

**Minutes of the
New York State Racing Commission**

1937

March 2, 1937

MEMORANDUM

After a discussion, it was agreed that, apart from the personnel being satisfactory, public convenience and protection required a minimum of eighteen layers in the clubhouse. It was explained that while the Racing Commission took no official cognizance of wagering, it would look to Mr. Cavanagh (ring master), a committee of the layers and the track management to see that the public was served. It was reported and accepted that 20 layers had been regulars in the clubhouse and it was reported that 20 would continue. Also it was reported, and agreed to by the layers committee, that the number should not go below 18. Those desiring to operate in the clubhouse must do so under the name and with the cooperation of a present position holder. In case of vacancy, seniority of association with the tracks, and application should govern. The candidate must be vouched for by the ringmaster as reputable and financially responsible. The ringmaster was to report on this to the track managements.

Note: The rule regarding layers in the clubhouse being required also to operate in the ring, was abrogated.

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Proceedings of a Meeting of the New York State Racing Commission, held Tuesday, March 9, 1937, at the office of the Chairman, Herbert Bayard Swope, 30 Rockefeller Plaza, New York City, at 2:00 o'clock, P. M.

Present:

Mr. Herbert Bayard Swope
Mr. John Hay Whitney
Mr. John Sloan
Mr. John F. Shevlin

Chairman Swope presided and Secretary Shevlin kept the minutes.

Minutes of the last meeting were approved without reading.

Note was made of the daily telephone conferences between the Chairman and the Secretary.

The Chair placed before the meeting the racing dates as petitioned by the racing associations of New York. These dates were unanimously approved and passed. They are as follows:

Thursday, April 15 through Saturday, May 8	Jamaica 21 days
Monday, May 10 through Saturday June 5	Belmont 24 "
Monday, June 7 through Wednesday June 30	Aqueduct 21 "
Thursday, July 1 through Saturday July 24	Empire 21 "
Monday, July 26 through Saturday August 28	Saratoga 30 "
Monday, August 30 through Wednesday Sept. 15	Aqueduct 15 "
Thursday, Sept. 16 through Saturday October 2	Belmont 15 "
Monday, Oct. 4 through Saturday October 16	Jamaica 12 "
Monday, Oct. 18 through Saturday October 30	Empire 12 "
	171 "

HUNTS MEETINGS 8 days

Rockaway Steeplechase	Cedarhurst	Spring, Saturday May 8.
" "	"	Autumn " Sept. 11.
Fairfield & Westchester	Rye	Monday, May 31.
United Hunts	Roslyn	Saturday, June 12
" "	Belmont	Tuesday, November 2.
Adjacent Hunts	Rye	Monday, September 6.
Meadow Brook	Westbury	Saturday, September 25.
West Hills	Huntington	Tuesday, October 12.

The Chair suggested that if in an emergency a member of the Commission should be called upon to act as Steward, it would be wise if each of the Commissioners took an eye test for distance and colors, which is required of the racing stewards and placing judges. The motion was approved.

The meeting took cognizance of a letter from Algernon Daingerfield, Assistant Secretary of the Jockey Club, in which he inquired whether a certificate from the Manhattan Eye, Ear, Nose and Throat Hospital, after an examination of the officials, would be satisfactory to the Commission. This was agreeable to the Commission.

The Secretary was instructed to notify the Saratoga Association to inform the Commission when the work of renovation, now under way at the track, is completed, so that the Commission may inspect and approve the changes before a public exhibition is given.

The Secretary was further instructed to notify all racing associations to install the proper equipment for the sterilization of jockeys' saddle cloths, etc., between races, and that the associations take steps to have a physical examination of each jockey.

The meeting took cognizance of the complaints and votes taken in Florida by the trainers opposed to the Australian Barrier. It was the view of the Commission that the trial given the Australian Barrier at Hialeah is inconclusive, and for the best interests of racing, the associations in New York which wish to continue starting two-year-olds from the Barrier, be permitted to do so.

The Commission approved and agrees with the action taken by the Committee created by the Jockey Club to study the Australian Barrier, which recommended that the gate be adopted by the racing associations in New York State.

The Commission voted to confer with the Jockey Club before the racing season commences, on this subject and other matters of racing interest.

The Chair placed before the meeting a list of the racing stewards to act in New York representing the Jockey Club. These officials were approved pending results of the eye test. They are as follows:

- Mr. George H. Bull, to officiate at the Spring meeting of the Metropolitan Jockey Club.
- Mr. P. A. B. Widener, to officiate at the Spring meeting of the Westchester Racing Association.
- Mr. H. W. Maxwell, to officiate at the Summer meeting of the Queens County Jockey Club.
- Mr. A. H. Morris, to officiate at the Summer meeting of the Empire City Racing Association.
- Mr. F. S. von Stade, to officiate at the Summer meeting of the Saratoga Association.

The Steward of the Commission, Marshall Cassidy, was empowered by the meeting to sit with the Licensing Committee of the Jockey Club, consisting of Messrs. J. E. Widener, Joseph E. Davis and A. H. Morris, on all matters concerning the licensing of trainers and jockeys.

The Chair discussed the method of taking the saliva, and as a safeguard it was moved by Commissioner Whitney, and approved by the Commission, that only one empty jar be taken to the saliva barn each time for the sample of saliva to be drawn from the tested horse. The supply of jars is to be kept in the Commission office and before each race the Assistant to the Supervisor of Saliva Tests will be present at the Commission office to take one jar for the following race.

The Commission recommended that the racing associations take up with Mark Graves, President of the New York State Tax Commission, the tax exemption of owners' badges, which has been denied by the Tax Department.

The Secretary was instructed to communicate with the License Committee of the Jockey Club and with Marshall Cassidy, to determine whether they thought any action should be taken in the suspension of Emerson Davis, a second offender against the saliva test. Mr. Davis was suspended indefinitely on August 25, 1936, after a test had shown the presence of coramine in the saliva of the horse Shoeless Joe, which ran and won at the Saratoga racetrack on August 18, 1936.

The Chair informed the meeting that he had been in communication with William Woodward, Chairman of the Jockey Club, on the subject of racing so-called half breeds. Mr. Woodward had informed Mr. Swope that he was sure some agreement could be made whereby horses racing under recognized jurisdictions may be allowed to race in New York regardless of their presence in the stud book.

There being no further business before the Commission, on motion, duly seconded, the meeting adjourned.

John S. Shewlin
Secretary.

Proceedings of a Meeting of the New York State Racing Commission, held at the office of Chairman Herbert Bayard Swope, 30 Rockefeller Plaza, on Wednesday, April 14, 1937, at 4:00 o'clock P. M.

Present:

Mr. Herbert Bayard Swope
Mr. John Hay Whitney
Mr. John Sloan
Mr. Marshall Cassidy
Mr. John F. Shevlin

Minutes of the preceding meeting were approved and passed without reading.

The Secretary reported the daily telephone conferences with the Chairman on routine and administration business.

The Commission discussed, informally, the Michell case now pending before the Florida Racing Commission and went over the precise detail of the New York laboratory test.

The Chair informed the meeting that the positive test for strychnine, on which the Florida Commission acted, was not analyzed in the Racing Commission Laboratory, but by Seil, Putt & Rusby of New York. This came from Dr. Catlett. The positive for strychnine that the laboratory reported was on a later experimental sample.

The Commission discussed the possibility of the passing of the bill legalizing dog racing and the Chair stated he was preparing a tentative budget and administrative formula, since it was likely the bill would pass.

The Chairman read a letter received from Commissioner John Sloan, requesting certain investigations to be made on betting conditions in the clubhouse. The explanation was made that because of betting's twilight zone, the Commission could not take direct action. The Secretary was instructed to assign an inspector to the clubhouse and ring to watch the volume and prices quoted and to pay particular attention to variations.

The Chairman informed the Commission that the new prices to be paid by the layers for the privilege of operating would be \$100 at all tracks in the clubhouse and \$75.00 in the ring. The ring price will be \$80.00 at Belmont. This tariff was set by J. E. Widener and the representatives of the other tracks.

The Secretary was instructed to analyze the Jamaica and Belmont figures on attendance and receipts, on a suggestion made by Commissioner Sloan, to consider a reduction in admission prices.

The Secretary was instructed to inform James G. Catlett, the Supervisor of Saliva Tests, that the trainer or his representative must be present in the saliva barn until the sample is sealed.

Chairman Swope read the Commission a letter received from Commissioner Sloan, requesting information on the financial phases of the new camera to be used for the finishes in New York. Steward Cassidy was instructed to answer Mr. Sloan's questions in writing and send copies to each of the Commissioners.

The Secretary was instructed to communicate with John G. Cavanagh, Ringmaster, and request from him a statement as to the subject of bookmaking on their own, by messengers in the grandstand. The Secretary was instructed to station a man in the grandstand at all times to note if this practice was prevalent.

Commissioner Whitney informed the meeting that he was having figures compiled with an end to raising the minimum purses in New York to \$1,500.

The Chair informed the Commission that after a conference with the Civil Service Commission, the positions of Supervisor of Saliva Tests, Racing Diagnostician and Assistant to the Steward, were placed in the exempt class. The positions held by the inspectors who are retained over the winter months, were declared open to Civil Service examination. The summer staff of inspectors was placed in a non-competitive class.

The Chair informed the meeting that all annual reports of other Racing

Commissions in the United States have been following the model laid down by this Commission.

The Chair announced, after discussion, that at a meeting with the Jockey Club, the Commission would discuss the question of requiring each horse to run a straight course for the first sixteenth of a mile after each start.

Reports of eye tests of the placing and patrol judges employed by the Jockey Club were laid before the Commission and approved.

The Chair announced that the Commission was in receipt of an appeal for a hearing from Charles Pillon. As Mr. Pillon had not been refused a license, it was decided that the request was not in order. The Secretary was instructed to communicate with Algernon Daingerfield of the Jockey Club, to get more particulars on the Pillon case.

The Chair informed the meeting that Commissioner Mark Graves of the Department of Taxation and Finance, had finally approved the tax exemption of owners of horses at the request of the Racing Commission.

It was unanimously agreed that all tracks must apply for approval by the Commission of all construction work done on their grounds.

There being no further business before the Commission, on motion, duly seconded, the meeting adjourned.

John S. Shwelin

Secretary.

FROM THE OFFICE OF THE CLERK OF THE SENATE, 77 NASSAU ST., N. Y.

Proceedings of a Meeting of the New York State Racing Commission,
held at the Commission Office, Aqueduct Racetrack, Aqueduct, L. I., on
Saturday, June 26, 1937, at 3:30 o'clock, P. M.

PRESENT:

Chairman Herbert Bayard Swope
Commissioner John Hay Whitney
Commissioner John Sloan
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

The minutes of the previous meetings were approved and passed without reading.

The Secretary reported to the Commission the daily telephone conferences held by the Chairman with him and the Commission Steward on routine matters.

The action taken to reinstate Emerson Davis, first over the telephone and later confirmed at an informal meeting at the racetrack on June 14th, was formally approved. The suspension was raised as of June 15th. Emerson Davis was the trainer in charge of Connie Smyth's "Shoeless Joe", a saliva test of which showed a positive trace of coramine after its winning race of August 18, 1936. An indefinite suspension was imposed on Mr. Davis on August 25, 1936.

Steward Cassidy reported to the Commission that his investigation on the tampering with Alvin Untermeyer's "Jungle Chase", entered but scratched on June 19th, was completed. A copy of the report is attached herewith.

As a time schedule of hands at the Untermeyer stabled placed the responsibility entirely up to William Goltz, stable foreman, it was moved by Commissioner Whitney, and seconded by Chairman Swope, that Goltz be suspended for thirty days beginning June 28th. The Secretary was instructed to notify Mr. Goltz of the decision, with copies to Mr. Untermeyer and his trainer.

The motion was unanimously passed.

The Chair moved that the question of jockeys being permitted to ride in stakes for their contract owners during the period of their suspension, unless punished for fraud or another serious act, be deferred until the summer convention of the National Association of State Racing Commissioners to be held this year at Saratoga during the month of August.

Mr. Swope informed the meeting that the National Association of State Racing Commissioners was prepared to study and evolve a uniform rule covering this condition.

Commissioner Whitney reported that at the last meeting of the Jockey Club, he had been asked the attitude of the Commission on the subject but had answered that the Commission had taken no definite decision as yet on which course it would follow. He added that the Jockey Club Stewards were inclined to cooperate with the Racing Commission.

The Chair informed the meeting that a movement to unionize exercise boys had been launched. The Commission took no attitude on the question.

There being no further business before the Commission, on motion duly seconded, the meeting adjourned.

John S. Hewlin
Secretary.

Proceedings of a Meeting of the New York State Racing Commission,
held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Tuesday, August 3rd,
1937, at 1:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Commission took notice of the appeal of Thomas Malone for a hearing on the refusal of his license by the Jockey Club. The Commission agreed to set a date for the hearing later. In the meantime, after considering the evidence now in hand, the Commission agreed that Mr. Malone might take his case back to the Jockey Club to submit any new evidence he had obtained.

On motion made by Commissioner Sloan, Steward Cassidy was requested to notify the manufacturer of the Bahr gate about extending the length of the stalls in the gate so that all horses might be lined up properly.

After consideration of further business, on motion duly seconded, the meeting adjourned at 3:00 o'clock P. M.

John F. Shevlin
Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission, held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Wednesday, August 11, 1937, at 1:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Commissioner John Hay Whitney
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Chair informed the meeting that the laboratory had reported positive findings of morphine in the saliva test of the horse "Black Mistress", owned by J. H. Rogers and trained by George Arvin. The Steward was instructed to conduct a secret investigation, at the end of which time he is to present his report to the Commission, so that a hearing may be held.

There being no further business, on motion duly seconded, the meeting adjourned at 3:00 o'clock, P. M.

John F. Shevlin
Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission, held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Monday, August 16, 1937, at 6:00 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Hay Whitney, by proxy of Chairman
Commissioner John Sloan
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary
Dr. J. G. Catlett, Supervisor of Saliva Tests
Mr. Charles E. Morgan, Chief Chemist.

The minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Chair informed the meeting that the formula laid down last year in all doping cases, had been pursued in the instance of Black Mistress. Following the special meeting of the Commission on August 11, no action was to be taken until a thorough investigation had been completed. In the meantime, any horse trained by the man under investigation, was to be permitted to start with, however, the saliva test being taken regardless of the finish. All medicines in the barn were to be sent to the laboratory for analyses. All these measures had been taken. The chemist reported that these samples were negative.

The Steward reported that he questioned George L. Arvin, the trainer; Hences Smith the groom; Charles Richardson, the exerciseboy; William Hunt, who was present in the stall and assisted in tying the tongue strap, was also questioned. The Steward communicated with Mr. A. B. Hagner, the owner of the horses for whom Hunt trains, and J. H. Rogers, the owner of Black Mistress. The investigation will be continued.

The Secretary was instructed to make the report from Mr. Cassidy a part of the minutes. The Commission then took up the further examination of the evidence.

Mr. Morgan reported to the Commission his discovery of the crystals, and said, without the possibility of a doubt, that these crystals were those of morphine. A photostat of the pictures of the crystals was directed to be made part of the minutes.

Dr. J. G. Catlett, Supervisor of Saliva Tests, reported that both he and Dr. E. J. Sullivan, had been suspicious of the actions of the horse in the paddock. The horse's action at the gate had caused Mr. Cassidy to telephone Dr. Catlett to take a saliva test of the horse no matter where it finished.

William Hunt was summoned before the meeting to explain his presence in the stall and to explain why he had assisted in putting on the horse's tongue strap. He testified he had merely held one end of the tongue strap while Arvin fastened the other end.

The exercise boy, Charles Richardson, was then questioned.

Hences Smith, the groom of the horse, was called before the meeting and assumed full responsibility for the condition of the horse until the time the horse arrived at the paddock. He offered no alibis.

George L. Arvin, the trainer, was called and was submitted to a detailed examination.

The Secretary was instructed to communicate with H. J. Anslinger, Commissioner of the Bureau of Narcotics in Washington, because of the presence of a narcotic drug in the test of Black Mistress.

Steward Cassidy was instructed to inform Arvin and J. H. Rogers, of the findings of the Commission.

As is customary in these cases, all horses in the care of George L. Arvin, stand suspended until they are placed in the hands of a trainer approved by the Commission. Steward Cassidy was empowered to act for the Commission if a change in trainers was presented.

Thereupon, on motion of Chairman Swope, the Commission unanimously voted its approval to the following resolution:

"RESOLVED, that all trainers licensed and operating in this State, are directed to see that no one not actually connected with the stable shall touch a horse while in the paddock preparatory to starting in a race."

The Chair explained that this regulation would tend to minimize the danger of horses being tampered with. The rule does not prohibit owners from touching their horses but it places responsibility directly on the trainer for violations.

There being no further business, on motion duly seconded, the meeting adjourned at 7:45 o'clock, P. M.

John S. Shewlin

Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission,
held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Thursday, August 19,
1937, at 6:00 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Commissioner John Hay Whitney, by proxy of Chairman
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Chair announced that Mr. Cassidy had received new evidence in the Arvin case and so, Arvin, the trainer, and Smith the groom, were being summoned for further questioning.

Mr. Arvin denied any knowledge of sugar having been given to Black Mistress in the paddock by any one.

Hences Smith was then called after Arvin had left, and repeated his testimony, that he had seen Arvin feed the horse sugar in the paddock before the race. He added that at Suffolk Downs, Arvin had in his presence given a stimulant to the two-year-old Dawn Light in a morning workout. The horse bolted and threw the exercise boy, Richardson, into the infield.

A transcript of his testimony was directed to be filed with these minutes.

It was voted by the Commission that the suspension of Smith should stand, since he had lied to the Commission on two previous occasions, and that his testimony against Arvin was not forthcoming until after he had been ruled off. The Commission, however, judged that there were extenuating circumstances, and if Smith could give the Commission evidence that he could find a job which was satisfactory to the Commission, steps may be taken to lift his suspension.

There being no further business before the Commission, on motion duly seconded, the meeting adjourned at 7:00 o'clock, P. M.

John F. Shevlin
Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission, held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Monday, August 23, 1937, at 3:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Mr. John F. Shevlin, Secretary
Mr. Marshall Cassidy, Steward.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Chair stated that Highzo, which broke its leg at the finish of the first race, was forced to remain in the unsaddling ring directly in front of the grandstand for twenty minutes before the ambulance arrived, and the sight provoked severe criticism and resentment from the spectators, especially the women.

On investigation, it was learned that the key to the battery in the ambulance had been misplaced due to negligence.

By unanimous vote, the following resolution was passed:

"RESOLVED, that each racetrack must test both man and horse ambulances each day and have them ready for immediate duty. The machines are to be placed alongside the track, so no time need be lost in answering calls."

The Secretary was instructed to communicate with the associations to this effect.

There being no further business before the Commission, on motion duly seconded, the meeting adjourned.

John F. Shevlin
Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission,
held Tuesday, August 24, 1937, at the Saratoga Racetrack, Saratoga Springs, N. Y.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

Mr. Swope reported he had been approached by Joseph E. Widener, who told him of a proposal to change starters at the racetrack.

The Chair suggested that the Jockey Club and the Racing Associations would be simplifying matters if they consulted the Commission in advance concerning any radical change affecting the public interest.

In a further discussion with Mr. Widener, Mr. Swope said it might be well for him to repeat his previous interpretation of the law, on which the Commission is proceeding, namely: that racing now being recognized and licensed by the State, a definite governmental responsibility had been set up and that responsibility rests solely upon the Commission, which is fully charged with authority; that the Commission is final in racing matters and that the Jockey Club, outside the powers conferred by law, had only those rights delegated to it by the Racing Commission. The Chairman added that he and his associates were desirous at all times of cooperating with the Jockey Club, and he and the other Commissioners had a high regard for its traditions and potentialities for usefulness; that on the whole there had been cooperation, although sometimes reluctant, and that in the case of some of the Stewards and Associations, there was not a complete readiness to recognize the full authority of the Commission.

Mr. Widener and Mr. Fairbairn, with whom the discussion was held, said they understood the conditions and accepted the interpretation. They declared they were eager to work in every way with the Commission. As an example, they laid before the Commission their plan to supercede Starter Cassidy with Starter Wingfield.

The Chairman said he would not undertake to speak for his associates, but if, when and as the change is decided upon, the Commission would make its position clear. He suggested that a thorough exploration of Wingfield's character be made, and that a trial for demonstration be arranged, if the Jockey Club were determined to press Cassidy's retirement. The experiment, Mr. Widener suggested, could be made at Hialeah. The Chair said that Commissioner Sloan and he personally, might have the opportunity to watch Wingfield's work during the coming winter if he were put on at Hialeah. Secretary John Campbell gave Wingfield high endorsement for honesty and ability.

The Chair supplied Commissioners Sloan and Whitney with the full details of the conversation.

The meeting adjourned at 5:00 o'clock, P. M.

John J. Shwelin
Secretary.

Proceedings of a Special Meeting of the New York State Racing Commission, held at the Saratoga Racetrack, Saratoga Springs, N. Y., on Friday, August 27, 1937, at 2:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

It was unanimously voted that hereafter the probable odds board in the clubhouse shall show the clubhouse ring prices, and the grandstand board shall show those prices prevailing in the grandstand. This is with particular reference to Saratoga.

John D. Shelton
Secretary.

Proceedings of a Meeting of the New York State Racing Commission,
held at the Aqueduct Racetrack, on Friday, September 10, 1937, at 5:30 o'clock.

PRESENT:

Hon. Herbert Bayard Swope
Commissioner John Sloan
Commissioner John Hay Whitney, by proxy of Chairman
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

By unanimous vote, the following resolution was adopted:

"RESOLVED, that on and after January 1, 1938, either the original or a photostatic copy thereof of the certificate of registration of every two-year-old horse that is starting for the first time in their career, be filed with the Racing Secretary at the track at which said horse starts."

The Chair moved that Hences Smith, groom in the Arvin stable, who had been under suspension with George Arvin, be permitted to take a position, subject to the approval of the Commission and the Stewards.

The Commission directed the Steward to inform Jules Wessler not to handle the horses formerly in the care of George Arvin until approval of this action had been granted by the Steward acting for the Commission.

The Chair informed the Commission that an application for a hearing on Thomas Malone was before the meeting. After a consultation with Commissioner Sloan, a date for the hearing was set for Friday, September 17, 1937, at the Belmont Park Racecourse after the last race.

The Steward informed the meeting that Jockey Frank McManus, who had been ruled off the turf by the Commission in 1935, appeared before him changing his testimony in the case which the Commission then had against him. A transcript of

the testimony was furnished each of the Commissioners and is attached hereto.

The Steward informed the Commission that at the instructions of the Chairman given in Saratoga, he was inquiring into the jumping situation at the tracks. This is with particular reference to Mr. W. R. Jones and Mr. F. Bellhouse, both of whom have been placed under suspension.

The Chair announced that at a later date a discussion would be held on guaranteed stakes at Saratoga.

The Chair directed that the Secretary place on the agenda for discussion with the Jockey Club, the possibility of the Jockey Club requiring color plates to accompany each application for colors.

There being no further business before the Commission, on motion duly seconded, the meeting adjourned at 6:45 o'clock, P. M.

John S. Shewlin
Secretary.

Proceedings of a Joint Meeting of the New York State Racing Commission and two Stewards of the Jockey Club, held in the Board Room at the Belmont Park Racecourse, Elmont, L. I., on Friday, September 17, 1937, at 5:20 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
 Commissioner John Hay Whitney
 Commissioner John Sloan
 Mr. John F. Shevlin
 Mr. Marshall Cassidy

REPRESENTING THE JOCKEY CLUB:

Mr. A. H. Morris
 Mr. Howard W. Maxwell

The Chair declared that the purpose of the meeting was to hear an appeal from Thomas Malone, whose license as trainer had been refused by the Jockey Club.

The Chair informed the meeting that Mr. Malone would be present with his attorney, Jerome Fendrick.

Mr. Malone and Mr. Fendrick were ushered into the meeting.

Mr. Fendrick requested the indulgence of the Board in hearing the character references first, since his witnesses had early appointments. The Board assented.

The witnesses appearing before the Board were D. C. Harrison, trainer for the Howe Stable; Hirsch Jacobs, trainer for Mrs. Ethel Jacobs and Senator Jeremiah Twomey, all of whom testified to the good reputation of Thomas Malone. At the conclusion of the character witnesses' testimony, the questioning of Mr. Malone was begun. A full report of the testimony is attached hereto.

After Messrs. Malone and Fendrick left the meeting, the Steward was instructed by the Board to enlist the assistance of the Pinkerton Detective Agency in investigating the record which had been compiled about Malone by the Wright and Leighton Detective Agency of Baltimore, as there seemed to be serious discrepancies.

The Board voted unanimously that no action would be taken pending the report from the Pinkerton Detective Agency.

There being no further business before the Board, the meeting adjourned at 7:15 o'clock, P. M.

John F. Shevlin
 Secretary.

Proceedings of a Meeting of the New York State Racing Commission,
held in the Board Room at the Belmont Park Racecourse, Elmont, L. I., on
Friday, September 17, 1937, at 7:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Hay Whitney
Commissioner John Sloan
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Secretary was instructed to include in the minutes of this meeting the mention of the Malone hearing.

The Chair informed the meeting that the case of George Arvin was still being investigated and that the Steward had new evidence which would question seriously the later testimony of Hences Smith.

The Steward informed the meeting that he had positive evidence that Richardson, the exercise boy, had been intentionally sent away from the stable for ten minutes before the horse left for the paddock, leaving Arvin and Smith alone with the filly, Black Mistress.

The Steward was instructed by the Commission to continue his investigations.

The Chair announced that he had received complaints from various horsemen that the racing strips on the New York tracks were neglected except during the time a race meeting was in progress. The Steward was instructed to investigate the matter.

Due to the lateness of the hour, the Secretary was instructed to carry over as unfinished business the questions of guaranteed stakes, baths for stable help, raising of jumps and color plates to accompany applications for colors.

The meeting adjourned at 8:15 o'clock, P. M.

John F. Shevlin

Secretary.

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NEW YORK STATE RACING COMMISSION

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IN THE MATTER OF :
THE APPEAL :
OF :
THOMAS MALONE. :

----- X

Belmont Park, New York,

Friday, September 17, 1937,

5:30 p.m.

Formal meeting of the Hearing Board of the New York State Racing Commission and two regularly appointed members of the Board of Stewards of the Jockey Club, considered the appeal of Thomas Malone from the action of the License Committee of the Jockey Club in failing to grant him a license by the Stewards of the Jockey Club as a trainer for the season of 1937.

PRESENT:

- HERBERT BAYARD SWOPE, Chairman
- JOHN SLOAN, Commissioner
- JOHN HAY WHITNEY, Commissioner
- JOHN F. SHEVLIN, Commissioner
- A. H. MORRIS, Commissioner
- H. W. MAXWELL, Commissioner
- MARSHALL GASSIDY, Commission Steward

JEROME J. FREDRICK, Esq.,
Attorney for Thomas Malone.

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PROCEEDINGS

(Chairman Swops, after consultation with the Commissioners and the Stewards, had the Commission's Steward, Mr. Cassidy, outline the case in so far as the pertinent facts were concerned.)

MR. FENDRICK: My name is Jerome J. Fendrick, 475 Fifth Avenue, New York City. I appear for Mr. Malone.

CHAIRMAN SWOPS: As you know, this is a joint hearing of the Board of Appeals on the application of Thomas Malone, who is represented by Mr. Fendrick. On July 21st, Mr. Malone, your application for a trainer's license was formally denied by the Jockey Club for the season of 1937, and thereafter your application for a hearing came before us. The Commission, and these two gentlemen representing the Stewards of the Jockey Club, would be very glad to hear any statement you or your counsel wish to make in connection with the application which has been refused.

MR. FENDRICK: Now, Mr. Commissioner and gentlemen, Commissioners and gentlemen of this Board, as you know this is an appeal pursuant to section 1132 of the Laws of 1926, Chapter 440, as amended. Mr. Malone has been a licensed trainer in this jurisdiction prior to this year, and he has been a licensed trainer in other jurisdictions, namely, the State of Illinois, the State of 227

Florida, and other States. So far as we know, Mr. Malone has not been in any trouble in any other jurisdiction, nor has he ever been in trouble in the New York jurisdiction. His license has never been suspended or revoked.

Now, pursuant to Section 1132, which, in part, reads, "Each such license, unless revoked by the Jockey Club or International Steeplechase Association, for cause, shall be for a period of one year from April 1st in which the same shall be issued."

Subdivision 2 of the same section reads: "That the failure of the Jockey Club or National Steeplechase Association to act upon an application for a license within fifteen days, shall be deemed a refusal of the license. Upon the application of a person whose license has been refused or revoked within ten days after service of such notice of such refusal or revocation, such person shall be entitled to a hearing before a joint session of the State Racing Commission and two Stewards of the Jockey Club," and the section goes on to state that such action shall be final action thereon.

Thus, we have a board sitting here today whose action is final, and only reviewable by an order of certiorari of the Supreme Court of the State of New York.

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Now, Mr. Malone has not been informed legally and officially of any charges that have been made against him. Technically speaking, we know, through the various cases, the old case of Grannon against the Westchester Racing Association, 153 New York, 449, and People ex rel Empire City Trotting Association versus the State Racing Commission, 120 Appellate Division, 484, affirmed 190 New York, 1931, it has been held that this Board, the Racing Commission, or the Jockey Club, or the Boxing Commission, or the License Commission of the State of New York, cannot act arbitrarily, distinctively, or capriciously, they must have just cause for a revocation or a refusal of a license of some party.

Now, Mr. Malone has been licensed, as I said before, and it is my opinion -- and that opinion may be not agreed upon in this room -- but it is my opinion that, in order to refuse this gentleman a license, some just cause, which arose upon the race track, must be given.

Now, we are here with character witnesses, we are here to justify Mr. Malone's ability to act as a trainer, and we are here to meet whatever may be said, and I think in all fairness to Mr. Malone, he should be given a chance to refute any allegations that may have been made against him.

CHAIRMAN SWOPE: You have made a statement here with certain errors therein. The licensing is not at present before the Racing Commission.

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MR. FENDBRICK: I understand that.

CHAIRMAN SWOFF: There is an appeal to us in this matter. We had no original jurisdiction in it. The question of counsel's interpretation of the rights of the Jockey Club, or such other licensing body, is a matter for the courts to decide. There is open to the License Committee of the Jockey Club a broad field of discretion. Since they are dealing with intangibles, their interpretation of what is best for the turf, subject to restrictions of capriciousness or vindictiveness, must govern.

I may say that the Commission's attention was drawn to the Malone case after the application came from Mr. Malone for a hearing, by the record that had been placed before the Jockey Club, and I think it is important for Mr. Malone to know that that record had a very definite influence in the attitude assumed by the Steward directly in charge of the licensing. There are some questions that will be asked -- I suggest that they be asked by our Steward, Mr. Cassidy -- which have to deal first with your career as a turfman, and secondly, with a more personal record. These questions which may be put to you do not indicate necessarily a belief on the part of Mr. Cassidy, or anyone else, in the charges that the questions may contain, but they are matters that are important for you to answer, and important for us to have you answer. I suggest you go on.

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MR. FENDRICK: Pardon me, Mr. Commissioner; may I make a suggestion: I know you have a set procedure here, but Mr. Malone happens to have two gentlemen outside who are willing and who are gracious enough to want to testify as to his character and reputation around the race track. Now, I know one gentleman -- in fact two of them have dinner engagements, and have asked me if I will please, if there is any possibility of them being heard --

CHAIRMAN SWOPE: I have no objections. Who are they?

MR. FENDRICK: Mr. Hirsch Jacobs and Mr. D. C. Harrison. /
Is that their names?

MR. MALONE: Yes.

CHAIRMAN SWOPE: Well, do my associates object if we take these gentlemen first.

COM. SLOAN: We might hear them first.

MR. FENDRICK: I would like to call Mr. Harrison first.

CHAIRMAN SWOPE: All right, call Mr. Harrison.

(Mr. D. C. Harrison enters the hearing room.)

CHAIRMAN SWOPE: Mr. Harrison, we are informed by Mr. Fendrick that you are here to testify as to your knowledge of Mr. Malone in connection with his hearing for a license, ^{with} which, no doubt, you are familiar. This is a joint hearing of the Racing Commission and the Jockey Club, in connection with the license which has been refused him. What do you want us to hear from you

MR. D. C. HARRISON: Mr. Swope and gentlemen, the only thing that I have got to say is, Mr. Malone asked me this morning if I would come down here and state before you gentlemen what I know about him, and I said I would.

Now, I have known Mr. Malone for about three years.

CHAIRMAN SWOPE: Pardon me a moment. Perhaps we had better, for the sake of the record, have your initials.

MR. HARRISON: D. C. Harrison.

CHAIRMAN SWOPE: You are at present a trainer --

MR. HARRISON: Howe Stable and myself.

CHAIRMAN SWOPE: I see. How long have you been training?

MR. HARRISON: Well, since 1928, I think I had my first license.

CHAIRMAN SWOPE: All right, you may proceed.

MR. HARRISON: I have known Mr. Malone about three years, approximately, and all I have known about him is all right. I don't know anything about his private life, except that I have seen him at the race track in the morning, talking to him, talked with him at the race in the afternoon. He has seemed to be a very decent fellow, so far as I know. I know nothing against him, and that is about all I can say. I do not know anything against him at all, he seems to be all right so far as I know.

COM. SLOAN: Do you know anything about his qualifications as a horseman or a trainer?

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MR. HARRISON: Well, as you notice a trainer in the morning training his horses, and all the success he has had, I would say he was pretty well qualified to train horses.

MR. FENDRICK: May I question him, Mr. Commissioner?

CHAIRMAN SWOFF: Surely.

MR. FENDRICK: Do you know of his reputation that he bears around the race track, as to his integrity, honesty, and his conscientiousness in the performance of his duties as a trainer?

MR. HARRISON: Why, so far as I know, it is one hundred per cent, I have never heard anybody knock him one way or the other.

MR. FENDRICK: Have you heard any of the trades-people talk of him, whether he owes them money or not; do you happen to know that?

MR. HARRISON: I don't know who Mr. Malone's trades-people are, who he has done business with, but I haven't heard anything one way or the other about him.

MR. FENDRICK: Well, that is all, Mr. Harrison.

CHAIRMAN SWOFF: Are there any questions that you wish to ask?

Have you ever heard Mr. Malone's name mentioned in connection with investigations here or in Maryland, in connection with sponge cases, regarding whether he reported them or not?

MR. HARRISON: No, sir, I just know he was suspended, or

whatever you call it, ruled off, whatever it is, that is all I know; I never knew what for, or anything else.

CHAIRMAN SWOPE: He was ruled off?

MR. HARRISON: Denied a license, I don't know just what term you call it, you know what it means; that is all I know.

CHAIRMAN SWOPE: Have you anything to ask?

MR. MORRIS: No.

CHAIRMAN SWOPE: Have you?

MR. MAXWELL: No.

CHAIRMAN SWOPE: Have you?

MR. SLOAN: No.

CHAIRMAN SWOPE: That is all; thank you.

MR. SHEVLIN: Do you want Jacobs now?

CHAIRMAN SWOPE: Yes.

(Mr. Hirsch Jacobs entered the hearing room.)

CHAIRMAN SWOPE: You are before a joint meeting of the New York State Racing Commission and Stewards of the Jockey Club, held for the purpose of listening to the appeal of Mr. Malone in the action of the Jockey Club in not granting him a license. To correct any error on your part, he is not suspended or ruled off; his license has been withheld. His counsel informs us you are a witness to his character and reputation. Proceed.

MR. FONDRIK: Mr. Jacobs, how long have you been a licensed trainer in the jurisdiction of New York?

MR. JACOBS: Oh, I should think about seven or eight years.

MR. FENDRICK: And, have you been licensed in other jurisdictions, in other States, for racing, as a trainer?

MR. JACOBS: Yes.

MR. FENDRICK: Do you know Thomas Malone, and how long have you known him?

MR. JACOBS: Oh, I should think about three years.

MR. FENDRICK: Will you tell this Commission, this hearing, what you know, the reputation that he bears around the race track, as to his conscientiousness in the performance of his duties, as to his integrity, honesty, and good moral character?

MR. JACOBS: well, I have never^x heard anything bad about the man, I have never heard no one say anything bad about him. I have known him around, there is nothing that I know of that I could say against him.

MR. FENDRICK: And, have you spoken to him around the race track during the mornings?

MR. JACOBS: Oh, yes, I have.

MR. FENDRICK: And do you know his reputation, dealing with the trades-people, buying feedstuff for the horses, and other material?

MR. JACOBS: I don't know anything, never heard anyone say anything against him, or anything of that sort.

MR. FENDRICK: And, in your opinion, has Mr. Malone shown the qualifications and the assets that a trainer should show

and would you say that he was an asset to horse racing in New York State and in other states?

MR. JACOBS: Well, as far as what I know of him, I would think so.

MR. FENDRICK: That is all.

CHAIRMAN SWOPE: How often did you come in contact with Mr. Malone?

MR. JACOBS: Oh, I wouldn't -- I remember when he stabled at Jamaica, I used to see him there every morning, pretty near a couple of years ago, he stabled there.

CHAIRMAN SWOPE: You wish us to believe that you thought him a good horseman and an honest individual?

MR. JACOBS: Well, he had a horse over there by the name of "Portden", he always looked pretty good, and raced pretty good, run pretty good; he looked pretty good, and he raced pretty good.

CHAIRMAN SWOPE: Are there any questions of Mr. Jacobs?

MR. SLOAN: No.

CHAIRMAN SWOPE: Have you any, Mr. Whitney?

MR. WHITNEY: No.

CHAIRMAN SWOPE: All right; you are excused.

(Senator Jeremiah F. Twomey entered the hearing room.)

SENATOR TWOMEY: My name is Jeremiah F. Twomey, state senator, New York, Chairman of the Finance Committee, and so forth and so on.

CHAIRMAN SWOFFE: Well, my first question was as to qualifications, but I think the Board will concede those.

MR. FENDRICK: Senator Twomey, how long have you been associated with racing around New York State?

SENATOR TWOMEY: Forty-five years.

MR. FENDRICK: And you have been a patron of the race tracks during those years?

SENATOR TWOMEY: Practically every year that they have been racing.

MR. FENDRICK: And you have taken a great deal of interest in racing legislation enacted in the New York Legislature?

SENATOR TWOMEY: I have.

MR. FENDRICK: Now, how long do you know Thomas Malone?

SENATOR TWOMEY: In the neighborhood of three years, since he has been around New York.

MR. FENDRICK: Now, can you tell this Board the reputation Malone bears around the track with the race track community at large, with the patrons, the people that come into the grand stands and the club houses?

SENATOR TWOMEY: Everybody that I have ever spoken to about Malone has spoken very highly of Malone, and I have always found him to be an honest, upright citizen. I cannot state as to his qualifications as a trainer, because I do not know how to train a horse myself, and I know that at all times-- and I have watched him at many stables -- at all times I have

always found that his horses were doing the best. They looked well, if I am any judge of the looks of a horse.

MR. FENDRICK: Now, Senator, as a gentleman associated with race tracks for a long period of time, knowing that you have the interests of racing at heart, would you say with honest conscientiousness that Mr. Malone is an asset to racing in New York?

SENATOR TROMBY: Well, Commissioners, I wouldn't appear for him if I didn't think so. If I didn't believe in my own heart that he was an asset to racing, I wouldn't appear for him, or would not have asked to come here. I know his wife, he has a beautiful wife, he has two children, and as far as I know they live very happily. One child is 13 years old, and I have met them occasionally. I do not know that there is anything else I can say about him, but I would not come here, I would not have the audacity to come here, I would not come to speak for him, if I did not believe in the man.

MR. FENDRICK: That is all I wish to ask the senator.

CHAIRMAN SWOPE: Have you any questions?

MR. MORRIS: No.

MR. MAXWELL: No.

CHAIRMAN SWOPE: How long have you been in the Assembly, Senator?

SENATOR TROMBY: I am not in the Assembly.

CHAIRMAN SWOPE: I mean in the State General Assembly.

SENATOR TWOMEY: I am 22 years, I was 3 years in the Assembly, and 19 years in the Senate, and if I live to fulfill my term, I will be 23 years a legislator without any interruptions. I want to qualify my statement, I was advanced from an Assemblyman to a Senator.

CHAIRMAN SWOPE: You have nothing further you wish to say?

SENATOR TWOMEY: Well, if I may say so, I do not know whether you want it on the record or not, in all my time that I have been around racing, I have had many people come to me when they were in trouble and ask me to intercede for them. I haven't. I have told them I couldn't intercede for them, because I didn't know them well enough to go to the front for them. If they get in trouble, that was their fault, and they would have to get out of it without me interfering, and I haven't interfered, as you gentlemen know. I have asked your Steward, Mr. Cassidy, many times about someone who was in trouble, and then I would say, "well, that is all I want to know, I wanted to know just what the trouble was," but I never tried to intercede for someone I could not vouch for.

CHAIRMAN SWOPE: Have you any questions to ask?

MR. SLOAN: No, I haven't any questions.

CHAIRMAN SWOPE: Have you, Commissioner?

MR. WHITNEY: No.

CHAIRMAN SWOPE: Thank you very much, Senator.

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MR. FENDRICE: Thank you, Senator.

SENATOR TROMBY: Thank you, gentlemen.

THOMAS MALONE was called as a witness in his own behalf and examined as follows:

BY CHAIRMAN SWOPS:

Q How old are you, Mr. Malone?

A 33.

Q 33?

A 33, yes, sir.

Q Where is your home?

A Philadelphia.

Q Is that where your family live?

A Yes, sir.

Q You have a wife and 2 children, the Senator said?

A Yes, sir.

Q How long have you been married?

A Over 14 years, pretty near 15.

Q How long have you been racing?

A Five years.

Q Tell us how you happened to go into the training end.

A Well, there was a man called Claude Burke, from Philadelphia, he had race horses, and when I was 18 years old, before I was 18 years old, I did a little fighting, I won the amateur championship four times and fought professionally

for two years, and I knew Frankie Hastings when he was a rider, and I put in with a fellow to buy a race horse, and we didn't do no good with the horse, so I put in with another fellow, called Christmas, and we had a little trouble about the horse, so I took the horse and trained the horse myself. I trained fighters, and a fighter that is fighting now, a boy my mother raised, his name is Eddie Cool, he just beat the champion of the world, and all the time I have been training, X I have been very successful, I won the most races in California, and I have never been in any trouble on the race track, I have never been reprimanded for anything, and I think the horses all ran good when I trained them. I won quite a few races in New York here, and I won, before I left Maryland last year, I won 21 races.

Q When did you go into Mr. Putnam's employ?

A In California?

Q Yes.

A Well, during the Santa Anita meeting --

Q This last winter?

A Yes, sir, he asked me to go to work for him. I was living at the Constance Hotel, and I had won up to that time 18 races with 6 horses, but they claimed them from me, and I had one horse, and Mr. Putnam asked me would I go to work for him.

Q How many horses did he have?

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A He had 11. Up to that time he had won 3 races, he told me, in 2 years, and when we left there, I won 9 in two weeks with his horses.

Q You had trained for no one before him, except yourself?

A No, sir.

Q You were always on your own until that time?

A Yes, sir.

Q And Putnam was attracted to you by the record you had made up there, winning 18 races with 6 horses, is that right?

A Yes, sir.

Q You had never met him before you met him, last winter, was it?

A No, sir, I had never met the gentleman.

Q And you brought his horses east?

A Yes, sir.

Q You took them to Maryland?

A No, sir, we came here.

Q Oh, you came here first, then you put in your application?

A Yes, sir.

Q Well, tell us what happened from your standpoint then.

A Well, I was denied -- now, how was that? We came here, and I didn't get any license, and Mr. Putnam took a license, and then we went from there to Delaware, and back here.

Q Putnam took the license in his own name?

A Yes, sir.

Q Was it a trainer's license?

A Yes, sir.

MR. CASSIDY: You were allowed to withdraw, do you remember, when you put in your name?

THE WITNESS: Yes, sir, that is right, I am wrong about that.

BY CHAIRMAN SWOPE:

Q You put in your application immediately after you came to New York State, Mr. Malone?

A Yes, sir.

Q And Putnam was handling his own horses at that time, as his own trainer?

A Well, when I put in, before, previous to me putting in the application, which I was allowed to withdraw, I was training horses. The first day we got here, we won two races at --

Q Jamaica?

A Jamaica, yes, sir.

Q And who was down as the trainer that day, - Putnam?

A Yes, sir.

CHAIRMAN SWOPE: Mr. Cassidy, had Putnam ever had a license before as a trainer?

MR. CASSIDY: No, he was never a trainer in his life.

CHAIRMAN SWOPE: What did they give him, - a previ-

sional license?

MR. CASSIDY: They gave him a temporary license at first, and later gave him a license; he passed the examination very well.

BY CHAIRMAN SWOPE:

Q Well, suppose you tell us, Mr. Malone, exactly your own attitude when you were told the license was being held up? You were informed by the Stewards the License Committee was not pleased with your previous record, weren't you?

A What, as a trainer?

Q No, as an individual.

A Well, yes, sir.

MR. MAXWELL: You were told that --

MR. FENDRICK: May I interrupt here, if the Commission please?

CHAIRMAN SWOPE: Yes.

MR. FENDRICK: As a matter of record, I would like to object. As I got the story, I do not know whether it is truthful or not, or whether it is right or not. Official action was taken on this case, then he was given no official word. The first official word of his refusal was the letter sent to me, a letter sent by the Jockey Club to Mr. Malone.

MR. CASSIDY: You are a little bit ahead of yourself; he has not reached that yet. He has never been

officially refused or anything officially done up to the time he is talking about.

MR. MALONE: No, this was --

MR. WHITNEY: Up to July of this year.

MR. FENDRICK: I understand.

CHAIRMAN SWOPE: I want to get his mental attitude.

MR. MALONE: When I came - here is the story from the beginning -- I went in to Mr. Cassidy -- is that when you mean, is that when they mean?

MR. CASSIDY: Well, he wants to know from the time--

CHAIRMAN SWOPE: The whole story from the time you made an effort to get the license.

MR. CASSIDY: ^x When you put in your application, right then on through, from the spring.

MR. MALONE: Well, I put in an application, and they sent the application back. What was -- well, they sent it back, and it wasn't that I was refused a license --

MR. CASSIDY: You were allowed to withdraw it?

MR. MALONE: I was allowed to withdraw it, that was it, and I withdrew the license, didn't have no trouble, and went on about my business, and then I went to Delaware, and then I put the license in, and I received a license from, I wouldn't say ^x for sure, but I think it was Mr. Dangerfield, then I was denied -- I wouldn't say whether it was he who sent -- yes, sir, it was.

BY CHAIRMAN SWOPE:

Q Suppose you read the letter, then.

A "Mr. Thomas Malone, Delaware Park, Stanton, Delaware.
Dear Sir: At a meeting of the Stewards of the Jockey Club,
held this day, your application for a trainer's license was
denied. Very truly yours. Algernon Dangerfield, Assistant
Secretary."

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Q What I was trying to get at, in a more informal way,
what was your feeling when you were told that there had been
a delay in the granting of your license?

MR. FENDRICK: As a matter of form, may I state this
objection on the record, on the ground that^x--

CHAIRMAN SWOPE: This is not --

MR. FENDRICK: I understand.

CHAIRMAN SWOPE: I haven't sworn any witnesses.

MR. FENDRICK: I understand that, sir.

A I wasn't mad, I never got mad or anything like that,
I didn't say anything.

Q Didn't you make an effort to discover why the Jockey
Club had taken this position?

A Oh, yes; yes, yes; and I found out it was for being
arrested, but I had a Judge, the man that gave me the hear-
ing, come and spoke to Mr. Cassidy; isn't that right?

MR. CASSIDY: Right.

A (Continued) And I will admit the truth, sure I was -- 204

Q What was the name of the Judge?

A He is --

MR. CASSIDY: Now the Chief Justice at Philadelphia.

A (Continued) Judge O'Malley.

MR. CASSIDY: O'Malley.

CHAIRMAN SWOPE: In Philadelphia?

MR. CASSIDY: Yes.

BY CHAIRMAN SWOPE:

Q What was the case before him?

A I was arrested for possession of whiskey, got caught with a pint of whiskey, two pints.

Q From that, you want us to understand that you got the feeling that the question of a license was just a matter of your --

A Well, I will tell you how I think the whole thing came up. I had a horse, the horse "Moonside" was sponged in Maryland. Now, I want all you gentlemen to hear this story. I went over to the telephone, saw a Mr. Tom Healy, and I said, "I think my horse has been sponged." I blew the horse out, and he went about an eighth of a mile, and he pulled up and let it drop its head; when Mr. Cassidy come, I told Mr. Cassidy, I sent for the doctor, and a fellow called Fitzgerald, Lion Fitz, I don't know his first name, and they were standing there, and I said, "I think something happened to the horse," and the horse was in the end stall and it was dark, and you

couldn't see.

MR. SLOAN: When was this? In the morning?

THE WITNESS: Yes, sir.

A (Continuing) So I found, I took the horse out and blew him out, sent for the doctor, found the sponge -- I still have the sponge -- and went all around, trying to find out, I sent for Mr. Cassidy, Mr. Cassidy came over there, and was right there when he pulled the sponge from the horse's nose. I walked the horse around the shed; Mr. Brown, Judge Brown, asked me to run the horse, so I asked the doctor. He said, "Well, I think it will be all right, Tom." I said, "Well, I will put a little grain on the ground and let the horse drop his head and see if he bleeds," so, he didn't bleed, so I ran the horse, and the horse won. Well, we shook hands, good-bye, everybody wished me luck, and I have never heard no more up until this time, Mr. Cassidy held an investigation about the thing, and, I will tell you gentlemen right here, if any one of you think that I had anything to do with that, I don't want no license, I don't deserve any; but that is, I never -- I blew the horse out, and was the one that found the sponge, and Mr. Cassidy can tell you I went over and reported it early in the morning, and a newspaper fellow came over there, so, right away they sent to Philadelphia for my record, because I was going in my mother's house when one of the fellows came up there and they couldn't get no record. Now, I wish you 2 81

gentlemen would read my record off just to see what it was put down for. There was a man, he is head, I don't know, head of a detective bureau, he is named Whitey Layton, and through an old score about this other fellow, he took spite out on me. That is how the whole thing started. You have heard the true story of it. Mr. Cassidy was there --

MR. CASSIDY: I just finished telling it. There is one thing about it that you didn't tell, of course; that is more or less important. At the time that this sponging case came up, you were on trial in Philadelphia; do you remember you had to leave and go to Philadelphia, you had hit somebody or slugged them, or got into a fight or something?

THE WITNESS: Yes, sir.

MR. CASSIDY: That is when you went back to Philadelphia.

THE WITNESS: Well, I will tell them about that. My brother-in-law is a little bit of a fellow, so this fellow's name is Merwitz, that hit him, see? So I went around and naturally I felt bad about him getting hit, he said something to me, and I hit him, and we got took in front of the magistrate; is that right?

MR. FENDRICK: Yes.

THE WITNESS: Sure.

MR. FENDRICK: Now that is all right.

THE WITNESS: We got took in front of the Magistrate, and I can get the same magistrate that gave me the hearing, he got fined, this other guy - fellow - got fined, because he is a bar man, a bully, he was six foot two, and hit my little brother-in-law, and I will admit I hit him, and he sued me for breaking his ear-drum, he said his ear-drum was broke, that was the trouble.

MR. FENDRICK: May I ask one question?

BY MR. FENDRICK:

Q Mr. Malone, did this so-called assault take place on any race track?

A No, it was home, on the corner.

MR. FENDRICK: That is as a matter of fact, Commissioners; I just want to object to any testimony about that.

BY CHAIRMAN SWOPE:

Q You made an important statement before, Mr. Malone, that during your entire five years of racing you had never been questioned or censured by the Steward; did I understand you correctly?

A This, I think this -- no, Mr. Cassidy asked me to come up, he wanted to speak to me one time about a mare called "Billowy Wave", Mr. Morris was in the judges' stand, the day that Russell Kastner rode her.

Q Russell Kastner?

A Kastner.

MR. CASSIDY: Russell Kastner.

A (Continuing) That was a four horse race, and "Billow Wave" was in front of her horses, they run awful slow, and "Billow Wave" never raced again, that was her last race, she broke down in the race, and they came up and asked me what I thought of the boy's ride on the horse. I remember that day, it was a muddy track.

MR. CASSIDY: There was another time, "Infernal Lad."

A (Continuing) "Infernal Lad", in Saratoga, that horse ran after that. Mr. Cassidy told me that I would be better off getting rid of the horse, because he went right from, he went, he didn't run for two months, you sent a veterinary to look at him; isn't that right?

MR. CASSIDY: Yes.

A (Continuing) Then, I took the horse down there, I run him a couple of times, and I run him down there one day, and Judge Brown, he finished fifth, he was a short price, I think at Laurel, or somewhere, and Judge Brown said "You can't run that horse no more," so I said, "What is wrong, Judge?" He said, "Well," he said, "that horse run awful bad, he was a short price horse, so he said, "I am going to send the veterinary over to look at him." So, he wouldn't let him run for a couple of weeks, and he did let him run, and he got beat a couple of more times, and then I dropped him down for a

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thousand dollars, and he won a race.

BY CHAIRMAN SWOPE:

Q Where was the "Billowy Wave" case?

A Empire City.

MR. CASSIDY: Where was it? September 14th, that wasn't at Empire City, the "Billowy Wave" affair, it was September 14th.

THE WITNESS: Mr. Cassidy, it should --

MR. SLOAN: I remember that race myself, at Empire City, about a four horse race, Cassidy, you are right, and I spoke about it myself to Mr. Cassidy, I thought it was a very bad ride, and I knew that "Billowy Wave" had run after that. Isn't that right?

THE WITNESS: I will tell you how I recall it --

MR. SLOAN: I remember very well it was at Empire City.

MR. CASSIDY: Yes, I remember very well. He just has the date September, instead of October.

MR. MORRIS: October?

BY CHAIRMAN SWOPE:

Q You certainly went through your racing career with the very real belief that you never were in trouble and none of the Stewards thought you were in trouble, and that is your attitude now, isn't it?

A Yes, sir.

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Q Now, there are some questions that I, or some of these gentlemen, may ask you, on the personal side. There is no allegation that these charges are true. We have no official record against you, but these are some of the things that were mentioned in connection with your name, and I think for frankness we should question you about them, particularly as you said a moment ago you wanted to be asked about anything that occurred to us, and you said some of these things may have been doctored a little by this detective who has it in for you?

A Yes, sir.

Q There is an outline of something like ten or twelve cases of arrests or questionings by the police. I will give you some of them. On July 19²⁶ you were charged with assault and battery; discharged. That will be eleven years ago. Do you recall anything about it?

MR. CASSIDY: July of 1926.

A Where was I fighting?

MR. CASSIDY: That was at Philadelphia.

A (Continuing) On the street?

MR. CASSIDY: Well, no, it just says "assault and battery."

BY CHAIRMAN SWOPE:

Q In an automobile.

A Assault and battery?

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Q Well, I do not think it would be binding upon you, you were discharged, simple assault and battery, reckless driving, too. Are you a drinker, by the way?

A Well, I haven't -- yes, sir, I was, I have drank.

MR. SLOAN: Do you drink to excess?

THE WITNESS: No more. I stopped it.

BY CHAIRMAN SVOPE:

Q You mean stopped drinking to excess, or do you mean stopped drinking?

A I stopped altogether.

Q Did you? How long has that been?

A Well, I will tell you the truth; since California.

MR. MORRIS: 1929, Mr. Chairman, a hold-up.

THE WITNESS: Yes, sir.

MR. FENDRICK: Just a second.

CHAIRMAN SVOPE: There is a record of one discharge.

BY CHAIRMAN SVOPE:

Q What do you wish to say about December 1929, something about the hold-up?

A Well, what is it; a hold-up? I will explain the case and get the man who was a witness.

MR. FENDRICK: Just one second, if the Commission please, I wish to make an objection -- Mr. Malone is going to tell everything, but I wish to make an objection as to any occurrence that occurred before Mr. Malone was

licensed as a trainer under the New York State jurisdiction.

CHAIRMAN SWOPE: Very well, we will have that on the record.

MR. FENDRICK: I wish also to make an objection to any inquiry of any case concerning Mr. Malone where no conviction was imposed. Now, ask all the questions you wish.

CHAIRMAN SWOPE: We will proceed with the examination, on the ground that the questions and answers to the questions are not compulsory, it is a matter of Mr. Malone answering of his own volition, and they certainly have to do, in our opinion, with his reputation and his right to be accepted as a man of decency.

THE WITNESS: well, I want to tell you gentlemen, and I have a letter right here from Magistrate Costella, if that is on the record, that the man that was in the case -- I was in the playground, I had a tan automobile, and I was running, I was running around the playground for exercise, I had a sweater on, I was running with this little boy who was fighting, and I was arrested for a Thomas Malone that had a tan colored Buick, he lived at 18th and Diamond Street, for he held up a milk company. Is that it? In Jersey, or something, or a card game, or something, and I was discharged, and my brother is a detec-

tive, and he was in there, and I went home that afternoon, they knew that it wasn't me, and they sent for the man that next morning, and the man said no, right away, it wasn't me that was there, and if it says anything on the papers --

MR. SWOPE: Yes, as I said to you before, and you, Mr. Fendrick, on this list of things, this list of questions which the record shows discharged, it certainly has created no prejudice in my mind, or in the minds of anyone here. I am showing you what the record was.

MR. FENDRICK: I am making my objection from a technical viewpoint, Mr. Commissioner.

BY CHAIRMAN SWOPE:

Q Now, one time where the case went against you was in May, 1931, possession of liquor. That is what you explained before?

A Yes, sir.

Q Well, there were two charges, one in May of 1931 and one in July of 1931, possession of liquor. The first time, six months probation, the second time \$20 and costs, probation two years. What were these incidents?

A Well, I was -- I had -- I was drunk, with a couple of pints of whiskey in my pocket, and a man, he was a captain on the police force, was in plain-clothes, and he wanted to take the whisky away from me, and I wouldn't let him, I had been drinking, and fresh, and I will admit that he was -- that I was

in the wrong, that is the truth about that. I was arrested for that, and I got just drunk and fresh with the man, and I think I got fined, didn't I? Twenty dollars?

Q The most curious matter in which your name has been mentioned has to do with the assertion, March 1932, you were convicted of maintaining a disorderly house, and participating in a lottery.

A That is a lie, and if anyone can get a record to prove that I had -- I am a married man, and never had nothing to do with anything like that, never had anything to do with no disorderly house.

Q According to this record we have, you were sentenced for that.

A I was never sentenced, never.

MR. FENDRICK: May I see the record, please?

CHAIRMAN SWOPE: No, it is not -- this is merely to refresh his memory.

MR. FENDRICK: May I suggest that the name -- is the name "Thomas Malone", in Philadelphia?

CHAIRMAN SWOPE: Mr. Cassidy, look here a minute. With all due respect to the Steward, I am not at all certain that the statement is accurate. You see, he was sentenced in July 1931, which throws back to the possession of liquor, where he was fined \$20 in court and given probation for two years. I do not see what that means. 285

that is meaningless to me, and I would throw it out.

MR. CASSIDY: I would, too.

CHAIRMAN SCOPE: I do not think it means a thing.

MR. WHITNEY: Did you ever have anything to do with a restaurant or cafe, where you had a saloon, or were you in one any time like that?

THE WITNESS: Yes, sir, I was arrested in a cafe.

MR. WHITNEY: When was that?

THE WITNESS: Oh, that has been a few years ago, you know, a raid in a cafe, I was arrested in that.

MR. WHITNEY: But, I mean, you had ^Xnothing to do with the place?

THE WITNESS: No.

MR. WHITNEY: By the way of being employed there or having any ownership in the place?

THE WITNESS: No, sir.

MR. CASSIDY: I think that is a mistake.

CHAIRMAN SCOPE: I think, in all fairness to Mr. Malone, we should say that not even unofficially have we any evidence before us that you were convicted or sentenced on the disorderly house item.

MR. SLOAN: That is the only item that I took any umbrage at at all, because these other things all occurred before.

CHAIRMAN SCOPE: How was your question ^Xabout the

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restaurant answered?

MR. WHITNEY: He said he had been in a raid in a cafe, but he had nothing to do with the place.

MR. SLOAN: Here is a case of arson, that is discharged.

BY CHAIRMAN SWOPE:

Q Was it a cafe, or disorderly house?

A The cafe, it was a cafe, a speakeasy -- well, you know.

Q It wasn't a disorderly house, was it?

A No, sir.

MR. SLOAN: Well, someone has gotten this mixed up with malice aforethought, as I see it. It looks that way to me. I will tell you it was --

MR. CASSIDY: I will tell^x you something that should go a long way with this, the Chief Magistrate of Philadelphia came to see me personally, and he said that there was nothing of record against Malone of conviction or of anything serious in Philadelphia. His name had appeared on the blotter a number of times, where he had been picked up in company, why, they always put it on the blotter, but he was never convicted of anything serious.

MR. FENDRICK: Mr. Commissioner, may I ask -- of ²⁰⁴ course, it is a letter from a Magistrate in Philadelphia, Magistrate Costella -- may I ask that it^x be looked at by

the members of this Board here?

CHAIRMAN SWOPS: You may read it.

MR. FENDRICK: Well, I will read it then: "Magistrate's Court, No. 273160, Kensington Avenue, Philadelphia. Philadelphia, September 15, 1937. To whom it may concern: I have known the bearer of this letter, Mr. Thomas Malone, for the past fifteen years, and have always found him to be honest, upright, and trustworthy. Any further reference that may be needed will be given at any time, either by writing or personally. Respectfully yours, Atkinson Costello."

MR. SLOAN: Well, what^x I would like to know is how he came into possession of all this? Well, that is a matter of going over --

MR. FENDRICK: There is another letter here, written to Captain Thomas Finnerty, Pinkerton National Detective Agency, Liberty Trust Building, Philadelphia, Pa.

"Dear Captain Finnerty: In compliance with your request for information concerning the criminal record of Thomas Malone, this is to advise that during my tenure as Superintendent of Police in this city, I conducted a thorough investigation of Thomas Malone, the result of which convinced me that his reputation was excellent, and he was deserving of consideration. I therefore removed from^x the files his record of arrests, none of which were for

serious offenses. True, he had a couple of convictions on the charge of possession of intoxicating liquor, which occurred during the Prohibition era, but at no time had he ever served any time in prison. Hundreds of other reputable citizens were arrested during those years for similar offenses, they being taken into custody when liquor raids were made. All such arrests are now looked upon as mere trivialities, they not being considered as serious breaches of the criminal law. With that in mind, and because of Malone's efforts to live a blameless life, I saw fit to remove the record. In passing, I may state that Thomas Malone has a brother David who is a city detective. With many regards, I am, Sincerely yours, Commissioner." And that was written --

CHAIRMAN SCOPE: What was his job then? Superintendent of City Police?

MR. FENDRICK: Yes.

MR. MORRIS: What did it say?

MR. FENDRICK: Superintendent of Police in the City of Philadelphia.

MR. MORRIS: That was written to the Pinkerton people?

MR. FENDRICK: That was written to Pinkertons on their request for information concerning Mr. Malone.

CHAIRMAN SCOPE: Written last year?

MR. SLOAN: This year.

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MR. FENDRICK: Written July 15, 1937.

CHAIRMAN SWOPE: Well, that must be a copy of a letter that was put in our possession some time ago.

MR. CASSIDY: I have seen our letter.

MR. FENDRICK: Yes.

CHAIRMAN SWOPE: It is a copy of a letter, isn't it?

MR. FENDRICK: Yes. Might I state that might there not be some possibility of two Thomas Malones being mixed up here in arson cases and disorderly conduct cases?

CHAIRMAN SWOPE: It is a very likely theory.

BY CHAIRMAN SWOPE:

Q where did you say that other Thomas Malone⁷ lived, Mr. Malone?

A 15th and Diamond, 15th street and Diamond, in Philadelphia.

Q Do you know him well enough to know whether or not he had a record?

A Well, I think so, he is an Italian, that is not his right name, he just, he sort of took that name; I don't know what his last name is.

Q How old is he?

A Oh, I judge he is my age.

Q How old are you?

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A Thirty-three.

Q Thirty-three? Still thirty-three? What is it, Diamond, ordinary Diamond, 15th and Diamond, you say?

A Yes, sir, Diamond.

BY MR. WHITNEY:

Q What led you to decide to give up drinking in California? Did you get into any trouble out there?

A No, sir, but I got sick, pretty sick, out there one time, I got some trouble with my heart, it started to jump.

Q You think that so far as this phase of getting into trouble is concerned, you are all through with that?

A Yes, sir, positively.

MR. MAXWELL: Mr. Malone, in how many different states have you received a license?

THE WITNESS: Florida, California, Maryland, New York, Detroit.

MR. WHITNEY: You haven't received a license here, have you?

MR. MORRIS: He did have one.

MR. CASSIDY: He did have one.

CHAIRMAN SWOPS: Florida, California, Maryland, Michigan?

THE WITNESS: Detroit, yes.

MR. MAXWELL: Michigan.

MR. SLOAN: You stated before you had a license in

Illinois, is that right, around Chicago?

BY CHAIRMAN SWOPE:

Q Did you ever race in Illinois?

A No, Detroit.

CHAIRMAN SWOPE: Your counsel said that. It doesn't make any difference.

MR. FENDRICK: I might have made a mistake.

BY CHAIRMAN SWOPE:

Q Did you ever drive in the State of Illinois?

A No, sir.

Q Well, the five states you mentioned?

A Yes, sir.

Q You raced in and had no difficulty in getting licensed, did you?

A No, sir.

MR. MAXWELL: Have you ever been denied a license in any other state?

THE WITNESS: Never.

MR. SLOAN: You were in Delaware, weren't you?

MR. CASSIDY: Did you have a license in New England, Narragansett?

THE WITNESS: No, I sent the horse up there that time to run; I didn't go.

MR. CASSIDY: You didn't go?

CHAIRMAN SWOPE: You never had a license in Rhode

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Island?

THE WITNESS: No, sir, I never raced up there. I had a horse race up there, but Shaeffer took him up for me.

MR. MAXWELL: Do you remember what years you had those licenses? Well, California, you must have had a license there.

MR. CASSIDY: In 1936, he had New York, Maryland, California.

CHAIRMAN SWOPE: Florida?

MR. CASSIDY: Florida.

CHAIRMAN SWOPE: And he said Michigan.

MR. CASSIDY: Well, he may have had, but those I know.

MR. MAXWELL: For 1936.

MR. WHITNEY: When did you get your original license?

THE WITNESS: The original, I think it was in Detroit; it was in Detroit.

MR. WHITNEY: The first time you ever raced under your own name as a trainer?

BY MR. MORRIS:

Q In the "Moonside" case, you had in your employ a man by the name of Doherty, Red Doherty?

A Yes, sir.

Q And he was under your supervision, was he not?

A Yes, sir.

Q And he was told to leave the track, was he not?

A He was excluded from the grounds.

Q Yes?

A By the Board.

Q Now, ⁴⁰ that man was also in your employ, you took him with you to California, didn't you?

A He came to California. No, sir, I didn't take him, he came there with his wife or his girl and father-in-law.

Q Then you re-employed him?

A Yes, sir.

Q Well, why did you take a character like that back again?

A Well, I am going to tell you. Now that Red Doherty isn't with me, I discharged him, I never looked into the man's reputation. While he was with me, Judge, he was one hundred per cent, and I really believe yet, even though I discharged him, that he did not have anything to do with that case, for the simple reason was that he knew I blew the horse out in the morning.

MR. SLOAN: This is the sponging case in Maryland?

THE WITNESS: Yes, sir.

A (Continuing) And I think the boy liked the horse too

well, the horse won six or seven races, and he won that many bets, and I don't see why he would put a sponge in his nose, and Mr. Cassidy could tell you the way that was shoved up there. I have the sponge in the trunk. I even took the sponge and went around to the drug-stores and asked the drug-store man, "Do you sell this kind of a sponge?" I thought maybe I could fish around and find out who it was.

MR. CASSIDY: I will tell you an incident that is probably important, regarding this ^x sponging. That sponge that was found in this horse's nose was of the same calibre exactly as that which was found in the noses of three or four other horses immediately after his horse was sponged, in different parts of the track. We located, I think, three other sponges in horses' noses, various stables of the track, and every one of the sponges that were taken out, after they were cleaned, were portions of the same sponge. There was a die identification mark on two of them, where it was torn, it was torn in half, and when we ^x put them together --

THE WITNESS: And I also reported to Mr. Cassidy one time, I never made no connections with those kinds of fellows, because the Finkerton man one time, I ran a short priced horse here, and I told Mr. Cassidy, the men caught him, he was trying to force in the barn door to stop the horse, and I run the horse here, Jockey

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workman rode her, and she went up in the bets and she won. There was a rumor around that they got to her, or something.

MR. CASSIDY: Somebody approached one of your men, did he not, approached one of your men?

THE WITNESS: Yes, and he wanted to give him some money, to give the horse something.

BY MR. WHITNEY:

Q You said before, Mr. Malone, that you put the blame for some of the trouble you have been in, on Whitey Layton?

A Yes, sir.

Q What particular trouble do you mean, that he was responsible for getting you into? /

A Well, about the sponge case, he is doing all the talking.

Q Was he employed by one of the Maryland tracks then?

A Well, Mr. Whitney, I seen him there, but I wouldn't say whether he was employed.

MR. CASSIDY: He was employed at -- I don't know whether it was Whitey Layton --

THE WITNESS: The horse ran in Eddie Kane's name, you see, and Eddie Kane was mad at him, something, I don't know what it was about, and he don't speak to Kane.

MR. SLOAN: It isn't Layton, it is Leighton;

Leighton is the man's name.

MR. CASSIDY: No, Layton is the man, I know.

MR. WHITNEY: Layton is the man.

MR. CASSIDY: L-e-i-g-h-t-o-n. I mean he pronounced his name that way.

THE WITNESS: And when he went to Delaware -- what is that judge's name, that old --

MR. CASSIDY: Anderson?

THE WITNESS: No, he has a horse or two.

MR. CASSIDY: Weston.

THE WITNESS: Weston. Well, I went to Delaware, and Mr. Weston said himself, when I went, I just went down there, I am a friend of Mr. Putnam's, I never asked him to say a word for me, and he said to him, he ought to forget the whole business and give me a license, because I have seen the man on the track ever since that man was on the track, every morning, and people that know me see me around there.

MR. WHITNEY: Where is Mr. Putnam, by the way; is he --

MR. FENDRICK: Where is Mr. Putnam now?

THE WITNESS: He is in South --

MR. CASSIDY: South America.

THE WITNESS: Chile.

MR. WHITNEY: Has he sent any message to the hearing?

MR. FENDRICK: well, if the hearing will req.

MR. SLOAN: Is he buying horses down there now?

THE WITNESS: well, I think he is going to buy some of them South American horses.

CHAIRMAN SWOPE: The Commissioner's question was, have we anything before us as to Putnam's attitude in the matter. Isn't that your question?

MR. SLOAN: Yes.

CHAIRMAN SWOPE: Have we?

MR. FENDRICK: Well, we have nothing. If Mr. Putnam were here, I am certain he would be here to testify --

CHAIRMAN SWOPE: Why don't you cable him? Ignore suppositions.

MR. CASSIDY: Mr. Putnam has sponsored Mr. Malone to you.

CHAIRMAN SWOPE: To you?

MR. CASSIDY: Yes.

MR. WHITNEY: And he has to me. I want to make that clear, if there wasn't anything on the record, he did speak to me.

CHAIRMAN SWOPE: Did you meet him in California?

MR. WHITNEY: No, I didn't meet him in California; I met him in Kentucky.

CHAIRMAN SWOPE: That is something we ought to know.

And he also sponsored him to you?

MR. CASSIDY: Yes.

CHAIRMAN SWOPE: Are there any other questions we want to ask Mr. Malone? Have you any, Mr. Morris?

MR. MORRIS: No.

CHAIRMAN SWOPE: Have you, Mr. Maxwell?

MR. MAXWELL: No.

MR. MORRIS: When you applied in Delaware, didn't they tell you that you would apply at your own risk? You knew Delaware was racing under the Jockey Club, didn't you?

THE WITNESS: Yes, sir.

MR. MORRIS: And you knew that you had been told that you could withdraw your license?

THE WITNESS: Yes, sir.

X MR. MORRIS: That was notice to you that the Jockey Club did not look with favor upon you, wasn't it?

THE WITNESS: Yes, sir.

MR. MORRIS: Then you applied in Delaware, and they told you there that you did it there at your own risk, is that correct?

MR. MALONE: Yes, sir.

MR. MORRIS: In other words, you knew that you had to go before the Jockey Club again?

THE WITNESS: Yes, sir.

MR. MORRIS: That is all.

CHAIRMAN SWOPE: Do you have any questions?

MR. WHITNEY: Just one.

BY MR. WHITNEY:

Q Have you ever been in any trouble with the police anywhere outside of Philadelphia?

A No, sir, no, sir, never once.

CHAIRMAN SWOPE: Have you anything, Mr. Sloan?

MR. SLOAN: No, I haven't any further questions.

CHAIRMAN SWOPE: Well, I think we are better posted than we were.

MR. SLOAN: There is only one thing. I want to make an observation here on this record, the police record, I think it is a very dangerous thing to have such a record on anybody unless it is authentic, and we are taking things for granted here when we see such a record.

CHAIRMAN SWOPE: No, we didn't. It was merely to refresh Mr. Malone's memory.

MR. SLOAN: There is a typewritten statement here, which would lead one to assume things.

CHAIRMAN SWOPE: Let's discuss that afterwards. There has been no prejudice whatsoever, so far as we are concerned, and the Stewards can speak for themselves, on

any record that has been submitted to us, that is why we wanted to ask you very frankly about each separate case.

I think that is all, unless you have something to say.

MR. FENDRICK: Yes, may I say just one thing? Now, gentlemen, in consideration of this case, I just ask that one thing be considered. It shows the man's character, and it shows that he has nothing to be afraid of, and he comes here with a clear conscience. We must remember that this man did not have to put in for a license in New York^X, just as this gentleman asked him, whether he knew he would take the consequences, or not; he could have skipped New York, and not apply here, and apply in Florida, or some other place, and probably -- I don't say he would have -- but probably he would have been granted a license. But, he took the bull by the horns, as you might say, and he came here straightforwardly and he put his license in, and he thought he would get it, and he came here to face this Commission, and he is still facing them, with the one thought that he doesn't want to go around the country licensed in some places and not licensed in others. He either wants to be clear or not clear, and we must recall one thing, that by refusal, by refusing to license this man, you

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are taking away probably the only profession he knows, his only career. He has a wife, he has two children, and I wouldn't ask for mercy or anything like that in any other case, where the man wasn't entitled to it, but in this case, if this boy has made some mistakes, I don't believe there is a person on the Board who hasn't at some time in his younger days, and I ask the Board to disregard that, and look on his record as a trainer under the jurisdiction of New York state and other tracks, and I want you to thank this Board for the very kindly and courteous attention they have given this case, and the courtesy they have shown to me, and I thank you very much.

CHAIRMAN SWOPE: Well, Mr. Malone, you may go now, and you will hear from the Secretary the disposition of it.

In the meanwhile, the case at least has been well handled by your counsel, you have gotten none the worse of it.

MR. MALONE: All right. Thank you.

(After the hearing, an informal discussion followed, and the Chair announced it was the consensus of the meeting that a thorough investigation be made in the report that has been submitted regarding Malone's rec-

ord. The Chairman instructed the Commission Steward to have the Pinkerton Agency take up this assignment immediately, and to report back to the joint meeting of the Commission and the Stewards.)

(Whereupon the hearing closed at 7:30 p.m.)

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Proceedings of a Meeting of the New York State Racing Commission, held at the Belmont Park racecourse, Elmont, L. I., on Tuesday, September 21, 1937, at 3:30 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Commissioner John Hay Whitney
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Steward informed the Commission that he had received the results of the investigation instituted by the Pinkerton Detective Agency, to check on the alleged police record of Thomas Malone. The Pinkerton Agency reported that there were three Thomas Malones, two of whom had been convicted of offenses; but the Thomas Malone who applied for a trainer's license had never been convicted of any offense.

It was the judgment of the Commission, that in order that the Commission might not appear to overrule the action taken by the Jockey Club, and inasmuch as the evidence laid before the Jockey Club in the Malone case was erroneous, the question be referred back to the Jockey Club with recommendation by the Commission that Thomas Malone be granted a license.

There being no further business before the Commission, on motion duly seconded, the meeting adjourned at 4:15 o'clock, P. M.

John F. Shevlin

Secretary.

Proceedings of a Meeting of the New York State Racing
Commission, held at the Belmont Park racetrack on Friday, September 24, 1937.

PRESENT:

Hon. Herbert Bayard Swope
Commissioner John Hay Whitney, by proxy of Chairman
Commissioner John Sloan
Mr. John F. Shevlin
Mr. Marshall Cassidy

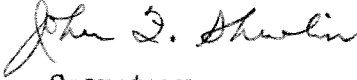
Minutes of the previous meeting were approved and passed without
reading.

The Secretary reported the daily conferences with the Chairman on
routine and administration business.

It was moved and unanimously approved that the suspension of
George Arvin, which began on August 16, be terminated on December 15, 1937.
The punishment grew out of the drugging of the mare Black Mistress. It was
the first offense charged against Arvin.

An analysis of Saratoga guaranteed stakes, showed that out of
a total value of \$107,500, only \$6,020 was contributed by the Association.
The subject is to be given further study and discussion.

On motion duly seconded, the meeting adjourned.


Secretary.

Proceedings of a Meeting of the New York State Racing Commission,
held at the Belmont Park racetrack on Saturday, September 25, 1937.

PRESENT:

Hon. Herbert Bayard Swope
Commissioner John Sloan
Commissioner John Hay Whitney, by proxy of Chairman
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without
reading.

The Secretary reported the daily conferences with the Chairman on
routine and administration business.

The Chair moved that the following resolution be adopted:

"RESOLVED, that in line with the Commission's
attitude in investigating possible retardation
as well as possible stimulation, every case of
form reversal shall be sent to the saliva barn
for an examination of saliva and urine, as well
as for examination of the nostrils for possible
sponging."

This had been done from time to time during the season.

The motion was unanimously passed and adopted.

On motion duly seconded, the meeting adjourned.

John F. Shevlin
Secretary.

Proceedings of a Meeting of the New York State Racing Commission, held at the Jamaica Racetrack, Jamaica, L. I., on Monday, October 4, 1937.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
Commissioner John Sloan
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary

BY INVITATION:

Mr. John G. Cavanagh.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Commission decided that no action would be taken on the later testimony of Frank McManus, since he had changed his testimony too often.

The license forms submitted by Mr. Cassidy for owners, trainers, jockeys, apprentice jockeys, veterinarians, stable foreman, grooms, exercise boys, watchmen and blacksmiths, were approved.

On motion duly seconded, the meeting adjourned.


Secretary.

Proceedings of a Meeting of the New York State Racing Commission,
held at the Jamaica Racetrack, Jamaica, L. I., on Wednesday, October 6, 1937,
at 3:30 P. M.

PRESENT:

Honorable Herbert Bayard Swope, Chairman
Mr. Marshall Cassidy, Steward
Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The Secretary informed the Chair that Dr. Harvey A. Seil of Seil, Putt and Rusby, Inc., Chemists, of 16 East 34th St., New York City, was unable to detect the drugs contained in a stimulant furnished by Mr. Cassidy, and which he had reason to believe, was being used to defeat the saliva test. The Secretary informed the Chair that, in the opinion of Charles E. Morgan, Chemist for the Commission, the stimulant could not be detected in the saliva test.

The Chair instructed the Secretary to place on the agenda for the next meeting, which would be attended by the Commission as a whole, the possibility of having the Massachusetts Institute of Technology experiment to discover -

- (a) the detection of a stimulated horse by his appearance before the race;
- (b) the results of stimulation of horses;
- (c) methods of prevention of stimulation.

On motion duly seconded, the meeting adjourned.

John F. Shevlin
Secretary.

Proceedings of a Meeting of the New York State Racing Commission, held in Room H of the Cloud Club, 405 Lexington Avenue, New York City, on Friday, November 12, 1937, at 1:00 o'clock, P. M.

PRESENT:

Hon. Herbert Bayard Swope, Chairman
 Commissioner John Hay Whitney
 Commissioner John Sloan
 Mr. John F. Shevlin, Secretary.

Minutes of the previous meeting were approved and passed without reading.

The Secretary reported the daily conferences with the Chairman on routine and administration business.

The tentative budget prepared by the Chairman was approved by the Commission. The actual amount granted will not be made public until February.

The Commission voted unanimously to conduct a research into the use of drugs, to amplify the saliva test. Experiments will be conducted on a realistic basis. The Secretary was instructed to communicate with Dr. J. G. Catlett, Supervisor of Saliva Tests, asking him to submit a program for approval by the Commission.

The Commission voted unanimously to abolish Guaranteed Stakes at Saratoga. Instead these stakes will be called "Of Estimated Value". The association will add money to the subscriptions already received. The Chair informed the meeting that this plan had the approval of George W Bull, President of the Saratoga Association.

The following resolution was unanimously passed and adopted -

"RESOLVED, that each association racing under the jurisdiction of the New York State Racing Commission shall make suitable sanitary arrangements for stable employees and jockeys, such as, baths, toilets, etc., to be conveniently located on the grounds of said associations."

Commissioner Sloan was appointed to make a study of these conditions and their correction and to make a report to the Commission of his recommendations.

After a discussion on whether or not call should be made of the progress of each race through the loud speaker, the following resolution was unanimously

passed and adopted:

"RESOLVED, that the racing public be canvassed by questionnaire during the spring race meetings, as to whether they prefer -

1. Vocal announcing of each race;
2. The use of the electric annunciator;
3. No announcements whatsoever."

After discussing the question of stall rents, the following resolution was unanimously adopted:

"RESOLVED, that racing associations operating under the jurisdiction of the New York State Racing Commission shall make no charge for stall rent against any horse performing at the meeting then in progress on the grounds of the association."

The Chair informed the meeting that complaints had been received from various trainers as to the absence of starting gates at the tracks where they were stabled when actual racing was conducted elsewhere. The following motion was unanimously passed by the Commission:

"RESOLVED, that there shall be starting gates for practice at every race track under the jurisdiction of the Commission where a certain number of horses (the number of which to be decided upon at a conference with the associations) are stabled on the grounds, even though a meeting is not in progress."

Action on the apprentice rule and weights was deferred until the winter convention of the National Association of State Racing Commissioners, where the questionnaires which were sent out by the Commission will be tabulated.

The Chair announced the appointment of Commissioner John Hay Whitney as Chairman of a Committee to study the steeplechase questions. Announcement of other names to serve on the Committee will be made after Commissioner Whitney returns from Europe. The Chairman and Commissioner Sloan will act as ex-officio members on this committee.

As the result of a question in the public mind, the following resolution was passed unanimously:

"RESOLVED, that the decision of all camera finishes shall be made on the basis of the position of the nose of the horse. No other part of the animal's body shall be taken into consideration."

In order to keep a better check on the identity of stable employees, it was unanimously

"RESOLVED that all stable employees shall be licensed by the Jockey Club in accordance with Section 9b of Chapter 310 of the Laws of 1934."

The Commission voted to suggest to the Jockey Club that each application for colors be accompanied by a water-color of the silks requested, in order to save confusion in identity among the colors of the various stables.

The Commission voted to ask the Jockey Club whether it would be possible to get water colors of those colors already granted.

The Chair informed the meeting that suggestions had been made to the Commission to alleviate in some way the misfortune of horsemen, who as a result of Rule 171 of the Rules of Racing, become the owners of a claimed horse whether it is alive or dead, sound or unsound, or injured during the race or after it. The following resolution was unanimously adopted:

"RESOLVED, that the National Association of State Racing Commissioners, study the possibility of introducing a nationwide system of insurance to protect the claimant in the event of his claim of an injured horse."

There being no further business, on motion duly seconded, the meeting adjourned.

John S. Shulin
Secretary.