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Writ of Certiorari.

New Jersey, ss.:

To ERNEST A. REED, County Supervisor of the County of Essex.

(seal) We being willing for certain reasons to be certified of and concerning certain proceedings instituted and conducted before you in the way of charges against Dr. Byron M. Harman, Superintendent of the Essex Mountain Sanitorium resulting in an order removing him from his position as Superintendent of the Essex Mountain Sanitorium, do hereby require that you certify the said proceedings and order, and all things touching and concerning the same to our Supreme Court of Judicature at Trenton on the first Tuesday of May next, that then and there may be done what of right ought to be done touching and concerning the same.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, this 5th day of February, 1929.

FRED L. BLOODGOOD,
Clerk.

SORG, DUNCAN & BAILEY,
Attorneys.

Notice of Application for Writ.

NEW JERSEY SUPREME COURT.

Between BYRON M. HARMAN, Prosecutor, and ERNEST A. REED, County Supervisor of the County of Essex.	On Certiorari. Notice of Application for Writ.

To ERNEST A. REED, County Supervisor of the County of Essex, and/or ARTHUR T. VANDERBILT, Attorney for Defendant.

Please Take Notice that we shall apply, before Chief Justice William S. Gummere, at the Supreme Court, State House, Trenton, on Tuesday, February 5, 1928, at 10 A. M. on that day, or as soon thereafter as counsel can be heard, for a writ of certiorari concerning the proceedings instituted and conducted before Ernest A. Reed, County Supervisor of the County of Essex in connection with the charges against Dr. Byron M. Harman, Superintendent of Essex Mountain Sanatorium, and to review the findings and order of said County Supervisor, removing said Dr. Byron M. Harman from his position as Superintendent of said Sanatorium, and all things touching and concerning same.

Dated, February 4, 1929.

SORG, DUNCAN & BAILEY,
Attorneys for Prosecutor.

Findings and Order.

In the Matter of The Investigation into charges for violation and neglect of duty against DR. BYRON M. HARMAN as Superintendent of the Essex Mountain Sanatorium.	Findings and Order.

APPEARANCES:

For Essex County Board of Chosen Freeholders, ARTHUR T. VANDERBILT, ESQ., County Counsel.

For Dr. Byron M. Harman, GEORGE B. BAILEY, ESQ., and ROBERT H. MCCARTER, ESQ.

Complaint was made against Dr. Byron M. Harman as Superintendent of Essex Mountain Sanatorium that he had penalized Harold Bennett, head of the Department of Roentgenology at Essex Mountain Sanatorium, by causing a nurse in his department to resign without just reason, thus interfering with the work of Bennett's department.

A hearing was held thereon on October 19, 1928. In view of the fact that the charges concerned the internal affairs of one of the county institutions, I directed that the hearing be held in private. At the hearing Mr. Bennett complained that on August 18, 1928, Dr. Harman advised him that he intended to change his hours and those of his nurse to what he says Dr. Harman described as "telephone operator's hours." This, he claimed, was

contrary to his understanding with Dr. Harman when he accepted the position.

Mr. Bennett also testified that Dr. Harman had removed from his department a nurse who had spent considerable time and effort in special study to fit herself for the particular work of his department. There is much extraneous matter in his testimony not pertinent to the matter under consideration. The nurse in question testified that she resigned because she did not care to be transferred from the department.

There is nothing in the testimony on these charges which would indicate that the changes made by Dr. Harman as to hours of Mr. Bennett or the nurse in his department and the transfer of the nurse from his department were not put in effect by Dr. Harman for the best interests of the institution. In the absence of proof of personal prejudice in the making of such changes I must conclude that the changes were made by Dr. Harman in the regular administration of the institution, and I therefore dismiss these charges.

Subsequently ten additional charges were made against Dr. Harman and at the request of his counsel the hearing was held in public. Witnesses were examined on ten different days at the Hall of Records, and at the request of Dr. Harman's counsel I went to Pinehurst, North Carolina, on January 3, 1929 to take the testimony of Dr. James Spencer Brown. In all, well over one thousand pages of testimony were taken on these charges.

The first, second and fourth charges deal with alleged improper conduct with Miss Bertie Galloway and Miss Pauline Galler, female telephone operators at the Essex Mountain Sanatorium. The first charge is that Dr. Harman invited Miss Galloway and Miss Galler into his office at the Sana-

torium to drink intoxicating liquor; that he served intoxicating liquor to them in his office; that he made immoral advances to them; and that he assaulted Miss Galler. The second charge is that he invited Miss Galloway and Miss Galler to ride in his automobile on various days and nights and that he took Miss Gallòway automobile riding and made improper proposals to her. The fourth charge is that he entered their bedrooms at times when they were in bed or scantily dressed and attempted improper relations with them.

Miss Galloway and Miss Galler each testified that Dr. Harman invited them down to his office before their working time was up at ten o'clock in the evening and on various occasions offered them intoxicating liquors and drank with them; that he made love to them and made improper advances to them. Miss Galloway testified that Dr. Harman invited her automobile riding on various days and nights and on these occasions made love to her and made improper proposals. Both testified that Dr. Harman made a practice of coming into their bedrooms in the afternoon when they were off duty and of making similar improper advances to them on these occasions.

Mr. Butterworth, the former Secretary of the institution, requested Miss Galloway to sign a resignation, but she declined to do so and left. No cause was ever advanced to her for requesting her resignation. Miss Galler left of her own accord, as she says, on the advice of Father James, a substitute chaplain at the Sanatorium, after she had told him of the drinking episodes and Dr. Harman's improper conduct toward her. Miss Galler also testified that she had been assaulted by Dr. Harman in his office.

Despite a lengthy and extremely searching cross-

examination of these witnesses they clung to their story. In my view, moreover, their testimony was not affected by the witnesses who were produced for the purpose of assailing their character. For example, Mrs. Lysick, a former telephone operator at Verona, admits that she was discharged but cannot remember what for; I cannot therefore have a high regard for her testimony. Miss Dedman accuses Miss Galloway of "petting" with one Doyle on the stairway of the administration building, but, although she obviously dislikes Miss Galloway most heartily, she frankly admits that she saw no immorality; Mr. Tate, though he admitted a grudge against Mr. Bennett, states that he saw nothing improper in Miss Galler's conduct when she was at his house, and Mrs. Tate concurs in that.

I cannot believe that Miss Galloway and Miss Galler would have gratuitously subjected themselves to a gruelling examination by both sides if their statements were untrue. They impressed me as telling the truth. This is especially so as to Miss Galler who was, I recall, present throughout a considerable part of the day previous to taking the stand, listening to the cross-examination of Miss Galloway.

Furthermore, with respect to Miss Galler, the uncontradicted testimony is that she left the institution at the suggestion of her spiritual advisor, Father James, and a short time thereafter voluntarily appeared at the rectory of Father Fitzpatrick ,the regular chaplain at the Sanatorium (for whom Father James had been substituting while Father Fitzpatrick was on vacation), and narrated her story to him in the presence of Dr. Harman, Freeholder Harris and Mr. Bennett.

In this connection, it seems to me it is only

proper for me to say that if either Dr. Harman or Freeholder Harris had referred this matter to me at that time as the officer designated by law to investigate complaints and hear charges, there would have been an authoritative disposition of the matter while it was still fresh in everyone's mind.

After the hearing before him Father Fitzpatrick held the matter in abeyance and ultimately concluded that the charges were not proved. To my mind, however, it is very significant that Freeholder Harris took occasion to caution Dr. Harman that in the future when he visited the quarters of female employees he should be attended by a housekeeper or nurse (this conversation taking place according to Mr. Bennett at the rectory and according to Dr. Harman later in the day while taking dinner at Freeholder Harris' home).

I am also impressed by three things: One, that while Dr. Harman and Freeholder Harris testify that they had a conference with Father Fitzpatrick and Mr. Bennett in Dr. Harman's office on the Saturday morning preceding the hearing in the rectory, Mr. Bennett denied any such conference, and Father Fitzpatrick, who is obviously not on good terms with Mr. Bennett at the present time, denied recollection of any such conference. Father Fitzpatrick did state that the only one he saw at the institution was Dr. Harman.

Two, that after the hearing at the rectory Dr. Harman immediately conferred with Mr. Bennett to see what instruments and equipment he desired, which to my mind would tend to substantiate Mr. Bennett's testimony that Dr. Harman asked him to keep the Galler girl quiet.

Three, that Dr. Harman seems to regard his loose leaf diary, which accounts for his movements up to 7 P. M. on August 11, 1926, as a complete

alibi as to what took place after 9.30 that night. I must confess that I cannot follow his reasoning on this point.

All the testimony on these charges considered, and especially by reason of the matters hereinbefore set forth, I am of the opinion that the charges as to Miss Galloway have been substantiated and that the charges as to Miss Galler even more definitely proved.

The third charge was that Dr. Harman took Henrietta Rose, a female patient and at times an employee, riding in his automobile at night. While there is some evidence to substantiate this charge I do not consider it compelling and I therefore dismiss it.

The fifth charge is that Dr. Harman made it a practice of unnecessarily exposing the persons of female patients while they were being treated. This charge is groundless. It appears that the practice adopted in this treatment is the standard hospital practice and I therefore dismiss this charge.

The sixth charge is that on May 8, 1925, Dr. Harman permitted and witnessed the performance of an illegal operation on Henrietta Rose at the Essex Mountain Sanatorium.

Miss Rose was admitted as a patient in 1922. In April, 1923, she was discharged as a patient and became assistant clerk at the Sanatorium, and going through successive steps in the Civil Service, she ultimately became secretary to Dr. Harman.

On May 1, 1925, she was readmitted as a patient and at Dr. Harman's request she was examined by Dr. J. Spencer Brown of the Advisory and Consulting Staff. The circumstances of the case are most peculiar. No such operation has ever been performed at the Sanatorium before or since.

While still classified as an employee, Miss Rose was attended by Dr. William F. Bennett. Dr. Bennett, nevertheless, did not examine her nor did he attend the operation, yet he is the doctor who prepared and signed the record of the operation. The operation, though most unusual at the Sanatorium, was never made the subject of a staff meeting.

Both Dr. Brown and Dr. Harman agree that there never was any indication of tumor, yet the statement of the patient as taken by Mrs. Engelbert, an experienced admitting nurse, states: "Is about to have an operation today for tumor uterine." Mrs. Engelbert testified that the information on the admission sheet was given her by the patient. Obviously the patient must have obtained this information from Dr. Brown or Dr. Harman. Moreover, on May 10th, two days after the operation, Dr. William F. Bennett wrote a record containing the words "tumor pelvis * * uterine tumor." and then crossed out both phrases and apparently substituted the term "endometritis." Dr. Bennett is unable to give any rational account as to why the crossed out words were written in two days after the operation or why they were stricken out. All this seems most unusual in view of the testimony of Dr. Brown and Dr. Harman given in defense of their action that there was no tumor present. Mrs. Engelbert's record sheet on May 7th states: "menses regular." Dr. Bennett's "Present History Sheet" of May 10th shows: "menstruation irregular." Obviously both cannot be true.

Dr. Harman states that one type of digital examination was made while Dr. Brown states that in all probability another type was made. Both agree that on the first visit on May 1st it was said

that the patient was to be transferred to Mountainside Hospital if an operation was required. Dr. Brown states that he came to see the patient on May 7th and looked her over but did not examine her and as a consequence he ordered an operation the following day. Dr. Harman, on the contrary, states that Dr. Brown did not see Miss Rose from May 1st until after she was under the ether on May 8th, he having sent for Dr. Brown to perform the operation.

Dr. Brown states that the reason he did not take Miss Rose to Mountainside Hospital was that he remembered that they had a rule against tubercular patients. Dr. Harman states that the reason for the change of intention was that she was an employee and unable to pay the expense, although concededly he has taken patients from the Sanatorium to such outside hospitals before and since, and Miss Rose was of course a patient from the time of her admission on May 1, 1925.

Dr. Harman describes the disease as "granular" endometritis, a term which Dr. Harrison S. Martland, the Chief Medical Examiner of Essex County, says he has never heard of, while Dr. Brown designates the disease as a hyperplasis of the endometrium, and denies that it was a granular endometritis. He asserted that counsel got the term "granular" endometritis from a letter he had written, apparently to Dr. Harman.

If the record that was customarily kept was made of this operation it has been lost or destroyed. Dr. Brown says it is up to the physician assisting the surgeon to prepare this record. There was no analysis made of the scrapings or other specimens from the operation as is accepted practice in hospitals, especially where a pathologist is employed as at the Essex Mountain Sanatorium.

It seems most remarkable that an institution having a pathologist available did not employ him in a case the like of which they never had before or since.

Moreover, the doctors differ as to the size and appearance of what was removed, one saying that there were very small clots and the other saying that some were the size of a quarter. Miss Houston, who was an assistant nurse, says that she saw an object about three inches long removed, which Miss Camblass, the operating nurse, told her was a fetus. Miss Camblass, who returned from California while the respondent's case was being put in, and Dr. Conklin, who was at the operation, and Dr. Hubbard of Montclair, the anesthetist who accompanied Dr. Brown to the Essex Mountain Sanatorium, were none of them produced to contradict Miss Houston.

In spite of the fact that Miss Houston says she saw an object about three inches long, I propose to dismiss the charge because she does not know of her own knowledge that it was a fetus. The many contradictions, several of which I have pointed out, the fact that important data in the history of the case have been altered, and the further fact that some of the records have disappeared, have caused me to pause in my decision. However, the matter is primarily a medical one and I have resolved the doubt in Dr. Harman's favor.

The seventh charge is that Dr. Harman failed to cause staff meetings of the physicians to be held at regular and frequent intervals. The testimony on this point appears uniform that staff meetings were abolished a year and a half or two years ago, and were held at rather infrequent intervals. Meetings of the staff to discuss X-ray plates were held in Dr. Ben-

nett's laboratory every Thursday morning, but Dr. Harman did not attend half of these and did not stay through many of those at which he appeared. Good hospital practice manifestly requires frequent staff meetings attended by the Superintendent as well as his staff, and rules to that effect should be adopted forthwith. In view of the fact that there were no specific rules on this point I have reached the conclusion that this charge should be dismissed.

The eighth charge was dismissed at the conclusion of the hearing on motion of respondent not opposed by the County Counsel.

The ninth charge was that Dr. Harman on or about August 19, 1925, was arrested on Fairfield Avenue, east of Fairfield Road, in Caldwell Township, on the complaint of parking without lights with an Essex County car, in the company of a female.

The testimony was that Officer Collerd did give Dr. Harman a summons for such parking without lights at the time and place named. Dr. Harman introduced no contradictory testimony on this point, but in view of the fact that Dr. Harman was not actually arrested I have concluded that the charge, as phrased, must be dismissed.

The tenth charge was that Dr. Harman parked Mrs. Harman's car on Mountain Avenue about a quarter of a mile from the school at night with an unknown female in the car with him, said to be Miss Henrietta Rose. Mr. Walzer testified that he recognized Dr. Harman but was unable to recognize who was with him and I therefore dismiss this charge.

During the course of the hearing on the ten charges mentioned, it developed from the testimony of Dr. Harman that he had dismissed Mrs. Eloise

D. Travers, Night Supervisor, without giving her a hearing on written charges as prescribed by the statute governing the Essex Mountain Sanatorium. On motion of the County Counsel an additional charge was permitted as follows:

> "In that on or about November 21, 1928, you discharged Eloise Travers from her position as night supervisor at the Essex Mountain Sanatorium without cause stated in writing after opportunity to be heard, contrary to the provisions of Chapter 278 of the Laws of 1922."

The complaint which Mrs. Travers had made to me of her dismissal and which she had during her lifetime discussed with me, was introduced as evidence, together with a certified copy of her death certificate, showing suicide as the probable cause of her death.

Dr. Harman admitted that she had never been served with written notice of any charges against her. Counsel for Dr. Harman endeavored to prove that he had not dismissed her, but it appears clearly from the record that he advised her that she had to leave because of the recommendations of the Prosecutor's detective, and that it further appeared that he told her when she inquired if she could obtain employment in some other institution, that if inquiry was made by a future employer he would have to give such employer a copy of the report on the basis of which he had requested her to leave the institution .

There is nothing in the report which connects Mrs. Travers in the slightest way with the convict Almond. Neither was she in my judgment derelict in duty failing to awaken the Superintendent in the middle of the night to inform him of the dis-

turbance that had been created by an intruder who had already left the building.

But regardless of all these considerations, the admitted fact remains that Mrs. Travers was discharged by Dr. Harman without the written charges prescribed by the statute and an opportunity to answer same.

Dr. Harman produced on his behalf the Superintendents of nearby county tuberculosis sanatoria who testified that they were in the habit of discharging employees without written charges. Their violation of the law cannot excuse Doctor Harman. It appears from their testimony, moreover, that they were acting in ignorance of that provision of the statute. The same defense cannot be made for Dr. Harman, however, for in connection with the hearing of the case of Samuel Simms, Chief Executive Officer and Steward of the Essex Mountain Sanatorium, Dr. Harman knew in January, 1927, that my written decision reinstating Mr. Simms was based on the fact that Dr. Harman had not discharged him according to law.

It must appear, therefore, that in dismissing Mrs. Travers without written charges and opportunity to answer same, Dr. Harman acted with full knowledge of the law brought out in a contested matter with respect to his duties as to dismissing employees at the Essex Mountain Sanatorium.

For the reasons given I find that Dr. Harman is guilty of charges one, two, four and eleven, and not guilty of the remaining charges, and hereby remove Dr. Harman from his position as Superintendent of the Essex Mountain Sanatorium.

Dated February 4, 1929.

ERNEST A. REED,
County Supervisor,
County of Essex.

Return.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	On Certiorari. Return.

In obedience to an order of the Supreme Court made on the 5th day of February, 1929 directing us to certify what facts were found in the above matter, we do hereby certify the annexed pleadings, testimony and exhibits in said matter.

ERNEST A. REED,
County Supervisor of Essex County.

Dated: April 5, 1929.

Order.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	On Certiorari. Order.

On motion of Arthur T. Vanderbilt, attorney for defendant, it is on this 23rd day of February, 1929, ORDERED that either party have leave to take depositions to be submitted upon the return of this writ on two days' notice to the other party.

Let this be entered in the minutes.

WM. S. GUMMERE,
C. J.

Notice.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	On Certiorari. Notice.

To: Messrs. SORG, DUNCAN & BAILEY, Attorneys of Prosecutor:

Please Take Notice that the defendant will, in pursuance of the rule heretofore taken in the above stated cause, take depositions and mark exhibits on his part before Henry Hahn, a Supreme Court Commissioner, at Room 507 Hall of Records Building, Newark, New Jersey, on Monday, April 29, 1929, at nine-thirty o'clock in the morning.

Please Take Further Notice that the defendant demands that you produce, on the taking of depositions, the letter of the defendant to the prosecutor, dated February 2, 1927, and the Supervisor's order in the matter of Samuel Simms, dated February 10, 1927.

In default of the production thereof, secondary evidence thereon will be offered.

Dated: April 26, 1929.

Respectfully yours,

ARTHUR T. VANDERBILT,
Attorney for Defendant.

Reasons.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	Reasons.

The prosecutor, by Sorg, Duncan & Bailey, his attorneys, and Robert H. McCarter, Esq., of counsel, comes and prays that the findings and order dated February 4, 1929, made by Ernest A. Reed, Supervisor of Essex County, and the entire proceeding taken by said defendant, may be set aside and for nothing holden, for the reasons following:

1. Because of refusal of defendant, Ernest A. Reed, Supervisor of Essex County, to furnish to prosecutor upon demand, a statement or bill of particulars of the various charges specified in Notice dated December 3, 1928, addressed to prosecutor, which bill of particulars should contain the names of the complainants and the times and places of the alleged occurrences and the duties he violated or neglected.

2. Because of refusal of said defendant, Ernest A. Reed, upon demand, to furnish to prosecutor, copies of the complaints and the names of the complainants, upon which were based the various charges specified in Notice dated December 3, 1928, addressed to prosecutor.

Reasons.

3. Because defendant, Ernest A. Reed, Supervisor of Essex County, without jurisdiction to conduct the proceeding or hearing upon the various charges contained in the Notices served upon prosecutor, dated December 3, 1928, and January 22, 1929, for the reason that the Statute under which said defendant conducted said proceeding, and commonly known as "County Supervisor Act", provides for such proceedings only as to subordinate officers and employees and prosecutor is not within that classification as Superintendent of Essex Mountain Sanatorium, but is, by virtue of Statute of 1922 (P. L.), Chapter 269, its amendments and supplements, Chief Executive Officer thereof.

4. Because all of the charges, contained in Notices dated December 3, 1928 and January 22, 1929, are indefinite, general in nature and specified in such manner and over such a period of time, going back to 1923, as to make impossible an adequate defense thereto, thereby depriving prosecutor of reasonable opportunity to prepare an answer and defense to same, and in that respect are irregular and the procedure of the Supervisor thereunder is likewise irregular.

5. Because the various charges, or some of them, as made, contained in Notices dated December 3, 1928 and January 22, 1929, do not constitute any violation or neglect of his duties as Superintendent of Essex Mountain Sanatorium, and are therefore without the jurisdiction of the Supervisor, defendant herein.

6. Because the various charges, and none of

them, as made, contained in Notices dated December 3, 1928 and January 22, 1929, do not set forth any rules or regulations which prosecutor violated or neglected, nor was proof offered at the hearing of any rules or regulations fixing or imposing upon prosecutor any duties which he violated or neglected.

7. Because the various charges contained in Notices of December 3, 1928 and January 22, 1929, were made by the defendant, Ernest A. Reed, Supervisor of Essex County, who then conducted the hearing thereof and sat in judgment thereon, which was irregular and illegal and prejudicial to prosecutor, who was thereby deprived of an impartial hearing of same, and such procedure was unconstitutional, as depriving prosecutor of a property right, his salaried position, without due process of law.

8. Because prosecutor, by virtue of his position as Superintendent of Essex Mountain Sanatorium, is within the exempt class of the Act commonly known as the "Civil Service Act" and is entitled to be heard under the proceeding therein set forth.

9. Because the statute under which the various charges were brought is unconstitutional, in that it permits the Supervisor to make the charges, conduct the hearing and make the determination or judgment thereon, depriving prosecutor of his salaried position as Superintendent of Essex Mountain Sanatorium, without due process of law.

10. Because testimony and evidence of an irregular and illegal character were admitted over

objection by prosecutor, and testimony and evidence offered by prosecutor were improperly and unlawfully excluded by defendant and prosecutor was in numerous instances refused and deprived of the right to cross-examine witness produced and offered against him in an attempt to substantiate the various charges contained in Notices of December 3, 1928 and January 22, 1929.

11. Because said Findings and Order of defendant Supervisor of Essex County, entered against prosecutor, were not based upon facts established by proper and lawful testimony, evidence and proof adduced at the hearing of said charges, and are contrary in fact to the testimony, evidence and proof offered at said hearing, in substantiation of said charges.

12. Because said Findings and Order, in respect to the charges concerning Miss Galloway, specifically state that her testimony is not affected by witness Mrs. Lysick, offered by prosecutor, and that defendant did consider testimony of said witness Lysick in making his determinations, whereas the fact is that all testimony of said Lysick was in fact excluded by defendant.

13. Because, with respect to the charges concerning Miss Galler, said Findings and Order specifically find prosecutor guilty of misconduct in August, whereas said Galler testified that same did not occur at that time, and the testimony of said Galler is so contradictory as to make impossible a determination of what portion of her testimony is truthful and a lawful or proper finding

of fact based upon any portion of her testimony is improper and prejudicial and contrary to law.

14. Because charge known as #11, dated January 22, 1929, was added after testimony was offered at the hearing, over objection of prosecutor, and contrary to statement of defendant, Supervisor, that the alleged facts so adduced would not be used as a basis for new or further charges, upon which prosecutor relied and did not cross-examine the witnesses in that respect, thereby depriving prosecutor of that opportunity as the said Eloise Travers died within a few days thereafter, so that prosecutor was then unable to produce her or to examine her as to her testimony in that respect.

15. Because the defendant specifically, in his Findings and Order, found that prosecutor had full knowledge of a previous decision in the case of one Simms, requiring charges to be given in writing to subordinate employees and a hearing had thereon, and based upon such alleged knowledge found prosecutor guilty of charge #11, whereas there was no proof whatever offered to establish such knowledge and no evidence that prosecutor did in fact have such knowledge.

16. Because the depositions taken subsequent to the Writ of Certiorari allowed in this cause, were for testimony available at the hearing and are intended to support the Findings and Order of the defendant, which in that respect, as to charge #11, were not based upon facts adduced at the hearing or evidence offered.

Reasons.

17. Because the said action of defendant, Ernest A. Reed, Supervisor of Essex County, as aforesaid, is in divers respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

SORG, DUNCAN & BAILEY,
Attorneys of Prosecutor.

ROBT. H. MCCARTER,
Of Counsel.

Testimony.

Thursday, December 13, 1928.

In the Matter

of the

Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

OATH TAKEN BY STENOGRAPHER.

I, Saul H. Kirschenbaum, do solemnly swear that I will well and truly take stenographically and accurately transcribe to the best of my skill and understanding the proceedings in the matter of the charges against Dr. Byron M. Harman, Superintendent of the Essex Count Sanatorium, for violation and neglect of duty.

Oath taken by witnesses.

Do you solemnly swear that the answers you are about to give in this investigation into the charges against Dr. Byron M. Harman will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Bailey: At this time I want to renew the application for an adjournment on the ground that Robert H. McCarter is actually trial counsel representing Dr. Harman, the defendant in these charges, which fact has been made known to your Honor; on the further ground that by reason of the various steps taken in the proceedings, the defense has had an inadequate time to prepare; on the further ground that one of the most important witnesses for the defense with relation to charge number six, which has to do with an alleged illegal operation which was permitted to be performed and was witnessed, according to the allegation, by Dr. Harman, the defense to which is that it was in fact a legitimate operation performed by a responsible physician in this County who is now in a hospital in Baltimore, having just undergone a major operation; on the further ground that your Honor has known of these charges since the so-called Bennett hearing on October 19, and prior thereto, and these charges and complaints have been investigated by you since that time and were first made known by written charges on December 3, which were served on us on December 4, today being the 13th, that time being entirely insufficient to meet the charges which extend back to Labor Day, 1923, a period of over five years; on the further ground that today's hearing, while it may be within the right of your Honor to fix, was not fixed by consent of counsel, because in reference to a letter which I addressed to Mr. Vanderbilt as County

Counsel, and your attorney, on December 4, I said that we would make application for a copy of the charges with names and complaints, and so forth, and therein I said, "In view of what follows hereinafter it will be impossible to hold the hearing on December 10." I said that we could agree upon an early date mutually convenient. Nothing further was said to myself or Mr. McCarter as to fixing December 13 for the hearing.

It is obvious from the steps taken in the case and the various demands that have been served upon you, that no effort has been made to obtain witnesses for the defense because it would be impossible to do so. As a matter of fact, the first subpoenas were obtained from you last night at our application, we being notified by letter last night about five o'clock that the hearing would go on today. The practice in all judicial proceedings commonly is that when counsel is actually engaged in another matter to carry the matter for his convenience. Mr. McCarter is actually engaged—was engaged yesterday and will be today and probably tomorrow—in Brooklyn as trial counsel in a case which is a retrial of a matter which was fixed some time prior to even the Bennett charges, and I therefore respectfully ask for an adjournment of the hearing for the mutual convenience of yourself, county counsel, Mr. McCarter and myself.

Mr. Vanderbilt: I desire to state on the record that I am appearing here by direction of the Board of Chosen Freeholders by unanimous vote taken at a conference held, I believe, a week ago Monday. In answer to the motion made by counsel and the several arguments which he has advanced for an adjournment, I desire merely to recall to the Supervisor the fact that Dr. Harman in a letter ad-

dressed to the Supervisor on December 1, 1928, which letter I am advised was prepared after consultation and advice of counsel, states that he demands an immediate, complete and impartial hearing of all of the charges. It is a matter of public knowledge that the State Department of Institutions and Agencies was asked to go into the matter by the Chairman of the Verona Hospital Committee, who intervened in this matter, and following that request, conferences were had between the Chairman or President of that Board a Mr. Earl, and the Commissioner, Mr. Ellis, attended by the Chairman of the Verona Sanatorium Committee and by two other members of this Board at which the representatives of the State Department of Institutions and Agencies advised the Freeholders to carry back word to you as Supervisor that unless action was taken last week to bring this matter on to an immediate hearing and determination, that the State Department of Institutions and Agencies would exercise their statutory right of visitation to come into the institution and make such report on the matter as they might be advised; that pursuant to that conference had by the three Freeholders: Mrs. Harris, Mr. Crane and Mr. Mungel with the representatives of the State Department of Institutions and Agencies, a special meeting or conference of the Board of Chosen Freeholders was called to which the Supervisor was invited, and after a whole morning's consideration of the situation the Board by unanimous vote requested the Supervisor to proceed in this matter with an immediate hearing, and directed the County Counsel to assist in the matter and to conduct the hearing on behalf of the County.

Immediately thereafter notice was prepared and served on Dr. Harman through his counsel, which notice advised him that the hearing would go on on Monday, December 10. Subsequent thereto counsel advised the County Supervisor that they demanded a bill of particulars and that they would be unable to go on with the matter on Monday, December 10. The County Supervisor, after taking advice, wrote counsel that the bill of particulars was not in order and that the matter would be continued until today, Thursday, December 13. That notice was given, I believe, on Thursday of last week. That was the morning of December 7. It was not until Tuesday morning of this week that any request for a further adjournment was made, and it was not until Tuesday of this week that the engagement of Mr. McCarter was stated to us.

In addition to the facts which I have mentioned, I think it proper to state on the record that we are in danger of having this case tried by newspapers, rather than by law, and I say this without any reflection on the newspapers, because it is their duty to print news; but we have had petitions circulated around from the patients, from the nurses, from the staff, from the advising and consulting staff, and from various other bodies, most of them declaring their belief in Dr. Harman's innocence and all sent to the County Supervisor. If such communications were sent in the trial of a case to the Judge before whom the case was being heard, all those who sent such petitions would be held in contempt of court as an attempt to influence the Court in its decision. I am advised that a new petition was presented to you this morning. These petitions have been printed at

length, and properly so, in the newspapers, because they have been made public. It seems to me, therefore, that with due deference to the State Department of Institutions and Agencies, and with due deference to the entire Board of Chosen Freeholders of the County, and as you yourself have stated to counsel with regard to the best interests of the institution to have this matter cleared up at once, the matter should proceed today.

I have discussed with counsel the question with reference to a witness who is out of the State. Counsel even yesterday was unable to tell me when that witness would be able to appear, advising me that the witness was still in the hospital. I told counsel at the time that the Supervisor, if it was necessary, would be willing to go to Baltimore to take depositions, so there is no hardship from that standpoint. In view of the fact that counsel cannot tell us when that witness will appear, to agree to an adjournment for that reason would be to agree to an indefinite postponement, in view of Dr. Harman's own request for an immediate hearing.

Further, with respect to the argument that Dr. Harman has not had an adequate time in which to prepare to answer these charges, it seems to me that the reply is obvious and complete. All of these matters are matters which, if they are true, lie within his peculiar knowledge. It is not like a case in which a corporation is sued and the officers do not know which of their subordinates were concerned; but it is all localized; it is in one institution under the control of Dr. Harman, and the witnesses are available.

With respect to the subpoenas for witnesses, in the very letter forwarding the charges to counsel,

I made an offer then to have subpoenas prepared and to assist in any way that we could with respect to that matter, and counsel has now had twelve days in which to get subpoenas, although they were not asked for until five o'clock yesterday afternoon. The charges have been known to Dr. Harman in a formal way since December 4. That is more time than is allowed to a defendant in the Court of Chancery on an order to show cause to answer the most important cases which arise in that court.

The objection that the date for the hearing is not fixed by consent of counsel, I can answer by saying that it is the duty of the Supervisor to fix the date, and if the date was not one that suited counsel, I think the Supervisor should have been immediately notified.

We have the situation in this case in which the witnesses on behalf of the County are not appearing joyfully or with any great desire to appear. Some of them are outside the jurisdiction and are brought here with considerable difficulty, and I think I may say with entire truth that if this hearing is postponed, it will be impossible to get one or two of the most important witnesses to appear again. They are not under the jurisdiction of the Essex County Court of Common Pleas, which is the only court under the Supervisors' Act, that can compel them to appear, and if we do not go on with the hearing today we will probably suffer a loss of their testimony on matters which are very important from the standpoint of the charges and complaints now made.

One of the arguments of counsel was that no preparation had been made. That, however, I do not think, is an argument. Counsel had an oppor-

tunity and might have prepared. If counsel did not prepare, pending these various applications on his part, it surely can be no ground for an adjournment.

There may be other phases of the matter which I have omitted, but I have tried to outline as briefly as possible what the situation is. It seems to me that the public importance of the case demands an immediate hearing; the best interests of the institution require it.

Mr. Bailey: I take it the public is not on trial today; it is Dr. Harman who is on trial and therefore the public interest in the matter plays no part. Dr. Harman has been charged with what in criminal law would constitute a most serious charge or charges. If he were indicted under similar charges in the criminal law, it would require a specific statement of the dates, the times and places for the obvious purpose of giving the defendant an opportunity to ascertain where he may have been on those dates. That has been requested here and it has been denied. As a consequence, Dr. Harman has been obliged to go back for a period of five years and trace day by day his movements, if possible.

We will admit today it is impossible to trace every one of those movements, and consequently, he has not had time since the charges were first served upon us on December 4, to go back. As a matter of fact, he is entitled to have the right to have the matter conducted according to law and have every right to have all the legal steps necessary to protect him, which counsel have given him in motions from time to time for the bill of particulars.

I will take up in a few moments the sequence

and dates that these papers have been served, showing that it is obvious it would be humanly impossible to prepare and furnish witnesses to cover the full period of five years. It may be true, as County Counsel says, that if the facts are true, that they are within the peculiar knowledge of Dr. Harman, but that is the very point at issue. Are they true? He can deny them, but is the denial sufficient to turn the testimony before you in his favor? Hasn't he a right to produce corroborative proof and substantiate any denial or excuse or explanation that he offers? That is the right that has been denied him.

It may be true that in the first letter to counsel the offer was made to serve subpoenas, but isn't it most unusual for the Prosecutor to offer to serve subpoenas for the defense and learn who all of the witnesses are for the defense?

Mr. Vanderbilt: It is taken in every proceeding before the County Supervisor. If counsel does not want to avail himself of that offer it is not our fault. That seems to me to be trifling, if you will pardon my saying so.

Mr. Bailey: I think it is within the defendant's discretion to subpoena witnesses. As to the witness who is out of the state, of course, we do not know. We have not had an opportunity to go to Baltimore. County Counsel has made the statement that you would go to Baltimore, but why should we go to that expense if we can get him here? He is a doctor of high character in this community and is charged with an illegal operation. He certainly would be glad to come.

As to trying this case in the newspapers, I don't think it makes any difference. It is his conclusion. Dr. Harman, as I said before, is the person

on trial here, and he is entitled to a common-sense decision on his application for adjournment. This is not, to use the words expressed in your letter to me, a trial, but an investigation, and it is true that we have demanded an immediate and complete hearing and we want a complete hearing, which means the opportunity, the same as the County has had, to furnish witnesses.

I again reiterate what I said before, that the County has known this since October 19, or before, but positively from that date, and has had its opportunity to make investigation and check and recheck since that time, and did not make known the charges until December 4, which is about six weeks. I do not think when the defendant asks for an adjournment that it is improper; it is not for the purpose of delay, and I think we can agree to a date.

Mr. Vanderbilt: If I may reply with respect to the Baltimore witness: Counsel does not even know the date when he is going to be available. I suggested when counsel spoke to me about the matter on Tuesday, I think it was, that it would be the simplest matter to telephone the Baltimore hospital to find out when the doctor would be available. No such attempt was made.

Our offer for subpoena has apparently been misunderstood, as I am informed the practice in the Prosecutor's office is to supply subpoenas and attend to the serving of them, and it has always been the practice, so far as I know, for the past seven or eight years, in hearings conducted before the County Supervisor. That does not mean that the respondent must have his subpoenas served that way, but it is merely an offer of the customary routine. It was apparently misunderstood, but it

should not have been. Counsel knows that in matters of the greatest importance—in some cases there are hundreds of thousands of dollars involved—five days is considered in the Court of Chancery adequate to prepare. In injunction suits and other matters I myself have had only five days in which to answer. As a matter of fact, the notice here given is considerably over that time, and I can only repeat that it will result in a great hardship if the matter is postponed, because of my fear of our inability to produce witnesses.

In addition to that, I may refer to the fact that counsel has served notice of application for a writ of certiorari to object to the jurisdiction of the supervisor to hear this matter, and I submit that if counsel had been in earnest about that application, which is scheduled to come on within a few days, there might have been an earlier application made to the Chief Justice for a stay. No such application has been made and the Supervisor is free to go on with the hearing and I urge on behalf of the County that we proceed.

Mr. Bailey: That application is in connection with some other applications of another nature. It is a matter discretionary with the attorney whether he is going to seek the stay or not, but it is customary to hold over the hearing until the application on the writ of certiorari. Nobody is going to be harmed. This is an investigation, not a tral. We are not bound by any rules of the Court of Chancery to answer Mr. Vanderbilt, on a return of a rule to show cause. If dates are not given, counsel may go in and move to extend the matter upon application for a bill of particulars, which is always granted in chancery matters. Therefore, I again urge on these additional

grounds that notice has been given to you for an application for a writ of certiorari questioning your jurisdiction in the matter, also on the right of your refusing to give the bill of particulars demanded.

Mr. Vanderbilt: I see no good purpose served in making any further argument.

The Supervisor: I have listened to what both counsel have said, and I see no reason why we should further delay the proceedings.

Mr. Bailey: I still have some motions to make.

At this time I renew my application and offer in the record the notice served upon you as County Supervisor, dated December 5, 1928, service of which was acknowledged by Mr. Vanderbilt on December 6th, asking for true copies of the complaints and the names of the complainant. I ask to have it marked in evidence.

(The same is received in evidence and marked Exhibit R-1.)

Mr. Bailey: I offer in evidence the reply dated December 7, 1928, signed by yourself, addressed to us, refusing to furnish us with the names of the persons making the complaints and copies of the complaints.

(The same is received in evidence and marked Exhibit R-2.)

Mr. Bailey: I offer in evidence the demand for a bill of particulars served upon you bearing date December 10, 1928, acknowledged by Mr. Vanderbilt on December 11, 1928.

(The same is received in evidence and marked Exhibit R-3.)

Mr. Bailey: I offer in evidence the letter from you dated December 12, 1928, received by me on December 11, 1928, also signed by you, wherein you decline to furnish the particulars demanded.

(The same is received in evidence and marked Exhibit R-4.)

Mr. Bailey: I offer in evidence notice served upon you bearing date December 12, 1928, acknowledged by Mr. Vanderbilt on December 12, 1928, of application to the Supreme Court to be made Saturday, December 15th, for an order requiring the furnishing of the information demanded in the notices just mentioned, and also of intention to apply for a writ of certiorari on the ground that you are without jurisdiction to try the matter.

(The same is received in evidence and marked Exhibit R-5.)

Mr. Bailey: I offer in evidence your reply of December 12, 1928, received yesterday afternoon.

(The same is received in evidence and marked Exhibit R-6.)

Mr. Bailey: I again urge the granting of the bill of particulars and the names of the complainants and copies of the complaint, as a matter of constitutional right in Dr. Harman, the defendant in these charges, notwithstanding that you take the position that this is not a trial but an investigation. Nevertheless, you have prepared and served

upon him notice of charges which he is required to answer this morning, the result of which, if found guilty by you, would be his discharge or suspension, which is a property right, and he is entitled not to be deprived of that property right except by due process of law. That means, then, that he is entitled to a full opportunity to be heard and to have made known to him specifically the charges that he is required to meet, similar in form, because they are matters of a criminal nature, to what would be permitted him in an indictment. We specifically ask to be given an adequate time to investigate if they are furnished at this time, the names of the complainants and the dates or occasions that each one of these charges occurred. I am referring now to notice of the charges dated by you December 3, 1928, which were served upon Dr. Harman through counsel on December 4, wherein it is charged that complaints have been made against him as Superintendant of the Essex County Sanatorium for violation and neglect of duty in certain particulars, setting forth ten charges.

The first charge is: "In that on various occasions between Labor Day, 1925, and August, 1926, you invited Bertie Galloway and Pauline Galler, female employees, to your office in said institution to drink intoxicating liquor and that you served intoxicating drinks to one or more of them in your office and made immoral advances to them, and assaulted the said Pauline Galler." Under that charge he is entitled to know on what days these occurrences took place; to which one the immoral advances were made; what those immoral advances were; what constitutes the immoral advances; whether or not they were made to one or

both of them, singly or together; what the assault upon Pauline Galler is. There is a definite legal meaning to the word "assault" which means striking, hitting, or even attempting to strike or hit. There is also a commonly understood meaning of that word which is an illegal connection with a female. Which it is, we don't know. We are entitled to know in order to meet the charge; we are entitled at the proper time to make the investigation and prepare our defense to find out where we were at those times and places. It is impossible to account for every day between Labor Day, 1925, and August, 1926.

In connection with charge number two, it is charged that between Labor Day, 1923, and August, 1926, a period of three years, he invited two named female employees to ride in his automobile on various days and nights, and that he took one of these named female employees riding at night in his automobile and made improper proposals to her. We are entitled to know what those improper proposals were; on what dates they occurred and on what nights; whether or not they went riding together or alone with him.

In charge number three he is charged with taking a named person, a female patient and at times an employee, riding in his automobile at night during a time when that person was a patient or employee. As a matter of fact, we cannot see where that constitutes a violation or neglect of duty in any wise, but nevertheless, we are entitled to know when. It does not mention any dates. How far back are we obliged to go to account for the movements, if any, with this female employee? Suppose, as a matter of fact, we are prepared to go back one or two years and the charge is made four

or five years ago or even longer? There is no date set forth; we are not prepared to meet it. We are entitled to know, as a matter of fact. We are charged with these things and we are entitled to prepare an adequate defense or explanation.

Charge number four is that between Labor Day, 1925, and August, 1926, on several occasions he entered the bedrooms of two named female employees at times when such female employees were in bed or scantily dressed, and on one or more such occasions attempted improper relations with such female employees. I again urge the same reasons that I did for charge number one with respect to the time that these took place; whether or not it was done when they were both together or alone; where; under what circumstances; what were the improper relations; what is meant by improper relations. We don't know. We are entitled to a bill of particulars defining or charging definitely what is meant by improper relations. We are not supposed to take it for granted.

The next charge is that in that he made it a practice of unnecessarily exposing the persons of female patients while they were being treated. No times are alleged; we don't know how far back that went; we are entitled to know the names of the patients, because this is a doctor who is being charged with this unnecessary exposing of female patients. This is a T. B. or tuberculosis sanatorium where one of the treatments is that of using sun lamps, sun baths and so forth, where exposure does take place. Aren't we entitled to know the names of the patients; to know the circumstances; to be able to explain, if possible, what it was? If it is one of those patients, we are entitled to a bill of particulars in that respect.

Charge six states that on or about May 8, 1925, he permitted the performance of an illegal operation upon a person who was a female patient at the Verona Sanatorium and that he witnessed this operation. It does not charge him with performing the operation; it says he witnessed and permitted it. We are entitled to know which operation. We know of one operation upon this particular person; a perfectly legitimate one; the one in question where we made application for the adjournment to produce the doctor who performed it. We are entitled to know what the illegal operation was; what kind of an operation it was; on or about is not sufficient. That is a definite charge. What date was it? We are entitled to know.

The charge number seven reads: "In that you have failed to cause staff meetings of the physicians at said institution to be held at regular and frequent intervals." We are entitled to know what regular meetings he failed to call. As a matter of fact, there is no statement in there showing a duty which he violated; there is no allegation of the duty which he has violated. We are entitled to a bill of particulars in that respect.

Charge eight is: "In that you have made it a practice to leave your duties as Superintendent during the middle of the day for a considerable length of time and spent much time resting or sleeping." When? What period of time? What days? Aren't we entitled to show that on certain days we may have been actually out of the institution? It may have been on legitimate institutional business. Can he today, if this charge should constitute fifty or more days, be called upon to answer each one of them without an opportunity to investigate back and determine where we

were? We are entitled, as a matter of right, I think, to a bill of particulars in that respect.

Charge number nine is: "In that on or about August 19, 1925, you were arrested on Fairfield Avenue, east of Fairfield Road, in the Township of Caldwell, on the complaint of parking without lights in an Essex County car, in the company of a female." We are entitled to know when he was arrested. On or about August 19 is what it says. When was he arrested? By whom was he arrested? Who was the female?

Charge number ten reads: "In that in the fall of 1926, you parked Mrs. Harman's automobile on Mountain Avenue about a quarter of a mile from the school at night with an unknown female in the car with you, said to be"—I prefer not to mention the name, but a name is mentioned here. Your Honor, as County Supervisor, I take it, is charged with knowing the municipalities in this county and possibly the streets in them. You must know that there are several municipalities in this county having a Mountain Avenue. There is no allegation where this Mountain Avenue is; whether it is in Verona, Montclair or Irvington, those being municipalities that I happen to know have Mountain Avenues in them. We are entitled to know when in the fall of 1926; what constitutes the fall. It is a period of several months, I take it. We are entitled to know the date. The date must be known and we are entitled to it to be able to prepare a defense.

Will your Honor rule on our application for the bill of particulars?

Mr. Vanderbilt: May it please the Supervisor, I do not desire to go over this entire matter because I think it has already been covered.

Argument.

Mr. Bailey: If your Honor please, in the first place, I asked for a ruling from the Supervisor, not the County Counsel.

Mr. Vanderbilt: If the Supervisor please, I take it I am still counsel in the case and entitled to make a response to an argument that has taken twenty minutes, but I will try not to take over five.

Counsel has said that the right of the Superintendent to the office is a property right. I will admit that we office holders sometimes acquire the idea that the offices we hold are our property, but there is nothing in the laws of New Jersey or the United States which sustains that conception. Offices are not construed as property rights in America.

Secondly, it is said these charges involve matters which are the subject of criminal proceedings. My answer is that many cases tried in the civil courts: accidents with automobiles; seduction, and the like, involve criminal charges, but those phases of the matter are not considered in the civil courts. This is an administrative proceeding before the Supervisor to try one particular matter, and that is the truth or falsity of such matters which are mentioned in the notice served on Dr. Harman.

We are told it is a constitutional right involved here, without reference being made to what article, provision or section of what constitution is involved.

Mr. Bailey: It is the property clause which you are familiar with.

Mr. Vanderbilt: I think this does not involve a property right.

Mr. Bailey: Not being deprived of something without due process of law.

Mr. Vanderbilt: Counsel will agree that due process of law in administrative proceedings is never construed to mean more than notice of hearings. Notice has been given and hearing has been had; the matter has been passed upon by the County Supervisor and it is in the record. I submit that there is nothing new offered here to change that.

Mr. Bailey: Will your Honor rule?

The Supervisor: Yes, I feel that we should proceed forthwith without waiting for the delay you are asking for.

Mr. Bailey: I ask that an exception be entered upon the record.

I still have some motions to make. I move now to dismiss all of the charges on the ground that none of them in itself constitutes a violation or neglect of duty as superintendent of the Essex County Sanatorium at Verona, as there is no section or provision contained herein setting forth his duties which are violated by these alleged actions.

As to charge number one, without going into it, it does mention his office in the institution, which I do not admit thereby would constitute a violation or neglect of his duty.

I particularly mention charge number two wherein it is alleged he took two females automobile riding on various days and nights on the ground that in itself it does not constitute a violation or neglect of duty in any way, shape or form.

Likewise with charge three, that he took a particular named patient or employee riding in his automobile at night, making no charge as to what he may or may not have done. That in itself does not constitute a violation or neglect of duty.

As to charge number four, portions of it may, if the duty is shown, to possibly be subject to a charge for violation or neglect of duty, but the mere entering of a bedroom by the Superintendent of the institution is not in itself a violation or neglect of duty.

As to charge number five, wherein is the duty set forth that he violated by unnecessarily exposing the persons of female patients while they were being treated?

Likewise as to charge number six.

As to charge number seven in that he failed to cause staff meetings to be called, wherein is the duty set forth requiring him to call staff meetings? How often? When?

As to charge eight in that he made it a practice to leave his duties as Superintendent during the middle of the day for a considerable length of time and spent such time resting or sleeping—what hours were prescribed by any list of duties for the Superintendent?

As to charge number nine, the so-called parking charge, wherein is there a violation or neglect of duty by reason of the fact that he was charged with parking in an automobile on a road outside of the County grounds?

As to charge ten, wherein is the duty that he is charged with violating or neglecting when he parked Mrs. Harman's automobile at night on Mountain Avenue?

I again urge that these charges do not set forth any violation or neglect of duties in any wise, altogether or any one of them. I ask for a ruling on that.

The Supervisor: Do you wish to reply to that, Mr. Vanderbilt?

Mr. Vanderbilt: I don't think it is necessary, Supervisor. I take it that these charges, if they are true, involve a violation and neglect of duty without any reply being made.

Mr. Bailey: Will your Honor rule on it?

The Supervisor: I will rule that the request will be denied and we will proceed with the hearing.

Mr. Bailey: I ask for an exception to that.

I now move as to your jurisdiction in the matter, under the laws of 1918, which I take it is the so-called County Supervisors' Act, to try or hear Dr. Harman in connection with these charges. That statute says that you have the duty to exercise a constant supervision over the conduct of all subordinate officers and employees * *. It is urged that Dr. Harman is not a subordinate officer within the meaning of that statute; that by virtue of the laws of 1922, Chapter 269, and the subsequent amendments, Dr. Harman is the Chief Executive Officer of the Essex Mountain Sanatorium at Verona, and that he is also Superintendent; that as such he is not a subordinate officer or employee within the meaning of that statute and therefore you cannot properly make the charges against him or conduct this hearing.

Furthermore, I move to dismiss these charges as made by you in that the Act itself is unconstitutional in that it permits you to make the charges. In other words it permits you to act as the prosecutor in the matter and to conduct the hearing; that is, sit as the judge in the case and determine from the testimony offered and render a verdict, thereby acting as a jury, which is a principle absolutely un-American and decidedly unconstitutional.

Furthermore, that the statute in itself does not

provide in any wise for a review of your findings if they should be against the person who is being charged before you with violation or neglect of duty, and particularly in this case that you are without jurisdiction in that as one of the defenses conceived by Dr. Harman it has been necessary for him to subpoena you as a witness with respect particularly to charges numbers one to nine, and that you will be a witness called upon by him and that you cannot be a witness in a proceeding conducted by you.

Furthermore, that Dr. Harman, by virtue of his position, comes within the exempt classification of the Civil Service Act and is entitled to be heard in accordance with the practice governing charges under that act which, by construction placed upon it under various decisions of our courts, means that he is entitled to a bill of particulars setting forth specifically the times and places of the alleged violations and neglect of duty.

Furthermore, we move to question your jurisdiction in the matter, and which is the reason why we have subpoenaed you, in that you have already expressed an opinion to this defendant before any evidence in defense was offered that the evidence against him was so preponderant that he should give immediate consideration to a resignation and avoid a hearing.

Furthermore, that one of these very charges was before you a year or so ago for investigation, I take it was investigated by you, and no charge was ever made against him, and it must have been determined at that time that he was not guilty and you must have made a decision upon that point.

We also question your jurisdiction under the commonly called Veterans' Act which is in the

laws of 1923, wherein it is set forth that he should not be tried except on specific charges in no wise political, and that these specific charges shall be in accordance with the practice as set forth in our various decisions.

Mr. Vanderbilt: Supervisor, I would like to reply, if I may. The Act of 1918, creating the office of County Supervisor, provides in Section 1, that the County Supervisor shall be the chief executive officer of the County, and in the second or third section, as I recall it, the third section, it gives him jurisdiction to exercise a constant supervision and to investigate all charges and complaints against subordinate officers. There is no question as to what is meant by that. The Supervisor was by that Act given jurisdiction to try any of the County employees or any of the officers acting by appointment under the Board of Chosen Freeholders, or any officers appointed by any of the independently elected officers of the County as the Clerk, Register, Sheriff or Surrogate. The only limitation would be that the Supervisor could not try the members of the Board of Chosen Freeholders or the other officers of the County who are elected by the people at large. That construction of the statute is reasonable and logical. Any other construction would mean that certain officers would be exempt forever from any inquiry being made into their conduct, which certainly is not the intention of the legislature, if one read the first, second or third sections of the Supervisors' Act carefully.

Argument is made that the Supervisors' Act is unconstitutional because it says he shall investigate all charges and hear and determine those charges. The answer to that is that this matter

has already been passed upon by the Supreme Court in a case arising out of this County, Frederick M. Reimer against Board of Chosen Freeholders, 96 N. J. L. 371, where the facts are analogous to those presented here. In that case the matter of investigating the Overbrook sewage disposal job had been referred to a committee of three Freeholders. They made a report. As a result of that report charges were then formulated against him as the then County Engineer. Under the peculiar language of the Road Act of 1912, those charges were heard by the entire Board of Chosen Freeholders rather than by the County Supervisor, and the objection was there made by counsel in this case, Mr. McCarter, that the three members of the committee who had investigated the matter and brought in a written report on which charges were formulated, were disqualified from sitting with the entire Board.

In the hearing of charges against the then County Engineer, I quote from the syllabus "Held, that the members of the reporting committee were not disqualified to sit, they having no personal or pecuniary interest in the result * *. Held, that no member of the Board could be disqualified by such an act of the Prosecutor, for he might bring such a suit against the entire Board and thus relieve himself of any trial authorized by the statute." That case, which incidentally went up to the Court of Errors and Appeals, and by them affirmed in 97 N. J. L. 575, in, I believe, a *per curiam* opinion by a vote of the entire Court of Errors and Appeals, twelve to nothing.

That case holds, then, that it is proper where the act so provides, for the trying body in an ad-

ministrative tribunal, to formulate the charges and hear and determine them.

In answer to the third argument that the Supervisor's Act is unconstitutional in that it does not provide for a review of the Supervisor's findings, there is of course no merit to that because if all of the matters heard by an administrative tribunal had to be reviewed by the Court, the Court itself had better hear it in the first instance, because the object of those tribunals is to relieve the Courts already overcrowded with work.

In answer to the fourth argument that you have been subpoenaed as a witness and therefore cannot try the case, I submit it is answered by the decision in the Reimer case holding that even having sat before would not disqualify you. To use the language of the Court in the Reimer case, the best way to avoid trial would be to to call your judge as a witness, which shows the fallacy, if not the ridiculousness of the situation.

With respect to the fifth argument that Dr. Harman is exempt, the exempt clause under the Civil Service means that he is exempt from being discharged for political or religious reasons. There is no political or religious reason involved and therefore that argument falls.

The sixth argument is that you have advanced an opinion on that matter. There is no proof of that offered, and if proof were offered, it still would not change the situation, because under the law you are charged with the duty of investigating all complaints and deciding, after hearing the evidence, what the decision should be.

The seventh argument is that one of these matters of complaint was before you a year ago. I don't know whether that is so or not, but so far as

I am advised, there was never any hearing held by you, and if there was no hearing, the matter surely can be heard now. There is no such thing as an estoppel being worked against a public officer in the performance of his duty.

In reference to the eighth argument referring to the Veterans' Act, I submit that the charges here made and about to be tried are in conformity with that act so far as you are bound thereby, and I therefore urge that the motion of counsel addressed to the jurisdiction be denied.

Mr. Bailey: The language of counsel, I take it, is the language of the Supervisor.

Mr. Vanderbilt: I must object to that remark being put upon the record; there is no evidence to justify it.

Mr. Bailey: I addressed my motion to the Supervisor and I haven't heard a single word from him as yet.

Mr. Vanderbilt: He hasn't had a chance yet. You at least concede, do you not, Mr. Bailey, that I have a right to answer your arguments?

Mr. Bailey: I take it you are advising the Supervisor who has not asked for an opinion yet.

The Supervisor: I am going to decline to dismiss the case at this time.

Mr. Bailey: I ask for an exception.

We left open the situation with respect to the testimony of the physician in Baltimore.

Mr. Vanderbilt: If the Supervisor please, I think that that is a matter that does not come up until the respondent starts to put in his case.

Mr. Bailey: I don't want to be met then with the statement: "Why didn't you make application in the beginning?" I am making my position known now.

Mr. Vanderbilt: As I recall, that was covered by a letter which the Supervisor sent to counsel yesterday saying, "I stand ready to do everything possible to take the testimony of this witness or any other witness you may desire within a reasonable distance."

Mr. Bailey: The hearing is today.

Mr. Vanderbilt: That must abide by the case as it develops. We don't know what condition the witness will be in and I don't see how we can take his deposition in Baltimore today; I don't see very well why we should want to take his testimony if he is a respondent's witness. I think it can be held in abeyance until the close of the County's case.

Mr. Bailey: Very well, as long as I am not precluded from taking the testimony.

Mr. Vanderbilt: On the other hand, if this doctor takes a notion to go farther south day by day it would be different. If he stays at Baltimore, that is one thing; if he goes to Pinehurst or Palm Beach, that is another.

The Supervisor: Have you any reasonable means of getting his testimony?

Mr. Bailey: I may be able to get him here. If I can, it would be preferable to taking it by deposition.

Mr. Vanderbilt: It would suit me much better.

Mr. Bailey: It would suit everybody much better. His name has not been brought in yet, as a matter of fact. When it is, I presume, and he knows about it, he will be only too glad to come.

The Supervisor: Can't we meet that situation when we are faced with it?

Mr. Bailey: I am satisfied as long as we are not precluded from getting that testimony in.

Mr. Vanderbilt: If the Supervisor please, I desire to offer for the record the notice dated December 3, 1928, signed by you and acknowledged by Sorg, Duncan & Bailey, on December 4, 1928.

(The same is received in evidence and marked Exhibit C-1.)

Mr. Bailey: Now that that is in, I repeat the same motions that I made before they were offered in the record.

Mr. Vanderbilt: May I have my remarks in answer thereto extended on the record.

BERTIE GALLOWAY, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Miss Galloway, were you a telephone operator at the Essex Mountain Sanatorium? A. Yes.

Q. During what period, as near as you can tell us? A. From right after Labor Day, 1925, until around April, 1926.

Q. What hours of employment did you have while you were at the Sanatorium? A. One week from six in the morning until two in the afternoon and the next week from two in the afternoon until ten at night.

Q. Who was it that employed you up there? A. Dr. Harman.

Q. Shortly after you had started to work there and you were on duty one evening did you have a conversation with Dr. Harman? A. Yes, sir.

Q. Will you tell the supervisor what that conversation was and what is was about?

Mr. Bailey: Can you fix the time any better than that?

A. He came through and asked me if I ever drank anything.

Q. What did you say? A. I said, No—I refused. I don't know exactly how to answer that.

Q. What did he say then? A. He said he had some wine and would like to give me a drink.

Q. What did you say to that? A. I said, "Oh, maybe some other time."

Q. Following that conversation at that time that evening did Dr. Harman give you a drink or not? A. He did.

Mr. Bailey: I don't object to some questions, but I think you are leading the witness and putting the answers into her mouth.

Mr. Vanderbilt: I object to that because I think if I have done anything I have done just the reverse of that, even on preliminary questions.

A. Did you say the same night?

Q. Yes. A. No, not the same night.

Q. After that conversation did you ever have any other conversations with Dr. Harman while you were on duty in the evening? A. Yes.

Q. What were those conversations, Miss Galloway? A. He wanted me to go down to his office after ten o'clock.

Q. Did or did you not do it? A. Later on I did.

Q. That was during the evening? A. Yes, sir.

Q. Before you went down to his office during the evening did you have any conversation with him? A. Over the telephone.

Q. What was the conversation? A. He wanted me to go down to his office.

Q. What time did he call up? Was it before or after you were through with your duties? A. Before.

Q. Can you tell us about what time? A. I can't tell what time it was.

Q. Did you go down to his office after your duties were through? A. Not the first night.

Q. I am not talking about the first night. We are beyond that. A. I went down after.

Q. When you went down to the Doctor's office after your duties were through at ten o'clock, what happened? A. He wanted me to have a drink of wine with him.

Q. What did the doctor say? A. I can't remember everything he said.

Q. I mean as near as you can tell us. You say he wanted you to have a drink of wine with him. How do you know that? A. He asked me to have a drink.

Q. Did he offer you anything but wine? A. Yes, he offered me brandy.

Q. What did you say to his offer of wine or brandy? A. I refused the brandy but drank the wine.

Q. Did or did not the doctor drink on this occasion? A. He drank brandy.

Q. After you had drunk the wine and he had drunk the brandy, what, if anything happened? A. (No answer).

Q. How long did you stay there? A. Maybe an hour.

Q. During this hour after you had had a drink of wine and the Doctor had had a drink of brandy, what did you do the rest of the time? What hap-

pened the rest of the time? A. I don't just know how to answer that.

Q. Just state the facts to the supervisor. A. (No answer).

Q. What happeded? A. Nothing happened that night.

Q. What did the Doctor and you do for the remainder of the hour after having the drink of wine and brandy? Did you have more than one drink? A. I don't remember.

Q. What did you do the remainder of the hour that you were there? A. (No answer).

Q. Tell the supervisor as best you can. A. I think I answered that question before, didn't I?

Q. Yes, but you will have to tell the supervisor now. A. (No answer).

Q. Was there any conversation between the Doctor and you? A. Yes.

Q. What was that conversation? A. He tried to make me believe that he was in love with me.

Q. Anything else? A. I can't remember the conversation.

Q. Did anything take place except conversation? A. What do you mean?

Q. I want to know will you tell the supervisor just what happened during that hour.

Mr. Bailey: She has answered twice, that nothing else occurred.

Mr. Vanderbilt: I think, Supervisor, when I am examining a witness I should be allowed to examine a witness without interference.

Mr. Bailey: That is all true, but she has given a definite answer twice. You said after drinking what happened and she said

nothing, and then you tell her to tell what happened and she told you that she had answered the question before.

The Supervisor: Proceed.

Q. Did anything happen there except conversation? A. What do you mean?

Q. You said that Dr. Harman tried to make you believe that he loved you. What did he say to you? A. I don't remember the phrases that he used.

Q. Tell us in substance if you can. Can you recall the gist of it? A. No, I don't remember the words that he used.

Q. Did he do anything?

Mr. Bailey: I object to that. That is a very leading question.

A. Did he do what?

Q. Anything besides talk? A. I don't know what you mean.

Q. Where were you sitting in the room and where was he sitting? A. In a chair.

Q. He was sitting in a chair at his desk? A. I believe so.

Q. Where were you sitting? A. By him.

Q. In another chair or in the same chair? A. The same chair.

Q. Was the door of the office open or closed? A. Closed.

Q. Did he say anything to you besides words to the effect that he loved you? A. He said several things; I can't remember everything that he said.

Q. Can you recall any of the other things that he said? A. I can't remember the exact conversation.

Q. After this occasion in the office did you ever

go out riding with Dr. Harman? A. Yes.

Q. When was that? A. In the evening and afternoon.

Q. You mean after you would be through duty at two o'clock on the week that you had the morning hours and would you go out at night after your evening hours were finished? A. Yes.

Q. For how long a period did you go out with him in the afternoons? How many different times? A. I don't remember.

Q. Was it one, or two, or ten or fifteen? A. It was several; I don't remember.

Q. How many times did you go out with him in the evening? A. I don't remember how many times.

Q. Would you say one, or ten or twenty-five or how many? A. I would say two or three.

Q. When you would go out riding with the Doctor in what car would you go out? A. In his car.

Q. A county car? A. No, his personal car.

Q. When you were out riding with him at night did anything happen on those occasions? A. Did what happen?

Q. Anything. Let me ask you one question, when you went out in the car did you keep driving continuously or did he ever park the car while you were with him? A. He did park the car.

Q. On all of the occasions when you went out with him? A. Yes.

Q. By parking it, do you mean that he parked along the roadside? A. That's the only place he could park.

Q. And when he parked the car what would happen? A. The usual.

Q. What do you mean by the usual? A. (No answer).

Q. Just tell the Supervisor what you mean by that in your own language? A. Must I answer that question?

The Supervisor: I am afraid you will have to.

A. He put his arms around me and tried to kiss me.

Q. Did this happen on every occasion when you went out with him? A. Every occasion.

Q. Did he say anything to you? A. Did he say anything to me?

Q. Yes. A. Yes.

Q. What did he say? A. I can't remember just what he said.

Q. What was the substance of it? A. I can't remember the conversation.

Q. Did he tell you things to the same effect as what he told you at his office before? A. Yes.

Mr. Bailey: I object to all these questions as leading.

Q. Did he or did he not make any improper proposals to you while you were out in the car with him? A. He did.

Q. On each of these occasions? A. Yes.

Q. What did you say to him? A. I said no.

Q. What did he say? A. He said, "You will some day, they all do."

Q. Did the Doctor, or did he not, attempt to use force on you while you were out in the car with him? A. He did.

Q. Did he attempt to use force while you were down in the office? A. Yes.

Q. How many different times were you down in the office with him? A. I don't remember.

Q. Was it more than one occasion? A. It was more than one, yes.

Q. Do you recall the last time when you were down there? A. Very well.

Q. Will you tell the Supervisor what happened on that occasion? A. (No answer).

Q. What happened on that occasion, Miss Galloway? A. The same thing, only worse.

Q. This time were you sitting in a chair near him or were you in some other position? A. In the same chair with him.

Q. Will you tell the Supervisor what happened there? A. (No answer).

Q. How long were you down there on that occasion? A. I don't remember just how long it was.

Q. Did you stay in the same chair with him all the time you were down there on that last occasion? A. No.

Q. Where did you get after being in the chair with him? A. (No answer).

Q. Were you or were you not on the floor later? A. Later.

Q. On this same occasion? A. Yes, sir.

Q. Where was the Doctor? A. There also.

Q. In what position was he with respect to you? A. What do you mean, what position?

Q. What was he doing? A. (No answer).

Q. Did you say anything? A. Yes, I wanted to go; I wanted to leave the office.

Q. What did you say to him? A. I said, "If you don't let me go I will scream."

Q. What did he say to that? A. He tried to quiet me.

Q. How did he try to quiet you? A. By kissing me in the mouth.

Q. Then what happened? A. (No answer).

Q. Did he or did he not let you up? A. He did.

Q. Do you know why he let you up? A. Because I made a noise.

Q. Then what did you hear him say? A. I don't remember the exact conversation.

Q. Did you ever go down to his office again? A. No.

Q. On this last occasion that you were there were or were not any part of your clothing removed by the doctor? A. They were not removed.

Q. Was or was not any part of your clothing torn by the doctor? A. Yes.

Q. Can you tell the County Supervisor what was torn? A. (No answer).

Q. Had he pulled any of your clothing off? A. He tried to.

Q. Did Dr. Harman ever come into your room, Miss Galloway? A. Yes.

Q. How did he get in there? A. With a pass key.

Q. You kept your door locked? A. Positively.

Q. What time of the day would he come in? A. After two o'clock in the afternoon.

Q. When he came in there what would you be doing? A. I would be in bed.

Q. Resting? A. Yes, sir.

Q. What did he say to you on these occasions when he came up to your room? A. He wanted me to get dressed and go riding.

Q. How many different times did he go into your room? A. I don't remember.

Q. Was it more than one? A. Yes.

Q. Several? A. Yes.

Q. Do you recall any occasion when he was in your room when Miss Avery, the housekeeper came by? A. Yes.

Q. What happened on that occasion? A. He tried to hide.

Q. Where did he try to hide? A. He stood up in a bag—a hat box.

Q. Was that in a room, or in a closet, or where? A. In the room. There was a chimney or something protruding; it was on the other side of that.

Q. Did Miss Avery discover the Doctor there at that time? A. No.

Q. Where were you at the time? A. In bed.

Q. On these various occasions when the Doctor came up and found you in bed were you dressed or undressed for bed? A. (No answer).

Q. I mean were you lying down with your street clothes on? A. No, I wore a uniform and I didn't go to bed with the uniform on.

Q. In other words, when he came up were you in bed with your night clothes. A. That's right.

Q. When the doctor came up on these occasions did or did he not kiss you? A. He did.

Q. Did he or did he not put his arms around you? A. He did.

Q. Do you know Henrietta Rose? A. Yes, I knew her.

Q. Do you know whether she went out riding with Dr. Harman at any time at night? A. She did.

Q. Was her room near yours? A. There was one room between.

Q. Did you know her very well? A. Very well.

Q. Do you recall whether or not she used to indulge in fits of crying? A. She did.

Q. Or get hysterical? A. She did.

Q. When was that? A. When was it?

Q. Yes, can you tell us about when that was or

over how long the period she was that way? A. I remember one whole week.

Q. Do you recall about when that was? A. No, I don't remember when it was.

Q. During that period of a week did she go to the dining hall at all? A. She never went over for breakfast.

Q. During that week did she go over for any of her meals? A. She made no effort to eat at all.

Q. Did she tell you why she cried?

Mr. Bailey: I object to that as not being binding at all upon this defendant.

Mr. Vanderbilt: I will withdraw the question.

Q. Did or did not Dr. Harman object to your going out with anyone else but him?

Mr. Bailey: I object. These are most unfair questions in the way they are framed. Let her tell the conversation. It is simply leading the witness, that's all.

The Supervisor: I think that is a fair question.

Mr. Bailey: I ask an exception to all that line of questioning whether he did or did not do such, so, or the other thing. There is nothing upon which that can be predicated and it is absolutely putting new ideas into the witness's mind and answers into her mouth.

A. He said that he did.

Q. What did he say to you? A. I don't remember the exact words.

Q. Can you tell us whether or not he objected to your going out with anyone else? A. Sometimes he wanted me to go out with him, when I was going out with someone else.

Q. Then what did he say? A. He didn't like it.

Q. That's what he said, "I don't like it"? A. No, I don't remember the exact words that he used; he gave me an argument.

Q. What kind of an argument did he give you? A. I don't remember the words that he used.

Q. Can you tell us what the substance of it was? A. He didn't want me to go.

Q. Did Dr. Harman ever ask you to come down to his room before your hour of duty was up at ten o'clock? A. Yes.

Q. What did he say to you or what did you say to him? A. He asked me to close up the switchboard at 9:30.

Q. What did you say to that? A. I was afraid that some of the Board of Freeholders might call up.

Q. Did you tell him that? A. Yes.

Q. What did he say to that? A. He said, "Oh, make some excuse, say you went to the bathroom or something like that."

Q. Do you recall an incident one morning when you were about to start to work at six o'clock with Dr. Harman? A. Yes.

Mr. Bailey: I object to that. Those are most certainly leading questions. She is Mr. Vanderbilt's own witness. This is not my witness. He is not trying to attack her credibility.

Mr. Vanderbilt: We seem to have different ideas as to the law of evidence.

Q. Tell us what that incident was and where it happened. A. In the hall.

Q. What was it? A. He gripped me by the arm.

Q. Did he say anything to you? A. I don't remember what he said.

Q. Was this the beginning of when you came there or toward the end? A. Toward the end.

Cross-examination by Mr. Bailey:

Q. How old are you, Miss Galloway? A. Twenty-five.

Q. Are you married? A. No.

Q. Have you ever been married? A. Yes.

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Q. Have you any children? A. No.

Q. Are you sure about that? A. I said no.

Q. Did you ever have any? A. No.

Q. You never had any? A. No.

Q. Is Galloway your married name? A. Yes.

Q. Did you ever live with anybody as man and wife without being married to him? A. Does this concern this case, Mr. Reed? Must I answer these questions? My private affairs have nothing to do with this.

Mr. Bailey: We can certainly go into this woman's private character to show what kind of a person she is in order to attack her credibility. That is the purpose of the question and we are prepared to establish it.

Mr. Vanderbilt: I object to the question, Mr. Supervisor, on the ground that it might tend to incriminate the witness.

Mr. Bailey: She has not answered it.

Mr. Vanderbilt: The question, if answered, might tend to incriminate her.

Mr. Bailey: Under the rules of evidence that is an objection which should be made by the witness herself and not by counsel. The purpose of asking this question is to show the character of this witness to show that she is a woman who has been guilty of, we will say promiscuous relationships, and it is that character of woman who is making this charge against this doctor; and it goes to the credibility of the witness. I think we are entitled to show that this charge is not made by a woman of unimpeachable reputation or character, and we are prepared to show, as a matter of fact, that she was living with another man here in the City of Newark. She just stated that she is not married, and we are prepared to show that this man was not her husband. I believe we are entitled to go into that line of testimony. You can impeach any witness's character, especially in this kind of a proceeding. Of course, your Honor has to remember this: This is a charge which any professional man, particularly a doctor, lays himself open to constantly; that his relationship with female patients is such that they may at any time come in and make these charges, and as a matter of fact, they do. Now, aside from the denial of the Doctor of such relationship, his only other line of defense is to show the character of the person making the charge to show the improbability of her story and the incredibility of it; it is for that purpose that

we are trying to open this line of testimony on cross-examination.

Mr. Vanderbilt: It is absolutely irrelevant, and it might tend to incriminate the witness.

Mr. Bailey: That is not a legal objection, and if it incriminates her, that is up to her to say, so that we may have the benefit of her connections in that way so that we may draw our own conclusions.

Witness: I am willing to answer questions concerning this case, not my private affairs.

Mr. Bailey: Will you read the question, please?

(The stenographer reads the pending question).

Mr. Vanderbilt: I think it is asking a witness to answer a question which raises the constitutional question that it tends to incriminate her.

Mr. Bailey: The witness has objected to it on the ground that it pries into her personal affairs. The question of incriminating herself was raised by the County Counsel.

The Supervisor: I think the objection to the question should be sustained.

Mr. Bailey: And I ask for an exception.

By Mr. Bailey:

Q. Do you know a man named Doyle? A. I did.

Q. Where did you know him? A. At the Institution.

Q. Do you know what happened to him afterward? A. I heard about it.

Q. Where did he go? A. I don't know where he is.

Q. Did you live with him in North Broad Street, Newark?

Mr. Vanderbilt: I object to that on the same grounds.

The Supervisor: Objection sustained.

Mr. Bailey: I asked her, not counsel, to state her reasons. I will repeat the question until I get some sort of answer from the witness.

Q. Did you live with Doyle? A. I don't think that concerns this case.

Mr. Bailey: I ask for a yes or no answer on the part of the witness. I ask for an answer by her that the answer will incriminate her.

Mr. Vanderbilt: It seems to me that the court has ruled on it.

Mr. Bailey: He has ruled on counsel's question, and counsel represents the Supervisor and not the witness.

Mr. Vanderbilt: He has ruled on your question.

Q. Did you ever go out with Doyle?

Mr. Vanderbilt: The same objection.

Mr. Bailey: I think we have an absolute right, and I will say right now that the questioning will take this line to show with whom this woman has been running around and going out with. We are trying to impeach her character, because we have a right to show the character of this woman that is making this kind of a charge against a physician and it is one of the defenses.

Mr. Vanderbilt: Counsel has another way of doing that.

Mr. Bailey: I think the witness herself knows better than anybody else whether she has been out with any of these men and whether she has lived with any of those men.

Mr. Vanderbilt: I object on that ground that it is ambiguous as to what is meant by going out with them.

Mr. Bailey: I will lead up to it.

The Supervisor: I will sustain the objection.

Q. What was Doyle's first name, Miss Galloway?
A. James.

Mr. Bailey: We won't get very far if that is the attitude this witness takes. I think Dr. Harman is entitled to go into it.

Mr. Vanderbilt: I think that question, Mr. Supervisor, is one that might fairly be answered if Mr. Doyle was an employee at the Institution and he did go out. But I do not think the question is clear as to what is meant by going out with the man.

Mr. Bailey: Let her answer the question. She knows.

Mr. Vanderbilt: I object to the question because counsel may mean one thing by it and the witness another thing and the Supervisor another thing.

Mr. Bailey: Let her answer it.

Mr. Vanderbilt: I object to it for that reason. She might not give it the common meaning.

The Supervisor: Make it more specific.

Q. Have you ever gone out with James Doyle anywhere from the Institution socially? A. (No answer).

Mr. Bailey: I ask that the witness be directed to answer the question.

The Supervisor: That is a proper question and you may answer it.

A. Must I answer?

The Supervisor: Yes.

A. Yes.

Q. How many times? A. I don't think that has anything to do with this case.

Mr. Bailey: If your Honor please, I don't think the opinion of this witness has anything to do with whether or not it is material.

Mr. Vanderbilt: You told us on direct-examination that you went out with other men and the Doctor objected to it and counsel has a right to ask that question.

Witness: I don't remember how many times.

Mr. Vanderbilt: Say so, then.

Q. When did you first go out with him? A. I don't remember.

Q. Was it soon after you went to the Institution? A. I don't remember.

Q. When were you appointed at the Institution, Miss Galloway? A. By the Civil Service, do you mean?

Q. However you got your appointment, when you

first entered on your employment at the Institution, when was that? A. Right after Labor Day.

Q. What year? A. 1925, I believe.

Q. When did you leave? A. The next April.

Q. 1926? A. Yes, sir.

Q. Do you remember the date? A. I believe it was the 25th.

Q. How did you come to leave the Institution? A. I was handed a resignation paper by Mr. Butterworth.

Q. Why did he hand you a resignation paper? A. I don't know; he refused to tell me why. He said he was sorry to have to be the one to do it.

Weren't you discharged for intoxication at the switchboard? A. Positively not.

Q. Weren't you discharged for intoxication generally? A. I was never intoxicated.

Q. Never? At the Institution or elsewhere? A. No.

Q. You don't drink, is that so, Miss Galloway? A. I don't drink, no.

Q. Not at all? A. What do you mean by drink?

Q. Take intoxicating liquors? You don't take intoxicating liquors, do you? A. As a rule, no.

Q. What do you mean, by "As a rule?" When do you drink intoxicating liquors? A. When do I?

Q. Yes. A. I don't know what you mean by that question, "When do I drink?"

Q. You say as a rule you don't drink intoxicating liquors. When do you drink intoxicating liquors? Under what circumstances? How often? A. I don't drink whiskey.

Q. But you drink everything else? A. Wine occasionally.

Q. What else? A. Nothing else.

Q. Did you ever drink it to the point of intoxication? A. No.

Q. You never have? A. No, never.

Q. How many did you drink? A. Two or three.

Q. Of what? A. Wine.

Q. In what size glasses? A. Small glasses.

Q. How often? A. I don't know what you mean by how often. If I happened to be some place where they served wine for dinner.

Q. You never drank at the Institution? A. Only with him.

Q. And on no other occasion? A. No.

Q. What did you drink on that occasion? A. Wine.

Q. Where did he get it? A. I don't know; he had it in his office.

Q. Where did he keep it in his office? A. I don't remember; I think it was in the file or some place in there.

Q. Let us get back to James Doyle. Did you ever go out riding with him up there in a county car? A. I was at one time with him and Mr. and Mrs. Butterworth in the county car. That was the only time.

Q. What car was that? A. A county car.

Q. Do you remember the make? A. No.

Q. Were you out in the Chevrolet with him? A. I don't remember what make it was.

Q. What time did you get back? A. I don't know; he had to go some place for Mr. and Mrs. Butterworth; he took them somewhere and they asked me to go along.

Q. And you never went out in the car with Doyle except with someone else? A. He never had his own car.

Q. How many times did you go out with Doyle in the county car? A. One time.

Q. What time did you go off? A. Ten o'clock one week and two the next afternoon.

Q. You weren't on until eleven o'clock, were you? A. No, ten.

Q. When you entered the employment of the Institution were you immediately put on the switchboard? A. Yes.

Q. And that is the only job you had up there on the switchboard? A. That is the only one.

Q. When you were first put on the switchboard, what were your hours? A. From two in the afternoon until ten at night.

Q. From two in the afternoon until ten at night? A. The hours alternated.

Q. What do you mean by that? A. One week I worked from six in the morning until two in the afternoon and the next week—

Q. That is what I am trying to find out. When you first started up there what was your first shift? A. When I first started they alternated every other day, one day I went on at six o'clock, and then the next day in the afternoon at two and then later I changed it myself.

Q. Six o'clock when? A. In the morning.

Q. That is the first job you had? A. Yes.

Q. Until two o'clock in the afternoon? A. Yes.

Q. Then what did you do? Were you through until six o'clock the next morning? A. Yes, sir.

Q. How long were you on that shift? A. When I first went there it alternated every day; that was the custom; but Dr. Harman gave information to change it, to have one shift a week; to have the shift each week.

Q. How many operators were there? A. Two.

Q. How soon after you went there was it changed to a weekly arrangement? A. I don't remember.

Q. About when? A. I don't remember just when it was changed.

Q. A couple of weeks later or several months later? A. Possibly, I don't remember.

Q. Can you give us any idea? A. No; I don't remember when it was changed.

Q. When was the first time Dr. Harman spoke to you? A. Right after he came back from his vacation.

Q. When was that? A. It was right after I went there to work; I don't remember how long it was. I had only seen him a few times, though.

Q. How long was he on vacation? A. I don't know.

Q. Have you any idea when he got back? A. I don't remember whether it was the next day after I went to work or whether it was the next week, or how long it was. It was soon, though.

Q. Where did the first conversation take place? A. At the switchboard.

Q. What time of the day was it? A. In the evening.

Q. What time in the evening? A. Between eight and ten; I don't recall just what time.

Q. Who was with you at the switchboard? A. No one.

Q. Where is the switchboard? A. On the second floor in the Administration Building.

Q. Is it a large room? A. Yes.

Q. Is it in the corridor between— A. That and the hospital.

Q. In other words, if you pass from the hospital to the wards, you have to pass the switchboard? A. Yes, sir.

Q. You see everybody that goes by? A. Yes, sir.

Q. And everybody sees you? A. Yes, sir, unless they go outside.

Q. This first conversation that he had with you was between eight and ten in the evening on what date? A. I don't remember the date.

Q. You must have some idea. This was rather important for the Superintendent to speak to you, wasn't it? A. It certainly was.

Q. Don't you remember the date? A. No, I don't remember the date.

Q. What did he say? A. He asked me if I ever drank anything.

Q. What did you say? A. I didn't know just how to answer that; because he was the superintendent; he was my superior.

Q. How long did he stand there in conversation with you? A. A few minutes; maybe a half hour.

Q. What was the course of conversation during that time? About what was it? A. He asked me how I liked the work, and he hoped I would like it.

Q. What else did you talk about? A. He had some wine and he would like to give me a drink.

Q. Did he have the wine with him? A. I didn't see it.

Q. Where did he tell you he got the wine? A. He didn't tell me where he got the wine. He said he had some imported brandy.

Q. Where had he got that? A. I don't remember; he did tell me that, but I don't remember.

Q. Did he ask you to come down that night? A. Yes.

Q. What did he say? A. He said to come down then.

Q. And what did you say? A. I said some other time.

Q. It was quite an honor to be asked to drink with the superintendent, wasn't it? A. No, indeed it wasn't.

Q. When did he next stop to talk to you? A. I don't remember whether it was the next day or a few days later.

Q. Haven't you any idea? A. He said to me every time he passed through.

Q. What would he say each time he passed through? A. I don't remember the exact word he used.

Q. How soon after that was it he asked you to drink with him again? A. It couldn't have been more than a few days anyway.

Q. What time of day was that? A. In the evening.

Q. What time in the evening? A. It must have been between eight and ten o'clock.

Q. Between eight and ten o'clock? A. As well as I remember; I don't remember the time.

Q. But you were always on duty? A. Yes.

Q. How long did he stand there then? A. A few minutes, I don't remember how long.

Q. How long? A. Five or ten minutes, maybe.

Q. What was that conversation? A. The same as the one before.

Q. What was the same as the one before? What do you mean by that? A. The weather the wine—

Q. What did he ask you about the wine? A. If I would come down and have a drink after I had closed the switchboard up.

Q. Did you go down? A. I don't remember whether I did that time or not; on the next occasion I did.

Q. After you had thought it over you decided you would go? A. I decided I was pressed for work, and I didn't know just how to answer. I didn't know how to take his attitude.

Q. What do you mean that you were pressed for work? A. I had to work for a living; it wasn't an easy matter to get a job every day.

Q. And therefore you decided— A. I was afraid if I answered him in the way I felt like he would discharge me immediately.

Q. Without any cause? A. Yes.

Q. Just when did that conversation take place? A. There were several conversations; I don't remember the times.

Q. I want the first conversation—the date. A. I don't remember the date.

Q. Haven't you any recollection as to any of these dates? A. I know I had only seen the man a few times; I don't know what date it was. I hadn't been there very long.

Q. Do you remember the occasion when you went down to the office for the first time? A. Yes.

Q. When was that? A. I don't remember when it was; I remember the occasion.

Q. What time of day was it? A. In the evening after ten.

Q. What time? A. Ten o'clock.

Q. What time? A. After ten o'clock; I don't remember the minutes.

Q. There are six or eight hours after ten o'clock. A. Immediately after I closed up the switchboard.

Q. Then where did you go? A. Down to his office.

Q. Did he come up to get you? A. The first time—I don't remember whether he did or not.

Q. Why did you hesitate then? A. Because he

did—I remember a few times that he did come up and I walked down with him, but I don't remember whether I did that night or not.

Q. What time did you get in his office? A. It only takes a few minutes to walk down one flight of stairs.

Q. Where was his office? A. On the main floor; I was on the second.

Q. In the rear of the building? A. No, at the front.

Q. Right at the main entrance? A. Yes.

Q. How many windows are there in his room? A. I don't know.

Q. Did you go in in the dark? A. Yes.

Q. Yes. A. Yes.

Q. And he was sitting there in the dark when you came down? A. He was at the door; I don't remember whether he walked down with me the first night or not. Is that what you are talking about?

Q. You know what I am talking about. You went down in answer to his telephone call, is that right? A. I don't remember whether he came up for me or whether I walked down alone.

Q. If he came for you where did he come from? The office? A. Yes, sir.

Q. You went to the office? A. Yes, sir.

Q. And you went into this dark office? A. Yes.

Q. There was no light in the office? A. No.

Q. And there never was a light in the office? A. No.

Q. Where did he go to get this wine that he had? A. Somewhere near his desk.

Q. All in the dark? A. The light was shining in from the windows.

Q. This was what time of the night? A. After ten o'clock.

Q. Where are the lights in the front? A. I don't remember whether it was the moonshine or not, but you could see enough to get around without stumbling.

Q. And you sat there in the dark? A. Yes.

Q. And you had several drinks? A. I don't remember how many.

Q. You must remember how many drinks. You are not a heavy drinker, are you? A. It wasn't more than two.

Q. Let us get back to the first time you went down there and he offered you this drink. Just what did he say to you about the drink? A. He wanted me to drink the brandy.

Q. He offered you brandy first? A. Yes.

Q. Did you look at it? Did he show you the bottle? A. He showed it to me in a glass.

Q. Was the bottle there? A. Yes, on the desk.

Q. Did you look at the bottle? A. I didn't pay very close attention to it.

Q. You could see it? A. Yes, but that's all.

Q. Where was the bottle? A. On his desk.

Q. Were there any other bottles there? A. I believe the bottle with the wine in it was there also.

Q. And he poured them out in a glass? A. Yes.

Q. And they were already poured out when you came down? A. No, I believe he poured them after; I don't remember.

Q. You said a moment ago that he showed you the brandy in the glass already poured out. A. He did show it to me.

Q. And he offered you a drink of the brandy in the glass? A. Yes.

Q. He had two glasses there, didn't he? A. I don't remember whether he had the brandy poured at first or not. I didn't pay such close attention.

Q. Do you think he had two glasses there? A. I don't remember whether he had the brandy poured first or not. I didn't pay such close attention.

Q. Do you think he poured it back in the bottle? A. I don't remember.

Q. If it was in a glass how did you know what it was? A. I don't know whether it was his drink he was offering me or not.

Q. You are sure there were two glasses filled with something? A. Yes.

Q. And he offered the brandy first? A. He said it was brandy, I don't know what it was.

Q. And there was another bottle on the desk, is that so? A. There were two bottles.

Q. Did you take a look at the label on the brandy bottle? A. No, I didn't pay very much attention to it.

Q. Couldn't you see very well? A. You could see the bottle.

Q. What kind of a bottle was it? A. I don't remember; it was a bottle about that high (indicating).

Q. What shape was the bottle? A. Flat shaped.

Q. Brandy? A. He said it was brandy; I don't know what it was.

Q. Did you see him open it up? A. I wasn't paying attention to him.

Q. Did you? You were in the room with him all this time. Did you see him open the bottle of brandy? A. I think it had been opened before.

Q. Did I misunderstand you in the early part of your examination that you said he went to some file or something? A. I said that is where he kept it.

Q. You saw him take it out of there, didn't you? A. I don't remember whether he took it out of

there. I don't know whether he took it out after I came down or not. I saw the glasses.

Q. How did you know he kept it in the file? A. He told me so.

Q. When? A. That same night.

Q. So you had quite a conversation with him as to where he kept his liquor cellar. A. (No answer.)

Q. Did he tell you what else he had? A. He said he always kept something to drink.

Q. How many drinks did you have? A. I believe it was no more than two; I am not positive.

Q. How many did he drink? A. I didn't pay close attention; I don't think he drank any more.

Q. You were there all the time, isn't that so? A. Yes, but I don't remember.

Q. These were large tumblers, were they? A. Small glasses.

Q. He drank brandy and he didn't drink wine, is that right? A. No, he drank the brandy and I drank the wine.

Q. Did he drink anything with the brandy, water or anything like that, or did he drink it straight? A. I believe he drank it straight.

Q. He didn't go out for water anywhere? A. No, he had water in there because I remember drinking water.

Q. He had water in there? A. He had a glass of water.

Q. Did he go out and get that or was it there? A. It was there.

Q. Where was that? A. On the desk.

Q. Where were these bottles? A. On the desk. I believe he immediately put them away after he poured the drinks.

Q. How long were you there? A. I don't know just how long; possibly an hour.

Q. What was his conversation with you when you first came into the room? A. Well, he was very nice at first.

Q. What do you mean by very nice? A. I mean he talked very nice.

Q. What did he say? A. I don't remember the exact words that he used.

Q. Then how do you know he was very nice if you don't remember the words? Can't you remember any of the conversation? A. I remember what it was about, but I don't remember the exact words.

Q. What was it about? A. He was talking love.

Q. It started somewhere. How did he begin that subject? A. At first he started telling me he hoped I would like the Institution and so forth.

Q. Yes. What is the and so forth? What do you mean by that? A. I don't remember just the words that he used.

Q. This was your first conversation with the Superintendent of the Institution down in the office at night. A. Yes.

Q. Certainly you must remember the conversation which took place on such an important occasion. A. There wasn't anything important about it.

Q. You were there an hour, weren't you? A. Possibly less; I don't know just how long it was.

Q. Give us an idea. Don't jump around to more or less— A. I can't remember the minutes.

Q. You were there an hour? A. Around there.

Q. What do you mean by an hour? You mean sixty minutes? A. Yes.

Q. So all the conversation that took place was that he hoped you would like the place and a little bit about love? What was the conversation about

love? A. I don't remember just the words he used.

Q. Nothing at all? A. (No answer.)

Q. Did he say that he loved you? A. Yes.

Q. Where were you sitting when he said that? A. In the chair.

Q. In the same chair? A. Not with him, not at first.

Q. Didn't you say, as a matter of fact, that the first time you went there that you did not occupy the same chair at all? A. Not the first time at all.

Q. But nevertheless he talked about love? A. Yes.

Q. Where was the chair that you used? A. Near his chair.

Q. Where was his chair? A. By the desk.

Q. That is his office desk chair where he carries on his business, is that so? A. Yes.

Q. Where was your chair? A. Near his chair.

Q. How near? A. As close as he could get it.

Q. What kind of a chair was it? A. I don't remember what kind of a chair it was.

Q. You sat in it? A. I sat in it, and I sat in a lot of chairs.

Q. Don't you remember the particular chair? A. No.

Q. You have been in that office many times. A. (No answer.)

Q. It is the same chair there now that there was then? A. I never took particular notice of the chairs in the office.

Q. You occupied that chair again on various occasions, didn't you? A. I don't know whether it was that chair or some other chair.

Q. You mean to tell me you have been in that

office and you don't know what kind of a chair you sat in? A. It is a chair, that's all I remember.

Q. Just a chair? A. Yes.

Q. And you can't remember what kind it was? A. No.

Q. What kind of a chair did it he fit in? A. His desk chair.

Q. And that is a swivel chair. A. His desk chair.

Q. And that is a swivel chair, isn't it? A. Yes.

Q. And he told you how much he loved you, is that so? A. Yes.

Q. This was the first time you were down there? A. Yes.

Q. And this was two or three days after he had first spoken to you, is that so? A. Yes.

Q. How much did he tell you he loved you?

Mr. Vanderbilt: Time or quantity?

Mr. Bailey: Both.

A. Must I answer these questions, Mr. Reed? I don't remember all those things.

The Supervisor: I think you ought to answer the best you can.

Q. How much did he state to you he loved you? A. I don't remember him saying anything how much; I don't remember the words he used.

Q. Did he seem very sincere about it? A. He seemed that way, yes.

Q. What did you tell him? A. I laughed at him.

Q. You laughed at him? A. Yes.

Q. You said nothing at all? A. I possibly gave him some kind of an answer; I don't remember just what I said.

Q. Did you ask him what his wife would have to say about it? A. I think I did tell him that, but I don't remember; I don't remember whether that came up the first time or not.

Q. Why didn't you go and tell his wife? A. I was afraid I would be discharged. I wanted to go down, but I was afraid if I refused he would discharge me.

Q. You were afraid that his wife would not thank you for coming, is that so? A. I don't suppose she would have.

Q. What was the date of this first occasion in the office? It is quite important. A. I am sorry I don't remember the date.

Q. You must remember some dates that these things happened. A. If I remembered the date I would tell you.

Q. Was it very soon after Labor Day? 1925? A. Yes, it was very soon after I started working.

Q. What would you say was very soon? Within three or four weeks? A. No, it couldn't have been that long; it couldn't have been three or four weeks.

Q. In other words, within ten days after you went up there— A. It must have been.

Q. (Continuing) He spoke to you the first time about whether you liked the work one night or whether you would like to drink wine. A. He was away on his vacation, I think. I know it was shortly after he came back from his vacation because he was talking about it.

Q. He never had a conversation with you before that? A. Only passing through.

Q. When was this conversation he had with you? Within the time he was just passing through? Do you remember the conversation? A.

The first time I saw him he came upstairs in the morning. I had never seen him before.

Q. Who employed you up there? A. He employed me over the telephone, Mrs. Harman interviewed me when I came up, and the first time I was up, and then Dr. Harman called me up after that and told me to report for duty on the day after Labor Day, I believe it was.

Q. The day after Labor Day? A. As near as I can remember.

Q. Well, it might be within a day or two, is that so? A. Yes.

Q. It wasn't longer than a week after Labor Day? A. I don't think so.

Q. You are quite sure, are you? A. Yes.

Q. Within about ten days, then, after you entered upon your employment up there, Dr. Harman had come back from his vacation, and a couple of days after that he had a conversation with you about the wine, is that right? A. Yes.

Q. You are sure about that? I want to get all this in logical order. Let me fix the time. Is that right? A. I can't remember the dates. If I could I would tell them to you one after the other.

Q. I am trying to fix the time with regard to certain incidents, which happened. You say that about ten days after you went there Dr. Harman first spoke to you, and he had been on his vacation, and then you had this conversation about the wine, and then it was one or two days after that when you made your first trip to the office, is that right? A. About that.

Q. Isn't that the sequence? Isn't that the time? A. As well as I remember. I don't remember just the dates or the days.

Q. No, but aren't those the incidents which fix the time? A. Yes.

Q. That is all I want to know. In other words, if you can't give me the exact dates, all right, but I want the incidents which fix the time. You are sure it was one or two days after he came back from his vacation that he first spoke to you and that it was one or two days after that that you went down to the office the first time. A. Yes.

Q. When was the next time that you went down to the office for a drink, or where did you have your next drink? A. Always in the office.

At one-thirty o'clock P. M. the Supervisor declares a recess of one hour.

After Recess.

BERTIE GALLOWAY resumes the stand.

Cross-examination (continued) by Mr. Bailey:

Q. When was that? A. I don't remember.

Q. Do you mean by that you don't remember the exact date, is that so? A. That's right.

Q. About how many times after this first drink that you had with Dr. Harman in his office? A. I don't remember about how many times.

Q. About how many? A. I am sorry I don't know.

Q. Have you any idea? A. No, I haven't.

Q. When did you have your next conversation with him? A. I don't remember.

Q. Haven't you any idea? Was it a week? A. I don't remember how long it was.

Q. Didn't he the next day talk about this little

incident that took place the night before? A. I spoke to him over the 'phone—

Q. Did he tell you over the 'phone that he loved you? A. At times, he did.

Q. I am talking to you about the next day. A. I don't remember.

Q. Let us go back to the office again on the first occasion. You were there one hour, as I understand it? Or at least one hour. A. Around about that.

Q. Were you in the chair all the time? A. I might have walked around; I don't remember.

Q. Was he in his chair all the time? A. I don't know whether—he got up, I suppose, a few times.

Q. And how many drinks were taken during that hour by you? A. Not more than two.

Q. And how many drinks were taken by Dr. Harman? A. I don't remember.

Q. Did he refill your glass? A. He refilled it once that I remember of.

Q. And some other times that you don't remember? A. I don't know that he refilled after the second time or not.

Q. So he refilled it twice, is that so? A. He refilled it once.

Q. Did he get up to do it? A. Yes.

Q. Where were the bottles? A. On the desk.

Q. What part of the desk? A. I didn't pay that close attention.

Q. Did he get up to give you a glass of water? A. He gave me a glass of water.

Q. Where did he get the water? A. He had it with the bottle; it was in the glass.

Q. When did you get that drink of water? As soon as you got it? A. After the wine.

Q. After the second drink of wine? A. I don't remember; after the first.

Q. How soon after? A. (No answer.)

Q. You can answer that? A. A few minutes.

Q. Was the water fresh? A. I don't remember whether it was fresh or not.

Q. Don't you remember whether it was cold or not? A. It wasn't very cold.

Q. Did he go out of the room to get it? A. No.

Q. Always in the room? A. Yes.

Q. How is that room furnished? A. Like any ordinary office; I don't remember the furniture in it.

Q. You have been in the office many times. A. I didn't go in to look the furniture over.

Q. You have been in the office many times. A. I didn't go in to look the furniture over.

Q. You were in during the daytime? A. Not very much.

Q. A number of times? A. Yes.

Q. Were you ever called in by Dr. Harman for a reprimand? A. No.

Q. Never? A. Never.

Q. Did he ever reprimand you? A. Never.

Q. Never? A. Never.

Q. Did he ever talk to you about talking to Doyle in the hall? A. No, sir.

Q. Never? A. No, sir.

Q. Did he ever reprimand you about going out with Mr. Bennett, the X-ray man? A. No, sir.

Q. Did he ever reprimand you for going into the X-ray laboratory with Bennett? A. No.

Q. Were you ever taking treatments from Bennette? A. At one time I had a tooth extracted—an impaction.

Q. Is Bennett a dentist? A. Not that I know of.

Q. What has he to do with the tooth being extracted? A. I had X-ray treatments. Dr. Harman was in and he gave me them several times.

Q. Where? A. In Mr. Bennett's office.

Q. When? A. I don't remember when.

Q. When did you have this trouble with the tooth? A. While I was there.

Q. How soon after you got there? A. I don't remember.

Q. Haven't you any idea? A. I have not.

Q. Who extracted the tooth? A. Dr. Pardman.

Q. Who is he? A. The dentist.

Q. Where? A. At the Essex Mountain Sanatorium.

Q. Why didn't he treat you? A. He didn't have anything to do with the treatments; I had to have them after.

Q. What kind of treatments did you have to have after? A. Some kind of electric or X-ray treatments.

Q. Where did you get them? A. In Mr. Bennett's office.

Q. How often did you have them? A. I believe once a day.

Q. For how long a period of time? A. I don't remember.

Q. Three or four weeks? A. I don't remember. I don't think it was that long.

Q. Two or three weeks? A. I don't know how long it was.

Q. Haven't you any idea? A. I have not.

Q. What was that course of treatment? A. Why, they put some kind of an aluminum plate

over my jaw and attached it to the electricity; I don't know just what it was.

Q. Did they massage your jaw? A. Yes.

Q. And they just applied heat? A. They put some kind of an ointment on before they applied the heat.

Q. What time of day did you get this treatment? A. In the morning; some may have been in the evening.

Q. As a matter of fact, most of the treatments were at night. A. I wasn't on duty while I had the pain in the tooth.

Q. For two or three weeks you weren't on duty? A. I don't know how long it was.

Q. How long were you off duty for any illness? A. That was the only time.

Q. How long was that? A. I don't remember.

Q. You must have some idea. Was it one day? A. It was more than one day.

Q. Was it a week? A. I don't remember.

Q. Was it less than a week? A. I don't remember.

Q. Was it six days? A. (No answer.)

Q. You know how long you took the treatments. A. I don't know for how long I took them.

Q. It was a considerable period of time, wasn't it? A. No.

Q. About how long did you go into the X-ray room for treatments? A. I don't remember how many times.

Q. Was it more than once? A. Yes.

Q. Was it more than twice? A. Yes.

Q. Three times? A. It was more than that.

Q. Four times? A. No answer.

Q. Was it at least a dozen times? A. I don't know whether it was or not.

Q. Was it? A. I don't know.

Q. Was it ten times? A. No answer.

Q. Just stop a moment to think. You know it was the only time you were sick up there. How many treatments did you get? A. I can't remember.

Q. Give us some idea. Make an estimate.

Mr. Vanderbilt: I submit, Supervisor, that counsel certainly has exhausted the witness on this topic. She has said a number of times that she doesn't remember. She answers now it is merely a guess.

Mr. Bailey: Let us have the guess.

Mr. Vanderbilt: I don't think you are entitled to a guess.

Mr. Bailey: I am asking the witness for the answer. If I am satisfied with that answer then I am satisfied with it.

Mr. Vanderbilt: If the witness has exhausted her memory—

Mr. Bailey: That is your version.

Mr. Vanderbilt: I am submitting it to the supervisor. I counted some fifteen or sixteen statements that she does not remember. How many times she was treated she says she doesn't remember.

The Supervisor: It does seem to me that the witness has said several times that she does not remember.

Mr. Bailey: I am trying to jog her memory. Her memory is very poor and I want to jog her for that.

Mr. Vanderbilt: She has had poor memory as to time on both direct and cross examination.

Mr. Bailey: I am trying to fix the number of treatments she had. She knows whether it is more than once or twice or three times or four times.

Mr. Vanderbilt: She says she can't remember the number.

Mr. Bailey: It is important to the defendant to know how many times.

A. I believe they kept a record of them and you can find out from that record.

Q. And you are willing to be bound by the record? A. Yes.

Q. Who gave you the treatments? A. Mr. Bennett and Dr. Harman.

Q. Who prescribed the treatments? A. I believe Dr. Harman did.

Q. Who gave you the first treatment? A. I don't remember which it was.

Q. Didn't Dr. Harman, as a matter of fact, object to you going in there for treatments after you came off duty at ten o'clock at night with Bennett in there alone? A. I was never in there alone with him.

Q. Who was with you in there? A. He had a nurse.

Q. Who was the nurse? A. I can't think of the name.

Q. What did she look like? A. She was fair and tall.

Q. How old was she? A. I don't know.

Q. Don't you remember her name at all? A. I would know it if I heard it. Miss Camblaus was in there, too.

Q. Who was she? A. She was one of the nurses —Mrs.—

Q. Mrs. who? Cashin? A. No.

Q. Kristetter? A. No; I am sorry I don't remember the nurse's name.

Q. But there was someone in addition to Mrs. Camblaus? A. Yes, Mrs. Harman was in there.

Q. Did she object to your being in there alone with Dr. Harman? A. I wasn't in there alone with him.

Q. You were in there with Mr. Bennett alone. A. I said there was a nurse there.

Q. On every occasion? A. Yes.

Q. Let us get back to the second drink you had with Dr. Harman; on the second occasion. When was that? How many days after you had been down at the office first? A. I don't remember how many days.

Q. Can you give us some idea? A. No, I can't.

Q. How did that come about? What time of day was it? A. In the evening.

Q. At what hour? A. After I closed up the switchboard at ten o'clock.

Q. Had he talked to you? A. Yes.

Q. Where? A. Passing through and over the telephone.

Q. At what hour? A. I don't remember.

Q. How long did he stop to talk to you? A. A few minutes at a time.

Q. When did he have this half hour conversation at the telephone? A. I don't remember; he had several conversations with me and I don't remember how long they were.

Q. Was that after he had known you for some time? A. Before and after; all along.

Q. Before he knew you? What do you mean by that? A. You said after he had known me for some time.

Q. I said either before or after he had known you for some time.

Mr. Vanderbilt: I object to the question. It has several ambiguous meanings.

Q. When was the first conversation that you had with him over the telephone? A. I don't remember.

Q. You are sure? A. Yes.

Q. What was the conversation that led up to your coming down the second time? What did he say? A. He insisted that I come down.

Q. What do you mean that he insisted? Tell me his language. A. When I would say no he would keep on asking me to come down.

Q. How many times did he ask you? A. Several times; I don't remember how many times.

Q. What did you tell him each time? A. I said no; I didn't like to be seen going down there.

Q. What did he say then? A. He said, "Come down for a few minutes anyway."

Q. Was that all that was said? A. That's all I remember.

Q. And you did go down? A. Yes.

Q. What time did you go down to the office? We are talking about the second occasion. A. All the occasions are alike to me, except the last one. I don't remember what was said on any particular occasion.

Q. How many times did you go in to have drinks with Dr. Harman? A. I didn't have occasion to go in at all.

Q. How many times did you go in to have drinks with Dr. Harman? A. I haven't any idea.

Q. Was it more than once? A. Yes.

Q. Was it more than twice? A. Yes.

Q. More than three times? A. I don't remember how many times it was.

Q. Give us some idea of how many times it was. A. I haven't any idea.

Q. Each time you went in what did he have to drink? A. Both wine—I don't know what he had to drink, whiskey or brandy. It wasn't wine anyway.

Q. Did he offer you anything besides wine? A. Yes.

Q. What did he offer you? A. The same that he drank.

Q. Brandy? A. He called it brandy the first time; after that I don't remember.

Q. Haven't you any idea? A. I don't remember what it was.

Q. Was it out of the same bottle that you got your first drink out of? A. I don't know whether it was or not.

Q. Where did he get the bottles? A. He kept them in his office.

Q. Where were the bottles when you went in the office? A. I don't know whether they were on the desk or whether he got them out of the file.

Q. Am I to understand that on every occasion that you went into his office and had a drink that there were always bottles on his desk; is that so? A. No, I didn't say that.

Q. Where did he get the bottles, if they weren't on the desk? A. He kept them in his office; I didn't ask him where.

Q. Where in his office did you see him get them from? A. I remember him walking over to something and get them out; I don't remember whether it was a file or a cabinet or what it was.

Q. How soon after you got into the office? A. A few minutes.

Q. Were the lights on? A. No.

Q. Always in the dark? A. Yes.

Q. There are heavy curtains in the window? A. There are draperies.

Q. And the draperies are very heavy, aren't they? A. They were on the side, though, because I know I could see out of the window.

Q. So he always poured these drinks out in the dark? A. He didn't have the light on.

Q. Never? A. No, sir.

Q. On this last occasion that you say you remember so very well, what was that? A. It was the last time that I was down there.

Q. When did you quit or when were you asked to resign? A. About April 25th.

Q. You remember that day, don't you? A. Yes, because I found the resignation paper that they asked me to sign, that's how I remember the date.

Q. Was that just one or two days before you resigned— A. I didn't resign.

Q. What happened? A. I was asked to resign but I didn't resign, I had to leave, but I didn't resign.

Q. At whose request did you have to leave? A. At Mr. Butterworth's.

Q. What did he state the reason to be? A. I don't know. I asked him whether it was my work and he said "no, your work was excellent." He said, "I am sorry I have to be the one to do this."

Q. Was that one or two days before you left that the last occurrence took place? A. Oh, no.

Q. How long before? A. I don't remember.

Q. We want to get some idea. What did you do after that occurrence? Did you ever have any

conversations with Dr. Harman after that? A. (No answer.)

Q. Yes or no. A. No.

Q. Didn't he talk to you at all? A. I didn't see him after that.

Q. Why not? A. I didn't go back up there looking for him.

Q. Back up where? A. At the Sanatorium.

Q. I think you and I misunderstand each other? A. You mean after I was discharged?

Q. No, I don't mean that. You talked of the last occurrence which took place in Dr. Harman's office which you remember very well. You remember the incident, don't you? A. Yes, I do.

Q. You were discharged or you left on April 25, 1926. How many days before you left the Institution permanently did that last occurrence take place? A. I don't remember.

Q. One or two days before you quit? A. It was quite awhile.

Q. How long before? What do you mean by quite awhile? A. I mean more than one month; more than two months.

Q. That would make it February—prior to February 25th—is that so? A. I believe it was after that yet.

Q. Let us fix the time. A. I can't fix the time, because I don't remember the date.

Q. But it was two months at least before you quit? A. As well as I remember, yes.

Q. How often did you see Dr. Harman after that occurrence? A. After which occurrence?

Q. The last occurrence in his office. A. Only the last one.

Q. Didn't he ever talk to you about it? A. Oh, yes.

Q. I thought you said you never had a conversation with him? A. Only over the telephone, but I never went down after that.

Q. You never went out with him after that? A. Not after that.

Q. How was that room furnished, do you know? A. I don't know.

Q. Have you any idea what furniture was in there at the time you were in there? A. No, I don't remember.

Q. How large was the room? A. It is a large office.

Q. How large? A. I don't know the size of it.

Q. Estimate it in feet? A. I can't do it.

Q. And there is a desk at one end? A. His desk was in there.

Q. Several chairs along the wall? A. Yes.

Q. Does the desk space, the entrance to the office at the opposite end of the room? A. Yes.

Q. Are there a number of chairs along the wall by the windows? A. I believe so.

Q. What is on the opposite side of the room opposite to the windows? A. There is a door that leads out into the hall.

Q. Opposite the desk that you are talking about? A. Opposite the windows at the front of the office.

Q. You are sure that there is a door that leads out there, or is it an entirely blank wall on that side? A. I don't remember about that.

Q. How many doors are there into the Doctor's office? A. Two, I believe.

Q. Where are they located? A. One you enter through his secretary's office and the other opens out into the hall near the stairway.

Q. How far away from the door which comes

through the stenographer's office is the other door? A. I don't know.

Q. You are sure there is a door? A. Yes, because I entered by that door.

Q. Is it on one end of the room? A. It is on one side.

Q. Right in the middle of the room? A. I think so.

Q. What is the furniture that is along the side of that room? A. Towards—I don't remember.

Q. Isn't there a large sofa along that side of the room? A. I believe there is.

Q. On this last occasion, just tell us in detail what happened and what led up to it and all that took place and what time of day or night it was. A. It was always in the evening after ten o'clock.

Q. You never went into the office in the daytime? A. I don't believe I was there more than once.

Q. Was you ever in the office in the daytime? A. I remember one time.

Q. What time of day? A. In the morning.

Q. What time in the morning? A. I don't remember what time in the morning.

Q. Haven't you any idea as to the hour? A. I have not.

Q. Where had you come from? A. From the switchboard.

Q. Why did you come down to the office in the morning? A. Something pertaining to the Civil Service Examination.

Q. Not for a drink? A. No.

Q. Nor for any other purpose? A. No.

Q. How long were you in the office? A. Only a few minutes.

Q. Was anything said to you then? A. He

pinched me on the cheek; that was all.

Q. Did he tell you he loved you? A. I don't remember.

Q. You are sure? A. I don't remember just what was said.

Q. Didn't he tell you that every time he saw you? A. Practically.

Q. He never failed? A. I don't remember the words that he used.

Q. Let us go back again. Let us stick to it this time. Just what took place on this last occasion that you particularly remember? What time of night was it? A. After ten o'clock.

Q. What time after ten o'clock? A. Immediately after.

Q. What led up to your going down to the office? A. His conversation over the telephone and as he passed through the telephone room.

Q. When did he pass through the telephone room? A. He had to pass through to go to his apartment unless he went on the outside.

Q. When had he passed through the telephone room? A. I don't remember.

Q. How long prior to your going downstairs? A. I don't remember.

Q. Immediately? A. No.

Q. How long before? A. (Interrupting) Because I remember he talked to me on the telephone.

Q. How long did he talk to you on the telephone? A. A few minutes.

Q. How long before you went down was the conversation on the telephone? A. Just a few minutes.

Q. What did he say to you? A. He asked me to come down for a few moments.

Q. Did you go down? A. I finally went down.

Q. Where was he when you went down? A. I don't remember whether he came up or whether I went down.

Q. And this is the occasion which you say you particularly remember. Now, just think about it. Did he come upstairs and get you? A. There were times when he came upstairs.

Q. I mean on this occasion. I am not asking you about any other. Did he come up and get you this time? A. I don't remember.

Q. Where did you meet him? A. I was with him in the office; in his office.

Q. I didn't ask you that. Where did you meet him? A. I don't remember.

Q. You don't remember? This is the occasion which you say you remember? A. I remember it happened after, not before.

Q. Where was he in the office when you went in. Tell me that. A. (No answer.)

Mr. Bailey: I ask that the witness be directed to answer.

The Supervisor: I think the witness is doing very well.

Mr. Bailey: She has not answered the last question.

A. He was in his office; I don't remember the spot where he was standing.

Q. Was the door open or closed as you got to the office? A. I don't remember.

Q. You don't remember? A. I don't remember whether he walked in with me or whether he opened the door and let me in.

Q. Which door did you go in? A. The side door into the hall; not through the other office.

Q. What did he do when you came in and what did he say to you? A. (No answer.)

Q. What did he say to you? A. I don't remember the conversation just what was said.

Q. What were his first remarks to you? A. I don't remember his first remarks.

Q. Did he invite you to sit down? A. Yes.

Q. Then you do remember what his first remark was? A. I don't remember whether that was the first thing he said.

Q. What did you do the first thing you got into the room? A. Went over and sat down.

Q. Did he told open the door for you? A. I believe that is customary.

Q. I didn't ask you that. I asked you whether he held the door open for you. A. Yes.

Q. Was the door closed then when you went into the office? A. He closed the door after I entered.

Q. Was the door closed then when you went to the office? A. I don't remember.

Q. Did you knock on the door to gain admission? A. I don't remember knocking—no, I never knocked.

Q. Then he waited for you with the door open? A. When I went down if he was in the office he usually waited at the door.

Q. Was the door open or closed? A. It was closed.

Q. And he waited outside or inside? A. Inside.

Q. How did he know you were there? A. I suppose he heard my footsteps.

Q. You didn't knock? A. No, never.

Q. What part of the office did you go to when you were admitted to the room? A. To a chair.

Q. What chair? A. I don't remember what chair.

Q. Where was it located in the room? A. Near the window; near his desk.

Q. Were there any lights on? A. No.

Q. Were there any lights on his desk? A. No.

Q. No lights at all? A. No.

Q. You just stumbled around in the dark? A. It wasn't so dark you had to stumble.

Q. Were all nights moonlight? A. I don't remember that.

Q. As a matter of fact, were any lights visible from the outside? A. I don't remember.

Q. Could you see outside through the draperies? A. Through the window.

Q. You are sure of that? A. Yes.

Q. Were the curtains up or down? A. Down I believe.

Q. Were there any curtains, as a matter of fact? A. I don't remember.

Q. You said they were down. A. I said they were down.

Q. As a matter of fact, are there any curtains on the windows? A. All windows have curtains.

Q. Were there any curtains on the Doctor's windows? A. I don't know whether there were any curtains on the Doctor's windows. I thought you meant draperies.

Q. As a matter of fact, you don't know whether there were any curtains in the windows or not. A. If there were any curtains they were down.

Q. If there were any curtains they were down? A. Yes.

Q. You went over to the Doctor's desk and sat down in the chair alongside of his desk. Then

what conversation took place? A. I don't remember just what was said.

Q. Didn't you ask him for a drink? A. I did not.

Q. Did he offer you a drink? A. Yes.

Q. Where were the bottles this time? A. I don't remember.

Q. Where did he get them? A. He had them in his office some place; I don't know where.

Q. Were the drinks already poured out when you were there? A. I don't remember whether he poured them out after or before.

Q. Do you remember seeing him pour the drinks? A. I remember seeing him pour the drinks but I don't remember whether it was this time or not.

Q. How many drinks did you have that evening? A. Not more than two.

Q. What kind of wine? A. I don't know.

Q. What other kind of liquor? A. I didn't drink anything but wine.

Q. What kind of wine was it? A. I don't know.

Q. What color was it? A. It was red.

Q. No white wine? A. No.

Q. You don't know whether it was Port or Sherry? A. I don't know. They are both red, aren't they?

Q. I don't know. I am no expert. What did the Doctor have? A. He had whiskey.

Q. Where did he get that? A. He had it with him; I don't know where he got it.

Q. How many drinks of whiskey did he have? A. I don't remember.

Q. Did he offer you any? A. Yes.

Q. Did you take any? A. I only drank wine.

Q. How many drinks of whiskey did the Doctor have? A. I don't remember.

Q. More than one? A. Yes.

Q. More than two? A. I don't remember how many.

Q. Did he take it straight or with water? A. I believe he took it straight.

Q. He never took any water? A. No.

Q. He never took any gingerale? A. I wasn't watching him that closely; I don't remember.

Q. Did he have a large or a small glass? A. A small glass.

Q. Did he have any water? A. Yes.

Q. Where did he get it from? A. I don't know.

Q. He always had it in the glass? A. He never left the room to get it.

Q. Is there any water faucet or any water bottle in that room? A. I don't know whether there was or not.

Q. How long were you in that room on that occasion? A. I don't remember just how long.

Q. Well, about how long? A. I don't know how long.

Q. Give us some idea. A. I haven't any idea; I don't know how long I was there.

Q. As I recall, you testified that you remember particularly this occasion. What do you mean by that? A. I remember the occasion, but I don't remember the time how long I was there and the minute; I would judge around an hour; I don't know how long I was there.

Q. On these occasions they were all about an hour, is that so? A. Some less; I don't believe I was there longer.

Q. And you never had more than two drinks? A. No, sir.

Q. How soon after you entered the room did you

get the first drink? Right away? A. Immediately after.

Q. What conversation took place following that? A. The usual.

Q. What do you mean by the usual? A. I don't remember his exact words.

Q. How did you know it was the usual conversation, then? A. The usual conversation he had when I was down there.

Q. What was that? What did he say to you? A. I don't remember the phrases that he used.

Q. Did he tell you again that he loved you? A. He always told me that.

Q. Where was he sitting when he told you that? A. I don't remember.

Q. In his chair at his desk? A. He said it more than once; he said it many times. I don't remember where he was sitting or standing when he said it.

Q. Was he on the other side of the room when he said it? A. I don't remember.

Q. He might have been? A. He might have been.

Q. Then what happened? A. What do you mean by that?

Q. You said some occurrence happened in there and I take it that he tore your clothes and the like. Tell me all about it. A. He made improper proposals to me.

Q. What do you mean by improper proposals? Just what did he say? A. I don't remember the words he used.

Q. Give me the gist of them. A. I don't remember the words that he used.

Q. How many times did he talk to you about

these improper proposals. A. Every time he saw me.

Q. How many times did he make improper proposals that evening? A. From the time I went in until the time I left.

Q. What do you mean by improper proposals?

Mr. Vanderbilt: I submit, Supervisor, that it explains itself.

Mr. Bailey: I submit that I am entitled to ask her the questions. That doesn't explain itself by any means. A proposal to do what?

Q. What do you mean by an improper proposal? You have some idea, haven't you? A. (No answer.)

Mr. Bailey: I ask that the witness be directed to answer the question.

Mr. Vanderbilt: I ask that the question be reframed to express what Mr. Bailey means.

Mr. Bailey: I asked the question the way I wanted it and I think it is perfectly proper.

Mr. Vanderbilt: I think it is improper and I object on that ground.

The Supervisor: I think counsel might well reframe the question.

Mr. Bailey: I would like to know in what way it is improper. Perhaps Mr. Vanderbilt would tell us. The witness said that he made improper proposals to her. Now, I want to know what improper proposals he made. If there is anything more proper

than that I would like to have it pointed out to me.

The Supervisor: You might arrive at that perhaps in another way.

Mr. Bailey: I am simply using her own language and I am entitled to ask her in her own language what she means by it.

Mr. Vanderbilt: I think it is quite obvious that there are some things that the witness does not like to say and I cannot see that she can be very much blamed for it.

Mr. Bailey: That is neither here or there. She has said some things we are entitled to go into. There are all kinds of improper proposals, that might be made.

Q. What was this one? A. I believe you know what I mean without going any further into it.

Q. What did he say to you? A. I don't remember the words he used; I wouldn't repeat them, anyhow.

Q. You do remember them, then? A. No, I don't remember the words he used.

Q. Then how do you know you would not repeat them? A. I don't remember.

Mr. Bailey: I ask that the Supervisor direct the witness to answer what she might mean by an improper proposal before I go any further.

The Supervisor: I don't think I will direct the witness to answer that question. I will suggest you get the information in some other way.

Mr. Bailey: I ask for an exception on the ground that it is a perfectly proper question. It is asking the witness in the same lan-

guage that she used what she meant by it.

Q. What happened in the room, if anything? A. (No answer).

Q. You can answer that question, can't you? A. (No answer).

Q. Did you get up to take a walk? A. (No answer).

Q. What did you do? A. I tried to leave the office right away, but he wouldn't let me out.

Q. Where were you sitting when you tried to leave the office? A. I was over near the door.

Q. Which door? A. The side door.

Q. Were you in a chair? A. No, I was trying to open the door and he wouldn't let me.

Q. You were standing up, is that right? A. Yes.

Q. Where did you come from? A. From the other side of the room.

Q. Over at his desk? A. Yes.

Q. What took place there? What caused you to go over to the other side of the room? A. (No answer).

Q. What caused you to go over to the other side of the room? A. Because I wanted to get out.

Q. Why did you want to get out? A. Because he tried to use force.

Q. Now, in what way did he try to use force? Just tell us that. Just tell us what he did. How did he use force? A. By holding me.

Q. Holding you how? Were you on a chair? A. (No answer).

Q. Were you on a chair? A. At first, yes.

Q. Did you get up? A. No, he pulled me down.

Q. He pulled you down where? On the chair? A. (No answer).

Q. Where was he? A. (No answer).

Q. Answer the question. Where was he? A. He was near me.

Q. And where were you? In the chair next to his desk? A. At first I was in the chair, yes.

Q. And he was in his chair? A. Standing over me.

Q. And he made some sort of an improper proposal to you? A. Yes.

Q. And you got up to leave? A. Yes.

Q. And you went to leave the room by going to the other side of the room? A. Going to the door that was on the other side of the room.

Q. Had he attempted to hold you before you went over there? A. Yes.

Q. Tell us about that. A. He caught hold of me before I could cross the room.

Q. And then what happened? Did you get over as far as the door? A. I did, yes.

Q. What happened there? A. He pulled me around.

Q. He pulled you around where? A. In the middle of the room; he wouldn't let me go out.

Q. Did you say anything? A. Yes, I threatened to scream.

Q. Did you scream? A. I made a slight noise after.

Q. You made a slight noise after what? A. When When he refused to let me leave the room.

Q. When did he refuse to let you leave the room? A. Right then at that time.

Q. And you made a slight noise? A. Yes.

Q. What was that slight noise? A. I made a noise in my throat to frighten him as if I was going to cough, or something.

Q. Why didn't you scream? A. Because I did-

n't want to have the scandal with people talking, but I wanted to get out quietly.

Q. You made no effort to yell? A. I made a noise, yes.

Q. How far is that door from the elevator? A. The elevator is in the cellar, I believe.

Q. Isn't there an elevator near that door? A. There is a stairway on each side.

Q. I am talking from the elevator. A. I don't remember where the elevator is located.

Q. Isn't the elevator located opposite the main entrance as you come in? A. I believe it is.

Q. And isn't that a step or two from the door where it goes to his office? A. Yes, I believe it is.

Q. Isn't there a man on duty at the elevator at all times? A. Not at night; there was no elevator man on duty at that time.

Q. On the night when you were in the office, there was no man on duty, is that it? A. I don't believe there was at night.

Q. There was no one near there? A. I heard some foot-steps.

Q. Why didn't you get out then? A. When I made the noise, he let me get up.

Q. When you were near the door, he let you go? A. He was holding me.

Q. Where was he holding you? A. On the floor.

Q. Whereabouts on the floor? In the middle of the room? A. Yes.

Q. How did you get there? Did you walk over there? A. Yes, I tried to get to the door and he stopped me and pulled me around.

Q. Then what? How did you get in the middle of the room? A. He pulled me around. I was trying to get to the door.

Q. You were still on your feet? A. Yes.

Q. When you got to the middle of the room, what happened? A. He finally overpowered me.

Q. What do you mean that he overpowered you? Did he throw you on the floor? A. Yes.

Q. Did you resist him? A. Yes.

Q. And then what happened? A. I tried to get away from him.

Q. Did you yell or scream? A. When he wouldn't let me get up—

Q. Did you cry out at that time? A. I made a noise.

Q. Did he have his hand over your mouth at all? A. Yes.

Q. Did he carry you to the sofa? A. No.

Q. Was there a sofa in the room? A. I don't remember; there was something on the other side.

Q. Did he lift you up at all? A. No, he didn't lift me.

Q. How did you get on the floor? How did you get off your feet? A. He put me there.

Q. How? How did you get off your feet? Did he pull you down with his hands? A. Yes.

Q. Where were his hands? Around you? A. Yes.

Q. Holding your arms? A. Yes.

Q. He had one hand on each arm? A. (No answer).

Q. Was he holding your hands? A. He was holding me.

Q. And he had his arms around you, is that it? A. Yes.

Q. Both of his arms around you, is that right? A. (No answer).

Q. Is that so? A. I don't remember everything.

Q. You were a party to this, weren't you? You were there, weren't you? A. (No answer).

Q. This does not happen every day in your life, does it? A. I hope not.

Q. Then you remember it very well. Now, tell us where were his arms. A. Around me.

Q. Both arms around you? A. Yes.

Q. Around your back? A. Yes.

Q. Then how did he hold your mouth covered? A. He didn't keep them there.

Q. So you could have screamed? A. I did make a noise after, and then he let me go.

Q. How much of a noise did you make? A. Just a slight noise.

Q. What do you mean by a slight noise? As loud as you are talking now? A. Yes.

Q. That isn't very loud, is it? A. No.

Q. Very quiet, as a matter of fact? A. I didn't have to make a lot of noise, because he let me go after that.

Q. Did he attempt to take you over to the sofa at all? A. He may have; he was tagging me around.

Q. How did you get off your feet? A. I answered that question before.

Q. Were you on the floor? A. (No answer).

Q. Yes or no. A. Yes.

Q. Where was he? A. Holding me there; you don't suppose I would be there of my own accord, do you?

Q. Was he on the floor? A. Yes.

Q. On top of you? A. (No answer).

Q. Yes or no. A. Yes.

Q. How about your clothes? Were they torn? A. Part of them.

Q. What part? What part of your clothes were torn? A. He broke the elastic.

Q. What elastic? A. Around my waist.

Q. To whom did you report this after it happened? A. I didn't report it to anyone; I kept it to myself.

Q. You didn't talk about it to anybody? To any friends? A. I may have mentioned it to someone; I don't remember.

Q. Whom did you talk to about it? A. I don't remember discussing it with anyone.

Q. How did it become known? A. I don't know; I think it was Mr. Bennett that heard me make the noise; I heard the foot steps.

Q. What makes you think that it was Mr. Bennett? A. The foot steps.

Q. What makes you think that it was Mr. Bennett you heard? A. The foot steps were coming from that way, and I imagine it was him coming from his office.

Q. Did Mr. Bennett ask you about it? A. No.

Q. Did Mr. Bennett learn about it? A. I don't know whether he learned about it or not. He may have surmised it; I am not positive that it was he, but I thought so.

Q. How did it become known if you didn't tell anybody? A. I don't know how it became known.

Q. Whom did you tell? Who was the first person that you told? A. I don't remember.

Q. How many persons have you told? A. I don't remember; I didn't discuss it.

Q. You never discussed it? A. I may have.

Q. How about the County Supervisor? How did he get into it? Did you tell him?

Mr. Vanderbilt: I object to that as immaterial and irrelevant. The County Supervisor is not on trial here.

Mr. Bailey: She said she never told any-

body. She said she kept it to herself and didn't tell anybody. Now I want to know whom she told. This doesn't happen every day and it is a rather serious charge. I want to know whom she told about it.

Q. Whom did you tell about it? A. I may have told some close friends.

Q. Who? A. I don't remember who.

Q. Is Mr. Bennett among your close friends? A. No, I don't mean men.

Q. Have you ever talked to Bennett about it? A. (No answer).

Q. Yes or no. A. I have told him about it.

Q. When did you tell him about it? A. I don't remember when it was.

Q. At the time it happened? A. No.

Q. How soon afterward? A. I don't remember.

Q. How did Bennett learn about it? A. I don't know how he learned about it.

Q. How did he come to talk to you about it? A. (No answer.)

Q. Did he come to see you about it? A. (No answer.)

Q. Yes or no. A. (No answer.)

Mr. Vanderbilt: I think that question is ambiguous. There is nothing about when or where or what is meant by it.

Mr. Bailey: She understands what I mean.

Mr. Vanderbilt: I don't.

Mr. Bailey: Let her say that she doesn't.

Mr. Vanderbilt: I think if it isn't clear counsel has a right to ask that it be made clear.

Mr. Bailey: As I understand it, you represent the Supervisor and not the witness and if the witness does not understand it is up to the witness to say she doesn't understand.

Q. How many times have you seen Bennett about this?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. Bailey: It is very material for the simple reason that she has made a charge of a most serious nature against Dr. Harman and it is one of the first principles that we learn in this kind of charges that she may make an outcry or report it to someone. She says she kept it to herself. If that is true, we would not be here today. I have an absolute legal right to ascertain when the charges were made and who is making the charges, to whom she reported the charges, and why they are brought up at this date when it is supposed to have happened in 1925-1926.

The Supervisor: I will sustain the objection.

Mr. Bailey: I ask for an exception.

Q. When you came out of that room, where did you go? A. I went upstairs to bed.

Q. Did you meet anybody on the way up? A. No.

Q. Did you go to bed? A. Yes.

Q. Did you talk to anybody about it that night? A. No.

Q. Did you report it to anybody the next day? A. No, I didn't.

Q. Did you see Mrs. Harris? A. (No answer.)

Q. Do you know Mrs. Harris? A. I know her by seeing her.

Q. Isn't she around the institution quite often? A. Yes, she was around.

Q. Did you report it to Mrs. Harman? A. No.

Q. Did you report it to Mrs. Harris? A. No.

Q. Did you report it to anybody else? A. No.

Q. Did you make any complaint to anybody? A. I didn't complain about it.

Q. Who was the first person you told about it? A. I don't remember.

Q. After you left the institution. A. I don't remember.

Q. How long after it happened did you tell anybody? A. I don't remember how long it was.

Q. Was it months? A. I don't remember.

Q. Was it several years? A. (No answer.)

Q. How did it become known to Mr. Bennett? A. I don't know how he found it out.

Q. How many times have you talked to Mr. Bennett about this? A. (No answer.)

Q. You can answer that, can't you? A. I don't remember.

Q. And where do you live now?

Mr. Vanderbilt: I object to it as immaterial.

Mr. Bailey: We are entitled to know where the witness lives.

Mr. Vanderbilt: Absolutely not. I do not know any such rule at all.

Mr. Bailey: That is one of the preliminary questions.

Mr. Vanderbilt: I hope we are not having

a preliminary examination of this witness now.

Mr. Bailey: I think we are entitled to know where she lives. We can do a little investigating and check up on her. It is perfectly proper. The name and address of the witness is the first essential.

Mr. Vanderbilt: That is not the first question here.

Mr. Bailey: But it belongs in the record.

Mr. Vanderbilt: I don't agree with that at all.

Mr. Bailey: I ask that the Supervisor rule on it.

Mr. Vanderbilt: Counsel has a right in opening his examination if he so desires—it is generally done by the direct examining counsel to ask the witness' name and address and occupation. It is merely a formal question and it is not a requisite at all. It has no proper place in the cross-examination and certainly not as a conclusion of any cross examination. And it is not proper for the purpose that counsel has stated.

Mr. Bailey: I will state now that we are desirous of obtaining the present address of the witness for the purpose of the record and for such other purposes as we may need; also to check up on her statements, which we have a right to do before the close of this hearing.

Mr. Vanderbilt: And I object on the ground that none of those reasons are proper reasons for asking this question.

Mr. Bailey: I ask that the Supervisor rule on it.

The Supervisor: I understand from counsel that this is not a proper place in the proceedings for the address to appear. On that ground I will deny the question.

Mr. Bailey: I hope to get a ruling favorable to the defendant after these many rulings by the Supervisor. As I understand it, it is a matter of discretion with the Supervisor and that he is conducting an investigation rather than a trial, and that there are no technical rules of pleading or procedure applicable, according to the Supervisor's own letter to me. If that is so, then I think the Supervisor should permit the question to be answered in all fairness to the defendant.

The Supervisor: I will sustain the objection.

Attorney for Dr. Harman prays an exception to this ruling of the Supervisor.

Q. Do you come from Virginia?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. Bailey: I ask that the Supervisor rule on it.

The Supervisor: Objection sustained.

Q. Were you what is known as a hustler down in Virginia?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

The Supervisor: Objection sustained.

Mr. Bailey: I ask an exception to all these rulings.

The Supervisor: The exceptions will be noted.

Q. When did you make the complaint in this case? A. I don't remember.

Q. Did you make the complaint to the supervisor? A. Yes.

Q. When did you make it? A. I don't remember the date.

Q. Was it a sworn complaint? A. Yes.

Q. Have you any idea when you swore to it? A. I believe it is about four or five weeks ago; I am not sure.

Q. Was it before October? A. I don't remember when it was.

Q. How did you come to the Supervisor to make this complaint? What brought you here? Did somebody bring you here?

Mr. Vanderbilt: I object to that as immaterial and irrelevant and not proper cross examination.

Mr. Bailey: It goes into the charges, where it is mentioned that he is notified of the complaints made against him and these are the complainants, and Bertie Galloway is one of them.

Mr. Vanderbilt: This morning you said you didn't know who the complainants were.

Mr. Bailey: I didn't. Now I am finding out and trying to find out more.

Q. Who brought you here to make the complaint?

Mr. Vanderbilt: I object to that as immaterial and irrelevant and on the further

ground that it is based on an assumption of facts which has no foundation.

The Supervisor: Objection sustained.

Mr. Bailey: In all of these questions the objection is sustained?

The Supervisor: So far.

Mr. Bailey: And I am asking for exceptions to every one of them.

Q. What was the first time you went riding? A. I don't remember the dates.

Q. How soon after you went to the institution? A. I don't remember.

Q. Two or three days?

Mr. Vanderbilt: I assume you mean riding with Dr. Harman.

Mr. Bailey: Yes.

Q. Two or three days? A. I don't remember.

Q. Was it in the afternoon or in the evening that you went riding for the first time? A. I believe the first time was in the afternoon.

Q. Where did you go? A. For a ride.

Q. Where? A. No particular place.

Q. You remember the ride very well, don't you? A. I remember the ride; I don't remember just what roads he drove over.

Q. Did you come down to Newark? A. No.

Q. Just where did you go? A. It was up around Caldwell; up that way.

Q. What happened on that ride? A. (No answer.)

Q. What happened on that ride? A. What happened?

Q. Yes. A. What do you mean?

Q. Did anything happen at all? Did you just go for a ride? A. Yes, for a ride.

Q. Did you stop anywhere? A. He always parked the car.

Q. Where? A. Along the road-side.

Q. On what street? A. I don't know the street.

Q. What road? A. I don't know the roads.

Q. Have you ever been there before? A. Back roads.

Q. Whereabouts? A. Up around Caldwell somewheres; I don't know.

Q. What time of day was this? A. In the afternoon.

Q. What time in the afternoon? A. I don't remember what time it was.

Q. How did you come to go on this ride? A. (No answer.)

Q. What made you go on the ride? A. He kept on asking me repeatedly.

Q. Did you start out from the institution? A. Yes.

Q. In whose car? A. His car.

Q. Did you start out from his house up there? A. Not from his house, no.

Q. Where? In front of the office? A. No, I walked out and then he picked me up.

Q. Whereabouts? A. Just right near the sanatorium.

Q. Wasn't Mrs. Harman superintendent of nurses then? A. I believe so, yes.

Q. Wasn't she around? A. I suppose she was around.

Q. Did she see you go away? A. No, I didn't get in his car right in front of the office.

Q. Who saw you go? A. I don't know.

Q. How long did you stop along the route? A. I don't know how long it was.

Q. What did you stop for? A. I don't know why he stopped; for reasons of his own.

Q. Did he say anything to you? A. Yes, he was talking to me.

Q. What did he say? A. He made improper proposals to me.

Q. What do you mean by improper proposals? A. I think we had that out before.

Q. Let us find out what it means. This is the second time you have used it. A. He always made them.

Q. From the first time he ever had a conversation with you, is that right? A. From the first time I was down in the office.

Q. Was this ride of yours before or after? A. After.

Q. After what? A. You mean after I was down in the office?

Q. Yes. A. Yes, after.

Q. How long? A. I don't remember.

Q. Just what were the improper proposals he made in the car? A. The same that he made in the office.

Q. What kind of a car was it? A. I don't know what kind of a car it was; it was his personal car.

Q. A sedan or an open car? A. It was a sedan.

Q. With front and back seats, is that right? A. I believe so, yes.

Q. Where were you? In the front seat? A. Yes.

Q. And there is no way of getting into the back seat unless you get out of the car, is that so? A. (No answer.)

Q. It has four doors? A. I don't believe so.

Q. How many doors were in there? A. I didn't get outside of the car anywhere.

Q. Did you have to get out of the car to get to the rear seat from the front seat? A. I don't think so.

Q. Is it a folding seat in the front? A. As well as I remember, I don't remember just how the car looked.

Q. You rode in the car didn't you? A. I have rode in many cars.

Q. You rode in this car, didn't you? A. Yes.

Q. Don't you remember what kind of a car it was? A. No.

Q. You rode in it a number of times? A. Several times.

Q. How many times? A. I don't remember.

Q. Estimate how many. A. I can't estimate.

Q. Two times? A. I don't remember how many times.

Q. Three times or just once? A. More than once.

Q. How many times, more than twice? A. Yes.

Q. More than three times? A. I don't remember how many times.

Q. How long did you stop? A. I don't know.

Q. You have no idea? A. No.

Q. When did you get back to the institution, or didn't you come back to the institution? A. Yes, I went back to the institution.

Q. He brought you back? A. Yes.

Q. About what time of the day? A. In the afternoon.

Q. What time in the afternoon? A. I don't remember what time it was.

Q. What time did you start out on the ride? A.

Sometime after two or three o'clock, because I didn't get off at that time until two.

Q. What time after three o'clock? A. I don't remember what time it was.

Q. You don't remember anything? A. Not very much.

Q. You just remember things that you want to remember and you don't remember things you don't want to remember, is that it?

Mr. Vanderbilt: I object to the argument of counsel.

Q. Let us trace this ride that you went on. When you left the institution where did you go first? A. He always drove around the same roads there, not toward Newark, it was up in Caldwell; I don't know where it was.

Q. Did he go out Bloomfield Avenue? A. No.

Q. Where did he go? A. He went out that way (indicating).

Q. Then where did he go? A. No place in particular.

Q. You went over the same roads, you said. Now, you know them. Which way did he go? A. Oh, the same way. I don't know what particular roads; up around the same way.

Q. What town did he come to first? A. I don't remember any towns; it was out on the country roads.

Q. You didn't pass through any towns? A. No, I don't believe so.

Q. What roads did he stop on? A. I don't know what road it was.

Q. Haven't you any idea? A. No, it was on a country road.

Q. In what township? A. I don't know.

Q. Was it in Essex County? A. I don't know.

Q. How far from the sanatorium was it? A. I don't know how far it was.

Q. How far had you been riding before you stopped? A. Maybe half an hour or three quarters of an hour.

Q. What was the conversation while you were riding? A. Foolishness; I don't remember the things that we said.

Q. You haven't any idea what conversation took place? A. (No answer.)

Q. You were out with him, weren't you? A. Yes.

Q. You know the conversation that took place. Let us have it. A. I don't remember the phrases that he used.

Q. I am not asking for the phrases. Give us the general gist of it. A. I gave you that before.

Q. What? A. I told you that he made improper proposals to me.

Q. What did he say to you? What do you consider an improper proposal? Did he have his hands on you? A. Yes.

Q. Did he do anything else? A. No, he didn't do anything else, but he tried.

Q. Did you object to that? A. Certainly.

Q. What did you say to him? A. I don't remember the words that I used.

Q. You don't remember anything of the conversation? A. I asked him to keep his hands off me.

Q. What did he say to that? A. He laughed.

Q. What did he do? A. He kept right on.

Q. Where did he have his hands? A. Around me.

Q. Anything improper in that? A. (No answer.)

Q. Is that improper? A. Yes, that isn't what I mean, though.

Q. Tell us what you mean. A. (No answer.)

Q. How long did you stop? A. I don't know how long it was.

Q. Were there other cars on the road? A. Not many.

Q. But they did pass? A. Yes.

Q. Did people walk along the road? A. I don't remember seeing them walk; they may have.

Q. How many miles did you ride? A. I don't know.

Q. You didn't look at the speedometer at all? A. No.

Q. You don't remember where you went? A. I know what direction I went.

Q. Tell us, if you remember. A. I told you it was up around Caldwell; it was up that way. It was not toward Newark.

Q. Did you keep on going in that direction? A. It was out that way, anyway; I don't know where.

Q. When did you make your turn to get back to the sanatorium? A. I don't know.

Q. Had you been drinking? A. Not in the afternoon, no.

Q. Did he have any drinks in the car? A. Not that I know of.

Q. Did you have any drinks in the car? A. No.

Q. Did any drinking take place? A. No.

Q. Was anybody else with you in the car? A. No.

Q. Don't you know where you were? A. (No answer.)

Q. Did you get back before dark? A. Sometimes, and sometimes it was dark.

Q. On this first occasion, what time did you get

back? A. I don't remember what time I got back the first time.

Q. When was the second ride you took with him? A. I don't remember.

Q. How soon after the first one? A. I don't remember.

Q. A week? A. I don't remember whether it was a week or not.

Q. Was it less than a week? A. (No answer.)

Q. Haven't you any idea? A. No, I have not.

Q. Have you any idea where you went? A. I told you as best I could where.

Q. Do you know what time of day it was? A. It was in the afternoon.

Q. What time in the afternoon did you start? A. I don't know what time it was; after two o'clock, though.

Q. From the sanatorium? A. Yes.

Q. You came off duty at two o'clock? A. Yes.

Q. It took you an hour to dress? A. I don't know what time I went out.

Q. Would you say you left about three o'clock? A. Around that, I imagine.

Q. Where did you go on that occasion? A. He always drove up the same direction; I don't know whether it was the same roads or not.

Q. Always the same direction? A. Yes.

Q. What time did you get back then? A. I don't remember.

Q. How long did he stop with you then? A. I don't remember.

Q. Did he stop? A. Yes, he always stopped.

Q. What did he say? A. His conversation was always about the same.

Q. What was that conversation? A. I don't remember everything that was said.

Q. How many other times were you out with him? A. I don't remember.

Q. Once or twice, or more? A. I don't remember how many times.

Q. Always in the afternoon? A. No, I remember coming back one night when it was dark.

Q. What time was it that you started out in the afternoon? A. I don't remember.

Q. But you came back after it was dark? A. Yes.

Q. Did you have your supper? A. Not at the sanatorium.

Q. Did you have supper with him? A. No.

Q. Did you start out before supper? A. I don't remember how long we happened to be out, because I remember he wanted to duck my head.

Q. Duck your head where? A. So no one could see me driving with him.

Q. Where? A. At the sanatorium.

Q. Where did you get out? A. In front of the administration building.

Q. He let you out at the front porch? A. He didn't want me to, but I wouldn't get out before.

Q. He did let you get out there? A. Yes.

Q. How many times were you out with him at night? A. I don't know how I happened to be out with him at night, but I remember that one instance.

Q. That wasn't very late? A. No, it couldn't have been.

Q. And that was following an afternoon ride? A. It must have been, yes.

Q. And you don't know how many rides you had with him? A. No.

Q. When did you quit all relations with him? A. After that last night in the office.

Q. Nothing more was said? A. He said things after that, yes.

Q. But you didn't go down? A. No.

Q. You didn't go out riding with him? A. No.

Q. You never went anywhere with him? A. No, not after that.

Q. Where was your room? A. On the fourth floor.

Q. In what building? A. The administration building.

Q. Is that the main building? A. Yes.

Q. What is on the second floor? A. The telephone room was on the second floor.

Q. What other rooms? A. The operating room.

Q. And doctor's offices? A. Doctors' offices.

Q. Whose offices? A. Dr. Bennett and Dr. Lauterburn.

Q. What other offices are there? A. The chapel and Dr. Bennett's and Dr. Lauterburn's offices and the operating room and the recreation room and the telephone room. I believe that's all.

Q. What is on the third floor? A. There were offices on the third floor also.

Q. What offices were on the third floor? A. Miss Jamison's office and the laboratory was on the third floor.

Q. Were there any rooms for living purposes on the third ffoor? A. Yes, I believe there were.

Q. Who lived on the third floor? A. I don't know.

Q. You have no idea? A. I may have known at the time; I don't know now.

Q. What was on the fourth floor? A. The girls all slept on the fourth floor.

Q. Where was your room? A. On the right hand side of the building in the front.

Q. As you looked out of the building from the inside or as you looked in from the outside? A. Looking out of it.

Q. You were on the right side? A. Yes.

Q. That is toward the west? A. Yes.

Q. Which side of the stairway as you go up the stairs? A. The same side; the stairway was right by my room.

Q. Did you look out from the front or the back of the building? A. The front.

Q. How many were in your room? A. One.

Q. Was yours the room next to the stairway? A. There was a hall like in back and there was three rooms: Henrietta's room, and then another room, and then mine.

Q. Who was in the other room at the end? A. The other telephone operator.

Q. Who was there at the time? You said Dr. Harman came into your room. Who was there at the time? A. I don't remember who was in the room.

Q. Was it an operator or a nurse? A. No, an operator.

Q. Who was the operator then? A. There were several.

Q. There were two operators? A. Myself and one more.

Q. But who was the operator with you? A. There was only one on at a time.

Q. Who was the operator that relieved you? A. Oh, they must have had eight or ten different ones; I don't remember.

Q. Who was the operator at that time? A. I don't remember.

Q. You are sure it was an operator that was in

the adjoining room? A. I don't think anyone else ever had that room but operators.

Q. Was it occupied on the day that you say Dr. Harman came into your room? A. I don't remember whether it was or not.

Q. What time of the day was this? A. In the afternoon, after two o'clock.

Q. What time after two o'clock? A. I don't remember.

Q. Were you asleep? A. Yes, sir.

Q. Did he wake you up? A. I remember one time that he woke me up.

Q. How many times was he up there? A. I don't remember.

Q. More than once? A. Yes.

Q. More than twice? A. I don't remember how many times, but it was more than once.

Q. On this occasion that you say he tried to hide, what time did he come up? A. I don't remember what time it was.

Q. Had you been asleep? A. I don't remember whether I had been on that particular occasion or not.

Q. Did you let him into the room? A. I did not.

Q. Did he knock at the door? A. No.

Q. How did he get in? A. He must have had a pass key; he unlocked the door.

Q. What did you say? A. I asked him what he wanted.

Q. What did he say? A. He wanted me to get up and get dressed and go for a ride.

Q. What did you say? A. I said no; that I was too tired.

Q. How long was he in there? A. He only stayed a few minutes.

Q. What do you mean by a few minutes? A. Not more than five or ten, anyway.

Q. Where was he in the room all of this time? A. He was usually so nervous he couldn't be still.

Q. Did he close the door? A. Yes.

Q. Did he ever knock at the door before he came in? A. He never did.

Q. He always came in with a pass key? A. He always managed to unlock it in some way; he must have had a key.

Q. He always came in in the afternoon? A. Yes.

Q. How many times did he visit you at night? A. Never.

Q. Always during the day time? A. Yes.

Q. What time of the day did he come in? A. After two o'clock.

Q. What time after two o'clock? A. I don't remember.

Q. And on one of those occasions don't you remember? A. I never remember the time.

Q. Was it always daylight? A. Yes.

Q. Was it always before five o'clock? A. Yes, because I had to go to supper around five.

Q. What were you doing in bed at two o'clock in the afternoon on each one of those occasions when you didn't go on duty until six o'clock in the morning? A. When I got on at six o'clock in the morning, I was usually tired, and I took a nap before dinner time.

Q. And you always disrobed to take your nap? A. Yes.

Q. Completely disrobed? A. Yes.

Q. You never lay down on the bed to take a nap but disrobed? A. Not always.

Q. But every time Dr. Harman came in, you were disrobed? A. Yes.

Q. How many times did you say he was there? A. I don't remember.

Q. Did you ever talk with Mrs. Harman about this? A. No.

Q. Did you ever mention it to anybody? A. I may have mentioned it; I don't remember.

Q. Whom did you mention it to? A. I don't remember whom I talked to about it.

Q. Did you mention it to anybody at the time? A. No.

Q. When did you mention it? A. I don't remember.

Q. After you left the institution? A. I don't remember at what time I mentioned it.

Q. Did you ever mention it to Bennett? A. I may have.

Q. As a matter of fact, isn't Bennett paying your expenses while you are waiting here for this hearing? Isn't he paying your board while you are here in town? A. (No answer.)

Q. Yes or no. A. If he is, I don't know anything about it.

Q. How many times have you seen Bennett lately? A. (No answer.)

Q. Can't you answer that? A. I didn't see him.

Q. Has he been at your home? A. Not that I know of.

Q. How many conversations have you had with Bennett in the last month or so? A. I don't know.

Q. More than one? A. (No answer.)

Q. More than one? A. I don't remember.

Q. Have you had one conversation? A. I have seen him, yes.

Q. Where? A. (No answer.)

Q. Where? A. On the street.

Q. Where on the street? A. I don't remember just where it was.

Q. Did you meet him by appointment? A. (No answer.)

Q. Yes or no. A. (No answer.)

Q. Answer that question yes or no. You know whether you met him by appointment or not. Yes or no. A. (No answer.)

Mr. Bailey: I ask that the witness be directed to answer.

The Supervisor: I think the witness ought to answer as best she can.

Q. Did you meet him by appointment? A. (No answer.)

Q. Did you hear the Supervisor tell you to answer? A. Yes.

Q. You did meet him by appointment, is that what you mean by yes? A. Yes, I met him by appointment.

Q. And where did you meet him by appointment? A. Is it necessary that I answer these questions?

The Supervisor: I think you should.

A. I met him in front of my office.

Q. Where is your office?

Mr. Vanderbilt: I object to that as immaterial. It is embarrassing the witness. Every line of this is appearing in the newspapers, and I do not think the witness should be embarrassed.

Mr. Bailey: A moment ago it was perfectly proper for her to answer the question that she met him by appointment and she said at her office, and then I asked her where

her office is and it was immediately objectionable. I cannot see the consistency of the two positions.

Mr. Vanderbilt: I can. I can't see how any good purpose is going to be served by questioning the witness as to her present position.

Mr. Bailey: I am not asking County's counsel—

Mr. Vanderbilt: I object to the question as irrelevant and immaterial.

The Supervisor: I think that counsel can change his question to get the information he wants without making a disclosure that would be detrimental to the interests of the witness.

Mr. Bailey: How can it be detrimental to the interests of the witness. You are assuming that it would be detrimental. You permitted her to answer the question that she met him by appointment and she answered yes, and the next question was where, and she said it was in front of her office. Now, I ask her where it is.

Mr. Vanderbilt: Just because you started down the road, does not mean that you can go to the end of the road. I think it is entirely within the Supervisor's discretion.

Mr. Bailey: I think so too, and I think wherever County counsel has objected, it has been sustained. I think the defendant should be given an opportunity.

Mr. Vanderbilt: I don't think there were any objections to my side of the testimony except one or two of the formal questions.

Mr. Bailey: This is not a trial, as I un-

derstand it, but an investigation. Let us get at the facts.

Mr. Vanderbilt: The facts concerning the charge are perfectly proper, but now you are asking where she met him, and that is a person who is not on trial here.

Mr. Bailey: This is an outgrowth of the Bennett proceedings. The decision in that case has not been disclosed pending these very facts. That was the very case that brought the charge against Dr. Harman before, and we want to know what his interest is in these proceedings and whether or not this is suggested by him and whether or not he has seen these witnesses and got them to make these charges. That is the purpose of these questions.

Mr. Vanderbilt: Granting that that is all right, that does not have anything to do with where this witness is employed.

Mr. Bailey: I didn't ask it for that purpose.

Mr. Vanderbilt: But that is what you asked, and I think it is immaterial. The important question is what was the conversation.

Mr. Bailey: It seems to me in all fairness to Dr. Harman, if it is an impartial hearing, that whether it is material or not should be left to him, and if he can get any benefit out of the information which may be gotten in that way he should have the benefit of it and not have every avenue which he has tried to open foreclosed to him. That is the result of these rulings. This is not a trial. We are not under legal rules of

evidence, I take it. This is entirely within the discretion of the Supervisor.

Mr. Vanderbilt: I think so too. I think further, Supervisor, that this witness is not on trial to pry into where this witness is employed, and I believe it is irrelevant to the testimony here. I have no objection as to whether or not there were conversations. I concede that that is proper, but to ask where the witness is employed, simply because it is coupled up with where the conversation took place, and what the conversation was which are proper—where it was seems to me to be immaterial and irrelevant.

The Supervisor: Have you anything to say on that, Mr. Bailey?

Mr. Bailey: I have stated my position and my reasons for it. I think the defendant is entitled to every opportunity which can be made available. Even now, my inquiry—

Mr. Vanderbilt: The question of the inquiry will be to go down to see the young lady's employer.

Mr. Bailey: That is an assumption. Let us not deal with assumptions.

Mr. Vanderbilt: Why do you want to know where she is employed?

Mr. Bailey: It is the defendant's reason. It is to trace the movements of this man Bennett.

Mr. Vanderbilt: If that is all it is designed for, it is absolutely no part of the case, and I object to it on that ground.

The Supervisor: Again I will ask coun-

sel if he can reframe the question to get the information he wants in another way.

Mr. Bailey: I do not think it is necessary to reframe the question. It is based on a question which you permitted as to where the appointment was kept, and she said at the office.

Q. Where is the office?

Mr. Vanderbilt: I object to that as absolutely immaterial. It is only intended to harrass the witness.

Mr. Bailey: That is an assumption.

Mr. Vanderbilt: That is a necessary consequence.

The Supervisor: I don't think it is necessary to disclose where the witness works at this time.

Mr. Bailey: I ask for an exception.

The Supervisor: The exception will be noted.

Q. What conversation did you have with Bennett? Was it held on the street or in the office? A. On the street.

Q. What conversation did you have with him? A. I don't remember exactly what was said.

Q. Was it about this complaint? A. (No answer.)

Q. Yes or no. A. That may have been mentioned.

Q. Did he make that appointment by telephone? A. Yes.

Q. How did he come to telephone you? Had you talked to him before? A. (No answer.)

Q. Yes or no. A. Before what?

Q. On a previous occasion had you talked to him? A. I have talked to him, yes.

Q. How many times? A. I don't know how many times.

Q. You made an appointment on the street in front of your office and that appointment was made over the telephone. When was the last time you had seen Bennett and talked to him about this complaint? A. I don't remember.

Q. How many days before? A. I don't remember.

Q. When did you first talk to Bennett about this? A. I don't remember.

Q. Was it recently? A. I don't remember just when it was.

Q. Was it this year? A. Yes.

Q. Early in the year? A. I don't remember just when it was.

Q. During the summer? A. I don't remember.

Q. Where were you and he when you had your first conversation about it? A. In front of my office.

Q. Was that by appointment? A. Yes.

Q. Over the telephone? A. Yes.

Q. About when was that? A. I don't remember when it was.

Q. How many appointments have you had with him in front of your office? A. Only the one.

Q. Only the one? A. Yes.

Q. Didn't you say before that the last time that you talked to him was by appointment over the telephone in front of your office and that you had more than one conversation with him? A. I said that I had had more than one conversation with him; I didn't say about what or when or where.

Q. How many conversations have you had with

him about these charges? A. I don't remember.

Q. More than one? A. I don't remember how many.

Q. More than one? A. It may have been mentioned more than once.

Q. About how many times was it mentioned? A. I don't remember.

Q. Where were these conversations held? At your home? A. No.

Q. On the street? A. On the street.

Q. Always on the street? A. (No answer.)

Q. Yes or no. A. On the street.

Q. Did any of them ever take place in Bennett's automobile? A. I don't remember.

Q. That might have taken place in his automobile, is that right? A. (No answer.)

Q. Yes or no. A. (No answer.)

Mr. Bailey: I ask that it be noted on the record that most of these questions are finally answered after a considerable period of hesitation and that they are not readily responsive.

Q. Some of these conversations might have taken place in Bennett's automobile? A. (No answer.)

Q. Yes or no. A. They might have, I don't remember.

Q. About how many times have you been out with Bennett in his automobile? A. What do you mean by out with him?

Q. Riding with him in his automobile. A. I believe only the one time.

Q. When was that? A. The time I met him in front of my office.

Q. And he took you riding in his automobile then? A. He took me home.

Q. And you had a conversation in the car about these charges? A. We talked about it before I got in the car, and I was in a hurry to get home, and I asked him to drive me home.

Q. And where did you live?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. Bailey: It is a perfectly logical sequence and we have been talking about it. I ask for a ruling as a matter of record from the Supervisor on that question being a proper one.

The Supervisor: I think you got the information you wanted.

Mr. Bailey: No, I have not. I am asking you for a ruling on the propriety and admissibility of this question.

The Supervisor: You are asking where the witness lives.

Mr. Vanderbilt: And I object to it.

Mr. Bailey: We have the testimony from her that she spoke to Bennett about these charges. She met him in front of her office and then asked him to take her home and there was a conversation there and in the automobile, I presume, and a conversation at the home, I suppose. That is what I am trying to find out.

Witness: No, not in my home.

The Supervisor: I think that disposes of the question now.

Mr. Bailey: No, it does not.

Mr. Vanderbilt: I object. The witness testified that they did not talk about the charges in the automobile.

Mr. Bailey: No, she says she went riding with Bennett once, and that these charges were discussed in Bennett's automobile or may have been discussed.

Mr. Vanderbilt: No, she said it may have been talked about, but she says it was the only time on the street and she did not talk about it in the automobile or in the home.

Q. How did you come to tell Bennett about this, Miss Galloway? A. I don't know how I came to tell him about it.

Q. Did he get in touch with you first or did you get in touch with him? A. He got in touch with me.

Q. How long ago? A. I don't remember how long ago it was.

Q. You have no idea? A. No.

Q. You have no idea how many times you have seen him since then about these charges? A. (No answer.)

Q. Yes or no. A. I don't believe I have seen the man more than two or three times since the time I left the institution.

Q. Have you seen him here in the Hall of Records—this building? A. (No answer.)

Q. Yes or no. A. He may have been here the same time I was.

Q. When you made the charges, is that right? A. (No answer.)

Q. Yes or no. A. I don't know whether he was here or not.

Q. Did he bring you here? A. He wasn't here then.

Q. Did he bring you here? A. No.

Q. Were you to meet him here?

Mr. Vanderbilt: I object to that. The witness says she did not meet him here; whether she was to meet him here or not is immaterial and irrelevant.

Q. Did he send you here? A. I came.

Q. Who sent you here? Who suggested your coming here? A. (No answer.)

Q. Answer that question. A. (No answer.)

Q. You understand the question, don't you? A. Who sent me here?

Q. Yes. Who suggested that you come here, or who sent you here? A. I came here myself, alone.

Q. You came here alone, but who told you to come here? A. (No answer.)

Q. Answer the question. A. (No answer.)

Q. You understand the question, don't you? A. I believe I do.

Q. Well, answer it. A. (No answer.)

Q. Is there any reason why you can't answer it? A. Will you repeat the question?

Q. Who told you to come here to make the charges? A. No one didn't tell me to do it.

Q. Who suggested that you ought to come up here to make the charges? A. (No answer.)

Q. Did Bennett tell you to come here to make the charges? A. (No answer.)

Q. Yes or no. A. He didn't tell me too, no.

Q. Did he suggest that you come here to make the charges? A. He talked about this case.

Q. And it was at his suggestion that you came, is that it? A. (No answer.)

Q. Yes or no. A. (No answer.)

Q. Can you answer that question? A. It may have led up to that.

Q. You didn't talk the case over with anybody

else but Bennett, did you? A. I have heard the case discussed by more than Bennett.

Q. It has been discussed by more than Bennett, but since you came to this building? A. And before.

Q. Whom did you discuss the case with before? A. I don't remember; different ones.

Q. How long ago? A. I don't remember.

Q. Somebody at the institution? A. No.

Q. Somebody Bennett sent to talk to you about it? A. No.

Q. When did you first talk about the case to anybody? A. I read different things in the paper.

Q. It has been since these recent charges, is that it? A. And before, also.

Q. What did you read in the paper then that caused you to talk about it? A. I read several things; they didn't amount to very much.

Q. What did you read? A. About that Mr. Simms case.

Q. Who did you talk to about it then? A. Different friends of mine.

Q. Who? Mention them. Men or women? A. Women; possibly men also.

Q. Who? A. No one connected with this.

Q. I haven't asked you that. I asked you who. A. I don't remember.

Q. Give me the name of the first person that you mentioned it to. A. I don't remember.

Q. Was it a man or a woman? A. I don't remember.

Q. And how long after it happened was it that you first mentioned it? A. I don't remember how long it was.

Q. Was it a year? A. (No answer.)

Q. Two years? A. (No answer.)

Q. Was it recently? A. (No answer.)

Q. This year? A. This year.

Q. You never mentioned it to a soul before this year? A. I suppose I did, yes.

Q. I don't want to know whether you suppose you did. I want to know whether you did. A. I may have talked about it.

Q. Not what you may have done. Did you? A. I don't remember.

Q. You probably did not mention it to anybody until this year, isn't that so? A. (No answer.)

Q. Isn't that so? A. I don't remember whether I mentioned it before or not.

Q. Probably you didn't mention it until this year, isn't it so? A. I probably did.

Q. Did or did not? A. I did.

Q. And to whom? A. I don't remember just who. Different friends of mine.

Q. Have you always been in New Jersey since you quit the institution? A. (No answer.)

Q. Yes or no. A. (No answer.)

Q. Never mind looking at Mr. Vanderbilt. Look at me. Yes or no. A. Yes.

Q. Around this vicinity?

Objected to as immaterial.

Q. In Essex County? A. (No answer.)

Q. Yes or no.

Mr. Vanderbilt: I object to that as immaterial and irrelevant where the witness has been since she left the institution.

Mr. Bailey: I think it is quite relevant. She has been here where she could have made these charges and never did. And I think it is material; it is something to be considered.

Q. Have you always lived in the County since you left the institution? A. In the County, yes.

Q. How many times have you seen Bennett since you left the institution? A. (No answer.)

Q. Can't you answer that question? A. Not more than two or three times.

Q. When was the first time you saw him since you left the institution? A. I don't remember.

Q. Was it the two or three times you have seen him since you left the institution within the past two or three months? A. I don't remember.

Q. They probably were within the past few months, isn't that so? A. The past couple of years.

Q. Who first brought up the idea, the thought, of making these charges? You or Bennett? A. I thought several times about why I was discharged for no reason—when they couldn't give me a reason, and I asked Mr. Butterworth at the time whether there was anyone higher than Mrs. Harris that I could go to, and he said no, there was no one else.

Q. Did you go to Mrs. Harris? A. No.

Q. Who was this? Mr. Butterworth? A. Yes.

Q. He is dead, isn't he? A. So I heard.

Q. Some of the other witnesses are dead too, aren't they? A. I don't know.

Mr. Vanderbilt: I don't know about any other witnesses.

Mr. Bailey: Doyle and some others. Not Bennett; he is very much alive.

Mr. Vanderbilt: I don't know anything about Doyle.

Q. How many times have you been in this building about this matter?

Mr. Vanderbilt: She never saw me before this morning.

Mr. Bailey: I want to know how many times she has been in this building about this matter.

A. I don't know.

Q. More than once? A. (No answer.)

Q. Yes or no. A. Not more than twice, I don't believe.

Q. Whom did you talk to about it? A. I talked to the Supervisor.

Q. How many times have you talked to the Supervisor about it? A. I believe twice.

Q. Who was present when you were talking to the Supervisor about this?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Q. Was Mr. Bennett here? A. (No answer.)

Q. Yes or no. A. I talked to Mr. Reed about it.

Q. Was Mr. Bennett present? A. I don't know; he wasn't in the office.

Q. Was he around the building? A. I don't know whether he was or not.

Q. Did you see him? A. I didn't see him.

Q. Did you see him on any occasion when you were here? A. I don't remember.

Q. Do you know this other girl, Pauline Galler? A. I met her.

Q. When did you meet her? A. I don't remember when it was.

Q. Just recently? A. Yes.

Q. Where did you meet her? A. I believe she was here the same night that I was.

Q. Here in this building? A. Yes.

Q. How many other times have you met her? A. Only the one time besides today.

Q. Was she in the Supervisor's office at the time, or where was she in this building? A. I met her in the building.

Q. Did you ever meet her at any other time? A. No.

Q. Did you ever know her at the institution? A. She wasn't there at the same time I was.

Q. Did you ever meet her up there? A. She came after I left.

Q. Did Bennett ever talk to you about her? A. I heard about her through someone else besides him.

Q. Through whom? A. Through Mrs. Cahill.

Q. Who is Mrs. Cahill? A. A friend of mine.

Q. Was she in the institution? A. She knew Miss Galler.

Q. Where does Mrs. Cahill live? A. I don't know where she lives.

Q. Is that spelled C-a-h-i-l-l? A. Yes.

Q. She is a friend of yours, isn't she? A. Yes.

Q. Does she live here in Newark? A. As far as I know.

Q. How did you come to hear about Pauline Galler through her? A. I met her and we talked about it.

Q. When was that? A. I don't remember.

Q. Was that recently? A. Quite a while ago.

Q. This summer? A. It may have been.

Q. This fall? A. No, I believe it was before that; I don't remember when it was. It wasn't recently, though.

Q. What did Bennett tell you to say about these charges? Anything? A. He didn't tell me anything.

Q. What was the conversation that you had about the charges? A. I don't remember the conversation. We talked it over, that is all.

Q. When did you discuss the charges? A. About the way I was discharged; that's the way I talked about it.

Q. Is that all? A. The whole thing was talked about.

Q. Everything? A. Yes.

Q. How many times had you been out with Bennett while you were at the institution? A. I was never out with him.

Q. Never out with him, is that right? A. (No answer.)

Q. You never entered his automobile, is that right? A. I didn't even know he had an automobile.

Q. You said that something happened at one time at the institution while you were there, about six o'clock in the morning when you met Dr. Harman. When was that? A. That was one morning when I went on duty at six o'clock.

Q. Just when? On what date? A. I don't remember the date.

Q. Was that after this last occurrence that you say took place in his office or before? A. After.

Q. What did he say to you then? A. He didn't say anything to me.

Q. What did he do to you? A. He just looked at me and gripped my arm and drew it to my side and walked out.

Q. Where was he? A. In the hall on the second floor.

Q. And where were you? A. Right there.

Q. Where? A. In the hall on the second floor.

Q. What part of the hall? A. I was coming

out of the little wash room where I had been arranging my hair.

Q. Were you in sight of the telephone switch board? A. Yes.

Q. You were just coming on duty? A. I took the connections down, and I had gone into this wash room to set the wave on my hair when he went by.

Q. And you were back at the board? A. I was on my way back.

Q. Was there any conversation then? A. No, he just took my arm.

Q. Was he walking the same way you were? A. He was on his way to the office, I suppose.

Q. And this was before six o'clock in the morning? A. After six o'clock.

Q. What time after six o'clock? A. I don't remember; it was early.

Q. You had just come on duty? A. It was before seven.

Q. You came on duty at six o'clock? A. It was right after six o'clock.

Q. You had just opened up the switchboard and stepped into the washroom to fix your hair, and then you came right out. That should not take you more than five minutes? A. Possibly.

Q. Then it would not be more than five or ten minutes after six? A. It may have been.

Q. Was it or wasn't it? A. I don't remember.

Q. What time did you get on duty that morning? A. Six o'clock.

Q. How long were you at the switchboard before you left it to fix your hair? A. I don't know whether I went out to the wash room immediately, or whether I sat there a while.

Q. What do you mean by a while? A. A few minutes.

Q. How long did it take you in the wash room? A. I don't know.

Q. Were you there for five minutes? A. I don't know.

Q. Ten minutes? A. I don't know.

Q. Were you there more than ten minutes? A. I don't believe so.

Q. And then you went back to the switchboard? A. On the way back I met him.

Q. That doesn't take more than fifteen minutes, does it? A. I don't know how long it was.

Q. It was that time? A. I don't know.

Q. Do you want to be honest in this? A. Of course.

Q. Then tell us. A. I don't remember how many minutes.

Q. That was about a quarter after six? A. Around that, yes; maybe six-thirty.

Q. What did he say to you when he grabbed your arm? A. He just looked at me; I don't remember what he said. I don't remember whether he said anything or not.

Q. He just gripped your arm and threw it down to your side? A. Yes.

Q. He didn't say anything? A. I don't remember what he said.

Q. Did you say anything? A. I don't remember what I said.

Q. Did you ever see Dr. Harman down around six o'clock in the morning before that? A. I don't believe I did.

Q. Or after? A. No.

Q. Don't you know, as a matter of fact, that Dr. Harman never gets up at that time of the day? A.

I know it wasn't customary; I didn't know why he was down there.

Q. Do you remember the occasion that you came home with this man Doyle in the County automobile? A. I was never in the County automobile, only the one time with him, and that was with Mr. and Mrs. Butterworth.

Q. What time of day did you get home on that occasion? A. It was at night; I don't remember what time it was.

Q. How late at night? A. It must have been after ten o'clock, because I think I was working that night.

Q. And Doyle came home drunk, didn't he? A. He was driving Mr. and Mrs. Butterworth; he couldn't have been drunk.

Q. I didn't ask you that. I asked you whether he came home drunk. A. He wasn't when I got out of the car.

Q. He had been drinking? A. I didn't see him drink; I don't know whether he was or not.

Q. He had been drinking, hadn't he? A. I don't know.

Q. Did he smell as if he had been drinking? A. Not to me.

Q. As a matter of fact, don't you know that he was discharged for drinking? A. Yes, I know that.

Q. And driving the car while drunk? A. I don't know.

Q. And on this particular occasion you called him up and warned him that the Superintendent was going to discharge him? A. On this particular occasion?

Q. Yes, or any other occasion. A. I don't remember that.

Q. Do you remember on any other occasion call-

ing up Doyle and telling him about Dr. Harman? A. I never talked about Dr. Harman to him.

Q. You didn't call him up? A. I may have told him some time when I was talking to him.

Q. Where did Doyle live, do you know? A. He lived at the institution.

Q. Where did he live when he was out of the institution? A. I don't know.

Q. Didn't he live on North Broad Street, Newark? A. I don't know where he lived.

Q. You never knew that he lived on North Broad Street in Newark? A. He may have; I don't know his address.

Q. As a matter of fact, you know he did, don't you?

Mr. Vanderbilt: She said no.

Mr. Bailey: She said he may have.

Q. You know he did, don't you? A. I don't know where he lived.

Q. You lived with him on North Broad Street in Newark, didn't you? A. (No answer.)

Q. Yes or no.

Mr. Vanderbilt: I object to that as another attempt to incriminate the witness.

Mr. Bailey: Why not let the witness answer?

Witness: I believe that was settled this morning.

Mr. Bailey: Will the Supervisor permit the question?

The Supervisor: It has already been ruled on.

Mr. Bailey: I ask for an exception.

The Supervisor: The exception will be noted.

Q. You stated this afternoon in your testimony that the reason you said nothing about this to anybody was that you were afraid of losing your job. You left the institution on April 25, 1926. Was there anything that prevented you then from telling about it, or why shouldn't you tell about it then? A. I asked Mr. Butterworth whether there was anybody I could go to higher than Mrs. Harris, and he said no, and I didn't go to her.

Q. Who was Mr. Butterworth? A. He was secretary, I believe.

Q. Secretary of what? A. I don't remember what his title was.

Q. Did you ever see any of the other Freeholders up there? A. I suppose I did; I don't know them by name.

Q. But you knew they were freeholders? A. Yes.

Q. Didn't you ever think of talking to them? A. I thought about it, but I never did.

Q. Why didn't you go to Mrs. Harris? A. Mr. Butterworth told me it wouldn't do me any good; that I might as well leave quietly. I asked him if my being Civil Service, whether it would make any difference, and he said, "No," that meant nothing.

Q. And what reason was this? A. He wouldn't give me a reason. I don't know of any. He said it wasn't my work.

Q. Did you talk with him about this incident in the office? A. No, I did not.

Q. Then, what did you mean it would not do any good to go and see Mrs. Harris about it? A. I was already discharged about it.

Q. You mean then, when you say it wouldn't do you any good to go to Mrs. Harris, it was because

you were discharged by Mr. Butterworth? A. He led me to believe that Mrs. Harris was the one that had discharged me. He didn't mention her name.

Q. But it had nothing to do with the incidents that took place in Dr. Harman's office? A. No.

Q. And you didn't mention to Mr. Butterworth the incident that had taken place in Dr. Harman's office, is that right? A. I didn't mention it.

Q. So he didn't tell you it wouldn't do any good to see Mrs. Harris about these things, is that right? A. No, he couldn't give me a reason, though. The only thing he could say was that he was sorry to see me go and he hated to do it.

Q. But you had no thought in talking to Mr. Butterworth about Dr. Harman causing this? A. No, I didn't think it was Dr. Harman doing it at the time.

Q. Doing what? A. That he had discharged me.

Q. Do you know now that he had you discharged? A. Yes.

Q. How do you know that now? A. Two different girls that were up there told me.

Q. Who were the girls that told you? A. One of them was Miss Rose.

Q. Who was the other? A. The other one was a Miss Furnell.

Q. When did they tell you that you had been discharged because of Dr. Harman or at his instance? A. After I was away from there.

Q. How long after you were away? A. I don't remember how long it was.

Q. Were you out with these girls? A. Yes, I met them.

Q. Where did you meet them? A. In Newark.

Q. By appointment? A. Yes.

Q. For what purpose? A. No purpose at all; I was friendly with the girls.

Q. Was it day or night? A. Both.

Q. How many times have you been out with Miss Rose and Miss Furnell? A. I don't remember how many times.

Q. Many times? A. Miss Rose told me about it one afternoon when I was up to see her.

Q. When were you up to see her? A. I don't remember just when it was.

Q. Recently? A. Quite a while ago.

Q. Recently? A. No.

Q. How many years ago? A. Possibly two; I don't know just how long it was.

Q. I thought you said that you had not been at the Institution since you left it in April, 1926? A. I was up two different afternoons to see Miss Rose. That was while she was in the hospital.

Q. What dates were these? A. I don't remember the dates.

Q. Was anybody with you when you went in? A. No.

Q. Where was Rose? In a private room or in the ward? A. In the ward.

Q. Who was alongside of her? A. I don't remember.

Q. Who were the patients in the adjoining beds? A. I don't know the patients.

Q. What year was this? A. I don't remember whether it was last year or the year before.

Q. Not any more accurately than that? A. No.

Q. Was it in the summer? A. Yes.

Q. About what month? A. I don't remember.

Q. July or August? A. I don't remember what month it was; I remember that the weather was warm.

New Jersey State Library

Q. And it was in the middle of the summer, is that it? A. I don't remember.

Q. Early in the summer? A. (No answer).

Q. How much time elapsed between these two visits? A. week? A. No, longer than that. I don't remember how long it was.

Q. A month. A. I don't remember how long it was.

Q. You have no idea at all? A. No.

Q. Do you think that if you thought about it over night your memory would be any better about it tomorrow morning? A. I don't know; it seems to me that I can remember now that I don't know.

Q. Do you think that if we brought you back here tomorrow morning that your memory would be any better if you had time to think about these things? A. I don't know.

Q. Do you recall when you went out with Dr. Harman on these automobile rides, you were asked what happened and your answer was "the usual". What did you mean by that? A. (No answer).

Q. What did you mean by that? A. (No answer).

Q. Can't you answer that question? A. The usual conversation.

Q. Or the usual conduct? A. Both.

Q. The usual conduct of all men, is that what you mean? A. Not of all men; they are not all like that.

Q. Or many men. A. Many, yes.

Q. In other words, you have been out with many men, so that you know what their conduct is, isn't that so?

Mr. Vanderbilt: I object to that question. It is absolutely unfair.

Mr. Bailey: Is there a ruling against the defense again?

The Supervisor: Yes sir I will sustain the objection.

Mr. Vanderbilt: Women may know about men from books and newspapers.

Mr. Bailey: I ask for an exception.

The Supervisor: The exception will be noted.

Q. Weren't you up to the Institution just a few weeks ago? A. No.

Q. Are you sure about that? A. No, I wasn't.

Q. You didn't see anybody at the Institution? A. I haven't been there.

Q. Within the past month? A. No.

Q. Within the past two months? A. No.

Q. You are posititve about that? A. Positive.

Redirect-examination by Mr. Vanderbilt:

Q. I show you a paper and ask you if that is a resignation that Mr. Butterworth handed you and asked you to sign. A. That's the one.

Q. And you refused to sign it? A. Yes.

Mr. Vanderbilt: I offer it in evidence.

Mr. Bailey: I object. This is not the time for exhibits to go in evidence. They go in on direct-examination and not on redirect.

Mr. Vanderbilt: There was no reference brought out on direct-examination about this but on cross-examination and this is my first opportunity to offer it.

Mr. Bailey: He could have offered it at the time of his direct case. He could have brought it out when she left the Institution.

Mr. Vanderbilt: It wasn't relevant to anything in the charges.

Mr. Bailey: I am stating my objection and expecting an adverse ruling.

The Supervisor: I will allow it and it will be marked in evidence.

Mr. Bailey: I ask for an exception.

The Supervisor: The exception will be noted.

(The same is received in evidence and marked Exhibit C-2).

Q. Did you ever have any conferences with me with respect to this or any other matter, Miss Galloway? A. No.

Q. Did you ever meet me before?

Mr. Bailey: I object to that. That question did not come up on cross-examination.

The Supervisor: I will sustain the objection.

Q. Did Mr. Bennett suggest to you to see the Supervisor and tell him what the facts were that you knew about this case? A. I talked to him about it.

Q. You talked to the Supervisor? A. Yes.

Q. After you had talked to Mr. Bennett? A. Yes.

The Supervisor: We will adjourn to ten o'clock tomorrow morning.

Mr. Bailey: This hearing was fixed for one day.

The Supervisor: The arrangement was that it should proceed forthwith, and I am very reluctant to take any further adjournment.

I feel that we ought to go ahead tomorrow morning.

Mr. Bailey: We have subpoenaed witnesses for today and I presume they have gone. The witnesses, including yourself, of course —you will be here, but there are other witnesses in the case.

Mr. Vanderbilt: If that arises to embarrass counsel, we will suspend, but from the way counsel is cross-examining, I don't think his witnesses will be reached tomorrow afternoon. We have ten or twelve witnesses.

Mr. Bailey: That's why I suggest that it be next week. We will be interrupted during the week end as it is.

Mr. Vanderbilt: In view of the publicity that has been given this matter, I think it ought to go on.

Mr. Bailey: This case was fixed for one day; it could have been set for a number of days.

Mr. Vanderbilt: That is a most unreasonable argument. When you are notified that the case will start on such and such a day, you naturally assume it will go on until it is finished.

Mr. Bailey: Not always. You know much better, Mr. Vanderbilt. In Chancery you know as well as I do that when a case is set down for a certain day it may not be finished that day and it may be carried over for a month.

The Supervisor: I feel that this is a case of such public importance and it concerns the Institution so vitally that we should go ahead at the earliest possible moment.

Mr. Bailey: Monday will not harm anybody.

Mr. Vanderbilt: Why not make it nine o'clock in the morning.

Mr. Bailey: I am not prepared to go on at nine o'clock in the morning. You forced us on today when we did not have an opportunity to prepare. We are entitled to more time. We have obtained some dates here today and we would like time to check them up.

Mr. Vanderbilt: And you may get some more dates tomorrow and you will have the week-end in which to check them up.

The Supervisor: I feel that we should go ahead tomorrow morning at ten o'clock and we will adjourn to that time.

SECOND DAY.

Friday, December 14, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Dr. Harman; ROBERT H. MCCARTER, of Counsel.

PAULINE GALLER, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Miss Galler, were you employed at the Verona Sanatorium? A. Yes.

Q. In what capacity? A. Telephone operator.

Q. From what time to what time? A. I believe in May; I don't know the exact date; from May to August.

Q. Of what year? A. 1926.

Q. By whom were you employed? A. Dr. Harman.

Q. Were you taken from the Civil Service list? A. Yes.

Q. Did you or did you not on any occasion have anything to drink with Dr. Harman? A. I did.

Q. Will you tell the Supervisor the circumstances how many times that took place, and where? A. It took place in Dr. Harman's office about 9:30 in the evening. He had called me off the telephone board and requested me to come down to his office, which I did. He had it there. He asked me if I would take a drink. I told him I didn't make a practice of it, but I did occasionally have a drink. He offered me a drink and I took it. He drank himself and he made me sit on his lap and he made advances toward me. He kissed me, and after a very few minutes in there he almost forced me into having relations with him.

Q. How often did this happen? A. To the best of my knowledge about three times.

Q. Was the door of Dr. Harman's office open or shut on these occasions? A. Closed and locked.

Q. Closed and locked? A. Yes, sir.

Q. How did you come to go down to his office? A. He called me on the telephone and asked me to come down.

Q. While you were on duty? A. Yes.

Q. Did you go with him to any other place than to his office? A. Yes, into the examination room.

Q. Where is this examination room? A. Opposite the telephone room.

Q. Was it during the day or evening that you went into the examination room with him? A. In the evening.

Q. How many times did you go into the examination room with him? A. It was two or three times.

Q. Was the door open or shut while you were in the examination room? A. The door was closed.

Q. What took place in the examination room? A. He kissed me and put his arms around me and made the best advances he could make.

Mr. McCarter: We respectfully object, Mr. Supervisor, to any evidence as to what took place or is claimed to have taken place in the examination room as not included in these charges. The only charge which is made to which this can apply is that which involves Bertie Galloway and Pauline Galler whom he is said to have taken to his office in the said Institution to drink intoxicating liquors. We object to any evidence as to what transpired at any place other than in his office.

Mr. Vanderbilt: I assume, Mr. Supervisor, that in one sense the entire Sanatorium can be regarded as Dr. Harman's office.

Mr. McCarter: The judicial advisor to the Supervisor, having abandoned his office of counsel, makes that exception when the charge specifically says "To your office in said institution."

Mr. Vanderbilt: I will call the Supervisor's attention to the fact that that clause of this charge No. 1 that has been referred to ends "And assaulted the said Pauline Galler." And that clause is set off by a comma and not limited to place.

Mr. McCarter: I beg to call the Supervisor's attention to one thing. I do not suppose it makes any difference, but I desire to have it on the record. We have requested a bill of particulars. We think we are entitled to be notified of the charges there are against us, considering that these charges go back several years. These particulars have been refused and we have been compelled then, to look to the general charges. We find that the only charge is that this transaction occurred in the Doctor's office in the Institution and there is no charge of anything that occurred in any other part of the Institution, and we object to any evidence of what is said to have transpired in any other part of the Institutions and the Doctor's office.

Mr. Vanderbilt: If counsel desires to narrowly limit this, I will withdraw the question.

The Supervisor: The objections are sustained.

Q. We will confine ourselves to what transpired at this time in the Doctor's office. You went into his office on these various occasions, were the lights on or not? A. No, they were off.

Q. Did you say that he also took a drink? A. Yes, he did.

Q. Do you know what he drank? A. He drank the same as he gave me.

Q. What was that? A. I believe it was port.

Q. Did he have anything to say to you on these occasions? A. Very little.

Q. What did he say? A. He told me that I was the type of girl he liked.

Q. On any of these occasions did Dr. Harman assault you? A. He did—

Mr. McCarter: I object to that as leading. I think the witness ought to tell what he did.

A. He did not exactly—

Q. Tell the Supervisor exactly what happened. A. I don't know whether I can or not.

Q. Tell just what happened? A. When I went to his office he kissed me and he was all upset. He had me on the floor; he had my clothes off from me and his body as close as possible to mine. That is the best I can describe it.

Q. Will you tell the Supervisor how your clothes came to come off? A. Well, they weren't taken off me—I don't know how to answer.

Q. Did or did not Dr. Harman on this occasion have all of his clothes on? A. No, he did not.

Q. What of his clothes did he not have on? A. He didn't have his coat on.

Q. Anything else? A. No.

Q. Did he have all the rest of his clothes on? A. Yes.

Q. All in their customary and proper place?

Mr. McCarter: I object to the customary and proper. The question is what occurred.

Q. Did he or did he not have any of his clothes partially off? A. He had some of his clothes open; he didn't have them off.

Q. What part of his clothes did he have open? A. His trousers.

Q. What was the position of his trousers? A. I am afraid I can't describe that.

Q. Tell the Supervisor as nearly as you can. A.

The best I can say is that he was as close to me as he could possibly get.

Q. I wish you would tell us specifically, if you will, just exactly what was the position of Dr. Harman's trousers on this occasion. You say they were open? A. Yes.

Q. Were they off or on? A. No, they were on.

Q. How much off and how much on? A. I am afraid I can't say that.

Q. Do you know? A. I do not. I know it was dark and I could feel his body on mine, but I couldn't tell just—

Q. What happened after that? A. We heard someone passing through the hallway and he released me.

Q. What did you do then? A. I immediately asked to leave the office—if I could leave.

Q. Did you leave? A. After a few minutes waiting he let me go.

Q. Will you tell the Supervisor whether or not Dr. Harman ever came into your room in the afternoon? A. Yes, he did; he came in the afternoon when I was on the morning shift.

Q. And when you were working on the morning shift, what were your hours? A. From six to two.

Q. How many times did he come in the afternoon to your room? A. I believe it was two or three times.

Q. Was the door of your room locked at the time? A. It was.

Q. How did you gain admission? A. With a pass key.

Q. Did he or did he not knock at the door before he came in? A. He did not knock.

Q. When he came in on these occasions where

were you? A. Once I was in bed and on another occasion I was just getting undressed.

Q. On the occasion when he came in when you were in bed were you undressed? A. Yes, in my night clothes.

Q. On the occasion that he came in you were not in bed, were you or were you fully dressed? A. No, I was not.

Q. What did you have on? A. A chemise.

Q. On these occasions when Dr. Harman came up to your room did you hear him coming in? A. I heard the key in the lock.

Q. Had you ever invited him to your room? A. I had not.

Q. When he came up to your room on these occasions what happened? A. He would kiss me and take me in his arms.

Q. Did he say anything to you? A. Very little.

Q. Did he do anything besides kiss you? A. He tried to make advances.

Q. In what way? A. Improper advances.

Q. Specifically, would you tell the Supervisor what he did by making improper advances? A. He tried to take my clothes from me.

Q. In your room? A. He tried to bare me.

Q. Did he or did he not succeed? A. He did not.

Q. Why not? A. There was usually someone in the hallway which would frighten him.

Q. Did he ever come and talk to you while you were at the switchboard? A. Yes.

Q. What did he say to you there? A. He would make various minor remarks as to being a nice day or having a nice car or taking a nice walk.

Q. Did he or did he not ever invite you to go out in his automobile? A. He did not.

Q. Did he or did he not come to you on any occasion while you were at the switchboard and offer to give you a drink? A. He did.

Q. On how many different occasions? A. Only one.

Q. Can you recall when that was? A. I don't recall the date, although it was the time of the sickness of an animal when he left a bottle of whiskey on the window sill at the switchboard.

Q. What animal was sick? A. I believe it was a horse.

Q. Did you ever have any occasion to go to the X-ray department of the Sanitorium for treatment? A. I did.

Q. Will you tell the Supervisor the circumstances under which that came about?

Mr. McCarter: We object to that for the same reason that is there is nothing in this place as having occurred.

Mr. Vanderbilt: This is merely a preliminary matter—

Mr. McCarter: I object to any evidence as to what transpired in the X-ray Department.

Mr. Vanderbilt: I am making no attempt to charge Dr. Harman with anything that happened in the X-ray Department. I am leading up to something with an entirely different purpose.

Mr. McCarter: I object.

Q. Will you tell us the circumstances under which that came about?

Mr. McCarter: Has the Supervisor ruled on the objection?

The Supervisor: Counsel has said that this is not an attempt to lead up to anything that Dr. Harman did in the X-ray Department. That is not in the charges. I think he may ask the question.

Mr. McCarter: I pray an exception.

Q. Will you tell us the circumstances under which you came to take treatment in the X-ray Department? A. I was referred to the X-ray room by Dr. Bennett.

Q. Why was it necessary for you to go to the X-ray room for treatment? A. For external bruises that I received when I was in Newark.

Q. And as a result of those bruises you had to go to the City Hospital, didn't you? A. Yes.

Q. And then following your return to the Sanitorium Mr. Bennett recommended X-ray treatment? A. Yes.

Q. Dr. Richard Bennett? A. Dr. Richard Bennett.

Q. And who gave you the X-ray treatments? A. Mr. Harold Bennett.

Q. Why did you leave the Sanitorium? A. Why, Dr. Harman was going too far in his advances, then I left under the advice of a Catholic Priest.

Q. Who was the Catholic Priest? A. I don't know his name.

Q. The Chaplain of the Sanitorium? A. No, he was replacing the Chaplain.

Q. Did you tell the Chaplain or the Priest what had happened? A. I told the Chaplain about being annoyed.

Q. By Dr. Harman? A. Yes.

Q. Did you on any occasion see Dr. Harman go

out riding in an tuomobile with Miss Henrietta Rose? A. I did not.

Cross-examination by Mr. McCarter:

Q. Your first name is what? A. I gave it; Pauline Galler.

Q. I know you gave it, but I wanted to know what it is. What is your first name? A. This is the second time I am giving it; Pauline Galler.

Q. Is it Geller or Galler? A. Galler.

Q. When did you enter the employ of the hospital? A. In May, 1926.

Q. Had you ever seen Dr. Harman before you became employed there? A. I did not.

Q. So that when you entered the employ of the Institution you were an entire stranger to him? A. Absolutely.

Q. You told us that Dr. Harman employed you. A. Yes.

Q. Did Butterworth employ you? A. Well—yes —that's right.

Q. Then you were mistaken when you said that Dr. Harman employed you. A. Well—he accepted my application. My application was not accepted until Dr. Harman returned.

Q. Was Dr. Harman at the Institution— A. (Interrupting) He was not.

Q. (Continuing) When you presented yourself for employment? A. He was not.

Q. Whom did you see? A. Mr. Butterworth.

Q. Who was he? A. I believe he was the Secretary to the Institution.

Q. Did you get to work before Dr. Harman returned? A. Yes.

Q. So that you were not only employed by But-

terworth but employed while Dr. Harman was away? A. Yes.

Q. Why did you tell the Supervisor you were employed by Dr. Harman? A. My application was not accepted until Dr. Harman returned.

Q. Dr. Harman was Superintendent and had charge of every employee there? A. Yes.

Q. How long was Dr. Harman away after you started work? A. I don't know the exact time.

Q. I don't want the exact time. Was it a week or two weeks? A. He came back about two weeks after I came there.

Q. Were you at that time an experienced operator on the telephone? A. Not on that telephone.

Q. On any telephone? A. Yes.

Q. Where do you work? A. I don't care to give the place of employment.

Q. Where do you work? A. I don't care to give it.

Mr. Vanderbilt: I don't think it is material, Mr. Supervisor. This employee was certified to the Institution by Civil Service. I judge from that that she had passed the tests prescribed by the Civil Service. Where she previously worked is not within the issues. Mr. McCarter is going to hold me strictly to time and place and room and I think he should apply it to himself.

Mr. McCarter: Can it be possible that persons who come here and tell stories of this kind cannot be interrogated as to their career, who they are and for whom they worked? Are we simply to take this story and swallow it whole? I insist upon the right to ask this witness by whom she was employed before she came to our Institution.

The Supervisor: Objection sustained.

Mr. McCarter: I pray an exception, please.

Q. You left the Institution in August following the May? A. Yes.

Q. And by whom have you been employed since? A. I don't care to give it.

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. McCarter: I repeat the same statement.

The Supervisor: I will sustain the objection.

Mr. McCarter: I do not know that it is necessary to except, but I do except.

Mr. McCarter: Do I understand that the ruling of the Supervisor is that this lady's history prior to May, 1926, when she entertered the employ of the Institution, and after August, 1926, when she left it, is not the subject of inquiry here?

The Supervisor: I have not made any such ruling.

Q. What did you do in August, 1926, after you left the Institution? A. I went to school.

Q. Where? A. I don't care to give it.

Q. Will you please answer the question? A. I don't care to mention the name of the Institution —of the school.

Q. What is the name of the institution which you call a school which you went to after you left? A. I don't care to give it.

Q. I insist upon an answer to my question. A. I don't care to involve it in my case.

Mr. McCarter: Mr. Supervisor, may I ask that the witness be advised to answer the question?

The Supervisor: I think the witness should answer the question if she can.

Q. What is the name of the institution which you designate as a school that you say you went to after you left the hospital? A. I don't care to involve the school in my testimony.

Q. Do you decline to answer the testimony? A. No, I won't answer it.

Q. You decline to answer it? A. Yes.

Q. After you left the place you call the school where did you next go? A. I went to seek employment.

Q. By whom were you employed? A. I don't care to give the name.

Q. By whom were you employed after you left the place you call the school which you say you don't want to involve? A. I don't care to involve my place of business.

Q. What is the name of it? A. I don't care to give the name.

Q. Do you decline to answer? A. I certainly do.

Mr. McCarter: I respectfully ask the Supervisor that the witness be directed to answer the question where she went after she left this so-called school.

Mr. Vanderbilt: If the Supervisor please, if it involves the witness' present place of employment I do not think it is a proper question to ask.

Mr. McCarter: I wish to state on the record that in the first place it does not appear

that it does involve present employment, and in the second place, if it did, it wouldn't make any difference. Mr. Supervisor, can it be possible that this woman can segregate her life to come here and implicate the reputation of a physician of this county and put a closure around herself as to her life before and since?

Mr. Vanderbilt: That is not the position I am taking.

Mr. McCarter: That is exactly the position you are taking.

Mr. Vanderbilt: I personally cannot see any objection to her answering the question of where she went to school or what previous places of employment she had, but it is designed to embarrass the witness where she is presently employed. She left the school and went to her present place of employment it would be objectionable. The question can be so framed as to overcome that objection.

Mr. McCarter: I insist upon the answer to my question.

Mr. Vanderbilt: I infer from her answer that the place of employment is the one that she still occupies.

Mr. McCarter: The point I make is this: That if it did involve her present employment, which it does not, can it be possible that we are not entitled to know by whom she is employed and what she is doing now? Why is she hiding it? Why is counsel seeking to hide her present employment? If she says it might injure her, doesn't all this get into the newspapers? Isn't all the testimony

here going into the newspapers? I pray a ruling on my question.

The Supervisor: The ruling is that the witness does not necessarily have to answer.

Mr. McCarter: I pray an exception.

By Mr. McCarter:

Q. Are you married? A. No.

Q. Have you a child? A. I have not.

Q. Have you ever been married? A. I have not.

Q. How long have you been in New Jersey before you were employed at the hospital? A. Three years.

Q. Where were you born? A. Virginia.

Q. And did you know Bertie Galloway in Virginia? A. I did not.

Q. Did you come to New Jersey with her? A. I did not.

Q. In what county in Virginia were you born, and from which you came? A. Prince Edward County.

Q. What is the name of the place? A. Green Bay.

Q. And you came from Green Bay to New Jersey? A. Not directly.

Q. Where did you go? A. Must I answer that question?

Q. Where did you go after you left Green Bay? A. I went to Chicago.

Q. How old were you at that time? A. About eighteen.

Q. Did you go to Chicago alone? A. I did not.

Q. Were you employed at Chicago? A. I was not.

Q. Were you with a member of your family in Chicago? A. I was.

Q. Who? A. My aunt.

Q. How long did you live there? A. Six months.

Q. Were you employed there at all? A. I was not.

Q. What was your aunt's name and address in Chicago? A. I don't care to give it.

Q. Do you decline to give it? A. Absolutely.

Mr. McCarter: I ask that the witness be instructed to give the name and address of her aunt with whom she said she stayed six months in Chicago?

The Supervisor: I think the witness should answer it.

A. I don't care to involve any of my relations.

Q. Do you decline to tell us the name of your aunt or the address where she lived and where you say you lived with her six months before you came to New Jersey? A. Yes.

Q. Because you say you don't want to involve your relations. A. Absolutely.

Q. Was she your mother's sister or your father's sister? A. My mother's sister.

Q. What was her name? A. I don't care to give it.

Q. Then you left Chicago and came to New Jersey? A. I came with her.

Q. To New Jersey? A. Yes, sir.

Q. How long before the employment in the hospital was that? A. About two and a half years.

Q. Two and a half years? A. About that; I didn't say exactly.

Q. Where were you living then? A. With my sister.

Q. Where? A. New Jersey.

Q. Where? A. I don't care to give the address.

Q. I want to know where in New Jersey you lived two and a half years with your sister. A. Well, in Essex County.

Q. Where in Essex County? A. I don't care to give the address.

Q. Was it in Essex County? A. Yes.

Mr. Vanderbilt: She said it was in Essex County.

Q. And you continued to live with your sister in Essex County from the time that you came from Chicago to New Jersey until you came to the Institution? A. I did not.

Q. Where else did you live? A. I lived with the Sisters of Charity.

Q. At the House of the Good Shepherd? A. No, not at the house of Good Shepherd.

Q. Where with the Sisters of Charity? A. With the Catholic Sisters of Charity; I don't care to give their address.

Q. Where with the Sisters of Charity? A. In Essex County.

Q. Which institution? A. I don't care to give it.

Q. Which Sisters of Charity Institution did you live in Essex County before you were employed by the Hospital? A. I don't care to give the address.

Q. I don't care whether you care or not. I want the answer. A. I decline to answer.

Mr. McCarter: I ask that the witness be instructed to answer the question.

The Supervisor: I think the witness should answer this question.

Q. What was the name of the Institution and where was it located that you speak of as the Sis-

ters of Charity? Somewhere in Essex County? A. Mr. Reed—I can't answer that.

Q. You can't answer that? A. I don't care to answer.

Q. How long were you with the Sisters of Charity at this place in Essex County before you came to the Hospital for employment? A. I don't remember the exact time.

Q. I didn't say the exact time. About how long? A. About a year and a half.

Q. Did you go directly from that institution to the hospital? A. I did.

Q. Had you been elsewhere in New Jersey to live or have a home or place of residence than those you have spoken of in Essex County previous to your going to the hospital? A. I have not.

Q. Did you have any employment in New Jersey? A. I did.

Q. When was it you came from New Jersey to Chicago? A. I don't remember the time.

Q. As nearly as you can recall. A. I can't recall it at all.

Q. How long were you in New Jersey before you went to the hospital? A. About three years.

Q. Were you employed by the New York Telephone Company or the Bell Telephone Company system in Newark? A. I refuse to answer.

Q. Were you employed by them? A. I refuse to answer.

Q. What part of the three years were you in this Sisters of Charity Institution? The first or the last part or the middle part? A. I was there the last part.

Q. The last part? A. Yes, sir.

Q. Just before you went to the hospital? A. Yes.

Q. How long were you in that institution? A. I don't recall. About—I don't recall the exact time.

Q. While you were in that institution did you have a baby? A. Did I have a baby?

Q. That's what I asked you. A. I did not.

Q. You are sure about that? A. Positively.

Q. Did you ever live in Passaic County? A. No, I did not.

Q. Did you not, when you applied to the Essex Mountain Sanatorium, give your address as being care of Mrs. W. Young, 18 Brinkerhoff Place, Passaic, New Jersey? A. I did not.

Q. You did not? A. No.

Q. You say that after you had been at the institution about a week or so, or ten days, Dr. Harman came home? A. Yes.

Q. And you had never seen him before? A. I did not.

Q. And the first alleged advance that he made to you was at the telephone board? A. It was in his office.

Q. How did you happen to be in his office? A. He called me to the office.

Q. Had you had any conversation with him before? A. Yes, he called me on the telephone.

Q. He called you on the telephone and asked you to come to his office? A. Yes.

Q. And the request to come to his office over the 'phone was the first talk you ever had with him? A. Yes—I wouldn't say the very first talk.

Q. What talk had you had with him? A. He asked me if I was the new operator at the sanatorium and I told him I was.

Q. Was that over the 'phone or personally? A. That was personally.

Q. Were you at the 'phone when he asked you that? A. Yes.

Q. How long was that before you received a telephone call to come to the office? A. I don't know; a few days later.

Q. You were then on the night shift on the board? A. Yes, sir.

Q. Who took your place at the board? A. No one.

Q. And you left the board? A. Yes, sir.

Q. I thought you said you closed the board at ten o'clock. A. Yes.

Q. And you closed the board at nine o'clock that time? A. Yes.

Q. Because the Doctor at that time asked you to come to his office? A. Yes.

Q. When you went in he locked the door? A. Yes.

Q. Immediately? A. Immediately.

Q. What did he have in the way of preparations for drinking when you went into that room? A. He had wine.

Q. In a bottle? A. Yes.

Q. Anything else? A. That's all I seen.

Q. Did he have any glasses? A. No, he had Lilly White cups.

Q. Two cups? A. Yes.

Q. Already out? A. Yes.

Q. On the table? A. No, they were on the window sill.

Q. And a bottle of some kind of wine? A. Yes.

Q. What kind of wine was it? A. I believe it to be port wine.

Q. You know it was, don't you? A. That's what I believed it to be.

Q. You know Port wine when you see it and

drink it and smell it. A. He told me it was Port wine.

Q. Did you each have a drink before you sat down? A. We did.

Q. Did you take more than one drink? A. I did not.

Q. You had had drinks before, of course. That wasn't the first drink of wine you had ever had? A. No.

Q. Did that one drink intoxicate you? A. It did not.

Q. What next occurred? A. He made advances toward me.

Q. One moment. I don't want you to give the description of it. I want you to tell us exactly what occurred. You were standing up at the window sill taking a drink? A. Yes.

Q. What next occurred? A. He made me sit on his lap.

Q. Where? A. In his office.

Q. On the floor? A. No, on the chair.

Q. On the chair behind his desk? A. Behind his desk.

Q. You went to his chair behind the desk. Did you go with him? A. Yes, he made me come with him.

Q. How did he make you go with him? A. He pulled me right with him.

Q. He pulled you right along? A. Absolutely.

Q. After you got to the chair you sat on his lap? A. Yes.

Q. What side of his chair was this? A. I don't know, he was sittnig on it.

Q. Don't you know what kind of a chair it was? A. No, I do not.

Q. Did it have arms on it? A. Yes, it was an arm chair.

Q. How long did you remain sitting on his lap? A. I don't know the exact time.

Q. I don't mean the exact time. About how long was it? A. About five or six minutes.

Q. Up to this time, the only acquaintance you had had with Dr. Harman personally was when he had casually said to you, "Are you the new employee"? A. Yes.

Q. And then your statement is that after you had each had this cup of wine he dragged you to the chair where he sat you on his lap and I understand from your direct examination that he then and there made improper advances to you? A. Yes.

Q. Right then and there? A. Not right then and there.

Q. Didn't you say he kissed you and almost forced you to have relations with him? A. That's right.

Q. Isn't that right then and there? A. No.

Q. How long were you in there? A. About twenty minutes.

Q. And while you were in there he almost forced you to have relations with him? A. Yes.

Q. Your exact words were, "He kissed me and almost forced me to have relations with him." A. Yes.

Q. Did you make any objection to the drink of wine? A. No.

Q. Did you make any objection to sitting on his lap? A. I did.

Q. You did? A. I certainly did.

Q. Nevertheless you continued to sit there? A. He forced me to.

Q. The door was locked? A. The door was locked.

Q. Where was the key? A. I believe he had the key in his pocket.

Q. Are you sure about that? A. I am not sure; I believe he had it in his pocket; it wasn't in the door.

Q. How many doors are there to his office? A. I don't know.

Q. Did he lock two doors? A. He locked one door.

Q. Which door? A. I don't know how to describe the door.

Q. Where was the door that he locked? The door into the hall? A. It did lead out into one hallway.

Q. Do you say there were no more doors in that office? A. I did not.

Q. But that is the only door you saw him lock? A. Yes.

Q. How near is the elevator to the door of his office? A. I don't know.

Q. You don't know? You lived in that building for three months? A. I don't know exactly.

Q. I don't mean exactly. How near to it? A. I should judge about twenty feet.

Q. Doesn't the main corridor run right along his office? A. It does.

Q. Was the hall lighted? A. Yes, the hall was always lighted.

Q. I am asking you about this particular night. Was the hall lighted? A. I believe there was a light right at the entrance.

Q. Did the Doctor turn out the light in his office after you went in? A. There was no light in there when I went in.

Q. So you went into the office in the dark? A. Yes.

Q. Could you see anything at all? A. I couldn't see him.

Q. You couldn't see him? A. I could see very little light from the windows.

Q. When were you in his office? A. Later, you mean?

Q. Yes. A. About a week later.

Q. How did that happen to come about? A. The very same way.

Q. Did he telephone you to come to his office? A. He did.

Q. What time? A. About the same time.

Q. What time was that? A. I gave it to you, about 9:30.

Q. And again you were on night duty? A. I was.

Q. And again you closed the board in advance of time? A. I did.

Q. You had had this previous scene with him? A. Yes.

Q. Was the Doctor's wife living in the Institution at this time, Mrs. Harman? A. I believe she was.

Q. Why did you go the second time to this dark room? A. I feared of being discharged.

Q. You felt that if the doctor had made these advances to you in a dark office the first time you ever had any talk with him, so much so, that he almost forced you to have relations with him, that if you brought that to the attention of either Mrs. Harmon or any other person in authority that that would bring about your discharge? A. Yes.

Q. And so you conveniently went the second time on a second call? A. I did, yes.

Q. Did you anticipate what was going to take place on the second occasion? A. I did not.

Q. It was about the same time, wasn't it? A. It was.

Q. Why didn't you tell the Doctor when he asked you to come down, "I would rather not come?" A. I didn't dare.

Q. So you went down. A. I went down.

Q. And you closed your board in advance of the time. A. I did.

Q. Did you think you would be discharged for insisting upon remaining at your post of duty until ten o'clock? A. I don't understand you.

Q. Did you think you would be discharged for remaining at your post of duty until ten o'clock? A. I did.

Q. Was Bertie Galloway in the Institution at this time? A. No, not that I knew of.

Q. On this second occasion did you have a drink again? A. Yes, I did.

Q. Why didn't you, after he summoned you, as you say he did, to his room at about half-past nine, and you found the room dark on the second occasion, and you saw he had a drink there, why didn't you then just leave or refuse to remain or call out or make an outcry? A. I was in need of my position.

Q. You had been for some years in Essex County, you say? A. Yes.

Q. Is that the only reason that you can give for your refusal to make any demonstration or refuse to proceed with what had occurred before? A. Because I feared the loss of my position.

Q. You say you were under Civil Service. A. I took a Civil Service course, yes.

Q. Did you tell us you were under Civil Ser-

vice? A. I took a Civil Service test for the position in Verona.

Q. I am not asking you that. When you told us at the inception of your examination that when you applied for the position you were in Civil Service, was that correct or not?

Mr. Vanderbilt: I don't recall that the witness said that.

Mr. McCarter: We can have the testimony read.

(The stenographer reads from the direct examination as follows:)

"Question: Were you taken from the Civil Service List? Answer: Yes."

Q. You have heard your testimony read in which you say at the time that you were employed by Dr. Harman, which appears was not the fact, that you were taken from the Civil Service list. Do you know what that means? A. I do not, no.

Q. Then why did you say that you were— A. (Interrupting) I thought I did.

Q. You knew that you were on the Civil Service list and you were protected, did you not? A. No, I did not.

Q. At any rate how many times, between May and August, did you similarly visit Dr. Harman's office at night during business hours? A. During May and August?

Q. Between May and August. A. Only three visits that I can recall.

Q. And each one of those was substantially the same in what occurred that you have described as occurring the first time, is that right? A. Yes.

Q. There were three visits to his office? A. Yes.

Q. All at night? A. Yes.

Q. On each one of which transactions such as you have described occurred, is that right? A. Yes.

Q. In none of which you made any effort to call anybody and did not scream. A. No, I threatened to.

Q. But you didn't do it? A. No.

Q. And on one of those occasions you said that he had his trousers opened or unbuttoned? A. Yes.

Q. And he got you on the floor? A. Yes.

Q. And he got as close to you as he could. A. Yes.

Q. On which occasion was that? A. The second occasion.

Q. Notwithstanding that you went back a third time? A. Yes.

Q. Because you were afraid of being discharged. A. Yes.

Q. Why didn't you go to Mrs. Harman and tell her that her husband had summoned you to his office and had even got you on the floor with your clothes up and had his own clothes open and had tried to have connection with you? Why didn't you tell Mrs. Harman that? You knew she was there, didn't you? A. Yes.

Q. Was there any other matron besides Mrs. Harman at the Institution? A. Yes.

Q. Why didn't you tell one of the matrons? A. Because I didn't dare to.

Q. And how long after this second occasion when you say he made these advances and had you on the floor was it before you were summoned a third time? A. I don't recall; it was a very short time after that.

Q. And you went? A. I did.

Q. And each time it was at night? A. It was.

Q. And you can't tell us the dates? A. I cannot.

Q. You made no memorandum of the dates of any one of these visits? A. I did not.

Q. Was it in the month of May? A. Yes, I believe—I don't say it was in the month of May; it was apart.

Q. How long apart were the three? A. A week or so.

Q. And the first was in May, you say? A. Yes.

Q. So they must all have been in May or early in June. A. Yes.

Q. The whole thing was done? A. Not the whole thing was done.

Q. Were you ever in his office except on these three occasions? A. No, during the day—

Q. During the day. A. Only on business occasions.

Q. But these nightly affairs to which you have alluded, were all out of the way within two or three weeks after the time you had entered the employment? A. Yes.

Q. Did you suffer with poison? A. I did.

Q. And did you confer with the doctor with reference to the outbreak of poison on your person? A. I did.

Q. When was that? A. I don't remember the time.

Q. As near as you can tell us. A. It was between the time of May and August; I don't remember the exact time.

Q. But it was after the occurrences to which you have alluded? A. I don't just remember.

Q. What is your best memory? A. I don't just remember.

Q. Did you go to his office with reference to the poison—the poison ivy? A. Yes, I did, and he told me—

Q. One moment. You say you did. Was that in the daytime? A. Well—yes—yes, this was in the afternoon, I believe.

Q. Now, I ask you solemnly if you ever were in his office except when you got notice of your permanent employment, except on that one occasion when you went in and consulted the doctor about the poison ivy? A. Not that I can remember.

Q. Now, just listen. On any occasion at night or any other time, besides the time you were told by the doctor that you were permanently employed, were you ever in his office? A. Not at night —only the three times.

Q. So you say the three times and the times that you went there about the poison ivy. A. That was in the afternoon.

Q. Now, we have it right, have we? A. I believe so.

Q. Are you sure about that? A. Well, I couldn't swear to it, whether it was in the afternoon or in the morning.

Q. When was it that you spoke to the Chaplain about the Doctor's relations with you? A. The last week.

Q. And didn't you tell the Chaplain when you described what had occurred between the doctor and yourself, that one of these occasions when you were in his office was on the 11th of August? A. Did I tell? I don't remember whether I did or not.

Q. You are a Catholic, aren't you? A. Yes.

Q. And you were telling your priest what you

deemed to be a matter of some importance, didn't you? A. Yes.

Q. And I ask you now if you can tell us whether you can specify the occasion when you visited Dr. Harman's office and when he attacked you, as having occurred on the 11th of August? A. No, I did not specify; I don't remember that I did.

Q. Did you, in fact, tell the Priest at all, the Chaplain? A. I told the Priest about being annoyed.

Q. Did you tell Bennett, the radiologist about it? A. I did.

Q. Did you tell Bennett about it? A. I did.

Q. When? A. Why, it was on the last week.

Q. The last week that you were there? A. Yes, sir.

Q. Didn't you tell Bennett that one of the occasions was on the 11th of August? A. I don't remember that I did.

Q. Well, if you did, that was wrong, wasn't it? A. I don't remember whether I did or not.

Q. Assume that you did, now; that's wrong, isn't it? It didn't occur on the 11th of August. A. I don't know whether it did or not, because I didn't specify any date. I don't remember specifying any date at all.

Q. You now remember its occurring on the 11th of August? A. No, I don't.

Q. Didn't you say it was on the 11th of August? A. No, I said I don't remember.

Q. Haven't you told us there were three occasions and they all took place in May or the early part of June? A. Yes, sir.

Q. Did you say it occurred on the 11th of August? A. I did not.

Q. Do you say so? A. I do not.

Q. Father Fitzpatrick was the regular Chaplain of the Institution, wasn't he? A. Yes.

Q. Do you remember having an interview at Father Fitzpatrick's home on or about the 22nd of August, 1926? A. I don't remember the date.

Q. One moment. At which Mr. Bennett, the radiologist; Mrs. Harris, Freeholder Harris; and Father Fitzpatrick were present, and you undertook to describe what had occurred and that you told the three of them, in the presence of Dr. Harman, that it was on the 11th of August that one of these occurrences took place in his office? A. No, I don't believe I specified any date.

Q. You say you didn't say so? A. I don't remember that I specified any date.

Q. Were you careful not to specify any date? A. No, I was not.

Q. Was it a matter of any importance to you that this thing had occurred? A. It was, but I didn't remember any of the dates.

Q. Do you now say that in the presence of Dr. Harman at the residence of Father Fitzpatrick and in the presence of the radiologist, Mr. Bennett, and in the presence of Mrs. Harris, the Freeholder, you did not specify August 11th as the date of one of these occurrences? A. I don't remember that I did.

Q. And haven't you learned since then that on August 11th Dr. Harman was not in Verona. You have learned that, haven't you? A. No, I have not.

Q. You spoke of having been injured and of having an X-ray examination. A. Yes.

Q. And that you were injured in Newark. A. Yes.

Q. Where was the injury inflicted? A. In the chest.

Q. In what part of Newark? A. It was in North Newark.

Q. Is that as near as you can get to it? North Newark is a pretty big place. Whereabouts in North Newark after dark were you injured, so much so in your chest that you had to have an X-ray examination? A. On Bloomfield Avenue.

Q. Where on Bloomfield Avenue? That's a pretty long street, too. A. Why, it was between the streets of Ridge—and I don't know the other street.

Q. This was while you were still employed at the Institution? A. Yes.

Q. Whereabouts do you say it was on Bloomfield Avenue? A. I think it was near Ridge Street; that's the nearest I can remember.

Q. Did you report to Dr. Harman that you had been injured? A. I don't believe I reported to him personally.

Q. Don't you know whether you did or not? A. I came back to the Sanatorium sick and I believe the doctors from the City Hospital had called the Sanatorium and told them that I was.

Q. You were taken to the City Hospital? A. Yes.

Q. You were assaulted by somebody? A. Yes, this man had approached me on the streets.

Q. A man had approached you on the street after dark? A. It was early in the evening.

Q. It was after dark? A. It wasn't dark.

Q. What time was it? A. I can't remember the time.

Q. Was it in daylight? A. Well, it was still daylight, yes.

Q. What did he try to do? Have connection with you? A. No, he asked me whether I wanted to go home in a taxi.

Q. That did not injure your chest did it? A. No.

Q. Then what occurred? A. I told him no.

Q. Go on. A. He told me not to be wise.

Q. Wise? A. I wish you wouldn't make me scream so.

Q. I want to hear you. Go on. A. When I told him not to annoy me he hit me in the chest.

Q. He hit you in the chest when you told him not to annoy you? A. Yes.

Q. This was in daylight? A. It was still daylight.

Q. And he hit you so severely on the chest that you were knocked down? A. Yes.

Q. Did an ambulance come and take you to the hospital? A. No.

Q. How did you get to the City Hospital? A. Somebody took me in a car.

Q. A stranger? A. Yes.

Q. Was it a patrol wagon? A. No.

Q. Then you later went up to the Sanatorium the same night? A. No, the next day.

Q. And it was for that injury that you desired to have this X-ray examination? A. Dr. Bennett prescribed them for me.

Q. Do you mean Harold Bennett? A. No, Richard Bennett.

Q. Was he a doctor in the Institution? A. Yes.

Q. You reported to Dr. Harman the incident you have described as having occurred on Bloomfield Avenue near Lake Street, didn't you? A. I don't know whether I reported it to him personally.

Q. Didn't you tell him or make a report to the Institution that it had occurred on the corner of Bloomfield Avenue and Old Belleville Avenue, or Broadway? A. I did.

Q. Did you tell a lie about that? A. I did not.

Q. Why did you tell them it occurred at a place where it did not occur? A. (No answer.)

Q. Why did you tell them it occurred near Lake Street when it occurred near Belleville Avenue? A. I didn't say Belleville Avenue.

Q. I must have misunderstood. A. I said Bloomfield near Ridge.

Q. I ask you whether you had not reported at the Institution that it occurred on the corner of Bloomfield Avenue and the corner of old Belleville Avenue or Broadway. A. I did not.

Q. Do you know the name of the man that assaulted you? A. I did not.

Q. Did you at the time? A. I did not.

Q. Were you requested to make a charge against him and you refused to do it? A. I was asked whether I agreed to make a charge.

Q. Did you? A. I did not.

Q. At any rate, you left the Institution in August, didn't you? A. Yes.

Q. 1926? A. Yes.

Q. You knew Mr. Bennett, the radiologist? A. Yes.

Q. How many times have you seen him from that time to the present? A. From what time?

Q. From the time you left the Institution in August, 1926 to the present time. A. Very few times.

Q. When did you see him last? A. Yesterday.

Q. Did he request you to go to Mr. Vanderbilt's

office and make a statement? Did Mr. Bennett make that request? A. No.

Q. Who did request that? A. He requested me to come over to see Mr. Reed.

Q. Mr. who? A. Mr. Reed.

Q. When was that request to you by Mr. Bennett to see Supervisor Reed? A. In October, some time.

Q. Can you fix the date? A. No, I can't.

Q. Where did you see him? A. At the Hudson Tubes, in Newark.

Q. He just met you at the station? A. Yes.

Q. By appointment? A. By appointment.

Q. Had he made the appointment? A. Well, I believe we—yes, I think he did.

Q. Did he suggest the Hudson Tubes? A. He did.

Q. And you met him there? A. I did.

Q. And he then requested that you should go and see Supervisor Reed? A. He requested that over the telephone.

Q. Before that? A. Yes.

Q. Do you know how he knew where you lived? A. I do not.

Q. Is your name in the telephone directory? A. It is not.

Q. Did he reach you at your residence or at your business address? A. At my business address.

Q. At the business address he asked you to go and see Supervisor Reed? A. He did.

Q. You declined to go? A. I did not decline.

Q. What did you say? A. I said yes.

Q. You said you would go? A. Yes.

Q. But before you went you met him at the Tubes? A. Yes.

Q. Why? A. He brought me here.

Q. You made arrangements over the 'phone to meet him at the Tubes and be brought by Mr. Bennett to see the Supervisor, is that right? A. I didn't make the arrangements over the 'phone that he would bring me from the tube station. We made an appointment to meet at the tube station and I would go to see Mr. Reed.

Q. Did you and Mr. Bennett come up from the tube station to the Supervisor's office in this building by taxi or walk? A. We came by car.

Q. By automobile? A. Yes.

Q. Bennett's car? A. I do not know.

Q. Wasn't it the county car? A. I do not know whose car it was.

Q. You didn't see the county name on the car? A. No, I didn't see any name on the car.

Q. Who drove the car? A. Mr. Bennett.

Q. What time of day was this? A. In the evening.

Q. What time? A. At six o'clock.

Q. At what time in October? A. I don't know the date.

Q. As near as you can recall. A. Well, I don't remember.

Q. How long before that occasion had you seen Bennett? A. I had not seen him since I left Jersey.

Q. You mean in August, 1926? A. No, shortly after.

Q. How soon after August, 1926? A. About three or four months later.

Q. Had you seen him between the time you left the Institution and the time three or four months afterwards that you left New Jersey? A. No, I had not.

Q. Had you communicated by mail or otherwise with Mr. Bennett between the time you left New Jersey and the time he telephoned you? A. I did not.

Q. Do you know how he knew where you were? A. I did not.

Q. Did you inquire? A. I did not inquire.

Q. Are you able to state whether it was the 15th or 16th or what day in October that you came up to see the Supervisor? A. No, I do not.

Q. What day of the week was it? A. I don't remember.

Q. What time of night was it that you got here? A. It was shortly after six.

Q. Had you been at work that day? A. I was.

Q. And you made the appointment at six o'clock so that you would not interfere with your working hours, is that right? A. Yes.

Q. Were you told by Mr. Bennett that Mr. Reed would be as late as after six o'clock to see you? A. Yes.

Q. Did Bennett say he had made some complaint about you? A. He did not.

Q. What did he tell you he was going to see Mr. Reed for? A. About the occurrences in the Verona Sanatorium.

Q. He told you that over the 'phone? A. No, he did not.

Q. When did he tell you that? A. When I seen him.

Q. At the Tubes? A. Yes.

Q. Then when he told you that he wanted you to go see Mr. Reed over the 'phone and you said you would go you didn't know what you were going for? A. No, but I suspected. He told me who Mr. Reed was.

Q. Did you know who Mr. Reed was before he told you? A. No, I did not.

Q. You didn't know that Mr. Reed was Supervisor? A. No, I did not.

Q. You came up here to this building? A. I did.

Q. How late did you stay here? A. I don't remember just the time.

Q. As well as you can recall. A. About an hour, I imagine.

Q. Did Bennett stay all the time? A. I don't know where he was. I didn't see him while he was in Mr. Reed's office.

Q. He did not remain in the office? A. He did not.

Q. Did he take you away? A. He did.

Q. In the automobile? A. In the automobile.

Q. And he took you where? A. To the Tube Station.

Q. And left you there? A. Yes.

Q. He didn't take you home, did he? A. He did not.

Q. Did he offer to take you home? A. He did not.

Q. What time was this, about nine o'clock? A. I don't remember the time.

Q. Was your statement taken down by a stenographer that night? A. No.

Q. Did you have any other interview with Mr. Reed or did you have your next interview with Mr. Vanderbilt, the County Counsel? A. No, I had another interview with Mr. Reed.

Q. Did Mr. Bennett accompany you on that visit? A. No.

Q. When was that interview? A. The next day.

Q. In this building? A. Yes.

Q. Did you see Mr. Bennett at all that day? A. I did not.

Q. Did you make a statement that day? A. I did.

Q. Was it taken down stenographically? A. It was.

Q. Who was present besides Mr. Reed and the stenographer? A. No one, except some people passing through the door that I didn't know.

Q. There was nobody there permanently during the interview? A. No, sir.

Q. While you were at the Institution you used to go out with Mr. Bennett a lot, didn't you? A. I did not.

Q. Didn't you go out evenings with him in the car and ride? A. I did not.

Q. Never? A. No, sir.

Q. You had never been with him except on this particular occasion you refer to? A. I did not.

Q. You never had been out with him in the car while you were employed at the Institution? A. Not for pleasure.

Q. It depends on what you call pleasure. I asked you if you ever went out with Bennett in his car while you were at the Institution. A. He took me from Caldwell to Newark.

Q. Only on one occasion? A. Only on one occasion.

Q. When was that? A. I believe that was after I had left the Institution.

Q. Didn't you used to come to the Institution after you had left it to see Bennett? A. I did not.

Q. Never? A. Never.

Q. Didn't you come to the Institution quite frequently after you left its employ to see Bennett in

Dr. Barnes car? A. I did not; I was in Dr. Barnes' car once and he took me from the Sanatorium to Caldwell.

Q. This was after you had left the Institution? A. I believe it was.

Q. And you had been to see Bennett? A. I didn't go to see Bennett.

Q. Whom did you see? A. I saw Dr. Barnes.

Q. They had a rule at the Institution that the place would be closed at nine o'clock and persons who were out had to be in before eleven. A. Yes.

Q. You stayed out one night until 2:30 and then climbed in through a window. A. I did not.

Q. You are sure about that? A. I am.

Q. Do you know Officer Welch? A. I believe I do.

Q. Don't you know you do? A. I don't know him well; I know him by sight.

Q. You know him, don't you? A. By sight.

Q. He was at the Institution at the time you were there, wasn't he? A. Yes.

Q. Didn't he catch you climbing in at 2:30 A. M. and accost you about the matter? A. He did not.

Q. When you left the Institution in August, 1926, did you live in Caldwell for awhile? A. I did not.

Q. Or Verona? A. I did not.

Q. You didn't live there at all? A. I did not.

Q. And you came to live where? A. Newark.

Q. While you were in this room you have referred to with Dr. Harman, did the Doctor knock you down? A. He pulled me down.

Q. You made no outcry? A. I protested against it—

Q. You made no outcry? A. No.

Q. Because you were afraid of being discharged? A. Yes.

Q. And did you resign from the Institution? A. I did.

Q. Were you short in your accounts when you left? A. I was not.

Q. Are you sure about that? A. Positive.

Q. Was it about the 15th that you left? A. Yes, I believe it was.

Q. As a matter of fact weren't you short $3.96 at the time that you left? A. I was not.

Q. Are you sure about that? A. Positive.

Q. And weren't you asked to refund it. A. I was asked to refund it.

Q. Oh, you were asked to refund it? A. Yes.

Q. Who told you you were short $3.96? A. I believe a Mr. Sims.

Q. Is he the steward? A. Yes.

Q. Did he show you his account? A. He did not.

Q. How long have you known Bertie Galloway? A. Since October.

Q. Since October? A. Yes, sir.

Q. 1928? A. 1928.

Q. Was she at the Institution while you were there? A. Not that I know of.

Q. If she was you don't know of it? A. Not that I know of.

Q. Who introduced you to Bertie Galloway in October, 1928? A. Mr. Bennett.

Q. Where was that? A. That was a short distance from the Hudson Tubes.

Q. On this same night? A. On this same night.

Q. Did Bertie Galloway accompany you on the same night to this building to meet Supervisor

Reed when you were with Mr. Bennett? A. He did.

Q. Did you know from the telephone talk that you were to meet Bertie Galloway or some other person? A. I knew I was to meet someone else but I didn't know whom I was to meet.

Q. Mr. Bennett told you that over the telephone? A. Yes.

Q. When you came to the Tubes Bertie was with him in the car? A. No, he met me at the tube station alone.

Q. Then where did you go? A. Up to the car.

Q. Where was Bertie? A. She was in the car.

Q. Had she gotten in the car at the tubes? A. No, she was in the car when I got there.

Q. So Bennett and she had met before he met you at the tubes? A. Yes.

Q. Who else was there? A. Miss Houston.

Q. A discharged nurse from the Institution? A. I didn't know her until that night; I had seen her, but I didn't speak to her.

Q. Was a Miss Cahill with you also? A. No.

Q. But you and Houston and Galloway and Bennett did come up together? A. Yes.

Q. In Bennett's car. A. I don't know whose car it was.

Q. But Bennett drove it? A. Yes.

Q. And Bennett had collected Bertie and Houston before he got you. A. He must have.

Q. Did these ladies all remain until you left and then all four of you go away together? A. Yes, we did.

Q. After remaining here for how long? A. I don't know the exact time.

Q. And Bennett and you and Galloway and Houston all got in the car and went back again

and left you at the tubes? A. Yes.

Q. And the other girls were left in the car? A. No, we all got out together.

Q. How often have you seen Galloway since then? A. Not until yesterday.

Q. You had not seen her between times? A. I did not?

Q. Have you told us all of the interviews you have had with Bennett this winter or fall? A. I have.

Q. You haven't seen him on any other occasion? A. No, sir.

Q. And you don't know how he found out your request? A. No.

Q. You were closeted with Mr. Bennett over across the hall yesterday, weren't you? You were in the room across the hall with him. A. For a short time.

Q. You talked with him about this matter. A. Very little.

Q. You did talk with Bennett about this matter, didn't you? A. I did.

Q. How did you have this conversation? Did he ask you to come in and talk to him? A. No, I asked him questions.

Q. What had he to do with it? What kind of questions did you ask him? A. Must I answer what questions I asked, Mr. Reed?

The Supervisor: Yes.

Q. Did you want to find out what had occurred in this room by asking Mr. Bennett across the hall? Is that what you asked him? A. I inquired as to the witness-stand as to what I would have to do.

Q. That is all you talked with Bennett about? A. Yes.

Q. Have you been to the County Counsel's office across the hall here? A. Only in the room that I was yesterday.

Q. That is the only time you were in the room? A. Yes.

Q. On this occasion when you had this assault by some person on Bloomfield Avenue, was that the only time you were at the City Hospital? A. No, it was not.

Q. When were you there at any other time? A. I don't remember the time; it was quite a long time before that—about two years—about—I don't know the exact time.

Q. How long were you there at that time? A. I think two days.

Q. And you think that was two years before this occasion? A. I don't say definitely.

Q. Was it more than six months? A. I told you it was about that time; I don't know definitely.

Q. There is some difference between two years and six months, you know. A. I told you about two years. I don't know definitely.

Q. You think it was about six months, you know? A. I told you about two years; I don't know definitely.

Q. You think it was about two years? A. Yes.

Q. What were you there for at that time? A. Why, I took sick in the office.

Q. What office? A. At the office where I was employed at the present time—at that time.

Q. What office was that? A. I don't care to mention the name.

Q. I ask that you tell us the name of the office that you were taken sick from. A. I told you I didn't care to give the name.

Q. Do you decline to answer the question? A. I do.

Q. Do you still decline to answer all the questions that I put to you earlier in the examination? A. I do.

Redirect-examination by Mr. Vanderbilt:

Q. Would you tell us what kind of a Catholic Institution this was that you were at, whether it was a boarding house or hospital or a nunnery or what? A. It was a boarding house for business girls.

Q. How did you come to go there?

Mr. McCarter: I object to any evidence upon this institution as to how she happened to go there when she declined to tell us what institution it was.

(Question withdrawn.)

Q. Counsel asked you if you had ever communicated with me, the County Counsel, with reference to this matter. Did you? A. No.

Q. You never met me in the matter before yesterday? A. No.

Q. With reference to this conference at Father Fitzpatrick's home. How did that conference come to be held? A. Why, I believe I was notified by the Chaplain—

Q. By Father Fitzpatrick? A. Yes.

Q. To come to his home? A. Yes.

Q. Did you know why you were to go there? A. Why, he did tell me it would be a hearing that Mrs. Harris had called.

Q. Was this in person or over the telephone? A.

No, he visited me personally at this Catholic Institution.

Q. This was after you had left? A. Yes, this was after I had left.

Q. And he told you there would be a hearing at his home? A. Yes—now, I don't remember whether I spoke to him over the telephone or whether it was over the 'phone he told me or in person. We spoke about it both times.

Q. He said there was a hearing at his home? A. Yes.

Q. And that it was called by Mrs. Harris? A. Yes.

Q. And what was the hearing to be about? A. Regarding the charges that I made against Dr. Harman.

Q. To whom did you make these charges? A. I did not make charges; I was going to make charges.

Q. How did Father Fitzpatrick learn about it? A. Well, he learned—through the relief Chaplain

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Q. If you know. A. Through the relief Chaplain and also through Harold Bennett.

Q. That was the relief Chaplain you spoke about that you had talked to? A. Yes.

Q. Where does Father Fitzpatrick live? A. In Caldwell.

Q. When you got there who was present? A. Mrs. Harris, Dr. Harman, Father Fitzpatrick, Harold Bennett and myself.

Q. Just tell us what took place on that occasion. A. Mrs. Harris questioned me as to what happened and why I had made those remarks to the Chaplain and she wanted to hear about it.

Q. What did you say? A. I told her just as I

have testified today what had happened, what had took place.

Q. And then what happened? A. Well, the hearing was adjourned and then I knew no more about it.

Q. You say the hearing was adjourned. Who was conducting this hearing? A. I really don't know who was the instigator of it.

Q. Who asked the questions? A. I believe Father Fitzpatrick did, and also Mrs. Harris, I am not quite sure.

Q. Who was supposed to be the Judge at this hearing?

Mr. McCarter: I object to that.

A. I think Mrs. Harris and Father Fitzpatrick.

Q. Did Mr. Bennett have anything to say at the hearing? A. Well, I believe he spoke as to what I told him.

Q. Was that before or after you spoke? A. No, that was after you spoke.

Q. When you got through what was said by Father Fitzpatrick? A. I don't know just what Father Fitzpatrick had said.

Q. What did Mrs. Harris say? A. Well, she said she had an open mind about it, and I heard no more about it.

Q. You said the matter was adjourned, what did you mean by that? That it was to come up again? A. No, pardon me for using the word, but they closed the hearing.

Recross-examination by Mr. McCarter:

Q. When had you told Bennett about this? Before that so-called hearing? A. I told him just—

I told him just—I believe the very last week, the very last few days.

Q. The very last few days what? That you were at the Institution? A. Yes.

Q. You told Bennett that? A. Yes.

Q. You didn't tell Mrs. Harman, did you? A. No.

Q. You didn't tell the matron? A. No.

Q. You didn't tell anybody but Bennett? A. Bennett and the Chaplain.

Q. How did you happen to tell Bennett? A. I knew he was a good friend of Father Fitzpatrick.

Q. And that is the reason that you told Bennett? A. Yes.

Q. When was it you told Bennett? A. I told you it was the last few days that I was there.

Q. How soon after these occurrences did you tell Mr. Bennett, was it right away? A. I told you the last few days that I was at the Sanatorium.

Q. Why didn't you tell him between May and August? A. Because I didn't prefer to.

Q. What had happened to make you prefer to tell him in August? A. Because Dr. Harman had called me on the phone and had requested me to come to his office again and I had made up my mind that that was the last time I was going; that I was leaving the Sanatorium; so I told the Chaplain and then I told Mr. Bennet.

Q. So the Doctor sought another one of these interviews in August? A. Yes.

Q. And he called you on the telephone? A. Yes.

Q. At night? A. Yes.

Q. What time was that? A. Early in the evening, between seven and eight.

Q. And you didn't go? A. I did not.

Q. And then I told Bennett? A. Then I told Bennett.

Q. Had you determined to leave the Institution before you told Bennett? A. Why, I determined to leave the Institution on the advice of the Chaplain.

Q. Was that before you had seen Bennett? A. I seen the Chaplain before I had told Bennett.

Q. When you speak of the Chaplain to whom do you refer? A. To the relief Chaplain.

Q. What was his name? A. I do not know.

Q. You do not know his name? A. I do not.

Q. When was it you saw the relief Chaplain whose name you do not know about this thing? A. I don't remember the day.

Q. Was it in August? A. Yes, it was.

Q. Was it by way of confession? A. No, it was not.

Q. What prompted you to tell the relief Chaplain in August and not the regular Chaplain about this? A. The regular Chaplain was away at the time.

Q. Why hadn't you told the regular Chaplain all during July? A. Because I thought Dr. Harman would discontinue his annoyance.

Q. You thought Dr. Harman would discontinue his what? A. Would discontinue his advances toward me.

Q. So it wasn't until after this alleged telephone call in August that you called the Chaplain? A. Yes.

Q. And he advised you to leave? A. Yes.

Q. And you then told Bennett? A. Yes.

Q. Why did you tell Bennett? A. Because he was a close friend of Father Fitzpatrick's.

Redirect-examination by Mr. Vanderbilt:

Q. Do you know whether the relief Chaplain's name was Father James? A. I think it was; I am not positive.

Q. But there was only one relief Chaplain there that summer? A. Yes.

Recross-examination by Mr. McCarter:

Q. When was this occasion when you said the doctor came to your room? A. In the afternoon.

Q. What month? A. I don't know just what month it was; I believe it was June; I am not positive.

Q. Can't you tell us more definitely than that? A. No, I cannot.

Q. Your door was locked? A. My door was locked.

Q. And you were in your nightclothes? A. I was on one occasion.

Q. And this was in the afternoon? A. It was.

Q. You were going to bed? A. I was.

Q. And you heard the passkey? A. I did.

Q. And he came into your room? A. He did.

Q. Can't you fix that time more definitely than you are fixing it? A. No, I cannot.

Q. Other than those occasions when he came to your room that you have mentioned, did he ever come again? A. No.

Q. Was that the first time he came to your room? A. I believe he made two visits, two or three visits to my room.

Q. How many was it? A. Two or three.

Q. You can't positively say whether two or three? A. There was a third visit, but I don't know whether he came into my room.

Q. On how many visits did he come into your room? A. Two visits that he actually came into my room.

Q. And you can't tell whether they were in July or August? A. I believe it to be in June; I really don't know.

Q. Can't you give us anything more definite as to when these visits to your room when the doctor slipped a pass key into the door that was locked and came into your room and made improper advances to you while you were in your night clothes? A. I did.

Q. You can't tell us when it was? A. I don't know the date.

Q. About when? A. In June, but I don't know the date.

Q. Was that the subject of discussion between Father Fitzpatrick and Mrs. Harris? A. Yes.

Q. That was mentioned, too? A. It certainly was.

Q. Did you give the dates then? A. No, I don't believe I did.

Q. You said usually there was someone in the hall that interrupted the proceedings? A. Yes.

Q. In other words, you say always on these occasions somebody went by in the hall and the performance was interrupted? A. No, there was always someone in the hallway regardless of who it was.

Q. Who had a key to the Doctor's office besides the Doctor? A. I don't know.

Q. Who had a key to your room besides you? A. Why, no one had a key besides Dr. Harman's pass key.

Q. Dr. Harman had a pass key to every room? A. I don't know; he had one to that room.

Q. Anybody else? A. I do not know.

MARGARET HOUSTON sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Miss Houston, you are a nurse at the Essex Mountain Sanatorium? A. Yes.

Q. When did you first go there? A. I do not remember the date.

Q. About how long were you there? A. About four years.

Q. When did you leave? A. I left in September, 1926.

Q. Did you know Miss Henrietta Rose? A. Yes, sir.

Q. What was her relations to the institution? A. She was a stenographer.

Q. Was she also at times a patient? A. She had been a patient.

Q. And then thereafter was a stenographer? A. Yes.

Q. Whose stenographer was she at the institution? A. She was Dr. Harman's.

Q. Wasn't she there when you first came there? A. No.

Q. When did she first come to the Institution, do you know? A. I do not remember.

Q. How long after you had been there as early as you can tell? A. Well, I would say about two months after I had been there.

Q. Do you recall being present at an operation which was performed on Miss Rose in May, 1925? A. Yes.

Q. Who else was present on that occasion? A. Dr. Harman was present, Dr. Brown, and Miss Camblauss and myself.

Q. What Dr. Brown, was that, do you know?

A. Dr. James Spencer Brown, of the Mountainside Hospital.

Q. Where did the operation take place? A. In the operating room of the Sanatorium.

Q. Were you present throughout the operation? A. I was.

Q. What was the operation? A. Curettage.

Q. Will you tell the Supervisor what took place at the operation as nearly as you can? A. I will have to explain that—

Mr. McCarter: You will have to talk so that we can hear you.

Q. What took place at the operation? A. Do I have to answer that question?

The Supervisor: Yes.

A. Well, I have told you the nature of the operation was a curettage.

Q. About how long did the operation take? A. Well, I would say about a half hour.

Q. As a result of, or in the process of the operation, was anything removed from the patient? A. There was what they call a fetus removed.

Q. What was the size of it? A. It was, I should say, three or four inches long.

Q. Was this fetus that was removed saved and examined in the laboratory? A. No, it was not; it was destroyed.

Q. Was Dr. Harman there throughout the operation? A. He was.

Q. Did either of the doctors make any comment during the process of the operation? A. The only comment I heard was that she was not very well developed, meaning the patient.

Q. Who made that statement? A. Dr. Brown.

Q. After the operation what was done with the patient? A. She was taken to the second floor in the hospital building.

Q. Do you know how long she stayed there? A. I don't know how long.

Q. Then after getting on the second floor of the hospital building what was done with the patient? A. She was taken to the nurse's home.

Q. Did you ever see Miss Rose out riding in the evening with Dr. Harman? A. I did.

Q. On how many occasions? A. On one occasion that I recall.

Q. What time of day or night was that? A. In the evening.

Q. About what time? A. About eight o'clock, I should say.

Q. In the treatment of some of the patients there is a process known as Quartz Lamp, or something like that, isn't there? A. There is.

Q. Did you have charge of any of that treatment? A. I did.

Q. Will you describe to the Supervisor what that treatment is and what it consists of? A. The treatment is a sun lamp and you are exposed to the waist line while taking the treatment.

Q. While these treatment were being given did or did not Dr. Harman come into the room? A. He did.

Q. And was it while the women patients were exposed to the waist as you have just described? A. Yes.

Q. Did or did not the patients object to that? A. They did.

Cross-examination by Mr. McCarter:

Q. How long were you at the hospital, Miss Houston? A. I would say about four years.

Q. Are you a graduate nurse? A. No.

Q. What was your duty at the hospital? A. Well, they call them pink nurses at the sanatorium.

Q. Pink nurses? A. Yes, or attendants.

Q. I didn't ask you what they called them. What were your duties? What was your duty as a pink nurse? A. To give treatments to the patients.

Q. What kind of treatments? A. Sun-light treatments.

Q. In other words, is that direct sunlight or artificial light? A. No, artificial.

Q. Supposed to be like the rays of the sun? A. Yes.

Q. And as you understand it, your theory is that the exposed body of the person of a patient suffering from tuberculosis is benefited by such a light? A. Yes.

Q. And your duty was to attend to that particular branch of the work? A. Yes.

Q. How long did you remain at the hospital? A. I said I was there about four years.

Q. From when until when? A. I don't remember.

Q. About. A. (No answer.)

Q. Can you say from when to when about? A. From about 1922 until 1926.

Q. How did you happen to attend this curettage operation on this Miss Rose? A. Miss Camblaus, the nurse in charge, asked me to help her.

Q. That was out of your line? A. Yes.

Q. You were there during the entire operation? A. Yes.

Q. Do you mean by the word curettage, that an abortion was performed? A. That is what it means.

Q. Curettage means an abortion. Is that what you understand. A. That is what it means.

Q. Were you told that there was to be a curettage operation before you went to it? A. No.

Q. When did you learn that it was a curettage operation? A. After the operation.

Q. Do you mean that every time the curet is used upon the womb of a woman that that means that an abortion is performed, is that what you mean? A. (No answer.)

Q. What is your answer? A. (No answer.)

Q. Can't you answer? A. (No answer.)

Q. Don't look at the County Counsel, look at me or the Supervisor.

Mr. Vanderbilt: I object to that because there is no testimony that a curet was used.

Q. Was a curet used? A. (No answer.)

Q. Do you refuse to answer? A. Yes.

Q. You refuse to answer. A. Yes.

Mr. McCarter: Will the supervisor direct the witness to answer the question?

The Supervisor: I think the witness should answer this question if she can.

Q. Was a curet used? A. (No answer.)

Q. Was a curet used? A. Well, I didn't have anything to do with the instruments, so I couldn't answer that question.

Q. Where did you get the word curettage? You

are not an instructed surgical nurse, are you? A. I was told.

Q. Who told you? A. Miss Camblaus.

Q. When did she tell you? Before or after? A. After the operation.

Q. Miss Camblaus told you after the operation that the operation had been a currettage, is that right? A. Yes.

Q. That is the extent of your information as to what the operation consisted of? A. Yes.

Q. Who were in the room? A. Dr. Harman, Dr. J. Spencer Brown, Miss Camblaus and myself.

Q. Who else? A. There was the doctor who gave the gas; I don't remember his name.

Q. The anesthetist? A. Yes.

Q. Was there any other nurse there? A. No.

Q. You are sure about that? A. Yes.

Q. Was there any other nurse there? A. No.

Q. Was Miss LaGreau there? A. No.

Q. You knew Miss LaGreau? A. I did.

Q. You say she was not there? A. No.

Q. Dr. Spencer Brown, did you known him? A. No.

Q. How did you know what his name was? A. I was told.

Q. By whom? A. By Miss Camblaus.

Q. When were you told that? A. Before the operation.

Q. You say that Dr. Spencer Brown performed an abortion upon Henrietta Rose, do you? Is that what you say?

Mr. Vanderbilt: I object because there is no such testimony here.

Mr. McCarter: She said that a curettage

was an abortion and that a fetus three or four inches long was removed.

Q. I want to know whether you say that Dr. Spencer Brown of Montclair, New Jersey, performed an abortion upon Henrietta Rose. A. I told you what I was told.

Q. Miss Camblaus told you, is that it? A. Yes.

Q. Did Miss Camblaus tell you also that a fetus about three or four inches long was removed? A. Yes.

Q. She told you that? A. Yes.

Q. And that is the source of your information and upon that subject, is that right? A. Yes.

Q. You didn't see it, did you? A. Yes.

Q. I thought you said Miss Camblaus told you. A. Well, I asked.

Q. You asked what? A. What it was.

Q. You asked whom? A. Miss Camblaus.

Q. In whose presence? A. No one's presence.

Q. When? A. After the operation.

Q. How soon after the operation? A. I don't just remember how soon after.

Q. Was it a day? A. No.

Q. An hour? A. It may have been.

Q. An hour or two? A. Yes.

Q. And was that the time too that she told you it was a curettage? A. Yes.

Q. You said that you saw something that Miss Camblus told you later was a fetus. A. Yes.

Q. And it was three or four inches long? A. Yes.

Q. What did it look like? A. No answer.

Q. Can't you tell us? A. I don't care to answer it.

Mr. McCarter: Will the Supervisor kindly instruct the witness, if he thinks she ought to answer the question, to answer it?

The Supervisor: I think the witness ought to answer it.

Witness: I don't care to answer it.

Q. Will you please tell us what this thing that Miss Camblaus told you later was a fetus, and which you say you saw looked like? A. (No answer.)

Q. Won't you answer the question? A. (No answer.)

Q. Do you decline to answer the question? A. I do.

Mr. McCarter: Then I respectfully move that all of her evidence respecting the alleged fetus and the thing that she described as having been three or four inches long be stricken out. I don't think this witness can give testimony that way and refuse to describe what she saw. If the Supervisor wishes to, I would be very glad to have him advise with the County Counsel. It is a most outrageous charge that this witness is making against Dr. Brown. I don't know Dr. Brown, but I know that he has a very high reputation, and I think it is an outrage for a woman to seek to besmirch the reputation of Dr. Brown on any such evidence as this.

Mr. Vanderbilt: I think, Mr. Supervisor, that the witness should be instructed to answer as best she can. If she cannot answer it, she cannot; if she can, she should describe it.

By the Supervisor:

Q. I wish you would try to describe this as best you can. A. I couldn't just describe it, Mr. Reed.

Q. What did it look like? What color was it? A. It was red.

Q. Describe it in your own language the best you can. A. I couldn't, Mr. Reed, I really couldn't; I would if I could.

Q. How long was it? A. (No answer.)

Q. What shape was it? A. Long.

Q. How long? A. Two or three inches.

Q. Was one end larger than the other? A. Yes.

By Mr. McCarter:

Q. Do you decline to give us any information about this thing that you have told us you were informed was a fetus other than you have given? A. I have given all the information I can.

Q. You seem to be rather delicate about it. You have been in a hospital about four years? A. Yes.

Q. Have you been in any other hospitals since? A. Yes.

Q. You are accustomed to hospitals? To seeing sick people in bed? A. Yes.

Q. You know what excessive bleeding at menstrual periods is, don't you? A. Yes.

Q. Did you ever hear of the operation of curettage for a person afflicted with excessive bleeding at her menstrual periods? A. No.

Q. You never have? A. No.

Q. Did you ever hear of the disease called "granular endomy tritis"? A. No.

Q. You never have? A. No.

Q. Did you ever see Dr. Brown before or since? A. No.

Q. What date was this? A. May, 1925.

Q. You remained in the hospital how long? Until 1926? A. Yes.

Q. What time in 1926? A. September.

Q. Are you the Miss Huston that was spoken of this morning by the witness as having driven up here to see Supervisor Reed in an automobile? A. Yes.

Q. And Mr. Bennett was there driving the automobile? A. Yes.

Q. Where did Bennett get hold of you? A. Mr. Bennett notified me that Mr. Reed wanted to see me.

Q. Had you been in touch with Mr. Bennett before that? A. No, I was not.

Q. How long since you had seen him? A. About two years.

Q. So after not having seen Mr. Bennett for about two years, he, Bennett, notified you that Mr. Reed wanted to see you? A. Yes.

Q. Did he tell you what Mr. Reed wanted to see you about? A. No.

Q. Where did he notify you? A. Where I was working.

Q. Where was that? A. I refuse to tell.

Q. Where were you when Mr. Bennett notified you that Mr. Reed wanted to see you? Where were you? A. I don't care to answer.

Q. Was it in Newark? A. Yes.

Q. At some hospital? A. Yes.

Q. How did he know you were there? A. I do not know.

Q. At any rate, you had not seen him for two years and he had taken the trouble to find out where you were and he notified you by telephone or by letter or in person— A. By 'phone.

Q. Did he suggest to you to go up to see Mr. Reed? A. I told him I didn't know in what room Mr. Reed was.

Q. Did he tell you what Mr. Reed wanted to see you about? A. No.

Q. Did he then suggest coming to get you? A. No, he suggested he would meet me and bring me to Mr. Reed's office.

Q. How long before the time that he did meet you was this suggestion made? A. I don't remember.

Q. A week or a day? A. It may have been a week or two.

Q. What day was it, if you can recall that you did in fact meet Mr. Bennett? A. I can't recall what day it was.

Q. Was it the latter part of October? A. I don't remember.

Q. Where did you meet him? A. On Central Avenue.

Q. Central Avenue where? A. Near St. Patrick's Cathedral.

Q. Was that the place fixed? A. Yes.

Q. You had not seen Bennett in two years? A. No.

Q. Did he drive up in his car and meet you there? A. His car was there when I got there.

Q. He was there and waiting? A. No, he wasn't there when I got there, but he came later.

Q. The car was standing alone? A. Yes.

Q. Was it a car marked "Essex County Sanatorium"? A. No.

Q. And the car was standing alone? A. Yes.

Q. And pretty soon he came back? A. Yes.

Q. And you had in the meantime gotten into the car? A. No, I got in then.

Q. Then where did you go? A. He brought me to Mr. Reed's office.

Q. Did you go to the Tubes? A. No, not then.

Q. Who was in the car? A. Miss Galloway was in the car.

Q. At the corner of Washington and Central Avenue right near St. Patrick's Cathedral? A. Yes.

Q. Was anybody else in the car? A. Not when I got there.

Q. Then you didn't meet her at the Tubes? A. No.

Q. Was anybody else in the car? A. Not when I got there.

Q. So that Miss Galloway was in the car when you drove direct from the corner of Washington Street and Central Avenue to this building? A. Yes.

Q. You didn't go to the Tubes? A. No.

Q. Was Miss Galler in the car? A. No, she came over after I was there.

Q. She came where? A. To the car.

Q. On the corner of Washington Street and Central Avenue? A. Yes.

Q. And met whom there? A. Miss Galloway and myself.

Q. Who came with her? A. Mr. Bennett.

Q. So Bennett had left the car with Miss Galloway in it on the corner of Washington Street and Central Avenue and had gone over somewhere and had brought back Miss Galler? A. Yes.

Q. Did you know her before that? A. Yes.

Q. And you knew Galloway before that? A. Yes.

Q. And from that point you all drove up here? A. Yes.

Q. Had you had any conference with either Galloway or Galler, or a Miss Cahill about this matter before that occasion? A. No.

Q. Or since? A. Since—no—I have not saw them since that occasion until yesterday.

Q. None of them? A. No.

Q. None of the three? A. No.

Q. Either before or since? A. No.

Q. Have you seen Bennett on any other occasion than that? A. No.

Q. Did Bennett talk to you about what you were to inform Mr. Reed before you got to this building? A. No.

Q. Did you know or suspect what you were going to talk about? A. No.

Q. You hadn't any idea? A. No.

Q. Did you know Mr. Reed? A. I did not.

Q. So that you now say that you took the trouble to meet Mr. Bennett on the corner of Washington Street and Central Avenue at about six o'clock in the evening for the purpose of going to see a Mr. Reed whom you didn't know and whom you didn't know about what you were going to see about, is that right? A. That's right.

Q. Did you know that Mr. Reed was Supervisor of the County? A. Yes.

Q. How did you know that? A. I saw his name mentioned in the paper and by people I was talking to.

Q. You mean Galloway and Galler? A. No.

Q. Beforehand? A. Yes.

Q. To whom had you spoken of this curettage operation in the intervening two years? A. No one.

Q. Did Mr. Bennett know about it? A. No.

Q. How do you know he didn't know about it? A. As far as I know he didn't.

Q. Did he tell you what he wanted to see Mr. Reed about? A. No.

Q. And after you got up here and saw Mr. Reed, who broached the subject of what had occurred at this operation? Who first brought that up? A. I don't remember who brought it up.

Q. Did you know it was to be spoken of? A. No, I did not.

Q. You didn't know? A. No.

Q. So that when you came upstairs in this building after six o'clock in the latter part of October, you hadn't the slightest idea of what you were going to be interviewed about? A. No.

Q. Who brought it up? A. (No answer).

Q. Did Mr. Reed bring it up? A. (No answer).

Q. Speak up, don't be afraid to answer. A. (No answer).

Q. Somebody must have mentioned it. A. As far as I can remember, I think Mr. Bennett.

Q. That's what I thought. Now, as a matter of fact, he had not mentioned it before, but he did mention it when he got up here with Mr. Reed? A. Yes.

Q. He had not mentioned it before? A. No.

Q. But after you got up in Mr. Reed's room and the conference commenced then Bennett wanted you to tell what occurred at that operation and you told Mr. Reed? A. Yes.

Q. Did Bennett say how he knew it? A. No.

Q. You had not told him? A. No.

Q. Did you wonder how Bennett knew about this thing? A. Yes, I did.

Q. You did wonder about it? A. Yes.

Q. Did you inquire? A. No.

Q. Did you know Dr. J. Spencer Brown? A. No.

Q. Who gave you his name "J. Spencer Brown." A. Miss Camblaus, I believe.

Q. At the time she spoke of this thing? A. Yes.

Q. And when you talked to Mr. Reed about the thing, did you make known to him the names of the people that were present at this curettage operation? A. I did.

At 1:15 o'clock, P. M., the Supervisor adjourns the hearing for one hour.

After Recess.

MORRIS E. COLLERD, sworn in behalf of the County.

Mr. McCarter: May I ask the County Counsel upon which charge this witness is supposed to be sworn?

Mr. Vanderbilt: Charge number nine.

Mr. McCarter: I suspected that. Now, Mr. Supervisor, I respectfully object to any evidence given in pursuance of or in an endeavor to prove anything under charge number nine which reads: "In that on or about August 19, 1925, you were arrested on Fairfield Avenue, east of Fairfield Road, in the township of Caldwell, on the complaint of parking without lights in an Essex County car in the company of a female." Your duty, as prescribed by the statute, in a matter of this kind, is to examine into all complaints made against any of the subordinate officers and employees of the County for violation or neglect of duty, and assuming that they

could prove that on or about August 19, Dr. Harman was arrested on Fairfield Avenue east of Fairfield Road in the Township of Caldwell on the complaint of parking without lights in an Essex County car in the company of a female, how does that in any way indicate that that tends to show that he was in any way violating or neglecting his duties as the head of the Sanatorium.

Mr. Vanderbilt: I think that same objection was made early yesterday morning by Mr. Bailey and has already been ruled upon. I think the same ruling should apply on that motion.

Mr. McCarter: Of course, our thought is, Mr. Supervisor, that your jurisdiction in matters of this kind is given by and confined to the language of the statute, and that is wholly a right to examine into complaints made against County subordinate officers or employees, for violation and neglect of duties. Does that mean that a man who takes a ride in an automobile with his wife or some other man's wife, or some young lady, and he is arrested for parking without lights, that he is guilty of a violation or neglect of duty. He is not bound to be at the institution for the twenty-four hours; he is required to be there as long as the Freeholders prescribe that he must. Parking without lights is not a violation or neglect of duty, and we think that the charge cannot be supported, even if proved. I was not here yesterday, and of course if it was foreclosed, I don't know anything about it. But it seems to me

that this is beyond the scope of the investigation into these charges.

Mr. Vanderbilt: If Mr. McCarter's arguments are sound, a man might be guilty of murder if committed outside of the Sanitorium and he could not be removed from his office. I understand, however, from matters that have taken place in previous hearings of this nature that anything that takes place in the conduct of the officer charged with respect to his acting as a gentleman and the head of an institution should act, was within the jurisdiction of the supervisor, and if that man is a professional man, the question would relate to his conduct as such a professional man. If counsel's argument is sound, the only charges which you might investigate would be as to duties which the Board of Freeholders had specifically prescribed as his duties, so that if his duties were never specifically prescribed, he never could be brought up on any charges. The County Supervisor's Act of 1918 makes the County Supervisor the Chief Executive officer of the County and Section 3 of that Act provides that he shall exercise a constant supervision over all subordinate officers and employees. Why exercise a constant supervision by simply and solely seeing that they do what men in those positions are supposed to do and not do what they are not supposed to do? One can well imagine the disorder and lack of discipline that can exist in an institution if it were a fact that the Superintendent of the institution were in the habit of taking females out and parking them in

his car without lights and getting arrested for it. If that can be tolerated, where will one draw the line? It seems to me that these are all questions that go to the fitness of the person charged, if they are true.

Mr. McCarter: With the courtesy of the Supervisor, I should like to make a reply to that. I am not seeking to minimize, Mr. Supervisor, the importance of your office. I think it is a very important office. The words of the statute do say that you are the chief executive officer of the County. It does give you the power to veto legislation by the Board of Freeholders. I think I may say, if I may so term it, you are the president of Essex County, just as Mr. Coolidge is president of the United States, but the fact that you are given the power and the duty to exercise constant supervision over the conduct of all subordinate officers and employees, means exactly what it says and means nothing more. It means that it is your duty as president of the County to supervise the affairs of the County, and if you find that any of the employees—or complaint is made before you that any of them is guilty of a violation or neglect of his duties, you are given the power to hear those particular charges —charges of violation or neglect of duty, now, Mr. Vanderbilt, for whom I have a very great respect, has said, to use an extreme case, that suppose Dr. Harman or some other person employed by the County should commit murder when off duty, and in no way affecting the discharge of his duty—if he should come down here to the theatre and

should be assaulted and get into a row—fisticuffs—commit any other crime—that would not give you jurisdiction to remove him because the act does not necessarily interfere with his discharge of his duties and does not in itself constitute a violation or neglect of it. It is a duty that is new, it is a new privilege, co-terminus and coincident with the office of Supervisor. The designation of those duties included a certain quasi-judicial power. You are not a general judge; you are not a judge charged with the keeping of the peace of the county; you are not a general judge to require morals to be observed. You have very broad powers, sir, but I know I am not giving any slight when I say that your judicial powers, sitting as a quasi-judge as you do in this investigation, constitute anything more than consideration of complaints in that a man got drunk; in that a man committed murder; in that a man committed assault and battery, but a charge that he has violated and neglected his duty. Charge number nine has absolutely no relation to the observance of the violation of the duty of this gentleman, assuming it is proved, and I therefore say that it must, upon reflection, be evidenced that unless you take the broad position that the County Counsel has asserted, that because you can generally supervise the affairs of the County that you can in a hearing of this kind, upon a complaint of this kind, adjudicate upon everything, and if you feel that a man was a bad fellow, not that he did not do his duty well, but that he was constantly profane, that he

wasn't the kind of a man that you wanted around; or, if you will, that in heat of passion, he committed murder; you may have him indicted for murder, but it is not within your province to consider that murder as an element in his violation of duties. If the murder was an exhibition of temper which, in turn, itself was so frequently manifested that it interfered with the proper discharge of his duties, then it would be a matter that would be a violation of the discharge of his duties. I do not think we want to vitiate these proceedings by going outside the scope of the inquiry. I think if Mr. Vanderbilt told you the exact and honest opinion that he entertains, he does not differ from me.

Mr. Vanderbilt: If it please the Supervisor, if I may reply to Mr. McCarter's argument, a gentleman for whom, too, I have the highest regard and respect, I feel that he too, like the rest of us lawyers, is carried away by his arguments. I don't think he is entirely serious in saying that a man might be a murderer and still occupy a high position in the county. It does not sound to me like the usual McCarter common sense. Mr. McCarter says that the duties of the Supervisor are new and that it is a new office in this County. The Act of 1928 is a revision of earlier Acts. The position of Supervisor dates back twenty-five years, and during the whole period of twenty-five years various employees have been removed for divers acts which were not any breach of any specified rule. The present supervisor himself has

sat in cases where employees were removed for making improper remarks to female employees on the way to and from work, and if they could not be removed for such things as that, I hesitate to think where the discipline and morale of our various county institutions would be. It does seem to me that it is a perfectly apparent thing under the act giving the Supervisor the broadest general power to exercise constant supervision over subordinate officers and employees that that gives the Supervisor the right to go into these matters. And may I say that the complaints referred to in the third section may be either complaints of witnesses or complaints preferred by the Supervisor himself as the result of such investigation. That has been the interpretation of this act which has been acquiesced in, as I say, for some twenty-five years. Any number of cases have gone up by certiorari to the Supreme Court and the Act has never before been questioned on that ground. It seems to me, to place the interpretation on it that counsel desires, it would circumscribe the powers of the Supervisor as to render his powers practically nugatory. It seems to me that it is absolutely contrary to the clear words of the statute to make any such interpretations of it. In conclusion, I would like to say that this matter was not only ruled upon yesterday in substantially the same form and that ruling should stand here today.

The Supervisor: Have you anything further to say, Mr. McCarter?

Mr. McCarter: No, sir.

The Supervisor: The objection is overruled.

Direct-examination by Mr. Vanderbilt:

Q. In 1925, did you hold any public position in Caldwell Township? A. Yes, sir.

Q. On or about August 19, 1925, were you on duty in the evening? A. Yes, sir.

Q. And on that date, who was with you? A. Officer Mullane.

Q. What was your position in Caldwell Township in 1925? A. Constable and special officer.

Q. Do you still hold that position? A. Yes.

Q. Tell the Supervisor what happened on that evening of August 19, 1925. A. I don't know whether it was that evening. I don't know if it happened on that evening; I am not sure about the date.

Mr. McCarter: I think it is quite improper for counsel to put the date in the mouth of the witness.

Q. On or about August 19, 1925, while you were in the course of your duties on Fairfield Avenue, east of Fairfield Road, in the Township of Caldwell, did you or did you not come upon Dr. Harman in a car parked without lights? A. I did.

Q. Tell the Supervisor the circumstances. A. Officer Mullane was driving the car which was a Ford roadster—

Q. That is the car you were in? A. Yes. He stopped the car; he was driving some distance behind the parked car. It was on the continuation of Fairfield Avenue in West Caldwell—in Cald-

well Township. We both got out of the Ford and walked up behind this parked car. Officer Mullane stood behind the car while I approached the driver, who was sitting in the driver's seat, and apparently only one man was in the car at the time, which was the driver.

Q. Who was the driver? A. Dr. Harman, Byron Harman. I didn't walk right alongside of the driver at first; I stood alongside of the car for a moment or two; a couple of seconds, maybe—

By Mr. McCarter:

Q. Two seconds? A. I wouldn't say two. It was a very short time. I stood there to see if there is anything wrong going on in the car or elsewhere. Then I stepped up alongside of the driver, which was on the left side of the car, and asked him what he was doing there. Just as I asked him that question, a lady appeared on the front seat beside him. I don't know where she came from; she just appeared. It seems she appeared out of nowhere. He told me he had just stopped there. He didn't have any good excuse to offer at the moment and I said to him, "You are violating a parking ordinance of this town." And I asked him to see his licenses. I had taken notice that he was in a car with a C. G. lincense plate on it. So he showed me his driver's license and registration card for the car and I started to write out a summons for him to appear on the following fortnight, and while I was writing it, he told me that this lady he was with had had the hysterics; she was subject to hysterics, and that is the reason he had stopped there. I said, "Is this lady your wife or your lady friend?" He said that it was neither. He said, "It is my sister-in-law." I said, "Why park in

this dark place"—it was a very dark place—"between ten and eleven o'clock at night with your sister-in-law?" He said, "I will assure you that everything is all right. My wife knows about it, and everything is all right." Of course, I didn't see anything wrong as far as I am concerned except parking there without lights at that hour of the night. I continued to write out a summons and handed it to him.

Q. You say Dr. Harman gave you his license card and the car registration card? A. Yes.

Q. And you got your information from that, from which you gave him a ticket? A. Yes, sir.

Q. And you yourself saw that it was a car with C. G. license plates? A. I did.

Q. Were there any lights on the car at the time? A. No lights.

Q. Was this place where the car was parked a populated spot or a secluded spot? A. A secluded spot.

Q. How far from the nearest house? A. At least a hundred yards from the nearest house.

Q. Can you describe the person who was with him? A. Well, the lady that was with him I would say was between thirty and thirty-five years of age, I don't know. She wasn't really dark; she had brownish colored hair. I should say she weighed around 140. I didn't see her standing, but she seemed to be a fairly tall woman.

Q. You don't know her name? A. No, I don't know her name; I didn't ask her name.

Q. In which direction was the car headed? A. South.

Q. Did the lady at the time that you saw her appear to be suffering from hysterics?

Mr. McCarter: I object. I think they ought to ask him what the lady was doing.

Mr. Vanderbilt: The doctor told him that she did suffer from hysterics. Now, I am asking him whether or not she was suffering from hysterics at the time.

Mr. McCarter: I object to that as calling for a conclusion.

A. There seemed to be something wrong with the lady. I don't know whether it was hysterics or what it was. I am not acquainted with it. She didn't have much to say. As a rule a woman has to talk right or wrong.

Q. You don't know what was the matter with her? A. I don't know what was the matter, if anything.

Q. You just said there was something the matter with her. A. There seemed to be something wrong.

Q. What seemed to be wrong? A. She didn't have anything to say, and acted frightened.

Q. Is there a store near-by some distance from there? A. Yes, some 300 feet from where the car was parked.

Q. Whose store is that? A. Sisco's.

Q. Did you ask the doctor why he had not stopped at the store to give the lady treatment for the hysterics? A. Yes, I did.

Q. What did he say to that? A. Well, he hadn't thought about the store.

Q. Was the store that you described well lighted at that time of night? A. I didn't notice.

Q. Was it open? A. It was open.

Cross-examination by Mr. McCarter:

Q. What kind of store is it? A. A general store.

Q. And it stays open at eleven o'clock? A. Sometimes all night.

Q. Where was this occurrence? A. It was on Fairfield Avenue, Caldwell Township.

Q. Where does Fairfield Avenue run from and to? A. It runs from State Highway No. 12 into Fairfield Avenue, West Caldwell; it is really a continuation of Fairfield Avenue, West Caldwell, formerly known as Dutch Lane.

Q. Is it pavement? A. Yes,sir.

Q. It is a main thoroughfare, isn't it? A. Not a main thoroughfare; it's a county road, I believe.

Q. Paved road? A. Paved road.

Q. How near to the junction of the other road? A. About 300 feet; approximately 300 feet.

Q. That is known as the Fairfield Road? A. The old Fairfield Road, or State Highway No. 12.

Q. That is a very important thoroughfare? A. It is a state highway.

Q. Are there any lights on either of those roads? A. No, sir.

Q. When was this occurrence? Don't look at some paper you have before you. A. There is nothing there to tell me anything.

Q. When was it? A. I did put it down at the time; I don't remember what it was. I know it was 1925; some time in August.

Q. Three years ago? A. About three years and a half ago.

Q. Were you and Mullane out on the discharge of your duty that night? A. Yes, sir.

Q. And your duty extends over what territory? A. Caldwell Township.

Q. As you were coming up this Fairfield Avenue you saw a car standing still? A. Yes, sir.

Q. On the right hand side of the road? A. On the right hand side.

Q. And within what distance of a well lighted store? A. Well, something over 300 feet; slightly over 300 feet.

Q. Had you been on that Fairfield Avenue for some time, or did you turn in from the Fairfield Road? A. Turned in from the Fairfield Road.

Q. You turned in from the Fairfield Road? A. Yes, sir.

Q. How far is that from where the car stood? A. About 300 feet.

Q. So that the car in which Dr. Harman was sitting was about midway between this store and the junction of the Fairfield Road? A. I don't understand that question.

Q. You have told us, as I understand it, that the car was on Fairfield Avenue. A. Yes, sir.

Q. And that about 300 feet from it was a well lighted store—a general store, that was open all night? A. Yes, sir.

Q. You have also told us, as I understand you, that this car stood about 300 feet from the junction of Fairfield Avenue with Fairfield Road. Am I wrong about that? A. You are right.

Q. Was the store at the junction of Fairfield Avenue and Fairfield Road? A. At the junction of Hollywood Avenue and Fairfield Road.

Q. That is the first time you have mentioned Hollywood Avenue. A. This is the first opportunity I had to mention it.

Q. I am not criticizing you. Was the car in front or behind the store? A. Behind.

Q. Did you see him pass the store? A. No, sir.

Q. Had he stopped before you saw him? A. Yes, sir.

Q. What sort of a car was he in? A. I don't remember the name of the car; it was a sedan—a medium sized sedan about the size of a Dodge.

Q. With a left-hand drive? A. Yes, sir.

Q. And when you stopped, you stopped your car right behind his? A. Not very close.

Q. And at that time you could see nobody? A. Not at the time we stopped; we could see no one then.

Q. You got out and Mullane got out? A. Yes.

Q. What became of Mullane? A. He and I approached the car and he stood behind the car while I went toward the driver's seat.

Q. Your eye was intent upon the person occupying the driver's seat first, wasn't it? A. I glanced in the back of the car and I walked alongside of it. I looked in the back first.

Q. Was there anybody in the back seat? A. No one in the back.

Q. When you got a little farther along, you found a man sitting at the wheel on the left hand side of the front seat. A. I saw him almost at the same moment that I looked in the back—

Q. And there was the man— A. (Interrupting) Dr. Harman.

Q. (Continuing) Sitting in front of the wheel— A. (Interrupting) Behind the wheel.

Q. Pardon me. Behind the wheel on the left hand side? A. Yes, sir.

Q. And you asked him what he was doing there, or something of that kind? A. Yes, sir.

Q. I suppose you were looking at him while you asked him that question? A. Yes, sir.

Q. Did you see him? A. Yes, sir; not distinctly; it was dark.

Q. Had you ever seen the doctor before? A. No, sir.

Q. While you were having this preliminary talk with him, your eyes became aware of the fact that sitting by his side was a lady? A. When I first spoke to the doctor there was no lady sitting beside him. I am positive about that.

Q. Where did she come from? A. I don't know where she came from. She came there some way.

Q. She dropped through the roof? A. I couldn't say; there was no hole in the roof, I don't believe.

Q. You didn't see her until suddenly you saw a lady sitting beside him in the front seat. A. She suddenly appeared.

Q. Was she sitting? A. Yes.

Q. The first time you saw her at all she was sitting by the doctor's side. A. Yes, sir.

Q. When you asked the doctor for his driver's license he showed it to you immediately, didn't he? A. Yes, sir.

Q. And he showed you the license for the car? A. Yes, sir.

Q. There was no hesitancy about it? A. No.

Q. And you stated you didn't see anything wrong. A. I didn't see anything wrong.

Q. So you commenced to draw a summons, didn't you? A. Yes, sir.

Q. Did you have a lantern? A. We had a flash light.

Q. Did you use the flash light while you were drawing the summons? A. I believe we did.

Q. What is the fact? A. I don't remember. I

must have had a light, or I couldn't write in the dark, so there must have been a light used.

Q. But you have no recollection of what light it was? A. I have no recollection of what particular light it was, but I know I can't write in the dark.

Q. You have no idea how long that car had been there? A. No.

Q. You had only been on the road travelling 300 feet. A. We had been further than that. I lived a long way down from there and I started out an hour before—

Q. I mean about this particular occurrence. You had come from 300 feet below, and you don't know how long the car had stood there. A. No; I don't know how long the car had stood there.

Q. You said there were no lights on the car. A. No lights of any kind within 300 feet of the car.

Q. But there were no lights on the car, you say? A. No.

Q. Was this in August? A. Yes.

Q. Was there a moon? A. I don't remember.

Q. Was it after you commenced to write out this summons and had this conversation with the doctor that the lady seemed to you to be frightened? A. Before I started to write the summons.

Q. What did she do before you wrote the summons that indicated that she was frightened A. She appeared to be frightened.

Q. What did she do? A. She sat there as if she was afraid of something.

Q. What did she say? A. She didn't say anything; she just sat there as if she was scared, in other words.

Q. What made you think she was afraid? A. By her appearance.

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Q. What about her appearance? A. She looked frightened.

Q. And she looked frightened? A. Yes.

Q. You could see that by her face? A. Yes.

Q. You could see her face plainly? A. Yes.

Q. You don't know whether you had a light or not? A. Yes, I had a light.

Q. Were you using your flash light? A. Yes.

Q. You don't know whether you did or not? A. That time.

Q. When? A. That time you are referring to now.

Q. What time? A. The time you are referring to. What time could it be but the time I flashed it on her.

Q. You did use your light, then? A. I don't know whether it was mine or Mullane's.

Q. Did you ask Mullane for a flash light? A. I don't remember; we had one between the two of us.

Q. Where was Mullane? A. He came up to us when I started writing the summons.

Q. So at the time you were writing out the summons, there were two of you? A. Yes.

Q. And you had a flash light? A. We had one or two; we had one at least.

Q. Did you show your badge? A. Yes, sir. As a rule I show that to anyone that I approach.

Q. You did show it as a justification for your interference? A. Yes, sir.

Q. Were you surprised that a lady, with a man shoving a flash light at her and pointing to his badge would be frightened? Would that surprise you? A. Yes, it did; I was quite surprised myself.

Q. Did you deliver this summons to the doctor? A. Yes, sir.

Q. And that directed him to appear when and where? A. The following court night.

Q. When and where? A. At the Township Hall.

Q. Before whom? A. Thomas Peer; he is the Recorder.

Q. Were you there that night? A. Yes, sir.

Q. What happened? A. Nothing happened.

Q. Nothing happened? A. No

Q. It seems to make you smile, is that right? A. It does.

Q. You were there prepared to give your evidence as an officer of the law, weren't you? A. Yes, sir.

Q. And was Mullane there? A. He was there.

Q. Prepared to do his duty like a man? A. Yes, sir.

Q. And lo and behold, everything was there but the lamb for the sacrifice? A. Yes, sir.

Q. Why didn't you make your complaint? A. I wrote my complaint out.

Q. Why didn't you go ahead? A. It stopped.

Q. You were the complaining officer? A. Yes.

Q. Why didn't you make it? A. I made the summons and the summons didn't appear and I couldn't find it.

Q. But you were the one that made the complaint, weren't you? A. Yes.

Q. Did you ask the Squire what had happened in this case? A. He told me.

Q. What did he tell you?

Mr. Vanderbilt: I object to that as immaterial.

A. That's what he said; I can't say what became of it, I don't know.

Q. Have you the stub of the ticket with you? A. No, sir.

Q. Did you keep one? A. No, sir.

Q. Didn't you keep a stub of your summons or tickets, as you call them? A. Not three years and a half.

Q. It is kind of outlawed, I think, myself. Did you have a stub at any time? A. Yes, sir.

Q. What became of it? A. It was turned over to the Recorder.

Q. When was that? A. I don't remember, it is so long ago I have forgotten just when I turned it over to him.

Q. What night was this returnable? A. Wednesday night.

Q. What day of the week was this affair on which you so nobly discharged your duty? Can you remember the day of the week? A. I believe it was Saturday night, to the best of my recollection.

Q. Did you look at your watch at the time it occurred? A. Yes, sir.

Q. And it was just eleven o'clock? A. I couldn't say it was just eleven o'clock; I can't remember the exact time. It was between ten and eleven. I marked it on the summons, but I haven't the stub here to show.

Q. But it was between ten and eleven? A. Yes, sir.

Q. Was any reason given to you why that proceeding did not continue that night? A. No, sir.

Q. Didn't Judge Peer make any announcement from the bench that this case would not go on? A. Yes.

Q. This must have been quite an occasion. What did he say? A. I don't remember what he said. He said the case would not come up.

Q. See if you can think. You had this wonderful exhibition of manly duty—you and Mullane—and were ready to do your duty on the following Wednesday night and suddenly you were interrupted and could not go on and show your manhood. A. There was so much excitement—

Q. What was the excitement? A. You said there was excitement.

Q. What was said? A. The case was dropped.

Q. Did he say who dropped it, or who had caused it to be dropped? A. My superior caused it to be dropped.

Q. Who is your superior? A. The Recorder.

Q. He himself caused it to be dropped? A. I suppose so; it dropped there. You will have to ask him about the rest of it.

Q. Wasn't it said that there was apparently no guilt and no violation and that therefore the proceedings would be dismissed? Is that what was said, or words to that effect? A. No.

Q. What was said? A. I didn't hear anything like that.

Q. What was said? A. I don't remember.

Q. When you said that some boss had put the quietus on this thing, you didn't refer to some Freeholder, did you? A. Some boss. I didn't say anything like that.

Q. A little while ago you used the word "boss"? A. No, sir.

Mr. Vanderbilt: I don't think he did. He said a superior.

A. Of course, it means one and the same.

Q. I didn't mean anything offensive by it. Was

the superior you alluded to one of the Freeholders? A. No, sir.

Q. Had the Recorder, your superior, looked into this thing? A. I suppose so; I don't know.

Q. Did he say he had looked into it and was satisfied there was nothing in it, or words to that effect? A. I don't know what he thought.

Q. Did he say he had looked into it and was satisfied that there was nothing in it, or words to that effect? A. He said the case was dismissed.

Q. Did you dismiss it from your mind then? A. Yes, sir.

Q. What brought it back to your mind after three years and a half? A. I didn't exactly dismiss it from my mind, but I didn't think over it or try to keep every word in mind.

Q. I am asking you now who brought it up with you recently? A. Mr. Peer, our Recorder—Thomas Peer. He asked me about it, if I remembered it, and I told him I did, some of it. I said I didn't remember all of it.

Q. Is that the only person that spoke to you about it? A. Yes, sir.

Q. And then you were subpoenaed to come here? A. Yes, sir.

Q. And that is all you know about it? A. That's all.

Q. Have you been down before to make a statement or complaint to Supervisor Reed about it since it became revived? A. Well, I was down here yesterday.

Q. You had been subpoenaed then? A. I had been subpoenaed then.

Q. You had not made any statement to Super-

visor Reed or talked to him about it before— A. Not to Supervisor Reed.

Q. To whom have you talked besides to Judge Peer? Anybody? A. Do I have to answer that question?

Q. Yes, I think so. A. I don't think that is necessary.

Mr. McCarter: I don't know why there is such taciturnity about this case. I have never heard so much taciturnity.

The Supervisor: I think it is a proper question and I think the witness ought to answer it.

A. I wrote out a statement for Recorder Thomas Peer.

Q. For whom else? A. Only to Recorder Thomas Peer.

Q. I want to know who the someone else is. A. I didn't say that at all. I said that I had a talk with Recorder Thomas Peer about this incident and I didn't tell you at any time that I wrote out a statement until just now.

Q. Exactly. A. And that is the man I gave the statement to.

Q. I think you told us a few minutes ago that besides Recorder Peer you had talked to somebody and when I asked you who it was you asked to be excused from answering. A. I didn't talk to anybody.

Q. Whom did you have in mind when you begged to be excused from answering? A. I got a little mixed up there.

Q. Whom did you have in mind? A. I don't have to tell that; I know that.

Q. Don't you have to tell that? A. No, I don't have to tell that; I didn't have a word with this man or a thing, so I don't have to say anything about that. I was over-reaching, that's all.

Q. You got a little bit ahead of the story. A. I got a little bit ahead of the story.

Q. Was it a Freeholder? A. No, sir; it wasn't anybody.

Q. You had in mind— A. Oh, I had him in mind.

Q. Was it a Freeholder you had in mind? A. It might have been.

Q. That's what I thought.

Redirect-examination by Mr. Vanderbilt:

Q. When you left your car, did you leave the lights on it as you and Mr. Mullane got out? A. Yes, sir.

Q. And when you came up to Dr. Harman's car was his motor running or not? A. No, sir; it wasn't running.

VINCENT A. MULLANE, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Mullane, in August, 1925, did you occupy any official position in the Township of Caldwell in the County of Essex? A. Special Police Officer.

Q. Do you recall one evening in the month of August, on August 19, or thereabout, that you were out on official duty with Officer Collerd? A. Yes, sir.

Q. On Fairfield Avenue, east of Fairfield Road in the Township of Caldwell? A. Yes, sir.

Q. Did you and Officer Collerd sight a parked car? A. Yes, sir.

Q. Without lights? A. Without lights.

Q. Will you tell the Supervisor what happened after that? A. After we had spotted the car?

Q. Yes. A. I pulled up behind the car and stopped the car. I kept the lights on. Officer Collerd got out of the car and approached the car that was standing. I also got out and followed him up. He looked into the car and give the driver of the car a ticket. Then I got back in our car and started my car again while the officers stood there talking to the driver.

Q. What else happened? A. That's all I know. I stood there in our car until the officer got in and then we drove off.

Q. When you came up to Dr. Harman's car, did you know who was in there? A. No, sir, I did not.

Q. Did you notice what kind of a car it was? A. Sedan car, official county license.

Q. Did you observe he was in the car? A. No, sir.

Q. Do you know whether there was more than one in the car? A. There was two in the car, but who they are, I don't know.

Q. Do you know whether there were two men or two women or one man and one woman? A. I didn't go close enough to see.

Q. You didn't have any conversation with the occupants of the car? A. No, sir.

Cross-examination waived.

ELOISE TRAVERS, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mrs. Travers, were you formerly employed at the Essex Mountain Sanatorium? A. From May 5, 1927, to November 21—that is, night duty—'20, '21, 1928.

Q. In what capacity? A. For one month as supervisor of one of the floors; for the remainder of the time as night supervisor.

Q. Did you know Miss Henrietta Rose? A. I did.

Q. Were you at the Sanatorium at the time of her death? A. I was.

Q. After her death did you have any occasion to sort out her belongings? A. I was called in by the nurse on the floor concerning her belongings.

Q. What was it to which you refer? A. It was a statement which, as nearly as I can remember—

Mr. McCarter: One moment, please. We don't want her to give evidence of some paper that was found among Miss Henrietta Rose's effects. How are we bound by that?

Q. Is this paper in existence at the present time? A. Not at present.

Q. What happened to the paper? A. The paper was destroyed with my consent.

Q. By whom? A. By the attendant. The nurse who was on duty and I discussed the matter and out of respect to the girl who was dead and as we thought out of loyalty to Dr. Harman, we destroyed this paper. It was burned and the ashes were flushed down the toilet.

Q. Who was the nurse? A. Miss Edwards.

Q. Who was the attendant? A. Violet Gould.

Q. And yourself? A. The attendant was the person who burned it. The first that I saw of the paper it was in the hands of Miss Edwards.

Q. So you are not able to produce the paper? A. I am not able to produce the paper.

Q. Are you familiar with Miss Henrietta Rose's handwriting? A. I know it when I see it. I have seen a specimen of her handwriting and I know it when I see it.

Q. Are you familiar with Dr. Harman's handwriting? A. Yes, I am familiar with it.

Q. In whose handwriting would you say this paper was? A. I believe it was written by Dr. Harman.

Q. Can you tell us what this paper said?

Mr. McCarter: One moment. I would like to cross-examine the witness on the question of her being familiar with Dr. Harman's handwriting.

The Supervisor: Very well.

By Mr. McCarter:

Q. You were a nurse in the institution? A. I was a nurse in the institution.

Q. Did you ever receive letters from Dr. Harman? A. I did not; his signature was on our checks, though, each month.

Q. Was his signature on this paper? A. There was no signature on the paper and no date.

Q. It was an unsigned and undated paper? A. It was an unsigned and undated paper. I should not have destroyed it.

Q. There was no signature? A. No signature.

Q. And the only familiarity you had with Dr. Harman's handwriting was that at periodical intervals you received a check for your services as nurse to which his signature was appended. A. I have seen other specimens of Dr. Harman's hand writing too.

Q. When and where? A. I have seen specimens of his handwriting on X-rays.

Q. Only the signature, wasn't it? A. No, I saw more than that.

Q. What you saw on an X-ray? You mean an X-ray photograph? A. Yes.

Q. When you speak of an X-ray and seeing Dr. Harman's handwriting, what do you mean? A. Well, I saw a specimen of his handwriting on the photograph.

Q. That is what I meant, what did you see on the photograph? A. I just saw the formation of the letters; I didn't read the thing; I just saw the formation of the letters.

Q. How did you know it was his handwriting? A. I said I believed it to be his handwriting.

Q. I don't mean the paper in question. I mean on the photograph of the X-ray. How do you know it was his handwriting? A. I was told that it was.

Q. Not by him? A. No.

Q. When you say you believed that this document that you found among Miss Henrietta Rose's effects was in his handwriting, do you rely on something that was told you as to the X-ray photograph? A. No.

Q. Then you rely wholly on the signature? A. I rely wholly on the formation of the characters.

Mr. McCarter: Mr. Supervisor, we do not

think that the witness has shown sufficient familiarity with the handwriting of Dr. Harman to justify her statement now of the contents of the document in which she says she participated in destroying. The rule of evidence is, as I understand it, that you cannot deliberately destroy a paper and then give evidence of its contents.

Mr. Vanderbilt: It seems to me, Mr. Supervisor, that the handwriting of Dr. Harman, has been identified by the witness in respect to two different points, and the witness says definitely she knows the handwriting of Miss Henrietta Rose and it was not her handwriting, and she testifies why it was destroyed; there are the additional circumstances of the two other witnesses who have knowledge of this fact. If it was something that this witness destroyed and this witness was the only one who had knowledge of it, it seems to me there would be much greater force in counsel's argument, but where there are two other witnesses, Miss Edwards and Miss Gould, who can give testimony on this point, and when the people who destroyed it did not destroy it for the purpose of preventing its production here, and had no knowledge that it was desired here, I think it is clear that the testimony of this witness can be given as to her views of it, because there is a right on the part of the respondent to call Miss Edwards and Miss Gould to contradict her if it was not right. We are not seeking to bind the respondent by Mrs. Travers' testimony alone,

because admittedly, there is the testimony of both of the other witnesses both as to the handwriting and as to the contents of the paper in question. And further, that it is not this witness who is seeking to prove the paper; it is the County that is trying to prove the paper,and that makes a difference.

The Supervisor: I will rule that the testimony of the witness can be taken in this matter.

Mr. McCarter: I pray an exception.

By Mr. Vanderbilt:

Q. What did the paper say? A. As nearly as I can remember; I am not sure that I remember it word for word, but as nearly as I can remember it was as follows: without date and without signature: "To whom it may concern: I have never been parked in a car with Dr. Harman nor have I at any time been with him when he broke any of the motor vehicle laws."

Q. And that you say is your best recollection? A. That is my best recollection of the wording of the paper. I don't say that it is exact, but I think it is pretty nearly exact.

Q. And that paper you say was in the handwriting of Dr. Harman? A. Yes, I believe it to be his handwriting from the formation of the characters.

Cross-examination by Mr. McCarter:

Q. When did Miss Henrietta Rose die? A. I think it was the 4th of November.

Q. Of the last month, this year? A. Yes.

Q. You have been in the hospital how long? A.

One and one half years; from May, 1927, to November, 1928.

Q. And you were discharged? A. I was discharged.

Q. At the request of the Prosecutor's office? A. Yes.

Q. Because they claimed that you were aiding and abetting in the concealment of some criminal act? A. No, that was not what was said.

Q. What was said? A. They said for neglect of duty.

Q. What do you know they meant? A. Well, the specific charge was my not having reported at 2:30 in the morning to Dr. Harman, wakening Dr. Harman, the presence in the pavilion of a man who had been drinking and who I thought to be an employee at the time at the institution and that I reported it at seven in the morning.

Q. So you think on that ground alone the Prosecutor of this County asked for your discharge from the hospital? A. Yes, that is the impression Dr. Harman gave me when he called me down to the office. I think he said that was the only charge.

Q. Who, in fact, discharged you? Dr. Harman? A. I take it that Dr. Harman did discharge me because—

Q. You have answered my question, and that was about the 21st of November? A. Yes, the night of the 21st.

Q. You took great pains to destroy this document? A. Yes, I did, out of respect for the dead girl, and I thought it would be—

Q. One moment. Never mind now—

Mr. Vanderbilt: I submit that the witness should be permitted to finish her answer.

Q. Go ahead. A. And out of loyalty to Dr. Harman, and it seemed to me too bad for her father to have knowledge that there was anything to be said against the girl.

Q. You considered that that was against the girl —what that paper said? A. Not necessarily, no, the point being—

Q. Just a moment. I don't purpose to have a stump speech from you every time I ask a question.

Mr. Vanderbilt: I object to that. That sentence was cut off in the middle. I think there is an unfinished sentence there, and I think the witness is entitled to finish it.

The Supervisor: Go on.

Q. To whom did you relate the contents of this horrible document? A. I didn't consider it horrible.

Q. To whom did you tell it? A. The first person that I spoke to about it was Mr. Bennett.

Q. Oh. When was that? A. After my discharge.

Q. Up until that time you were so loyal to Dr. Harman and so thoughtful of the memory of the dead that you had not spoken to a soul about the matter. A. I had said nothing to anybody about it.

Q. Then you were discharged by Dr. Harman, and where was it you saw Bennett? A. In the X-ray room.

Q. Had you heard at the time you saw Bennett that he had made charges here against Dr. Harman? A. He had not.

Q. When was it that you told him about it, as near as you can recall? A. It was the day that I

left the Sanatorium; I was away for two days—the 23d.

Q. Do you mean to tell me that on the 23rd of November that you had not heard either through the newspapers or otherwise that Mr. Supervisor Reed had held a hearing in this room or elsewhere in which Mr. Bennett had made charges against Dr. Harman? A. Yes.

Q. And you heard that it had petered out? A. I didn't follow it at all.

Q. Did you hear that it had petered out? A. No, I did not follow it at all.

Q. The X-ray room is Bennett's room, isn't it? A. It is his department, yes.

Q. Did you go there to tell him about this? A. No, I didn't know what he wanted with me.

Q. He sent for you, did he? A. He sent for me.

Q. Had he heard of this? A. Not that I know of.

Q. How did you happen to tell it to him? A. Because he asked a leading question.

Q. What was the leading question? A. He said something about this document being in existence that was wanted.

Q. What did he say? A. I don't remember the exact words.

Q. I don't care about the exact words. A. About a document being in existence which was wanted.

Q. He said something about a document being in existence which was wanted? A. Yes.

Q. Did he say what the document was? A. Did he say what it was? No.

Q. He just said a document. A. No.

Q. What was his language? I don't mean the exact language, but what did he say? A. He ask-

ed me if I knew anything about any of these affairs that had come up with these girls, and if I know anything about the documents concerning any of them .

Q. Then you told him about what you had seen? A. Yes.

Q. Your loyalty to the doctor and your respect for the dead were overcome by that inquiry? A. (No answer).

Q. What is your answer? A. Well—

Q. Perhaps your discharge might have had nothing to do with it. A. I thought the paper was wanted and I thought then that I had no business to destroy it or let it be destroyed.

Q. You found that this man Bennett was very anxious to learn the contents of that document? A. (No answer).

Q. He told you so, didn't he? A. He said that it was wanted.

Q. Did he say who was anxious to get it? A. I didn't say that he was.

Q. Who did he say was anxious to get it? A. He said that Mr. Reed was anxious to get information about it.

Q. Mr. Bennett told you that Mr. Reed was anxious to get information concerning that document? A. Yes.

Q. Did Bennett tell you how he knew of the existence of that document? A. No.

Q. Did he refer specifically to any document? A. No.

Q. Did he refer to a document that had been found among the effects of Miss Henrietta Rose? A. I don't remember whether he mentioned her name or not; I think he did.

Q. So he must have heard, either from you or Miss Edwards before of this document? A. He had not heard it from me.

Q. Where is Miss Edwards? A. She is at the Sanatorium, as far as I know.

Q. Had she told him? A. I don't know.

Q. Have you talked with her about it since? A. I have not.

Q. Did you say that Dr. Bennett sent for you to come to the department? A. Not Dr. Bennett, Mr. Bennett.

Q. That was out of your jurisdiction, wasn't it? A. What do you mean?

Q. Your duties did not ordinarily take you to the X-ray room? A. No.

Q. You had other duties to perform than that? A. I wasn't on duty.

Q. What time was this? Day or night? A. It was day time, of course.

Q. And so you went to the X-ray room? A. Yes.

Q. And what did Mr. Bennett say to you? A. He asked me if I felt that I had been fairly treated being discharged as I had been.

Q. That was the very first thing that he brought up. Do you think you have been fairly treated when you were discharged at the request of the Prosecutor's office? A. Yes.

Q. And you said what? A. I said not, and I still think so.

Q. Having gotten your feelings that you had not been fairly treated in your discharge, what next did he say? A. He asked me if I wanted to appeal to Mr. Reed.

Q. He asked you if you wanted to appeal to Mr. Reed from your discharge, is that it? A. Well, tell him about it, yes.

Q. That is the next thing that Bennett asked you —if you wanted to appeal to Mr. Reed from the discharge that had already taken place? A. Yes, sir.

Q. And what did you say? A. I said that I wanted to see Mr. Reed and tell him the circumstances which had occurred and explain to him my side of the story.

Q. And then what next occurred? A. I came to Mr. Reed and did exactly that.

Q. This was all the same conversation? A. That's all there was to the conversation.

Q. You haven't told us a word about this paper. A. Oh, he then—yes, of course, that is what we are coming to. I have told you.

Q. I want to hear again what he said. A. He asked me—or rather, he said that a document was wanted, and I am not sure whether he mentioned Henrietta Rose's name or not, but he did ask me if I knew of any impropriety of Dr. Harman, which I do not, with any young girl.

Q. And you say not, and you told him then, that you did not, is that right? A. Yes, sir.

Q. And then what was said about this document? A. I just told you that he asked me if I knew of any document concerning it or any impropriety of action.

Q. You told him you knew of the document right then and there? A. Yes, I told him I knew of the document which had been destroyed and what had happened to it.

Q. When Mr. Bennett spoke to you or made inquiry of you, you said you knew of nothing wrong, or something of that kind. What was it he said?

A. Any impropriety of action; this is the sense of it, I don't remember the exact words.

Q. I don't expect you to repeat the exact words. A. All I know of any impropriety of actions of Dr. Harman toward any young girl. I told him I did not, and I do not.

Q. And the next question was in reference to the document? A. Yes, sir.

Q. Did he mention any name? A. I told you that I thought Henrietta Rose's name was mentioned. Not aside from that.

Redirect-examination by Mr. Vanderbilt:

Q. Have you filed a formal complaint with the Supervisor about your discharge? A. I wrote him a letter, yes.

Q. And that is still pending? A. (No answer).

Q. There has been no action on that that you know of? A. No, sir.

Adjourned to Monday, December 17, 1928, at ten o'clock.

THIRD DAY.

Monday, December 17, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

CHARLES WALZER, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Walzer, what is your business? A. I am a painter at the Sanatorium.

Q. How long have you occupied that position? A. Five and a half years.

Q. Do you recall an incident concerning a car on Mountain Avenue in the Fall of 1926? A. Yes, sir.

Mr. McCarter: What specification is that, please?

Mr. Vanderbilt: No. 10.

Q. Will you tell the Supervisor what you know about it?

Mr. McCarter: We object to this as being utterly outside of the scope of this investigation.

The Supervisor: We will have to overrule that objection as we did the other concerning the other parking episode.

Q. Tell us what you know about it? A. I was riding over Mountain Avenue one night and I had a flat shoe and I pulled in to the lefthand side of the road and I was fixing it and pretty near through when a car pulled up about three or four hundred feet in back of me. I was there for a little while. There was an officer came along and went to this car. I don't know what he said, but he came around the front and put the headlights on, and I happened to look, and Dr. Harman came to the front with him. After awhile there was a young lady came there, too.

Q. To the front of the car? A. To the front of the car, yes, sir.

Q. Did you recognize Dr. Harman? A. Yes, sir.

Q. Who was the young lady? A. I didn't identify her.

Q. Who was the officer? A. Why, I think the officer was Johnson; I am not sure about that.

Q. What kind of a car was that? A. Packard; one of them club coupes.

Q. Do you know whose car it was? A. Mrs. Harman's, I believe.

Q. Did the car have any lights on on this occasion when you saw it— A. (Interrupting). No, sir.

Q. (Continuing) Until the officer came up? A. No, sir.

Cross-examination by Mr. McCarter:

Q. Where was this, Mr. Walzer? A. Mountain Avenue, North Caldwell.

Q. Mountain Avenue, North Caldwell? A. Yes, sir, I believe it is North Caldwell.

Q. How far from the Sanatorium? A. Why, I should figure about two and a half miles.

Q. You had a flat tire? A. Yes, sir.

Q. What time of day was this? A. It was at night time.

Q. What time? A. Well, it must have been between—about between twenty after eleven and one o'clock.

Q. Between eleven and one? A. Yes, sir, between eleven and one.

Q. That is as near as you can come to it? A. Yes, sir.

Q. What sort of a car was this? A. Mine was a Durant.

Q. And you drove up to the curb to stop and fix your tire? A. Yes, I drove up to the lefthand side of the road.

Q. How did you happen to drive up to the lefthand side of the road? A. It was a left tire and I didn't like to stand in the middle of the road changing a tire.

Q. And your lights were burning? A. Yes, sir.

Q. Rear and front lights? A. Yes, sir.

Charles Walzer—Cross.

Q. How long were you there fixing the tire? A. I should judge twenty-five minutes or a half hour.

Q. And you had got it fixed? A. Yes, pretty near.

Q. After you had stopped a car stopped behind you? A. After awhile.

Q. Pretty soon afterward a car stopped behind you? A. Not directly behind me.

Q. Where was it? A. About three or four hundred feet in back of me.

Q. On the left or right-hand side of the road? A. On the left.

Q. It was behind you. A. Yes, sir.

Q. How far behind you? A. Three or four hundred feet.

Q. Did you measure it? A. I did not.

Q. Did you go up to it? A. I did.

Q. When it came up did it have any lights on? A. I didn't know it was there until it stopped.

Q. How did you know it was there when it stopped? A. I heard the brakes.

Q. You didn't hear the motor before you heard the brakes? A. I didn't hear the motor, no, sir.

Q. So when you heard the brakes and looked around you saw a car there? A. Yes, sir.

Q. It was too far to recognize anybody then, wasn't it? A. No, I couldn't recognize anybody then.

Q. How was it, then, that you did recognize anybody? A. After they got done talking to the cop they both walked out to the front—

Q. Talked to whom? A. To the police officer.

Q. When did the policeman come along? A. When did the policeman come along?

Q. Why do you repeat my question? A. I don't understand you.

Q. When did the policeman come along? A. I don't know when he came along; he came along.

Q. Before you got your car fixed? A. Yes, sir.

Q. In the same direction they came from? A. What?

Q. Did the police officer come from the same direction that they had come from? A. Yes, sir.

Q. And he didn't stop then, but he came on to you? A. No, he stopped there first.

Q. And then he came on to you? A. Yes, sir.

Q. Who was that officer? A. I have an idea it was Johnson.

Q. What makes you think it was Johnson? A. I didn't know his name.

Q. Did you have some conversation with him? A. No, for a little while, yes, sir.

Q. You did have a conversation with him? A. I did.

Q. Then what next occurred? A. Nothing occurred; he just went on and I went on myself.

Q. You say you saw Dr. Harman? A. I did.

Q. Three hundred feet off? A. Yes, sir.

Q. In the dark? A. Well, it was a light there; it was just a ways back on the other side of the street, you know.

Q. I don't know anything about it. A. I am telling you.

Q. There was a light there, then? A. Yes, sir.

Q. Right near there? A. Well, on the other side of the street, maybe seventy-five feet away.

Q. What kind of a light was that? A. A regular globe light.

Q. An electric light? A. Yes.

Q. An arc light or an incandescent light? A. I don't know what you call it.

Q. You don't know the difference. There was an electric light between the Doctor's car and yours? A. Seventy-five feet behind the Doctor's car.

Q. So it was on the other side of the road from the Doctor's car? A. Yes, sir.

Q. Where was the Doctor when you say you recognized him by means of a light seventy-five feet behind his car on the other side of the road, being in a car that you say was 300 feet away from you?

Mr. Vanderbilt: I object to that, because the witness did not testify to that effect.

Mr. McCarter: I understood him to say that. Suppose you tell us what you think he testified to?

Mr. Vanderbilt: He said he saw the doctor in front of his lights of his car, as I understood it.

Mr. McCarter: If counsel wants to put words in the witness' mouth, all right.

Q. What did you say were the circumstances which you saw the doctor? A. I saw him when he came out in front of his car and the lights were switched on.

Q. They were switched on on his car? A. Yes, sir.

Q. What was he doing? A. I don't know whether he was looking at his licenses or what.

Q. Looking at his own license? A. The policeman was there with him.

Q. Did the policeman go back to him? A. Go back where?

Q. To him after he came to you? A. No, sir,

he stayed there until he got through with him and then he came on to me.

Q. Then you knew who it was before the policeman talked to you? A. I did.

Q. Did the young lady come in front of the car, too? A. She came and stood alongside.

Q. They both came out of the car and then both stood there in front? A. He got out first and then she came out later.

Q. They stood there with the lights burning? A. Yes, sir.

Q. And the policeman there? A. Yes, sir.

Q. And you were 300 feet away? A. Yes, sir.

Q. When was this? A. Why, it was either the last week in September or the first week in October; I don't know the exact date.

Q. What year? A. 1926.

Q. Did you make a note of it? A. What do you mean, did I make a note of it?

Q. You can't understand that either? A. No, sir.

Q. Did you make a note of this incident? A. I can't understand what you mean.

Q. Did you make any memorandum of this? A. I did not write it down, no, sir, it wasn't necessary.

Q. When did you first speak of it? A. When did I first speak of it?

Q. Repeat the question. A. That is my privilege, isn't it?

Q. Certainly. A. I guess it was an X-ray.

Q. To whom? A. Mr. Water, a carpenter up at the Institution.

Q. When did you next speak of it? A. I don't think I spoke of it again.

Q. Not at all since? A. Yes, I spoke with Mr. Reed about it.

Q. When was that? A. Five or six weeks ago.

Q. Didn't Mr. Bennett ask you to come up and talk about it? A. No, sir.

Q. Where did you see Mr. Reed? A. Mr. Reed asked me to come down and see him.

Q. This policeman when you first saw him was where? A. In front of Dr. Harman's car.

Q. You don't know where he had come from? A. No, sir.

Q. How soon did you see the policeman at Dr. Harman's car after Dr. Harman had stopped? A. Maybe ten minutes—five or ten minutes after.

Q. Do you know Mr. Bennett? A. Yes, sir.

Q. You say you have not spoken to him at all about this matter? A. I have talked it over a couple of times.

Q. Yes, I thought so. A. We talked it over just like anybody else.

Q. Bennett is the radiologist at the Institution, isn't he A. He is the X-ray man; I don't know what else he is.

Q. When did you speak to Mr. Bennett? A. I think it was the day after I had been down to Mr. Reed's office.

Q. Before you went down? A. After I went down.

Q. Did Bennett tell you that he had spoken to Mr. Reed about it and he asked Mr. Reed to send for you or words to that effect? A. No, he didn't tell me anything.

Q. What did you tell him? A. What I told Mr. Reed.

Q. How did you happen to tell him? A. We

have been working up there and we know each other pretty well.

Q. You say you spoke to him two or three times. What else did you say? A. I said I spoke to him a couple of times.

Q. You said you did speak to him a couple of times. When did you sqeak to him? A. I guess I spoke to him a couple of times, but I can't remember when.

Q. Were you going to the Institution that night? A. No, sir.

Q. Going away from it? A. Yes, sir.

Q. You were not pointed toward the Institution, then? A. No, sir.

Q. Did you just come from the Institution? A. Yes, sir.

Q. Where had you been? A. I had been working.

Q. Working at night? A. Yes, sir.

Q. Painting? A. No, sir.

Q. What? A. Special officer.

Q. You were employed at the Institution at other employment? A. Yes, sir.

Q. That was not quite right, was it? A. Why not?

Mr. Vanderbilt: I object to that.

Q. The Doctor has reprimanded you from time to time because he thought you were not doing your work right, isn't that so? A. Not to me.

Q. To anybody else? A. He tried to a couple of times.

Q. What have you heard about it? A. Mr. Barkhill asked me a couple of times.

Q. What did he ask you? A. He asked me

what was the matter and I said I didn't know anything about it.

Q. Did Mr. Burke ever speak to you about your work? A. No, sir.

Q. And the Doctors complained about it? A. He said he complained but not about the work.

Q. Burke did? A. Yes, sir.

Q. He said the Doctor talked about what? A. Coming in late, ten or fifteen minutes, or going away ten or fifteen minutes early.

Q. Cutting off both hands. A. You can take it either way.

Q. When was that? A. I don't know.

Q. Was there any other complaint that anybody else said the Doctor had against you? A. Not that I know of.

Redirect-examination by Mr. Vanderbilt:

Q. At the time you first saw this car in back of yours were or were not the lights on it? A. They were out when I first saw it, and then they put on the headlights.

Q. Did you see the officer who was there? Could you identify him? A. I believe I could; I am not sure of that.

Mr. Vanderbilt: Is Mr. Johnson in court?

Q. Is that the officer standing up back there (indicating)? A. Well, he looks a little different from in the uniform; I think it is, though.

HAROLD G. JOHNSON, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Johnson, what is your business? A. I am a carpenter by trade.

Q. Were you in 1926 a police officer in one of the towns of West Essex? A. In North Caldwell Township.

Q. And you still hold that position? A. Yes, sir.

Q. Have you just heard the testimony of Mr. Walzer? A. Yes, sir.

Q. Do you recall that incident? A. No, sir.

Q. You don't recall any such incident? A. No, sir.

Q. Did you ever stop Dr. Harman while he was in a car on Mountain Avenue? A. No, sir.

Q. For parking without lights? A. No, sir.

Q. Whom have you talked to about the case? A. Nobody at all.

Q. You have not talked to Welch about it, have you? A. No, sir.

Q. You swear to that? A. Yes, sir.

Cross-examination Waived.

SARAH RUSSO, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Miss Russo, what is your position at the Essex Mountain Sanatorium? A. Clerk-typist.

Q. Have you charge of the records there? A. Yes, I have.

Q. Have you with you the record relating to the case of Miss Henrietta Rose? A. I have.

Q. May I see it? A. Yes, sir.

Q. Are these the records you are handing me produced from the file of the hospital? A. Yes.

Q. And are they the only records relating to the case of Miss Rose? A. Yes.

Q. Did you have charge of these records, personally? A. Yes, I have.

By Mr. McCarter:

Q. How long have you been there? A. About a year and a half; a little over.

Q. Who was your predecessor? A. I don't believe they had anyone before me in the position I am now holding.

Q. Do these records only cover your time? A. No, in a period before I came.

Q. Before, too? A. Yes.

By Mr. Vanderbilt:

Q. Can you tell me what these three separate folders relate to? I mean what are the different records? A. There are three separate admissions.

Q. Will you give them to me in chronological order?

Mr. McCarter: If this pre-dates her service there may we see them?

Mr. Vanderbilt: Certainly.

Mr. McCarter: Just the ones that were made before she was there.

(After examining papers.)

No objection that she did not keep them or that they were made before her time.

Witness: Do you want the dates?

Mr. Vanderbilt: Yes, please, these records are all the records there are, Miss Russo?

A. Yes, sir.

Mr. McCarter: About Henrietta Rose.

Mr. Vanderbilt: Yes.

A. She was first admitted October 26, 1921.

By Mr. McCarter:

Q. As a patient? A. Yes, and discharged May 25, 1922. That was the first admission. The second admission was admitted May 7, 1925, and discharged May 14, 1925.

Q. As a patient again? A. Yes. And then the last time she was admitted June 21, 1927, and she died November 4, 1928.

Q. On each of those occasions was she suffering from tuberculosis? A. On the second admission it was not tuberculosis; it was endometritis. That was the diagnosis on the second admission.

By Mr. Vanderbilt:

Q. May I see the papers relating to the second admission? A. Yes, sir.

Q. I notice that under the sheets, that all these sheets bear the No. 2535. What does that relate to? A. The case number.

Q. And I notice that under the words, "Essex Mountain Sanatorium" the various sheets are numbered. What do those various printed numbers relate to? A. There are fourteen sheets in a complete chart, and each sheet is numbered.

Q. Will you go through those and tell us whether that set is complete? A. The No. 2 sheet is missing from that.

Q. What does that relate to? A. The Social Service History of the patient.

Q. I notice we skip also from sheet 5 and sheet 8. What are sheets 6 and 7? A. 6 is the examination sheet on admission and 7 is the weight sheet.

Q. Where are those sheets? A. I don't know; I couldn't tell you.

Q. Did you ever have them? A. No.

Q. I notice sheet No. 12 is missing. What does that contain? A. No. 12 sheet is only for patients that are out in the shacks. The hospital patients do not have the No. 12 sheet.

Q. So that would not be in this case because it was a hospital case. A. Yes, sir.

Q. Do you know what has happened to sheet No. 2? A. It may not have been made out.

Q. And sheets No. 6 and 7? A. I couldn't tell you about that.

Q. What did you say they relate to? A. No. 6 would be examination on admission and discharge and 7 would be the weight chart.

Q. Isn't there also in each of these a final sheet? A. That is sheet No. 14. The back of sheet No. 14 is the final summary sheet.

Q. Do you know what Miss Rose did in between the first discharge and the second admission? A. Between the first discharge and the second admission?

Q. Yes. She was discharged on May 25, 1922, and readmitted May 7, 1925. A. I don't know.

Q. Were you there at the time? A. No, I was not.

Q. Can you tell us by whom sheet No. 1 was prepared? A. No, I couldn't tell you.

Q. Or when? A. I am sorry I can't; I wasn't

there at the time and I don't know who typed them up before I came.

Q. Who ordinarily prepares such sheets as that? A. Now I do.

Q. From what source do you get the information for them? A. From the admission book of the admitting nurse.

Q. Have you that book with you relating to that case? A. No, I have not.

Q. Can you get it? A. Yes, it is at the Institution.

Q. In other words, this is merely a transcript in the typewritten form from some original memorandum prepared by a nurse. A. Yes, sir.

Q. Will you produce the original source from which this sheet is taken and how? A. Yes, sir.

Q. Are there any other records of a similar nature from which this record was prepared which you have not produced? A. I don't think so.

Q. Relating to sheet No. 3, by whom was that prepared? A. Mrs. Englebert, the admitting nurse.

Q. Is she here today? A. Yes, she is.

Q. How is this sheet filled out? From what information?

Mr. McCarter: That was before she was there.

Mr. Vanderbilt: I mean the usual practice.

Mr. McCarter: I object to her testifying to what is the usual practice. That was made out before.

Q. Has there been any change in the practice

since you have been there? A. No, sir, I don't think so.

Q. In the period that you have been there from what is sheet No. 3 made up?

Mr. McCarter: I object to that. As I understand you, you are speaking of the first admission.

Mr. Vanderbilt: The second admission.

By Mr. McCarter:

Q. That was before you were there? A. Yes, sir.

By Mr. Vanderbilt:

Q. I am asking at the present time how is sheet No. 3 made up? A. At the present time it is made out by the admitting nurse taken from the information given by the patient himself.

Q. And made directly on this sheet, or is there some other original memorandum? A. No, sir, this is the original memorandum.

Q. Sheet No. 3? A. Yes, sir.

Q. I show you sheet No. 4 and ask you if you can tell us in whose handwriting that is.

Mr. McCarter: Is this the first or second admission?

Mr. Vanderbilt: The second admission.

Mr. McCarter: Before she was there, as I understand it.

A. I can't tell.

Q. You can't tell? A. No, sir.

Q. I show you sheet No. 5 and ask you in whose handwriting that is. A. Numbers 4 and 5 are made out by the same person.

Q. In the usual practice, at the present time, who would make out sheets 4 and 5? A. The Doctor to whose ward the patient had been admitted.

Q. In the present practice does he make it out directly on these sheets or does he have some other memorandum? A. He makes that directly on the sheets.

Q. Can you tell us from this record in whose ward Miss Rose was on her second admission? I mean, can you refer me to the part of the record that shows that? A. The staff card.

Q. That will tell? A. This is the old staff card. That would not tell it. We have a new form now, but that old one does not show it.

Q. It does not tell in whose ward the patient was admitted? A. No, sir, I am sorry.

Q. And you don't recognize the handwriting on pages 4 and 5. A. I think it may be Dr. Bennett.

By Mr. McCarter:

Q. That isn't our old friend Harold. A. No, Dr. Bennett.

By Mr. Vanderbilt:

Q. Has Dr. Bennett been there all the time that you have been there? A. Yes, he has.

Q. You are quite familiar with his handwriting, aren't you? A. Yes.

Q. Can you tell us whether sheets 4 and 5 are in his handwriting? A. I said they were.

Q. You said you thought they were. A. They are.

Q. Then why didn't you tell me that when I first asked you that? A. It was before I came there.

Q. But it is the same handwriting of Dr. Ben-

nett both before and after your advent. A. I looked at it more closely the second time.

Q. But you are sure it is his handwriting? A. Yes, sir, quite sure.

Q. Is there any doubt about it? A. Dr. Bennett could tell you himself better than I could.

Q. You see his handwriting every day. A. Not every day.

Q. Quite often. A. Yes, sir.

Q. Is it like any other doctor's handwriting? A. No, sir.

Q. These sheets are not made by the nurses, are they? A. No, sir.

Q. Then there is no doubt in your mind that it was made by Dr. Bennett, is there? A. I guess not.

Q. Can you tell us who wrote sheet No. 8? Do you want to compare that with 5 and 6?

Mr. McCarter: I don't thing he is a handwriting expert.

A. That is Dr. Bennett's again. He has his initials there.

Q. Can you tell us who prepared sheet No. 9? A. No, I couldn't.

Q. In the regular course at the Sanatorium since you have been there, who would prepare sheet No. 9? A doctor or a nurse? A. I have been doing that.

Q. From what records? A. From records sent down by the laboratory.

Q. Have you the original records at the Sanatorium? A. I don't know whether they have been as far back as 1925.

Q. Will you look them up and bring them back tomorrow? A. Yes, sir.

Q. I show you sheet No. 10 and ask you if you know who prepared that. A. No, because that is taken care of out on the wards.

Q. By one of the nurses? A. Yes.

Q. The nurse in charge, presumably? A. I presume so, I don't know exactly.

Q. Directly on the sheet is some other written memorandum of it? A. I couldn't tell you; I don't know about the sheets that are out of the wards.

Q. Is there anything in this record to show what nurse had charge of the case? A. No, I don't believe so.

Q. Nothing in the record to show what nurse was in charge of the patient? A. I don't think so, unless it would be on twelve.

Q. 12 is missing. What did you say that 12 was ordinarily? A. I meant 13. 12 is the exercise sheet.

Q. Does it appear on 13? A. No. I guess they don't put the numbers down. I am not familiar with the hospital records. I just file them.

Q. Do you know who prepared sheet No. 11? A. No, I do not. That is also taken care of out on the ward.

Q. Do you know whose initials those are there (indicating)? A. Dr. Harman.

Q. Do you recognize those initials as being in Dr. Harman's handwriting? A. Yes, sir.

Q. Do you recognize the whole page as being in his handwriting? A. I think so; yes, it is.

Q. What did you tell me that sheet 6 was? A. Sheet 6 is the diagnosis, on admission and on discharge.

Q. And the 7th? A. 7 is the weight chart.

Q. And 12 you said was what? A. I believe it

is called the exercise sheet and is only in the case of pavillion patients.

Q. I show you sheet No. 13 and ask you if you can tell us in whose handwriting or handwritings that sheet is. A. No.

Q. In the ordinary course of the hospital practice since you have been there, who would prepare this sheet?

Mr. McCarter: Which sheet?

Mr. Vanderbilt: 13.

A. The nurse on the ward—I think she does anyway. I will tell you, I am not familiar with the ward sheets. I just file them, so I don't know anything about them.

Q. I show you sheet No. 14 and ask you who prepared this sheet. A. The writing is that of Dr. Bennett.

Q. I suppose in making that statement you are not including the name or the notation at the bottom of the page? A. No, sir.

Q. Do you know whose handwriting that is? A. Miss Englebert's.

Q. Looking at the back of the sheet 14 in whose handwriting or handwritings is that? A. The signature is Dr. Bennett and the handwriting is Dr. Harman's—the note on the bottom.

Q. I show you this card in back of the record and ask you who prepared that? A. That is usually prepared by the person who prepares the first sheet, so the person who typed up the first sheet would have typed that.

Q. You do that work now? A. Yes.

Q. From what instrument or instruments was the data there set forth on this card obtained? A.

The admission date is taken from the admitting nurse's admitting books.

Q. And what other data is on it? A. The discharge data, after discharge, is taken from the chart.

Q. Taken from which chart? Which page? A. It is written up on a sheet by the admitting nurse and it is written up by the typist.

Q. Is that sheet there? A. No.

Q. What do you call that sheet? A. It is just a sheet that you keep yourself. It has no technical name.

Q. Is that sheet preserved? A. I believe she keeps them; she does now. I don't know whether she did before.

Q. That is a sheet prepared by the admitting nurse? A. Yes.

Q. At the conclusion of the case? A. Yes.

Q. Are they kept in a separate case at the Institution? A. Yes, she keeps them herself.

Q. You don't have custody of those? A. No.

Q. Mrs. Englebert would have those? A. I think so.

Q. Is Mrs. Englebert here? A. I believe she is.

Q. Is it unusual for any of these pages to be missing, like 6 and 7, especially? A. Yes, it is, unless, of course—well, in her second admission she was not examined for tuberculosis, so possibly it had not been made out.

Q. I mean, it is unusual for a diagnosis sheet to be missing, isn't it? A. Yes, sir.

Q. Is there any record here of any diagnosis of the case of this patient? A. This is the examination, No. 8 sheet, but I don't know whether it would be the diagnosis on admission. Usually it would not.

Q. There has been testimony here of an operation performed on May 8th. This paper you are referring me to is dated May 10th. Will you look through that and tell me whether there is a diagnosis before the operation? A. No, there isn't. It just says here "diagnosis of endometritis".

Q. What page is that on? A. On the back of the last page.

Q. That is the page that is prepared at the completion of the case. A. Yes, sir.

Q. And not the original record, is it? A. No.

Q. So there is no record of a diagnosis before the operation. A. Evidently not.

Q. And therefore no record as to whom may have the diagnosis? A. No, sir.

Mr. McCarter: I don't think you are fair about that. You say this operation was on May 8th. There is no evidence of that. The operation said to have been (page 235) in the record in May, 1925.

Mr. Vanderbilt: I am not taking it from the record but from the back of page 14 of the institution notes.

Mr. McCarter: You are speaking of something that is in the record. You have not offered these in evidence as yet.

Mr. Vanderbilt: I will offer them. I was not trying to be unfair, Mr. McCarter.

Mr. McCarter: I don't know whether you are or not. You say you are not and I will take your word. You are taking something for granted that has not been proved.

Mr. Vanderbilt: I will offer in evidence pages 1, 3, 4, 5, 8, 9, 10, 11, to pages No. 13, the front and back of page 14 and a card

dealing with the second admission of Miss Henrietta Rose and I ask to have them marked.

(The same are received in evidence and marked as Exhibit C-3.)

Q. Referring to the back of page 14 of this Exhibit C-3, is the statement over Dr. Bennett's signature "uterine curettage, May 8, 1925." I ask you if this record contains any diagnosis of the case prior to the date of the operation here given, May 8, 1925? A. No, excepting that the diagnosis endometritis is made on admission that is shown; that would be the only diagnosis.

By Mr. McCarter:

Q. And that is on 7, isn't it. The admission. A. That is on the back of the sheet—

Q. What is the date of the admission? A. May 7th.

Q. And the same day you have shown the word "endrometritis." A. Yes, sir.

By Mr. Vanderbilt:

Q. This sheet that you are now referring to is not the original record but is made up from the entering nurse's record. A. Yes.

Q. Is there anything on that page or anywhere else in the record to show who made the diagnosis? A. No. The diagnosis is not in the admission book; the diagnosis is filled in after the discharge.

Q. The diagnosis on page 1 is filled in after the discharge? A. Yes.

Q. Have you anywhere a record made prior to the operation as to what the diagnosis at that time

was and what doctor or doctors made it? A. I don't find any in here.

Q. What is your practice at the present time? Have you anything in the present practice that shows a diagnosis that shows operation? A. I don't know; I couldn't say.

Q. At the Sanatorium do you have any record which would show whether or not this case of Miss Henrietta Rose was ever presented to the staff of the Sanatorium? A. It has a question mark here (indicating).

Q. At the bottom of page 1? A. Yes.

Q. It says "presented at staff meeting" and then a question mark. What does that mean? A. I don't know.

Mr. McCarter: I suppose it speaks for itself.

Q. And you have all the records there are relating to this case? A. I think so. I have all the cards, but the information that is in the cards is on the chart.

Q. What cards? A. I haven't the last admission—

Q. I mean dealing with the second admission that we are now talking about which commenced on May 2nd, 1925. Have you all the records relating to that? A. As far as I know they are supposed to be here.

Q. All those records are kept in your charge. If you had any other records you would have them, wouldn't you? A. Yes, sir.

Q. No one would take any records out without your knowing about it? A. They are not supposed to.

Q. No one could, could they? A. In my absence

the chart could be taken out. The doctors have access to the files.

Cross-examination by Mr. McCarter:

Q. Can you tell us when it was that you first went to the hospital as an employee? A. May 10, 1927.

Q. So that you were there until after Henrietta Rose had been admitted the second time as these records show. A. Admitted and discharged.

Q. Do you know whether she had been an employee in the Institution? A. Yes.

Q. Don't you know as a matter of fact she had been for some time previous to this so-called admission an employee of the Institution? A. I don't know that, no.

Q. You have told us that sheet No. 6 is missing and I think you called that the examination on admission. I have taken from this large file (indicating) which you have not been examined about a sheet No. 6, and I ask you to look at it and tell me whether that is the character of sheet No. 6 you have told us about. A. Yes, sir.

Q. It is called a graphic summary and gives a picture of the lungs and where they are affected, if they are affected. A. Yes, sir.

Q. Confined entirely to the lungs. A. Yes, sir.

Q. You have also told us that sheet No. 7 was missing, and you called that the weight chart. Look at what I hand you which I have taken from the large file. Do you know whether that is like the weight chart you have referred to? A. Yes, sir.

Q. And that shows the weight day by day? A. The weight of tubercular patients, yes, sir.

Q. If a patient at a given time is not being treated for tuberculosis there would be no occasion for the use of sheets Nos. 6 and 7? A. I don't know about the weight.

Q. But about 6, there would be no use for that. A. No, sir.

Q. 7 shows the weight of the patient? A. Yes, sir.

Q. I am showing you synopsis sheet No. 1. In what day of the history of a given case is sheet No. 1 made up? A. The admission record is made the day the person is admitted.

Q. Complete? A. No, sir, it is only partially filled out.

Q. To what extent is it not filled out? A. The name, address, religion, the relative or friends, position, admission date, the weight previous to admission, the sputum previous to admission, hemptosis previous to admission, and admitted by.

Q. What is put in afterward? A. On discharge the diagnosis on admission is put in, the discharge date, condition on discharge, the X-ray diagnosis, the anatomcal diagnosis, the general condition on admission and discharge, considered, duration of disease: On discharge, hospital days; weight on discharge; sputum: admission, during residence and discharge; hemoptosis: during residence; fever: average, maximum on admission and average, maximum on discharge.

Q. Where is the information from which these later items are obtained? A. Well, it is all taken from the chart itself, but it is made out on a smaller sheet so that I can just keep it on the first sheet.

Q. What becomes of the first sheet? A. Mrs. Englebert the admitting nurse, keeps it and files it.

Q. Is it not a fact that when every patient is admitted a temporary diagnosis is made? A. I don't know.

Q. How many doctors are there? You mentioned that it is the doctor to whom the patient is assigned. How many doctors are there? A. You mean now?

Q. All were there in 1925 when you first went there. A. I wasn't there in 1925.

Q. I mean in 1927 when you went there? A. There are three staff doctors—four staff doctors.

Q. Who were they? A. Dr. Bennett, Dr. Lauterborn, Dr. Eastwood and Dr. Ivy.

Q. And they each had a ward under their charge? A. They each had a certain section of the hospital excepting Dr. Bennett.

Q. And he didn't have anything? A. Why—

Q. No. Where are these records kept. These records you produce, are regularly kept in whose custody and where? A. They are now kept in the file in my office.

Q. You say the doctors have access to them? A. Yes, they do.

Q. Has Mr. Harold Bennett access to them? A. No, excepting through me.

Q. Did his nurse come to you recently and get them for him? A. About two weeks ago, I should say—before that—the first time. It was in November right after the death of Henrietta Rose.

Q. How soon after Henrietta Rose died? A. I should say about a week or more.

Q. She died the 4th. Apparently that is the date from your records. A. Yes, sir.

Q. About a week or so after that what occurred about Mr. Bennett, not Dr. Bennett. A. The X-ray nurse came for them and I gave them to her.

Q. What did you give her? A. The whole package of them.

Q. All of them? A. Yes, sir.

Q. Including the small ones that has been offered in evidence? A. Yes, sir.

Q. How long were they in Mr. Bennett's possession? A. Just that date. I think they were brought back the same day.

Q. Did he again send for them? A. Yes, sir.

Q. When was that? A. About two weeks ago.

Q. Did he come himself or send his nurse? A. He sent his nurse.

Q. And again took them? A. No.

Q. What did he take? A. I didn't have them in the files.

Q. Where were they? A. I didn't know at the time.

Q. You didn't have them? A. No, they had been taken out of my file.

Q. Which had been taken out of your file? A. The three charts, all of them.

Q. I am talking about the complete file. Where was the complete file when Mr. Bennett asked for it the second time? Was it in your possession? A. No, it was not.

Q. The complete file that is offered in evidence, the small one, had been taken away by somebody? A. Yes, sir.

Q. So that you were not able to let Mr. Bennett have it? A. No.

Q. When did you get it back again? A. Last Friday—I beg your pardon; it wasn't Friday. It was last Wednesday.

Q. Did Dr. Harman have them? A. Yes.

Q. Do you know when he had taken them? A. No, I do not.

Q. And he brought them back to you? A. I let him know that I didn't have them when I got the subpoena.

Q. And then he gave them to you, is that right? A. Yes.

Redirect-examination by Mr. Vanderbilt:

Q. Is there any record or any statement in the record as to who performed the operation or who were present at this operation of May 8, 1927, while it was performed? A. I don't know. I don't know where such a record would be. I have never come across any.

Q. There isn't any such record there, is there? A. No.

Q. In the cases other than T. B. cases is there a different kind of sheet substituted for No. 6, or do they use regular ones; or is there a different kind for the patients that go to the hospital and a different one for the wards and pavilions? A. We have never had any patients that have had any other than T. B.

Q. Haven't you had patients that went to the hospital to have a leg set or anything of that kind? A. They have never been admitted as patients.

Q. Then the admission of a patient for an operation like this is unusual in your experience? A. Yes.

Q. And there is nothing in the record which you can find which will tell who performed the operation or who were present during the operation? A. No, sir.

WILLIAM F. BENNETT, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Bennett, what is your position? A. Why, I am first assistant to the Superintendent at the Essex Mountain Sanatorium.

Q. How long have you occupied that position? A. Well, about a year.

Q. How long in all have you been connected with the Sanatorium? A. About five and a half years.

Q. And always in the capacity of a member of the staff? A. Yes, resident physician.

Q. And it is only within the past year you have been made first assistant to the Superintendent? A. Yes, about that time.

Q. Referring to the second admission of Miss Henrietta Rose on May 7, 1925, and her discharge seven days later on May 14, 1925, what did you have to do with the case, doctor? A. Why, I just saw her in the ward and probably took some of her history after the admission to the ward.

Q. Did you have anything to do with the diagnosis of the case? A. No, I had seen the case, but I had not made the final diagnosis myself.

Q. The patient had not been in your charge prior to the admission on May 7, 1925? A. Well, I think I saw her once or twice before her admission.

Q. Was there a staff meeting called at which you were present to discuss this case prior to or at the time of admission? A. Well, I couldn't say; I don't recall.

Q. Were you present at any such staff meeting? A. I can't just recall at the present time.

Q. Is there a record kept of the staff meetings? A. Well, no; not always; except on some cases which are discharged sometimes; we usually make out a sheet then.

Q. There is no regular record kept of staff meetings? A. No.

Q. And you haven't any recollection of being called to a staff meeting connected with this case of Miss Henrietta Rose which resulted in an operation on May 8, 1925? A. Well, I had seen the case with Dr. Harman, but I can't recall any staff meetings.

Q. Prior to the operation of May 8, 1925, did you examine the patient? A. I saw her and examined her, yes, externally.

Q. For tuberculosis? A. Well, she was having a temperature and complaining of pains in her abdomen and pelvis and some tenderness.

Q. How long prior to the operation of May 8, 1925, was that, doctor? A. Well, I don't think it was many days; probably three or four days.

Q. As a matter of fact, Miss Rose was employed in the Institution prior to this admission as a patient, was she not? A. Yes, she was.

Q. In what capacity? A. Well, she was a stenographer.

Q. Did she come to you, or how did you happen to be called in to treat her? A. Well, she was in bed in her room, and she had this temperature, and this pain, and I went up to see her.

Q. Can you fix the date of this visit that you made with respect to the operation of May 8, 1925? A. No, I cannot, but probably during the week previous to the operation.

Q. What examination, if any, did you make of

her? A. I made an examination of the chest at that time and of the abdomen. Of course, she had had pulmonary tuberculosis previously.

Q. She had had tuberculosis previously, but had been discharged on May 25, 1922; some three years previous? A. She may have been, but I don't think she was ever cured.

Q. I mean she was discharged and was retained as an employee there that time. A. Yes, she was.

Q. You say you examined her chest and abdomen. Did you keep any record of that examination? A. No, only mental.

Q. That, you say, you think was a week prior to the operation? A. Yes.

Q. Did you see Miss Rose again at all before the operation in a medical way? A. I don't believe so; I saw her once or twice; that was during the week previous or possibly a few days before the operation.

Q. Did you have any occasion on these subsequent visits to which you refer to examine her? A. No, not any further than I did the first time.

Q. Then you didn't examine her at all before the operation except this external examination you are speaking about, about a week before the operation. A. Yes, sir.

Q. Were you present at the operation? A. No, I was not.

Q. When did you first learn that there had been an operation? A. Well, I think the day that it was done; that morning.

Q. Before or after? A. No, the morning of the operation.

Q. Isn't it unusual, doctor, to have an operation without there being a consultation of the staff with

reference to it? A. Of course, we had spoken of the case, and the advisory board was called in for final diagnosis and treatment of the case.

Q. Who was called in? A. The advisory board.

Q. One of the doctors of the advisory board, you mean? A. Yes, sir.

Q. By whom was he called in? A. He would be called in by the Superintendent, Dr. Harman.

Q. You had nothing to do with calling him in? A. No, sir.

Q. And you don't know when he was called in? A. No, sir.

Q. Is there any record that you know of of any consultation between the Superintendent and the member of the advisory board you speak of, about this case? A. I don't know; I wasn't present.

Q. Do you know of any record of it? A. No, I don't know that there is a record.

Q. Do you know who was present at the operation of May 8, 1925? A. No, I do not; I couldn't tell you all that were there.

Q. Do you know who it was that diagnosed the case as endo metritris?

Mr. McCarter: If he knows.

Q. Do you know, I say? A. I suppose Dr.—

Mr. McCarter: Don't tell us your supposition. Let us have your knowledge, if you know it.

A. Dr. Brown and Dr. Harman.

Q. Do you know that of your own first hand knowledge or from what somebody else told you? Were you called in to that diagnosis? A. I was told about it.

Q. Afterward? A. About the time of the operation.

Q. Do you know when Dr. Brown was called in with respect to the case and with respect to the date of the operation? A. No, I do not.

Q. Or when he first diagnosed the case of Dr. Harman? A. No, I couldn't tell you.

Q. How long after the operation was it that you first saw the patient? A. Oh, that same evening or the next morning.

Q. You are not certain which? A. No, sir.

Q. I notice that Sheet No. 14, on the reverse side, bearing several typewritten lines is signed Dr. William F. Bennett. Is that your signature, doctor? A. Yes, that is my signature.

Q. How did you happen to sign that? A. Well, I was the doctor probably in charge of the ward at that time and in making up the final summary sheet, the doctor in the ward usually makes that up because he has been with the case. Following the operation or decease, he makes that up.

Q. But you had no first hand knowledge of the diagnosis, had you? A. Well, any more than I say.

Q. But you wrote that— A. Yes, at the time of the operation, I had; I had not made a diagnosis myself any more than the others.

Q. You made no separate diagnosis yourself. A. No, it was made with the other doctors that made the diagnosis. It was the final diagnosis made. The final diagnosis was made by excluding all the other diseases and operation was deemed advisable at that time.

Q. When you wrote on the back of page fourteen, "Diagnosis, endometritis, you merely put down what Dr. Harman and Dr. Brown had diag-

nosed it as? A. They would make the final diagnosis.

Q. But you had not seen the patient in a medical way to make an examination for a week before the operation and had made only an external examination at that time. That is correct, isn't it?

Mr. McCarter: A week?

Q. A week? A. During that week.

Mr. McCarter: That is a different thing. I understood you to say on your direct-examination you saw her the day before.

Witness: I said three or four days before.

Q. You couldn't, from that external examination, give this diagnosis, could you? A. Well, I wouldn't give a final diagnosis, no, sir.

Q. So this statement, "Diagnosis endometritis" over your signature does not represent your diagnosis, but the diagnosis you got from Dr. Harman or Dr. Brown. A. Well, yes; I agreed with them on the diagnosis.

Q. Did you make any separate examination that would lead you to that conclusion? A. No, only from the history of the case.

Q. In other words, you were making a diagnosis from the history? A. Yes.

Q. That would not be a fair way to operate on a patient, from the history, would it? A. It depends on the case.

Mr. McCarter: He didn't operate.

Q. I mean in this case. A. Of course, that was the diagnosis that was made finally.

Q. Made finally by whom? A. By Dr. Brown.

Q. I notice in the fifth line, in the typewriting, "Diagnosed, incipient." What does that mean? A. That is the very early stages of tuberculosis; it is an incipient form of tuberculosis; the very early stages of tuberculosis.

Q. Farther down, six lines from the bottom of the typewriting, "Uterine curettage, May 8, 1925." Where did you get that information from? A. I got that following the operation.

Q. From whom? A. I got that from Dr. Harman.

Q. You have no first hand information of that? A. No, I was not present at the operation.

Q. So these statements on the back of page 14 that I have referred to merely represent the formal report which you signed as the ward physician rather than your first hand knowledge of the case and those particulars. A. I was resident physician at that time and, of course, I didn't make the final diagnosis of the case.

Q. You made no examination of the case, did you, to determine whether or not she had a tumor? A. I didn't make a vaginal examination, no, sir.

Q. And that would be the only way that could be determined, preliminary to an operation, would it not? A. It would be the advisable way.

Q. That would be the only safe way, as a matter of fact, wouldn't it, Doctor? A. Yes, I will say so.

Q. A sheet number one has been referred to by Miss Russo as being partially filled out at admission and partially afterward. Did you have any occasion to give any information set forth on that sheet, or wouldn't that be in your course of duty? A. No, not on sheet one.

Q. Referring to sheets number four and five, is that in your handwriting? A. Yes, sir, it is.

Q. When were these sheets prepared? Before or after the operation? A. They were prepared after the operation.

Q. On the day which they are dated? May 10? A. Yes, sir, that's right.

Q. From what source did you get the information that appears on sheet four? A. Possibly from the patient herself. We usually get that direct from the patient.

Q. With reference to the last two lines, "Remarks." Where did you get that information from? A. Well, this was the probable diagnosis before the operation, but I got that direct from the patient.

Q. I notice the last two lines read, "Remarks" in print followed by "Operation, tumor, pelvis, and so forth," and that has been crossed out, and then after that, "No flu, no hernia." A. And no ischiorectal abscess.

Q. I notice in parenthesis the word "uterine tumor". A. Yes, sir.

Q. And "curettment May 8, 1925." A. Yes, sir.

Q. Endometritis. A. Yes, sir.

Q. Where did you get this information from? From Dr. Harman? A. The last I probably got from Dr. Harman, as to the operation; I was not present at the operation.

Q. I notice in both places references to tumor, pelvis and uterine tumor which were crossed out. A. That was the diagnosis previous; it might have been one of the two or three things.

Q. But this was on May 10, 1925, prepared two days after the operation and where you wrote in twice something with reference to a tumor you

crossed it out both times. Why was that? A. I probably wrote it down at that time and following the operation, not knowing what the diagnosis was at that time.

Q. And when you found out what the diagnosis was you crossed out tumor, pelvis and uterine tumor? A. Yes, sir.

Q. So these two were stricken out after you had obtained the information from Dr. Harman as to what the operation was? A. Yes, sir, I probably filled that out before I received the information.

Q. Where did you originally get the information from, Dr. Bennett, with reference to this uterine tumor? A. Well, on account of the condition and symptoms of the patient at that time.

Q. Where did you get the information that led you to strike those two words out? A. I got that following the operation, probably from Dr. Harman.

Q. Where did you get the information from which you put down, tumor pelvis, and so forth? A. That was the diagnosis before that until the final diagnosis. I didn't know the final diagnosis until that day.

Q. And when Dr. Harman gave you the final diagnosis, you struck them out? A. Yes, sir.

Q. What was the final diagnosis? A. Endometritis.

Q. There was no tumor? A. No, sir.

Q. What kind of endometritis was this? Acute or chronic? A. I think it was probably chronic condition.

Q. What type of chronic endometritis?

Mr. McCarter: If he knows. He did not make the diagnosis.

Q. Don't tell me if you don't know. A. I didn't make the final diagnosis.

Q. Do you know whether it was acute or chronic? A. Well, usually; very often in these cases with tuberculosis—

Mr. McCarter: Oh, no.

Q. I mean in this particular case. A. No, I wouldn't say.

Q. I notice on sheet four, on the third printed line from the bottom there is a reference to menstruation "Irregular." Does that mean prior to or subsequent to the operation? A. That was prior to the operation.

Q. I notice on sheet number three as given by the patient to the attending nurse in the handwriting of Mrs. Englebert on the seventh line from the bottom the word "mensis regular." Which is correct, or could they both be correct? A. They might both be correct.

Q. Just how could they both be regular and irregular? A. They might have been regular before they were irregular.

Q. You mean regular before the operation and irregular after? A. They were irregular before the operation.

Q. Is this sheet number four prepared before or after the operation? A. That is after the operation; it would have reference to the menstruation previous to the operation.

Q. But this sheet number three is dated May 7, 1925, and this gives the word "regular" whereas sheet number four prepared three days after the operation says "irregular." This sheet number three is prepared from information given by the patient, isn't it? A. So is the other sheet.

Q. Can they both be right? A. Well, they should not be at that time, but it was one of the conditions of the operation—irregularity.

Q. Did you see this sheet before the operation? A. I did not.

Q. You didn't have anything to do with the operation? A. No, I filled those out separately.

Q. You didn't have anything to do with the operation? A. No, sir.

Q. And you would not have been called upon to sign any of these papers or have anything to do with them except as ward physician? A. That's right.

Q. I am specially interested in the four words stricken out after the operation on information given to you by Dr. Harman, that is right, isn't it? A. Yes, sir.

Q. And from all you know from what he told you, there was no tumor there? A. I don't understand that it was.

Q. It was from Dr. Harman that you got the information which led you to fill in the bottom of page four? A. Yes, sir.

Q. And you have no knowledge of the type of endometritis, whether acute or chronic or which type it was? A. No, I think it was complicated by the tuberculosis; otherwise I don't know.

Cross-examination by Mr. McCarter:

Q. Doctor, you are not a surgeon, are you? A. No, sir; just minor surgery occasionally.

Q. Your regular occupation at the hospital is, of course, in connection with the tubercular patients? A. Yes, sir.

Q. That is what you are there for, and that is

your speciality? A. Pulmonary diseases.

Q. Now, it is in the regular course of events, the practice for the particular physician having charge of a particular ward, or of a particular section, to finally find out the data with reference to the patient in that ward? A. Yes, sir.

Q. Do they have many surgical cases up there? A. Not very many.

Q. There is an operating room? A. Yes, sir.

Q. Is Dr. J. Spencer Brown the head of the surgical board of the hospital? A. He was at that time.

Q. I meant he was at that time. A. Yes, sir.

Q. Who constituted the advisory board of surgeons at that time? A. They have a great many; I don't know as I recall them all, but he was one of the consulting surgeons.

Q. Henrietta Rose had been an employee of the Institution for some time prior to the 7th of May, 1925, when she had this particular sickness, hadn't she? A. Yes, she had been.

Q. She had been a stenographer? A. Yes.

Q. And you heard in your ward that she was there claiming a pain in her pelvis? A. I saw her in her own room previous to her admission into the ward.

Q. In her own room? A. Yes, sir.

Q. And she was complaining of a pain in her pelvis? A. Yes, sir.

Q. Did she say then that she had an unusual flowage? A. Yes, she was flowing irregularly.

Q. And she spoke of it at that time? A. Yes, sir.

Q. About how old was this girl? A. I imagine she was twenty and some years of age.

Q. Isn't it a fact that for a young girl of that

age having an irregular an excessive flowage, the natural diagnosis is that she either has a polypus, small tumor, or else has endometritis. A. Yes, sir.

Q. That would be the natural assumption? A. The natural supposition.

Q. What the facts are would be developed by the actual operation, wouldn't they? A. Yes, sir.

Q. Which of the two? A. Yes, sir.

Q. Do disturbances of that nature frequently or infrequently accompany tuberculosis complaints? A. They are very frequent.

Q. You first saw her with reference to this matter in her own room? A. Yes, sir.

Q. And she made this complaint? A. Yes, sir.

Q. And your idea, off hand, was that she either had a polypus or tumor or endometritis.

Mr. Vanderbilt: I don't think he testified to that at all.

Mr. McCarter: I think he did. I understood him to say that.

Q. Am I right or wrong? A. I saw the final diagnosis—

Q. I am not talking about the final diagnosis. A. It might be a polypus or tumor or endometritis.

Q. You knew enough about that, didn't you? A. Yes, sir.

Q. Do you know when Dr. J. Spencer Brown was called in? A. I do not, no.

Q. Do you know whether Elmore Hubbard of Montclair, the anestateist was at this operation? A. No, sir.

Q. He wasn't on the advisory board, was he? A. No, sir, not that I recall.

Q. Did you know, if you didn't see him before the operation, that Dr. Brown was going to attend to the matter? A. I did, yes, sir.

Q. How did you learn that? A. The same morning I believe.

Q. What morning? A. The morning of the operation.

Q. After the operation you were told by the persons who were present at the operation that it was a case of endometritis and so you entered it regularly in that way? A. Yes, sir.

Q. One of the things it was likely to be from the preliminary diagnosis, is that right? A. That's right.

Redirect-examination by Mr. Vanderbilt:

Q. That flow you speak of as being excessive, started when, to your knowledge? A. I couldn't say.

Q. Did you have any record of that? A. No, I don't believe so, except that she had been irregular for weeks previous.

Q. That is quite inconsistent with the patient's own statement to the admitting nurse on page three. A. This patient had been in bed for about two or three weeks previous to her admission to the hospital. I saw her the week previous.

Q. There is her own statement on an intimate fact of which she would have knowledge. A. Possibly she didn't know the condition.

Q. If she didn't know the condition, how could any physician tell? A. He could tell from the history that she was flowing and then stopping and then starting again.

Q. Wouldn't the patient have as much knowledge

of that as any physician? A. She should have.

Q. This flow that you speak of, you say it would be caused by a polypus or small tumor or endometritis? Is there any possible cause other than those? A. There might be quite a few other causes.

Q. The two causes of polypus or small tumor or endometritis do not exhause the possible causes of this excessive flowing, do they? A. No.

Q. What else? A. Fibroma, uterine tumor.

By Mr. McCarter:

Q. Fibroid tumor. A. Yes, sir.

By Mr. Vanderbilt:

Q. What else? A. Possibly

Q. What is that? A. An inflammation of the fallopian tubes.

Q. Are there any other causes for this excessive flow? A. I don't know, in her case.

Q. I don't mean in this particular case. What other causes could produce this excessive flow? A. It might be possibly pregnancy or something.

Q. Any other cause? A. No, I don't know of any other unless it be injury or something of that kind.

Q. It might be the result of an internal injury? A. Yes, sir.

Q. Either coincident with or unconnected with pregnancy? A. Yes, sir.

Q. In other words, the causes of this excessive flowing are not exclusively due to the polypus or small tumor or endometritis but might be due to any number of causes. A. Yes, sir.

Q. This page four was prepared two days after the operation, wasn't it? A. Yes, sir.

Q. At that time you had had a conference, had you not, with Dr. Harman, as to the patient who had been committed to your ward? A. Yes, sir.

Q. At that time you knew definitely what the operation had revealed, did you not? A. Yes, sir.

Q. What had it revealed? A. Well, it had not revealed anything, as I say, except endometritis, to my knowledge.

Q. If it revealed only endometritis, why did you strike out tumor pelvis and uterine tumor? A. That was done previous to my knowledge of what the operation revealed.

Q. You mean when you wrote this on May 10 you had not heard what the operation revealed? A. No, sir; I didn't learn of it at that time.

Q. When did you learn what the operation revealed? How long after May 10? A. It must have been three or four days after the operation that I got the history.

Q. Why did it take from May 8 to two or three days after May 10, which would make it the 13th or 14th, for you to learn from Dr. Harman what the operation actually revealed? A. I knew that the operation was a curettage, but I didn't learn what it revealed until a few days later.

Q. Why did you write down the reference to a tumor without knowing it was an actual fact? A. I put it down out of my own diagnosis until I found out the final diagnosis.

Q. But the time for diagnosis had passed on May 8. After that you didn't have to deal with any scientific guesswork; you had to deal with facts. Why did you put that down on May 10? A. I hadn't the history of the operation.

Q. Hadn't you talked to Dr. Harman of this patient? A. No, sir; he told me there had been a

curetment. I got that there had been a curetment and that was all. What it was for or what had been found, I didn't know at that time. The treatment would be the same, whatever had been found.

Q. So you put that down two days after the operation without having talked it over with Dr. Harman as to what had been found on performing the operation? A. Yes, sir; that's right.

Q. As a result of an operation for endometritis, doctor, is there any discharge or any animal body taken out as a result of the operation?

Mr. McCarter: I object. I don't think this witness is an expert. I don't believe he has ever performed an endometritis operation or ever been at one.

Q. Do you know, doctor?

Mr. McCarter: I object.

A. I do not, no.

Q. You don't know whether on an endometritis operation there are any scrapings? A. There are, of course; it is a curettage.

Q. Do you know whether or not in this case the scrapings or other material which was obtained as a result of the operation, were analyzed in the sanatorium laboratory? A. I couldn't tell you that.

Q. Isn't it the regular hospital practice at the Sanatorium to make that analysis? A. If it is necessary, yes.

Q. Isn't that required by the American Medical Society in all hospitals? A. I don't know that it is required; it is routine when necessary.

Q. And this was a rather unusual operation to

be performed at the Essex Mountain Sanatorium. A. It should be, yes.

Q. Is there any reason why there wasn't any such analysis?

Mr. McCarter: I don't know that he said there wasn't.

A. I don't know whether there was or was not at that time.

Q. Do you know now whether or not there was? A. No, I do not.

Q. And yet you were the ward physician in charge. Who would have charge of making such an examination? A. The clinical laboratory would.

Q. Under whose charge was that? A. I don't know whether Mr. Ryan was there at that time or not.

Q. And if there was such an examination in the laboratory there would, of course, be a report of it? A. Yes.

Q. And that would be in the record of the case here? A. It would probably be in the laboratory reports.

Q. That would not come here? A. No, probably not.

Q. And whose duty would it be in the case of an operation like this to send the specimens to the laboratory for analysis? A. That would be done from the operating room.

Q. Do you know of any other case in the period that you have been at the hospital that this type of operation has been performed? A. Not at the hospital.

Q. It has been customary to send all of these

cases down to the Mountainside Hospital, has it not? A. Yes, sir, to some other hospital.

Q. And this particular patient had not been a patient at the Institution for several years before the performance of this operation, is that correct? A. Yes, sir, I believe so.

Q. Do you know why the operation was performed at the Mountain Sanatorium? A. Well, due to being an employee there, I suppose.

Q. Have similar operations been performed, or operations of any nature been performed for employees? A. Employees have always been taken care of at the hospital if they cared to stay there.

Q. For a major operation? A. No, sir.

Mr. McCarter: Is it a major operation?

Q. Is it a major operation? A. I wouldn't consider it a major operation.

Q. How do you define a major operation? A. Well, I would say an abdominal operation, or anything of that kind. Curettage is not a very difficult operation.

Q. In opening the abdominal cavity, any operation of that sort is not a major operation. A. Yes, sir, that or an amputation.

Q. Wouldn't this be so classified? A. It would all depend—

Q. Depend on what? A. On what they would want to classify it. It is not a difficult operation.

Q. Appendicitis is a major operation, but it is not a difficult operation. A. It is a surgical case, of course. I am not a surgeon.

Q. How often are staff meetings held at Verona? A. We used to hold them every morning for some time.

Q. In what period? A. Ten or ten-thirty to eleven in the morning.

Q. How long did you have that practice? A. We haven't had it for some time.

Q. For how long? A. Until about a year ago we had these meetings.

Q. Up to a year ago there were staff meetings every morning? A. Yes, sir, almost.

Q. Was this particular case ever submitted to the staff? A. I can't recall it. There may have been, but I can't recall it.

Q. Who were on the staff in May, 1925? A. I think Dr. Lauterbern and myself were there at the time; I don't recall anybody else.

Q. If there were a staff meeting and an operation were recommended as a result of that meeting, there would be a record of it, wouldn't there? A. No, we never kept records of the staff meetings.

Q. Was there anybody else there besides yourself and Dr. Lauterborn and Dr. Harman at that time? A. Not to my knowledge; I don't recall at that time.

Recross-examination by Mr. McCarter:

Q. Doctor, you are a doctor and I am a lawyer. See if I am right about a certain idea. I understand that pregnancy stops the flow of blood and does not create it. A. There may be abortage and there may be a flowing during pregnancy too.

Q. Doesn't pregnancy stop flowing? A. Except an attempted abortion.

Q. If there has been some abortion there would be flowage? A. Yes, sir.

Q. Doesn't pregnancy stop it? A. Nearly always; there are exceptions.

Q. Isn't that one of the great signs, that the monthly periodic flowage ceases, and that is the first indication that the person is pregnant? A. Yes, sir.

Q. And it continues so until she is relieved of the infant either by premature birth or else by actual birth in proper time. A. Yes, sir, except in cases—I have had cases of people who might accidentally fall and have a flow and then—

Q. They have an abortage? A. No, I put them in bed and they cleared up.

Q. But the ordinary effect is to restrain rather than cause the flowage from the uterus? A. Absolutely correct.

Q. Has a staff meeting to your knowledge been requested and refused? A. No, sir.

Q. Have you ever heard of Dr. Harman's refusing to have a meeting of the staff when it was requested? A. No, I do not.

Q. Was it not the practice of Dr. Harman to discuss with each of the three other physicians their particular cases separately? A. We had staff meetings and discussed them collectively, also.

Q. How often would you have these staff meetings when you would discuss them collectively? A. We had them every morning for some long period of time.

Q. When did that practice cease? A. I think probably during the past year or so.

Q. What took their place, if anything? A. We have meetings in the X-ray department with the X-rays Thursday mornings that the whole staff attends where we discuss the patients admitted and discharged and outside cases and the cases are discussed and compared with the X-ray findings.

Q. Do I understand that you say that there have

not been staff meetings Thursdays right along now? A. Only on holidays or exceptional opportunities, when they can't be held.

Q. Then, will you tell me what on earth you meant when you said that you had not held staff meetings? A. There were other staff meetings we had every morning before that.

Q. Have you or have you not had, during the past year, a so-called staff meeting every Thursday morning? A. I would call them that.

Q. What were they? What took place? Who met at them? A. All the doctors on the staff.

Q. Namely. A. Dr. Lauterborn, Dr. Ivy, Dr. Eastwood and myself, and occasionally Dr. Harman.

Q. What would take place at these regular Thursday morning staff meetings? A. We would discuss the cases admitted and those that were discharged, and every other case of importance, and also the X-rays that had been taken from the week previous to that Thursday.

Q. And would you receive instructions from Dr. Harman as his first assistant, or suggestions from Dr. Harman as his first assistant, as to what subjects to discuss at those staff meetings? A. If there was anything in particular to say.

Redirect-examination by Mr. Vanderbilt:

Q. Did I understand you to say that at those Thursday morning conferences you met in the X-ray room? A. Yes, sir.

Q. And those dealt with the patients that had been admitted and discharged and the verification of the X-ray plates? A. Yes, sir.

Q. But Dr. Harman was not there? A. Not al-

ways. He was there occasionally when he wanted to give any orders to the staff. When he wanted to do that, he was present.

Q. Have any records been kept of those staff meetings? A. No, sir, not to my knowledge.

Q. Aside from those Thursday morning conferences dealing primarily with the X-rays and the admissions and discharges, have there been any other meetings? A. No, sir; occasionally Dr. Harman will have us all in the office, but those are not regular.

Q. About how often and about how many in the past year of these unusual or extraordinary meetings have there been of the staff? A. That is pretty hard to say.

Q. As nearly as you can say. A. Perhaps a dozen or so; I wouldn't say positively. What I had reference to staff meetings, we did have them every morning, but some of the doctors objected that it took from ten to eleven o'clock, and it took so much time—those we had regularly every morning—but the other staff meetings on Thursdays were always had.

Adjourned to ten A. M., Tuesday, December 18, 1928.

FOURTH DAY.

Tuesday, December 18, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

MARY J. ENGLEBERT, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mrs. Englebert, what is your position at the Verona Sanatorium? A. Admitting nurse.

Q. How long have you occupied that position? A. Five years.

Q. Have you your original notes on the admission of Miss Henrietta Rose at the time of her second admission in May, 1925? A. Yes, I have,

but they are in the possession of Miss Russo. You told her to bring them down yesterday.

Q. Do you know whether she is coming down this morning? A. Yes, she intended to. Here is a memorandum you asked me to bring.

Q. What is this memorandum? A. On discharge.

Q. These are your original notes on the discharge? A. Yes.

Q. From these notes, what papers were prepared? Which of these various records?

Mr. McCarter: Did she prepare this record?

Q. Those are your original notes? A. Yes, when the discharge comes down I go through the chart and I take this document and transfer to the first sheet.

Q. In other words, you take this paper which you produced this morning and you get the data for it from the records of the case, these various sheets which were offered in evidence yesterday, and your notes are typewritten on this page 1, the synopsis sheet. A. Yes.

Mr. Vanderbilt: I offer it in evidence.

Mr. McCarter: What is that? I don't understand how that loose paper that this woman says she kept is admissible in this case.

Mr. Vanderbilt: The testimony yesterday was that from the synopsis sheet No. 1 she prepared at the time of admission. You brought that out. It was said that the major portion of it was said at the conclusion of the case.

Mr. McCarter: You say I brought that out?

Mr. Vanderbilt: Yes, from information furnished to the typist by the admitting nurse, and I asked for the production of the original notes from which this sheet was prepared, and in response to that Mrs. Englebert now produces these original notes.

Mr. McCarter: Did she prepare sheet No. 1?

Mr. Vanderbilt: She prepared data and some typist transcribed them on here. We are producing the original record of which sheet No. 1 is a secondary record.

Q. Is that a correct statement of the process, Mrs. Englebert? A. Yes, it is.

Mr. McCarter: May I cross-examine this witness a little on this?

Mr. Vanderbilt: No objection on my part.

By Mr. McCarter:

Q. Let us get at this record, please. What is your position? A. Admitting nurse at the Sanatorium.

Q. As such, do you make notes with reference to the discharge of patients? A. Well, yes, I do, when the doctors have made their final summary and the patient is discharged the chart comes down to me and I go through the Doctor's data and the nurses' data and from that select the data required for the completion of the chart.

Q. For the completion of what? A. For the completion of what? A. For the completion of the first page of the chart—No. 1.

Q. After the patient is discharged is sheet No. 1 brought to you? A. Yes, it comes down—the whole chart complete comes down.

Q. Will you please answer my question? A. I am.

Q. Then after the patient is discharged, sheet No. 1 is brought to you? A. The whole chart is brought to me with the sheet No. 1. The sheet No. 1 not alone; the whole chart is brought.

Q. That includes how much? A. It includes No. 1; they are all of the chart.

Q. How many sheets are there ordinarily? A. There is fourteen.

Q. Then what do you do on sheet No. 1? A. I take the chart and I go—

Q. What do you do with sheet No. 1? A. I gather the data from the chart and put it on that small paper that you have got and the typist transcribes it on sheet No. 1 by a typewriter.

Q. What do you do with this small sheet of paper which is in manuscript? A. That small piece that you have in your hand?

Q. Yes. A. I then save them. It isn't necessary—

Q. You have been doing what? A. Putting them away according to the month when I complete it and all the May discharges, I put them together.

Q. You put all your sheets of which this small one is one, away by months? A. Yes.

Q. You made out this small sheet yourself? A. Yes.

Q. Where did you get the information as to what you were to put upon it? A. From this chart (indicating).

Q. From the chart? A. Yes, sir.

Q. You knew nothing yourself about it one way or the other. A. What I know about it—I wouldn't put down what I know about it.

Q. You are a woman of intelligence. Won't you answer my question? A. I am answering to the best of my ability.

Q. Look at this small sheet which you have shown us and tell us what is there written which you gained from your own knowledge. What you gained yourself? A. I have nothing down here that I gained from my own knowledge.

Q. When did you write the words, "Henrietta Rose" on here? A. When the patient was discharged before the—

Q. One moment. I didn't ask you why. When the patient was discharged, you say. A. Yes.

Q. When did you write the word "endometritis" on there? A. When the chart came down to me after the Doctor had made his final summary.

Q. Where is the final summary? A. Page 14.

By Mr. Vanderbilt:

Q. Front or back of page 14? A. On both sides.

By Mr. McCarter:

Q. When did you write the question "improved" on this paper? A. When the chart came down to the office.

Q. That is in pencil. A. Yes.

Q. When did you write the words "Discharged May 14, 1925 able to return to quarters"? It seems to be in ink. A. Yes.

Q. When did you write on that paper— A. I would like to elaborate on it.

Q. I would like to have an answer. When did you write the words, "Discharged May 14th, 1925.

Able to return to quarters"? A. When the patient is discharged and the chart comes down I write, "Henrietta Rose," the case number and the date of her discharge.

Q. When did you write the words, "Able to return to quarters"? A. When the chart comes down.

Q. Again, you write the words "Endometritis" there. Where did you get that information? A. When the chart comes down after the doctor has made his final summary.

Q. When did you write the words "X-ray not taken"? A. At the same time.

Q. Where did you get that information? A. From sheet No. 14. On this side of sheet No. 14 (indicating).

Mr. Vanderbilt: The back.

Q. Then you colated the same material from the file and put it into shape so that the young typist would be able to complete sheet No. 1. Is that what you do? A. What do you mean from the file? You mean from the chart?

Q. Yes, whatever you call it? A. Yes, sir.

Q. You were completing information from the chart to enable the young lady to complete the No. 1 sheet? A. Yes.

Q. And you keep your sheets, of which this is a specimen in the regular place. A. Yes.

Q. Have you shown this to anybody before the day? A. No, I got it this morning when I came to the office. I looked it up in my file—

Q. I asked you if it has been in your possession all the time? A. It has been in the office, yes.

Q. In your personal possession? A. Well, what do you mean my personal possession?

Q. Where is it kept? A. I have them in a box in the closet in the office.

Q. Has anybody been looking at this particular sheet? A. I don't know.

Q. Who could look at it if they wanted to? A. Well, the closet is not locked.

Mr. McCarter: I have no objection to the document.

(The same is received in evidence and marked Exhibit C-4.)

By Mr. Vanderbilt:

Q. Did you have anything else to do with the preparation of the records? A. When the patient is admitted I fill out on page 1 as much relating to admission that is down here: "Admission date" further on it would be on discharge, except the previous admission, the standard weight, the usual, that would be filled in on admission. The sputum not examined or examined, whichever it may be, would also be filled in on admission. Whether the patient had a hemorrhage before admission would also be filled in, and the rest would be filled in on discharge.

Q. You referred to some paper that I asked Miss Russo for which you said she had with her. What was that? A. It was a small book that I use for to get the information for the front page.

Mr. Vanderbilt: Miss Russo, have you that book here?

(Miss Russo hands book to Mr. Vanderbilt.)

Q. What is this book which I now show you? A. This is the small book which I use when the pa-

tient is admitted. I get all the data for the front sheet from that.

Q. And that data which is contained on this page of your admission book is the page from which the typist got that part from sheet No. 1 which she did not get from this other Exhibit C No. 4? A. Yes, sir.

Mr. Vanderbilt: I ask that this page be marked in evidence.

Mr. McCarter: May I cross-examine on this?

Mr. Vanderbilt: I have no objection.

By Mr. McCarter:

Q. May I ask, Mrs. Englebert, in what page or step in the progress of events is the writing on this page, page No. 3525, made? A. I took her history on the 7th of May—

Q. No, when did you write the page in this book to which you have referred Mr. Vanderbilt? A. The day the patient is admitted.

Q. Did you personally admit her? A. Yes, that is, I took her history.

Q. Where did you get the history from? A. From the patient.

Q. Did you need information from Henrietta Rose as to her address and all that? A. Well, of course,—

Q. Well, I am asking you. Did you? A. Of course.

Q. She lived in the Institution how long? A. She was there ever since 1921.

Q. Did you interview her before making these entries? A. Yes.

Q. Where was she? A. Up in her room.

Q. Who told you that she was to be entered as

a patient? A. I don't know who told me. I suppose that it was the doctor told me.

Q. I didn't ask you what you supposed. If you don't know, say so. A. Well, when the patient—

Q. One moment. This lady had been living in the Institution, you say, since 1921. A. Yes, sir.

Q. I want to know who told you on the 7th of May, 1925 that she was to be entered as a patient? A. It must have been the chief nurse. She usually does when an employee is sick and they are entered as a patient.

Q. You don't know who told you? A. No.

Q. Would it be a nurse? A. No.

Q. Who would it be? A. It would be the chief nurse or else a doctor.

Q. Which doctor? A. Either Dr. Harman or the Chief Nurse.

Q. You can't say which one told you? A. No.

Q. Who was the chief nurse? A. At that time? I don't know; I don't remember.

Q. So after somebody told you that this young lady who had been living in the Institution for four years was to be entered as a patient you went up and asked her her father's name and her mother's name and her nationality and her birthplace and whether her mother was dead or alive. You went and asked Miss Rose all those questions? A. Yes, I got all those questions from Miss Rose.

Mr. McCarter: I have no objection to its admission in evidence.

By Mr. Vanderbilt:

Q. Those questions were asked in the regular hospital routine, were they not? A. Yes, they were.

Mr. Vanderbilt: I offer the page, page 2535 in evidence.

(The same is received in evidence and marked Exhibit C-5.)

Cross-examination Waived.

SARAH RUSSO, recalled.

Direct-examination by Mr. Vanderbilt:

Q. Yesterday I asked you to produce certain papers. The admission book has been produced and marked. Were there any other papers that were to be produced? A. You asked me to produce the original of the entry made on sheet No. 9 which would be the urinalysis. The routine is changed in that in the last several years, so I understand that is the—

Mr. McCarter: One way or the other. Not what you understand.

Q. Is the record of the urinalysis there? A. It was in the chart, yes.

Q. Have you the original record to which reference was made yesterday? A. No.

Q. Where is that, do you know? A. I don't know.

Q. Who would be able to tell us about it? A. Why, I really don't know.

Q. Does the superintendent know something about it? A. He might.

Q. How long ago was the system of keeping the record of urinalysis changed? A. I don't know.

Q. Has it been changed during your period of occupation up there? A. No, sir.

Cross-examination Waived.

HAROLD BENNETT, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Bennett, what is your occupation? A. Radiologist at the Sanatorium.

Q. How long have you occupied that position? A. I am in my sixth year.

Q. By whom were you appointed to that position? A. Dr. Harman after a Civil Service ruling or regulation or whatever it was.

Q. On whose recommendation? A. Dr. Carl Ill and Dr. Reissman, and several other of the prominent doctors in this city.

Q. Before you became connected with the Essex Mountain Sanatorium what previous experience had you had in X-ray work? A. I had been with Dr. Reissman nearly five years before that. His first name is Irwin. He is located at the Medical Tower Building in Newark. He is a roentgenologist.

Q. What has been your training along that line, Mr. Bennett?

Mr. McCarter: Is that necessary? Is he going to be an expert witness in this case as a radiologist?

Mr. Vanderbilt: No. I think, Mr. Supervisor, it is important to show who the witness is and what his standing is. The record may be a little silent on this and I think we are entitled to show it.

Mr. McCarter: If you want to show he is a good radiologist, go ahead.

Q. Will you continue? A. In addition to being with Dr. Reissman I had charge of St. Michael's

Hospital for nearly three years for which time we built up a department. We took about fifteen thousand plates there, that's all.

Q. You took 15,000 plates at the St. Michael's Hospital? A. Yes, that's all, because we had to build up a department. I still have a key to Dr. Reissman's office.

Q. Is he one of the recognized leaders in that field? A. He is one of the foremost in the world.

Q. Where is his office? Here in Newark? A. Suite 1410 in The Medical Tower Building. It is one of the models of the country.

By Mr. McCarter:

Q. His apartment is one of the models in this country? A. Yes, sir.

Mr. McCarter: I suppose that is important in this case.

Mr. Vanderbilt: He is referring to his office, Mr. McCarter.

By Mr. Vanderbilt:

Q. Are you connected with any association or society?

Mr. McCarter: I think this is all immaterial.

A. I am the state representative of the State Association of Radiologists. This is my second term.

Q. Will you tell the Supervisor in chronological order what you know with respect to the events related by Miss Galler, so far as you know them, and so far as Dr. Harman is concerned therein and was a party thereto.

Mr. McCarter: It seems to me that the witness cannot be presumed to have read

here or heard all of this evidence. He ought to be asked a question to show what he knows about something, not what was said by some witness.

A. I know very little about it.

By Mr. McCarter:

Q. When there is an objection interposed, Mr. Bennett, you are not to answer the question until the objection has been disposed of by the Supervisor. A. I am sorry.

Mr. Vanderbilt: I have no objection to going at it in that way.

By Mr. Vanderbilt:

Q. Did you ever have a conference at which Dr. Harman was present and at which Miss Galler was present? A. I attended a conference.

Q. Will you tell the Supervisor when and where that conference took place? A. It took place in the Villa in Caldwell.

Q. What is the "Villa"? A. It is the place where Father Fitzpatrick lives; it is a Catholic—I think a boarding house—Father Fitzpatrick's home is there.

Q. And Father Fitzpatrick is the Chaplain at the Verona Mountain Sanatorium? A. Yes, sir.

Q. When was this conference held, if you can tell? A. It was about August, 1926; somewhere in August.

Q. Who asked you to come to the Villa? A. Father Fitzpatrick called me on the telephone.

Q. Did he tell you what he wanted to see you for? A. Not until I arrived there.

Q. When you got there, whom did you meet? A.

Mr. Harris was there and Dr. Harman was there and Father Fitzpatrick was there. He called me outside and told me what he wanted.

Q. What did he tell you? A. He said there was going to be some sort of a hearing or something and that he had called the hearing.

Q. A hearing about what? A. Something about the irregularity of Miss Galler and she came pretty soon after that.

Q. You say pretty soon after that she came? A. In the room, yes. I don't know—he went somewhere and she was only out of the room a few seconds.

Q. And when she came into the room what happened? A. He asked her to have a seat and Mrs. Harris started asking her some questions.

Q. Will you repeat to the Supervisor the conversation and what took place in Father Fitzpatrick's home in the Villa on this occasion as near as you can tell us. A. As best I can. Mrs. Harris asked this girl something to the effect of having been annoyed by Dr. Harman and she said it was correct, or yet, or something of that sort. She also asked her to narrate the episodes or something and the girl started to talk about things that apparently was embarrassing for Father Fitzpatrick and he sort of inclined to stop. He seemed to have thought that he heard enough. That was the first I knew of the actual details of it as to the actual things.

Q. What was it that Miss Galler told up to the time that Father Fitzpatrick stopped her? A. She said that she had been annoyed several times and he had annoyed her in her room, and so forth.

Mr. McCarter: I object to the "and so

forth". Can't we have this witness say the whole thing?

Mr. Vanderbilt: Yes, I am trying to get it.

Q. Tell us as near as you can recall what Miss Galler had said to Father Fitzpatrick and Mrs. Harris had happened. A. She said that he had annoyed her while she was on the Board and down in her room and had requested that she come to the office and just recently had telephoned her again in a solicitous manner and that he had offered her some drinks and Mrs. Harris interrupted the things right there, and asked Dr. Harman if it was so, and he said it was so and he said that he had no ulterior motive in doing it; that he had offered it to other girls. He just wanted to test them to see whether or not they were worthy of their position.

Q. To test them? A. To see whether or not they were responsible.

Q. Mrs. Harris asked him about the drinking episode? A. Mrs. Harris asked Dr. Harman about it.

Q. What did he say? A. The girl said she had some drinks in Dr. Harman's office. Mrs. Harris asked Dr. Harman if that was so and he said yes, but there was no ulterior motive to it.

Q. And then he said what about this drinking business? A. Just what I have told you.

Q. Give it to us at length. A. After he said there was no ulterior motive he said that it was just done to test the girls to see whether or not they were worthy of this position—the responsible position on the board, and all that kind of thing. She also asked him if he gave any other girls any

drinks, and he said yes without any other motive. She also asked him if he had been in the room, and he said yes, to see whether the rooms were in proper order, and she asked him if it was not somebody else's place to look after that, and he said he guessed yes, and she said after that to have the housekeeper to look after the rooms. That's all I know of the details.

Q. What further conference took place, if any? You say Father Fitzpatrick interrupted Miss Galler. A. He interrupted when she began to relate some episodes that she had been annoyed and forced, and so forth.

Q. Will you tell us what Miss Galler told Father Fitzpatrick and Mrs. Harris about the annoyances? A. After she had been in the office at some time—while she was in the office—he had endeavored to force her into a compromising position and had succeeded to a great extent, sufficiently so that it was embarrassing.

Q. What happened next at this conference? A. Mrs. Harris—she just seemed to get quite provoked and turned around to me as if she was going to cut me in half and accused me of being disloyal toward Dr. Harman. I asked her what she meant by it and she said,"You should have gone immediately to him." I said, "I had other work to do and it was none of my business." The case came to me casually and so it was.

Q. What took place next at this conference? A. Dr. Harman seemed to grasp that as the proverbial straw—

Mr. McCarter: I object to the characterization.

Q. Leave out the proverbial straw and get down

to what happened. A. He also said that I was disloyal to him by not reporting it immediately and I told him also that I wasn't there for tattling tales and things of that sort, and if that was the way he appreciated my work, when we got back to the office he could have my resignation.

Q. You said that while they were all in the room? A. Yes, sir, they were all there—the same people were there.

Q. What further took place at that conference? A. I left soon after that.

Q. What was Dr. Harman's attitude at the conference? Was he quiet or angry with you?

Mr. McCarter: I object to that. What did he say or do.

A. He told me I had been disloyal to him by not reporting it to him. I didn't agree with him and I expressed my opinion, as I told you.

Q. When? A. That afternoon when I got back to the office.

Q. What day was that? A. Sunday afternoon.

Q. How soon after you got back to your office and wrote out your resignation did you see Dr. Harman again? A. He came into my office after dinner that night. I imagine it was six o'clock or so. I was quite surprised to see him at that time. I didn't see him until Monday.

Q. What transpired when Dr. Harman was in your office on that Sunday afternoon or evening? A. He came in there with a sort of a smile and grin. He asked me how I felt, and things of that sort and he said he came in to apologize for the things he had said that afternoon. He said that he was excited and didn't mean what he said. He said he didn't expect me to be an enemy. He want-

ed me to be his friend, he said. He said this girl would ruin his reputation if this went on, and he was still a young man and he was sick, and he asked me if I wouldn't talk to the girl. He used the term, I think, infuriated girl.

Q. What did you say? A. I told him I was not interested. I don't think you want me to tell exactly what I said to him.

Q. Yes, I want to hear exactly what you did say to him. A. I told him to deal with that and everything connected with it—to deal with Mrs. Harris—he and Mrs. Harris both. That's what I said.

Q. Did you give him your resignation? A. I had it there and he wouldn't pick it up. It was on the desk. We were on each end of the desk, it happened to be when he walked into the room.

Q. What further happened at this conference? A. He asked me if there wasn't anything I needed in my office and I told him it wasn't any different from what we had needed for weeks. We needed a camera for some of our scientific work we had been doing and were doing and that we needed a camera in addition to my own, and all of a sudden he decided we needed some instruments in a cabinet that had been standing empty for weeks, and he went and got an armfull of them.

Q. On this Sunday evening? A. Yes, sir.

Q. What were the instruments? A. Little scissors and first aid instruments we needed in the room for the doctors when they came down, just simple first aid material.

Q. Did you or did you not offer your resignation to Dr. Harman this evening? A. Yes, and he didn't want to accept it. He said he offered his apology for what he had said and he thought I ought to accept it, and after a half hour's conver-

sation I kind of thought the thing over and I said we would let it drop for the time and forget about it.

Q. What happened next? A. After I fell for that he wanted me to talk to this girl.

Q. What did he say? A. He asked me if I wouldn't talk to her and see if we couldn't convince her to not press the case and, to quote him—"So the case would stay put."

Q. What did you say to that? A. That was after he brought the material into the room. I said I wasn't accepting bribes; the material he was bringing me was just a bribe to quiet me down because I wasn't feeling so extra good at that time.

By Mr. McCarter:

Q. Feeling what? A. I was provoked at the time.

By Mr. Vanderbilt:

Q. Then what happened next at this conference in the office with Dr. Harman? A. We talked for half an hour or so more and he kept repeating his same requests that he had made in the beginning.

By Mr. McCarter:

Q. Go on and tell us what it was. A. I intended to.

By Mr. Vanderbilt:

Q. Go ahead. A. Regarding the—

By Mr. McCarter:

Q. No, no, tell us what he said. A. Regarding his physical disability, or rather his ill health, and being a young man, and all these things, so he sort

of prevailed on me in that way and I agreed to speak to this girl and see whether or not she would refrain from pressing the case, as he had used the term, and I think, in a day or two I located her at a Catholic Boarding house in Newark. I located her through Father Fitzpatrick, and I talked to her and I told her—

Mr. McCarter: I object to the conversation with the girl.

By Mr. Vanderbilt:

Q. What further conversation or dealings did you have with Dr. Harman with respect to the matter? A. That was about all that night. I had talked to the girl, so I met him in the hallway after that. At that time I used to see him practically every morning. There was a time that he used to come to my office every morning just to pass the time, or something like that, or look at a plate. After that when I passed him in the hall he would ask, "How is everything"? And I would say, "All right" and go on. I assume he had reference to the case—

Mr. McCarter: Never mind what you assume.

Q. After these passing meetings in the hall, did you ever have any further conversation with Dr. Harman with reference to this matter? A. Nothing especial until some time this year when I thought he was a little slow in renimbursing me for some expenditures that he knew it was necessary for me to make and I had intended seeing him—

Mr. McCarter: I think what his inten-

tions and what his thoughts were, are not competent.

Q. Not what you thought, but what you said and did with Dr. Harman? A. I am trying to explain it to you.

Q. Go ahead. A. I thought on seeing Dr. Harman—

Mr. McCarter: One moment. You are telling us what you thought. Tell us what you did when you met Dr. Harman or what he did and what you said. We are not allowed to tell in court what we think.

A. I will supplement the word I intended seeing Dr. Harman—

Mr. McCarter: Please stop telling us what your intentions were.

Q. Tell us what you did. A. I can't without using the word.

Q. Make a fresh start and see if you can't hurdle it in some other way. A. Let us try it.

Q. Go ahead. A. On August 1st or 2nd—

By Mr. McCarter:

Q. 1926? A. 1928.

By Mr. Vanderbilt:

Q. On August 1, 1928—

Mr. McCarter: Or 2nd.

A. It might have been the 3rd. I was to see Dr. Harman by my own desire. I received the official communication from Washington to go to Kansas City, Missouri. I was to stop at St. Louis first. I called Dr. Harman on the telephone and told him,

or rather requested him, a brief leave of absence if I might go. I told him I had to go to St. Louis. He asked me how long it would take and I said it might be five days or it might be five weeks. He asked me if my work was taken care of and I said it was. He asked me to let him know from time to time and I said I would. I left on a Friday night early in August. While on the way to St. Louis, where I had to go first—and looking over some mail that I had gotten at the last minute I found, or I thought—

Mr. McCarter: There go the thoughts again.

A. (Continuing) It appeared that I couldn't get back as early as contemplated and I wrote a letter by airmail to Dr. Harman requesting a reimbursement of the expenditures in this case by a certain date somewhere in the middle of August. I returned from Kansas City the following Wednesday evening, and a day or two after that Dr. Harman relayed a message to me through the operator that he wanted to see me in his office. I went to the office and he said he had received the airmail letter and asked me to tell him more about it and I didn't repeat anything other than what was in the letter and with which he was already familiar. He said, "All right", and he put the letter in his pocket. There was still a few days, possibly four or five days or a week, before the money was needed and the case appeared to be quiet and I just thanked him and went out. The next day Father Fitzpatrick came to my office and asked me what of this—

Mr. McCarter: I object to the conversation with Father Fitzpatrick.

Q. You can't tell that, Mr. Bennett, unless Dr. Harman was there at the time. A. No, he was not there.

Q. As a result of Father Fitzpatrick's coming down to see you the day after you had talked with Dr. Harman about the letter, what did you do? You can't tell what Father Fitzpatrick and you said, but what was done as a result of the conversation which you did have? A. I wrote out another resignation.

Q. The same day that Father Fitzpatrick came to see you? A. I won't say for sure; that or the next day.

Q. What did you do with the resignation which you wrote out? A. Put it in Dr. Harman's—I sealed it and told the nurse to put it in Dr. Harman's basket.

Q. After that was done what transpired next? A. Father Fitzpatrick wrote me a letter.

Q. How soon after you had handed in your resignation did you get this letter from Father Fitzpatrick? A. One or two days. It was a very brief period.

Q. As a result of this letter from Father Fitzpatrick, what did you do, if anything? A. You don't want to know what was in the letter?

Q. No. A. I didn't do anything. A day or two after that Dr. Harman called me in his office one morning and minus any formalities he said, "I am going to change your nurse." He said, "What attitude do you think she will take?" I said, "She will quit." He said, "Why?" I said, "For the same reason the other one quit." She came there to learn the business and promised to stay long enough so we would not have to break new nurses in all the time, and she promised to stay long

enough to be of some benefit to the department. He said, "I wanted to see her." I sent her in and she came back and she told me—

Mr. McCarter: Never mind what she told you.

Q. As a result of that conference with Dr. Harman what did she do? A. She wrote out her resignation.

Q. In the meantime had your resignation been acted upon? It had been in Dr. Harman's hands three or four days before this conference with relation to the nurse, hadn't it? A. Yes, sir.

Q. Had you heard anything else? A. No, sir.

Q. What transpired next, if anything? A. The Doctor told me that he was going to change my hours, effective on a certain date ahead, which was three or four days subsequent to that.

Q. Did he give you any reason for it? A. He said for the benefit of the department, and things like that. He said I should work telephone operator's hours. He said business hours, 8:30 to 12 and 1 to 4:30.

Q. What previous arrangement had you had when you came to the hospital? A. To get my work done commensurate with the requirements of the doctors. I did my work and kept it done.

Q. Did Dr. Harman at that time make any complaint that you had not had your work done? A. No, sir.

Q. Were you during the five or six year period that you were at the hospital been doing any outside work? A. Well, I was.

Q. Did you do that from the beginning of your employment there? A. It was our understanding—

Mr. McCarter: Never mind the understanding.

Q. Was that your arrangement with him? A. It was made before I went there.

Q. And continued up to this time three or four days after you had handed him your resignation? A. Yes, sir, when I went there I went on part time, meaning part pay. I was away part of the afternoon but I came back in the evening in order to build the department up, in order to get it arranged. After I was there awhile they increased my salary which I appreciated; I didn't ask for that either, and my hours were to remain the same. After that I think they changed the title of the department whereby it necessitated my taking another Civil Service Examination, which I did, and that increased my salary again, and again I appreciated it, but my hours were still the same. I was to keep my work done.

Q. When Dr. Harman said he was going to change your hours and the hours to the hours you had said, what did you say? A. I couldn't quote the words except that I objected to it as being a penalty in reference to these matters.

Q. What did he say to that? A. He said it was for the benefit of the Institution or words to that effect.

Q. What happened after that between Dr. Harman and yourself? A. Very little. I don't think he spoke to me three times since then. I went to Mrs. Harris' house about it; I made an appointment and went to her house.

Q. When was that? A. It was after that time; it might have been a few days or it might have been a few weeks.

Q. What did you consult Mrs. Harris about? A. The whole situation I have just talked about.

Q. What, if anything, transpired as a result of that conference? A. She said it was for the benefit of the—

Mr. McCarter: I object to what Mrs. Harris said.

Q. What, if anything, transpired as a result of that conference? A. Nothing transpired.

Q. What next took place? A. Then I went to Mr. Reed.

Q. What transpired as a result of that conference with Mr. Reed? A. I told him that I was dissatisfied—

Mr. McCarter: One moment. What transpired as a result of your conference with Mr. Reed?

A. I told him I had been dissatisfied as the result

Mr. McCarter: Won't you answer the question? What happened as a result of your conference with Mr. Reed? Not what was said, you can't tell that because Dr. Harman was not present. What transpired as a result of your conference with Mr. Reed?

A. I filed a complaint for having been treated unjustly.

Q. And that was the complaint that was heard here in October? A. Yes.

Q. And following that, what happened, if anything? A. Mr. Reed—I explained the details of the injustice. After that Mr. Reed asked me if

I knew of any other similar instances and I told him—

Mr. McCarter: I don't think these conversations between him and Mr. Reed are competent.

Mr. Vanderbilt: I am not addressing myself to that.

Q. Not what conversations you had with Mr. Reed, but what happened as a result of them? A. He asked me to locate, if I could—

Q. You are giving conversations. What happened as a result of your conference with Mr. Reed? What did he do or what did you do after that? You can't tell conversations; you can't tell what conversations there were unless Dr. Harman was there, and you can't tell what you thought or what he thought. You have to tell us what happened. A. I looked up some addresses for Mr. Reed.

Q. And did you supply those addresses? A. Yes.

Q. And as a result of that did witnesses appear at the Court House? A. Yes, sir, there was three or four.

Q. Did you go to Mr. Reed of your own initiative or were you referred to him originally by someone? A. No, I was referred to Mr. Reed.

Q. By whom? A. Some counsel.

Cross-examination by Mr. McCarter:

Q. What counsel? A. The County Counsel.

By Mr. Vanderbilt:

Q. After the first hearing— A. I beg your pardon—

Q. After the first hearing you referred to? A. Yes, sir.

By Mr. McCarter:

Q. Your association with Dr. Reissman, who has the finest apartments in the world, made you quite efficient in radiology, didn't it?

Mr. Vanderbilt: I object to the question as not based upon the evidence.

Q. Well, leave out the finest apartments. Your association with him made you very efficient in radiology.

The Supervisor: You withdraw your objection now that the question has been reframed?

Mr. Vanderbilt: Yes, sir.

A. That and other places.

Q. Were you interested in the Institution—the Tuberculosis Hospital? A. Yes, sir.

Q. Very much so, weren't you? A. In my work, yes, sir.

Q. By the way, when did you last see Dr. Fitzpatrick? A. I am sorry I didn't understand you.

Q. When did you last see Father Fitzpatrick? A. I would say a month or so ago.

Q. Did you know he was very ill? A. From hearing people talk; I don't know that he is very ill.

Q. You have heard? A. Yes, I have heard that he was ill.

Q. Who first told you back in 1926 of any alleged irregularities between Miss Galler and Dr. Harman? A. She called me on the telephone—

Q. She did, is that right? A. She called me on the telephone.

Q. When? A. A few days before Father Fitzpatrick came back from his vacation.

Q. Where did you see her? A. She called me on the telephone.

Q. Does that answer the question where you saw her? Please hurry up. We can't stay here forever. A. I didn't see her that day.

Q. She told you this over the 'phone? A. I told you that three times.

Q. She told you over the 'phone of these irregularities? A. Yes, sir.

Q. That is, she told you over the telephone that Dr. Harman had made indecent proposals to her in the hall and in his office? A. I didn't say that.

Q. What did she say over the 'phone? A. She told me over the telephone that again she had been annoyed by Dr. Harman. I said, "Why don't you take it up with Father Fitzpatrick—the priest. She said Father Fitzpatrick is not home. I said, "Speak to Father James." She said, "I don't know him." I said I would call him and I called him and I dismissed the matter and that's all there was to it.

Q. Did you hear anything before that? A. Just gossip.

Q. I mean from her? A. No, sir.

Q. So the first thing you heard from her was that Dr. Harman had called her on the 'phone and suggested that she come to his office? A. I didn't say that. She called me on the 'phone, but she didn't say that he called her on the 'phone.

Q. What did she say? A. That again she had been annoyed.

Q. And you then said what? A. I asked her

why she didn't report it to the priest.

Q. And she said— A. Father Fitzpatrick was away and I said, "Well, Father James is here." She said, "He is a stranger." I said, "All right, I will call him." And I did call him.

Q. You did call him? A. I did.

Q. Did you tell Father James that Galler wanted to see him? A. I said there was some irregularity—

Q. Did you tell Father James that Galler wanted to see him? A. Yes.

Q. And you arranged for an interview. A. I didn't arrange for any interview.

Q. Do I understand you to testify that the next thing you heard you were summoned to Father Fitzpatrick's house? A. Regarding the case, yes, sir.

Q. I mean about that. A. Yes, sir.

Q. You had had no talk with anybody else about the matter before you went to Father Fitzpatrick's house? A. I didn't pay any attention to it—

Q. I didn't ask you that. Do you say you didn't have any talk with anybody else? A. No, I dismissed it from my mind.

Q. Do you recall an interview in Dr. Harman's office? Do you recall an interview in Dr. Harman's office between you and Mrs. Harris before you went to Father Fitzpatrick's house? A. No, I did not.

Q. You say it did not take place? A. I have no recollection of it.

Q. You went to Fitzpatrick's house. Was that on Sunday? A. Yes, sir.

Q. And Mrs. Harris was there? A. Yes.

Q. And Miss Galler was there? A. Yes.

Q. And you were there? A. Yes.

Q. And Dr. Harman was there? A. Yes.

Q. Did Dr. Harman have his diary there? A. I won't say whether he did—I don't know.

Q. You don't recall? A. I don't recall, no.

Q. Do you remember his having a book something like that (indicating) there? A. I didn't see it; I don't recall seeing it. He may have had it somewhere, but I don't recall seeing it.

Q. You understand that Father Fitzpatrick had called this meeting? A. I didn't understand whether he did or not. He simply called me.

Q. Didn't Miss Galler repeat her story there? A. She talked considerable until Father Fitzpatrick told her that was enough, or something like that.

Q. Did she designate the time when these occurrences took place? A. I don't recall that she did.

Q. Would you say that she did not? A. I won't say that she did not.

Q. In fact, do you recall distinctly what she did say? A. She didn't say the number of times, sir.

Q. I ask you if you recall distinctly what she did say. A. Word for word, I do not.

Q. Not word for word, but what was the purport of the conversation? A. That she had been annoyed by him on several occasions and that she had been forced into a compromising position and that it reached an embarrassing point, and things equivalent to that.

Q. What things equivalent to that? Go on and tell as near as you can recall. A. That they rolled around on the floor and came up to a couch or a sofa, or something.

Q. Did she say a couch? A. I can't recall which it was; either a couch or a sofa, or something.

Q. What about it? A. That she had been to that and that he had pulled her down to the floor.

Q. In his room? A. She said in his office.

Q. Did she say whether the office was light or dark? A. She said it was—the lights were out.

Q. Did she tell how many of these occasions there were? A. She said several.

Q. Didn't she say when they had occurred? A. If she set the date, I couldn't tell you.

Q. Did she say they had been a year before? A. No, she said recently.

Q. About when was this interview had at Father Fitzpatrick's house? A In the last part of August—in the latter part of August.

Q. 1926? A. That's right.

Q. And Mrs. Harris seemed anxious to learn about it, didn't she? A. She seemed intensely interested.

Q. Didn't she ask any questions about this girl? A. She did.

Q. And did the girl answer her questions? A. I think she did as far as I know?

Q. She did not cut her off, did she? A. Not on the points of embarrassment, she didn't; Father Fitzpatrick did.

Q. So I understand you to say that on this occasion Dr. Harman admitted that he had given this young woman drinks? A. Yes.

Q. And he said he had been accustomed to do that with the other employees as well to test then? A. He specified operators.

Q. He said other operators? A. Yes, Mrs. Harris asked him a question.

Q. What question? A. About other operators, and he said yes.

Q. How long did this interview at Fitzpatrick's last? A. I imagine it must have been close to an hour, I imagine. I was in there about an hour; I couldn't say exactly. It was in the middle of the afternoon.

Q. When it was over you all separated? A. I went out first.

Q. You went out first? A. Yes.

Q. Miss Galler was not in your department, was she? A. No, sir.

Q. You knew her well? A. Only from being on the board; she was a very efficient operator.

Q. And the only way you knew her was on the telephone board? A. Yes, sir.

Q. You never were out with her? A. No, sir.

Q. You are sure about that? A. Yes, sir, I am sure about it.

Q. You never took her to call on people with you? A. I have no recollection that I did.

Q. You say you only knew her on the board— A. To call, no, I didn't.

Q. You didn't say that? A. No, I didn't say I didn't say it. I didn't take her to call because I don't make social calls.

Q. You don't make social calls? A. No, sir.

Q. Now, I ask you again whether you ever before today went out with Galler. A. What do you mean went out?

Q. While she was at the Institution did you go out with her? A. No, sir.

Q. Riding with her? A. No, sir.

Q. Calling with her? A. No, sir.

Q. You are sure about that? A. Yes, sir, I am sure about that.

Q. Do you know Mr. Tate in Verona? A. Yes, I do know Mr. Tate.

Q. Didn't you ever bring Miss Galler to his house — A. I don't recall bringing her—

Q. (Continuing) While she was at the Sanatorium? A. I can't recall, sir.

Q. Don't you remember? A. I do not remember.

Q. Did you not have the Galler girl riding in your car in Newark and you were driving so fast that you collided with Mr. Tate's car? A. I never collided with Mr. Tate's car.

Q. Did you not have her riding with you and collide with Mr. Tate in September, 1927? A. I never collided with Mr. Tate.

Q. Did you have her riding with you in September, 1927? A. I don't recall that I did.

Q. You say you have never been out with her. Have you ever been out in a car with her? A. If she were coming—

Q. Go on. If what? A. If she were coming—if she were out—there are plenty of people that come from the sanatorium down to the car line and anybody that comes down, if you know the person and you ask her if she was coming down, you bring her down.

Q. Do you say you never had her out in your car? A. If she might have been standing, I would have picked her up. I pick up a lot of people under those circumstances.

Q. So you had no acquaintance with her excepting a passing acquaintance with a girl, a telephone operator, as she would have with a great radiologist in the building.

Mr. Vanderbilt: I object to that question.

Mr. McCarter: Leave out the great.

A. After she went to Newark at the boarding school I called there at the boarding house.

Q. Oh, you did. A. I left money there, yes, sir.

Q. You did? A. Yes, sir, in the presence of the Sister.

Q. Why did you lug in "in the presence of the Sister"? Why did you lug that in?

Mr. Vanderbilt: I object to the question about lugging it in. It is part of his answer.

Witness: I can explain it.

Q. Why did you say, in the presence of the Sister? A. There was no reason especially for saying that.

Q. There was no reason especially for saying that. A. Not especially, no.

Q. When was it that you went to the school and gave her money- A. I never went to the school and gave her money. It was the boarding house.

Q. You said school a moment ago. A. I apologize for that error; it was a boarding house.

Q. When was it? A. Very soon after the hearing; within a few days after the hearing in Caldwell.

Q. How did you know where she was staying? A. I told you before I had located her through Father Fitzpatrick.

Q. How much did you give her at that time? A. Possibly $100.

Q. Don't you know? A. I think the first time it was $100.

Q. That was your money? A. Yes, sir.

Q. And you gave her $100 of your money? A. Yes, sir.

Q. The first time you went to see her at that home? A. At the boarding house.

Q. Where was that boarding house? A. Loretto Hall.

Q. Where is Loretto Hall? A. It is on what is now known as Broadway opposite the first Catholic Church up on Bloomfield Avenue.

Q. Is it St. Michael's Church? A. I couldn't tell you the name of the church.

Q. Did you go there again? A. I did.

Q. When? A. I couldn't tell you the time; possibly a couple of weeks or a month.

Q. Did you give her any more money? A. I did.

Q. How much? A. I think I gave her another $100.

Q. Did you take a receipt for it? A. No, sir.

Q. That was your money? A. Yes, sir.

Q. And you didn't take a receipt for it? A. No, sir.

Q. That makes $200. A. Yes.

Q. And that was about how long after the first call? A. It might have been three or four weeks; I couldn't tell you exactly.

Q. Did you go again? A. I did.

Q. About how soon? A. It might have been a week or two.

Q. And again what did you do? A. I gave her some more money.

Q. Always in the presence of the sister? A. I wouldn't say that she was always in the room. I was only there a very few minutes.

Q. Sometimes you saw her alone? A. I won't say that I did.

Q. And you gave her $100? A. I won't say that I did.

Q. You won't say what? A. That I stayed there alone. I would give her $100 in an envelope.

Q. Now it is $300. A. No, sir; you mentioned two instances—

Q. I don't want to get into a quarrel with you. Did you give her any more money? A. Yes, sir.

Q. How much did you give her? A. It was less, possibly $50.

Q. Did you take a receipt for that? A. No, sir.

Q. It was your money? A. Yes, sir.

Q. And you didn't take a receipt for it? A. No, sir.

Q. What was your salary at that time? A. I imagine it was—I don't know exactly—I imagine around $1500.

Q. Don't you know what you were making at that time? A. At that time?

Q. In 1926. A. I didn't look it up; I imagine it was around $1500.

Q. It wasn't more than that. A. It might have been a little more; it was about that.

Q. Up to this time you had given her $200 and how much more? A. Possibly $50.

Q. You don't remember exactly? A. Not exactly, no.

Q. You kept no memorandum? A. I did.

Q. Where is it? A. I threw it away.

Q. And when did you throw it away? A. Several months ago.

Q. When? A. After I handed in my resignation and intended to leave the institution.

Q. Then you threw away this memorandum? A. Everything.

Q. Did you visit her again? A. Possibly four or five times within the first three or four months, I would say.

Q. And you gave her money on each occasion? A. Yes, sir.

Q. Of your salary? A. Money.

Q. From your salary. A. My salary and what I made on the side.

Q. What were your total earnings at that time? I don't want to be inquisitive, but I think I am entitled to know. I mean, what was your income roughly? A. My income was more than my salary.

Q. You had an automobile of your own? A. I did not in August, no, sir.

Q. Did you later? A. Yes, sir.

Q. Are you married?

Mr. Vanderbilt: I object to that as immaterial.

Mr. McCarter: I think I am entitled to know.

Mr. Vanderbilt: I don't think that is material at all.

Mr. McCarter: I think I am entitled to know whether he is married.

Mr. Vanderbilt: I don't see on what grounds it is relevant.

Mr. McCarter: The amount of money he was paying this girl and whether a married man was going to a girl's house and giving her money. I want to know whether he is a married man or not.

Mr. Vanderbilt: I would scarcely describe a Catholic boarding house as a girl's home.

Mr. McCarter: I ask for a ruling.

Mr. Vanderbilt: And I can't see any relevancy about it.

The Supervisor: I think the witness should answer the question.

Mr. Vanderbilt: Exception.

Q. Will you answer the question, please? A. I don't care to answer it.

Q. You are married, aren't you? A. I don't care to answer the question. I refuse to answer.

Q. You have two children, haven't you? A. I refuse to answer your question.

Q. You have heard the Supervisor rule that you ought to answer, haven't you? A. I didn't hear whether he said it or not. I refuse to answer.

Q. You didn't hear it? A. No, sir.

Mr. McCarter: Will the Supervisor please instruct him to answer.

The Supervisor: I think it is a proper question.

Witness: Do I have to answer that?

The Supervisor: You should answer it.

Witness: Well, I object to answering it.

By Mr. McCarter:

Q. Now, I take it that according to the evidence thus far you had given this girl $250 at least? A. Yes, sir.

Q. When did you get your automobile? A. I think I bought one in September.

Q. In September, 1926? A. September or October; somewhere in the Fall.

Q. Now, I ask you again if you did not take this girl out riding in that automobile. A. I did not take her out riding except under circumstances that I have mentioned and I don't recall having her especially. If I were going—

Q. I ask you again if you ever took her riding in a taxicab. A. No, I don't recall that I did.

Q. Did you give her any more money? A. Yes.

Q. When? A. I told you that I did.

Q. When? A. During the next three or four months—there was three or four months altogether.

Q. That is between the latter part of August and three or four months afterwards you gave her more money. A. Yes.

Q. Each time going to this same place on Belleville Avenue? A. Or mailing it there.

Q. Did you mail some there? A. Yes, sir.

Q. By check? A. No, sir.

Q. How? A. Plain money—bill money.

Q. You mailed plain money? A. Yes, sir.

Q. By registered letter? A. No, sir, plain money in a plain envelope.

Q. How much at a time? A. About $20 or so.

Q. In bills? A. Yes, sir.

Q. Were you corresponding with her? A. No, sir.

Q. You mailed the money. A. Yes, sir.

Q. You mailed her or delivered to her in all how much? A. In the neighborhood of $500.

Q. Is that as accurate as you can make it? A. A little over $500.

Q. Well, how much? A. I couldn't say exactly.

Q. How much over $500? A. It may have been $525.

Q. You think that is correct? A. Approximately, yes.

Q. By approximately, what do you mean? A. I named the figures.

Q. And you are within the amount when you say — A. It might have been a little more.

Q. Didn't you have a record? A. I had the record I told you about.

Q. You said you had a record which you destroyed after you sent in your resignation and your res-

ignation was sent in in September, 1928? A. August or September.

Q. You looked at the memorandum before you destroyed it? A. No, sir; I did not.

Q. You say you had given this girl $500 or more in this way and you had a memorandum and destroyed it after you handed in your resignation? A. Yes, sir.

Q. You say the aggregate was about $500? A. It was a little more than that; I think it was more than that.

Q. I am trying to find out. I am naming your figures. A. The total amount of everything—

Q. I don't want to know of everything. I am asking you about the amount of money that you paid this girl. A. I don't recall the exact amount now, sir.

Q. What was the limit? A. The limit of it—

Q. The limit that you paid that girl. A. The limit that I approximate it was $610. Those are the best figures as I could approximate it, because I didn't have the thing down in dollars and cents.

Q. Did you or did you not keep a memorandum of the amount you have paid that girl? You told us you did. What is the fact? A. Of the larger amounts, I did; I mean $20 or $50 I did.

Q. Did you pay her any smaller amounts, too? A. Yes.

Q. How? Personally? A. By mail; just mailed without a letter.

Q. How much do you say now that you paid her? I don't know anything about it; I am trying to learn. It seems to me an extraordinary thing that you don't remember how much you paid her. A. I am trying to tell you.

Q. How much? A. I approximated the aggregate amount as $610.

Q. For everything? A. Yes, sir.

Q. Why did you say before $525 and now you say $610. A. You ask me about the slip and I was just trying to recall the slip because I did keep the larger amounts down, and the other ones I didn't. Before I wrote the letter I approximated the whole amount.

Q. When did you make the last payment to her? A. It has been much over a year ago—much longer than that. It has been approximately, I would say, within six months after the hearing, approximately.

Q. How often were you seeing her during this period? A. I possibly seen her the two or three times I stopped there; maybe three or four times, I wouldn't say exactly.

Q. Did you ever have her at the house of Dr. Phelps in Caldwell? A. I think she came there with a patient one time.

Q. Will you answer my question? Did you ever have the Galler girl to the house of Dr. Phelps? A. I don't recall that I did.

Q. Did you say you did or did not? A. I don't recall that I did.

Q. Did the Galler girl ever call on you at the institution after she left? A. No, sir.

Q. Didn't Dr. Bond bring her there? A. Doctor who?

Q. Dr. Bond? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. And she has never seen you at the institution after she left? A. No, sir; never. I know Dr. Bond.

Q. You know Dr. Bond? A. Yes, sir.

Q. To whom did you tell, if anybody, that you were giving this money to this girl as you were giving it? A. No one.

Q. And when did you first tell anyone that you were giving this girl money? A. I am sorry I don't understand your question.

Q. When did you first tell anyone that you were giving this money to this girl? A. When I wrote the letter to Dr. Harman.

Q. When you wrote the letter to Dr. Harman? A. Yes, sir.

Q. That you referred to as writing on the train? A. Yes, sir.

Q. You told him then that you had given the money to this girl? A. I mentioned in the matter that he was familiar with. He knew about the matter.

Q. He knew you were paying her this money? A. He didn't specify.

Q. Did he say he knew you were paying her this money? A. He knew it was necessary—

Q. You say he knew you were paying her this money? A. He didn't know how much I was paying her.

Q. Did he know that you were paying this girl any money? A. (No answer).

Q. I beg your pardon. A. I can only say no to that question.

Q. Why do you say it was necessary? A. (No answer).

Q. Was the girl in need of money? A. He asked me to go and see her—

Q. I asked you if the girl was in need of money. A. She said that when she had left there she was out of a position and that she wanted to take up

some sort of a course in order that she could work elsewhere.

Q. The first time that you ever mentioned the fact you were paying this girl money to Dr. Harman was when you wrote the letter, wasn't it? You have told us that. That's right, isn't it? A. After the original night.

Q. What night are you referring to? A. The night that he came to my office.

Q. You had not paid her any money then, had you? A. No.

Q. And the first time after you say you had paid this girl money that you ever mentioned it to Dr. Harman was in this letter? A. Yes.

Q. When do you say you had last seen the Galler girl before August, 1928? A. Before August?

Q. Yes. A. I would say it had been a year and a half, approximately.

Q. Approximately a year and a half? A. Yes, approximately, I will say it was within a year and a half.

Q. A year and a half? A. I said I would think it was at least a year and a half.

Q. You and the doctor were friendly during the year of 1927? A. I don't understand your word friendly.

Q. You had no differences with him? A. I tried not to have.

Q. Did you have any differences with him during the year of 1927? A. There was no controversy.

Q. During the year of 1928, how often were you away on alleged conventions? A. Not on any alleged conventions.

Q. Well, on conventions. How often were you away? A. I was in Chicago in April.

Q. How long were you gone? A. Eight working days.

Q. How long were you gone? A. Eleven days altogether; about eleven days.

Q. Why did you say eight when you knew it was eleven? A. I said eight working days.

Q. Who paid your expenses on that occasion? A. Myself.

Q. Was that the convention that you were going to when you wrote this letter? A. No.

Q. When was that? In April? A. I went to a convention in April.

Q. I am speaking of the times you were away at conventions or otherwise. A. April was the convention, and when I wrote the letter it was in August, on my way to St. Louis.

Q. Then you were at a convention in April in Chicago at which you lost eight working days at the institution? A. Yes, sir.

Q. Wasn't it in April, also of 1928, that you were quite active in getting up an anniversary testimonial to Dr. Harman? A. I don't think I had anything at all to do with it; I don't recall that I did. It is possible—

Q. There was a testimonial given to him on the fifth anniversary of his connection with the institution? A. Yes.

Q. And didn't you participate in that? A. I had some pictures or something there.

Q. Radiograms? A. No.

Q. Didn't you participate in that and didn't you help to get it up? A. The only thing, I showed the pictures that I was asked to show.

Q. Didn't you help to get it up? A. Nothing more than that, no.

Q. After April, when was the next time you went away? A. In August.

Q. And that was where? A. At St. Louis.

Q. You had been to Chicago in April? A. Yes.

Q. And in August you went to St. Louis? A. Yes, sir.

Q. Was there something in California? A. I didn't go to California.

Q. Was there something in California? A. There was something going on in California.

Q. When was that? A. Early in August.

Q. And you asked to go to that, didn't you? A. I did.

Q. And asked that your expenses be paid? A. I did.

Q. And the Doctor said he would put it up to the Freeholders? A. He said he would.

Q. He said he would and he said he did, didn't he? A. Yes.

Q. And you were quite incensed that the Freeholders would not permit you to go and to go at the County's expense, weren't you? A. No, sir, I was not incensed.

Q. Look at this letter dated August 6th, 1928, and see whether that is the letter you have been referring to. A. This is the one I wrote on the train.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-7).

Q. You wrote that letter on the train, didn't you? A. Yes, sir.

Q. The train seems to be called a somewhat historical, the Spirit of St. Louis. A. Just like Lindbergh.

Q. Had you made the request to go to California before you went to St. Louis? A. Yes.

Q. You had? A. Yes, in writing.

Q. And had you been refused before you went to St. Louis to go to California on another convention? A. I think something had been said to that effect.

Q. It had been turned down, hadn't it? A. I don't recall just what was said about it.

Q. As a matter of fact, the proposal that you should go to California had been made and rejected before you left to go to St. Louis, that's right, isn't it? A. I cannot recall just what the disposition of it was.

Q. You never went, did you? A. No, I never went.

Q. And you were not given the money to go with? A. No, sir.

Q. And whatever the disposition of it was, it had occurred before you went to St. Louis. That is what I am driving at. A. I won't say that it did. The date for the convention in California would necessitate leaving in July.

Q. Then it had occurred and been rejected before you went to St. Louis. A. I won't say it was rejected.

Q. This letter was written on the train, wasn't it? A. Yes, sir.

Q. The letter says, "Spirit of St. Louis; Pennsylvania Railroad; 25 hours between New York and St. Louis; special features; ladies' maid; manicure; stenographer; observation car, periodicals, bathroom, telephone." Then it is dated August 6, 1928, "Dear Dr. Harman: Will you please arrange to settle the personal expense account of which you are familiar since 1926. I would like this by

the morning of August 16, 1928. The amount is $610. Respectfully yours, Harold Bennett. P. S. I will return as soon as possible by the end of week if I can. B." A. There is an H. there too.

Q. Have I left out something? A. There is an H. B. there.

Q. It doesn't make any difference. I don't see anything but a B there. Will you tell me why, if you had within six months after August, 1926, paid out—first you say $525 and then you say $610—to this girl Galler, and had never spoken to the Doctor about it, what had happened between that time when you made the payments and August 6, 1928, that impelled you to write on the train asking that this money be paid by the 16th of August, 1928? What had happened that made you suddenly wake up right on the train that you wanted that money of which you had never spoken to him before since it was paid or while it was being paid? Why did you write that letter at that time? A. Because I needed the money at the time I suggested there.

Q. Did you have some payment to meet? A. Yes, I had a payment to make.

Q. You mean a business payment? A. Yes, sir.

Q. When you came back you saw the Doctor. I think he sent for you, didn't he? A. Yes, in his usual manner.

Q. In his what? A. In his usual manner. Yes. He sent for me.

Q. Was there anything unusual about his sending for you? A. No.

Q. And you went to his room. A. Yes, sir; I went to his office.

Q. He showed you this letter and he asked you what it meant. A. No, sir.

Q. What did he say about the letter? A. He asked me if I could tell him all about it.

Q. I ask you if he didn't say something like this to you: "What the Hell do you mean by that letter?" A. He never did.

Q. He wouldn't use that word "Hell" to you, would he? A. He didn't use it.

Q. He didn't say anything like that? A. No, sir.

Q. He didn't express any surprise at it? A. No.

Q. He didn't tell you you were trying to blackmail him? A. No, sir.

Q. He didn't? A. No, sir.

Q. Did you go into any explanation of it? A. Nothing more than I said it was that little affair of 1926, and he said, "All right" and he turned a cardinal red and folded it up and put it in his pocket.

Q. What next occurred between you and the doctor? A. When?

Q. After that interview. A. I think the next thing was that he called me in his office.

Q. A second time? A. About two weeks later.

Q. All right. Go on. A. About two weeks later he told me he was going to change my nurse.

Q. He said he was going to put a new nurse on your job in your room? A. He said he was going to change my nurse.

Q. And you objected to that? A. (No answer).

Q. And you objected to that? A. Not then I didn't.

Q. You did not? A. No, sir.

Q. Well, now, Mr. Bennett, what next occurred? A. He spoke to my nurse.

Q. In your presence? A. No, sir.

Q. And he proposed to substitute for your nurse

one of the other nurses? A. It is customary—he didn't say—

Q. What? A. He just simply said he was going to change my nurse.

Q. He simply told you that he believed in rotation. He told you that, didn't he? A. He used that term, yes, sir.

Q. And you objected to the rotation? A. No.

Q. You did not? A. No.

Q. Well, at any rate, who was the nurse that you had had? A. Mrs. Cashin.

Q. Where is she, by the way? A. She lives in Morris Plains.

Q. You have told us that you thought rotation generally was proper, haven't you? A. Excepting the ones who are classified as an assistant.

Q. Was Mrs. Cashin a nurse or wasn't she? A. She was a registered nurse.

Q. You were very friendly with her, weren't you? A. Just what do you call friendly?

Q. Just what I say. You were very friendly with her? A. Nothing more than conducting her work.

Q. The result was that you preferred a charge against Dr. Harman to Mr. Reed, wasn't it? A. I did, for the interference with my department.

Q. One moment. You preferred a charge. I will show you a copy of a letter that was sent to Dr. Harman by Mr. Reed and ask you to look at it and see if you recognize that as being the charge that you preferred against Dr. Harman. A. I didn't read it all; the general appearance appears to be of the letter.

Q. There appears to be no doubt about that. A. No, sir.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-8).

Q. I see this paper is dated September 15, 1928. Of course at that time you knew of the interview at Father Fitzpatrick's home in 1926, didn't you? A. Yes.

Q. You knew that you had been paying $610 to this girl? A. Yes.

Q. And you made this charge against Dr. Harman, didn't you? A. I did.

Q. "Verona, New Jersey. September 15, 1928.

Mr. Ernest A. Reed, Supervisor,
County of Essex,
Hall of Records,
Newark, New Jersey.

Dear Mr. Reed:

The writer, employed in the department and institution named above, came here on certain conditions by request of some of the County's most prominent and eminent medical men, nearly five years ago.

Recently, to rebuke for a personal reason and some of his dictators, Dr. Harman has penalized, intimidated and threatened the writer, and, caused his nurse to resign after over two years of special study at her own expense and own time in the X-ray and electrical therapy work for this particular institution. This is the second nurse Dr. Harman has caused to resign for no just reason in a little over two years—after the writer has spent the same length of time to instruct them in a manner that they both became very adept. This unjust action has harmed the department and also deprived

the writer of all the essential privileges that has helped make the department what it is.

Being the State representative (in second term) for the technical field of the X-ray, it is obligatory to report the condition to the proper authority in the organization.

Being the head of a department and a victim of an unjust penalty, the writer demands a written apology from Dr. Harman and, a reinstatement of his nurse at a very early date."

Why didn't you say something about these other things? A. Isn't that sufficient?

Q. Is that the best answer you can give? A. (No answer).

Q. That was the charge you made against Dr. Harman on the 14th of September, 1928? A. Yes, sir.

Q. And you were to have a hearing on that and you knew that Mr. Reed was courteously going to send Dr. Harman a copy of the charge, didn't you? You knew that? A. I didn't know his proceedings.

Q. You knew that was a complaint against Dr. Harman? A. I knew it was a complaint, yes, sir.

Q. I ask you why you didn't make some of these other charges, far more serious, I should think, Mr. Bennett, than the refusal to let you have a nurse? A. That is the only charges that I had desired to make against the man.

Q. You came here on this charge. You knew a date was set, didn't you? A. Yes, sir.

Q. And you saw Mr. Bailey and me sitting here and you immediately asked for counsel and so an adjournment was granted that you might get counsel? A. Yes, sir.

Q. And then another adjournment was made? A. Not at my request.

Q. And you were asked to state your case against Dr. Harman, weren't you, by Mr. Reed? A. Yes, sir.

Q. And Mr. Vanderbilt was here and asked you to state your complaint, did he? A. Yes, sir, I think he did.

Q. And that was on October 19, 1928, wasn't it? A. It was about two months ago.

Q. You made quite a long statement, didn't you? A. (No answer).

Q. Didn't you? A. You would know better than I.

Q. Well, didn't you? A. (No answer).

Q. And you recounted something like this (page 5): Dr. Harman came to me and told me I might suggest any nurse's name in the institution who I thought was practical and who would appear to be all right, providing she didn't mind doing X-ray work and was willing to agree to stay there long enough to be of some benefit—I mean not work a few months and then go off. It is very hard to get a good X-ray nurse, a nurse who has a general aptitude for the work. There are a lot of good nurses but not good X-ray nurses, and I suggested the name of Mrs. Cashin. She has been working with me now for almost two years until I think August 21, 1928, and then she became displeased by spending so much time to prepare for all the extra course and everything else, I believe she tendered her resignation rather than being transferred to the threapeutic lamp room. As the head of a department, Dr. Harman—he didn't tell me why he wanted to transfer her—I know he is the superintendent and all of that, but I tried to play a fair game with him,

and there didn't seem to be any reason for taking my nurse away from me on such short notice, and to do so when there was evidence of her being penalized or penalizing me, for something else."

Did you say all this? A. You should know better than I; I don't remember it word for word.

Q. You remember a stenographer was here and took down your statement? A. I have no copy of it.

Q. You remember that a stenographer was here and took down all that you said? A. Surely.

Q. Did you further say: "I suggested myself nearly two years ago that after the building, which was going along nicely now, that by having the nurse established, it would be very good to have the rotation of nurses, further, that I would have an extra nurse, and give every nurse in the institution a chance for experience, and give every nurse on the staff the service she has a right to expect, the same as every large hospital I have worked in." Did you say that? A. I should have, if I didn't—meaning—

Q. I guess you did. "I mentioned the matter to Mrs. Harris and she discussed that and all things in general, and even mentioned something about an expense account when I went to Chicago to a convention in the spring." Did you say that? A. I should have.

Q. And did you say: "Before I went to Chicago the Doctor asked me, I took it to be a casual and courteous manner, as to what I thought my expenses would be. I told him I didn't know, and didn't know. I knew about the fare, everybody knows it is around $50. I went on the Broadway Limited. It is an extra fare train. He said when I got to Chicago to send him a programme and I did.

When I came back—before I went he told me when I came back to let him have a list—and he didn't promise payment, but he would submit it and see whether or not the Board would act on it." A. That conversation took place.

Q. And then did you testify, "I put in a request in writing to go to San Francisco and named approximately $500 for the round trip." Is that correct? A. I think so.

Q. "The convention was to be four days, the 6th to the 10th of August, both days inclusive and we had to come back—we were travelling with scientific men the same as I was in Chicago and $500 would not have been an unreasonable amount. That was rejected." A. I don't recall whether I said that or not.

Q. Will you tell Mr. Reed whether you said that? A. I don't recall that I said it. I don't deny that I said it. The second request was put in for a very definite reason.

Q. "In writing to Mr. Reed I demanded the reinstatement of my nurse and a written apology from Dr. Harman, based on the facts I have given you, because he is working for somebody else and not being straight-forward and interfering with my department." A. Because what?

Q. Because he is working for somebody else and not being straightforward and interfering with my department. Did you say that? A. I don't recall those words.

Q. Did you further say: "It is nearly five years now—five years and a few days—since I have been at the Sanatorium. It is one of the finest in the country. There have been improvements from time to time. If I have been selfish in the matter, or any matter, Dr. Harman is right there and can

tell you. I think I have covered the subject in general, unless I have left out something. If I have, you can remind me and I will try to explain it. You know now in general why I have done what I have, how I feel and why I feel." Did you say that? A. I don't recall the words that I used.

Q. "The Supervisor: Is that all? Mr. Bennett: I think in general it is, Mr. Reed, unless there is something I have overlooked." Did you say that? A. I don't recall what I said.

Q. Did you further say: "I have requested the presence of Mr. Hines and Mr. Mungel for the purpose of asking them why there was so much going on and why they condemned everything. They condemned us so far as Dr. Harman and Mrs. Harris was concerned. That is the information I heard." Did you say that? A. It is possible that I did.

Q. And on page 19, did Mr. Vanderbilt ask you: "Have you any other witnesses?" And did you say: "No more here, no." A. I don't recall that he asked me that.

Q. Now I will ask you, Mr. Bennett, if you had this information that there was this claim on the part of the Galler girl that these improper proceedings had gone on, and if you had the information that you had paid her $610, or any other sum, implying that you paid it at the Doctor's request, when you made charges against the Doctor and broke with him and came up here and had the hearing, why you didn't say something about it but confined your charge entirely to the claim that he was wrong and owed you an apology because he had insisted upon changing your nurse. Why did you do that? A. The other ones had been spoken of to Father Fitzpatrick and Mrs. Harris, and as far

as I was concerned it was done with.

Q. You knew that Father Fitzpatrick and Mrs. Harris had concluded that, didn't you? A. No, sir, I didn't know that.

Q. Now, I show you a letter from you dated July 5, 1928, to Dr. Harman. See whether you wrote it. You did, didn't you? That was before you went to St. Louis. A. Yes, sir, this is the letter.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-9).

Q. Reading from the letter written at the Sanatorium July 5, 1928, addressed to Dr. B. M. Harman, "Dear Dr. Harman: The writer is the New Jersey representative, (second term) of the technical phase of the X-ray field—an active member of the American Hospital Association and of other organizations beneficial to this work; and, is desirous of attending to Thirtieth Anniversary convention of the American Hospital Association in San Francisco, California, from August sixth to tenth, inclusive, on behalf of interests to the Sanatorium. The approximate necessary expenditure for the trip is $500. Your consideration for the appropriation of this sum will be appreciated. Respectfully submitted, Harold Bennett, radiologist." That request was not granted, was it? A. No, that was not granted; I didn't intend it to be.

Q. You didn't what? A. I didn't think it would be.

Q. You went through the form of asking for it and did not expect it would be granted? A. I did it at Dr. Harman's request.

Q. Had you sent it to the finance committee first? A. No, sir; I addressed it to them.

Q. And then they required you to receive Dr. Harman's approval? A. No, sir; Dr. Harman told me I had addressed it wrongly and I addressed it to him immediately.

Q. At any rate, you didn't get the money? A. No, I didn't expect it.

Q. What was the point in writing this letter if you didn't expect it? A. In the original—I was at the Chicago convention affair you mentioned some time ago and when I came back he said while he did not promise the money he would take the matter up with the Board, the $300 expense account, and I believe it was referred to the proper authorities through Dr. Harman or something to that effect, and someone in there asked who recommended it, or something to that effect, or rather they asked who authorized it, and he said no one. And he said the matter was dead and if the matter had been put in writing before the event, which was the proper thing to do, it might have gone through, and I immediately suggested this and he said go ahead and do it and he would write a recommendation on it, which he did.

Q. Do you remember what day you got back from St. Louis? A. I think it was on the Wednesday following the Friday I went.

Q. Were you back on the 10th? You seem to have written him on the 6th on the train going. A. I think I left on a Friday night and was back the following Wednesday night.

Q. On August 6th you were on the train and August 6th, 1928 seems to be a Monday. A. 1928? Monday?

Q. Yes. A. Well, I thought I had gone on a Friday evening.

Q. How long were you gone? A. A very few days.

Q. When did you get back? What day? A. I really couldn't tell you. I really don't know the exact time.

Q. The day of the week. A. No, I don't know.

Q. Were you back on Sunday? Leaving here on Monday the 6th of August— A. I was away one Sunday.

Q. You were away one Sunday? A. Yes, sir, I was away one Sunday.

Q. You are sure about that? A. Yes, sir, I was away one Sunday.

Q. I thought you wrote on the 6th and the 6th was Monday—then you must have been away Sunday the 11th. A. I don't know the dates; I am not sure.

Q. That stands to reason, doesn't it? I should think as a raiologist you might know that if you left on the 6th and you were away one Sunday, then you would be away on Sunday which was the 11th. A. I don't know that I started on that particular day.

Q. How long does it take to go to St. Louis? A. About twenty-five hours.

Q. Look at that letter and tell us when you left? A. I thought I left on a Friday. It might have been on a Sunday.

Q. Had you seen Dr. Harman before you resigned? A. From when? Before I resigned?

Q. Yes. A. I don't understand your question, sir.

Q. I show you your resignation. Look at it and see whether you wrote that. Did you write that? A. Yes, sir.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-10).

Q. "August 11, 1928, B. M. Harman, M. D., Superintendent, Essex Mountain Sanatorium, Verona, New Jersey. Dear Dr. Harman: It is the writer's desire to resign as radiologist at the above named institution, no later than December 31, 1928. Respectfully requested, Harold Bennett." Is that correctly dated? A. I presume it is; I couldn't say.

Q. You wrote it, didn't you? A. Yes.

Q. What had occurred between the time of the writing of the letter on the train and the time of your writing this resignation before you wrote it and presented it to him? A. I couldn't say; I had evidently seen him in between times.

Q. Had you? A. I had seen him in between times; I had returned.

Q. You are sure about that? A. I certainly had to be back there to write it.

Q. You are sure you had seen Dr. Harman before you had written this letter of resignation? A. I must have seen him. What date was it, please?

Q. August 11th. A. I must have seen him.

Q. You have no recollection of having seen him? A. I am not positive because I must have seen him because of some other things.

Q. When you came back you didn't intend to resign? A. Immediately upon my return I had no reason to.

Q. It was only after the interview that the doctor invited you to participate in concerning this letter written on the train that you determined to resign, is that right? A. I couldn't tell you exactly.

According to the way you have figured out the dates, it is possible.

Q. Then was it what had occurred at the interview that made you determine to resign? A. No.

Q. What did make you determine to resign? A. An interview with Father Fitzpatrick.

Q. An interview with Father Fitzpatrick? A. Yes.

Q. When was that? A. The day after I had been in Dr. Harman's office.

Q. The day after the interview with Dr. Harman you saw Fitzpatrick and then, whatever happened, you determined to resign, is that right? A. Yes.

Q. How soon after that did you determine to put in a charge against Dr. Harman? A. Not until he took my nurse away.

Q. Your case on the charge has not been decided, has it? A. I haven't heard that.

Q. In the meantime you have been hunting up witnesses against Dr. Harman, haven't you? A. (No answer).

Q. Now, answer that. You have been hunting up witnesses against Dr. Harman for this proceeding. A. There is two answers to that.

Q. I want the correct answer. A. I have located some persons that I had known who were dissatisfied—

Q. Whom did you locate? A. At Mr. Reed's request—

Q. Whom did you locate? A. There were two telephone operators and Miss Galler—

Q. Perhaps you don't know their names. Miss Galler and who was the other one? A. Miss Galloway.

Q. Miss Galloway? A. Yes.

Q. How did you locate them? A. I located them

through someone in Newark.

Q. Miss Galler wasn't in Newark, was she? A. New York.

Q. Who located her for you in New York? A. I don't quite understand the question.

Q. Who gave you the information that enabled you to locate Miss Galler in the City of New York? A. I don't care to give that out.

Q. You will have to do it. We won't have any more of that hiding. I want to know who told you. A. (No answer).

Q. Why don't you answer? A. I asked two other people—

Q. I want to know who told you. A. Do I have to answer that, Mr. Reed?

The Supervisor: I think you ought to answer it.

Q. What is your hesitancy about telling us? A. I am trying to think of the name of the person; I know the address.

Q. We will take the name first and the address later. A. I am not so sure that I even know the name.

Q. Was it a man or a woman? A. It was her sister.

Q. In other words, Miss Galler's sister was living in Newark? A. No, she lives in Nutley.

Q. Where? A. In Nutley.

Q. Did you go out to Nutley? A. No, sir.

Q. How did you commuicate with her? A. By telephone.

Q. And you asked her that you wanted to know the address of her sister? A. Yes, sir.

Q. Did she give it to you right away? A. Yes, I first got it from Loretto Hall from the Sisters at

Loretto Hall, the Catholic Boarding house.

Q. That is this place where you paid this $525 or $610 to the girl? A. Yes, sir.

Q. You got it there? A. Yes, sir.

Q. Why did you first need confirmation of it? A. She gave me the other address.

Q. She gave you the other address? A. The Sisters gave me—

Q. The Sisters gave you Galler's sister's address. A. That's right.

Q. They didn't know where Galler was in New York? The Sisters didn't. A. I couldn't say; I didn't ask them.

Q. They didn't give it to you, did they? A. They gave me the address they had.

Q. You first went to the Catholic Home, whatever you call it, and you didn't get the information you wanted. A. I went there first, yes, sir.

Q. And you didn't get the information you wanted? A. No.

Q. Then you got in communication with her sister at Nutley? A. Yes, sir.

Q. Did you get the information there? A. Yes, sir.

Q. Then, did you go to New York or write to New York or telephone? A. I telephoned.

Q. What did you telephone? A. I telephoned to them—

Q. Telephoned to whom? A. To Miss Galler.

Q. Did you call her Miss Galler? A. I did.

Q. What did you tell her? A. I told her Mr. Reed would like to see her and asked her if she objected to coming over.

Q. That's all? A. She said she didn't object and suggested a time when it was convenient for her to come.

Q. Did you make an appointment to meet her at the tube station at a certain time? A. Yes, sir.

Q. You had already arranged with Miss Houston and Miss Galloway—the names you had such difficulty in remembering—did you arrange with them before that? A. Yes.

Q. How did you know Miss Galloway's address? A. I asked a friend of hers.

Q. Whom did you ask? A. Mrs. Cahill; I think that's the name.

Q. Cahill? Yes, I think that's the name. A. Yes, sir.

Q. She had been at the institution when you and Galler had been there, hadn't she? A. She had been there some time before quite awhile ago.

Q. Wasn't she there when you and Galler were there? A. I don't know.

Q. Had you been in touch with Mrs. Cahill in the intervening two years? A. Perhaps I might have received a Christmas card from her.

Q. Did you recall that she would probably know Galloway's address? A. I didn't recall that she might; I thought she might.

Q. Did you inquire from somebody else? A. No, sir.

Q. And she told you where Galloway was? A. Yes, sir.

Q. How did you communicate with Galloway? I telephoned her.

Q. How did you get in touch with Houston? A. I telephoned her also.

Q. Where did you find her address? A. I knew where Miss Houston was working.

Q. How did you happen to know that? A. I couldn't recall just how I knew.

Q. You arranged with all of these three persons

to meet them the same night about the same place? A. Yes, sir.

Q. Did you go to Houston's house to meet her? A. No, sir.

Q. Where did you meet Galloway? A. At my car.

Q. Where? A. I left my car near St. Patrick's Cathedral.

Q. You thought that would be a kind of good christening place near the Cathedral, to meet these three young women to take thme up and see Mr. Reed.

Mr. Vanderbilt: I object to that.

A. No, sir.

Q. The Cathedral had nothing to do with it? A. No, sir, that stands on its own facts.

Q. Isn't it a matter of fact that you were married and your wife sued you for divorce because an inmate of the Sanatorium had broken up your family relations and that she was awarded a considerable sum of alimony, and that you wanted that $610 for, not $510, but $610, what you wanted it for was to pay that alimony? A. No.

Mr. McCarter: I am not through with the cross-examination of this witness and I should like to have him return.

Mr. Vanderbilt: How much more time will you want with this witness?

Mr McCarter: I don't know.

At one o'clock, P. M. the court adjourns to 10 A. M. Wednesday, December 19, 1928.

FIFTH DAY.

Wednesday, December 19, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

HAROLD BENNETT, resumes the stand.

Cross-examination (continued) by Mr. McCarter:

Q. Mr. Bennett, after the hearing before the Supervisor on your charge about removing your nurse which I think was on October 19, 1928, did you see Director Hines and bring to his attention some of the matters that are incorporated in the charges here? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Did you take a meal with him and Mr. Reed at the Athletic Club?

Mr. Vanderbilt: I object to that as absolutely irrelevant and immaterial and not within the issues.

Mr. McCarter: I want to show his activity in this matter.

Mr. Vanderbilt: I don't think it is material.

Mr. McCarter: I think it is very material.

Mr. Vanderbilt: In what way?

Mr. McCarter: This man had a grudge against Dr. Harman and there was nothing in it and it petered out; it was about a nurse being removed from his department; and then he stirs this matter up, I want to show what his activity is in this matter.

Mr. Vanderbilt: I have no objection, but on my cross-examination of Dr. Harman I ask that I may go as far afield.

Mr. McCarter: I am making no such bargain. I don't think this is far afield; I think it is within my rights.

Mr. Vanderbilt: All right.

Q. Did you? A. I can't recall whether I did.

Q. Do you mean to say you can't recall whether or not since the 19th of October, within two months you took a meal at the Newark Athletic Club with Director Hines and Mr. Reed about this matter and discussed this matter with them? A. I had breakfast with Mr. Hines.

Q. You had breakfast with Mr. Hines? A. Yes, sir.

Q. At the Athletic Club? A. Yes, sir, with Mr. Hines; not with Mr. Reed.

Q. Was that after you had first seen Mr. Hines

about this? A. I saw Mr. Hines about the—

Q. Won't you answer my question. Was this breakfast that you took with Mr. Hines at the Athletic Club the first time you spoke to him about this matter or— A. (Interrupting) It was not the first time.

Q. So you saw Director Hines at least twice about this? A. About the bills is what I spoke to him about.

Q. Will you answer my question? You saw Director Hines at least twice about this matter of difference between you and Dr. Harman? A. No.

Q. You did not? A. No.

Q. Didn't you speak to Mr. Hines concerning what you deemed irregular conduct by Dr. Harman? Didn't you? A. I discussed the bill with Mr. Hines. I discussed the bill with Mrs. Harris I spoke about—

Q. Which bill do you mean? A. The San Francisco bill for that appropriation. Mrs. Harris said it was turned down by Mr. Mungle, and she said it wasn't; he said it never came to a vote.

Q. That is the only subject you discussed with Mr. Hines back in July when you were anxious to go to San Francisco at the expense of the County at a cost of $500? A. I wasn't anxious; it was Dr. Harman's suggestion.

Q. You said that was the result of your breakfast interview with Mr. Hines? A. The original interview; that is what I want to see him for.

Q. I ask you if that was the sole subject of your two interviews with Mr. Hines? A. No.

Q. You discussed some of these matters of alleged complaint against Dr. Harman with Mr. Hines, didn't you? A. I don't get you clear on the question.

Mr. McCarter: Will you read the question please?

(The pending question is read by the stenographer).

A. I don't recall the exact conversation, but it was something in reference to the institution.

Q. Something in reference to the institution? A. Yes, sir.

Q. Was it with reference to Dr. Harman? A. No answer.

Q. It was, wasn't it? A. It was in reference to my resignation.

Q. Was it in reference to Dr. Harman? A. No, I have no grievance against Dr. Harman.

Q. I didn't ask you that. I asked you whether you talked to Mr. Hines relative to Dr. Harman. A. (No answer).

Q. Won't you answer my question? A. I can't answer it in the way you want me to answer it.

Q. I want you to answer it truthfully. A. In reference to my resignation, and so forth.

Q. And so forth. Do you decline to answer my question any more than you have answered it? A. I can't answer it better than I have.

Q. Did you see Mr. Hines a third time? A. I think I seen Mr. Hines twice.

Q. And then later you saw Mr. Reed about this matter, did you not? After you had seen Mr. Hines at breakfast at the Athletic Club you saw Mr. Reed, did you not? A. I seen Mr. Reed occasionally.

Q. Did you see Mr. Reed after you had seen Mr. Hines at the Athletic Club? A. Nothing specially.

Q. Did you see him? Did you come into this

building to see him? A. (No answer).

Q. I want you to answer these questions. A. I think I did.

Q. Yes, I guess so. A. I won't say whether it was before or after.

Q. Your headquarters are up at the hospital, aren't they? A. Yes, sir.

Q. That is where you live, isn't it? A. Yes, sir.

Q. When you came down to see Mr. Reed at this building you came all the way from the institution here, didn't you? A. Not especially, no. I came from the institution; I did several errands at the same time.

Q. Sure. Did you go to Mr. Reed's house? A. I have never been in Mr. Reed's house.

Q. Did you go to his house? A. (No answer).

Q. Why can't you answer those questions? A. I don't want to answer anything if I am not pretty sure about it, sir.

Q. What is your answer? A. I have been to Mr. Reed's office.

Q. Since October 19th, the time when your hearing was held here on your own complaint? A. Yes, sir.

Q. How many times have you been to Mr. Reed's house since then? A. I think I was down there once.

Q. What? A. Once or twice, possibly.

Q. How many times? A. Once; I am not sure whether I was there twice or not.

Q. Where is Mr. Reed's house? A. It is on Sixth Avenue in the Roseville section.

Q. During the daytime or at night? A. I couldn't tell you that—whatever time I was coming down. I think it was in the afternoon.

Q. Did you bring to Mr. Reed's attention on any

of these visits the alleged facts that between Labor Day, 1925, and August, 1926, Dr. Harman had entered the bedroom of Pauline Galler and Bertie Galloway?

Mr. Vanderbilt: I object to that as immaterial. The issue in this case is the truth or falsity of these charges, and whether or not Mr. Bennett brought them to the attention of the Supervisor is absolutely immaterial.

Mr. McCarter: I think that the source of these charges is very material and I insist that I am entitled to an answer, Mr. Supervisor.

The Supervisor: Will you read the question, Mr. Kirschenbaum?

(The stenographer reads the pending question).

Mr. Vanderbilt: How can that be material? Under the act there is no question that the Supervisor himself might be the complainant.

Mr. McCarter: I do not so understand the act. Nevertheless, I think I am entitled to a ruling.

By Mr. McCarter:

Q. Do you understand the question?

Witness: You asked me if—

Mr. McCarter: Will you read the question, please?

(The stenographer reads the pending question).

Mr. Vanderbilt: I am simply making these objections, I am stating frankly, so that I

may have the same latitude in cross-examining later on.

The Supervisor: I am reluctant to make any ruling that would seem to keep out any facts in this case. I think we have to get at the facts regardless of where they may go and whom they may concern. I think the question is proper and may be answered.

Mr. McCarter: Will you please read the question?

(The stenographer reads the pending question).

The Witness: In answer to his question—

Q. Will you please answer my question? Did you or did you not?

Mr. Vanderbilt: Mr. Supervisor, I insist that that question cannot be answered yes or no, or it may not be answered yes or no. It may be yes to one and no to the other or yes to both or no to both. If it develops that he brought the facts to the Supervisor's attention as to Miss Gallowy and not Miss Galler—

The Supervisor: Will counsel reframe the question?

Q. Did you at any of these interviews bring to Mr. Reed's attention the alleged facts that between Labor Day, 1925, and August, 1926, Dr. Harman had entered the bedroom of Pauline Galler? A. I mentioned about the hearing in Father Fitzpatrick's—

Q. Will you answer my question? A. Yes, to one and no to the other.

Q. The question is as to Pauline Galler. A. Yes, based on the hearing.

Q. You did mention that alleged fact to Mr. Reed? A. Based on the hearing—

Q. Yes, anything you want to say about it. You mentioned that to Mr. Reed, did you? A. After he asked me, yes, sir.

Q. The hearing you mean was the transaction before Father Fitzpatrick, is that what you call the hearing? A. Yes, sir.

Q. Did you bring to Mr. Reed's attention at any of these interviews the alleged facts that Dr. Harman had entered the room of Bertie Galloway? A. No, sir, I did not. I didn't know about it.

Q. On any of these occasions did you bring to the attention of Mr. Reed the alleged facts that the Doctor had the practice of unnecessarily exposing the persons of female patients? A. No, sir.

Q. You did not? A. No, sir.

Q. You didn't mention that subject? A. No, sir, I didn't know nothing of it.

Q. You have had the file or chart, Exhibit C3, bearing upon the operation upon Henrietta Rose in your possession, haven't you? A. I asked for it about two weeks ago and it wasn't there.

Q. Will you answer my question? I want an answer to my question. You are the radiologist of this Institution and I think as the State's representative there in the second term; I think you are intelligent enough to answer my question. Have you had this file or chart in your possession? A. I don't know what you mean by possession. I have seen it in my nurse's hands.

Q. Did you direct your nurse to get it? A. I asked her to.

Q. Has she got it? A. The last time it wasn't there.

Q. Did she get it? A. On one occasion she did.

Q. And she brought it to your department? A. Yes, sir.

Q. You wanted to see it when you asked for it? A. Yes.

Q. How long did you have it? How long was it in your apartment? A. Possibly ten minutes.

Q. What did you want to see it for? A. We checked up on an X-ray report, the last thing which was made which is not on the chart because it is not typed.

Q. Then you examined the papers? A. I looked over some papers, sir.

Q. Look at Exhibit C-3 which has several papers in it and see if you looked at those papers. A. I don't know that I looked over all of them; I mean I don't recognize all of them. It seems as if there were more than that there.

Q. Did you examine some of them? A. Yes, sir.

Q. Which ones did you examine? Q. Look over it and tell me which ones? A. There is three or four here that I examined.

Q. Three or four that you examined? A. Yes, there is an X-ray slip which is not here.

Q. You say that something has been taken— A. An X-ray report is not here.

Q. Which of those papers did you see first, and then we will talk about anything that is missing. Which did you see? A. The X-ray slip.

Q. You said you saw two or three of those that are there. Which are they? A. These (indicating).

Q. Are those three you have laid aside those which you say you have examined? A. Yes.

Q. One of those that you say you examined is No. 8 sheet. A. I looked at that one, but there is no X-ray report with it.

Q. No. 8 is the one that you examined? A. I looked at it, sir; the X-ray report is what I was looking for.

Q. No. 14 is the one you say you examined? A. Yes, sir.

Q. And No. 4 is one you say you examined? A. Yes, I don't know the number of it.

Q. Look at it and see. If No. 4 is one. A. Yes.

Q. And No. 3 is one, is it? A. Yes.

Q. Did you take an X-ray of Miss Henrietta Rose at the time that she was ill and Dr. Brown operated on her? A. I don't know just when he operated on her, sir.

Q. You are aware of the fact, are you not, that this particular chart is the chart giving the history of her operation? A. Yes, sir.

Q. I ask you if you took an X-ray of Miss Henrietta Rose in connection with, at the time of, or after that operation? A. No.

Q. Then what are you talking about the X-ray? A. It is a routine that every patient is X-rayed. What I wanted to see was how long it was since I have X-rayed her.

Q. You wanted to find out what? A. I looked for the X-ray reports and we found the duplicate with a note on it in our department.

Q. You looked it up for the X-ray report of that operation? A. No, we are talking about anything

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Q. No. I am talking about this particular operation and I am talking about this particular chart, Exhibit 3, which alone concerns this operation.

You say you found an X-ray report of that operation? A. No.

Q. You say you had a duplicate of the X-ray report in your department? A. No.

Q. What did you say about the duplicate? A. There is a duplicate kept in the department and the original on the chart and every time we make an X-ray it goes on the card and every time we make an additional one you get that card and type them together.

Q. You don't remember whether you had taken an X-ray or not? A. No.

Q. And you wanted to find out, is that it? A. (No answer).

Q. Is that what you were after? A. We wanted to write up the reports.

Q. When you a little while ago said you sent your nurse to get this chart, and examined chart Nos. 3, 4, 8, and 14, you have told us you were looking for some X-ray reports, haven't you? A. Yes.

Q. Did you think you had taken an X-ray of her during that illness? A. I didn't know whether I had or not.

Q. And you wanted to find out? A. Not especially, no.

Q. Why were you looking, then? A. (No answer).

Q. Why were you looking? A. It is possible for the X-ray report—that our report was mislaid—which happens occasionally.

Q. You found in your own place no X-ray report and you thought possibly that might have been mislaid and so you went to the original chart—A. No.

Q. No, what? A. We got a sack of them, 500 possibly.

Q. And you couldn't find any X-ray report of this particular operation, so you went to this chart and found out. A. No.

Q. What was it, then? A. Since August we have not typed any reports, and this is only one of perhaps 25 charts, maybe 50 charts, that we have gotten. I would say roughly, maybe 25 we have gotten.

Q. I am talking about a chart away back in 1925, three years ago, or more. A. I don't know nothing about the 25 chart.

Q. Why were you looking at this chart? That's what we want to know. A. Every case that is discharged or deceased, or something the records are checked against it, and there is a copy of an X-ray report somewhere.

Q. Did you have anything to do with the discharge of this particular case? A. No, but the case is listed under death.

Q. You noticed, did you not, that on No. 14 was stated that the trouble with Miss Rose was endometritis, operation, curettment? You noticed that, didn't you? A. Yes, I noticed something else on there.

Q. Let us have that, too. That is what we want to find out. A. There is quiescent T. B. somewhere.

Q. What is it you say you noticed? A. Quiescent T. B.

Q. That means quiescent tuberculosis. A. Yes, sir.

Q. You noticed that, is that it? A. Yes.

Q. What number is that? A. 14. It is a study

Q. One moment. Did you talk to Dr. Lauterborn about this operation while that file was in your possession?

Mr. Vanderbit: I object to that as absosolutely immaterial. I don't see how any conference with any third party—

Mr. McCarter: I asked him if he talked with Dr. Lauterborn about it.

Mr. Vanderbilt: I object to that as immaterial and not at all within the issues.

Mr. McCarter: I think it is material to show the zeal and earnestness of this man.

Mr. Vanderbilt: That is not the issue, if the Supervisor please. We are concerned with the truth or the falsity of these charges.

Mr. McCarter: I believe it is. I believe the court above will say so if this court does not, which I think this court will because I have perfect confidence in this court. I ask that the question be answered whether he did not talk to Dr. Lauterborn about it.

Mr. Vanderbilt: May I ask counsel to state on the record the purpose of the question.

Mr. McCarter: The purpose of the question is to indicate the zeal of this witness in this matter and to indicate, as every fair-minded person must believe, that he is the sole inspirer of these charges. Apparently what I say makes this witness laugh.

Mr. Vanderbilt: Then it is not within the issues. I suppose if it were conceded as a fact that Mr. Bennett was the man that brought these charges exclusively to the Supervisor's attention, although that fact was denied by him at least in part, that would not have anything to do with the case. We

are not trying Bennett's character. We are trying these specific charges.

Mr. McCarter: But I think we may show that Bennett framed this thing and I think we are entitled to show that. I ask that Mr. Bennett's smile be noted on the record.

Mr. Vanderbilt: I object to that unless all of counsel's remarks are put in at the end of each question.

Mr. McCarter: I want everything to go in.

Mr. Vanderbilt: Will the stenographer note that.

Q. Will you please answer the question? A. I understood it has been about Dr. Lauterborn—

Mr. McCarter: Will you please read the question?

(The stenographer reads the question as follows: "Question: Did you talk to Dr. Lauterborn about this operation while that file was in your possession?")

A. No.

Q. At any time? A. He came to my department

Q. At any time? A. When he came to check up the case I presume he wrote his summary—

Q. When was this? A. When he wrote his summary.

Q. When? A. Whatever date it was.

Q. Recently? A. Usually the summary?

Q. I am not asking about usually. When was it you talked to Dr. Lauterborn? Was it in 1925 or recently? A. No, it was recently.

Q. How recently? A. It was after the patient

died. He came in to compare the records and the plates. I don't know what date it was.

Q. You knew Miss Rose died, didn't you? A. Yes, we know when they all die. We get reports on it.

Q. Did you bring to the attention of Mr. Reed the alleged facts that Dr. Harman on or about the 8th of May, 1925, permitted the performance of an illegal operation on Henrietta Rose? A. No, that was a topic—

Q. You did not speak to Mr. Reed of that matter? A. I can't answer you yes or no.

Q. Very good. Did you speak to Mr. Reed concerning the alleged failure of Dr. Harman to call staff meetings? A. No.

Q. You did not? A. No.

Q. Did you discuss with the County Counsel or his assistant, or anybody in connection with the County Counsel's office, other than Mr. Reed, these matters? A. No.

Q. Nobody? A. I told you yesterday that I spoke to counsel, but when I identified the man—when I went to see about this bill I spoke about—

Q. No.

Mr. Vanderbilt: Let him finish.

Mr. McCarter: I don't want to know when he went to see about a bill.

Witness: I will tell you if you will let me.

Q. I want you to answer the question, I don't want a long speech. Did you or did you not talk to either Mr. Vanderbilt or someone in his office about these matters? A. No.

Q. Were you mistaken when you said you had spoken to County Counsel yesterday? A. Yes.

Q. That was a mistake? A. Yes, the man I recognized when I went to speak about this bill was Mr. Hines, the director.

Q. You didn't know the difference between Mr. Hines, the director, and Mr. Vanderbilt, County Counsel? A. I didn't know any of them; I had never seen them before.

Q. Hadn't you seen Mr. Vanderbilt in your hearing here in October? A. I spoke to Mr. Hines before the hearing about the bill.

By Mr. Vanderbilt:

Q. You mean before that hearing, don't you? A. Yes, that is what I said—about the bill. I just asked him if he voted against it; that's all.

Q. Who has been your nurse since, we will say, the middle of October? A. This year?

Q. Yes. A. Miss—

Q. You are pausing. It is hard to think, isn't it? A. No—Miss Kerstetter—it's hard to pronounce her name.

Q. Was Mrs. Cashin the nurse previous to that? A. Yes.

Q. When did you leave? A. Soon after the middle of August.

Q. Soon after the middle of August? A. Yes.

Q. Is that Miss Cashin's or Miss Unpronounceable's handwriting? A. This is my writing.

Q. Oh, all the better. I offer it in evidence.

(The same is received in evidence and marked Exhibit R-11.)

Q. Did you have a room No. 61, third floor, the telephone call of which was Chelsea 4050? A. No.

Q. Isn't that a hospital? A. Yes.

Q. Where? A. In New York.

Q. Did you sometimes go there? A. I did.

Q. And didn't you since the hearing of your charges give this paper which is marked Ex. R-11 which says, "Chelsea 4050, room 61, third floor, to Paddy King, together with a dollar and tell Paddy to Watch Dr. Harman's office and see whether any girls went into it at night"? A. (No answer.)

Mr. McCarter: Note the pause now.

Q. What is the answer? A. I did.

Q. What? A. I think I did.

Q. And didn't you also tell him that you would give him other addresses where he could reach you on other nights? A. No, sir.

Q. When was this that you gave this Exhibit R-11 to Paddy King with a dollar for the purpose of notifying you if he, Paddy, saw any women entering Dr. Harman's apartment— A. I didn't say that.

Q. When was it that you gave him this? A. I don't know the date of it, sir.

Q. Well, as near as you can recall. A. Within the last few months.

Q. Since the hearing in your case, which was on October 19th? A. (No answer.)

Q. It was since that, wasn't it? A. I don't know the date, but it has been since then.

Q. Since then? A. Since then, yes.

Q. Did you make any inquiries of Paddy as to the result of his vigil? A. He might have said something to me—

Q. You did say something to him, didn't you? A. I say something to him every morning.

Q. Did you ask him whether he had seen anybody? A. If not in those words, to that effect.

Q. What did you ask him? A. Just what I have told you.

Q. You asked him whether he had seen anybody? A. If not in those words, to that effect. I didn't say anybody.

Q. What is Paddy's position? Night watchman? A. He goes on occasionally, but that is not his regular position.

Q. In that matter were you acting as a spy on Dr. Harman?

Mr. Vanderbilt: I object to that question as calling for a conclusion.

Mr. McCarter: I will withdraw it.

Q. Why did you make that request of Paddy and give him this memorandum of where Paddy could reach you over the 'phone in New York? Why did you do that? A. (No answer.)

Q. Why? What is your answer? A. (No answer.)

Q. Do you decline to answer? A. (No answer).

Q. Won't you answer the question, please? A. There is no answer to it.

Q. Won't you answer my question? Why did you do that? A. To get his answer.

Q. Will you please rise and see if your wife or former Mrs. Bennett is sitting in the back of the room?

Mr. Vanderbilt: I object to that as not within the issues. Are we going to try a matrimonial cause here and in the newspapers as well?

Mr. McCarter: I will withdraw it.

Mr. Vanderbilt: It is dramatic but not within the issues.

Q. Did you know a telephone operator at the hospital during the years 1924 and 1925 by the name of Anna B. Steinen or Steiner? A. (No answer).

Q. Did you know her? A. The name is familiar but I can't place her.

Q. Do you remember taking her on an occasion to the house of Dr. Phleps in Caldwell?

Mr. Vanderbilt: If the court please, I object. The court is not sitting here as a vice chancellor in any matrimonial cause. Anna B. Steinen or Steiner is not mentioned in this issue in any way. This is simply a gratuitous attempt of counsel to drag in matters not within the broadest interpretation of the rules of evidence—

The Supervisor: I think counsel's objection is well taken and I will sustain it.

Q. Now, Mr. Bennett, did Dr. Harman see a resignation that you say you had written out back in August, 1926? A. Yes, sir.

Q. You showed it to him? A. I offered it to him.

Q. You have stated that Dr. Harman sent voluntarily to your department at or about August 1926, some paraphernalia—photographic instruments—and things of that kind which you had wanted and called it an attempt to bribe you. Do you remember that? A. No.

Q. Did you testify that way yesterday? A. (No answer).

Q. Didn't you testify that way yesterday? A. He wanted me to name something that I wanted and I told him I wouldn't because I was not accepting bribes.

Q. He didn't bring them to you but he told you to name things? A. Yes, he asked me later to go in his office.

Q. Was that the first time the subject had been mentioned? A. About the instruments?

Q. Yes. A. No.

Q. Hadn't you stated at the interview in Father Fitzpatrick's villa in August, 1926, in the presence of Mrs. Harris that you thought you ought to have some more instruments and Mrs. Harris asked you why you had never told the Doctor about it? A. No, sir.

Q. Nothing of that kind occurred? A. I have no recollection.

Q. Will you say it did not occur? A. The subject was never brought up.

Q. The subject was never brought up at Father Fitzpatrick's villa that day? A. No, sir.

Q. Do you know when it was that Henrietta Rose died? A. (No answer.)

Q. It was during the month of November, 1928. A. It has been about two months ago.

Q. You knew she was very ill with tuberculosis before she did die, didn't you? A. Yes.

Q. You went to see her father before her death, didn't you? A. I seen him.

Q. Did he come to see you or did you come to see him? A. No.

Q. What? A. I went to him.

Q. Where? A. In Newark, at his home in Newark.

Q. In the evening? A. Yes, sir.

Q. When was this? A. I don't know the date.

Q. As near as you can tell. It was after the hearing in your case, wasn't it? A. (No answer.)

Q. Please answer the question as quickly as you can. A. Possibly it was.

Q. And wasn't it only a week or ten days before she died? A. Possibly it was.

Q. Did you know where he lived or did you have to hunt that up? A. No, he lived on Clinton Avenue.

Q. I asked you if you knew where he lived? A. Yes.

Q. Won't you please answer? A. Yes, I told you.

Q. You knew where he lived? A. Yes.

Q. Did you hunt up the record to find out? A. No, I didn't look at the record.

Q. How did you know where he lived? A. I have known where he has lived for quite a while.

Q. You have known him and known his address? A. Yes, sir.

Q. Some evening you went from the Sanatorium to Clinton Avenue, Newark, to see Henriette's father, didn't you? A. I saw him while I was in Newark.

Q. But you went down Clinton Avenue to see him? A. Yes.

Q. In your car? A. Yes.

Q. At his home? A. Yes.

Q. And you were talking to Henriette to him? A. Yes.

Q. Yes, you did. And did you tell him that he ought to remove Henriette from the hospital? A. No.

Q. You didn't tell him that he ought to remove Henriette from the hospital? A. No.

Q. What did you tell him? A. I just talked to him—

Q. What? A. I just talked to him and I said that—

Q. One moment. I am not asking you what he said. I am asking you what you said.

A. I just talked to him about nothing in particular.

Q. What did you say to Mr. Rose, the father of Henriette, down on Clinton Avenue in Newark one evening a few days before her death about Henriette? What did you say to him? A. I don't know the exact words, but it was about the effect that he was asking how she was getting along because I never went to see her.

Q. You were living in the Institution at the time? A. Yes.

Q. And you knew she was ill? A. Yes.

Q. And you went down to Clinton Avenue in Newark to see her father to see how she was? A. No.

Q. Isn't that what you said? A. No.

Q. What did you say to him about Henriette? A. I asked him if he knew how ill she was, or something to that effect, and he said she was doing very nicely, and all that, and she wanted to come home.

Q. He said all that? A. Yes.

Q. Have you given us all the conversation? A. To the effect; not word for word.

Q. Do you say solemnly on your oath that you did not come there for the express purpose of telling him that he ought to remove his daughter from the hospital? A. No, I have no reason to—

Q. I am not asking you about your reason. Did you say that? A. No.

Q. Nothing of the kind? A. No, it was none of my business.

Q. No. Didn't you also tell him on the same occasion that he, Mr. Rose, should go to the hospital and tell his daughter Henriette, who was very ill, that she should not eat anything or drink anything that was given to her at the hospital or take any medicine? A. No.

Q. Nothing of that kind? A. I said no.

Q. Nothing of that kind? A. No.

Q. And didn't you say to Mr. Rose on the same occasion that you would like to get her out of the hospital so that you could talk to her? A. No.

Q. What? A. No.

Q. Nothing of the kind? A. No.

Q. You seem to say that a little weakly. Say it strong. A. No, I said.

Q. You said nothing of that kind to Mr. Rose on that occasion? A. No, I didn't want her out of the hospital—

Q. I asked you whether you said that to Mr. Rose. A. No, I said no in answer to your question.

Q. After that didn't Mr. Rose say to you that he could not afford to pay the expense of getting her out of the hospital and her bed elsewhere, and didn't you say, "I will pay that expense"? Didn't you say that? A. No, your words are wrong.

Q. What did you say to him? You say that I worded it wrongly? I wasn't there, you know. What did you say about that? A. He said she was dissatisfied that she was not getting a square deal and wanted to come home.

Q. What did you say? A. He said—

Q. What did you say about paying her expenses? A. He said he was financially embarrassed at that time and he couldn't afford it.

Q. Couldn't afford what? A. Couldn't afford to give her the things she needed at home.

Q. And then did you say, "I will advance the money", or "I will take her to a Sister's home"? A. No.

Q. You didn't? A. No. What Sister's home.

Q. What? A. I didn't say anything about taking her to a Sister's home.

Q. Didn't you say you would arrange with some Sister's of Charity to take care of her? A. I told him the shortage of the money could be made up.

Q. Won't you answer the question? A. It can't be answered.

Q. Didn't you tell him you would arrange with some Sisters of Charity to have her taken care of? A. No.

Q. And again you say you didn't say to Mr. Rose on that occasion that you were anxious to get her out of the hospital because you wanted to talk to her? A. No, I told him the difference of the money could be arranged for.

Q. Who was going to do the arranging? You? A. I was going to get it from some one else.

Q. From Pauline Galler? A. No, the same charitable organizations that we got a lot of money from.

Q. How long was it since you had seen Henriette? A. A few weeks before when I X-rayed her.

Q. Did you make another visit to Mr. Rose's house? A. I did.

Q. After Henriette's death? A. Yes.

Q. I can't hear you. A. Yes.

Q. Did you seek to get a picture of Henriette? A. Yes.

Q. What did you want of a picture of Henriette after she was dead? A. To copy the photograph.

Q. Why did you want that? A. A friend of hers

came to me and asked me if I would get it and copy it.

Q. Who? Who is the friend that came to you? A. Mr. Wintsch, the man I had copied some other pictures for. He just wanted a picture—a photograph.

Q. Who is Mr. Wintsch? A. He is a friend of the girl's.

Q. Where does he live? A. He lives in Bloomfield.

Q. And you say now that Mr. Wintsch, a friend of Henrietta's, came to you to get you to go to Mr. Rose and get for him a photograph of the dead girl and copy it, is that what you say? A. He asked me if I would copy a picture for him and I told him that I would. He said he didn't have any there and I agreed to stop and get one that was most suitable for the copying.

Q. Is Mr. Wintsch an employee at the Sanatorium? A. Yes.

Q. Now, I want to ask you if on at least three occasions previous to your activities in connection with this charge you have not approached persons and either demanded money or some other service with threats if they did not carry it out?

Mr. Vanderbilt: I object to that as being vague, indefinite and impossible of answer.

Mr. McCarter: I will make it more definite.

Q. I will ask you if you did not, about eighteen months ago, prefer a charge before the Real Estate Board against this Mr. Tate, to whom I alluded yesterday, on the claim that he owed you $100 as a deposit on a purchase of some land—

Mr. Vanderbilt: If the court please—

Mr. McCarter: Just a moment. You wanted it specific and I want to go on with the specification.

Q. (Continuing) And if that was not shown to be absolutely false. A. There are two answers—

Mr. Vanderbilt: I object to that. I suppose that is a matter that can be tried before the State Board of Realtors, but I can't see what it has to do with this case.

Mr. McCarter: I want to show that this man is a professional framer, just as we think this is a framed charge. We propose to show that he framed the Tate matter and framed two other matters.

Mr. Vanderbilt: I can't see how it has anything to do with the case, and I submit that that is not the proper method of impeaching a witness.

The Supervisor: Do you press the question?

Mr. McCarter: Yes, sir.

Mr. Vanderbilt: May I have the question again?

(The stenographer reads the question as follows: "Question: I will ask you if you did not, about eighteen months ago, prefer a charge before the Real Estate Board against this Mr. Tate, to whom I alluded yesterday, on the claim that he owed yo u$100 as a deposit on a purchase of some land, and if that was not shown to be absolutely false.")

Mr. Vanderbilt: I object to that as absolutely incompetent. If this is the real estate

board there will be a record of their proceedings. It is not the best evidence. The question itself does not indicate whether it is the State Real Estate Board.

Mr. McCarter: I submit that the Supervisor who is sitting here in the capacity, not as counsel stated the first day as already in the record, in the character of a mere investigator, rather than as a judge where the strict rules of evidence do not apply; that the first thing that the Supervisor is interested in is the truth of the evidence, the reliability of a person who plays so important a part in this matter as does this witness, and if we can show in response to the question that the County Counsel asked us to make specific, where he had before this particular matter gone to the Real Estate Board and sought to procure a revocation of Mr. Tate's license as a real estate agent, upon the theory that he owed him $100 when it was not a fact, and the whole falsity of the thing was shown up, that is material to the fact that this man has a mania for making financial claims just as he made a claim of $610 against us, and that if he does not get it, to go to somebody else to injure that person.

Mr. Vanderbilt: Now, if the Supervisor please, counsel is apparently attempting in this phase of the case to turn the issue from the charges which have been preferred here and draw a red herring across the trail. Mr. Bennett is not on trial and the only point that there would be to all of this testimony of Mr. Bennett is so far as it affects those

charges. There are a number of charges with which he, so far as the evidence discloses, has had nothing to do. Counsel is attempting now to go into some inquiry which was made before another body and as to which he can produce the records if he so desires on a matter which has absolutely nothing to do with the issues here, and that question, as it is framed, is one which absolutely calls for a conclusion. I submit that as additional grounds why it should not be answered.

Mr. McCarter: I have nothing more to say. Of course the accuracy of these charges is the issue here, but suppose this person here is the inspirer of it. He has busied himself for weeks with it. If we show that he is a professional framer, doesn't that affect his credibility of him and the whole story?

Mr. Vanderbilt: No more than if a man starts a suit in the District Court or the Common Pleas Court and he is unsuccessful; that does not make him a perjurer. If that were so, Mr. McCarter clients and my clients would often be held on that. We do not always win our cases. Counsel knows perfectly well how to test the credibility of the witness and he knows that this is not a proper manner in which to do it; and it calls for a conclusion. Were these charges proved to be absolutely false, is this witness to sit as a court to determine whether the case was proved to be absolutely false? The question is highly improper and unfair.

The Supervisor: Counsel's objection will be sustained in this case.

By Mr. McCarter:

Q. Have you, since the hearing of your case, which I think occurred on the 18th or 19th of October, 1928, hunted up and interviewed other former employees of the Sanatorium than the persons who have been named heretofore or who have testified in this case? A. No, sir.

Q. Your answer is no? A. I don't think I have; I don't recall that I have.

Q. Don't you know? A. I don't recall that I have.

Q. Do you know a Miss Gaut that used to be at the Institution? G-a-u-t. I don't know whether I pronounced it correctly. Do you know her? A. Miss Gaut was the former superintendent of nurses.

Q. Do you know her? A. Yes, sir, I know whom you mean.

Q. Haven't you been to see her? A. No, sir.

Q. Not at all? A. No, sir.

Q. Since this matter? A. No, sir.

Q. Did you call her up or try to get in touch with her? A. I have talked to her on the telephone.

Q. In the last six weeks or two months? A. It might be within two months.

Q. And endeavored to get some information from her? A. According to the request I received.

Q. Yes, sure. According to the request. Do you mean to say that Mr. Reed or anybody else told you to call up Miss Gaut? A. To try to locate her, yes, sir.

Q. Did you try to locate her? A. Yes, sir.

Q. Where did you locate her? A. In New York.

Q. New York State? A. New York City.

Q. Did you ask her if she knew anything about Dr. Harman? A. No.

Q. What did you ask her? A. I asked her whatever I was requested to ask.

Q. What did you ask Miss Gaut? A. Something in reference to when she left there.

Q. Is that all you asked her? A. No, it isn't all I asked her.

Q. What more did you ask her? A. (No answer).

Q. Hurry up, please. A. I asked her something in reference to the gossip that had been going around all the time.

Q. Won't you tell us what you asked Miss Gaut? A. In reference to when she left there and who relieved her—

Q. Yes. A. Or, rather—it might be relieved her.

Q. Did you ask her anything about Dr. Harman? A. (No answer.)

Q. Did you? A. I may have.

Q. Did you ask her if she knew anything about any alleged improprieties of Dr. Harman with any of the former employees? A. No.

Q. What did you ask her about Dr. Harman? A. It was something in reference to Miss Rose.

Q. Miss Rose? A. Yes.

Q. Oh, I see. About this operation? A. No.

Q. Where were you when you telephoned her? In Newark? A. I might have been in Newark or Verona; I don't recall just where I called her from, but I called her on the telephone.

Q. Did you call her more than once? A. (No answer.)

Q. Hurry up, please? A. I don't think I did.

Q. You don't think you did? A. I don't think so.

Q. Do you know a Miss Blass? A. Yes, I know Miss Blass.

Q. And you communicated with her too, didn't you, in the last two months? A. (No answer.)

Q. Quick, please. You know whether you did or did not. A. I telephoned to her.

Q. You telephoned to her. Yes, where was she? A. She was on her vacation.

Q. Where? A. I don't know where she was.

Q. How did you 'phone her if you didn't know where she was? A. I say she was on her vacation.

Q. But you tried to find her but didn't get her. A. Yes.

Q. Where did you telephone to her? A. At the Government Hospital in Beacon, New York.

Q. That is some distance up the Hudson River. You telephoned up there, did you? A. It is outside of New York.

Q. It is at Peekskill, isn't it? A. I have never been there; I have been to Peekskill.

Q. Did you drive up there? A. No, I did not.

Q. Didn't you? A. No, I telephoned her, I said.

Q. And you found that she was away? A. Yes.

Q. And you had the same purpose in telephoning her that you had had in telephoning Miss Gaut, didn't you? A. No.

Q. What was your purpose in telephoning her? A. There was considerable complaint—she complained—

Q. What was your purpose in telephoning her? To get some information about the Doctor, is that it? A. I started to tell you and you interrupted me.

Q. Will you answer the question? Was it about the Doctor? A. No.

Q. It wasn't? A. No.

Q. It didn't affect the Doctor? A. I started to tell you.

Mr. Vanderbilt: Answer now. Let us get through.

Witness: About dissatisfied employment.

Q. You knew Miss Blass was a discharged employee, didn't you? A. I didn't know whether she was discharged or not.

Q. Did you not want to inquire of her whether she knew anything about the Doctor? A. No.

Q. But you telephoned all the way up to Beacon to endeavor to get in touch with her. A. I just told you.

Q. Do you know Sam Vournis? A. Sam Vournis is a patient or was a patient.

Q. And an employee? A. I think he was at one time.

Q. You have communicated with him in the past two months, haven't you? A. No, sir.

Q. How long is it since you have communicated with him? A. I never communicated with him; I don't even know where he is.

Q. Didn't you see Sam within a week in your own automobile? A. No.

Redirect-examination by Mr. Vanderbilt:

Q. Mr. Bennett, prior to the hearing which was had before the County Supervisor in October, had you ever discussed any discharges with me as County Counsel or with me at all? A. I had never seen you before.

Q. Or with anybody else in my office? A. No, I didn't know anybody in your office.

Q. Following the hearing which was had in this

room before the Supervisor and Mr. Bailey and myself present did you come across the hall to my office? A. I don't understand the first part of your question.

Q. Following the hearing which was had here in October on the complaint which Mr. McCarter referred to yesterday, did you come across the hall into my office where I was with Mr. Mahoney, my secretary? A. I don't recall whether I did or not.

Q. Don't you recall coming over there and don't you recall telling me that you had some other things to say and when the next hearing was going to be held?

Mr. McCarter: I don't think he ought to put words into this witness' mouth.

Mr. Vanderbilt: Counsel has made an effort to drag the County Counsel into this case.

Mr. McCarter: Mr. Vanderbilt, I am too old a friend of yours to do that. The witness volunteered yesterday—I have not meant that he had been in collusion with you or anything of that kind. I beg your pardon.

Q. Following that hearing, at least a day after the hearing, had you discussed these charges with me prior to the commencement of the hearing here last week? A. No.

Q. Or anyone in my office? A. No, I had not been in the place.

Q. With reference to the conference you had with Mr. Hines, did he refer you to anyone? A. He referred me to Mr. Reed.

Q. And it was after your conference with Mr.

Hines that you took these matters up with Mr. Reed? A. I did.

Q. And it was after you had come and had your talk with Mr. Reed that you approached the various witnesses, or some of the various witnesses who have testified here? A. It certainly is.

Q. What did Mr. Hines have to do with this matter, if anything? A. He referred me to Mr. Reed.

Q. Beyond that has he had anything to do with it? A. No, he hasn't had anything to do with it.

Q. Did I understand you went to Mr. Reed's house or into his house? A. I have never been in the house.

Q. What did you do when you went to the house but not in it? What was that about? A. I presume I went there to speak to Mr. Reed about something. I remember going there.

Q. Did you see the Supervisor there at his house? A. I think he met me in the vestibule there and invited me in and I told him I didn't have any time. I was on some errands. I didn't even go in.

Q. Some reference has been made to Dr. Lauterborn. What did he have to do with these charts, or any of these charts? A. Nothing more than he has to do with any others.

Q. What is that? A. Every time there is a death he brings the charts down and we go over it from beginning to end in every case where there is a death.

Q. Do the other doctors do that? A. No, he has more cases there than anyone else except Dr. Bennett.

Q. Do the other doctors also discuss their cases with you? Is that approved hospital routine? A.

Yes, the others don't do it as much as he does.

Q. These trips which have been referred to to Kansas City and Chicago, were they at your expense or at the County's expense? A. My own.

Q. And this money which you say had been paid by you to Miss Galler over what period of time were these payments made? A. A few months; less than a year.

Q. Was it your money or someone else's money? A. I borrowed the money.

Q. What was the money given to her for? A. Whatever was necessary for tuition and things of that sort.

Q. Did you do it voluntarily or had someone else requested it? A. I did it at Doctor—it was the result of a request of Dr. Harman to me to attempt to quiet the infuriated girl, or something to that effect. He didn't tell me to spend five cents or five dollars or $500.

Recross-examination by Mr. McCarter:

Q. Do you mean to say that you are always consulted after a patient dies? A. I didn't say so.

Q. Didn't you say a little while ago that in all death cases the doctors confer with you? A. I didn't say so.

Q. What did you say about that? A. This young man knows better than I—

Mr. Vanderbilt: Repeat it.

A. I don't know.

Q. You don't know? A. I don't know it word for word.

Q. You were asked by Mr. Vanderbilt about Dr. Lauterborn. A. Yes.

Q. And you said, as I have it in my mind, that it was customary in every death case for the doctors to consult you. A. I didn't say so.

Q. What did you say? A. That he came down and checked up, so far as I know, on every one of his death cases. He has always done it, so far as I know, and the other doctors do it frequently.

Q. That is what you say you said? A. As near as I can repeat it.

Q. Very well. Now, we will drop that subject and go to another one. This Galler girl had left the institution before the interview at Father Fitzpatrick's, hadn't she? A. Yes.

Q. Did you know where she was at that time? A. No.

Q. Nobody in the Institution knew where she was? A. I never asked.

Q. As far as you knew nobody knew? A. I knew nothing about it.

Q. Very good. Did you know where she was living after that? A. After when?

Q. After the interview at Father Fitzpatrick's. A. When I learned through Father Fitzpatrick.

Q. Do you know when she left the Institution? A. Not the date, sir.

Q. As near as you can tell, how long before the interview at Father Fitzpatrick's? A. Well, it was a short time; I would say maybe a week or two, or two or three. It might have been something of that sort.

Q. You said that you gave that $610 to this Galler girl as a result of a request of Dr. Harman to quiet the infuriated girl. Did you say that? A. To that effect.

Q. Did he request that you pay her a dollar? A. He didn't request I pay her—

Q. Did he request that you pay her a single dollar? A. No.

Q. Why, then, did you say that you paid her $610 in about six months after she had left the Institution as a result of the request of Dr. Harman to quiet the infuriated girl? Why did you say that? A. I don't understand your question—the beginning of it.

Mr. McCarter: Will you please read the question?

(The stenographer reads the pending question.)

A. It seemed to be the only solution.

Q. It was your idea then. A. It wasn't my suggestion.

Q. The Doctor didn't suggest it. Who did suggest it? A. He suggested that anything that she wanted—

Q. What did the Doctor say to you? A. I don't remember the exact words.

Q. What did the Doctor say to you? You are making a charge against the Doctor here. A. I am not making a charge.

Q. Haven't you suggested that you paid this girl $610 at the Doctor's suggestion? A. It resulted in that amount.

Q. What did he say to you that made you make that remark? You say he didn't tell you to pay a dollar. What did he say to you that leads you to that inference? I want to know what he said. That is a pretty serious charge. A. I am not making any charge.

Q. What did Dr. Harman say to you that justifies your contention that that $610, if you ever paid it, was made as a result of what Dr. Harman said

to you? What did he say to you? A. He wanted me to talk to her.

Q. To talk to her. A. Yes.

Q. All right. A. And see what she wanted and things of that sort. That was the substance of it.

Q. I want to hear what he said about it. A. The only words that I actually remember were that the case "Would stay put." That is the words that he used. I don't recall the rest. They were out of the ordinarily or perhaps I wouldn't have remembered those.

Q. He wanted you to talk to her and to do anything at all so that the case would stay put. Is that what you say now that he said? A. Yes, I just said that.

Q. And two years went by and until your letter of August 6th written on the train you never mentioned the subject to the Doctor, did you? August 6th, 1928. A. May I see the letter?

Q. You may see the letter, but I want you to answer my question first. Until August 6th, in the letter written on the train, then after two years, you never mentioned it to the Doctor, did you? A. No, sir.

Q. Here is the letter. A. May I have the envelope?

Q. I haven't the envelope, but I have the letter here, which is good enough for me.

THOMAS W. LAUTERBORN, sworn in behalf of the County.

Mr. McCarter: May I ask the witness a question or two?

Mr. Vanderbilt: Go ahead.

By Mr. McCarter:

Q. I understand you do not believe in the existence of a God? A. That is my personal affair.

Mr. McCarter: Then I object to the witness taking an oath.

Witness: I don't think you have any business to inquire into my personal beliefs.

Mr. McCarter: I am not trying to be inquisitive, but the law requires that before a witness shall take an oath they shall have at least a belief in the existence of a God.

Witness: Can't I make an affirmation?

Mr. Vanderbilt: The witness says he can make an affirmation. Is there any doubt about that?

Mr. McCarter: I don't think he can. People prefer to take an affirmation, but they affirm in the presence of the everliving God. I have a sort of old-fashioned belief that men who do not believe in a God are not credible.

Mr. Vanderbilt: Must it be a personal god that walks around like a man or may he be an evolutionary god?

Mr. McCarter: You know what the law is on that subject better than I do.

Mr. Vanderbilt: The witness has stated he is ready to affirm.

Mr. McCarter: I understand, Mr. Super-

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visor, that the rule is that a man who denies his belief in the existence of a Creator or a God, as we are accustomed to speak of him, cannot either swear or affirm.

The Supervisor: The witness has not said that he does not believe in the existence of a Creator.

By Mr. Vanderbilt:

Q. Dr. Lauterborn, do you believe that there is a cause of things as well as an effect? A. I do.

Q. And that cause a great many people describe as God? A. Yes.

Q. But you believe there is such a cause? A. I do.

Mr. Vanderbilt: I think that is sufficient, Mr. Supervisor.

By Mr. McCarter:

Q. Doctor, may I ask you a question? I am not trying to be personal. I hope you won't misunderstand me. I am the last person in the world to put you into an embarrassing position, but I have a right to interrogate you when you are called as a witness. No person under the law can be sworn as a witness or affirmed as a witness who does not believe in the existence of a God, as that phrase is known and used by people of intelligence and Christian people, and I ask you if you believe in God in the sense that that term is used by people generally, and not in the sense of some possible evolunary first cause.

Mr. Vanderbilt: May I, before the witness answers that, state that as I understand the law, a Chinaman who believes in Confucius or an Indian who believes in Buddha is per-

mitted to take the oath, and I do not think that one who takes the oath in the 20th Century must have the same idea of God as John Roache Straton has, but may have the same belief in God as John Emerson Fosdick, if he does believe in a personal God, he does not have to believe in a God that walks around in the heavens in his image. I think any such thing must make an impression in the mind of the Supervisor as to the desire of the respondent to get at the truth of the matter—

Mr. McCarter: In view of that suggestion, I withdraw the objection. If you think we are trying to suppress anything, you are mistaken.

Direct-examination by Mr. Vanderbilt:

Q. Now, doctor, how old are you? A. In my seventy-first year.

Q. How long have you been a physician? A. About forty-nine years.

Q. How long have you been connected with the Essex Mountain Sanatorium? A. Three years and seven months.

Q. You were in the hospital, then, as a physician in May, 1925? A. Yes.

Q. Can you tell us whether or not there was any staff conference or meeting prior to an operation which was performed on Miss Henrietta Rose on May 8, 1925? A. I know of none.

Q. You were not asked to any such staff meeting? A. No, sir.

Q. And you know of none? A. No, sir.

Q. When did you first learn of that operation?

From whom? A. I first learned of the operation a few days after Henrietta Rose's death when it was in the line of my duty—

Mr. McCarter: One moment. I think that answers the question.

Q. In her last sickness were you the physician in charge? A. I was.

Q. And it was when you came to make up the final report that you learned of the operation of May 8, 1925? A. Yes, sir.

Q. How often are staff meetings held at the Verona Mountain Sanatorium? A. Irregularly.

Q. Well, during the past year, say, how often have they been held? A. In 1928, I should say probably six times.

Q. During the entire year so far in 1928? A. As near as I can recollect, during the entire year so far six or seven times perhaps.

Q. How about in 1927? A. Irregularly; perhaps sometimes one week, two weeks, three weeks, four weeks, six weeks—the intervals varied.

Q. You mean that length of time between meetings in 1927? A. Yes, sir.

Cross-examination by Mr. McCarter:

Q. You knew the committee of the Board of Freeholders in charge of the Sanatorium. You knew who they were? A. The committee of the Board of Freeholders? No, sir.

Q. Did you know that Mrs. Harris had anything to do with the Sanatorium? A. Oh, yes, but I don't know who the members of the entire board are. Some of them I have never met.

Q. Well, you saw Mrs. Harris at the Institution

frequently, didn't you? A. Not frequently.

Q. How often? A. Well, now, that's hard to say.

Q. Did you ever complain to her of a lack of staff meetings? A. No.

Mr. Vanderbilt: I object to the question.

Q. You never did. All right. Now, do I understand that Dr. Bennett and you and the other doctor or doctors did not meet every Thursday morning for conference? A. That was the X-ray reading in the X-ray room every Thursday morning, I think, since I have been there.

Q. You met and who else? A. Dr. Bennett—the other members of the staff.

Q. Who are they? A. Dr. Bennett, but—

Q. Who else? A. Well, you can't answer that categorically because—

Q. Are there any other doctors besides you? A. Because they come and go, Mr. McCarter.

Q. Whoever were the other doctors? Were they all there Thursday mornings? A. Yes, the entire staff was supposed to be there.

Q. When you spoke of six times a year in 1928, and irregularly during 1927, you were not referring to those? A. To the X-ray readings? No, sir.

Q. Did you ever request Dr. Harman to have more frequent staff meetings? A. Never.

Q. Did you not, in fact, request him to discontinue those that were being had because they took too much time from your work? A. Never.

Q. Never? A. Not me.

Q. Who did? A. I don't know.

Q. Do you remember Dr. Conklin being there about three years ago? A. Yes, sir.

Q. Don't you remember one day you and Dr. Conklin and Dr. Harman were together and the subject of these formal staff meetings was referred to and Dr. Conklin or you said that they prevented the regular discharge of your duties? A. I have no such recollection, sir.

Q. Now, I understood that you never heard in the hospital of Henrietta Rose's operation until after her death. A. That's true.

Q. She died November, 1928? A. Yes, sir.

Q. The operation was in 1925? A. Yes, sir.

Q. You have been there since May, 1925? A. Yes, sir.

Q. And never heard of the operation at all? A. Never.

Q. When did you enter the hospital? A. May 1, 1925.

Q. Do you remember during your period when other operations had been performed in the operating room in the hospital for injuries or for causes other than tuberculosis? A. No, sir.

Q. You are not a surgeon? A. I have practiced surgery all my life.

Q. Are you on the surgical board up there? A. No, sir.

Q. Did you have anything to do with Henrietta Rose's sickness? A. Only her last illness.

Q. Did you examine her? A. As regarding the tuberculosis.

Q. You did? A. Yes, sir.

Q. When? A. While she was downstairs as my patient I listened to her chest—

Q. And when was that? That is all I am trying to find out. A. It is impossible to state the dates. My impression is that she was sent down-

stairs in the terminal stage of the disease; perhaps a month or so before she died.

Q. You examined her after she was sent down? A. Yes, when she came downstairs I listened to her chest and her heart.

Q. She was quite sick then, wasn't she? A. Oh, yes; the terminal stage of tuberculosis.

Q. About three or four weeks ago did you go to Dr. Harman's office and say to him, "Doctor, they are trying to put the skids under you," or words to that effect? A. I haven't any such recollection, sir.

Q. Will you say you did not do it? A. I don't remember.

Q. You don't remember whether that conversation took place or not within three weeks? A. No.

Q. Or four weeks? A. No, sir.

Q. Now, just try to think. A. I can't recall.

Q. You won't deny it. A. I neither deny or affirm; I can't remember.

Q. You live in Montclair, don't you, doctor? A. Yes, sir.

Q. Did you see in the newspapers or elsewhere the announcement of Mr. Bennett's first charges against Dr. Harman? A. No, sir.

Q. Did you hear about it?

Mr. Vanderbilt: I object to that as not cross-examination.

Mr. McCarter: I just want to remind him of a talk about it.

Q. Did you hear of it? A. No, sir.

Q. Don't you recall that after that first charge of not having the rotation in nurses was made by

Mr. Bennett against Dr. Harman that you came to Dr. Harman at his office at the Institution and said to him substantially as follows: "Dr. Harman, they are getting ready to put the skids under you" that "two or three people have been to my house to talk to me about it." Don't you recall that conversation, or words to that effect? A. I do not.

Q. Was anybody at your house to talk about it? A. No, sir.

Q. Was Mr. Mungle there, Freeholder Mungle? A. No, sir.

Q. Nobody had been to your house to talk about the charges against Dr. Harman? A. No, sir.

Q. Did you talk about it at Mr. Mungle's house? A. I have never been to Mr. Mungle's house.

Redirect-examination by Mr. Vanderbilt:

Q. And you are here under subpoena, doctor, aren't you? A. Yes, sir.

Q. And you have not made any charges against Dr. Harman? A. Absolutely not one.

Q. Did I understand you to say, doctor, that you know of no operations other than T. B. operations being performed at the hospital? A. I don't know of others.

Q. Before T. B. operations, is it customary to have conferences of the staff before operation? A. They don't consult me; I haven't been consulted.

HARRISON S. MARTLAND, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Dr. Martland, you are chief medical officer of Essex County? A. I am chief medical examiner.

Q. Doctor, will you tell us what is the accepted practice in class A hospitals where a pathologist is employed, concerning the examination of specimens or scrapings after an operation.

Mr. McCarter: I object to that as not applying to this particular institution. This is not a hospital; this is a tuberculosis sanatorium. I think, therefore, the evidence is improper.

The Supervisor: I think that is a fair question and I think the witness ought to answer it if he can.

A. I can only state that in general hospitals where a lot of surgery is done and the hospital employs a pathologist all the specimens removed should be sent to the laboratory for growths and microscopical examination.

Cross-examination by Mr. McCarter:

Q. General hospitals where a great many operations are performed? A. Yes.

Q. And it is only that class of hospitals that ordinarily have pathologists? A. Well, special hospitals that are also first class have pathologists. I think it is proper to have microscopical examinations for growths, but I am only familiar with gen-

eral hospitals where considerable surgery is done.

Q. You know that the Essex County Tuberculosis Sanatorium is not a place where many operations take place, don't you? A. I shouldn't imagine so; I should imagine it is more or less limited to the section of the ribs where the pleura are.

Q. What is the practice in these general hospitals where the pathologist is able to examine matter under the microscope? What is the purpose of the examination? A. To have a correct diagnosis of what the surgeon has removed; of what the tissue is, and what it was removed for, and so forth.

Redirect-examination by Mr. Vanderbilt:

Q. Doctor, isn't it accepted hospital practice when an operation is performed, for there to be kept a contemporaneous record of the physicians who performed the operation and who attended and the nurses and what the instruments used were and what the operation was? A. Yes, that is accepted practice.

Q. That is done in all Grade A hospitals? A. Yes, it should be.

Recross-examination by Mr. McCarter:

Q. Every time a curettage takes place in a hospital, there would be a complete record? A. Yes, there should be.

Q. What is the object of that record? A. The object of that record is so that you have a record of what was done, the character of the operation, who performed it, and what it was performed for.

Q. By the way, what is a curettage? A. A uterine curettage I suppose you refer to; that is

a scraping of the inside of the womb.

Q. Done with what instrument? A. It is done usually with a metal curet.

Q. What will make necessary a curettage? A. A great variety of things.

Q. For instance? A. For instance, chronic inflammation of the lining—the inside lining of the womb, chronic endometritis, for which curettage is done to stop bleeding. Currettages are done sometimes in incomplete abortion cases and in addition clean out the inside of the womb. They are sometimes done for diagnostic purposes as to whether cancer exists inside of the womb.

Q. Now, see if I understand you correctly in reference to an incomplete abortion. If the patient has aborted either spontaneously or by criminal abortion, sometimes there will be left in the womb some remnant of the operation which the curettage is designed to remove? A. Yes.

Q. It is not the operation itself; the curettage would not be used in the operation of abortion? A. Oh, yes. It is a very common form of criminal abortion, curettage. That is one of the ways of performing criminal abortion, and it is also one of the ways of therapeutically treating an abortion which has not been completed.

Q. You spoke of endometritis. What is that? A. An inflammation of the mucous membranes inside the womb.

Q. What causes that? A. A variety of things.

Q. For instance? A. The malformation of the womb so that there is chronic congestion to form an endometritis. It is due to a number of diseases such as gonorrhea and so forth.

Q. Is it accompanied with irregular and sometimes unusual bleeding? A. Endometritis?

Q. Yes. A. Yes, it is.

Q. Isn't that, in fact, one of the symptoms of it? A. Yes, in some forms.

Q. Is there a form of endometritis known as granular endometritis? A. Not granular. I suppose you mean glandular. Yes, there is a form of endometritis known as chronic glandular endometritis.

Q. I suppose in a case of curettage in connection with a criminal operation and the removal of a fetus there would be an enlargement of the womb? A. Naturally, there must be if there is a fetus removed from it, the size depending on the size of the fetus.

Redirect-examination by Mr. Vanderbilt:

Q. Doctor, does this bleeding always accompany a case of endometritis? A. Not always.

Q. Might that bleeding come from other causes? A. Oh, yes.

Q. What other causes might produce that type of bleeding? A. What type do you refer to? A constant oozing or intermittent oozing or what?

Q. Take either one. A. I suppose an incomplete abortion or a fibroid tumor of the inside of the womb or cancer on the inside of the womb.

Q. You are here under subpoena, doctor? A. Yes, sir.

Q. And you have not volunteered any statement? A. No, sir.

At one o'clock P. M. the Supervisor declares a recess of one hour.

After Recess.

Mr. Vanderbilt: While we are waiting for Mrs. Englebert, I desire to offer in evidence resolution of the Board of Freeholders No. 5815, passed May 8, 1924, creating the position of pathologist at the Verona Sanatorium; resolution No. 5984 passed October 9, 1924, appointing George W. Olcott to that position; and employee's card showing the appointment and approval by the Civil Service Commission November 13, 1924.

I would like to call Mrs. Harris as a witness to establish that he is still an employee at the Sanatorium.

(The card is received in evidence and marked Exhibit C-6.)

ELIZABETH A. HARRIS, sworn in behalf of the County.

Direct-examination by Mr. Vanderbilt:

Q. Doctor George W. Olcott who was appointed pathologist in the fall of 1924, is still pathologist at the Verona Mountain Sanatorium? A. Yes.

Q. You are, and for several years have been, Chairman of the Verona Mountain Sanatorium committee? A. I have.

Cross-examination by Mr. McCarter:

Q. Does Mr. Olcott reside at the Sanatorium? A. No, he does not; he is a part-time worker.

Q. Do you know how much of the time he is

there? A. Well, I would imagine, I really can't tell you how many half days he is there. That is a matter of administration under the Superintendent. I can tell you how much he gets; he gets $100 a month without maintenance.

Q. Do you know what duties he performs? A. In the pathology department.

Q. In connection with tuberculosis? A. I would imagine so.

Q. You don't know. A. I don't know. You see, those are matters of medical administration.

MARY J. ENGLEBERT, recalled.

Direct-examination by Mr. Vanderbilt:

Q. I neglected to ask you one or two questions yesterday, Mrs. Englebert. Is sheet number three of this chart of the May, 1925, admission of Miss Henrietta Rose in your handwriting? A. Yes, sir, it is.

Q. And from what source did you obtain the information set forth on that sheet? A. From the patient herself.

Q. I call your attention particularly to the seventh item from the bottom on the left hand column. Did she give you that information? A. Yes.

Q. Menses regular? A. Yes.

Q. From whom did you obtain the information on the third item from the bottom in the second column, "Operation today for tumor." A. From the patient herself.

Q. And then after that you say "uterine" and a question mark. Did you obtain that information

from her? A. No, she was very uncertain about it, so I put the question mark after it.

Q. That relates to the whole operation? A. Yes.

Q. But all the information as entered there you got from Miss Rose on May 5, 1925, and transcribed it as she gave it to you? A. Yes.

Cross-examination by Mr. McCarter:

Q. At this time, what position did you fill? A. Admitting nurse.

Q. You, of course, had known the patient for three or four years. A. I had known the patient since she came to work in the office. She worked first in the executive office—

Q. I didn't ask you where you had known her. But you knew her. A. Yes.

Q. Please answer the questions. Where was she when this statement was taken? A. In her room in the administration building.

Q. In her bed? A. Yes.

Q. Was she flowing? A. She says not. I can only take her own statement.

Q. Is that down here? A. Yes, "regular."

Q. Will you show me where it is? A. The seventh question from the bottom in the first column.

Q. I asked you if she was flowing at the time that you made this statement. A. That question does not—

Q. Will you please answer my question? I asked you if she was flowing at the time A. I didn't make an examination.

Q. Why did you say that you did and that she had answered she was not? A. Simply because I was referring to that same thing.

Q. The question and answer to which you refer me shows: "Question, Menses" and the answer is "Regular." A. Yes, that's right.

Q. I suppose menses can be regular and at the same time flowing when the cycle is on. A. Yes, certainly.

Q. Why, even a man knows that. A. Yes, certainly.

Q. So you didn't ask her whether she was flowing at the time. A. No, I asked her if she was regular and she said, "Yes."

Q. You asked her if there had been a miscarriage, did you? A. Well, of course, I did not ask her.

Q. What? A. Well, no.

Q. Didn't you tell us you asked these questions — A. I asked her every one of those questions you have got down there.

Q. Then you asked whether if there was a miscarriage and she said no. A. Yes.

Q. You asked her if she was nervous and she said yes. A. Yes.

Q. You asked her if she had lost consciousness and she said several times. A. Well, if it is there.

Q. Now, this one with the question mark: The question is "Operations" isn't it? A. Yes.

Q. Do you think I am trying to say something that is not there? I will come around next to you so we can both look at it at the same time. You asked her the question: "Operations." A. Yes.

Q. And her reply was "Is to have an operation today for tumor." A. Uterine.

Q. Uterine tumor? A. Yes.

Q. You put a question mark alongside that. A. Yes, because she was uncertain about it.

Q. So much so that you yourself put a question

mark alongside of it at the time. A. Yes, when the patient is uncertain I do that.

Q. And you were uncertain and she was uncertain. A. Yes.

Q. And this was before the operation took place? A. Yes.

Q. How long before? A. Well, I took her history at ten o'clock in the morning of May 7th, and she was operated on the next day.

Q. Where do you get the ten o'clock in the morning from? A. It isn't there; it is in the other book.

Q. What record have you for that?

By Mr. Vanderbilt:

Q. Is it in this book, Exhibit C-5? A. Yes, the time of admission.

By Mr. McCarter:

Q. What is this book? A. The admission book.

Q. What do you refer to on that? A. You asked me what time I took the history.

Q. Yes. A. And I told you at ten o'clock in the morning.

Q. But what did you refer to? A. To the book here (indicating).

Q. Time admitted ten A. M. A. That's what I said.

Q. That is what you referred to. A. Yes.

Q. That phrase? A. Yes.

Q. Did she remain in her room? A. Why, no; I took her history and then went down to the office.

Q. Where was she admitted as a patient? In what part of the Sanatorium? In the hospital? A. Ward Number 2 of the hospital.

Q. Wasn't it at that time that she became ad-

mitted, when she went to the hospital to Ward 2? A. She was brought to the hospital, yes, but at the time I took her history I considered she was admitted.

Redirect-examination by Mr. Vanderbilt:

Q. You are here under subpoena? A. Yes.

Q. And you never have discussed this case at any time with me? A. No.

Q. Have you ever met me before the hearing? A. No.

Q. And you have not discussed this case outside the room? A. No.

Mr. Vanderbilt: If the Supervisor please, that is our case with the exception that I would like to reserve the right to call one witness as soon as he is physically able to attend.

Mr. McCarter: Who is that?

Mr. Vanderbilt: Father Fitzpatrick.

Mr. McCarter: Well, I think we ought to have the case closed.

Mr. Vanderbilt: May I say, Mr. Supervisor, that when our first subpoenas were sent out on a Thursday—I think it was Thursday, December 6th or 7th—we were told when we inquired at the the Villa that Father Fitzpatrick was suffering from a nervous breakdown and he was not attending to his duties and has not since then. We have made numerous efforts to subpoena him, but he is in bed, or so we are informed by the sister at the Villa, suffering from some sort of nervous breakdown, and I im-

ply that it is impossible for us to get him here.

Mr. McCarter: We have had the same experience exactly.

Mr. Vanderbilt: Then I take it there is no necessity for an affidavit.

Mr. McCarter: No, we apparently are not allowed in the house and cannot get near him, and I take it he is seriously ill. If you want to wait until he gets better, or what, I don't know about that. I don't think we ought to commence our proof until you are through.

Mr. Vanderbilt: I think we should do as we do in many civil cases when we cannot get a witness we close with a reservation of that kind.

Mr. McCarter: I suppose you might make some inquiries and find out when Father Fitzpatrick is able to come.

Mr. Vanderbilt: One of the representatives of my office has been there every day and all the information he can get from the Sister who answers the door is that he has had a nervous breakdown. He has not tried to force his way into the house.

Mr. McCarter: No, we have had the same experience and we want him as badly as you do, perhaps worse.

Mr. Vanderbilt: So, if we can get him, I would like to reserve the right to call him.

Mr. McCarter: Mr. Supervisor, it is quite evident that this priest is a very important witness for this investigation, and I have no doubt you feel so. I know I do and I believe that Mr. Vanderbilt does. I want him

quite as badly as he does. It is a little difficult to proceed with the case and to meet something that is not all in. I don't want to delay this; I am very anxious to finish it. I am here under the greatest personal inconvenience, and I think that Mr. Vanderbilt ought not perhaps today, but as soon as he can, announce, if we go on, whether or not he is going to be able to have Father Fitzpatrick testify. In other words, I don't think we ought to be expected to put in our case on a part of the evidence and then at the last moment wake up to the idea that Father Fitzpatrick can be called and then produce him as part of the complaint. My information is that Father Fitzpatrick is ill just exactly as Mr. Vanderbilt says. We have not been able to get near him. Of course, I have not been up there any more than Mr. Vanderbilt has, but that is what I am told. It may be that his testimony can be taken up there, I don't know, but something ought to be done. We do not ask for a delay on that account, but we do think there ought to be a time set, if they are going to rely on his evidence in the case. I think that is only fair.

Mr. Vanderbilt: I think it is too. I will say, then, Mr. Supervisor, in view of Mr. McCarter's announced intention to call Father Fitzpatrick as a witness if he is available, I will definitely close my case subject to the right to call Father Fitzpatrick later if Mr. McCarter does not call him as part of the respondent's case.

Mr. McCarter: I guess that is reasonable.

The only reason we won't call Father Fitzpatrick will be if we are not able to get him.

County Rests.

LEONORA LYSICK, sworn in behalf of the respondent.

Direct-examination by Mr. McCarter:

Q. Are you single or married? A. Married.
Q. And you live where? A. In Verona.
Q. What is your husband's name? A. John.
Q. John Lysick? A. John Lysick.
Q. Were you formerly employed at the Sanatorium? A. I was.
Q. In what capacity? A. Telephone operator.
Q. Can you tell when you went there and when you left? A. Yes, you mean to work?
Q. Yes. A. I was hired in December.
Q. What year? A. Three years ago—1925.
Q. And you remained— A. Until February.
Q. 1926? A. 1926.
Q. Did you resign? A. No, I was discharged by Dr. Harman.
Q. Did you become acquainted while you were there with Bertie Galloway? A. I did become acquainted with her.
Q. Did you know her quite well? A. Very well.
Q. You and she became friends? A. Yes.
Q. After you left the hospital about the first of February, 1926, did Bertie Galloway come to see you? A. She did.
Q. On more than one occasion? A. Several times.
Q. Do you remember on one occasion having a

talk with her in which she told you anything about her condition?

Mr. Vanderbilt: I object to that as immaterial and irrelevant and no proper foundation laid for this testimony.

Mr. McCarter: Mr. Supervisor, I want to say this: Some information has come to us from this lady since Bertie Galloway was a witness and you will recall that she has gone away, and she specifically declined to tell us where she is. If we had an opportunity to get her first, after having had this information, we would of course confront her with this inquiry as to her talk with this Mrs. Lysick. We have been deprived of that by her disappearance and by the fact that under the objection of the County Counsel we were prevented from learning where she is on the theory that it might incriminate or disgrace her. Under these circumstances I think we ought to be permitted to ask this witness what Bertie Galloway told her about her condition and who was responsible for it, and if they want to contradict that, let them produce Bertie Galloway. They know where she is and we do not. My associate, Mr. Bailey also tells me that she was at least confronted with that portion of what this young woman will testify to as to whether or not she had not gone out with this May Doyle and she denied that she had I think under these circumstances we ought to be able to show that Bertie Galloway told this witness while she was still at the hospital, not this witness at the hospital, but when

Bertie was still there, that—

Mr. Vanderbilt: I object to counsel's testifying.

Mr. McCarter: I am not testifying. I am just telling you what I want to prove.

Mr. Vanderbilt: That is another form of testimony. If there is any fundamental rule of testimony it is when you attempt to contradict and break down the testimony of a witness that you have to confront that witness with the exact testimony you intend to break the witness on that they may have a chance categorically to affirm or deny. Bertie Galloway was not asked any questions as to any conversations she had with Mrs. Lysick and there is therefore no foundation whatsoever laid for this testimony. I think I am within the bounds of truth when I say that no judge who knew any law at all would permit this question to be asked or answered.

Mr. McCarter: There is no doubt about the general principle. I am not trying to deceive or suggest any such thing. I say that this situation is peculiar. On the objection of the County Counsel we are not allowed to find the whereabouts of this girl who appeared mysteriously like manna from heaven or from the other place and disappeared just as mysteriously. We cannot subpoena her; we don't know where she is. Since that time we have been apprised of this conversation of hers with Mrs. Lysick. We didn't know it at the time. Now, I say, that either the other side should disclose where she is so we can subpoena her and bring her and con-

front her with this thing before we examine Mrs. Lysick or else be permitted to examine Mrs. Lysick and then the other side bring her here to deny it.

Mr. Vanderbilt: Let me say further, even if they knew her address and brought her here and she denied this conversation they would be precluded from impeaching the testimony of their own witness.

Mr. McCarter: There is no such rule.

Mr. Vanderbilt: It is a rule of law. So far as the address of Mrs. Galloway is concerned, I haven't the slightest idea where she lives or works.

Mr. McCarter: I insist under the circumstances, if the Supervisor please, that I be permitted to ask this witness what Galloway told her.

Mr. Vanderbilt: Merely evidence given to contradict a witness without that witness having the opportunity—

Mr. McCarter: Produce her.

Mr. Vanderbilt: It isn't up to us to produce her; it is up to you to produce her and you could have produced it on your cross examination.

The Supervisor: I will rule that counsel's objection will be upheld.

Mr. McCarter: I then ask the Supervisor to instruct whoever is the complainant or prosecutor or County Counsel, or whoever is behind this thing, to produce Miss Bertie Galloway as soon as possible at this hearing, tomorrow or the next day. I think we are entitled to have her. I ask for a ruling upon that question.

Mr. Vanderbilt: If that is a motion, I certainly do not think it is allowable. I have never known of a case in civil or criminal law or in the Court of Chancery where the other side is required to produce a witness.

Mr. McCarter: Whose whereabouts have been kept from us.

Mr. Vanderbilt: Whose whereabouts counsel is not aware of.

Mr. McCarter: I ask for a ruling.

Mr. Vanderbilt: Counsel had an opportunity to cross-examine this witness and did it for a day.

Mr. Bailey: I take it now that you are referring to the counsel who cross-examined her, and if you will recall, we were foreclosed at every attempt to cross-examine Miss Galloway's past or present. If we had been permitted to we would have gotten the foundation required for this lady's testimony.

Mr. Vanderbilt: There was nothing to prevent them from asking whether she had had any conversation with Mrs. Lysick.

Mr. McCarter: We didn't know it then.

Mr. Vanderbilt: It often happens that we don't know it during the trial.

Mr. McCarter: It never happens that an address of a witness is refused. I never heard it in forty years of practice.

Mr. Vanderbilt: Counsel should be acquainted with Justice Swayze's opinion in Herster against Harrington Company in which it was held that it need not be given and counsel must know that.

Mr. McCarter: I ask for a ruling.

Mr. Bailey: I understand that this is not

a trial, in any event; it is an investigation to get at the facts.

Mr. Vanderbilt: Counsel have brought out everything not within the rules of Wigmore.

Mr. McCarter: If the Supervisor please, the Chief Justice, in his opinion just rendered in this matter says in so many words that we are entitled to know the names of the complainant; we do not know them; we are not given them; he says we are entitled to know the dates of the alleged charges; they have never been given, with one or two exceptions. One of the chief complaining witnesses comes here and, as I said before, under the objection of counsel conducting this investigation, is prevented by the Supervisor from telling us where she lives or works upon the ground, as counsel says, that it might disgrace her or incriminate her. She leaves this place; she doesn't stay. We don't know where she is; we don't know where she came from. She was here at the solicitation of counsel and testified to a most extraordinary story. Since she was here we have, by pure accident, met this young lady on the stand and learned from her a most damaging statement made by Galloway to this young lady, and Mrs. Lysick read in the newspaper of this testimony of this young girl Bertie and at once comes to us with a statement. I say we ought either to be able to ask this girl what Bertie told her or else you should direct the other side to produce Bertie here so that we may ask her and if that is not done, there is a great miscarriage of justice here.

Mr. Vanderbilt: I take it that the Chief Justice could not have written the same letter to Mr. McCarter that he did to me. I can't find anything in my letter that Mr. McCarter read or any such inference. Secondly, this witness was not produced here at the instigation of the County Counsel. The first I saw of her was when she was produced here Thursday morning of last week. Thirdly, the objection to those questions was not on any such ground as counsel states. That was urged on other points, but solely on the ground as not within the issues. An attempt to trace the history from the time she was two years old is certainly not within the issues. The Supervisor said, and correctly so, I think, that it was not within the issues in this case. Further, they have no right, without having laid the foundation, to introduce this testimony, and equally no right to ask us to produce our witness; they had the opportunity to hand her a subpoena while she was in this examination room, and that they failed to do.

Mr. McCarter: I ask for a ruling.

The Supervisor: I feel that the County Counsel is right in this, and I shall so rule.

Mr. McCarter: Exception.

By Mr. McCarter:

Q. Did you ever see Bertie Galloway while she was at the Sanatorium with a man by the name of Doyle? A. I wasn't at the Sanatorium at that time.

Q. While she was at the Sanatorium did you

ever see her with a man by the name of Doyle? A. No, Doyle did not work there then.

Q. Did you ever see her with Doyle?

Mr. Vanderbilt: I object to that as immaterial and irrelevant and no foundation laid.

Cross-examination by Mr. Vanderbilt:

Q. You testified that you were married. When? A. I was married in 1922.

Q. What were you discharged for? A. I don't recall.

Q. You mean you don't remember what you were discharged for? A. I do not.

Q. Who discharged you? A. Dr. Harman.

Q. And you can't recall why you were discharged? A. No, I can't.

Q. Were you discharged for cause? A. It was something to do about the board.

Q. And you can't recall what it was? A. Not now, I can't; it has been three years ago.

Q. How many times have you been discharged from various places? A. That was the first time.

Q. And you can't remember why you received your first discharge? A. I can't.

Q. How did you happen to come here? A. On my own accord. I found that the things Bertie said were not true and I can prove it.

Q. Were you jealous of the young ladies who got their pictures in the newspapers? A. Jealous? Of what?

Adjourned until 10 A. M., Thursday, December 20, 1928.

SIXTH DAY.

Thursday, December 20, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman; ROBERT H. MCCARTER, of Counsel.

Mr. McCarter: Mr. Supervisor and Mr. Vanderbilt. I am just told by Mr. Bailey that a messenger, somebody whose name I do not know, tells him that he thinks if it be quietly arranged, that Mr. Vanderbilt can take the testimony of Father Fitzpatrick some time today at the Villa. I would suggest that this proceeding now be adjourned to go right up there; I will not go, Mr. Bailey will go. If that is convenient to the County Counsel—

Mr. Vanderbilt: I understood that the arrangement yesterday was that I would close my case and that the respondents if they could would produce Father Fitzpatrick, if he was available, and if they did not produce him that I would produce him.

Mr. Bailey: If the witness is now available there is no reason why we should not have the case closed.

Mr. Vanderbilt: I understood that Mr. McCarter objected to my closing with the exception of that one witness and that he desired him as a witness. Thereupon, after argument, I agreed to close my case, resting upon whatever cross-examination I might have of Father Fitzpatrick subject to their producing him and if they did not produce him I would get him on rebuttal if he was available. If he is available now I do not see why he should not be produced on the respondent's case. I have not interviewed any of these witnesses in the case and I do not know what they are going to say—

Mr. McCarter: I haven't been able to see them either. It is very amusing to me, counsel made a great show, that he would not close his case without Father Fitzpatrick. He evidently is coquetting for position and makes a great point whose witness Father Fitzpatrick is to be. We are anxious, if he is not anxious, to examine Father Fitzpatrick and I would suggest that this proceeding now adjourn to go up, if that can be done, with the stenographer and Mr. Vanderbilt and Mr. Bailey to examine him. I don't care whose witness he is. I think the story

should be heard by the Supervisor. It isn't necessary for the Supervisor to go unless he wants to.

The Supervisor: I would be very glad to go; if it can be arranged we will go up there at once.

The Supervisor: We will now adjourn the hearing to the Villa of Father Fitzpatrick at Caldwell. We expect to continue here at two o'clock this afternoon and I will ask all the witness and those who wish to come to return at two o'clock.

Testimony taken at the Villa of The Sacred Heart, Caldwell, New Jersey.

JAMES V. FITZPATRICK, sworn for the respondent.

Mr. Bailey: Who proceeds here?

Mr. Vanderbilt: I understood before we left that I stated my position very clearly yesterday and I understood that Mr. McCarter acquiesced in it.

The Supervisor: I understood so, too.

Mr. Bailey: If you direct us to go ahead, I will go ahead.

The Supervisor: Go ahead.

Direct-examination by Mr. Bailey:

Q. Father, do you know Harold Bennett? A. Yes.

Q. How long have you known Harold Bennett? A. Ever since he came to the Sanatorium.

Q. Getting directly to the matter in interest do you remember an incident concerning the Galler girl? A. Yes.

Q. How did that first come to your attention? A. I was away on my vacation and I got back on a Tuesday noon and the following morning I went up to the Sanatorium and Mr. Bennett notified me about it. He notified me that that had taken place and I told him that that was so, then we would have to take steps to remove the doctor. I then said I would have to meet that girl if she was there. She had gone in the meantime.

Q. She had left the Institution? A. She had left the Institution before I got back and next I called on her to see her, I notified Mr. Bennett that I wanted to see her so she came down to this room.

Q. At the Villa? A. Yes. I asked her about it and she made those charges.

Q. Yes. A. I said you will have to make those before the doctor. On the following morning I went up to the Sanatorium—that was Thursday morning. And I waited for the Doctor.

Q. Did you see the Doctor? A. Yes, I was seated in his office and as soon as he came in the office, immediately I went in and I told him and he denied it. And I said, "You are willing to meet this young lady?" And he said, "Yes." Decidedly yes.

Q. When did he say he would see the girl? A. He didn't intimate, but it seemed to me that he called her on the 'phone.

Q. Was she right there? A. No, she wasn't.

Q. You don't remember her coming in there? A. No.

Q. Where did this interview take place? A. In the Doctor's office.

Q. Do you remember Mrs. Harris coming in there and interviewing him in the office?

Mr. Vanderbilt: I object to that as leading.

A. That was on Thursday then—

Q. Just let me interrupt you, Father. Do you recall Dr. Harman's calling anybody into the office? A. No, sir.

Q. Do you remember his calling Bennett into the office then? A. No.

Q. You don't remember that? A. No, I just made that declaration and went out. Then he said he was willing to meet the young lady and so I again told Mr. Bennett, because I didn't know where she was.

Q. Where did you tell Bennett that? A. I think it was in the Sanatorium, as far as I can recall. And I made arrangements for them to meet down here.

Q. Whom did you tell to meet down here? A. The girl, Mr. Bennett and the Doctor and Mrs. Harris; and they came down here.

Q. Did you tell Mrs. Harris to come down? A. No, I don't recall telling Mrs. Harris, but I wrote her about it.

Q. When did they come here? A. On the following Sunday.

Q. What time of the day, do you remember? A. It was around four o'clock, because I had to finish the Devotions.

Q. Did you ask the questions? A. I told the girl—the girl was standing near the door and I was next to her, and I said, "Now, tell your story", and she did, most brazenly and immodestly.

Q. What story did she tell? A. That she had

been invited to the Doctor's office to have a drink and advantage had been taken of her. That was the way she put it.

Q. Did she state when she had been invited in? A. She mentioned only one time.

Q. When was that? A. That was preceeding the time that she had called the man who had taken the place.

Q. Did she mention the month? A. In August.

Q. Do you remember the year? A. That very year.

Q. I don't believe you have told us the year yet. A. That was three years ago last summer.

Q. That was 1926? A. 1925 I think.

Mr. Bailey: There is no doubt about the year, is there? It was August, 1926.

A. Two summers ago.

Q. August, 1926. A. Yes. Then she made that declaration and I turned it around to the Doctor and he denied it and then I said, "All right."

Q. Did she mention a date? A. I don't recall.

Q. You don't recall the date, but did she mention the date at the time? A. It seemed to me that she seemed to imply it was the very night she had called up Father James who had taken my place, for protection. That was during the time I was away and I don't recall the date.

Q. Do you know whether the Doctor had a diary with him or a book of any kind? A. I can't recall that. He said that on that particular day he was out fishing and that his diary would show that. Well, I wasn't so much interested in that more than the fact that as I just said a little while ago. And then I gave thought to it, and I couldn't pass any judgment on that because there was too

much doubtfulness in it. On the one hand I had the girl—

By Mr. Vanderbilt:

Q. Father, I don't want to interrupt you, but you can't tell us what you thought but what you said and did. I have allowed more latitude than I would with a well witness. A. That's all right. Then afterward I formed my own opinion and the opinion was just in abeyance. Then later on; some time later on, the young lady called me up and she asked me whether I thought it would be advisable for her to be private stenographer to Mr. Bennett and I said no.

By Mr. Bailey:

Q. Do you remember when she asked that? A. It must have been a couple of weeks after the affair and I said no, and I called Bennett on the 'phone and advised him not to have anything more to do with her because I thought it was best not to and there wouldn't be anything more about it.

Q. Father, I am trying to refresh your recollection, if I can. Do you remember the day that you went up to Dr. Harman's office and you went into his office and you found Dr. Harman there? Do you remember that? A. Well, I don't recollect whether—well, he was there. It was right early in the morning. It was as soon as I got up.

Q. And you had told him about this incident? A. Right away.

Q. What did he do then? Do you know whether he called in Mrs. Harris? A. Not then.

Q. How long were you there at the Institution? A. I was there all morning, I guess, because usually I am. I don't recall just how long, but I don't remember meeting Mrs. Harris there.

Q. Don't you remember meeting Mrs. Harris at the Institution at all? A. I haven't any recollection at all.

Q. Do you remember talking to Bennett about it at the Institution in Dr. Harman's office? A. No, no. I just speak to the Doctor and then I held the case until I brought them down here.

Q. The person that made it known to you first was Mr. Bennett? A. Yes, I had no other means of knowing it.

Q. The Galler girl did not come to you direct? A. No, Mr. Bennett told me. He told me the day after I came home. Then, as I said, I made that arrangement to meet here to see what she had to say herself, and then I made the other arrangement.

Q. Do you know whether Bennett and the Galler girl have been to see you since then? A. No, I have never seen or heard from them since.

Q. One other incident that has nothing to do with the Galler girl. Do you remember the matter where Bennett made a complaint against a man named Tate? A. Yes.

Mr. Vanderbilt: I object to that as immaterial and outside of the issues. I don't want to foreclose the case, but I do not think it should be about anything as to what Bennett has not been interrogated about. There was nothing brought out about anything that concerned Father Fitz patrick and Bennett and Tate. That is the ground of my objection. If they ask him about a fact or a conversation that Bennett testified to I couldn't object to it, but I think

this is outside of the scope of the examination.

Mr. Bailey: :But this is an investigation and we are not bound by the strict rules of evidence.

Mr. McCarter: I am willing to do the best I can to ease this for Father Fitzpatrick. I will consent to its being taken subject to its being stricken out from the record and from the press.

Q. Do you remember the Tate incident? A. Yes, there was some trouble about the purchase of property for which Mr. Bennett gave $100 and did not get the sale of the property.

Q. How did they drag you into it? A. I wrote a letter to Tate to let up on Mr. Bennett. I don't recall the words. Then I got a notice from Tate's lawyer and that's all there is to it. Then how they settled it—they went to court—I don't know just how it was. He wanted to have Tate forbidden to sell property—to have his certificate taken away from him. Tate had been a patient in the Sanatorium.

Q. Didn't Bennett make certain statements which you declared untrue in that letter? A. I don't recall it.

Q. Coming back to one more incident about this Galler matter, didn't you remember an incident where Dr. Harman came to you and showed you a letter that he had received from Mr. Bennett? A. Why, that was last fall.

Q. This present year, 1928? A. Yes, Mr. Bennett had gone West and he wrote a letter demanding money. It was then the Doctor came down and showed it to me and I thought, "Well, that's

nothing," I went up to see him. I haven't in all these five years been able to calm him down. He resigns at the rate of once or twice a year, and I say to him, "Calm down and become reconciled." The Doctor showed me the letter and I thought I would go up to see him, so I saw him.

Q. Didn't he turn in his resignation then? A. He said there was nothing for him to do but turn in his resignation.

Q. And he did? A. I told him if the Doctor thought that had to be paid on that occasion that that would admit the Doctor's guilt. I said, "Go in—he said, "Well, then I will resign." I said, "Well, go ahead, then." So then I said, "Go in and have a talk with him and be reconciled to him." But he wouldn't do it. He said, "You come in and I will tell you what he is." I said, "That's between the two of you." Then I said jokingly, "I would like to punch your face and bring you back to normal."

Q. You told that to Bennett? A. Yes, jokingly; and I smiled and went out. Then, from that time on he shunned me.

Q. Bennett did? A. Yes.

Q. Does Bennett hold any animosity against Dr. Harman that you can see?

Mr. Vanderbilt: I object to that.

Q. That you can see. A. I always felt that way, that he had an obsession.

The Supervisor: Aren't these conclusions?

Witness: Is it all right?

Mr. Vanderbilt: Go ahead, subject to its being stricken out.

Witness: I always felt that he always felt

that everybody was interfering with him. One time it was the Board of Freeholders and the next time it was someone else trying to put someone in his department that would destroy it, and he seemed to have an obsession that they would destroy that department and about outside interference. Regarding the doctor, I always felt that he had a very determined attitude against him, although when I put it up to him he denied it, but it didn't convince me.

Q. At the time that you completed your investigation in the Galler matter, did you at that time express yourself as having entire confidence in Dr. Harman?

Mr. Vanderbilt: I object to that.

The Supervisor: I will sustain the objection.

Q. Did you express it to anybody?

Mr. Vanderbilt: He said before, Mr. Supervisor, that he held the matter in abeyance. Now he is asking a distinctly leading question.

The Supervisor: Reframe it.

Q. When you completed your investigation, did you express any opinion in the matter? A. Yes, I doubted the doctor's guilt.

Q. Did you say anything more than that? A. I have absolute confidence in him still.

By Mr. Vanderbilt:

Q. Did you say that? A. I don't remember exactly what I said, Mr. Vanderbilt.

By Mr. Bailey:

Q. Whom did you say that to? A. I said that to the doctor himself, I think.

Q. Do you know whether you said that to Mrs. Harris? A. And Mrs. Harris too.

Cross-examination by Mr. Vanderbilt:

Q. Father, whatever you did in any of these matters, you did in your capacity as chaplain at the Sanatorium. A. Yes.

Q. With the idea of doing whatever was best for the interests of the parties concerned, is that right? A. Yes, I have no interest but just in the Institution and the patients.

Q. And the employees too, for their best interests. A. Yes.

Q. Harold Bennett was a member of your church? A. Yes, he has been a convert for five years. Shortly after he went into the church he came up here and he asked me when he came up to be kindly disposed to him because he was new, and that is how I took the interest I did in him.

Q. You spoke of Bennett's having an obsession in his department. He was very deeply interested in his work? A. Very much so.

Q. And if he made any mistake at all, it was because he was very much interested in it? A. It was because he was so much interested in it he never took a vacation and I urged him to take a vacation for his physical good, and I always felt that his continual attention to the work was undermining him.

Q. You, from what you saw of him and what he said to you, gained the idea that he felt that he was being interfered with in his department and had an obsession on that subject. A. Yes, he al-

ways said it didn't make any difference whether it was the local authorities and sometimes he would say it was the Board of Freeholders. I asked him, "Why don't you go on a vacation?" He said, "They want me to get away because they want to put someone in there." When they arranged for his vacation they urged him to take the vacation but he wouldn't do it, he said for two reasons: One he did not have any money; and secondly he said they want to break up his department.

Q. He was, as a matter of fact, very much broken up when the nurses in his department were shifted. A. Yes, each time the nurse was changed he seemed to get beyond himself. Of course, that wasn't anything new in the institution, they could change all the nurses they wanted to.

Q. He had spent a lot of time training each of these nurses? A. Yes, but I always argued with him that every nurse ought to take as much chance of learning as the preceding one. He said it tied up his work.

Q. Father James was the substitute chaplain while you were on your vacation in the summer of 1926? A. Yes.

Q. Did he report to you that Miss Galler had made some sort of complaint to him, or didn't he tell you that? A. No, he was gone the morning I returned.

Q. At the time of this hearing or conference at your home, or in the Villa, when Bennett and Miss Galler were present and Mrs. Harris and Dr. Harman, you called on Miss Galler to tell in the presence of the doctor what she had to say against him? A. Yes.

Q. That was your way of getting at the truth of the matter? A. Yes.

Q. On that occasion did she charge that he had asked her to have a drink more than once? A. No, I don't think so; she just referred to one occasion.

Q. Did she make any reference to Dr. Harman's having come into her room while she was lying down? A. I have no recollection of that.

Q. Did you do all of the questioning or did Mrs. Harris do some of it? A. There was very little questioning done. She spoke out her tale and the doctor contradicted it, and the only time I remember Mrs. Harris saying anything was one time when she asked the girl why she was not more respectful to me, a priest.

Q. Was the girl disrespectful to you? A. She was very bold.

Q. Was Dr. Harman asked either by Mrs. Harris or by you whether he had ever had a drink with her in the office? A. Not by me; maybe Mrs. Harris did. He made some rebuttals to some questions, but I don't recall. There were very few questions asked, I know, by Mrs. Harris.

Q. Do you recall whether or not Mrs. Harris asked Dr. Harman whether or not he had ever had any of his employees down in the office and given them a drink?

Mr. Bailey: I object to that. There is no question about other employees here. We are talking about the Galler girl alone.

Mr. Vanderbilt: It is in Bennett's testimony.

Mr. Bailey: But it is not in the direct testimony of this witness.

Mr. Vanderbilt: I can go all around with cross examination, of course.

Mr. Bailey: No.

The Supervisor: Just a moment, please.

Mr. Bailey: He was conducting the cross-examination and asked if the Galler girl told this, and there hasn't been any mention so far whether there were any other girls at all. I don't think he can ask that on cross-examination unless it was brought out on direct-examination.

Mr. Vanderbilt: I can go into anything that took place at that hearing or conference before Father Fitzpatrick.

The Supervisor: It seems to me that that is right and we ought to bring all of this out.

Mr. Bailey: Exception.

By Mr. Vanderbilt:

Q. At this hearing, Father, at your home, did Mrs. Harris ask Dr. Harman if he had ever had a drink in his office with the Galler girl or any other employee? A. I am afraid I couldn't answer that. I don't recall at all. Very few questions were asked anyway.

Q. I understood you to say that at the conclusion of the hearing your mind was in abeyance on the subject. A. Yes.

Q. And you never communicated further with Miss Galler with reference to it? A. The only time was when she called me up, to my recollection, about taking up the position as an extra stenographer to Mr. Bennett. That is, to do work that he might have—extraordinary work. She said she would need the position and I said it was better for her to get work elsewhere.

Q. And that was about a week after the conference? A. Yes.

Q. She was not a stenographer so far as you knew? A. No, she said that she was a telephone operator.

Q. I understood you to say that when you went over to talk to Dr. Harman about this before the hearing was arranged for that he was the only one you saw there at the time. A. Yes.

Q. Who was it arranged to get the different people here to your house on that Sunday afternoon? A. I just told the doctor and then I told Mr. Bennett.

Q. How did you tell Bennett? Personally or by telephone? A. Personally, because I told him on Saturday.

Q. Did you tell him what the meeting was for? A. I told him to bring the girl along because the doctor and all would be there.

Q. Is it very clear in your mind that the Galler girl, when she made her statement, referred to the one occasion? A. That is the only thing I recollect. It was the occasion that took place while I was on my vacation.

Q. Can you recollect anything being said about Dr. Harman's going into her room? A. No, sir, I have no recollection of that.

Q. You say that Bennett was in the habit of writing out his resignations at various times? A. Yes, the last one was this time a year ago. He was going to resign and I urged him not to resign until after the first of the year because I knew when any of these spasms blew over that he was all right again.

Q. At this hearing at your home that Sunday afternoon did Dr. Harman complain against Ben-

nett? A. Yes, he had a little outburst against Bennett. He told Bennett he should have notified the proper authorities, not me. He said he was disloyal, and then he apologized right afterwards.

Q. Did Bennett then say anything about resigning? A. I don't recall. He said that he thought the one he was to inform was the priest.

Q. And that was because Miss Galler was a Catholic that he felt he should tell you. A. Yes.

Q. Do you know whether or not Bennett loaned money to Tate? A. I don't know; I wouldn't know anything about that.

Q. Or did any private work for Tate? A. Yes, he attended his family professionally.

Q. Who did? Bennett? A. Yes, I heard him say he attended his mother-in-law or somebody else.

Q. When you say that you told Dr. Harman that you doubted his guilt in the matter, you were basing it upon what had come to you in this one incident alone. A. It was my private opinion.

Q. What did you mean when you said you had held the matter in abeyance in your mind? A. You see, I don't know whether you will rule it out —the girl did not impress me very well when she was there. She always impressed me as being a bit light, and Mr. Bennett always had the unfortunate faculty of being the spiritual guide to anyone coming into the Institution. In fact, he is more of a spiritual guide than I, with these women, so often he would bring my attention to individuals. It was Mr. Bennett's peculiar disposition. The girl I did not think would stand against the regulations that had been made by the doctor for the moral uplift of the Institution. No matter when I went to the doctor about the moral de-

linquency he always sent away the individual who was violating the moral code.

Q. This girl has been there for a considerable time before you went on your vacation, hadn't she, Father? A. It doesn't seem to me that she was working there so very long. I don't remember when she went to work there.

Q. Before you went on vacation you never saw anything out of the way in her conduct? A. She was too free and up and down with those that associated with her. They always commented upon how free she was. I went there in a taxi and the men that were driving up and down used to comment on how free she was, and that is what caused me to take the balance and give the decision.

Redirect-examination by Mr. Bailey:

Q. You were on your vacation in August, 1926? A. It was in August I got back. I think I went the last week in July and the two first weeks in August.

Q. Do you think Bennett is of sound mind from your observation? A. You know, I don't like to say it for publicity, but I have long since doubted it.

A recess had been previously declared by the Supervisor until two o'clock P. M.

JOHN G. ROSE, sworn in behalf of the respondent.

Direct-examination by Mr. McCarter:

Q. Mr. Rose, are you the father of Henriette Rose? A. Yes, sir.

Q. And she died when? A. The 4th of last month.

Q. The 4th of November of this year? A. I think that's the date.

Q. She had been in the sanatorium for some time? A. Yes, about six years, I guess.

Q. You live here in Newark? A. Yes, sir.

Q. Are you employed in Newark? A. No, sir.

Q. Where are you employed? A. In Elizabeth.

Q. Do you remember being visited a short time before your daughter Henriette's death by Mr. Bennett, the radiologist at the Sanatorium? A. I do.

Q. At your house? A. Yes, sir.

Q. Where was that visit? A. 475 Clinton Avenue.

Q. Near what street is that? A. Near Bergen Street.

Q. I examined Mr. Bennett about that interview and he made certain answers and I am only allowed to ask you certain questions which you will answer, truthfully of course, and answer yes or no. I asked Mr. Bennett this question, speaking of his interview with you: "Do you say solemnly on your oath that you did not tell Mr. Rose that you came there for the express purpose of telling him that he ought to remove his daughter from the hospital?" Did he say that to you? A. That's what he said.

Q. He said no. Then I asked him (page 502) "Didn't you also tell him" that is, didn't Mr. Bennett tell you, "That on the same occasion that he, Mr. Rose, should go to the hospital and tell his daughter Henriette, who was very ill, that she should not eat anything or drink anything that was given her at the hospital or take any medicine",

and he said, "No." I ask you whether he said that. A. Those are the words he said.

Mr. Vanderbilt: I object to counsel's telling the witness what the answer was. I think the proper procedure is for him to tell the witness what was said.

Mr. McCarter: I have to use the language I used with him.

Mr. Vanderbilt: You don't have to use the language of Mr. Bennett's answer.

Mr. McCarter: I am not so sure about that.

Mr. Vanderbilt: I am.

Q. I asked him, "Didn't you say to Mr. Rose on the same occasion that you would like to get Henriette out of the hospital so that you could talk to her?" And the answer was, "No."

Mr. Vanderbilt: I object to the answer, the objection being that in the case where you have a hostile witness, all he has to do is give the opposite answer; if Bennett said yes he says no. The question should be, "Did this conversation take place and what did Bennett say or what did you say? But he should not suggest to the witness what he obviously desires the answer to be.

Mr. McCarter: I don't care anything about the answer. I will leave the word "no" out.

Q. I will ask you "Did Bennett say to you on the same occasion on that visit that he would like to get Henriette out of the hospital so he could

talk to her? A. That's what he said.

Q. I then asked him "And didn't Mr. Rose say to you" that is Mr. Bennett, "That he, Rose, could not afford to pay the expense of getting Henriette out of the hospital and pay her board elsewhere and you said "meaning Bennett, "Would pay her expense?" A. That's what he said.

Q. And after reciting some conversation between you and him with reference to your ability to pay I asked him "And then did you say, "Meaning Bennett, "I will advance the money or I will take her to a Sister's home." Did he say that? A. Well, not particular that way.

Q. He didn't say that in that way? A. Not that way, but the same thing, however.

Q. What did he say? A. He said he would advance the money. He had the money in his pocket and he would give it to me to pay the expenses and after that it would be turned over to some charity institution.

Q. Do you remember his making a second visit to you after Henriette's death? A. I do.

Q. Was that the occasion that he asked for a photograph? A. That is the occasion.

Q. What did he say he wanted the photograph for? A. He said he thought a lot of the girl and he wanted a photograph of her; if he only had a snapshot he could have it enlarged.

Cross-examination waived.

WILLIE MAY HARMAN, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. Mrs. Harman, you are the wife of Dr. Harman? A. I am.

Q. When were you married? A. May 20, 1920.

Q. What training have you had as a nurse or in that direction? A. I graduated from the Bailey University Training School, three year course, and worked in that institution until the war. I went across with the Army Nurse Corps in 1918 and was eighteen months over sea giving anesthetics and war work; in 1919 I went to the transfer casual as a relief nurse and there I was Dr. Harman's assistant in doing refugee work. In 1921 I accepted a position as instructor of nurses and anesthetist and was there for two years. Since then I have been at the Essex Mountain Sanatorium.

Q. When did you marry Dr. Harman? A. May 20, 1920.

Q. And of course you came to the Sanatorium with him? A. Yes, sir.

Q. Won't you briefly describe the layout of the Sanatorium? I have never been there. I suppose Mr. Reed has been there, but I have not been there. A. There is the Administration Building, which is the first building that you approach when you come up the main road, that is, one branch of the main road. From the administration building into the hospital, which is attached to the administration building by a bridge; then, passing the first floor of the hospital you come into a corridor that connects the hospital with the nurses' home. Further along there is another building, the pa-

tients' dining room and kitchen—rather, a group of dining rooms with the kitchen; behind that building and connected by a corridor is a building known as the annex. Behind the hospital building and to the right of the dining room are four so-called pavilions.

Q. Where are the apartments that are assigned to Dr. Harman and yourself? A. They are in the nurses' home; the first floor of the nurses' home.

Q. That is where you and he spend your leisure time? A. It is.

Q. Are you at present the superintendent of nurses? A. No, I am not.

Q. How long were you superintendent of nurses at the Sanatorium? A. I was superintendent of nurses from May 18, 1925 to December 1, 1925, and then for six weeks in 1927, I believe.

Q. In the intervening time was there any time that you were ill—in 1926? A. No, I wasn't very well, but I wasn't confined to bed. I kept to my room sometimes for a day at a time.

Q. Referring to the administration building, just glance at this drawing and see whether that gives a fair picture of the layout of the buildings, also that we can tell from it where the different offices and administration buildings are. A. Yes.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked R-12).

Q. The Doctor's office, so-called, is the room or suite shown on the sketch as the superintendent's office? A. It is.

Q. And its relation to the hall and to the next room all that are correctly shown there? A. They are.

Q. How many doors are there in the Doctor's office? A. Two.

Q. One going into the hall and one going where? A. Into the stenographer's room which is also the reception room.

Q. What furniture has there been in the Doctor's office since January, 1926? A. There is a couch that sits against the wall—the larger wall; at each end of that couch is a straight chair without arms; there are three leather arm chairs distributed about the room; Dr. Harman's desk and chair are there and another chair for a visitor sitting beside the desk, and a small filing cabinet and two book cases and a small table.

Q. I said January 1, 1926, because my then recollection was that no incidents had been testified to in this case as having occurred in the office or building prior to January, but I find by referring to my memorandum that I am at error about that and that Miss Bertie Galloway says that she was at the institution from Labor Day, 1925, to April, 1926. I will ask you if the furniture that you have described, the make-up of the Doctor's private office, was the same at Labor Day and before, 1925, as it was in January, 1926, or, has it been changed? A. There was no change.

Q. What kind of a lounge or sofa is this? A. It is a leather lounge—a rather large leather couch, such as we would find in a library.

Q. And that is against the wall? A. Yes.

Q. Is that indicated on that drawing? A. No, it isn't.

Q. Now, living in that place as you have stated, what has been your daily life, first, while you were superintendent of nurses and then when you left that position at the Sanatorium? A. When I was

superintendent of nurses I, of course, did all the duties of that office and besides, directed the entire doctors' floor and looked after the newspaper —the print shop—and it pretty well took up my time.

Q. What time was it customary for the Doctor and you to arrive mornings? A. About eight o'clock, except when I was superintendent of nurses; then I got up early.

Q. You got up earlier than he did? A. Yes.

Q. What is the practice as to getting up mornings? A. He got up at eight o'clock.

Q. Do you remember any occasion at all when he got up as early as six o'clock? A. A few occasions, when he went fishing.

Q. On these fishing occasions, after having his breakfast, did he immediately go fishing? A. Yes.

Q. Did he go with Dr. Bennett? A. He always went with someone; he never went alone.

Q. What time did you go to the administration building while you were superintendent of nurses? A. I went every morning to the Print shop to direct the work of the print shop and to correlate the material that made up the little paper that we printed.

Q. Did you know Bertie Galloway? A. Yes, I knew her.

Q. Who employed her, if you know? A. I did.

Q. When was that? A. It was in September, 1925.

Q. September, 1925? A. Yes.

Q. It appears that she left in April, 1926. Do you know the circumstances under which she left? A. I do not; I was no longer superintendent of nurses in 1926.

Q. But she did quit in April, 1926? A. Yes.

Q. Have you ever seen her from the time she left the institution until when she testified here the other day? A. Never.

Q. Did you since that time hear from her or from anybody else in the institution any gossip or any claim that the Doctor had made improper or undue suggestions or had any misconduct with her? A. No.

Mr. Vanderbilt: I object to that as immaterial and not within the issues.

The Supervisor: Objection sustained.

Mr. McCarter: Does the Supervisor mean by that that he excludes all evidence to the effect that there was no gossip or rumor so far as the witnesses will recount or recite or knew concerning the matter that has been testified to here in the Institution?

Mr. Vanderbilt: I submit that that is not a proper question to ask. I think the questions should be ruled upon as they come up. The fact that Miss Galloway did not come and tell Mrs. Harman about the incident is immaterial and irrelevant. She was under no duty to tell Mrs. Harman.

Mr. McCarter: Except that it is the most natural thing in the world to do.

Q. Did you hear any gossip around the place concerning Pauline Galler?

Mr. Vanderbilt: I object to that on the same ground and on the further ground that it is hearsey.

The Supervisor: The same ruling.

Q. Did you know Pauline Galler? A. I think

I have seen her at a switchboard as I passed through, but I had only a vague memory of her face when I saw her the other day.

Q. By the way, how many inmates are there in the institution on the average, and how many employees? A. Now, or 1925?

Q. 1925 and 1926. A. We had 225 to 228 patients and we had, I suppose, a hundred or 125 employees.

Q. You have been here during all of the testimony that has been taken in this matter, Mrs. Harman? A. Yes, Mr. McCarter.

Q. Has your husband any affection of his health? A. He has.

Q. What is that? A. He has tuberculosis.

Q. Does that require him to take care as to exertion and to get sufficient rest? A. It does.

Q. Do you know whether he was thus affected before he went to the Sanatorium? A. He was.

Q. Did you know Henriette Rose? A. Yes.

Q. When did you become acquainted with her? A. Why, a very few days after we went to the Sanatorium in 1923.

Q. And what was she then? A. She was stenographer for the secretary.

Q. Who was the secretary? A. Mr. Butterworth.

Q. Is Mr. Butterworth still there? A. No, Mr. Butterworth died.

Q. After Mr. Butterworth died what position then did Henriette Rose hold, if any? A. Why, she was Dr. Harman's stenographer, but she took that position before Mr. Butterworth died, Mr. McCarter.

Q. When did she become his stenographer or secretary and how long did that continue, Mrs. Harman? A. As far as I can recall, it must have been

the latter part of 1924, or the early part of 1925. I don't recall exactly when it was. It continued until her illness required her to stop.

Q. Are you familiar enough with the Doctor's office to know whether or not he kept any liquor or wines there? A. I am, Mr. McCarter.

Q. What was the facts?

Mr. Vanderbilt: I object. I don't see how this witness can testify to that unless the witness is with that person as much as a shadow is with him.

Mr. McCarter: She can testify to whether she saw anything.

The Supervisor: Can't you reframe the question along the line of your later question?

Q. Did you ever take in wine or liquor to his office? A. You mean bring it?

Q. No, take it to the office. A. Yes, I have, Mr. McCarter.

Q. Tell us under what circumstances. A. As superintendent of nurses I would find a patient who had liquor and use it in small amounts, but I always took it away from the patient and took it to the Doctor's office.

Q. What was the kind of liquor that you took in and what was the largest quantity? A. I suppose the largest quantity was three ounces. You wouldn't get it until it was all gone, or most of it gone.

Q. Three ounces would be how much? A. It would be a very small amount in a bottle about that large (indicating).

Q. A couple of inches high? A. Yes.

Q. With that exception have you ever seen any

liquor, wine or brandy in Dr. Harman's office? A. No, sir, never.

Q. Do you remember on one occasion Bertie Galloway being in Bennett's department purporting to receive treatment at night? A. Yes.

Q. When was that? A. That was—it must have been in October or November, 1925. She had a tooth extracted and the dentist ordered her to go to the X-ray room for diathermy, and we had just had a diathermy machine put in. He thought that would help the swelling. I went there myself with her for the first treatment because I looked after the employees. I didn't know anything about any further treatments and the next day or the day afterward, I can't remember which, one of my assistants, or perhaps it was the girl herself, I don't know how the information came to me, that Bennett had had her in the room without a nurse and had given her treatments. This was strictly against the rules of the institution and I reported it immediately to Doctor. When I reported it I told him that the morning that I took her in I objected decidedly to the familiar manner in which Mr. Bennett handled the girl while giving her the treatment.

Mr. Vanderbilt: I object to that on the ground that it was not made the subject of this examination by any cross-examination of any previous witnesses.

Mr. McCarter: He was asked if he had not treated her and had not been accused of being too familiar and he said, "No."

Mr. Vanderbilt: As I recall it he was asked if he had treated her and he said "Yes."

Mr. Bailey: The Galloway girl testified

to this very situation about Mrs. Harman coming in with her.

Mr. Vanderbilt: Then I will withdraw my objection if you say it is in the record I will take your word for it.

Q. When was this incident with reference to Galloway in the X-ray room? About what year do you say that was? A. About 1925, Mr. McCarter.

Q. What information did you have with reference to an operation that was performed upon this Henriette Rose in the month of May, 1925? What knowledge had you of that? A. Why, I knew there was going to be an operation and I knew the operation was performed. Did you want me to tell you all about it?

Q. Yes.

Mr. Vanderbilt: I object unless she was present at the operation or took part in the diagnosis. I object to any hearsay testimony.

Mr. McCarter: I asked her what information she had with reference to the operation.

Q. You say you knew it was to be performed? A. Yes.

Q. And you knew it was performed? A. Yes.

Q. But you were not present. A. But I object to any hearsay, then.

Mr. McCarter: I am not having her describe the operation.

Q. Who spoke to you concerning the operation upon Miss Henriette Rose?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. McCarter: I think it is very important.

Q. Who spoke to you? I am not asking what he said.

Mr. Vanderbilt: I don't see how that is possibly material.

Mr. McCarter: Suppose her husband spoke to her, Mr. Supervisor? Do you think the husband would be apt to speak of an operation that is criminal to his wife? I think we have some opportunity to go into human nature here. I press the question.

Mr. Vanderbilt: I can't see how it can possibly be relevant. We have testimony of an operation. The best testimony would be the contemporaneous record of it. Asking her what was said about it—

Mr. McCarter: I am asking her only who told her.

Mr. Vanderbilt: I can't see what basis there would be for that.

Mr. McCarter: That is not the point at all.

The Supervisor: What is your point, Mr. McCarter?

Q. Did your husband speak to you about it? Don't answer the question until Mr. Vanderbilt is through.

Mr. Vanderbilt: I object to that. The objection is whether her husband did speak to her of the operation and the answer would be yes. We don't know what he told her or

whether he told her the truth or not the truth. How is that material. The question is what took place at the operation, not what someone told someone else took place there.

Mr. McCarter: I have not asked her what her husband told her. I think this is important. We deem it important, and notwithstanding the learning and views of the County Counsel. We think it is important if we show that Dr. Harman spoke to his wife about this operation which was said to be criminal both before and after it was performed on the theory that if a man is expecting to participate in an illegal operation he would not tell his wife about it.

Mr. Vanderbilt: The answer to that is: Suppose A had told his wife that he had gone fishing, but instead of having gone fishing he went somewhere else. What difference does it make what he told his wife?

The Supervisor: I believe that County Counsel's argument is good and that his objection ought to be sustained.

Q. When did you first hear of any suggestion that that operation which occurred in May, 1925, was as is stated in the notice served upon the Doctor an illegal operation? When did you first hear of it?

Mr. Vanderbilt: I object to that as immaterial and irrelevant, when Mrs. Harman heard of it, and as absolutely not within the issues. The question is was it performed.

The Supervisor: Objection sustained.

Q. During the time that you were superintendent of nurses, what do you say was the practice with reference to staff meetings? A. Why, there was a staff meeting once a week, as I remember, and then frequently in the afternoon special meetings were called for those patients who were going to be discharged from the institution.

Q. Do you remember the month of September, the latter part of September, and the early part of October, 1926? A. I do.

Q. Were you and the Doctor at home, that is, at the Sanatorium, or were you and he away at that time? A. We went to Atlantic City for the last week in October, 1926, to the American Hospital Association.

Q. The last week of what? A. The last week of October, or September, it was that year.

Q. Yes. A. And we came home—

Q. Do you remember how long you were there? A. We were there practically a week, Mr. McCarter, and we came home and were home either two days or one day—one day, I think—and then we went to Washington and we were there for the International Tuberculosis Conference, and we were there about five or six days, the first week in October.

Cross-examination by Mr. Vanderbilt:

Q. Were these weekly staff meetings the ones that have been described in the X-ray Department going over X-rays? A. Yes.

Q. And all that was done at those meetings was the discussion of the X-ray plates and their relations to the patients. A. Oh, no; the case was discussed as well.

Q. But merely with regard to the X-ray plates? A. No, they were not; they were meetings at which the X-rays and the clinical findings were checked.

Q. Then, Dr. Bennett and Dr. Lauterborn are wrong when they say they are merely X-ray meetings? A. Yes.

Mr. McCarter: Dr. Bennett did not say that.

Mr. Vanderbilt: My recollection is that he did.

Q. During the period that Dr. Harman has been superintendent have you ever known him to take a drink of wine or whiskey or brandy while he was at the Sanatorium?

Mr. McCarter: I object to the question. That is not the issue here.

Mr. Vanderbilt: The question is designed to test the credibility of the witness.

Mr. McCarter: Counsel has many times argued what is the way to test the credibility of a witness. Certainly you can't test the credibility of this witness by asking whether she has ever known Dr. Harman to take a drink. The subject of taking a drink has not been referred to, but the question of liquor in his office, but I certainly say it is not proper cross-examination and it has nothing to do with any charge here, because there is no charge that the Doctor ever drank either to excess or otherwise.

Mr. Vanderbilt:: I have a different recollection of the charges. I think one of the charges is—

Mr. McCarter: I advise that you find out what they are.

Mr. Vanderbilt: I will withdraw the question.

WILLIAM J. TATE, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. You live where, Mr. Tate? A. Verona, New Jersey.

Q. How long have you lived there? A. Five years.

Q. Are you married? A. Yes, sir.

Q. Do you know this man Harold Bennett? A. I do.

Q. Has he ever been at your house with Miss Pauline Galler? A. He has been to my home with a Miss Galler.

Q. On more than one occasion and when? A. On one occasion.

Q. When was that? A. July 18, 1926.

Q. How did he come? A. I called him up at the Sanatorium. My mother-in-law was very sick and I wanted his advice as to who was a good doctor. He advised me to get in touch with Dr. Phelps of Caldwell, which I did, and he and Dr. Phelps arrived at the same time, or probably fifteen minutes apart.

Q. In their respective automobiles? A. In their own automobiles.

Q. The reason you remember it was the 18th is because of this illness you speak of? A. Yes, we have checked it up with the bill from our doctor.

Q. Did Miss Galler come in? A. Yes.

Q. Were you introduced to her? A. Yes.

Q. By whom? A. Bennett.

Q. What time of the day was this? A. I should judge it was between two and three o'clock in the afternoon.

Q. How well did you know Bennett? A. Fairly well.

Q. Did he make his home at your house for awhile? A. He did not.

Q. Did he have a room there? A. No, sir.

Q. Do you remember any other occasion having seen Bennett and this Galler person in an automobile together? A. I do.

Q. When was that? A. Between August 20th and September 10th, 1927.

Q. Where was that? A. On Broad Street, just south of Hahne's.

Q. In Newark? A. In Newark.

Q. Were they walking or driving? A. He was driving a Moon automobile, a sedan.

Q. And she was with him? A. She was.

Q. Did anything occur between your car and his? A. It did.

Q. What was it? A. I struck his car in the rear with my car and bounced him up the block about ten feet.

Q. Then there was a collision between the two cars? A. Yes.

Cross-examination by Mr. Vanderbilt:

Q. You had disagreements with Mr. Bennett over money matters, didn't you? A. We have—or I have.

Q. You have a grudge against him on account of

it, haven't you? A. If you call it a grudge; I call it worse than a grudge.

Q. You have had your real estate dealers license revoked, haven't you? A. I have not.

Q. You do real estate business in your wife's name, don't you? A. I do not.

Q. Are you the William Tate that I brought a suit against for the Mutual Bank of Roseville in 1925 and obtained a judgment that you have not paid? A. That has nothing—

Mr. McCarter: I object to that question whether this man has been sued or not.

The Supervisor: Is this a matter of identification?

Mr. Vanderbilt: Yes, I want to show whether it is the same man that is so careful here about money matters and in speaking of these people.

Q. Are you the same man that owes Charles Bart & Sons of Verona about $20,000 and never paid it.

Mr. McCarter: I object to that.

The Supervisor: I will sustain the objection.

Q. Don't you owe the people around Verona about $35,000 or $40,000 and never paid a bit of it?

Mr. McCarter: I object to the question.

Mr. Vanderbilt: It is the same kind of questioning that the other side were permitted.

Witness: I would like to answer that Bart question that was asked.

Mr. McCarter: I don't think it has anything to do with this case.

Witness: I don't either, but it is going to get in the papers.

Q. Did you run into Bennett's car deliberately? A. I did not.

Q. How do you know that Miss Galler was with him at the time? A. Because I got out of the car and saw both of them.

Q. You spoke to her? A. No, I did not.

Q. Why not? A. She is not worth while speaking to.

Q. When did you make up your mind to that? A. I have always had my mind made up to it.

Q. Did you speak to her the day she came to your house? A. Out of courtesy in being at my home.

Q. Are you a former patient of the Sanatorium? A. Yes, I am a former United States Government patient, too.

Q. I didn't ask you that. You are a little peevish, aren't you? A. Yes.

Q. How long were you there? A. One year and two days.

Q. Had you known her while you were there? A. No.

Q. Why did you call Bennett up and ask him to suggest a physician? He isn't a Doctor, is he? A. No, but he knows a good many physicians in the county with his expert X-ray work.

Q. Why didn't you call up Dr. Harman? A. Being a free country I called up whom I saw fit.

Q. Why did you call Bennett? A. Because I chose to.

Q. That is the best reason you can give? A.

That's the best reason I am going to give.

Q. And you called a layman to suggest a physician? A. Yes.

Q. You knew some of the physicians up at the Sanatorium? A. We had tried two or three of them and we tried to get another one that would do the lady some good.

Q. You mean you tried to get in touch with the doctors at the Sanatorium? A. No, we got one of the Verona physicians.

Q. And failing in that you called Bennett? A. No, we had the Verona physicians, but they didn't help a bit.

Q. So you sent for Bennett. A. We didn't send for him at all.

Q. Why did he come down? A. Anybody is welcome at our house.

Q. Did you ask him to come down? A. He said he would be down.

Q. Did you tell him what you called him for? A. He told me over the telephone he would be down.

Q. Were you surprised there was a young lady with him? A. I wasn't surprised to see him because he said he would come down.

Q. Did you have any conversation with him about it at all? A. No.

Q. You are sure it was Miss Galler? A. Yes.

Q. How long were they there? A. About an hour.

Q. It took all that time to give you the name of Dr. Phelps? A. No, he waited for Dr. Phelps to arrive.

Q. Was there anything out of the ordinary with Miss Galler's conduct during that hour?

Mr. McCarter: I object to that as immaterial and not cross-examination.

Mr. Vanderbilt: It is perfectly material.

The Supervisor: It seems to me it is; I think that question might sell be answered.

Mr. McCarter: Go on and answer it.

Q. Was there anything wrong with her conduct? A. No.

Q. Why did you decline to talk to her the next time you met her after you had gratutiously bumped into the car she was in? A. No particular reason.

Q. She had been in your home for an hour and when you met her the next time, you declined to talk to her. Why was that? A. We were near a safety aisle at Hahne's. Traffic was pretty heavy. I told Bennett, "If you want my credentials, go up to some side street and I will give them to you." He went around the corner and he had a higher powered car than I had and I lost him.

Q. You said a moment ago that she was not worthy of speaking to. You said she was behaving all right when she was at your house for an hour. Then, why did you take this high and haughty attitude when you bumped into the car in which she was riding? A. No particular reason.

Q. Because you wanted to give any kind of testimony against the County's case and to hurt Bennett as much as you could. That is the truth, isn't it? A. No.

Mr. McCarter: Is the County the complainant here? I ask if the County of Essex is the complainant here.

Mr. Vanderbilt: I would say so. I have had this pleasant job wished upon me by a

resolution of the Board of Freeholders. You said yesterday that you thought that I had prepared these witnesses.

Mr. McCarter: I didn't say anything about preparing these witnesses and I am not not so sure about it, but you can't sidetrack me me in this way. You said in your question to Mr. Tate a moment ago something about the County's case.

Mr. Vanderbilt: I admit I said that.

Mr. McCarter: Is this the County's case?

Mr. Vanderbilt: I wouldn't say so.

Mr. McCarter: Then why did you call it the County's case?

Mr. Vanderbilt: I will withdraw it for your happiness.

Q. You are here to say anything that you can say detrimental to Harold Bennett. That is it, isn't it? A. I wouldn't say that.

Q. You are here to satisfy a grudge? A. It seems as though there is a lot of other people here to satisfy grudges too.

Q. Just answer my question. A. Yes, if you want to know it.

Redirect-examination by Mr. McCarter:

Q. You had a paper in your hand. What is that paper? A. A copy of the charges preferred against me in the real estate commission.

Q. Tell us about it. A. On August 24, this fellow Bennett preferred charges against me.

Q. What year? A. 1927.

Q. Go on. A. For claiming he had gave me a deposit of $100 on two lots owned in the Borough

of Caldwell. He claimed that he had made several demands on me for the return of the money and I refused to return the money.

Q. Go on. A. He said that unless I returned the money he was going to prefer charges against me in the real estate Commission. And I told him to go ahead and he did.

Q. Was this verbal or in writing? A. It is in writing here. He then preferred charges and came to my home one Saturday afternoon and thought if we could get together—

Q. What did he say? A. He said, "Pay me the $100 and I will have the charges withdrawn." I said, "Hell will freeze over before you get $100 from me." I said, "I will go before the real estate commission and see if the charges go through." They did go through and I was vindicated. The check of $100 that he presented was in repayment of my loan to him.

Q. What became of the charges? A. They were dismissed.

Q. And that is the ground of your indignation against Bennett? A. It cost me $300 for counsel fee. I ought to have some indignation.

IVY L. TATE, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. Mrs. Tate, are you the wife of the preceding witness? A. I am.

Q. Do you remember an occasion when Mr. Bennett came to your house and Pauline Galler was with him? A. I do.

Q. Was she brought into the house and introduced by him to you and your husband as Miss Galler from the institution? A. Yes.

Q. Were you in the automobile at the time you collided with Mr. Bennett's car? A. Yes, I was.

Q. On Broad Street in front of Hahne's? A. In front of the Cathedral, the Trinity Cathedral; that is, it was on that side of the street, but in front of the Trinity Cathedral just above Hahne's.

Q. What time was this? A. Between 4:30 and five in the afternoon.

Q. Who was in the automobile that you collided with? A. There was a young lady in the automobile with Mr. Bennett.

Q. Do you know who it was? A. I couldn't have recognized her because I didn't get out of the car.

Cross-examination by Mr. Vanderbilt:

Q. When she was up at your house did she behave like a lady? A. I don't know that she did anything out of the way, but I don't know that she was a lady by any means.

Q. Did she do anything out of the way? A. No.

Q. Nothing that you can criticize? A. No.

Q. Are you in the real estate business too? A. Yes.

Q. Both you and your husband are in the real estate business. A. Yes, but I am not active in it. I will tell you how I got my license. When Mr. Tate came back from the Sanatorium and he got into the business, when he was out, somebody had to take care of his business, and that was the reason for my getting a license.

Elizabeth A. Harris—Recalled—Direct.

ELIZABETH A. HARRIS, recalled in behalf of the Respondent.

Witness: Mr. Supervisor, with your permission I would like to make a statement before I am questioned.

The Supervisor: If counsel on both sides agree to that.

Mr. Vanderbilt: The difficulty with that, Mr. Supervisor, is that I am here under a vote of the Board, including Mrs. Harris' vote, and it is very difficult to ask questions when a statement is made. I feel that the proceedings had better be by the customary practice of question and answer.

The Witness: It is a very simple request.

Mr. Vanderbilt: Is it a statement of all the facts, you mean?

Witness: It is simply a statement of my position.

Mr. Vanderbilt: I have no objection to that.

Witness: I want to make it clear that I am not here to accuse or defend Dr. Harman. I am here to learn the facts and I am here to give the facts.

Mr. McCarter: I think that is a very proper statement.

The Supervisor: I think that is a very fine statement.

Direct-examination by Mr. McCarter:

Q. You are one of the members of the Board of Chosen Freeholders of Essex County? A. I am.

Q. How long have you been such? A. Seven years it will be the first of the year.

Elizabeth A. Harris—Recalled—Direct.

Q. Are you connected with the Committee having in special charge the tuberculosis sanatorium? A. I am.

Q. What position on that Committee do you hold? A. I am Chairman.

Q. The affairs of that institution, so far as the Board of Freeholders is concerned, are under the statute practically turned over to this committee? A. Yes, with the approval always of the Board.

Mr. Vanderbilt: I object to that as asking the witness a question of law rather than a question of facts.

Mr. McCarter: The statute is peculiar, and nobody knows it better than Mr. Vanderbilt. The statute says that the institution shall be under the direct control of either the Board of Managers, or the Board of Freeholders, or the Committee. I want to show that the Committee has the actual management of it under the statute.

Q. That is the fact, isn't it, Mrs. Harris? A. Yes, with the ratification of the Board.

Mr. Vanderbilt: That is a question of law that I cannot concede.

Mr. McCarter: Then object to it.

Mr. Vanderbilt: I do object to it.

The Supervisor: The objection is sustained.

Mr. McCarter: The objection is always sustained.

Mr. Vanderbilt: I object to the remark of counsel. The objections have not always been sustained. I think counsel has been getting a whole lot in that under the strict

rules of evidence he is not entitled to.

Mr. McCarter: The first day you said that the strict rules of evidence do not go here. You said this not a trial but an investigation.

Q. Who else besides you are on the Committee? A. Mr. Dodd, Mr. Muir, Mr. Mungle, and of course, the Committee sits with the Board with a vote, and the Supervisor also sits without a vote.

Mr. Vanderbilt: I don't understand that the Supervisor is a member of the Committee.

Mr. McCarter: If counsel desires to take the stand he may do so.

Q. Can you tell us who the Committee were in 1925 and 1926? A. The committee in 1925 was Mr. Lindsley, Mr. Lindeman, Mr. Mungle and Mr. Crane.

Q. In 1926? A. That was 1925; I am not sure about 1926. Our committees change quite a bit. I would like to have that looked up. But I was Chairman.

Q. You were chairman in 1926? A. Yes, I have been chairman continuously.

Q. Was the institution opened after you became or before you became a member of the board? A. Well, the institution—the new buildings had just been completed when I was elected into office, and they moved over into the new buildings in February.

Q. Were you a member of the Board when Dr. Harman was elected or chosen superintendent? A. I was.

Q. And did he receive the unanimous vote of the Board for that position? A. He did.

Q. And was Mr. Reed a member of the Board at that time? A. He was.

Q. Since you have become chairman, which was, I take it from what you say, certainly on the first of January, 1926, or thereabouts, have you given any particular attention to the routine at the Sanatorium? A. Well, I always keep in touch, at least, the superintendent always keeps me in touch with the routine as much as is necessary.

Q. Have you been accustomed to go to the Sanatorium and if so, how frequently during 1926, we will say. A. It is very difficult to answer that; I am there a great deal of my time.

Q. And you were in 1926? A. Yes.

Q. You, of course, knew Dr. Harman? A. I didn't know him before he was elected to this—

Q. I didn't ask you that. I mean, while you were chairman in 1926. A. Yes, I knew him.

Q. What have you to say as to his having been and being an efficient superintendent?

Mr. Vanderbilt: I object to that as immaterial and not within the issues.

The Supervisor: I will allow it.

A. I think the work that he has accomplished there has been the proof of his efficiency, and so regarded by the medical profession.

Q. Your answer, then, is in your experience and judgment, he is and has been an efficient superintendent? A. Yes.

Q. Has the institution a fine reputation? A. I believe it has.

Q. During the month of August, 1926, did you

hear of some charge by Pauline Galler against Dr. Harman? A. I was at the Sanatorium in August, on Saturday, the 21st, and I was making an inspection. As I came back, Dr. Harman came out from his office and was very much disturbed. I noticed it in his manner. He said, "Mrs. Harris, Father Fitzpatrick is in the office and he has brought me charges that have been made against me by a telephone operator. Won't you come in at once?" I went into the office immediatley and Father Fitzpatrick was there. Father then made the statement that Harold Bennett had told him that Dr. Harman had made improper advances to Pauline Galler.

Mr. Vanderbilt: May I interrupt for a minute, please? I would like to have it noted on the record that I have a legal right to object to these questions but I am not objecting, so that Mr. McCarter won't say that I object all the time. I can have a ruling now, but I am not asking for it.

Witness: Oh, I am sure he wouldn't rule against a member of his Board.

Mr. Vanderbilt: I am not asking him to rule.

Q. Tell us what transpired in the office. Father Fitzpatrick, as I understand it, tells you that information had been brought to him by Mr. Bennett, not by Pauline Galler. A. No, Harold Bennett made the complaint.

Q. All right, go on. A. And Father said, "I will go into it right away and take it up." Dr. Harman stated that Pauline Galler had left the institution a number of days before, without notice, taking money from the telephone cash box. When

Father said he would go into it I said, "Father, if these charges prove logical and are trustworthy, you will have to come before the Verona Committee." We discussed it and he said, "We will bring in Harold Bennett right away before us."

Q. Who said that? A. Father.

Q. Yes. A. We sent for Harold Bennett from the X-ray department and he came in.

Q. So Bennett was there? A. Bennett was there.

Q. Did you hear him say yesterday that he was not there? A. I did.

Q. Go on. A. Father plied him with questions. He was very indefinite, quite incoherent, and couldn't stand up under the grilling which Father gave him. Father dismissed him. The charges that Father told to Dr. Harman were that Pauline accused him on the 11th day of August that he had attacked her. Dr. Harman immediately pulled out his diary that was there and on that day he was fishing with his first assistant.

Q. And the diary showed it? A. The diary showed it.

Q. Go on. A. Father said, "I will have to get in touch with Pauline. I will have to locate her." She was not in the employ of the County. He said, "Mrs. Harris, I will notify you and Dr. Harman as soon as I locate her and we will get together." The next morning, I think it was, I think Dr. Harman telephoned me that Father had telephoned him that he had located Pauline and to come to his rooms that afternoon in the Villa of the Sacred Heart.

Q. To Father Fitzpatrick's rooms? A. Yes. Dr. Harman came down and he got me and we went up there that afternoon and when I went into the hall Father came downstairs and met us and said,

Pauline and Bennett are upstairs." I don't suppose counsel will permit me to say this—

Mr. Vanderbilt: Go ahead.

A. (Continuing) I said to Father, "What is Bennett so interested in Pauline for?" I didn't get it; I didn't understand it. We went upstairs and Pauline and Bennett were up there sitting in the outer sitting room. Father, Pauline Galler, Harold Bennett, Dr. Harman and myself were there. Father did the questioning of Pauline.

Q. Can you remember now what questions were asked and answered? A. Well, he asked her first what did she have to say, or something like that. Of course, you must remember it is over two years and it is hard to recall the details.

Q. Yes. A. She said it was the 11th day of August, and doctor, of course, had taken up his diary after Father had told him about that the previous day. When she saw she could not prove that, she became very contradictory and very much confused and didn't know what else to say. Then she especially stressed after that that Dr. Harman had locked her in his office with this attack and Father said to her, "Why, you know, Pauline, the door is on the side of the office that goes into the hall and is locked with a key and the other door has a spring lock, and I am in that office almost every time I am at the Sanatorium and no one can be locked in that office." She was very much confused and didn't know what to say then. Dr. Harman emphatically denied it and denied it in such temper that I thought almost he was going to have a stroke, and that's about the sum and substance of it. Father then dismissed us and he talked more about it; I saw him in a couple of days.

Q. Whom do you mean? A. Father Fitzpatrick. I said to him, "Father, you will have to come before the Committee." He said, "The charges have not been proven and I cannot come before the Committee." Now, if Harold Bennett or Pauline Galler had come to me, I would have immediately called my Committee, but the charges were not made to me, Father said they were not proven and that he had every confidence in Dr. Harman.

Q. How did you yourself feel about it? A. I felt in her contradictory way that she had not proven her statements.

Q. Did you agree with Father Fitzpatrick then? A. I did.

Mr. Vanderbilt: I am willing to go at great length, but I don't think we ought to have these thoughts given here.

Q. Well, after your hearing, what transpired at the Villa, as you call it? What was your belief as to the truth or falsity of the charges?

Mr. Vanderbilt: I object to that as immaterial and irrelevant.

Mr. McCarter: I think I am entitled to that answer both in protection of Dr. Harman and in protection of Mrs. Harris.

Mr. Vanderbilt: Mrs. Harris certainly is not on trial, Mr. Supervisor.

Mr. McCarter: I am not sure. I would like to have a ruling on it.

Mr. Vanderbilt: I certainly think it is immaterial and exactly at variance with Mrs. Harris' statement when she was sworn as a witness. Now you are asking her what is her judgment on the case.

Mr. McCarter: Not now. I am asking what it was then. Hasn't she a right to give the conclusions she reached as Chairman of the Committee for the Institution? They had the so-called hearing before Father Fitzpatrick and she either reached a conclusion or did not, and I think we are entitled to have what conclusion she reached after that matter terminated.

Mr. Vanderbilt: The matter of the conclusion that is reached is not vested in the Freeholders, but in the County Supervisor.

Mr. McCarter: That is my question and I think I am entitled to an answer.

The Supervisor: I will sustain the objection of the County Counsel.

Q. When did you next hear of anything with reference to Pauline Galler and her claim as outlined in the specification number two of this notice that has been served upon Dr. Harman? When did you next hear of it? A. I didn't hear anything of it until September; I think it was the latter part of September, when the Supervisor called me and said he was calling a meeting of the Verona Committee. We came down here—

Q. I didn't ask you what occurred. The next thing you heard of it was September, 1928? A. Yes.

Q. And when did you first hear of any charge of any kind on the part of Bertie Galloway concerning relations that were said by her to have existed between herself and Dr. Harman? A. I didn't hear anything about it until the Supervisor brought the charges before the Board, but the name was not released until the charges came out—

Elizabeth A. Harris—Recalled—Direct.

Q. I am asking you when you first heard the name of Bertie Galloway in connection with charges about improper relations or suggestions between Dr. Harman and herself. A. When Dr. Harman received the charges.

Q. Has anyone ever suggested to you, previous to this hearing in this room, that there had not been frequent enough staff meetings? A. No, I have never heard about it.

Q. During the interview at the Villa, that you attended, and have undertaken to describe, did Father Fitzpatrick interrupt and stop Pauline Galler in telling her story? A. I have no recollection of such a thing. My impression—may I be permitted to state—

Q. What is your recollection? A. My recollection is that Father was very severe with her and did not stop her.

Q. Did she in her statement say that the Doctor had offered her drinks and did you interrupt her right there and ask Dr. Harman if that was so and he replied that it was so and that he had no ulterior motive in doing it? A. I have no such recollection.

Q. Did Dr. Harman further say in the same connection that he had also offered liquor to other girls and that he just wanted to test them to see whether or not they were worthy of their positions? A. I haven't any such recollection.

Q. To see whether or not they were responsible. A. I haven't any such recollection.

Q. Do you remember during that conference at the Villa anything being said by Bennett with reference to having some more tools or implements in his laboratory? A. Yes, I do remember that.

Q. What was said? A. He stated to Dr. Har-

man that he was short of certain supplies in his department—the X-ray department. Harold Bennett had been very lavish in his demands for the equipping of that department and the superintendent always, in consultation with me, had endeavored to hold him down, so I said to Dr. Harman after we left there, "Go in when you have the opportunity to see what he actually requires, if he does require anything." That is my recollection of it.

Q. Then the subject was spoken of there the way you have related it? A. Yes.

Q. Did Dr. Harman bring to your attention this letter of August 6th, written on the train from Mr. Bennett to himself being Exhibit R-7? A. Yes, he did.

Q. Do you remember how early after its receipt? A. No, I guess immediately; I think immediately.

Q. He brought it to your attention? A. Right away, yes.

Q. Did Galler at the interview at the Villa complain of any improper incidents between Dr. Harman and herself than the one in the month of August? A. No, that was the only charge.

Cross-examination by Mr. Vanderbilt:

Q. Mrs. Harris, you heard Father Fitzpatrick's testimony at the Villa this morning? A. I didn't hear all of it, he spoke so low. I would like to review it.

Q. Do you recall that he testified that he did not talk to you down in Dr. Harman's office prior to the hearing at the Villa? A. I do remember that.

Q. And that he did not talk to Bennett, down in Dr. Harman's office? A. I remember he was very hazy about it.

Q. He said it positively, didn't he?

Mr. McCarter: I object to counsel's confronting this witness with what another witness said.

Q. You are positive of that conversation? A. Absolutely.

Q. In Dr. Harman's office first with Father Fitzpatrick and Dr. Harman there and then with Bennett coming in later? A. Yes, the reason I remember it particularly is because I happened to be at the hospital in the morning visiting the hospital.

Q. I am asking you that particularly because Father Fitzpatrick said he did not recall any such conversations. Now, we get to the conference at the Villa on Sunday afternoon. Can you recall who it was that first mentioned the date of the alleged assault? A. Up in that room.

Q. Yes. A. Why, Father asked Pauline, "What time was this?" He had previously told us in the office that she said it was the 11th and she said, "The 11th of August."

Q. That was her statement? A. That was her statement.

Q. At the conclusion of this hearing in Father Fitzpatrick's house there was quite an explosion between Dr. Harman and Mr. Bennett? A. Yes, of course. No more with Mr. Bennett than with Pauline, because he denied her charge.

Q. But I mean between those two there was a verbal set-to? A. There was.

Q. Did Dr. Harman ask Bennett for a resignation? A. No.

Q. Did he ask Bennett to give one? A. I have no recollection.

Q. Do you know why Dr. Harman did not ask

Bennett to resign at that time? A. I do not.

Q. How soon after this conference at the Villa were these instruments sent down to the X-ray department? A. Well, I really can't tell you that. I think the superintendent probably in a few days —in a few days, probably.

Q. Was that matter mentioned at the Villa? A. Yes, he said it at the Villa and on the way home I said to Dr. Harman, "Go in and see what he wants."

Q. That matter of instruments seemed to be on Bennett's mind that afternoon in the conference at the Villa? A. He was very lavish; he was never satisfied.

Q. It was apparently not only a vocation but a hobby with him? A. Absolutely.

Q. When did you say you saw the letter of August 6th that Bennett wrote on the train? A. I didn't make a note of it; I supposed it was immediately after he received it.

Q. Do you know why the Doctor did not ask Bennett for his resignation after the receipt of that letter?

Mr. McCarter: How could she know?

A. I can't answer that.

Q. As a matter of fact, Dr. Harman never has asked for Bennett's resignation.

Mr. McCarter: I object. He has had one since August 11, 1926, and it is in evidence. Why should he ask for something that he already has?

By the Supervisor:

Q. I would like to ask you one question for my own information. After this hearing with Father

Fitzpatrick, why didn't you come to me about it? A. Well, Mr. Reed, the charge was made to Father. If the charge had been made to me, I would have come to the Committee and you, but I couldn't assume the accusations made by some other person. You don't know where that would lead to.

Q. Did you ever take them up with your Committee? A. No, I did not; and that is the reason, because the charge was not made to me. I repeat it; the charge was made to Father. If it had been made to me, I would have done as I do with anything, take it up with my Committee, but I can't assume accusations made by other persons. You know that.

The Supervisor: You assumed a very grave responsibility. That's all.

Mr. McCarter: We are not trying her, are we, Mr. Reed?

The Supervisor: No, positively not.

Witness: I would do the same thing over again if I had it to do.

Adjourned until 9:30 A. M., Friday, December 21, 1928.

SEVENTH DAY.

Friday, December 21, 1928.

In the Matter

of the

Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman; ROBERT H. MCCARTER, of Counsel.

BYRON M. HARMAN, respondent sworn in his own behalf.

Direct-examination by Mr. McCarter:

Q. Where were you born, Doctor? A. Frenchtown, New Jersey; Hunterdon County.

Q. Where did you receive your medical education? A. At the University of Pennsylvania.

Q. Did you graduate there? A. Yes, sir.

Q. In what year? A. 1917.

Q. How old are you? A. 36.

Q. Did you serve at all in the war? A. Yes, sir.

Q. In what way and when? A. As assistant surgeon in the United States Navy.

Q. And you were abroad? A. Not during the war, immediately afterwards when I went to Russia with the relief outfit.

Q. When did you come to the Institution, the Sanatorium? A. I think it was the 1st day of April, 1923.

Q. At that time you were married? A. Yes, sir.

Q. And you have been, then, at the Institution, since April, 1923? A. Yes, sir.

Q. Have you any lung trouble? A. Yes, sir.

Q. What? A. Tuberculosis.

Q. What, generally, is the size, scope and method of conduct of the Sanatorium? Just give us a little description of that. Somebody hereafter who is interested in this case may not know that the way the Supervisor does. A. The Institution at the present time consists of, I think, eleven buildings—eleven separate buildings. The patient capacity as originally defined was for 250; we have at the present time, 278 patients. We are very much over capacity. We have a considerable list of patients awaiting admission—

Mr. Vanderbilt: I object to all this line of testimony as not within the issues. The description of the present needs and the future needs of the Institution—

Mr. McCarter: I would like to conduct this thing in an orderly way.

The Supervisor: I think it has nothing to do with the charges against Dr. Harman, but I am going to admit this statement of Dr. Harman's. I don't see any harm in it.

Q. Continue. A. The Institution is divided into a hospital or infirmary building and pavillions together with the necessary administration building, treatment building, and quarters for male and female employees, and dining rooms, kitchen, laundry, and so forth. The patients are divided according to the stages of their disease: Strictly bed patients; semi-ambulance, those who go to one meal; and those who take care of themselves and go to their room and meals themselves.

Q. Is there any treatment by light of the patients? A. Yes.

Q. What is that? A. Both artificial and natural. The lamp room, as we call it, is the artificial —the Alpine sun lamps—the mercury vapor lamps; and then, we use the sun—helio therapy.

Q. The Alpine treatments being what? A. We have seen remarkable results not only in our institution but in other institutions in stimulation, and especially in bone cases, abscesses and sinuses that go with tuberculosis. We have had some glands with remarkable results. The sun has a natural effect as a stimulant. If we do not get pigmentation, tanning, not necessarily sunburn, we discontinue the sun treatment. While treating these cases they are careful with them both by clinical signs and symptoms and the laboratory tests.

Q. The person of the patient has to be exposed to the ray of either artificial or natural light? A. Naturally.

Q. Prior to the service upon you of what is denominated the notice of the charges, have you ever had any complaint or heard of any complaint of unnecessarily exposing the persons of female patients while they were being treated? A. Not one.

Q. Who has charge of that branch of the business? A. I do.

Q. Is there an apartment or special place where that branch of the work is carried on? A. Yes, sir.

Q. Have either the Board of Freeholders or the Committee of the Board having in charge the Sanatorium ever given you a notice of, or statement of their determination as to the extent of the performance by you of your duties? A. No, sir.

Q. You are familiar with the statute which defines your duties and specifies your authority? A. I have read it several times.

Q. With the exception of vacations or periods when you have attended conventions of various kinds, how much of your time since your installation as Superintendent of this Sanatorium have you devoted to your work? A. All day.

Q. You have had no other occupation than this since your installation as Superintendent of the Sanatorium? A. No.

Q. Do you ever feel called upon, and do you, in fact, visit the homes of the patients before they come or after they have come, or after they have left? A. Very often.

Q. What is the radius of the territory from which patients are admitted into your institution? A. The entire County of Essex.

Q. Did you know Bertie Galloway? A. Yes, sir.

Q. Who employed her? A. She was interviewed by Mrs. Harman and I passed on her permanent appointment.

Q. Do you know when that was? A. In September, 1925.

Q. When was she admitted— A. No, the date of

her appointment, I think was September, 1925.

Q. How long did she continue there? A. Until April 25, 1926.

Q. Do you know whether she left voluntarily or whether she was discharged? A. She was discharged.

Q. What do you know about her discharge? A. I was away at the time of her discharge; I was on my vacation in the West Indies, and when I returned I was informed by my secretary, Mr. Butterworth, that on advice of the chairman that this girl had returned to the institution in an intoxicated condition and was discharged—told to leave.

Q. Then her discharge came when you were away? A. Yes, sir.

Q. Then you had nothing to do with it personally? A. I had nothing to do with it personally.

Q. Where is Mr. Butterworth now? A. He is dead.

Q. Mr. Butterworth is dead? A. Mr. Butterworth is dead.

Q. Had you seen her or heard from her previous to the day that she testified here? A. No.

Q. Had you heard of her from the time you returned from the West Indies and learned she had been discharged during your absence until the service upon you of the notice of this case? A. No, sir.

Q. She was a telephone operator? A. She was.

Q. Will you indicate on this sketch, Exhibit R-12, by the word, "telephone" if you can, the location of the telephone? A. It is one floor up.

Q. Whereabouts? A. Over the X-ray department in the main corridor.

Q. What do you call that over the X-ray depart-

ment? A. It is the main corridor.

Q. A passageway? A. Yes, sir.

Q. There is an operator there from when to when or was in 1926? A. From six in the morning until ten at night, and after ten at night we did not have the buildings open and the outside wires were plugged in, one directly to my department and one to the first floor hospital. That was all at that time. We only had two.

Q. In 1926, how many shifts of telephone girls did you have? A. I think after that, if I recall, we had three, but in 1925, only two.

Q. When did the three shifts come in? A. I don't know the exact date; I think it was along in 1926.

Q. One would start— A. We changed the hours so that they worked eight hours.

Q. Would they alternate as to time? A. Yes.

Q. For instance, if they went on at six in the morning for eight hours one week, one operator would go on at one time? A. No, Mrs. Harman put in that system. We changed the time so that the morning operator went on at eight o'clock and worked eight hours; that is, eight to three; the second one went on from three to eleven and the third one from eleven to six or eight.

Q. When you had the two shifts would the shifts change? I mean by that— A. (Interrupting) Yes, sir.

Q. How would that be accomplished? For instance if a person were on the morning shift one week what shift would she be on the next week? A. The afternoon; they alternated.

Q. Did you ever make love to Bertie Galloway? A. No, sir.

Q. Did you ever ask her to come to your office

and have her there after dark in the dark? A. Absolutely not, no, sir.

Q. Did you either in the dark or in the daytime invite her to the office and have improper relations or make improper suggestions at all to her? A. No, sir.

Q. Was she ever, so far as you can recall, in your office? A. Yes, sir.

Q. When was that, if you can tell us? A. I think the day that she answered—I know it—the day that she answered the advertisement for the position she was brought into my office by Mrs. Harman for interview and of the candidates that applied she was finally selected.

Q. After her employment was she ever in your office? A. Yes, sir.

Q. That is what I am interested in. A. She received notice, I believe to take a Civil Service Examination, and after I received notice of her certification and qualification, it is customary always, I send to every employee a notice that an interview is necessary before they receive a permanent appointment and kindly apply in writing or call for interview—I have her letter—and state that she desired to accept the position—and she came down to my office in the morning and I told her what her duties would be and she stated that she would accept. She was working at that time temporarily and at the next committee meeting her name was presented for appointment.

Q. I show you copy of a letter dated September 16, 1925, and ask you if that is a copy of the letter which you have referred to? A. Yes.

Mr. McCarter: I offer it in evidence.

(Same is received in evidence and marked Exhibit R-13.)

Q. Pursuant to the request in that letter contained, did she visit your office? A. Only at the interview.

Q. Pay attention to the question. Pursuant to the request in that letter contained did she visit your office? A. No.

Q. Did she come after you had asked her to come? A. After receipt of this letter.

Q. Pay attention to my letter, Doctor. That was pursuant to that request, wasn't it? A. Yes.

Q. Did you see her? A. I did.

Q. Have you any recollection of her ever having been in your office after that occasion? A. No, sir.

Q. Did you have any automobile rides with her, and if so, when and of what character? A. I have taken her to the trolley line the same as I have any number of other employees—many times.

Q. With that exception, have you had her out in your automobile? A. No, sir.

Q. How many times can you recall having taken Galloway from the Institution to the trolley line? A. I can't recall the exact number, but I don't believe it is over one or two times.

Q. How far is that? A. A little over a mile.

Q. Is it true, as stated by one of the witnesses, that it was quite customary to lift up employees going to and from the trolley at the Institution? A. I think everyone up there who has an automobile takes employees to and from.

Q. Did you ever make love to, or make any effort to embrace her or kiss her in an automobile? A. No, sir.

Q. Did you ever visit the room of Galloway? A. I have opened the door in her room, yes.

Q. Tell us about that and how that came about.

A. That is part of my duties, as Superintendent. I make an inspection of the Institution once or twice a week from top to bottom. I always have ever since I have been there and it is usually some time during the day; usually in the middle of the day, because I am too busy in the early morning. My custom has been, as I go along, to strike my hand on the door and open the door with my key and look in, and if there is anyone in I would go on.

Q. With that exception, have you ever visited Galloway's room? A. No.

Q. Did you ever make love to her or make improper proposals to her, or hug her or kiss her, either dressed or undressed in her room? A. No.

Q. Were you ever in her room and conceal yourself by hiding on a hat box or other affair because footsteps were heard along the corridor? A. No, sir.

Q. Where is the dormitory that is occupied by the telephone operators and other female employees? A. It varies from time to time.

Q. Where was it in 1925 and 1926? A. It was at the top, on the fourth floor of the administration building around to the left and in front.

Q. About over to what portion of the building as shown on the plan? A. On the fourth floor directly over my office in the front.

Q. In 1926, won't you give very briefly, the personnel of the Doctor's, the staff, so to speak, and then the housekeeping and nursing personnel? You had how many assistant doctors in 1925 and 1926? A. There were three besides myself.

Q. You had three assistants? A. Yes, sir.

Q. They were who? A. Dr. Bennet, Dr. Lauterborn, and Dr.—let me see, in the latter part of

1926 it was Dr. Eastwood—Dr. Heller.

Q. Then you have spoken of a superintendent of nurses. Was there always a superintendent of nurses? A. Yes, sir.

Q. And how many nurses, roughly? A. About twenty-three—around twenty-three.

Q. Female nurses or male and female? A. All female.

Q. Was there a housekeeper? A. Yes, sir.

Q. Was there a woman housekeeper? A. Yes, sir.

Q. And then with all the other employees you had, how many employees including the doctors and nurses? A. The number of actual employees working were other than what actually appears on the payroll. They keep coming and going all the time. We lose a great number each pay day. We had difficulty in getting help because we didn't pay enough money; we paid only $50.

Q. How many people, about? A. Actually working, actually employed, about 125 or 130 actually.

Q. You heard the evidence of Bertie Galloway in this case, did you? A. Yes, sir.

Q. I want to ask you if there is a grain of truth in any of the statements that she made of approaches by you, of alleged love making by you, of her going to your office in the dark, of her being called on the telephone to come to your office, or having drinks in your office, is there a word of truth in that?

Mr. Vanderbilt: I object to that.

The Supervisor: On what ground?

Mr. Vanderbilt: On the ground that one cannot be asked a single question character-

izing the testimony of a witness as untruth. It must be asked by separate questions.

Mr. McCarter: I am trying to hurry along—

The Supervisor: I think the question has been framed to cover a good many different things and I think the question should be allowed.

A. No, sir.

Q. What about your having liquors or wines in your office? A. Never.

Q. Did you have glasses or cups? I think Galloway said glasses and Galler said Lillie cups. Did you have either for the dispensing of liquor in your office? A. No, sir.

Q. Was any liquor ever brought to your office by any one of the employees or nurses taken from patients? A. I don't know whether it was liquor or not, but at times there were different bottles confiscated about there that were supposed to have liquor in them.

Q. Did you know Pauline Galler? A. Yes, sir.

Q. Have you a record of her entrance to the institution? A. Yes, sir.

Q. Will you produce it? A. Yes, sir.

Q. Is this the official record? A. It is the appointment card.

Q. Show it to Mr. Vanderbilt and then we will offer it in evidence.

(Same is received in evidence and marked Exhibit R-14.)

Q. I notice that this appointment card says under date of May 5, 1926, the name "Pauline Galler, address care of Mrs. W. Young, 18 Brinkerhoff

Place, Passaic, New Jersey", and the time that she is notified as "May 6, 1926." That is the official card that has been in the office since she was employed? A. Yes, sir.

Q. And it is taken from the file of all the official cards? A. Yes, sir.

Q. Did you hear her deny in her testimony that she had ever lived at 18 Brinkerhoff Place, Passaic, New Jersey? If you did, it doesn't make any difference. A. I recall it, yes.

Q. Did you employ her? A. No, sir.

Q. When, if you can recall, did you first see her? A. It was after my return from the West Indies; I think it was about May 13th or 14th.

Q. 1926? A. 1926.

Q. Did she get a permanent certificate from the Civil Service? A. She qualified, yes.

Q. And then did you send her this communication similar to the one that was sent to Galloway (handing paper to witness)? A. Yes, sir.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-15.)

Q. Did she come to your office as requested in that letter? A. Yes.

Q. And you saw her then in your office? A. Yes, sir.

Q. Do you recall her being in your office on any other occasion than that? A. Yes, sir.

Q. When? A. I think it was in August of 1926.

Q. Describe what occurred on that occasion. A. As I recall she came to my office around 4:30 that afternoon, the exact date I don't recall, and said that she had poison ivy and wouldn't I prescribe

for it. I said, "Let's see it, where is it?" She said it was on her knee and she showed me her knee. I said, "Any other part of your body?" She said, "Yes, on my shoulder." And I saw it. She showed it to me, and I took my hand and I pushed on it to make a diagnosis to satisfy myself that it was poison ivy and not the hives or the itch, and I prescribed for it.

Q. With that exception, and pursuant to the request of that letter I have just shown you, was she ever in your office? A. Not that I recall at any time.

Q. Did you ever summon her to your office over the telephone and tell her, if necessary, to close up the telephone switchboard and come to the office? A. No, sir.

Q. Did she ever come to your office in the evening with the lights out and remain there? A. No, sir.

Q. Was she ever in your office or in the light and you made improper suggestions to her, hugged her, kissed her, made love to her, threw her down on the floor, or anything of that kind? A. Absolutely not.

Q. Did you ever enter her room? Her bedroom? A. I never entered it.

Q. What did occur, if anything, with reference to her room so far as you were concerned? A. On making my rounds, as part of my duties I opened the door and saw her in her room several times in the middle of the day and closed the door and went about my business.

Q. Did you ever enter her room and hug her and kiss her when she was in her dishabille? A. No, sir.

Q. Or otherwise? A. No, sir.

Q. Did you ever make love, make what is called improper suggestions and force to the floor either Galloway or Galler? A. No, sir.

Q. Did you ever ride in an automobile with Galler? A. I have no recollection of it.

Q. You have no recollection of it? A. I have no recollection of it.

Q. Did you ever make love to her or improper suggestions, or tell her you loved her, either in an automobile or anywhere else? A. No, sir.

Q. Did you ever park an automobile with the Galloway girl? A. No, sir.

Q. Now, I want to take you back to August, 1926, and thereabouts. When did Harold Bennett enter the Institution as radiologist? A. The first day of November, 1923.

Q. Was that before or after you came? A. After.

Q. When did you first learn, and how did you first learn, in August, 1926, of a claim on the part of Galler that you had had some improper relations with her? A. Through Father Fitzpatrick.

Q. By the way, when did Galler leave the Institution? A. Either August 15th or 16th; I think it was the 16th, 1926.

Q. Did you discharge her? A. No, sir.

Q. Were you there when she did leave? A. Yes.

Q. What was the complaint against her? A. I don't know of any complaint. The incident that after pay day, which would have been the 15th, there were eleven or twelve employees quit because they were not satisfied with the salary. They thought they ought to get their usual semi-annual increase, and she was among those that walked out and quit.

Q. So, so far as you know, she left voluntarily? A. Yes, sir.

Q. Was there any trouble with her financial statement on the telephone receipts? A. In checking over her cash box and receipts there was found to be a shortage.

Q. Have you the record of the man who kept the accounts? A. Yes, sir.

Q. Will you produce it? A. Yes, sir.

Q. What is this document you have in your hand? A. This is a record book of personal calls kept by the two telephone operators with the charges.

Q. What is there indicating a shortage on the part of Galler? A. There is a receipt by the clerk having received from her the sum of $37.88 on July 31, 1926; and then at the end of August, 1926, in balancing the book, there was a total amount of calls checked up which amounted to $39.16 and cash receipts of $35.20, leaving a shortage of $3.96.

Q. In whose handwriting is that? A. It is Mr. Bristol's, he is the man who kept these books.

Q. Is that shortage Galler's shortage or a shortage on the telephone? A. A shortage on the 'phone.

Q. You couldn't tell to which one it applied? A. Not definitely.

Q. Do you know where she went when she left? A. No, sir.

Q. When did you learn that she had gone? A. I think that day; the day that she left or the day after.

Q. Did she see you before she left? A. No, sir.

Q. Who did I understand you to say a moment ago brought your attention to some claim of Galler

with reference to your treatment of her? A. Father Fitzpatrick.

Q. Just tell us about that. Go on and recite the whole thing. A. Early, I think it was, on Saturday morning; I am almost positive it was Saturday morning, between 9 and 10, or possibly a little later, Father Fitzpatrick came to my office.

Q. This was in August, 1926? A. Yes, sir.

Q. Go on. A. And he said to me, "Doctor, I have learned of some serious charges against you. I said, "Well, I am surprised, Father, what is it?" He said, "Mr. Bennett has been to my home and told me that a Miss Galler has made charges against you to him," that is, Bennett, and Bennett had related them to Father Fitzpatrick. I said, "What are they?" He said, "It was about making improper proposals in your office." He spoke about calling her to my office from the switchboard and I said to him, "What day, Father", he said, "August 11th." I said, "Wait a minute, let me see." And I opened the drawer in my desk where I keep my daily memorandum book, and so forth, and I opened it, and I saw a notation in which I had been fishing with Dr. Bennett on that day and several other incidents had occurred. I said, "I think, Father, Mrs. Harris is in the Institution. This is a serious matter. Will you let me call her and bring her in here?" He said, "Certainly." I located Mrs. Harris in the Institution and I said to her, "Father Fitz is in my office and he has told me that Bennett has made some serious charges against me and I want you to hear about it." She came into my office and we sent for Bennett and he came into my office and Father Fitz asked him about it and he said yes and no and wouldn't say much, and as I recall, Mrs. Harris suggested, I

think it was her suggestion, that we continue this investigation on her charges as soon as the Galler girl could be produced, and have us here with them and see what she had to say, and that was agreeable to Father Fitzpatrick. That interview was arranged for the following day, which was a Sunday.

Q. By the way, what position did Father Fitzpatrick hold in the Institution? A. He was Chaplain; the Catholic Chaplain.

Q. Go on. A. On Sunday afternoon I went to the Villa where Father Fitzpatrick resides and there I met Mrs. Harris and Father Fitzpatrick downstairs after the Sister had admitted us, and Father Fitz, as I recall it, said, "Bennett and Miss Galler are upstairs." I think Mrs. Harris said, "What are they doing up there?" And we went up.

Q. Who? The three of you? A. Mrs. Harris, Father Fitz and myself.

Q. Go on. A. It was in his sitting room; Father Fitz started to question the girl and Mrs. Harris said, "Father, don't you want to swear her?" Father said, "No, it is not necessary in my presence." He asked the girl to relate her experiences and what had occurred and she related, as I recall, that I had sent for her to come to my office and had had improper relations with her; that I had called her from the 'phone—from the switchboard—to my office. Father Fitz said, "What date did this occur? What time did this occur?" She said, "August 11th", he said, "Are you sure it was August the 11th?" She said, "I am." He said again, "Are you sure it was August 11th?" She said, "I am." He said, "Do you know that Dr. Harman was not in the office on August the 11th?"

And then, as I recall it, Bennett spoke up and said, "It was around that time." That is as I recall it.

Q. Did she on this occasion at the Villa make any reference whatever to any alleged occurrences in June? A. I have no recollection of it.

Q. You just said she spoke of the 11th of August? A. Yes.

Q. Did she refer to any other occasions? A. No.

Q. Go on and just tell us what occurred. A. Mrs. Harris asked her a number of questions. Mrs. Harris, I remember one very well—she said, "If you are sincere about this, why didn't you come to me about it", or "Why didn't you go to Mrs. Harman about it?" And there was no answer. Then she asked her, "If you were locked in there, why didn't you get out?"

Q. Locked in your office? A. Yes, locked in my office. "Why didn't you get out?" I think that was all that occurred between Galler and Father Fitz.

Q. Did Father Fitz interfere, or did Mrs. Harris interfere or interrupt the story of what she was asked to relate? A. No.

Q. She told everything she wanted to tell. A. She told everything she wanted to.

Q. Did you have your diary with you at the Villa? A. Yes.

Q. Will you produce it? A. Yes.

Q. Is that a diary kept by you? A. It is a book in which I make notations, yes, sir.

Q. Did you keep it during the month of August, 1926? A. Yes.

Q. Will you turn to August 11th? A. Yes, sir.

Q. What entry do you find there? A. The entry I find there "Went fishing with Dr. Bennett; Dr.

Bennett caught big fish. Home tired, 7 P. M."

Q. How long a time elapsed on the occasion of the visit to the Villa? How long were you at the Villa? A. Oh, I should say two hours.

Q. Can you recall anything more that transpired with reference to these charges? A. Yes.

Q. Go ahead. A. As I recall, Mr. Bennett spoke up and he started to say that he had been mistreated and I think, I may be mistaken, but I don't think I am, but Mrs. Harris said to him, "What interest have you in this case?" He said, "Why, the girl came to me and I went to Father Fitzpatrick." Father Fitzpatrick interrupted him and asked him, "What right has she to come to you? You are not the Chaplain at the Sanatorium. It seems to me that you are taking on some of my duties." Then Bennett started to say that he had been deprived of certain things that were necessary in his department.

Q. Did he mention them? A. Yes, instruments.

Q. Yes. A. I said, "Why didn't you come to me and tell me what you wanted? Why did you tell that to Father Fitz? You should come to me with those things so I can take it up with the chairman." He said, "I thought you knew it." We had a few words, and I said, "You are disloyal." I said, "If you want things, why don't you come to me instead of going to somebody else?" He had made demands from time to time for things in his department which I didn't think he needed because if you give him instruments and so forth, he is likely to practice medicine and I don't want any layman to practice medicine.

Q. Do you recall any remarks made by Mrs. Harris about those instruments? A. I don't recall her making any.

Q. The interview ended? A. Yes.

Q. And you supposed the incident was closed, didn't you? A. I heard nothing more of it.

Q. When did you next see Bennett? A. The next morning.

Q. What occurred? A. In my going through the Institution I went through his department. I said to him, "Mr. Bennett, yesterday afternoon you said you wanted a lot of stuff in your department. Now, what do you want? What is it?" He said, "I need some instruments. There is a cabinet here standing empty. I said, "Why don't you come to me and ask me for them?" He said, "The Doctors come down here and they have to change the dressings on the patients after they are X-rayed. We ought to have some instruments here so we don't have to send to the operating room each time." So I said, "All right." I went to my office where I keep a reserve supply of instruments and I brought back some first aid instruments to him, a probe and some forceps, and something like that, and that was all.

Q. On that occasion, or at any other time in connection with this matter did Bennett make the remark to you that you could not bribe him by giving him instruments, or words to that effect? A. No, sir.

Q. Was any such suggestion ever made to you? A. No, sir.

Q. Was there a camera among these things that you delivered to him that morning? A. No, sir.

Q. Was the incident that you said you considered closed after the visit to Father Fitz house referred to in this interview between Bennett and you? A. No, sir.

Q. Did you on that occasion or any other occa-

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sion tell him to do what he could with this girl to restrain her or to keep her from making a row or words to that effect? A. No, sir.

Q. Did you mention the subject? A. No, sir.

Q. From that time, which I assume was the latter part of August, 1926, did Mr. Bennett continue there as radiologist? A. Yes, sir.

Q. Did he make any reference to you from then down until 1928 concerning this matter with Galler? A. No, sir.

Q. Did he make a request to go to California? A. Yes, sir.

Q. When was that? A. I think it was in July, July or August; I am not sure. I was authorized to go to California myself.

Q. What was this? A. This was a Convention of the American Hospital Association, and I requested the committee to permit me to go and the request was granted and I saw the expense and I wasn't feeling so very good myself, so I declined.

Q. What did Bennett request about that? A. He requested me for permission to go. I said, "You put it in writing and I will present it to the committee and I will see what action they take on it." The first letter he brought in was addressed to the chairman of the finance committee. I said, "What's the idea of addressing the letter to the Finance Committee. I am the superintendent here. What do you want to go over my head for?" He went out a little hurt and the next letter he brought in was addressed to me.

Q. And that is Exhibit R-9? Look at it. A. Yes.

Q. Just read that request. A. "Dear Dr. Harman: The writer is the New Jersey Representative (Second Term) the Technical Phase of the X-ray

Field; an active member of the American Hospital Association, and, of other organizations beneficial to this work; and, is desirous of attending the Thirtieth Anniversary Convention of the American Hospital Association, in San Francisco, California, from August 6th to 10th, inclusive, on behalf of interest to the sanatorium. The approximate necessary expenditure for the trip is $500. Your consideration for the appropriation of this sum will be appreciated. Respectfully submitted, Harold Bennett, Radiologist."

Q. What did you do with that request? A. I wrote an endorsement on July 7th.

Q. Does it appear on there? A. Yes, sir.

Q. And passed it on to the committee? A. Yes, sir, to Mrs. Harris, the Chairman.

Q. The request was not granted, was it? A. No.

Q. Did he, in the meantime go to St. Louis on some other convention? A. I don't know where he went, but he was away.

Q. While he was away did you receive from him this letter which has been marked Exhibit R-7? A. I did.

Q. Written on the train. A. Yes, sir.

Q. I think a request was made the other day by Mr. Bennett for the envelope, have you found the envelope? A. I have.

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit R-16.)

Q. That was the envelope in which the letter was contained? A. Yes, sir.

Q. Postmarked where? A. St. Louis, August 7, 8:30 A. M.

Q. Then it was apparently written on the train and mailed in St. Louis? A. Yes, sir, by air mail.

Q. Before I proceed with that, Mr. Bailey has called my attention to one thing that I forgot. During this office interview you have described where the instruments were delivered to Bennett, was any reference made by either you or him to the Galler claim? A. No.

Q. Did he offer you his resignation that day? A. No.

Q. Did you see any resignation? A. No, sir.

Q. When did you first hear or learn that on that occasion he had prepared and laid on the table a resignation from the Institution? A. Why, during the testimony here.

Q. I see this envelope has on the back the stamp "Newark, New Jersey, August 8th." I suppose you received it about that time. A. Yes.

Q. 1928. A. 1928.

Q. To whom did you show that letter? A. To the Chairman of the committee. I showed it to Mr. Bennett as soon as he returned. I immediately sent for him on his return and I pulled this out of my pocket and I said to him, "What the hell do you mean by sending me a letter like this". I said, "Are you trying to blackmail me?" He said, "You know what that's for." I said, "That's all I have to say." I put the letter in my pocket again.

Q. Had you shown it to anybody else before that, or when did you first show it to Mrs. Harris? A. The day I received it.

Q. Did you also show it to Mrs. Harman? A. Yes, sir.

Q. What next occurred between you and Bennett personally? When did you next see him, if you can

recall, after this interview that you have just referred to? A. A few days later.

Q. I show you Exhibit R-10 which is a resignation. Was that handed to you? A. No, sir.

Q. How did it reach you? A. I don't know; I found it on my desk.

Q. What is the date of that letter. A. August 11, 1928.

Q. Do you recall when the interview between you and Bennett after his return from St. Louis took place that you showed him what you call this blackmail letter? What date was it? A. May I look it up and see if I have a note of it?

Q. Yes. A. August 10th.

Q. Did you show Exhibit R-7 which is what we call the blackmail letter, to Father Fitz? A. Yes, sir.

Q. When was that? A. August 10th.

Q. And the next step in the progress of events was the finding on your desk of the resignation? A. Yes, sir.

Q. Which is before you? A. Yes, sir.

Q. Did you show Mrs. Harris that resignation? A. I called her up and told her I had it.

Q. Did you shortly after that consult counsel? A. I did.

Q. Did I have the opportunity of meeting you somewhere along there? A. Yes, sir.

Q. I was introduced to you at that time by Mr. Bailey. A. Yes, sir.

Q. Was the next thing that occurred the preferment of the charge that has been alluded to here about your causing one of Mr. Bennett's nurses to be rotated? A. Yes, sir.

Q. I think that charge is in evidence here, and

was a hearing had in this room upon that charge? A. Yes, sir.

Q. Has there been a decision in that matter? A. Not that I know of.

Q. It closed? A. As far as I know.

Q. You offered no evidence? A. No evidence.

Q. Your counsel were here? A. Yes, sir.

Q. And Mr. Vanderbilt was here? A. Yes, sir.

Q. And, of course, the Supervisor heard Mr. Bennett and asked him if he had anything more to say and all that. A. Yes, sir.

Q. Did you later have an interview with Mr. Reed at which he told you that some serious charges had been preferred against you or words to that effect? A. Yes, sir.

Q. And is it a fact that on that occasion he suggested that you should resign? A. I took that inference.

Q. What was said?

Mr. Vanderbilt: I object to the inference.

Mr. McCarter: I asked him what was said.

A. Shall I relate the occurrence.

Q. Yes. A. I was sent by Mr. Reed—called on the telephone—and he asked me whether I could come down to his house about 1:30 that afternoon, I think it was December—it was a Monday, anyhow—and I said, "No, I can't make it by 1:30, it is almost that now. It will take me about a half hour to drive down. So I went to his house and he and I were there for a long time, and a little while later Freeholder Dodd appeared and Mr. Reed, as I recall it, said, "Doctor, there have been some serious charges preferred against you."

Q. Did he say by whom? A. No, he said, "I am

not at liberty to give them." And he pulled a piece of paper out of his pocket and said he had noted them under two headings. One of them was conduct unbecoming a county employee and the other was conduct unbecoming a physician. Under No. 1 he enumerated seven or eight separate items, and then I said nothing at the time; and then, I think if I am correct, Mr. Dodd interrupted and explained his presence there. He said he was there to represent the Board of Freeholders and he was to carry back to them whatever decision I would make or whatever answer I would give, and so forth. Mr. Reed said, "Now, Doctor, these are very serious charges, and it seems to me" as I recall it, he said, "It seems to me that the preponderance of evidence is of so much weight against you that there is only one alternative." I said nothing. Mr. Dodd said, "Doctor, suppose we go a little more into detail?" He said to Mr. Reed, "You have enumerated more than you enumerated at the conference this morning." So we went into them in some detail and I denied them; some things I admitted. After we were through Mr. Dodd said, as I recall, "Mr. Supervisor, here the Doctor has categorically denied all of these charges. I think he should be given some consideration." Then the conversation, as I recall it, continued. The Soho case was mentioned, not discussed—

Q. What? A. The Soho incident with Dr. Pringle. There was no discussion of it, but it was mentioned. Mr. Dodd said, "Doctor, would you want to stay at the Institution with the animous of the board against you if you should be acquitted?" I said, "I don't care what the feelings of the board are as long as I know what I am doing

is right. I said, "I will make no answer until I consult my counsel."

Q. And that closed the interview? A. Yes, and then I called Mr. Bailey's office from Mr. Reed's house and immediately went down and told him what had occurred.

Q. And the next incident was the service upon you of what we call the charges in this case? A. Yes, sir.

Q. Do you recall the occasion of going fishing with Dr. Bennett on or about the 11th of August? A. Yes, sir, very well.

Q. Where did you go? A. We took a boat from Sheepshead Bay and went down, I think off Asbury Park or Atlantic City around there at the fishing banks.

Q. Do you remember what you did at the Institution when you came back? A. I remember I brought home a big fish that I caught that took the prize of the day.

Q. Did you leave your home that evening after you got back from fishing? A. No, sir.

Q. Did you go to bed early or late? A. I went to bed early.

Q. Were you tired? A. Yes, very.

Q. What furniture was there in your office in 1926? A. A desk, a desk chair, a side arm chair, three large leather covered chairs, a large sofa, two side chairs—straight back chairs—two book cases, a costumer, a steel, one drawer with three compartments filing cabinet, a waste basket, a small table and, I think, a large dictionary and stand.

Q. What lock or locks were there on the two doors? A. The door leading out into the admitting office had a spring lock and the door leading

into the hallway is the key lock.

Q. Now, I will turn to Henrietta Rose, when did you first become acquainted with her? A. In April, 1923.

Q. And she became an inmate? A. No, she was an employee.

Q. Did she suffer from tuberculosis? A. She had been a patient.

Q. Before that? A. Yes, sir.

Q. Oh, yes, I remember now. In other words, she had been a patient before you came there. A. Yes, sir.

Q. She became better? A. She improved.

Q. Sufficiently to become employed? A. Yes, sir.

Q. What employment did she undertake in 1923 when you first made her acquaintance? A. She was office assistant.

Q. Commencing when? A. May 23, 1922.

Q. That is before you were there? A. Yes, sir.

Q. Who was your predecessor? A. The acting superintendent before I came was a Dr. Pender and before him—I don't know, there were three.

Q. What employment did Henriette Rose fill after you came to the Institution? A. She was a clerk-stenographer temporary.

Q. In your office? A. No, in the business office.

Q. Yes. And she qualified by examination under Civil Service and became a clerk-stenographer permanent and continued as such.

Q. When did she become transferred to your office, if at all, as your secretary? A. I don't recall the date.

Q. About when? A. I think it was in 1924, possibly; I am not sure of that.

Q. And her desk was in the outer room next to your office? A. Yes.

Q. The room shown there? A. Yes.

Q. Was anybody else stationed in that office besides her? A. Yes, the admitting nurse.

Q. What is her name? A. Mrs. Englebert.

Q. Do you recall the fact that a curettage operation was performed on Henriette Rose? A. Yes, sir.

Q. What was the first information that you had that she had any trouble that led to that operation? A. It was the latter part of April, I think, 1925.

Q. Go on and tell us about it. A. She had been sick off and on all that year, not feeling well, and with a cold up and down. She would lose a day or so at a time, and in April, I don't just recall when, I think the record will show. She was confined to her quarters and she was taken care of there by Dr. Bennett and I think, Dr. Conklin. I don't know whether he saw her or how often, because I am not sure, because I made it a practice not to take care of sick employees. I let one of my staff do it, and I saw her, I think it was, the last day—the last week—in April with the nurse, and she looked pretty sick, and I said, "What's the matter with you, Henriette?" She told me that she was coughing, running a little temperature, and had considerable pain in her abdomen —tenderness—and that her menstrual periods had started, but had not stopped and she was losing a lot of blood.

Q. That was when, as far as you can recall? A. As far as I can recall it was the last week in April; very near the end.

Q. At that time where was she? A. In her room.

Q. Was anybody present at that interview? A. The nurse.

Q. Did you bring the matter of her condition to the attention of any of your staff—I don't mean your own staff, but your board of managers? A. Yes.

Q. Whom? A. Dr. James Spencer Brown.

Q. About when? A. As far as I can recall, it was the 1st day of May.

Q. Who was Dr. J. Spencer Brown? A. He was president of our advisory and consulting staff.

Q. Dr. J. Spencer Brown of Montclair? A. Of Montclair, yes.

Q. How long had he been connected with the Institution either as a member of the advisory consulting staff or as president of it? A. Before I was appointed.

Q. Do you know whether he saw her? A. He did.

Q. Did he make any report to you? A. I was present.

Q. Present? A. I was present.

Q. About when was that? A. About the 1st of May.

Q. Where was that? A. In her room.

Q. What occurred there? Just tell us. A. He made an examination.

Q. A vaginal examination? A. A vaginal examination.

Q. With the naked eye or with any instrument A. Instrument—no, not then—just a manual examination with his hands.

Q. She was in bed? A. She was in bed.

Q. What next occurred, if you know, in the history of that case? A. As we were coming down the steps after we left her room, Dr. Brown said,

"Now, if this condition keeps up you call me in a few days and let me know. Perhaps it will be necessary to take her down to the Mountainside Hospital and curet her. She has lost a lot of blood and looks anemic and pale, and something has to be done."

Q. Did the Doctor in your presence give expression to what he thought she was suffering with? A. He said she was suffering from tuberculosis, a wasting disease, and she probably had a condition of the lining of the membrane of the uterous which would cause bleeding.

Q. What next occurred? A. Dr. Bennett—I am pretty sure it was Dr. Bennett—reported to me that she was still up there, and wasn't getting any better and I went up and saw her again? She told me that this flow had not stopped and was not getting any better. So I went and called Mr. Brown on the telephone and he said, "Well, Hubbard and I will be up today or tomorrow."

Q. Who is Hubbard? A. Dr. Hubbard, he is the anaesthetist.

Q. Dr. Hubbard of Montclair? A. Dr. Hubbard of Montclair.

Q. He said that Hubbard and he would be up tomorrow? A. Either today or tomorrow.

Q. Did they come? A. Yes, sir.

Q. I told Mrs. Engleberg that she had better be sent to the hospital and be prepared. She was admitted to the Sanatorium and her history was taken by the admitting nurse and the next morning she was prepared for operation and Dr. Brown and Dr. Hubbard came in after eleven o'clock. It was quite late in the morning, pretty close to noon, and she was taken to the operating room by her floor nurse and she was anaesthetized on the

stretcher—on the litter—on the carriage—by Dr. Hubbard outside of the operating room. She was wheeled into the operating-room, and Dr. Brown did a curettage.

Q. You didn't take her to the Mountainside Hospital? A. No, sir.

Q. What occurred about that? A. Because of the expense; she was en employee and unable to pay.

Q. What did this curettage that you have just referred to consist of? Were you present? A. Yes.

Q. Who else? A. Dr. Hubbard, Dr. Brown, Miss Chambloss, Miss Houston, and her floor nurse Miss Lagrau.

Q. Miss Chambloss resigned from the Institution later? A. Yes.

Q. And she is out West now? A. I don't know where she is.

Q. Do you know where Miss Lagrau is? A. She is in Roumania.

Q. Miss Houston is the young lady who was here the other day? A. Yes, sir.

Q. What was her function in the operating-room? A. She was an attendant—dirty nurse.

Q. After the patient was anesthetized and brought into the operating-room proper, tell us what occurred. A. She was placed on the—I don't recall whether she was left on the stretcher or placed on the table. Anyhow, Dr. Brown took his position at the foot of the table on a stool and the cervix was dilated and the inside of the uterus cureatted and irrigated.

Q. Did he make an examination at that time before the actual currettment? A. Not that I recall.

Q. Were these scraping that were brought out as a result of the curettment? A. There were a lot of blood clots.

Q. What became of them? A. They were thrown out.

Q. Was there anything suggested by anybody, or did it occur to you, that there should be a microscopical examination of the blood clots? Did it occur to you? A. No.

Q. Did Dr. Brown announce any confirmation of his diagnosis made about the 1st of May? A. I asked him.

Q. What did he say? A. I said, "Doctor, what is your diagnosis in this case?"

Q. What did he say? A. A granular endunmetritis.

Q. Was there any fetus, Doctor? A. I didn't see any.

Q. Was there any suggestion that there was a fetus? A. No.

Q. Did you ever hear of it before you heard this so-called testimony here of what this Houston woman said she was told? Did you ever hear of it before then? A. No, sir.

Q. That was in what year? A. 1925.

Q. In May? A. May.

Q. Did Henrietta after that ever resume her employment? A. Yes.

Q. What position did she occupy after that? A. Clerk-stenographer.

Q. How long was she ill before she resumed her work? A. I think she was away for a month or six weeks after that.

Q. Away from the Institution? A. Yes.

Q. And then came back? A. Yes.

Q. Can you tell when she came back? A. No.

Q. How long was she in the hospital proper before she was able to go around or do anything? A. Six or seven days.

Q. Did you see her after the curretage and before she left the hospital? A. Yes.

Q. Did you find out whether or not the curettage had any effects upon the bleeding? A. It stopped it.

Q. When was she admitted as a patient—a tubercular patient—after the next time? A. I didn't see the record here.

Q. Can you tell us about when it was? A. It was about in 1927; the early part.

Q. Did she get worse? A. Yes, gradually.

Q. And finally died? A. Yes.

Q. When? A. November 4, 1928.

Q. Have you ever had Henrietta Rose in your automobile? A. Yes.

Q. When and under what circumstances? Tell us all that you can recall. A. I don't know just when, the dates, but like any other employees and visitors, I have taken her to the car line.

Q. Have you ever driven around the country after dark or before dark except as you were going to or from the trolley car to the Institution? A. No, sir.

Q. Did you ever park with her in your automobile? A. No, sir.

Q. Some suggestion has been made with reference to meetings of the staff. What has been the facts with regard to that since you have been there? A. After I first came to the Sanatorium and got the thing under way we had staff meetings each morning in my office.

Q. Consisting of what? A. Consisting of members of the medical staff and the superintendent of

nurses, at which time each new admission and discharge and admission was discussed and gone over. Later on we found that these meetings were taking up considerable time because the doctors started their rounds about half-past eight in the morning; sometimes before. It is usually about ten o'clock or later until they have finished, and then if they come down to the office and we occupy it half an hour or an hour it is quite late before they again do anything more. It is customary in every sanatoria to have a rest hour after lunch. During that time no examinations take place. There is practically inactivity the same as at night—and it was at the request of the doctors themselves that these meetings in the mornings were discontinued, because they said they did not have time to get the work done. Our patient population increased rapidly. Some of them admitted were so sick that within twenty-four or forty-eight hours they died. There is no use of bringing such cases up; there is no interest about them. It is the same day after day. If a patient died and we had an autopsy it was discussed and the staff was present at the autopsy. If there were any complications of tuberculosis, and so forth, it was usually taken up and discussed and we had for a time had staff meetings in the evening from seven to eight, and they were discontinued for the same reason. There was really nothing unusual or of unusual interest. If it was, it was taken up. My work increased tremendously. We had no steward and I was compelled to do the steward's work along with my own work. The building program came along and I was taken up with that for two years. I called my first assistant, Dr. Bennett, to my office—in fact, he comes down nearly every morning and I

tell him whatever I have to say and he goes back to the staff room and takes it up with the members of the staff each Thursday morning. There is a meeting of the staff in the X-ray room each Thursday morning with the staff and the superintendent of nurses, and all the X-rays are gone over and all the cases of the week are gone over and the clinical findings are checked up with the X-ray findings.

Q. Previous to this notice served upon you of the charges "in that you have failed to cause staff meetings of the physicians in said institution to be held at regular and frequent intervals" had any suggestion been made to you by anybody connected with the institution of a failure to cause staff meetings to be held? A. No, never heard of it.

Q. Do you recall the conversation between Dr. Lauterborn and yourself a few weeks ago in which he said to you words to this effect: that he had seen some newspaper account of some charges against you and that they were trying to put the skids under you, or words to that effect? A. Yes, sir.

Q. What was said? A. I think it was in September some time he came to my office and very confidentially and very friendly—it was on the 17th of September—he told me, "Doctor, there are some people trying to put the skids under you" he said, "There have been three people called me on the 'phone that want to come to my house and see what I know."

Q. Who was it that suggested the discontinuance of the staff meetings that you referred to? A. I think it was Dr. Lauterborn.

Q. Mrs. Travers testified to finding among the effects of Henrietta Rose after her death some paper or document which she said was in your

handwriting. Do you remember that document? A. Yes, sir.

Q. Just tell us about that. A. On Saturday morning, November 3rd, as I was going through the ward on the first floor, Henrietta called to me and she said, "I want to see you this afternoon with my father." I said, "What is it about?" She said, "It is very important. I must see you." She said, "I want to see you over in the administration building." I said, "You are pretty sick, Henrietta. I want you to stay here." She said, "No, I must see you with my father." I said, "All right." About two-thirty that afternoon—a Saturday afternoon, the regular visiting day—I think it was Saturday—I received a telephone call from the operator and she said that Mr. Rose and Henrietta were over in the reception room and wanted to see me. I went over and went in and the three of us were sitting there. She was in a wheelchair and she said, "Now, Pop, tell the doctor what Mr. Bennett has been telling you." Her father told me about a week or so before this Mr. Bennett had been at his house on Clinton Avenue.

Q. In Newark? A. In Newark, to see him. He said he waited for him; he caught him, as I recall it, coming home from work, and he told him, "Mr. Rose, I want you to go right up to the Sanatorium and take Henrietta away from there. Tell her she is not to eat a thing or drink a thing and not to take any medicine because her life is in danger." I said to him, "What do you think about that?" He said, "I got them mixed up. I didn't know whether it was Mr. Bennett or Dr. Bennett." He sat there waiting for an answer and I told him I couldn't afford to take her out; I have to work for a living and I can't afford to pay for it." I said,

"She has never complained to me." So Mr. Bennett told him, "Never mind about that." He says, "I have an ambulance hired from Orange and I will have her brought down here and I will see that her doctor bills are paid for and her board is paid for and I will see that everything is taken care of until Harman is out of there, and after Harman is out of there we can take her back or some charity organization will take care of her." I said, "Why didn't you tell me this before?" He said, "Well, I didn't think there was anything to it." Henrietta spoke up then and she said, "Pop, you know the fellow is cracked." He said he came up to see Henrietta and told her what Bennett had told him and she said, "Pop, I am perfectly satisfied here; everything is being done for me that can be done. I don't want to leave here. I am absolutely satisfied." Then he said, "Her next gas treatment"—she was a pneumothorax case—

Q. What is a pneumothorax case? A. An accumulation of gas in the pleural cavity.

Q. Go on. A. He said, "Her next gas treatment is due very shortly and something may accidentally happen during that treatment." Then Henrietta said to me, "Doctor, I am afraid to take that treatment. He may monkey with the operatives. I am afraid to go down to the X-ray room. He may do something." And then he told me that Henrietta had been accused of lots of things that had taken place there which she was not guilty of; which she had not done, because she used to work for me and used to keep me informed of lots of things that went on at that Institution and it was through that source that I could correct a lot of things and she also mentioned, or he mentioned, that she had—that people around there had accus-

ed her of being out in my automobile, which she said was not true. So I said, "Well, what are you going to do, Mr. Rose?" What are you going to say?" He said, "She wants to stay here; let her alone." So he took her back to her room and I went on home over to the house. Then I came back again and I went through the ward and I saw while she was sitting there she was getting pretty well exhausted, pretty well tired out. I went through the ward and she called to me in the room again and she said to me, "Dr. Harman, will you write out a statement for me and say for me that I was never parked in your car at any time and was never in your car when you got a ticket?" I said, "Yes, I will do that if you want me to." So I went over to my office and I wrote out a statement, as nearly as I can remember, in these words: "To whom it may concern: I at not time have been parked in an automobile with Dr. Harman or given a reprimand by a police officer." I took it back and put it on—I read it to her and asked her to sign it in the presence of another patient, and I said to her, "If this is not all right, tell me, and I will change it." I left it lying on the table. She said, "I am too weak now; I am too tired." I left it on the table and walked away and paid no more attention to it. And Mrs. Harman and I went out to dinner that evening, and the next day in the report I saw that she had died.

Q. When had she died? A. She died after two o'clock that night.

Q. Two A. M. that night? A. Two A. M. of November 4th.

Q. Did you have anything to do with the making of the several sheets in these charts? Do you personally have anything to do with it? A. No.

Q. The work on that is done by the several people that handle the case? A. Yes, I see the chart before it is filed away and very often, in most instances, make a note on the chart before it is filed away, something that I personally see.

Q. After the discharge? A. After the discharge.

Q. In the chart, Exhibit C-3, would there be any occasion for making a sheet for the condition of the lungs? Is there any occasion for a chart like No. 6 in such a case as this? A. No.

Q. What is No. 6? A. It is a graphic summary dealing entirely with the chest condition on admission and discharge.

Q. What is No. 7? A. A weight chart.

Q. Is there any other sheet missing, looking at that particular Exhibit C-3? A. Page 2 and page 12.

Q. Besides 6 and 7? A. Besides 6 and 7.

Q. What is 2? A. 2 is the social service chart.

Q. What kind of a chart is that? A. That applies to the home surroundings and home condition of the patient, and so forth; whether there are any children, and the condition of the living; whether there are any tubercular relations, and so forth.

Q. What is No. 12? A. For ambulance patients only; that is, patients in the pavilions only, and for their daily exercise.

Q. When, recently, was your attention first directed to that chart? A. After November 4th.

Q. Did you examine it? A. I did.

Q. Did you find those four sheets missing that you have referred to? A. I didn't make note of it.

Q. Did you make note of anything? A. No, sir.

Q. And you returned the record to Miss Russell? A. No.

Q. What did you do with it? A. I kept it. Since the hearing on the preliminary charge about your insisting upon a rotation of nurses, has your desk been broken into? A. Yes, sir.

Q. When? At night or in the daytime? A. At night.

Q. How was your attention directed to that? A. The special officer about the grounds called me after one o'clock one morning and told me there was a light in my office. I said, "Well, that is unusual." I got up and dressed and went over to the office and went in and looked around. I didn't see anything disturbed until I got to my desk and I saw my desk—the drawer in which my diary and daily notation was—was opened.

Q. Were there any lights burning outside of the administration building where your office is located after ten o'clock at night? A. No.

Q. Was the light burning in your room this night when you went there the night of the desk incident? A. Yes.

Q. It was burning? A. It was burning.

Q. I suppose you put it on when you left. Did you leave the light burning? A. I wasn't in there; I hadn't been in my office.

Q. But you went in your office and found the desk broken open? A. Yes.

Q. When you left your office after finding the desk broken open did you put it out? A. Yes.

Q. Were any lights burning outside, and with the light out, can you see in your room? A. No.

Q. It is dark? A. Very dark.

Q. Who does the janitor work in your room? A. Patrick Kane.

Q. Previous to the receipt of what we call the

blackmailing letter, had you ever been told or notified by Bennett or any one else that he was paying Galler money? A. No.

Q. On the occasion of the interview following the so-called hearing at Father Fitz's house, did you directly or indirectly, or in any way at all, tell Bennett to do anything with Miss Galler? A. No, sir.

Q. Did you have the slightest suspicion previous to the receipt of the letter of August 6, 1928, written on the train, that he had a pretended claim against you of $610 or any amount? A. No, sir.

Q. In other words, the letter demanding some payment to him by you of $610 was a perfect surprise to you. A. Absolutely.

Q. You made no suggestion that he should pay anything. I understood you to say that to Miss Galler. A. Never at any time. Why should he?

Q. Do you recall any occasion upon a report of Mrs. Harman with reference to familiarity between Bennett and Galloway in the X-ray room reprimanding Bennett? A. Yes, sir.

Q. Just what was that? A. I told him—this incident occurred at night and Mrs. Harman reported to me that it occurred at night—and I told him he had better treat his patients during the day time and have his nurse there.

Mr. McCarter: Would there be any objection to having the Doctor step aside for a moment so that we can call Dr. Gluckman who is here at considerable inconvenience.

Mr. Vanderbilt: No objection at all.

L. EDWARD GLUCKMAN, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. How long have you been practicing medicine, Doctor? A. About twenty-three years.

Q. Are you on the advisory staff of the tuberculosis sanatorium? A. I am president of the advisory consulting staff.

Q. How long have you been connected with that staff? A. Ever since its inception. I believe is six years, if I am not mistaken.

Q. You have occasion to go up there now and then? A. Yes, sir.

Q. What have you to say as to whether or not that institution, in your opinion, is efficiently operated and run under the superintendency of Dr. Harman.

Mr. Vanderbilt: I object to that as immaterial and irrelevant and not within the issues.

The Supervisor: I realize that this, perhaps, hasn't anything to do with the charges, but I do not see, on the other hand, any reason why Dr. Gluckman's testimony could not be permitted. I think the question might be allowed.

A. As far as I am concerned, being connected with a number of other institutions, I think it is as well run as any other institution in the United States.

Mr. Vanderbilt: I ask that that be stricken out unless the Doctor can testify how all the other institutions in the United States are run.

Q. Your answer, then, is that in your opinion it is very efficiently run? A. In my opinion, yes.

Q. Has any complaint with reference to failure to call staff meetings or the claim of the performance of an illegal operation, or that Dr. Harman has made a practice of unnecessary exposing the persons of female patients while they were receiving light treatment ever been brought to you or to the advisory committee in this institution?

Mr. Vanderbilt: I object on the ground that it is absolutely immaterial and irrelevant. The advisory and consulting staff had no duty to hear this matter at all.

Mr. McCarter: I think that it goes to the truth and bona fides of the accusation, whoever makes it, that no complaint of these matters which affects the medical feature of the case, has ever been brought to the attention of the advisory board and this gentleman who is the president of it.

The Supervisor: I think that is a fair question.

A. No, sir.

Cross-examination by Mr. Vanderbilt:

Q. You signed a statement, I believe, after there was an account in the paper that there was a notice of charges given to Dr. Harman, didn't you? A. Yes.

Q. Did you recall what you said in that statement? A. I don't know the exact words, but the idea was that we would stand by Dr. Harman until he was proven guilty.

Q. You didn't say that, did you? A. That was

the thought in the matter, anyway.

Q. You said in that statement, did you not, that Dr. Harman was not guilty? A. We didn't believe he was guilty.

Mr. McCarter: I object. Let us have the statement. The contents of the statement cannot be spoken about if you have the statement itself. I have some copy of it here. I object to evidence of a document unless it is produced. I find that it is not among my papers.

Q. Have you a copy of it? A. No, Dr. Ill would have a copy of it. He is the secretary.

Q. Did you prepare it? A. No, sir, Dr. Ill prepared it. He is secretary of the board.

Q. You don't recall what it said? A. As I told you, that is what I recall was meant by the statement.

Q. That was probably issued the day after there was any hearers of the charges? A. I don't know whether it was exactly the day after or the week after. I can't positively tell.

BYRON M. HARMAN, resumes the stand.

Cross-examination by Mr. Vanderbilt:

Q. Dr. Harman, how long have you been keeping that diary that you referred to on direct-examination? A. About five years.

Q. Have you always kept it in that form of a loose leaf diary? A. Yes.

Q. Why do you keep a loose leaf diary? A. It is the only kind I keep; it is the only kind I had.

Byron M. Harman—Cross.

Q. I ask you why you keep a loose leaf diary rather than one bound in book form? A. It is the only kind I ever kept; it is the one I started with and I kept it up.

Q. Why did you start with a loose leaf diary rather than a diary bound together and the pages numbered? A. It is the book which I had at that time and which I started; it was the only available book.

Q. Why was that the only available book? A. It is the only book that I had in my desk when I started to keep it.

Q. Are the pages of your diary numbered in print? A. No.

Q. You numbered them? A. No.

Q. You didn't keep the pages numbered? A. No, only by dates.

Q. Do you put a record in there every day? A. I do.

Q. What do you keep in the diary? A. I keep a notation of the happenings of what goes on; and things I think should be recalled from time to time, possibly.

Q. And what time of the day do you write up the diary? A. Usually the next morning.

Q. The first thing? A. Not always.

Q. About what time the next day do you write up the diary? A. In the morning after I get my mail opened and gone over. Sometimes possibly towards noon.

Q. Then you put in the diary important things which have happened the day preceding, is that right? A. Yes.

Q. Is this a record of your official doings as superintendent, or is it a record of your personal affairs? A. My personal affairs.

Q. It does not purport to be a record of what you do as a superintendent? A. No.

Q. And you kept it for the purpose of what? A. Referring to it from time to time.

Q. Why did you put in, for example, the reference that on such and such a day you went fishing? A. There were several incidents that happened that day that were quite important.

Q. Will you turn to your diary for that day? A. Yes, sir.

Q. And read it, please. A. August 11th. Went fishing with Dr. Bennett. Caught big fish. Home tired at seven, P. M."

Q. That is all you said? A. That is all I said.

Q. You didn't put anything in there, anything about getting prize fish, did you? A. No, sir.

Q. How did it come you failed to put that in? That was the big strike of the day, wasn't it? A. I don't put everything down.

Q. Didn't you put down the big thing of the day, or are you accustomed every time you go fishing to get the prize fish? A. I have been, yes.

Q. Is that so? A. I have been, yes, sir.

Q. And it was such a customary thing with you that you didn't think it worth while to put that down? A. On a number of occasions when I went fishing I came home with the first or second prize.

Q. But you made no note of it? A. No.

Q. You are an enthusiastic fisherman? A. Yes.

Q. And like all enthusiastic fishermen you are a little bit prone to boast of your conquests on the sea? A. Absolutely.

Q. And yet on that record you didn't put down that you were given the first prize fish? A. No, I didn't.

Q. On other days, did you make the error of omitting the really high spot of the day? A. It all depends on what you consider and what I consider the high spot of the day.

Q. You, as a fisherman, did not consider the prize fish the high spot of the day? A. No, the fact that I was tired.

Q. Is that unusual? Is it an unusual thing for you to be tired? A. Yes.

Q. What? A. Unusual?

Q. Yes. A. No, it is the usual thing.

Q. Do you put down there things like putting on your collar and necktie, or do you put down in the diary the unusual things? A. I put down in the diary whatever happens to occur to me.

Q. By the way, did you ever have occasion at any time to change any of the sheets in the diary for any cause whatever? A. You mean make changes?

Q. Yes. A. Corrections?

Q. Yes. A. Corrections, yes.

Q. How did that happen? A. Why, I corrected myself.

Q. I mean, you put down there the next day what happened on the preceding day. What would be the occasion for making corrections? A. When I was wrong.

Q. You mean you wouldn't remember Friday morning what had happened on Thursday? A. Oh, no; some of the notations go back for some time.

Q. You mean you don't make these records every day? A. Yes.

Q. I am trying to find out how these corrections you make in your diary—you would write this morning, Friday morning, what had happened all

day Thursday. What would there be to correct? A. Nothing.

Q. Then what do you mean by corrections? A. These are not necessarily incidents that occurred the day previous. Sometimes I put down things, for instance, today I may put down something that occurred on Monday if I want to remember it.

Q. Why wouldn't you put down on Tuesday morning what occurred on Monday rather than wait until Friday? A. Because I wouldn't think of it.

Q. Those wouldn't be corrections, would they. They would be additions? A. Well, they would be additions.

Q. You have spoken of corrections. Have you made corrections or ever had occasion to make corrections in the diary? A. Yes.

Q. Which ones? A. I don't recall.

Q. Didn't you have this diary along with you when you went to Father Fitzpatrick's house on that Sunday afternoon? A. Yes.

Q. How did you happen to take it with you? A. Because I showed it to him the morning before.

Q. Were you carrying it in your hand? A. I had it under my arm.

Q. Did you read from it to Father Fitzpatrick? A. I don't recall whether I read from it except to refer to it.

Q. And you say you showed it to Father Fitzpatrick the day preceding at your office? A. I looked at it, and called his attention to the fact when he was so specific of the date, and I immediately reached in my desk a drawer and looked to see what had occurred on that date.

Q. And you referred to it at that time? A. I did.

Q. Now, as I recall it, Miss Galler's testimony was that this incident occurred between nine-thirty and ten o'clock.

Mr. McCarter: What incident?

Mr. Vanderbilt: In the Doctor's office.

Q. What time did she say it occurred when she spoke of it at Father Fitzpatrick's home in the Villa? A. I don't recall any time.

Q. Did she say it was daytime or night? A. I don't recall any time.

Q. You don't recall her mentioning any time at all? A. No, sir.

Q. Do you recall her saying whether it was after dinner or before dinner? A. I don't recall any time at all.

Q. You have no recollection— A. I have no recollection of any time.

Q. And you have no recollection of Father Fitzpatrick's telling you what time she charged that this occurrence happened?

Mr. McCarter: Time of day, you mean?

Q. Time of day? A. No, sir.

Q. You have no recollection of that? A. No, sir.

Q. Didn't Father Fitzpatrick or Mrs. Harris interrogate Miss Galler about that? A. Yes, they did.

Q. And the time? A. Not the time of day; I have no recollection of it.

Q. Do you recall what Father Fitzpatrick had to say on that subject yesterday?

Mr. McCarter: I object to that. It isn't competent, as suggested yesterday, to confront one witness with the testimony of another witness.

Mr. Vanderbilt: It is perfectly proper for Mr. McCarter to ask whether there is a shred of truth in what Miss Galler said and not proper for me to ask this.

Mr. McCarter: I say it, and you can't deny it, intelligent as you are about the rules of law, that you cannot confront one witness with the cross-examination of another witness who testifies. He is not bound by it. He can't tell what Father Fitzpatrick is going to say. He has no right to interrupt or anything else.

Mr. Vanderbilt: It is improper for me, but it is proper for the other side.

Mr. McCarter: That is entirely different.

Mr. Vanderbilt: Yes, it is the other side. I ask for a ruling that would be the same as the preceding ruling.

The Supervisor: Dr. Harman was there and heard Father Fitzpatrick's testimony. I think he might answer this question.

A. I don't recall. I had so much on my mind yesterday that I don't recall his testimony.

Q. Weren't you interested in hearing from Miss Galler at the time she mentioned, at what time of day these occurrences had happened? A. Certainly I was.

Q. If no one else asked her why didn't you ask her? A. I wasn't putting the questions.

Q. Weren't you interested? A. I certainly was.

Q. Weren't you interested in knowing what time she charged that these incidents took place? A. It didn't occur to me.

Q. Didn't it occur to you if she said seven o'clock and if you did not get back from fishing until sev-

en o'clock, that you would have a pretty good alibi? A. No.

Q. It didn't occur to you until this minute? A. What? The time?

Q. The fact that you were vitally interested in when these incidents had occurred. I didn't know anything about the time until I heard the testimony.

Q. Weren't you interested when you were in Father Fitzpatrick's house and when he was at your office previous to that in knowing at what hour she made the complaints? A. There was nothing mentioned about the hour.

Q. Then if nothing was mentioned about it weren't you concerned in knowing at what hour her charge was that you had got these things? A. It didn't occur to me.

Q. It didn't occur to you that if she had made a statement that it had occurred at five o'clock in the afternoon, supported by your loose leaf diary, you would have a perfect alibi? A. There was nothing mentioned but the date.

Q. But didn't you consider, if Father Fitzpatrick was not clever enough to ask the time, or if Mrs. Harris did not think about it, that that was a vital thing for you to think about? A. No, it was sufficient on my mind that she made the charge.

Q. Didn't it occur to you that it would be the best way to blot it out completely if you were out of the Sanatorium at that time? A. It didn't occur to me.

Q. And as far as you can recall, there was nothing said there at the conference on Saturday at your office between yourself and Father Fitzpatrick and Mrs. Harris, or at the Villa the next af-

ternoon attended by the same three, and Miss Galler and Mr. Bennett, as to the time when she charged that you had been guilty of these matters you had been guilty about?

Mr. McCarter: You mean the time of day?

Mr. Vanderbilt: The time of day.

A. Nothing until this hearing had taken place.

Q. Do you recall at this conference at the Villa there being anything said by Miss Galler with reference to your having come into her room? A. No.

Q. Nothing was said about it? A. I don't recall that it was. You mean the conference about two years ago.

Q. Yes, at the Villa with Miss Galler present. That was the only conference at the Villa at which she and you were present, was it not? A. Yes.

Q. Do you recall anything having been said about your entering her room? A. I can't recall.

Q. Have you any vague recollection of it? A. No, sir.

Q. Can you recall your saying to Mrs. Harris that things would come to a pretty crash if, as superintendent, you could not make an inspection of your institution? A. Mrs. Harris brought that out afterward.

Q. No, at the conference. A. No.

Q. And do you recall Mrs. Harris saying to you that when you made an inspection of the female employees' quarters that you have a housekeeper along with you? A. Not at that conference.

Q. Didn't she make that suggestion at a later time? A. Yes.

Q. Was Mr. Bennett present when that suggestion was made to you by Mrs. Harris? A. No.

Q. You are sure about that? A. I am sure.

Q. Bennett is wrong when he says that statement was made in his presence and in Father Fitzpatrick's presence at the Villa that Sunday afternoon? A. I don't recall.

Q. You would recall that, wouldn't you? A. I think so.

Q. And you have no recollection about that at all? A. Not at that time.

Q. When was it that Mrs. Harris did speak to you about it? A. In discussing, I think it was, that Sunday night at her house. I was there for dinner.

Q. You went down from the Villa to Mrs. Harris' house in Glen Ridge for dinner- A. Yes.

Q. Was there any disucssion at the Villa with respect to giving Bennett the instruments that he wanted? A. Yes.

Q. What was that discussion? A. He had made complaints several times that I had penalized or crimped his department.

Q. That was before this? A. No, down there.

Q. Had he made complaints before that to you? A. Never to me.

Q. Do you know whether he had made complaints to any one else? A. I understand that he did.

Q. To whom did he make those complaints? A. Father Fitz.

Q. Had Father Fitz ever carried those complaints on to you? A. No.

Q. What was said by Bennett up at the Villa with respect to the lack of instruments in his possession or in the department? A. Why, as I recall, he said he couldn't carry on his work there; he didn't have the necessary equipment.

Q. Yes. A. That is what I said, "Why didn't you report that to me so I could get it for you?" and then Mrs. Harris, as I recall it, if I am correct, interrupted and said, "Mr. Bennett has always been lavish in all his equipments for different things." He wanted new equipment from time to time. He has gone to the advisory board over my head and asked for different things.

Q. For his department? A. Yes.

Q. What did Mrs. Harris say? A. She said, "Why didn't you go to the superintendent about it?"

Q. What did he say? A. He didn't answer, as I recall.

Q. Then what did Mrs. Harris say for you to do with respect to the matter? A. She said, "Go see what he actually needs and let me know."

Q. And this was in Bennett's presence at the Villa? A. No, this was at her house.

Q. He didn't say anything about it at the Villa while Bennett was present? A. No, not about giving him what he wants.

Q. Did you hear Mrs. Harris's testimony yesterday? A. I did, yes.

Q. Do you recall whether or not she said anything there about giving Bennett what he wanted? A. No.

Mr. McCarter: The same objection on the theory that it is improper to confront one witness on cross-examination on the theory that it is inconsistent with the testimony of another witness as to confront him with the testimony of that other witness.

The Supervisor: He has answered the question.

Q. As a matter of fact, Doctor, isn't it accepted hospital practice when a physician is going through the wards to be accompanied by a nurse? A. Yes and no.

Q. Or if there is a nurse on the case, that nurse is present when the physician interviews the patient? A. Not necessarily always, no.

Q. Isn't that the accepted hospital practice? A. Not always, no.

Q. It isn't? A. No.

Mr. McCarter: There is no allegation here in that respect.

Q. Isn't it accepted hospital practice where the superintendent is going from room to room where the female employees are living, to go accompanied by a nurse? A. They are not suppose to be in bed during the day. A superintendent of a hospital must inspect the hospital. Is it necessary for a superintendent to have a witness with him every time he does anything? Why be the superintendent?

Q. Isn't it accepted hospital practice for a superintendent, when he is going through the rooms of female employees, to be accompanied by either the housekeeper or a superintendent of nurses or a nurse? A. Yes and no.

Q. Didn't Mrs. Harris tell you it was accepted hospital practice? A. No.

Q. Didn't she tell you it was advisable to do it? A. She said it would be advisable.

Q. Isn't it accepted hospital practice? A. Yes and no.

Q. Amplify. A. Where the quarters are separated at a distance from the institution, but where

the quarters are in the institution and there are always people around, no.

Q. That is the practice in other institutions? A. I can't say about other institutions; I know it is done.

Mr. McCarter: All this is objected to on the ground that there is no charge of such violation of such alleged accepted practice.

The Supervisor: This practice has such an important bearing on one of the charges here in the case that I am going to allow it.

Q. I understand you to say, Doctor, that it was a custom for the various men at the institution, when they had occasion to be coming down from the Sanatorium to the trolley, to take anybody along that did not have a car and wanted a lift? A. Everybody, yes, sir.

Q. Not only the physicians, but anybody else who may happen to have a car. A. Yes.

Q. And isn't it also a custom at the institution, if a man owning and driving a car is coming down to Newark, and if any of the employees want to come down to Newark, they take them along to Newark. A. I think so.

Q. And that is a habit indulged in by everybody. A. I think so.

Q. Now, with reference to this statement which you say was prepared by you and which you left with Miss Henrietta Rose for signature, will you give me again the wording of that statement? A. As near as I can remember: "To whom it may concern: I at no time have been in an automobile parked with Dr. Harman or reprimanded by a police officer."

Q. Did it say anything in that statement about violation of the Motor Vehicle Act? A. I don't recall, no.

Q. Or any of the provisions of the Motor Vehicle Act? A. No, I don't think so.

Q. And I understand that statement was prepared by you at the request of Miss Rose? How long after her father had left? A. Fifteen or twenty minutes.

Q. She had gone back to the ward by that time? A. Yes.

Q. Did she say why she wanted you to write out the statement? A. She said that she had been accused several times of doing it.

Q. And you went back to your office and wrote out the statement, is that right, Doctor? A. Yes.

Q. Then when you had written it out, what did you do next? A. Brought it back to her room and handed it to her, and I said, "Henrietta, here is the statement you wanted. If it is all right, sign it, and if it isn't tell me what corrections to make."

Q. I understand you to say on direct-examination: "I asked her to sign this statement in the presence of another patient." A. I took it back to her room and I said, "Here is the statement. Read it over. If it is all right, if it isn't, I will change it."

Q. Was it the idea that she was to give you the statement, or that she was to keep it? A. I don't know.

Q. Did she tell you when she asked you to write it out? A. There was no reference made to it.

Q. Do you recall who the other patient was who was to witness her signature? A. I do.

Q. Who was it? A. Elizabeth Boris.

Q. But she was too weak to sign it and subsequently died before she did sign it? A. She said, "Doctor, I am too weak and too tired to sign it."

Q. Why did Mrs. Travers leave the institution? She referred to this statement that you left, you will recall? A. She left the institution by request.

Q. Why did you request it? A. On the recommendation of a Prosecutor's detective.

Q. Who was the Prosecutor's detective? A. Mr. Mayer.

Q. Did he state the grounds of his recommendation? A. Not competent. May I read the statement?

Q. Yes. A. With reference to the night supervisor—

By the Supervisor:

Q. What is this document? A. The report of the investigation submitted to the Prosecutor by the county detective of his investigation of the Sanatorium.

The Supervisor: Any objections?

Mr. Vanderbilt: No, I want it.

A. (Continuing) "With reference to the night supervisor, I made mention her duties be changed from night supervisor to day supervisor and perhaps it would be well for me to say that this position be filled by some competent person other than the present one."

Q. What, specifically, did Mr. Mayer say that Mrs. Travers had done that— A. She had neglected her duty to call me in an incident of vital importance.

Q. Is that in the report that you are reading from? A. It is in here.

Q. Tell us in your own words what the incident was that she had failed to report? A. That she had failed to report?

Q. Yes. I want the incident. A. Yes, there was a man, a prowler, on the Sanatorium grounds there who came into the female quarters; that is, one of the female patients in the pavilion, and he went up to the bed of one female patient; I don't know what he did, but the patient said she was scared, and he ran out of the pavilion and ran into another pavilion and did it with another patient. They made so much noise that they aroused the occupants of a nearby building who telephoned to the operator and asked the operator to call the police, which she did not do. This night superintendent went out and passed the man and she did not stop him, and we know that the man that was there was a friend of hers.

Q. How do you know that? A. Because he was a former employee.

Q. How do you know she was a friend of his? A. Because she had failed to report other incidents, it was reported to me.

Q. It was reported by whom? A. By him.

Q. Was Mrs. Travers ever faced with the charges? A. Yes, sir.

Mr. McCarter: Is the propriety of facing Mrs. Travers with the charges at issue here? I don't see how the fact that Mrs. Travers was discharged from this institution can bear upon this case.

Q. Did you ask for Mrs. Travers' resignation? A. I told Mrs. Travers I thought she had better look for another position.

Q. You asked for her resignation? A. I didn't ask for it; I told her she had better look for another position.

Q. Did you tell her she could not get another position in New Jersey? A. No, I told her that probably she would not be able to. I told her that wherever she applied they would write to me and I would have to tell them that she was incompetent.

Q. Did you ever give her a hearing on these charges?

Mr. McCarter: I object to that as immaterial. Are we accused of improperly discharging Mrs. Travers?

Mr. Vanderbilt: If the Supervisor please, she stated on her direct-examination that she was asked to leave and she was not told the reason why. I am trying to find out whether she ever got a hearing and had these matters that are charged against her disclosed to her. It seems to me it is a matter of grave importance on the credibility of her testimony. We can't recall her in rebuttal because, as every one knows, the day following the giving of her testimony here, she either fell or threw herself in front of a subway train, and the day after she left here she was discharged from the hospital at Oradell. Dr. Harman's counsel stated at that time that she had been discharged by reason of something that the Prosecutor's detective said she had done, and that she had committed a heinous crime.

Mr. McCarter: The evidence is (page 295) "Question: And you were discharged? Answer: I was discharged. Question: At the

request of the Prosecutor's office? Answer: Yes. Question: Because they claimed that you were aiding and abetting in the concealment of some criminal act. Answer: No, that was not what was said. Question: What was said? Answer: They said for neglect of duty. Question: What do you know they meant? Answer: Well, the specific charge was my not having reported at 2:30 in the morning to Dr. Harman, wakening Dr. Harman, the presence in the pavilion of a man who had been drinking and who I thought to be an employee at the time at the institution and that I reported it at seven in the morning. Question: So you think on that ground alone the Prosecutor of this County asked for your discharge from the hospital? Answer: Yes, that is the impression Dr. Harman gave me when he called me down to the office. I think he said that was the only charge. Question: Who, in fact, discharged you, Dr. Harman? Answer: I take it that Dr. Harman did discharge me because— Question: You have answered my question. And that was about the 21st of November? Answer: Yes, the night of the 21st." Dr. Harman is not here accused of discharging an employee without a hearing. He said she was discharged and the basis of the discharge was the report by the Prosecutor's detective. Whether Dr. Harman gave her a hearing or did not give her a hearing is immaterial.

Mr. Vanderbilt: The clear inference of those questions is that they were to create

an impression that she was discharged for some other more grievous cause. If that testimony which Mr. McCarter read does not create the impression that there is some deeper, more sinister impression, then I give up.

Mr. McCarter: What I object to is asking Dr. Harman why he did not give Mrs. Travers a hearing. That is not the issue here. The propriety or impropriety of Mrs. Travers' discharge is not at issue. I asked the question to show animus and she characterized the nature of her discharge and said it was because she was told by Dr. Harman that the Prosecutor had recommended to him that she had failed to report an incident at two A. M. and reported it instead at seven o'clock.

Mr. Vanderbilt: I will withdraw the question and ask it in another way.

Q. Was there another charge made by the Prosecutor's detective against Mrs. Travers, other than the fact that she did not report in to you at 2:30 A. M., the fact that she did not report to you at that time the presence of this man in the pavilion and let you sleep until seven in the morning, as was your custom?

Mr. McCarter: If you have the report, you may show it to Mr. Vanderbilt.

Witness: The entire report is here.

Adjourned until 10 A. M., Saturday December 22, 1928.

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EIGHTH DAY.

Saturday, December 22, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman; ROBERT H. MCCARTER, of Counsel.

Mr. McCarter: May we interrupt the cross-examination of Dr. Harman to ask Dr. Phelps a question or two? He is here at great inconvenience.

Mr. Vanderbilt: No objection.

JOSEPH PHELPS, sworn in behalf of the Respondent.

Direct-examination by Mr. Bailey:

Q. Dr. Phelps, you are a practicing physician? A. Yes, sir.

Q. And have been for how long? A. Since 1924.

Q. Where do you live? A. Caldwell.

Q. Do you know Mr. Bennett? A. I do.

Q. Do you know the Galler girl who has been mentioned in these proceedings? A. I have met her before.

Q. Where did you meet her? At my home.

Q. Under what circumstances? A. Well, Mr. Bennett and I used to be quite a bit together, doing work together. He used to make some electrical treatments and do some X-ray work for me. He brought her to my home and left her there several times while I went ont to some calls with him.

Q. What time of day or night was it? A. I don't recall the particular time.

Q. Do you recall the year? A. It was in 1926 when I first came to Caldwell.

Q. Do you know whether that was while the Galler girl was at the institution or after she left? A. I couldn't say.

Q. On how many occasions are you sure she came there? A. Probably a dozen times.

Q. Always with Mr. Bennett? A. Yes.

Q. Do you recall any other incident with Mr. Bennett that you were involved in? A. Well, Mr. Bennett came to my house for quite some time after I had been in practice for a short time—I opened a small sanatorium of my own and Mr. Bennett installed X-ray apparatus for me and did private work for me.

Cross-examination by Mr. Vanderbilt:

Q. When Miss Galler came to your home with Mr. Bennett did she act all right? A. As far as I was concerned, yes.

Q. Nothing irregular with her conduct? A. No.

Q. She acted as a woman and a lady should? A. Yes.

Q. Can't you recall, Doctor, whether the times when she came was while she was still at the hospital or not? A. Well, about the first date—I can't be sure that it is exact, but is exact within three or four days, was in the early part of July.

Q. Of what year? A. 1926.

Q. When was the last? A. That I couldn't say.

Q. Can you give us an idea? A. Mr. Bennett and I severed connections in the latter part of 1926 and I haven't seen her since that time.

Q. How long before Bennett and you severed connections in the latter part of 1926 was it that you had seen Miss Galler? A. He brought her to the house, as I said, probably a dozen different times.

Q. Can you fix the last time you saw him with respect to the time when you and Bennett severed connections? A. I can't.

Q. Every time she was there she behaved as a lady should?

Mr. McCarter: That isn't the object of this testimony. The object is to show that she told an untruth when she said he did not go to Dr. Phelp's house with Bennett.

By Mr. Vanderbilt:

Q. Mr. Bennett and you did come to the parting

of the ways some time in the latter part of 1926, didn't you, Doctor? A. Yes, sir.

Q. And the cause of that was what? A. Well, I didn't consider that the actions of Mr. Bennett in my home were those that I cared to have around my house hold.

Q. Wasn't the real difficulty that he had submitted a bill to you for work done for you, for your patients, and you told him that you had not collected from those patients and he found out you had and he retained Walter Brandley, the lawyer in Caldwell, and pressed you for the money? A. I did not.

Q. Isn't that the real reason that he went to counsellor Brandley to collect it and you refused to pay it? A. No, sir, I beg your pardon.

Q. Didn't Mr. Brandley make you pay it?

Mr. Bailey: I object to that as improper.

Mr. Vanderbilt: It is perfectly proper. If it isn't, a motion to strike it out—to strike out a quarter of the Respondent's testimony would be in order. I must not show that this man has an animus against Bennett.

Mr. McCarter: We produced him to show that Bennett lied.

Mr. Bailey: And Miss Galler lied.

Mr. Vanderbilt: And I have a right to conduct this testimony in the same fashion.

Mr. Bailey: Whether Brandley had sued him is not material here.

Mr. Vanderbilt: I submit that this testimony is just as relevant as the testimony that was produced in large quantities by the respondent.

The Supervisor: I think this testimony is

proper and the examination should proceed.

Mr. Bailey: Exception.

Q. Did you receive any letters from counsellor Walter Brandley in reference to a claim of Mr. Harold Bennett against you? A. I have no answer.

Mr. McCarter: I think you ought to answer, Doctor.

The Witness: All right, yes.

Q. And it was about work that Bennett had done for you at your request in connection with certain patients.

Mr. McCarter: Objected to.

A. Yes, sir.

Q. And demanded payment of money by you to Bennett.

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. Yes.

Q. And you paid it.

Mr. McCarter: Same objection.

The Supervisor: The same ruling.

A. Yes.

Redirect-examination by Mr. Bailey:

Q. Will you give us the reason why you thought that Bennett was not the kind of gentleman you cared to have in your household? A. Because of his misconduct in my home with the nurse that I employed.

Q. What was that misconduct? A. I had been out to the movies on several different nights with my wife and when we came home we found condi-

tions at the house that were not to our liking.

Q. What were those conditions? A. When we left the house everything was satisfactory and this man was not there and he was there when we came back, and we decided once to leave the machine a distance from the house and find out whether anything was wrong, and we did. We found Mr. Bennett and my nurse in a bedroom; that I considered was entirely improper and I immediately ordered them both from the house.

Q. They were in bed? A. Yes, sir.

Recross-examination by Mr. Vanderbilt:

Q. What was the name of the nurse? A. I will not answer the question.

Mr. Vanderbilt: I think that is perfectly relevant.

Mr. Bailey: We asked for names, if the Supervisor will recall, and we were precluded from getting them.

Mr. Vanderbilt: You got them.

Mr. Bailey: I object to his furnishing the name.

Mr. Vanderbilt: I ask that the witness be instructed to answer.

The Supervisor: I think the witness should answer the question.

A. I beg your pardon, this nurse had nothing to do with the Sanatorium. She was outside of it entirely. I am sorry I can not tell her name.

Q. Whether or not she is connected with the Sanatorium does not make the slightest bit of difference. A. I am very sorry, but I can not—

Mr. Carter: Doctor, if you have no objection you may write the name of the nurse and give it to the Supervisor and the stenographer.

The Witness: But I don't want it published.

Mr. McCarter: That will be satisfactory, will it not, Mr. Supervisor?

The Supervisor: I think so.

(The name of the nurse is written on a slip of paper by the witness and handed to the stenographer).

By Mr. Vanderbilt:

Q. Her first name, please. A. I don't know her first name.

Q. How long was she your nurse? A. About eight months.

Q. And you don't know her first name? A. I do not.

Q. Did you ever know it? A. I did.

Q. And you can't possibly recall the first name of a nurse who was with you eight months? A. No.

Q. Where did you get her from?

Mr. Bailey: I object to that.

Mr. Carter: That nurse is not on trial here.

Q. Did you pay her by check?

Mr. Bailey: I object to that.

Q. Did you pay her by check?

Mr. Bailey: I object to that.

The Supervisor: I think it may be answered.

A. Yes.

Q. Have you your canceled checks? A. Not here no, sir.

Q. Have you got them at home? A. I probably have.

Q. Will you look up her first name from those canceled checks and come back and tell us?

Mr. McCarter: I will ask him to send it to me and I will give it to you.

Q. Will you do that? A. Yes.

BYRON M. HARMAN resumes the stand.

Cross-examination (continued) by Mr. Vanderbilt:

Q. When we stopped yesterday, Doctor, we were speaking of a matter of Mrs. Eloise Travers and you referred me to a report made to you in November, 1928, by County Detective G. L. Mayer. How long after the incident of the prowler did you discuss the matter with Mrs. Travers? A. Why, within a very few days.

Q. Did she report it to you the morning after? A. It was in the Night Supervisor's report book.

Q. When did you first discuss the matter with her?

Mr. McCarter: Mr. Supervisor, do you think the details of the discharge of Mrs. Travers are of importance here, or whether there is any justification for it? Mrs. Travers was brought here as a witness by whoever is behind this proceeding. She gave some testimony and we asked her on cross-examination whether she had not been dis-

charged and she said she had been. We asked her whether it was at the request of the Prosecutor's office and she said what was said yesterday about having reported it at 7:00 o'clock instead of at 2:00 o'clock, and the incident was closed. Now, Mr. Vanderbilt's questions are directed to the occurrences between Dr. Harman and her. What he said and what she said, it seems to me, is not relevant. We are not justifying or unjustifying her discharge. It isn't material. She either was discharged or she was not. If she was not, then the effect of her discharge is not material; if she was, she has a grudge. The details touching the discharge are irrelevant.

Mr. Vanderbilt: In the part of the testimony that I quoted yesterday it appeared that the inference was clearly created that she was discharged for some more grievous case.

"Q. So you think on that ground alone the Prosecutor of this County asked for your discharge from the hospitol?

"A. Yes, that is the impression Dr. Harman gave me when he called down to the office. I think he said that was the only charge."

I think we have a right to go into that case because it was brought out by counsel for Dr. Harman on cross-examination of one of our witnesses who, as I said, is no longer able to be brought here in rebuttal. I think I am entitled to go into that incident because we want to show and maintain, among other

things, that her testimony is absolutely correct, 100 per cent.

The Supervisor: I think this might well be inquired into, Mr. McCarter.

Mr. McCarter: It is very curious that everything we want to inquire into outside of the specific record and charges is not admitted, but everything the other side wants to go into is admitted.

Mr. Vanderbilt: That is a most unfair comment.

The Supervisor: Proceed.

Q. When did you first discuss the matter with her? A. A few days after it occurred.

Q. Did you take the matter up with her when you read it in the Night Supervisor's book? A. I took it up with the Day Superintendent of Nurses.

Q. Why didn't you take it up immediately with Mrs. Travers?

Mr. McCarter: I object to that. There is no charge of misconduct on the part of Dr. Harman with reference to Mrs. Travers. Why he didn't take it up earlier is not relevant.

Mr. Vanderbilt: I will withdraw it.

Q. Did you talk to her before you had this report from Mayer? A. Before.

Q. What did you say to her on that occasion?

Mr. McCarter: The same objection.

The Supervisor: I think it should be answered.

A. The questioning was taking place in my office with Mr. Mayer. Just what took place, I don't recall. It is all in the testimony there (indicating).

Q. But you did not question her independently of that? A. Not before, no.

Q. Did you question her or talk to her after this occasion when Mayer was there?

Mr. McCarter: The same objection.

The Supervisor: Overruled.

A. I talked to her in my office, yes, sir.

Q. When was that? A. I don't recall the date; it was in November; I think it was, a day or so before she left.

Q. What did you say to her on that occasion?

Mr. McCarter: The same objection.

The Supervisor: Same ruling.

A. I read to her the report that I had received from the Prosecutor's detective and I told her what I was going to do and she said, "What is that?" I said, "Well, I think the best thing for you to do is try to secure another physician elsewhere." She said, "I haven't the money now. I will have to have a few days to look around to get one." I said, "All right. How long have you worked here?" I don't recall the answer she gave. I said, "When did you have your last vacation?" She said, "Some time ago." I said, "You have part of your vacation coming?" She said, "Yes." I said, "Take that part of your vacation to look around for another position."

Q. Did you say she could not get another position in New Jersey? A. Not in those words.

Q. What did you say? A. She said, "Can I get

another position in Glen Gardener or another Sanatorium in New Jersey?" I said, "I don't know. If they write to me I will have to send them a copy of this report."

Q. Have you read through this report of Detective Mayer? A. I have.

Q. What is there in that report that he charged her with that led you to discharge her? A. May I go into the story?

Mr. McCarter: Answer that question first.

A. (Continuing) From what I know, and the information that she gave in her testimony, together with his report, I am almost certain that she was mixed up in this incident.

Q. From what you know? What do you mean by that A. From previous reports that had been made to me concerning her actions.

Q. By whom? A. By the Superintendent of Nurses.

Q. Was she ever confronted with them? A. No.

Q. You refer to the testimony attached to the Mayer report in your hand, is that right? A. Yes, sir.

Q. From the Mayer report you got the idea that she was mixed up with this prowler. Will you refer me to the part of the testimony, or the Mayer report, which in any way involves Mrs. Travers with this prowler? A. It occurs somewhere that Detective Mayer asked her whether she knew this Andrew Almond. Here it is: "As she recalls his appearance now, she is of the impression that it might have been Almond, but did not think of him at the time."

Q. Almond had been an employee at the Sanatorium?

Mr. McCarter: I object to that question as absolutely outside of the scope of this examination.

Mr. Supervisor: I think it is proper.

Mr. Vanderbilt: There wasn't anything improper with her knowing a former employee of the institution, was there?

Mr. McCarter: I object to the propriety or impropriety. Whether the relations with this man Almond were proper is not the point here.

The Supervisor: I think the question should be allowed.

Q. There wasn't anything improper with her knowing a former employee of the institution, was there? A. No.

Q. Is there anything in the testimony here, or in the report of the Prosecutor's Detective Mayer, showing anything wrong in her relations with Almond?

Mr. McCarter: I object to that. We asked her on cross-examination whether she was discharged and she said she was and she admitted it was on the recommendation of the Prosecutor's office. We think that this line of questioning is improper, and whether we are justifying or unjustifying it; that seems to be irrelevant and double so in view of the fact that if Mrs. Travers told the truth—she said she had appealed to you in that matter.

Mr. Vanderbilt: I refer to the testimony of yesterday:

"Q. Why did Mrs. Travers leave the insti-

tution? She referred to this statement that you left, you will recall.

"A. She left the institution by request.

"Q. Why did you request it?

"A. On the recommendation of the Prosecutor's detective.

"Q. Who was the Prosecutor's detective?

"A. Mr. Mayer.

"Q. Did he state the grounds of his recommendation?

"A. Not competent. May I read the statement?

"Q. Yes.

"A. With reference to the Night Supervisor—"

Then he goes on to give Mr. Mayer's report. Then I asked:

"Q. What, specifically, did Mr. Mayer say that Mrs. Travers had done?

"A. She had neglected her duty to call me in an incident of vital importance."

Now, the Doctor says he based his action on what he knew and what the testimony was and on the report of Mayer, and he stated yesterday: "And we know that the man that was there was a friend of hers."

Now, I want to show what was the basis of that assertion made on examination yesterday. There is nothing in the report that tells us anything besides that she knew Almond. I want to find out what was the basis of the Doctor's action.

Mr. McCarter: I won't make any objection again except that I wish to go on record in saying that it is perfectly improper and ut-

terly irrelevant and a great waste of time to pursue the details of the leaving of the institution by Mrs. Travers. She is dead, as the papers tell us. She admitted that she had been discharged, and how the details of that, what she said and what the Doctor said and what basis there was for what the Doctor said at the time she left the institution, seems to me to be utterly irrelevant.

The Supervisor: I think that might be an question?

(The stenographer reads the pending question).

The Supervisor: I think that might be naswered.

A. I think there is, yes.

Q. Read it. A. It goes all through.

Q. Read it all, Doctor. A. The entire document?

Q. No, anything that relates to improper relations between Mrs. Travers and Mr. Almond.

A. The detective was investigating this incident that occurred at the Sanatorium some time in October and he was not going into any other occurrence at the institution, and in his report he connects up the telephone operator and the night supervisor with this man Almond, who was at that time in the county jail.

Q. Now, read that part. A. I have to go through the whole thing.

Q. Go ahead. A. In her testimony she said that "the cap shown to her was like the one the man wore who was seen around the institution the night someone broke into the ward and the overcoat had the same general effect. That there is a

record kept of the time the nurses return at night unless they slipped in through the hospital door. When she saw the man he was walking naturally and her suspicions were not aroused, did not talk to him, and he went out the door exactly in the manner the watchman's relief would. As she recalls his appearance now, she is of the impression that it might have been Almond, but did not think of him at the time. She has not seen him since he was discharged."

Q. You are reading Mr. Mayer's report? A. Yes, I am reading Mr. Mayer's report of Mrs. Travers, Night supervisor, interrogated at about 5:00 P. M.

Q. Read me something showing anything wrong between Mrs. Travers and Almond. A. There isn't any; the whole thing is a collusion.

Q. Read me the collusion that involves her. There is a collusion in there between the telephone girl and Almond, isn't there? A. And her, too.

Q. Read the part that involves Mrs. Travers. A. This is Detective Mayer's interrogation of Almond at the county jail:

> "Q. Do you know Mrs. Travers?
>
> "A. Yes.
>
> "Q. Did you see her on October 28th?
>
> "A. No, the only persons I saw were Elsie, the telephone operator, who called Doris down, and the night watchman, a short Italian fellow. They were the only ones I saw since I left the institution."

That is all that refers to Mrs. Travers.

Q. That does not involve her in any way with Almond, does it? A. I think it does.

Q. Read the part that is there. A. It isn't here.

Q. Read something that involves Mrs. Travers with Almond. Not the invisible report, but something in black and white. A. It isn't here.

Q. What did involve her with Almond? A. I think it was New Year's night, 1927, Almond came on duty drunk, and instead of her reporting it she did not; she took him into a room somewhere and put him on a cot and kept him there until he sobered up, and he didn't do any work that night.

Q. Did you reprimand her for that?

Mr. McCarter: I object to that.

Mr. Vanderbilt: It is a year apart.

Q. Did you call her attention to it?

Mr. McCarter: How does that affect this controversy?

Mr. Vanderbilt: The act creating the powers of the superintendent of this institution, P. L. 1926, 85, says:

"The superintendent shall, for cause stated in writing, after an opportunity to be heard, discharge any such officer or employee at his discretion."

Now, I am trying to find out whether or not, either before or at the time that Mrs. Travers was discharged, she knew that the Doctor was discharging her because, among other things, for something that happened the preceding New Year, when, probably, more than one employee in the county was drunk.

Mr. McCarter: My answer to that is that there is nothing in the nine elements of alleged misconduct that mentions that.

Mr. Vanderbilt: I am not urging that as a charge against him, Mr. Supervisor, but as going against the testimony which he gave here yesterday morning.

Mr. McCarter: I object to it for the reasons stated.

The Supervisor: The objection is overruled.

A. The Superintendent of Nurses did.

Q. Have you any record of the occasions on which Mrs. Travers reported when Almond did come in drunk?

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. I have a card which is taken from the Superintendent of Nurse's files regarding Almond, the night attendant.

Q. Is there any report of Mrs. Travers having reported occasions when he did come in drunk? A. Yes, sir.

Q. Will you read that? A. Reported intoxicated on duty just after Christmas.

Q. Was that by Mrs. Travers to you? A. By Mrs. Travers to Mrs. Donovan.

Q. Are there any other occasions when she reported him drunk? A. Yes, sir.

Q. Will you read that? A. In July there is a notation, "Late on duty several nights; not on duty evening of July 15th; reported to have been out off duty for two days; reported in annex getting in argument with patient."

Q. This was the July after the Christmas you have just refrred to? A. Yes, sir.

Q. Which July? A. 1928.

Q. Those incidents were reported by Mrs. Travers to Mrs. Donovan, the Day Superintendent of Nurses? A. Yes.

Q. Will you read the part of the card which shows that she failed to report him on New Year's?

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

A. There is no notation that she failed to report him.

Q. Is there any notation that he was drunk on New Year's? A. Yes, reported on duty intoxicated just after Christmas.

Q. That is the one you said was the report of Mrs. Travers to Mrs. Donovan. A. I can't say the exact source of Mrs. Donovan's information. She can tell you that.

Q. Where does it appear anywhere on the record of which you have knowledge that Almond reported drunk?

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

A. I would have to go through the night report book.

Q. Was Almond finally discharged? A. Yes.

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

Q. When you asked her for her resignation or advised that she get a new job, did you bring up to her on that occasion that she had failed to report the drunkeness of Almond on New Year's of the preceding year? A. Yes, sir.

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

Q. Did she remind you of the many times that she had reported that Almond was drunk? A. No, sir.

Q. You knew it, didn't you? A. No, sir.

Q. You didn't? A. No, sir.

Q. Weren't you familiar with Almond's card? A. No, sir.

Q. How did you know the fact that she had failed to report the drunkenness of Almond on New Year's Eve, but she didn't report it at Christmas night and July and divers times following?

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. When we began to look up the connection between Mrs. Travers and Almond in this—

Q. Read it. A. It isn't there.

Q. Where did you find it? Let us have what the connection was. I have been working half an hour to get it out of you and I haven't the slightest idea of it yet. A. From the Superintendent of Nurses.

Q. What did she say? A. I don't know what she said.

Q. Did she tell you about it? A. Yes.

Q. What did she tell you? A. About this incident of Almond coming on duty.

Q. On New Year's? A. Since Christmas—after Christmas.

Q. But that was reported, wasn't it? A. Not to me.

Q. Does the Night Supervisor report to you or to the Superintendent of Nurses? A. She reports to the Superintendent of Nurses.

Q. Then it wasn't Mrs. Traver's fault that Mrs. Donovan did not report it to you, was it?

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

A. No.

Q. Then why charge her with it? A. Because I knew of it.

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

Q. When did you first learn of it?

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

A. During this investigation.

Q. And during this investigation you had no knowledge of the fact that Mrs. Travers had reported that Almond had been drunk after Christmas and for several days in July and missing for two full days and that that had been reported by Mrs. Travers to Mrs. Donovan?

Mr. McCarter: The same objection.
The Supervisor: The same ruling.

A. No.

Q. When you brought her in did you give her the charges in writing? A. No.

Q. Did you give her an opportunity to be heard after charges in writing had been preferred? A. She had a chance to answer when she was in my office; she didn't ask for written charges.

Q. And you asked her to leave? A. Not in those words.

Q. And you told her she couldn't get a job in New Jersey. A. No.

Q. I still want to know what evidence you have that she was a friend of Almond or that she had any relations of any kind with him, proper or im-

proper. A. I don't know how to answer that question because things in an institution come around through various channels and different sources. Information comes to you from time to time, not in writing, but in gossip and hearsay, and I recall several instances when there was quite a discussion in the nurses' dining room among the nurses about Mrs. Travers and Almond.

Q. When did you confront her with this gossip of the nurses' dining room?

Mr. McCarter: I object to why he did.

Mr. Vanderbilt: I said when.

Mr. McCarter: Does the Supervisor think it is proper?

The Supervisor: I do.

A. When this investigation was on.

Q. When this investigation was on? A. No, I mean the day I called her to my office.

Q. When you had Mayer's report? A. Yes.

Q. How long had this gossip been going on in the nurses' dining hall?

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. I don't recall when it was.

Q. You didn't confront her with that gossip of the nurses' dining hall when you first heard it, did you?

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. I didn't confront every employee with what I heard of gossip.

Q. And you didn't confront this employee? A. I did not.

Q. I again ask you how you knew that Mrs. Travers was a friend of Almond and that she had had relations, proper or improper, with him.

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. From conversations which I had heard had taken place in the nurses' dining room.

Q. So you fired this woman on the gossip of the nurses' dining room. A. I did not.

Q. What did you do? A. I didn't fire her.

Q. You advised her to resign, or to leave her job, on the strength of the gossip of the nurses' dining room.

Mr. McCarter: Does the Supervisor think whether he was justified in doing what he did with Mrs. Travers important in this matter?

Mr. Vanderbilt: We have the statement made in almost the last bit of testimony taken yesterday; "We knew that the man that was there was a friend of hers."

"Q. How do you know that?

"A. Because he was a former employee.

"Q. How do you know she was a friend of his?

"A. Because she had failed to report other incidents, it was reported to me.

"Q. It was reported by whom?

"A. By him.

"Q. Was Mrs. Travers ever faced with the charges?"

I am trying to find out in further cross-examination on what evidence there was that Mrs. Travers was a friend of Almond.

Mr. McCarter: It seems to me that Mr. Vanderbilt is trying to hoist himself over the fence by his own boot straps. He raised that point by his own improper cross-examination. I don't see why the Supervisor tolerates it. There isn't a word in the charges about Mrs. Travers.

The Supervisor: Do you press the question?

Mr. Vanderbilt: I think I am entitled to that, Mr. Supervisor.

The Supervisor: I will allow it.

A. I said no.

Q. What had she done that led you to ask her to quit her job?

Mr. McCarter: The same objection.

The Supervisor: The same ruling.

A. Doesn't a man have a right to form an opinion of what he hears when he employs and discharges individuals, and base his opinion on what he thinks is right?

Q. Doesn't the act provide that you shall, for cause stated in writing, after an opportunity to be heard, discharge any such officer or employee at your discretion?

Mr. McCarter: That shows, Mr. Supervisor that that is really a covered attempt to add to the charges against Dr. Harman. There is no charge that he discharged employees without hearing and there is no propriety in discussing whether or not he was right when whatever did occur between Mrs. Travers and him occurred. Why permit the pursuit of that here?

The Supervisor: We are trying to get at the bottom of this matter and trying to get at the facts behind it. I think this is a proper proceeding.

A. She didn't ask for a hearing; she admitted that she had neglected her duty.

Q. In what respect? A. By failing to report this incident.

Q. You just testified that her duty was to report to the Superintendent of Nurses, Mrs. Donovan. A. In her report book, yes, but they are all instructed that when any incidents occur at night to call me immediately on the phone.

Q. This man was prowling about the place, wasn't he?

Mr. McCarter: I object to that as immaterial.

Q. Was it her duty to report it to you or the night watchman?

Mr. McCarter: I object.

The Supervisor: I will allow it.

A. The night watchman and me.

Q. Was it her duty or the night watchman's duty to report it? A. Both.

Mr. McCarter: I say it is a perfect outrage to pursue this examination that has now lasted an hour concerning a matter over which there is no charge here against Dr. Harman. It is utterly irrelevant as to the propriety or impropriety of his action, whatever his action was, whenever she left the Institution.

The Supervisor: It does concern the doc-

tor's testimony and the testimony of Mrs. Travers.

Mr. McCarter: I don't see how. Mrs. Travers said that the charge of the Prosecutor was that she had failed to report at 2:00 o'clock and did not do so until 7:00 o'clock in the morning.

Mr. Vanderbilt: I beg your pardon, that isn't what counsel said. It was counsel that talked to her about the Prosecutor's charge.

Mr. McCarter: Let us see. I am reading from page 295, cross-examination by Mr. McCarter:

"Q. And you were discharged?

"A. I was discharged.

"Q. At the request of the Prosecutor's office?

"A. Yes.

"Q. Because they claimed that you were aiding and abetting in the concealment of some criminal act.

"A. No, that was not what was said.

"Q. What was said?

"A. They said for neglect of duty.

"Q. What do you know they meant?

"A. Well, the specific charge was my not having reported at 2:30 in the morning to Dr. Harman, wakening Dr. Harman, the presence in the pavilion of a man who had been drinking and who I thought to be an employee at the time at the Institution and that I reported it at 7:00 in the morning.

"Q. So you think on that ground alone the Prosecutor of this County asked for your discharge from the hospital?

"A. Yes, that is the impression Dr. Harman gave me when he called me down to the office. I think he said that was the only charge.

"Q. Who, in fact, discharged you? Dr. Harman?

"A. I take it that Dr. Harman did discharge me because—

"Q. You have answered my question. And that was about the 21st of November?

"A. Yes, the night of the 21st."

I say the propriety or impropriety of Dr. Harman's conduct with Mrs. Travers is not at issue here and it is to my mind a great waste of time to pursue this.

Mr. Vanderbilt: May I ask that this card of Almond be marked in evidence?

(The same was received in evidence and marked Exhibit C-7.)

Mr. Vanderbilt: And also the letter addressed to the Prosecutor by Mr. Mayer and the three pages attached.

(The same was received in evidence and marked Exhibit C-8.)

Mr. McCarter: There is no objection to their being introduced on cross-examination, but we do object to their introduction as immaterial and irrelevant.

Q. What would you describe this card, Exhibit C-7, as? What is the technical name of that card? A. That is the card that is kept in the files of the Superintendent of Nurses.

Q. Returning for a minute to the matter of Miss Galloway, have you her card? A. Yes, sir.

Q. Before I see that, may I see Mrs. Travers'

card? A. I haven't got it here.

Q. Will you produce it at the next session? A. Yes.

Q. Now, may I see Miss Galloway's card? A. Yes, sir (handing paper to counsel).

Mr. McCarter: I offer it in evidence.

(The same is received in evidence and marked Exhibit C-9.)

Q. Who was it discharged Miss Galloway? A. Mr. Butterworth.

Q. And that was because you were away at the time? A. Yes, sir.

Q. Have you any first-hand knowledge of that? A. Only what I was told when I returned.

Q. By Mr. Butterworth? A. By Mrs. Harris.

Q. Did Mrs. Harris have any first-hand knowledge of it?

Mr. McCarter: How does he know?

Q. Did she say she was there?

Mr. McCarter: I don't know that what Mrs. Harris told this witness concerning the discharge of Galloway is proper.

Mr. Vanderbilt: Dr. Harman testified that Miss Galloway was discharged for intoxication and I am simply asking him the elementary proposition on cross-examination whether he knew what he talked about. He says now that Miss Galloway was discharged by Mr. Butterworth.

Mr. McCarter: He said yesterday she was discharged while he was away and he said when he came back he was told she was discharged for intoxication.

Q. Was there any record on her card made, Doctor, giving the reason why she was discharged?

Mr. McCarter: The doctor wasn't there.

A. I wasn't there; the card shows discharged.

Q. Were there any written charges in the case of Miss Galloway's discharge?

Mr. McCarter: That I object to. He wasn't there. Is it possible that the propriety of something that Mr. Butterworth did in the absence of Dr. Harman is the subject of investigation here? If the effort by this evidence is to make a foundation for a new set of charges, I would like to know it, and if the Supervisor is using these proceedings to make a new set of charges against the doctor, I would like to know that.

The Supervisor: I assure you that is not the case.

Mr. McCarter: I believe it, but I think you are being duped. I certainly think it is not material in this investigation what Butterworth did with Galloway while Dr. Harman was away.

Mr. Vanderbilt: The statute gives the power to the Superintendent, for cause stated in writing, after opportunity to be heard, to discharge any such officer or employee. It doesn't give it to the secretary to the Superintendent or to the secretary of the Institution to do that, and I am simply trying to find out whether Dr. Harman discharged her.

Mr. McCarter: He has not pretended that he did.

Q. Did you discharge her? A. No, I did not.

Q. Whatever discharging was done, was done by Butterworth in your absence. A. Yes.

Q. Doctor, on any of the occasions on which you were making an inspection of the rooms of the female employees, did you go into the room, or did you enter the door of the room occupied by Miss Galloway? A. Yes, sir.

Q. While she was there? A. Yes, sir.

Q. Can you remember on how many occasions that happened? A. I don't know.

Mr. McCarter: Mr. Supervisor, Dr. Ill is here. Could we ask Dr. Harman to step aside and interrupt the proceedings long enough to examine Dr. Ill? We don't want to bring him up again if we can help it.

Mr. Vanderbilt: No objection on my part.

CARL H. ILL, sworn in behalf of the respondent.

Direct-examination by Mr. McCarter:

Q. Are you a practicing physician and surgeon, Dr. Ill? A. Yes.

Q. How long have you been practicing in Newark? A. Ten years; almost ten years.

Q. Are you on the Advisory Board at the Sanatorium? A. Yes.

Q. How long have you been on that board? A. Ever since it was created.

Q. What official position do you hold at present on that board? A. As secretary to the board.

Q. Have you had occasion from time to time, in pursuance of your duty as a member of the Ad-

visory Board, to keep in touch with the Institution? A. Yes, we have kept in very close touch, I think, with the Institution.

Q. What, in your judgment, and from your observation, have you to say as to the efficiency with which that Institution has been conducted during the past five years?

Mr. Vanderbilt: I object to that as immaterial and not within the issues.

The Supervisor: I think that might be properly answered.

Mr. Vanderbilt: There is no charge that the Institution is not efficiently conducted.

A. I think the Institution has been remarkably well run, especially when you consider the condition it was in when Dr. Harman took it up.

Q. What is endometritis? A. That is an inflammation of the inside of the womb.

Q. Assume that a patient has been flowing from the vagina for a period of a week or so, would an operation like a curettage be proper? A. Yes.

Q. Would there be scrapings? A. Yes, sir, there would be.

Q. What would be the color of such scrapings? A. Red, very likely; full of blood clots.

Q. Do you know Dr. James Spencer Brown? A. Very well, yes.

Q. What is his reputation?

Mr. Vanderbilt: I object to that as absolutely immaterial and irrelevant.

The Supervisor: I realize it is immaterial, but at the same time I think it might still be answered.

A. No doctor in the county or in the State has a better reputation.

Q. What is the ordinary reason for making a pathological and microscopic examination of scrapings from the womb? A. The reason is decidedly to help us to help that patient. If we do not realize, or we do not know, or we feel that we do not know that there is something that we cannot find out at operation, we have it examined so that it will tell us more about it.

Q. To help, then, in the diagnosis of the origin of the trouble. A. Yes.

Q. For instance, would a scraping display the presence or absence of cancerous germs? A. Yes.

Q. And would that be an important reason for making the examination? A. Yes, very important.

Q. And if the operating surgeon has no doubt about the situation, then is there any necessity for an examination? A. No, it is done merely as a matter of routine. I couldn't answer that question in that way. I could say better than an ordinary scraping, the surgeon usually knows with that without a pathological examination what it is, but those things are usually sent to a laboratory as a routine in any large hospital and in lots of cases they are not.

Q. What is the operation of curettment? A. That is a scraping of the inside of the womb.

Q. Can an operating surgeon of experience tell at the time that he is curetting whether or not the patient is or has been pregnant? A. Almost every time.

Q. Why is that? A. Any womb that is pregnant or has recently, within a reasonable period of time, say within a month, been pregnant, the womb is entirely different; the feel of the scraping is en-

tirely different. It is very much softer; it is very dangerous to curet when it is pregnant because the curet easily goes through the uterous.

Q. Then an operating surgeon of experience in performing a curettage could, without difficulty, you think, tell whether or not the patient either at the time or within, say, a month before, had been pregnant? A. Almost always he can tell it.

Q. Some charges have been preferred by someone against Dr. Harman, some of which, particularly one, reads as follows: "In that on or about May 8, 1925, you," that means Dr. Harman, "permitted the performance of an illegal operation upon Henrietta Rose at the Sanatorium, and that you assisted in the operation." Previous to the service of these specifications upon Dr. Harman, had the Advisory Board, or you as a member of it, ever been appealed to by anybody with reference to this illegal operation?

Mr. Vanderbilt: I object to that as immaterial and irrelevant, the matter being within the jurisdiction of the Supervisor.

The Supervisor: I think the doctor might well answer that.

Mr. Vanderbilt: Exception.

A. No, we never have been.

Q. Did Mr. Bennett ever mention that matter to you? A. About the operation?

Q. Yes. A. No, sir.

Q. Did he ever bring any complaint to you? A. Yes, he did.

Q. What was that? A. He brought a complaint to me at one time that the Superintendent of Nurses name was ahead of his on the bulletin board

in entering the hospital, and that he thought he was much more important than the Superintendent of Nurses, and he asked me if I couldn't ask Dr. Harman to put his name ahead of he name of the Superinendent of Nurses.

Q. When was that? A. Two or three years ago; and he also said at that time that if it was not put that way at that time he would resign.

Q. I show you a paper marked Exhibit R-7, which is the blackmail letter in this matter, and I ask you if you have ever seen that before, and, if so, when. A. I have never seen this letter, but I have been told about it.

Q. By whom? A. By Dr. Harman.

Q. Do you remember during what month that was? A. It was either in August or in early September; I think it was in August.

Cross-examination by Mr. Vanderbilt:

Q. Doctor, would the fact of bleeding continuing for a week or more from the vagina always indicate endometritis? A. No, it would not—

Q. What else would it indicate? A. I beg your pardon, it always would indicate an endometritis.

Q. What might be the causes of that endometritis? A. The causes would be anything that would cause the bleeding. The two of them are absolutely together; anything that causes an unusual bleeding in the uterus would cause endometritis.

Q. What would the causes be? A. Syphilis, cancer, pregnancy—

Q. Tumor? A. Tumor, yes, but it is very unusual for a tumor to be in a young girl; very unusual.

Q. And the fact of whether or not a tumor was

present would be diagnosed by the attending physician before the operation? A. It depends entirely on the size of the tumor.

Q. How large would the tumor have to be to enable the attending physician to diagnose it before the operation? A. That is an impossible question to answer.

Q. What would be the minimum size? A. You would have so many other factors: In a stout woman you can have a tumor the size of a grapefruit and you couldn't diagnose it; in a thin woman you could have a tumor the size of a pea and you would diagnose it. It depends on how far from the surface it is and how far inside—it is impossible to answer that.

Q. What sort of an examination would a surgeon make before performing this type of operation? A. He would do a vaginal examination; or in an unmarried girl, he would do a rectral examination.

Q. Is that a manual examination or by instruments? A. Yes—both.

Q. And no operation would be undertaken in the case of an unmarried girl without both types?

Mr. McCarter: I object to that. It doesn't seem to me that the doctor can tell what other practitioners would do. He might be asked what he would do.

Q. There is a standard of skill in the medical profession isn't there, Doctor? A. I think you can not call it a standard of skill.

Q. I mean, aren't there certain accepted standards or methods? A. Every man has his own method.

Mr. McCarter: No two lawyers try a case the same way.

A. (Continuing) There is no accepted standard.

Q. Would an operation like this be undertaken by a mere manual examination of the vagina? A. Very frequently, yes.

Q. It would? A. Oh, my, yes.

Q. And the doctor could— A. Can I qualify that a little?

Q. Yes. A. The fact is that in an unmarried girl it would be almost impossible to do an instrumental examination without an anesthetic.

Q. Isn't it accepted hospital practice, Doctor, after such an operation, where there is a pathologist attached to the institution, always to have the scrapings analyzed? A. I wouldn't say that, no, sir.

Q. What is the purpose of having a pathologist around, then? A. To help diagnose conditions that we can not diagnose without a pathologist.

Q. When you have a patient whose case is complicated with tuberculosis, and with unusual other complications, wouldn't the examination of the scrapings be of assistance in telling the attending physician what the ailment was? A. You will have to qualify it. Tell me the age of the girl—you mean a girl in this condition?

Q. Yes. A. It would be of absolutely no importance.

Q. It might be due to tumor or cancer? A. What is a tumor?

Q. I don't know. A. A tumor is any swelling. I don't think a laboratory examination in a case like this would, in a vast majority of cases, give you anything.

Q. Would it enable you to tell whether it was cancer? A. Yes, it would.

Q. And that would be worth knowing? A. No.

Q. Why not? A. It would be entirely irrelevant to the case if it were cancer. If it were cancer, what could you do? And again, you haven't the history of cancer in this case and you haven't the symptoms of cancer to deal with.

Q. Doctor, isn't it accepted in ordinary hospital practice, to keep a contemporaneous record of an operation? A. I would like to ask you what you mean by contemporaneous record.

Q. Made substantially as the operation is progressing or immediately thereafter. A. The usual practice in hospitals is with a surgeon to dictate his case, or write it, after the case is over.

Q. Immediately? A. Not necessarily.

Q. I mean the same day. A. Yes.

Q. And that is done by the operating surgeon? A. Yes, he is entirely responsible for that.

Q. That tells who was present, I suppose. A. No, that is never done by the operating surgeon in our experience. All that the operating surgeon ever does is to dictate his findings about the operation. He never cares who is there.

Q. Does he dictate the steps that he takes and what he does? A. It depends entirely upon what the operation is. Our practice, and I think most practices, for an operation like this, is to put down that a curettage has been done, unless there is some reason why he wants to qualify, because we all know very definitely what that means. The reason for the record is so that you can look back on the record and find out what was done and to help thereafter.

Q. I show you page 4 of a record of an operation

and ask you what is meant by the last two lines of that page.

Mr. McCarter: I object to the question. How can the doctor say what is meant? The paper speaks for itself. He had nothing to do with the operation; he didn't make the record and he wasn't there when it was made.

Mr. Vanderbilt: I am asking him what the medical terms mean.

Mr. McCarter: What is the medical term?

Mr. Vanderbilt: There are bunches of them, Mr. McCarter.

Q. Two lines: "Operation—tumor pelvis and so forth. No flu—no hernia— A. Shall I try to read it?

Q. Yes. A. "Remarks: Operation—" Something is crossed out I can't read. "No flu—no hernia—no ischio-rectal abcess." Ischip-rectal abcess is just outside the rectum. "Uterine Tumor" crossed off. "Curettment May 8th, 1925—endometritis."

Q. What is meant by the phrase "tumor pelvis"? What does that medical term mean, if it is a medical term? The first words crossed out, I mean. A. Tumor pelvis could mean anything from a wart to a pregnancy.

Q. And "Uterine tumor"? A. That is a tumor of the uterus.

Q. How long have you known this Roentologist, Harold Bennett? A. Ever since I have been in practice.

Q. Is he a competent Roentologist?

Mr. McCarter: I object to the competency or incompetency as a Roentologist of

Mr. Bennett. He is not here on trial.

Mr. Vanderbilt: It is competent to tell it is a well-managed institution.

Mr. McCarter: Dr. Harman is accused of not doing his duty; that is the only basis of this examination, but Mr. Bennett—his competency as a Roentologist certainly is not at issue in this case.

The Supervisor: On the same ground that this witness was permitted to state the efficiency of the operation of the institution I think he might well answer this question.

A. I think he is a very good technician, but I do not think he is a very good Roentologist.

Q. Here again I go beyond my depth. What is the difference? A. The difference is that he takes a picture remarkably well; nobody can take it better; but I do not think he knows how to interpret it.

Q. That is a physician's task, isn't that? A. That is the Roentologist's task, but we usually expect him to be a physician.

Q. Do you recall Bennett's calling up last Summer, about August, when you were on your Summer vacation at Point Pleasant? A. Yes, I do.

Mr. McCarter: I object to any conversation between him and Bennett last August as incompetent and taken not in our presence.

Q. Leaving the conversation out, had anyone from the Institution spoke to you, Dr. Harman or Mrs. Harris, about Bennett's resignation? A. I don't recall; I don't know the dates.

BYRON M. HARMAN resumes the stand:

Cross-examination (continued) by Mr. Vanderbilt:

Q. I understood you to say, Doctor, that you never at any time had any liquor, wine, whiskey, or any of those things in your office except when they had been brought in there on being confiscated from patients, is that correct? A. Patients and employees.

Q. Did you ever on any occasion bring any liquor of any kind into your office?

Mr. McCarter: I object to that question. He is not accused of drinking liquor in his office, and there was nothing in the direct-examination on that subject. I suppose, perhaps, the doctor takes a drink. I know I do and I hope the Supervisor does, but I don't think that is one of the charges here.

Mr. Vanderbilt: I will not press it.

Q. With respect to Miss Galloway, did you ever send her to Bennett for any treatments? A. Did I?

Q. Yes. A. No, sir.

Q. After she had had a tooth extracted. A. No, sir.

Q. You are sure of that? A. I am.

Q. But you did send Miss Galler to have some treatment for poison ivy? A. To Bennett?

Q. Yes. A. I did not, no, sir. What has X-ray got to do with poison ivy?

Q. I don't know, I am asking you whether you ever sent her. A. No, sir.

Q. Were you ever in the X-ray laboratory while either of these girls were having treatments by him? A. Yes.

Q. Which one? A. Galloway.

Q. What was she being treated for? A. Swollen jaw.

Q. What took place on that occasion? A. He had an instrument in which there was a violet ray passing and he was massaging it back and forth across her jaw.

Q. Did you raise any objection to that? A. No, sir.

Q. On how many occasions were you there while he was administering any such treatment? A. Only once that I have any recollection of.

Q. How many times did you open Miss Galler's door while she was in her room during the day? A. I don't know.

Q. Did you ever go into her room while she was there? A. No, sir.

Q. You are sure of that? A. I am.

Q. I understand that when Miss Galler left on August 15th she was not discharged; she left voluntarily. A. She disappeared.

Q. And there is some claim made that her accounts and the accounts of the other operator for that period at the time she left were short. A. Yes, sir.

Q. That shortage might be due either to her or to the other operator. A. Possibly.

Q. Are you sure, Doctor, that there was an actual shortage at that period? A. Only what shows on the books. I assume the bookkeeper keeps his records straight.

Q. Who was the other operator at that time, do you recall? A. A Miss Moore.

Q. Isn't it a fact, Doctor, that the only two shortages that have been found from telephone girls in the past five years was one of Doris Eu-

bank, and that those shortages were made up by her? A. I can't say that.

Q. Whose duty is it to keep the record? A. The bookkeeper's.

Q. Who was the bookkeeper? A. At that time it was Mr. Bristol.

Q. Who is it at the present time? A. We have no one at the present time.

Q. After Miss Galler had left on August 15th, voluntarily, do you know why it was that she went up to Father Fitzpatrick's house after that? A. I didn't know that she had gone there.

Q. I thought she met you up there. A. She did.

Q. Well, now, why did she go up there after she had voluntarily left the Institution? A. I don't know.

Q. There was no reason given for it? A. I don't know why she went to the Villa.

Q. Were you there at all, Doctor, at the time that Father James was the acting chaplain—the relief chaplain? A. Yes, sir.

Q. Did he say anything to you at all about the Galler girl? A. Never.

Q. How long was he there? A. I don't know; it was during the vacation period of Father Fitzpatrick.

Q. You say it was on a Saturday that Father Fitzpatrick first mentioned to you the charges that were made by Miss Galler? A. I think it was Saturday.

Q. And that you immediately went out and called in Mrs. Harris and then called in Mr. Bennett? A. Yes, sir.

Q. You are positive, are you, that Father Fitzpatrick was present on this occasion? A. Absolutely, yes, sir.

Q. In your office? A. In my office.

Q. And you are positive that Mr. Bennett was present on this occasion? A. Yes, sir.

Q. Was or was not Miss Galler present on that occasion? A. In my office?

Q. Yes. A. No, sir.

Q. You heard the testimony of Father Fitzpatrick up at the Villa the other day, Thursday morning? A. Yes.

Q. Do you recall that he stated that there was no such conversation at your office? A. I don't recall just what was said.

Q. On question by Mr. Bailey: "Just let me interrupt you, Father. Do you remember Dr. Harman's calling anybody into the office? A. No, sir. Q. Do you recall his calling Bennett into the office then? A. No." Don't you remember that? Do you recall that? A. I recall that he said that, yes.

Q. Do you still insist that Mrs. Harris and Bennett both came into your office on that Saturday morning? A. I do, absolutely; I remember it very well.

Q. When you arrived at the Villa on Sunday afternoon, the next day, did you come alone? A. No, sir.

Q. Who came with you? A. Mrs. Harris.

Q. By the time that you had arrived, had Miss Galler come yet or did she come afterward? A. I don't know; we were told later on that she was upstairs; she and Bennett.

Q. How long were you downstairs? A. About ten or fifteen minutes, probably.

Q. Mrs. Harris and you went upstairs with Father Fitzpatrick? A. Yes, sir.

Q. And after you were up there, did the Father

leave his room to get Mr. Bennett or Miss Galler? A. They were there.

Q. They were in the room when you came? A. They were in the room when we came.

Q. Will you tell us, as near as you can, just what it was that Miss Galler said on this occasion? A. As I recall, Father Fitzpatrick started to explain what we were there for and he started to ask Miss Galler some questions and Mrs. Harris said, "Father, don't you want to swear the girl?" He said, "No, it is not necessary in my presence." Then he asked her, if I am correct, to tell what had happened, and she started by saying that I had made improper proposals to her and that I had kissed her and that I had forced her, and he said, "Do you remember the day?" She said, "Yes, it was August, the 11th." He said, "Are you sure of that?" She said, "Yes, I am." He said, "Are you very sure of it?" She said, "Yes, I am." Then Father Fitz said, "Did you know that Dr. Harman was not in Verona that day?" And then Mr. Bennett interrupted and he said, "Well, it may have been about that time." And then Mrs. Harris spoke up, if I remember it, and said, "Why is Mr. Bennett so interested in this girl?"

Q. Did this date with respect to the conversation precede or follow the narration by Miss Galler? A. Before.

Q. Before she had narrated what had happened? A. Before.

Q. Before, is that right? A. You mean August 11th?

Q. No, I mean up at the Villa that afternoon, did this discussion about its being August 11th precede or follow her narrating the events that took place. Did Father Fitzpatrick or anybody

else question her as to the day before she told her story as to what took place as she claimed had in your office? A. It was while she was telling the story.

Q. How far had she progressed in her story before she was asked about the date? A. Well, it was awhile she was describing it.

Q. Suppose you tell us as near as you can what the conversation was and the order of the conversation on this occasion. A. The order was, as I said before.

Q. When you got into the room Father Fitzpatrick started it? A. He told us what we were there for.

Q. Tell us as near as you can what he said? A. He asked the girl to tell her story. He said, "Miss Galler, won't you tell your story?" Then Mrs. Harris said, "Father, don't you want to swear her?" He said, "No, it is not necessary in my presence." Then she said I had made improper proposals to her; that I had kissed her and that I had forced her. Father said, "Can you tell about what time?" She said, "It was on August the 11th." He said, "Are you sure of that?" She said, "I am." He said, "Are you very sure of it?" She said, "Yes." He said, "Did you know that Dr. Harman was not in Verona at that time?" Then Mr. Bennett interrupted and said, "It may have been about that time." Then Mrs. Harris said, "Why is Mr. Bennett so interested in this girl?"

Q. What I am trying to get at is, did her statement of what she claimed transpired at the office come before or after this reference to August 11th. A. It was while she was telling her story.

Q. In other words, it was while she was in the

process of telling what happened there that night that some one interrupted and asked her whether it was August 11th. A. Yes.

Q. How far had she gotten before some one asked her whether it was August 11th? A. She was through.

Q. Then it was after she was through telling her story that she said it was August 11th? A. Yes.

Q. Then after this conversation about August 11th, what was said or done next? A. Well, then after she had finished, Mrs. Harris said, "Why is Mr. Bennett so interested in the girl?" He spoke up and said, "I have no interest in the girl. I just brought her here." Then Mr. Bennett said, "Dr. Harman has deprived me of certain things I need in my department." He said that I wouldn't give him the necessary things to carry on his work, as he thought he did. Then I said, "What's the idea? What interest have you in this girl?" I said, "Why didn't you tell me if you needed instruments in your department? Why did you go over my head every time? You have gone over my head several times. Why didn't you tell me instead of Father Fitzpatrick? I am the Superintendent of the Sanatorium. If you need things I will give them to you." He said, "I thought Father was the man I was to go to." Then Father Fitz said that he had taken on the duties of the Sanatorium that he considered were his duties in many instances.

Q. Assuming the chaplain's duties? A. Yes.

Q. At what point was it that you first referred to your diary? A. At that point.

Q. Yes. A. When the date of August 11th was mentioned.

Q. Did you read from the diary on that occasion or just show it to Father Fitzpatrick? A. Neither.

Q. What did you do? What was done about the diary? A. I opened it and looked at it.

Q. You just referred to it yourself, but you didn't make any comment about it? A. No, because I had done it the day before.

Q. I understood you to say on your direct-examination that after reference was made to the diary that Miss Galler was very much confused.

A. I didn't say that.

Q. You didn't? A. If I did, I don't recall it.

Q. As a matter of fact, was she confused after you referred to the diary? A. In my opinion she was very much confused and very much excited.

Q. When she saw you looking at the diary had she any way of knowing what it was? A. I don't know.

Q. Did you say anything to her during the course of your conference or hearing? A. I don't recall that I did.

Q. You have no recollection of saying anything? A. Not to her.

Q. Did you point out either to Father Fitzpatrick or Mrs. Harris at this time what was in the diary? Did you refer that to them at this time, or did you just look at it yourself? A. I don't think I did on that Sunday; just myself.

Q. Why was it necessary for you to look at the diary yourself? A. Why, it is the most natural thing in the world to do it.

Q. Why? A. Because I was vitally interested and I was concerned.

Q. How did your looking at your diary and not commenting on it have any significance to you?

A. Naturally, when a person is charged with things which he knows are not true and which he knows he wasn't about that that time—but looking at it is a source of pleasure; it satisfies your mind.

Q. How did that diary containing reference to your fishing trip and your return at 7:00 P. M. satisfy your mind after hearing these charges of Miss Galloway? A. I knew she was a liar.

Q. How? A. By what she had said.

Q. What about the diary made you feel that? A. What about what?

Q. What in the diary made you feel that? A. What in the diary made me feel she was a liar?

Q. Yes. A. Because she specified the time.

Q. What time did she specify? A. August 11th.

Q. What time on August 11th? A. No time.

Q. Did she say whether it was daytime or night? A. No.

Q. No one there thought of asking her about it? A. I don't know.

Q. No one did ask her about it? A. No.

Q. There was no discussion of what kind of light there was in your office? A. No.

Q. Or whether there was no light at all? A. No.

Q. There was nothing said in the whole two hours at the Villa as to what time of day or night these incidents that Miss Galler claimed occurred were said to have occurred? A. I don't recall any.

Q. Weren't you holding your diary in your hand or under your arm and weren't you impressed with the importance of fixing the time? A. Why, certainly.

Q. Why didn't you ask her or suggest that Father Fitzpatrick or Mrs. Harris ask her what time these acts occurred that she was charging you

with? A. I had enough on my mind to think about that day.

Q. But you said that this diary was a great source of comfort to you, or some such phrase, and that explained that you had gone fishing and had returned home at 7:00 o'clock. Didn't it impress you as important to fix the time or day or night that Miss Galler charged you with these acts? A. I didn't think of it; I didn't think of the time of day or night.

Q. You had previously shown the diary to Mrs. Harris and Father Fitzpatrick. A. I showed them that page.

Q. Yes, I mean that reference. And neither of them, you say, asked Miss Galler as to what time of day or night on August 11th it was? A. I don't recall it, if they did.

Q. How, if that is so, did this diary act as any comfort to you when the time was not fixed? A. Why, I knew that no such incident occurred and I knew that she was a liar when she said it.

Q. You knew it had not occurred even if there had not been a diary there? A. Absolutely.

Q. Then how did the diary act as a comfort to you? A. It made her out a liar in my mind positively and definitely.

Q. How did the diary make her out a liar? A. Because it specified I was not in Verona on August 11th.

Q. But you were in Verona after 7:00 o'clock on August 11th. A. I know where I was.

Q. Did you make a note in the diary? A. No; incidents that are in the diary recall other incidents.

Q. If it had not been for that diary recalling to you where you had been on August 11th, you might

have been in your office and she might have been there. A. Not necessarily, no.

Q. I am trying to find out what there was about that diary that confirmed in your mind that she was a liar and that comforted you. In the absence of the diary, would you have thought that these things might have occurred? A. No.

Q. Well, will you tell us what there was in this diary that operated as a comfort to you? A. When a woman accuses a man, especially a physician, of being with her, he is up against a pretty hard proposition. She specified a definite date, and in order to satisfy myself, not necessarily myself, but other people—my conscience and my mind were clear—to satisfy these people who were interested, I tried to convince them I was not in Verona at that time.

Q. And this diary was convincing as to where you were up to 7:00 o'clock. A. I don't know whether it was convincing proof or not.

Q. Well, it was evidence as to where you were up to 7:00 o'clock. What sort of proof did the diary afford as to where you were from 7:00 P. M. on August 11th? A. None, only to myself.

Q. How did it furnish any evidence to you yourself? A. It recalled to me, as I said—incidents noted down recall incidents—a notation was there that I was very tired. I was. I was extremely tired. I was pretty well sunburned and I went to bed immediately I got home and had supper.

Q. How long after August 11th was this conference at Father Fitzpatrick's house? A. I should say about a week or so; about a week, probably.

Q. It was after the girl had left on August 15th? A. Yes.

Q. But you are still sure that Miss Galler did

not give the time of day or night that this incident happened that was claimed, and that no one asked her? A. I didn't hear, if she was asked.

Q. And all told you were in Father Fitzpatrick's place about two hours? A. I think so, yes.

Q. And was Miss Galler there that full period? A. I don't think she was.

Q. How long was she there? A. I don't know.

Q. I mean, how long did she leave before the rest of you left? A. Some little time.

Q. Fifteen minutes or a half hour? A. It may be, and it may be longer.

Q. Was this conversation that you had with Bennett in reference to the instruments in the presence of Miss Galler or after she had left? A. While she was there.

Q. And that subject of the instruments was brought up by Bennett? A. Yes.

Q. Was there any heated argument between Bennett and yourself on this occasion? A. There was.

Q. When did this heated argument start? At the conclusion of the Galler girl's testimony or after she had left? A. At the conclusion of her testimony.

Q. Did she take any part in that argument? A. No, I don't recall that she did.

Q. After she had once told her story, she subsided? A. As far as I remember, yes.

Q. Did Bennett on this occasion have anything to say about a camera that he wanted? A. I don't recall it.

Q. Merely about the instruments on this occasion? A. Yes, sir.

Q. And then after this conference you went down

with Mrs. Harris to her home in Glen Ridge and you had dinner there? A. Yes, sir.

Q. And it was on this occasion that she suggested to you the advisibility, when going around to the quarters of the female employees, to have a housekeeper, or superintendent of nurses, or a nurse along? A. We discussed the institution in general and the peculiarities and predicaments of a superintendent of an institution, or a doctor in his office, that he might be placed in.

Q. As a matter of practice, when you are receiving people in your office, is the door left open or closed? A. It is left open.

Q. In other words, when an employee comes in your office entrance door, it is generally left open? A. Yes.

Q. That is your practice? A. Yes.

Q. And the office door is kept closed only when you are not in the office? A. No; if we have some conference going on, or some consultations going on, and we don't care to have the people in the outer office hear about it, it is closed.

Q. But ordinarily it is open? A. Ordinarily it is open.

Q. At the conclusion of this hearing at Father Fitzpatrick's house, was there anything said about any further hearing, or anything more to be done about it, or was that the end? A. It was the end so far as I was concerned.

Q. Do you recall that Father Fitzpatrick testified something about having held the matter in abeyance. Did he so state? A. Not to me.

Q. Did he state that to anyone else? A. I didn't hear it.

Q. You say you saw Bennett the next morning? A. The next morning.

Q. Where did you have your conference with him? A. In his office—in the X-ray Department.

Q. Was there any argument between you and him at that time? A. I don't know whether it was necessarily an argument; we had some words, yes.

Q. What words did you have at that time? A. I asked him why he didn't report to me what he needed instead of going over my head.

Q. Anything else? A. No.

Q. Did you talk to him further with reference to the incident—the incident that had been discussed at Father Fitzpatrick's house? A. I didn't mention it.

Q. Why was that? A. I thought it was a closed incident as far as I was concerned; it was finished.

Q. You didn't mention it at all to him? A. No, sir.

Q. Did he say anything to you at all on this occasion about his resignation? A. No.

Q. That topic was never mentioned? A. No.

Q. Did you at any time after the conference at the Villa mention Miss Galler to Mr. Bennett? A. A. No, sir.

Q. How soon after this conversation which took place in Mr. Bennett's laboratory on the Monday morning, did you bring the instruments and supplies to him? A. I don't know the exact time, whether it was that morning or the afternoon or the next day.

Q. Was anything said by Bennett on this occasion on Monday with reference to the camera? A. No, sir.

Q. It was not mentioned? A. No, sir.

Q. Was any reference made at all to Father Fitzpatrick? A. Nothing more than the reference I

made when I said he went over my head to Father Fitzpatrick when he wanted things.

Q. When Bennett returned from St. Louis and you showed him this letter, Exhibit R-7, what did you say to him? A. I sent for him—I telephoned for him—and when he came into my office I pulled this thing out of my pocket and I said to him, "What the hell do you mean by this?" I said, "Are you trying to blackmail me?" He stood there and he smiled. He said, "You know what it is for." I said, "That's all I have to say." And I put it in my pocket.

Q. Why didn't you request his resignation at that time? A. I wanted to consult counsel.

Q. Why did you want to consult counsel? A. Because I considered that letter a distinctly blackmailing scheme.

Q. And it was at that time that you did consult counsel? A. The next day.

Q. You consulted with Mr. Bailey and Mr. McCarter? A. Mr. Bailey.

Q. How soon after that did you consult with Mr. McCarter? A. I don't know; I think it was the next day or so.

Q. But you didn't on that occasion demand the resignation of Bennett. Is that right? A. Not on that day, no, sir, and I didn't on the day after on the advice of counsel.

Q. What was there about that letter that made you feel that it was necessary to consult counsel? A. Why, the demand for money.

Q. Why would the mere fact of a demand for money make you feel that it was necessary for you to consult counsel if you didn't owe him any money? A. It specified a certain date that he was to have it. I wanted action right away. I wanted

action immediately. I knew the man's peculiarities.

Q. Did you demand his resignation? A. No, on the advice of counsel.

Q. Counsel advises you not to demand his resignation? A. At that time.

Q. Why? A. I don't know.

Q. They didn't assign any reason? A. No, sir.

Q. Did you show this letter to anyone else but counsel? A. I did; I showed it the same day I received it.

Q. To whom? A. Mrs. Harris.

Q. Did you show it to anyother member of the Sanatorium Committee? A. No.

Q. Was it before or after you showed the letter to Mrs. Harris that you consulted counsel? A. After.

Q. Referring to the conference that you had with Supervisor Reed and Freeholder Dodd, will you tell us what happened on that occasion? A. It was on a Monday, I think; I am pretty sure it was December 3rd or 4th—December 3rd—Mr. Reed telephoned me after 1:00 o'clock in the afternoon asking whether I could come down to his house immediately, by 1:30.

Q. I want to get the date straight, if I can. It was the week preceding December 3rd, not December 3rd, just to keep our records straight. The charges were dated December 4th. A. It was the week prior to that.

Q. It would be some date in November. I want to get the dates right, if I can. A. That would be November 26th.

Q. Yes, Monday, November 26th. Is that right? A. It was a Monday.

Q. It could not have been Monday, December 3rd? A. What is the date of the charges?

Q. December 4th, and you wrote a letter on December 3rd asking for a prompt trial of the charges. I show you a letter dated December 1st and ask you if your conferences with Supervisor Reed and Freeholder Dodd did not precede the writing of that letter? A. Yes.

Mr. Vanderbilt: I offer it in evidence.

(The same is received in evidence and marked Exhibit C-10.)

Q. And the conference was on the Monday preceding? A. I don't recall whether it was the Monday preceding or not, but it was on a Monday.

Q. It was the Monday before that letter was written. A. It was a Monday before that letter was written.

Q. That letter was written on a Saturday? A. It was December 1st.

Q. Will you check it up on your calendar? A. On Saturday, yes.

Q. The conference with Supervisor Reed and Freeholder Dodd was the preceding Monday, wasn't it, Doctor? A. I think it was; I can't say absolutely; I know it was a Monday.

Q. Some Monday preceding the writing of this letter? A. Yes.

Q. Yes. Will you tell us what took place at this conference? A. As nearly as I can recall correctly, Mr. Reed telephoned me after 1:00 o'clock and asked me whether I could be at his house by 1:30 and I said, "No, it is almost 1:30 now." He said, "All right, 2:00 o'clock." I said, "2:00 will be better." I said, "Who will be there?" He

said, "Mr. Dodd." So I got in my car and drove down and Mr. Reed and I were alone there for some time and Mr. Dodd arrived.

Q. During the time that the Supervisor and you were alone there was no discussion of this thing? A. Not a word.

Q. Then Freeholder Dodd came in? A. Then Freeholder Dodd came in and we sat down and Mr. Reed said, "Now, Doctor, there have been some very serious charges made against you and I want to talk it over with you." I said, "May I know what they are and who made them?" He said, "I am not at liberty to give them." And then, as I recall, he reached in his pocket and pulled out a slip of paper and he said, "I have enumerated these charges under two headings:" No. 1 was conduct unbecoming a County employee, and the other was conduct unbecoming a doctor or physician. Under No. 1 he enumerated several items, and then, if I recall Mr. Dodd said, "Doctor, it might be well before we go into this for me to explain why I am here—my presence here." And he told me that he had been delegated as a representative of the Board of Freeholders at a conference I think that morning. And then Mr. Reed started to enumerate the items under No. 1. If I recall, I don't know just when, whether it was before he enumerated these items or whether it was after he enumerated the items, but he said—that is, Mr. Reed said—he said, "Doctor, it seems to me the weight of evidence is so preponderant against you there is only one alternative." And Mr. Dodd said, "Let's go into it a little more in detail."

Q. You say that statement was made by Supervisor Reed or by Freeholder Dodd? A. By Mr. Reed.

Q. You are positive of that? A. Yes, sir.

Q. Will you give us his exact words as nearly as you can recall? A. As nearly as I can recall, because I went outside and wrote it down, he said, "Doctor, it seems to me that the weight of evidence is so preponderant against you there is only one alternative." That is as near as I can recall it. And then we enumerated the specifications under No. 1, and Mr. Dodd said, "Well, Mr. Supervisor, you have told us more here than you did this morning at the conference." And then we went into each one of the items and discussed them in some detail; not much, but some. Then Mr. Dodd, I think, said, "Well, now, Mr. Supervisor, here the doctor has categorically denied all of these charges. I think he should be given some consideration."

Q. What did the Supervisor say to that? A. He said, "I think so, too." And Mr. Dodd then said—I interrupted then. I said, "I won't say anything until I consult counsel; until I advise with counsel." Mr. Dodd said, "That's right, I think he ought to be given an opportunity to confer with counsel."

Q. What did the Supervisor say to that? A. He said, "I think so."

Q. You say that the phrase was used, that there only was one alternative. Do you say that was the exact language used? A. As I recall it.

Q. Was there anything said to you, Doctor, about the purpose of this meeting? A. No.

Q. Did Mr. Dodd explain that to you? A. There was some talking—some discussion going on—but I don't recall exactly what it was. I think as soon as we got in there we got right down to business.

Q. Didn't Mr. Dodd say why the conference had

been called? A. He explained why he was there; that he had been delegated to represent the Board of Freeholders, and the purpose was to discuss with me—his reason there was to discuss with me these charges—these so-called charges.

Q. How was the matter left at the end of the conference? A. I called Mr. Bailey on the telephone and went right down from Mr. Reed's to his office.

Q. You had called up Mr. Bailey from Mr. Reed's house? A. Yes, sir.

Q. You said yesterday there was a reference to some other case up at Soho. What was the connection of that case with this case? A. Why, that case, I think—I don't remember just now how it was brought in. It was not discussed at all; it was mentioned that a hearing was conducted with Dr. Pringle in the Soho case. There were no details; nothing but the discussion—and whether I wanted this to go on to a hearing, and then Mr. Dodd—

Q. Who was it asked you if you wanted to go to a hearing? A. I think it was the Supervisor.

Q. Was it the Supervisor? A. I think so.

Q. Can't you be sure of that? Who was it referred to the Soho case? Mr. Dodd or Mr. Reed? A. Mr. Dood.

Q. Who was it asked you if you wanted to go on to a hearing? A. It wasn't in those exact words. "Do you want it to go on to a hearing?" No, it wasn't in those exact words.

Q. Go on and give us the exact words. A. It was the Supervisor—Mr. Reed—said something about this would have to go on to a hearing. What it was, I don't recall. I wasn't paying attention to the hearing.

Q. What do you mean by that, that you weren't paying attention to the hearing? A. I didn't care whether we had a hearing or not.

Q. Did you tell them so on that occasion? A. No.

Q. You didn't say a word? A. No.

Q. Did you say a word all the way through the conference? A. Very little.

Q. What did you say throughout the conference? A. As these items under his group No. 1 were gone into slightly I denied them absolutely.

Q. You denied them? A. Yes, and I admitted some.

Q. You admitted some and denied the others? A. I did.

Q. But the final arrangement was that you should call up counsel about it? A. That was my own arrangement.

Q. That was concurred in by all present? A. Yes.

Q. And subsequently to that consultation with counsel you wrote the letter dated December 1st to the Superintendent? A. After I had consulted counsel.

Q. That was subsequent to this conference. A. That was my position.

Q. On this occasion that you testified about yesterday, relating to the operation in May, 1925, to Henrietta Rose—she had been a patient, you say, when she had become sick in the Spring of 1925, under the charge of Dr. Bennett? A. She was treated as a patient employee.

Q. Under the charge of Dr. Bennett? A. Several other doctors had seen her.

Q. What other doctors had seen her? A. I don't know positively.

Q. When she finally became confined to her room in the Spring of 1925, under whose charge was she? A. The doctor that was making the rounds that day went up to see her, I think, every day.

Q. You don't know which one it was? A. I don't recall which one it was.

Q. When did you first see her with respect to this illness? A. The exact date I can't remember.

Q. As near as you remember. A. Probably I saw her the latter part of April; the last week in April or the first week in May.

Q. Prior to that had her condition been reported to you by any of the doctors? A. Yes.

Q. Which doctor? A. Dr. Bennett.

Q. Do you know whether Dr. Bennett had examined her? A. I do not.

Q. Didn't he report to you on that? A. He reported that she was running a slight temperature and that she was not feeling well and her general condition—the information I got usually about my sick employees comes from my Superintendent of Nurses who sees them every day.

Q. From whom did your information respecting Miss Rose come? A. From Miss Camblass.

Q. Who was she? A. She was the Acting Superintendent of Nurses.

Q. And she was the one who in the last week of April or in the first week of May spoke to you with reference to Miss Rose? A. Oh, I knew she was sick.

Q. But I mean with respect to going and seeing her by reason of her sickness. A. No, she reported to me her condition daily.

Q. Did you examine Miss Rose before the operation? A. No, sir.

Q. You did not? A. No, sir.

Q. Do you know whether Dr. Bennett? A. I can't say that he did.

Q. How was it determined to call in Dr. James Spencer Brown in the matter? A. From the history she gave me when I saw her.

Q. From the history Miss Rose gave you when you saw her with the nurse, Miss Camblass? A. Yes.

Q. What history did she give you? A. That she was running a slight temperature; that she was coughing; that she had lost a lot of weight; that she had abdominal pain; and that her menstrual period had started and had not stopped.

Q. Was any record kept of her statement? A. That she gave me?

Q. Yes. A. No, we don't keep a record of patient employees until they are admitted.

Q. How long after this interview with Miss Rose in the presence of Miss Camblass did you consult Dr. Brown? A. I think it was about the first of May.

Q. Did Dr. Brown come up to the Sanatorium? A. He came up to the hospital to see her, yes, sir.

Q. Were you there when he visited her? A. I was.

Q. Will you tell us what took place then? A. Dr. Brown visited her and I think he—I know he did—he questioned her, and then he said to the nurse who was present, "Will you get me a pair of gloves and I will examine her." The nurse got him the pair of gloves and he made a vaginal examination. I don't know what he said to her; I think he said, "Don't worry. You will be all right." And we went downstairs. On the way down he said to me, "Doctor, if this girl keeps on bleeding you call me in a few days and let me

know; then we will see what we can do."

Q. Then he said something about sending her to the Mountain Side Hospital? A. Yes, he said it may be necessary to take her down to the Mountain Side to curet her.

Q. When did you see the girl again? A. Probably within a few days; during the week.

Q. When did you next communicate with Dr. Brown? A. On the 7th of May.

Q. May 7th? A. Yes, sir.

Q. How many times had you seen Miss Rose in the intervening period? A. You mean during that week?

Q. Yes. A. I don't think over once.

Q. Did you take up the matter with the hospital staff at all? A. I did not.

Q. Did you consult at all with Dr. Bennett with respect to it? A. I may have talked to him about it, yes.

Q. Do you recall when or what the conference was about? A. No.

Q. Was Dr. Bennett present at the time on May 1st when Dr. J. Spencer brown made the examination? A. No, sir.

Q. This was a rather unusual case, Doctor, wasn't it? A. No.

Q. No? A. No.

Q. Do you have many of these operations at the Mountain Sanatorium? A. No.

Q. Then it was an unusual case. A. No, an endometritis is not an unusual case. A woman bleeding excessively is not an unusual case, no.

Q. This bleeding continued right up to May 7th and May 8th? A. As far as I know.

Q. Was there any further examination made

after May 1st by anybody? A. Not that I know of.

Q. That is, prior to the operation on May 8th, was there any examination made by Dr. Brown? A. Only on his first visit.

Q. I mean from May 1st to May 8th, another examination was made? A. No.

Q. Was there another examination made before the operation? A. Only on May 1st.

Q. No, on May 8th. A. No.

Q. The first that Dr. Brown saw her on May 8th was after she had been etherized, was it? A. Yes.

Q. He didn't see her from May 1st until the time she was under ether? A. Until she was under ether.

Q. Had you examined her in the meantime? A. No, sir.

Q. Had you asked Dr. Bennett to examine her? A. I suppose he did it—

Q. Did you ask him? A. No.

Q. Had he reported to you the result of any examination? A. No.

Q. Was the operation of May 8th had without any further examination than the examination made by Dr. Brown on May 1st? A. As far as I know.

Q. Had you had any reports from any of the nurses on her condition in the period from May 1st to May 8th? A. Yes.

Q. From whom did you obtain those reports? A. From the acting Superintendent of Nurses—from Miss Camblass.

Q. Were those reports in writing? A. No.

Q. There was no record of those reports at all

because the patient was not admitted until May 7th? A. No.

Q. Who determined on May 7th to admit the patient? A. Why, I did.

Q. Why? A. Because Dr. Brown was—I called Dr. Brown the day before and he said, "Send her over to the operation room and Hubbard and I will be up there today or tomorrow and we will do a curettage."

Q. You called Dr. Brown on May 6th? A. No, on May 7th.

Q. The day she was admitted? A. Yes.

Q. Why did you determine on May 7th to admit her as a patient? A. I knew Dr. Brown and Dr. Hubbard were coming up that day or the next day to curet her.

Q. Without any preceding further examination? A. Why, that is up to them; that's up to the surgeon.

Q. If the flowing had stopped in the meantime would you still have curetted the girl without any further examination? A. No, unless the surgeon deemed it advisable.

Q. What was the case here? Had the flowing stopped or hadn't it? A. No, not to my knowledge.

Q. Do you know whether it had or not? A. Only what the Acting Superintendent of Nurses had told me.

Q. And she told you that it had not ceased? A. It had not.

Q. Did she say anything to you with respect to the flow or the nature of the discharge? A. No.

Q. And no further examination of any kind was made. A. Not to my knowledge.

Q. Did Dr. Bennett make any further reports to you with reference to her case prior to the oper-

ation? A. Nothing more than the general discussion. He told me that he did not think she was getting any better.

Q. Did he say whether or not he had examined her? A. I think he told me he had gone over her chest, I don't recall; I can't recall definitely. It was two years ago; I can't recall definitely.

Q. So far as you know, Dr. Bennett never made a vaginal examination. A. Not to my knowledge, no.

Q. Why wasn't this case put up to the medical staff, Doctor? A. It hadn't come to the medical staff. She had not been admitted until the day preceding the operation. We don't bring every case to the staff.

Q. Was this what you call an emergent operation? A. Yes and no. Here was a girl that was continually bleeding and something had to be done to stop it; now, you can say that is an emergency, if you want to. Here was a girl that was continually bleeding, and palliative treatment might have been continued longer, but she had tuberculosis and she could not undergo the strain of the loss of blood.

Q. For how long had this bleeding continued? A. Over a week, to my knowledge.

Q. That in itself could not have been abnormal, could it? A. Well, yes and no. An excessive flow for a week would certainly be abnormal.

Q. Was this an excessive flow? A. I don't know, only what she told me.

Q. On the admission of the patient you had Mrs. Englebert take her history according to the regular hospital routine? A. Yes, sir.

Q. Mrs. Englebert is a nurse of experience? A. I presume so.

Q. How long has she been at the hospital? A. Several years; I don't know exactly how long.

Q. Has her work been satisfactory? A. Yes.

Q. She is a graduate? A. She is a graduate nurse.

Q. Capable of taking a statement from a patient? A. I think so.

Q. Has her record been accurate? A. As far as I have been able to determine.

Q. You have never found any inaccuracies? A. Some, yes; everybody has to be corrected.

Q. What inaccuracies have you found in her? A. Difference of dates; difference of times; inaccuracies of statements given by patients which later, when she was told about, she would correct.

Q. Then she is not an efficient nurse. A. Yes, I say she is efficient. Everybody makes mistakes when it comes to taking statements and writing down histories, and so forth.

Q. How many histories did she have to write, can you tell us, on May 7th, 1925? A. I don't know.

Q. On the average, how many statements come along in one day? A. Well, our admissions are thirty or thirty-five a month, but she has plenty of other work to do besides that. She is busy all day.

Q. This is one of her most important duties, taking statements and keeping the records. A. Keeping the records.

Q. Who was the doctor that determined that the operation should take place at the hospital rather than at Mountain Side? A. Dr. Brown.

Q. Why did he determine that, do you know? A. On account of the expense that would be involved if the girl were taken to Mountain Side.

Q. When was that determination made? A. The day I called him; May 7th.

Q. Did you discuss the matter with him? A. Yes.

Q. What was that conversation between the doctor and you over the telephone? A. Over the telephone.

Q. What was the conversation? A. I called Dr. Brown on the telephone. I said, "Dr. Brown, this girl up here has not stopped bleeding." And in his language he said, "Well, Hubbard and I will be up tomorrow." He said today or tomorrow. I said, "You don't want to take her down to the Mountain Side?" He said, "No, it will cost too much money. We can do it up there. You have an operating room. Hubbard and I will be up today or tomorrow." And he hung up.

Q. Have any other operations of this kind been performed at the Essex Mountain Sanatorium? A. Not since I have been there.

Q. And since? A. No.

Q. These cases before and since have been sent away? A. I think yes. In several instances the uterus was curetted. I know in one or two instances specifically we had a child born at the Sanatorium and the mother sent to a hospital afterwards. I know another one had a miscarriage shortly before she was admitted and it was necessary for us to send her out to a general hospital.

Q. These have all been sent out to other hospitals? A. These were patients.

Q. So was Miss Rose a patient after she had been admitted. A. A patient employee, but she was an employee first.

Q. Previously a patient and again admitted.

And as a re-admitted patient she could have been sent out. A. Yes.

Q. Why wasn't she sent out? A. Anything we can do to help our employees I think we should do. It was too great an expense.

Q. Were all the other patients that were sent out—did they all have money? A. No.

Q. Why wasn't she sent out? A. Because there were complications that existed that we knew of definitely in the other cases. One following a child birth and one following miscarriage. And it is not proper for us to have post-operative cases on account of the exposure and the danger is great of catching pneumonia following an anesthetic. This was a simple operation. It is done by internes at the hospitals every day of the week.

Q. This case could have been sent out like other cases. A. No, because there were complications in the other cases that did not exist in this case.

Q. How did you know there were complications? A. We knew it.

Q. From what? A. From the history of the patient.

Q. You knew you had the complication of tuberculosis here, didn't you? A. I knew that, yes.

Q. Were you present throughout the examination on May 1st by Dr. Brown? A. Yes.

Q. Were you present throughout the operation on May 8th? A. I think I was, certainly.

Q. Where was the patient etherized? A. I can't recall definitely; it was three years ago. I don't know whether it was outside of the operating room —the patient was not etherized.

Q. What was administered to the patient? A. Gas.

Q. And you don't recall where that was adminis-

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tered? A. I can't recall positively. I think it was outside.

Q. What instruments were used by Dr. Brown at the operation? A. I don't know.

Q. Didn't you observe the operation? A. I observed the operation. I didn't follow the instruments that were used at each step. I didn't follow the operation and I didn't know what instruments the doctor used.

Q. How long did the operation take? A. I don't know that; a few minutes.

Q. Were there any scraping or matter removed? A. No, in curetting anything inside the womb there would certainly be material removed.

Q. I asked you whether there was any material removed. A. During the irrigation I saw some blood clots, yes.

Q. About how large were the blood clots? A. I don't know; they were coming out with the flow of the water in and out—a saline solution.

Q. What was the largest? A. About the size of a quarter.

Q. Were there many of these blood clots? A. No.

Q. About how many would you say? A. I don't know; the saline solution was flowing in and out; what was washed out I don't know.

Q. Aside from these blood clots, were there any scraping or refuse? A. I didn't see any.

Q. You were there throughout the operation. A. I was in the operating room throughout the operation, yes.

Q. You observed the operation? A. Yes, not necessarily the field of operation; I was in the operating room.

Q. I mean by that, if there had been any other

refuse besides these blod clots, you would have seen them. A. I probably would have seen them.

Q. You surely would have seen them. A. I certainly would.

Q. How was this case diagnosed before the operation? A. Before the operation?

Q. Yes. A. It wasn't diagnosed before the operation—a positive diagnosis—only a tentative diagnosis.

Q. What was it stated after the operation to be? A. An endometritis.

Q. Anything about a tumor? A. After the operation?

Q. Yes. A. No.

Q. Before the operation? A. To me? Nothing about a tumor to me.

Q. Did Dr. Brown say anything to the patient about this being a tumor? A. Not in my presence.

Q. Then where did Mrs. Englebert get the information which she says she obtained from Miss Rose? A. I suppose she got it from her.

Q. Did you say anything to Miss Rose about her having a tumor? A. No.

Q. Did Dr. Brown say anything to her about her having a tumor? A. I don't recall it.

Q. And you were there all the time that Dr. Brown was there? A I was.

Q. Before the operation did you tell Dr. Bennett what this case was? A. I did not.

Q. After the operation did you tell him what it was? A. I did.

Q. How long after the operation? A. I don't know whether it was that day or the next day; everybody in the Institution knew what was going on.

Q. But what did you tell Dr. Bennett was the

nature of the operation? A. I told him that it was an endometritis.

Q. Anything else? A. No.

Q. Did you say anything about a uterine tumor? A. No.

Q. Did you say anything about a tumor pelvis or pelvis tumor? A. No.

Q. You didn't tell him that? A. No, sir.

Q. When did you first see this page 4 of the record of the operation that has been put in evidence? A. Let me see the last page. Probably not until after this summary was made out, because I saw the summary of every patient.

Q. The summary is page 14? A. Page 14.

Q. The time that this summary was filled out was at the time of the discharge of the patient, about May 14th? A. No, these summaries are filled out on discharge.

Q. About how long after May 14th would this summary be filled out? A. It depends on how much work the typist who does these cases has. It may have been a few days; it may have been a week.

Q. But you saw the papers within a week? A. It may have been less and it may have been more.

Q. About how much more than a week? A. I don't know.

Q. It would not run over ten days at the most, would it, Doctor? A. Every case is completed and filed away before our monthly committee meeting. Very often the doctors write out the summaries in longhand and the typist files them away and when she has time she completes the chart, and at the committee meeting every discharge and admission is completed because I must make a report to my committee and I have to have a report ready.

Q. Sooner or later you say each chart is completed, including page 4? A. Yes.

Q. Did you notice two lines at the bottom of page 4? A. I didn't take particular notice of them.

Q. Did you discuss with Dr. Bennett at all the references there about pelvis tumor or uterine tumor? A. After the final diagnosis was made, yes.

Q. When did you first discuss that with Dr. Bennett? A. The final diagnosis?

Q. No, what appears there. A. Oh, I don't know.

Q. When you first saw the page, was it in its present condition with those four words with lines drawn through them? A. I can't recall that; this is Dr. Bennett's page. I have nothing to do with it.

Q. Dr. Bennett was not at the operation, was he? A. No, sir.

Q. Why wasn't he at the operation? The patient was in his charge. A. I suppose he had other work to do.

Q. Did you ask him to attend the operation? A. They all have that privilege.

Q. But you didn't ask him to attend? A. I think that was on a Friday, and if I am not mistaken, Dr. Bennett was probably at the clinic in Newark taking care of my Friday clinic in Newark.

Q. And if it was on a Friday, why wasn't Dr. Bennett there? A. I don't know; I can't answer for him.

Q. Was he advised of the operation? A. Yes.

Q. You spoke of this being a granular endometritis. What is meant by that? A. As I understand it—I am not a surgeon, but as I understand

it, it is the most common type of endometritis.

Q. Is that an acute or chronic endometritis? A. As I say, I am not a surgeon. It is the most common type of endometritis.

Q. Is it acute or chronic? A. It may be either.

Q. What is the granular? A. It is the newer term for endometritis. I am not a surgeon. I have not been doing gynecology or obstetrics in ten years.

Q. With respect to the staff meetings, how many times in 1928 have you attended meetings down at the X-ray laboratory on Thursday mornings? A. I can't say how many times.

Q. About how many times? A. I haven't any idea; usually that is my busiest time of day.

Q. The number of those meetings you have attended have been relatively few. A. No, I wouldn't say relative few. I have attended as many as I possibly could.

Q. Have you attended most of them? A. I wouldn't split the difference with you.

Q. You have heard the testimony of Dr. Lauterborn and Dr. Bennett? A. Yes, sir.

Q. Is their testimony correct?

Mr. McCarter: I object to that as immaterial and improper. You can't ask one witness whether the testimony of another witness is correct or not.

Mr. Vanderbilt: Mr. McCarter asked whether the testimony of one witness had a shred of truth in it and covered the whole testimony in one question.

Mr. McCarter: That was the accusation against Dr. Harman.

Mr. Vanderbilt: It certainly seems to me

that that testimony is proper when the doctor is unable to tell us how many of these X-ray meetings he attended during 1928.

The Witness: They were not X-ray meetings; meetings of the staff.

Q. Meetings of the staff in the X-ray room.

Mr. McCarter: But I don't think it is right to ask him whether the testimony of A and B is right in that respect.

The Supervisor: I think the Doctor might answer that question.

A. I can't vouch for their testimony.

Q. How many times have you attended these meetings down the X-ray room in 1928? A. I say I don't know. I knew they were taking place and I had many other things to do. They were being held, I know that, and I am pretty sure they were held regularly and as often as I thought necessary I called the full staff to my office whenever I had instructions to give, and when I didn't have time, I called my first assistant, Dr. Bennett, and gave him the instructions and he called the staff meeting and passed them on.

Q. What was the maximum number that attended the staff meetings? A. Five or six—six with the Superintendent.

Q. You mean you would call Dr. Bennett instead of having all of them in at once? A. Yes.

Q. How many staff meetings have you had in your office in 1928? A. I don't know.

Q. One, ten, twenty, fifty? A. Probably a dozen or so.

Q. With reference to the year 1927, how often

did you attend these meetings down the X-ray Department? A. I don't know that; I can't remember that.

Q. But relatively about the same proportion as 1928? A. No, more often.

Q. About how many staff meetings were there in your office in 1927? A. I don't know that.

Q. As near as you can tell. A. More than there were this year.

Q. Do I understand you to say that in 1926 the staff meetings were held daily? A. Not exactly daily, no, but quite frequently.

Q. And that they were discontinued at the request of Dr. Lauterborn? A. He was the one that made the request, yes, sir.

Q. Who were the others? A. Dr. Conklin was one. He was there, I think, in 1925.

Q. Any others? A. It was generally discussed, yes. I think they all took a part in the discussion as to whether or not it was advisable to keep on taking up time on cases coming in and going out when we obviously knew what they were all about, because there was nothing interesting about them; they were perfectly simple.

Q. Why couldn't those cases have been discussed in the afternoon? A. The doctors were busy.

Q. All afternoon? A. Not necessarily so, but I didn't see any value in taking up a doctor's time or anyone else's time in going over a lot of cases where it is obvious what is wrong with them. If there is nothing interesting about it, if there is nothing new, why waste the time? If there is anything unusual, yes.

Q. With reference to this time, that Miss Henrietta Rose and her father had a conference with

you in the reception room, how long was she there? A. Fifteen or twenty minutes.

Q. She was in a very sick condition at the time? A. She was ill; she was sick, yes.

Q. Was this writing of a paper suggested while she was in the reception room with her father or did that arise afterward? A. Both.

Q. What was said in the reception room while you and she and her father were present with respect to the writing of the paper? A. Towards the end, I think it was, her father said to me, he said, "Henrietta has been accused of a lot of things around here which she is not guilty of, which she has never done, and she has never been given a chance to defend herself. She has never been given a chance to say anything. This fellow Bennett wants me to take her out of here so he can get a statement from her, or get something from her." And then, I think I am right, she said, "Pop, I want to make that statement to Dr. Harman."

Q. Did you write it out while Mr. Rose was still there in the reception room? A. No.

Q. When did you write it out? A. After four-thirty.

Q. What time did he leave about? A. I don't know.

Q. Then I understood you to say, Doctor, that after you made it out down in your office— A. Yes.

Q. You took it to where she had gone back to her bed and asked her to sign it in the presence of another patient. A. I said, "Henrietta, here is the statement. Can you sign it?" I said, "I will read it to you or you can read it and sign it and I will get it."

Q. Did you say something on direct-examination

about asking her to sign it in the presence of another patient? A. I don't recall what I said in my direct-examination.

Q. Did you say you wanted her to sign it in the presence of another patient? A. There was another patient in the room.

Q. Why did you say on direct-examination, "I want you to sign it in the presence of the other patient"? A. I inferred that the other patient was in the room.

Q. And you said she was too weak? A. She said she was too weak and too tired.

Q. Why was it, Doctor, that there was no contemporaneous record kept of this operation of May 8th? A. What do you mean by contemporaneous record?

Q. I mean any kind of record made by anyone who knows anything about it. Either by one of the attending nurses or by one of the attending physicians. A. On page 13, which is the bedside notes, there is a record which states, "Patient admitted 10:00 A. M., May 7, 1925. Soapsuds enema. Prepared for operation. 7:00 P. M., quiet day. Pain in right abdomen during afternoon. Apparently slept well. 11:00 A. M. next morning, soapsuds enema, satisfactory results. 11:30, taken to operating room, 12:00 Noon, returned from operating room. Pulse 89. Conscious. Comfortable. A quiet afternoon. 4:30. Voided aseptically dressed. Slight bloody discharge. Voided at 8:40 P. M. Slight bloody discharge. Slept well. Voided at 6:30 A. M. Very slight bloody discharge."

Q. That is everything but the operation. A. It it not supposed to be on here.

Q. I am not asking you that. I am asking you

why no record was kept of the operation. Those were all preparations for and treatment afterward.

Mr. McCarter: He is talking about the operating room.

A. They are there.

Q. May we have them? A. Yes.

Q. Now, will you refer to the operating room record? A. These are the reports of all dressings, operations and records that take place on patients —that took place in 1925.

Q. Will you refer to the record of this operation of May 8th? A. It is not here.

Q. Where is it? A. I don't know.

Q. Who makes out those records? A. The operating room nurse.

Q. That is Miss Camblass in this case? A. Miss Camblass.

Q. She was the acting superintendent? A. Yes, sir.

Q. When did she leave? A. July 28, 1926.

Q. Did she resign or was she discharged? A. She resigned.

Q. What, in the regular course, would appear on that card of the type you are now referring to, Doctor? A. Well, here is an example. "April 22, 1925, hit head on wall, laceration, went into head dressed, cotton and collodion applied; tincture of iodine and alcohol applied."

Q. Will you read what relates to an operation? A. That card is missing.

Q. I say to an operation. Not this particular operation, but any operation. A. What do you mean? I don't understand what you mean.

Q. That is one you read and it looks like someone bumped his head. I want you to refer to one that

relates to an operation. That does not sound to me like an operation. A. I don't know. I would have to go through this whole year. I might say that after Mrs. Harman assumed the superintendency of the Institution, a book of this form was kept, but prior to that, there was no book at all kept, nothing but these loose-leaf cards that were distributed all over the place.

Q. When was it Mrs. Harman became superintendent of nurses? A. May 18, 1925. And this book has been kept and is still being kept up to date of all operations and treatments and it is very complete.

Q. Can you give us a sample from those 1925 cards of the Institution which are made in the case of any operation? A. Here is an abdominal wound. Dr. Conklin cleansed the wounds, and so forth, and so on, and the different dates.

Q. Those are made by the nurses? A. Yes, by the nurses.

Q. When was it first discovered that the card on the operation of May 8, 1925, when Miss Rose was operated, was missing? A. After these charges were made.

Q. Had you seen it at any time prior to that? A. No, sir.

Q. Was there any record of the operation in that black covered book you have referred to? A. No, sir; this begins June 9, 1925.

Q. Immediately after Mrs. Harman became Superintendent of Nurses? A. Yes, sir.

Q. So there is no record at all of the operation made contemporaneously with it? A. Not that I can find. These cards; I got them out of the storeroom. I took them out of the boxes where they had been put away in the storeroom. Mrs. Har-

man and Mrs. Donovan and I went down there after these charges were made. There were some from 1927 and some from 1923 in the same boxes. They were all mixed up. Somebody had been in those boxes.

Q. Doctor, do you ever go over to your office at night? A. Yes.

Q. Did you, back in 1925 and 1926, go over to the office at night? A. I have ever since I have been there.

Q. And at various hours, seven o'clock, eight o'clock, nine o'clock and ten o'clock, and maybe eleven? A. Maybe at any time.

Q. Can you see in that room at night without lights in the room being lit? Can you see your way around the room without the lights being lit? A. You can't see, no.

Q. I mean, is there any light comes in from the outside when the lights are out? A. When the street lights are on.

Q. How far is the light from the window? A. Forty or fifty feet.

Q. Is that an arc light? A. No, it is an ordinary road lamp with a frosted light in it.

Q. One of those heavy lights that they use for traffic? A. Not as large as that.

Q. And that sheds light in your office? A. Yes.

Q. Just that one light, 40 or fifty feet away? A. Yes.

Q. How long is that kept lighted? A. That depends on the fireman. Sometimes he turns them out late and sometimes early. They are supposed to be turned out at ten o'clock.

Q. If there is a bright moon, does that shed any light in your office? A. I never took any notice of it.

Q. You testified on direct-examination that you had reprimanded Mr. Bennett for being too friendly with Miss Galloway. Do you recall when that was? A. I don't recall the date. but I recall the incident that Mrs. Harman complained to me that she had gone down to the X-ray room and saw Miss Galloway and Bennett in there. She complained to me and I told him he had better see his patients during the day when a nurse was present.

Q. Bennett was a man who was very much interested in his X-ray work, wasn't he? A. I think so.

Q. There is no doubt of that, is there? A. No, I don't think there is any doubt of it.

Q. And as Dr. Ill has said, efficient as a technician? A. A very good technician.

Q. Have you the card of Mrs. Lysick? A. No.

Q. Do you know why she was discharged, Doctor?

Mr. McCarter: I object to that as immaterial. The object of her being called was to recite something she was not permitted to talk about.

Mr. Vanderbilt: I won't press it.

Redirect-examination by Mr. McCarter:

Q. Who was this other patient that was in Henrietta's room when you brought in this writing? A. Miss Elizabeth Oros.

Q. Is she living or dead? A. She is dead.

Q. When did she die? A. Since this hearing has been going on.

Q. Since the hearing has been going on or since the charges have been made? A. Since the hear-

ing has been going on. I think it is within the last week or so.

Q. Can you recall whether it was at the interview at Father Fitz' house that the Galler girl claimed that you had succeeded in your efforts to have intercourse with her? A. I think she said I did.

Recross-examination by Mr. Vanderbilt:

Q. Now, Dr. Harman, I asked you twice this morning to tell us what Miss Galler had said and you never told us in response to my questions that she had charged that you had actually had intercourse with her. Why didn't you tell us that? A. She didn't use the word "intercourse." She said that I had forced her.

By the Supervisor:

Q. Just one question, Doctor. Referring to the time that you were at my home with Freeholder Dodd, did you say in your testimony yesterday that I said, "Doctor, would you want to stay at the Institution with the animus of the Board of Freeholders against you, even though you were acquitted?" A. No, I said Mr. Dodd said that.

Adjourned to ten o'clock A. M., Monday, December 24, 1928.

NINTH DAY.

Monday, December 24, 1928.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

The Supervisor: Now, Mr. Bailey, can't we settle the matter of Dr. Brown's testimony and how it is to be taken?

Mr. Bailey: I have a letter from Dr. Brown. I am perfectly willing to go down; he is sixty-six years old—

The Supervisor: I think it is only a matter of deciding when we should go down. I am willing to go down at the earliest possible moment, except that I do not wish to go on Christmas Day.

Mr. Bailey: I think we can leave Wednesday night.

The Supervisor: Very well.

William M. Bennett—Recalled—Direct.

WILLIAM F. BENNETT recalled in behalf of the respondent.

Direct-examination by Mr. Bailey:

Q. Dr. Bennett, do you remember going on a fishing trip with Dr. Harman in August, 1926? A. Yes, I do.

Q. Do you know about when that was? A. To my recollection it was about the 11th or 12th of August; I believe the 11th of August.

Q. Are you certain as to the date? A. Well, a few incidents that happened that day I recall it from.

Q. What were those incidents? A. Well, it was the first time that we had gone fishing and when we were going out the nurse called to us; we left very early in the morning. There were patients leaving the pavilion without permission. When we returned that evening or the next morning we were told that one of the patients on the first floor had called a taxi and had left the Institution in a taxi dressed only in a bathrobe. It was a bed patient that had left in his bathrobe.

Q. Do you recall what time you got home that day? A. Not before seven P. M.

Q. Do you recall what you did that evening? A. Well, we—I think we cleaned the fish after we got home, put them in the refrigerator, and then ate our supper.

Q. Then what did you do? A. Then I went to bed, and after that—about eight or nine o'clock.

Q. Do you know what Dr. Harman did? A. I presume he went to bed—

Mr. Vanderbilt: I object to what he presumes.

Witness: He said he was going to bed.

William M. Bennett—Recalled—Cross.

Q. Do you know whether any unusual fish were caught that day? A. Yes, he caught the largest fish caught on the boat that day.

Cross-examination by Mr. Vanderbilt:

Q. From what did you check up to refresh your recollection that it was August 11th? A. Just the incidents that happened—

Q. Those incidents might just as well have happened on August 12th. A. They might, but they happen to have happened on August 11th.

Q. Tell us how you know? A. The time that the patient left the Institution was August 11th.

Q. How do you know that? A. I wouldn't recall except that I remember the patient left about that time I looked at the chart and found it was August 11th.

Q. When did you check up on it? A. Possibly a week or so ago.

Q. What was the name of that patient? A. James—I think his first name is James—at least his last name is McTiernan.

MARY A. FOX, sworn in behalf of the respondent.

Direct-examination by Mr. Bailey:

Q. Miss Fox, you are employed at the Essex Mountain Sanatorium? A. Yes.

Q. How long have you been there? A. Over five years.

Q. What particular work are you doing now? A. I am in what they call the lamp room.

Q. How long have you been there? A. Three years and four months.

Q. Are you in charge of the work? A. Under the direction of Dr. Harman.

Q. Which doctor is in charge of the work? A. Dr. Harman.

Q. Directly? A. Yes.

Q. In the course of that treatment is it necessary to expose the persons of patients? A. Yes.

Q. Male and female? A. Yes.

Q. Have you ever had any complaints made to you about unnecessary exposure of the person of any female patient? A. No.

Q. Or any male patients? A. No.

Q. Have you heard of any complaints made to anybody else about any unnecessary exposure about the person of the patients? A. No.

Q. Does Dr. Harman come in to see the patients? A. Yes.

Q. Did you ever see a booklet like that (handing booklet to witness)? A. Yes, I did.

Q. Have you a copy of one? A. I did have one, yes.

Q. Do you know what that booklet is? A. It is the directions under which the treatment is given for helio—

Q. For sun treatment? A. Yes, for sun treatment.

Q. Do you know who prepared the booklet? A. No, I do not.

Q. Will you look at it? A. This book was not used; I read the book but it was not used.

Q. Were some of the treatments used? A. The treatments are like that, but we didn't use that book.

Q. What do you mean, the treatments contained

in this book were used but you did not use the book? A. I have a larger book and I have another one, but those pamphlets, I knew that they were there but they were not distributed.

Q. You had one? A. Yes, I got it indirectly.

Q. Do you know what the booklet shows? A. What do you mean?

Mr. Bailey: I will prove it in another way. That's all. Cross examine.

Cross-examination by Mr. Vanderbilt:

Q. As I understand it, in this sun lamp treatment the patient is exposed to the waist? A. To the waist and below the hips.

Q. So that the light will flood the chest and abdomen? A. Yes.

Q. And you had charge of the giving of these treatments? A. Yes.

Q. Have you had special training in that work? A. No.

Q. You have been doing it for how long? A. Two years and four months.

Q. Does that call for any special type of skill? A. Well, in the course of our work we are shown before we take a position in any part of the hospital—

Q. In other words, before you start to do the work you are instructed by the doctor or superintendent of nurses how to do the work. A. Yes.

Q. Is there anything peculiar about this work that could not be done by an ordinary graduate nurse? A. No.

Mr. Bailey: I object. That is calling for a conclusion on her part as to medical re-

sults which she is not qualified to testify to. It is obvious that that is so. How is she to tell the physiological or other reactions under the sun treatment? She has said she had no special training.

Q. Is it necessary for the doctor to come in while the patients are being given these treatments? A. Yes.

Q. Why? A. The doctor directs the work and it is necessary for him to see the patients.

Q. What directions does he give you for this treatment? A. Do you mean any special treatments? A. Yes, in any case. A. Well, for instance a treatment given for an abdominal condition, the skin becomes tanned. You know that is one of the things, and after a certain number of treatments, whatever is prescribed for, may improve under it.

Q. Why is it necessary that the doctor be in in the course of those treatments? A. Well, whatever treatments the doctor has prescribed he usually follows up his treatments by observation.

Q. Is it necessary that the doctor come in while these patients are being treated?

Mr. Bailey: I object to that; that is for the doctor to determine whether it is necessary for him to be in or not.

Mr. Vanderbilt: I will withdraw the question.

Q. What would the doctor do when he came while you were giving the course of treatments? A. Why, he would look at the patient.

Q. Is that all? A. That is all.

Redirect-examination by Mr. Vanderbilt:

Q. That's all that was necessary, wasn't it; to look at the patient? A. Yes, surely.

Q. Did he make any examination after dressings were removed, or anything like that? A. Occasionally. There were six treatments after the patient was treated with the treatment prescribed it was necessary to call the Doctor's attention to the patient.

By Mr. Vanderbilt:

Q. What were those? A. I have in mind a certain case where a woman had a very badly ulcerated leg. I had to call in Dr. Harman. He prescribed certain dressings and washings for the patient.

Q. In the usual run of cases was it necessary to call the doctor in?

Mr. Bailey: I object to that. I think it is a most foolish line of examination to ask this witness from the Doctor's viewpoint what was necessary. The most common treatment today for T. B. patient is the sun lamp treatment. To ask this witness whether the Doctor should come into the room or should not come in is ridiculous.

A. No.

By Mr. Bailey:

Q. It wasn't necessary to call him in, you say? A. No.

Q. Do you know, as a matter of fact, whether in some cases they discontinued the treatment of some patients after it had started? A. Oh, yes.

Q. And that was done under anybody's direc-

tion? A. Under the Doctor's direction, when he found it would be beneficial.

MARION DONOVAN, sworn in behalf of the respondent.

Direct-examination by Mr. Bailey:

Q. Mrs. Donovan, you are at the Essex Mountain Sanatorium? A. Yes, sir.

Q. In what capacity? A. Superintendent of nurses.

Q. How long have you been such? A. Three years.

Q. Have you ever had any other experience in institutional work? A. I have been doing institutional work for some twenty years.

Q. Can you name some of the institutions with which you have been connected? A. University of California Hospital, San Francisco; the Knox Hospital, Rockland, Maine; Belfast Hospital, Belfast, Maine; I was with the British Government during the war in British Hospitals, and in French Hospitals, and in American Hospitals.

Q. Did you have any complaints made to you by female patients for indecent or improper exposure of their persons in connection with any treatments? A. No.

Q. Do you know whether or not the doctors had staff meetings from time to time? A. Yes.

Q. Did you attend them? A. As a rule.

Q. Did you attend these meetings in the X-ray room on Thursday mornings? A. Usually.

Q. What was the reason for your attendance? A. Well, I asked if I could go to those meetings so

that I might—if relatives came to me and wanted to know about patients, I don't give them the medical diagnosis, but I know a little of their condition if I have heard the discussion among the doctors as to what they have been able to find.

Q. You were here when Dr. Harman testified, I believe. A. Yes.

Q. Do you recall his saying that you and Mrs. Harman and himself searched in the cellar, I think he said, or the basement, for the records of the operating room in connection with the Henrietta Rose operation? A. Yes.

Q. And you were there? A. Yes, twice, I think I was there; we went through all the records.

Q. Did you help go through the records? A. Yes, sir.

Q. And the records was missing? A. Yes.

Q. There were a lot of records produced here the other day; were those the records that you found? A. Yes, sir.

Q. In your opinion, based on your past experience, what would you say as to the efficiency in the administration of that institution?

Mr. Vanderbilt: I object to that as immaterial and irrelevant and on the further ground that the witness is not qualified.

The Supervisor: I think that is a fair objection and I will sustain it.

Mr. Bailey: This woman has had twenty years experience in institutional work and I think she is well qualified to say whether the institution is run efficiently or not.

Mr. Vanderbilt: I object also on the ground that it is self-serving. You couldn't expect the witness to say that the institu-

tions of which she was the superintendent of nurses was not well conducted.

Mr. Bailey: Her department may be.

The Supervisor: I will overrule it.

Mr. Bailey: Exception.

Cross-examination by Mr. Vanderbilt:

Q. How long have you been Superintendent of Nurses? A. Three years.

Q. At any staff meetings that were held every week down at the X-ray room, how long have you been attending them? A. All the time I have been there except occasionally when I couldn't get in or couldn't get away from my work.

Q. Did Dr. Harman attend all those meetings in the X-ray room? A. Not all of them.

Q. In 1928, how many did he attend? A. I don't know that he was in very often, but there were other meetings held.

Q. I am referring to the Thursday morning meetings in the X-ray room. A. I don't know how often he came in, but he used to come in quite often—for part of them he stayed anyway. If there was anything special to take up, he came in.

Q. Did he come in and stay for part of all the meetings in 1928? A. No.

Q. What proportion didn't he come to at all as near as you can tell? A. Oh, maybe half of them.

Q. And what proportion did he come to and stay to? A. Well, he usually stayed part of them if there is anything special to take up he comes in.

Q. What proportion did he stay throughout the entire meetings? A. I don't remember as he did stay the entire meetings.

Q. In 1927 was there about the same situation

with respect to the X-ray meetings as in 1928? A. Yes.

Q. You said there were other meetings in addition to the X-ray meetings. How often were the meetings held other than these weekly meetings down the X-ray room? A. Why, I should say they were every month, or about that.

Q. Where were they held? A. In Dr. Harman's office.

Q. He presided at those meetings? A. Yes.

Q. What was taken up at those meetings? A. Anything of interest throughout the institution which should be brought to the—

Q. Specific cases? A. Sometimes, yes, and discipline in the institution.

Q. And institutional routine and management? A. Yes.

Q. In Dr. Harman's absence, who presided at those meetings down at the X-ray room? A. Dr. Bennett.

Q. Were any records kept of those meetings? A. Not that I know of.

Q. Were these meetings which were held in Dr. Harman's office about the same in 1927 as in 1928? A. Why, I should think so, maybe a few more.

Q. About how many all told in 1927? A. I really haven't any idea.

ELIZA ALICE DEDMAN, sworn in behalf of respondent.

Direct-examination by Mr. Bailey:

Q. Miss Dedman, you are at the Sanatorium? A. Yes, sir.

Q. And you have been there for about how long? A. Nearly six years.

Q. What position have you had? A. Well, I filled different positions.

Q. Were you ever night supervisor? A. Yes, for nearly twelve months.

Q. Do you recall in what period you were night supervisor? A. Between the end of 1925 and the beginning of 1926.

Q. Did you know the Galloway girl? A. Yes, I knew her.

Q. Will you tell us what you know about her in connection with your duties? A. She behaved with an abandonment and disregard of social proprieties, consistently.

Q. What do you mean by that? A. She would hang about the staircases at night with a man named Doyle between the hours—

Mr. Vanderbilt: I object. There is no proper foundation laid for anything like this on cross-examination.

Mr. Bailey: Oh, yes, there was. I asked Miss Galloway whether she was not in the hallway with the man Doyle and reprimanded for it.

Witness: Frequently I found her—

The Supervisor: I think that is a proper question.

A. (Continuing) I would come upon them with a flashlight and really, they weren't behaving as they should. It might be the conduct of people in a cabaret or road house, but you wouldn't expect people behaving like that in a public institution.

Q. Where would you find them? A. On dark

staircases; I would come upon them unexpectedly.

Q. They had a flashlight? A. No, I had the flashlight.

Q. Was there any other way in which they were visible other than by the aid of your flashlight? A. No.

Q. Did you ever call it to her attention? A. Yes, I told her if Dr. Harman found her there he would be extremely angry. And then I went promptly to the telephone and communicated with Dr. Harman and he ordered them away immediately and told me he would deal with the case the next day.

Q. Did you ever have occasion to go to her room at night? A. Yes, I used to go to her room at night because she was one of those sort of people I couldn't trust. Occasionally I would find her in her room and she would be very rude and very defiant and slam the door in my face. Frequently I wouldn't find her in her room at all.

Q. What time was that? A. Two o'clock or later. I couldn't follow her up all the time; I had my patients to look after. Those were my primary duties. But I felt in a measure responsible for the order and well being of the Institution.

Q. Did you know the Galler girl? A. I may have known her by sight, but I don't remember her.

Cross-examination by Mr. Vanderbilt:

Q. You never spoke to the Galler girl at all? A. I don't remember speaking to Galler.

Q. What is your position now? A. I am a graduate nurse.

Q. What was your position back in 1925 or 1926? A. I was night supervisor.

Q. Were you night supervisor when the Galler girl was there? A. I may have been if she was there during the time Galloway was there.

Q. Miss Galler was there from April, 1926, to August, 1926. A. I didn't know much about her.

Q. What were your duties at that time? A. To look after the patients.

Q. When were you night supervisor? A. From September, 1925, until the middle of 1926.

Q. Exactly when did you stop being night supervisor? A. I can't recall exactly. It is a year or two ago.

Q. You say the middle of 1926. If I could get it exactly— A. I think it was June; yes, it was June, 1926.

Q. So you were night supervisor during April and May and part of June, at any rate, while Miss Galler was telephone operator. You knew her, of course. You knew who she was. A. The name is familiar, yes.

Q. She never did anything that would cause you any extra responsibility, did she? A. I don't recall Galler at all.

Q. Then it is pretty clear that she was in her room at two o'clock in the morning and that she was not defiant— A. I do know that the other was—

Q. So far as you recall Galler, you don't know of any way in which her conduct was out of the way. A. No, I don't recall.

Mr. Bailey: Miss Dedman was night supervisor up to and including June 26, 1926.

Q. So, so far as you are concerned, Miss Galler behaved herself. She made no dent upon you, in

other words, as a bad girl. A. I had no dealings with her to my knowledge.

Q. So that during that period of your night supervisorship Miss Galler does not stand out in your gallery of bad girls. A. No, it was Bertie Galloway that is the one I had the trouble with.

Q. Where were the stairways that she used to be hanging around when you would catch her with the flashlight? A. In the administration building.

Q. What part of the administration building? A. Any part; usually in the middle of the staircase.

Q. On the first floor or second floor? A. No, there were four flights.

Q. And there was a bend on each flight as you were going up she was on that bend either on the first or second, or third floor? It made no difference to her which floor it was on. A. No, they were absorbed in each other.

Q. How many times did you stumble over her with the flashlight? A. Altogether I think it would be six or seven times.

Q. About what time of the evening would it be? A. About midnight, between eleven and twelve o'clock.

Q. Did you report this on each occasion? A. Not each occasion, no. I treated the girl with leniency and consideration at first. I thought she was just a little empty-headed flapper.

Q. That got her by the first time. But what about the second time? A. I was a little more indignant, I suppose, the second time.

Q. Did that get your indignation to the point where you reported it? A. Yes, I spoke to Mrs. Donovan.

Q. I suppose from that second time on your in-

dignation was rising increasingly? A. It certainly was.

Q. And you reported it each time since that with a little more emphasis? A. I don't know; you simply have to bear with that type.

Q. You would report it every time you found them with a flashlight? A. Not every time. I reported it to Mrs. Donovan and I gave her good talkings to myself.

Q. You reported her once and then stopped reporting her? A. Those girls are built that way. If you go on reporting them they still go on the same way. I reported her once to Dr. Harman. Indignantly I went to the telephone and the Doctor ordered them away—Doyle and the girl.

Q. Dr. Harman ordered them away? A. Away from where they were.

Q. Not out of the institution? A. No.

Q. Can't you fix the date when you telephoned Dr. Harman? A. I can't fix the date.

Q. About when? A. I can't fix the date.

Q. Tell us about when it was—about what month it was? A. I can't tell exactly. It is a long time; it is two or three years ago.

Q. How long did she stay around the Institution after you reported her to Dr. Harman? A. I think my reports to Dr. Harman subdued her somewhat and Doyle.

Q. How long did she stay about the Institution in a subdued state? A. I don't recall whether she stood around there at all. I never took extreme measures unless I was absolutely compelled to do so.

Q. How long did this period of good behavior continue after your reporting her to Dr. Harman? A. I think she used to go out less.

Q. I mean how long did she behave around the Institution after you reported her to Dr. Harman? A. I don't remember that I saw her around the staircase at all after that.

Q. Did she show any sign of good behavior after you reported her to Mrs. Donovan? A. I don't know that she did very much.

Q. Her influence was not as great as that of Dr. Harman's. A. Naturally, being head of the Institution he carried more weight.

Q. So far as you can recall, you saw her on the staircases about some six or seven times and on the second time to Mrs. Donovan. A. It might be the third occasion or the fourth; I couldn't say exactly.

Q. Depending on the degree of leniency, you felt. Was it the last occasion you reported her to Dr. Harman? A. Yes, she was on one of the seats behaving rudely and I asked them to go away and not behave like that and I heard a lot of cheek from her.

Q. Just exactly what was it she did? I am a little bit uncertain. Will you give us more of a description of it? A. She was falling about and laughing and giggling and mawing and pawing each other.

Q. Laughing and giggling was done even before we had flappers. What do you mean by pawing? A. Pawing and mawing each other. She wasn't behaving the way a respectable little girl should behave, I considered, in a public institution.

Q. We have to admit that the Victorian days are over. What kind of mawing and pawing was going on? A. They weren't behaving as they should. It might be permissible in a cabaret or a roadhouse, but not in a sick institution. People

should comport themselves properly, and that is not what she did do. If she had I should not have reported it to Dr. Harman. I treated her too leniently.

Q. You wouldn't call this anything more than the newspapers call petting. A. It didn't seem to me they should behave in such a manner. I should have used the buckle strap.

Q. There was nothing about her conduct on any of these occasions, however, that one could characterize as immoral. A. I saw no immorality, but her staying out late at nights. She was out at all hours, and if I reproved her I had a volume of impudence from her. I spoke to Dr. Harman about the nocturnal wanderings. The door after that was closed at twelve o'clock unless they had special permission to be out until one o'clock. And that rule is now in force.

Q. When did that rule go in force? A. I think it was just about that time.

Q. Then Miss Galloway really deserves some credit for having brought that about. A. It is characters like that that bring about such things. If they behave that way we have to take drastic measures.

Q. Was she the first character you were acquainted with at the Institution that displayed this propensity for petting, as we call it? A. They were more or less well behaved girls. She gave me more trouble than all the others put together. Nobody was more pleased than I was when she took her departure. I said, "Thank God." Very fervently.

Q. I take it that there was no feeling of loss on your part at all that she left the Institution. A. No, I think it was a gain to the Institution.

Q. And no loss to you. A. No, it was a gain to

me, I assure you, because it lessened my responsibilities.

Q. But with all her impudence, you never saw her do anything immoral. A. I saw no immorality, Mr. Vanderbilt; not there.

Q. About how old was Miss Galloway at this time? A. I don't know; she might have been twenty and she might have been thirty. Girls get themselves up so now-a-days, you can make an old hen look like a chicken.

Q. But you never came across her in any other places except on these bends in the stairways. A. No.

Q. Are these bends in the stairways equipped with seats or settees? A. No.

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Q. You have to sit on the steps? A. Yes, you have to sit on the steps or by the windows.

Q. When it was reported to Dr. Harman that Miss Galloway was out two o'clock nights? On how many occasions did you find her out two o'clock nights? A. On several occasions I went to her room and found her absent at two o'clock. Dr. Harman was making an official visit one night—I take it it was official—and I mentioned those nocturnal wanderings on the part of Miss Galloway and I thought it would be a very good suggestion to lock the doors at twelve o'clock and grant permission to remain out later on special leave on the part of the superintendent.

Q. And that rule was accordingly put into effect? A. That rule was put into effect.

Q. Was this conversation with Dr. Harman you are referring to now before or after you had reported to him the flashlight meetings with Miss

Galloway on the staircase? A. That I can't recall; I think it was afterwards.

Q. This conversation about the eleven o'clock— A. I think it was afterwards.

Q. And I understood you to say that there were also one or two other girls who had a habit of slipping out nights? A. No. Occasionally they would, but not consistently—not cheating.

Q. Do I understand that Miss Galloway stayed out every night? A. I wouldn't say every night, but very frequently. She was the sort of girl I distrusted; I couldn't place confidence in her at all.

Q. So you checked up on her every night? A. Yes, because I thought she needed watching.

Q. But you didn't check up on the other girls? A. Yes, they said goodnight to me as I went through the corridor, but in her case she was a tricky customer.

Q. Did you report the fact that she was out nights to Mrs. Donovan? A. No, there was no rule prohibiting staying out nights then.

Q. So it was perfectly all right. A. No, we assume that people are responsible and come to an institution, that they will keep reasonable hours. It is only when we find they are not behaving that we check up on them. I treated her with great leniency at first, but when I found she wasn't trustworthy I checked up on her. I had my patients primarily to look after and I had to take care of them and the well-being of the institution, and this girl was a great worry to me and I was glad she cleared out.

Redirect-examination by Mr. Bailey:

Q. How many floors are there in the institution? A. Four floors.

Q. So there is one flight from the main floor to the second? A. There were four flights of stairs.

Q. On which flight would you find Galloway and Doyle? A. On the second or third; I wouldn't take notice. It was a very dark spot.

Q. But you would find them occasionally on the second floor? A. Yes.

Q. Do you know why Doyle should have been in the administration building at that hour? A. He had absolutely no business to be there.

EDMUND EASTWOOD, sworn in behalf of the Respondent.

Direct-examination by Mr. Bailey:

Q. What is your position now, Doctor? A. Why, chief of the medical and surgical divisions for the Western half of New York for the United states Veterans Bureau.

Q. Where are you located? A. Buffalo, New York.

Q. Were you ever connected with the Essex Mountain Sanatorium? A. Yes, sir.

Q. When? A. I went there on November 1st or 3rd, 1926.

Q. How long were you there? A. I was there until November 1st, 1928.

Q. You knew Dr. Harman quite well? A. Yes, sir.

Q. Did you leave of your own accord? A. Yes.

Q. What experience have you had with institutional work? A. Well, of course, during the war I was doing hospital work in the army and then later, in 1919, I was Post Surgeon at Wilbur Wright Field at Dayton, Ohio. After 1921 I went with the United States Public Health Service; then I served at Fox Hill, Staten Island, from January 5, 1921, to March 20, 1922. Then I went with the Second District Office at New York that took in New York, New Jersey and Connecticut.

Q. With the United States Government? A. Yes, sir, Chief of the Medical and Surgical Division, and then I went into the hospital.

Q. That covered New York, New Jersey and Connecticut, and from August, 1922, to December 30, 1925, I was the Hospital Inspector for District 2.

Q. For the United States Government? A. For the United States Government.

Q. During that time did you have occasion to visit many hospitals? A. Well, I inspected all the government institutions, and those covered the three states I mentioned, and then also all contract institutions.

Q. What do you mean by contract institutions? A. The Government did not have sufficient facilities for hospitalizing beneficiaries and we had contracts with the Essex County Hospital at Overbrook, and at Morris Plains, down at Camden County, and the Paterson General and the Muhlenberg at Plainfield; also with the T. B. institutions at Dr. English's, the State Sanatorium, and the Essex Mountain Sanatorium; and it was the same way with New York and Connecticut.

Q. What are the duties of that inspection? A. To see whether the hospitals were class A, and

whether our beneficiaries were receiving proper attention and care.

Q. To see whether they were efficiently run, and so forth? A. Yes.

Q. During your experience at the Essex Mountain Sanatorium at Verona, would you say it was efficiently managed? A. Yes.

Q. Medically and otherwise? A. Yes, in every way.

Q. While you were there, did they have staff meetings? A. Yes, sir, they did have staff meetings.

Q. In what way would they be held and where? A. We had a general staff meeting every Thursday down at the X-ray department.

Q. What would be the purpose of that meeting? A. All cases that had been admitted during that past week, all X-rays were shown on those cases—all new cases, and then, in cases that any of the doctors on the staff had requested X-rays on, they were also shown at the general staff meetings, and there would be a discussion on the cases; and then, in addition to that, we had what I always conisdered was a staff meeting, every day.

Q. What was that? In what way? A. We would meet at half past eight, the entire staff, Dr. Bennett is the clinical director, or chief of staff, and we would visit, as an entire staff, every case in the hospital, and the whole staff would go along. At that time I had charge of the pavilions and I did the medical treatments there. In cases where I was dubious about either the progress or the treatment, I would take them up with Dr. Bennett and the other doctors would stand around also and discuss whether the case should be transferred back to the hospital; also cases where I felt

they might be getting ready for discharge making a vacancy for another person, that would be discussed. It would take from half past eight to half past ten every morning.

Q. Do you know whether or not that was under the supervision of Dr. Harman? A. Absolutely.

Q. Did you ever have occasion to take up, aside from these meetings, cases with Dr. Harman alone in the absence of the other doctors? A. Yes, sir.

Q. On many cases? A. Many cases.

Q. Do you know whether Dr. Harman was in close touch with the medical situation? A. I sometimes thought he knew more about my patients than I did myself.

Q. Have you ever received a communication from Mr. Bennett, the X-ray man at the institution? A. Yes.

Q. Where did you receive that communication? A. Buffalo, New York.

Q. When did you receive it? A. I think it was on my return from the sub-office at Syracuse, and I went there on the 5th and came—reported back to the Buffalo office for duty, I think, on the 12th of November. It was either there on my return, or I got it the next day.

Q. What was that communication?

By Mr. Vanderbilt:

Q. Have you got it? A. No.

By Mr. Bailey:

Q. Did you destroy it? A. No, it is in my file at Buffalo. I can send it to you, Mr. Vanderbilt.

Mr. Vanderbilt: If it is available, just mail it to the Supervisor.

Q. Are you certain you have it? A. I am quite sure—right after that I took an apartment up on Delaware Avenue and I am quite positive it is in the desk in the living room.

Mr. Bailey: Can we agree on this, Mr. Vanderbilt? I don't want to call the doctor again.

Witness: I might wire Dr. Woodworth up there and ask him to go up to the room and get it.

Mr. Bailey: I would like to get on the record, quietly, if necessary, just what the contents are, if he hasn't the letter—

By Mr. Vanderbilt:

Q. You are sure you have it? A. I wouldn't swear to it; I remember the letter because it came by air mail; it had been misdirected.

Mr. Vanderbilt: If he has a letter he will mail it to the supervisor. It might be marked as an exhibit now.

(The letter, when received, will be marked in evidence as Exhibit C-11).

Mr. Bailey: I assume he has the letter; if he hasn't it, we will know what the contents were.

Mr. Vanderbilt: I know he is safe.

By Mr. Bailey:

Q. Doctor, did you ever have occasion, in the course of your inspection trips or work with the Government to go to Perrysburg, New York, the T. B. institution? A. Yes.

Q. Do they give sun treatments there? A. I think it was first instituted there.

Q. Do they wear any clothes there in giving the treatment? A. As I recall it, just a loin cloth.

Q. Male and female patients? A. Yes, sir.

Q. Is that the customary way of giving sun treatments? A. Yes.

Q. Is that the recognized method of giving sun treatments today? A. It is the only way.

Q. While you were at the institution did you ever have occasion to go into the sun room? A. I have gone into the lamp room.

Q. I am talking about the Essex Mountain Sanatorium. A. I have gone into the lamp room.

Q. While patients were there? A. Yes.

Q. Female patients? A. Yes.

Q. For what purpose would you go in? A. To ascertain how the patient was getting along under the treatment that I had prescribed.

Q. The patients under your charge? A. The patients under my charge.

Q. Would it be necessary for you to go in to see the patients? A. Absolutely.

Q. Upon what ground? If you had told the nurse to expose the patient to a certain part of her body or down to her waist, or something like that, would it be necessary for you to go in and look at the pateint? A. Well, you see the way I would come into contact with them would be on my morning rounds, I would have a patient that might be complaining of some fistula that was getting worse, or ulcerations, and so forth, I couldn't stop right then and expose the patient before everybody else, and the best place I could see them was while he or she would be taking the lamp treatment, and I would say, "What time are you taking the lamp treatment?" and I would see the patient at that time.

Q. Do you know whether or not all patients re-

acted the same way to the lamp treatment? A. Oh, my, no.

Q. Is it true that a patient would often begin a sun treatment and then you would be obliged to discontinue it? A. Yes, sir.

Q. Can the person who is in the room, who is not a physician, determine that, or is it necessary for the physician to determine it? A. I think the physician would be the only one who would decide.

Q. Would you know which doctor objected to the continuance of the staff meetings up there because it was taking too much time? A. Mr. Lauterborn.

Cross-examination by Mr. Vanderbilt:

Q. Down in the X-ray room, I understand these meetings were held every Thursday morning? A. Yes, sir.

Q. At those X-ray meetings the thing which was discussed was cases of the various patients as they appeared from the plates and photographs, is that right? A. Yes.

Q. Who was present at these meetings? A Well, Dr. Bennett and Dr. Lauterborn and myself and Dr. Ivy—the entire medical staff.

Q. Would Harold Bennett, the radiologist be up there? A. Yes, he would be up there and show the pictures.

Q. Did Dr. Harman attend all of those meetings? A. Not all of them.

Q. How many of them in 1928 up to the time you left, about what proportion? A. I don't know, we might be running a series of pictures on a special case—that patient might be taking a sun or some special treatment—possibly during the week he

might have examined the case and he would want to see the picture on Thursday morning.

Q. You wouldn't come to these meetings regularly? A. Not every time.

Q. You say there were staff meetings every day when the doctors would make the rounds together as a staff. When were they discontinued? A. They were never discontinued; they were still going while I was there.

Q. In November, 1928? A. Yes, as I understand it, you mean the staff meetings we had every day in going around?

Q. Yes. A. Yes, they were still in effect.

Q. And all the doctors would go around as a group? A. Yes.

Q. Dr. Bennett, Dr. Lauterborn and Dr. Harman— A. No, not Dr. Harman, he made a general trip around the hospital and saw each patient at least every week, like most superintendents do.

Q. But the other doctors went around once every day as a group? A. As a group, yes.

Q. But Dr. Harman would not do that with the staff? A. We might meet him on the second floor or—

Q. But he wouldn't make the rounds? A. Not every day.

Q. You say this work was under the supervision of Dr. Harman, this business of going around from 8:30 to 10:30, but he didn't go around with you—you were just doing it by reason of his direction? A. Yes.

Q. Were there other staff meetings held in Dr. Harman's office? A. Yes, we have been down at the doctor's office in 1927 and in 1928—

Q. How many of those meetings would be held each year? A. I couldn't say off-hand.

Q. As near as you can tell. A. I couldn't even tell that because I used to get sore about having to go down there. You see, by the time we got through at half past ten in making the rounds, and then if we had another meeting in Dr. Harman's office, we would not have time to take care of the patients. We had to exeamine them and institute new treatments. The treatment of tuberculosis is more of an individual thing, as you have to take care of the patients. I used to get sore; I told the doctor I didn't like it very much.

Q. When did you first go to the institution? A. It was either the first or third of November, 1926.

Q. Did you know Harold Bennett? A. Not before I went there.

Q. I mean while you were there.. A. Yes.

Q. What have you to say of his work as a radiologist?

Mr. Bailey: I object to that. There was nothing brought out on direct-examination of that. It is not proper cross-examination.

The Supervisor: I will sustain the objection.

Redirect-examination by Mr. Bailey:

Q. In your opinion, Doctor, was it necessary for Dr. Harman to be present at every one of these meetings in the X-ray room or any other staff meet-meetings? A. No, I don't think so.

Q. Do you know whether he had Dr. Bennett call these meetings? A. He always understood, if one of us was not around for the rounds—you mean these Thursday meetings?

Q. Yes, or any other staff meetings. A. Yes, the

only thing that would excuse us would be illness.

Q. They were held under the direction of Dr. Harman? A. Yes.

Q. Do you know whether it was necessary for Dr. Harman to make daily rounds to see the patients? A. I have never seen it in any other institution.

Q. Do you think it was necessary here? A. No, sir.

PATRICK KANE, sworn in behalf of the Respondent.

Direct-examination by Mr. Bailey:

Q. Mr. Kane, are you employed at the Essex Mountain Sanatorium? A. Yes, sir.

Q. How long have you been there? A. Four or five years.

Q. What is your duty up there? A. Porter.

Q. As porter, do you have occasion to go into Dr. Harman's office? A. Yes, sir.

Q. At what time do you usually do that? A. In the morning.

Q. Every day? A. Every day.

Q. You clean the office? A. Yes, sir.

Q. I take it for granted you thoroughly clean the office? A. Yes, sir.

Q. Did you ever find any liquor of any kind, wine or whiskey or brandy, in Dr. Harman's office? A. Never did.

Q. Do you know Mr. Bennett? A. Yes, sir.

Q. Did you exer see him in his X-ray room? A. Mr. Bennett?

Q. Yes. A. Yes, sir.

Q. At night? A. Yes, sir.

Q. With anybody? A. Yes, sir.

Q. Any of the nurses? A. Yes, sir.

Q. What time of the night would it be? A. Well, about half past eight or nine o'clock.

Q. Ever any later? A. Well, it might be later.

Q. Have you ever seen Mr. Bennett do anything improper in the X-ray room with any nurse? A. Yes, sir.

Q. When? A. Afternoons when I would go in there.

Q. What would you see him do? A. He was having his arms around this nurse, kissing her.

Mr. Bailey: I don't want to drag in another name. I will ask him to give it for the benefit of the Supervisor and you and the record.

Mr. Vanderbilt: Let him write it out.

Q. Will you write out the name of the nurse? A. Yes, sir.

(The witness writes the name of the nurse as follows: Miss Cashin).

Q. Do you know whether she is still at the institution? A. No, sir.

Q. Did you ever have any conversations with Mr. Bennett about this incident and the nurse you saw there? A. Oh, yes.

Q. What was the conversation? A. She used to give me a carton of cigarettes every once in a while.

Q. Did she say why she gave you that? A. Not to tell anybody what I caught him and her do.

Q. Did Bennett ever have any conversation with you about it? A. Yes.

Q. What did he say? A. He used to give me a quarter or a half dollar not to say anything about it.

Q. How often did he used to give you the money? A. He used to give me the tip maybe once a week.

Q. On how many occasions would you say you saw this happen? A. Quite a few.

Q. What do you mean by quite a few? Two times? A. More than that.

Q. About how many times? A. Maybe three times a week.

Q. You would catch them three times a week? A. Yes, sir.

Q. Over how long a period of time? A. Well, quite a bit in the afternoon.

Q. I mean for a month or two months or how long did this continue? A. Quite a while.

Q. What do you mean by quite a while? A. Well, maybe four or five months.

Q. Was it always in the day time or at other times of day? A. Day time.

Q. Where in the X-ray room did it take place? A. Right in the X-ray room.

Cross-examination by Mr. Vanderbilt:

Q. And you were collecting your quarter every week for four or five months? A. Yes, sir.

Q. What day of the week did you collect on? A. He used to give it to me generally on Thursday or Friday afternoon.

Q. Where did you go to collect? A. He used to call me in.

Q. When did he start to give you the quarter or half dollar? A. When he got acquainted with me right.

Q. What do you mean by when he got acquainted with you right? A. He thought he could depend on me, I guess.

Q. What was it, a quarter or a half? A. Both.

Q. A quarter one week and a half the next? A. Well, sometimes.

Q. How did you happen to agree with him on that rate? A. I never agreed with him on that rate.

Q. How often did the nurse give you what you call a cartoon of cigarettes? A. She used to come around maybe once a month and give me a cartoon.

Q. What kind did she favor you with? A. Camels.

Q. Is that your favorite brand? A. Yes.

Q. How far did you have to walk to get them? A. In the X-ray room.

Q. How many of these cartons of Camels did she give you? A. Did she give me?

Q. Yes. A. Oh, I should judge three or four.

Q. Did you ever say anything about these successive incidents to Dr. Harman? A. No, sir.

Q. Why not?

Mr. Bailey: He was collecting cigarettes.

A. I was getting these cigarettes.

Q. And a quarter or a half? A. Yes, sir.

Q. Did it make any difference how many times a week you caught them as to whether it was a quarter or a half? A. No, sir.

Q. The rates were the same no matter how many times you caught them? A. Yes, sir.

Q. And what you say you saw was that Bennett had his arms around the nurse kissing her? A. Yes, sir.

Q. You observed this three or four times a week in the X-ray room over a period of four or five months? A. Yes, sir.

Q. Were the doors of the X-ray room locked? A. No, sir.

Q. Were the windows of the X-ray room so that anyone could look into that office on the ground floor? A. Yes, sir.

Q. How many windows were there in the room? A. Five.

Q. All on the ground floor? A. Yes, sir.

Q. How many doors were there in the room? A. Just two.

Q. Were they locked or unlocked? A. One was locked and one was open.

Q. One was always open? A. Yes.

Q. And that was the one from the corridor or the hall to the X-ray room? A. Yes, sir.

Q. Anyone else could have entered the same as you did? A. Yes, sir.

Q. But you were the only one, so far as you know who ever caught them kissing? A. Yes, sir.

Q. About what time would be the kissing time? A. I should judge about half-past two.

Q. And that is the time you always went in? A. Yes, sir.

Q. And you always found them at it? A. Yes, sir.

Q. It got to be a sort of regular daily ceremony for you to witness this kissing incident? A. Yes, sir.

Q. You never told anyone about it? A. No, sir.

Q. When did you first tell anyone about this? A. When?

Q. Yes. A. After this trouble started.

Q. How did you happen to do that? A. How?

Q. Yes. A. Why, I told Dr. Harman about it.

Q. How did you happen to do it? A. I just thought about it.

Q. That is the best answer you can make? A. Yes, sir.

Q. Did the quarter a week still keep up? A. No, sir.

Q. When did that stop? A. After I went against him.

Q. But the quarter continued until after you went against him, is that it? A. Yes, sir.

Q. What was the first day that you thought to tell Dr. Harman about it? A. About three weeks ago.

Q. And when was the last time you got your quarter or your half dollar? A. I couldn't remember.

Q. That made quite an impression on you not to get your quarter or half dollar? A. Yes, sir.

Q. Or, are you collecting from other people around the institution? A. No, sir.

Q. That is the only collection you make? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Then you should be able to remember when you made your last collection and when you got your last pack of cigarettes? A. I don't recall that.

Q. Did you tell Mr. Bennett that you decided to tell Dr. Harman about this, and that you didn't want the quarter or half any more? A. No, sir.

Q. How did Bennett find out that you had told Dr. Harman? A. I cannot say.

Q. Did he refuse to give you the quarter? A. I never asked him.

Q. You went in there just the same? A. Yes, sir.

Q. But the quarter stopped coming? A. Yes, sir.

Q. And that was the signal that something was wrong and he knew you had told Dr. Harman? A. I couldn't say.

Q. And this was the only collection you ever made around the institution? A. Yes, sir.

Q. Of any kind? A. Yes, sir.

Q. And you never reported it to Dr. Harman while it was going on? A. No, sir.

Q. And you never told Mrs. Donovan about it? A. No, sir.

Q. You never told anybody anything about it? A. No, sir.

Q. Not to a soul? A. No, sir.

Q. You kept it to yourself? A. Yes, sir.

Q. For a quarter and a box of cigarettes every week? A. Yes, sir.

Q. How often do you say you cleaned up the doctor's room? Every day? A. Yes, sir.

Q. What did you do down there? Go through his filing cabints? A. No, sir.

Q. Did you go through his desk? A. No, sir.

Q. You never opened his desk? A. No, sir.

Q. If you had known there was any liquor in there would you have opened it? A. No, sir.

Q. If you had found any liquor in there, what would you have done with it? A. Leave it there.

Q. You never drink, do you? A. I take a drink once in a while.

Q. How often?

Mr. Bailey: I object to that. That is not proper cross-examination.

Q. How often do you take a drink?

Mr. Bailey: I object to the question.

Mr. Vanderbilt: I want to show the character of this unusual witness. This is to test the credibility of the witness.

Mr. Bailey: His drinking capacity has nothing to do with his credibility.

The Supervisor: I will overrule the objection.

Mr. Bailey: Exception.

Q. How often do you take a drink? A. Maybe once a week.

Q. Where do you get it?

Mr. Bailey: I object to that.

A. In Newark.

Q. Do you ever bring any of it into the Sanatorium? A. No, sir.

Q. You never have brought any in? A. No, sir.

Q. Did you ever bring any of it near to the Sanatorium? A. No, sir.

Mr. Bailey: I object to that. Where is that proper cross-examination?

Mr. Vanderbilt: May I have Mr. Kane's employment card?

Mr. Bailey: We haven't it.

Mr. Vanderbilt: May I have it produced at the next hearing?

Mr. Bailey: He is still employed at the institution.

Mr. Vanderbilt: Yes, but I want to see the record card.

Mr. Bailey: We will bring it here.

Q. Have you ever been suspended while you were up there? A. No, sir.

Q. Where were you employed before you came to the Sanatorium?

Mr. Bailey: I object to that. I don't think that is proper cross-examination. I don't know and I don't care, but I don't think it is proper cross-examination.

The Supervisor: I will sustain the objection.

Q. Were you ever convicted of crime? A. No, sir.

Mr. Bailey: I object to that.

Q. You are sure of that? A. Yes, sir.

The Supervisor: I think that is a proper question.

Q. You are certain of that? A. What's that?

Q. You are certain of your answer to my last question? A. Yes, sir.

Q. Did you ever plead guilty to any criminal offense? A. Guilty?

Q. Or non vult. A. I was never in any trouble.

Q. You were never in any trouble? A. No, sir.

Redirect-examination by Mr. Bailey:

Q. What kind of glass is there in the windows of the X-ray room? Can you see out of the glass? A. No, you can't look out the glass.

Q. Is it frosted glass? A. Frosted glass.

Q. What kind of a door is it that goes into the X-ray room? A. It is a regular revolving door.

Q. On which side is the revolving door? A. On both sides.

Q. When you come from the hall into the first room, that Bennett has, is that what you call the X-ray room, or is there another room inside? A. There is another room on this side before you go into the X-ray room.

By Mr. Vanderbilt:

Q. You always could get into the X-ray room without the use of a key during the day time? A. Yes, sir.

HELEN OLIVER, sworn in behalf of the Respondent.

Direct-examination by Mr. Bailey:

Q. Where do you live? A. 130 Broad Street.

Q. Newark? A. Yes.

Q. Were you ever a patient at the Sanatorium? A. Yes.

Q. How long were you at the Sanatorium? A. I went there May 6th, 1924, and remained there until August 14, 1926.

Q. And you have been out ever since that time? A. No, I have been back for one year; I went back November 14 and stayed there until November 2d, that was in 1927, until November 2nd, 1928.

Q. You just left the institution as a patient? A. Just left, yes.

Q. As a patient, did you ever hear any complaints about the indecent or unnecessary exposure of female patients? A. Never.

Q. As a patient, did you ever have occasion to write any letter to a newspaper? A. Yes.

Q. Have you a copy of that? A. I think I have.

Q. May I see it? A. Yes—pardon me, I haven't it.

Q. You wrote a letter to what paper? A. The Newark Evening News.

Q. Do you know whether that letter was published? A. Yes, I can get a copy of it today.

Q. When was it published? A. I think it was January 3, 1928, between the 3rd and 4th. I cannot exactly recall the date.

Q. What was the letter? A letter of criticism? A. No.

Q. What was it? A. Strongly in favor of the Sanatorium.

Mr. Vanderbilt: I object to that. We have had enough newspaper publicity without submitting that.

Mr. Bailey: It is only to show the patient's view point in a letter written a year ago, when none of this was up, by a patient, showing the patient's attitude toward the efficiency and management of the institution. It goes along those lines for what it is worth.

The Supervisor: I realize it is immaterial, but I do not object to your putting in any of this testimony if you really want to put it in.

Mr. Bailey: Here is a patient who voluntarily came in a year ago and wrote a public letter concerning the institution. It has some bearing.

The Supervisor: I presume you can get others to testify to the same thing.

Mr. Bailey: Yes, but this woman came forward voluntarily.

Q. Did you take the sun treatment? A. Yes.

Q. And you stripped to your waist? A. Yes.

Q. Did you think that was improper at all? A. Nothing improper about it; it never seemed to me there was anything improper about it at all. We all enjoyed it. We all liked the sun treatment and enjoyed the sun treatment.

Cross-examination waived.

Mr. Bailey: That is all except for the testimony of Dr. Brown.

The Supervisor: Then I think the testimony of Dr. Brown is the next proceeding.

Mr. Vanderbilt: Yes, sir.

The Supervisor: Then we will adjourn to Pinehurst, North Carolina on Thursday morning, or at such time as we may arrive there.

TENTH DAY.

Thursday, January 3, 1929.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.
MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman.

Testimony taken at the home of Dr. James Spencer Brown at Pinehurst, North Carolina.

JAMES SPENCER BROWN, sworn in behalf of the Respondent.

Direct-examination by Mr. Bailey:

Q. Doctor, you are a practicing physician and surgeon? A. No, sir, I am a practicing surgeon.

Q. And have been for how long? A. Forty-three years.

Q. Are you connected with any institutions? A.

Yes, sir, I was attending surgeon and then surgeon-in-chief of the Mountainside Hospital for twenty odd years, and I am now surgeon emeritus of that institution; also consulting surgeon at several institutions, among which is the Essex County Sanatorium.

Q. What has been your medical education? A. Columbia College, College of Physicians and Surgeons; New York Hospital; University Hospital; and Guy's Hospital at London.

Q. You have been a surgeon for how long? A. Forty odd years.

Q. When were you connected with the Essex Mountain Sanatorium? A. About six years ago Mrs. Harris came to me and asked me if I would serve as chairman of a commission for the reorganization of that institution. I told her I would let her knew. I went up to examine the institution and found it in a most deplorable condition. It could not be classed in class E. I told her that I would serve as chairman of the commission to reorganize the institution, but that as soon as any political influence was thrown in I reserved the privilege of resigning.

Q. Are you still connected with it? A. Yes, sir. We have advanced that institution from class C or class E until it is in class A, through the efficient advice of a committee of which no higher medical men in the county can be mentioned than are the members of that committee.

Q. Were you ever chairman of the consulting staff? A. Chairman of the consulting staff?

Q. Yes. A. I am also a consulting surgeon to the institution.

Q. Weren't you president of the Board? A. President of the Advisory Board until last year.

Q. Do you recall an incident where Dr. Harman communicated with you— A. I would like to make a statement here in regard to this case. I want to ask a question—

The Supervisor: Just a monment. Do both counsel agree to this?

Mr. Bailey: As far as I am concerned he can go as far as he likes.

Mr. Vanderbilt: I think we ought to proceed in the proper way by question and answer.

Witness: This isn't a court of law. It is bound to take testimony in order to get at the bottom of this case.

Mr. Vanderbilt: I don't think, Doctor, that is the proper way to do it. Mr. Bailey is a counsellor and he knows how to bring out what he wants.

Witness: This is the point. I am accused of the most nefarious, base, cheapest crime that can be laid to any man in a backhanded way—

Mr. Vanderbilt: Mr. Supervisor, I don't think we can have it go on in this way.

Witness: I merely wish to make a statement, I want to ask a question, and that is, who is the instigator at the bottom of this investigation, because I am accused of a base crime and I do not intend to let it stay here. I am going to smoke it out and I propose to have the privilege in a court of law of suing the instigator that accuses me of this base crime. I propose to prove to you that the operation was done in a perfectly legitimate way to save human life. I don't

see why I should not be privileged to make a statement.

By the Supervisor:

Q. You have made it, haven't you? A. No, sir, I have not. For forty-three years I have held as high an ethical position in the profession as any man has held. Never a finger has been pointed at me, and today I am accused of a base crime, and therefore I want to ask you who is the instigator of this charge. Isn't that proper?

Mr. Vanderbilt: Are you addressing it to me, Doctor?

Witness: I am addressing it to the chairman.

The Supervisor: I don't think it is proper at this point in the proceedings.

Witness: I take exception.

Mr. Bailey: Here is the Doctor's position as I understand it: While the charges are against Dr. Harman, the charge against Dr. Harman is not that he performed this operation, but that he permitted an illegal operation to be performed on Henrietta Rose on May 18, 1925. It came out in the testimony given by Miss Houston that a curettment was performed and that a curettment meant an abortion and an abortion is a crime. She mentioned Dr. Brown as the surgeon who performed that operation. Dr. Brown feels he is entitled to know who made the charge so that he can get after them. He thinks his reputation has been attacked. While he is not named specifically in the charge his name has been brought out before the public and he reser-

ves his right to make someone smart for it.

Mr. Vanderbilt: I think that is another reason why we should confine ourselves to questions and answers.

The Supervisor: I think it is a perfectly proper thing for Dr. Brown to get at that matter, but I do not think it is right to make a statement at this time.

Witness: I take exception.

Mr. Bailey: I guess the Doctor wants an exception.

Witness: Yes, I want to take exception.

By Mr. Bailey:

Q. Do you remember some time about May, 1925 the curettment performed upon one Henrietta Rose at the Essex Mountain Sanatorium? A. Very well. Of course, I can't remember the exact date. These dates are taken from the record. About May 1st I saw Henrietta Rose.

Q. How did you come to see her? A. I was asked to see her by Dr. Harman as consulting surgeon of the Essex Mountain Sanatorium.

Q. Where did you see her? A. I saw her in bed in the ward.

Q. Did you make an examination of her? A. Yes, a digital examination.

Q. What do you mean by a digital examination? A. With my fingers.

Q. Did you use any instruments? A. No.

Q. What conclusion did you arrive at? A. That she had an endometritis or some form of endometritis, that caused her to bleed freely. She was flowing tremendously, and because she was advanced in pulmonary tuberculosis I advised conservative treatment for her and to let me know if

she did not get better. That was because I didn't want to give her an anesthetic at that time. A few days later I saw this patient again with Dr. Harman. She was very much exsanguinated; she had a high degree of anemia from the loss of blood and I told Dr. Harman that the only thing I saw that would be of service to her would be a proper curettage. She was taken to the operating room the next day, and in order that she should be given a proper anesthetic I brought my own anesthetist to the Sanatorium with me.

Q. Who was that? A. Dr. Hubbard. We had no facilities for giving gas oxygen at the Essex Mountain Sanatorium—we didn't have at that time.

Q. Why was it done at the Essex Mountain Sanatorium? A. For the simple reason that she had tuberculosis and tubercular cases were not admitted at the Mountainside.

Q. Whose decision was it that she should be operated on at the Essex Mountain Sanatorium? A. My decision.

Q. Go ahead. A. I curetted her. There was an immense lot of clots in the vagina. She had a hyperplasia of the endometrium; that is, it was highly organized and bleeds freely. She was curetted and the uterus packed with a little strip of gauze, which I told Dr. Harman or his assistant to remove in forty-eight hours. I called up the hospital in two or three days and they said she was all right and she got well and her life was prolonged. The only reason for performing the operation was to save the life of a woman well advanced in pulmonary tuberculosis.

Q. It was testified by Miss Houston that she was present at the operation, although she was not the

assisting nurse; that she saw an object three or four inches long taken from the uterus or vagina of Miss Henrietta Rose; and that she was told the next day by a Miss Camblass, who was the assisting nurse, that that was a fetus.

A. That's a lie. In the first place, the woman's uterus was not large enough to hold a three or four inch fetus. I had great difficulty in dilating the cervix in order to do a curettage.

Q. Could you tell from that woman's condition whether or not she was pregnant? A. Pregnancy never entered into it.

Q. Could you tell at that time whether she had recently been pregnant? A. Absolutely.

Q. Have you performed many curettages? A. Thousands of them.

Q. From your experience in that respect is it always possible to tell in performing a curettage whether or not a woman has been pregnant recently? A. Generally.

Q. Could you in this particular case have told whether or not she had been recently pregnant? A. I certainly could.

Q. Is there more than one kind of endometritis? A. There are several kinds of endometritis.

Q. What are they? A. It isn't necessary to enumerate; it is sufficient to say that this was a hyperplasia of the endometrium; that is, the endometrium was bleeding freely.

Q. Was this particular endometritis caused by pregnancy? A. No. In the first place, I don't believe that any assistant nurse would know a fetus if she saw it—

Mr. Vanderbilt: I move that that be stricken out.

A. (Continuing) Of the size that would come out at that time. It was a little bit of a uterus. No nurse in training could tell a fetus at that stage.

Q. Doctor, in your opinion, assuming that this patient had been bleeding for a period of a week or so, would an operation like a curettage have been proper? A. Absolutely; it is not desirable in a tubercular subject, but necessary in this case in order to save her life.

Q. Why was it necessary to save her life? A. She was losing blood faster than she was making it and she was tremendously anemic.

Q. At the conclusion of the operation did you order any pathological examination made? A. I don't think I did; I don't remember; but I don't think I would.

Q. Why not? A. It wasn't necessary; nothing would be gained by it. If I had suspected cancer or if I had found a tumor of the uterus, I would naturally do it, but in a case well advanced in tuberculosis and that had stopped bleeding as soon as the curettage was done, there was no reason to order it. I don't think any hospital litters up their laboratory with those simple curettages.

Q. Was it your duty as operating surgeon to say whether or not there should be a pathological examination? A. In our institution it rests with the surgeon to say whether or not there should be an examination.

Q. In this case you did not? A. No, I don't remember that I ordered an examination at all.

Q. In making your first examination, was it necessary to make an instrument examination? A. No.

Q. Your digital examination you thought was entirely proper? A. Yes, digital examination to de-

termine the size and shape of the uterus, and whether it was a case of tumor or pregnancy or what-not.

Q. Do you recall whether at the conclusion of the examination you directed that any entry was to be made in the hospital records? A. I don't think I did; I was merely a consultant. They were to put in the record whatever they saw fit.

Q. Was "endometritis" a proper entry? A. Absolutely.

Q. Did she have a tumor? A. No.

Q. Did she have a tumor in any form? A. No.

Q. Do you want to state anything further in connection with the operation? A. Absolutely nothing.

Cross-examination by Mr. Vanderbilt:

Q. Doctor, can you recall the date when you were first called in— A. (Interrupting) Absolutely not. I would have to depend on the record. I can't remember back three years. It says in the record May 1st. Q. What record are you quoting from? A. The hospital record.

Q. And that is a record that Dr. Harman— A. (Interrupting) Supplied me with them.

Q. When you went up there on May 1st you found Miss Rose in bed in the ward, is that correct? A. Yes, sir, I believe it was in the ward or in a private room. It doesn't make much difference, does it? She was in bed.

Q. I am not attaching much importance to that. At that time were you furnished with her previous history? A. Absolutely. I want to state that as a consulting surgeon to several institutions that no

reputable surgeon would see the case unless the history was complete.

Q. I show you page 3 of the case— A. (Interrupting) I can't recall that history, of course.

Q. I show you the record of Miss Rose's previous illness, which, so far as I know, is the only record which was made up until after May 7th, and ask you if that is the record which was shown to you. A. I can't testify to this record. My gracious sake, I can't remember it for three years.

Q. Those are the records of her first admission, Doctor, in 1922.

Mr. Bailey: I object to this, anyway. There was nothing brought out on direct about her previous record.

A. We had hard enough work forming these records so as to have some records. When we took charge of the Sanatorium there weren't any records. Where is the operative record?

Q. We will come to that. I am referring now to the record of the first admission of the patient in 1922. A. I don't know anything about it.

Q. But you say there was some record of the history of the case at the time you saw the patient first in 1925. A. It was given to me.

Q. Who was present, do you recall? A. Dr. Harman.

Q. Anybody else? A. I think his assistant, whoever he was. I went up there with the doctors. I usually go up with them all in a consultation. I can't remember the thing; it was so trivial. I have performed hundreds of operations since.

Q. When you went there on May 1st, you did give her a digital examination? A. Absolutely.

Q. Prior to that you had been shown the history of the case? A. I had been given the history of the case.

Q. By whom? A. By whatever doctor was present; I don't remember the doctor.

Q. And then you performed a digital operation? A. Absolutely. I can't remember whether I did a vaginal examination or whether I did a rectal examination. If she was a young woman, the probabilities are I would do a rectal examination, because she was a thin subject and I could well examine her that way, so I don't remember whether I did a rectal or vaginal examination, but I did nothing but a digital examination.

Q. So you have no recollection now whether this was a vaginal or rectal examination. A. No, all I can tell you is that is the case of a young woman it would be a rectal examination.

Q. That would be true in every case of a virgin, wouldn't it, Doctor? A. Absolutely.

Q. But you have no recollection in this case what it was? A. I have no recollection.

Q. As a result of this digital examination did you determine that there was a tumor? A. No, sir.

Q. Did you state anything either to the doctors present or the patient about either a pelvic tumor or a uterine tumor? A. I don't have any recollection of our talking about a tumor at all.

Q. You didn't find anything as a result of your examination which indicated a tumor to you? A. No.

Q. Now, will you tell us as specifically as you can what this examination showed as to the condition of the womb or uterus, or whatever it is? A. As far as I remember it showed a uterus a little

enlarged without any marked enlargement in any one direction, with a highly vascular—so that when you touched the uterus she bled freely, and that is the only thing that I can recall. Nothing was ever thought about a tumor or pregnancy or anything like that.

Q. What was her condition from the standpoint of tuberculosis? A. I would have to leave that to Dr. Harman, I am not a lung specialist. He told me that she had a very pronounced pulmonary tuberculosis.

Q. I think in your direct-examination you described it as well advanced. A. That is what he told me.

Q. That information came to you from Dr. Harman and the other doctors who were attending with you? A. Yes, sir.

Q. But you recall distinctly that you didn't say anything about any kind of a tumor? A. No, I didn't say anything as far as I remember.

Q. Do you recall, Doctor, stating at the conclusion of your examination something to the patient, or is that too far off? A. I suppose I told her what I tell every patient. I pat her on the shoulder and tell her she is going to be all right. Papa Brown always does.

Q. Then did you say anything to Dr. Harman to the effect that if she does not stop bleeding in a few days "We will take her down to Mountainside and operate"? A. I remember suggesting that we take her to Mountainside for the curettage, and "then, on thinking it over, I remembered we do not accept tuberculosis patients." She would have to go in the ward at that time and we did not accept tubercular and syphilitic patients. Those were the two diseases, and contagious diseases.

Q. So that was the ultimate reason for operating at the Sanatorium. A. Absolutely.

Q. When did you next see the patient? A. Several days later. The record says, I think, about May 8th or May 7th, but it was within a few days. I don't remember when. I saw her the day before I curetted her.

Q. What makes you recall that? A. For the simple reason that I can remember a case, where I can't remember a name.

Q. The reason I press that is that there is no record of your seeing her the day before the operation and because the testimony of two or three of the witnesses was that you did not see her until a time when she was under the anesthetic.

A. I might have gone over and talked to Harman about her and looked at the patient and not made any examination and found she was not better and examined the cloths and saw she was still bleeding. No man alive—no good surgeon—competent surgeon—would curette or perform an operation on a tubercular patient under an anesthetic unless it was absolutely necessary and he would not leave his home and fireside and go up there in the middle of the day. He could use the time to better advantage. The point was to save the life of the patient.

Q. The point I make is that the operation was performed May 8th and you examined her on May 7th? A. I don't recall that I examined her. If I remember, Harman, I don't think I examined her that day.

Q. You looked at the cloths? A. Yes, and saw that the bleeding was continuous and of bright color, and her physical condition would determine it anyhow.

Q. Do you recall who was present on the second visit? A. No, I don't remember a thing.

Q. Was Dr. Harman there? A. I don't remember; he probably was, but I couldn't remember.

Q. You went up there of your own initiative— A. (Interrupting) No, Dr. Harman called me up and said the patient was not better.

Q. So you went up and gave her the second— A. (Interrupting) Once over.

Q. And told the Doctor— A. (Interrupting) To give gas oxygen because it is less irritating to the tubercular lung.

Q. Do you recall whether or not on this second occasion that you were up there, the day before the operation, May 7th, whether you at that time saw the record of previous illness which was made out on that date? A. No, I couldn't.

Q. You couldn't tell whether you saw that sheet No. 3 of May 7th, 1925? A. No, I could not.

Q. At any rate, as a result of this second visit on May 7, 1925, you told Dr. Harman that you would be up the next day with Dr. Hubbard? A. Absolutely.

Q. And on this second visit there was likewise nothing to indicate any kind of tumor? A. Absolutely none.

Q. You told Dr. Harman that because of the bleeding it would be necessary to save her life to perform a curettage? A. Absolutely. That was my judgment.

Q. Doctor, haven't there been other patients go down from the Sanatorium to Mountainside to be operated on?

Mr. Bailey: I object to that.

Q. If you know.

Mr. Bailey: I object to that. There is nothing here about that and it doesn't make any difference.

The Supervisor: I think that is a proper question. I would like to know.

A. I don't know; I can't answer that.

Mr. Bailey: I ask an exception.

Witness: I know that the Mountainside Hospital does not take tubercular subjects, especially pulmonary tubercular subjects, in. We take bovine tuberculosis—you probably don't know the difference—but we take cow tuberculosis of the joints in but we don't take pulmonary tuberculosis in the Mountainside Hospital. That's the rule.

Q. And you came up on the morning of May 8, 1925, as I understand it, with Dr. Hubbard, and after he had given this gas oxygen anesthetic to the patient you performed the curettment. A. Absolutely.

Q. What instruments were used? A. Oh, gracious me. Do you know anything about an operation.

Q. No. A. Why should I answer that? The usual instruments that are used for a curettage.

Q. What are they? A. They are a dilator and several cervical dilators, gradual dilators, traction dilator, and a curet, a sharp instrument for scraping off the lining membrane of the uterus; and I will volunteer the information to you that any man that would use the sharp curet in pregnancy would be a damn fool.

By Mr. Bailey:

Q. Why, Doctor? A. Why, it would perforate the uterus.

By Mr. Vanderbilt:

Q. After the operation you say you packed the patient with guaze—A. (Interrupting) One strip of gauze. That was to keep her from bleeding any further.

Q. And you didn't have occasion to see the patient after that? A. I didn't see the patient after that.

Q. Would you call this a case of acute or chronic endometritis? A. All cases of hyperplasia of the endometrium are chronic.

Q. Can you tell us what was the cause of this condition? A. No, sir. I remember very well asking Harman whether it was common amongst tubercular subjects.

Q. There were no symptoms of venereal disease in this patient? A. None that I discovered.

Q. That is sometimes the cause of this disease, isn't it, Doctor? A. Yes, I think it is.

Q. These scrapings that resulted from the operation, what size were they? A. I couldn't tell you that. It didn't impress me. Nothing but little shreds of mucous membrane, evidently. If I had seen anything—I want to volunteer this—if I had seen anything that was suspicious of pregnancy, or if I had seen anything suspicious of cancer, or if she had had any symptoms of cancer previously, which are pretty definite, I certainly should have ordered a microscopic examination, and if necessary, would have taken one down to my own laboratory to have it done.

Q. That would not have been necessary, would it, Doctor— A. I think we had the laboratory established at that time. Wasn't Olcott appointed at that time?

Dr. Harman: Yes.

Q. So you would describe this as a case of chronic endometritis, is that it, Doctor? A. Yes, I would describe it as chronic endometritis with an acute exacerbation.

Q. Would you call it granular endometritis? I got that from the testimony previously given. A. There is such a thing as granular endometritis, but this was a hyperplasia of the endometrium.

Q. But this was not a granular endometritis? A. This was a glandular endometritis.

Q. No, I don't mean glandular endometritis. Was this a granular endometritis? A. I don't know, I wouldn't call it that.

Q. What is a granular endometritis? A. It isn't this form of endometritis. I know where you got that. You got that out of a letter written, by George—in the hospital when I was five days from an operation and suffering like the devil.

Q. No, I didn't, Doctor? A. That's where it came from, and I wasn't under examination then, and if you can sit up in bed and write anything a few days after a gall bladder operation—

Q. You are suspecting me of things that I don't know at all. I am an awfully ignorant layman. I am coming back again and asking you what is a granular endometritis. A. A granular endometritis is one in which there is a hyperplasia of the endometrium and in which the glandules of the endometrium are enlarged at different points, and stick up like granules. Granular is one of the new terms under the new pathology.

Q. I must admit that that must be so because I cannot find it in any of the books.

Mr. Bailey: It is under "gynecology" in the Encyclopedia Brittanica.

Q. Was there any record made of the operation, Doctor? A. I couldn't answer that question. It is not within my province to make a record of the operation, but I certainly was in that institution for the simple reason that our committee spent days and nights in arranging that form of history and we had an operative record, as far as I have looked over the records, and I have been at the institution frequently and looking over records to see that they are kept—they have all been kept up to date.

Q. Whose duty is it to keep a record of the operations? Is it up to the surgeon? A. No.

Q. It is up to whom? A. The attendings at the operation; they are the assistant or the sub-assistants, or some person connected with the institution.

Q. That is up to the doctor who attends the surgeon to prepare that record? A. Some member of the staff. The surgeon merely states what the operation is and the findings.

Q. Do you recall whether there was any such statement taken from you after this operation? A. I wouldn't say that I recall any statement being taken on paper, but I made the statement.

Q. To whom did you make the statement? A. To the entire operating room.

Q. And that was made up of Dr. Harman and Miss Camblass— A. (Interrupting) I can't remember. It was a minor operation and it didn't impress me.

Q. Isn't it the usual practice, Doctor, after an operation—any operation—where there are scrapings, to have those scrapings sent to the labora-

tory? A. Not always. In a case like that in our institution they are never examined unless there is some reason to examine them, unless we want some definite information to see whether the patient had cancer or was pregnant, or some definite thing. If we had anything definite in mind. There are rare conditions present in pregnancy, such as cancer forming on top of the glandules, the most violent form of cancer that there is; and tumor, or if there is some other reason to examine them. No surgeon performing an operation like this would clutter up his laboratory, it seems to me, any more than he would bisect every tonsil taken out at the hospital. If you bisected every operation and put it through for examination when there was no reason for it, you would have your laboratory so cluttered up that you would never get through with the work.

By the Supervisor:

Q. When you say "our institution" you mean what? A. Mountainside. I have been the directing head of that institution for twenty-eight years, responsible for all the surgery that has been done.

By Mr. Vanderbilt:

Q. Doctor, on page 3 of the record of this operation, on the admitting, previous illness page, is the statement "menses regular" prepared by the admitting nurse, and then on page 4, the present history, is the statement there on the fourth line from the bottom "menstruation irregular" they couldn't both be right at the same time, could they? A. Absolutely.

Q. How? A. The patient might come in and you ask her whether her menstruation is regular and

she would say yes, and then when you had her in the hospital and observed her you would find that she did not tell the truth.

Q. At the bottom of this page is this notation under the head of "remarks," "operation" and then it has something crossed out "pelvic tumor—uterine tumor." A. I know how that occurred and I can tell you. The probabilities are that the internes in an institution are not expert surgeons and when they have a case that is flowing they put down the possibilities, you see this is in parenthesis, taking the possibilities, because they are not sufficiently expert to determine themselves and they put it down merely for the sake of reference.

Q. But the difficulty with that is that it is dated May 10th. A. I can't help that.

Mr. Bailey: It was testified that that was made out before he went into the operating room.

Witness: There ought to be an operating record. Where is that operating record?

Mr. Vanderbilt: There isn't any operating record.

Dr. Harman: It is gone.

Witness: What? It has been taken?

Dr. Harman: Evidently. It has disappeared.

By Mr. Vanderbilt:

Q. You don't recall whether or not Dr. Conklin saw this case? A. Dr. Conklin?

Q. Yes, the assistant to Dr. Harman. A. Did Conklin see it, Harman?

Dr. Harman: I think he did.

Witness: I did the operation, I know, and nobody else is responsible for it but me.

Redirect-examination by Mr. Bailey:

Q. Is it possible for a virgin to have an endometritis? A. Absolutely, a virgin can get an infection as well as anybody else.

Q. Is it the ordinary practice for the head nurse in the operating room to make the operating record? A. No.

Q. Who does that? A. One of the—I don't know what the custom is in this hospital, because this isn't a hospital! this is a Sanatorium, but in a regular hospital one of the house staff takes the record.

Q. Do you recall whether or not there was an additional reason why the operation took place at the Sanatorium? Was it because she was an employee at the time? A. No, I don't recall that.

Q. Was there any more reason why the scrapings should have been analyzed at that institution than at the Mountainside? A. Absolutely not. Now, I want to know who is the instigator of these charges? How can I get at that?

Mr. Bailey: I can't tell you. We have been trying to find out.

Witness: Do you refuse to answer?

The Supervisor: Of course I can't make any statement on which you can base any legal proceedings. My position in this matter prevents that.

Witness: There must be some way to smoke it out either in the courts or somewhere. I can't believe that a man can have

an insinuation of this kind placed against him without finding out who the instigator of the charges is and give him a chance for redress. You refuse to answer that question, do you?

The Supervisor: I can't answer it.

Witness: I take exception to that.

Mr. Bailey: That is all you want to say?

Witness: The only thing I want to bring out, and I want to reiterate it, that I propose to smoke out the man who made these charges, and I want that to go in the record. The man or woman. It looks to me as if there were politics in it.

ELEVENTH DAY.

Tuesday, January 22, 1929.

In the Matter
of the
Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman; ROBERT H. MCCARTER, of Counsel.

Mr. Bailey: I believe, Supervisor, we had closed our case, but I am asking the privilege of reopening it for the purpose of offering in the record the bound volume of the Proceedings and Reports of the Board of Chosen Freeholders for the year ending December 31, 1925, and particularly the report of Dr. Harman to the Board dated January 1, 1926, as found on page 521, with special reference to page 530 under "X-ray" second paragraph, and page 541, the last paragraph on that page, which has

to do with the statement that the X-ray Department has had added to it a complete clinical reducing camera for clinical photography and photomicrographic work.

Mr. Vanderbilt: No objection.

(The same is received in evidence and marked Exhibit R-17.)

Respondent Rests.

Mr. Vanderbilt: I understood from Mr. Bailey that he had available an additional witness, Miss Camblass, who was one of the nurses who had attended at the operation, and that he expected to call her. He has not called her and I wish to call her myself because I know the Supervisor wishes all the light that can be shed upon that operation.

Further, in view of the testimony which has come out in the hearing, and because of the representations which have been made to me by her friends, I would like to move that the complaint in the case be amended to add an 11th paragraph reading as follows:

"11. In that on or about November 21, 1928, you discharged Eloise Travers from her position as night supervisor at the Essex Mountain Sanatorium without cause stated in writing after opportunity to be heard, contrary to the provisions of Chapter 278 of the Laws of 1922."

Mr. McCarter: We strenuously object to any enlargement of these charges. These charges were served on us on the 3d of December. We have prepared our case and we were told that all that the other side had was rebuttal. We respectfully object to the enlargement or addition to these charges. If they are enlarged and added to we

will have to have time to prepare to meet them. I never heard before that Mrs. Travers was discharged; I never heard of the incident. It seems to me that it is a pretty late date, when we are on the eve of summing up—when we are prepared to argue the case—to bring this additional charge in. I am at some inconvenience here to see the case through, and I do not see why now, at this time, they should go out and hunt out further charges. Who makes this charge, Mr. Vanderbilt?

Mr. Vanderbilt: Mr. Supervisor, as I understand it, and I was not aware of it until the matter was brought to my attention through friends of Mr. Travers, that Mrs. Travers had applied to you as Supervisor for a hearing prior to the time that she came here and testified and prior to the time following that, a day or two later, when she committed suicide in New York, as the papers say, by jumping in front of a subway train. I was unaware of that situation, as I say, until the matter was brought to my attention by friends of Mr. Travers, and it seems to me that if these allegations are true, they are certainly matters that are within the jurisdiction of the Supervisor and should be gone into at the present time, because there was a considerable amount of testimony taken on the reasons for her discharge, it being alleged that she was discharged by the direction of the Prosecutor. I am prepared this morning to call the Prosecutor in rebuttal to show that she was not discharged as a result of any instructions of the County Prosecutor; on the contrary, he knew nothing about the matter at all. I fully concede that if counsel desires time to prepare on any matter, they certainly have that right.

Mr. McCarter: The question has not been an-

swered. I suppose this woman is dead. Whether she committed suicide or not, I don't know. I was very much shocked to read the paper and learn that she was dead after testifying here. At least, we are entitled to know who is making the complaint that she was improperly discharged. Who proposes to inject that question into these proceedings at the expense of delaying the matter? I want to say to the Supervisor, who has been most courteous to me, that I have arranged to go to Honolulu on the 15th of February. I have half a dozen matters to take care of in court before that time. If this case goes over I cannot give it my attention. I do hope that we can go on and close the case. If we have an adjournment, I cannot see when I can go on. I suppose Dr. Harman is entitled to have counsel on this. I think there ought to be an end to this thing.

Mr. Vanderbilt: All I can do is read the matter of the letter which was addressed by Mrs. Travers to the Supervisor:

"315 East 18th Street,
Brooklyn, New York.
Nov. 25th, 1928.

Hon. Ernest A. Reed,
Hall of Records, Newark, N. J.

My dear Mr. Reed:

Could you arrange a hearing for me in the matter of my having been discharged from Essex Mountain Sanatorium, as I was? If you could, and would, do this it would need to be early in the week, as my plans are, of necessity, under the circumstances, vague. I must, of course, be looking for a position, and must get myself settled at the earliest possible moment.

The more I think of the matter, the more I feel that a grave injustice has been done me, and the more sure I am that the matter should be threshed out. It is a serious charge, that of neglect of duty, to bring against a nurse, and I do not feel that I deserve such a charge. I am willing to admit an error of judgment, if that decision should be reached by a hearing. I did, however, the things that seemed to me right at the time, and I do not admit neglect of duty.

Thanking you for your courtesy to me, I am,

Very truly yours,

ELOISE D. TRAVERS, R. N."

It does seem that when a matter is brought thus officially to the Supervisor's attention, and when her friends, and friends of her deceased husband press the matter, and when a very considerable amount of testimony was given by Dr. Harman as to the reasons for her discharge and, as I recall it, he admitted that no charges in writing were given her with opportunity to be heard, it is certainly a germane matter of investigation for the Supervisor; and in view of the fact that her untimely end can be somewhat attributed to these circumstances, I do not see how the Supervisor can refuse to investigate them.

Mr. McCarter: All I can say is that she is not here; we cannot cross-examine her. She says she was improperly discharged; she is not here to testify either for or against it. We respectfully and emphatically object at this eleventh hour to any new charges here that will delay the matter. That letter to the Supervisor was evidently written before these charges were filed, and he did not see fit to incorporate this charge with the others. I do

not see why friends of the deceased lady and friends of her deceased husband press this that this should be brought up at this time. We object to it most strenuously. We cannot go on today with it. I never heard of the situation and I cannot see how it can be brought up now.

The Supervisor: I think the matter of Mrs. Travers' discharge is fairly before me in the capacity of Supervisor and inasmuch as the letter from Mrs. Travers does embody the request for a hearing, and a good deal of evidence has already been given in regard to Mrs. Travers' discharge, I feel that it can properly be made a part of this investigation. I am very sorry to interfere in any way with your trip to Honolulu and I hope it will be possible to get this matter out of the way without inconvenience, but I feel even that should not interfere with this hearing.

Mr. McCarter: We can't go on today.

The Supervisor: I think Mr. Vanderbilt will agree that that is not necessary.

Mr. McCarter: We can't close at this stage. I never heard of such a thing before.

The Supervisor: Mr. Vanderbilt, will you prepare specifications?

Mr. Vanderbilt: There is nothing to be added. I can prepare it in legal form if the Supervisor so desires it.

The Supervisor: I think it should be done.

Mr. Vanderbilt: I will do that. I understand, Mr. Supervisor, that Miss Camblass has started down here and should be here at any time. In the meantime I will try to get one or two other witnesses.

Mr. McCarter: Do I understand that the ruling

is that this additional charge will be permitted?

The Supervisor: Yes.

Mr. McCarter: Will you please note on the record that counsel for Dr. Harman respectfully objects to the adding of this charge against Dr. Harman; that the charges have been testified to and against, and the person who is alleged to have been improperly discharged is dead; she can't be cross-examined on the subject and is not here to present her grievance, and we are not yet told who the person complaining of this matter is; that before the matter can be presented we would have to be served with a copy of the proposed charge that is not even yet formulated; and have time to prepare a defense to the charge; and that counsel for Dr. Harman now states that he will not be able to give this matter any attention after today until the middle of April.

Mr. Vanderbilt: I don't know what further I can say, Mr. Supervisor, in answer to counsel's statement except to say that if he presses this argument seriously that we cannot go into the matter because Mrs. Travers cannot be here, that there never could be an indictment for murder unless the person murdered was there, which shows the fallacy of that argument. The charge is formulated and I will put it in the form of a notice, which, I take it, is what the Supervisor desires.

FRANKLIN KARL WINTSCH, sworn in behalf of the County in rebuttal.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Wintsch, what is your position? A. Secretary to the Superintendent.

Mr. McCarter: Is this evidence offered on the charges that have been in for two months or on the new charge? If it is on the new charge we object to it.

Mr. Vanderbilt: It is on the old charges.

Q. At the Essex Mountain Sanatorium? A. Yes, sir.

Q. How long have you held that position? A. Since the 1st of January, 1928.

Q. Prior to that, what was your position? A. Principal clerk.

Q. How long did you hold that position? A. About from a year to eighteen months, as near as I can remember it.

Q. Before that, what was your position? A. Senior clerk.

Q. How long did you hold that position? A. For three to six months; I don't remember the exact dates.

Q. Prior to that what was your position? A. Clerk.

Q. All at the Essex Mountain Sanatorium? A. Yes, sir.

Q. As clerk under these various titles, was it your duty or part of your duties to handle the sheets and collections from the telephone operators? A. It was.

Q. Were there any discrepancies in the returns made by Pauline Galler? A. None that I know of.

Q. Or Bertie Galloway? A. None that I know of.

Q. What was the only discrepancy that you know of? A. Only in the past year there were two discrepancies of one operator up there by the name of Eubank. She was short $11 and some cents at one

time and one dollar and some cents at another time, both of which were made up.

Cross-examination by Mr. McCarter:

Q. What position did Mr. Bristol have in 1926? A. Mr. Bristol was a clerk.

Q. Principal clerk? A. Just clerk.

Q. How long had he been there? A. I couldn't say; perhaps five or six years.

Q. In 1926, in August, what position did you hold? A. Either clerk or senior clerk.

Q. Do you know Mr. Bristol's handwriting? A. Yes, very well.

Q. Look at this book. Pinned in on one page there seems to be a receipt signed by you. Have you ever seen this book before? A. I imagine I have. This is my distribution of unpaid accounts. It is my writing.

Q. Who else kept this book besides you? A. I don't remember of anyone else.

Q. Do you know Mr. Bristol's handwriting? A. I do.

Q. Is that his handwriting? A. Yes.

Q. Did you ever see that before? A. Not that I recall. I probably have, being in the office.

Q. Don't you know whether you ever saw it before? A. I see it now.

Q. Do you see it now? A. Absolutely.

Q. How long is it since you have had this book in your custody? A. I don't even remember this particular book. There have been so many changes since then.

Q. On that page before you appear some figures in the handwriting of Mr. Bristol with the word

"shortage, $3.96." Did you ever see that before? A. No.

Q. You were not the only person that kept that book? A. It seems that was the one thing that he did keep in it, as far as I can see. I don't recall that at all.

Q. On that page. A. On that page.

Q. That seems to be his handwriting? A. There is no doubt about that.

Q. The previous entries in the book are made by you? A. The entries are made by the operators and checked up by myself.

Q. You evidently did not check up this account of the Galler girl as shown on the page where the exhibit is marked, did you? A. No, I did not.

Q. How long has Mr. Bristol been dead? A. I think he died in the beginning of January, 1928; the 3rd or 4th.

Q. He has been dead about a year? A. Yes.

Q. So that has been entered in there for over a year. A. You mean the date of the entry?

Q. It has been there over a year anyway, hasn't it? A. Yes.

Q. Have you seen that book in a year? A. No, I have not.

RITA J. CASHEN, sworn in behalf of the County in rebuttal.

Direct-examination by Mr. Vanderbilt:

Q. Mrs. Cashen, you were employed at the Essex County Mountain Sanatorium as a nurse over what period of time? From when to when? A. I went there first—I really don't know as I know the exact date because—I think it was in May,

1926, and I was there working as a ward nurse until November, 1926. I went back in June, 1927, and I was there until August—no, that's a year behind—

Q. Get the dates right and tell us when you were there to the best of your recollection. A. I went there in May, 1925, as a ward nurse and I was there until November, 1925, and I left then—resigned. I went back in May or June—I forget just which month it was—1926, and I was there until August, 1928.

Q. When you went back, what was your work? You were a ward nurse the first time. A. When I went back I was a ward nurse for one week, and the nurse who was in the X-ray room left her position. As the hours there suited me better than the ward hours, which were twelve hours on duty and twelve off, I asked for the position and they gave it to me.

Q. How long were you nurse in the X-ray department? A. From June, 1926, to August, 1928.

Q. And you were working there under the direction of Mr. Harold Bennett? A. I was.

Q. During that time did you ever know a porter around the Institution by the name of Patrick Kane or Paddy Kane? A. I certainly did.

Q. Kane has made some statements which I would like to ask you about. He has stated that he would come into the X-ray Department three or four times a week, over a period, as I recall, of some four months or so, generally coming in the afternoon around 2 or 2:30 and he would find you in the X-ray department with Mr. Bennett kissing you. Is that true? A. It absolutely is not true.

Q. Did you ever kiss Mr. Bennett? A. I absolutely did not.

Q. He has further testified that you were in the habit of giving him what he called a "cartoon" of cigarettes, what we call a carton of cigarettes, once a month so that he would keep quiet about it. A. I gave him a carton of cigarettes Christmas, 1927, because he was working there.

Q. As a Christmas present? A. Yes, that is the only time I gave him that or anything else.

Q. Did you give it to him as a Christmas present? A. I certainly did.

Cross-examination by Mr. McCarter:

Q. When was it you said you gave him a Christmas present of a carton of cigarettes? A. Christmas, 1927—Christmas, 1926.

Q. Get it right. When was it? A. Christmas, 1926; the first Christmas I was in the X-ray room.

Q. You were a witness and testified before the Supervisor in the matter of the charges against Dr. Harman in November last, were you not? A. I was, yes.

Q. Did Mr. Bennett ask you to come here this time? A. He asked me if I would be willing and I said I did not want to come unless it was necessary.

Q. I didn't ask you what you said. Mr. Bennett asked you to come? A. Yes.

Q. When? A. Some time in October; I don't remember the date.

Q. I mean this time? A. No, sir, he did not.

Q. Who did? A. I got a telephone call last night at 7:15 asking me to come down and I asked if it was necessary—

Q. Who telephoned you? A. They said they

were from the County Counsel's office. I didn't inquire who they were.

Q. You have been very friendly with Mr. Bennett, haven't you? A. I wouldn't say so.

Q. You have ridden out with him in his car? A. He has driven me to the bus occasionally going home.

Q. Didn't you drive his car yourself? A. I drove it once for Mr. Bennett when he was out of town when my own car was not in working condition.

JOSEPH L. SMITH, sworn in behalf of the County in rebuttal.

Direct-examination by Mr. Vanderbilt:

Q. Prosecutor, you are the Prosecutor of the Pleas of the County? A. Yes, sir.

Q. Statements have been made by Dr. Harman in the hearing that you recommended to him that Mrs. Eloise D. Travers, who occupied the position of night supervisor at the Essex Mountain Sanatorium, be discharged from her duties—

> Mr. McCarter: I think the evidence said the Prosecutor's office. I don't think it was ever intended that Mr. Smith himself made the recommendation.
>
> Mr. Vanderbilt: I am referring now to the question asked by counsel of Mrs. Travers on page 296 of the testimony.
>
> "Q. (By Mr. McCarter) So you think on that ground alone the Prosecutor of this county asked for your discharge from the hospital?"

Q. Now I ask you, Prosecutor, if you ever did ask for the discharge of Mrs. Travers from the hospital? A. No, sir, I never did.

Q. Did you ever make any report either to Dr. Harman, as superintendent of the hospital or to Mrs. Harris, Freeholder, Chairman of the Hospital Committee, recommending the discharge of Mrs. Travers? A. I made no recommendation.

Cross-examination by Mr. McCarter:

Q. Did you have a detective in your office in the latter part of 1928 by the name of Mayer? A. Yes, sir.

Q. Was his name George L. Mayer? A. Yes, sir.

Q. Do you remember receiving from him a letter dated November 10, 1928, addressed "Hon. Joseph L. Smith, County Prosecutor" of which I show you a copy? A. Yes, sir, I did.

Q. Did you follow it up at all? A. No, sir, I did not, except that I personally interviewed and examined a defendant named Almond, who was then confined in the Essex County Jail. I examined him personally for a long period of time in my office because I believed Almond was the one who could determine whether or not there should be any criminal prosecution.

Q. The matter was in the charge of Mr. Mayer? A. I assigned it to Mr. Mayer to investigate and report to me.

Q. Did Mr. Mayer ever report to you that he had recommended, after the investigation that he made, which seems to have been quite full, that Mrs. Travers be discharged? A. The only recommendation—

Q. Won't you answer my question, please, Mr. Smith? A. He had no—

Q. I didn't ask you that.

(At the request of Mr. McCarter the stenographer reads the pending question.)

Mr. Vanderbilt: I ask that the question be amplified to show to whom it was recommended.

A. He never told me that he made any recommendation. The first I heard of it was when I read of it in the public press, and he had no right to make a recommendation, if he did.

Q. Did you ever examine the report with all the statements that he made concerning the matter, copy of which I hold in my hand? A. I certainly did, Mr. McCarter.

Redirect-examination by Mr. Vanderbilt:

Q. Did you ever give out any copies of that report, Prosecutor? A. I never gave a copy of that out. I considered that it was only a report made by one of my men for me.

Q. Did you ever authorize him to give it out? A. No, sir, I did not.

Mr. McCarter: I would like to call the Supervisor's attention to page 732 of the record. Dr. Harman was asked "Question: Why did Mr. Travers leave the institution? She referred to this statement that you left, you will recall. Answer: She left the Institution by request. Question: Why did you request it? Answer: On the recommenda-

tion of a Prosecutor's detective. Question: Who was the Prosecutor's detective? Answer: Mr. Mayer."

The Supervisor: Now, Mr. McCarter, I feel that next April is rather out of the question with regard to going on with the new charge.

Mr. McCarter: Then it will have to go on without me, sir. The date you wrote me you told me that we hoped to close the case and be through. I have every day taken up until I go away on the 15th of February. If a new charge is going to be made against Dr. Harman I think it ought to be made in the regular form and served in the regular way and taken care of in regular course. Every court in New Jersey would respect my going away on February 15th except Mr. Vanderbilt who does not seem to want to give me that courtesy.

Mr. Vanderbilt: Mr. McCarter, I think that is an absolutely unjustified statement. I would like to know on what occasion I have not extended to you every courtesy.

Mr. McCarter: You are insisting that it go on.

Mr. Vanderbilt: I think you are unfair. I distinctly stated on the record that you are entitled to a reasonable time.

The Supervisor: But I think April 15th is rather more than a reasonable time.

Mr. McCarter: Very good, sir. Then it will have to go on without me.

Mr. Vanderbilt: I might say on this 11th charge that I have offered all the evidence I intend to offer on it with the exception of putting in Mrs. Travers' letter.

Mr. McCarter: I don't understand that the charge is preferred, or anything else, or that we have had any legal notice of it. I am perfectly

willing to close up this case today. If there is going to be any new charge made against Dr. Harman, it can be made in the regular course, but I object to its being injected into this matter without opportunity on our part to prepare a defense.

(A short recess is taken.)

Mr. Vanderbilt: Mr. Supervisor, I have been unable to locate the additional witnesses I want, and therefore I rest my rebuttal of the case on the original charges. Complying with your instructions, I have prepared a notice covering the 11th charge. I say, Mr. Supervisor, that I rely on the record with the exception that I will reserve the right to put in Mrs. Travers' letter which I mentioned heretofore. That is all I desire to put in on that point.

Mr. McCarter: I suggest if the County Counsel desires, to take up the question of the propriety or impropriety of Mrs. Travers' so-called discharge, that that can be heard by itself and disposed of by itself. I suggest as a practical solution that we dispose of the case today by argument so far as the charges that are before us are concerned. As far as the further charge is concerned, it can be taken care of in my absence. I was retained in this case and I want to see it through and I can't see it through today if there is to be an additional charge against Dr. Harman. If that is to keep on indefinitely like Tennyson's brook, I do not see where it will end. I do not think this proceeding should be interrupted by any new charges. I offer as a practical solution that if this charge is now made, as it seems to be, and handed to Mr. Bailey, that it be heard at some time in the future and that we

close up the ten charges about which you wrote me the other day that you are very anxious to dispose of.

Mr. Vanderbilt: I have no objection Mr. Supervisor, to summing up the testimony on the ten charges, or ten specifications covering the original charges, but I do not think the matter should be decided by the Supervisor until the entire matter, including this 11th charge, is heard. I am perfectly willing to offer the letter in evidence and rest the whole case. If they want to go on at some future date, as set forth in this notice, I am agreeable to that, but I do not think there should be a decision in the case or that the case should be disposed of piecemeal. If Mr. McCarter desires, I am perfectly willing to argue the ten charges now with the distinct understanding that I will have an opportunity to argue the other charge after the other side is through, and that the Supervisor will decide after covering all eleven charges.

Mr. McCarter: What is the use of closing the ten charges and arguing now? I suppose the Supervisor is anxious to get rid of this thing. I want to say that we will want to raise a legal question as to the propriety of a complaint when the complaining person is dead. If the court decides against us on that we will have to call several witnesses. There is more to it than that letter written several months before these charges were made. I am not prepared to take up this new matter today. I offer either alternative: This matter kept by itself and decided by itself, or the matter taken up—

The Supervisor: I take it you don't agree with Mr. Vanderbilt's suggestion then.

Mr. Vanderbilt: No, I don't feel that is a practic-

al thing to sum up the case today. Nobody's mind could carry the argument for months.

The Supervisor: And you say you require some time to prepare a defense to this additional charge.

Mr. McCarter: Yes, I don't know anything about it at all. We have to see Mr. Mayer and we have to see Mrs. Harris. There are a lot of things involved in this. It was never suggested that this was an attack against Dr. Harman. I will be willing to have it considered in due course. We are not willing to take it up now; we are not willing as part of this case to try it piecemeal. We want one consideration and one decision in the case. We will finish up on the ten charges that are in.

The Supervisor: I think that there is a great deal of merit to Mr. Vanderbilt's suggestion that the whole matter ought to be considered at one time; that all the charges against Dr. Harman ought to be considered at one time and a decision made on the basis of all of them. I have been rather hopeful that as a result of this discussion between counsel we could arrive at a mutual understanding that would be satisfactory to both sides so that we could accomplish it without delay, because I am more anxious than anybody else to have this investigation out of the way and closed. Under the circumstances, there seems nothing else to do but proceed according to the terms of this notice which are to the effect that the hearing of this 11th charge will be on Monday, the 28th of January, setting that as a tentative date, at ten o'clock.

Mr. McCarter: I can only say that I cannot be here on that day, sir.

Mr. Bailey: As a matter of fact, I am tied up on that date.

Mr. McCarter: I am here prepared to close this case today, as you wrote me you wanted to do, and I insist on doing it. I state now that I cannot be here on the 28th of January.

The Supervisor: Mr. McCarter will certainly remember that the adjournment to today was made at the request of Dr. Harman's counsel.

Mr. McCarter: From yesterday.

The Supervisor: Not from yesterday.

Mr. Bailey: That is not quite so because the date was agreed upon when we returned from Pinehurst and we couldn't go on because Mr. Vanderbilt had to go to the United States District Court and the earliest date we could agree on was today because Mr. McCarter and I were engaged.

Mr. Vanderbilt: We tried to get transportation to Pinehurst during Christmas week, but we were unable to do so and it was arranged to go down on the Wednesday following New Year's. I made it known to counsel that I had a case before Judge Clark in the United States District Court and I had it go off so that I could go to Pinehurst and it was agreed that we were to go on the following Tuesday and it was adjourned at Mr. McCarter's request or Mr. Bailey's request until this Tuesday. I received a letter from the Supervisor insisting on going on today. As a matter of fact, Judge Dungan is carrying a case out of its place because I showed him a letter from the Supervisor that this case must go on.

The Supervisor: I recall an earnest conversation with Mr. Bailey and Mr. McCarter's secretary as to a tentative date, and certainly the date was fixed for today at their request.

Mr. Bailey: Yes, but there was no date fixed prior to today.

The Supervisor: Have you anything more to submit, Mr. Vanderbilt?

Mr. Vanderbilt: I have not.

The Supervisor: Have you anything more to submit, Mr. McCarter?

Mr. McCarter: On what?

The Supervisor: On the first ten charges.

Mr. McCarter: I have not. I would like to argue it now.

The Supervisor: I will be very glad to hear it if you wish to argue it now, but I will not decide until the 11th charge has been heard.

Mr. McCarter: Then I cannot be here. I am sorry that I cannot be here until my return.

The Supervisor: Then we will adjourn.

Mr. Bailey: Do I understand that this is to the 28th of January?

The Supervisor: It is tentatively set for the 28th. We will have to try to work out a date together.

Adjourned tentatively to Monday, January 28th, 1929.

TWELFTH DAY.

Monday, January 28, 1929.

In the Matter

of the

Charges against DR. BYRON M. HARMAN, Superintendent of the Essex County Sanatorium, for violation and neglect of duty.

Before ERNEST A. REED, ESQ., County Supervisor, County of Essex.

APPEARANCES:

ARTHUR T. VANDERBILT, County Counsel, for the County of Essex.

MESSRS. SORG, DUNCAN & BAILEY, (by GEORGE B. BAILEY) Attorneys for Dr. Harman; ROBERT H. MCCARTER, of Counsel.

Mr. Vanderbilt: Mr. Supervisor, I desire to offer the evidence the letter written by Mrs. Eloise B. Travers, dated November 25, 1928, addressed to Hon. Earnest A. Reed.

Mr. McCarter: I object to it. There is no proof that she wrote it. Certainly the letter does not prove itself.

Mr. Vanderbilt: Concerning which Mrs. Travers spoke to the Supervisor in person.

The Supervisor: The objection will be overruled and the letter will be admitted.

(The same is received in evidence and marked Exhibit C-12.)

Mr. Vanderbilt: I have ordered a certified copy of the death certificate of Mrs. Travers and that will be here within fifteen or twenty minutes. With the offering of that death certificate I rest.

County Rests.

Mr. McCarter: I respectfully move for the dismissal of the new charge with reference to Mrs. Travers, because there is absolutely no proof that she was discharged; there is no proof of the letter and therefore there is nothing in the record requiring an answer, and no course proper with reference to this supplementary charge except a dismissal.

Mr. Vanderbilt: If the Supervisor please, the testimony on that point appears in Dr. Harman's own testimony.

Mr. McCarter: I would like to call the Supervisor's attention on that subject to the record. The Supervisor will remember that while the County Counsel insisted on interrogating Dr. Harman upon his cross-examination as to the circumstances surrounding the alleged discharge of Mrs. Travers I objected, I imagine, twenty-five times, upon the ground that there was no charge before this tribunal to the effect that Mrs. Travers had been improperly discharged and that the evidence was incompetent and illegal; I told the Supervisor that I was afraid that he was being fooled and that the evidence was being taken contrary to the rule and in the face of the fact that there was no charge

with reference to the discharge of Mrs. Travers, for the purpose of building up evidence upon that point for a supplementary charge. On page 776 of the record I again noted my objection as follows: "If the effort by this evidence is to make a foundation for a new set of charges I would like to know it, and if the Supervisor is using these proceedings to make a new set of charges against the Doctor, I would like to know that." The Supervisor replied: "I assure you that is not the case."

The Supervisor: So far as I was concerned.

Mr. McCarter: Very good. Now, on page 956, when the new charge was proposed and I objected to it at the last hearing the Supervisor is reported to have said: "I think the matter of Mrs. Travers' discharge is fairly before me in the capacity of Supervisor and inasmuch as the letter from Mrs. Travers does embody the request for a hearing, and a good deal of evidence has already been given in regard to Mrs. Travers' discharge, I feel that it can properly be made a part of this investigation." The County Counsel has said that he relies on the evidence that is already in. I refer you to your own ruling on page 776 where you stated in so many words that that evidence would not be used for this purpose. It is utterly improper that it should be. Now, we are faced with the dilemma —without intending offense, to use a phrase for the lack of a better one, "False pretenses" to rely on evidence which you said yourself you did not want to use.

The Supervisor: Do you want to reply to that, County Counsel?

Mr. Vanderbilt: I have nothing to say. It strikes me that if we cannot use the sworn testi-

mony given in this proceeding, I don't know what evidence we can use.

Mr. McCarter: "If the Supervisor is using these proceedings to make a new set of charges against the Doctor, I would like to know that." The Supervisor then said, "I assure you that is not the case."

Mr. Vanderbilt: That testimony was taken in the cross-examination of Dr. Harman for the purpose of testing his credibility and properly a matter of cross-examination. I do not think anyone can question that; I do not think any judge in the State would question that. If such testimony is admitted for that purpose and if it subsequently develops that it is relevant on any other part of the hearing, of course it is relevant. You don't have to divide your mind into two compartments. It can be used for anything in this hearing, especially as the testimony comes from the respondent himself. I can't see anything to counsel's argument.

Mr. McCarter: Mr. Supervisor, I have only this to say. I presume that this is a hearing that is conducted with fairness and propriety. I was objecting to a lot of testimony. We were here to answer relevant charges; a lot of testimony was being offered which I said struck me as being offered to make a foundation for a new set of charges, and I said I would like to know if that is the fact and if the Supervisor is using these proceedings to make a new set of charges against the Doctor I would like to know that. The Supervisor said, "I assure you that is not the case." I have the word of the Supervisor, which is good enough for me, that that was the fact, and nothing further was done. I don't think any further objection to the

evidence was put in upon that point. Now a new charge has been made, and in the place of the statement of the Supervisor that the evidence that was being put in was not to be used for this new charge, it is now offered for that purpose. I object to it and move for a dismissal.

Mr. Vanderbilt: If it will relieve the situation, I offer the cross-examination of Dr. Harman on the first ten charges.

Mr. McCarter: I object to it; it is the same thing in another form.

The Supervisor: Well, it was not my intention at that time to consider a separate charge. Yet, the testimony that has been given seems to warrant it and consequently the charge has been brought in, and I do not see my way clear to entertain your motion dismissing it at this time.

Mr. McCarter: Does the Supervisor propose to keep his word, or doesn't he?

The Supervisor: He proposes to keep his word.

Mr. McCarter: You said it was not being used to lay a foundation for a new charge.

The Supervisor: The charge is here and it will have to be heard.

Mr. McCarter: I hope everybody will notice, in the face of what the Supervisor said he will not permit the evidence to be used for the purpose of making a new charge, he is using it. The language of the Supervisor is, "I assure you that is not the case."

The Supervisor: We are not going to dismiss this charge. Will you kindly proceed?

Mr. McCarter: Do I understand that the Supervisor permits the evidence taken before this charge was filed to be used in support of this charge?

Mr. Vanderbilt: I offer it as an admission.

The Supervisor: I will permit it.

Mr. McCarter: Then we can't rely on the statements of the Supervisor. I think it is a curious situation. That letter might have been written by anybody. It doesn't appear at all that Mrs. Travers wrote that letter. Without any proof that she wrote that letter, a letter that is supposed to have been in the Supervisor's hands since November 21st, and on the proof that was adduced under the circumstances, that the Supervisor said on page 776 that he would not permit it to be used in support of another charge, the charge is now refused to be dismissed.

Mr. Vanderbilt: I submit that that is not what the record says at all. We come to a funny state of affairs, if these charges constitute a violation of duty—we reach an unusual state of affairs when the act says that he must give employees a written charge and an opportunity to be heard, but when he comes up before the Supervisor on a hearing of charges against him it must go over for weeks. It is an unusual situation and I do not think it needs very much argument.

Mr. McCarter: I would like to ask Dr. Harman whether this card that I now show him is the card of Mrs. Travers that was referred to in the evidence some time ago and he was requested to produce it.

Dr. Harman: That is the card.

Mr. McCarter: Was it made at the time?

Dr. Harman: Made out after she left.

Mr. McCarter: Who made it out?

Dr. Harman: I believe Mr. Winsch, the secretary.

Mr. McCarter: I offer it in evidence.

Mr. Vanderbilt: Is Mr. Winsch here?

The Supervisor: I don't see him.

Mr. Vanderbilt: I would like to know when this was made out and who filled it in. It is very clear that the word "resigned" is filled in on a different typewriter.

Mr. McCarter: The card was made out when she came, and when she left we can't have the type, after a year, the same as when she came in. Dr. Harman says it was in that condition from the time she left down to the present time.

Mr. Vanderbilt: If there is testimony, Mr. Supervisor, as to who instructed that that word be written in, I have no objection to it going in. The mere fact that the word is there does not prove anything. It might have been written by John Jones or Katie Smith, or the Prosecutor.

Mr. McCarter: Is the card admitted?

Mr. Vanderbilt: I object to its admission without proof as to who gave the instructions to write the word "resigned" there.

Mr. McCarter: The record shows that Mr. Vanderbilt asked for this card in the cross-examination of Dr. Harman.

Mr. Vanderbilt: The record does not show that I offered it in evidence.

Mr. McCarter: Will County Counsel wait until I am through?

Mr. Vanderbilt: Pardon me.

Mr. McCarter: I would like to have some chance, if I may. County Counsel seems to be Judge, and County Counsel and Prosecutor and everything else here.

Mr. Vanderbilt: I beg your pardon. I do try to observe some idea of deportment in the courtroom and I take exception to Mr. McCarter's remarks on the record. He may continue through-

out the case, if he desires to insult the Supervisor; the Supervisor has no power to punish by contempt, or else Mr. McCarter would not make those remarks.

Mr. McCarter: As I did not refer to the Supervisor in my remarks then, I don't know where the insult comes in. County Counsel can't prejudice the Supervisor against me in that way. The record shows that that was the card called for by the County Counsel and the evidence shows that that card is in the same condition as it was when she left.

Q. Mr. Vanderbilt: We have a right to know who gave instructions that that word "resigned" be put in there.

Mr. McCarter: You may cross-examine him on that point if you wish, but I do not think you can dictate what I shall prove in my case.

The Supervisor: I think it may be offered in evidence.

Mr. Vanderbilt: Exception.

(The employment card referred to is received in evidence and marked Exhibit R-18.)

ELIZABETH A. HARRIS recalled by the respondent.

Direct-examination by Mr. McCarter:

Mrs. Harris, it already appears that you were and are the Chairman of the Tuberculosis Sanatorium Committee of the Board of Chosen Freeholders. A. I am.

Q. Was the matter of the conduct of Mrs. Travers in connection with her failure to act concerning the presence of a man who was believed to have been a man by the name of Almond in a shack during the night brought to your attention? A. Not until I placed a detective in the Institution to make an investigation which was authorized by me. I reported it to the Supervisor and also spoke to Mr. Dodd. He was there at the time when this discussion came up. I would like to give a picture of what led up to placing the detective there.

Q. Go on. A. On the 15th day of September there was a County car stolen and wrecked on the Institutional grounds. A few weeks later Dr. Harman's office had a light in it between one and two o'clock in the morning and the drawer in his desk was broken open. There were many weird things going on. On Sunday morning, the 28th of October, there was a man up there that went into the shacks seven and eight where our female patients are sleeping. On Tuesday—that was on Tuesday following that—there was a man in Caldwell arrested an hour after this occurrence for driving a stolen car without license and intoxicated, and it was reported back to us that he was a former employee of our Institution. So then it was determined to place a detective in there because this man then had been sent for sixty days to the New-

ark Street jail. I felt very much dazed over these different occurrences. Mr. Supervisor, you know I talked to you about it. And so I called up the Prosecutor and talked with him over the 'phone. He seemed very desirous of assisting in every way that he could and assigned Mr. George Mayer, of his detective staff, to go in and make an investigation. Mr. Mayer called me at night about nine o'clock and arranged for him to go up there and meet the Superintendent. He asked for a stenographer and I told him he had better get one because of the character of the work; that it was so confidential that I didn't care to have an institutional stenographer do the work. He went up there and interrogated the night telephone operator, the night supervisor, Mrs. Travers, and the outside watchman. He went into it very thoroughly; he was a very conscientious detective. Then he came to my house and talked with me at length about it and about Mrs. Travers and about the telephone operator. That went on for several weeks. I finally telephoned for him. I went into the Prosecutor's office several times but he wasn't in. Mr. Mayer brought the report up to my desk in the big Freeholders' room and I went up to the Superintendent immediately and I said, "Dr. Harman, Mrs. Travers has failed in her duties in this Institution when she would permit a man to go into those shacks, and in her own testimony that had accosted some of the women, I felt that she was not trustworthy." I said, "Doctor, you send for her and have it over with her and see what she has to say about it." And that's what he did. Now, Mr. Supervisor, your attitude seems to demand a pound of flesh instead of protecting our patients. We have a moral responsibility as well

as laws, and if this Institution is not going to be run and managed for the benefit of our patients, the sooner we know it the better. I think it is well for them to know it. There is continual interference with the responsibilities of the Superintendent. I think Dr. Harman dealt too lightly with Mrs. Travers. Any woman that had borrowed $1800 from the employees of that Institution months before, and when it was brought to the attention of Dr. Harman through his superintendent of nurses—if he had permitted her to have gone then his employees would have lost all that money. She still owes a little money up there. Mrs. Travers knew that she failed in her duties because she had been screening that man Almond, and he is today serving time up at Caldwell. You went and talked to Mr. Almond, didn't you, Mr. Supervisor? Yes, I knew you did. This woman should have been discharged when she had all the consideration in the world.

Cross-examination by Mr. Vanderbilt:

Q. Mrs. Harris, you have just stated that there were many weird goings on at the Sanatorium. Of course, you don't know all these first hand yourself do you? A. No, I do not, but you have to have faith in some of these reports, Mr. Vanderbilt.

Mr. Vanderbilt: Then I move that the testimony as to the weird things be stricken out.

Witness: I know about the car that was destroyed, Mr. Vanderbilt. Mr. Supervisor, are you going to permit County Counsel to use that gag on me? He is a County employee and he knows it—

Elizabeth A. Harris—Recalled—Cross.

Mr. Vandembilt: Even if the President of the United States gave testimony like that I should move to strike it out. A witness can't come here and give testimony as to what was going on during the night when she was in another town.

Q. Were you there at the investigation of the County detective? A. No, I was not.

Mr. Vanderbilt: Then I ask that Mrs. Harris' testimony be stricken out, because it is hearsay.

Mr. McCarter: It is in the report that is in evidence.

Q. You stated that Mrs. Travers failed in her duties. What is the basis of that? A. I think that any woman that permitted a man like Almond to secrete himself in the Institution failed in her duty.

Q. What proof have you of that? A. I think my word is good enough.

Q. But you don't know it of your own knowledge. What is there on which you base your statement that this dead woman failed in her duties? A. Because she permitted this man Almond to come in there.

Q. Where is your proof of that? A. I have sufficient proof myself, and my own concern is about my patients. When a man comes into that Institution and he is permitted to go into the shacks—she did not give an alarm. She should have raised the roof in protection of those women fighting death.

Q. Will you tell us on what you base your statement? A. I refuse to answer that. I have al-

ready answered it sufficiently, Mr. Supervisor.

Q. You refuse to answer that? A. Yes.

Mr. Vanderbilt: I move that that be stricken out on the ground that it appears to be hearsay.

The Supervisor: I don't think I will. I am very much interested in what Mrs. Harris had to say.

Q. Did you ever talk this over with Mrs. Travers? A. No, the Superintendent of the Hospital is there for that purpose. I am Chairman of the Committee. It was an administrative matter for the Superintendent.

Q. You stated that the Supervisor was exacting a pound of flesh. What did you mean by that? A. Just what I said.

Q. You don't care to explain that? A. I do not.

Q. You stated that there had been continual interference with the Superintendent. By whom? A. I think this is interference when you question how he should dispose of an employee that had not been faithful in her duties there. That is interference. And on the 19th of October we had a hearing in this room by Harold Bennett preferring charges against the Superintendent, a case of insubordination, and we have yet to have the decision on that hearing.

Q. Then the interference that you referred to as being continual is with reference to these hearings, is that it? A. I don't get the question.

Q. I say that what you refer to as continual interference is confined solely to these hearings. A. Not at all. Everything that Verona has wanted in the past five years it had to fight for.

Q. From whom? A. I refuse to answer that here. I will give it to you if you wish it, but I won't answer it here.

Q. When was it that Mrs. Travers first borrowed this money? A. I don't know whether—I don't know.

Q. When was Mrs. Travers case first taken up? A. I don't know whether it was taken up with the Committee—it was taken up with me. I can't remember the day or date.

Q. It was in the winter of 1927? A. I can't remember; I don't know.

Q. Do you know from whom it was that Mrs. Travers borrowed this money that you mentioned? A. The report was that she borrowed it from all the employees. I know there was a little attendant there who loaned her $600—all her savings.

Q. What attendant was it? A. I didn't go into the details of all those things as chairman of the committee.

Q. Did the little attendant tell it to you personally? A. No.

Q. From whom did she borrow it? A. I don't know. She must have borrowed from everybody to pick up $1800.

Q. Do you personally know from whom she borrowed it? A. She didn't borrow it from me.

Q. Do you know from whom she did borrow it? A. You will have to ask the Superintendent that.

Q. You don't know? A. I couldn't tell you positively.

Q. Did any of these people ever complain to you? A. Why should they? They go to the Superintendent; it is a matter of administration. Mrs. Donovan has talked to me about it.

Q. All that you know of the subject came to you through the Superintendent? A. Yes.

Q. When was it that Dr. Harman first told you of these borrowings of Mrs. Travers? A. I can't tell you; it was last winter some time.

Q. The winter of 1927? A. 1928.

Q. But you never spoke to her about the matter? A. Why should I? It wasn't my duty to do that. That would be interference.

Q. Did you direct the Superintendent to take the matter up with her? A. He had already taken it up with the Superintendent of Nurses to the detail, I can't tell you.

Q. You said that Mrs. Travers knew that she had been screening Almond. How do you know that? A. From the reports of the Superintendent, and also Mr. Mayer stated that there was a collusion between the two. He didn't know what it was, but there seemed to be a collusion there.

Q. Will you refer to Mr. Mayer's report? A. It isn't in the report. He said it in my house to me personally.

Mr. Vanderbilt: I move that that testimony be stricken out as hearsay.

Witness: How are we ever going to get at the truth—

Mr. Vanderbilt: I ask that it be stricken out on the ground that is is hearsay.

Witness: We are there to protect our patients, Mr. Supervisor. That is the most important problem we have today. You know that, Mr. Reed, don't you?

The Supervisor: I will strike out the hearsay testimony.

Mr. Vanderbilt: I desire to offer in evi-

dence the report from the office of the Chief Medical Examiner of the City of New York.

Mr. McCarter: Aren't we on our case?

Mr. Vanderbilt: I reserved the right to offer this paper when it came in.

Mr. McCarter: What is that?

Mr. Vanderbilt: The death certificate from the office of the Chief Medical Examiner of the City of New York.

(The same is received in evidence and marked Exhibit C-13).

BERTHOLD S. POLLAK, sworn in behalf of Respondent.

Direct-examination by Mr. McCarter:

Q. Dr. Pollak, you are a Doctor of Medicine? A. I am, sir.

Q. What position do you hold in Hudson County? A. I am the Medical Director of the Hudson County Tuberculosis Sanatorium.

Q. Where is that located? A. At Secaucus.

Q. How long have you been Medical Director of that Institution? A. It will be twenty-two years in February.

Q. Does your position correspond to what is known as Superintendent of the Essex Mountain Sanatorium at Verona? A. Yes, I believe under the Act I am Superintendent; we have changed the title to Medical Director.

Q. Have you found it practicable in all cases where it became necessary in your judgment to sever relations between employees of the institution and the institution to go through the formal-

ity of preferring written charges and having formal hearings?

Mr. Vanderbilt: I object to that question because it involves a question of law and not a question of medical practice or even of institutional practice.

Mr. McCarter: That isn't a question of law; it is a question of the practicability of the plan.

The Supervisor: Do you withdraw your objection, Mr. Vanderbilt?

Mr. Vanderbilt: No, I do not. He is asking the Doctor whether he finds the law practicable which concerns the Institution under which his Institution, as a matter of fact, does not operate, because the Doctor has had his own special law since the Institution started. He is asking him whether he finds that law practicable. It has nothing to do with our Institution. The Hudson County Tuberculosis Institution operates under a different law.

Mr. McCarter: I don't know where counsel gets that idea. All hospitals of first-class counties operate under this act, I thought.

Mr. Vanderbilt: I think not.

Witness: May I answer that?

Mr. Vanderbilt: Yes.

Witness: At the time that this Act was drawn we were working very satisfactorily in Hudson County under what is termed the Tuberculosis Act. There was an act referred to by Mr. McCarter as to first-class counties. We were concerned about conserving the rights of the Board of Mana-

gers of our Hospital. Through Judge Carey, who knew Mr. Vanderbilt, who drew the act, it was incorporated in the Act that counties of the first class who wished to avail themselves of it, could retain the Board of Managers, or have the Board of Freeholders operate the Hospital if desired. We were constituted under the 1912 County Tuberculsis Hospital Act originally, which today pertains to all counties but Essex County, so that really Essex County has a special act and we are working under an old law.

By Mr. McCarter:

Q. Don't you know that the act which you say Mr. Vanderbilt drew under which the Essex County Sanatorium is operated repealed the Act of 1912 which you refer to and that both counties are now operating under the Act that you say Mr. Vanderbilt drew, necessarily so? One cannot operate under one act and the other under the other. That act provides in the alternative that the control of the institution shall be either under a Board of Managers or the Board of Chosen Freeholders. A. Exactly.

Q. So that the other provisions of the act with reference to the duties of the Superintendent and the medical director and all that are in this bill that Mr. Vanderbilt drew? A. Yes, sir.

Mr. McCarter: That is the act of 1922, Chapter 278. Now, Mr. Supervisor, the provisions in question with reference to the duties of the Superintendent or, as the Doctor calls himself, Medical Director, are the

same, and the question I desire the witness to answer if it is permitted is whether under that act he has found it practicable to go through the formalities of having written charges and holding formal hearings in the successful conduct of the Sanatorium's business. It seems to me it is very important.

Mr. Vanderbilt: In the first place, Mr. Supervisor, I think there is no foundation laid for that question. We don't know yet that Dr. Pollak does not conform to the law about giving written charges when employees are dismissed. I think that fact should be developed first before he is asked to draw any conclusions; then, I think the question is subject to the second objection, and that is, asking the Doctor to admit he is following the law or not; and thirdly, I think it is not relevant because it is covered by the provisions of the statute.

Mr. McCarter: I insist upon the question being answered.

The Supervisor: I would like to hear it answered.

Mr. Vanderbilt: Exception.

A. Ordinarily I had very little to do with the discharging of employees because they are departmental. If a nurse is to be discharged her superintendent comes to me and says "Mary Jones is not fit for her work," and I will tell the Superintendent of Nurses to tell her to quit, which they always do. There are no charges. I tell them, "It is better for you to resign." And they resign. I don't believe, and I think I am pretty certain about that

— I don't believe I ever gave written charges except once when there was a particularly potent, powerful individual, in his own mind, and I wanted to make sure of everything. I made up my mind that he was going to go because he was absolutely wrong and I prepared everything according to law, and that was the only time that I can possibly remember where I had a great deal of petitioning on the part of the population, and this gentleman, who carried the city and state in his pocket as they sometimes think they do, and in spite of that, the gentleman went—or I think it was a lady—and the Board of Managers upheld it. That settled the question as far as we were concerned. There was a woman working in a certain capacity there—I won't say what—when some of my subordinates reported the situation to me I said, "Send this party out." They did not send her a notice. I didn't have charges written out. It would have been deleterious to her future, and she saw the point and left gladly without written charges. That is the common thing for us; that is the way superintendents usually handle it. We fire orderlies and porters at least ten or twelve or fifteen a month. We fire different people who think they are too important for us to get along without. We say, "Here is the ticket and there is the station."

Cross-examination by Mr. Vanderbilt:

Q. When you fire them, Doctor, they stay fired.
A. As a rule, yes, sir.

SAMUEL BUDD ENGLISH, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. What position do you hold, Dr. English? A. Chief Executive Officer of the New Jersey State Sanatorium for Tubercular patients.

Q. At Glen Gardner? A. Yes, sir.

Q. How long have you been there? A. Since the 19th day of August, 1907.

Q. That is when the Institution was organized and opened? A. It wasn't open then; that's when I went there.

Q. You have been there since the Institution has been in operation? A. I went there before the Institution was in operation.

Q. How many employees are there in that Institution? A. About 140; I don't know just how many.

Q. In the administration of the affairs of that Institution, have you found it practicable to see to it that every employee who has in your judgment been found derelict in duty, to have written charges against him or her, or any formal hearings before discharging such employee?

Mr. Vanderbilt: I object to that because Dr. English's Institution operates under an entirely different law than the Essex Mountain Sanatorium and on the further grounds as I stated in objecting to the question asked of Dr. Pollak.

The Supervisor: I will sustain the objection because I understand there is an entirely different act as to Dr. English's Institution.

Q. Is it not a fact that the Civil Service Act requires a hearing and the preferrment of charges before this charge? A. I understand it does.

Q. And your employees or some of them at least, are under Civil Service are they not? A. All but myself and one girl.

Q. That being so, I ask you if, in the conduct of your duties as the head of that Institution, you have found it practicable, before dispensing with the services of employees, always to have a hearing such as the Civil Service Act prescribes?

Mr. Vanderbilt: I make the same objection because we are dealing with the particular provisions of that act relating to County Tuberculosis Sanatoriums, and dealing with a different class of patients than at Glen Gardner.

Q. A T. B. patient is the same whether at Glen Gardner or Weehawken or Verona.

The Supervisor: I will sustain the objection.

Cross-examination waived.

JOSEPH R. MORROW, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. Are you the head of any Tuberculosis Institution of this State, Dr. Morrow? A. Bergen County Hospital.

Q. How long have you been in that hospital? A. Fifteen years.

Q. Have you found it practicable in the administration of the affairs of that Institution, in the event of your dealing with subordinates, when the relations between employees and the institution should be severed, to prefer formal charges in writing and to have a formal hearing?

Mr. Vanderbilt: The same objection as to the similar question propounded to Mr. Pollak.

The Supervisor: That objection will be overruled.

A. It is not always practicable.

Q. Why is that? A. There are times when it would be impracticable.

Q. For what reason? A. Employees may not be efficient and they sometimes may misrepresent their ability and qualifications.

Q. Do you know whether this Mrs. Eloise Travers, who recently died had been employed at your institution? A. She was.

Q. When did she come? A. If I recall it, it was probably ten days or two weeks before her heath. Possibly a bit longer than that.

Cross-examination by Mr. Vanderbilt:

Q. Do you know that the law covering the County Tuberculosis Sanatoriums requires that the Superintendent give written charges to employees? A. I did not know that specifically.

Q. If you had known that you would have given written charges, wouldn't you? A. I am afraid it would be quite difficult at times.

Q. You would deliberately violate the law? A. I would not deliberately violate the law, no.

JOHN E. RUNNELLS, sworn in behalf of the Respondent.

Direct-examination by Mr. McCarter:

Q. Doctor, what institution are you the head of? A. Union County, sir, Scotch Plains, New Jersey.

Q. The Tuberculosis Sanatorium? A. Yes, sir.

Q. How long have you been head of that? A. It will be eighteen years the coming August.

Q. Have you found it practicable in the discharge of your duties, as the head of that institution always to formulate written charges and always to give a formal hearing to every employee who you felt should no longer continue in connection with the institution?

Mr. Vanderbilt: The same objection as to the same question asked Dr. Pollack.

The Supervisor: Objection overruled.

Mr. Vanderbilt: Exception.

A. I have never done so; I have never given a written reason for discharge. I should say if we had to do that we would do nothing else. It would keep us busy all the time giving written statements and answering charges. The turnover of employees is very great. Somebody is going and coming every day for one reason or another. I have never had any difficulty in getting rid of employees if they were undesirable. Most of them prefer not to have any written charges.

Q. Have you in mind a recent experience with a fireman in your place? A. Yes, I had a fireman very recently who became intoxicated and at two o'clock attempted to break into the nurses' home. In fact, he got in as far as the sitting room and

he was discovered by the night watchman. He was discharged the next morning. I didn't make any written charges against him. He was quite content to go without any charges.

Cross-examination by Mr. Vanderbilt:

Q. Did you know the provision in the County Tuberculosis Sanatorium Act requiring that written charges be served on the employees? A. I am frank to confess that I did not.

Q. About this fireman, about what time did he get started on the rampage and create the rumpus? A. It was some time between midnight and the morning.

Q. Two o'clock, or something like that, you said. A. Yes.

Q. That was reported by whom? A. The night watchman.

Q. When did he report it to you? A. The next morning.

Q. You didn't fire the night watchman for not waking you up at two o'clock in the morning and reporting it to you then. A. Perhaps I would have.

Q. You would have fired the night watchman if he had awakened you then? A. Yes, sir, I think I would have.

Respondent Rests.

Mr. McCarter: Mr. Supervisor, I move the dismissal of charges 3, 8, and 10, because there is no proof whatever offered by anybody in support of them; 3 is the charge "In that you took Henrietta

Rose, a female patient, and at times an employee riding in your automobile at night during the time when said Henrietta Rose was a patient or employee." The 8th is, "In that you have made it a practice to leave your duties as Superintendent during the middle of the day for a considerable length of time and spent such time resting or sleeping." The 10th is: "In that in the fall of 1926 you parked Mrs. Harman's automobile on Mountain Avenue, about a quarter of a mile from the school at night with an unknown female in the car with you, said to be Henrietta Rose." On the 10th I move for a dismissal because in connection with charge 3, if proved, as they have not been, would not be a violation or neglect of duty and therefore not within the purview of an investigation of this kind. So far as charge 2 is concerned, with reference to Pauline Galler, there is absolutely no evidence that Dr. Harman ever went automobile riding with her and she herself admitted that she had not been riding with him.

Mr. Vanderbilt: As to charge No. 8, I raise no objection to counsel's motion. As to charge No. 3, I beg to call to the Supervisor's attention that there is testimony to that effect. "Question: Did you ever see Miss Rose riding out in the evening with Dr. Harman? Answer: I did." Therefore the motion is improperly made as to that charge. As to charges 3 and 10, I contend that there is evidence on both of them, making it proper for these matters to be submitted to the Supervisor. Is your motion with reference to Galler or Galloway on the second charge?

Mr. McCarter: Galler.

Mr. Vanderbilt: On the second charge I object to the motion because it reads "You invited said

Bertie Galloway and Pauline Galler, female employees, to ride" and there is testimony to that effect "and that you took the said Bertie Galloway automobile riding at night on several occasions". In other words, there is testimony on those points, but I can see no testimony produced on the 8th charge, and I can see no objection to counsel's motion addressed thereto.

The Supervisor: The 8th charge will be stricken out, but not the others.

Now, in regard to the summing up, it isn't my intention to limit anybody and a sufficient amount of time to say it in will be allowed. I am wondering whether we cannot arrive at an agreement between counsel so that we may know about how much time to allocate for that purpose.

Mr. McCarter: I can't say definitely.

The Supervisor: An hour?

Mr. McCarter: I think it will take more than an hour with me. I don't think there ought to be any cast iron rule. This is a very important matter for Dr. Harman and I would like time to express my views in a slow, dignified, orderly way, and I do not see any occasion for limiting this to any length of time. I certainly do not want to take a moment more than necessary in my judgment.

Mr. Vanderbilt: I agree to keep within any time limit that Mr. McCarter does.

The Supervisor: Very well, that is satisfactory.

Mr. McCarter: I should like an opening.

Mr. Vanderbilt: Mr. Supervisor, the opening will be this: That the argument will proceed on the parking charged in the first place, and as to the charges dealing with Miss Bertie Galloway and

Miss Pauline Galler, in the second and third place; in the fourth place with respect to the failure to have staff meetings; in the fifth place, with respect to the charges relating to the operation on Miss Henrietta Rose; in the sixth place, on the supplemental charge dealing with the discharge of Mrs. Travers without authority of law.

Exhibit C-1.

To Dr. Byron M. Harman,
Superintendent of the Essex County Sanatorium,
Verona, N. J.

This to notify you that complaints have been made against you as Superintendent of the Essex County Sanatorium at Verona for violation and neglect of duty in the following particulars:

1. In that on various occasions between Labor Day, 1925, and August, 1926, you invited Bertie Galloway and Pauline Galler, female employees, to your office in said institution to drink intoxicating liquor and that you served intoxicating drinks to one or more of them in your office and made immoral advances to them, and assaulted the said Pauline Galler.

2. In that between Labor Day, 1923, and August, 1926, you invited said Bertie Galloway and Pauline Galler, female employees, to ride in your automobile on various days and nights, and that you took the said Bertie Galloway automobile riding at night on several occasions and made improper proposals to her.

3. In that you took Henrietta Rose, a female patient and at times an employee, riding in your automobile at night during the time when said Henrietta Rose was a patient or employee.

4. In that between Labor Day, 1925, and August, 1926, on several occasions you entered the bed rooms of Pauline Galler and Bertie Galloway, female employees, at times when such female employees were in bed or scantily dressed, and on one or more such occasions attempted improper relations with such female employees.

To Dr. Byron M. Harman,
Superintendent of the Essex County Sanatorium,
Verona, N. J.

Supplementing my notice to you of December 3rd, 1928, I beg to state that an additional complaint has been made against you as Superintendent of the Essex County Sanatorium at Verona for violation and neglect of duty in the following particulars:

11. In that on or about November 21, 1928, you discharged Eloise Travers from her position as Night Supervisor at the Essex Mountain Sanatorium without cause stated in writing after opportunity to be heard, contrary to the provisions of Chapter 278 of the Laws of 1922.

This is to notify you that I will examine into such complaint for violation and neglect of duty on Monday, the twenty-eighth day of January, 1929, in the Meeting Room of the Board of Chosen Freeholders, Hall of Records, Newark, N. J., at 10 o'clock in the forenoon, at which time and place you may be present personally or by counsel to answer said complaint.

ERNEST A. REED,
County Supervisor of the
County of Essex.

Dated Newark, N. J.
January 22, 1929.

Exhibit C-1.

5. In that you made it a practice of unnecessarily exposing the persons of female patients while they were being treated.

6. In that on or about May 8, 1925, you permitted the performance of an illegal operation upon Henrietta Rose at the Verona Sanatorium and that you witnessed the operation.

7. In that you have failed to cause staff meetings of the physicians at said institution to be held at regular and frequent intervals.

8. In that you have made it a practice to leave your duties as Superintendent during the middle of the day for a considerable length of time and spent such time resting or sleeping.

9. In that on or about August 19, 1925, you were arrested on Fairfield Avenue, east of Fairfield Road, in the Township of Caldwell, on the complaint of parking without lights in an Essex County car in the company of a female.

10. In that in the Fall of 1926 you parked Mrs. Harman's automobile on Mountain Avenue about a quarter of a mile from the school at night with an unknown female in the car with you, said to be Henrietta Rose.

This is to further notify you that I will examine into such complaints for violation and neglect of duty on Monday, the tenth day of December, 1928, in the Meeting Room of the Board of Chosen Freeholders, Hall of Records, Newark, N. J., at 10 o'clock in the forenoon, at which time and place

Exhibit C-1.

you may be present personally or by counsel to answer said complaints.

Dated Newark, N. J., December 3, 1928.

ERNEST A. REED,
County Supervisor of the County of Essex.

Service of the within complaint is hereby acknowledged this Fourth day of December, 1928.

SORG, DUNCAN & BAILEY,
Attorneys of Dr. Byron M. Harman.

Exhibit C-2.

ESSEX MOUNTAIN SANATORIUM

Verona, N. J.

B. M. Harman, M. D.
Superintendent.

Telephones:
Branch Brook 4061
Verona, 5437

I hereby tender my resignation as Telephone Operator, to take effect April 25, 1926.

_____

Signed.

Exhibit C-3.

ESSEX MOUNTAIN SANATORIZM

Synopsis Sheet No. 2535

1

Name: Rose, Henrietta. Race, White. Nativity, New Jersey.

Address: Essex Mountain Sanatorium, Verona, N. J. Born: June 1, 1904.

Religion: Protestant. Occupation, Stenographer. S. M. W. Age: 20.

Relative or Friend: Father—John Rose. County: Essex.

Address: 475 Clinton Avenue, Newark, N. J. Telephone: ————

Physician: Dr. B. M. Harman. Address: Verona, N. J.

Admission Date: May 7, 1925. Condition: Endomitritis.

Discharge Date: May 14, 1925. Condition: Improved.

Reason for Discharge: Able to return to quarters.

Anatomical Diagnosis: Endometritis.

X-Ray Diagnosis: X-ray not taken.

Gen. Condition Admission: Weak. Discharge: Good. Considered: No.

Duration of Disease: 7/15 month. On Discharge: 7/10 month. Hospital Days: 7.

Previous Admission: Yes-- Oct. 26, 1921. At other Sanatoriums: No.

Weight: Standard: Not weighed. Usual: ———— Height: ————. Feet: ————

Min. P. I.: ———— Admission: ———— Discharge: ————.

Sputum: Tubercle Bacilli Previous to Adm.: Not examined. Admission: Not examined.

Exhibit C-3.

Hemoptysis: Previous to admission: No. During Residence: No.
Fever: Previous to Admission: Yes. Average Max. Adm.: 99. Average Max. Disch.: 99.
Pulse Range on Admission: 68-98. Discharge: 80-98.
Urine on Admission: Negative. Discharge: ——
Complications Non-Tuberculous: Admission: Negative. Location: ————.
Complications Tuberculous: Admission: Negative. Location: ———.
Presented at Staff Meeting: ?
Admitted by Mary J. Englebert.

———

ESSEX MOUNTAIN SANATORIUM

Previous Illness No. 2535

3

Name: Rose, Henrietta. Date: May 7th,'25

Family History

F.: Living and well. M. G. F.: Deceased. Accident.
M.: Died. No data. M. G. M.: Deceased. Old age.
B.: One. Died of Tuberculosis. W.: ———
S.: One. Living and well. H.: ————
P. A.: Three living and well.
P. U.: None. T. B. Glands: Cervical glands were swollen when 10 years old.
P. G. F.: Deceased. T. B. Joints: No.
P. G. M.: Deceased. Cancer: No.

Exhibit C-3.

M. A.: Two; living and well—I died, no data. Heart Disease. No.
M. U.: Two living and well. Dialetes: No.

Previous History Rheumatism: ———

General Health: Good up to Oct. 1921. Typhoid: No.
In Childhood: Never very strong. Malaria: Yes, years ago.
Measles: Yes. Grippe: Yes; 1 month ago.
Mumps: Yes. Tonsilitis: Yes; several attacks.
Varicella: No. Scrofula: No.
Pertussis: Yes. Nasal Disease: No.
Diphtheria: Yes. Nasal Operation: No.
Scarlatina: No. Throat: Normal.
Chorea: No. Pneumonia: Yes; 13 yrs. ago.
Rheumatism: No. Pleurisy: Yes; 3 yrs. ago.
Palpitation: No. Alcohol: No.
Swelling of Ankles: No. Tobacco: No.
Urine: Normal. Infection: No.
Tripper: No. Last Day's Work: April 18, 1925.
Lues: No. Dust: No.
Menses: Regular. Ventilation: Good.
Miscarriage: No. Slept with Windows: Open.
Nervous: Yes. Operations: Is about to have an operation today for tumor.
Loss of Consciousness: Several times. Other Diseases:
Convulsions: No. Uterine?
Eyes: Wears glasses. Remarks: Patient appears weak and anemic.
Ears: Normal.

Exhibit C-3.

ESSEX MOUNTAIN SANATORIUM

Present History No. 2535

4

Name: Rose, Henrietta. Date: May 10, '25
Occupation: Typewriter & stenographer. Tubercular associates: 1 Bro. (died).
First symptoms of which you complain: Cough & expectoration.
History of Protracted "Colds": Lis.
First lung examination: Oct. 1921. Method: Physical— X-ray.
By what physician? Dr. Phalen. Address: Newark, N. J.
What was his advice? Sanatorium.
What was his diagnosis? Pulmonary Tuberculosis.
Did you return for a second examination? Yes.
When did you first cough? Oct. 1921. How much? Mod. Continuous? No. Intermittent? Yes.
When did you first expectorate? Oct. 1921. Present amount: ———
Sputum examined: Yes. Findings: Positive.
Have you suffered from Grippe? Yes. Malaria? Yes ?
Bronchitis? Yes. Typhoid Fever? No.
When were you ill in bed? For past 3 wks, (2 wks —Grippe).
Pleurisy: Yes. Side: Both. Date: 1921.
Dyspnoea: Yes. Chills: Yes.
Hemoptysis: No. Amount: No. Date: No.
Fever: Yes.
Night sweats: Yes.
Abdominal pain: Yes. Dates: May, 1925.

Exhibit C-3.

Tenderness: Yes. Region: Pelvic. Dates: May, 1925.
Appetite: Good. Vomiting: No.
Bowels: B. Constip. Menstruation: Irreg.
Previous treatment: Private and San. Where: Home—E. M. S. Result: Improved.
Remarks: Operation. No flu.—No hernia. No ischis—rectal abscess—(curettment) May 8, 1925—Endometritis.

ESSEX MOUNTAIN SANATORIUM

Physical Examination No. 2535

5 Date: May-10-1925

Name: Rose, Henrietta.
Height: ———— Photo Admission
Weight: ————
Eyes: Blue—Glasses.
Teeth: Fair.
Tongue: Sl. coated.
Ant. Nares: Neg.
Post. Nares: Neg.
Pharynx: —— (Tonsils).
Larynx: Neg.
Ears: Neg.
Mucuous Membrane: Sl. congestion.
Lymph Nodes: Neg.
Skin: Neg.
Spine: Neg.
Extremities: Neg.
Reflexes: N.
Liver: Neg.

Exhibit C-3.

Spleen: Neg. Photo Discharge
Kidneys: Neg.
Stomach: Neg.
Abdomen: Neg.
Arterial tension, Sphygmonometer
Systolic, Diastolic: ———
Vessels soft & full.
Heart
Inspection, Pulse pressure: Neg.
Percussion: Neg.
Auscultation: 2nd A & P. Accent.
Thorax
Angulus: Mod.
Retraction: + Sl.
Deformities: Neg.
Expansion: Diminished.
Remarks:

Exhibit C-3.

ESSEX MOUNTAIN SANATORIUM

Urinary Chart No. 2535

9

Name: Rose, Henrietta.
Dates: 5-8-25.
Characteristics: Orange Sediment;Normal.
Reaction: Acid.
Spec. Grav.: 1025.
Albumen: Neg.
Sugar: Neg.

Exhibit C-3.

ESSEX MOUNTAIN SANATORIUM

Treatment Chart No. 2535

11

Name: Rose, Henrietta.
Ordered: 5-9-25.
Medicine: Ti. Iodine cjtt. V. T. + D. mis.
Diet: Regular.

ESSEX MOUNTAIN SANATORIUM
Bedside Notes No. 2535

13

Name: Rose, Henrietta.

May 7-25		10 A. M.	Admitted. S S. Enema. Prepared for operation.
			7 P. M. Quiet day. Pain in right abdomen during afternoon.
5-8-25			Apparently slept well.
	11 A. M.		S. S. Enema—Satisfactory
5-8-25	Hpyo—Morph. gr. 1/6		results.
	Hyacine gr. 1/300		11.30 taken to Opr. Room. 12 Noon.
			Returned from Opr. Room. Pulse 89. Conscious comfortable. Quiet afternoon. 4.30 Voided. Asceptically dressed. Slight bloody discharge.
5-8-25 9			Voided at 8.40 P. M. Slight bloody discharge. Slept well.
			Voided at 6.30 A. M. Very slight bloody discharge.
5-9-25	Tr. I o f.qtts. V. t. d. P. C.		Comfortbale. Regular diet.
5-9-25	in milk.		
10			Comfortable night.

ESSEX MOUNTAIN SANATORIUM

Bedside Notes No. 2535

13

Name: Rose, Henrietta.

5-10-25.	T. Iodine qrts V P. C.	No complaint.
5-10-25.		No complaint.
11	Tr. Iodine qtts in milk-8-1-6	Complains of sore throat.
5-11-25.	Argyrol to throat.	
5-11-25.		Slept well.
12		No complaint.
5-12-25.		Examined by Dr. Bennett. Slight discharge—Sterile precautions.
5-13-25.	Sonstipated—Cascaria qus T.	Comf. night. Slept well.
5-13-25.		Slight discharge. "Sweet." No complaint.
5-14-25.		Slept well. Condition seems good.
		No complaints. Out of bed on porch in cure chair.
5-14-25.	Tr. Iodine qtts V in milk 8-1-6	Bowels evacuated—Pt went to bath room. Had a comfortable day.
	6 P. M.	Pt. discharged.

Exhibit C-3.

ESSEX MOUNTAIN SANATORIUM

Final Summary of Case No. 2535

14

Name, Rose, Henrietta.

On Admission

Condition:
Moderately Advanced√
√A B C
Extent of Signs (Turban) Peribronchial
I √II III Parenchymatous
Area of Involvement:
Right upper lobe√ (entire) (portion) √
Left upper lobe√ √

On Discharge

Condition
Quiescent√
Right upper lobe√ (entire) (portion) √
Left upper lobe√ √

Complications on Admission

Tuberculous
Enlarged glands (cervical auxiliary)
" joints Neg.
Scoliosis, Kyphosis, Pott's Dis.
Laryngitis: Neg.
Infiltration. Oedema. Ulceration.
Epiglottis. Arytenoids. Ventric. Bands.
Chords. Commissures, ant. & post.—Neg.

Exhibit C-3.

Pleuritis. Intestinal. Peritoneal. Kidney. Bladder. Fistula. Proctitic Abscess. Otitis Media.—Neg.

Non-Tuberculous

Endometritis

Pyorrhea: Neg.

Indigestion: Heaviness. Pain. Flatulence. Nausea. Vomiting.—Neg.

Weight: Actual. Standard.

Too ill to be weighed.

Complications on Discharge

Tuberculous

Enlarged glands (cervical axiliary)

" joints.—Neg.

Scoliosis, Kyphosis, Pott's Dis.

Laryngitis: Neg.

Infiltration. Oedema. Ulceration.

Epiglottis. Arytenoids. Ventric. Bands. Chords. Commissures, ant. & post.—Neg.

Pleuritis. Intestinal. Peritoneal. Kidney. Bladder. Fistula. Proctitic Abscess. Otitis Media.—Neg.

Non-Tuberculous

Endometritis

Operation

Curettment.

Pyorrhea: Neg.

Indigestion: Heaviness. Pain. Flatulence. Nausea. Vomiting.—Neg.

Weight: Actual. Standard.

Too ill to be weighed.

Exhibit C-3.

ESSEX MOUNTAIN SANATORIUM

Final Summary of Case.

Less than 30 days stay case not considered.

Length of stay: 7 days.
Not considered √
Dur. of disease prior to admission: (Tb. 3 yrs. 8 mo.) (Ends 2 weeks).
Dur. of disease when discharged: 7/10 mos.
X-rayed admission: No.
X-rayed discharge: No.

Tubercle Bacilli:

+=Pos,—=Neg, 0=Not exam.

Previous to admission 0
On admission 0
During residence 0
On discharge 0

a Rapid uneventful improvement.
√b Gradual uneventful improvement √
c Remissions with improvement.
d Stationary.
e Steady gradual decline.
f Pronounced exacerbations.
g Rapid decline.

(Typewritten story, including Etiology, development, previous treatment, incidents of interest under Sanatorium regime and final result).
Henrietta Rose: Was re-admitted May 7, 1925.
Diagnosed: Endometritis.
Age 20, Occupation Stenographer; Race, White.

Exhibit C-3.

First Admission: October 26, 1921.
Diagnosed: Incipient.
Made rapid, uneventful improvement.
Discharged as Quiescent, May 22, 1922 to work in Essex Mountain Sanatorium.
Family history: 1 brother died of T. B.
Personal history: measles, whooping cough, diphtheria, grippe, pneumonia, pleurisy—pulmonary tuberculosis.
Tuberculosis does not appear to be active.
Uterine curettage May 8, 1925.
Patient made a rapid uneventful improvement.
No cough nor expectoration.
Discharged.
Quiescent as to TB. and operation successful.
Patient discharged as cured May 14, 1925.

DR. W. F. BENNETT.

Was advised to take a complete change and rest for some time. Has been up and down for last 10 months. Enlargement of Thyrond which is probably toxic.

B. M. H.

ESSEX MOUNTAIN SANATORIUM.

Case No. 2535

Father: John Rose; Connecticut.
Mother: Henrietta Hindson; New Jersey.
Name, Rose, Henrietta. Address: Essex Mountain San.
Friend or Relative: Father—John Rose. Address: 475 Clinton Ave. Newark.
Occupation: Stenographer. Employer: EM. S. Address: Verona.
Age: 20. Male or Female: F. Color: White. Religion: Protestant. Nationality: Amer.
S. M. W. D.: Single. Ward: 2. Date of Birth: June 1, 1904.
Admitted: May 7, 1925. Time: 10 A. M. Discharged: May 14, 1925.
Total Days in Hospital: 7.

Diagnosis on Admission: Endometritis.
Weight on Admission: Not weighed. Discharge: bed pt.
Sputum on Admission: not exam. Discharge: No spec.
Complications: Negative.

Results

Improved.

Exhibit C-4.

2535

HENRIETTA HOSE.

Endometritis.
Improved.
Discharged May 14, 1925.
Able to return to quarters.
7/15 mos. 7/10 mos.
Meals: Good. No.
Endometritis.
X-ray not taken.
Not weighed. 7 days.
Sputum not examined.

Henm	no	no
Lungs		Lungs
99		99
68-98		80-98

Urine: Neg.
Cormp. Neg.
" Neg.
Staff ?
X-ray: No.
" Neg.

Exhibit C-5.

Adm. No. 2535.
Name: Henrietta Rose.
Address: Essex Mt. San.
Date adm.: May 7, '25.
Emp. Name: E. Mt. San.
Emp. Address: Verona.
Father's Name: John Rose.
Father's Address: 475 Clinton Ave., Newark.
Father's Nationality: Amer.
Father's Birthplace: Conn.
Mother's Name: Henrietta Hindror.
Mother's Address: Dead.
Mother's Nationality: Amer.
Mother's Birthplace: New Jersey.
Rel. or Friend: Father.
Address
How related
S. M. W. D.
Pts. Occupation: Stenographer.
Pts. Religion: Prot.
Pts. Birthplace: New Jersey.
Pts. Age: 20.
Born: 1904—June 1st.
How many years in: 4 yrs.
How many years in: Life.
How many years in: Life.

Phone
Time Adm. 10 A. M.
Height
Stand. Weight. Not weighed.
Adm. Weight.
Race
Wd.: 2.

Exhibit C-6.

Name: Olcott, George W. Dr.
Designation: Pathologist.
Department: Verona.
Appointment, Date: October 9, 1924.
Salary Range: $100.00 per month (Part time).

Exhibit C-8.

November 10, 1928.

Hon. Jos. L. Smith, Prosecutor.

Dear Sir:

Attached hereto you will please find three separate reports of my investigation made at the Verona Sanatorium, and a synopsis of its contents is as follows:

Report #1—Contains information given me by Mr. Welch. Statements taken and examination made of the employees in question.

Report #2—Contains additional statements together with cross examination of the above mentioned employees.

Report #3—Contains general outline of my findings and summation, together with the suspected Andrew Almond's own statement made to me.

Hoping same will meet with your approval, I am,

Very respectfully yours,

COUNTY DETECTIVE,
G. L. Mayer.

Exhibit C-8.

November 2, 1928.
Hall of Records Bldg.
Newark, New Jersey.

Interview with Mr. Joseph Welseh, Chauffeur for Mrs. Harris, Freeholder.

"I have been instructed to give you the synopsis of two different cases which occurred at the Essex County Sanatorium at Verona, New Jersey. On September the 15th there was a Buick sedan SG-232 parked near the male employees home at the institution and this was about 11:45 p. m. at night. This car was taken away from the parking place and someone ran it down off the road and completely wrecked it."

On Sunday morning, October 28th, at about 2:20 A. M. a man was seen at the hospital Pavilion #7 and it is alleged that this man attempted to assault a female patient there. Patients in this ward screamed and gave alarm. This man did not run at the outcries given by the patient but remained a short while. He acted as though he knew the place very well. One of the female patients called up the telephone operator for help and instead of the operator notifying police headquarters at Verona, the operator failed to notify anyone for help, the operator saying she would take care of this. This man went out of Ward #7 to Ward #8 in another building where there are female patients, where he is alleged to have layed across a certain bed in which a female patient was at the time, by the name of Umsteader, and all the girls in the ward screamed for help, and then this man left the ward. The night supervisor, Miss Travers, also the night watchman, Peter Mucillo, saw this man. They all gave a de-

scription of him as follows: 5ft. 7 or 8 in., slim built, with a cap and dark overcoat. This night watchman saw this man get in a Hudson Super Six and this was a stolen car from Orange, New Jersey, and owned by a man by the name of Mr. Williams.

On the morning of October 26th at about 3 a. m. a man was arrested and he gave his name as Andrew Almond to Officer Cables of Caldwell, New Jersey. This man, Almond, was arrested in the act of attempting to steal another automobile and abandoning the Hudson automobile, the one he had at the time. Recorder Jacobus of Caldwell last Monday sentenced this, man, Almond, to sixty days in jail for being a drunken driver. The Orange Police Department has a retainer filed against him for stealing the Hudson car as mentioned before. "It was learned by me that the telephone operator was very friendly with this man Almond and in fact used to keep company with him when he was employed at the Institution last June as an attendant. The night the car was stolen, this telephone operator in question went on duty at about 12:30 a. m., but the Buick car was stolen between 11:45 and 12 Midnight. When the Buick car was found the next day a clock inside of the car was stopped at seven minutes to twelve. It was further learned that this man, Almond, had been in the habit of coming up on Saturday night since his discharge from the Institution. When this Buick car was found the next morning September 16th, completely wrecked, a girl's powder puff was on the running board of this Buick car, but unfortunately this powder puff was not kept by anyone and was destroyed when the car was removed. I have a witness who will prove that this

man, Almond, on the morning of October 26th is the same man that borrowed a watering can for the purpose of getting water in the car which he had at the time but never returned the watering can.

This taxicab driver will say that Almond told him that he was going to the Sanatorium.

November 2, 1928

Hall of Records Building
Detective Bureau
Newark, N. J.

Statement of George L. Mayer.

After an interview with Mr. Welch at about 7 p. m. at my home, I decided to go to the Essex County Sanatorium, first getting in touch with Mrs. Harris, Freeholder, and making the necessary arrangements with Dr. Harmond, superintendent. I reached the Institution about 8:15 p. m. and after having a conversation with Dr. Harmond, superintendent, we decided to interview the night watchman, Peter Muccio, and Mrs. Doris Eubank, telephone operator, also a Mrs. Eloise D. Travers, night supervisor. After obtaining a statement from Peter Muccio, I decided to have the telephone operator called away from her room and accompanied by Dr. Harmond, while the said operator was relieving the other telephone operator. I made a careful search of her room for the purpose of endeavoring to secure evidence in way of mails, etc. Not finding anything of importance I then sent for her and obtained a statement from her.

Exhibit C-8.

I then obtained a statement from Eloise D. Travers, night supervisor.

After those statements were obtained their stories were so conflicting that I immediately became suspicious that the three aforesaid mentioned persons were covering up questions that had been put to them, or in other words refused to implicate defendant, Almond.

On the morning of November 5th after having made a careful search I learned of a taxicab driver by the name of Leo Howland who is stationed at a taxicab stand near the Essex County Verona Sanatorium. The result of my questioning I learned that on the evening of September 15th the night that the Buick car is alleged to have been stolen and wrecked, this Mr. Howland told me that he was the taxicab driver that had taken the telephone operator and the defendant, Almond, to the Institution at around 11 or 11:30 p. m. Saturday night. That the defendant, Almond, told the taxicab driver that he would let him know when to call for him at the Institution later on, but this defendant did not get him to take him back and he remembers distinctly the next morning when the Buick car was found totally wrecked. He then surmised what had happened because the defendant Almond, seemed to him to be under the influence of liquor.

I have arranged to obtain a statement from the taxicab driver for the purpose of proper identification of the telephone operator in question also to obtain statements from other witnesses etc.

Exhibit C-8.

Verona Sanatorium
10:40 p. m.

November 2, 1928.

Voluntary Statement of Peter Muccio, Night Watchman, Home Address: 65 Verona Avenue, Newark, N. J.

"I saw a man in front of the male employees' home and he got into an automobile, large closed car, and he went down the road. This was about 2:20 a. m. Sunday morning, October 28th. This man did not talk to me. He had a cap on. I was about fifty feet away from him when I saw him. He turned his car around and went down the road to Mountain Avenue. I went thru the add. building and I spoke to the telephone operator and she told me she had heard about somebody was around the shack. I said, "I'll go over and find that out."

I got on the first floor of the hospital. I saw Mrs. Travers and she told me she saw a man walk towards the front from the shack towards the employees' building. I told her I saw a man jump in an automobile and went away and she said, "I hope so, I won't be afraid anymore."

A woman patient about fifty years old told me that shack number seven, I don't know her name, but her bed is directly opposite as you enter the door of the shack. I don't know her name but she told me the man walked in the shack and she yelled at him, "Where are you going" and she told him to get out. All the women patients were scared. I walked around to see if I could see anybody but I could not. I did not make any report of this because I thought Mrs. Travers would take care of it.

Signed: PETER MUCCIO.

Exhibit C-8.

Verona Sanatorium,

11:05 p. m.
November 2, 1928.

Voluntary Statement of:
Mrs. Dora Eubank, Telephone Operator.

Question: Where did you come from?

Answer: Richmond, Virginia, Cary Street, 1505. This address was my last home before I came to New Jersey. I have worked about one year as a telephone operator at this institution. I have only worked three shifts since I have been here.

Q. What were they?

A. They were from 5 p. m. to 12:30 a. m. Last week I worked from 12:30 a. m. until 8:30 a. m.

Q. Were you on duty as a telephone operator on October the 27th.

A. I was until 8:30 Sunday morning.

Q. Did anything unusual happen Sunday morning at an early hour.

A. Yes, around 2:30 A. M. I heard some women scream in Shack #8. Miss Oliver was a patient in there and she got on the telephone and she said, "Operator, there is a man in the Shack," and she said he was tall and thin and wore a cap. I asked, "Where is he now" and she said, "He is headed for the hospital." I tried to get Miss Travers by ringing her on the second floor but the night attendant Miss Huzzy said he heard girls scream and was headed for the shack. Then Miss Denman, a nurse in The Annex came on the line and she said, "There was a terrific scream coming from the shack," I asked her to send Joe Gilbroth, night attendant. After that I did not hear anything until 2:45 a. m. Miss Travers asked me to call up the employees' building and find out if any of the men

Exhibit C-8.

were out. I told her if I rang over them at 1 a. m. Mr. Harris would not like it. Miss Travers said, "Let it go until the morning." That is all I heard about it until Wednesday, October 31st. The man at the taxi stand, the fellow called, Bill, said that Leo, (taxi driver) gave the man a can to fill water in for his car and he forgot to return the can. He did say that he thought it was an ex-employee or an ex-patient who had worked here. He did not mention his name to me. I did not make a report because I thought the night supervisor, Miss Travers would take care of that. I tried to get Mr. Welch then at about 2:30 a. m. by ringing the garage, but I did not get an answer.

Question by Detective Mayer: Do you know a Mr. Almond?

A. Yes, sir, I do.

Q. When did you see him last? A. I saw him a couple of Sundays ago and Pete (night watchman) saw him and spoke to him and made a remark, how well he looked, and that was in the telephone booth in the building about when Pete made his first round, because I saw Mr. Almond get on the bus in front of the building about nine o'clock. That was the first time I seen him since he has left here. He came up here to see me personally and he talked to me a little while and then he went home. He said he was working for The American Store people, like driving around delivering goods to chain stores. It was a little after 2:30 o'clock in the morning I saw Pete, the watchman, and I told him, "Miss Travers wants you to look around the grounds for her." I did not see Pete until the next morning 6:15 a. m. Miss Oliver told me it was a tall man that was over here with a cap on. The reason I did not notify anybody is because I

thought Mrs. Travers would take care of it. This is all I know about this affair which took place Sunday morning October 28th. I make this statement and it is the truth made without any threats or promises to me.

Signed: MRS. DORIS EUBANK.

Verona Sanatorium

12 midnight
November 2, 1928.

Voluntary Statement of:
Eloise D. Travers (Night Supervisor)

"At 2:30 a. m. I heard the girls (Patients in #8 Pavillion) screaming. I was on the first floor of the Hospital. I was at the office at the time about 80 ft. I swiftly as possible walked to Pavillion #8. When at the end of Hospital corridor, a man passing through the corridor from #8 was silouhetted just outside door. Thinking was the watchman relief I did not turn flash light on him. Seeing by pale moonlight the man looked a little above average in height, around 5 ft. 8 in. Wore a loosely fitting overcoat and a cap. The overcoat was loose. He went out the door (outside of this corridor) turned down. A few moments later about ten minutes later the night watchman came through. He said he saw this man get into a car in front of Male Employees' Building. After I had been in #8 I saw light over in Ward #7. I went over to #7. The patients in #7 said that a man whom they described and description of whom fitted the man I had seen in the corridor had been in #7 before the screaming in #8 had occured and

Exhibit C-8.

had accosted one of the girls in #7 (Loretta Dargin.) I do not know what he said to her. In #8 he accosted a girl called Lena Saparita. I don't know what was said to her. They were conflicting stories about this. In #8 Miss Foehmlin put him out of the Shack. She got up out of bed. It was the same description. I reported this occurrence next morning in my night report. (I didn't think to call Dr. Harmon or the Police.) I had told the watchman and felt he should take care of this.

Signed: ELOISE D. TRAVERS.

Verona, New Jersey.

November 5, 1928.

Doris Eubank, Telephone Operator,
Interrogated at 3:55 p. m. testified that:

She did not see Almond at the Institution September 15th. The only night he had been there was about two weeks before the 28th of October and that he called for her at seven o'clock and went down on the nine o'clock bus.

During this interrogation Leo Howland, taxicab driver, was brought in and identified Doris Eubank as the woman he drove up to the Sanatorium September 15th between 11:30 and 11:45 p. m. She denied this and said the driver was all balled up.

She said that she bought the cake in Dick's place next to the blind man's store where she left the cake while Almond bought cigars. When they came back in the cab, Almond ran down the hill and caught the nine o'clock bus. And that is the only one time he came to the Institution since he

left his employment there, and that she did not know of any trouble until she was shown the article in the newspaper.

In her voluntary statement she stated that the one time Almond came up to the Institution the watchman, Pete, had seen him but she thought later that it was not Pete but Finnigan. She knows it was Finnigan because he passed her several times on his rounds that night, and it was Sunday night, not Saturday.

When asked if she knew a taxi driver by the name of Hall she said that she knew a fellow by the name of Bill but did not know his last name, and that she never went out with him. He did loan her four dollars one time when she was short but she gave it back to him and has not seen him since, but she went on to say that he had been at the Institution the night before when she told him not to stand around there.

When she saw Almond he had on a blue suit with a pin stripe and a brown overcoat that he bought off one of the fellows there, black patent leather shoes and a new cap, a kind of plaid with checks in it or something. He again had a mustach.

She recalled the evening Dr. Harmon's car was stolen. When she came downstairs to go on duty Welch and Dr. Harmon were there telephoning the police. She did not remember having been out that night but stated if she was it must have been with one Charlie Rettinger, 116 Maple Avenue, Irvington, New Jersey, with whom she went to theatre in New York one Saturday night.

Tuesdays are her days off. Sundays she is on relief duty 12 to 12:30 and 4:30 to 5 p. m. Was

on duty from 12:30 M to 8:30 a. m. Saturday night.

She is twenty-seven years old.

Verona, New Jersey.

November 5, 1928.

Leo Howland, 250 Mountain Avenue, North Caldwell, New Jersey, interrogated at about 3:35 p. m. testified that:

On Saturday night September 15, 1928 between 11:30 and 11:45 p. m. he was in the station of the cab stand located at the corner of Bloomfield Avenue and Mountain Avenue when he was asked for a cab by a man whom he can describe and a young lady whom he knows to be a telephone operator at the Sanatorium. He took them up and when he got to the top of Penitentiary Hill she made a remark that she missed a package, he thought a cake. The man said, we will go back and get it, and they drove down to the corner and he ran into get the package. He took them to the hospital, they both got out, the man paid the fare and remarked, "I will call you later," but he did not call.

The next day Howland learned that an automobile had been stolen and wrecked and went up to the Institution to look at it.

When shown a cap and overcoat by Detective Mayer, Howland identified them as having been worn by the man. He did not remember any conversation but did remember that the man had an odor of liquor about him.

Once before on September 15th he remembers

taking the man up there, at which time the man said he was going to see his girl friend and for him to wait.

He also brought him up during the week before the car was stolen and let him off in back of the Hospital at the ambulance driveway.

October 28th at about 1:30 he saw a man who borrowed a watering can. The man was drunk and had on the same hat and coat which we showed him.

The watering can was never returned. The man had a Hudson Super Six car which had no license plate on the front and the plate in the back was tilted up so that you could not read it.

He further stated that today he took this telephone operator up to the Institution and she remarked to him that she was going down and give his boss a piece of her mind because he was telling people that one Bill Hall was running around with her.

Verona, New Jersey,

November 5, 1928.

William Hall, Taxi Driver, 1 Hanford Place, Caldwell, N. J.

Interrogated at 3:20 p. m. testified that:

He claimed on the morning of October 28th he saw a man in a closed car on the road to the Essex County Sanatorium and at that time he was coming from the Institution; that this man was driving his car near the Nurses Home, and that was the last he saw of this man that morning.

Mr. Hall was shown a light cap and claims the

man in question that he saw wore a cap similar to the one shown him and that the overcoat was a dark one; he could not see it very well at night.

Verona, New Jersey.

November 5, 1928.

Mrs. Travers, Night Supervisor,
Interrogated at about 5 p. m. testified that:

The cap shown to her was like the one the man wore who was seen around the Institution the night someone broke into the ward and the overcoat had the same general effect.

That there is a record kept of the time the nurses return at night unless they slipped in thru the hospital door.

When she saw the man he was walking naturally and her suspicions were not aroused, did not talk to him and he went out the door exactly in the manner the watchman's relief would. As she recalls his appearance now, she is of the impression that it might have been Almond, but did not think of him at the time. She has not seen him since he was discharged.

November 9, 1928.

Remarks made by Detective Mayer
To Dr. Harmon.

In addition to the examination made by me of the employees at your Institution, I had occasion to examine the suspected defendant, Andrew Almond, with reference to the nights of September 15th and October 28.

Exhibit C-8.

I have given him a close grilling, and I find his story to be correct, particularly as to the night of September 15 being a Saturday night. You will notice in this testimony I called his attention particularly as to the time, place and date. In my humble opinion as expressed in a report to the Prosecutor who in turn will submit a report to Mrs. Elizabeth Harris, freeholder, certain suggestions which undoubtedly will be remedied and make it impossible for such occurrences to repeat themselves again.

With reference to the night watchman, I made mention that an additional one be employed, preferably one with police knowledge, being properly equipped with badge and firearm, and one who knows the routine in the event of emergency.

With reference to the night supervisor, I made mention her duties be changed from night supervisor to day supervisor and perhaps it would be well for me to say that this position be filled by some competent person other than the present one.

With reference to the telephone operator, I recommend her discharge, as I have learned of her conduct by other means, and I think it will be for the best interest and welfare of the Institution.

That the present watchman in view of his long years of service as such be given another opportunity, such as fireman, for fire prevention, instead of police night work.

In conclusion I wish to make known to you of the invaluable services that have been given me by Mr. Welch who in my opinion is well qualified to be placed in a position as a confidential man in or about your Institution.

Exhibit C-8.

Hall of Records Building,
Newark, New Jersey,

November 8, 1928.

Statement of:
George L. Mayer, County Detective.

I visited the Essex County Jail at 3:05 p. m. yesterday afternoon returning the overcoat and cap belonging to Andrew Almond, defendant, who is confined as a prisoner, and turned these articles over to Mr. Lyons, keeper of the jail. I then requested an interview with Andrew Almond explaining to him that I was County Detective, and I put the following questions to him.

Q. How long have you worked at the Verona Sanatorium?

A. About nine months.

Q. How well did you know a Miss Doris Eubank, telephone operator?

A. Very well.

Q. When did you see her the last time?

A. About two months ago.

Q. What night was that?

A. A Saturday night.

Q. When did you see Doris Eubank, at what place and time did you first meet her, and tell me all that happened the night that you were with her.

A. I met a Mrs. Fox at the taxicab station at the corner of Bloomfield Avenue and Mountain Avenue at about seven o'clock. She, Mrs. Fox, had engaged a taxicab to go to the hospital and I got into the cab with her. When I reached the hospital I went to the Administration Building with the idea of going there to see my brother who is a patient, because I was told that the visiting hours

were changed and I could see him from seven to eight.

Q. Whom did you say you saw in the hospital as you entered the Administration Building? A. Oh, I saw Miss Elsie, the telephone operator, and I asked her where Doris was. She told me that she was up in her room. I said to her, please call her down, I want to speak to her. Doris then came to where Elsie, the telephone operator was and I said to her, "Let's go out for a while." I remained there until Doris got dressed to go out with me. We left the Institution together about 8:30 p. m. doing some shopping in Caldwell. We left on that 8:30 bus that leaves the hospital at that time. When we got to Caldwell we went in different stores and I waited outside for her. She bought a jelly roll and then we went back to the Institution taking a bus. I think it was between 9 and 9:30 p. m. when we reached there, and I remember I took the last bus which was 10 o'clock from the Institution.

Q. Did Doris forget the jelly roll package which she had at the time at the taxicab station before you returned to the Institution.

A. No, sir, I do not know what you mean.

Q. Are you sure this was a Saturday night you are talking about now?

A. I ought to know because the bakeries are not open on Sunday in Caldwell.

Q. When you say you got to the Institution between 9 and 10 o'clock you are quite certain that you took the last bus at 10 o'clock, are you.

A. Yes, sir, it was the last bus I took from the Institution at 10 o'clock.

Q. Who was with you in the bus when you left the Institution?

Exhibit C-8.

A. Nobody, only the old man who drove the bus.

Q. What is his name.

A. I do not know. I know him when I see him.

Q. Give me a description of him.

A. He is a short stout old man and the only one who owns buses that run to and from the Institution.

Q. Did you have anything to do with taking a County car belonging to Dr. Harmond from the Institution on that Saturday night that you are talking to me about?

A. No, sir, not me. I do not know anything about it.

Q. Well tell me, how many times did you go to the Institution since you have been discharged.

A. Once, the time I told you about, when I saw Doris.

Q. Now, Almond, were you in or about the Institution on October the 28th the morning that you were arrested in Caldwell having a car in your possession? Tell me, were you at the Hospital that night?

A. No, but I can tell you this. That night I met a fellow by the name of Lawic on Mechanic Street in Orange. He had some liquor with him and gave me some. After that I remember he took me in the car he had, which was a Hudson car, to Paterson, New Jersey, and we went into some saloons out there and Lawic was so drunk that he told me to bring the car back to Orange where we had started from and leave it there. So, you see, I left Paterson around midnight and I came back from Paterson by the way of North Caldwell, and I stopped in Caldwell because my car was steaming and I needed some water, and I was looking around when an officer came up to me and demand-

ed my license, and I tried to explain what I told you. After all, I am guilty because I had the car without a license.

Q. Almond, do you know of any reason why people would give a description of you wearing a cap like the one you had on and the overcoat which you wore, to be the same in every particular, and you say you are not the man who was at the Institution on October 28th?

A. Well, there are other people at the Institution who have the same clothes that I wear, and of the same color. How can they pick on me?

Q. Doris Eubank is a good friend of yours, is she not?

A. Yes, sir.

Q. Do you know of any reason why she would say anything that is not right towards you?

A. No, but she can make mistakes.

Q. Well, I want to be frank with you, could this have been a Sunday night that you saw Doris at the Institution, or was it a Saturday?

A. You ask Doris, she knows it was a Saturday night, and if she tells you anything different, she made a mistake.

Q. Do you know Mrs. Travers?

A. Yes.

Q. Did you see her on October 28th?

A. No, the only persons I saw on September 15th were Elsie, the telephone operator, who called Doris down, and the night watchman, a short Italian fellow. They were the only ones I saw since I left the Institution.

Q. Did you have a conversation with the watchman?

A. No, he said, "Hello," and I said, "Hello," that is all.

Exhibit C-8.

Q. Did he ask you what you wanted there?

A. No, he knew me. I used to work there. It is alright for me to call on friends of mine there any time, and besides I got a brother there that is a patient.

Q. Now, Almond, do you want me to believe your story?

A. Of course I do; it is the truth.

Q. It may be that I am going to take you to this Institution and have you identified, and before I do that, I would tell you that it would make a lot of inconvenience and trouble, so if you have anything further to tell me I would not like to make you go up there and have you go thru all this unnecessary procedure. Why don't you tell me the truth?

A. Well, I will let my story stand. I told the Chief at Verona the same story and I stick to it.

Q. Have you seen any visitors while you have been here in the jail?

A. No, I was surprised the Chief of Verona asked me that question. I did not want Doris to know that I was here.

Q. Why not?

A. Because it would make it bad for her. I told the police when I was arrested who the other fellow was, Lawic, why don't you try to get him?

Well, Almond, don't you worry about him. You think this over and worry about yourself. If you want to change your story in any way after you have thought this all over, you let me know before I make a decision as to what I will do with you, because I do not believe your story.

That was the end of the conversation. I left the jail at 4 p. m.

Exhibit C-10.

ESSEX MOUNTAIN SANATORIUM

Verona, N. J.

B. M. Harman, M. D.
Superintendent

Telephones:
Branch Brook 4061
Verona 5437

December 1, 1928

Hon. Ernest A. Reed,
Supervisor,
Hall of Records,
Newark, N. J.

Dear Sir:

At the meeting last Monday, held at your home, which I was requested to attend and at which Freeholder Dodd was present, you informed me that a number of charges had been made against me by persons whose names you did not disclose. After stating to me in outline the character of the accusations which are of a most grave and serious nature, it was intimated that I consider an immediate resignation. I did then, and do now, most emphatically deny the truth of each of the alleged charges, and here repeat that they are without foundation in fact. I informed you I would seek advice of counsel and be guided in the matter by him.

After hearing the facts he advises me that I have no alternative; that I cannot resign in the face of the accusations, as such a course on my part would lead to one inference only—that I was guilty. He advises that I demand an immediate, complete and impartial hearing of all the charges made against me and forever still the circulation of those charges, which are in the highest degree

Exhibit C-10.

a reflection upon my personal and professional integrity and conduct, and of others at the institution. I have been Superintendent of Essex Mountain Sanatorium for more than five years, and have always given my best and sincerely believe I have made it an efficient and scientific institution for the cure of tuberculosis. I am a young man and to permit any inference of guilt to be drawn from a resignation would forever destroy my professional future and success. If I were in fact guilty I would welcome the opportunity to resign with as little publicity as possible, but knowing myself absolutely innocent of any improper conduct, in both my personal and professional capacities, in the management and administration of the institution, I feel that anything except a complete vindication, after a thorough public hearing of all the charges of which I have had no details, but which were outlined to me by you, would be unfair to myself, the institution and those persons who have always had the utmost confidence in my personal honor and professional integrity and ability. All I ask for is justice.

As Mr. Dodd was present at the above mentioned meeting I am also communicating my decision to him.

Sincerely yours,

DR. B. M. HARMAN.

Exhibit C-11.

Verona, N. J.
Monday.

My dear Doctor Eastwood:

Just a line to express regret at your absence.

If an opportunity for superintendency of a large institution presented itself, would it interest you more than the position you have accepted recently?

Sincerely your,

HAROLD BENNETT.

Exhibit C-12.

315 East 18th Street
Brooklyn, N. Y.

Nov. 25th, 1928.

Hon. Ernest A. Reed
Hall of Records, Newark, N. J.

My dear Mr. Reed:

Could you arrange a hearing for me in the matter of my having been discharged from Essex Mountain Sanatorium, as I was? If you could, and would, do this it would need to be early in the week, as my plans are, of necessity under the circumstances, vague. I must, of course, be looking for a position, and must get myself settled at the earliest possible moment.

The more I think of the matter, the more I feel that a great grave injustice has been done me, and the more sure I am that the matter should be threshed out. It is a serious charge, that of neglect of duty, to bring against a nurse, and I do

not feel that I deserve such a charge. I am willing to admit an error of judgment, if that decision should be reached by a hearing. I did, however, the thing that seemed to me right at the time, and I do not admit neglect of duty.

Thanking you for your courtesy to me, I am,

Very truly yours,

ELOISE D. TRAVERS, M. D.

Exhibit C-13.

OFFICE OF THE CHIEF MEDICAL EXAMINER

Of the City of New York

Borough of Manhattan

Case Number 7175

Report of Death by Thomas A. Gonzales, M. D., Deputy Chief Medical Examiner

Name of Deceased: Eloise Dublin Travers.
Last Residence: Essex Mountain Sanitorium, Verona, N. J.
Date and time of Death: December 18, 1928, 3:40 A. M.
Date and time Examiner Notified: December 18, 1925, 6:19 A. M.
Date and time Body Examined: December 18, 1928, 9:55 A. M.
Place of Death: Bellevue Hospital, Ward M-1. Body found at City Mortuary.
Character of Premises: Hospital.
Removed to City Mortuary by Bellevue Hospital.

Exhibit C-13.

Age: 36 Years. Color or Race: White.
Place of Birth: U. S. A.
How long Resident in City of New York: Non-resident.
Occupation: Registered Nurse. Civil Condition: Widowed.

I hereby certify that on the 18th day of December, 1928, I made an examination of the body of Eloise Dublin Travers, now lying dead at City Mortuary, and upon investigation of the essential facts concerning the circumstances of the death and history of the case, I am of the opinion that the cause of death was: Fracture of the Skull; Laceration of the brain; Fractured Ribs; Internal Injuries; said to have jumped in front of B. M. T. subway train at 34th Street and Broadway on December 17, 1928.

Examination Tag jjb

White adult female, about 5 ft. 7 in. in height; weight, about 160 lbs.; obese; head shaved; brown eyebrows and eyelashes; gray eyes fracture of the ribs on the left side; operation wound running vertically on the right side of head, about 5 in.; rubber tissue drain in the lower part; on the right side also is lacerated wound of the scalp just back of this wound, 1 in. in length; trephine opening on the right side and a fracture of the skull in the right parietal region.

Police Blotter—

7th Precinct, Patrolman St. Jacques, 12 Noon, 12/18/28—jjb

"At 10:30 A. M. on December 17th; B. M. T. 34th St and Broadway Subway Station; down town

Exhibit C-13.

side; apparently jumped from downtown subway express platform in front of southbound express train; probably suicidal."

Note 12/20/28 jjb.

Case released this date at the direction of Dr. Gonzales in accordance with attached letter of request from Supreme Court Justice McCook.

Signed—THOMAS A. GONZALES, M. D.
Deputy Chief Medical Examiner.

(Seal)

This is a true copy.
Charles Norris.

FROM BELLEVUE HOSPITAL,

New York, December 18th, 1928.

To Chief Medical Examiner of the City of New York.

Statement and particulars of the Death of Eloise Dublin Travers, Essex Mountain Sanitorium:

Residence, Verona, N. J.
Age, 26 years.
Color, White. Occupation, Nurse, R. N.
Single, Married or Widowed, Widowed.
Place of Birth, U. S. A.
How long in United States, life.
How long in N. Y. City, non-resident.
Admitted 18 day of Dec. 1928, at 11:15 o'clock A. M.
By N. Y. Hospital Ambulance, Dr. Strubenbard.
From 33rd Street and Broadway.

Exhibit C-13.

Suffering from the following symptoms: Was said to have either jumped or fallen in front of subway train on Sunday December 16th. Received fracture of skull and fracture of ribs on left side.

Injuries said to have been received: Subway station unknown but on B. M. T. Line.

Decompression performed on skull Monday Dec. 17th—revealing a subdural hemorrhage and laceration of brain.

Death took place on the 18 day of December 1928, at 3:40 o'clock A. M. The immediate cause of death being: Fractured skull resulting in hemorrhage and laceration of brain.

JOSEPH CLARK, M. D.,
House Surgeon Physician.

Exhibit R-1.

In the matter of Dr. Byron M. Harman.

To Ernest A. Reed, Esq.,
County Supervisor of the County of Essex,
Hall of Records, Newark.

Dear Sir:

Please Take Notice that Dr. Byron M. Harman hereby demands true copies of the complaints and the names of the complaints, which complaints are referred to as having been made against him as Superintendent of the Essex Mountain Sanitorium at Verona, for violation and neglect of duty, and particularly all complaints and the names of the complainants upon which are based each one of the ten charges specified in your notice dated December 3, 1928, addressed to said Byron M. Harman. As paragraphs numbered 1, 2, 4, 5, 6, and 9, contained in said notice of charges, particularly refer to matters of a criminal nature, the demand of said Dr. Byron M. Harman for copies of the complaints and the names of the complainants or accusers is made as a matter of constitutional right.

December 5, 1928.

SORG, DUNCAN & BAILEY,
Attorneys for Dr. Byron M. Harman.

Exhibit R-2.

COUNTY OF ESSEX, NEW JERSEY

Office of County Supervisor

Hall of Records, Newark.

December 7, 1928.

Ernest A. Reed,
Supervisor.

Telephone
Mitchell 7800

Messrs. Sorg, Duncan & Bailey,
Attorneys for Dr. Byron M. Harman,
1060 Broad St., Newark, N. J.

Gentlemen:

I have your notice of December 5th, 1928, served on the County Counsel December 6th, 1928, and I have conferred with the County Counsel with reference to the matters therein contained.

The complaints set forth in the notice to Dr. Harman, dated December 3rd, 1928, signed by me, fully apprise Dr. Harman of the violation and neglect of duty concerning which I gave notice that I intended to examine and take testimony on Monday, December 10th, 1928. I am of the opinion that it would not be proper for me to disclose the evidence in the case in advance of the hearing and I am unable to do this in view of the fact that some of the matters submitted to me are not in written form. So far as the question of matters of a criminal nature is concerned, I think it is sufficient to say that I am not trying Dr. Harman on any criminal charge, that being the exclusive prerogative of the Criminal Courts, and entirely outside of my jurisdiction.

Because of the statement in your letter of December 4th, 1928, to Mr. Vanderbilt, that it would

Exhibit R-2.

be impossible for you to go on with the hearing December 10th, I have adjourned the matter. In view, however, of the public importance of the matter, the insistence of the State Department of Institutions & Agencies and the Board of Chosen Freeholders that the matter be expidited, as well as to give consideration to Dr. Harman's own request for an immediate hearing, I have set the matter down for Thursday, December 13th, 1928, at ten o'clock in the forenoon, in the County Counsel's Hearing Room, 507 Hall of Records, Newark, N. J., at which time I will examine witnesses and take testimony.

Will you please advise Dr. Harman and his witnesses of the hearing on Thursday, December 13th, 1928.

Yours very truly,

ERNEST A. REED,
County Supervisor.

Exhibit R-3.

In the Matter of Dr. Byron M. Harman.

To Ernest A. Reed, Esq.,
County Supervisor, County of Essex,
Hall of Records,
Newark, New Jersey.

Dear Sir:

Please Take Notice that Dr. Byron M. Harman, hereby demands a statement or bill of particulars, as hereinafter set forth, of the complaints made against him for violation and neglect of duty, referred to in Notice signed by you and dated December 3, 1928.

Exhibit R-3.

1. As to paragraph numbered 1:

State the various occasions between Labor Day, 1925 and August, 1926, when he invited Bertie Galloway and Pauline Galler, female employees, and each of them to his office in Essex Sanatorium at Verona, to drink intoxicating liquor and to serve one or both of them with intoxicating drinks in said office and made immoral advances to them, and assaulted said Pauline Galler, giving the exact date or dates, the hour or hours of the day and to which one of said persons, in each instance, specifying in detail the act or acts constituting the alleged "immoral advances", and to which (and if both, so state), of said persons, also setting forth act or acts or manner of the alleged assault upon the said Pauline Galler.

2. As to paragraph numbered 2:

(a) State the various days and nights between Labor Day, 1922 and August, 1926, he invited said Bertie Galloway and Pauline Galler, female employees, and each of them, to ride in his automobile, specifying the exact date or dates, and hour or hours of the day or night, stating in each instance with which employee, or whether with both, and also to what place or places.

(b) State the several occasions he took the said Bertie Galloway automobile riding at night, specifying the date or dates, the hour or hours, and to what place or places and what improper proposals were made to her.

3. As to paragraph numbered 3:

State the date or dates and hour or hours he

took Henrietta Rose, riding in his automobile at night during the time when said Henrietta Rose was a patient or employee.

4. State the several occasions between Labor Day, 1925, and August, 1926, when he entered the bedrooms of Pauline Galler and Bertie Galloway, female employees, when such persons were in bed or scantily dressed, specifying the date or dates, the hour or hours of the day, also specifying which employees in each instance, also specifying the date or dates, the hour or hours of the one or more occasions he attempted improper relations with such female employees, stating in detail what such attempted improper relations were and specifying with which employee same were attempted.

5. As to paragraph numbered 5:

State the names of the female patients, whose persons were unnecessarily exposed by him while being treated, and for what said patients were being treated at the time their persons were so unnecessarily exposed, as alleged.

6. As to paragraph numbered 6.

State the exact date of the alleged illegal operation, the performance of which it is alleged, was permitted and witnessed by him, at the Verona Sanatorium.

State the nature of the alleged illegal operation.

State the name or names of the persons who performed said alleged illegal operation and who participated therein.

Exhibit R-3.

7. As to paragraph numbered 10:

State the date or dates and the hour or hours it is alleged he parked Mrs. Harman's automobile at night with an unknown female in the car with him, said to be Henrietta Rose, specifying in what municipality said Mountain Avenue is located, and what school is referred to and in what direction from said school was said automobile parked, alleged to have been parked about a quarter of a mile from said school.

And Take Further Notice, that the right is hereby reserved, at or before any hearing of the said charges contained in said Notice of December 3, 1928, to move to strike out or dismiss said charges, or one or more of them, or portions of one or more of them, as not constituting a violation or neglect of duty of said Dr. Byron M. Harman, as Superintendent of Essex County Sanatorium at Verona.

Dated December 10, 1928.

SORG, DUNCAN & BAILEY,
Attorneys for Dr. Byron M. Harman.

Exhibit R-4.

COUNTY OF ESSEX, NEW JERSEY

Office of County Supervisor

Hall of Records, Newark,

Ernest A. Reed,
Supervisor.

Telephone
Mitchell 7800.

December 12, 1928.

Messrs. Sorg, Duncan & Bailey,
Attorneys for Dr. Byron M. Harman,
1060 Broad St., Newark, N. J.

Refer to Mr. George B. Bailey.

Gentlemen:

The County Counsel has turned over to me the demand for a bill of particulars which you served on him earlier this morning.

Apparently, Dr. Harman misapprehends the nature of this proceedings. The notices which he has caused to be served on me would seem to indicate that he is under the impression that this is a trial and that I am the moving party therein. Such is not, in fact, the case. It is an investigation under the County Supervisor's Act, by which I am charged with the duty of acting in a quasi-judicial capacity.

This being so, the ordinary routine of the courts has no application in this proceeding. I am advised that I am not bound by the technicalities of pleading and legal procedure, inasmuch as I am charged by law with the duty of investigating complaints and exercising a constant supervision over the conduct of all subordinate officers and employees. For this reason I must necessarily decline to answer the three page demand for a bill of parti-

Exhibit R-4.

culars. At the same time I desire to make it clear to Dr. Harman that I will accord him every opportunity at the hearing to cross-examine the witnesses and to present whatever witnesses he may desire with respect to the subject matter of the complaints.

The County Counsel has informed me that you stated to him this morning that you would be unable to go on with the matter Thursday, December 13, 1928, to which day I adjourned the matter at your request, by reason of the engagement of your counsel, Mr. Robert H. McCarter, in the trial of a case in Brooklyn. As to this I can only repeat what I stated to you in my previous letter with respect to Dr. Harman's demand for an immediate hearing and the insistence of the State Department of Institutions & Agencies and the Board of Chosen Freeholders that I proceed in the matter forthwith, and add that the continued agitation of the matter in the public press and at the institution makes it imperative that I proceed on Thursday. There has already been one adjournment at your request and you were advised at that time of intention to proceed with the investigation on the adjourned date, together with my reasons therefor. The situation which has since developed makes it even more imperative that I decline to grant any further postponement.

Yours very truly,

ERNEST A. REED,
County Supervisor.

EAR-c

Exhibit R-5.

NEW JERSEY SUPREME COURT.

In the matter of
Byron M. Harman

NOTICE.

To Ernest A. Reed, Esq.,
County Supervisor, Essex County

and/or

Arthur T. Vanderbilt, Esq.,
County Counsel and Attorney for said County Supervisor.

Please Take Notice, that on Saturday, December 15, 1928, at the Supreme Court, Hall of Records, Newark, New Jersey, at 10:00 A. M., or as soon thereafter as counsel can be heard, we shall apply, in behalf of Byron M. Harman above named, to the Chief Justice, or such other justice, of said court who shall hear the same, for an Order directing and requiring Ernest A. Reed, Esq., County Supervisor of Essex County to furnish the bill or statement of particulars heretofore demanded by said Byron M. Harman, and which was refused and/or for an Order directing or requiring said County Supervisor to furnish to said Byron M. Harman, true copies of the complaints and the names of the complainants heretofore demanded of said County Supervisor and refused, and for such other and further relief required by the premises.

Please Take Further Notice, that the foregoing application will be based upon the following:

1. Notice of said complaints, dated December 3, 1928 and served upon said Byron M. Harman.

Exhibit R-5.

2. Demand for copies of said complaints and names of complainants, dated December 5, 1928, served upon said Ernest A. Reed, County Supervisor.

3. Letter dated December 7, 1928 from said Ernest A. Reed, County Supervisor to Sorg, Duncan & Bailey, Attorneys.

4. Demand for bill or statement of particulars, dated December 10, 1928, service of which was acknowledged December 11, 1928, in your behalf by the County Counsel.

5. Letter dated December 12, 1928, from said Ernest A. Reed, County Supervisor, to Sorg, Duncan & Bailey, attorneys.

6. Letter dated December 11, 1928, from Sorg, Duncan & Bailey, attorneys to said Ernest A. Reed, County Supervisor.

Please Take Further Notice, that at the time and place aforesaid, we shall apply for a writ of certiorari upon the ground that the said County Supervisor is without jurisdiction to conduct the above mentioned proceeding or hearing, as the Statute in such case made and provided, commonly called the "County Supervisors' Act", provides for such proceedings only as to subordinate officers and employees, and said Byron M. Harman is not within that classification as Superintendent of Essex Mountain Sanatorium.

Dated December 12, 1928

Yours Respectfully,

SORG, DUNCAN & BAILEY,
Attorneys of Dr. Byron M. Harman.

Exhibit R-6.

COUNTY OF ESSEX, NEW JERSEY

Office of County Supervisor

Hall of Records, Newark,

Ernest A. Reed,
Supervisor.

Telephone
Mitchell 7800.

December 12, 1928.

Messrs. Sorg, Duncan & Bailey,
Attorneys for Dr. Byron M. Harman,
1060 Broad St., Newark, N. J.

Refer to Mr. George B. Bailey

Gentlemen:

The County Counsel did advise me that you stated to him that one or your witnesses was in a hospital in Baltimore. He stated, moreover, that you had informed him that the deposition of this witness would have to be taken in Maryland. The County Counsel today told me that up to this morning you had not communicated with this witness to ascertain when he would be available here. I stand ready to do everything possible to enable you to take the testimony of this witness or any other witness you may desire within a reasonable distance.

The County Counsel has also delivered to me a copy of your notice of motion for Saturday, December 15th, 1928. I am advised by him that he is not aware that there is any jurisdiction in the Supreme Court to grant your motion for a bill of particulars. He further states that your motion gives notice merely of an application for a writ of certiorari, which as I understand it, does not act as a stay. I am advised that if you had seriously

Exhibit R-6.

desired to stay the proceedings tomorrow you might have made an immediate application to the Chief Justice for a stay.

Very truly yours,

ERNEST A. REED,
County Supervisor.

EAR-c

Exhibit R-7.

SPIRIT OF ST. LOUIS

(Cut of locomotive)

Pennsylvania Railroad.

Twenty-five hours between
New York and St. Louis

Special Features.
Ladies Maid. Observation Car.
Manicure. Periodicals.
Stenographer. Bath Room.
Telephone.

Dictated to the
train stenographer.

Aug. 6, 1928.

Dear Dr. Harman:

Will you please arrange to settle the personal expense account of which you are familiar since 1926. I would like this by the morning of Aug. 16, 1928. The amount is $610.00.

Respectfully yours,
HAROLD BENNETT.

P. S. I will return as soon as possible by the end of week if I can.

B.

Exhibit R-8.

Department of Roentgenology
ESSEX MOUNTAIN SANATORIUM
Verona, N. J.

Telephone:
B. M. Harman, M. D. Branch Brook 4061
Superintendent. Verona 5437.

September fifteenth
1 9 2 8.

Mr. Earnest A. Reed, Supervisor
County of Essex,
Hall of Records,
Newark, N. J.

Dear Mr. Reed:

The writer, employed in the department and institution named above, came here on certain conditions by request of some of the Countys' most prominent and eminent medical men, nearly five years ago.

Recently, to rebuke for a personal reason and some of his dictators, Dr. Harman has penalized, intimadated, and threatened the writer and, caused his nurse to resign after over two years of special study at her own expense and own time in the X-Ray and electrical therapy work for this particular institution. This is the second nurse Dr. Harman has caused to resign for no just reason in a little over two years—after the writer has spent the same length of time to instruct them in a manner that they both became very adept. This unjust action has harmed the department and also deprived the writer of all the essential privileges that has helped make the department what it is.

Being the State representative (in second term)

Exhibit R-8.

for the technical field of the X-Ray, it is obligatory to report the condition to the proper authority in the organization.

Being the head of a department and a victim of an unjust penalty, the writer demands a written apology from Dr. Harman and, a re-instatement of his nurse at a very early date. Other things will be mentioned later.

Should there not be a reply by return mail, it will be assumed your interest in this direction is not warranted and the matter will continue on in the channel now destined for it—redress through legal action against the parties concerned.

Respectfully yours,

HAROLD BENNETT.

HB:R

Exhibit R-9.

Dep't. of Roentgenology

ESSEX MOUNTAIN SANATORIUM
Verona, N. J.

July fifth
1 9 2 8

Telephone:
Branch Brook 4061
Verona 5437.

B. M. Harman, M. D.
Superintendent.

Dr. B. M. Harman, Sup't.,
Essex Mountain San.,
Verona, N. J.

Dear doctor Harman:

The writer is the New Jersey representative

Exhibit R-9.

(second term) of the technical phase of the X-Ray field; an active member of the American Hospital Association and, of other organizations beneficial to this work; and, is desirous of attending the Thirtieth Anniversary Convention of the American Hospital Association, in San Francisco, California, from August sixth to tenth, inclusive, on behalf of interest to the Sanatorium.

The approximate necessary expenditure for the trip is five hundred ($500.00) dollars. Your consideration for the appropriation of this sum will be appreciated.

Respectfully submitted,

HAROLD BENNETT,
Radiologist.

HB:R

7/7/28

Forwarded to Chairman Finance Committee for indorsement with statement that as far as I have been able to learn no one from Essex Co. is going to attend this annual meeting. It is my opinion that Essex Co. and her institutions should be represented at national meetings of this character.

B. H. HARMAN,
Supt.

Exhibit R-10.

Dep't. of Roentgenology

ESSEX MOUNTAIN SANATORIUM
Verona, N. J.

Telephone:
B. M. Harman, M. D. Branch Brook 4061
Superintendent. Verona 5437.

August eleventh
1 9 2 8

B. M. Harman, M. D., Sup't.,
Essex Mountain Sanatorium,
Verona, N. J.

Dear doctor Harman:

It is the writers desire to resign as Radiologist at the above named institution, no later than December 31, 1928.

Respectfully requested,

HAROLD BENNETT.

HB:R

Exhibit R-11.

Slip with Bennett's telephone number in New York City.

Exhibit R-12.

Photostat.

Exhibit R-13.

December 16, 1925.

Miss Bertie Galloway,
Essex Mountain Sanatorium,
Verona, N. J.

My dear Miss Galloway:

Your name has been certified to me, by the Civil Service Commission, as being eligible for the position of Telephone Operator, at this Sanatorium.

Kindly inform me within three days, in writing, whether or not you desire to accept this position.

A personal interview is necessary. This may be arranged at the Sanatorium any morning except Friday, Saturday or Sunday, between the hours of nine and twelve.

Very truly yours,

B. M. HARMAN, M. D.
Superintendent.

BMH:HR

Exhibit R-14.

ESSEX MOUNTAIN SANATORIUM

Name Pauline Galler
Address c/o Mrs. W. Young, 18 Brinkerhoff Place, Passaic, N. J.
Maintenance Full C. S. Notified May 6/26

Appointed	Position	Resigned	Salary
May 5/26	Tel Operator (Temp)	8/15/26	$65.00

(Reverse side.)

Born February 9, 1906, Gren Bay, Va.

Exhibit R-15.

June 18, 1926.

Miss Pauline Galler,
Essex Mt. Sanatorium,
Verona, N. J.

My dear Miss Galler:

Your name has been certified to me by the Civil Service Commission, as being eligible for the position of Telephone Operator at this Sanatorium.

Kindly inform me in writing, within three days, whether or not you desire to accept this position.

A personal interview is necessary. This may be arranged any morning except Friday or Sunday, between the hours of nine and twelve.

Very truly yours,

B. M. HARMAN, M. D.,
Superintendent.

BMH:HR

Exhibit R-16.

(Envelope)

Pennsylvania Railroad
"Spirit of St. Louis"

Air Mail Stamp
Postmarked:
St. Louis, Mo.
Aug 7—8:30 A. M.

Dr. Byron M. Harman, Supt.,
Essex Mt. Sanatorium,
Verona,
Essex Co.,
New Jersey.

(Personal)

Exhibit R-17.

X-RAY.

The X-Ray Department is most complete and it will rank second to none in any Sanatorium equipment.

There was added in 1925 a Clinical Reducing Camera for Clinical Photography and Photo-Mictographic work, a demonstration lantern for lecture purposes and a Di-Thermy machine for Physio-Therapy work.

This department made five thousand, eight hundred and eighty-nine (5,889) exposures, one thousand, five hundred and nineteen (1,519) were Sterograms of the chest, taken on 14 x 17 films.

A large number of Gastro Intestinal Series were done when necessary.

The fluoroscope was used often.

A stereoscopic roentgenogram of each patient's chest is taken as a routine upon admission and discharge. In addition X-Ray pictures of the teeth, sinuses, spine, bones, and etc., were taken whenever necessary.

Examination by X-Ray has been very valuable and has led to some interesting conclusions. It is not by itself a diagnostic procedure and is valuable only in checking up on the history and physical findings.

The X-Ray Department is in charge of a trained Technician under the direction of our Consulting Roentgenologist.

The interpretation of the plates is made by the Staff at their meetings, and with the assistance of our Consultant.

All treatments are done under the direction of the Superintendent and the Consultant.

In very early cases, an X-ray picture of the case

shows very little actual pathology, although the symptoms may be pronounced. In the case of the older patients, the picture may be marked by a great deal of scar tissue pathology.

The X-ray was found very favorable in checking up on the progress of new cases and on the progress of various stages in the Pneumo-Thorax Technique.

In other words, the X-ray is but a link in the diagnostic chain.

We have added to our X-Ray Department a complete Clinical Reducing Camera, for Clinical Photography and Photo-Mictographic work, also a complete demonstration lantern. There have been over two hundred and fifty (250) lantern slides made, which are used for permanent records, lectures and demonstration purposes.

Exhibit R-18.

Eloise D. Travers
c/o Alex Long,
637 College Ave., Rock Hill, S. C.

Full Maintenance		Resigned	
5/3/27	Res. Nurse	11/30/28	$100.00
5/3/27	" "		110.00

(Reverse side.)

Born July 2, 1892
Pickens Co., South Carolina

Depositions.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	On Certiorari. Depositions.

Depositions pursuant to rule heretofore taken in the above stated cause on notice to attorneys of prosecutor dated April 26, 1929, taken at Room 507, Essex County Hall of Records, Newark, N. J., on Monday, April 29, 1929, at nine-thirty o'clock in the morning, in the presence of ARTHUR T. VANDERBILT, attorney of defendant, and SORG, DUNCAN & BAILEY (by GEORGE B. BAILEY), attorneys of prosecutor, and before HENRY HAHN, Supreme Court Commissioner of New Jersey.

Mr. Bailey: The subject matter of these depositions is improper at this time for the reason that these matters were all available on the main case and should have been made part of the main case when the charges were first brought against Dr. Harman: I object further on the ground that this is an attempt to bolster up and justify the findings of the Supervisor, and in that respect is clearly illegal; that the purpose of depositions is not to take testimony of matters which were avail-

able on the main case, but are matters which may have developed subsequently.

Mr. Vanderbilt: For the purpose of the record I desire to state that this is not an attempt to bolster up the record, but to present to the court matters which were judicially known to the Supervisor at the time his decision was rendered, but the existence of which as to him can only be proved by referring to the previous record of the case of Samuel Simms. The sole purpose of this offer of testimony is to show that Dr. Harman had previous actual knowledge from the Simms case that he had no right to discharge any employee without notice and hearing.

I call upon the respondent to produce a letter of February 2, 1927, addressed to Dr. Byron M. Harman, Verona, N. J., and Mr. Samuel Simms, Caldwell, N. J.

Mr. Bailey: I am appearing for Dr. Harman. As you know, he is in bed and has been in bed seriously ill for some weeks past. This notice was presented to him and he has had the papers brought to him in his bed and he has had his wife search for them and has no record of receiving the documents referred to and does not recollect them, and for that reason we are unable to produce them.

Mr. Vanderbilt: I desire to offer in evidence the original finding and order of Ernest A. Reed, County Supervisor, dated February 10, 1929, in the matter of hearing in relation to Samuel Simms, an employee of the Essex Mountain Sanatorium.

Mr. Bailey: I object to it on the grounds first stated. I further object to it on the ground that the document itself does not show that it was ever given to or served upon Dr. Harman, and that the

letter annexed to it is addressed to the Board of Chosen Freeholders.

(Same is received in evidence and marked Ex. C-1, 4/29/29.)

GEORGE M. COE, sworn in behalf of County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Coe, you are assistant clerk of the Board of Chosen Freeholders? A. Deputy Clerk.

Q. Did you take and transcribe the testimony in the Samuel Simms matter on January 26, 1927? A. Yes.

Q. Can you tell us whether or not Dr. Harman was present at the hearing held on January 26, 1927? A. Yes, he was.

Q. Do you recall whether or not I appeared as counsel for Dr. Harman on that occasion? A. Yes, sir.

Q. I show you seven pages and ask you if they are the transcript of the hearing which took place on that occasion. A. Yes, sir.

Mr. Vanderbilt: I offer the transcript in evidence.

Mr. Bailey: I object to it on the ground that it is not properly proved.

Q. Are these pages a correct transcript of the minutes as you took them stenographically at the hearing on that date? A. Yes.

(Same is received in evidence and marked Ex. C-2, 4/29/29.)

Cross-examination by Mr. Bailey:

Q. Did you type them? A. I did.

Q. When did you last see these? A. I haven't seen these since about the time of the hearing until I got them out of my files this morning.

Q. They came from your files or the County Counsel's files? A. My files.

Q. Will you look at that (handing papers to witness), which purports to be a transcript of testimony taken in the same matter on January 21, 1927, and tell us whether that represents the transcript of notes which you took in the same matter? A. I believe so.

Q. Don't you know? A. I have no doubt of it. Of course, if I got it out of my own files I would know.

Q. Will you look at it and see? A. The only way I could be absolutely sure of it would be to compare it with my copy from the files.

Mr. Bailey: I can call him back and make him my own witness unless you admit this is correct.

Mr. Vanderbilt: Do you want to offer this?

Mr. Bailey: Yes.

Mr. Vanderbilt: No objection.

(Same is received in evidence and marked Ex. D-1, 4/29/29.)

Redirect-examination by Mr. Vanderbilt:

Q. Did you keep the minutes of the regular meeting of the Board of Freeholders of April 14, 1927? A. I did.

Mr. Bailey: I am objecting to everything going in, but in so far as these being the minutes he has taken, I have no quarrel with them.

Q. Did those minutes refer to a communication from the County Supervisor in the Simms matter, referring to page 89 of the printed minutes of 1927? A. Yes.

Mr. Vanderbilt: I would like to have that one item of the minutes on page 89 introduced.

(Same is received in evidence and marked Ex. C-3, 4/29/29).

Q. Is it your regular practice to mail the printed copies of the minutes as they appear from meeting to meeting to all department heads, including Dr. Harman, the Superintendent of Verona?

Mr. Bailey: I object to what his practice is.

A. Yes.

Q. Did you mail him a printed copy of the minutes of this meeting we are just referring to? A. That work is done by the stenographer in the office.

Q. Under your direction? A. Yes.

Recross-examination by Mr. Bailey:

Q. But you don't know, as a matter of fact, whether she positively does it or may fail to do it and slip up now and then. You don't check them up when they go out each time, do you? A. No.

Daniel Cunnane—Direct.
Daniel Cunnane—Cross.

DANIEL CUNNANE, sworn in behalf of County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Cunnane, what was your position on April 14, 1927? A. Stenographer in the Board of Freeholders office.

Q. When did you leave that position? A. October 15, 1927.

Q. Following the printing of the minutes of the meeting of April 14, 1927, did you mail a copy thereof to Dr. Harman, Superintendent of the Essex County Sanatorium? A. I suppose so.

Q. Did you regularly mail the minutes?

Mr. Bailey: I object to that. The question is what he did in this case.

Q. (continuing) to all department heads including Dr. Harman? A. Yes, sir.

Cross-examination by Mr. Bailey:

Q. Who put postage on these letters? A. I did.

Q. In every case? A. Yes, sir.

Q. Did you check the letters carefully to see that you covered everybody? A. Yes, sir.

Q. You never made any exception? A. No, sir.

Q. Did anybody else do it? A. Not while I was there.

Q. Do you know as a matter of fact whether you were there on April 14, 1927? A. No, sir.

RICHARD W. BOOTH, sworn in behalf of County.

Direct-examination by Mr. Vanderbilt:

Q. Mr. Booth, you are County Treasurer of Essex County? A. Yes, sir.

Q. And you have held that position either under the title of County Treasurer or County Collector since what date? A. Since 1901.

Q. I show you certain vouchers and ask you if this is the payroll voucher of Essex Mountain Sanatorium from December 1, 1926, to December 16, 1926, produced from your office. A. It is.

Q. And it is certified by whom? A. William F. Bennett.

Q. Does the name of Samuel Simms, executive officer and steward, temporary, $125 a month, appear on that voucher? A. It does.

Q. And has he receipted for payment? A. He has.

Mr. Bailey: I, of course, object to all this line of questioning. I see no purpose in submitting payrolls. Wherein can you connect them with the Harman case on the charges which were before the Supervisor in any way?

Q. I show you a paper and ask you if this is the payroll of Essex Mountain Sanatorium from December 16, 1926, to December 31, 1926, produced from the records of your office. A. It is.

Q. Does Mr. Simms' name appear on that payroll? A. Apparently not in the same place, unless it is somewhere else.

Q. Will you look through it and see whether you can find it somewhere else? A. I fail to find it.

Q. I show you a paper and ask you if this is the payroll of Essex Mountain Sanatorium from January 1, 1927, to January 15, 1927, produced from the records of your office. A. It is.

Q. That is certified to as correct by whom? A. B. M. Harman.

Q. I ask you whether or not you find the name of Mr. Samuel Simms, executive officer and steward, on that payroll? A. Not in its regular place.

Q. Will you look through it and see whether you can find it anywhere else? A. It is not here.

Q. I show you a paper and ask you if this is the payroll of Essex Mountain Sanatorium from January 16, 1927, to January 31, 1927, produced from the records of your office. A. It is.

Q. By whom is it certified to as correct? A. B. M. Harman.

Q. Superintendent? A. Superintendent.

Q. I ask you whether you find the name of Samuel Simms, executive officer and steward, on that payroll.

Mr. Bailey: Still temporary?

Mr. Vanderbilt: I am looking for Simms.

A. It is not here.

Q. I show you a paper and ask you if this is the payroll of Essex Mountain Sanatorium from February 1, 1927, to February 15, 1927, produced from the records of your office. A. It is.

Q. Certified by whom? A. B. M. Harman, Superintendent.

Q. I ask you whether you find the name of Samuel Simms on that payroll. A. I do not find it.

Q. I show you a paper and ask you if this is the payroll of Essex Mountain Sanatorium from Feb-

ruary 16, 1927, to February 28, 1927, produced from the records of your office. A. It is.

Q. Certified as correct by whom? A. B. M. Harman, Superintendent.

Q. I ask you whether you find the name of Mr. Simms on that payroll. A. It is not here.

Q. I show you a voucher, 1247, to Samuel Simms, for services rendered from January 1, 1927, to February 28, 1927, in the sum of $500, and ask you if that is produced from the records of your office. A. It is.

Q. Certified by whom? A. B. M. Harman.

Q. What does that cover? A. It covers what is lost from the other payroll, I imagine.

Q. Has that sum been paid? A. It has been paid.

Mr. Vanderbilt: I offer it in evidence.

By Mr. Bailey:

Q. You say you imagine that it covers what was lost from the other payroll. A. I suppose it does.

Q. You don't know. A. That is for $500.

Q. You don't know what it represents. A. No.

Q. You don't know whether it was services of an entirely different nature or not, do you? A. No.

Mr. Bailey: I object to it.

By Mr. Vanderbilt:

Q. Do you know whether or not Mr. Simms had been rendering any other services during this period? A. Not to my knowledge; nothing other than on the payroll. That might have been a compromise.

Mr. Vanderbilt: I ask to have it marked.

(Same is received in evidence and marked Ex. C-4, 4/29/29.)

Mr. Bailey: I object to its admission as an exhibit because it is not proved that it represents salary. On the face of it it says services. They may be any services which are not at all pertinent to anything in this case.

Cross-examination by Mr. Bailey:

Q. I show you the payroll marked for the period from December 1, 1926, to December 15, 1926, in which you say the name of Samuel Simms appears, and it says in parenthesis "Temp." What does that mean? A. Temporary.

Q. What does "temporary" mean? A. Not permanent.

Mr. Vanderbilt: I object because Mr. Booth did not qualify to answer that.

Q. It is your practice to examine these payrolls, isn't it? A. My office's.

Q. Do designations come through quite often with the word "Temp." on them? A. It is possible.

Q. You are supposed to know what it means? A. When I see it.

Q. And you know in this case what it means? A. I know in this case what it means.

Q. What does it mean? A. It means temporary.

Q. That he is a temporary employee? A. Yes.

Q. Has Samuel Simms ever been anything but a temporary employee? A. I don't know.

Q. As far as your records are concerned, they

always show him to have been a temporary employee, don't they? A. I don't know.

Q. The records before you now show him to be a temporary employee. A. I don't know whether I ever saw all the payrolls.

Q. I am talking of the records before you. A. That is part of the payroll.

Q. What do the records you have testified to show; whether he is a temporary or permanent employee? A. Temporary.

Depositions Closed.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Defendant.	On Certiorari. Certificate of Supreme Court Commissioner

I, Henry Hahn, a Supreme Court Commissioner of New Jersey, do hereby certify the within depositions taken before me in the above stated cause pursuant to rule heretofore taken and on notice to attorneys of prosecutor dated April 26, 1929.

Witness my hand this twenty-ninth day of April, 1929.

(Signed) HENRY HAHN,
Supreme Court Commissioner
of New Jersey.

COUNTY OF ESSEX, NEW JERSEY

OFFICE OF COUNTY SUPERVISOR

Court House, Newark.

Ernest A. Reed
Supervisor.

Telephone
3430 Mulberry.

April 2, 1927.

Board of Chosen Freeholders
of the County of Essex,

Exhibit C-1.

Court House,
Newark, N. J.

Gentlemen:

In the matter of charges against
Samuel Simms - Essex County Sanatorium.

I hand you herewith finding and order in the above matter.

Yours very truly,

ERNEST A. REED,
County Supervisor.

BEFORE COUNTY SUPERVISOR.

COUNTY OF ESSEX.

In the Matter of Hearing in relation to SAMUEL SIMMS, an employee of the Essex Mountain Sanatorium.	Finding and Order.

The matter of the request of Samuel Simms for investigation of the circumstances surrounding his dismissal as steward and executive officer of the Verona Sanatorium by the superintendent of said institution having been held by me on January 21, 1927, and January 26, 1927, in the presence of the said Samuel Simms and C. Wallace Vail, his

attorney, and Arthur T. Vanderbilt, Esq., County Counsel, and it appearing from the testimony taken before me that the said Samuel Simms was dismissed from his position by the superintendent of said hospital without first having been given a hearing on charges, and I having been advised by the said County Counsel that said hearing is in law a prequisite to any action to any dismissal or removel of any employee at said institution, I therefore find that the dismissal of said Samuel Simms from his position as aforesaid was not made in accordance with law, and do ORDER that he be continued on the payroll in his position, and that a copy hereof be served upon the said Samuel Simms or his attorney, and a copy on the Civil Service Commission and the County Treasurer.

ERNEST A. REED,
County Supervisor.

Dated Newark, N. J.,
February 10, 1927.

Exhibit C-2.

January 26, 1927.

Continuation of Hearing requested by Mr. Samuel Simms in appeal from his discharge by Dr. Harman from the Essex Mountain Sanatorium.

By Mr. Vail: May I ask if Mr. O'Malley, Wintsch, Baker, Wagner, Miss Beckmann, Mrs. Turner and Mr. Harris are here.

Dr. Harman: They are all here with the exception of Mr. Baker. Mr. Baker is the head cook and could not very well leave the institution.

Mr. Vail: May I also ask if the Committee of the Board of Freeholders in charge of the Verona Sanatorium at the time of Mr. Sim's employment there and discharge, are here.

Mr. Dodd: Mr. Blauvelt and Mr. Crane are not here yet.

Mr. Vail: * * * and furthermore I would like to present to you at this time Mr. Supervisor, that Mr. Simms is still an employee of this County in the capacity of executive officer and steward, with maintenance at the Essex Mountain Sanatorium, Verona; that the attempt which has been made to discharge him is not effective in law and that he is entitled to his pay at this time.

Mr. Reed: I would suggest that you go ahead with your proof of the fact that he has been improperly discharged. I am simply following the method that we have used in all of these hearings. Perhaps I will ask Mr. Vanderbilt if he will make a statement on that subject.

Mr. Vanderbilt: The practice we have followed in the county is exactly the practice adopted in all the hearings before the State Civil Service Commission. Section 4 of the Act establishing the

Exhibit C-2.

Verona Sanatorium provides that the Superintendent shall with the consent of the Board of Managers or of said committee of the board of chosen freeholders, as the case may be, appoint such resident officers and such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, after an opportunity to be heard, discharge any such officer or employee at his discretion. * * * From the foregoing it is clear the superintendent should appoint officers and employees with the consent of the committee which in turn submits the matter to the Board for its action by resolution. With respect to removals the superintendent is given the power after giving them * * to discharge any officer and employee at his discretion. This power is of course, subject to review by the County Supervisor or in the case of a Civil Service employee holding a permanent appointment subject to an appeal to the Civil Service Commission. Section 29 of the Civil Service Act provides for the appointment in cases of emergency, etc., etc., (see opinion of County Counsel). We are here today as I see it not on any right of appeal that Mr. Simms has because I take it under the terms of the Sanatorium act and under the terms of the Civil Service Act he has no right to such appeal, but we are here under the right that any citizen has to make a complaint and to call upon the Supervisor to investigate. That power extends to everybody in the County employ except those who are elected by the public and would include everybody but publicly elected officers. Now Mr. Sims has filed with you his letter which is the basis of this procedure and has

New Jersey State Library

asked for a hearing. You have accorded him that hearing and it seems to me he is the moving party and should proceed.

Mr. Reed: That is my understanding.

Mr. Vail: Mr. Supervisor, referring to section 4 of the act appointing the committee for the Essex Mountain Sanatorium in which it provides that the executive officer, the superintendent of the Sanatorium may discharge employees I think the language is to the effect that he may do that only after written charges and an opportunity to be heard. Mr. Simms was attempted to be discharged by Dr. Harman without written charges and he was given no opportunity to be heard.

Mr. Dodd: I would ask the County Counsel to read that section again.

Section 4 reread by the County Counsel.

Mr. Vail: I think that conforms with my statement of it and respectfully urge that Mr. Simms is still an employee of the County, and is not coming here as a citizen this morning who asks for a review but that he comes here as an employee and is entitled to a hearing before you.

Mr. Vanderbilt: There is no proof before the County Supervisor that he has not had a hearing, that there have not been charges and a hearing as the record stands there is no proof that he has not been given charges and a hearing.

Mr. Vail: It is a fact that he has not been given any written charges until last week when he appeared before the supervisor and that was the first time since the time of discharging him that there has been any attempt or semblance of a hearing.

Mr. Vanderbilt: You are sitting here in a quasi

judicial capacity and know nothing except the records before you. There is nothing in Mr. Sims' letter which would indicate that he had made that the basis of his application for a hearing, that he had not been given proper charges in writing or an opportunity to be heard. It seems to me that is a matter calling for proof.

Mr. Vail: If it is the ruling of the Supervisor that we must go ahead and act as the moving party we will do it, but under protest.

Mr. Vanderbilt: There should be proof of the facts that charges were not made and an opportunity for a hearing was not given. There is nothing in the record to disclose that. The only thing before the Supervisor now is a complaint of a former employee who has the same status as any citizen to ask the Supervisor to investigate into anything that concerns the conduct of any officer or management of an institution of the County.

Mr. Dood: Except that we must confine ourselves in this matter to the application made in Mr. Simms' letter to inquire simply as to his dismissal.

Mr. Vail: Everything that Mr. Vanderbilt says may be so, but there is nothing that I am able to see in Mr. Simms' letter that is an admission of his being discharged or that is an acceptance of his being discharged and I say that he is still an employee of the County and furthermore that being so you may have the power to review the action of the superintendent at the sanatorium and I again repeat that if we are forced to go ahead this morning and answer some charges which are not proven we will do so.

Mr. Vanderbilt: If Mr. Simms' contends that his discharge is not in accordance with the statute

he should prove it, that charges were not made and an opportunity was not given to be heard. There is no proof before you as to that. Counsel's statement that such charges were not made and hearing given is not evidenced.

Mr. Vail: We are ready to go ahead and produce our witnesses if that is the ruling of the Supervisor.

Supervisor Reed: I think that is the only course to pursue.

Mr. Vail: But under protest.

SAMUEL SIMMS, sworn by the County Supervisor.

By Mr. Vail:

Q. What is your full name? A. Samuel Simms. etc., etc.,—

Cross-examination * * * *
By Mr. Dodd:

Q. When you were employed on the 18th of May Dr. Harman made it very clear to you that your appointment was thoroughly a temporary one? A. Oh, yes.

Q. And you understood that? A. Yes.

Q. And that that meant you were there at the pleasure of the superintendent. A. I didn't think so. I was there at the pleasure of the Superintendent and Board of Freeholders.

Q. You also knew that the appointment could not become permanent until you have taken the Civil Service Examination, had passed and been appointed. A. Yes, sir.

Exhibit C-2.

Q. You received the letter of November 29, 1926 by hand of Dr. Bennet, did you not? A. I did.

Q. And you read it then and there? A. I did.

Q. Did you say anything to Dr. Bennet about wanting a hearing? A. No.

Q. Have you ever said anything to anybody about it? A. No.

Q. You never applied for a hearing? A. No, sir.

Q. You can not say the hearing was denied you. A. No.

Q. When you received the letter of December, you also received that by hand of Dr. Bennet. A. Yes.

Q. Did you at that time ask for a hearing on the subject. A. No.

Q. How soon after receiving the letter of December 14th, did you take your belongings out of the Sanatorium? A. I left the morning of the 16th.

Q. Took all your belongings and left the institution. A. Yes.

Q. Did you see Dr. Harman? A. No.

Q. Did you ever make any effort to see Dr. Harman from November 29, to the writing and sending of this letter to the Supervisor. A. No.

Q. So far as you remember you are able to say at least that nobody has ever denied you a hearing. A. No.

Q. Is there any reason, you care to state why you did not make an application for a hearing sooner.

By Mr. Vail:

I am compelled to object to this line of question-

ing. Whether he decided it some other time to avail himself of the statuttory rules and regulations has nothing to do with whether he may do so.

A. I will not answer that question, by advice of counsel.

Exhibit C-3.

EXCERPT OF MINUTES OF

Regular Meeting of April 14, 1927, of the Board of Chosen Freeholders of Essex County.

Verona, Simms Hearing.

A communication was read from County Supervisor Reed transmitting Finding and Order dated Feb. 10, 1927, in the hearing in relation to Samuel Simms, an employee of the Essex Mountain Sanatorium, ordering that he be continued on the payroll in his position. Received and filed.

Exhibit C-4.

County of Essex, New Jersey.

Voucher 1247

Department Essex Mountain Sanatorium
Appropriation for Maintenance

To Samuel Simms
Address 100 Central Avenue
Caldwell, N. J.

For Services rendered from Jan. 1, 1927
to Feb. 28, 1927 $500.00

Compared
Puder & Puder
Certified Public Accountants

Articles received or services performed as stated:
B. M. Harman, Supt.
Extensions and Footings O. K. F. Wintsch.
Certified for $ Non-contract.
We report this claim correct:
E. A. Harris
Z. G. Crane
A. T. Muir.
Committee on Hospitals.

Ordered paid at a meeting of the Board of Chosen Freeholders, held Feb. 24, 1927.

Frank E. Ward,
Clerk.

Account submitted for $500.00
Differences as follows:

Audited Feb. 24, 1927 for $500.00
Albert T. Guenther, Auditor.
Received payment of Amount audited.
Samuel Simms,
C. W. Vail,
Attorney.

Exhibit C-4.

State of New Jersey }
County of Essex } ss.:

The undersigned, being duly sworn according to law, says that the within claim against "County of Essex, New Jersey, is just and true; that the work therein mentioned has been performed, and the materials therein mentioned have been furnished; that no bonus has been given or received by any person or persons with the knowledge of the undersigned person in connection with the above claim; that it is in all respects a Bona Fide and fair claim; and that the amount is a reasonable one.

C. WALLACE VAIL.

Subscribed and sworn to before me this 8 day of Mch 1927.

J. Ferdlin,
Notary Public for N. J.

November 29, 1926.

Mr. Samuel S. Simms,
Essex Mountain Sanatorium,
Verona, New Jersey.

Mr. dear Mr. Simms:

I have been observing your work as Executive Officer and Steward at the Sanatorium for the past few months and have concluded that by reason of your lack of institutional experience in the preparation and service of food for patients and your apparent unwillingness to acquaint yourself with institutional routine and institutional help classification that I cannot recommend you for permanent appointment. I am also borne out in this conclusion by the fact that your grade, the result of

the recent examination, was but 66.67 points under "duties".

In view of the above, I must, therefore, request that you submit your resignation from your temporary appointment as Executive Officer and Steward to become effective December 16, 1926.

Very truly yours,

B. M. HARMAN,
Superintendent.

December 14, 1926.

Mr. Samuel Sims,
Essex Mountain Sanatorium
Verona, New Jersey.

Dear Mr. Simms:

In view of the fact that I have not received a reply to my letter of November 29th, in which I requested your resignation effective December 16th, 1926. I therefore request that you vacate your room as I have other uses for it and turn over all your Sanatorium keys to Dr. Bennett. Your name will not appear on the payroll after December 15th.

Very truly yours,

B. M. HARMAN, M. D.,
Superintendent.

Exhibit D-1.

Before—Hon. Ernest A. Reed, County Supervisor.

In the Matter

of the

Discharge of Samuel Simms, Executive Officer & Steward, Verona Sanatorium.

Hearing held at the Court House, Newark, N. J. Jan. 21, 1927. Hon. Ernest A. Reed, County Supervisor Presiding.

Samuel Simms appearing personally and by C. Wallace Vail, Esq.

County Counsel Arthur T. Vanderbilt for the Supervisor.

Also present, Freeholders Louis F. Dodd, Edwin Hall, Henry C. Hines and Elizabeth A. Harris, Dr. Byron M. Harman, Superintendent, Verona Sanatorium.

Hearing called to order at 2:15 P. M.

By the County Supervisor:

This meeting is for the purpose of hearing the request made by Mr. Samuel Simms in regard to his discharge from the Essex Mountain Sanatorium and I wish to make a part of the record a letter that Mr. Simms wrote to me requesting the hearing.

The following letter was read and ordered made a part of the record:

Exhibit D-1.

100 Central Ave., Caldwell, N. J.
Jan. 7, 1927.

Hon. Ernest A. Reed,
County Supervisor.

Dear Sir:

The purpose of this communication is to ask you to review the action of the Supt of the Essex Mt. Sanatorium at Verona in dismissing me from the position of Executive Officer & Steward to which position I had been appointed by the Board of Freeholders through the Verona Committee in May 1926.

The reasons given were, low rating by the Civil Service Com. on "duties", lack of institutional experience and "apparent unwillingness to familiarize myself with the routine and classifications".

I particularly deny the last of these charges as being directly contrary to the fact and call attention also to the fact that I passed as Number one of all those taking the examination for the position. My dismissal was the subject of comment at a recent meeting of the Board of Freeholders and according to newspaper reports the additional charge of inefficiency was made against me.

I consider that my reputation as a business man and my general standing in the community in which I have resided for over twenty years has been injured by these accusations. In addition a member of the Board has taken the liberty of writing personal letters to friends of mine also calculated to create or sustain the charges as above mentioned.

It is with this in mind that I ask for a complete review of all the circumstances connected with my

Exhibit D-1.

administration of the affairs of the Sanatorium intrusted to me during my incumbency of the position together with the manner in which my dismissal was effected.

I might say that insofar as I know or can learn but one member of the Committee or of the whole Board of Freeholders had any knowledge of the incident until it became an accomplished fact.

I feel that I shall be able not only to disprove the charges of inefficiency and unwillingness etc., but will if given the opportunity be able to place the inefficiency charge where it properly belongs.

At command I am,

Yours most respectfully,

SAMUEL SIMMS.

By Mr. Simms:

I have nothing more to say than to deny the charge of inefficiency as indicated in that letter.

By Freeholder Dodd:

On behalf of Dr. Harman I would like to ask at this time if the County Counsel rules that Dr. Harman having sent Mr. Simms a letter stating the reasons for his dismissal, he being a temporary appointee, if in spite of the denial contained in Mr. Simms communication there is any occasion on the part of Dr. Harman to go any further in the case of a temporary appointee?

By Mr. Vanderbilt:

In answering the Director's question I would say that in an opinion which I wrote some time ago on this matter for Mrs. Harris as Chairman of the Verona Committee, I expressed the view that Mr. Simms had no standing so far as the Civil

Service Commission was concerned but that the County Supervisor had a right and in fact on application being made to him, a duty to investigate into any complaints that were made respecting the work of any subordinate officer or employee of the Board; and I take it that that is the purpose of this hearing.

Mr. Simms claims that he was wrongfully discharged and denies the charges that were made against him by the Superintendent and in effect calls upon the Superintendent to state in what respects he was inefficient or insubordinate. In other words it is really like a demand for a bill of particulars.

By the Supervisor:

That is my understanding.

By Director Dodd:

I take it the ruling would be that in view of the County Counsel's opinion it would become the duty of the Superintendent to submit such specifications; and on his behalf I would ask that your letter to him be marked and made a part of the record.

EXHIBIT 2.

January 13, 1927.

Dr. B. M. Harman, Supt.
Verona Sanatorium,
Verona, N. J.

Dear Sir:

Mr. Samuel Simms has applied to me for a hearing of the facts in connection with his recent dismissal from the service of the County in the posi-

Exhibit D-1.

tion of Steward and Executive Officer at your institution, and I have fixed Friday, January 21st at two o'clock in the afternoon in the Office of the County Counsel in the Court House as the time and place for the hearing.

Will you kindly appear and be prepared to submit proof of the facts regarding Mr. Simms' dismissal.

Very truly yours,

ERNEST A. REED,
County Supervisor.

By Director Dodd:

In further behalf of Dr. Harman I would say it had been his understanding that Mr. Simms, having been appointed by him—although that appointment had been transmitted to the committee and it had approved of the appointment—he had been under the impression that he had a lawful right to dismiss Mr. Simms upon the statements contained in the two letters; but in view of the ruling of the County Counsel he will submit the following bill of particulars and specifications setting forth the reasons for this dismissal at your request.

By the County Counsel:

I think perhaps the Director misunderstood my opinion on that. My opinion was not that the Superintendent did not have the right to dismiss a temporary employee—or for that matter a permanent employee—under the wording of the Act concerning Tuberculosis Hospitals but was merely on the point that the County Supervisor had a right to review and inquire into the transaction.

Exhibit D-1.

By Mr. Vail:

May I ask that the charges that are presented by Dr. Harman be read at this time and spread upon the records of the meeting.

Exhibit 3 (read and made a part of the record)

January 21, 1927.

Hon. Ernest A. Reed, Supervisor,

Hon. Supervisor:

In compliance with the direction contained in your letter addressed to me under date of January 15, 1927 wherein you require me to appear and be prepared to submit proof of the facts regarding Mr. Samuel Simms' dismissal, I submit the following reasons for my dismissal of Mr. Samuel Simms from the position of Executive Officer and Steward at the Verona Sanatorium, pointing out at the very outset that Mr. Samuel Simms at the time of such dismissal was a temporary appointee, in support of which I refer to the records in his case.

The reasons which I publicly submit upon your request are presented with regret and reluctance and are only made public by the insistence of Mr. Samuel Simms that he have a public hearing by the Supervisor, and, of his accusations of an unfair and limited public statement as to his Verona service.

My dismissal of Mr. Samuel Simms was made after my written request of November 29, 1926 that he do resign, to which letter I refer. My dismissal was contained in my letter of December 14, 1926 to which I also refer.

To particularize beyond the contents of said letter of November 29th, 1926 and in support thereof I base my reasons for such dismissal on the two general grounds

Exhibit D-1.

1. Inefficiency.
2. Insubordination.

As to Item 1. Inefficiency.

(a) Lack of institutional experience and apparent unwillingness to acquaint himself with institutional routine.

(b) A lack of interest in his duties.

(c) His inability to properly supervise the preparation and service of food to the patients.

(d) His lack of supervision of the proper cleanliness of kitchen floors, walls, gas ranges, bake shop, milk store room, kitchen utensils, sinks, closets, dining rooms, windows, dishes, ice boxes, supply rooms, etc.

(e) I found him wasteful and not economical.

(f) Inability to determine the varying daily requirements of food to properly provide for the patients and employees.

(g) A continued disregard and observance of the rules and regulations of the Institution as they affected his duties, and I have knowledge that Mr. Samuel Simms seldom received supplies at the Storeroom or Butcher shop, this was a requisite part of his work and his indifference caused me much additional work and detail.

As to Item No. 2. Insubordination.

(a) Disregarded my instructions that no person be employed or discharged without first advising with the head of the department under which the person served, and I state that in several instances he (Simms) appointed, discharged, and shifted the day of relief of many of our employees without first a conference with the head of the department, who is responsible to me for the service of about fifty employees. This persistence on the

Exhibit D-1.

part of Mr. Samuel Simms caused me and the Superintendent of Nurses great annoyance and serious inconvenience in our hospital organization.

(b) Refusal to give attention that the food was properly prepared and served to patients and his obstinacy and refusal to keep our kitchen and its appurtenances sanitary and free from dirt.

(c) He has also failed to submit for my approval certain contract requirements to be forwarded to the Purchasing Agent for provisions and supplies.

(d) The audacity of Mr. Samuel Simms in giving a written order to the Corbin Cabinet Lock Company directing that there be made a master key and two regular keys for his personal use, and without my knowledge or instruction.

(e) There were many minor acts of continued insubordination and disobedience which made his services intolerable.

I have in my possession various sworn statements by our employees as to Mr. Samuel Simms' indifference and incompetency by his unwillingness to comply with my personal instructions, and I complete this brief with a statement that my committee must not hold me responsible for conditions over which I have no control, as Mr. Samuel Simms insistence on a continuance of service would practically mean, as you will appreciate that an employee might remain in our service continuously who in my opinion is not competent, and it is not necessary for me to remind you that such a condition if permitted means—organization chaos.

BYRON M. HARMAN, M. D.,
Superintendent.

Exhibit D-1.

By Mr. Vail:

The charges that have now been outlined against Mr. Simms seem to be quite sweeping and comprise almost every duty I can conceive he had up there. It seems to me that in view of the charges being submitted at this time that Mr. Simms should be given the opportunity to fortify his denial by granting him time to do that. We have something now that is a direct accusation. I think it is only fair to him and I respectfully urge upon you to give us an opportunity of a week or ten days to prepare for the specific charges made against him.

By Director Dodd:

The situation created by Mr. Simms' dismissal and by his attitude following that dismissal has and is in my opinion seriously affecting the whole esprit de corps and organization, not only of this particular institution but all the institutions of the county. There is nothing in the itemized bill of particulars which can be any surprise to Mr. Simms. They are simply in writing. I would think if Mr. Simms is to have any time at all it be brief and for the good of the institution this matter be speedily disposed of. I would suggest that it go over not longer than until Monday of next week. It is a matter of vital importance to the whole Board that this be disposed of.

By Mr. Vail:

With all due respect to Mr. Dodd and to the interests of the County I think that in view of the fact that the County is in a position to gain information on a minutes notice and they have all the records available, that that would be unfair to Mr. Simms. He is at a disadvantage. He does not have access to the records without your per-

mission and I think that a reasonable time would be some time beyond Monday. This is Friday. Saturday is practically no day at all and that does not give any time to prepare. Under the circumstances we should like to have at least one week.

By Director Dodd:

I can see the position of difficulty that you are placed in and it is not my disposition to in any wise hinder you in the request for an adjournment. I do want to call attention that Mr. Simms has already very completely tried his side of the case in the public press and it would appear that he is in possession of the great mass of information which he is anxious to supply at this hearing and at least he could begin and take a chance that it would be relevant testimony. It is unfair to the County to let this matter drag one single day.

By the Supervisor:

I realize the truth of what each side has presented and that these specifications are voluminous, and Mr. Simms should have some time in which to prepare his defense and also the truth of what Mr. Dodd says that for the benefit of the Board the proceedings should not be drawn out any longer than necessary. I am trying to find a compromise and suggest Wednesday afternoon of next week at 2 o'clock.

By Mr. Vail:

The difficulty is you have the records and unless you are willing to recognize a notice to produce certain things that we may need I may be put to the necessity of taking some action that will give us access to those things that you only have access to in order that we may be able to properly pre-

pare the defense. Between now and Wednesday is a very short time.

By Mr. Vanderbilt:

The Supervisor has asked me the question with respect to opening up the records. The Supervisor's Act gives the Supervisor the right to subpoena any witnesses or records which may be necessary. If reasonable notice is given of what witnesses were necessary I have no doubt Dr. Harman would produce them here.

By Mr. Dodd:

Anything either in the way of witnesses or records that the Supervisor feels is pertinent to this inquiry will be produced upon the mere request of the Supervisor.

By Supervisor Reed:

I think that answers your question.

By Mr. Vail:

Yes. If we are going to have any difficulty in your supplying such information as we may need from the records and personnel.

By the County Counsel:

If you will outline in detail and give the list to Mr. Mahony for submission to Dr. Harman the witnesses or records can be brought down that you require.

By Mr. Vail:

I am very frank to say I will need to have a conference with my client. I will probably be able to advise Mr. Mahony tomorrow or Monday.

Adjourned to Wednesday Jan. 26 at 2 P. M.

GEO. N. COE,
Stenographer.

Opinion of Supreme Court.

Byron M. Harman, Prosecutor v. *Ernest A. Reed, Supervisor of Essex County, Respondent.*

Argued October 3, 1929—Decided May 6, 1930.

Before GUMMERE, Chief Justice and Justices KALISCH and CAMPBELL.

For the prosecutor, ROBERT H. MCCARTER.
For the respondent, ARTHUR T. VANDERBILT.

Per Curiam.

This writ brings before us, for review, the order of judgment of Ernest A. Reed, supervisor of Essex County, removing the prosecutor from his position as superintendent of the Essex County Sanatorium, which position he has occupied since 1923.

Extremely voluminous proofs are brought before us upon which the respondent based his findings. These we have not examined or considered because it has seemed to us that there was a basic question of jurisdiction involved. That question is, did the respondent, as supervisor of Essex County, have jurisdiction over the prosecutor and the subject-matter of the inquiry?

We think he did not.

It is true that the statute creating the office of supervisor (Pamph. L. 1900, p. 168; 1 Comp. Stat. 529, and Pamph. L. 1918 ch. 206, p. 751) provides: "1. there shall be a chief executive officer in counties of the first class in this state to be known as the county supervisor. 2. The county supervisor * * * shall be the chief executive officer of the county and may recommend to the board of chosen freeholders to pass such measures

as he may deem necessary or expedient for the welfare of the county.

3. It shall be the duty of the county supervisor to exercise a constant supervision over the conduct of all subordinate officers and employees and to examine into all complaints made against any of them, for violation or neglect of duty and if it is found that any officer or employe is guilty of the charges brought against them the county supervisor may suspend or remove them."

Under Pamph. L. 1912, ch 217, p. 340, authorizing hospitals for the treatment of tuberculosis in counties, such institutions are placed under the direct control and management of a board of managers, to be appointed by the board of freeholders.

Section 3 of such act authorized such board of managers to appoint a superintendent to hold office at the pleasure of such board of managers. His qualifications are defined to be: "Shall be a qualified practitioner of medicine or other person trained for work of said character."

Section 4 of this act provides: "The superintendent shall be the chief executive officer of the hospital and subject to the by-laws, rules and regulations thereof and to the powers of the board of managers."

By Pamph. L. 1922, ch. 278, p. 685, Sec. 4 and other portions of the act of 1912, *supra*, were amended.

Section 4 was amended so as to read as follows: "4. The superintendent shall be the chief executive officer of the hospital, and subject to the by-laws, rules and regulations thereof and to the powers of the board of managers, or of said board of freeholders, or of said committee, as the case may

be * * *." The addition over the original text is "or of said board of freeholders or of said committee as the case may be."

A reading of the entire section will indicate a legislative intent to take away from the board of managers the exclusive control over the superintendent under the original act of 1912 and to distribute such powers amongst such board of managers, the board of freeholders and a committee of the latter board.

Two things are to be noted, however: 1. That the power of appointments remains in the board of managers. 2. That the superintendent remains "the chief executive officer of the hospital."

There is also to be taken into consideration the fact that with such power of appointment there remains the provision contained in the original act of 1912, *supra,* that such superintendent "shall hold office at the pleasure of such board" (board of managers).

It is further to be considered that the Supervisor act was originally adopted in 1900 and re-written into the revision of the County act in 1918. Pamph. L. 1918, p. 751.

The Tubercular Hospital act was originally adopted in 1912 and its amendment, before referred to, was adopted in 1922.

It seems to us that the obvious result and controlling conclusion to be arrived at from a construction and application of these legislative acts must be that the prosecutor is not such a subordinate officer as to come under the supervision and control of the respondent, the county supervisor.

It seems to us that if this authority and control extends to the prosecutor it can only be so because

such supervisor is by the statute, creating such officer, designated as "the chief executive officer of the county." If his authority rests upon this, then it seems to us, that by the same token and the same process of reasoning, members of the board of chosen freeholders, as well as the present prosecutor, must be "subordinate officers," in comparison with the county supervisor. This we think, would lead to an absurd conclusion. But there is another reason that seems to us to be controlling and conclusive and that is that the power to appoint the superintendent is and always has been in the board of managers and such power to appoint is complied with the following right in the appointee, "and shall hold office at the pleasure of such board" (board of managers).

We conclude, therefore, that the respondent, county supervisor, was without authority and jurisdiction to hear and pass upon the charges in question and therefore the judgment brought before us must be set aside.

Order of Reversal.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor, vs. ERNEST A. REED, Supervisor of Essex County, Respondent.	On Certiorari. Order reversing Findings and Order of Removal made by Supervisor of the County of Essex.

The court having had before it the transcript and proceedings of the Supervisor of Essex County, Respondent, returned with the Writ of Certiorari in this cause, and the reasons for reversing his Findings and Order below and heard the argument of counsel concerning same, and it appearing, after consideration of same, that the Respondent did not have jurisdiction over the Prosecutor and the subject matter of the inquiry and therefore the other reasons for reversal urged by Prosecutor not being necessary for consideration, same have not been considered,

It is, on this 21st day of May, 1930,

ORDERED that the Findings and Order of Ernest A. Reed, Supervisor of the County of Essex, Respondent, be and same hereby is reversed, set aside, vacated and made for nothing holden, with costs.

Entered May 21st, 1930.

On motion of
SORG, DUNCAN & BAILEY,
Attorneys of Prosecutor.
ROBERT H. MCCARTER,
Of Counsel.

Costs of Prosecutor.

Filed July 24, 1930.

NEW JERSEY SUPREME COURT.

	BYRON M. HARMAN, Prosecutor,	
10	vs.	On Certiorari.
	ERNEST A. REED, Supervisor of Essex County, Respondent.	Costs of Prosecutor.

Disbursements.

	Clerk's Fees, Filing and Docketing	6.00
20	Clerk's Fees, Entering Judgment Final	5.00
	Printing State of Case	813.00
	Printing Points	159.00
	Printing Points	24.50
	Transcript of Testimony	824.90
	Total Disbursements	1832.40

Costs.

	Argument Fee, Issue of Law	15.00
30	Before Notice of Argument, Issue of Law (Pltff.)	15.00
	Total Costs	30.00
	Total Disbursements	1832.40
	Total	1862.40

Taxed at 1862 dollars 40 cents

July 24th, 1930

40

FRED L. BLOODGOOD,
Clerk.

Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

BYRON M. HARMAN, Prosecutor-Respondent, vs. ERNEST A. REED, Supervisor of Essex County, Respondent-Appellant,	On Certiorari. Notice and Grounds of Appeal.

To MESSRS. SORG, DUNCAN & BAILEY,
Attorneys of Prosecutor-Respondent.

Sirs:

Please take notice that Respondent-Appellant appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause on the following ground:

1. Because the Supreme Court erred in giving judgment for the Prosecutor-Respondent instead of for the Respondent-Appellant.

ARTHUR T. VANDERBILT,
Attorney for and of Counsel with
Respondent-Appellant.

New Jersey Court of Errors and Appeals

Byron M. Harman, Prosecutor-Respondent, *vs.* Ernest A. Reed, Supervisor of Essex County, Defendant-Appellant.	On Appeal from Supreme Court. On Certiorari.

BRIEF FOR DEFENDANT-APPELLANT.

Statement of Facts.

Numerous charges of violation and neglect of duty by Byron M. Harman as Superintendent of the Essex Mountain Sanatorium, were brought to the attention of defendant, Ernest A. Reed, as Supervisor of Essex County. Defendant, as County Supervisor, duly served notice upon Harman of the charges and advised him that he would investigate the charges and that Harman might be present personally or by counsel to answer the charges. Numerous hearings were held at which Harman and his counsel attended.

After hearing voluminous testimony, the County Supervisor found that Harman had been guilty of violation and neglect of duty on several counts and dismissed him. Harman then obtained a writ of *certiorari* to review the order of the County Supervisor, and the matter duly came before the Supreme Court. On May 6, 1930, the Supreme Court decided that the County Supervisor had no jurisdiction to try Harman, and on May 21, 1930, an order was entered setting aside the order of the County Supervisor.

The opinion of the Supreme Court and the order entered thereon expressly state that the only point considered or decided by the Supreme Court was whether the County Supervisor had jurisdiction to try Harman and remove him for neglect or violation of duty. Defendant has duly filed notice and ground of appeal from the order and judgment of the Supreme Court.

Ground of Appeal.

The ground of appeal relied upon by defendant is:

1. Because the Supreme Court erred in giving judgment for Prosecutor-Respondent instead of for Defendant-Appellant.

ARGUMENT.

POINT I.

The County Supervisor had jurisdiction under the County Supervisor's Act to try respondent Harman.

The office of County Supervisor was created by *P. L. 1900, p. 168* (*7 C. S. 529*) and the provisions of this act were restated with modifications in *P. L. 1918, C. 266, p. 751.* This statute provides:

> "1. There shall be a chief executive officer in counties of the first class in this state to be known as the county supervisor.
>
> 2. The county supervisor * * * shall be the chief executive officer of the county, and may recommend the board of chosen freeholders to pass such measures as he may deem necessary or expedient for the welfare of the county.

> 3. It shall be the duty of the county supervisor to exercise a constant supervision over the conduct of all subordinate officers and employees and to examine into all complaints made against any of them, for violation or neglect of duty and if it is found that any officer or employee is guilty of the charges brought against them, the county supervisor may suspend or remove him."

Under the express terms of the above mentioned act, the County Supervisor had jurisdiction to try respondent Harman if he was a "subordinate officer or employee". A reading of the County Supervisor's Act displays that the phrase, "all subordinate officers and employees" obviously refers to all officers and employees subordinate to the Board of Chosen Freeholders and a review of pertinent statutory provisions will clearly establish that respondent was a subordinate officer or employee and within the jurisdiction of the County Supervisor.

The act under which the Essex Mountain Sanatorium was established is the "Act Concerning Tuberculosis" (*P. L. 1912, C. 217; 1 Cum. Suppl. C. S., p. 1528*).

Section 1 of the 1912 Act authorized the establishment of a county hospital; Section 2 provided for the appointment of a board of managers; Section 3 provided for the appointment of a superintendent by the Board of Managers to hold office at the pleasure of said board, and Section 4 provided that the superintendent shall be chief executive officer of the Hospital and shall be subject to the powers of the Board of Managers.

In 1922 (*P. L. 1922, C. 269, p. 654*) the act of 1912 was amended so as to transfer in counties of the first class all of the powers of the board of managers to the Board of Chosen Freeholders or a committee thereof. Section 1 (*P. L. 1922, C. 269, p. 655*) now provides that:

> "In counties of the first class the board of chosen freeholders or such committee or committees thereof as such board may designate shall exercise all the functions herein conferred on the board of managers, and all the functions described in this act and the amendments thereto and supplements thereof as belonging to the board of managers, shall, in counties of the first class, inhere in and be exercised by the board of chosen freeholders of such county or its said committee or committees."

Section 3 (*P. L. 1922, C. 269, p. 657*) now provides:

> "In counties of the first class the director of the board of chosen freeholders shall select from among the members of the board, a committee to exercise the functions given in other counties to the board of managers, subject, however, to the general jurisdiction and control of such board of chosen freeholders, and shall designate the chairman of such committee. Said board of managers or such board of chosen freeholders, as the case may be, shall appoint a superintendent of the hospital, who shall be except in counties of the first class, also, treasurer and secretary of the board."

It is important to note that the amendment of 1922 to Section 3 omits the sentence contained in Section 3 of the 1912 act, that the board of managers shall appoint the superintendent who "shall hold office at the pleasure of the board." Instead the power of appointment is by sections 1 and 3 vested in counties of the first class (such as Essex County) in the Board of Chosen Freeholders or a committee thereof.

Section 4 now provides that the superintendent shall be subject to the powers of the board of managers or of the board of freeholders or of said committee as the case may be. Under section 4

and prior sections the superintendent, in counties of the first class, is subject to the powers of the board of freeholders or its committee.

It is evident, therefore, that after the amendment of 1922 (*P. L. 1922, C. 269, p. 654*) the superintendent of Essex Mountain Sanatorium is appointed by the Board of Chosen Freeholders or a committee thereof; and that said superintendent is subject to the powers of the Board of Chosen Freeholders or its committee. In addition, all of the powers of the Superintendent as defined in *P. L. 1922, C. 278, p. 685,* (*1 Cum. Suppl. C. S., p. 1530*) are made subject to the direction and control of the Board of Freeholders or its committee. In effect this statute provides that the Superintendent:

> "(1) Shall enforce *rules adopted by the committee of the Board* for the government, discipline and management of the hospital;
>
> (2) May, with the *consent of the committee of the Board,* appoint officers;
>
> (3) Shall receive patients *under direction of the Board;*
>
> (4) Shall temporarily discharge undesirable patients and *report to the committee of the Board who shall make final disposition of the case.*
>
> (5) Shall report his accounts to the Committee of the Board."

After the adoption of the 1922 amendment, above referred to, the Board of Chosen Freeholders of Essex County appointed a committee from within its ranks to act as the governing body of the Sanatorium and this committee has full charge of the officers of the institution subject, of course, to the approval of the entire board (S. C., p. 479). Admittedly, Harman was appointed by the Board of Chosen Freeholders (S. C., pp. 480, 481).

In view of the express terms of the statute whereby the Board of Chosen Freeholders appoints and directs and controls the activities of the superintendent, it is difficult to see how it can reasonably be urged that the superintendent is not an officer or employee subordinate to the Board of Chosen Freeholders.

Thus far we have assumed that the phrase "subordinate officers and employees" means subordinate to the Board of Chosen Freeholders and a reading of the County Supervisor's Act (*P. L. 1918, C. 206, p. 751*) leaves no room to doubt the propriety of our assumption. Respondent might conceivably contend, however, that the phrase means subordinate to the County Supervisor; that in turn, however, can only refer to all officers and employees subordinate to the Board of Chosen Freeholders.

The County Supervisor's Act (*P. L. 1918, C. 206, p. 751*) provides that the County Supervisor is the *chief executive officer of the county.* The evident purpose of the act was to furnish the county with a chief executive officer, to supervise all county affairs and assist in the conduct of the county government. He has the power to recommend the passage of such measures as he deems necessary or expedient and has the power to veto measures passed by the Board of Chosen Freeholders. He is charged with the supervision of county affairs and is under a duty to report conditions in the county to the board of chosen freeholders. It is also his duty to supervise the conduct of "all subordinate officers and employees".

The purpose of the statute was obviously to confer jurisdiction on the supervisor over all officers and employees subject to the jurisdiction of the board of chosen freeholders including the respondent. Furthermore, there is no other meaning which can be reasonably attributed to the phrase. The only other possible meanings are:

1. That all officers and employees, including the board of chosen freeholders, are within the county supervisor's jurisdiction. This will not be urged by respondent.

2. That some county officers, although subordinate to the board of chosen freeholders are not subordinate to the county supervisor, while others are. Such an interpretation would be absurd. Unless all officers and employees subordinate to the board of chosen freeholders are "subordinate" within the meaning of the County Supervisor's Act then no officers or employees are subordinate. The county supervisor appoints no county officers or employees, nor does he direct or control the conduct of their work. His sole relation with any county officer and employee is to supervise and remove when there is a violation or neglect of duty. Accordingly, it must be agreed that either all county officers and employees subordinate to the board of chosen freeholders are subordinate within the meaning of the supervisor's Act or none are.

Since the letter and obvious purpose of the statute confers jurisdiction on the county supervisor over all officers and employees, subject to the jurisdiction of the board, and since respondent was admittedly subject to the board's jurisdiction, he was subject to the jurisdiction of the county supervisor.

The decision of the Supreme Court that the county supervisor had no jurisdiction to try respondent was rested upon statutes which have long been repealed or amended.

(1) The Supreme Court stated that County Hospitals for the treatment of tuberculosis are placed under direct control and management of a board of managers citing *P. L. 1912, C. 217, p. 340* (S. C. pp. 854, 855). The Supreme Court, how-

ever, overlooked the 1922 amendment (*P. L. 1922, C. 269, p. 655*) which changes the 1912 Act so as to place county hospitals in counties of the first class under the control of the board of chosen freeholders or their committees, in place of boards of managers. Accordingly, under the law as it has been in force since 1922, Essex Mountain Sanatorium has been under the direct control and management of the Board of Chosen Freeholders of Essex County or a committee thereof.

(2) The Supreme Court stated that section 3 of the act of 1912 authorized the board of managers to appoint a superintendent to hold office at the pleasure of such board of managers (S. C., p. 855). Here, again, the Supreme Court overlooked the amendment of 1922 (*P. L. 1922, C. 269, p. 657*) which omits the sentence referred to by the Supreme Court and places the power of appointment in the board of chosen freeholders or its committee.

(3) The Supreme Court stated that a reading of Section 4 (*P. L. 1922, C. 278, p. 685*) indicates a legislative intent to distribute control over the superintendent among the board of managers, the board of freeholders and its committee (S. C., p. 855). A reading of the act as now constituted (*C. S. Cum. Suppl., p. 1528*) displays the fallaciousness of the statement of the Supreme Court. Section 4, read in connection with preceding sections, merely provides that in counties of the first class the superintendent is subject to the powers of the boards of chosen freeholders or their committees, while in other counties he is subject to the powers of boards of managers.

(4) The Supreme Court stated that "the power of appointment remains in the board of managers". This is not so, since under the 1922 amendment (*P. L. 1922, C. 269, p. 657*), apparently

overlooked by the Supreme Court, the Board of Chosen Freeholders of Essex County, a county of the first class, or its committee has power to appoint the superintendent.

(5) The Supreme Court stated that:

> "There is also to be taken into consideration the fact that with such power of appointment there remains the provision contained in the original act of 1912, *supra,* that such superintendent 'shall hold office at the pleasure of said board' (board of managers)" (S. C., p. 855).

Here, again, the Supreme Court overlooked the 1922 amendment (*P. L. 1922, C. 269, p. 657, Sec. 3*) which omitted the provision referred to by the Supreme Court and amended the statute so as to give the appointing power to the boards of chosen freeholders or its committee.

(6) At the conclusion of its opinion the Supreme Court states that a controlling reason for its conclusion is:

> "That the power to appoint the superintendent is and always has been in the board of managers and such power to appoint is complied with the following right in the appointee, and shall hold office at the pleasure of such board (board of managers)" (S. C., p. 856).

As already stated the amendment of 1922 (*P. L. 1922, C. 269, p. 657*) transfers the power of appointment in counties of the first class from the board of managers to the board of chosen freeholders. The same amendment also abrogated the provision that the superintendent holds his position at the pleasure of the board of managers. It is quite evident from the opinion of the Supreme Court that it overlooked the amendment of 1922 (*P. L. 1922, C. 269, p. 654*) and that if that amend-

ment had been considered the conclusion of the Supreme Court would have been that the county supervisor had power to try and dismiss respondent.

It is respectfully submitted that the Supervisor had jurisdiction to try and dismiss respondent and that the order and judgment of the Supreme Court should be reversed and the writ dismissed.

POINT II.

The writ of certiorari should have been dismissed on the ground that respondent has an appeal to the Civil Service Commission from the County Supervisor's order of removal.

The Civil Service Act, which pertains to county employees, provides that:

> "Any officer, clerk or employee of the non-competitive class of the classified Civil Service removed, discharged or reduced, as aforesaid, shall have the right of appeal to the Civil Service Commission under such rules as said Commission shall prescribe ***" (2 Cum. Suppl. C. S., p. 2584).

A reading of the act discloses that prosecutor Harman falls within the above quoted provision.

The act divides the civil service into two classes, classified and unclassified (2 Cum. Sup. C. S., p. 2578; 144-67).

Respondent contended before the Supreme Court that he is in the unclassified service of the Civil Service Commission under the following provision:

> "The unclassified service shall include the following classes:
>
> 'All superintendents of, teachers and instructors in the public schools and State agri-

> cultural institutions, all superintendents of state institutions, county superintendents and members and business managers of all boards of education, all police magistrates * * *'."

Respondent contended that he comes within the language "county superintendents and members and business managers of all Boards of Education". Obviously the term "county superintendents" refers to county superintendents of schools, which office was created by the school law of 1874, which act was revised and codified in 1903 (4 C. S. 4724). Since 1903 the act has undergone numerous amendments to date (See, *e. g.,* P. L. 1928, c. 227) and, as amended, is in full force and effect.

The Civil Service Act reads:

> "County superintendents and members and business managers of all boards of education, * * *."

Can there be any doubt, in view of that language, preceded and followed by commas, that the act refers to county superintendents of schools? If the framers had meant superintendents of county institutions they would have said so as they did with reference to "Superintendents of State Institutions". It is important to note that the act includes county superintendents within the same phrase as other school officers (members and business managers of all Boards of Education.)

Mr. Justice Bergen in *Virtue* v. *Civil Service Commission, 97 N. J. L. 80* (*Sup. Ct. 1921*), clearly indicates that, in his opinion, the term county superintendent refers to county superintendents of schools. He says:

> "The Civil Service act (Pamph. L. 1918, p. 244) provides that the unclassified service shall include 'all superintendents of, teachers and instructors in the public schools, * * * county superintendents and members of all boards of education."

His grouping and the omission of the provision as to "superintendents of state institutions" displays that he adopted the obvious meaning of the statute to the effect that county superintendents of schools were referred to.

Since respondent does not come within the unclassified service, he falls under the express terms of the statute in the classified service.

The classified service is divided into four groups; exempt, competitive, non-competitive and labor (*2 Cum. Sup., C. S., 2579; 144-68*).

It will not be disputed that respondent does not come within the competitive or the labor class.

It might be urged, as counsel for respondent contended at the hearings, that Harman is within the exempt class. The pertinent provision of the statute reads as follows:

> "The following positions shall be in the exempt class."
>
> "(5) * * * All officials of state and county institutions who must, of necessity, be physicians."

Reference to the statute creating the position of the superintendent, however, clearly shows that respondent does not fall within the exempt class.

The Act Concerning Tuberculosis, *Chap. 217, Laws 1912, Sec. 3,* provides:

> "* * * It shall appoint a superintendent of the hospital who shall also be the treasurer and secretary of the board and shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board of managers, and shall be a qualified practitioner of medicines *or other person trained for work of said character.*"

Since the superintendent need not of necessity be a physician, it is obvious that Dr. Harman does not fall within the exempt class. It follows, there-

fore, that Harman is within the non-competitive class (3 C. S., p. 3800), which provides as follows:

> "The non-competitive class shall include such positions as are not in the exempt class or the labor class and which it is impracticable to include in the competitive class."

Since Harman is within the non-competitive class, he has an appeal to the Civil Service Commission from the order dismissing him under the provisions of the Act before quoted (*2 Cum. Suppl., C. S., p. 2584*).

The rules of the Civil Service Commission prescribe that an appeal by an employee in the non-competitive class shall be taken in the same manner as is prescribed by statute for the competitive class.

That procedure (2 Cum. Suppl., C. S., p. 2583) is not the subject of inquiry in this proceeding and it would serve no useful purpose to set it forth in this brief. It is sufficient that the legislature has prescribed a mode of appeal.

That there is an appeal to the Civil Service Commission from the Supervisor's order cannot be disputed.

In *County of Essex* v. *Civil Service Commission, 98 N. J. L. 571,* the Court said, p. 673:

> "Thus, it is obvious that the civil service commission is fully invested by section 24 of the statute of 1917, with full authority and power to hear appeals from the class of employees holding positions or places designated by the statute and who have been discharged, removed, fined or reduced, and to make an independent investigation and to hold an independent hearing and to determine the merits of the case on the testimony taken before it.
>
> "But it is strenuously urged by counsel for the prosecutors that the power and authority possessed by the civil service commission

under section 24 of the act of 1917 was repealed by section 3 of an act entitled 'An act creating the office of county supervisor in counties of the first class in this state'. *Pamph. L. 1918, ch. 206, p. 752.*

"This section provides: 'It shall be the duty of the county supervisor to exercise a constant supervision over the conduct of all subordinate officers and employees, and to examine into all complaints made against any of them for violation or neglect of duty, and if it is found that any officer or employe is guilty of the charges brought against him, the county supervisor may suspend or remove him as the case may seem to require. * * *'

"We can perceive no language in this section which even in the remotest sense is inconsistent with a right of review by the civil service commission to investigate and hear appeals from a case where there has been a removal from a position or place falling within the Civil Service Act."

In view of the fact that Harman has not exhausted his statutory remedies, the Supreme Court should not have considered on *certiorari* the validity of the supervisor's action. The cases in this state uniformly hold that the Supreme Court should not, on *certiorari,* review the action of an administrative body removing an officer unless the officer removed has first exhausted all other remedies provided by statute.

Stockton v. *Board of Education, 72, N. J. L. 80, 81 (Sup. Ct., 1905)*:

"Until the remedies thus provided have been exhausted the prerogative writs of the state should not be awarded. *Jefferson* v. *Board of Education,* 35 Vroom 59; *Draper* v.

Commissioners of Public Instruction, 37 *Id.* 54."

See:

Jefferson v. *Board of Education, 64 N. J. L. 59 (Sup. Ct., 1899).*

Since respondent has an appeal to the Civil Service Commission from the County Supervisor's order of removal which has not been exhausted, the writ of *certiorari* should have been dismissed by the Supreme Court. If the Supreme Court is to hear cases which could have been appealed to administrative bodies, what would be the purpose of the statutes in providing appeals to such administrative bodies?

It is therefore respectfully submitted that the order and judgment of the Supreme Court be reversed and the writ dismissed with costs.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

Byron M. Harman, Prosecutor-Respondent, *vs.* Ernest A. Reed, Supervisor of Essex County, Defendant-Appellant.	On Appeal From Supreme Court. On Certiorari.

REPLY BRIEF FOR DEFENDANT-APPELLANT.

Reply to Respondent's Point I.

Respondent admits on page 17 of his brief that the Supreme Court overlooked the 1922 laws (chapters 269 and 278) conferring upon the Board of Freeholders control over tuberculosis sanitaria. Accordingly there is no dispute that the Supreme Court erred because its decision was based upon a repealed statute. But respondent argues that the result reached by the Supreme Court is supportable upon another ground,—viz., that the respondent was not a subordinate official over whose conduct in office appellant had jurisdiction on the presentation of complaints.

It is argued that since under Section 214 of the Home Rule Act (Laws of 1918, Chap. 185), the Board of Freeholders has the power by majority vote to remove subordinate officers whose terms are not fixed by statute, the County Supervisor's Act passed the same day should receive a narrow construction in its use of the words "subordinate officers." But how narrow? If respondent's con-

tention is followed to its logical conclusion, the Supervisor's Act was wholly unnecessary. But a statute is to be respected rather than rendered nugatory. The Supervisor's Act is in no sense inconsistent with Section 214 of the Home Rule Act. The latter provision was quite obviously intended to cover cases of subordinate officers serving at the pleasure of the Board of Freeholders, whereas the Supervisor's inquisitorial and removal powers were made applicable to all subordinate officers and employees against whom charges were preferred, irrespective of whether they were appointed for a definite term. In such cases, where hearings on charges must be held, the legislature established the Supervisor as the judge rather than the large Board of Freeholders.

Respondent's argument under Point I is rested largely on an abnormal construction of the words "all subordinate officers," over whom appellant by statute has jurisdiction. Respondent admits on page 18 that he is subordinate to the Board of Freeholders, but argues that he is not so subordinate as to fall under the County Supervisor's jurisdiction. No attempt is made to enlighten the Court where the line of subordination is to be drawn. Respondent imtimates that a hierarchy of subordinate officers should be visualized, the upper portion of which is outside the scope of the County Supervisor's authority. On page 19 of his brief he says, "If it (the legislature) had intended to include all officers, it would have said so." The legislature did say so in unambiguous language when it imposed on the Supervisor, as chief executive officer of the county, the duty "to exercise a constant supervision over the conduct of *all* subordinate officers", examine into complaints made "against *any* of them" and on finding "any officer" guilty to suspend or remove him. Respondent's brief disregards the words

"all" and "any", although they are the clearest indications of the legislative intent.

Reply to Respondent's Point II.

The Supreme Court, having rested its decision solely on the lack of jurisdiction in the Supervisor, did not pass on the question of whether respondent was not obliged to appeal to the Civil Service Commission before prosecuting a writ of certiorari.

Respondent has not answered rationally Point II of appellant's main brief. It was there anticipated that respondent would attempt to bring himself within the unclassified service by urging that he was included in the words "County superintendents and members and business managers of all *Boards of Education.*" This is a desperate effort by respondent to raise himself to the level of a county school superintendent. But the language of the statute forbids such interloping.

Even the authorities referred to by respondent require that the right to appeal to an intermediate tribunal like the Civil Service Commission be exhausted before resorting to a writ of certiorari.

Reply to Respondent's Point III.

Respondent was not entitled to a bill of particulars and the proceedings were not harmfully illegal.

Respondent never made a demand for particulars as to Charge 11 and accordingly this point applies only to Charges 1, 2 and 4. Furthermore, Charge 11 was very specific and clearly there could be no particulars given even if demanded.

It is very clear that in an investigation such as this the person being charged is not entitled to

a bill of particulars. Our Courts have repeatedly said and the law is universally accepted to be that bills of particulars, in the absence of statute, apply only to actions at common law. In *Reynolds v. Britton,* 18 N. J. L. 304, 305, the Court said:

> "We do not think it is a case for a particular. It is not a suit at common law, according to the course of the court under the practice act; but in the nature of an inquest to inform the conscience of the court and to be conducted upon the principles and in such a way as the court shall direct."

In *Paper and Textile Co.* v. *Newlin,* 101 N. J. Eq. 115, the Court said that in the absence of statute

> "a bill of particulars was only demandable in actions at law."

Furthermore, it is the established rule in this state that even in actions at law the granting of a bill of particulars is entirely discretionary with the trial court (*Paper and Textile Machinery Co.* v. *Newlin,* 101 N. J. Eq. 115; *Reynolds* v. *Britton,* 18 N. J. L. 304); and in the absence of a showing of prejudice and abuse of discretion the trial judge's ruling will be sustained.

All of the respondent's cases refer to the question of whether the charges upon an officer being tried for misconduct are sufficiently definite to meet the statutory requirements. All of the cases cited involve statutes prescribing a form of investigation and the question raised was whether the statute had been complied with. In our case the statute prescribes no particular form of investigation. It contains no provision as to written charges and is entirely silent as to the manner in which the County Supervisor shall conduct the investigation (*P. L. 1918, c. 206*).

We do not care to go into the question of whether under this statute written charges need be preferred. We are ready to assume that they need be and in this case they were.

The only question remaining is whether the written charges served were sufficiently definite.

The law is well settled that under a statute requiring written charges to be served it is sufficient if the notice informs accused of the nature of the charge.

In *46 Corpus Juris,* 994, Sec. 17 (c), it is said that:

> "The charges must be sufficient in their nature to warrant removal, and sufficiently specific to apprise the officer of what he has to meet. They need not, however, express the formality and exactness required in court proceedings."

In *Fuller* v. *Ellis,* 57 N. W. 33 (Mich.), the Court said

> "And while, in this case, the law requires the charges to be presented in writing, it is sufficient if they contain specific statements of infractions of the law or the rules and regulations which the accused should observe, and specify the facts depended upon to show incompetence or unfitness, and which requires a removal from the standpoint of the best interest of the institution. As the information upon which these must be based is largely within the control of the warden (accused) and can only be obtained by investigation, it is not to be expected that the formality of criminal pleading should be used, and it is enough if tangible statements of fact are made, sufficient to apprise the accused of the nature of the accusation that he is to meet."

Again in *Rutter* v. *Burke,* 93 A. 842 (Vt.) the Court said:

New Jersey State Library

> "It is claimed that the charges were too indefinite to give validity to the proceedings. It is not necessary that charges of this nature have the formality and completeness required in court proceedings, but they must be such as will fairly inform the officer of the accusations upon which he is to be tried."

And then when referring to one particular charge:

> "This charges a practice of the department in conflict with the ordinances, and shown by its records, and we think it was sufficiently definite without specifying the instances."

In *People* v. *Sayer,* 200 N. Y. S. 134, the officer was served with a notice to appear before the commissioner to show cause why he should not be removed

> "for failure to carry out instructions of the department and for inefficiency."

The Court held that this notice was sufficiently definite. Clearly, if that was sufficient, the charges served in our case are sufficient.

Respondent does not contend that he was unaware of the *nature* of the charges. On the contrary, he admits that they were of the most serious character. All he demanded was the time, place and name of complainants. It is clear that the place, *i. e.,* his office, was well known to him and was stated with sufficient definiteness. As to the time it is equally clear that the charges sufficiently apprised Harman. Furthermore, as the record shows, the Supervisor could not have given Harman exact dates or more exact places for he did not have that information.

Respondent states that he had to *immediately* answer the charges. Obviously the suggestion is that he was unable, because of lack of time, to

answer the charges because they were not sufficiently particular as to time.

It is enlightening to note that the charges were served upon him December 4, 1928, that the hearings commenced December 13, 1928, and were continued on various days until January 29, 1929. During this period of over six weeks, fourteen full days were dedicated to the hearings. It need hardly be pointed out that in that length of time prosecutor had every opportunity to answer all of the charges and that he was in no way prejudiced because the charges were not sufficiently particular as to "time or place".

On pages 23 to 25 of respondent's brief are cited decisions from other states, none of which support the right to a bill of particulars. Nor do any of these citations assert that the charges served upon an officer must be particular as to time and place of the alleged misconduct or dereliction of duty.

On the contrary, they are authority for the proposition that in proceedings of this character the accused officer is entitled to a hearing, to be confronted by his accusers to defend himself and that the charges be sufficient in their nature to apprise him of the accusations he has to meet.

It is equally clear that Harman was not entitled to the name of complainants or a copy of the complaint. In every case cited on this point by respondent there was a statute requiring a complaint. In our case the statute does not require that there be a complaint or complainant. The statute merely states that the Supervisor shall "investigate all charges". The charges were investigated after serving a written notice of the charges, which was more than the statute expressly requires. Respondent cites *Dodd* v. *Camden,* 56 N. J. L. 258, which we find is squarely against his contentions. It should be noted that the charges

in that case were much less specific than the charges in our case, yet they were readily sustained. In that case there was no complaint or complainant and clearly the officer being removed received no copy of a complaint or name of a complainant.

Respondent cites *Reilly* v. *Mayor,* 64 N. J. L. 508, and states that in that case the person making the charges signed them. On page 509 the statute under which the officer was tried is quoted and provides for removal only after written charges, signed by the person making the charges, are served. Clearly that case has no application to our case.

Even under that statute the officer being tried did not receive a copy of the complaint but only received written charges, as did Harman here.

It is respectfully submitted that respondent was not entitled to a bill of particulars and the proceedings were not harmfully illegal.

Reply to Respondent's Point IV.

The Supervisor's findings on Charges 1, 2 and 4 were amply supported by the evidence and the order dismissing respondent was entirely justified.

Before considering the evidence, we wish to advert briefly to the applicable rules of law. It is well settled in this State, and respondent so admits in his brief (p. 27), that the Supervisor's findings of fact will not be upset unless the facts fail to disclose a rational basis for the findings.

Devault v. *Mayor of Camden,* 48 N. J. L. 433;

Alcutt v. *Board of Police Commission,* 66 N. J. L. 173 (Sup. Ct. 1901);

Ayres v. *Board of Police Com.,* 49 N. J. L. 170 (Sup. Ct. 1886);

Cavanaugh v. *Board of Com.*, 59 N. J. L. 412 (Sup. Ct. 1896);
Reilly v. *Mayor*, 64 N. J. L. 508 (Sup. Ct. 1900).

"In reviewing the action of a board of police commissioners this court will not weigh the evidence taken before them, for the purpose of reaching an independent conclusion on the question of the guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational basis for the judgment against him. *If it does, then no matter whether the evidence be weak or strong, this court will not interfere. Dodd* v. *Camden*, 27 Vroom 258. Tested by this rule, the evidence produced before the board, and sent up with the writ in this case, supports the conviction which rests upon it, and the order of removal must therefore be affirmed."

In the *Devault* case, *supra*, the Court said (p 434):

"The province of this court is simply to see that these rights have been secured. Neither the statute nor the dictates of sound policy warrant our going further. The technical rules that have been judicially adopted with regard to inferior criminal prosecutions are not to be applied to these investigations, for while it is proper that proceedings to deprive persons of common rights for alleged crimes should be confined by somewhat strict limits, the removal of incompetent or ill-behaved officials from their exceptional positions of authority and responsibility, should be easy and prompt, and no forms should be requisite which are not in themselves substantial safeguards of justice. *Murdock* v. *Phillips Academy*, 12 Pick. 243; *People* v. *Fire Com'rs.*, 77 N. Y. 153.

In our opinion, the prosecutor was charged, in the mode provided by the statute, with con-

duct unfit for a policeman, forbidden by the rules of the department and justifying his dismissal; was duly tried upon the charge before the proper municipal authority, and was found guilty upon evidence which, whether weak or strong, *formed a rational basis for the judgment against him.*

His removal was therefore legal, and must be affirmed, with costs."

In *Olcutt* v. *Board, supra,* the Court said:

"Upon the trial it was for the board to say whether the evidence established the charge made, and if it appears that the officer was duly tried upon the charge, before the proper authority, and was found guilty upon evidence which formed a rational basis for the judgment, this court will not interfere. *Devault* v. *Camden,* 19 Vroom 433; *Ayers* v. *Newark,* 20 *id.* 170; *Dodd* v. *Camden,* 27 *id.* 258; *Cavanaugh* v. *Police Comm'rs.,* 30 *id.* 412."

In our case, therefore, the question is not whether the evidence is weak or strong or whether this Court would have reached a different conclusion. The only question is: Did the evidence present a rational basis for his findings? A review of the testimony will clearly show that not only was there a rational basis for his findings, but that the evidence amply supports his findings.

First let us consider the testimony of Miss Bertie Galloway. Miss Galloway was a telephone operator at the Sanatorium. While thus employed, she was invited by Harman to come to his office and have some liquor. She accepted, and both drank liquor there (S. C., p. 42). The last time she was at his office, he attempted to attack her (S. C., p. 47). She testified that he came into her room while she was undressed (S. C., pp. 48, 49). She further testified that she went riding with him several times and he made improper proposals to her (S. C., p. 46). The testi-

mony of Bertie Galloway, on direct examination, was as follows:

"Q. After this occasion in the office did you ever go out riding with Dr. Harman? A. Yes.

Q. When was that? A. In the evening and afternoon.

Q. You mean after you would be through duty at two o'clock on the week that you had the morning hours and would go out at night after your evening hours were finished? A. Yes.

Q. For how long a period did you go out with him in the afternoons? How many different times? A. I don't remember.

Q. Was it one, or two, or ten or fifteen? A. It was several; I don't remember.

Q. How many times did you go out with him in the evening? A. I don't remember how many times.

Q. Would you say one, or ten or twenty-five or how many? A. I would say two or three.

Q. When you would go out riding with the Doctor in what car would you go out? A. In his car.

Q. A county car? A. No, his personal car.

Q. When you were out riding with him at night did anything happen on those occasions? A. Did what happen?

Q. Anything? Let me ask you one question. When you went out in the car did you keep driving continuously or did he ever park the car while you were with him? A. He did park the car.

Q. On all of the occasions when you went out with him? A. Yes.

Q. By parking it, do you mean that he parked along the roadside? A. That's the only place he could park.

Q. And when he parked the car what would happen? A. The usual.

Q. What do you mean by the usual? A. (No answer.)

Q. Just tell the Supervisor what you mean by that in your own language? A. Must I answer that question?

The Supervisor: I am afraid you will have to.

A. He put his arms around me and tried to kiss me.

Q. Did this happen on every occasion when you went out with him? A. Every occasion.

Q. Did he say anything to you? A. Did he say anything to me?

Q. Yes. A. Yes.

Q. What did he say? A. I can't remember just what he said.

Q. What was the substance of it? A. I can't remember the conversation.

Q. Did he tell you things to the same effect as what he told you at his office before? A. Yes.

Mr. Bailey: I object to all these questions as leading.

Q. Did he or did he not make any improper proposals to you while you were out in the car with him? A. He did.

Q. On each of these occasions? A. Yes.

Q. What did you say to him? A. I said no.

Q. What did he say? A. He said "You will some day, they all do".

Q. Did the Doctor, or did he not, attempt to use force on you while you were out in the car with him? A. He did.

Q. Did he attempt to use force while you were down in the office? A. Yes.

Q. How many different times were you down in the office with him? A. I don't remember.

Q. Was it more than one occasion? A. It was more than one, yes.

Q. Do you recall the last time when you were down there? A. Very well.

Q. Will you tell the Supervisor what happened on that occasion? A. (No answer.)

Q. What happened on that occasion, Miss Galloway? A. The same thing, only worse.

Q. This time were you sitting in a chair near him or were you in some other position? A. In the same chair with him.

Q. Will you tell the Supervisor what happened there? A. (No answer.)

Q. How long were you down there on that occasion? A. I don't remember just how long it was.

Q. Did you stay in the same chair with him all the time you were down there on that last occasion? A. No.

Q. Where did you get after being in the chair with him? A. (No answer.)

Q. Were you or were you not on the floor later? A. Later.

Q. On this same occasion? A. Yes, sir.

Q. Where was the Doctor? A. There also.

Q. In what position was he with respect to you? A. What do you mean, what position?

Q. What was he doing? A. (No answer.)

Q. Did you say anything? A. Yes, I wanted to go; I wanted to leave the office.

Q. What did you say to him? A. I said, "If you don't let me go I will scream."

Q. What did he say to that? A. He tried to quiet me.

Q. How did he try to quiet you? A. By kissing me in the mouth.

Q. Then what happened? A. (No answer.)

Q. Did he or did he not let you up? A. He did.

Q. Do you know why he let you up? A. Because I made a noise.

Q. Then what did you hear him say? A. I don't remember the exact conversation.

Q. Did you ever go down to his office again? A. No.

Q. On this last occasion that you were there, were or were not any part of your clothing removed by the doctor? A. They were not removed.

Q. Was or was not any part of your clothing torn by the doctor? A. Yes.

Q. Can you tell the County Supervisor what was torn? A. (No answer.)

Q. Had he pulled any of your clothing off? A. He tried to.

Q. Did Dr. Harman ever come into your room, Miss Galloway? A. Yes.

Q. How did he get in there? A. With a pass key.

Q. You kept your door locked? A. Positively.

Q. What time of the day would he come in? A. After two o'clock in the afternoon.

Q. When he came in there, what would you be doing? A. I would be in bed.

Q. Resting? A. Yes, sir.

Q. What did he say to you on these occasions when he came up to your room? A. He wanted me to get dressed and go riding.

Q. How many different times did he go into your room? A. I don't remember.

Q. Was it more than one? A. Yes.

Q. Several? A. Yes.

Q. Do you recall any occasion when he was in your room when Miss Avery, the housekeeper came by? A. Yes.

Q. What happened on that occasion? A. He tried to hide.

Q. Where did he try to hide? A. He stood up in a bag—a hat box.

Q. Was that in a room, or in a closet, or where? A. In the room. There was a chimney or something protruding; it was on the other side of that.

Q. Did Miss Avery discover the Doctor there at that time? A. No.

Q. Where were you at the time? A. In bed.

Q. On these various occasions when the Doctor came up and found you in bed, were you dressed or undressed for bed? A. (No answer.)

Q. I mean were you lying down with your street clothes on? A. No, I wore a uniform and I didn't go to bed with the uniform on.

Q. In other words, when he came up were you in bed with your night clothes? A. That's right.

Q. When the doctor came up on these occasions did or did he not kiss you? A. He did.

Q. Did he or did he not put his arms around you? A. He did.

Q. Do you know Henrietta Rose? A. Yes, I know her.

Q. Do you know whether she went out riding with Dr. Harman at any time at night? A. She did'' (S. C., pp. 44-49).

On cross-examination she testified that:

''Q. You said some occurrence happened in there and I take it that he tore your clothes and the like. Tell me all about it. A. He made improper proposals to me.

Q. What do you mean by improper proposals? Just what did he say? A. I don't remember the words he used.

Q. Give me the gist of them. A. I don't remember the words he used.

Q. How many times did he talk to you about these improper proposals? A. Every time he saw me.

Q. How many times did he make improper proposals that evening? A. From the time I went in until the time I left.

Q. Where was he holding you? A. On the floor.

Q. Whereabouts on the floor? In the middle of the room? A. Yes.

Q. How did you get there? Did you walk over there? A. Yes, I tried to get to the door and he stopped me and pulled me around.

Q. Then what? How did you get in the middle of the room? A. He pulled me around. I was trying to get to the door.

Q. You were still on your feet? A. Yes.

Q. When you got to the middle of the room, what happened? A. He finally overpowered me.

Q. What do you mean that he overpowered you? Did he throw you on the floor? A. Yes.

Q. Did you resist him? A. Yes.

Q. And then what happened? A. I tried to get away from him'' (S. C., pp. 94, 95).

She further testified:

"Q. How long did you stop along the route? A. I don't know how long it was.

Q. What did you stop for? A. I don't know why he stopped; for reasons of his own.

Q. Did he say anything to you? A. Yes, he was talking to me.

Q. What did he say? A. He made improper proposals to me.

Q. What do you mean by improper proposals? A. I think we had that out before.

Q. Let us find out what it means. This is the second time you have used it. A. He always made them.

Q. From the first time he ever had a conversation with you, is that right? A. From the first time I was down in the office.

Q. Was this ride of yours before or after? A. After.

Q. After what? A. You mean after I was down in the office.

Q. Yes. A. Yes, after.

Q. How long? A. I don't remember.

Q. Just what were the improper proposals he made in the car? A. The same that he made in the office." (S. C., p. 111.)

From her testimony both on direct and on cross-examination, it is clear that prosecutor had attempted to attack her, had made improper proposals while riding, had entered her bedroom and had otherwise acted improperly.

Here was a girl telling a probable story, subjecting herself to one of the most merciless cross-examinations a witness ever went through, and sustaining her testimony on cross-examination as clearly as on direct. Why shouldn't her story be believed?

What possible motive could this girl have for ruining her reputation as well as another's unless her story was true? We wish to have the Court note the hesitancy with which she told her story

on direct examination. She was evidently embarrassed by the questioning, and the Supervisor, who had the opportunity of seeing the witness, was certainly more qualified to determine whether she was telling the truth than any non-observer can.

Her cross-examination fills about one hundred pages of the State of Case. No woman would subject herself to such an examination on an embarrassing subject unless her story was true. What possible reason was there for her to lie?

Respondent in his brief attempts to show that her story is inconsistent. We intend to consider these assertions and prove that her story was not only consistent, but, as we sincerely believe, truthful.

The first specific statement made in respondent's brief to discredit Miss Galloway's testimony is that she, on cross-examination, often said she did not remember. May we refer the Court to her testimony on direct examination, in which her memory was very faulty, and to the fact that her testimony was secured only after difficulty (S. C., p. 43, ll. 15, 18; p. 44, l. 14; p. 45, ll. 18, 40; p. 47, ll. 9, 17, 23, 31, 40; p. 49, l. 15).

Respondent also states that Miss Galloway's story was similar to Miss Galler's and infers that there was a "frame-up". A mere reading of the respective testimony shows that the charge is utterly false. If in general approach, respondent acted similarly with both girls that, instead of casting doubt upon their stories, would corroborate them. It is well known that men act similarly with different women when attempting to achieve the same purpose. The testimony clearly showed that Miss Galloway and Miss Galler did not know each other, not having met each other until shortly before the hearings commenced.

Counsel for respondent doubts whether a man would make an "improper proposal" to a tele-

phone operator the first time he met her. The doubts of counsel on this subject are of little weight. Furthermore, for the comfort of counsel may we point out that the respondent did not make the improper proposal to Miss Galloway the first time he met her (S. C., p. 41, l. 28). Counsel eloquently describes his client and states that it is difficult to believe that he would offer the telephone operator a drink. But it is known to have been done before in this imperfect world.

Counsel for respondent also comments on the return of the girls after the first advances. But they both testified that they feared discharge and we all know that to ordinary employees that is a dangerous weapon.

With reference to Miss Galloway to whom we are directing our immediate attention, she testified that she had nothing to do with respondent immediately after he had made a serious attempt to attack her (S. C., p. 117, l. 40 to p. 118, l. 10).

An attempt is also made to draw some strange inference from the failure of the girls to expound the meaning of "improper proposals". Any girl with any self-respect would be embarrassed by the questions of counsel for respondent and would refrain, if possible, from defining the term, the definition of which everyone knew.

Then follows an attempt to make Miss Galloway's story appear improbable. Counsel for respondent ask why he had two bottles of liquor, as if this were very unusual. The guest was not unexpected as counsel for respondent states but was very much expected (S. C., p. 65, ll. 23, 26). Miss Galloway testified that the moonlight gave them sufficient light for his purposes. Certainly human experience has taught all of us that although a room may not have any artificial light, it may still be light enough to see objects. It may have been due to moonlight as Miss Galloway

testified or it may have been due to the street light which Harman described (S. C., p. 635, ll. 20-30). He admitted that Miss Galloway had been to his office. She would therefore, if she remembered all insignificant details that counsel for respondent expect her to remember, know whether his office had curtains, even though his story were true (S. C., p. 498, ll. 18, 19). It is difficult for us to see how the fact that she did not remember whether the room had curtains other than the draperies, is at all significant.

The interesting conclusion is drawn by counsel that since Miss Galloway admitted she was not sitting in the same chair with respondent when he spoke endearing terms to her, her story is highly improbable. The testimony referred to was:

> "Q. Where was your chair? A. Near his chair.
> Q. How near? A. As close as he could get it."

Need it be said that many other men have been known to say sweet nothings in that position?

The allegation appears in respondent's brief that the charge was unfair in that it did not separate the periods of employment of Miss Galloway and Miss Galler. Surely respondent knew when each was an employee at the sanatorium and could not have possibly been prejudiced. This allegation of prejudice and unfairness along with the numerous other allegations of prejudice and unfairness is wholly unfounded and hardly deserves answer.

Then a part of Miss Galloway's testimony is quoted to prove she was inconsistent. The testimony immediately preceding that quoted by counsel is important:

> "Q. Did he come up and get you at the time? A. I don't remember.

> Q. Where did you meet him? A. I was with him in his office.
>
> Q. I didn't ask you that. Where did you meet him? A. I don't remember'' (S. C., p. 89, ll. 10-18).

The witness obviously did not remember whether on this occasion respondent had come to her switchboard and escorted her down or whether he was in his office and she came to him.

There is nothing improbable about Miss Galloway's testimony that she drank red wine. As has been pointed out the moonlight or street lamp usually furnish sufficient light to a room to ascertain objects and colors.

Comment is made on the fact that Miss Galloway did not scream. It must be remembered that she was subject to discharge, a dangerous weapon against most minor employees. Furthermore, no girl wants to create a scandal that can be avoided. She testified:

> ''Q. Why didn't you scream? A. Because I didn't want to have the scandal with people talking, but I wanted to get out quietly.''

The slightest knowledge of human nature renders the remarks contained on pages 48 and 49 of respondent's brief absurd. Miss Galloway testified that she made a noise to frighten him and that respondent put his hand on her mouth (S. C., p. 100, ll. 11-13). No further outcry was necessary for he then let her go:

> ''I didn't have to make a lot of noise because he let me go after that'' (S. C., p. 101, ll. 19-21).

Counsel asked: ''Why didn't Miss Galloway tell Mrs. Harman?'' Even slight knowledge of human nature answers that. Furthermore, Miss Galloway testified that after respondent attempted

to attack her she kept away from him (S. C., p. 117, l. 40 to p. 118, l. 10).

Miss Galloway's testimony is then dismissed with the statement that it is a tissue of lies. Thus far, we have seen that not only is there no evidence that she lied, but that there is every reason in the world to believe she told the truth.

Respondent next attacks Miss Galloway's statement that after she voluntarily left the Sanatorium she did not tell of his conduct except possibly to a few friends. But was not that the only decent and ladylike way to act? Would one expect her to broadcast his shameful conduct? She had left the sanatorium and had no reason to tell any one of the occurrences. That she told a few friends shows that her womanly nature overcame, to a slight extent, her judicious restraint.

Respondent charges that Harold Bennett "framed" Miss Galloway's testimony. But this charge is utterly without foundation as the evidence clearly shows. Miss Galloway testified on cross-examination:

> "Q. How many times have you seen Bennett since you left the institution? A. Not more than two or three times" (S. C., p. 135, ll. 3-9).
>
> Q. How many times had you been out with Bennett while you were at the institution? A. I was never out with him.
>
> Q. You never entered his automobile, is that right? A. I didn't even know he had an automobile" (S. C., p. 138, ll. 12-20).

There was absolutely no evidence offered by respondent to contradict Miss Galloway's testimony that she hardly knew Bennett and there is certainly no evidence to show that Bennett was in any manner responsible for Miss Galloway's testimony.

Considerable space in respondent's voluminous brief is devoted to Miss Galloway's testimony that one morning Harman passed her and gripped her arm. If that wasn't true, then why tell it? If, as he contends, this was a deliberate lie, what purpose could it serve? Why open herself to cross-examination on a subject entirely immaterial and not referring to the charges? In our opinion, this testimony rather than impeaching her story lends weight to it.

Counsel state that it is their sincere belief that Miss Galloway's testimony is untrue. If beliefs of counsel are to be considered, may we state that we cannot believe that this girl would tell the story she did and subject herself to a merciless cross-examination unless she was telling the truth. It must be remembered that no reason has been shown why she should lie. Respondent's counsel state that "obviously the testimony * * * has been rehearsed", by Misses Galler and Galloway. The undisputed testimony shows that they had never met except in the presence of the Supervisor (p. 136, l. 33, to p. 137, l. 2).

Counsel also argue "Isn't it reasonable to suppose he would ask her (Miss Galler) to go riding?" since he had asked Miss Galloway, the prior operator. We can't believe this query was made seriously. However, might we suggest that perhaps respondent had come to realize that his taking Miss Galloway out riding was quite hazardous to his station and had decided to confine his activities indoors as much as possible.

The next bit of testimony considered in respondent's brief is that which told of his taking Miss Galloway out riding. Counsel state they hardly believe he would run the risk of being recognized. The testimony showed that where they parked there were but few cars (S. C., p. 115, l. 9).

Furthermore, the evidence showed that respondent was not particularly interested in whether he was recognized. He had received a summons for parking in a car without lights in the company of a woman (S. C., pp. 223, 225). Apparently this did not prevent him from again parking without lights in the company of a woman. This time again a policeman found them (S. C., p. 253). Harman did not deny that these events took place.

The next reference in respondent's brief is to his entries to Miss Galloway's room. Harman admits that he entered the room but states that his purpose was proper (S. C., p. 499, ll. 38, 39). Certainly this disposes of the suggestion found in his brief that it is improbable that he would enter their rooms in the day time with many people around the sanatorium.

Miss Galloway testified she never drank to intoxication and there is absolutely nothing to indicate that she had. Respondent testified that he heard she was discharged for intoxication (S. C., p. 496, ll. 10-18). Certainly, counsel must know that what respondent *heard* in no way affects the veracity of Miss Galloway.

The attack then shifts from Miss Galloway's testimony to that of Miss Galler. We have reviewed in detail Miss Galloway's testimony and the comments made in respondent's brief thereon. It is obvious that her testimony was amply sustained by the probabilities and the circumstances, and that the Supervisor was amply supported by the evidence when he found that her charges were true. Surely it cannot possibly be said that the Supervisor had no rational basis to find that respondent had committed the wrongful acts alleged by Miss Galloway. Harman denied the story of Miss Galloway, but, as will be shown later, his testimony was hardly believable. Before

discussing his testimony in detail we wish to consider the testimony given by Miss Galler.

Miss Galler's testimony on direct examination was as follows:

"Q. Did you or did you not on any occasion have anything to drink with Dr. Harman? A. I did.

Q. Will you tell the Supervisor the circumstances how many times that took place, and where? A. It took place in Dr. Harman's office about 9:30 in the evening. He had called me off the telephone board and requested me to come down to his office, which I did. He had it there. He asked me if I would take a drink. I told him I didn't make a practice of it, but I did occasionally have a drink. He offered me a drink and I took it. He drank himself and he made me sit on his lap and he made advances toward me. He kissed me, and after a very few minutes in there he almost forced me into having relations with him.

Q. How often did this happen? A. To the best of my knowledge about three times.

Q. Was the door of Dr. Harman's office open or shut on these occasions? A. Closed and locked.

Q. Closed and locked? A. Yes, sir.

Q. How did you come to go down to his office? A. He called me on the telephone and asked me to come down.

Q. While you were on duty? A. Yes.

Q. Did you go with him to any other place than to his office? A. Yes, into the examination room.

Q. Where is the examination room? A. Opposite the telephone room.

Q. Was it during the day or evening that you went into the examination room with him? A. In the evening.

Q. How many times did you go into the examination room with him? A. It was two or three times.

Q. Was the door open or shut while you were in the examination room? A. The door was closed.

Q. What took place in the examination room? A. He kissed me and put his arms around me and made the best advances he could make.

Q. Did you say that he also took a drink? A. Yes, he did.

Q. Do you know what he drank? A. He drank the same as he gave me.

Q. What was that? A. I believe it was port.

Q. Did he have anything to say to you on these occasions? A. Very little.

Q. What did he say? A. He told me that I was the type of girl he liked.

Q. On any of these occasions did Dr. Harman assault you? A. He did——

Mr. McCarter: I object to that as leading. I think the witness ought to tell what he did.

A. He did not exactly——

Q. Tell the Supervisor exactly what happened. A. I don't know whether I can or not.

Q. Tell just what happened? A. When I went to his office he kissed me and he was all upset. He had me on the floor; he had my clothes off from me and his body as close as possible to mine. That is the best I can describe it.

Q. Will you tell the Supervisor how your clothes came to come off? A. Well, they weren't taken off me—I don't know how to answer.

Q. Did or did not Dr. Harman on this occasion have all of his clothes on? A. No, he did not.

Q. What of his clothes did he not have on? A. He didn't have his coat on.

Q. Anything else? A. No.

Q. Did he have all the rest of his clothes on? A. Yes.

Q. All in their customary and proper place?

Mr. McCarter: I object to the customary and proper. The question is what occurred.

Q. Did he or did he not have any of his clothes partially off? A. He had some of his clothes open; he didn't have them off.

Q. What part of his clothes did he have open? A. His trousers.

Q. What was the position of his trousers? A. I am afraid I can't describe that.

Q. Tell the Supervisor as nearly as you can? A. The best I can say is that he was as close to me as he could possibly get.

Q. I wish you would tell us specifically, if you will, just exactly what was the position of Dr. Harman's trousers on this occasion. You say they were open? A. Yes.

Q. Were they off or on? A. No, they were on.

Q. How much off and how much on? A. I am afraid I can't say that.

Q. Do you know? A. I don't. I know it was dark and I could feel his body on mine, but I couldn't tell just——

Q. What happened after that? A. We heard someone passing through the hallway and he released me.

Q. What did you do then? A. I immediately asked to leave the office—if I could leave.

Q. Did you leave? A. After a few minutes waiting he let me go.

Q. Will you tell the Supervisor whether or not Dr. Harman ever came into your room in the afternoon? A. Yes, he did; he came in the afternoon when I was on the morning shift.

Q. And when you were working on the morning shift, what were your hours? A. From six to two.

Q. How many times did he come in the afternoon? A. I believe it was two or three times.

Q. Was the door of your room locked at the time? A. It was.

Q. How did he gain admission? A. With the pass key.

Q. Did he or did he not knock at the door before he came in? A. He did not knock.

Q. When he came in on these occasions where were you? A. Once I was in bed and on another occasion I was just getting undressed.

Q. On the occasion when he came in when you were in bed where you undressed? A. Yes, in my night clothes.

Q. On the occasion that he came in you were not in bed, were you or were you not fully dressed? A. No, I was not.

Q. What did you have on? A. A chemise.

Q. On these occasions when Dr. Harman came up to your room did you hear him coming in? A. I heard the key in the lock.

Q. Had you ever invited him to your room? A. I had not.

Q. When he came up to your room on these occasions what happened? A. He would kiss me and take me in his arms.

Q. Did he say anything to you? A. Very little.

Q. Did he do anything besides kiss you? A. He tried to make advances.

Q. In what way? A. Improper advances.

Q. Specifically, would you tell the Supervisor what he did by making improper advances? A. He tried to take my clothes from me.

Q. In your room? A. He tried to bare me.

Q. Did he or did he not succeed? A. He did not'' (S. C., pp. 154-157).

After a gruelling cross-examination, Miss Galler's testimony was unaffected. After the assault upon her, Miss Galler saw Father James, relief chaplain at the Sanatorium, and told him of Harman's actions (S. C., p. 159, ll. 25-40). Upon the advice of Father James, she left the sanatorium. She testified:

> ''Why, Dr. Harman was going too far in his advances, then I left under the advice of a Catholic Priest'' (S. C., p. 159, ll. 25-30).

Father Fitzpatrick referring to the date on which Harman assaulted Miss Galler testified:

> ''It seemed to me that she seemed to imply it was the very night she had called up Father

James, who had taken my place, for protection'' (S. C., p. 440, ll. 28-32).

Father Fitzpatrick, a very friendly witness for respondent, states that as early as August, 1926, Miss Galler had told him in the presence of respondent that she called Father James for protection against his advances.

If Miss Galler had lied when she said she complained to Father James immediately after the assault and left the sanatorium at his suggestion, how easy it was for respondent to prove that. He could have called Father James; but he didn't. The only possible inference from his failure to call Father James is that the Father would have in every detail corroborated the girl's story; and indeed his corroboration is very harmful to respondent's protestations of innocence.

It is inconceivable that this girl complained to her priest that respondent had attacked her and left her position on the advice of the Father unless her allegations were true. We must not forget that Miss Galler called on Father James shortly after the attack took place and before she had seen Bennett (S. C., p. 198, l. 30) so there can be no possible suggestion that any one had ''framed'' her.

Shortly after leaving the sanatorium, she was called by Father Fitzpatrick, the regular Chaplain, to his home and she there, in the presence of Father Fitzpatrick, Harman, Mrs. Harris and Mr. Bennett, told the same story she told to the Supervisor at the hearing. This meeting took place in August, 1926, and could not have been very long after the attack occurred.

It is impossible to believe that this Catholic woman would lie to these Fathers on so serious a matter. No animosity by the girl against Harman is shown; in fact, no possible motive is shown.

Respondent's brief attacks Miss Galler's testimony in two respects. Great stress is laid on a supposed variance in dates. Miss Galler displayed, on the stand, that her memory as to dates was faulty (S. C., p. 178, ll. 30-40). There was nothing surprising in that since the hearings were held over two years after the acts being described took place. The act itself would in the ordinary course of events remain vivid but the dates would be dimmed.

Miss Galler testified that she didn't remember the dates but believed the assault in question occurred in June, 1926. She testified as follows:

> "Q. Was it a matter of any importance to you that this thing had occurred? A. It was, but I didn't remember any of the dates (S. C., p. 181, ll. 20-23).
>
> Q. It didn't occur on 11th of August? A. I don't know whether it did or not" (S. C., p. 180, ll. 25-27).

Harman and Mrs. Harris testified that at Father Fitzpatrick's home Miss Galler said that the assault occurred on August 11, 1926. Miss Galler, Bennett and Father Fitzpatrick did not recall that any date had been mentioned on this occasion.

Father Fitzpatrick testified as follows:

> "Q. Did she mention a date? A. I don't recall."

The evidence therefore is in direct conflict as to the real date on which the assault occurred. The only evidence to show that Galler said it occurred on August 11th is that furnished by highly interested witnesses, respondent and Mrs. Harris. Mayhap, Miss Galler's recollection was more accurate than the definite recollection of Harman who had an abortive "alibi" for August 11th.

Furthermore, even though the assault did occur on August 11th that does not nullify, by any means, Miss Galler's testimony. To the best of her recollection it occurred in June; if it occurred in August it none the less occurred. She testified:

> "Q. It didn't occur on the 11th of August? A. *I don't know whether it did or not,* because I didn't specify any date. I don't remember specifying any date at all" (S. C., p. 180, ll. 25-27).

One of the many misrepresentations contained in respondent's brief is the statement that Miss Galler left the institution under a cloud admitting a small shortage in her account. The clear testimony showed that she denied any shortage in her account (S. C., p. 191) and the records of the hospital substantiate her story (S. C., p. 708, ll. 33-35).

Miss Galler's story was entirely probable and remains unimpeached. As we stated before, we do not believe that she would ask Father James for protection if her story were not true; nor would she voluntarily appear before Father Fitzpatrick. There is absolutely no reason shown why she should lie and it is difficult to see how in view of those circumstances her story can be disbelieved. Surely it cannot be contended that the Supervisor had no rational basis for believing her story.

Let us now consider the testimony of Harman. He stated that he had never offered Miss Galler a drink and had never made improper proposals or assaulted her. A study of his testimony will clearly display its falsity. Referring specifically to the Galler assault, he relied on a loose leaf diary to prove his innocence. The diary stated that he had been fishing all day and returned about 7 P. M. The assault is described as having taken place about 10 P. M.

He testified on direct examination that when Father Fitzpatrick told him of Miss Galler's story,

> "I opened the drawer in my desk where I keep my daily memorandum book and so forth, and I opened it, and I saw a notation in which I had been fishing * * *" (S. C., p. 507, ll. 20-30).

Innocent men do not search for an alibi so soon after they are accused.

On cross-examination, he testified:

> "Q. Why was it necessary for you to look at the diary yourself? A. Why it was the most natural thing in the world to do (S. C., p. 601, ll. 33-36).
>
> Q. What in the diary made you feel that? A. What in the diary made me feel she was a liar?
>
> Q. Yes. A. Because she specified the time (S. C., p. 602, ll. 14-17).
>
> Q. Then how did the diary act as a comfort to you? A. It made her out a liar in my mind positively and definitely.
>
> Q. How did the diary make her out a liar? A. Because it specified I was not in Verona on August 11th."

Imagine an innocent man testifying that his diary proved to *him* that he was innocent.

> "Q. Well, will you tell us what there was in this diary that operated as a comfort to you? A. When a woman accuses a man, especially a physician, of being with her, he is up against a pretty hard proposition. She specified a definite date, and in order to satisfy myself, not necessarily myself, but other people—my conscience and my mind were clear—to satisfy these people who were interested, I tried to convince them I was not in Verona at that time.
>
> Q. And this diary was convincing as to where you were up to 7:00 o'clock? A. I

don't know whether it was convincing proof or not.

Q. Well, it was evidence as to where you were up to 7:00 o'clock. What sort of proof did the diary afford as to where you were from 7:00 P. M. on August 11th? A. None, only to myself."

In numerous instances his testimony was undoubtedly untrue. Counsel for Harman having recklessly called all of the witnesses against their client "liars", may we suggest that when an obvious contradiction appears, it isn't usually a black lie but a faulty recollection. When, however, a subtle inconsistency exists, it is time to beware.

Harman testified that Mrs. Harris, after the conference at the house of Father Fitzpatrick, suggested that he be accompanied by a housekeeper when he entered the girls' bedrooms (S. C., p. 544, ll. 30-38). Yet Harman also testified that nothing was said when the charges were made before Father Fitzpatrick about his entering Miss Galler's room (S. C., p. 554, ll. 30-38). How, possibly, could Mrs. Harris have mentioned the necessity of taking a precaution if the subject was not brought up?

Harman testified that Father Fitzpatrick, and he, in the presence of Bennett, had a conference as to these charges before the conference at which Miss Galler was present took place. He said:

"Q. You are positive, are you, that Father Fitzpatrick was present on this occasion? A. Absolutely, yes, sir.

Q. And you are positive that Mr. Bennett was present on this occasion? A. Yes, sir" (S. C., p. 596, l. 30 to p. 597, l. 3).

Father Fitzpatrick, a friendly witness testifying on his behalf, said:

"Q. Do you remember talking to Bennett about it at the institution in Dr. Harman's

> office? A. No, no. I just spoke to the Doctor and then I held the case until I brought them down here'' (S. C., p. 442, ll. 3-10).

May I here quote the unfair language of respondent's brief (p. 71) ''Clearly the evidence with respect to this single incident proves her to be a liar. False in one respect—false in its entirety.''

Bennett testified to the same effect as Father Fitzpatrick.

Miss Houston testified that she saw Dr. Harman out riding with Henrietta Rose in the evening (S. C., p. 204, ll. 10-12). There is no possible reason in the case why her testimony should not be believed.

A note was found in Miss Rose's room in respondent's handwriting which reads as follows:

> ''To Whom it May Concern: I have never been parked in a car with Dr. Harman nor have I at any time been with him when he broke any of the Motor Vehicle Laws.''

The testimony clearly showed that Harman was given a summons for parking a car without lights in the company of an unknown woman (S. C., p. 223, l. 29 to p. 225, l. 30). The evidence also proved that on another occasion Harman had been confronted by a policeman while parked without lights in the company of a woman (S. C., p. 253). Harman did not deny these occurrences.

Despite the foregoing testimony, Harman denied that he had ever been riding in the evening with Miss Rose (S. C., p. 525, ll. 25-30). He rendered the unbelievable explanation for the document above mentioned that it was written at Miss Rose's request. It should be noted that he asked her to sign in the presence of another patient (S. C., p. 530, ll. 24, 25). Why? Can there be any doubt that Harman lied when he said that he

never took Miss Rose out riding other than to the car line?

Dr. Lauterborn testified that he had never requested Harman to discontinue staff meetings. He testified:

> "Q. Did you not in fact request him to discontinue those that were being had because they took too much time from your work? A. Never.
> Q. Never? A. Not me" (S. C., p. 411, ll. 34-38).

Harman testified:

> "Q. And that they were discontinued at the request of Dr. Lauterborn? A. He was the one that made the request, yes, sir" (S. C., p. 630, ll. 17-19).

Whom shall be believe, this disinterested and worthy physician, or the respondent who is, at least, highly interested?

Miss Houston, who is clearly disinterested, testified that at the operation on Miss Rose a two or three inch object, which she was told was a fetus, was removed (S. C., p. 210, ll. 10-18). Harman testified that no object was removed (S. C., p. 624, l. 10 to p. 625, l. 4).

Dr. Brown, witness on behalf of Harman, testified that Miss Rose was operated on at the sanatorium because of the rule at Mountainside Hospital excluding tubercular patients. He testified:

> "Q. Why was it done at the Essex Mountain Sanatorium? A. For the simple reason that she had tuberculosis and tubercular cases were not admitted at the Mountainside" (S. C., p. 684, ll. 19-23).

Harman testified:

> "Q. Who was the doctor that determined that the operation should take place at the hospital rather than at Mountainside? A. Dr. Brown.

> Q. Why did he determine that, do you know? A. On account of the expense that would be involved if the girl were taken to Mountainside'' (S. C., p. 621, ll. 33-40).

Here again may we quote respondent's brief ''caught in a lie''?

Dr. Brown testified that he did see Miss Rose the day before the operation (S. C., p. 692, ll. 23-27). Harman testified that Dr. Brown did not see Miss Rose from May 1st until after she was under ether ready for the operation (S. C., p. 618, l. 30).

The hospital record of the operation was missing. The record of the case contained the words ''Operation, tumor pelvis, uterine tumor, etc.'', crossed out, even though Dr. Bennett admits that they were written on cards after the operation (S. C., p. 289). The statement of the patient was that she was to have an operation for tumor (S. C., p. 420, ll. 35-40). Yet Harman testified that Dr. Brown said the operation was one for ''Glandular endometritis'' (S. C., p. 524, ll. 18-20). This is denied by Dr. Brown (S. C., p. 695, ll. 15-17).

Harman testified that even though he relied on his diary to prove his innocence, and even though the diary purported to cover his activities only until 7 P. M., he never thought of asking Miss Galler the hour of the attack (S. C., p. 542, l. 30 to p. 543, l. 30). May we dare to cast doubt upon the probability of that bit of testimony?

Harman so accurately repeated what is supposed to have taken place two years prior at Father Fitzpatrick's house, especially the reference to dates, that it is hard to understand why his memory was so ''faulty'' on many other pertinent matters (S. C., p. 598, ll. 10-30, with S. C., p. 599, ll. 18-35).

Another bit of testimony is interesting. It was testified on behalf of respondent that Miss Galler

became confused when shown that Harman was not in Verona August 11th (S. C., p. 484, ll. 20-26). *But Harman testified that he didn't show the diary to anyone in Miss Galler's presence* (S. C., p. 601, ll. 1-10). What then confused her?

Many more inconsistencies and unbelievable details of Harman's story can be shown, but it would serve no useful purpose. The only reason why we have even considered it as fully as we have is because of the nature of respondent's brief. It is full of misrepresentations and baseless accusations to the effect that all of the witnesses against him are perjurers, prostitutes, vagrants and the like. We have refrained from like retorts.

The next testimony considered is that of Harold Bennett. Respondent charges that Bennett "framed" the charges against him. We have shown that the charges were all well founded and supported by ample evidence. We have further shown that under the uncontradicted evidence Bennett hardly knew any of the witnesses who testified against Harman. There is some testimony, contradicted by Miss Galler and Bennett, that they had been seen together a few times. Surely it is impossible to believe that these people would become perjurers and would blacken their souls and besmirch the name of another, even assuming that someone they hardly knew asked them to.

We submit that it is beyond the bounds of human intelligence to accept what respondent in his brief would have us believe. Even if Bennett had requested the witnesses to press their charges against Harman, that is a long way from the repeated cry of "frame up". Furthermore, we will show that Bennett's activities in this case were very slight and in no way affected the case, other than to help bring facts to light.

First, we will agree that in order to believe that Bennett framed Harman as alleged, we must be-

lieve Bennett to be insane. However, we would not only have to believe Bennett to be insane, but we must also believe that the witnesses he is alleged to have procured were insane. It is indeed a reflection on the Supervisor to say that, after listening to Bennett and the other witnesses testify for days, he did not in the least question their sanity and, furthermore, believed in their trustworthiness. Bennett's testimony will be best considered by discussing the unfair comments thereon contained in respondent's brief.

Throughout the brief counsel attribute the motive to Bennett of wanting to get rid of Harman as his superior for his own advancement. How is that at all consistent with Bennett's willingness to resign (S. C., p. 320)? In fact, Bennett on the advice of Father Fitzpatrick resigned after Harman refused to pay him the money he had advanced to Miss Galler. Bennett testified he had nothing against Harman, and there is no reason to believe he had. Respondent's theory that he wanted more power in the Sanatorium seems utterly without foundation in view of his willingness to resign, which is admitted by Harman and is supported by Father Fitzpatrick. It is asked why Bennett secured the witnesses. The simple answer is that when he placed his grievances before Supervisor Reed he also told him of other things he had heard and at the request of Supervisor Reed he secured the other witnesses (S. C., p. 330).

Bennett testified that he paid money to Miss Galler in the presence of a Catholic Sister (S. C., pp. 338, 339). Harman attacks the truth of this, yet no attempt was ever made to attack the credit of his testimony by securing the testimony of the Sister.

An effort is made to show friendliness between Miss Galler and Bennett. Bennett testified that

when Supervisor Reed asked him to obtain the witnesses, he obtained the address of Miss Galler only through her sister (S. C., p. 366). If respondent wanted to discredit this testimony of Bennett he could have called the sister, but it is significant that she was not called.

The dismissal by the Real Estate Board of Bennett's claim against Tate is also referred to. Counsel for respondent know only too well that, assuming the Board did dismiss the claim, that is no evidence in this action that the claim was unfounded. Nevertheless, they state that it was established that Tate did not owe the money to Bennett.

Counsel refers to rules of criminal law (p. 75). Need we do more than to refer to the opinion in *Devault* v. *Mayor of Camden,* 48 N. J. L. 433, 434, where the Court clearly states that the rules of criminal law have no application to an investigation such as was here involved.

Counsel refer to testimony of Father Fitzpatrick to the effect that, in his opinion, Bennett had an animosity towards Harman. Clearly this testimony was inadmissible, and only the liberality of the Supervisor in admitting the evidence in an attempt to get at the truth of the matter permitted counsel for respondent to introduce it. But even after it is admitted, it can carry no weight, for it is only an opinion based on a feeling, and is not based on facts.

Respondent's reflections on Bennett's sanity indicate, under the circumstances, that Harman elected to adopt a desperate expedient to overcome his associate's damaging testimony. But it seems to be very bad taste coming from one who worked with him for years, has respected his work, and has entrusted him with responsible work, never during all this time suggesting that his co-worker was insane. If he was insane, it is

indeed strange that Harman didn't accept one of his resignations. It is even stranger that Harman ever "suspected" he was insane until it became necessary to make that contention in a final effort to make the best of a bad situation. It is also a reflection on the Supervisor that in many hearings he did not discover Bennett was insane.

Counsel have overdone the "framing" and "insanity" theories. The charge that Bennett "framed" Miss Houston's testimony. Miss Houston testified that Bennett never said anything to her about the charges in this case (S. C., p. 214). Shall we believe her or shall we brand her a perjurer because respondent purports to believe that Bennett influenced her?

Next as to the payment of money to Miss Galler. Bennett and Harmans' testimony was in direct conflict on this as on most points.

Why should Bennett keep a memorandum after he left the institution? Certainly, counsel for respondent realize that the memorandum was no evidence that Harman owed the debt. When he was leaving the institution, it was natural to throw the memorandum away for he know how much the total debt was. Bennett's reason for paying Miss Galler, rather than being ridiculous as respondent contends, was highly probable. The charges of Miss Galler were known to Freeholder Harris and Father Fitzpatrick in 1926. Yet for over two years thereafter they were kept quiet even though the stability of a public institution was at stake. Of course, Harman wanted to keep it quiet and he asked Bennett to "keep her quiet". Apparently, Father Fitzpatrick and Mrs. Harris were perfectly willing to keep it quiet, as evidenced by their silence for over two years. The only one left to silence was the girl and it was done in the usual way.

The attempt by Harman to bribe Bennett is significant. He admitted that after the hearing before Father Fitzpatrick, he offered to give Bennett some things he had asked for previously and had been refused. It is indeed strange that the benevolent attitude came at such a crucial time.

At page 91, respondent refers to Mrs. Harris' testimony to prove Miss Galler lied. We cannot agree that what Mrs. Harris said about the locks at all impeaches Miss Galler's testimony. We still cannot see why the door could not be locked. Furthermore, as we have already pointed out, how can we reconcile Mrs. Harris' testimony that Miss Galler became confused when she learned of Harman's diary (S. C., p. 484) with Harman's testimony that Miss Galler did not know of the diary or its contents (S. C., p. 601, ll. 1-10)?

Respondent also states that Mrs. Harris testified that Miss Galler at the conference before Father Fitzpatrick referred only to the incident of the assault. How can we reconcile that testimony with Harman's that after the conference in question Mrs. Harris advised him to have a housekeeper accompany him in going into the employees' bed rooms (S. C., p. 544, ll. 30-38)? This remark must have been called forth by the girls' charges that he entered their bedrooms.

Respondent refers to a letter by Bennett requesting the payment of money advanced by him. Take for a moment, respondent's testimony that when he asked Bennett what the money was for the answer was "You know what that's for" (S. C., p. 514, l. 30).

Assuming that Harman did question Bennett what the money was for, is not Bennett's remark, as testified to by Harman, just the thing he would honestly say? If his claims were false would he by any stretch of the imagination say that?

Another misstatement in respondent's brief is that Bennett, anticipating ouster, tendered his resignation. It is undisputed that Bennett resigned on the advice of Father Fitzpatrick (S. C., p. 324).

The other ingenious arguments of counsel for respondent found at the conclusion of this point in their brief are not deemed worthy of further consideration.

No real motive is shown why Bennett would want to harm respondent. At page 106 they say Bennett held Harman responsible for not being paid certain expenses. Merely another misstatement. The undisputed testimony showed that if Bennett blamed anyone it was the Board of Freeholders and not Harman (S. C., p. 371).

The suggestion that Bennett paid Miss Galler for a school course as a matter of friendship, is drawn from thin air and unsupported by any evidence.

From all that has been said, it is clear that Bennett had nothing to do with the charges against Harman and that the cry of "frame-up" is the familiar one of the man that was unfortunate enough to get caught.

Before dealing with the allegations of prejudice, we wish to comment on the statements that the rules of the institution were not introduced to show what the superintendent's duties were. Can there be any doubt that even without express rules the acts of respondent as superintendent of a county institution constituted violations of his duty? Certain duties are necessarily implied from the nature of the office itself. Here the head of a public institution took his subordinates away from their work, riding, drinking, making improper advances, etc. And, to make matters worse, practically all of the offenses were committed in his office at the institution. The statute

governing the superintendent provides that he shall have general supervision over all internal affairs and maintain discipline (P. L. 1922, C. 278, p. 685). What could be a greater violation of his duty to maintain discipline than his conduct with the employees? Counsel say that some of the charges referred to hours when he was off duty. As we understand the facts, all of the charges on which Harman was found guilty involved a time when he should have been performing his duties as superintendent and, furthermore, involved times when the employees were on duty. Aside from that, the argument is that if, during a time outside of superintendent's hours of duty, he takes an employee away from her work into his office at the sanatorium and makes improper proposals to her he is not violating or neglecting his duty. The absurdity of that contention is apparent from its mere statement. What could be more dangerous to the welfare of a public institution than such conduct? Respondent states that the cause for removal must affect the administration of the office. Well, what could more clearly affect the administration of the office of Supervisor of a public institution than conduct which will disrupt the morale of the institution, will wreck its internal affairs, ruin its efficiency and bring the scorn of the public upon it? We must remember that a public hospital is involved. What faith could the populace have in an institution where the superintendent is permitted to carry on as Harman did?

The cases cited by respondent clearly do not refer to a situation like ours, for they all recognize that where the acts affect the office, as they certainly do here, they are sufficient cause for removal.

We trust that counsel are not serious when they intimate that respondent did not understand the

meaning of the allegation "improper proposals". Similarly, it is beyond our comprehension that he did not understand the meaning of "assault".

Respondent next contends that dates should have been given to him. We have already pointed out that the Supervisor didn't know the dates and could not have given them to him. Furthermore, Harman knew the dates and certainly had an opportunity to prepare other "alibis" during the many weeks intervening between the date on which Misses Galler, Galloway and the others gave their testimony and the date on which the hearings closed.

We wish to consider next the allegations of unfairness that appear throughout respondent's brief. We believe that the Supervisor conducted the hearing in an eminently fair manner and that the remarks of counsel for respondent in their brief are entirely unwarranted, unfounded and highly improper.

At page 35 counsel complain of a ruling of the Supervisor on a point of evidence relating to the propriety of their questions to Miss Galloway as to her past life. Of course, it is admitted that rules of evidence do not govern in an investigation and that this Court will not reverse for erroneous rulings on evidence.

Furthermore, even under the well established rule of law in the United States there can be no doubt that the Supervisor acted properly by disallowing the examination attempted by counsel for respondent.

Wigmore states that where counsel attempts to show immorality by specific acts, as counsel did here, the law in some of the United States is that the trial judge has absolute discretion to exclude the testimony. The rule in the other states absolutely prohibits such examination. There is no state which requires that such testimony be ad-

mitted. Since that is the rule in trials at law *a fortiori* the Supervisor acted properly in halting the examination in question.

Wigmore ably states the reasons for the rule whereby evidence of specific acts of immorality is inadmissible.

> "The ordinary instincts of decency, not to say courtesy, are violated by such examinations, and every new instance makes us more sodden to the spectacle and tends to bring us towards the same level of degradation. It is the difference between the hunt and the slaughterhouse. One may well enough find sport in stalking the lion in the desert or beating the bush for the tiger, because there is a risk for the hunter which dignifies his sport, and there is a rapacity and a destructiveness in the hunted which leaves no room for sympathy; but the process of cutting the throat or knocking the head of a sheep or an ox penned in the shambles is both safe and brutal, and is to be justified only on the ground of its absolute necessity. The hunting down of a fleeing desperado, or the ensnaring of a chief of counterfeiters by the craft of detectives, is a process which does not violate instincts of fairness or principles of justice. But the ruthless flaying of personal character in the witness-box is not only cowardly—because there is no escape for the victim—and brutal—because it inflicts the pain of public exposure of misdeeds to idle bystanders—, but it has often not the slightest justification of necessity. Severe limits must be put to such conduct. As Lord Ellenborough said, 'I will put it to your own feelings, your own good sense.' Some weight must be allowed to the instincts of manly fairness and good sense.
>
> The second reason is a politic one, *i. e.*, that, with the prospect of such an examination as a possibility, the public is certain to dread the witness-box. From time to time those whose knowledge would have been valuable will seek

> to evade disclosing it; the ascertainment of the truth will be hampered and perhaps prevented. That such a feeling exists today, in a greater or less degree, can hardly be doubted.
>
> These reasons seem to demand some limitation for the scope of examination."

Wigmore, Evidence (2d Ed.), Sec. 983.

Even in the conduct of an investigation rules of relevancy, common sense and decency are applicable.

The question here is not whether counsel could have produced witnesses to show that Miss Galloway's reputation for moral conduct was bad. They did not attempt to do that. They attempted to show immorality by examining the witness as to specific acts and even under strict rules of evidence the examination was improper.

2 Wigmore, Evidence (2d Ed.), Sec. 983, pp. 372, 375.

Counsel say they were attempting to prove that Miss Galloway was not a woman of good *reputation.* Why did they not do that properly by producing witnesses to testify as to her *reputation* instead of improperly questioning the witness as to alleged specific instances of misconduct? It is clear, therefore, that the Supervisor's ruling was correct even under strict rules of evidence. *A fortiori* it was correct in an administrative investigation. The cases cited in respondent's brief have no connection whatever with the problem presented here. In one of the cases cited by respondent, *Prout* v. *Bernard Land and Service Co.,* 77 N. J. L. 719, 721 (E. & A., 1919), the Court said:

> "The discretion of the trial court in regulating and limiting the range of cross-examination is very great and extends among other

> things, to matters affecting the credibility of the witness and matters not directly relevant to the issue."

The question being considered was one of credibility only, and even in a court of law it would be within the entire discretion of the trial judge and not appealable.

Respondent intimates that the signing of the notice of charges by the Supervisor was improper. If the Supervisor is not the proper person to sign the notice, who is? In fact, he was duty bound to give notice to Harman.

Counsel for respondent refer to me as "prosecutor." That charge is baseless, and no one knows it better than Harman's counsel. I have consistently refrained from acting in criminal cases. I appeared in this case only because I am county counsel of Essex County, and the Board of Chosen Freeholders by unanimous vote directed me to present the evidence on the charges before the Supervisor (S. C., p. 14, ll. 32-36). Despite counsel's numerous efforts to make it appear that I had coached the witnesses (S. C., pp. 194, 383) the record shows (and that absolute truth) that I never saw any of them before they gave their testimony (S. C., pp. 148, 195, 400).

My personal relations with Dr. Harman were friendly and I consistently asked for and obtained his appointment as Commissioner in numerous lunacy cases. Under these circumstances, I cannot but resent that counsel should attempt to paint me as *diobolus ex machina.*

Counsel state that objections by me were always sustained; while objections by them were always overruled. A reading of the state of case will display the falsity of that remark.

In numerous instances, the Supervisor admitted evidence offered by respondent in aid of his defense, though such evidence was clearly irrele-

vant and inadmissible under any school of thought. May we quote from several portions of the state of case indicating that not only was Harman given a fair trial, but was given extraordinary latitude in the presentation of his defense.

"By Mr. McCarter.

Q. Did you bring to Mr. Reed's attention on any of these visits the alleged facts that between Labor Day, 1925, and August, 1926, Dr. Harman had entered the bedroom of Pauline Galler and Bertie Galloway?

Objection by Mr. Vanderbilt.

The Supervisor: I am reluctant to make any ruling that would seem to keep out any facts in this case. I think we have to get at the facts regardless of where they may go and whom they may concern. I think the question is proper and may be answered" (S. C., pp. 373-375).

Again, on a question which was clearly immaterial to the issues in the case:

"Mr. McCarter:

Q. What have you to say to his having been and being an efficient superintendent?

Objection.

The Supervisor: I will allow it" (S. C., p. 481, ll. 27-30).

In numerous other instances the same thing occurred. *E. g.* (S. C., p. 501, l. 30; p. 534, l. 20; p. 585, l. 10; p. 734, l. 10).

When the Supervisor informed Harman of the charges, and he denied them, the Supervisor said he thought that Harman ought be given an opportunity to confer with counsel (S. C., p. 612, l. 28). After Harman denied the charges the Supervisor said he thought Harman should be given consideration (S. C., p. 612, l. 20).

Counsel refer to the Supervisor's statement that he could not have a high regard for Mrs. Lysick's testimony, since she could not remember the cause of her discharge. Certainly a discharge is an important thing in the life of a woman of character: witness, the case of Mrs. Travers. While one would ordinarily forget dates and many other details after a lapse of two years, it is hard to forget the cause of a discharge, unless, of course, that is a daily occurrence.

Counsel charge that the Supervisor was prejudiced and his mind was made up before the hearings. They have resorted to the quotation of portions of testimony out of content for their purpose. To continue their quotation from Harman's testimony:

> "Well now Mr. Supervisor, here the doctor has categorically denied all of these charges, I think he should be given some consideration. Q. What did the Supervisor say to that? A. He said, *'I think so too'* " (S. C., p. 612, l. 20).

Obviously his mind was not made up. Harman admitted that the Supervisor was the one who suggested the hearing (S. C., p. 613, ll. 23-30); and that the Supervisor expressed the thought that Harman be allowed to confer with counsel (S. C., p. 612, l. 30).

In *Crane* v. *Jersey City,* 90 N. J. L. 110, 111 (Sup. Ct. 1917) cited in respondent's brief, the director had written the following letter with reference to one of his subordinates:

> "This man is constantly reporting sick, and I am convinced that his ailments are only imaginary, with the purpose of shirking his duties. I have stated before in a communication to you that I am determined to drive such men as these out of the department and I only regret that I have not sufficient evidence to

> place Crane (the prosecutor) before the commissioners on charges, and recommend his dismissal."

Subsequent to the writing of the letter, charges were preferred against the policeman in question and the writer of the letter acted as trier of the charges. The Court held that he was not disqualified to act. Certainly, the director in the *Crane case* had a definite opinion on the question yet he was not disqualified. How much clearer is our case where the Supervisor had not made up his mind but merely informed Harman that the evidence loomed weighty against him.

In *Reimer* v. *Board of Chosen Freeholders of Essex County,* 96 N. J. L. 371, affirmed in 97 N. J. L. 575, the Court held that even though members of the board had expressed the following opinions:

> "The county engineer has been grossly and habitually derelict and negligent in the performance of his official duties. As a result, we have lost all confidence in these men as the professional and technical advisers of the board. * * * It is our recommendation that the board request the immediate resignation of the county counsel, county attorney, and county engineer."

they were qualified to act as his triers.

The Court said:

> "The first and important question to be decided is, were the two members of the committee disqualified, under these circumstances, to sit as judges of the facts and law applicable, they having no personal, financial, or other interest in the result? They are not disqualified by the statute, for that confers on them, as members of the board, the right to hear and determine charges of this nature, and to dismiss an officer, after hearing, upon proof, to their satisfaction, sustaining the charges, so if they are disqualified it must be upon

the ground that no man can be a judge in his own case. It cannot be properly said that either of the persons sought to be disqualified were judges in their own case, for they had no personal interest in the result, and would not lose or gain anything because of the result of their action in the premises. The opinion expressed in their report was based on facts ascertained by them which might be changed by the evidence to be taken on a formal hearing; and as they had no interest but the public welfare, we must assume that such considerations would influence them on final hearing. Most, if not all, of our cases holding voidable any action by a public body because not impartially constituted rests upon the fact that the participating judge had an interest in the result. It is not an uncommon proceeding for a public body to refer charges of this character to a committee to ascertain the facts and report, on the coming in of which the whole body may take action; but such a report is not a judicial finding, and has no finality. To disqualify every member of a committee serving to ascertain facts for the board which appoints it would seriously interfere with the administration of its public duties. That a superior officer who has expressed dissatisfaction with the conduct of an inferior may sit as his judge on the trial of charges against him, there being no statutory prohibition, was held in Crane *v.* Jersey City, 90 N. J. Law, 109, 103 Atl. 678, affirmed by the Court of Errors and Appeals, 92 N. J. Law, 248, 103 Atl. 1051, and the reasons there given are applicable to this case."

These authorities would dispose of respondent's objections even if the Supervisor had expressed a definite opinion. Clearly in this case the charges of bias and prejudice are such as to provide no justification for their insertion in respondent's brief.

From all that has been said, it is clear that the evidence amply supported the Supervisor's find-

ings. Clearly it can not be said that there was no rational basis for the Supervisor's findings, and that, it is admitted, is the only issue before this Court on this phase of the case.

Reply to Respondent's Point V.

The undisputed evidence proved that respondent was guilty of Charge Number 11 and the Supervisor properly removed him on that ground.

Charge Number 11 reads as follows:

> "In that on or about November 21, 1928, you discharged Eloise Travers from her position as Night Supervisor at the Essex Mountain Sanatorium without cause stated in writing after opportunity to be heard contrary to the provisions of Chapter 278 of the laws of 1922."

The statute referred to in the charge provides that the superintendent of the sanatorium may discharge employees only for cause stated in writing after opportunity to be heard (P. L. 1922, C. 278).

This charge was served on January 22, 1929. The Supervisor announced that a hearing would be held on January 29, 1929, at which time a hearing was held. At the hearing Harman was present, was represented by counsel and presented witnesses in answer to the charge.

At that hearing the testimony of Harman, offered in evidence as admissions on Charge 11, was as follows:

> "Q. Why did Mrs. Travers leave the institution? A. She left the institution by request.
>
> Q. Why did you request it? A. On the recommendation of a Prosecutor's detective" (S. C., p. 550, ll. 4-11).

"Q. You asked for her resignation? A. I didn't ask for it; I told her she had better look for another position.

Q. Did you tell her she could not get another position in New Jersey? A. No, I told her that probably she would not be able to. I told her that wherever she applied they would write to me and I would have to tell them that she was incompetent" (S. C., p. 552, ll. 1-12).

"Q. What is there in that report that he charged her with that led you to discharge her? A. May I go into the story? From what I know and the information that she gave me in her testimony together with his report, I am almost certain that she was mixed up in this incident.

Q. From what you know? What do you mean by that? A. From previous reports that had been made to me concerning her actions.

Q. By whom? A. By the superintendent of nurses.

Q. *Was she ever confronted with them?* A. *No*" (S. C., p. 566, ll. 10-25).

"Q. *When you brought her in did you give her the charges in writing?* A. *No*" (S. C., p. 575, ll. 27, 28).

Can there be any doubt that these admissions under oath made by Harman were admissible in evidence on Charge 11, even though that charge was not served until after he made the admissions? After giving the testimony in which he admitted that he discharged Mrs. Travers without written charges, he was served with Charge 11 and was given ample opportunity to be heard on that charge. At the hearing on January 29th he was present with counsel and, in justification, presented several witnesses to testify that they as superintendents of other county sanatoriums had also discharged employees without hearings, a novel justification, indeed, and one which offers great possibilities in the realm of the criminal law

(S. C., pp. 737-746). It is important to note that Harman did not testify at this hearing that he had not discharged Mrs. Travers without cause stated in writing after opportunity to be heard. He merely presented witnesses to justify his dismissal of her in violation of the statute.

Further testimony to prove that Harman wrongfully discharged Mrs. Travers was furnished by Mrs. Travers. The following testimony was elicited by counsel for respondent at various stages of the cross-examination of Mrs. Travers, at one of the hearings on the other charges:

> "Q. And you were discharged? A. I was discharged" (S. C., p. 245, ll. 3-4).
>
> "Q. Oh, when was that? A. After my discharge" (S. C., p. 246, l. 25).
>
> "Q. Then you were discharged by Dr. Harman, and where was it you saw Bennett? A. In the X-Ray room" (S. C., p. 246, ll. 30-33).
>
> "Q. And what did Mr. Bennett say to you? A. He asked me if I felt that I had been fairly treated being discharged as I had been" (S. C., p. 249, ll. 24-27).
>
> "Q. That is the next thing that Bennett asked you—if you wanted to appeal to Mr. Reed from the discharge that had already taken place? A. Yes, sir.
>
> Q. And what did you say? A. I said that I wanted to see Mr. Reed and tell him the circumstances which had occurred and explain to him my side of the story.
>
> Q. And then what next occurred? A. I came to Mr. Reed and did exactly that."

A letter from Mrs. Travers to the Supervisor requesting a hearing as to her discharge was admitted in evidence (S. C., p. 704, l. 130). May we quote it in full:

"315 East 18th Street,
Brooklyn, N. Y.

Nov. 25th, 1928

Hon. Ernest A. Reed
Hall of Records, Newark, N. J.

My dear Mr. Reed:

Could you arrange a hearing for me in the matter of my having been discharged from Essex Mountain Sanatorium, as I was? If you could, and would, do this it would need to be early in the week, as my plans are, of necessity under the circumstances, vague. I must, of course, be looking for a position, and must get myself settled at the earliest possible moment.

The more I think of the matter, the more I feel that a great grave injustice has been done me, and the more sure I am that the matter should be threshed out. It is a serious charge that of neglect of duty, to bring against a nurse, and I do not feel that I deserve such a charge. I am willing to admit an error of judgment, if that decision should be reached by a hearing. I did, however, the thing that seemed to me right at the time, and I do not admit neglect of duty.

Thanking you for your courtesy to me, I am,

Very truly yours,

Eloise D. Travers, M. D."

(Ex. C-12, S. C., p. 792.)

Furthermore, the evidence showed that Harman, when he dismissed Mrs. Travers, knew that he was violating the statute and knew that the Supervisor had reinstated an employee whom Harman had similarly discharged (S. C., pp. 820, 822, 823, 838). Harman testified that he knew the pertinent statutory provisions (S. C., p. 495, ll. 13-16).

From the foregoing evidence it is clear that Harman discharged Mrs. Travers without cause

stated in writing after opportunity to be heard, despite the fact that he knew this was in violation of law, and despite his knowledge that the Supervisor had reprimanded him for such action by reinstating another employee whom he had similarly discharged.

What could be a clearer case of insubordination and violation of duty than again to violate the law in the management of a public institution after receiving a reprimand for an earlier violation of similar character?

It should be noted that the Supervisor found that Mrs. Travers was discharged without just cause and the evidence clearly shows that. In fact that finding of the Supervisor is admitted *sub silentio* in respondent's brief. But regardless of whether there was cause or not, it was a wilful violation of duty to dismiss her in the fashion that Harman did. This Court will not displace the Supervisor's opinion by its own, as to whether this violation of duty justified dismissal, although it is difficult to see how one may reasonably differ from the Supervisor's conclusion.

Since the dismissal of Harman was clearly justified on Charge 11, the validity of the Supervisor's findings on the other charges may be considered academic by the Court.

It is suggested by counsel for respondent that Mrs. Travers was not discharged. It is difficult to see how any reasonable person, after reading the testimony, can reach any conclusion other than that she was discharged. Harman told her she had better leave. He testified that "she left the institution by request". He was asked what led him to discharge her and he replied that from what he knew she was mixed in an objectionable incident (S. C., p. 56, ll. 10-20). Mrs. Travers testified that she was discharged (S. C., p. 245, ll. 3-4). In a letter written by Mrs. Travers to

Supervisor Reed she complained of her discharge (S. C., p. 704, l. 30). There can be no doubt that Mrs. Travers was discharged and that Harman did the discharging, for he so admitted on the witness stand (S. C., p. 552).

Counsel state that it was merely suggested to Mrs. Travers that she leave, and that she left voluntarily. It was not suggested that she leave; she was told to leave and she left voluntarily in the same sense that every one who is told to leave departs voluntarily, *i. e.*, they are not carried out. She was told to leave and was given a week's vacation to look for another job (S. C., p. 565, ll. 20-40). If that is not being discharged, then what is?

Furthermore, respondent in his brief admits that if there is a rational basis for the findings of fact of the Supervisor, they will be affirmed (Brief, p. 9). We do not believe that even counsel for respondent will contend that the Supervisor's finding that respondent Harman discharged Mrs. Travers without a hearing and without written charges was without a rational basis.

The next objection is that Charge 11 was not served until after Mrs. Travers had given her testimony. Of what materiality can that be? The charge was duly served upon Harman and he had ample opportunity to be heard. In fact a hearing was held at which he was present, was represented by counsel and presented witnesses in his behalf. At this hearing, Harman did not offer any testimony denying that he had discharged Mrs. Travers without cause stated in writing after opportunity to be heard.

In the case of *In re Mason,* 181 N. W. 570, 572, charges were added while the hearings were being conducted. Counsel there raised the objection that this was improper even though the officers

had further opportunity to be heard. The Court briefly dismissed that contention as follows:

> "* * * see no reason why additional charges may not be presented either independently of the original charges or by way of amendment to them. The question to be determined is whether the accused officer has so misconducted himself in respect to the performance of his official duties that the good of the public service requires his removal from office. And the officer or special tribunal, charged with the duty to determine this question may in our opinion in proper exercise of its discretion permit the presentation of further and additional charges."

Counsel further contend that they had no opportunity to cross-examine Mrs. Travers. Holding that contention in abeyance, for a moment, we wish to point out that the Supervisor's findings on Charge 11 are amply supported by the *admissions of Harman.* Certainly his counsel had the opportunity of "cross-examining" him as to whether he was telling the truth when he admitted on the witness stand that he wrongfully discharged Mrs. Travers. At the hearing on January 29th, he had the opportunity of clarifying his admissions. He did not take the stand and the only justifiable inference is that his statements, in this instance, were truthful.

As to Mrs. Travers' testimony, which was brought out on cross-examination by counsel for respondent, can there be any doubt that it was trustworthy and truthful? Counsel complain that he had no opportunity to cross-examine concerning the incidents surrounding her leaving the hospital. But the incidents surrounding her leaving the hospital were and are entirely immaterial. It is admitted by Harman that Mrs. Travers was discharged without a hearing and without written

charges and Mrs. Travers corroborated this. What possible difference could it make whether the incidents surrounding her leaving the hospital justified her dismissal?

Whether adequate cause for dismissal existed (the Supervisor on the uncontradicted evidence found that there was no just cause for dismissal) is immaterial since it is admitted that the procedure prescribed by law was not complied with. Lastly, since the strict rules of procedure and evidence have no application to this proceeding, respondent's objections are, in no event, valid.

Counsel here also attempt to show unfairness. At the hearing before the Supervisor, a similar charge was to be inferred, from counsel's remarks, which, in a court of law, would be contempt. At the earlier hearing, we stated that in cross-examining Harman on the Travers matter, we were not urging the Travers incident as a charge. That was true and we are sure that at that time the Supervisor had no such thought.

Subsequent developments made it not only proper that there be a hearing on the Travers incident but, in our opinion, it was his duty, under the circumstances, to entertain the Travers complaint. After Mrs. Travers testified at the earlier hearing she lost her position and on the same day threw herself in front of a subway train and was killed (S. C., p. 794). The investigation of her suicide was stopped at the request of her friend Supreme Court Justice McCook, in order to avoid unpleasant publicity.

After her suicide, her relatives and friends, including Mr. Justice McCook, sought to vindicate her name by proving that she had been wrongfully dismissed. What could be more natural and humane? If the Supervisor had refused to hear the charge when urged by friends of Mrs. Travers,

he would have been violating his duty as Supervisor and if we had refused to present the evidence to the Supervisor, we would have been violating our duty as counsel for the Board of Freeholders.

Counsel for respondent refer to the letter written by Mrs. Travers and suggests that its signature was not proved. The Supervisor had spoken to Mrs. Travers about the letter; that seems sufficient proof of its authenticity. Furthermore, Mrs. Travers' signature is in evidence, having been introduced in evidence by counsel for respondent (Exhibit C-8, S. C., p. 779) and the Supervisor could determine its authenticity from that.

Counsel suggest that the report of a detective to respondent in writing met the requirement of the statute which allows discharge "for cause stated in writing after an opportunity to be heard." This obviously means cause stated in writing by the superintendent to the employee, and it must have indeed taken a fertile brain even to suggest that a written report from a county prosecutor's detective to the prosecutor might meet the requirement.

On page 115 of their brief, counsel for respondent evidently fail to realize the meaning of Charge Number 11. The charge was not directed to secure the reinstatement of Mrs. Travers, for she was dead. The charge was heard to determine whether Harman violated his duty in dismissing Mrs. Travers without written charges and an opportunity to be heard. To do that after having been reprimanded for a prior similar act is clearly gross misconduct that warrants dismissal. His dismissal does not reinstate Mrs. Travers, for it is too late to do that; but this is immaterial, for, even though Mrs. Travers was dead, Harman had still been guilty of a gross violation of duty justifying the dismissal.

Counsel next refer to the cross-examination of Dr. Harman with reference to the Travers matter. At that time the testimony was being elicited for the sole purpose of attacking credibility. When the Supervisor stated that the evidence was not being used to make a new charge, we have no hesitation in saying that, in our opinion, he had no thought of a new charge, and respondent's counsel are entirely without warrant in inferring that the Supervisor had.

At page 116 of respondent's brief, counsel state that:

> "the reliance upon the Supervisor's statement to the defense as aforesaid and as a consequence not making further effort to cross-examine and prepare a defense which otherwise would have been done, the defendant has been most grossly prejudiced in this case."

These assertions are entirely without merit. Harman admitted on the stand that he discharged Mrs. Travers without complying with the statute. What possible "defense" or "alibi" could he have on that charge? Counsel say that if the charge was made before Harman made the admissions, a defense would have been prepared. What possible defense could honestly be made other than that made at the hearing on January 29th, on which day he did not deny his wrongdoing, but attempted to justify it by the novel excuse that others had committed similar wrongdoing?

It is next urged that admitting that Harman wrongfully discharged Mrs. Travers, nevertheless in the absence of *malice* he may not be removed. Here again the arguments are so unfounded as to hardly require answer. The Supervisor's act provides in effect for discharge for "violation or neglect of duty" (P. L. 1918, C. 206). The act pertaining to superintendents provides that em-

ployees may be discharged "for cause stated in writing after an opportunity to be heard".

Respondent had once before violated the statute and had wrongfully dismissed an employee in exactly the same fashion that he dismissed Mrs. Travers. This employee was reinstated (S. C., pp. 820, 822, 823, 838). Harman admitted on the witness stand that he had read the provisions of the act in question:

> "Q. You are familiar with the statute which defines your duties and specifies your authority? A. I have read it several times" (S. C., p. 495, ll. 13-16).

The Supervisor would be justified in dismissing him for violation of duty, even though this were his first infraction. Where, as here, he had previously violated his duty and the employee had been reinstated, what could be more clearly a violation and neglect of duty than to have him again violate the same duty in the same manner?

Counsel seem to treat the wrongful dismissal of an employee of the hospital as something slight. Mrs. Travers did not consider it slight. The result to her was suicide.

The cases cited by counsel are obviously not in point, and it seems rather bad taste to argue now that his violation of duty in wrongfully dismissing Mrs. Travers with knowledge that he was violating his duty was a mere trifle.

In *Sharp* v. *Brown,* 221 Pacific Reporter 139, quoted from in respondent's brief, the Court said:

> "Under the repeated holdings of this and other courts, it is not required that the officer informed against shall be guilty of refusing or neglecting to perform an official duty in the sense of having an evil or corrupt motive in so doing."

In *Davis* v. *Sayer,* 200 N. Y. S. 134, also relied upon in respondent's brief, the Court held that an employee could be dismissed for failing to acknowledge letters on time after the department had issued instructions that they be promptly acknowledged. If that was serious enough to warrant dismissal how clear it is that in our case dismissal was warranted. It must be remembered that Harman was the head of a public institution for the cure of tuberculosis. The public is vitally interested in his position and it is indeed important that the head of the institution perform his duty, not alone for the sake of the internal affairs of the institution, but to retain the public respect so essential to the proper conduct of the institution. Nothing should be done that casts even doubt in the mind of the public as to whether the institution is properly conducted. Need it be said that it is impossible to retain the faith of the public in an institution if its head is to be permitted to conduct himself in the manner Harman followed?

It is respectfully submitted that the Supervisor's findings that respondent was guilty of Charge 11 and his order of dismissal should be sustained.

It is respectfully urged that the order and judgment of the Supreme Court be reversed, and the writ ordered dismissed with costs.

Respectfully submitted,

Arthur T. Vanderbilt,
Attorney for and of counsel with
Defendant-Appellant.

New Jersey Court of Errors and Appeals

On Appeal.

BYRON M. HARMAN,

Prosecutor-Respondent,

VS.

ERNEST A. REED, Supervisor of Essex County,

Respondent-Appellant.

BRIEF FOR PROSECUTOR-RESPONDENT.

Statement.

This is an appeal from an order of the Supreme Court (p. 857) reversing an order made by Ernest A. Reed, Supervisor of Essex County, removing Dr. Byron M. Harman from the position of Superintendent of the Essex Mountain Sanatorium.

At the inception of the proceedings inaugurated by the Supervisor, as well as throughout the same, it was contended on behalf of Dr. Harman that the Supervisor lacked jurisdiction to entertain the proceedings. The Supervisor, however, overruled this contention, and after hearing an enormous amount of testimony, determined to remove him. A *certiorari* at once issued from the Supreme Court to review the propriety of this order, and among the numerous reasons assigned, was the lack of jurisdiction in the Supervisor (third reason, p. 7). The Supreme Court, after hearing full

argument upon all the reasons, filed its opinion (p. 853), in which it is stated (p. 853, line 20):

> "Extremely voluminous proofs are brought before us upon which the respondent based his findings. These we have not examined or considered because it has seemed to us that there was a basic question of jurisdiction involved. That question is, did the respondent, as supervisor of Essex County, have jurisdiction over the prosecutor and the subject matter of the inquiry? We think he did not."

The opinion concludes (p. 856):

> "That the County Supervisor, was without authority and jurisdiction to hear and pass upon the charges in question, and therefore the judgment brought before us must be set aside."

Reasons Filed in Supreme Court in Certiorari Proceeding and Not Considered by That Court May Be Brought Up With the Record and Argued in the Court of Errors and Appeals.

The question to be determined upon review in our Appellate Court is always as to the propriety of the judicial action of the Court below, and a decision of the Supreme Court will not be disturbed if the right result is reached, even if for a wrong reason.

Gillespie v. *Ferguson Co.*, 78 N. J. Law 470;
Kleinert v. *Hutchinson et als.*, 98 N. J. Law 831.

This rule applies in certiorari cases and reasons filed in the Court below and brought up with the record may be argued in this Court and the Court of Errors and Appeals has power to pass on the merits of certiorari or may remit case to the Supreme Court for review of the questions involved, where the Supreme Court did not pass on the merits.

Burhans et al. v. *City of Paterson,* 99 N. J. Law 490;
Jordan v. *Borough of Dumont et al.,* 105 N. J. Law 197.

The reasons filed in the Supreme Court and brought up with the record may be found. Case, page 6.

Summarized Statement of Facts.

The prosecutor-respondent, Dr. Harman, since 1923 has been Superintendent of the Essex County Sanatorium, one of the public institutions of the county and specially devoted to the care, treatment and cure of tubercular patients, be removed. Dr. Harman graduated at the medical school of the University of Pennsylvania in 1917; is thirty-six years of age; is married and, after having served as assistant surgeon in the United States Navy during the war, on the first of April, 1923, was selected as the medical head and Superintendent of the Sanatorium. This institution is under the control of the Board of Chosen Freeholders of Essex County, and subject to the immediate supervision of a committee of which Mrs. Harris, one of the freeholders is chairman. There is, and always has been an advisory medical

board, consisting of physicians of the highest character in Essex County, who united in testifying in this proceeding to the careful, successful and satisfactory way in which Dr. Harman has discharged his duties (see evidence of Dr. Gluckman, Case, p. 534, and Dr. Ill, Case, p. 584).

In fact, no one disputes the statement that the Sanatorium is in the first class of such institutions. The difficulties resulting in the accusations and order here under review are due entirely to the activities of one Harold Bennett, the radiologist of the institution, who, we believe to have been insane, and to have been—to quote the phrase of Father Fitzpatrick, the Chaplain of the institution—"obsessed" with a desire and intention to ruin Dr. Harman.

On September 15, 1928, two years and more after Bennett claims to have become aware of the serious charges sustained by the Supervisor in this proceeding, he filed with the Supervisor a complaint (p. 809) against Dr. Harman, a copy of which was immediately served upon him by Mr. Reed, to the effect that the doctor had penalized, intimidated and threatened him, and caused his nurse to resign, and demanding a written apology from the doctor and a reinstatement of his nurse.

At the designated time, Dr. Harman appeared, with his counsel, before the Supervisor, and after an adjournment at the solicitation of Bennett, the latter was given full opportunity to present his case, which was so ridiculous and flimsy that the doctor offered no evidence whatever. While these proceedings were still pending and undetermined, Bennett busied himself in preferring new charges, and inspiring other persons unknown to the prosecutor, to present others, with the result that on the 22nd of

January, 1929, the Supervisor served upon Dr. Harman (Exhibit C-1, p. 750) a notice

> "that complaints have been made against you as Superintendent of the Essex County Sanatorium at Verona for violation and neglect of duty in the following particulars:
>
> 1. In that on various occasions between Labor Day, 1925, and August, 1926, you invited Bertie Galloway and Pauline Galler, female employees, to your office in said institution to drink intoxicating liquor and that you served intoxicating drinks to one or more of them in your office and made immoral advances to them, and assaulted the said Pauline Galler.
>
> 2. In that between Labor Day, 1923, and August, 1926, you invited said Bertie Galloway and Pauline Galler, female employees, to ride in your automobile on various days and nights, and that you took the said Bertie Galloway automobile riding at night on several occasions and made improper proposals to her.
>
> 3. In that you took Henrietta Rose, a female patient and at times an employee, riding in your automobile at night during the time when said Henrietta Rose was a patient or employee.
>
> 4. In that between Labor Day, 1925, and August, 1926, on several occasions you entered the bedrooms of Pauline Galler and Bertie Galloway, female employees, at times when such female employees were in bed or scantily dressed,

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and on one or more such occasions attempted improper relations with such female employees.

5. In that you made it a practice of unnecessarily exposing the persons of female patients while they were being treated.

6. In that on or about May 8, 1925, you permitted the performance of an illegal operation upon Henrietta Rose at the Verona Sanatorium and that you witnessed the operation.

7. In that you have failed to cause staff meetings of the physicians at said institution to be held at regular and frequent intervals.

8. In that you have made it a practice to leave your duties as Superintendent during the middle of the day for a considerable length of time and spent such time resting or sleeping.

9. In that on or about August 19, 1925, you were arrested on Fairfield Avenue, east of Fairfield Road, in the Township of Caldwell, on the complaint of parking without lights in an Essex County car in the company of a female.

10. In that in the Fall of 1926, you parked Mrs. Harman's automobile on Mountain Avenue about a quarter of a mile from the school at night with an unknown female in the car with you, said to be Henrietta Rose."

A day was also designated in the notice on which the Supervisor stated he would proceed

to examine into such complaints, and notifying the doctor that he might be present "personally or by counsel" to answer said complaints.

It will be observed that this notice fails to include copies of the complaints, the names of the alleged complainants, and with the exception of Number 6 is either entirely indefinite as to time, or in the first, second and fourth specifications—the only ones which the Supervisor sustained—the notice states that the charges are that on "various occasions" between Labor Day of either 1923 or 1925 and August, 1926, the alleged outrageous transactions took place.

The counsel of Dr. Harman deeming it very unjust that the names of the alleged complainants should be concealed from him, and that there should be a more specific statement of the time when the occurrences were alleged to have taken place (Exhibit R-1, p. 797) at once served upon the Supervisor, a demand for a copy of the complaints, the names of the complainants and a bill of particulars, with which demand the Supervisor under the advice of the County Counsel, declined to conform (Exhibit R-3, p. 799). On the day set for the hearing, these demands were renewed (p. 13) and an adjournment requested because the senior counsel of Dr. Harman, Mr. McCarter, was actually engaged in Court. Both requests were refused, and the proceedings commenced and continued for a full day in Mr. McCarter's absence. Shortly thereafter, an application was made to the Chief Justice for a writ of *certiorari* to review the proceedings, both because of the refusal to comply with the requests for copies of the complaints with the names of the complainants, and a bill of particulars specifying the time and place, with some degree of certainty, of the alleged occurrences, and because it was deemed that the

Supervisor was without jurisdiction to hear or conduct the proceedings on the ground that Dr. Harman was not a "subordinate officer" within the language of the statute empowering the Supervisor to act in the premises. A copy of the Chief Justice's conclusions is annexed to this brief in the appendix, from which it appears that he felt the application was premature. After referring to

> "the failure to serve copies of the complaint, the refusal to furnish the name of the complainant, and the refusal to specify the time and place of the alleged dereliction of duty"

the Chief Justice said:

> "all those matters, assuming that the contention of the applicant for the writ with relation thereto is sound, can be corrected by the Supervisor during the progress of the hearing had before him. For the reasons indicated, my conclusion is that the writ prayed for ought not to be allowed at this time, but that the application be continued until the final determination by the Supervisor with relation to the matter legally subject to his investigation."

No correction or compliance was made, and the case proceeded with the result that of the ten charges originally made and above quoted, all were dismissed, except Numbers 1, 2 and 4. During the progress of the hearing before the Supervisor, notice of an additional complaint (p. 750a) was given, to the effect that on or about the 21st of November, 1928, Dr. Harman had discharged Mrs. Travers from her position as night supervisor of the institution without cause stated in writing after opportunity to be heard. This belated charge

was also sustained, and is included among the reasons for the Supervisor's conclusions to discharge Dr. Harman. His conclusions are found on page 2a. It should be stated that they included a dismissal of the earlier charges made in October, to which we before alluded.

Immediate application was renewed to the Chief Justice for a writ of *certiorari,* and while strenuously resisted by the County Counsel, it was allowed, and a stay meantime granted, by which, during this review, Dr. Harman was retained in his position.

The statute under which the proceedings in question were conducted, is Chapter 206, Section 3, of the Laws of 1918, the relevant part of which reads as follows:

> "It shall be the duty of the County Supervisor to exercise a constant supervision over the conduct of all subordinate officers and employees, and to examine into all complaints made against any of them for violation or neglect of duty, and if it is found that any officer, or employee is guilty of the charges brought against him, the County Supervisor may suspend or remove him, as the case may seem to require, and generally to perform all such duties as may be required of him by law or ordinance."

The Essex County Sanatorium exists by virtue of an Act entitled "An Act Concerning Tuberculosis" P. L. 1912, Chapter 217, and Amendment thereto, Chapter 278 of the Laws of 1922, in which the duties of the Superintendent are specified as follows:

> "The Superintendent shall be Chief executive officer of the hospital and subject

to the by-laws, rules and regulations thereof, and to the powers of the Board of Managers or of the said Board of Freeholders or of said Committee, as the case may be."

The superintendent is likewise given power, with the consent of the Board of Managers or of the Committee, as the case may be, to appoint such resident officers and such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties.

Under this statute, the supervision of the institution has been exercised by the Committee of the Board of Freeholders, of which Mrs. Harris is chairman.

We respectfully contend:

I.

THE SUPERVISOR WAS WITHOUT JURISDICTION TO HEAR THE MATTER.

II.

PROSECUTOR-RESPONDENT IS ENTITLED TO THE REMEDY OF CERTIORARI.

III.

THAT THE PROCEEDINGS WERE HARMFULLY ILLEGAL, BECAUSE THE REQUESTS OF DR. HARMAN FOR COPIES OF THE ALLEGED COMPLAINTS, AND MORE PARTICULARLY THE NAMES OF THE COMPLAINANTS AND A BILL OF PARTICULARS OF THE TIMES AND PLACES OF THE ALLEGED CHARGES, WERE NEVER COMPLIED WITH.

IV.

AN EXAMINATION OF THE EVIDENCE DISCLOSES THAT THERE IS NO RATIONAL BASIS FOR THE ORDER OF THE SUPERVISOR.

V.

THE FACTS WITH REFERENCE TO MRS. TRAVERS AND HER QUITTING THE INSTITUTION CANNOT POSSIBLY BE RELIED ON AS A CAUSE FOR THE DISCHARGE OF DR. HARMAN.

We will first discuss the question of jurisdiction.

I.

The supervisor was without jurisdiction to hear the matter.

A short chronological review of the legislation constituting the office of County Supervisor, as well as authorizing the creation and maintenance of tubercular sanitoria will be made.

On March 22, 1900, an act was approved, being Chapter 89 of the Laws of that year, entitled "An Act to Reorganize the Government of Counties of the First Class in this State." The 10th Section of this Act provides that freeholders constituted and elected in the manner provided in the Act, shall have all the power and duties then vested in existing Boards of Freeholders. The 11th section terminates the terms of office of all officers then holding office under appointment by the Boards of Freeholders of First Class counties, with certain exceptions, including veterans. The

first section provides that the first class counties shall be governed by a chief executive officer to be known as the County Supervisor. The second section specifies his qualifications and term of office, being elected at large in the County, and adds:

> "He shall be the chief executive officer of the County, and may recommend the Board of Chosen Freeholders to pass such measures as he may deem necessary or expedient for the welfare of the County. It shall be his duty to communicate to the Board of Chosen Freeholders at their first annual meeting in each year, and at other times when he may deem it expedient, a general statement of the condition of the County * * * with such recommendations as he may deem proper; to be vigilant and active in causing the laws and ordinances of the county to be executed and enforced."

The third Section provides:

> "It shall be the duty of the 'county supervisor' to exercise a constant supervision over the conduct of *all subordinate officers*, and to examine into all complaints made against any of them for violation or neglect of duty, and if it is found that any officer is guilty of the charges brought against him, the 'county supervisor' may suspend or remove him, as the case may seem to require; and, generally to perform all such duties as may be required of him by law or ordinance."

It will be observed that by this section, the Supervisor was required to exercise supervision

over the conduct of "all subordinate officers and to examine into all complaints made against them or any of them for violation or neglect of duty". No light is thrown by the Act upon the question who were "subordinate officers" included in this section. It certainly did not mean all officers of the county.

The fourth section gives to the Supervisor, the power of veto over all resolutions or ordinances passed by the Board of Freeholders.

The ninth section makes all existing laws governing Boards of Freeholders applicable to first class counties.

It was undoubtedly the purpose of this Act to create an executive officer in first class counties, who was bestowed with the usual executive functions in addition to the non-executive function of trying and suspending or dismissing certain county officers.

The next Act in chronological order is Chapter 217 of the Laws of 1912, P. L. page 340, which was approved March 28, 1912, and is entitled "An Act Concerning Tuberculosis." This Act authorized the Board of Freeholders of any County to establish a County hospital for the care and treatment of persons suffering from tuberculosis. The second section authorized the Board of Freeholders, after having determined to establish such a hospital and acquiring a site therefor, to appoint five citizens of the County, at least two of whom shall be practicing physicians who shall constitute a Board of Managers of the hospital. The third section required the Board of Managers to "appoint a Superintendent of the hospital who shall be also the Treasurer and Secretary of the Board and shall hold office at the pleasure of said

Board". He shall not be a member of the Board and shall be a qualified practitioner of medicine or other person trained for work of that character. The same section further provided:

> "Said Board of Managers shall fix the salary of the Superintendent and all other officers and employees."

The fourth section provided that the Superintendent shall be the CHIEF EXECUTIVE OFFICER OF THE HOSPITAL, and be subject to the by-laws, rules and regulations thereof, and to the powers of the Board of Managers. The same section further amplifies the powers and duties of the Superintendent, giving him general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and requires him to "maintain discipline therein and enforce compliance with and obedience to all rules, by-laws and regulations adopted by the Board of Managers for the government, discipline and management of said hospital, and the employees and inmates thereof." It gives him power to make rules, regulations and orders as he may deem necessary that are not inconsistent with law or the rules, regulations and directions of the Board of Managers. It gives him power, with the consent of the Board of Managers, to appoint such resident officers and employees as he may think proper and necessary for the efficient performance of the business of the hospital and prescribe their duties, and for cause, after an opportunity to be heard, authorizes him "to discharge any such officer or employee at his discretion". It requires him to keep accurate accounts and records, to receive applicants, to examine their physical condition, discharge inmates, receive all moneys, etc.

The seventh section provides that all hospitals maintained under the provisions of this Act shall be subject to inspection by any representative of the State Board of Charities, the State Department of Health or the State Charities Aid Association, and of the Board of Freeholders. The Superintendent is by this Act given the broadest possible powers, and is especially designated "the chief executive officer of the hospital."

By Chapter 185 of the Laws of 1918, P. L. page 567, approved March 4, 1918, and entitled "An Act Concerning Counties"—the so-called home rule Act—was passed, applicable to all Boards of Freeholders of every County, Sections 204 to 209 authorize the election of a Clerk, County collector, County auditor, purchasing agent, general storekeeper, and Section 209, such "other officers, agents and employees as may be required for the execution of the powers conferred upon the said Board."

The 214th section of the Act provides:

> "Every Board of Chosen Freeholders shall have the power by a majority vote of all the members of such Board to remove from office any person who holds office in subordination to or by appointment from such Board *in all cases where the term of such office is not fixed by any statute.*"

By Chapter 206, P. L. 1918, page 751, there was enacted an Act entitled "An Act creating the office of County Supervisors in Counties of the First Class in this State". This Act is a practical re-enactment of the Sections of Chapter 89 of the Laws of ~~1912~~ 1900 above referred to, so far as the County Supervisor is concerned, except that it

enlarges and extends his supervision to the conduct of employees as well as "subordinate officers" designated by Section 3 of Chapter 89 of the Laws of 1912, and authorizes him "to examine into all complaints made against any of them (*i. e.*, subordinate officers and employees) for violation or neglect of duty", and if such officer or employee is found guilty of the charges brought against him, the Supervisor is authorized to suspend or remove him.

This Act, passed the same day as the County home rule Act, in which so many officers of the County are, as we have seen specified and provided for, was careful, while extending the Supervisor's jurisdiction over employees, to limit it to "subordinate officers".

Obviously, the Legislature did not intend that the Supervisor should have jurisdiction to remove all officers. If the Supervisor's power of removal did not extend to all officers, as it did to all employees, but was confined to subordinate officers, it is most extraordinary if it intended to include the Superintendent of the Sanatorium, who is designated the chief executive officer, among those whom it authorized the Supervisor to remove.

The next Act in sequence is Chapter 269 of the Laws of 1922, P. L. 654, which is entitled "An Act to Amend an Act entitled 'An Act Concerning Tuberculosis' approved March 28, One Thousand Nine Hundred and Twelve." This Act was approved March 17, 1922, and amends Sections 1, 2, 3, 4, 5 and 7 of the Act of 1912, *supra*.

The effect of this Act was, in counties of the first class, to transfer the management of tuberculosis hospitals from the Boards of Managers provided for in the Act of 1912 to the Board of

Chosen Freeholders, or a committee thereof, as shall be determined by the Board of Freeholders, and all the important provisions contained in the third section of the original Act of 1912 with reference to the functions to be performed by the Superintendent, as such, are re-enacted, including his power to appoint "resident officers and such employees as he may think proper and necessary, and for cause stated in writing, after an opportunity to be heard" discharge any such officer or employee at his discretion. This Act consists of six sections, all of which are amendments to the several sections of the Act of 1912, and constitutes a complete code for the government of these tubercular hospitals, after the substitution of the Board of Freeholders, or a committee thereof, for the old Board of Managers. The Supervisor is not mentioned therein.

Next comes Chapter 278 of the Laws of 1922, P. L. page 685, entitled "An Act to amend an Act entitled 'An Act Concerning Tuberculosis' approved March 28th, One Thousand Nine Hundred and Twelve," which amends Section 4 of the original Act by re-expressing the full and ample powers bestowed upon the Superintendent, Section 5 and Section 13. Nothing is here said with reference to the powers of the Supervisor in connection with the tuberculosis hospitals. In fact, throughout, these two subjects, namely, tuberculosis hospitals and County Supervisors, have consistently been kept separate and distinct.

We concede that the Supreme Court in its opinion overlooked Chapters 269 and 278 of the Laws of 1922, but that fact in no way vitiates the correctness of its conclusion. The transfer of the management of tuberculosis hospitals from the "Board of Managers" as originally provided for,

to the Board of Freeholders, or a committee thereof, in no way enlarged or minimized the functions and duties of the Superintendent of the hospital. He was in no sense more subordinate under the provisions of the one Act than of the other. He is just as much the chief executive officer now as then. He is required to enforce discipline in compliance with, and obedience to all rules, by-laws and regulations adopted by the Board of Freeholders or its committee, for the management, discipline and government of the hospital, just as he had previously been required to enforce such rules, by-laws and regulations as had been adopted by the Board of Managers. He can, with the consent of the Freeholders, or their committee, appoint such resident officers and employees as he may think proper and prescribe their duties, and after opportunity to be heard, discharge any resident officer or employee. It is quite obvious that the "subordinate officers" referred to in the statute creating the County Supervisor, cannot properly be held to include an officer who holds a position of great importance and dignity under a particular Act, which in no way refers to the County Supervisor.

The appellant consistently reiterates the statement that it is our contention that the Superintendent of the hospital is an officer that is not subordinate to the Board of Freeholders. We have made no such contention, and, of course, he is subordinate to them. The point we make is that the language of the Act empowering the County Supervisor to examine into complaints, limits the persons against whom such complaints may be entertained, to subordinate officers and employees. As we have already pointed out, this Superintendent is by the tuberculosis hospital legislation, expressly authorized to appoint both officers and

employees, and when the Legislature authorized the Supervisor to investigate complaints, it included within his jurisdiction all employees, and only subordinate officers. If it had intended to include all officers, it would have said so. As already indicated, Section 214 of Chapter 185 of the Laws of 1918 (the County home rule Act) bestows power upon the Board of Freeholders to remove from office "any person who holds office in subordination to, or appointment from such Board". There is obviously, therefore, a body possessing the power of removal of the Superintendent in the event of misbehavior, and the only logical and consistent construction of all the statutes bearing upon the subject is that by the home rule act, County officers, of whom as we have seen, there are a great many, appointed by the Board, are removable by a vote of all the members. Subordinate officers of tuberculosis hospitals appointed by the Superintendent, pursuant to Section 4 of Chapter 278 of the Laws of 1922, are among the subordinate officers against whom the Supervisor is given the right to entertain complaints. As shown by the opinion (p. 856) if the Supervisor's power of removal extends to the chief executive officer of the tuberculosis hospital, then by the same token and the same process of reasoning, all the County officers who are appointed by, and subject to the jurisdiction of the Boards of Freeholders, including the Clerk of the Board, the County Collector, County Auditor, Purchasing Agent and the general storekeeper, are subject to his jurisdiction.

For this reason the conclusions of the Supreme Court that Dr. Harman was not a subordinate officer within the meaning of the Act creating the County Supervisor, are correct and should be affirmed.

II.

Prosecutor-respondent is entitled to the remedy of certiorari.

The contention in this regard is that Dr. Harman has a remedy by appeal to the Civil Service Commission, and this in turn is based upon the supposition that Dr. Harman's position is not in the unclassified service.

The Civil Service Act is found in 2 Cumulative Supplement to the Compiled Statutes, page 2578, and at the bottom of that page is listed the persons who are in the so-called unclassified service, and not subject to the provisions of the Act. They are, among others,

> "All superintendents, all teachers and instructors in the public schools and State agricultural institutions; all superintendents of State institutions; County superintendents and members and business managers of all Boards of Education," etc., etc.

There is no such officer as "County Superintendent" and the persons referred to in the Act just quoted undoubtedly refers to the Superintendents of County institutions, as the previous clause refers to Superintendents of State institutions. By Section 3, Chapter 217 of the Laws of 1912, the Board of Chosen Freeholders was given the power to establish a County hospital for the care and treatment of persons suffering from the disease known as tuberculosis, and also the power to appoint a Superintendent of such hospital. The incumbent of the office is, therefore, a County officer appointed by the Board

of Freeholders, with the title of "Superintendent", and like the Superintendent of the other County institutions, was plainly intended to be in the unclassified service and exempt from the provisions of the Civil Service Act. The provisions of the act, therefore, that bestows upon persons included within the protection of the Civil Service Law the right to appeal to the Civil Service Board, has no application. In the case relied on by the appellant, *County of Essex* v. *Civil Service Commission,* 98 N. J. Law 671, there was no doubt that Farley, the head laundryman, was expressly within the protection of the Civil Service Act.

The language of the Civil Service Act pertaining to County employees, provides that,

> "Any officer, clerk or employee of the non-competitive class of the classified Civil Service, removed, discharged or reduced as aforesaid, *shall have the right to appeal to the Civil Service Commission* under such rules as said Commission shall prescribe."

This is a mere permissive act, and it has never been held to be mandatory. In this respect, it is entirely different from the language of the School Act, the cases under which are they which are relied upon by appellant for his contention.

The language of the School Law has always been, and still is, that the Commissioner of Education (formerly the State Superintendent) *shall* decide, subject to appeal to the State Board of Education, all controversies that shall arise under the school laws. In *Draper* v. *The Commissioners,* 66 N. J. Law 54, Chief Justice Gummere, after calling attention to the language requiring that all controversies arising under the

School Law shall be first submitted to the higher state officials of the school system, says:

> "By these several provisions, the Legislature has erected a series of tribunals for the speedy and inexpensive determination of all controversies, and the legislative intent is plain that in the first instance recourse is to be had to these special tribunals for the settlement of these controversies. It seems equally manifest that it was the legislative intent that these tribunals should have exclusive jurisdiction over these matters."

See also *Duren* v. *Albertson,* 54 N. J. Law 72, and *Jefferson* v. *Board of Education,* 64 Id. 60.

There are involved in this controversy questions of jurisdiction, of failure to comply with legal requirements—procedure—and of plain departures from underlying principles of law, in the action of the Supervisor, here being reviewed.

III.

The proceedings were harmfully illegal, because the requests of Dr. Harman for copies of the alleged complaints, and more particularly the names of the complainants and a bill of particulars of the times and places of the alleged charges, were never complied with.

This contention applies to the findings on charges 1, 2 and 4, all of which concern alleged immoral practices on the part of Dr. Harman with employees in the institution. It also applies to the 11th charge, in that there is no proof that

any complaint was made by Mrs. Travers or on her behalf or account, or that any copy thereof was furnished Dr. Harman.

The general nature of the charges as stated in the notice, has already been adverted to. The defendant, without the slightest particularization or specification as to time or place, is called upon to meet and immediately to answer charges of the most serious character covering a period between Labor Day, 1923, and August, 1926, a period of three years, and the last date of which had lapsed more than two years before.

While we concede that the law does not require in proceedings of this character, the same strictness of pleading that obtains in indictments, yet it has been uniformly held that the proceedings should be according to "the law of the land". In *Andrews* v. *King,* 77 Maine 234, the Court said:

> "Specifications of the alleged causes should therefore be formulated with such reasonable detail and precision as shall inform the incumbent of what dereliction is urged against him. The charges should be specifically stated with substantial certainty, though the technical nicety required in indictments is not necessary."

In *State* v. *Frazier, Governor,* 182 N. W. Reporter 545, 547, the Court, in speaking of proceedings of this character, said:

> "When the legislature deemed it proper to prescribe a legal cause as the basis ground for the removal of the office involved, necessarily there then applied those fundamentals in Anglo Saxon jurisprudence essential and recognized in any free and

> democratic government, namely, the right of the accused to a hearing, *to be confronted with his accusers,* and to the right of defense."

The whole subject is learnedly discussed in *Dullam* v. *Willson* (Mich.), 19 N. W. Reporter 112, and the conclusion reached that the officer sought to be removed is entitled to know "the particular acts and neglect of duty or other act relied upon as constituting malfeasance or misfeasance in office".

In the course of an elaborate opinion, we find:

> "These cases not only required a proper hearing on proper charges, but held that these charges must consist of distinctly stated facts, and in general facts of wrong or neglect so that it can be determined as a matter of right whether what the removing body treats as wrong is within the legal quality of wrong."

Judge Campbell in a concurring opinion said:

> "It has been uniformly held that where provision has been made for removal of local officers for cause, there must be the same definite charges and fair hearing, whether expressly required by statute or not."

In *People* v. *Therrien,* the same Court, in 45 N. W. Reporter, page 78, reverses proceedings for the removal of an officer because no specific acts of official misconduct were alleged, nor is any time or place of such misconduct given.

Under this principle, the incumbent is entitled to be served with, or at least to see the charges themselves in order to determine whether or not they bring the case within the purview of the statute authorizing the officer to act.

> "The charges must be sufficient in their nature to warrant removal." 46 Corpus Juris, page 994, Section 17 (c).

See also page 988, Section 183 (f), where we find:

> "The information or accusation by which a proceeding is begun to remove a public officer from his office, should state with clearness and certainty the particular grounds for which the removal is sought, and the particular acts or things constituting the offense charged, it being requisite that grounds be shown justifying a removal under the particular provision invoked."

And further:

> "The complaint should affirmatively show by whom the action is brought."

In *People* v. *Therrien,* 80 Mich. 187, it is stated:

> "The complaint, petition, accusation or the like, by which proceedings for the removal of a public officer are commenced, should show by whom, or in whose behalf the proceedings are instituted."

In view of these decisions, the proceedings to which, as we have seen, strenuous objection was immediately made, were plainly illegal, and the suggestion of the Chief Justice (see Appendix

herein) that in this respect may be corrected, was not adopted. The statute requires that there shall be complaints, and the law would seem to require the accused to be furnished with a copy thereof, so that he can see whether it contains a sufficient accusation under the statute. It is not what the Supervisor construes the charge to be. It is his duty to receive complaints of others, and to determine, upon proceedings taken in accordance with the law of the land, whether or not the incumbent is guilty thereof, but the accused is entitled to know what the specific charge is, and be furnished either with a copy of it, or at least to be permitted to inspect it, so too, he is entitled to know the name of his accuser, and to be able to present to the Supervisor any motive or reason for the accusations. As was said by the Chief Justice in the argument for the earlier writ of *certiorari*:

> "If you sue a man on a promissory note, you serve a copy of the complaint on him, or at least give him the name of the complainant,"

and so far as we are aware, prior to this proceeding, it has never been held that due process of law did not include information to the accused of the name of his accuser.

See also, *Burt* v. *Board of Freeholders* (Mich.), 66 N. W. Reporter 387.

In *Ayers* v. *Newark,* 49 N. J. Law 170, a removal had taken place, which, on *certiorari* was objected to because the officer had not been served with a statement of the grounds of the charges, or with proper notice of the substance thereof.

It appeared that notice had been given to the incumbent in writing, with a statement as to the nature of the charge. Inasmuch as he appeared with counsel at the time and place specified in the notice and made no objection thereto, the charge with specifications was then read to him and he pleaded not guilty to it, the Court refused to upset the order. This ruling was in accordance with the principle enunciated in *17 Encycl. of Pleading and Practice,* under the title "Public Officers" page 215, to the effect that:

> "Either the fact that notice was given, or that it was properly given, or the sufficiency of the notice itself, may be waived by the appearance of the accused and submission to the jurisdiction of the court or other tribunal."

In *Dodd* v. *Camden,* 56 N. J. Law 258, copies of the charges were served upon the prosecutor before the hearing.

In *Reilly* v. *Mayor of Jersey City,* 64 N. J. Law 508, the charges were in writing, signed by the person making them.

IV.

An examination of the evidence discloses that there is no rational basis for the order of the Supervisor.

Before passing to a discussion of the evidence, which necessarily must be very full, we, for the convenience of the Court, collect the cases which justify our claim that if the proofs in a proceeding of this character fail to form a rational basis

for the conclusion reached, the Court will set it aside.

Devault v. *Mayor of Camden,* 48 N. J. Law 433;
Reilly v. *Mayor, etc., of Jersey City,* 64 N. J. Law 508;
Dodd v. *Camden,* 56 N. J. Law 258;
Crane v. *Mayor of Jersey City,* 90 N. J. Law 109,

where the Court said,

> "An examination of the evidence leads us to the conclusion that the judgment pronounced by the Mayor against the Prosecutor, is fully supported *by the preponderance of the credible* testimony in the case."

Brill v. *Bowden,* 4 N. J. Misc. Reports 326, where the Court, after examining the evidence, reached the conclusion that the order of the Supervisor

> "was directly supported by the facts".

In a word, the Court in a proceeding of this character, will not meticulously weigh the evidence, but it must find in it a rational basis for the conclusion reached.

This is a case wherein the prosecutor-respondent, Superintendent of Essex County Hospital for the Treatment of Tuberculosis, is fighting for his personal and professional reputation, and the principal charges of which he has been found guilty are of such a criminal nature that the prosecutor-respondent respectfully prays this Court most carefully to weigh all the testimony as contained in the record, notwithstanding same is not repeated in prosecutor-respondent's brief, as it is

believed that the testimony in its entirety is of extreme importance and necessary to be reviewed in order to determine this case.

We will consider charges 1, 2 and 4 and the testimony concerning them apart from charge 11, which will be taken up hereafter. The prosecutor-respondent was found not guilty of the other charges. They read as follows (Exhibit C-1, Case, p. 750):

> "1. In that on various occasions between Labor Day, 1925, and August, 1926, you invited Bertie Galloway and Pauline Galler, female employees, to your office in said institution to drink intoxicating liquor and that you served intoxicating drinks to one or more of them in your office and made immoral advances to them, and assaulted the said Pauline Galler.
>
> 2. In that between Labor Day, 1923, and August, 1926, you invited said Bertie Galloway and Pauline Galler, female employees, to ride in your automobile on various days and nights, and that you took the said Bertie Galloway automobile riding at night on several occasions and made improper proposals to her.
>
> 4. In that between Labor Day, 1925, and August, 1926, on several occasions you entered the bed rooms of Pauline Galler and Bertie Galloway, female employees, at times when such female employees were in bed or scantily dressed, and on one or more such occasions attempted improper relations with such female employees."

The charges do not specify dates, and in form, charge that he committed the alleged acts to the Galloway and Galler girls jointly (except charge 2—automobile riding with Galloway), that is, always at times when both girls were present, and do not charge him with these acts against each individually, and when not in the presence of the other. There is not a single word of testimony or other proof that these acts, or any of them, were committed to or against said girls when together and in fact the testimony is that they did not know each other until the end of the year 1928. Consequently, in that respect, the proofs do not conform to the charges.

It will be noted, incidentally, that throughout the entire case, there is no proof whatsoever of any rules and/or regulations concerning the conduct of any of the employees of the Essex Mountain Sanatorium or governing their conduct, or that of the Superintendent. These charges are alleged to be (Exhibit C-1, p. 750) "violation and neglect of duty". Obviously, there must be a duty shown which has been neglected or violated. It may be assumed that there are some instances where it may be inferred certain acts of employees or the Superintendent could be construed as violations or neglect of duty, but the charges made included the riding in automobiles away from the institution, which in themselves are not violations or neglect of duty, unless there were rules and/or regulations forbidding them and which have only to do with his private conduct, assuming them to be true. All of the charges have been denied by the doctor. Some of them were outside of his hours of duty at the institution and by no stretch of the imagination could they ordinarily be construed as violations or neglect of duty at the institution. These charges have been combined with

others, not separated, and consequently the whole must be treated as one charge and if not a violation or neglect of duty in part, then the entire charge must be so, and finding him guilty of the entire charge is illegal. The cause for removal must be one which specially relates to and affects the administration of the office.

46 Corpus Juris, p. 986, §148, and cases cited, including
Haight v. *Love,* 39 N. J. Law, 14, 476, and *ibid.,* p. 987, and cases cited.

Also:

Holliday v. *Fields* (Ky.), 275 S. W. Rep. 642.

Much has been said in the testimony not only as to Charge No. 1, but also as to Charges Nos. 2 and 4, that improper proposals were made by Dr. Harman to the Galloway and Galler girls. What is an improper proposal? Does it always mean suggestion of an illicit sexual act, or does it not also mean any proposal which is a violation of any criminal statute, any rule of ethics or even the ordinary and accepted rules of convention and conduct, not criminal in their nature? Offering a person intoxicating liquor in violation of the prohibition law might be construed as an improper proposal. Certainly, the charges should have been more specific and definite as to the meaning thereof and should have set forth the acts which were intended to be charged against him. This illustrates the importance of our contention that the charges themselves, and not the Supervisor's construction of them, should have been served on the defendant.

He is charged with an assault upon Pauline Galler. Testimony was offered to show that he attempted to rape her. Certainly, an assault may mean an attempt to strike a blow, which is the common law meaning thereof, and the words may or may not be construed to mean an attempted rape. The proof offered was of a most damaging nature and would constitute a crime under our laws. Surely, to be found guilty thereof, Dr. Harman should have been given something of the same protection as any person indicted for a crime (in this case an alleged attempted rape), and should have been furnished with *the date* or dates and the place, so that he would have an opportunity to prepare proper defense. The charges should have been separated as to each girl because the proof offered was that the acts were alleged to have occurred at different periods of time and were not in any way related nor done jointly to the girls. How could the defendant prepare to meet and rebut a charge of an alleged act which may have happened any time between the period of Labor Day, *1925,* and August, *1926,* an entire year, and in Charge No. 2, between Labor Day, *1923,* and August, *1926,* a period of 3 years? He was entitled to know specifically what dates (or at least approximate dates) so that he might have had an opportunity to prepare a defense, an alibi, if available, or an explanation if one was necessary, for those particular dates. Obviously, it is almost humanly impossible for any of us to account for our movements every day of an entire year for a year (and in the one instance *three* years), which elapsed more than two years prior to the making of the charges. This hearing took place in December, 1928, and January, 1929, and defendant was expected to be able to show and account for and be prepared at the hearing

to rebut any and every possible date during the period from Labor Day, *1923,* to August, *1926,* because the bill of particulars demanded by the prosecutor-respondent, was refused by the Supervisor (Exhibit R-4, Case, p. 803). Dr. Harman *learned for the first time at the hearing the dates the alleged acts were supposed to have occurred* and had absolutely no opportunity to prepare a defense or produce testimony and evidence which may have been available to establish that it would have been impossible for him to have been guilty of these charges because he may have had a perfect alibi. In all justice, he cannot be called upon reasonably, to remember what transpired every day for one or more years, and for a period which elapsed two to three years prior thereto. The cases supporting this contention will be subsequently cited.

The findings of the Supervisor mean briefly that Dr. Harman has been guilty of an attempted rape on two different occasions on two different girls. It is elementary law, based upon human experience of centuries, that no man is to be found guilty of rape solely upon the allegation of a woman unless there was an attempted outcry at the time and unless there is some corroboration of her story, the corroboration in most instances being the telling by the woman, immediately after the rape or attempted rape, and as soon as it is physically possible for her to do so, of the act charged against the defendant. If this was not the rule, every man, and not only physicians who peculiarly, by reason of their profession, are subject to and easy victims of such terrible charges, would be the possible victim of an unscrupulous, designing, mercenary or revengeful female.

This Court may go through the entire testimony

of this case most minutely and will not find a single bit of testimony or evidence of any kind corroborating the story of the Galloway girl (and also of the Galler girl, but that will be considered later, separately). Dr. Harman was found guilty solely upon the word of this girl. Dr. Harman, by his testimony, denied absolutely and unqualifiedly, the truth of each allegation made by her and also by the Galler girl. Consequently, upon legal principles alone, the plaintiff or complaining witness in each instance, has not sustained the burden of proving her case, and as in a criminal case, these being charges of a highly criminal nature, the defendant, Dr. Harman, should have been given the benefit of a reasonable doubt and found not guilty and the charges dismissed.

However, Dr. Harman is not satisfied to be found not guilty on mere technical rules of evidence, but wishes this Court seriously to consider the improbabilities of the testimony offered and the manner in which this trial was conducted. (It was a *trial,* not an *investigation,* where an endeavor should have been made to ascertain all the facts, by the Supervisor, which is required of him of the statute in making an investigation; assuming for argument that the Supervisor has the power in this case to "try" these charges.) Every possible means or cloak of protection were thrown around the Galloway and Galler girls when an attempt was made on cross examination to delve into their pasts, reputations and conduct, and when defendant's counsel attempted to question them concerning their present means of livelihood, by whom they were employed and where, and their residences, questions which are without doubt clearly proper and admissible and in this instance of vital import to the defendant,

they were always excluded and ruled out as improper questions, by the Supervisor. This was true of defense's efforts to ascertain the addresses of both girls (Case, p. 105 and p. 161, *et seq.*). There is a most interesting colloquy between the attorney of the "prosecution" during the hearing and the attorney of the defendant, Dr. Harman (Case, p. 105, *et seq.*), when Galloway was asked where she lived at the present time, whether she came from Virginia and whether she was known as a "hustler" in Virginia. When an endeavor was made to examine her with respect to her relationship with one Doyle (Case, pp. 52-54, *et seq.*) she was asked:

> "Q. Did you ever live with anybody as man and wife without being married to him? A. Does this concern this case, Mr. Reed? Must I answer these questions? My private affairs have nothing to do with this."

Immediately there was an objection *by counsel, not by the witness,* that the answer might tend to incriminate her. It is elementary in the law of evidence that where a question is asked and objection made thereto on the ground that the answer might tend to degrade or incriminate the witness that the objection must be raised by the witness and not by counsel.

The right to refuse to answer the question on the ground that the answer will incriminate or degrade the witness is a personal privilege to be availed of or waived by the witness and may not be raised by counsel.

Vineland v. *Maretti,* 93 N. J. Eq. 520.

Citing:

Fries v. *Burgler,* 12 N. J. Law 79;
Conover v. *West Jersey Mortgage Co.,*
87 N. J. Eq. 16, and
3 Wig. on Evidence, par. 2268.

The reasons given by defendant's counsel for asking the question are fully set forth (Case, p. 53), but notwithstanding them, all questions as to both girls along those lines were excluded by the Supervisor. When she was especially asked for purpose of laying a foundation to impeach her, whether she lived with Doyle at North Broad Street, Newark, whether she ever went out with him—questions of that character were excluded by the Supervisor and exception taken thereto by counsel.

In general, any question which tends to explain or modify the force of the evidence of the adverse party is material and relevant.

Tischler v. *Steinholz,* 99 N. J. Law 149;

or which diminishes the trustworthiness or impeaches the credit of a witness;

Crosby v. *Wells,* 73 N. J. Law 790, 803.

It is obvious that if it was the fact (and the defense endeavored to lay a foundation to prove same and was excluded from doing so), that she did in fact live with Doyle, who was proved to be a criminal, known to her to be such, that she was not a woman of good reputation, and of the best character, and in the determination of the issue of whether there was probability and truth in her story, absolutely uncorroborated except by

her own telling, such evidence was most material, important and relevant and should balance the scales of justice in favor of the defendant.

Any matter bearing on the credibility of a witness may be admitted.

State v. *Black,* 97 N. J. Law 361.

Cross examination of a witness on matters directly relevant to the issue is a matter of right and failure to allow such cross examination is reversible error.

Prout v. *Bernard, etc.,* 77 N. J. Law 719.

Contradictory statements of a witness, on material and relevant matters, may be shown as a matter of right.

Moloney v. *P. S. Ry.,* 92 N. J. Law 539.

His denial, therefore, nothing else being shown to impeach his character or the truthfulness of his testimony, should have been accepted by the Supervisor and the charges resolved in his favor and dismissed. If the Court will read the entire testimony it can come to no other conclusion than that the "trial" of Dr. Harman was most unique in the manner in which it was conducted and absolutely contrary to all the commonly accepted principles of justice which have been so long and firmly established in the history of our law.

Supervisor Reed signed the notice given to Dr. Harman containing the charges. They are in such form as to appear to be charges made by him involving these various people, and the "investigation" is by him according to the statute. The County Counsel, Mr. Vanderbilt, was the legal advisor of the Supervisor and was supposed to

advise him on legal questions and was presumably supposed to advise him upon legal questions arising during the investigation. The investigation, however, developed into a prosecution in which County Counsel assumed the role of prosecutor. When questions were asked by him on direct examination and objection made thereto by defendant, the Supervisor, before ruling thereon, asked the advice of the County Counsel, who almost without exception ruled that such questions propounded by him, the County Counsel, as prosecutor, were admissible and defendant's objections overruled; and when the defendant offered testimony and questions were propounded and objections made thereto by County Counsel, in almost every instance, except concerning questions of most minor importance, the Supervisor, before ruling, obtained the advice of the County Counsel and following same, excluded testimony and did not permit the questions to be asked. Consequently, the result was that the "prosecutor", Mr. Vanderbilt, asked such questions as he pleased, ruled upon the admissibility by advising the Supervisor, who naturally followed the County Counsel's advice and excluded such testimony and evidence as the defendant offered and which tended to attack the credibility of the complaining witnesses' testimony, with the result that the defendant had a most unfair trial, conducted in a manner unheard of in this State or elsewhere where the common law and ordinary rules of fair play and justice prevail.

The findings and order of the Supervisor (Case, p. 2d) states as follows:

> "In my view, moreover, their testimony was not affected by the witnesses who were

> produced for the purpose of assailing their character. For example, Mrs. Lysick, a former telephone operator at Verona, admits that she was discharged but *cannot remember* what for; I cannot therefore have a high regard for her testimony."

Her testimony is given in full (Case, pp. 427 to 434). *There is in fact absolutely no testimony given by Mrs. Lysick because it was excluded by the Supervisor and exception taken thereto by counsel.* The reasons advanced by respective counsel for the admission or exclusion of the testimony throughout the entire case, is most interesting and worth reading by this Court, as it clearly shows that the manner in which the proceeding was conducted was not that of an impartial, unprejudiced "investigation" to ascertain all of the facts, but was clearly an effort to prosecute this defendant in a way and by procedure not permitted by our courts and without permitting him in any way an opportunity to impeach these women, whose testimony is relied on. Mrs. Lysick (Case, p. 434) said in answer to question by Mr. Vanderbilt:

> "Q. How did you happen to come here? A. On my own accord. I found that the things Bertie (meaning the Galloway girl) said were not true and I can prove it."

The defense did lay a foundation for the admission of this testimony by attempting to ask the Galloway girl, as referred to above, about her relationship with Doyle, and the witness Lysick was offered by the defendant to show the character of the Galloway girl and also the falsity of her testimony. How can the Supervisor support

the statement in his findings that he cannot give any credence to the testimony of the Lysick witness when in fact she never testified to a single thing and was not permitted to. He therefore finds Dr. Harman guilty on the Galloway girl charge by stating that he cannot credit the testimony of Lysick. This means that he must have considered that she did testify. He is in error, because the record is to the contrary. He says he does not consider her testimony because he says it could not be believed for she stated that *she did not remember why she was discharged from the institution.* Nevertheless, throughout the entire testimony of both the Galloway and Galler girls, in instance after instance, and always during cross examination, not on direct examination, they each stated, "I can't remember", "I don't remember", "I refuse to answer", and the record will also show on page after page in answer to questions asked on cross examination of these two girls the notes by the stenographer of "(No answer.)" (Case, pp. 43, 44, 45, 46, 47, 62, 63, 66, 69, 71, 78, 81, 83,—178, 179, 180, 181, 182 and many other instances). The Supervisor gives as his reason that he did not believe the Lysick woman's testimony because she did not remember *one fact*, but nevertheless does not apply the same reasoning in the case of the Galloway and Galler girls when they, not once, but dozens of times, when asked questions of most vital importance as to their own lives and about matters directly connected with the alleged "assaults", which if they were good and honest women of decent reputation and unimpeachable character would stand out and never be forgotten, and which they would readily remember, said, "I can't remember", "(No answer.)",

etc. The Supervisor, by his findings, says, in effect, "I will believe the girls' stories, I will 'have a high regard' for their stories, even though they can't remember and refuse to answer in many instances, and I will assume that they are telling the truth in this instance, but will disregard Dr. Harman's denial and not admit testimony by Lysick because she can't remember why she was discharged, and if she did testify to anything I would not give credence to it because of that fact and I will find Dr. Harman guilty of all these dastardly charges."

The improbability of the stories of these two girls must be considered. Incidently, when reading the testimony of the Galler girl it should be noted, as it is testified to in the record, that she sat throughout the hearing the first day when the Galloway girl was under examination, that her story is identical with that of the Galloway girl in every respect, including alleged conversations; that the approach of Dr. Harman to them was always in the same manner, that his attempted rape of them always came about in the same way, led up to under the same circumstances, the same hour of the evening, at the same place in the office, and the same reasons given for not protesting or making outcry, and in both cases the story told in such a manner that one cannot escape the inference and belief that the two girls have at someone's instance talked over these charges and rehearsed their stories for the purpose of satisfying some possible grudge of their own or at the behest of another. When the defendant, as he has a right to do, attempted to impeach the character of these women to show that they were harlots (a "hustler"), and that they were the type of women who would not hestitate to damn one man in order to satisfy

or please another or for any reason sufficient unto themselves, he was precluded from so doing by the Supervisor, and their stories accepted in full, without question, notwithstanding the improbabilities thereof; the inconsistencies thereof, and the many discrepancies and falsehoods therein, all without corroboration.

This Court will consider the truth and probability of their stories in the light of and by applying the standards of ordinary human experience. Unless a man seeks the society of a prostitute to whom he intends to pay money and who knows that she is to be paid for her society and services, in which case there is no necessity of approaching the woman in anything but upon the basis of a "business proposition", we must in every other instance consider and bear in mind the fact that men do not approach women of character the first time they meet them or talk to them, and "make improper proposals" (assuming that the improper proposal is a suggestion of illicit sexual intercourse). Yet this is exactly what the Galloway and Galler girls have testified to; that is what they would have us believe, and that was what was found by the Supervisor in finding Dr. Harman guilty. Dr. Harman was and is a married man, a victim himself of tuberculosis, living at that institution with his wife as testified to, and his wife was with him throughout the entire hearing and testified in his behalf, and it is asking too much to have us believe that Dr. Harman, a graduate physician, a man of education and refinement, did, the first time that he passed these telephone operators, while they were on duty at the switchboard, ask them whether they drank and then and there invited them down to his office for a drink.

And assuming (although emphatically and consistently denied by Dr. Harman) that they did come down to the office in the evening when the switch-board was closed at 10 o'clock; when the work of the institution was obviously finished; when Dr. Harman would be found in his own apartment, with his wife, and who would otherwise, without any question, ascertain where he was; it is again asking too much to have us believe that as soon as they entered through the door of his office in the dark that he had liquor already poured out in glasses to offer to them and immediately after they got in the room, *including the first time,* told them how much he loved them and got them to sit on his lap and made improper proposals to them and the second or at most the third time they went into the office (going back into this dark office where these alleged improper proposals were made), that he attempted to rape them, that he pulled them down on the floor and disarranged their clothes and made an effort to have sexual intercourse. And in the face of such alleged conduct on his part, on the occasion of the early visits of both girls, they both plaintly returned on later occasions under similar circumstances, subjecting themselves to the same treatment!

It is not what men ordinarily do and it is in this instance highly improbable. When they were asked numerous times what the improper proposals were, in not one instance could they relate the words that he spoke, nor did they say what the improper proposals were, nor did they give the gist of the conversations.

It is because of the many discrepancies in their stories (slight in some instances to be sure, but cumulative in effect and of vital importance),

which prove their stories are untrue, that we must examine the details. If we examine the "tale" of the Galloway girl, she testified (Case, p. 65) that the doctor was waiting in his darkened office by the door when she entered, that there were no lights and never any turned on, that she could see several bottles standing on the desk (Why was not one sufficient? Why did he have two?) and that he had the glasses all prepared and filled, and that he had a glass of water already poured. Why should we believe that? A man does not have those things all prepared in advance when he does not know that the "guest" is coming, nor which liquor out of the two bottles will be selected. She testified the only light in the room came from the moonlight and upon cross examination said that this happened at different times when it was not necessarily always moonlight. She also testified that the *curtains were drawn* and then stated that *she presumed there were curtains* (Case, p. 91):

> "Q. As a matter of fact, were any lights visible from the outside? A. I don't remember.
>
> Q. Could you see outside through the draperies? A. *Through the window.*
>
> Q. You are sure of that? A. Yes.
>
> Q. *Were the curtains up or down?* A. Down, I believe.
>
> Q. Were there any curtains, as a matter of fact? A. *I don't remember.*
>
> Q. *You said they were down.* A. *I said they were down.*
>
> Q. *As a matter of fact, are there any curtains on the windows?* A. *All windows have curtains.*
>
> Q. Were there any curtains on the

doctor's windows? A. I don't know whether there were any curtains on the doctor's windows. I thought you meant draperies.

Q. *As a matter of fact, you don't know whether there were any curtains on the windows or not.* A. *If there were any curtains they were down.*

Q. *If there were any curtains they were down?* A. *Yes.*"

She testified she could see through the windows, the moonlight came in and when pressed insisted that "if there were any curtains they were down". These discrepancies are of vital importance. They concern instances of which there is nothing of more vital importance in the life of a good woman. The Galloway girl stated that at the time of her first visit (Case, p. 70) to the office she and the doctor did not occupy the same chair; were not together and yet he told her about love and how much he loved her—highly improbable. It is not the way of men with women. Men do not broadcast their words and protestations of love. In the testimony of the Galloway girl she could not fix nor approximate the dates of these visits to his office or any one of the visits to her room nor the auto rides, during the time that she was at the institution, except that she states that the doctor first stopped to talk to her at the telephone board within a few days after his return from his vacation and that the whole thing transpired in a comparatively short time. Incidentally, the records show her employment to be from Labor Day, 1925, to April, 1926, and that of the Galler girl from May, 1926, to August, 1926. Why the charges as to both girls were made for the period

from Labor Day, 1925 (Charge No. 2, Labor Day, *1923*) to August, 1926, is impossible to comprehend and obviously unfair and prejudicial to the defendant.

Again, it is to be noted that the charges instead of having been limited to the respective periods of employment of the two girls at the institution, especially in the case of charge 2, include one of the girls for over a year before her employment began. Again, a small incident, but nevertheless, of importance (Case, p. 89):

> "Q. *Where was he in the office when you went in?* Tell me that. A. (No answer.)
>
> Mr. Bailey: I ask that the witness be directed to answer.
>
> The Supervisor: I think the witness is doing very well.
>
> Mr. Bailey: She has not answered the last question.
>
> A. *He was in his office; I don't remember the spot where he was standing.*
>
> Q. Was the door open or closed as you got to the office? A. *I don't remember.*
>
> Q. You don't remember? A. *I don't remember whether he walked in with me or whether he opened the door and let me in.*"

It will be observed that she absolutely contradicts herself in those several questions, in one instance stating that he was in his office and in the next moment stating she did not know (Case, p. 90, l. 23):

> "Q. *Was the door closed then when you went to the office?* A. *I don't remember.*
>
> Q. Did you knock on the door to gain

admission? A. I don't remember knocking—no, I never knocked.

Q. Then he waited for you with the door open? A. When I went down if he was in the office he usually waited at the door.

Q. *Was the door open or closed?* A. *It was closed.*

Q. And he waited outside or inside? A. Inside."

Notwithstanding this darkened and curtain-drawn room and the fact that there *never* were lights in the room she testified as follows (Case, p. 92):

"Q. What other kind of liquor? A. I didn't drink anything but wine.

Q. What kind of wine was it? A. I don't know.

Q. What color was it? A. It was red.

Q. No white wine? A. No."

(Incidentally, the Galloway girl says he drank whisky or brandy (Case, p. 92) but the Galler girl says he always drank wine (Case, p. 154).)

How was she able to distinguish color in the darkened room with the curtains down? How was she able to see across the room, bottles on a desk and their shape? It was testified to (Case, p. 458) that the furnishings in the office included a large sofa, on the side of the room opposite to the windows and by the door it was testified to both the Galloway and Galler girls attempted to leave. In each case they testified that they got over to the door and attempted to leave when he dragged them back and then pulled them on the floor, the hard floor, when he had nearer to the door, this sofa. This is a small incident, but

nevertheless must be considered to prove the improbability of their stories. Furthermore, in each instance, Galloway girl (Case, p. 98) and the Galler girl (Case, p. 177) when they were asked what they did when he attempted this rape:

(Case, p. 98; Galloway):

> "Q. Did you say anything? A. Yes, *I threatened to scream.*
>
> Q. Did you scream? A. I made a slight noise after.
>
> Q. You made a slight noise after what? A. When he refused to let me leave the room.
>
> Q. When did he refuse to let you leave the room? A. Right then at that time.
>
> Q. And you made a slight noise? A. Yes.
>
> Q. What was that slight noise? A. I made a noise in my throat to frighten him as if I was going to cough, or something."

(Case, p. 177; Galler):

> "Q. In none of which you made any effort to call anybody and did not scream? A. No, I threatened to.
>
> Q. But you didn't do it? A. No."

How can we believe that this Galloway woman (and the Galler girl's story is almost identical) who was struggling to free herself from the clutches of a man attempting to rape her, could have such control over her emotions and nerves, and be so unexcited that "I made a noise in my throat * * * as if I was going to cough or something". She obviously was not frightened and unless she was so thoroughly frightened that she

could not scream, it is a certainty that a woman (also applies to the Galler girl) in her position, the object of an attack or attempted rape, would have unconsciously screamed. It is to be observed that in each instance, they say there happened to be footsteps in the hall which caused the doctor to let them go. They could hear the footsteps in the hall, but they would not scream even though screams could readily be heard. The reasons given in each instance by the girls that they were afraid of being discharged and hence submitted to his suggestions, are ridiculous when the circumstances are considered. Mrs. Harman, the wife of the doctor, resided in the institution and they knew that if they made known the doctor's conduct to Mrs. Harman or any other person in the place that they would not be discharged but it would be something for the doctor to worry about. There was a matron in the institution to whom complaint could have been, but was not, made— Instead of appealing to either of these ladies they calmly repeat their visits! The stories of these girls, absolutely uncorroborated, it is submitted are improbable, impossible and a tissue of lies.

It is well settled that in accusations of this character where the evidence preponderates in favor of the defendant or bears on its face indication of unreliability or improbability, and particularly when it is contradicted by other evidence, it should always be set aside, unless there is corroboration of the woman (33 Cyc. 497).

A further point of importance to show the improbability of the stories of these girls is that the Galloway girl left the institution in April, 1926. She testified (Case, pp. 102, 105, 122 and 129 to 135 and particularly at p. 133) that she did not

tell of these incidents until many months thereafter had elapsed. She testified (Case, p. 133):

"Q. When did you first talk about the case to anybody? A. I read different things in the paper.

Q. It has been since these recent charges, is that it? A. And before, also.

Q. What did you read in the paper then that caused you to talk about it? A. I read several things; they didn't amount to very much.

Q. What did you read? A. About that Mr. Simms case.

Q. Who did you talk to about it then? A. Different friends of mine.

Q. Who? Mention them. Men or women? A. Women; possibly men also.

Q. Who? A. No one connected with this.

Q. I haven't asked you that? I asked you who. A. *I don't remember.*

Q. Give me the name of the first person that you mentioned it to. A. *I don't remember.*

Q. Was it a man or a woman? A. *I don't remember.*

Q. And how long after it happened was it that you first mentioned it? A. *I don't remember* how long it was.

Q. Was it a year? A. (*No answer.*)

Q. Two years? A. (*No answer.*)

Q. Was it recently? A. (*No answer.*)

Q. This year (meaning 1928; the date the alleged attempted rape took place was in the last part of 1925 or early in 1926)? A. This year.

Q. You never mentioned it to a soul before this year? A. I suppose I did, yes.

Q. I don't want to know whether you suppose you did. I want to know whether you did. A. I may have talked about it.

Q. Not what you may have done. Did you? A. *I don't remember.*

Q. You probably did not mention it to anybody until this year, isn't that so? A. (No answer.)

Q. Isn't that so? A. *I don't remember* whether I mentioned it before or not.

Q. Probably you didn't mention it until this year, isn't it so? A. I probably did.

Q. Did or did not? A. I did.

Q. And to whom? A. *I don't remember* just who. Different friends of mine.

Q. Have you always been in New Jersey since you quit the institution? A. (*No answer.*)

Q. Yes or no? A. (*No answer.*)

Q. Never mind looking at Mr. Vanderbilt. Look at me. Yes or no. A. Yes.

Q. Around this vicinity?

Objected to as immaterial.

Q. In Essex County? A. (*No answer.*)

Q. Yes or no.

Mr. Vanderbilt: I object to that as immaterial and irrelevant where the witness has been since she left the institution.

Mr. Bailey: I think it is quite relevant. She has been here where she could have made these charges and never did. And I think it is material; it is something to be considered.

Q. Have you always lived in the County since you left the institution? A. In the County, yes.

Q. How many times have you seen Bennett since you left the institution? A. (*No answer.*)

Q. Can't you answer that question? A. Not more than two or three times.

Q. When was the first time you saw him since you left the institution? A. *I don't remember.*

Q. Was it the two or three times you have seen him since you left the institution within the past two or three months? A. *I don't remember.*"

The reason that she advanced, that she did not tell anyone because she was afraid of being discharged, no longer existed after *April, 1926,* which was within a few months at the most of the time of the alleged attempted rape, and yet by the only inference which can be drawn from the testimony, she did not mention it to a soul until just before the charges were brought against Dr. Harman, in *December, 1928,* and probably discussed it only with this man Bennett of whom more will be said later and who really supplies the motive for these ridiculous, baseless and dastardly charges against Dr. Harman. If, as she one time says, it was about the time of the Simms' trial, that was in February, 1927 (p. 830).

Another incident which taints her entire story with improbability and falsehood is to be found on page 138:

"Q. You said that something happened at one time at the institution while you were there, about six o'clock in the morning when you met Dr. Harman. When was that? A. That was one morning when I went on duty at six o'clock.

Q. Just when? On what date? A. I don't remember the date.

Q. Was that after this last occurrence that you say took place in his office or before? A. After.

Q. What did he say to you then? A. He didn't say anything to me.

Q. What did he do to you? A. He just looked at me and gripped my arm and drew it to my side and walked out.

Q. Where was he? A. In the hall on the second floor.

Q. And where were you? A. Right there.

Q. Where? A. In the hall on the second floor.

Q. What part of the hall? A. I was coming out of the little washroom where I had been arranging my hair.

Q. Were you in sight of the telephone switchboard? A. Yes.

Q. You were just coming on duty? A. I took the connections down, and I had gone into this washroom to set the wave on my hair when he went by.

Q. And you were back at the board? A. I was on my way back.

Q. Was there any conversation then? A. No, he just took my arm.

Q. Was he walking the same way you were? A. He was on his way to the office, I suppose.

Q. And this was before six o'clock in the morning? A. After six o'clock.

Q. What time after six o'clock? A. I don't remember; it was early.

Q. You had just come on duty? A. It was before seven.

Q. You came on duty at six o'clock? A. It was right after six o'clock.

Q. You had just opened up the switchboard and stepped into the washroom to fix your hair, and then you came right out. That should not take you more than five minutes? A. *Possibly.*

Q. Then it would not be more than five or ten minutes after six? A. *It may have been.*

Q. Was it or wasn't it? A. *I don't remember.*

Q. What time did you get on duty that morning? A. Six o'clock.

Q. How long were you at the switchboard before you left it to fix your hair? A. *I don't know* whether I went out to the wash room immediately or whether I sat there a while.

Q. What do you mean by a while? A. A few minutes.

Q. How long did it take you in the wash room? A. *I don't know.*

Q. Were you there for five minutes? A. *I don't know.*

Q. Ten minutes? A. *I don't know.*

Q. Were you there more than ten minutes? A. *I don't believe so.*

Q. And then you went back to the switchboard? A. On the way back I met him.

Q. That doesn't take more than fifteen minutes, does it? A. *I don't know* how long it was.

Q. It was that time? A. *I don't know.*

Q. Do you want to be honest in this? A. Of course.

Q. Then tell us. A. *I don't remember* how many minutes.

Q. That was about a quarter after six? A. Around that, yes; *maybe* six-thirty.

Q. What did he say to you when he grabbed your arm? A. *He just looked at me; I don't remember* what he said. *I don't remember* whether he said anything or not.

Q. He just gripped your arm and threw it down to your side? A. Yes.

Q. He didn't say anything? A. *I don't remember* what he said.

Q. Did you say anything? A. *I don't remember* what I said.

Q. Did you ever see Dr. Harman down around six o'clock in the morning before that? A. *I don't believe I did.*

Q. Or after? A. No.

Q. Don't you know, as a matter of fact, that Dr. Harman never gets up at that time of the day? A. I know it wasn't customary; I didn't know why he was down there."

Mrs. Harman testified (Case, p. 459):

"Q. What time was it customary for the Doctor and you to arrive mornings? A. About eight o'clock, except when I was superintendent of nurses; then I got up early.

Q. You got up earlier than he did? A. Yes.

Q. What is the practice as to getting up mornings? A. He got up at eight o'clock.

Q. Do you remember any occasion at all when he got up as early as six o'clock? A. A few occasions, when he went fishing.

Q. On these fishing occasions, after having his breakfast, did he immediately go fishing? A. Yes."

Aside from the fact that this alleged incident occurred at approximately six o'clock in the morning when it was not probable that Dr. Harman had arisen for the day she would have us believe that the doctor in a public hallway grabbed her arm and said not a single word to her nor she to him. She said at page 138, line 32:

> "He didn't say anything to me. He just looked at me and gripped my arm and drew it to my side and walked out."

She later attempted to say that she does not remember whether he said anything. Obviously, it is a lie. How could the Supervisor or any other person separate the lies, the falsehoods to be clearly found throughout the entire stories of these girls, from the truth and it is with the deepest and sincerest feeling counsel in this case believe that there is not a single word of truth in the stories of these two girls with respect to their relationship with Dr. Harman.

As said, *supra,* the testimony given by the girls is practically identical; the same in every respect; no real variations. Obviously, the testimony is false and has been rehearsed.

Now, consider the testimony concerning automobile rides and the alleged visits to their bed rooms. The Galler girl admits (Case, p. 157) that she never went automobile riding with Dr. Harman, because he never invited her. If he was doing the same things to her it is alleged he did to the Galloway girl isn't it reasonable to suppose he would ask her to go riding? The Galloway girl says his excuse for coming in the bedroom was to invite her to go riding. Galler testified (bottom p. 157), he made remarks about *nice car* and *taking a walk,* but he never asked

her to go riding. What was his excuse in her case? Assuming that he invited one or both to go automobile riding but did not in fact take them, is such an invitation a "violation or neglect of his duty?" The Galloway girl testified that she did go riding with him on several occasions but "always in the afternoon after two o'clock" in daylight, and they always returned to the institution before dark except one occasion when they returned shortly after dark, but before supper. She could not name or identify a single road of the many upon which she alleged they drove. She could not describe a single place that they had been except that it was the part of Essex County near the institution, and on back roads. She wants us to believe that the first time that he went out with her, a few days after he first spoke to her, he parked in the car along the roadside in broad daylight and put his arms around her, kissed her, made love to her, and again made "improper proposals"! Bear in mind that she has never been able to tell us what these improper proposals were; never has she mentioned the words he used or even the gist of the alleged conversations she had with him. She would have us believe that Dr. Harman, Superintendent of one of Essex County's largest institutions, a person well known throughout the County and particularly in the vicinity of the institution, would park in broad daylight and kiss and hug her and run the risk of being recognized any instant, for she admits (Case, p. 115) that cars would go by while they were so parked. These stories on their face are palpably false.

It is a significant fact that they allege the office incidents as occurring *two or three* times, the automobile rides *two or three* times, and the

incidents with respect to his attempt again to rape them in their bedrooms as happening *two or three* times. If the testimony of the Galloway and Galler girls are compared it will be seen again that in each instance he came up in the afternoon after two o'clock when they came off duty and went to bed, never at night or after dark, but always in broad daylight when this institution of several hundred employees was very much alive and when the doctor would have been seen by any number of persons. They would have us believe he would run the risk of going to their rooms at such times under those conditions. In each instance they were undressed or almost so, and that he would come in the room and *immediately* tell them how much he loved them and hug and kiss them; that he never knocked but always came in with a "pass" key; that they never screamed and that in one instance the doctor hid behind a door in her room!

The doctor flatly denies taking these girls automobile riding and going into their bedrooms and committing the acts as alleged, although he admits that in a number of instances in going to and from Newark he has picked up employees, male and female, of the institution and given them lifts to and from the car line, which is about a mile away, and sometimes to and from Newark. These girls undoubtedly, knew that this was a practice of his, as it was with others at the institution, and they also knew that among the duties of Dr. Harman was that of inspection of the rooms of the employees of the institution. Dr. Harman testified that it is one of his duties to make an inspection of all employees' bedrooms, that he always knocked at the door when he found a door closed, and if he got a response and could not be admitted into

the room he never did go in, but if he got no response and the room was locked would open it to go in as it was his duty to do. Is he to be charged with these alleged acts simply because by reason of his duties it was possible for him to be placed in a position where he must admit that he does go into employees' rooms?

We might consider here the testimony of Mrs. Dedman (Case, p. 649), who testified that she was night Supervisor for the period covering the employment of the Galloway girl at the institution and that she found the Galloway girl with Doyle about six or seven times upon the dark stairway of the administration building *above the first floor* (Case, p. 658) by using her flashlight and that they were only visible by the use of her flashlight and that they were "mauling and pawing" each other and carrying on in a most *disgraceful manner* and that these occurrences were *about midnight;* and that Doyle had absolutely no business to be in the building (Case, p. 658) and that it was the conduct of the Galloway girl (although she saw no immorality, nevertheless Galloway was "tricky" and stayed out until early hours of the morning and that she often went to Galloway's room after midnight and did not find her in), which caused the recommendation to be made requiring the doors of the institution to be closed at 12 o'clock midnight unless special permission was granted to be out until one o'clock. At page 655, in answer to question the witness said:

> "They (referring to other employees) were more or less well behaved girls. She (meaning the Galloway girl) gave me more

trouble than all the others put together. Nobody was more pleased than I was when she took her departure. I said 'thank God'. Very fervently.

Q. I take it that there was no feeling of loss on your part at all that she left the Institution. A. No, I think it was a gain to the Institution."

It should be noted also that the stairway upon which Doyle and the Galloway girl were found at midnight in the dark, was the stairway to the bedrooms of the Galler and Galloway girls. On the other hand not one of the 125 employees in the institution ever saw or heard of any impropriety between the doctor and these two girls. Mrs. Travers (testifying before her death) shows (pp. 248-251) that she was interrogated by Bennett as to any such impropriety and she replied she did not (p. 251) see any.

The Galloway girl also said she never drank to point of intoxication (Case, p. 59), yet Dr. Harman testifies that when he returned from a vacation he found she had been discharged by Mr. Butterworth at Mrs. Harris' direction, for intoxication.

There is not a single word of corroboration of the stories of these two girls with respect to the incidents in the office, the automobile rides and the alleged occurrences in their bedrooms. It is impossible to believe that Dr. Harman, a man of intelligence, whose wife was living at the institution with him, in broad daylight and who would be seen by other employees and patients would run the risk of going to these girls' rooms when they were occupied and close the door. It is not a reasonable story, and weighed by the probabilities, it is obviously false.

Now, referring to the testimony of the Galler girl in more detail than we have above, the findings of the Supervisor are (Case, pp. 2d and 2e) that Dr. Harman was guilty of an assault (meaning attempted rape) upon the Galler girl and which occurred on *August 11, 1926,* after 9:30 P. M. that evening. Much is made by the Supervisor of the diary of Dr. Harman offered by him in evidence for that particular day, and which shows that Dr. Harman had been on a fishing trip that day with Dr. Bennett, another physician at the institution and which testimony was corroborated by Dr. Bennett (Case, p. 639) and that they returned to the institution at 7:00 P. M. and thus exploding the so-called alibi of Dr. Harman. The Supervisor missed entirely the significance of and reason for the offer of that diary when considering the other testimony in the case. It was testified by Dr. Harman and Dr. Bennett that they left the institution early in the morning of the 11th of August, and were fishing all day; that day was particularly remembered because Dr. Harman made mention that he won first prize in landing the largest fish, and that after they got home at 7:00 P. M., very tired, they cleaned the fish, had something to eat and each started for his respective apartment to retire.

Of course Dr. Harman was in the building. His wife was home and he was in his own apartment at 9:30 P. M., the time the Galler girl alleged this incident took place. Dr. Harman is himself a sufferer from tuberculosis (Case, pp. 461 and 493). He knows the dangers of overexertion, becoming overtired and as a physician would do the same thing for himself that he prescribes for all patients under his care and

that is after a particularly difficult and tiresome day, retire and not run the risk of a breakdown, relapse or hemorrhage. The diary was offered to show that on that particular day it was *improbable* that this incident occurred, and also more important for the reason shown hereafter.

The date *August 11* is important in this respect because mention is made of the fact that the Galler girl made a complaint to Mr. Harold Bennett who advised her to tell it to a Father James, temporary Catholic chaplain at the institution, she being a Catholic, and that she then told of the incident to Father Fitzpatrick, the regular chaplain at the institution who returned from his vacation some time in August. It should be remembered, as testified by Father Fitzpatrick, that he was on his vacation (Case, p. 452):

> "Q. You were on your vacation in August, 1926? A. It was in August I got back, I think I went the last week in July and two first weeks in August."

and at page 450, Father Fitzpatrick testified:

> "Q. Is it very clear in your mind that the Galler girl, when she made her statement, referred to the one occasion? A. That is the only thing I recollect. It was the occasion that took place while I was on my vacation."

It was therefore testified by Father Fitzpatrick, the permanent Catholic chaplain, that the Galler girl, a Catholic, told him, her priest at the institution, that this incident occurred on *August 11, 1926.* There can be no question after all the testimony is considered but that this girl, of a

dubious and low character and reputation for lack of something better to talk about, told Bennett, while running around with him, of this alleged attack and these alleged incidents involving Dr. Harman. Bennett at the time may have thought her story was true and *himself immediately went to the priest* (Father Fitzpatrick so testified), not at her instance, but of his own volition, and the girl could not then recant or retract what she had told Bennett and prove herself a liar in his sight, but had to stick to her story. Please remember that this is testified to by Mrs. Harris, a Freeholder of the County of Essex, who was at that time chairman of the Freeholders' Committee in charge of the institution (whose testimony will be considered later) and who was brought in voluntarily by Dr. Harman (Case, p. 507; p. 482), to investigate the truth of this story. Father Fitzpatrick, a Catholic priest, who would have no other motive or object than to protect women in general, and his Catholic parishioners at the institution in particular, including this Galler girl, nevertheless after an investigation by himself was not satisfied that sufficient evidence had been adduced to substantiate her story. If she had been of decent character and reputation he might have, even without corroboration, accepted her story, but Father Fitzpatrick, witness for Dr. Harman, said (Case, p. 439):

> "I told the girl—the girl was standing near the door and I was next to her, and I said, 'Now tell your story,' and she did, most brazenly and immodestly."

Also said (p. 448):

> "Q. Did you do all of the questioning or did Mrs. Harris do some of it? A. There

was very little questioning done. She *spoke out her tale* and *the doctor contradicted it,* and the only time I remember Mrs. Harris saying anything was one time when she asked the girl why she was not more respectful to me, a priest.

Q. Was the girl disrespectful to you? A. She was very bold."

And on page 452, upon cross examination:

"Q. Before you went on vacation you never saw anything out of the way in her conduct? A. She was too free and up and down with those that associated with her. They always commented upon how free she was. *I went there in a taxi and the men that were driving up and down used to comment on how free she was, and that is what caused me to take the balance and give the decision."*

When her own priest, as kindly and considerately as he could, said she was bold, brazen, free, associated with taxi drivers and others it is clear that he felt that she was a woman of low character, without reputation, untrustworthy and unworthy of belief. Again Father Fitzpatrick says, notwithstanding the fact that this investigation was made shortly after the alleged incident (Case, p. 445):

"Q. *When you completed your investigation, did you express any opinion in the matter?* A. *Yes, I doubted the doctor's guilt.*

Q. *Did you say anything more than that?* A. *I have absolute confidence in him still."*

We have emphasized the date, *August 11,* but only to show hereinafter that the story of the Galler girl is a fabrication and an absolute falsehood in its entirety.

From the foregoing, and the testimony of Father Fitzpatrick and Mrs. Harris and also Harold Bennett, it is clear that she alleged this so-called attempted rape occurred on *August 11, 1926.* We have attempted to show that it would be unlikely that the doctor would do the act at all, but that date has significance for another reason and one which totally destroys all belief in her story. On pages 176 and 181 will be found the following testimony given by the Galler girl under cross examination:

> "Q. At any rate how many times, between May and August did you similarly visit Dr. Harman's office at night during business hours? A. During May and August?
>
> Q. *Between May and August.* A. *Only three visits that I can recall.*
>
> Q. And each one of those was substantially the same in what occurred that you have described as occurring the first time, is that right? A. Yes.
>
> Q. *There were* THREE *visits to his office?* A. *Yes.*
>
> Q. *All at night?* A. *Yes.*
>
> Q. On each one of which transactions such as you have described occurred, is that right? A. Yes.
>
> Q. In none of which you made any effort to call anybody and did not scream. A. No, I threatened to.
>
> Q. But you didn't do it? A. No.
>
> Q. And on one of those occasions you

said that he had his trousers opened or unbuttoned? A. Yes.

Q. And he got you on the floor? A. Yes.

Q. And he got as close to you as he could? A. Yes.

Q. On which occasion was that? A. The second occasion.

Q. Notwithstanding that you went back a third time? A. Yes.

Q. Because you were afraid of being discharged. A. Yes.

Q. Why didn't you go to Mrs. Harman and tell her that her husband had summoned you to his office and had even got you on the floor with your clothes up and had his own clothes open and had tried to have connection with you? Why didn't you tell Mrs. Harman that? You knew she was there, didn't you? A. Yes.

Q. Was there any other matron besides Mrs. Harman at the Institution? A. Yes.

Q. Why didn't you tell one of the matrons? A. Because I didn't dare to.

Q. And how long after this second occasion when you say he made these advances and had you on the floor was it before you were summoned a third time? A. I don't recall; it was a very short time after that.

Q. And you went? A. I did.

Q. And each time it was at night? A. It was.

Q. And you can't tell us the dates? A. I cannot.

Q. You made no memorandum of the dates of any one of these visits? A. I did not.

Q. Was it in the month of May? A. Yes,

I believe—I don't say it was in the month of May; it was apart.

Q. *How long apart were the three?* A. *A week or so.*

Q. *And the first was in May, you say?* A. *Yes.*

Q. *So they must all have been in May or early in June.* A. *Yes.*

Q. *The whole thing was done?* A. *Not the whole thing was done.*

Q. Were you ever in his office except on these three occasions? A. No, during the day.

Q. During the day. A. Only on business occasions.

Q. *But these nightly affairs to which you have alluded, were all out of the way within two or three weeks after the time you had entered the employment?* A. *Yes.*"

Testified to she entered employment May 5, 1926 (Exhibit R-14, Case, p. 814).

"Q. Did you suffer with poison? A. I did.

Q. And did you confer with the doctor with reference to the outbreak of poison on your person? A. I did.

Q. When was that? A. I don't remember the time.

Q. As near as you can tell us. A. It was between the time of May and August; I don't remember the exact time.

Q. But it was after the occurrences to which you have alluded? A. I don't just remember.

Q. What is your best memory? A. I don't just remember.

Q. Did you go to his office with reference to the poison—the poison ivy? A. Yes, I did, and he told me——

Q. One moment. You say you did. Was that in the daytime? A. Well—yes—yes, this was in the afternoon, I believe.

Q. Now, I ask you solemnly if you ever were in his office except when you got notice of your permanent employment, except on that one occasion when you went in and consulted the doctor about the poison ivy? A. Not that I can remember.

Q. *Now, just listen. On any occasion at night or any other time, besides the time you were told by the doctor that you were permanently employed, were you ever in his office.* A. *Not at night—only the three times.*

Q. So you say the three times and the times that you went there about the poison ivy. A. That was in the afternoon.

Q. Now, we have it right, have we? A. I believe so.

Q. And are you sure about that? A. Well, I couldn't swear to it, whether it was in the afternoon or in the morning.

Q. When was it you spoke to the Chaplain about the Doctor's relations with you? A. The last week.

Q. And didn't you tell the Chaplain when you described what had occurred between the doctor and yourself, that one of these occasions when you were in his office was on the 11th of August? A. Did I tell? I don't remember whether I did or not.

Q. You are a Catholic, aren't you? A. Yes.

Q. And you were telling your priest what you deemed to be a matter of some importance, didn't you? A. Yes.

Q. And I ask you now if you can tell us whether you can specify the occasion when you visited Dr. Harman's office and when he attacked you, as having occurred on the 11th of August? A. No, I did not specify; I don't remember that I did.

Q. Did you, in fact, tell the Priest at all, the Chaplain? A. I told the Priest about being annoyed.

Q. Did you tell Bennett, the radiologist, about it? A. I did.

Q. Did you tell Bennett about it? A. I did.

Q. When? A. Why, it was on the last week.

Q. The last week that you were there? A. Yes, sir.

Q. Didn't you tell Bennett that one of the occasions was on the 11th of August? A. I don't remember that I did.

Q. Well, if you did, that was wrong, wasn't it? A. I don't remember whether I did or not.

Q. Assume that you did, now; that's wrong, isn't it? It didn't occur on the 11th of August. A. I don't know whether it did or not, because I didn't specify any date. I don't remember specifying any date at all.

Q. You now remember its occurring on the 11th of August? A. No, I don't.

Q. Didn't you say it was on the 11th of August? A. No, I said I don't remember.

Q. Haven't you told us there were three

occasions and they all took place in May or the early part of June? A. Yes, sir.

Q. *Did you say it occurred on the 11th of August?* A. I did not.

Q. *Do you say so?* A. *I do not.*

Q. Father Fitzpatrick was the regular Chaplain of the Institution, wasn't he? A. Yes.

Q. Do you remember having an interview at Father Fitzpatrick's home on or about the 22nd of August, 1926? A. I don't remember the date.

Q. One moment. At which Mr. Bennett, the radiologist; Mrs. Harris, Freeholder Harris; and Father Fitzpatrick were present, and you undertook to describe what had occurred and that you told the three of them, in the presence of Dr. Harman that one of these occurrences took place in his office? A. No, I don't believe I specified any date.

Q. You say you didn't say so? A. I don't remember that I specified any date.

Q. Were you careful not to specify any date? A. No, I was not.

Q. Was it a matter of any importance to you that this thing had occurred? A. It was, but I didn't remember any of the dates.

Q. Do you now say that in the presence of Dr. Harman at the residence of Father Fitzpatrick and in the presence of the radiologist, Mr. Bennett, and in the presence of Mrs. Harris, the Freeholder, you did not specify August 11th as the date of one of these occurrences? A. I don't remember that I did."

She swore under oath at the hearing under review that all of the alleged occurrences and attempted rape were in May or early in June. There is a difference of not less than two months in the dates she testified to at the hearing, and the date that she mentioned in the investigation before Father Fitzpatrick. A liar must have a good memory. The story that she told to Father Fitzpatrick was untrue in fact, but it and the date had no particular significance to her then and two years later when she is required to testify under oath to the date she gave then she cannot remember what she had told theretofore. Clearly the evidence with respect to this single incident proves her to be a liar. "False in one respect—false in its entirety." By what right does the Supervisor, and how can he, differentiate between and separate the falsehoods in her testimony from the truth, if any?

It is respectfully submitted that there is not a single truthful material statement in all the testimony of the Galler girl and when she now testified that the alleged attack took place not later than early in June there is not a single word of testimony or other evidence corroborating her testimony before the Supervisor.

Furthermore, after she left the institution, and she left under a cloud, admitting that there was a shortage in her account of a small amount although denying that she was responsible therefor, she did not go to any other person except Harold Bennett to tell this story, and never again do we hear of it until she is brought in by Harold Bennett to make these charges two years after. She has testified in answer to questions whether or not she ever went out with Harold Bennett that she did not, and did not go riding with him

except when she was in the automobile with him by appointment just prior to the filing of these charges against Dr. Harman. Nevertheless, the testimony of Mr. Tate (Case, p. 469) shows that on two occasions at least she was out with Harold Bennett. Tate testified that on July 18, 1926, Harold Bennett, who says he never went out with the Galler girl, nevertheless had her with him at the home of Mr. Tate and that Tate was introduced to her by Bennett and that Bennett and the Galler girl remained at his home about an hour. And again in August or September, 1927, she was in a car riding with Harold Bennett when Tate collided with that car. This is likewise corroborated by Mrs. Tate (Case, p. 476). Reference is made in the findings of the Supervisor that there was no proof of misconduct at the Tate home. Obviously the Galler girl was not going to misconduct herself with Bennett on every possible occasion and in the presence of persons she meets for the first time, but it is proof that both she and Bennett lied when they testified that they never went out together at any time and particularly with reference to the fact that Bennett had no interest in the girl whatsoever after she left the institution except as he says, to try to bribe her at the request of Dr. Harman when he admits, as we see by the testimony, that he never was requested by Dr. Harman at any time to pay a single cent. A most diabolical allegation and one which could only be conceived by a person absolutely without principle or of unsound mind.

Tate's testimony stands unimpeached as to those two incidents and again clearly brands as false another portion of the testimony of the Galler girl, wherein she denied ever being out with

Bennett. Consequently, her entire story is false. Every charge that she made, and every charge also that the Galloway girl made, as to riding in the automobile, the occasions in the office and the visits to their bedrooms have been unequivocally and flatly denied by Dr. Harman.

There is in the testimony of Mr. Tate an incident of extreme importance by reason of the inference to be drawn therefrom and as affecting the credibility and reasonableness of Bennett's testimony with respect to the payment by him of monies to the Galler girl in behalf of Dr. Harman and which Bennett says are the monies that he demanded back in his letter of August 6, 1928 (Exhibit R-7, Case, p. 808), contained in envelope (Exhibit R-16, Case, p. 815). It developed in the examination of Tate that he was unfriendly to Bennett because of a charge made by Bennett against him before the Real Estate Board, Tate being a licensed realtor. The testimony with respect to this incident is given in full as follows (Case, p. 475):

> "Q. You had a paper in your hand. What is that paper? A. A copy of the charges preferred against me in the real estate commission.
>
> Q. Tell us about it. A. On August 24, this fellow Bennett preferred charges against me.
>
> Q. What year? A. 1927.
>
> Q. Go on. A. For claiming he had gave me a deposit of $100.00 on two lots owned in the Borough of Caldwell. He claimed that he had made several demands on me for the return of the money and I refused to return the money.

Q. Go on. A. He said that unless I returned the money he was going to prefer charges against me in the real estate commission. And I told him to go ahead and he did.

Q. Was this verbal or in writing? A. It is in writing here. He then preferred charges and came to my home one Saturday afternoon and thought if we could get together——

Q. What did he say? A. He said, 'Pay me the $100.00 and I will have the charges withdrawn'. I said, 'Hell will freeze over before you get $100.00 from me'. I said, 'I will go before the real estate commission and see if the charges go through'. They did go through and I was vindicated. The check of $100.00 that he presented was in repayment of my loan to him.

Q. What became of the charges? A. They were dismissed.

Q. And that is the ground of your indignation against Bennett? A. It cost me $300.00 for counsel fee. I ought to have some indignation."

It is obvious that if Bennett, and it is proved as shown above and not denied, could borrow money from Tate and then give Tate a check for $100 in repayment of that loan and subsequently make a charge that the $100 was in fact a deposit on a lot, and it was established that it was in fact repayment of a loan as proved by the decision of the Real Estate Board, then Bennett is capable of concocting any kind of a story involving money and stating any reason whatsoever concerning same which is the explanation for the

demand for $610 set forth in the above letter to Dr. Harman and which he testified to under cross examination he thought was $525 and of which he, Bennett, had no proof. More of this incident is considered hereafter.

Aside from the rule that where a defendant in a criminal charge (and we should treat these as criminal charges) is given the benefit of any reasonable doubt and there can be nothing but doubt in this case, as the only testimony is that of the girls, uncorroborated, against the emphatic denial of the doctor, it is most strenuously urged that this Court should go further in this case and find, not only that the doctor was not guilty because of a reasonable doubt resolved in his favor, but also because the stories of both girls are improbable, untrue and unbelievable, because in their own testimony they have in numerous instances clearly been proven to be falsifiers and to use the more ugly word, liars.

The question arises as to what motive there might be in the making of these charges by these girls against Dr. Harman. Passing over the fact that we have many instances of prostitutes falsely charging men with criminal sexual assault, for one motive or another, sometimes for revenge, other times for blackmail and other times because of the fact that such women in many instances are of unsound mind, and without character or reputation, nevertheless we do find a motive in this case.

We should consider the manner in which these charges first came about. It has been heretofore referred to in this memorandum that Harold Bennett instituted charges (Exhibit R-8, Case, p. 809) against Dr. Harman and charged him with

"penalizing and intimidating him and interfering with Bennett's work in the X-ray room of the institution". A hearing was held in October, 1928, on these charges by the Supervisor, and at the conclusion thereof Dr. Harman did not offer any testimony whatsoever for the good and sufficient reason that there was nothing for him to rebut, it being obvious at the conclusion of the testimony that the Supervisor could do nothing else than to dismiss the charges which he finally did at the same time that he entered his findings and order after the present charges were made. If the Court will refer again to the testimony of Father Fitzpatrick there is great significance in that found at page 444, line 21:

> "Then I said jokingly, 'I would like to punch your face and bring you back to normal'.
>
> Q. You told that to Bennett? A. Yes, jokingly; and I smiled and went out. Then, from that time on he shunned me.
>
> Q. Bennett did? A. Yes.
>
> Q. Does Bennett hold any animosity against Dr. Harman that you can see?
>
> Mr. Vanderbilt: I object to that.
>
> Q. That you can see. A. I always felt that way, *that he had an obsession.* * * *"

(the following testimony was not stricken out):

> "I always felt that he always felt that everybody was interfering with him. One time it was the Board of Freeholders and the next time it was someone else trying to put someone in his department that would destroy it, and *he seemed to have an obsession that they would destroy that depart-*

ment and about outside interference. Regarding the doctor, I always felt that he had a very determined attitude against him, although when I put it up to him he denied it, but it didn't convince me."

and on page 446, under cross examination, Father Fitzpatrick testified:

"Q. You, from what you saw of him and what he said to you, gained the idea that he felt that he was being interfered with in his department and had an obsession on that subject. A. Yes, he always said it didn't make any difference whether it was the local authorities and sometimes he would say it was the Board of Freeholders. I asked him, 'Why don't you go on a vacation?' *He said, 'They want me to get away because they want to put someone in there.'* When they arranged for his vacation they urged him to take the vacation but he wouldn't do it, he said for two reasons; one he did not have any money; and *secondly* he *said they want to break up his department."*

and on page 450 he said:

"Q. You say that Bennett was in the habit of writing out his resignations at various times? A. Yes, the last one was this time a year ago. He was going to resign and I urged him not to resign until after the first of the year because I knew when any of these spasms blew over that he was all right again."

and on page 451:

"Q. What did you mean when you said you had held the matter in abeyance in

your mind? A. You see, I don't know whether you will rule it out—the girl (meaning the Galler girl) did not impress me very well when she was there. She always impressed me as being a bit light, and Mr. Bennett always had the unfortunate faculty of being the spiritual guide to anyone coming into the institution. In fact, he is more of a spiritual guide than I, with these women, so often would he bring my attention to individuals. *It was Mr. Bennett's peculiar disposition.* The girl I did not think would stand against the regulations that had been made by the doctor for the moral uplift of the institution. No matter when I went to the doctor about the moral delinquency he always sent away the individual who was violating the moral code."

and on page 452, line 26, Father Fitzpatrick said:

> "Q. *Do you think Bennett is of sound mind from your observation?* A. *You know, I don't like to say it for publicity, but I have long since doubted it.*"

The defendant offered as a witness in his behalf a Dr. Edmund Eastwood (Case, pp. 658 *et seq.*) who testified that he had received a communication from Harold Bennett and that it came to him some time between the *5th and 12th of November, 1928.* The communication is (Exhibit C-11, Case, p. 792) as follows:

"Verona, N. J.
Monday

My dear Doctor Eastwood:

Just a line to express regret at your absence.

If an opportunity for superintendency of a large institution presented itself, would it interest you more than the position you have accepted recently?

Sincerely yours,

HAROLD BENNETT."

Is it not of the utmost significance that following the farcical hearing of the charges brought by Bennett in October where it was obvious that the Supervisor could do nothing but dismiss them, that he should soon thereafter, within a few weeks, write to Dr. Eastwood about the superintendency of a large institution and that if opportunity for same availed itself would he accept it, coupled with the fact that Father Fitzpatrick testified that he suffered from an obsession against Dr. Harman and that immediately thereafter these charges were made by the girls, Galloway and Galler, friends of Bennett, against Dr. Harman?

Bennett sought them out, went to considerable trouble, and took them, together with Miss Houston, another witness, to see the Supervisor, before the charges were made. He waited outside while they interviewed Mr. Reed, and escorted them away to their respective destinations, going to a great deal of trouble and some expense. He interrogated Mrs. Travers (p. 251) if she knew of any improprieties on the part of the defendant and visited Nutley, New York City and elsewhere to suggest that these witnesses present complaints to Mr. Reed. The only reasonable inference is that Bennett was the one behind these charges and that they are the machinations of a "crazy brain", conceiving them for purpose of revenge to have Dr. Harman ousted from the institution and superintendency where he felt that he would have more power and would not

be "interfered with" in his operation of the X-ray Department under a new superintendent, and that Dr. Eastwood then would be under obligation to him. It was testified to at the trial that Bennett was a married man, a deserter of his wife, and that he was in fact running around with both the Galler and Galloway girls. It was admitted by the Galloway girl that she had been out for a ride, did not remember exactly when, with Mr. Bennett and it was proved by the testimony of Tate, *supra,* that Bennett was in fact going around with the Galler girl. Both of these women were, by inference reasonably drawn from the testimony, of doubtful and low character, and reputation, and have been proven to be liars and willing to lie under oath, and it was an easy thing for him, Harold Bennett, to "frame" up these charges with them. He knew without any question the character of the women and we have the right to infer that by threat of exposure or promise of some kind he prevailed upon them to make these dastardly charges against Dr. Harman.

Eloise Travers, whose discharge is the subject of the 11th charge, testified significantly as follows, and pertinent to the above: On page 247 she tells of conversation with Bennett in the X-ray room:

> "Q. The X-ray room is Bennett's room, isn't it? A. It is his department, yes.
>
> Q. Did you go there to tell him about this? A. No, I didn't know what he wanted with me.
>
> Q. *He sent for you, did he?* A. *He sent for me.*
>
> Q. Had he heard of this? A. Not that I know of.
>
> Q. How did you happen to tell it to

him? A. Because he asked a leading question.

Q. What was the leading question? A. He said something about this document being in existence that was wanted."

And at page 249:

"Q. And so you went to the X-ray room? A. Yes. He asked me if I felt that I had been fairly treated being discharged as I had been.

Q. That was the very first thing that he brought up. Do you think you have been fairly treated when you were discharged at the request of the Prosecutor's office? A. Yes.

Q. And you said what? A. I said not, and I still think so.

Q. Having gotten your feeling that you had not been fairly treated in your discharge, what next did he say? A. *He asked me if I wanted to appeal to Mr. Reed.*

Q. He asked you if you wanted to appeal to Mr. Reed from your discharge, is that it? A. *Well, tell him about it, yes.*

Q. That is the next thing that Bennett asked you—if you wanted to appeal to Mr. Reed from the discharge that had already taken place? A. Yes, sir.

Q. And what did you say? A. *I said that I wanted to see Mr. Reed and tell him the circumstances which has occurred and explain to him my side of the story.*"

(Note: It will be observed that Mrs. Travers did not state she wanted to *appeal* her "discharge".)

"Q. And then what next occurred? A. I came to Mr. Reed and did exactly that."

It is obvious that Harold Bennett went out of his way and sought every possible excuse that he could find for bringing charges against Dr. Harman with preconceived determination to have him removed as Superintendent. Whether those charges were false or not, made little difference to him and that he, Harold Bennett, was the instigator of this whole proceeding and that the letter written to Mr. Reed complaining of her alleged discharge was written by Mrs. Travers at the instigation of Harold Bennett.

To show further his animosity in this case, and insane obsession toward Dr. Harman, we refer to the testimony of Mr. Rose (Case, p. 453), father of the Henrietta Rose upon whom it is charged an illegal operation was performed (not by Dr. Harman, but merely witnessed by him, but of which Dr. Harman was found not guilty) wherein he testifies that Bennett came to see him at his home for the express purpose of telling him to remove his daughter from the institution and to tell his daughter that *she should not eat or drink anything that was given her at the hospital or take any medicine,* and that he (Bennett) would like to get Rose's daughter out of the institution so that he, Bennett, *could talk to her* and that he would advance the money to pay the expenses of removing her from the institution. What basis could there be for advising her father that she should not eat or drink anything at the institution or take any medicine, inferring that she would be poisoned, murdered, except to consider them as the vagaries or hallucinations of an insane mind?

At this point we might well consider some of the testimony of witnesses offered by Dr. Harman in his defense who corroborate him in many

respects and attack the credibility of the stories told by Galloway and Galler and Bennett.

Kane (Case, p. 667) testified that he was watchman at the institution and also cleaned the office of Dr. Harman and he never found liquor of any kind, wine or brandy or whisky, in the doctor's office.

Dr. Bennett (Case, p. 640) (not to be confused with Harold Bennett) verified the fact that on August 11, 1926, he went fishing with Dr. Harman. This proves that the entry with respect to this was not a "fake entry" as counsel for the prosecution intended to infer by his cross examination of Dr. Harman by reason of the fact that it happened to be a loose leaf diary. And (on p. 637) Dr. Bennett said that they cleaned the fish after they got home, put them in the refrigerator, then ate their supper and then went to bed after that—about 8 or 9 o'clock; Dr. Harman stating that he was going to bed.

Dr. Phelps testified (Case, p. 556) that the Galler girl was with Harold Bennett a number of times at his (Dr. Phelps') home, *probably a dozen times,* and testified (Case, p. 559) that he broke off his friendship with Harold Bennett for the following reason:

> "Q. Will you give us the reason why you thought that Bennett was not the kind of gentleman you cared to have in your household? A. Because of his misconduct in my home with the nurse that I employed.
>
> Q. What was that misconduct? A. I had been out to the movies on several different nights with my wife and when we came home we found conditions at the house that were not to our liking.

> Q. What were those conditions? A. When we left the house everything was satisfactory and this man was not there and he was there when we came back, and we decided once to leave the machine a distance from the house and find out whether anything was wrong, and we did. We found Mr. Bennett and my nurse in a bedroom; that I considered was entirely improper and I immediately ordered them both from the house.
>
> Q. *Were they in bed?* A. *Yes, sir.*"

That incident shows the character of Bennett because at this time he, a married man, was running around with the Galler girl and at the same time was carrying on an "intrigue" with the nurse in Dr. Phelps' home, and it is reasonable to draw the inference that his sexual conduct with the Galler girl at this time (after considering the testimony we have as to her reputation, especially that given by Father Fitzpatrick) was the same and all this was taking place at the time it is charged Dr. Harman was guilty of misconduct with either Galler or Galloway or both. It is most sincerely urged that the charges by the Galler and Galloway girls against Dr. Harman were at the instigation of Bennett and his insane mind. We know it to be a characteristic of some insane persons to charge another with the very acts or deeds of which they are themselves guilty.

A witness offered by the prosecutor, Miss Houston, likewise shows the "hand of Bennett" and his insane effort "to get" Dr. Harman. Her testimony (Case, pp. 211 *et seq.*) has to do with the illegal operation charge which has been dismissed

and therefore not before this Court, but her testimony contains matters of significance in this respect: that *two years after* she had left the institution, *and it will be likewise noted that she refuses to give her address or her place of employment* (another matter of mystery protected by the Supervisor in that respect, similar to the Galloway and Galler girls who likewise refused), *that Harold Bennett got in touch with her and arranged to have her make this charge* which is another of the most dastardly kind, not only because of its reflection upon the reputation of a young woman, now dead, but the intimation of the performance of a criminal act by one of the leading surgeons of the County (not Dr. Harman), and who was Chairman of the Advisory Medical Staff of the institution, and to which testimony, entirely hearsay and of the least convincing kind, the Supervisor gave great consideration. Notwithstanding the voluminous testimony offered to support the charge (No. 6), it was dismissed. The *defendant was not charged with performing an illegal operation,* but merely as witnessing same, which it is alleged was performed by the head of the consulting staff of this institution. No charge was made by the Supervisor against the physician performing the operation even though he was then head of the Advisory Medical Staff. This is merely commented upon here, as likewise are the comments on the evidence concerning the other charges, which were dismissed, because it shows the mental attitude of the Supervisor and his counsel and their determination to "prove something against Dr. Harman" and is indicative of the highly prejudicial manner in which the charges were made and the "investigation" conducted.

At this point it might be well to emphasize that this was supposed to be, *not a trial, but a fair and impartial investigation* (see Exhibit R-4, Case, p. 803); for when a bill of particulars demanded by the defense was refused in the communication from the Supervisor refusing same there appears the following:

> "Apparently, Dr. Harman misapprehends the nature of this proceeding. The notices which he has caused to be served on me would seem to indicate that he is under the impression that this is a *trial* and that I am the moving party therein. *Such is not, in fact, the case. It is an investigation* under the County Supervisor's Act, by which I am charged with the duty of acting in a quasi-judicial capacity.
>
> This being so, the ordinary routine of the courts has no application in this proceeding, I am advised that *I am not bound by the technicalities of pleading and legal procedure,* inasmuch as I am charged by law with the duty of investigating complaints and exercising a constant supervision over the conduct of all subordinate officers and employees. For this reason I must necessarily decline to answer the three page demand for a bill of particulars."

Notwithstanding the Supervisor's statement that he was not bound by technicalities of pleading and legal procedure, nevertheless the record is replete with instances of where he ruled against objections made and questions asked by the defense, following the advice of County Counsel, his legal adviser, on the stated ground that they were improper *by reason of the rules of evidence.*

One can only infer, therefore, that the Supervisor was not concerned with seeking the truth, by an investigation, but was endeavoring to conduct a *trial* and prosecute the defendant in the same manner as he would have been prosecuted under a criminal indictment. Incidentally, the charges of which Dr. Harman was found guilty (except the one concerning the alleged improper discharge of the Travers woman) would all have been barred by our Statute of Limitations having occurred more than two years previously.

The Claim With Reference to the Payment of Money to the Galler Girl.

The Court will recall that the first display by Harold Bennett of his animosity against Dr. Harman was the letter (Exhibit R-7, p. 808) he sent by air mail to Dr. Harman, August 6, 1928, while en route to St. Louis:

> "Will you please arrange to settle the personal expense account of which you are familiar since 1926. I would like this by the morning of Aug. 16, 1928. The amount is $610.00."

Immediately upon his return Dr. Harman confronted Bennett with this letter and demanded to know what he meant by it (p. 514). He also showed the letter immediately to Mrs. Harris (p. 514), Mrs. Harman (p. 514), Father Fitzpatrick (p. 515). Bennett on the stand in this proceeding (pp. 338 *et seq.*) pretends he gave the Galler woman from time to time after she left the institution, moneys of his own aggregating an amount of which he is not certain,

claiming that it was hush money, delivered on Dr. Harman's behalf.

We contend the story is a falsehood and we respectfully urge a reading of his cross examination upon the subject (pp. 338-348—pp. 359-363).

His story is a falsehood and a "story made out of whole cloth". Under cross examination he testified (Case, p. 340) that he kept a memorandum of these amounts which he says he paid in cash to the Galler girl, some of which he claims were mailed in unregistered letters containing cash (not by check or money order), and that these payments were made in *1926* during a period about six months from the time the Galler girl left the institution and that he kept this memorandum until the *latter part of 1928 when he destroyed same.* Consider the improbability of that story. He mailed (Exhibit R-7, Case, p. 808) to Dr. Harman on *August 6 or 7, 1928,* a letter demanding $610. He resigned by letter dated August 11, 1928 (Exhibit R-10, Case, p. 812), which was subsequent to his writing of the aforesaid letter, and he testifies (Case, p. 340) that the memorandum *he had kept for two years* containing the amount which he now demanded from Dr. Harman he threw away:

> "Q. You kept no memorandum? A. I did.
>
> Q. Where is it? A. I threw it away.
>
> Q. And when did you throw it away? A. Several months ago.
>
> Q. When? A. After I handed in my resignation and intended to leave the Institution.
>
> Q. Then you threw away this memorandum? A. Everything."

No person is going to believe for a single instant that he would throw away the only possible proof or record of the amount he alleged he had coming to him from Dr. Harman as he alleged, *immediately after he had made demand for the same* and *after he had resigned from the institution* so that his relationship with and necessity to be in the good graces of Dr. Harman, if any existed, need no longer be considered. The reason stated by Bennett for the payment of these monies to the Galler girl for Dr. Harman is utterly ridiculous. The inference that Harold Bennett would have us take from his testimony is that Dr. Harman was "buying his peace". There might be something to it, if only the Galler girl and Harold Bennett knew of the alleged occurrence, but it must be remembered that these alleged payments *began after* "the beans had been spilled" because the Galler girl (testified to by Bennett) had left the institution, was boarding at a boarding house and the payments were made for a period of six months after she had left the institution, when Father Fitzpatrick and Mrs. Harris already knew of the alleged occurrence. Therefore, there was no silence necessary for Dr. Harman "to buy", because the priest, the chaplain of the institution, who was also the spiritual advisor of this girl, and the chairman of the Verona Committee, Mrs. Harris, in direct charge of this institution, and who was the representative of his employer, the Board of Freeholders, also knew it. What was there to gain by his paying money to this girl? The very persons he would want to keep from knowing of the charge, if true, already knew it. The story is too ridiculous and absurd to give credence to except to show again that such a tale only can be conceived in the mind of an

insane person. *The Galler girl makes no pretense of having received the monies.*

Not only does Bennett allege this particular act of bribery, but he would have us believe that the defendant also tried to bribe him, Harold Bennett, by offering, immediately after the hearing before Father Fitzpatrick, to give him equipment for his X-Ray Department and a special camera for his work, which he alleges had been demanded by him theretofore. Only an insane person could and would make these charges, basing them on incidents which may have occurred in part or for other reasons and which were entirely innocent when done in the natural course of the administration of the institution.

Mrs. Harris, Chairman of the Verona Committee, in charge of this institution, of which the defendant is Superintendent, a member of the Essex County Board of Freeholders for the last nine years, and a woman of State-wide reputation for her high character, ability and integrity, testified that after she left the conference at Father Fitzpatrick's home (Case, p. 488) :

> "I said to Dr. Harman after we left there, 'Go in when you have the opportunity to see what he actually requires, if he does require anything.' "

So that what was given to him was at the instance of Mrs. Harris and not to bribe him. Furthermore, the camera was given to him for his department (by referring to Exhibit R-17, Case, pp. 816-817). It is stated, and the aforesaid exhibit was offered in evidence (Case, p. 701) and contained in the bound volume containing the record of the Freeholders for the *year ending December 21, 1925,* to show that there was added in *1925* to the

X-ray Department complete clinical reducing camera, which is the camera given to Bennett by Dr. Harman, which obviously *was a year prior to the Galler girl alleged incident,* which is alleged *to have occurred in August, 1926.*

We will consider now the further testimony of Mrs. Harris, corroborating Dr. Harman, and also Father Fitzpatrick and discrediting the testimony of Galler and Harold Bennett. Mrs. Harris testified (Case, p. 484) that the Galler girl at the time of the hearing before Father Fitzpatrick stated that the alleged attack took place on August 11, 1926, and that Dr. Harman had with him, at Father Fitzpatrick's, his diary. The fact that he had his diary with him corroborates both Mrs. Harris and Dr. Harman when they say that on the previous day Father Fitzpatrick had spoken to Dr. Harman at the institution about this charge and that Dr. Harman had called Mrs. Harris in, who on that particular morning, a Saturday, was at the institution on one of her usual tours of inspection, and at which time the date was mentioned and the doctor pulled out his diary and stated that on that particular day he had gone fishing, the fishing trip being an incident which took most of the day and which would recall to him by association of ideas, other incidents and what his actions were on that day, and he did recall to his memory that he with Dr. Bennett had retired early. Corroborated by Dr. Bennett, *supra* (Case, pp. 627-630). Furthermore, Mrs. Harris testified that the girl when before Father Fitzpatrick alleged that Dr. Harman locked her in the office. She was asked by Mrs. Harris whether one of the two doors in the room has a spring lock and is not locked by a key. This was

corroborated by Dr. Harman. Clearly Galler lied and as Mrs. Harris said (Case, p. 484):

> "Why, you know, Pauline (Galler), the door is on the side of the office that goes into the hall and is locked with a key and the other door has a spring lock, and I am in that office almost every time I am at the Sanatorium and *no one can be locked in that office.*"

And that:

> "She (Galler) was very much confused and didn't know what to say then."

Caught in a lie. Proved false in this instance as well as many others. What portion of her story can be believed? What right has the Supervisor to find as a fact that her story is true in all respects when as a matter of fact she is a *proven liar?*

Furthermore, it is significant, in Mrs. Harris' testimony (Case, p. 488) that she says the Galler girl referred only to *one* incident which occurred and that was the alleged attempted rape in the office, and nothing was said by Galler as to drinking, nothing was said as to an offer of drinks, nor to improper proposals nor going on automobile rides, and yet at the trial under cross examination the Galler girl charges these other incidents after talking to Bennett, and after meeting the Galloway girl, and also contradicts herself as to this very vital and important thing, *the date,* stating under cross examination (Case, pp. 176 to 181, *supra*) under oath, that it could not have taken place later than the early part of *June,* at least two months prior to August 11—the date she told previously to Father Fitzpatrick, and Mrs. Harris, Dr. Harman and Harold Bennett.

We might discuss at this place an incident referred to by the Supervisor in his findings and concerning which he made great stress, and that is the paragraph (Case, p. 2d) where it says:

> "Furthermore, with respect to Miss Galler, the uncontradicted testimony is that she left the institution at the suggestion of her spiritual advisor, Father James, and a short time thereafter *voluntarily appeared* at the rectory of Father Fitzpatrick, the regular chaplain at the Sanatorium (for whom Father James had been substituting while Father Fitzpatrick was on vacation), and narrated her story to him in the presence of Dr. Harman, Freeholder Harris and Mr. Bennett."

It is significant that Father Fitzpatrick was apprised of this alleged incident, *not from Father James,* who, we may assume, normally would report this to Father Fitzpatrick, for whom he was substituting, *nor did he hear it from the Galler girl, which is the finding of fact by the Supervisor, but Father Fitzpatrick, himself, testified* (p. 438), *that the person who brought him this information was Harold Bennett,* and after he heard Bennett's story he then arranged for the hearing before him.

Digressing at this point to show again another false finding of fact by the Supervisor, and not based on the evidence or proof before him, reference is made in his findings (Case, p. 2i) of the failure of the defense to produce a Miss Camblos, and although this had to do with the illegal operation Charge No. 6, which was dismissed, nevertheless a comment at this point is required to

show the general unfairness in his findings of fact in this case by the Supervisor. At page 706 Miss Camblos obviously was intended to be used as a witness by the prosecution, because the record shows:

> "Mr. Vanderbilt: I will do that. I understand, Mr. Supervisor, that Miss Camblass has started down here and should be here at any time. In the mean time I will try to get one or two other witnesses."

Miss Camblos was the woman who it is alleged by Miss Houston told her (Miss Houston) that the operation was an illegal one, and of course Miss Camblos was a necessary witness for the prosecution in order to prove this charge, and it is most unfair to state that the defendant failed to produce her when there was nothing to contradict, which is proved by the Supervisor dismissing this charge.

We shall consider here, more in detail than we have above, the testimony of Dr. Harman and his denial, corroborated by circumstances and contradictions by the Galloway and Galler girls, and also further evidence of the unsound and diabolical mind of Harold Bennett.

We should consider the circumstances leading up to the making of these charges against Dr. Harman as deduced from the record, exhibits and other evidence. Immediately prior (a few days) to the filing of these charges, which are dated December 3, 1928, notice of which was served on Dr. Harman on December 4, he was called to the home of the Supervisor, and attended there, at which time Freeholder Dodd also attended. Supervisor Reed took from his pocket a paper and

stated that some serious charges had been preferred against him (Dr. Harman) and that he had classified them under two headings; one, conduct unbecoming a county employee, and the other unbecoming a physician, and after reading them Mr. Reed said (Case, p. 517, and also Case, p. 611 it is again repeated), and there is no contradiction of this testimony:

> "Mr. Reed said, 'Doctor, it seems to me the weight of evidence is so preponderant against you there is only one alternative.' And then Mr. Dodd interrupted and stated 'Better go into a little more detail.'"

This case was prejudged by the Supervisor then and there and his mind had already been made up as to the guilt of Dr. Harman without having given him a hearing or offered him the opportunity thereof. Consequently, he sat and presided at the "trial" of Dr. Harman already prejudiced and opinionated against Dr. Harman and this is borne out by the character of the rulings throughout the entire hearing and is clear proof that Dr. Harman did not have an unbiased, impartial hearing. The Supervisor, who had this information himself, signed the notice and then sat in judgment upon the very charges and which he had already expressed an opinion upon, as to the guilt of the doctor. If ever there was a case un-American in principle, unconstitutional in fact, and depriving defendant of a fair and impartial hearing and one in which the "judge" is also "grand jury," prosecutor and *petit* jury, this is a most glaring and outstanding example.

Subsequent to that conference at the home of Supervisor Reed, Dr. Harman wrote a letter (Exhibit C-10, Case, p. 790) in which he stated that

he emphatically denied the truth of each of the alleged charges and that they were without foundation in fact and at the hearing Dr. Harman denied the truth of each and every one of the allegations, and such denials in this case, applying the ordinary rules of the weight of evidence, should be sufficient to have dismissed all of the charges, because the complaints have not been sustained, because the testimony of the girls themselves in each instance is without corroboration and itself unbelievable. But the defense has gone beyond that and shown that the stories of the two girls are improbable and unbelievable because in many instances they have been proven to be liars, and such testimony *as was permitted to be admitted* by the Supervisor in behalf of the defendant has clearly shown that both girls are of loose morals, low character and not the type of women whose story might be believed under ordinary circumstances even though corroborative evidence is lacking.

Dr. Harman in his letter to Mr. Reed (Case, p. 791) said:

> "If I were in fact guilty I would welcome the opportunity to resign with as little publicity as possible"

and demanded a public hearing. Is not that exactly what a man would do who is not guilty of these charges? A resignation would have implied his guilt. If he was guilty he certainly would have grasped the opportunity to get out without a public airing of these charges, when his official record would have been clean, but he could not do so in justice to his personal and professional reputation. This attitude on his part

is significant, and should be given weight when the credibility of his testimony and that of all the interested parties is considered. Dr. Harman in his testimony, as would any honest man who has regard for his oath, admits (Case, p. 635) that he has been in his office at night but always with the light on, never in the dark, and it is also admitted that there has been liquor in the office in the daytime for a few moments as testified to by Mrs. Harman; that it was liquor taken away by her from patients who had it contrary to the rules of the institution and was disposed of; he admits that he has taken many employees in his automobile to and from the institution and when he was asked whether he did this with the Galloway girl he stated that he probably had, as he had many other employees, and when he was asked whether he had taken the Galler girls, stated that he has no recollection of same. That is significant because it did not mean anything to him whether he had or had not. He could just as easily have said "No", because the Galler girl herself testified that she never did go out in an automobile with Dr. Harman. The doctor emphatically denied drinking with either the Galloway or Galler girls and at page 496 says that he was informed by his secretary upon his return from vacation that the Galloway girl was discharged during his absence upon the advice of the chairman, Mrs. Harris, because this girl had returned to the institution in an intoxicated condition and was discharged. The fact that she was discharged for intoxication is not reconcilable with her story under examination that she did not drink or did not take more than one or two drinks, of wine.

Dr. Harman denied all love making and the circumstances surrounding the alleged love making

should be sufficient to establish the falsity of the testimony of the two girls.

The circumstances surrounding the 4th charge should likewise brand such an allegation as improbable. It should be borne in mind that neither the Galloway girl nor the Galler girl charged him with coming to their rooms at night but always in the day time, in the middle of the afternoon, when the institution was alive with people, and neither of them ever suggested that these bedroom incidents had taken place, prior to testifying in this case. There were (Case, p. 501) 125 employees at the institution, and (Case, p. 493) about 278 patients, and to believe that the Superintendent of the institution would go to their rooms for the purposes they allege in the day time and run the risk of being seen by these employees and patients is highly improbable, when, if the stories of the girls are true, it was only necessary to call them to his office after dark and they would come.

Another significant bit of testimony by Dr. Harman concerns the "blackmail" letter (Exhibit R-7, Case, p. 808). When this was received by the doctor, which would be around the 8th or 9th of August, 1928, he immediately sent for Harold Bennett as soon as the latter returned from his trip (Case, p. 514):

> "Q. To whom did you show the letter? A. To the Chairman of the Committee. I showed it to Mr. Bennett as soon as he returned. I immediately sent for him on his return and I pulled this out of my pocket and I said to him, 'What the hell do you mean by sending me a letter like this?' I said, 'Are you trying to blackmail me?' He said, 'You know what that's for.' I said,

'That's all I have to say.' I put the letter in my pocket again.

Q. Had you shown it to anybody else before that, or when did you first show it to Mrs. Harris? A. The day I received it.

Q. Did you also show it to Mrs. Harman? A. Yes, sir.

Q. What next occurred between you and Bennett personally? When did you next see him, if you can recall, after this interview that you have just referred to? A. A few days later.

Q. I show you Exhibit R-10, which is a resignation. Was that handed to you? A. No, sir.

Q. How did it reach you? A. I don't know; I found it on my desk.

Q. What is the date of that letter? A. August 11, 1928.

Q. Do you recall when the interview between you and Bennett after his return from St. Louis took place that you showed him what you call this 'blackmail letter'? What date was it? A. May I look it up and see if I have a note of it?

Q. Yes. A. August 10th.

Q. Did you show Exhibit R-7 which is what we call the blackmail letter, to Father Fitz? A. Yes, sir.

Q. When was that? A. August 10th.

Q. And the next step in the progress of events was the finding on your desk of the resignation? A. Yes, sir.

Q. Which is before you? A. Yes, sir."

Is it the act of a man guilty of such charges to immediately show this letter to Mrs. Harris and to his wife, and to Father Fitzpatrick? Is it the act of a man who has an honest claim, as

Bennett alleges he has, for monies advanced, immediately after his return, when he is confronted with this letter and asked, "What the hell do you mean * * * are you trying to blackmail me?" to tender his resignation? (Exhibit R-10, Case, p. 812). Bennett knew then that he had no claim and that his bluff did not work and when his guilty conscience felt that Dr. Harman would probably have him ousted from the institution for making such an outrageous charge, he tried to anticipate such discharge by tendering his resignation. The circumstances surrounding this letter as testified to by Dr. Harman are corroborated by the testimony of Mrs. Harris and Father Fitzpatrick. We can't escape the conclusion that Bennett was insane and his hand and work is to be seen throughout this entire affair.

Bennett is so impressed with his own importance and suffering from such an insane exaltation or delusion of greatness that he says (Case, p. 315):

> "I am the State Representative of the State Association of Radiologists. This is my second term."

and in his letter to the Supervisor which contained the charges originally brought against Dr. Harman upon which he was tried and to which he offered no evidence and of which Dr. Harman nevertheless was acquitted and the charges dismissed, there is contained this (Exhibit R-8, Case, p. 809):

> "Being the State representative (in second term) for the technical field of the X-Ray, it is obligatory to report the condition to the proper authority in the organization."

and in Exhibit R-9 (Case, p. 810), in a letter

addressed to Dr. Harman Bennett again says about himself:

> "The writer is the New Jersey Representative (second term) of the technical phase of the X-Ray field", etc.

and for Dr. Harman to interfere with his X-ray department by removing his nurses therefrom and rotating them, for the administrative welfare of the institution without consulting him, was a terrible blow to his inordinate pride and dignity and considered by him without doubt a personal affront and is the reason for his insane desire for revenge and to oust Dr. Harman and get in someone (Dr. Eastwood, Exhibit C-11, Case, p. 792) who would feel grateful and under obligation to him and who would not interfere with his department.

In addition to the testimony already before this Court showing that every witness offered by the prosecution (with the exception of those to prove records in connection with the Galloway, Galler and Rose charges) was produced by and at the instigation of Harold Bennett, there is also another point to be considered to show the Harold Bennett interest in this matter (Case, p. 278). It was testified to by Miss Russo that a few weeks before the hearing of the charges now before this Court for review, Bennett sent his nurse to the record room at the institution to Miss Russo who was in charge thereof and obtained the file concerning the record of Miss Rose, the patient who was alleged to have been operated on for an illegal operation, but which charge was dismissed, and that those records were in Bennett's possession a number of days when he could have done with them as he pleased before he

returned them by the same nurse. Why his interest in the Rose case? Certainly no one but Bennett took the initiative in this matter. It was not taken by Mr. Rose, the father of his patient who died, and who was a witness offered by the defense (Case, p. 452).

With a more detailed examination of the testimony given by Bennett we conclude our analysis of the testimony given in this case. It is of great interest because it is so filled with palpable falsehoods, inconsistencies and must be the statements of one of unsound mind. At page 318 he testified that Dr. Harman admitted at the hearing before Father Fitzpatrick that he had given the girls at the institution drinks and on cross examination (Case, p. 335) he limited the giving of drinks to operators, and he further says that Harman stated that he (Harman) did it to "test them for responsible position on the board." This is flatly denied by Father Fitzpatrick and Mrs. Harris and Dr. Harman and that there was nothing said about drinks or drinking. Why conduct such a test? It could only be conceived in a "crazy brain".

And at page 325 Bennett says he asked for *"a brief leave* of absence" to attend a convention and testifies:

> "I told them I had to go to St. Louis. He asked me how long it would take and I said it might be *five days* or it might be *five weeks."*

Such a statement could only be made by someone who did not know what he was talking about. If ever there was an incoherent statement it is the testimony he gives beginning at the bottom of page

324 and continuing to the bottom of page 325. Incidently, Bennett's statement (Case, p. 325) "the next day Father Fitzpatrick came to my office, and asked me what of this—(having reference to the "blackmail" letter addressed to Dr. Harman and about which Dr. Harman testified he spoke to Father Fitzpatrick) corroborates Dr. Harman in all respects. Father Fitzpatrick testified to this incident (Case, p. 443) and Bennett admits writing out his resignation and sealing it and had a nurse put it on Dr. Harman's desk (Case, p. 326).

It will be noted that this resignation followed the interview with Father Fitzpatrick, concerning which Father Fitzpatrick made it his business to see Harold Bennett, the matter having been taken up with him by Dr. Harman and is not the same kind of resignation which Father Fitzpatrick (Case, p. 444) testified, Bennett gave once or twice a year—more evidence of an unstable mind.

At page 332 Bennett testified the Galler girl told him over the phone of the annoyance by Dr. Harman and at page 316 Bennett says Father Fitzpatrick called him (Bennett) on the phone and when he "got to the hearing" at Father Fitzpatrick's villa he then learned what it was all about; but it was testified to by the others, Mrs. Harris, Dr. Harman and Father Fitzpatrick that Bennett and the Galler girl came together and that they got there before Mrs. Harris and Dr. Harman, which is a flat contradiction of Bennett, and one cannot tell what part of his story may be believed and what must be discarded as being false, and the Supervisor consequently should have disregarded Bennett's story in its entirety.

Bennett (Case, pp. 338-341) tells of giving money to the Galler girl *possibly* $100 and a few

weeks or a month later another $100 and again in a few weeks giving her $100 in an envelope and then again, less, *possibly* $50, all of these payments being made in *1926*. We have commented heretofore on the improbability thereof with respect to the memorandum he alleged he had kept concerning this but we further question the probability of this story and allege that the most probable construction to be placed thereon is as follows: We believe that the money was given to the Galler girl by Harold Bennett over a period of about six months, from the date she left the institution. At page 343 he says he gave her money during the next three or four months and in another part of his testimony says over a period of about six months. It will be recalled that Father Fitzpatrick (Case, pp. 449-450) stated as follows:

> "Q. And you never communicated further with Miss Galler with reference to it? A. The only time was when she called me up, to my recollection, about taking up the position *as an extra stenographer to Mr. Bennett.* That is, to do work that he might have—extraordinary work. She said she would need the position and I said it was better for her to get work elsewhere."

Bennett undoubtedly was friendly with this girl and he testified (Case, p. 346):

> "She said that when she had left there she was out of a position and that she wanted to *take up some sort of a course* in order that she could work elsewhere."

Also at this point it is to be observed (Case, p. 347):

> "Q. When do you say you had last seen

the Galler girl before August, 1928? A. Before August?

Q. Yes. A. I would say it had been a year and a half approximately."

As a matter of fact, in August or September, 1927, he was in an automobile with her which was in a collision with the Tates (we referred to their testimony, *supra*), and at page 403 Bennett started to say that he had paid at Dr. Harman's request, but corrected himself:

> "Q. Did you do it voluntarily or had someone else requested it? A. I did it at Doctor—it was the result of a request of Dr. Harman to me to attempt to quiet the infuriated girl, or something to that effect. He didn't tell me to spend five cents or five dollars or $500."

This entire amount of money that he alleged was paid within six months we know is just about the duration of a business college course in stenography. He was educating her for his own purpose, offering her a position with himself as stenographer, as told by the Galler girl to Father Fitzpatrick, and again with the cunning of an insane mind making use of these payments to have it inferred therefrom that they were being made by him at the request of the doctor to buy the silence of the Galler girl. He admitted at page 338 it was his own money and at page 346 that Dr. Harman did not know a thing about it and at page 403 that Dr. Harman did not tell him to spend any amount whatsoever and *that the first time he ever* mentioned this *alleged payment* of money *was two years later in 1928,* not by personal demand which he admits he never made of Dr. Harman, but by letter and which he sent

by air mail, the fastest means possible after this delay of two years and when he himself intended to return and did get back to the institution two or three days later. Utterly ridiculous, and its inconsistency and improbability can only be explained by the fact that Harold Bennett is of unsound mind. He could not clearly tell the amount he alleges he spent and counsel believes that Bennett had in mind the same scheme that he tried to concoct when he made the charge against Tate, of trying to compel someone else to pay money that he wanted and could not otherwise get, even though it meant the making of (or caused to be made) false charges.

At page 361 Bennett testified of having gone to a conference in Chicago and that the expenses were $300 and that because it had not been taken up properly with the Board of Freeholders and that he wanted his money back and undoubtedly charged Dr. Harman with being responsible for his not being repaid this sum; and also he testified that he desired at another time to attend a convention in California, in July, 1928, and that the approximate expense was $500 and these sums, being in his mind, probably made up the $610 that he wanted and constantly having them in mind it became his insane idea that Dr. Harman owed him such sum. There is no other reasonable inference which can be drawn from the testimony in this case. We cannot explain the workings of an insane mind.

Bennett also denied (Case, p. 397) hunting up other former employees of the institution but under cross examination admitted he did, and the witnesses, Galler, Galloway, Houston, Travers, Russo, Englebert, all testified that Bennett talked to them or had seen them about this case and *in every instance prior to the filing of the charges.*

So, it is again proved that his testimony is false and not to be believed, and further establishes his insane determination to "get" Dr. Harman.

It is submitted that the case *sub judice* is, on the facts, a gross miscarriage of justice—a finding of fact, damning a man's personal and professional reputation, not decided in accordance with the weight of evidence, and that it gives no rational basis for the finding and order of the Supervisor.

V.

The facts with reference to Mrs. Travers and her quitting the institution cannot possibly be relied on as a cause for the discharge of Dr. Harman.

Charge No. 11, which is as follows (Case, p. 750a and Case, p. 2k):

> "11. In that on or about November 21, 1928, you discharged Eloise Travers from her position as Night Supervisor at the Essex Mountain Sanatorium without cause stated in writing after opportunity to be heard, contrary to the provisions of Chapter 278 of the laws of 1922."

The notice of this charge, it will be noted, is dated January 22, 1929. This date is of extreme importance and significance in this case and *the charge was added after the testimony concerning the other ten charges had been completed.* Eloise Travers was an early witness in the case and gave testimony for the "prosecution", beginning with page 240. She was produced personally to testify

concerning the destruction of a letter written by Dr. Harman concerning Henrietta Rose, mentioned in two of the charges which charges were dismissed and are not before this Court for consideration, except for the following:

On cross examination by Mr. McCarter, she was asked whether she was discharged and she stated that she was and that she understood it was because of neglect of duty, on her part. She was asked (Case, p. 245):

> "Q. Who, in fact discharged you? Dr. Harman? A. *I take it* that Dr. Harman did discharge me because——"

She makes no direct allegation that she was in fact discharged by Dr. Harman. When we consider all of her testimony, much of which was objected to by the defense, and also the testimony of Dr. Harman on cross examination, all of which, in so far as it concerned the Travers woman was elicited over most strenuous objection on the part of the defense, as being inadmissible, it will be seen that in fact she was not discharged, but it was *suggested that she leave.* This is not an attempt to quibble over the meaning of words, but it is the fact that she knew she had been involved in an incident in which she did not bear a blameless part, and when this was brought to her attention, and she was told she had better look for another position, *she left voluntarily.* She was not discharged in the sense that she was told to get out, at once, but was told to look for another position which meant that she was not wanted and if she did not, then perhaps charges would have been brought against her for purpose

of dismissing her. Dr. Harman stated (Case, p. 52):

> "Q. You asked for her resignation? A. I did not ask for it. I told her she had better look for another position."

It is to be noted that Mrs. Travers gave her testimony as aforesaid on *December 14, 1928,* and that the question of her discharge came up in an incidental way on cross examination. It is also to be noted, as it is an admitted fact (see statement of counsel for Supervisor, p. 552) that "the day following the giving of her testimony she either fell or threw herself in front of a subway train" and was killed (also Exhibit C-13, p. 793). The defense had no knowledge that a charge was to be made as set forth above in Charge No. 11 and consequently did not make effort to cross examine her concerning the incidents surrounding her leaving the hospital. There was no charge of this nature then pending and obviously, questions going into her discharge were clearly immaterial and irrelevant with respect to the other ten charges then pending against Dr. Harman and for which he was being tried. From page 562 to page 581 when the prosecution endeavored to bring out by cross examination of the defendant the incidents connected with and surrounding the leaving of the institution by the Travers woman, counsel for the defense objected strenuously to the admission of such evidence on the ground that it was an attempt to add to the charges against Dr. Harman when in fact there was no charge then made against Dr. Harman that he had discharged an employee without a hearing contrary to the statute.

We might say at this point that counsel for the prosecution at page 572 said:

> "Mr. Vanderbilt: *I am not urging that as a charge against him,* Mr. Supervisor, but as going against the testimony which he gave here yesterday morning."

We have no particular quarrel, although we maintain that all the evidence concerning the alleged discharge of the Travers woman was immaterial in this case, with the admission of the testimony of the Travers woman, in so far as it may have been an attempt to attack the credibility of Dr. Harman, but we do say that the testimony so brought out could not be made the basis of an added charge. The Travers woman, when the charge was added in January 22, 1929, was not subject to cross examination, because of her death, which deprived the defendant of a substantial right.

The Supervisor by no stretch of the imagination can justify a finding that Dr. Harman was guilty of Charge No. 11 made and given to him on January 22, 1929, based upon immaterial and irrelevant testimony and which the defense made no effort to go into because of its clear inadmissibility at that time. Not one, but many times did the defense object to these questions concerning the alleged discharge of Mrs. Travers when asked on cross examination of the defendant and in particular at page 579 objection was made as follows:

> "Mr. McCarter: I say it is a perfect outrage to pursue this examination that has now lasted an hour *concerning a matter over which there is no charge here against*

Dr. Harman. It is utterly irrelevant as to the propriety or impropriety of his action, whatever his action was, whenever she left the Institution.

The Supervisor: It does concern the doctor's testimony and the testimony of Mrs. Travers."

The inference to be drawn from that statement of the Supervisor is that the testimony was admitted by him for purpose of attacking the credibility of Dr. Harman, but that statement coupled with the previous one made by counsel for the prosecution (Case, p. 572 as above set forth) lulled the defendant into the position that it was not going to be the basis of a new charge against Dr. Harman, and therefore no further examination of Travers was made by the defendant.

As clear proof of the unfair tactics of the prosecution in this case we refer to Exhibit C-12, Case, page 792, which reads as follows:

"315 East 18th Street,
Brooklyn, N. Y.
Nov. 25th, 1928.

Hon. Ernest A. Reed,
Hall of Records, Newark, N. J.

My dear Mr. Reed:

Could you arrange a hearing for me in the matter of my having been discharged from Essex Mountain Sanatorium, as I was? *If you could, and would, do this it would need to be early in the week,* as my plans are, of necessity under the circumstances, vague. I must, of course, be looking for a position, and must get myself settled at the earliest possible moment.

The more I think of the matter, the more I feel that a great grave injustice has been done me, and the more sure I am that the matter should be threshed out. It is a serious charge that of neglect of duty, to bring against a nurse, and I do not feel that I deserve such a charge. I am willing to admit an error of judgment, if that decision should be reached by a hearing. I did, however, the thing that seemed to me right at the time, and I do not admit neglect of duty.

Thanking you for your courtesy to me. I am,

Very truly yours,

ELOISE D. TRAVERS, M. D."

It will be noted this letter, written November 25, 1928, can not be called a "complaint". That she was discharged "without cause stated in writing as required by the statute". No step was taken by Mr. Reed until after the death of Mrs. Travers and when it was apparent that most of the charges would have to be dismissed—and then he construed the letter as Charge No. 11 and with a determination to get rid of Dr. Harman, contrary to his own statement, above quoted, determined to use the evidence already in in support of the charge.

Even in that letter she admits that she might have been guilty of an error of judgment, not necessarily a neglect of duty, and desired a hearing *immediately.* The exhibit is referred to principally, however, for the reason that it is dated *November 25, 1928, before* any of the other ten charges were made and served upon Dr. Harman and she asked for an immediate hearing. The Supervisor had that letter in his possession from

that date until January 22, 1929—a period of two months. Throughout the entire protracted hearing in this case which took from 12 to 14 days of actual trial and notwithstanding the numerous objections made time after time during the cross examination of Dr. Harman where it was stated in the course of these objections by counsel that there was no charge before the Supervisor against Dr. Harman with respect to the improper discharge of the Travers woman, the Supervisor did not state that it was his purpose to add this charge, which he did on January 22, 1929, after the hearing was complete with respect to the other charges and when Eloise Travers was not available for cross examination.

It is submitted that such action on the part of the Supervisor and his counsel, both of whom had knowledge of her letter, the former having possession of it, and also the fact that counsel for the Supervisor acted as prosecutor as well as advisor, to the Supervisor, on the admissibility of evidence, is an example of the unfair and prejudicial manner in which this "investigation" was conducted by the Supervisor. It is submitted that Dr. Harman cannot be "tried" in the present proceeding on Charge No. 11 in the manner in which he was and the admission of all testimony concerning same and the bringing of this charge against him based upon that testimony is clearly illegal and outside of the jurisdiction of the Supervisor.

With further reference to the circumstances surrounding the making of Charge No. 11, perhaps it is well to go into the details thereof. It was added on January 22, 1929 (Case, p. 702), not at the request of Mrs. Travers, who was dead and who had died December 18, 1928 (Exhibit

C-13, p. 793), but at the instance of Mr. Vanderbilt, legal advisor to the Supervisor and "prosecutor" in this case, it being stated as follows:

> "Further, in view of the testimony which has come out in the hearing, and because of the representations which have been made to me by her friends, I would like to move that the complaint in the case be amended to add an 11th paragraph reading as follows" and then he set forth Charge No. 11.

This was most strenuously objected to by counsel for the defense and further objected to in detail (Case, p. 723). Attorney for the prosecutor stated (Case, p. 716):

> "Mr. Vanderbilt: I might say of this 11th charge that I have offered all the evidence I intend to offer on it with the exception of putting in Mrs. Travers' letter."

The letter was offered in evidence (Case, p. 722) over objection on the ground that it was not proved that it had been written by her. Obviously, the circumstances clearly prove that County Counsel was the prosecutor and also the legal advisor of the Supervisor on the admissibility of evidence—a most unheard-of procedure.

Furthermore, the statute reads that the discharge shall be "for cause stated in writing", but does not state that the writing must be made by the Superintendent but obviously could be made by anyone. Testimony shows that in the report of the County Detective making the investigation for the prosecutor's office and his report to the prosecutor and which report was given to Dr. Harman, was a written report and contained the

recommendation that someone else be placed in her position (Exhibit C-8, Case, p. 784, l. 20). Furthermore, Mrs. Travers was confronted with the charge and at the suggestion that it would be better for her to get out under the circumstances and knowing that she was certainly subject to criticism by reason of her conduct, did get out. The only official record shows that she "resigned" (Exhibit R-18, Case, p. 817). As a matter of fact, the statute obviously is intended as a protection to an unfairly or unlawfully discharged employee and is intended to protect county employees in their position unless lawful charges are made. The entire question here is academic and no court in this State under our procedure permits consideration of questions purely academic. Assuming, merely for argument, that she was discharged improperly, nevertheless she was dead at the time the 11th charge was made against Dr. Harman, and if he was in fact guilty the finding would be a reinstatement of Mrs. Travers which, of course, by reason of her death, was impossible. Counsel for the defense, of course, at the conclusion of the hearing not only moved for the dismissal of this charge, but likewise all the other charges (Case, p. 746).

It is submitted to the Court with reference to the 11th charge, that same was brought about in the most unfair manner possible and in a manner greatly prejudicial to the rights of the defendant. Referring to the examination of Dr. Harman concerning the Travers incident (Case, pp. 562, *et seq.*), throughout which the defense objected to any testimony concerning same, it is quite apparent from the state of the record that the "prosecution" was endeavoring to bring in testimony with

the intention at that time of subsequently making this 11th charge or a charge concerning discharge by Dr. Harman of employees. At Case, page 583, following the effort of the prosecution to get the details of the leaving of the institution by Mrs. Travers and the Galloway girl, counsel for the defense stated:

> "Mr. McCarter: That I object to. He wasn't there. Is it possible that the propriety of something that Mr. Butterworth did in the absence of Dr. Harman is the subject of investigation here? *If the effort by this evidence is to make a foundation for a new set of charges against the doctor, I would like to know it, and if the Supervisor is using these proceedings to make a new set of charges against the doctor, I would like to know that.*
>
> The Supervisor: *I assure you that is not the case.*"

Consequently, with the assurance of the Supervisor that all this testimony concerning Mrs. Travers and the Galloway girl with respect to the circumstances under which they left the institution was not to be the basis of new charges and the reliance upon the Supervisor's statement to the defense as aforesaid and as a consequence not making further effort to cross examine and prepare a defense which otherwise would have been done, the defendant has been most grossly prejudiced in this case.

It is of importance to be considered in this case that the record (Exhibit R-18, Case, p. 817) shows Mrs. Travers *resigned* November 30, 1928, and that this card was not made by Dr. Harman nor at his direction. Whoever put that informa-

tion on the card must have been informed that she resigned and was not discharged.

Assuming, however, that the tardy presentation of the 11th charge, after the death of Mrs. Travers, was, under the circumstances, proper and that the proofs justify the conclusion, which we deny, that she was discharged, it is evident therefrom that no malice or improper motive existed in the proceeding by Dr. Harman; that he did not know of the provision of the statute, or if he did, his failure to act strictly in accordance therewith was a matter of inadvertence and the whole thing is a mere technicality which does not justify a removal. In *Sharp* v. *Brown,* 221 Pacific Reporter 139, it was held that while an evil motive is not essential in the performance of the act relied upon to justify a removal, it must appear that the officer has purposely and intentionally failed to obey the law.

In 46 Corpus Juris 993, Section 166, the author, after showing the statute permitting a hearing before the removal of an officer was not enacted for the purpose of mitigating or excusing misconduct on the part of honorably discharged soldiers, states:

> "The charges justifying removal, however, must be substantial, and not trivial or technical, or showing mere error of judgment, without bad faith or evil purpose." Citing *Davis* v. *Sayer,* 200 N. Y. Supplement 134, and *People* v. *Whitney,* 127 id. 554.

In *Sharp* v. *Brown,* 221 Pacific Reporter 139, an officer was removed for his refusal to perform official duties required of him by law. The proceedings had been summary and resulted in the

removal of the officer for his failure to have appointed a subordinate. The Statute required such appointment. The Court said:

> "Not every infraction or departure from the strict letter of the law will subject an officer to removal under this statute, for the law does not concern itself with trifles, nor does it require a degree of efficiency and exactness in the performance of official duties that cannot be reasonably complied with in the exercise of ordinary care and diligence."

and held that the neglect, refusal or failure to perform official duty will only justify removal when the duty has been purposely and intentionally ignored, and the officer has substituted his own method of performing such official duties for that which the Legislature has prescribed. The conclusion of the Court was that a public officer should not be removed unless he has refused or neglected to perform an official duty pertaining thereto in some substantial respect, which under the existing conditions would lead all reasonable minds to conclude that the act complained of was an intentional violation of the law. A reasonable effort to perform the duties pertaining to public office is all the law requires.

Respectfully,

SORG, DUNCAN & BAILEY
(GEORGE B. BAILEY),
Attorneys of Prosecutor.

ROBERT H. MCCARTER,
Of Counsel.

APPENDIX.

Conclusions of Chief Justice Gummere.

"I have considered the application for a writ of certiorari to review the action of the County Supervisor in considering the charges made against Dr. Harman, with the following results:

The principal ground on which the application is based, as I gather from the arguments, is that the Supervisor is without jurisdiction to consider the charges which were made against Dr. Harman. The statutory provision upon which the Supervisor's action was based provides that 'it will be the duty of the County Supervisor to exercise a constant supervision over the conduct of all subordinate officers and employees, and to examine into all complaints made against any of them for violation or neglect of duty'.

The contention is that the Superintendent of the tuberculosis hospital is not a subordinate officer and, therefore, that the provision cited does not apply. If this was pecfectly clear I should think that the writ ought not to be allowed, notwithstanding that the application was not made until the investigation of the truth of the complaint had been begun, this being the doctrine of the case of *Mowery* v. *Camden*. But that is not the present situation; in other words, it is at least doubtful whether the statutory provision which I have referred to does not embrace the Superintendent of the Sanatorium.

That officer is appointed by the Board of Freeholders, under the statute, or by a committee of that board. Each member of that body is a county officer, and he is their subordinate in the

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