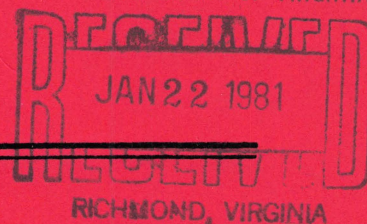


222 VA 379

CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 801425

GILES COUNTY BOARD OF SUPERVISORS,
Appellant
v.

ARNOLD G. CARR and
ROSCOE C. MUNSEY,
Appellees

APPENDIX TO BRIEF

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BASIC INITIAL PLEADING
PETITION FOR WRIT OF MANDAMUS
FILED May 27, 1980

Come now the undersigned, Arnold G. Carr and Roscoe C. Munsey, your petitioners herein and allege as follows:

I

Your petitioners are duly appointed members of the Giles County Social Services Board, having been appointed for terms which were to have expired in February, 1983, and February, 1982, respectively.

II

At the initial meeting of the newly elected Board of Supervisors for Giles County (consisting of Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely) on January 8, 1980, said Board of Supervisors voted to vacate all seats on the Giles County Social Services Board and dismiss your petitioners as incumbent members of said Board. Your petitioners were given no notice of hearing, no opportunity to present evidence in their behalf, and no reason was stated for their dismissal. Subsequently, the Board of Supervisors nominated and appointed five (5) new persons to constitute the Giles County Social Services Board. Said persons are: Mr. Carl Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, and they have constituted themselves as a Board and have conducted business as such, to the exclusion of your petitioners.

[RECORD PAGES 1 - 4]

BASIC INITIAL PLEADING
PETITION FOR WRIT OF MANDAMUS
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III

At another meeting of the Board of Supervisors, several days later, the original motion to dismiss your petitioners was amended to read: "to vacate the positions on the Social Services Board for the following reasons: (1) The members of the Board of Supervisors have received numerous complaints from the citizens of Giles County regarding occasions of rude behavior by the former Social Services Board members to county citizens; (2) We have substantial philosophical differences with the former Board members and desire to appoint a new Board more philosophically in tune with this Board of Supervisors and the people of Giles County as evidenced by the recent election; (3) We believe that this Social Services Board has not shown the type of leadership required by the position and have generally been content to follow rather than lead; and (4) the Central District representative is currently serving his third term on the Board and is thus serving in violation of § 61.3-39 of the Code of Virginia which limits a member of the Social Services Board to two consecutive terms."

IV

Your petitioners and another dismissed Board member petitioned this Court for a Writ of Mandamus and were ordered reinstated by this Court pursuant to an Order dated May 12, 1980.

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BASIC INITIAL PLEADING
PETITION FOR WRIT OF MANDAMUS
FILED May 27, 1980

V

However, even before the final Order and Writ of Mandamus was entered, your petitioners each received identical letters dated May 1, 1980, informing them of an impending hearing at which their dismissal for cause would be considered. Six reasons were listed, none of which coincided with the previous reasons given, as noted in paragraph III, supra.

VI

At the scheduled meeting on May 19, 1980, pursuant to notice duly served on your petitioners, the Board of Supervisors convened to determine if there existed cause to remove your petitioners from the Social Services Board again. Evidence was brought to the Board by two (2) persons. Your petitioners, because of the insufficiency of the evidence brought by these two (2) persons, presented no evidence in their own behalf. Following the presentation of evidence, the Board of Supervisors, without discussion or stating of reasons, voted to dismiss again your petitioners from the Giles County Social Services Board.

VII

Said dismissal of your petitioners was performed without showing of legal cause for dismissal as required by Section 63.1-45 of the Code of Virginia, 1950, as amended, and was therefore improper, illegal, and should be considered as

[RECORD PAGES 1 - 4]

BASIC INITIAL PLEADING
PETITION FOR WRIT OF MANDAMUS
FILED May 27, 1980

void. The dismissal was simply the most recent move in an ongoing attempt by the Giles County Board of Supervisors to remove your petitioners from office by whatever justification, however flimsey, seemed most expedient.

VIII

As a consequence of the foregoing, your petitioners have been and remain unable to complete their terms of office. Moreover, your petitioners have been forced, yet again, to petition this Court for reinstatement to their appointed positions, thereby causing them among other hardships, expenses and attorney's fees incident to this litigation.

WHEREFORE, and inasmuch as your petitioners are otherwise without sufficient and adequate remedy, they pray that a Writ of Mandamus may be issued by this Court directed to the said Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely, individually and collectively, as the Board of Supervisors of Giles County, Virginia, commanding and compelling them to reinstate your petitioners to the Giles County Social Services Board; that the said Mr. Carl Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, individually and collectively as the current Giles County Social Services Board be commanded to refrain from holding themselves (itself) out as the legal and proper Social Services Board of Giles

[RECORD PAGES 1 - 4]

BASIC INITIAL PLEADING
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FILED May 27, 1980

County, Virginia, or in any way acting as such, and that all such other, further, and general relief be granted to your petitioners as the matter of the case may require, including costs of this proceeding and reasonable attorney's fees.

Respectfully submitted,

/s/ Arnold G. Carr

ARNOLD G. CARR

/s/ Roscoe C. Munsey

ROSCOE C. MUNSEY

LINDA BOGGS - D

5.

1 Department of Social Services?

2 A. Social worker supervisor.

3 Q. How long had you held that position?

4 A. About six years.

5 Q. And can you tell us approximately when you
6 started in that position?

7 A. I started at the department in 1969 and left
8 briefly and came back in 1972. So, I've been in Welfar about
9 nine years.

10 Q. How long during that period of time was
11 Arnold G. Carr and Roscoe C. Munsey members of the Giles County
12 Board of Social Services?

13 A. I think Mr. Carr in 72; I'm not sure about
14 Mr. Munsey. I think maybe 76.

15 MR. JENKINS: I will confine my questions on 1976 for your. And

16 I am confining them to the times that Mr. Carr
17 and Mr. Munsey were members of that Board.

18 Q. Can you please tell us while you were there
19 if there was any memorandum or paper that was sent to you on
20 program and activities summary?

21 A. You are probably talking about the administra-
22 tive review which was done in February 1978?

23 MR. JENKINS: Yes.

24 A. That's the last one that I recall that was
25 done when I was still there. And that was completed by the

HEARING 5/19/80 BEFORE BOARD OF SUPERVISORS
TESTIMONY OF LINDA BOGGS

LINDA BOGGS - D

6.

1 Roanoke Regional Office in February 1978, with regional staff.
2 It was a review of records, of minute books, of accounting pro-
3 cedures. A general review of the whole operation.

4 Q. Was this in writing?

5 A. After they completed the review, they went
6 over it with Mr. Johnson and some of the supervisors of what was
7 pertinent to each of them. And then they presented a written
8 report.

9 Q. And the written report of what they went over,
10 can you tell the members of this Board what was contained insofar
11 as the recipinets of welfare appearing on the public minutes?

12 A. That there was to be a required action.
13 There's a difference in required action and recommended action.
14 Required means something that you have to change. And Michael
15 Blair who was, at the time, Special Assistant Attorney General,
16 said that we were to cease putting names in the minute book. He
17 did make a thorough review of the minute book to make sure all
18 appointments, for example, of state and local hospitalization and
19 this kind of thing was being done. And he pointed out to the
20 agency - to the Director, at the time - that no client names was
21 to be in the minute book. It was required action.

22 Q. Insofar as the members of the Social Services
23 Board concerned, in this proceeding, Mr. Carr and Mr. Munsey.
24 Again, they were members at that time?

25 A. Yes.

LINDA BOGGS - D

1 Q. Do they hold regular meetings?

2 A. Yes. At least six meetings a year are re-
3 quired, I believe. But they previously held one, once a month.

4 Q. And is the business of the Social Services
5 discussed and passed on, at those meetings?

6 A. Yes sir.

7 Q. After that statement from Michael F. Blair,
8 the Special Assistant Attorney General, have you had an oppor-
9 tunity to examine the public minutes of the Board of Social
10 Services?

11 A. I have gone back a number of years because
12 we've been reviewing some of the policies from the start of
13 February on the new Board, to know what kind of agency policy
14 we have, and to either take action to continue or change. And I
15 have looked back and there are quite a few minute books. Of
16 every meeting.

17 Q. Well, from the time that this memorandum was
18 received?

19 A. I think there may be a couple of meetings
20 that there are. Instead they now use the case numbers, now.

21 Q. Well then, would it be fair to say that most
22 of the names occurred after this memorandum was delivered;
23 that they appeared in those minutes?

24 A. Right.

25 Q. Was this ever pointed out to either Mr. Carr

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TESTIMONY OF LINDA BOGGS

LINDA BOGGS - D & C

8

1 or Mr. Munsey?

2 A. I don't know.

3 Q. You don't know?

4 A. No, I wasn't - I didn't attend the meetings
5 and I don't know how much was pointed out after - in April of 78
6 after the administrative review. Nothing specific was written in
7 the minute book but that the review was discussed with the Board
8 and I don't know how much in detail because I wasn't present.

9 Q. In your present position, who would be over
10 you?

11 A. The local Board and the State.

12 Q. And that was true at that time?

13 A. Yes.

14 MR. JENKINS: I believe that's all.

15 CROSS EXAMINATION BY MR. CAMPBELL:

16 Q. Mrs. Boggs, at whose request did you go back
17 to look through the minute books?

18 A. We went back and looked through the minute
19 books on policy. And at nobody's request because that was one of
20 the first things, as new Director, that I wanted to do was to
21 review with the Board - whoever they were - some policies.
22 Because Mr. Johnson, the previous Director, and I did not agree
23 in the past what was the best policy for the agency. And when
24 there is option for change I think it should be reviewed.

25 Q. So you just, on your own initiative then, went

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TESTIMONY OF LINDA BOGGS

LINDA BOGGS - C

9.

1 back to 1978 - ever since 1978 - to look in the minute books?

2 A. No, I didn't say 1978 to look. Just various
3 policies like sick leave, vacation, policy like this that effects
4 the operation of the agency. Dress code, this kind of stuff.

5 Q. And what - you were looking specifically for
6 clients' names in the minute books, or something like that?

7 A. No. Uh uh. Policy.

8 Q. You just happened to notice those?

9 A. No, Mr. Davis actually. Because he had to
10 sign the last meeting in January.

11 Q. He was the one who actually requested that
12 you do that, wasn't he?

13 A. I never did do it.

14 Q. In fact, Mrs. Boggs, this was done at Mr.
15 Davis' request, wasn't it?

16 A. No. No. Uh uh.

17 Q. It was not done at his request?

18 A. He looked at the books for the names. I know
19 there are names in the book, because I have been through them
20 to look for policy, excerpts on policy. I am aware that names
21 are in the book. But I did not go through and look for names.

22 Q. And you are subject to dismissal, I believe,
23 by the new Board, are you not?

24 A. I am subject to dismissal by the State or the
25 Board, whoever they are.

LINDA BOGGS - C

10.

1 Q. Or by the Board of Social Services?

2 A. Yes.

3 Q. And you don't know how long Mr. Munsey and Mr.
4 Carr actually have been on the Board, do you?

5 A. Prior to being the Director of the department,
6 the staff had very little contact with the Board.

7 Q. I'll ask my question again. You really don't
8 know how long Mr. Carr and Mr. Munsey had been on the Board, do
9 you?

10 A. Mr. Carr since 72. I think, Mr. Munsey since
11 76.

12 Q. Were you a part of an administrative review
13 in 1978?

14 A. I participated in part for the Social Services
15 but not in the administration.

16 Q. And you are not aware of whether or not Mr.
17 Blair's opinion was ever conveyed to Mr. Carr and Mr. Munsey?
18 Is that right?

19 A. None other than what's in the minute book.
20 MR. CAMPBELL: All right. That's all the questions I have for you.

21 MR. JENKINS: Just one more question.

22 Q. Do you know when the minutes were read of the
23 preceding meeting; if Mr. Carr or Mr. Munsey were there?

24 A. Well, it states it at the beginning of the meet-
25 ing who was there each meeting.

MICHAEL J. DAVIS - D

11

1 MR. JENKINS: That's all

2 Mr. Campbell, as I understand then, your request
3 is just to go along with the evidence is that correct?

4 MR. CAMPBELL: Yes.

5 - - - - -

6 DIRECT EXAMINATION OF MICHAEL J. DAVIS

7 BY MR. JENKINS:

8 (The witness was sworn by the Court Reporter.)

9 Q. Now, would you state your full name and
10 what your present occupation is?

11 A. My full name is Michael J. Davis. Presently
12 I am a member of the Giles County Social Services Board.

13 Q. How long have you been a member of the Giles
14 County Social Services Board?

15 A. Off and on since January 8, 1980.

16 Q. And what periods were you on and what periods
17 were you off?

18 A. Shortly after the Board of Supervisors voted
19 in January 1980 to dismiss Mr. Carr and Mr. Munsey and Mrs. Cald-
20 well. We were named as parties in the suit as well as the Board
21 of Supervisors. And the Circuit Court of Giles County, Judge
22 Powell presiding, entered an Order enjoining us from participating
23 in any further meetings. During that time we were off. We
24 immediately appealed the Order to the Supreme Court of Virginia
25 which overruled the Judge's decision, putting us back on in time

MICHAEL J. DAVIS - D

12.

1 for the meeting of February 25, 1980. Sometime in April another
2 court action was brought by Mr. Carr and Mr. Munsey and Mrs.
3 Caldwell. And after the proceeding I was off again , I guess it
4 was a matter of a few minutes, and then the Order came in and
5 I was reappointed last Tuesday.

6 Q. So you have been a member of this Board for
7 some time?

8 A. Yes sir.

9 Q. Have you had an opportunity to inspect the
10 public record of the Board of Social Services in connection with
11 the listing of names that you heard Mrs. Boggs mention?

12 A. Yes sir, I have that now.

13 Q. Have you found that what she found was correct?

14 A. Yes sir, prior to the administrative review
15 on February 23 and 24, 1978, there are a hundred, and subsequent
16 to the administrative review on February 23 and 24, there are
17 hundreds of client names in the minute book.

18 Q. Has any action been taken to correct that?

19 A. Its my understanding that its not within the
20 purvue of this book to go back and purge the names from the
21 book. We have, at a regular Board meeting, developed policy for
22 processing privileged information at request which we believe
23 we'll be able to protect the names of these clients from public
24 view.

25 Q. If I could go now, into another field, we

MICHAEL J. DAVIS - D

1 are talking about excessive budget proposals which Mr. Carr and
2 Mr. Munsey, or one of them - two specific charges that we've gone
3 into. And would you please tell us if you've had an opportunity
4 to inspect any budgets which they've had a part of?

5 A. Yes sir, I reviewed the minutes of the January
6 1980 meeting in which what is now called the "old Board" voted
7 to approve the budget. They spent, according to the minutes,
8 approximately ten minutes on that budget. And when we came into
9 office, we were into the appeal process where we were rein-
10 stated by the State Supreme Court. We met February 25, 1980
11 and set two special meetings to review the budget. We felt like
12 that we did not want to be bound or recommend a budget we had
13 not looked at. And we held two special meetings on that budget
14 and made substantial changes in that budget which I will be glad
15 to go into.

16 Q. What I wanted to know specifically were
17 excessive budgets proposed, which in your opinion were excessive?

18 A. After reviewing the foster care program
19 item in the budget, we determined that the original amount of
20 \$65,660.00 was excessive considering the number of children go-
21 ing out of the program and the number of children coming into
22 the program and the state suggestion that we expected approxi-
23 mately a fifteen percent increase. We thought that was entirely
24 excessive. We voted reduction of \$20,660.00, which represents
25 an amount of county money of \$10,330, and still around a twenty

MICHAEL J. DAVIS - D

14

1 percent mark rather than fifteen percent mark as far as expected
2 increased expenses. The second item was the aid to the blind
3 program. That was originally budgeted \$9,360.00. That would
4 account for two people to participate in the program which no
5 people participate in at this time. We voted to reduce that
6 amount to \$4,680.00 which would be enough for one individual.
7 And we felt that was a safety factor, because there are no
8 people expected to participate in that program in the next fiscal
9 year. The third item was a transfer rather than an actual reduc-
10 tion. The original budget included the amount of \$5,000.00
11 for attorney's fees to represent the department in, basically,
12 Juvenile and Domestic Relations Court, when the department is
13 present to discuss such things as removing from homes, and that
14 type of thing. That was originally listed as a \$5,000.00 total
15 county money, 100% county money. All right, the Board and Mrs.
16 Boggs investigated the item and determined there was substantial
17 liklihood that we could receive eighty percent State money on
18 that, thereupon we submitted an amendment to the State budget
19 and asked for \$4,000.00, or eighty percent and limited our local
20 budget to \$1,000.00 instead of the original \$5,000.00. That
21 comes to a grand total of \$25,340.00 reduced in budget, of which
22 \$16,085.00 is totally local money.

23 Q. When I ask these questions, I want you to
24 understand that I'm talking about events that occurred while
25 Mr. Carr and while Mr. Munsey were members of the Social Services

MICHAEL J. DAVIS - D

1

1 Board, and no other?

2 A. Yes sir. This was a budget passed in January
3 1980, at which time they were serving.

4 Q. I believe you've already gone into an accurate
5 budget projection causing a loss of local funds. Do you have
6 any more that you can tell us about that?

7 A. No, that's the changes that we've made
8 with the \$5,000.00 attorney's fees.

9 Q. Now, what can you tell the members of this
10 Board about calendar year 1979, when we've alleged that there
11 was a failure to adhere to prescribed proceedings concerning of
12 minutes, of the prior minutes?

13 A. After reviewing the minutes for the period
14 of thirteen months including December of 1978, and entire months
15 of 1979, I believe there were six. I'm relying on my memory
16 now. I believe at least five and maybe six times at which this
17 Board, the old Social Services Board, voted in affirmative vote
18 recorded in the minutes, not to read the minutes. And they were
19 not mailed out five days in advance which I understand is
20 necessary apparently to reading and approving of the minutes
21 at the actual Board meeting.

22 Q. The failure to approve administrative bills
23 during meeting. What can you tell us about that?

24 A. The process before the new Board took office,
25 was to not look at or approve administrative bills each month.

MICHAEL J. DAVIS - D

16.

1 But rather to have those typed into the minute book and then
2 presumably they were looked at the next month. Since five or
3 six months of the calendar year 1979 and December 1978 - there
4 was no vote to look at or read the minutes of the previous month.
5 Its my presumption that those people, I mean, that those admini-
6 strative bills were paid without ever having been looked at by
7 the Board. All these errors, I might add, have been rectified
8 by the new Board.

9 Q. Number six is the rigid personnel policy
10 proving harmful to department morale, what can you tell us about
11 that?

12 A. With the Board's permission, I would just like
13 to read my statement about that if its acceptable. "The
14 personnel policies enforced while the old Board was in office
15 were too strict and were harmful to both the morale of the staff
16 and the effectiveness of the agency. For example, the vacation
17 policy was very strict under the old Board. It is my understand-
18 ing that there was a general rule that vacations had to be
19 scheduled a year in advance and could usually not be changed
20 later. One day vacations were not permitted except in a "extreme
21 emergency" ... and rather inconsistently defined by the former
22 Director." The vacation policy is entered in the public minutes
23 and I would like to read it to this Board so that they can
24 attempt to understand. It is rather incoherent, but for the
25 benefit of the Board I would like to read it. This is taken

MICHAEL J. DAVIS - D

1

1 from the minutes of the July 24, 1978 meeting of the Giles
2 County Social Services Board, at which time all three members
3 we're talking about were members of that Board. "Vacation will
4 be scheduled June 30th, as accumulated, work conditions permitting
5 same." For example, nowadays, a worker has only eight days
6 accumulated and three days can be taken from Wednesday through
7 Friday, with the full week falling on the ensuing week. This
8 can be reversed whereby a full week can be scheduled Monday
9 through Friday, with the three days the following Monday, Tues-
10 day, and Wednesday. It has to be consecutive days. If the
11 worker does not wish to take the full eight days, then the full
12 week is scheduled and the remaining days can be scheduled later.
13 This wasn't permissible. "The three days must be taken in
14 sequence with two additional days later to make a full week. It
15 is not permissible to take just one day unless it is an extreme
16 emergency." I don't understand that a bit. I don't think any-
17 body else could. The other items I want to talk about for
18 personnel. The employees were told that if they entered the
19 building at 8:01 a.m. on a workday, the workday beginning offici-
20 ally at 8:00 o'clock, that they would be docked an hour's pay.
21 If there was snow on the road, if there was work construction,
22 any other obstacles were somehow supposed to be miraculously
23 accounted for by leaving the road area. Now, this Board realizes
24 there are all kinds of things that can happen to keep you from
25 getting to work on time. And this was something - the only deter-

MICHAEL J. DAVIS - D

18.

1 mination was whether it was something you could predict. The
2 other item was the fact that if you wanted any time off for a
3 doctor or dental appointment, you had to take a half day off
4 sick leave. The business hours of the department are 8:00
5 o'clock to 4:30. The last time that Dr. Louis Webb, who is a
6 local dentist in Narrows, schedules dental appointments is at
7 4:15. Therefore, if you had a 4:15 dental appointment, you had
8 to take a half day off. This means that your work piles up.
9 The same thing with your vacation policy, you can't switch your
10 vacation. Not only can you not switch it for your own benefit
11 but you can't switch it for the benefit of the department. We've
12 changed all these policies, I might add.

13 Q. Do you have anything else that you could tell
14 us pertaining to that?

15 A. I think that's all I have on personnel matters.

16 Q. Is there anything else that you might care to
17 tell the members of the Board?

18 A. There's one thing that you didn't ask me
19 about. The names of the clients in the public minute book. In
20 April 1978 - its my understanding that the April 1978 meeting
21 is a meeting at which the administrative review was received by
22 the department. And that very month, in which they were told
23 not to put client names in the minute book, there is a statement.
24 I'm not going to admit the name of this person because I don't
25 want to do the same thing that other people have been doing and

MICHAEL J. DAVIS - D

1

1 put names up in public that don't belong there. So I'll omit the
2 name. The case of blank was dismissed as "Client paid in full
3 to avoid prosecution." This was under the subject of fraud.
4 And this person is accused in the public minute books of the Giles
5 County Social Services Board of having committed fraud. This
6 says that they paid to avoid prosecution. Right below that
7 statement, at the end of his name is "Case of blank did not go
8 to Court. Client agreed to make monthly payment of blank" and
9 then there is the amount per month. I know these things don't
10 belong in the public minutes book.

11 Q. Were those minutes approved?

12 A. Yes sir, the signature of th Chairman of
13 that Board was on every one of them. And if the Chairman wasn't
14 there, then the Acting Chairman.

15 Q. Who was the Chairman?

16 A. The Chairman of the Board, at that time, was
17 Mr. Arnold Carr.

18 Q. Who was that?

19 A. I never saw any time that Mr. Carr wasn't
20 there. There's one more thing. There's a Code section I'd
21 like to read to the Board and that's 63.1-53 of the Code of
22 Virginia which states, and I shall quote exactly, "It shall be
23 unlawful for any person, firm, corporation, or association, to
24 publish the names of any child receiving assistance under pro-
25 visions of 63.1-56 of the Code of Virginia. Any person violating

MICHAEL J. DAVIS - D & C

20.

1 these provisions shall be guilty of misdemeanor and punished
2 accordingly. 63.1-56 of the Code of Virginia discusses the
3 foster care program and the vast and overwhelming majority of the
4 number of five names in the minutes book is (~~abused~~) under
5 the foster care program." That's all I have.

6 - - - - -
7 CROSS EXAMINATION BY MR. CAMPBELL:

8 Q. Mr. Davis, what is the schedule of Board
9 action?

10 A. Schedule of Board actions is the list of
11 basically the list of changes in the various programs. It includes
12 people who were taken off. You list client names and the amount
13 awarded or that they were denied.

14 Q. And what is the accepted provision according
15 pursuant to the Attorney General's opinion, or the Assistant
16 Attorney General's ruling, how is it supposed to be done?

17 A. I don't understand what you're asking.

18 Q. How is the schedule of Board action supposed
19 to be included in the minutes of the meeting?

20 A. Its my understanding that there are two ways
21 in which you can properly discuss individual clients in a meeting
22 And that is, one, by entering executive session. And there's
23 no record that I could find, ever, of this Board having done so.
24 And discussing the names, thereupon re-entering regular session
25 and taking the requisite action. And the second item is by using

MICHAEL J. DAVIS - C

1 case numbers instead of case names. Its my understanding that
2 the case numbers were used on a couple of occasions at staff
3 initiative and then they were corrected and told to no longer use
4 case numbers, but to use the names.

5 Q. The schedule of Board action nearly always
6 contains the names of the people, though, doesn't it? The clients?

7 A. Yes, that's why they're supposed to go into
8 executive sesssion.

9 Q. And that's why the minutes are not supposed
10 to include that, isn't that right?

11 A. Because the names are in there.

12 MR. CAMPBELL: That's right.

13 Q. But the minutes must reflect that the schedule
14 of Board action was approved, isn't that true?

15 A. That's absolutely true.

16 Q. That's in fact a requirement of the law that
17 the schedule of Board action be approved, is it not?

18 A. You're the attorney. I'm not going to give
19 you a legal opinion on that.

20 MR. CAMPBELL: Mr. Chairman, is the record going to show, then
21 that the witness will not answer that question?

22 Or how should we reflect that, as a matter of procedure?

23 MR. DODSON: I think if you can answer that, you should.

24 A. I'll tell you what my understanding is on it.

25 MR. DODSON: Go ahead.

(VOLUME I OF RECORD, P 5) FILED JULY 21, 1980
HEARING OF 5/19/80 BEFORE BOARD OF SUPERVISORS
TESTIMONY OF MICHAEL J. DAVIS

MICHAEL J. DAVIS - C

22

1 A. Okay, you can take it for what its worth.
2 My understanding is that you're not supposed to have the names
3 in there. And the right procedure for covering the item is as I
4 stated earlier, entering executive session, discussing the
5 names, coming back out of executive session, approving the
6 schedule of Board actions without reference to client names, or
7 using a list in the public minutes of case numbers, rather than
8 by name. And neither of those were done regularly.

9 Q. Mr. Chairman, I'll try to ask my question
10 again and see if it will get answered for the third time. Is
11 it not a requirement that the Board approve the schedule of
12 Board action at each meeting?

13 A. I answered that a minute ago, my answer is
14 yes.

15 Q. Mr. Davis, you talked about the proposed
16 budget for January, 1980. That had not been accepted, had it
17 not?

18 A. Accepted by whom?

19 Q. Accepted by the regional office, by the State
20 office?

21 A. It has still not been accepted by the regional
22 office.

23 Q. In fact, that won't be accepted until sometime
24 in July, is that correct?

25 A. I'm not sure.

MICHAEL J. DAVIS - C

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1 Q. Do you know the procedure as to where a budget
2 goes after it is submitted by the local Board?

3 A. It goes to the regional office, yes.

4 Q. Do you know where it goes from there?

5 A. It also goes to the county, because the county
6 money is involved.

7 Q. Do you know where it goes after the regional
8 office?

9 A. I assume it goes to the State Department of
10 Welfare in Richmond.

11 Q. Do you know where it comes back from, then?

12 A. I assume it follows the same track going back
13 to the regional office and then back to the county.

14 Q. Do you know that the regional and State offices
15 both have the power to review the budget and delete items that
16 are excessive?

17 A. Its my understanding that they have the power
18 to delete State items, I do not think that they have the power
19 to delete local items.

20 Q. But you don't know, do you?

21 A. I said I think. That's correct. Of course,
22 they wouldn't approve it if it wasn't there.

23 Q. Mr. Davis, you said that it was your pre-
24 sumption that the bills were paid without being looked at, but
25 you really don't know, do you?

MICHAEL J. DAVIS - C

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1 A. Well, its a fairly strong presumption.

2 Q. My question is, you really don't know, do you?

3 A. I'll answer the question if you will let me,
4 please. The presumption is based on the fact that, I presume,
5 because..

6 MR. CAMPBELL: Mr. Jenkins, if you could just instruct your
7 witnesses to answer the question?

8 MR. JENKINS: Just say yes or no and then explain your answer.

9 A. The answer is, yes it is presumption. And the
10 reason it is presumption is because I assume that the minutes
11 actually reflect the activity. If the minutes actually reflect
12 the activity then, no it is not a presumption because the
13 minutes say that they did not read the minutes of the previous
14 month. If they did not read the minutes of the previous month
15 and the only place that the administrative bills are listed is
16 in the minutes, then they didn't look at them.

17 Q. And what requirements are you aware of, Mr.
18 Davis, as Chairman of the Social Services Board, that the Board
19 approve the bills?

20 A. As I understand it, no money can be expended
21 by the Department of Social Services except the bill is reviewed
22 and the money was expended.

23 Q. And do the minutes reflect any objection to
24 any of the bills that were paid during the period in question?

25 A. You mean, did the Board members themselves

MICHAEL J. DAVIS - C

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1 object to them?

2 MR. CAMPBELL: Yes.

3 A. I've seen no objection, no. I've seen no
4 mention of the fact that it was done incorrectly.

5 Q. Mr. Davis, were you ever a member of the
6 Department of Social Services?

7 A. You mean was I ever employed by them?

8 MR. CAMPBELL: Yes sir.

9 A. No, I was not. I have not been.

10 Q. Do the minutes reflect the employee policy
11 about being one minute late to work?

12 A. I haven't found it in the minutes, no.
13 That's what the employees were told.

14 Q. Did Mr. Munsey tell them that?

15 A. I don't know, I haven't been privy to all Mr.
16 Munsey's conversations.

17 Q. Did Mr. Carr tell them that?

18 A. I don't know. I haven't listened to all his
19 conversations, either. They were told by the director who was
20 the employee of this Board.

21 Q. And you have said that there were several
22 times, I believe you said, five to six, in which the Board voted
23 not to read the minutes, is that correct?

24 A. Yes, the motion on the floor was to dispense
25 with the reading of the minutes and the motion was carried. The

MICHAEL J. DAVIS - C

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1 minutes were not read, according to the minutes of the meeting.

2 Q. And is there a requirement from the State that
3 the minutes be read at each meetings?

4 A. Its my understanding that all those type of
5 minutes are supposed to be read or that the minutes are supposed
6 to be sent out five days in advance, be received five days in
7 advance.

8 Q. And what is your understanding based on?

9 A. On conversations with individuals involved
10 in the State Department of Welfare and such things.

11 MR. CAMPBELL: That's all I have.

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(Court convened at 11:00 a.m. on July 21, 1980.)

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THE COURT: I apologize to those of you who were waiting in the case of Giles County Board of Supervisors and Arnold G. Carr and Roscoe C. Munsey.

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The stenographic report of the transcript of the evidence of the meeting of May 19, 1980 did not reach the Court by mail, maybe because I live so far back in the mountains of Dickenson County, but anyway, the Court did not get it and I had to read the transcript of that evidence this morning before I could proceed with the case. So now the Court is ready to hear any motions and any argument with reference to the hearing held at the meeting of the Board of Supervisors of Giles County on May the 19th, 1980, at which time Arnold G. Carr and Roscoe C. Munsey were removed from the Social Service Board of Giles County, and Mrs. Ellen Moore and Mr. Richard Williams were appointed as new members to fill the positions held by Arnold G. Carr and Roscoe C. Munsey.

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All right, the Court is ready to hear any further matters.

MR. CAMPBELL: Your Honor, it is our understanding that the Court has received into evidence by stipulation the transcript of the hearing in May. At the conclusion of that transcript I think the Court will note that the petitioners in this proceeding made the decision not

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2 to present any evidence at that hearing based on the insuffi-
3 ciency of the allegations at that point to constitute legal
4 cause for their dismissal.

5 we would rise on this occasion to move the Court,
6 as a matter of law, to rule in favor of the petitioners, inas-
7 much as the transcript of the evidence presented at the
8 hearing, as a matter of law, does not constitute legal cause,
9 as required under the Code of Virginia, to dismiss your
10 petitioners from their lawfully held position.

11 We have supported this motion with memorandum
12 of law and evidence, which I think the Court has and has had
13 the opportunity to review. It is basically our position that,
14 of course, petitioners could only be removed for cause, and no
15 cause is shown whatsoever on the face of the transcript here.

16 Certainly, if the Court overrules this
17 particular motion and a prima facie case has been established
18 by the Board for dismissing the petitioners, we are prepared
19 to present evidence at this time, but our motion now would be
20 to rule as a matter of law that no cause has been shown.

21 THE COURT: For the purpose of the record, since
22 the original transcript of the Board of Supervisors' meeting
23 of May 19th, 1980 did not reach the Court, I am taking the
24 liberty of marking the copy, which was furnished by counsel,
25 as filed as of this date, and the Court will consider all of

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2 the evidence and all of the things that transpired at that
3 meeting and will make a decision here. Also, I will mark
4 filed the memorandum of law and evidence filed on behalf of
5 Arnold G. Carr and Mr. Roscoe C. Munsey.

6 All right, now, Mr. Jenkins.

7 MR. JENKINS: May it please the Court, Your
8 Honor, first of all, I would like to say that it is my under-
9 standing of the law, and I quote, and I will give you a
10 memorandum at the end of my summary in this case, is that
11 when there happens to occur events in cases like this, where
12 you have the Board of Supervisors of Giles County and you have
13 the Board of Social Services, that the law has read in to a
14 requirement that they be discharged for cause, that there
15 must be a hearing and there must be an opportunity for them
16 to be heard, and of course, they have counsel who certainly
17 advised them of this and that is correct, too, Your Honor.

18 Your Honor, and simply our position is this,
19 is that the officer or the Board having the power to the
20 removal are the sole judges of the existence of cause
21 alleging their removal. Now, you are probably wondering
22 well, where do they do that? They do that at this hearing,
23 Your Honor, which you have right before you, and that is
24 the evidence, Your Honor, that is considered, because it
25 would be unfair to come in here with other groups of witnesses

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2 now to give you evidence that was not at that hearing. I can
3 show you a section in Am.Jur. that that states that, that
4 that is the law of the case. You, more or less, Your Honor,
5 if I could give you an analogy act as an appellant court, you
6 know, from that proceeding, that is my understanding of the
7 law. That is why, Your Honor, it is so important that you
8 look at that hearing and you see exactly what was before the
9 Board of Supervisors when they did at that hearing hold that
10 they thought that there was sufficient cause for their
11 removal.

12 Now, Your Honor, if I could briefly sum up the
13 evidence that was taken in that hearing, is that in that
14 hearing they revealed that the Attorney General's office
15 prior to having this hearing had advised the Board of Social
16 Services not to publish the names of anybody that was receiving
17 welfare, welfare recipients. There was a, I believe they called
18 it a written report that was submitted, you know, Your Honor,
19 at that hearing, and this written report was submitted by
20 Michael Blair, who was an Assistant Attorney General, and
21 this was the evidence that was before the Board of Supervisors
22 at that time; and then thereafter, the evidence before the
23 Board of Supervisors was that at least three hundred or four
24 hundred times, Your Honor, that that occurred; that these
25 names occurred not only before Michael Blair, the Assistant

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2 Attorney General, told them not to, but it occurred afterwards.
3 The evidence before the Board of Supervisors at that hearing
4 was the fact that minutes were signed by the petitioners in
5 this case who allowed that to be done for a certain length
6 of time.

7 Also, at that hearing it was pointed out that
8 63.153 of the Code of Virginia makes it a misdemeanor, Your
9 Honor, for that to happen, and I give the Court, if I can,
10 a copy of that particular Virginia Code section. Needless to
11 say, if that was happening, and it did happen, that that
12 would subject Giles County to a multitude of lawsuits. They
13 could perhaps, Your Honor, be sued individually by a number
14 of people, and it was completely illegal and the Code defines
15 that conduct as a misdemeanor, Your Honor, and yet, before
16 this very Board you had the evidence that that was happening
17 somewhere around three hundred or four hundred times and
18 that remains, Your Honor, uncontradicted.

19 The petitioners in this case never got before
20 the Board of Supervisors and they never explained their
21 conduct and, therefore, the Board of Supervisors had before
22 them the blanket facts that that was existing, that they had
23 warning of it by the Attorney General's office, and that
24 they intended to do it, and certainly, everybody, Your Honor,
25 in Giles County has an interest in seeing that that's not done,

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2 because that goes to the very heart of what the Board of
3 Supervisors do; they supervise, Your Honor, and these two
4 gentlemen had the opportunity at that hearing to present
5 evidence and yet, they chose not to present evidence at that
6 hearing.

7 In addition to that, Your Honor, there was
8 ample evidence before the Board of Supervisors that there was
9 somewhere around a budget problem of, according to Mike Davis,
10 and that's on page thirteen of that transcript, Mr. Carr and
11 Mr. Munsey spent ten minutes in January of 1980 on the budget,
12 and the budget, in his opinion was excessive by twenty thousand
13 six hundred and sixty dollars, and he also testified at page
14 fourteen that certain other matters in the budget were changed
15 by them, by the new Board of Social Services, for a reduction
16 of somewhere around twenty-five thousand three hundred and
17 forty dollars.

18 Also, on five or six occasions, by a vote of
19 the Social Services Board, the minutes were not read, and
20 administrative bills were paid without ever being looked at,
21 and there were also some personnel policies, which my client
22 says that they have very little problems with on the personnel
23 policies themselves; that they will agree that that doesn't
24 constitute cause, and so will I; but, Your Honor, certainly the
25 allowing of the misdemeanor to occur gives the impression that

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2 there is some explanation, Your Honor, that's needed and yet,
3 not one word of explanation was given to the Board of Super-
4 visors for that conduct, and we're just simply here stating
5 that if you take Mr. Campbell's definition of what cause
6 constitutes, and I think that he quoted a section, "the cause
7 which will justify the removal of a municipal officer must be
8 one which specifically relates to and affects the adminis-
9 tration of his office." This does, Your Honor. The publi-
10 cation of those names in those minute books does affect it
11 and must be restricted to something of a substantial nature
12 directly affecting the rights and interest of the public. It
13 does affect the rights and it does affect the interest of
14 the public. The public has an absolute right to insist that
15 the laws of the Commonwealth of Virginia not be violated and
16 that the names are not published in the public minute books.

17 "The case must be one touching on the qualifi-
18 cations of the officer or his performance of his duties showing
19 that he is not a fit person to hold his office. An attempt to
20 remove an officer for any cause not affecting his competency
21 or fitness would be in excess of a fair and equivalent to an
22 arbitrary removal." I agree on that, but this is not an
23 arbitrary removal, Your Honor. This is where that there were
24 misdemeanors, where Giles County could be subjected to lawsuits;
25 and in addition to that, you have the problems on the budget

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2 which was never answered before the Board of Supervisors.
3 "Willful neglect of duty," I quote Section 317 of Am.Jur.,
4 and I will give the Court a copy of this, "The violation of
5 or a failure to enforce the law or other willful neglect of
6 duty is sufficient cause for removal of a municipal officer,
7 but willful neglect to perform an official duty is considered
8 to be something more than an oversight of carelessness."
9 Well, they didn't have any evidence that it was an oversight
10 of carelessness, Your Honor, here. They had evidence before
11 them that the Attorney General's office told them that it wasn't
12 done, Your Honor; that there was no explanation given to the
13 Board of Supervisors as to why this wasn't done; there was no
14 explanation given to them of why that they absolutely allowed
15 these names to be repeated; that they signed minutes to that
16 effect.

17 There is a Tennessee case, Your Honor, 137 Tenn.
18 67, which stated that an invasion of a charter provision
19 requiring advertising bids of contracts was grounds for a
20 removal; and in Burns v. Lynn, an Oklahoma case, it held that
21 persons holding municipal office may be removed for failure
22 to enforce the law; and in talking about the reluctance of
23 parties to testify, Your Honor, I quote this section from 56
24 Am.Jur.2d, which I have set out, "However, the Federal
25 Constitution is not violated by the dismissal of municipal

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2 officers and employees after proper proceedings if they refuse
3 to account for their performance of a public trust where the
4 proceedings do not involve an attempt to coerce them, to
5 relinquish their constitutional rights, including the privilege
6 against self-incrimination"; and it has never been alleged,
7 Your Honor, that that was the reason, but here you have two
8 public officials who for some reason or another did not give
9 an accounting and did not tell the Board of Supervisors who
10 was their supervisors who had to determine cause of really why
11 these names appeared or what the reason was in the budget,
12 why that there was excessive projections by these individuals.
13 And I would like to also quote you Section 827, "Wrongful or
14 unjustified removal or suspension, refusal of Courts to inter-
15 fere by mandamus to remedy removals or suspensions from office
16 is predicated on the existence of the power to remove or
17 suspend and the proper exercise of such power. Where such
18 conditions do not exist and where there is no power in the
19 Board or officers to make a removal or where there is power
20 and it is abused," Your Honor, "it is abused or arbitrarily
21 exercised, the writ will be generally issued."

22 Now, from this point, Your Honor, that is the
23 one point that we're trying to say. We're trying to say that
24 mandamus does not lie here because it is not clear, Your Honor,
25 and we just say from the facts in this case that it's not clear

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2 because there was absolutely nothing that was said before this
3 hearing. This is a case, Your Honor, that is on all points
4 and I think that, number one, as I stated in my brief and I'd
5 like to read you some more law on it, entitled, "A removed
6 officer to restoration of his office upon the grounds that he
7 has been illegally removed therefrom, he is bound to show that
8 prior to his removal he was lawfully an incumbent in the office
9 by a clear legal title, and he must show clearly" -- now,
10 Your Honor, here is what the law says, "clearly that the removal
11 was, in fact, illegal and it is entitled to reinstatement," and
12 they cannot prove that, Your Honor, at this point from that
13 hearing; and Your Honor, if you would go into other evidence,
14 then you would be going into evidence that was not before the
15 Board of Supervisors and you would be substituting, in all due
16 respect to Your Court, your judgment for the Board of
17 Supervisors, Your Honor.

18 Thank you.

19 THE COURT: All right, do you have a reply?

20 MR. CAMPBELL: Your Honor, as far as mandamus
21 being the proper remedy, I think this Court, in a very similar
22 case previously brought by these people, the last time they have
23 been discharged, in order to rule on that, and I won't waste
24 any further time at this point other than to say that the
25 statutory requirements have been met for mandamus. Mandamus

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2 is, indeed, the proper remedy in this particular situation
3 where people have been unjustly discharged.

4 As far as the individual items alleged, we would
5 simply stand on the record and point out to the Court that
6 none of those six items allegedly constituting cause do, in
7 fact, constitute cause as a matter of law. We would rely on
8 the general law cited in our memorandum of law and evidence
9 regarding what does constitute cause in a general way in the
10 United States.

11 As far as Mr. Jenkins' allegation that the
12 behavior of these Board members might have subjected the
13 County to lawsuits and so on, there is nothing in the record
14 to indicate that. Indeed, that's a legal conclusion I think
15 he has drawn and perhaps is not necessarily the case, depend-
16 ing upon the situations as they might arise. They are
17 admitting now that some of the six reasons, I note, are not
18 sufficient to constitute cause. Unfortunately, our people
19 were in there because of the six reasons. Basically, we
20 would, in response to his arguments, just say that the general
21 law would support our conclusion that as a matter of law there
22 is no legal cause showing on the face of the record.

23 THE COURT: Anything further, Mr. Jenkins?

24 MR. JENKINS: No, sir.

25 MR. CAMPBELL: I don't know whether it has been

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2 made a part of this record or not, Your Honor. Certainly,
3 our petition alleges that this is merely the last step in a
4 long going proceeding. This Court was involved in the last
5 proceeding in which these people were dismissed. We think it's
6 important that the Court know that as well at this point.

7 THE COURT: All right, of course, there is the
8 duty of the Board of Supervisors in conducting its hearing
9 with reference to the removal of officers in this nature
10 to comply with Section 63.1-45 which reads: "Members of any
11 local Board may be suspended or removed for cause by the State
12 Board or by the Judge or other officers or anybody authorized
13 to report the members of the local Board." Now, that is the
14 section that if the Board of Supervisors of Giles County
15 had any authority to exercise their power with reference to
16 the removal of these two gentlemen, it had to be exercised
17 under that authority.

18 Now, I notice in the original petition for the
19 writ of mandamus, which this Court heard, the Board of
20 Supervisors--it is alleged in paragraph number three the reasons
21 for the removal of the two members from the Giles County
22 Social Services Board were that the members of the Board of
23 Supervisors have received numerous complaints from the citizens
24 of Giles County regarding occasions of rude behavior by the
25 former Social Services Board members to County citizens. Two,
we have substantial philosophical differences with the former

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Board members and desire to appoint a new Board more philo-
sophically attuned with this Board of Supervisors and the people
of Giles County as evidenced by the recent election.

Three, we believe that this Social Services
Board has not shown the type of leadership required by the
position and have generally been content to follow rather
than lead.

Four, Central District Representative, Mr. Kirk,
is serving his third term on the Board and is thus serving in
violation of 61.3-39 of the Code of Virginia, which limits
the members of the Social Services Board to two consecutive
terms.

Now, after the Court -- after this Court ordered
the reinstatement of Arnold G. Carr and Roscoe C. Munsey,
notice was given whereby six charges or six reasons, as stated
in the notice, were given for the removal of Mr. Carr and
Mr. Munsey, and one, of course, is the improper listing of
clients' names in public minutes. Two were the excessive
budget proposals. Three, inaccurate budget projections
causing loss of local funds. Four, for the calendar year 1979,
failed to adhere to prescribed procedures of meetings con-
cerning minutes of prior meetings. Five, failure to approve
administrative bills during meetings. Six, rigid personnel
policy proving harmful to the department morale.

Now, the Court is not going to comment on all of these, but in order for the Court not to reinstate these two gentlemen, the Court would have to believe that one or more of these six reasons set out in the notice and considered on the evidence of Linda Boggs, (T-4), and which case the Court has just read, would have to constitute cause for removal under 63.1-45 of the Code of Virginia of 1950, as amended.

I think really what this case is about, I think that it's often said that your first thoughts sometimes more correctly reflect your real reasons. I think that in this case that those thoughts of the Board and the intention of the present Board of Supervisors is clearly set out and made clear, made abundantly clear that there are substantial philosophical differences with the former Board members, and certainly, that's not cause.

The United States Supreme Court had just recently ruled with reference to deputies in county offices. that you just can't remove them because a Democrat goes in and he has Republican deputies, you can't remove them for political reasons, and these matters are being battered back and forth before the Court. Of course, the unfortunate thing in the removal of officers, especially -- I'm talking especially about deputies in constitutional offices, was the Cook County,

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2 Illinois case in which the Supreme Court took a position that
3 it was somewhat contrary to the position it reiterated -- or
4 not the Supreme Court, but a District Court reiterated in the
5 Lee County, Virginia cases and then here a few days ago the
6 United States Supreme Court handed down a decision which
7 indicates clearly what the Court had just said, that you
8 cannot remove a deputy from a constitutional office unless
9 that deputy is a policy making or a high-ranking policy making
10 officer, which is going to have a great impact upon this
11 country. For instance, to give you -- to put it to Giles
12 County, if Sheriff Hopkins goes out of office and a Democrat
13 is elected, (I believe he runs on an Independent ticket) --
14 if a Democrat or a Republican is elected, that elected officer
15 under the present Supreme Court ruling, cannot remove Sheriff
16 Spicer except for cause. He has to keep those deputies.

17 I think really that this Board of Supervisors,
18 the present Board of Supervisors is trying to do exactly
19 what the United States Supreme Court says you absolutely can't
20 do, and I think you have admitted that when you said, "We have
21 substantial philosophical differences." Now, whether
22 philosophical has brought it up to cover politically-oriented
23 matters or selfish biased matters, this Court can't see the
24 difference.

25 So this Court is of the opinion and is so ruling

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2 that the four reasons given originally and the six reasons
3 given in your notice and presented in your meeting on May 19th,
4 1980 did not constitute proper cause under Code Section 63.1-45
5 for the removal of Mr. Arnold G. Carr and Mr. Roscoe C. Munsey.

6 This Court further believes and states
7 emphatically that I think this -- the present Board of
8 Supervisors of Giles County by its action on May the 19th, 1980,
9 was trying to do indirectly what this Court said it could not
10 do, and the Court is now ordering that Arnold G. Carr and
11 Roscoe C. Munsey be reinstated to serve out the balance of
12 their term and that Mrs. Ellen Moore and Richard Williams be
13 removed and no longer be considered as members of the Social
14 Services Board of Giles County, and if this Board continues
15 to try to disobey the orders of this Court, this Court will
16 not hesitate in the least, if evidence is presented as to the
17 violation of that order, to hold this Board and any member who
18 disobeys the order of this Court in contempt and it holds fine
19 or jail sentence, either or both.

20 MR. JENKINS: Your Honor, may the record show
21 my exceptions to the Court's ruling and especially to the
22 exception of the Court's ruling, and not being disrespectful
23 to the Court, Your Honor, but presupposing that another
24 proceeding that was instituted by the respondents in this
25 thing is their motive for the present one, we think in order

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2 for the Court to do so, in all due respect to the Court,
3 would be pure speculation and pure conjecture.

4 Your Honor, at this time I would like to file,
5 and I have a copy of this, my memorandum of law for the Court. --

6 THE COURT: All right.

7 MR. JENKINS: -- supporting my proposition that
8 this did constitute cause, and I give my colleagues a copy of
9 it, Your Honor.

10 Thank you.

11 THE COURT: I want to thank the lawyers. You
12 have briefed this case, both Mr. Jenkins and Mr. Campbell and
13 Mr. Sadler, and both of you have been a great help in
14 providing the memorandum of law and argument which you have
15 presented here.

16 So Mr. Sadler and Mr. Campbell, I am directing
17 you to prepare the appropriate order pursuant to the opinion
18 just rendered by the Court, forward it to Mr. Jenkins for
19 endorsement and exception.

20 MR. CAMPBELL: Yes, sir.

21 MR. JENKINS: Your Honor, what type -- May I
22 ask the Court what type of a bond would you want to be set
23 on this?

24 THE COURT: Well, I think what we will do, as I
25 stated to you previously, I will let the Clerk of the Court in

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2 the event of an appeal, just let the Clerk of the Court set
3 that bond and if you have any difficulty, the Court will set
4 it, but the bond would merely be to insure costs. It would be
5 a very small bond because it's just a guarantee of the
6 payment of costs on appeal.

7 By the way, if you can agree on the bond and if
8 you feel reasonably certain that it's going to be appealed,
9 maybe the lawyers can agree on the bond and the Court will
10 approve it, but it wouldn't be a large bond. It'd be a
11 very small bond.

12 MR. SADLER: May it please the Court, may I rise
13 at this time to point out to the Court that this matter, as
14 Your Honor knows and the record indicates, has been in this
15 Court before you on two occasions and before Judge Powell on
16 another occasion. The petitioners necessarily have had to
17 go to personal expenses in this matter and it appears they're
18 going to have to go to some more personal expenses, so I would
19 ask Your Honor to consider assessing attorneys' fees against
20 the Board of Supervisors in this case.

21 THE COURT: Well, I will do the same thing in
22 this case as I did in the other. I will require you to file
23 a petition and I will hear argument.

24 MR. JENKINS: Your Honor, don't you think that
25 we had better do that when we see ultimately what the results

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2 of the Supreme Court action is because they certainly intend,
3 from what I understand at this time, pursuing an appeal. I
4 think that that would be the proper time. I'm not trying to
5 delay you.

6 MR. SADLER: We asked for that in our petition.
7 We asked for attorneys' fees.

8 THE COURT: Well, I will take the matter of
9 the attorneys' fees and any costs incident to the prosecution
10 of this case under advisement.

11 MR. SADLER: All right, sir.

12 MR. JENKINS: Your Honor, in all due respect to
13 the Court, it looks like to me it would have to be until we
14 see what results we get on the petition because it could be
15 reversed.

16 THE COURT: Well, it wouldn't be the first time.

17 MR. JENKINS: Thank you, Judge.

18 MR. SADLER: Thank you, Your Honor.

19 THE COURT: All right, Court is adjourned.

20 (Court adjourned.)
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[RECORD, P 64 - 67]
FINAL ORDER ENTERED IN THIS CASE ON
AUGUST 12, 1980
Filed August 12, 1980

Came this day the petitioners herein, personally and by counsel, upon notice of application for writ of mandamus and petition duly served on each of the members of the newly appointed Giles County Social Services Board and each of the members of the Giles County Board of Supervisors, all of whom were represented by counsel; and the petitioners in their petition represented to the Court that they were duly appointed members of the Giles County Social Services Board having been appointed for terms which had not expired in January, 1980, and further represented that they were dismissed by the newly elected Board of Supervisors for Giles County on January 8, 1980, at which time the Board of Supervisors nominated and appointed five (5) new persons to constitute the Giles County Social Services Board, that subsequently, they applied for and were granted by this Court a writ of mandamus reinstating them as members of the Giles County Social Services Board, that subsequent to the entry of said Order at another meeting of the Giles County Board of Supervisors on May 19, 1980, they were again dismissed for six (6) alleged reasons. The petitioners further by their petition represented that they considered none of the reasons individually or collectively as sufficient cause for dismissal and they sought reinstatement to the Giles County Social Services Board by a writ of mandamus directed to Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely,

[] RECORD, P 64 - 67 []
FINAL ORDER ENTERED IN THIS CASE
ON AUGUST 12, 1980
Filed August 12, 1980

individually and collectively, as the Board of Supervisors of Giles County, Virginia, commanding and compelling them to reinstate your petitioners to the Giles County Social Services Board; and directed to Mr. Carl Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, individually and collectively, as the current Giles County Social Services Board, commanding them to refrain from holding themselves (itself) out as the legal and proper Social Services Board of Giles County, Virginia, or in any way acting as such and also requesting attorney fees for this proceeding.

Also came the respondents herein and filed a demurrer and represented unto the Court that mandamus was not the proper remedy in this case. The respondents further answered the petitioners' petition denying certain allegations in the petition. Said respondents in their answer alleged that the petitioners were given a proper proceeding on May 19, 1980, and that at said meeting cause was found for their dismissal; and also denying that prior proceedings (prior to May 19, 1980) had anything to do with the proceeding of May 19, 1980, and further denied that their actions were motivated by the allegations contained in petitioners' pleading.

The parties were convened at a hearing on July 21, 1980, at 11:00 a.m. and after the Court took the opportunity to review the file and the transcript of the Board of Supervisors' hearing on May 19, 1980, at which meeting the petitioners were dismissed from their positions on the Giles

[RECORD, P 64 - 67]
FINAL ORDER ENTERED IN THIS CASE
ON AUGUST 12, 1980
Filed August 12, 1980

County Social Services Board, the Court entertained a motion by the petitioners to decide the case as a matter of law based on the pleadings and the aforesaid transcript of said hearing without hearing any further evidence. Argument in support of said motion and in opposition to said motion was heard by the Court. The motion was sustained.

And the Court being of the opinion that the petition for writ of mandamus was properly brought and does state a cause of action and that the petitioners have no adequate remedy at law, the respondents' demurrer is hereby overruled and dismissed, and the answer to said petition for mandamus is likewise dismissed.

WHEREUPON, the Court being of the further opinion that the Board of Supervisors acted illegally as a Board in dismissing the petitioners herein in that Virginia Code Section 63.1-45 requires that Social Services Board members such as the petitioners herein be dismissed only for "cause" and the Court being of the opinion that no cause is reflected in the transcript of the hearing of the Board of Supervisors, and that it is proper and appropriate to do so, it is hereby ADJUDGED, ORDERED and DECREED that Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely, individually and collectively, as the Board of Supervisors of Giles County, Virginia, be and they hereby are commanded and compelled to reinstate your petitioners to the Giles County Social Services Board; and that Mr. Carl

[RECORD, P 64 - 67]
FINAL ORDER ENTERED IN THIS CASE
ON AUGUST 12, 1980
Filed August 12, 1980

Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, individually and collectively, as the current Giles County Social Services Board, be and they hereby are commanded and compelled to refrain from holding themselves (itself) out as the legal and proper Social Services Board of Giles County, Virginia, or in any way acting as such. Said reinstatement shall be effective as of May 19, 1980, to which ruling the respondents objected.

It is further ADJUDGED, ORDERED and DECREED that respondents' demurrer and answers filed herein are dismissed.

The petitioners having requested attorney fees and costs, it is further ADJUDGED, ORDERED and DECREED that said attorney fees and costs will not be awarded.

It is further ADJUDGED, ORDERED and DECREED that the transcript of the aforesaid hearing of May 19, 1980, and the transcript of the hearing of July 21, 1980, taken by Eula Bott and the testimony entitled "Vouching the Record of Aubrey Dodson and Ted Timberlake" is hereby made a part of this case.

It is further ADJUDGED, ORDERED and DECREED that the respondents be served individually by certified copy of this writ of mandamus and that the provisions contained in this order and writ of mandamus shall become fully effective at once upon said service.

Respondents objected to the entry of this order upon the grounds that cause was shown in the hearing of May 19, 1980,

[RECORD, P 64 - 67]
FINAL ORDER ENTERED IN THIS CASE
ON AUGUST 12, 1980
Filed August 12, 1980

and upon the further grounds that the court entered this order without hearing any of the witnesses called on their behalf and only considered the pleadings of the petitioners and the aforesaid transcript of May 19, 1980, in rendering its decision, and also to the ruling of the Court that mandamus was the proper remedy.

ENTER: This Order this 12th day of August, 1980.

/s/ Glen R. Phillips

We ask for this Order:

/s/ H. Gregory Campbell, Jr.
H. Gregory Campbell, Jr.
Counsel for Petitioners

/s/ Max Jenkins
Max Jenkins
Counsel for Carl Neely, Mike Davis,
Helen Moye, Martin Richard Williams,
Tommy Miller, and the Giles County
Board of Supervisors

AFFIDAVIT

We, Aubrey S. Dodson and Ted Timberlake, members of the Giles County Board of Supervisors, do hereby make the following statement under oath:

Had we testified in this case, we would have testified that on January 8, 1980, we were members of the Board of Supervisors of Giles County and removed the petitioners from their offices as members of the Social Services Board.

At a subsequent meeting of the Board of Supervisors, a few days later, the original motion to dismiss the petitioners was amended and the following reasons were given:

- 1) The members of the Board of Supervisors have received numerous complaints from the citizens of Giles County regarding occasions of rude behavior by the former Social Services Board members to the County citizens;
- 2) we have substantial philosophical differences with the former Board members and desire to appoint a new Board more philosophically in tune with the Board of Supervisors and the people of Giles County as evidenced by the recent election;
- 3) we believe that the Social Services Board has not shown the type of leadership required by the position and has generally been content to follow rather than lead; and
- 4) The Central District representative currently serving his third term on the Board is thus serving in violation of §61.3-39

of the Code of Virginia which limits a member of the Social Services Board to two consecutive terms.

That thereafter the petitioners instituted a proceeding by way of injunctive relief to be reinstated, which injunctive relief was granted by this Court, and which injunctive relief was dissolved by the Supreme Court of Appeals of the State of Virginia.

Thereafter, a statement appeared in the press of a local newspaper which indicated that the petitioners would not further pursue this matter. Because of said article appearing in said local newspaper, the undersigned were led to believe that no further action would be taken.

Thereafter, the petitioners brought a petition in mandamus and it was conceded that the issue in that case was the giving of a notice and an opportunity to be heard to the petitioners and because of said absence of a notice and a hearing, on May 12, 1980, an order was entered reinstating the petitioners to the Board of Social Services.

However, prior to May 12, 1980, several matters were reported by employees of the Social Services Board, which information was to the effect that welfare recipients names were appearing in the public minute books of Giles County, which appearance of said names was contrary to Virginia Law (it being a misdemeanor and perhaps subjecting Giles County to a number of law suits). Information was given to the undersigned that the petitioners had been warned or advised by the Attorney General's Office to refrain from allowing said names to be revealed on the public minutes books, which request

(RECORD, P 57) FILED AUGUST 12, 1980
VOUCHING RECORD OF MEMBERS OF BOARD OF
SUPERVISORS, AUBREY S. DODSON AND TED
TIMBERLAKE

was being ignored, that there were matters which indicated that the petitioners had neglected their office insofar as budgeting was concerned, methods of conducting the business of the Board of Social Services and the problems with personnel policies. Knowing from prior experiences that a notice and an opportunity to be heard was necessary, these reasons were sent in writing to the petitioners, giving them the reasons in writing and an opportunity to be heard. Since one of these matters (the publication of recipients' names in public minute books) was in violation of Virginia Law, and law suits could result therefrom, it was extremely necessary that a hearing be immediately scheduled. The hearing, however, was scheduled after the petitioners were reinstated.

At this hearing on May 19, 1980, in our opinion, these allegations were proven and at this hearing, the petitioners gave no explanation of their conduct, especially allowing welfare recipients' names to appear in the public minute books, and cause was found at that hearing.

The undersigned further state that they were motivated to discharge the petitioners because, in their opinion, the public had a vital interest in seeing that the law was complied with and the names of citizens of Giles County did not appear in said minute books.

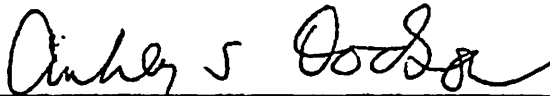
We further state that we were of the opinion at this hearing that some explanation should have been given to them by the petitioners of said names appearing in said minute books, and in addition thereto-

some explanation for the allegation of bad budget practices.

The undersigned deny that there was any motivation concerning philosophical differences and further deny that they were motivated by the four reasons of January, 1980.

The undersigned further state that defensive pleadings to this action were filed and that they were not given an opportunity on July 21, 1980, to testify.

Appended hereto is a certified copy of the first final order in a mandamus proceeding.



Aubrey S. Dodson



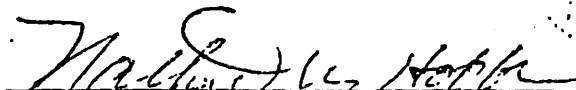
Ted Timberlake

STATE OF VIRGINIA

CITY/COUNTY OF Mico, to-wit:

I, Nathan Hobbs, a Notary Public in and for the State and County of Giles aforesaid, do certify that the above signatures of Aubrey S. Dodson and Ted Timberlake were duly taken, subscribed and sworn to before me this 7 day of Aug, 1980.

My Commission expires: 12. 5. 1983


Notary Public

VIRGINIA: IN THE CIRCUIT COURT OF GILES COUNTY

ARNOLD G. CARR, et al

"VOUCHING THE RECORD OF AUBREY
DODSON AND TED TIMBERLAKE"

Complainants

V.

WRITTEN STATEMENT OF TESTIMONY
OF AUBREY DODSON AND TED
TIMBERLAKE BY THEIR AFFIDAVIT
FOR THE PURPOSE OF VOUCHING
THE RECORD

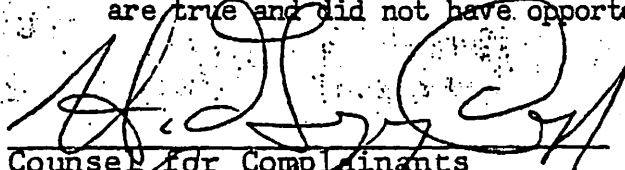
CARL NEELY, et al

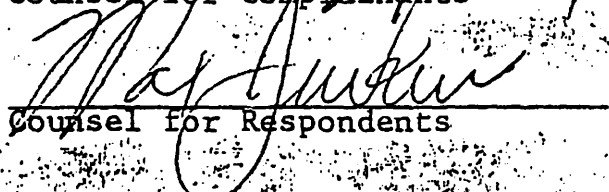
AND

GILES COUNTY BOARD OF SUPERVISORS

As provided by Rule 5:9 the appended affidavit of
Aubrey Dodson and Ted Timberlake is hereby tendered for the
purposes of vouching the record, or for the purpose of showing
what these witnesses would have testified had they been called
as witnesses.

This statement is signed by the Judge of that court,
and by counsel of all parties for the purpose of vouching said
record, and in addition to the affidavit appended herewith,
there is also appended a final order in a prior mandamus pro-
ceeding. Complainants do not concede that the facts in the affidavit
are true and did not have opportunity to cross-examine.


Counsel for Complainants


Counsel for Respondents


Judge

This 12th day of
August, 1980.

[RECORD, P 62]
ORDER ENTERED IN PREVIOUS MANDAMUS ACTION

Came this day the petitioners herein, personally and by counsel, upon notice of application for writ of mandamus and petition duly served on each of the members of the newly appointed Giles County Social Services Board and each of the members of the Giles County Board of Supervisors, all of whom were represented by counsel; and the petitioners represented to the Court that they were duly appointed members of the Giles County Social Services Board, having been appointed for terms which had not expired in January 1980, and further represented that they were dismissed without a showing of legal cause by the newly elected Board of Supervisors for Giles County on January 8, 1980, and which time the Board of Supervisors nominated and appointed five (5) new persons to constitute the Giles County Social Services Board, and further represented that they sought reinstatement to the Giles County Social Services Board by a writ of mandamus directed to Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely, individually and collectively, as the Board of Supervisors of Giles County, Virginia, commanding and compelling them to reinstate your petitioners to the Giles County Social Services Board; and directed to Mr. Carl Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, individually and collectively, as the current Giles County Social Services Board, commanding them to refrain from holding themselves (itself) out as the legal and proper Social Services Board of Giles County, Virginia,

□ RECORD, P 62 □
ORDER ENTERED IN PREVIOUS MANDAMUS ACTION

or in any way acting as such.

Also came the respondents herein and filed a demurrer and represented unto the Court that the action had been improperly brought and that the petitioners had other remedies at law. Upon oral argument, respondents further alleged that their failure to give notice was not required by statute and that they, in fact, did at a subsequent meeting state the reasons for its dismissal of the petitioners. Evidence was presented by both the petitioners and the Board of Supervisors and newly appointed Board of Social Services members.

And the Court being of the opinion that the petition for writ of mandamus was properly brought and does state a cause of action and that the petitioners have no adequate remedy at law, the respondents demurrer is hereby overruled and dismissed, and

WHEREUPON, the Court being of the further opinion that the Board of Supervisors acted illegally as a Board in dismissing the petitioners herein in that Virginia Code Section 63.1-45 requires notice to be given to the petitioners, and that it is proper and appropriate to do so, it is hereby ADJUDGED, ORDERED and DECREED that Mr. Carl Neely, Mr. S. G. Timberlake, Mr. William S. Smith, Mr. Aubrey Dodson, and Mr. Ray Neely, individually and collectively, as the Board of Supervisors of Giles County, Virginia, be and they hereby are commanded and compelled to reinstate your petitioners to

[RECORD, P 62]
ORDER ENTERED IN PREVIOUS MANDAMUS ACTION

the Giles County Social Services Board; and that Mr. Carl Neely, Ms. Helen Moye, Mr. Martin Richard Williams, Mr. Mike Davis, and Mr. Tommy Miller, individually and collectively, as the current Giles County Social Services Board, be and they hereby are commanded and compelled to refrain from holding themselves (itself) out as the legal and proper Social Services Board of Giles County, Virginia, or in any way acting as such. Said reinstatement shall be effective as of January 8, 1980.

It is further ADJUDGED, ORDERED and DECREED that the respondents be served individually by certified copy of this writ of mandamus and that the provisions contained in this order and writ shall become fully effective at once upon said service. The parties hereto shall bear their own costs.

ENTER: This Order this 12th day of May, 1980.

/s/ Glen R. Phillips
JUDGE

We ask for this Order:

/s/ H. Gregory Campbell
H. Gregory Campbell, Jr.
Counsel for Petitioners

Seen:

/s/ Max Jenkins
Max Jenkins
Counsel for Carl Neely, Mike Davis,
Helen Moye, Martin Richard Williams,
Tommy Miller, and Giles County Board
of Supervisors

ASSIGNMENT OF ERROR
PETITION FOR WRIT OF ERROR
FILED September 8, 1980

1) MANDAMUS WAS NOT THE PROPER REMEDY AND THE
DEMURRER OF APPELLANT SHOULD HAVE BEEN SUSTAINED.

2) THE FACTS PRESENTED TO APPELLANT AT THE MAY 19
HEARING DID CONSTITUTE CAUSE AS REQUIRED BY VA CODE § 63.1-45.

3) THE COURT ERRED IN NOT HEARING ANY EVIDENCE ON
THE PART OF APPELLANT.

BRIEF IN OPPOSITION AND ASSIGNMENT OF CROSS-ERROR

FILED September 18, 1980
PAGE 3

Did the trial court err in denying appellees
their request for reasonable attorney's fees?