

FRANKLIN TOWNSHIP
FRANKLIN TOWNSHIP MUNICIPAL BUILDING
202 SIDNEY ROAD
PITTSTOWN, NEW JERSEY 08867

NOVEMBER 16, 2009

POLICE DISCIPLINARY HEARING

IN THE MATTER OF THE DISCIPLINARY
HEARING OF:

OFFICER HATEM WAHBA
.....

B E F O R E:

STEPHEN F. SMITH, J.S.C., Hearing Officer

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1 THE HEARING OFFICER: Is everyone ready?

2 MR. O'REILLY: Yes.

3 MR. METS: Yes, your Honor.

4

5 K E N N E T H J. M A N D O L I, is sworn.

6

7 DIRECT EXAMINATION BY MR. O'REILLY:

8 Q By whom are you employed, Mr. Mandoli?

9 A Franklin Township Police Department.

10 Q In what capacity?

11 A Director of Public Safety.

12 Q And for how long have you been so

13 employed?

14 A Five years.

15 Q And in this particular matter, did you
16 have occasion to have charges brought against Officer
17 Wahba?

18 A Yes, that is correct.

19 MR. O'REILLY: Judge, I don't know whether
20 we marked these before, I think we may have.

21 Let's mark it as FT-29, and I will
22 continue looking for it.

23 (Exhibit FT-29, consisting of the Notice
24 of Charges and Hearing, marked for identifica-

1 tion.)

2 BY MR. O'REILLY:

3 Q I will show you what is marked as FT-29.

4 Is that a copy of the charges?

5 A Yes, it is.

6 Q And what was the date of those?

7 A August 14, 2009.

8 THE HEARING OFFICER: Yes, this is part of
9 the body of evidence.

10 MR. METS: I believe that that was marked
11 previously in this matter.

12 MR. O'REILLY: Yes, let's take that out.
13 Just for the record, the Court Reporter sent all
14 of the exhibits back to counsel, and mine are on
15 their way here now.

16 THE HEARING OFFICER: They are coming
17 under separate cover.

18 MR. O'REILLY: They cam in on Friday,
19 and I was informed they came back upstairs
20 today.

21 THE HEARING OFFICER: We will muddle
22 through it.

23

24 BY MR. O'REILLY:

1 Q Did you sign those charges?

2 A I did sign them. This copy does not have my
3 signature on it.

4 Q Were they given to Officer Wahba?

5 A Yes, they were.

6 Q On the 14th?

7 A Yes, that is correct.

8 Q Now, those specific charges, did they come
9 out of an investigation that was done by one of the
10 officers in the department?

11 A No, they did not.

12 Q How did they come about?

13 A They were the result of an investigation
14 conducted by the Prosecutor's Office in Hunterdon
15 County.

16 Q And was anyone else involved in that
17 investigation?

18 A No, sir.

19 Q When was it that the Prosecutor's Office
20 turned their file over to you?

21 A I received notification on July 2, 2008 that I
22 could come down and secure the package from them. It
23 was late in the afternoon on the 2nd. I didn't get a
24 chance to go down there and retrieve the packet until

1 July 6th, because the 3rd was a holiday, a County
2 holiday and they were closed. Then we had the
3 weekend, so it wasn't until the following Monday, the
4 6th, that I picked it up.

5 Q Prior to the 6th when you picked it up,
6 had you started any internal investigation?

7 A No, sir.

8 Q To your knowledge, had any internal
9 investigation been done by Franklin Township?

10 A No, sir.

11 Q On the 6th when you received this package,
12 what did you do with it?

13 A I brought it back here to headquarters and I
14 notified the Mayor that I had it, it was in a sealed
15 envelope where it remained sealed until I got
16 direction from the Mayor on who was going to be
17 conducting the Internal Affairs investigation for
18 administrative purposes.

19 Q And who was that?

20 A It was delivered to Mark Tabenkin.

21 Q Who is Mark Tabenkin?

22 A He is an attorney that was hired by the
23 Township, and I was under the impression that his
24 office was going to conduct the investigation,

1 according to the Mayor. So it was brought up to his
2 office in Morris County.

3 Q Do you know what Mr. Tabenkin did with
4 that or anybody he may have hired?

5 A I don't, that is the last time I saw it. In
6 fact, I turned it over to him up at his office, and
7 that was the last I know of it.

8 Q At some point were you contacted by
9 myself?

10 A Yes.

11 Q And was that later on, like in August?

12 A Yes, that is correct, it was in August.

13 Q And that was before these charges were
14 filed?

15 A Yes, it was before the charges were filed, and
16 that is when I found out that it had been transferred
17 to you to be handled.

18 THE HEARING OFFICER: I am unclear about
19 something, Mr. O'Reilly: Did the package remain
20 sealed? The point was made it was a sealed
21 investigation that was handled. Could you
22 clarify that?

23 MR. O'REILLY: Yes.

24 Q When you refer to the word "sealed", was

1 this in some type of an envelope that was sealed?

2 A That is correct.

3 Q It wasn't turned over to you as a sealed
4 investigation?

5 A No, no, no, it was just taped shut and had my
6 name on it, to make sure I was the only one that
7 picked it up, nobody else.

8 Q What was your understanding when the
9 Prosecutor's Office turned it over to you?

10 A That it was to be used for an Internal Affairs
11 investigation for administrative purposes.

12 Q And then you communicated that to the
13 Mayor?

14 A That is correct.

15 Q And then the Mayor at some point assigned
16 it to some attorney by the name of Tabenkin; is that
17 correct?

18 A Yes.

19 Q And you transported it to him?

20 A Yes.

21 Q And after that, you learned that I was
22 involved?

23 A Yes.

24 THE HEARING OFFICER: Again, I am still

1 unclear. Did it remain sealed?

2 THE WITNESS: Yes.

3 THE HEARING OFFICER: Was it reviewed by
4 you and/or the Mayor?

5 THE WITNESS: No, neither one of us.

6 THE HEARING OFFICER: Thank you.

7 Q Let me take you back to September 17,
8 2008. Do you recall having any discussion with
9 Officer Zeveney on that date?

10 A Yes, I do.

11 Q What was the nature of that discussion?

12 A He came into my office -- actually, it started
13 on September 12th where he came into my office and he
14 actually notified me that he had gotten money and
15 permission from the Township Committee to seek an
16 attorney on his own to actually defend him, because
17 he was being removed from the PBA. So on the 12th of
18 September he went down and met -- he was telling me
19 he was going down to meet with an attorney by the
20 name of Don Morrow, and it was on the 17th that he
21 came back to me as a result of that meeting on the
22 12th.

23 Q Let me ask you this: With regard to his
24 being removed from the PBA, he had not as yet been

1 removed from the PBA?

2 A At that time, no.

3 Q Is the PBA the bargaining unit?

4 A Yes.

5 Q So in effect, they were removing an
6 individual from the bargaining unit?

7 A That is correct.

8 Q As well as removing him from the PBA?

9 A That is correct.

10 Q So on the 17th when he came to you, what
11 was the nature of that conversation?

12 A He advised me that Mr. Morrow had advised him to
13 secure certain documents to help him with his case,
14 and at the time of securing those documents, he came
15 across some information that he wanted to make me
16 aware of.

17 Q What was the nature of that information?

18 A He advised me that he came across an incident
19 where Officer Wahba was involved with another
20 officer, and there was an issue with some summonses
21 that were missing from the court, or had never been
22 delivered to the court, and that is what he wanted to
23 make me aware of.

24 Q Had he indicated he had met with anybody

1 prior to that on the 17th, prior to talking to you?

2 A No, other than Mr. Morrow, that was it.

3 Q What did you do then?

4 A Based on the information that he gave me, what
5 he was stating was possibly criminal in nature, and
6 so I advised him that he was going to assist me and
7 go down to the Prosecutor's Office and we would be
8 going to give the information to the Prosecutor's
9 Office.

10 Q And did you go to the Prosecutor's Office
11 that day?

12 A Yes, we did, in the afternoon on the 17th.

13 Q And at that time were you keeping kind of
14 a log book as to what you did on a daily basis?

15 A It is kind of like a diary, just some highlights
16 or a need to have a recollection of what I did if I
17 had to go back. And basically, it is just my own
18 notes, so I knew if I had to ever go back, or if I
19 was ever questioned by the Township Committee, I
20 could let them know, since I don't provide them with
21 a schedule of what I do, just the highlights of what
22 I did on any particular day.

23 Q And did you note that on the 17th that you
24 went to the Prosecutor's Office?

1 A I believe I did. I don't have it in front of
2 me, but I believe I did.

3 THE HEARING OFFICER: I don't have a
4 reference as to how you marked that.

5 MR. O'REILLY: It is not a joint exhibit,
6 that is for sure.

7 Q You have been shown what is marked as
8 J-1. Was there a notation --

9 A That I went to the Prosecutor's Office, yes,
10 that is correct.

11 Q And at that time do you recall who you
12 saw?

13 A Yes, it was the chief of detectives, Chief
14 Hurley, and there was an Internal Affairs
15 investigator, Ken Rowe, in the room.

16 Q Now, the incident that Officer Zeveney
17 made you aware of, when did that specifically occur,
18 do you remember?

19 A I believe it was back on April 27, 2005.

20 Q And do you recall an incident between
21 Officer Zeveney and Officer Wahba back at that time
22 period?

23 A Yes, I do.

24 Q And what was the nature of that incident?

1 A I was made aware of it at approximately 10:30 or
2 11:00 that morning when Officer Zeveney came into my
3 office and he said that he had just had an alterca-
4 tion with Officer Wahba over an incident which
5 occurred the evening before, prior. It was a motor
6 vehicle accident.

7 Q And what had happened with regard to the
8 motor vehicle accident?

9 A Officer Zeveney advised me that the individual,
10 it was a hit and run accident which occurred on White
11 Bridge Road, and that the individual had fled and
12 left his vehicle behind, and that he got his
13 information from relieving Officer Snyder the
14 following morning of the 27th, that Officer Snyder
15 had issued seven summonses to the owner of the
16 vehicle, since the driver had fled.

17 Q Had Officer Zeveney indicated -- what was
18 the nature of the confrontation with Officer Wahba?

19 A He advised me he was having breakfast at a local
20 establishment in town called Perricone's, and he was
21 dispatched back to White Bridge Road, that is Officer
22 Zeveney now. He stated that the individual possibly
23 involved in the incident the night before was at the
24 scene attempting to retrieve his vehicle, which by

1 then had been towed away.

2 Q When did Officer Wahba get involved in
3 this?

4 A He advised me that Officer Wahba somehow met
5 with him prior to him responding to White Bridge
6 Road, and advised him that he would be handling -- he
7 wanted to handle the response over there, and for
8 Officer Zeveney to stay away.

9 Q Was there a reason why Officer Zeveney was
10 concerned?

11 A He had found out that the individual was
12 possibly a friend of his, that it was his son's
13 wrestling coach.

14 Q When you say "his son's wrestling coach",
15 or "a friend of his", who do you mean?

16 A That it was Officer Wahba's son's wrestling
17 coach that was possibly involved in the incident.

18 Q What was the relationship between Officer
19 Zeveney and Officer Wahba at that time?

20 A They were both at the time -- it was a duty
21 assignment. They were both corporals, so they were
22 not equal, but at the time Officer Wahba was the
23 officer in charge, which put him senior to Officer
24 Zeveney on that date.

1 Q Did Officer Zeveney indicate to you
2 anything that Officer Wahba wanted to do with these
3 particular tickets?

4 A He was afraid -- he mentioned to me that he
5 actually confronted Officer Wahba and was afraid that
6 he was going to hold it against him, because of the
7 fact that he felt -- this is Zeveney now -- that
8 Officer Wahba would use his powers as officer in
9 charge to put pressure on Officer Snyder to void the
10 summonses.

11 Q Was there any mention of Officer Wahba
12 dismissing or voiding the charges on his own?

13 A No, sir.

14 Q So Zeveney was concerned because he was
15 junior to Wahba?

16 A That is correct.

17 Q What was he concerned about?

18 A Well, because he stood up to him was his exact
19 words, he felt like -- and he was going to use this
20 as retribution against him for standing up to him and
21 questioning him and his authority. That is why he
22 was making me aware of it.

23 Q As a result of what he made you aware of,
24 what did you do on April 27th?

1 A I waited, it was about 45 minutes to an hour
2 later that Officer Wahba returned to headquarters,
3 and I asked to speak to him in my office. And I
4 advised him what Officer Zeveney had told me.

5 Q What did you advise him?

6 A Based on what Officer Zeveney told me, my advice
7 to Officer Wahba was to not get involved.

8 Q And what was Wahba's response?

9 A His response to me at the time was that he
10 couldn't get involved even if he wanted to, that they
11 had already been sent out. And I assumed he was
12 referring to the summonses.

13 Q Did you take any further action at that
14 point?

15 A No, I took the man for his word, that that was
16 the end of it.

17 Q Did you have any other contact with him?
18 Did you check on the tickets or whether they reached
19 court, or anything along those lines?

20 A I didn't, that was day-to-day operations, and in
21 fact, it was Officer Wahba's responsibility, as far
22 as his summonses and where they go. At the time I
23 was new on the job, and I couldn't even tell you
24 where summonses were put. I knew they had to go to

1 the court, but I didn't know where they were placed
2 by the officer, or how they were brought to the
3 court.

4 Q When you were made aware of this in
5 September, on September 17th, of 2008, did you recall
6 the incident at that time?

7 A I did recall, yes.

8 Q And have you, subsequent to the
9 Prosecutor's Office returning the file to Franklin
10 Township, did you put at some point after you
11 transported the file to Mr. Tabenkin, did there come
12 a time when you were interviewed by Mr. Palleria?

13 A Yes.

14 Q And do you recall when that was?

15 A It was at the beginning of August.

16 Q And did Mr. Palleria ask you questions
17 about your exchange with Wahba on the day of April
18 27th?

19 A Yes, he did.

20 Q What was the nature of those questions?

21 MR. METS: I will object to the
22 discussion. If there is a transcription of this
23 interview, we asked for discovery and I have no
24 knowledge of any interview or sworn statement.

1 THE HEARING OFFICER: Mr. O'Reilly, do
2 you have any comment? We are talking about
3 hearsay here, it has a limited value. The value
4 it does have is what action this witness took as
5 a result of the information he received. As far
6 as I am concerned, as the fact finder, I will
7 allow the hearsay not for the truth of the
8 matter, but to decide what was done next, unless
9 you are offering it for the truth. So if you
10 would tell me about that.

11 MR. O'REILLY: Judge, not at this
12 juncture, there will be some statement with
13 regard to a statement that was made and whether
14 or not that was true or false, but that is
15 another question.

16 THE HEARING OFFICER: Okay. We will get
17 to that when we get to it, then. Go ahead.

18

19 BY MR. O'REILLY:

20 Q You had a conversation with Mr. Palleria?

21 A Yes, sir.

22 Q Did he indicate to you what was said with
23 regard to a conversation between you and Officer
24 Wahba on April 17th?

1 A Yes, he did.

2 Q And what was the nature of what he told
3 you Officer Wahba said that you and he had discussed?

4 A He came to me and he said that according to
5 Officer Wahba, that Officer Wahba had mentioned that
6 I advised him that we did this all the time in
7 Bridgewater.

8 Q When you saying "We did this all the time
9 in Bridgewater", what is the "this" that you are
10 talking about?

11 A Apparently voided summonses.

12 Q And what was it that Wahba allegedly said
13 with regard to this to you, or what you supposedly
14 said to Wahba?

15 A He said that we did it all the time, and it was
16 an acceptable practice in Bridgewater.

17 Q So that this was something you were
18 telling him?

19 A According to him.

20 Q Had you ever told Officer Wahba that this
21 was the accepted practice --

22 MR. METS: Objection, it seems like he is
23 offering it for the truth of what he stated.

24 THE HEARING OFFICER: Now we are talking

1 about did he ever tell Officer Wahba, and that
2 is not hearsay. Overruled.

3 Q Did you ever tell Officer Wahba that this
4 was the accepted practice in Bridgewater when you
5 were there?

6 A No, I told you it was a very short conversation,
7 Bridgewater was never brought up in that conversa-
8 tion.

9 Q Was it the accepted practice in
10 Bridgewater when you were there --

11 MR. METS: I will object, Judge, there is
12 no foundation -- I represent Bridgewater, and it
13 is a large department, and I am not sure he
14 knows what goes on there.

15 THE HEARING OFFICER: He knows what he
16 knows.

17 MR. METS: He knows what he knows, but
18 that is not the practice.

19 THE HEARING OFFICER: I am sure he can't
20 answer for anybody else in Bridgewater as to
21 policies and procedures, but this witness can
22 answer as to his knowledge of the situation. Go
23 ahead.

24

1 BY MR. O'REILLY:

2 Q To your knowledge, was that the practice
3 in Bridgewater?

4 A No, it was not. I was the supervisor for 12
5 years with Bridgewater.

6 Q How long were you with the Bridgewater
7 Police Department?

8 A Twenty-two years.

9 Q And were you supervisor for 12 of that
10 time?

11 A That is correct.

12 Q What was the procedure in Bridgewater?

13 A The procedure was very specific: If you wanted
14 to void, or if any officer wanted to void a summons,
15 he had to document a memo through the chain of
16 command to the Judge of Bridgewater stating the
17 purpose and the reasons for voiding the summonses,
18 and you had to attach all four copies of the summons
19 to that letter.

20 Q Was the memo that was done, was it done by
21 the officer who wrote the tickets?

22 A That is correct.

23 Q And it went all the way up to the Chief?

24 A It had to go through the Chief and to the Judge

1 and the court.

2 Q When it went to the court, did it go to
3 the Municipal Prosecutor?

4 A Yes, but the final determination was made by the
5 Judge on whether that summons could be voided.

6 Q And that was the only procedure you knew
7 with regard to voiding a summons?

8 A Absolutely. There was a policy and procedure
9 covering that.

10 Q So if you had said that is what we did in
11 Bridgewater, just the officer in charge or the
12 officer himself just voids his own summonses, that
13 would have been incorrect?

14 A Yes.

15 MR. METS: Objection.

16 Q I mean, if you made that statement.

17 MR. METS: Assuming facts not in the
18 record here that that is what Wahba said, all we
19 have is Wahba may have said, that is an
20 allegation, that is what you did in Bridgewater.

21 We have no evidence of what that is. We
22 have no evidence of what procedure Wahba was
23 talking about, if it was even said, and now he
24 is testifying.

1 THE HEARING OFFICER: No, he is putting it
2 all together in a question. I assume -- it
3 assumes the fact finder can follow that line of
4 logic that would be against Bridgewater
5 procedures, and he asked that question.
6 Sustained, Mr. O'Reilly.

7

8 BY MR. O'REILLY:

9 Q Did you prepare a report with regard to
10 this, also?

11 A Yes, I did.

12 MR. O'REILLY: I would like to get that
13 marked.

14 (Exhibit FT-29, consisting of a one page
15 handwritten document, marked for identifica-
16 tion.)

17 (Exhibit FT-30, consisting of a typed
18 document signed by Kenneth Mandoli, marked for
19 identification.)

20

21 BY MR. O'REILLY:

22 Q I will show you what is now marked as
23 FT-30. Is that the report that you prepared after
24 your discussion with Mr. Palleria?

1 A Yes.

2 Q And is that memorializing what happened on
3 the 27th?

4 MR. METS: I will object to this report.
5 First of all, it is an undated report.
6 Secondly, it appears to have no relevance to the
7 charges brought against Officer Wahba, because
8 the charges were brought before -- from what I
9 am getting from the testimony -- before this
10 gentleman spoke to Mr. Palleria. So I don't see
11 what relevance this has to the charges.

12 THE HEARING OFFICER: I haven't read the
13 document, it hasn't been offered in evidence.
14 The only question that I am aware of is this
15 memo at this point.

16 Are you going to go further with this, Mr.
17 O'Reilly, so I can read it now?

18 MR. O'REILLY: Yes.

19

20 BY MR. O'REILLY:

21 Q This report that you made was made after
22 the charges were filed?

23 A No, it was made before the charges.

24 Q And the conversation that you had with Mr.

1 Palleria, was it before the charges?

2 A Yes, it was.

3 Q And as part of the charges, is one of the
4 charges the fact that this statement allegedly made
5 by Officer Wahba to the effect -- recounting a
6 statement that you made, that "It is done all the
7 time in Bridgewater", was in fact not accurate?

8 A That is correct, that is one of the charges.

9 Q And because you never said that; is that
10 correct?

11 A That is correct.

12 THE HEARING OFFICER: I may have missed
13 it, can we know who this memo was submitted to?

14

15 BY MR. O'REILLY:

16 Q Mr. Mandoli, who did you prepare this for,
17 this memo?

18 A The investigator, Mr. --

19 Q Palleria?

20 A Palleria, yes.

21 Q During the course of this investigation
22 were you also asked to provide phone records from the
23 police department?

24 A Yes, I was.

1 Q And specifically, what are the Town's
2 phone numbers?

3 A The Town's, or the police department?

4 Q The police department.

5 A We have 908-735-6508; we have three lines coming
6 in to police headquarters at that number.

7 Q So the Town police department is
8 908-735-6508?

9 A That is correct.

10 Q And did you obtain copies of the phone
11 records for the police department?

12 A Yes, I did.

13 MR. O'REILLY: Can we have this marked as
14 FT-31, please?

15 (Exhibit FT-31, consisting of AT&T phone
16 records, marked for identification.)

17 MR. METS: The first Bates stamp number on
18 that is FT00895?

19 MR. O'REILLY: Yes.

20 MR. METS: We are not looking at Sprint,
21 we are looking at AT&T?

22 MR. O'REILLY: AT&T phone records.

23

24 BY MR. O'REILLY:

1 Q What is in front of you is FT-31. Is that
2 the phone bill for the police department back for a
3 time period including the 26th and 27th of April in
4 2005, specifically pages 8 and 9?

5 A Yes, that is correct.

6 Q And as part of your duties, do you also
7 maintain a list of the patrolmen and members of the
8 department and their phone numbers, their contact
9 information?

10 A Yes, on my desk I have a roster of all of the
11 members of the department, both cell and home.

12 Q And are you aware of the phone number for
13 Officer Wahba?

14 A Not without referring to that list. I have a
15 roster, but I don't know it by heart, if that is what
16 you are asking me.

17 Q Do you have that list handy?

18 A Yes, it is right on my desk, if you wanted me to
19 go get it.

20 MR. O'REILLY: Judge, could we take a
21 short recess?

22 MR. METS: Are you trying to get Wahba's
23 phone number in? Is that what you are saying?

24 MR. O'REILLY: Yes.

1 (Whereupon, a short recess was taken.)

2 THE HEARING OFFICER: Are you ready?

3 MR. O'REILLY: Yes, would you mark this,
4 please?

5 (Exhibit FT-32, consisting of a list of
6 department members and phone numbers, marked for
7 identification.)

8

9 BY MR. O'REILLY:

10 Q I will show you what is now marked as
11 FT-32. Is that a list of Franklin Township police
12 officers?

13 A Yes, we update it -- we try to update it around
14 every six months. This is the most recent.

15 Q Do you know whether the numbers have
16 changed with regard to Officer Wahba?

17 A I don't, but that is up to the secretary, that
18 is why we constantly are updating it, in case people
19 switch phone numbers.

20 Q Does Officer Wahba -- what phone numbers
21 are listed for Officer Wahba?

22 A I have an unlisted number of 908-541-9446, and I
23 have a 707-2408, which is 908, too. And I have a
24 908-285-2999 for a cell phone.

1 Q And those numbers, do you know whether or
2 not they were in existence back at the time of April
3 of 2005?

4 A No, this has been revised several times since
5 then.

6 Q But do you know whether or not he kept the
7 same phone numbers during that time?

8 A No, I'm sorry, I do not.

9 Q On the phone bill that was previously
10 marked FT-31, on page 9 of that phone bill, is there
11 a phone call from the department on the 27th at 11:38
12 in the morning to 908-507-4385?

13 A That is correct.

14 Q Do you know who that phone number is?

15 A No, I don't.

16 Q And is there also a phone call again on
17 the 27th at 2:27 p.m. to that same number?

18 A Yes, that is correct.

19 Q Do you know who that is?

20 A No, I do not.

21 THE HEARING OFFICER: Are you talking
22 about April or May 27th?

23 MR. O'REILLY: April 27th, Judge.

24 Q Now, were there calls on the 28th? Item

1 number 35 on this list.

2 MR. METS: I will object. I would like a
3 proffer. The Director said he was asked to
4 obtain these records from the department to give
5 to the investigator, Mr. Palleria. There is no
6 indication whether that was done post or pre-
7 charges, and if it was done post charges, it
8 would be completely irrelevant to these
9 proceedings, because they could not have been
10 considered when charging Officer Wahba.

11 THE HEARING OFFICER: Well, that is
12 argument. Is there any foundation in the
13 objection to referring to the records and
14 questioning about phone numbers?

15 MR. METS: Proceeding from the documents
16 and putting into evidence now stuff from the
17 document, the document is not in evidence and
18 there is no information whether this document
19 was produced prior to or considered when making
20 the charges, drafting the charges.

21 THE HEARING OFFICER: I am not entirely
22 sure why that makes a difference as I sit here
23 right now, and perhaps it makes a significant
24 difference and you can certainly argue that.

1 But factually, is there some kind of an
2 objection to this?

3 MR. METS: Do I dispute that these are
4 AT&T records? No. I just think that in the
5 scheme of police discipline, in most
6 investigations, that you should have your
7 information that you are going to be using
8 against an officer before the hearing.

9 THE HEARING OFFICER: Again, that may or
10 may not be a significant point here, but
11 certainly I will consider the argument on that.

12 But as far as the phone calls are concerned, I
13 will just accept the information as it comes in.

14 MR. METS: Then I don't see any reason to
15 continue to read the phone numbers, they say
16 what they say. If we will go through and
17 highlight everything --

18 THE HEARING OFFICER: I don't want to go
19 through every phone call on the record, Mr.
20 Mets. If there are some that you want to draw
21 my attention to, Mr. O'Reilly, go to those.

22 MR. O'REILLY: I did, Judge, as to the two
23 in question.

24 THE HEARING OFFICER: I was on the wrong

1 page, tell me which ones?

2 MR. O'REILLY: It is page 9, your Honor.

3 THE HEARING OFFICER: You referred to a
4 couple of calls on the 27th?

5 MR. O'REILLY: It is actually the number
6 17 and the number 21.

7 THE HEARING OFFICER: Is there a question
8 regarding number 35, now?

9 MR. O'REILLY: Yes, Judge, number 35,
10 which is at 4 p.m. That is to 908-541-4946.

11

12 BY MR. O'REILLY:

13 Q Is that one of Mr. Wahba's phone numbers?

14 A Yes, it is.

15 MR. O'REILLY: I have nothing further,
16 Judge.

17

18 CROSS-EXAMINATION BY MR. METS:

19 Q Director, the phone bill that you provided
20 to Mr. Palleria --

21 A Yes, sir.

22 Q -- FT-31?

23 A Yes, sir.

24 Q Do you remember when you gave it to him?

1 A It was at the same time that he asked for this
2 other report that I filled out.

3 Q So he never actually interviewed you, he
4 just asked you to do that report that was marked as
5 FT-30?

6 A That is correct.

7 Q So when Mr. O'Reilly said that Mr.
8 Palleria had interviewed you, that was incorrect?

9 A No, we sat down and he had questions about this,
10 but at that time he requested at the end of the
11 interview -- he requested this and the phone records.

12 Q Do you remember the date of that interview
13 or that discussion?

14 A I believe it was around August -- it was the
15 first or second week of August, somewhere around the
16 7th.

17 Q Was Mr. Palleria hired by the Township of
18 Franklin prior to Mr. O'Reilly being hired to handle
19 the Internal Affairs investigation?

20 A Could you rephrase that, please?

21 Q Was Mr. Palleria hired to do this Internal
22 Affairs investigation prior to Mr. O'Reilly's
23 involvement, or the retainer by the Township?

24 A I believe he was, yes.

1 Q So Mr. Palleria was here first?

2 A Yes.

3 Q So he wasn't brought in by Mr. O'Reilly?

4 A I don't know, because I hadn't met Mr. O'Reilly
5 at the time; the only other attorney I had spoken to
6 was Mr. Tabenkin.

7 Q And you had sent over to Mr. Tabenkin a
8 sealed packet of materials from the Prosecutor's
9 Office?

10 A No, I didn't send it over, I drove it to his
11 office.

12 Q You drove it. Did you fax him anything
13 relative to this?

14 A Not relative to this case, no, it was still in a
15 sealed envelope. Whatever was in that envelope was
16 delivered to him as such.

17 MR. METS: This is the only copy I have of
18 this document. I didn't think it was relevant,
19 but it might be now.

20 Q I will show you a copy of a document that
21 I would like to have marked.

22 (Exhibit E-18, consisting of a fax to Mark
23 Tabenkin, marked for identification.)

24 Q I will show you a copy of E-18, it is a

1 fax cover sheet. Can you identify that for us?

2 A Yes, it is a fax from me to Mr. Tabenkin.

3 Q And it indicates how many pages were
4 faxed?

5 A That is correct.

6 Q How many pages were faxed?

7 A Twenty-one pages.

8 Q What is the date?

9 A 7/23/09.

10 Q And that fax was regarding this Wahba
11 investigation? Strike that.

12 What did you fax to him?

13 A He wanted our Internal Affairs policy from our
14 policies and procedures book.

15 Q So as late as July 23, 2009, Mr. Tabenkin
16 was involved with this investigation?

17 A That is correct.

18 Q Do you know if Mr. Tabenkin was dismissed
19 by the Township of Franklin?

20 A Do I know why he was?

21 Q Do you know if he was?

22 A No, I don't.

23 Q You asked me a question why he was. If
24 you don't know if he was, I am assuming you didn't

1 know why he was.

2 A No, I didn't hear your question.

3 Q Now, at the top of E-18 it indicates this
4 was faxed from the "Express Times." I will show that
5 to you. Do you see that up top there?

6 A Yes.

7 Q Did you fax that from an "Express Times"
8 office instead of the police department?

9 A No, sir.

10 Q Could you explain to us why there was a
11 fax from the "Express Times" on top there?

12 A Yes, we have everything precoded, and I hit the
13 wrong -- I probably had to send it out, I may have
14 hit the wrong code.

15 Q You may have sent it to the "Express
16 Times" by accident?

17 A Yes, it was just our Internal Affairs policy.

18 Q And it is 21 pages, the Internal Affairs
19 policy?

20 A Yes, sir.

21 Q Let me show you what has been entered into
22 evidence as E-2. Is that the Internal Affairs
23 policy?

24 A Yes, it is.

1 Q That you faxed to Mr. Tabenkin?

2 A Yes, it is.

3 Q And how many pages is that?

4 A Twenty pages, and then my cover sheet makes 21.

5 I didn't make copies of the report.

6 Q It is 19 pages, right? If you didn't make
7 copies of the report, it is 19 pages.

8 A I thought that said page 20.

9 Q No, right there on the bottom.

10 A No, I was going by this up here (indicating).

11 Q So you didn't fax the full document to Mr.
12 Tabenkin, you only faxed certain parts of it?

13 A That is right.

14 Q Are you familiar with the Internal Affairs
15 policy of the Township of Franklin Police Department?

16 A Not that familiar with it, no.

17 Q Do you know that the policy requires that
18 an Internal Affairs investigation be conducted by
19 members of the department?

20 A No, I don't.

21 Q Do you know how the rules and regulations
22 of this police department defines who a member of the
23 department is?

24 A Who what?

1 Q Who "a member of the department" is?

2 A Yes.

3 Q What is a member of the department?

4 A Employed by the Township.

5 Q It is not a sworn police officer, a member
6 of the department, it could be a civilian?

7 A Well, I consider myself a member of the police
8 department, I am not sworn.

9 Q How do the rules and regulations define
10 "member of the department"?

11 MR. O'REILLY: Objection, your Honor, that
12 is really a legal argument.

13 MR. METS: He is the Police Director.

14 THE HEARING OFFICER: One at a time. Are
15 you finished, Mr. O'Reilly?

16 MR. O'REILLY: Yes.

17 THE HEARING OFFICER: Mr. Mets?

18 MR. METS: I think that it is probably
19 perfectly appropriate to question the Police
20 Director, who is the chief executive officer of
21 the police department, about the rules and regs
22 of the department, especially when they are
23 charging someone with violating the same rules.

24 THE HEARING OFFICER: Overruled.

1

2 BY MR. METS:

3 Q Let me show you again Exhibit E-2. Could
4 you read paragraph six, what the makeup of the
5 Internal Affairs Unit is?

6 A "The Internal Affairs Unit or responsibility is
7 herein established or defined, the unit shall consist
8 of those members of the department as shall be
9 assigned to the Internal Affairs function by the
10 Chief of Police. Personnel assigned to the Internal
11 Affairs function shall serve at the pleasure of the
12 Director responsible to the Police Chief."

13 Q There is no more Police Chief here in
14 Franklin Township.

15 A That is right.

16 Q You are the chief executive officer for
17 the police department.

18 A Administrative officer.

19 Q So the ordinance, when the Township passed
20 an ordinance abolishing the Chief's position --

21 A That is correct.

22 Q -- they just substituted Police Director
23 for Police Chief; is that correct?

24 A That is correct.

1 Q So when it says "Police Chief" in this
2 Internal Affairs Unit definition, is it fair to say
3 that Police Director is now replacing Police Chief
4 with regard to the assignment of personnel to the
5 Internal Affairs Unit?

6 A That is correct.

7 MR. METS: Could I have this marked as
8 E-19?

9 (Exhibit E-19, consisting of the Franklin
10 Township Police Department rules and regula-
11 tions, marked for identification.)

12 Q Would you look at Exhibit E-19?

13 A Yes, sir.

14 Q Could you identify this?

15 A That is the Franklin Township Police Department
16 rules and regulations.

17 Q Are those the rules and regulations that
18 were in effect in 2008?

19 A Yes, sir.

20 Q And were they in effect in 2005?

21 A Yes, they were.

22 Q And they are currently the ones in effect
23 today, right?

24 A That is correct.

1 MR. METS: I would like to offer those in
2 evidence.

3 MR. O'REILLY: I have no objection to it.

4 THE HEARING OFFICER: In evidence.

5 (Exhibit E-19 marked in evidence.)

6 Q Could you turn to the definition section
7 of those rules and regulations? Is there a
8 definition of what a member of the department is
9 contained in that document?

10 A Yes, sir.

11 Q What page is it on?

12 A It is on page 11.

13 Q Could you read that definition?

14 A Page 11. "Any duly appointed police officer of
15 the department."

16 Q Does that say "duly" or "duty"?

17 A I'm sorry, I didn't have my reading glasses.

18 Duly.

19 Q Do you need your glasses?

20 A Not really.

21 Q A member of the department is a sworn
22 police officer?

23 A A duly appointed --

24 Q Duly appointed sworn police officer,

1 correct?

2 A Yes.

3 Q Not a civilian?

4 A No.

5 Q Mr. Palleria is not a member of the police
6 department, is he?

7 A No, he is not.

8 Q Mr. O'Reilly is not a member of the police
9 department, is he?

10 A No, he is not.

11 Q Do you have FT-29 in front of you?

12 A Yes, sir.

13 Q Can you show me on September 12th where
14 you documented your meeting with Officer Zeveney
15 regarding the PBA charges against him?

16 A This doesn't have it on here.

17 Q It is on mine. On the first page of
18 FT-29, it is a one page document.

19 MR. METS: I asked the full document be
20 put in, not just the one page. We will put it
21 in as another number.

22 MR. O'REILLY: All right.

23 MR. METS: I would like to mark this as
24 E-20.

1 (Exhibit E-20, consisting of three
2 handwritten pages, marked for identification.)

3 Q Could you identify that document?

4 A Yes, it is part of my log.

5 Q The same log that you testified to that
6 FT-29 was part of?

7 A Yes.

8 Q What period is that log through?

9 A It starts on 9/9/08 and goes until 9/26/08.

10 Q Okay. Is September 12th contained on
11 there?

12 A Yes, it is.

13 Q Does it indicate that you met with Officer
14 Zeveney regarding meeting with his attorney and PBA
15 charges?

16 A That is not on here, no, sir.

17 Q So you didn't document that meeting?

18 A No, sir.

19 Q And when you spoke to Officer Zeveney
20 about him retaining counsel to fight the PBA charges,
21 did he tell you who was paying for that counsel?

22 A He was receiving funds from the Township
23 Committee.

24 Q He was receiving funds from the Township

1 Committee to fight the PBA in a matter completely
2 unrelated to the Township?

3 A No, it was related.

4 Q It was? Explain to us how the PBA
5 membership is related to the Township.

6 A Charges were brought up against him for being
7 harmful towards another officer as a result of an
8 Internal Affairs investigation, is what I was told.

9 Q Is that an Internal Affairs investigation
10 regarding a one day suspension that was issued to
11 Officer Wahba?

12 A Yes.

13 Q And that Internal Affairs investigation
14 the findings and the one day suspension were
15 eventually overturned, and the officer was exonerated
16 by an independent Arbitrator?

17 A That is correct.

18 Q And you and Officer Zeveney were
19 responsible for that investigation, were you not?

20 A I wasn't responsible for it, it was conducted by
21 Officer Zeveney.

22 Q But you approved of bringing charges and
23 suspending Officer Wahba, did you not?

24 A Yes.

1 Q And it was ultimately overturned, right?

2 A Yes.

3 Q Now, past investigations into police
4 officer misconduct have been conducted by members of
5 this police department as Internal Affairs, correct?

6 A As long as it wasn't a conflict of interest,
7 yes.

8 Q Well, in this case, this Internal Affairs
9 investigation of Officer Wahba's alleged misconduct
10 was turned over to an outside third party who is a
11 civilian; is that correct?

12 A Yes.

13 Q And it was done because you felt there was
14 a conflict of interest?

15 A It was done at the request of the Prosecutor's
16 Office.

17 Q The Prosecutor's Office requested that it
18 be done by an independent third party?

19 A Yes, that is correct.

20 Q And was that Officer Farneski who
21 requested that?

22 A No, it wasn't, it came from the Chief.

23 Q Who is the Chief?

24 A Dan Hurley.

1 Q And he felt that --

2 A After telling him that our Internal Affairs
3 officer is involved in this incident, there is nobody
4 else available to do the investigation, that it would
5 have to be done by somebody from outside, that is
6 when he suggested that it be done by a third party.

7 Q But you told the Chief over in the
8 Prosecutor's Office that the matter involved Zeveney,
9 so therefore, an outside party had to do the
10 investigation?

11 A Well, they conducted their part of the
12 investigation, they already knew that Zeveney was
13 involved.

14 Q That is my question: You made a statement
15 that it appeared, you said to them that a conflict
16 existed and then they suggested farming it out.

17 MR. O'REILLY: Judge, I object. That is
18 not what he said.

19 THE HEARING OFFICER: It is not my
20 recollection, either.

21 MR. METS: I'm sorry.

22 MR. O'REILLY: He said the opposite.

23 THE HEARING OFFICER: We can argue about
24 who remembers what all day, but what the witness

1 remembers is more important. Go ahead.

2

3 BY MR. METS:

4 Q Did you tell the Prosecutor's Office that
5 you felt that a conflict existed and then they
6 suggested going to an outside third party?

7 A That is correct.

8 Q And you felt the conflict existed because
9 that prior arbitration where Officer Wahba's
10 discipline was overturned found that you and Officer
11 Zeveney conducted a biased investigation, correct?

12 A It had nothing to do with the prior incident.

13 Q Well, did the disciplinary charges brought
14 by the union have anything to do with that prior
15 incident?

16 A I am sure it did, I don't have any -- I am not
17 privy to the reason for them doing what they did.

18 Q But Officer Zeveney came to you and
19 explained to you and said he had to go look for
20 records on the advice of counsel, correct?

21 A Right.

22 Q And did he tell you what those documents
23 he was looking for were?

24 A No, he didn't.

1 Q He wasn't just going to go look for those
2 documents, these tickets regarding Mr. Mascaro, was
3 he?

4 A He didn't tell me what he was going to go look
5 for, he just said for his case, he needed to obtain
6 certain documents.

7 Q Did he tell you what documents?

8 A No, he didn't.

9 Q As the Police Director in this township,
10 you didn't ask? You are going to go search for
11 records that involve a union matter, and you don't
12 care which police documents he turned over to the
13 union or private counsel?

14 A Yes, I did care, and my advice to him was that
15 he fill out an OPRA request and that he pay for
16 whatever copies he was making.

17 Q Do you know that Officer Zeveney did fill
18 out an OPRA request for the documents he was looking
19 for?

20 A No, I don't know.

21 Q Do you know if he obtained records before
22 filling out that OPRA request?

23 A No, I do not know.

24 Q Do you know the only records he went to

1 look for were, with regard to those union charges
2 were the documents involving these tickets that are
3 at issue here?

4 A No, sir.

5 Q Do you know that the union disciplinary
6 charges had nothing to do with these tickets that are
7 at issue in this case?

8 A The what?

9 Q The union disciplinary charges that were
10 being brought against Officer Zeveney, that had
11 nothing to do with these tickets that are at issue in
12 this case?

13 A I was told that it had to do with prior Internal
14 Affairs investigations, nothing to do with this case.

15 Q So these tickets that Officer Zeveney came
16 across while investigating or gathering evidence to
17 defend himself had nothing to do with the actual
18 defense of the PBA charges?

19 A Yes, it did have something to do with it.

20 Q It did have something to do with it?

21 A Well, according to him, he was supposed to
22 obtain documents that would help him with his case
23 against the PBA. If he was seeking out these
24 tickets, he must have felt it had something to do

1 with it.

2 Q If I told you, sir, that Officer Zeveney
3 testified that it had nothing to do with it, would
4 you disagree or agree with that statement?

5 A I don't know, because I didn't speak to Officer
6 Zeveney about this. All I know is he was going out
7 to get documents, and I instructed him to make sure
8 he had an OPRA request for whatever he was receiving.

9 Q You don't know what those disciplinary
10 charges -- strike that.

11 The union disciplinary charges, they
12 involved the one day suspension that was overturned,
13 correct?

14 A I am pretty sure, I never saw a copy of anything
15 as to what the exact charges were against Officer
16 Zeveney.

17 Q Well, Officer Zeveney came to you and said
18 -- he didn't explain to you at all what these charges
19 were about.

20 A No, because he said he never received a charge
21 from the PBA, he was just dismissed.

22 Q He was dismissed when he came to you from
23 the PBA?

24 A No, he was dismissed afterwards as a result, but

1 still to this day he has not received anything as to
2 the charges for what he violated.

3 Q On September 12th when he came to you and
4 said he was being charged by the PBA, he didn't tell
5 you what those charges were about?

6 A No, he just said who brought the charges up
7 against him.

8 Q And he said Officer Wahba brought those
9 charges?

10 A That is correct.

11 Q So he told you he was being charged by the
12 PBA, I need to look for records, and you didn't ask
13 him any further questions about what type of records
14 he needed?

15 A No, it was after his conversation with Mr.
16 Morrow that he was told he had to secure certain
17 documents.

18 Q So an outside attorney told a police
19 officer of this department to go gather records of
20 this police department and turn them over to him, and
21 you asked no questions about what it was about?

22 A If they went through the proper procedure like
23 any other civilian, no, I did not.

24 Q But he is not any other civilian, is he?

1 He is the officer in charge of this police
2 department, right?

3 A Well, he is, but not when he was acting on that
4 behalf.

5 Q Does the Town normally pay for lawyers for
6 individual civilians out in the street when they come
7 in with their OPRA requests?

8 A No, sir.

9 Q So the Town was paying in his capacity as
10 a police officer, officer in charge of this
11 department, they were paying for his defense against
12 the PBA, right?

13 A They were paying for his defense, that is
14 correct.

15 Q So this didn't involve Joe Public coming
16 off the street for an OPRA request, right?

17 A No, but I didn't want him to abuse his powers,
18 so I just told him to fill out the OPRA request.

19 Q Did you follow him to make sure he did
20 that?

21 A No, sir, it is not my job to micromanage.

22 Q I am not asking you to micromanage, I am
23 asking you as Police Director -- do you know if
24 Zeveney did all of this work, this investigation into

1 how he is going to defend himself against PBA charges
2 while on duty?

3 A I don't know, but I didn't work the same hours
4 that he does all the time, so I don't know.

5 Q Well --

6 A He works rotating shifts and I work steady days.

7 Q Do you know when he started looking for
8 documents?

9 A I believe it would have had to have been
10 starting since that appointment on September 12th.

11 Q Well, on the 17th of September you contend
12 that you went to see Officer Farneski or Detective
13 Farneski over at the Prosecutor's Office.

14 A No, I didn't say that.

15 Q Who did you go see at the Prosecutor's
16 Office?

17 A Chief Hurley and Ken Rowe.

18 Q Was Lieutenant Farneski present at that
19 meeting?

20 A No, he was not.

21 Q Did you have a meeting with Lieutenant
22 Farneski?

23 A Yes, I did.

24 Q When was that?

1 A It was probably like ten days later, like
2 towards the beginning of October.

3 Q Okay. Did you meet with Lieutenant
4 Farneski on September 23, 2008?

5 A September 23rd, no, I don't recall that.

6 Q Well, is it reflected in your log, Exhibit
7 E-20?

8 A No, it is not.

9 Q If you did meet with him, you would have
10 put it in your log, right?

11 A I work an eight hour day, sir, so I don't log
12 everything I do in eight hours.

13 Q You found it was important enough to log
14 it in on the 17th, right?

15 A Yes.

16 Q So if you met with him again on this Wahba
17 matter on the 23rd, met with him and the Chief, would
18 that be important enough to log it or not?

19 A I didn't meet with the 23rd.

20 Q You did not meet with them on the 23rd?

21 A No.

22 Q If I told you that Lieutenant Farneski in
23 a sworn affidavit to the Court to get phone records
24 said that you met with him and Chief Hurley, and you

1 and Dominick Zeveney and Chief Hurley met on the 23rd
2 of September, that would be a lie?

3 A Sir, I am just saying I did not work on the
4 23rd, so I couldn't have met with him.

5 Q So then Lieutenant Farneski, if he said
6 that, he would have been not telling the truth?

7 A I don't know what he said, sir.

8 Q I am not asking you that question. If he
9 said he met with you on the 23rd, "On the 23rd I met
10 with Director Mandoli, Dominick Zeveney, the chief of
11 the Prosecutor's Office Hurley and himself on
12 September 23rd, 2008", that would not be true?

13 A He did not meet with me on the 23rd.

14 Q Are you familiar with the section of the
15 Internal Affairs rules and regulations of this police
16 department that says that when a criminal complaint,
17 potential criminal misconduct of an officer is at
18 issue, the matter is to be turned over to the
19 Prosecutor's Office?

20 A That is correct.

21 Q And that is what happened in this case,
22 right? In September of 2008, the Wahba investigation
23 was turned over to the Prosecutor's Office.

24 A That is correct.

1 Q And the Prosecutor's Office then commenced
2 the investigation; is that right?

3 A That is right.

4 Q And when were you interviewed by the
5 Prosecutor's Office?

6 A I never was.

7 Q You never were? In fact, a sworn state-
8 ment was never taken from you regarding this matter,
9 was it?

10 A No, it was not.

11 Q Are you familiar with the section of the
12 Internal Affairs rules and regulations of this police
13 department that says that the department is supposed
14 to not go forward in an administrative investigation
15 until advised to do so by the Prosecutor's Office?

16 A Yes, I am.

17 Q And that is the protocol that you practice
18 in this police department?

19 A Yes, sir.

20 Q Once the Prosecutor's Office says we are
21 turning this over to you for administrative action,
22 that is when you are told you can go forward, right?

23 A That is correct.

24 Q While I am looking for something, the

1 police officers in this police department are
2 supposed to accurately complete their daily activity
3 logs, right?

4 A Yes, they are.

5 Q And failure to include information on
6 those logs could subject an officer to discipline,
7 right?

8 A Yes.

9 Q And full entries into a daily activity log
10 is not only subject to disciplinary charges, but
11 could be subject to criminal charges, right?

12 A Yes.

13 Q For falsifying a police document; is that
14 right?

15 A Yes.

16 Q Did you advise Officer Zeveney to falsify
17 his daily activity log on September 17th or September
18 18th?

19 A No, sir.

20 Q You told him to fill it out correctly,
21 right?

22 A Yes, sir. I don't check the daily logs, just so
23 you know, that is a day-to-day operation, and I don't
24 see the daily logs.

1 Q You keep going back to this day-to-day
2 operation. Didn't Officer Wahba go before the
3 Township Committee and complain that while he was
4 officer in charge, you were interfering with the day-
5 to-day operation of the police department?

6 A I don't recall that, sir.

7 Q Do you know if he went before the Township
8 Council and complained about the office of the
9 civilian Police Director?

10 A Not about that, about a Class II position, is
11 the only thing I recall.

12 Q Did you get approval from the Prosecutor's
13 Office in writing to have a civilian conduct an
14 Internal Affairs investigation in this police
15 department?

16 A No, sir.

17 Q While we are looking for this document,
18 you indicated that it was Officer Wahba's responsi-
19 bility to ensure --

20 MR. METS: Excuse me. Could we take a
21 short recess?

22 THE HEARING OFFICER: Yes.

23 (Whereupon, a short recess was taken.)

24

1 BY MR. METS:

2 Q Director, in what you refer to as a report
3 of the 30th, first, I want to ask you, this is not an
4 official police report, right?

5 A No, it is just a fact page.

6 Q It is your version of events that you
7 provided to the investigator, right?

8 A That is right.

9 Q And when Zeveney came to you in April of
10 2005, he advised you that he felt that Officer Wahba
11 was going to retaliate against him for challenging
12 his authority?

13 A He thought there was going to be some retribu-
14 tion for him standing up to him that morning on the
15 27th.

16 Q Did he tell you how he stood up to Officer
17 Wahba?

18 A No, sir.

19 Q So you just took it as a general
20 statement, "I fear retribution", but you had no idea
21 why?

22 A Well, he told me that he thought Officer Wahba
23 was going to use his powers as officer in charge in
24 order to have Officer Snyder void those summonses.

1 Q You didn't go to Officer Snyder that day
2 and say, "Hey, don't let Officer Wahba pressure you
3 to void these summonses", did you?

4 A No, sir.

5 Q And Officer Snyder never came to you and
6 said, "I feel Officer Wahba is going to pressure me
7 to void summonses, did he?

8 A No.

9 Q And if Officer Wahba had gone to Officer
10 Snyder to void summonses, there is a procedure to
11 void those summonses, right?

12 A That is right.

13 Q And if that procedure is followed, there
14 is nothing wrong with doing that, it is up to the
15 Judge, right?

16 A Yes.

17 Q And Officer Wahba was very well aware of
18 those procedures at that time in 2005?

19 A This is policy and procedures which all of the
20 officers signed, yes.

21 Q So by signing that, he knew those
22 procedures. By signing off on those procedures, he
23 is indicating that he read them and understands them,
24 correct?

1 A I don't know about understanding, but the
2 officer at least knows they are signing that they
3 read them.

4 Q Well, you have known Officer Wahba for a
5 while, right?

6 A Yes, sir.

7 Q Would you agree that Officer Wahba is
8 intelligent enough to understand the policies of this
9 police department?

10 A Yes, no doubt.

11 Q Therefore, it is fair to say that Officer
12 Wahba knows what the process is for voiding
13 summonses, correct?

14 A That is correct.

15 Q And there are three separate documents for
16 one ticket, right?

17 A I don't know how many copies there are here,
18 sir.

19 Q You never looked at the summons book?

20 A No.

21 Q As you sit here today, the summonses that
22 went missing with regard to this matter, you have no
23 idea what happened to them, do you?

24 A No.

1 Q In fact, the day in question, do you know
2 if Officer Zeveney was on duty, April 27, 2005?

3 A He was on duty.

4 Q And as the on-duty officer, it was his
5 responsibility to bring those tickets to court,
6 wasn't it?

7 A No.

8 Q It was not his responsibility?

9 A No.

10 Q Officer Zeveney told me it was his
11 responsibility when he testified.

12 A I was under the impression whatever officer was
13 going over to the court, if anybody is going over
14 there -- they will not make a special trip -- maybe
15 not today, but they will deliver them.

16 Q But it is the officer on duty if there is
17 a delivery to be made, it is his responsibility to
18 bring them?

19 A If there is a delivery being made, yes, sir.

20 Q So if there was a delivery to be made on
21 the 27th, as the patrol officer on duty, that would
22 have been Officer Zeveney's responsibility, right?

23 A No, sir, because there were two officers
24 working, so either one.

1 Q But Officer Snyder was going off duty,
2 right?

3 A But Officer Wahba was working.

4 Q But Officer Wahba was officer in charge.

5 A Yes, the officer in charge is responsible for
6 handling calls and patrol officers.

7 Q And also responsible for running the
8 department, right?

9 A Yes.

10 Q So it is the protocol in this department,
11 is it not, that the regular patrol officer, not the
12 officer in charge, if a run is going to be made to
13 the court, he would bring the tickets to the court?

14 A I can't say that, because I know for a fact that
15 Officer Zeveney has made trips to the court and was
16 officer in charge, when other officers have been
17 working.

18 Q On the 17th, what time did you go to the
19 Prosecutor's Office?

20 A I don't know.

21 Q The 17th of September.

22 A I don't know exactly, but it was in the
23 afternoon.

24 Q Late afternoon, early afternoon?

1 A Around after lunch.

2 Q About 1:00?

3 A I don't recall, I'm sorry.

4 Q So on April 27, 2005, you had this
5 discussion with Zeveney. What time of day did that
6 take place?

7 A I would have to say it was around 10:30, 11,
8 somewhere around that time.

9 Q 10:30 or 11?

10 A Yes.

11 Q And Officer Zeveney met you back here in
12 headquarters?

13 A Yes, he came back here.

14 Q And he specifically came back to tell you
15 what happened with Officer Wahba?

16 A Yes, sir.

17 Q And didn't Officer Zeveney tell you that
18 he feared -- he wanted to bring this to your
19 attention, because he felt -- he didn't want to be
20 complicit in criminal activities?

21 A I don't recall that statement, no, sir.

22 Q So there was no statement whatsoever that
23 Officer Wahba was going to get rid of these tickets,
24 not through the proper channels?

1 A No, he was more concerned about that he stood up
2 to him and somehow challenged him or whatever, you
3 know, his authority at the time, and that is what he
4 was afraid of.

5 Q You are not aware of any retaliation taken
6 against Officer Zeveney for what happened on the 27th
7 of April of 2005, are you?

8 A No, sir.

9 Q And if there was, you would, as Police
10 Director, you would know about it, right?

11 A I assume so, yes.

12 Q While the Prosecutor's Office was
13 continuing the investigation from September 2008, you
14 were kept informed of the progress of that
15 investigation?

16 A No, I was not.

17 Q Do you remember meeting with the
18 Prosecutor's Office sometime before but near May 27,
19 2009 regarding this conclusion?

20 A We did have a meeting, yes. I don't recall.

21 Q On April 27, 2005, when Zeveney told you
22 what his concerns were, you didn't tell him to do a
23 report, did you?

24 A No, sir.

1 Q In fact, you didn't do a report either,
2 did you?

3 A No.

4 Q And you didn't ask Wahba to do a report
5 either, did you?

6 A No, sir.

7 MR. METS: I would like to have this
8 marked as E-21.

9 (Exhibit E-21, consisting of an internal
10 investigation e-mail from Dan Hurley, marked for
11 identification.)

12 Q Do you remember receiving that document?

13 A No, sir.

14 Q You can't identify it for us?

15 A No.

16 Q Well, it indicates there was a meeting
17 with you, with the Prosecutor's Office, and it looks
18 like Charles Ouslander and Chief Hurley. Do you
19 remember having a meeting with those two individuals
20 sometime around May 27, 2009?

21 A Yes, sir.

22 Q And isn't it true at that meeting they
23 told you that they were not going to pursue this
24 matter criminally, "they" being the Prosecutor's

1 Office, but it is being referred back to this police
2 department, Franklin Township, for administrative
3 inquiry.

4 A Yeah, at that time they told me they weren't
5 closing this case because of the fact they were
6 waiting to get some return from the computer
7 forensics.

8 Q The question is, sometime prior to May
9 27th the Prosecutor's Office advised you that the
10 matter was being turned over to this police
11 department for administrative inquiry; isn't that
12 correct?

13 MR. O'REILLY: Judge, asked and answered.

14 MR. METS: No, Judge.

15 THE HEARING OFFICER: You may answer.

16 A They said it would probably be turned back to us
17 for administrative purposes, but they weren't turning
18 the file over to me until they had a return from the
19 computer.

20 Q But it says a decision has been made to
21 refer the complaint against the Franklin Township
22 officer for an inquiry. It doesn't say "probably",
23 it says, "A decision has been made by our office to
24 refer the complaint against the Franklin Township

1 police officer back to the Director for an
2 administrative inquiry"; is that correct?

3 A That is what he is saying in the memo, yes.

4 Q And you are saying that is not what
5 happened?

6 A No.

7 Q But again, the Prosecutor's Office is
8 wrong?

9 A Nothing was given to me that day as far as the
10 case being closed.

11 Q I am not asking you whether documents were
12 given to you, was the authority given to you to go
13 forward administratively as that document indicates?

14 A No, sir.

15 MR. METS: Could I have this marked as
16 E-22, please?

17 (Exhibit E-22, consisting of an e-mail
18 from Dan Hurley dated June 12, 2009, marked for
19 identification.)

20

21 BY MR. METS:

22 Q Can you identify that document for us,
23 please?

24 A Yes, sir, it is an e-mail to me.

1 Q You received that e-mail?

2 A Yes.

3 Q From Chief Hurley of the Prosecutor's
4 Office?

5 A That is right.

6 Q And in that document doesn't Chief Hurley
7 reiterate that this matter involving Officer Wahba
8 has been closed by the first assistant and is being
9 referred back to you for whatever action you deem
10 appropriate, correct?

11 A No, sir. I took it as the last line saying this
12 case is not considered closed.

13 Q So you ignored the rest of it and read the
14 last line?

15 A No, but I read the ending.

16 Q So you drew a conclusion even though the
17 Prosecutor's Office is saying, "Hey, this is your
18 case now, do what you want with it", that last line
19 completely obliterated that and you couldn't do
20 anything about it?

21 A Well, I can't do anything without any documenta-
22 tion, and they hadn't released any documents to me
23 yet.

24 Q But when you got the e-mail, did you pick

1 up the phone and say, "I will come over and pick up
2 the documents so we can move on this"?

3 A Yes, I called and nobody got back to me.

4 Q The Prosecutor's Office didn't call you
5 back?

6 A That is right.

7 Q So Zeveney got the documents from the
8 police department, he runs over to the police
9 department, finds out what happened to the tickets,
10 and you don't do anything, you are looking for
11 documents from the Prosecutor's Office?

12 A No, I was advised by the Chief that he would
13 contact me when he had a package for me to pick up.

14 Q On June 12th, you knew they were turning
15 this over to you for administrative investigation,
16 but you did nothing to go gather the file?

17 A I was told not to go down there until they
18 called me, and until they notified me that a package
19 was going to be ready to be picked up.

20 Q At the time when you were notified that it
21 is up to you to start investigating this, at least on
22 June 12th, you took no action?

23 A I can't take any action without the documenta-
24 tion they were going to provide to me.

1 Q You could have started interviews in the
2 Internal Affairs process, could you not?

3 A No, sir, I wasn't conducting the investigation.

4 Q Pardon me?

5 A I wasn't conducting the investigation.

6 Q You could have directed somebody in your
7 police department to conduct the police investiga-
8 tion, correct?

9 A No.

10 Q You are the head of the police department.
11 You have the authority to order the police
12 investiga-tion.

13 A Yes.

14 Q But in this one it is completely
15 different, you had no authority?

16 A That is correct.

17 Q Despite the Prosecutor telling you that it
18 is being referred back to you for whatever action you
19 deem appropriate, you are telling me you had no
20 authority to act?

21 A I had the authority, but there was a conflict of
22 interest, so it was --

23 Q So you couldn't call Officer Santoro and
24 say, "Officer Santoro, you have to investigate this

1 Internal Affairs matter"?

2 A That is correct, he hasn't been to IA school.

3 Q Zeveney hasn't either.

4 A Yes, he has.

5 Q When was he there?

6 A I can go down and get his certification, but I
7 don't know exactly when he went.

8 Q You don't need to go to Internal Affairs
9 training to become an Internal Affairs officer, do
10 you?

11 A It helps.

12 Q It helps if you go to the police academy
13 to be a police officer.

14 A That is mandatory.

15 Q Exactly. Training in Internal Affairs to
16 be an IA officer is not mandatory, is it?

17 A It was where I came from, where I came from.

18 Q Bridgewater?

19 A Yes, and San Diego.

20 Q It is not here in Franklin Township, and
21 it is not here in New Jersey, right?

22 A It was in Bridgewater, sir.

23 Q That is departmental policy. But here in
24 Franklin Township, it is not mandatory, is it?

1 A I am not quite sure, but I would never assign an
2 IA case to an individual who had not gone to IA
3 school.

4 Q Isn't it true that Officer Santoro has
5 conducted two Internal Affairs investigations?

6 A Not to my knowledge.

7 Q So he would do them without your
8 knowledge?

9 A Possibly.

10 Q And as you sit here today, that would be
11 improper because he didn't go to IA school; is that
12 correct?

13 A Yes.

14 Q So if Zeveney assigned an Internal Affairs
15 investigation to Officer Santoro to conduct, that
16 would be without your knowledge?

17 A If it was done, yes, sir.

18 Q You are obligated to sign off on the
19 conclusions of Internal Affairs investigations,
20 aren't you?

21 A Yes.

22 Q So if Santoro did one, there would have to
23 be a conclusion requirement, and it would have to
24 come across your desk to approve or not approve it;

1 is that right?

2 A That is correct.

3 Q And in fact, you have an obligation to
4 compile a report that goes to the Attorney General's
5 Office on all Internal Affairs investigations that
6 take place in this police department.

7 A That is correct.

8 Q So if I have two Internal Affairs
9 investigations by Santoro, you are telling me you did
10 not sign off on them?

11 A I might have signed off, I said I don't recall
12 Officer Santoro --

13 Q It would be against policy to do it?

14 A It would be in my eyes.

15 Q But you would sign off on it anyway?

16 A If you are telling me I signed off on them.

17 Q On an improper investigation?

18 A On an individual -- they should not do an
19 Internal Affairs investigation.

20 Q You are saying you never assigned Santoro
21 to do any?

22 A I did not, no.

23 Q And you have no recollection whether he
24 did or didn't do any?

1 A No, sir.

2 Q Were you ever the Internal Affairs officer
3 in Bridgewater?

4 A Yes, I was.

5 Q So you are very familiar with the Attorney
6 General guidelines on Internal Affairs?

7 A That is correct.

8 Q And as such, those guidelines limit
9 civilians from doing Internal Affairs investigations,
10 do they not?

11 A I don't remember that portion of the AG's
12 guidelines.

13 Q You don't know one way or the other?

14 A No, sir.

15 Q When you said that -- actually, let me go
16 back to E-21. You were copied on that e-mail, were
17 you not?

18 A It says cc -- yes.

19 Q Is that your e-mail address, kmandoli@-
20 franklin-twp.org?

21 A Yes.

22 Q And that is the same e-mail address on
23 E-22 for you?

24 A Yes, that is correct.

1 Q And on the bottom of each one of those
2 documents, E-21, it says, "http//mail.franklin-
3 twp.org 2095 --" Do you know what the 2095 refers
4 to?

5 A No, sir.

6 Q Then it says, "/third party/squirrelmail/-
7 src/read." Do you see that?

8 A Yes, sir.

9 Q That indicates that you opened and read
10 these e-mails; is that correct?

11 A I don't know what that refers to.

12 Q Are you familiar with the e-mail system in
13 this township?

14 A Not very well, sir.

15 Q On the charges filed against Officer
16 Wahba, you said you signed off on them?

17 A Yes, sir.

18 Q And there is also a signature line for
19 Officer Zeveney as officer in charge?

20 A That is correct.

21 Q Did he sign off on them, also?

22 A No, sir, he was on vacation.

23 Q So he never signed off as officer in
24 charge, he never signed off on the charges?

1 A No, sir.

2 Q Did you run these charges by Officer
3 Zeveney before issuing them?

4 A No, he was on vacation, sir.

5 Q The packet that you received from the
6 Prosecutor's Office, when did you open it and read
7 it?

8 A I didn't open it and read it, I never opened it.

9 Q You never opened it?

10 A No, sir.

11 Q So you charge Officer Wahba based upon an
12 investigation of the Prosecutor's Office without ever
13 reading the contents of the investigation?

14 A That is correct.

15 Q And you drafted the charges, right?

16 A I along with the help of Mr. O'Reilly.

17 Q Did you supply Mr. O'Reilly with the
18 documents from the Prosecutor's Office?

19 A No, sir, I gave it to Mr. Tabenkin.

20 Q And do you know if Mr. Tabenkin gave them
21 to Mr. O'Reilly?

22 A Yes, sir.

23 Q Do you know when that was?

24 A No, I had nothing to do with that.

1 MR. METS: Could we go off the record for
2 a second, because I need to have a discussion.

3 (Discussion off the record, both attorneys
4 and the Hearing Officer conversed in the
5 hallway.)

6 THE HEARING OFFICER: We are back on the
7 record.

8

9 CROSS-EXAMINATION (CONTINUED) BY MR. METS:

10 Q Director, you indicated in FT-30 that
11 there is a statement attributed to Patrolman Wahba,
12 "He had approached me on the day in question and
13 said, 'Well, what do you think?'" Where did you get
14 that information?

15 A It was given to me by the investigator.

16 Q Mr. Palleria?

17 A Yes.

18 Q Do you remember when that was given to
19 you?

20 A During our interview with him. It was like I
21 said, somewhere around the beginning of August.

22 Q Was it Mr. Tabenkin who hired Mr. Palleria
23 to do the investigation?

24 A I would not know, sir, I had nothing to do with

1 the hiring.

2 Q Mr. Palleria was involved in the
3 investigatory process prior to the charges being
4 brought against Officer Wahba?

5 A Yes.

6 Q Did you order Patrolman Snyder to give a
7 statement to Mr. Palleria?

8 A Did I order him? No, sir.

9 Q Do you know if Officer Zeveney gave an
10 order to Patrolman Snyder to speak to Mr. Palleria or
11 give a statement to Mr. Palleria?

12 A I wouldn't know that, no, sir.

13 Q On or about July 2nd you said you were
14 notified by the Prosecutor's Office that a discovery
15 packet was available for you to pick up regarding the
16 investigation into the allegations against Officer
17 Wahba; is that right?

18 A Yes.

19 Q You didn't pick it up until the 6th of
20 July, correct?

21 A Yes.

22 Q And as of the 6th of July, had Mr.
23 Palleria been retained by the Township to conduct
24 this investigation?

1 A I am not quite sure yet, all I was told was to
2 deliver it to Mr. Tabenkin's office, he was
3 conducting the investigation.

4 Q And do you remember how much time elapsed
5 from the 6th of July until the time you turned it
6 over to Mr. Tabenkin?

7 A I don't remember the exact date I brought it up,
8 I believe it was a couple of weeks or so. I am not
9 quite sure. I was waiting for the words from the
10 Township Committee, I don't even know if they had
11 hired Mr. Tabenkin at the time. I wasn't given a
12 name or else I would have delivered it right away.

13 Q When you turned over the file to Mr.
14 Tabenkin, did you advise the Prosecutor's Office that
15 you were giving it to him?

16 A No, sir.

17 Q And at the time you had given the file to
18 Mr. Tabenkin, the computer -- the HP computer was
19 still in the possession of the Prosecutor's Office?

20 A It was still in their possession, yes, sir.

21 THE HEARING OFFICER: Mr. Mets, you
22 referred to the HP computer?

23 MR. METS: The HP desktop computer that
24 was delivered to the Prosecutor's Office that

1 the Director had mentioned in the earlier
2 e-mails, E-21 and E-22, I believe they are.

3 THE HEARING OFFICER: I haven't read those
4 in detail, I just wanted to make sure that I got
5 the HP computer right. Thank you.

6

7 BY MR. METS:

8 Q Sir, on E-22 you went to the last line,
9 "This case is not considered closed", remember when I
10 asked you questions about that?

11 A Yes, sir.

12 Q The preceding sentence says, "I am sorry
13 for the delay, but we are waiting for the results of
14 one additional investigative task prior to officially
15 closing it." It was the computer analysis that they
16 were waiting for?

17 A That is my understanding, yes.

18 Q Your understanding?

19 A Yes, sir.

20 Q Now, I am not sure and bear with me if I
21 asked you this question: Is it your testimony that
22 the conflict that existed was because it was Officer
23 Zeveney who was bringing allegations against Officer
24 Wahba?

1 A Yes, sir.

2 Q In the prior Internal Affairs investiga-
3 tion, the one that led to the one day suspension that
4 was overturned --

5 A Yes.

6 Q -- it was Officer Zeveney who investi-
7 gated, who was making the allegations in that case,
8 and who also conducted the investigation, correct?

9 A Yes, sir.

10 Q And prior to that investigation, Officer
11 Zeveney had accused Officer Wahba of other alleged
12 misconduct and conducted Internal Affairs
13 investigations, correct?

14 A That is correct.

15 Q Now, you indicated that you had some
16 assistance from Mr. O'Reilly in drafting the charges.

17 A That is correct.

18 Q Did he draft them and provide them to you
19 for review, or did you draft them and provide them to
20 him for review?

21 A He actually -- we did it together. We went
22 through the policies and procedures, and he actually
23 drew them up. His office did. Then he provided me
24 with the final copy.

1 Q But still at that time you had not
2 reviewed the Prosecutor's file, correct?

3 A No, sir.

4 Q How did you become aware that Mr. O'Reilly
5 had taken over the investigation from Mr. Tabenkin?

6 A From the Mayor.

7 Q And do you remember when you were advised
8 of that?

9 A I am not quite sure. It had to be towards the
10 end of September, I believe, I am not sure.

11 Q Now, getting back to the statements that
12 were attributed to Officer Wahba, you were asked --
13 one second. Were you told by Mr. Palleria that
14 Officer Wahba had made those statements?

15 A Yes.

16 Q And the statements were, "I was recently
17 made aware --" I am reading from FT-30. "I was
18 recently made aware of Patrolman Wahba's IA statement
19 to the Prosecutor's Office in answer to the summonses
20 being voided." In the statement Patrolman Wahba had
21 approached me on the day in question and said, "Well,
22 what do you think?" And you testified that Patrolman
23 Wahba never said that.

24 A That is correct.

1 Q And the statement further states that "I
2 replied by saying, 'We had to do this all the time in
3 Bridgewater'", and your testimony is that you never
4 said that to Patrolman Wahba?

5 A That is correct.

6 Q Now, in Bridgewater, the procedure for
7 voiding a summons is the same, it is consistent
8 throughout the State of New Jersey for a Municipal
9 Court summons; is that correct?

10 A I can't speak for other departments other than
11 the two I have been a part of.

12 Q Well, Bridgewater and Franklin are the
13 same the way you wrote tickets, correct?

14 A Yes, sir.

15 Q And you have a form that the court
16 provides to the police department, right; is that
17 correct?

18 A For voiding summonses?

19 Q For voiding summonses.

20 Is there a form?

21 A I am not sure. I was always told you just draft
22 a letter to the Judge through the chain of command,
23 and that is what I always saw. I didn't see a form.

24 Q So through the chain of command it would

1 have to go through your office before it went to the
2 Judge. Is this the request to void a summons
3 (indicating)?

4 A I have never seen one, so I don't know if any of
5 them had been voided or not, so I don't know if I am
6 considered to be part of the chain of command.

7 Q If you weren't considered to be part of
8 the chain of command --

9 A Since this department doesn't have a rank, you
10 have to go to the officer in charge.

11 Q Are you familiar with this document that
12 has been marked in this matter?

13 A No.

14 Q You have never seen this before?

15 A No.

16 Q You are not familiar with any such
17 document or similar document that was in effect when
18 you were with Bridgewater?

19 A No.

20 Q Did you ever void a ticket when you were
21 at Bridgewater?

22 A Yes.

23 Q And you told me you just did it through
24 memo?

1 A Through a letter, yes.

2 Q Through the chain of command.

3 A Yes.

4 Q You never filled out one of these?

5 A No, sir.

6 Q You have requested officers in this
7 department to void tickets, have you not?

8 A I have requested it?

9 Q Yes.

10 A I don't believe so.

11 Q Do you recollect when you asked Officer
12 Oliveira to void a ticket for a friend of yours?

13 A No, sir.

14 Q You don't recollect asking Officer
15 Oliveira to void a ticket for an abandoned vehicle?

16 A I am not familiar -- I don't know what you are
17 talking about.

18 Q You have no recollection whatsoever of
19 that?

20 A No.

21 Q The phone records which were marked FT-31,
22 that was AT&T?

23 A Yes, sir.

24 Q These appear to be all of the outgoing

1 calls. Does the department keep track of the
2 incoming calls, also?

3 A I am not quite sure, this is just a statement of
4 the outgoing calls, so I don't know if you are
5 charged with incoming calls or not. I don't believe
6 there is -- there is no recording system.

7 Q Maybe AT&T, but does the department keep
8 track of incoming calls?

9 A No, sir.

10 Q The lines are not recorded?

11 A No, sir.

12 Q I am not real familiar with your phone
13 system, if somebody calls, a civilian calls the
14 police department and everybody is on the road, would
15 it go to voice mail or dispatch, central dispatch?

16 A No, it refers to a tape message which says if
17 you need emergency assistance, dial 9-1-1, other than
18 that it goes through all of the names and somebody
19 can leave a voice mail for that individual.

20 Q So unless you have an emergency, you can
21 leave a message here at the department?

22 A That is correct.

23 MR. O'REILLY: That last question, could
24 we clarify if that is in 2005 or 2009 how the

1 system works?

2 MR. METS: I'm sorry, let me clarify that.

3 Q Was the phone system we just talked about,
4 was that the same type of system that was in
5 operation in 2005?

6 A Yes.

7 Q And it hasn't been changed up to the
8 present?

9 A Not since I have been here, no.

10 THE HEARING OFFICER: Are you going to be
11 a while with the witness, Mr. Mets?

12 MR. METS: Not much longer.

13 THE HEARING OFFICER: Are you planning
14 redirect, Mr. O'Reilly?

15 MR. O'REILLY: No, not yet.

16

17 BY MR. METS:

18 Q Did Officer Zeveney talk to you in detail
19 about the discussion that he had with Officer Wahba
20 on the morning of April 27, 2005, regarding the
21 Mascaro tickets?

22 A No.

23 Q So all he said to you was, "I have fear of
24 retribution because I stood up to Tim"?

1 A Yes.

2 Q And you didn't inquire any further?

3 A No, sir.

4 Q Now, you spoke to Tim, you approached Tim
5 about the tickets themselves, right?

6 A No, sir.

7 Q You never did?

8 A No.

9 Q So you called Tim in to talk to him and
10 you just said --

11 MR. O'REILLY: Could you clear up which
12 Tim?

13 Q Yes, there is Tim Snyder and Tim Wahba. I
14 have Tim, I mentioned Tim in the last couple of
15 sentences, and I was referring to Officer Wahba.

16 A I'm sorry, there is Tim Snyder, too.

17 Q Officer Wahba, so Zeveney never said
18 anything more but he feared retribution from Wahba
19 because he stood up to him or something to that
20 effect?

21 A That is right.

22 Q And he never said, "Because I told him he
23 couldn't pressure Snyder into voiding summons"?

24 A Yes, he did tell me he was afraid he would lose

1 his power as officer in charge if he put pressure on
2 Officer Snyder to dismiss the tickets.

3 Q And Zeveney never told you how he stood up
4 to Wahba in that conversation?

5 A No, but he just mentioned to me that the
6 individual involved was his son's wrestling coach.

7 Q His son's wrestling coach?

8 A Yes.

9 Q And he didn't describe the conversation at
10 all to you?

11 A No, sir.

12 Q Now, you have known Officer Wahba since
13 you have been Police Director here, right?

14 A That is right.

15 Q So at least five years?

16 A That is correct.

17 Q And you would agree that Officer Wahba
18 rarely, if ever, uses expletives?

19 A That is correct.

20 Q He is a very polite individual, correct?

21 A Towards me or towards others?

22 Q Towards others.

23 A Yes, sir, very polite.

24 Q And by implication, I am assuming you feel

1 he is not polite to you?

2 A No, he has been more than disrespectful at
3 times.

4 Q At times, but he has never used
5 expletives?

6 A No, sir.

7 Q Now, as officer in charge or -- any
8 officer within the department can go to another
9 officer and request that they void a ticket or
10 downgrade a ticket, right?

11 A You mean for them? It has to be the officer
12 that wrote the ticket.

13 Q That is what I am saying. Officer Snyder
14 can go to Zeveney and say, "Hey, look, this is a
15 friend of mine, you know, can you downgrade it or
16 void the ticket", and it is up to Zeveney whether he
17 is going to do that or not, right?

18 A It has to be the officer that wrote the ticket,
19 yes, sir.

20 Q Do you know what the tickets at issue in
21 this case were, do you know what they were written
22 for?

23 A No, sir.

24 Q Did you ever see them?

1 A No, sir. I can assume what a couple of them
2 were, because it was a hit and run, left the scene.
3 I don't know if that is exactly what they were
4 written for.

5 Q Well, there were no witnesses to this
6 incident, no officers witnessed this incident, right?

7 A No officers witnessed it, no.

8 Q Isn't it true that you had told members of
9 this police department that this department was not
10 pursuing this matter, but it was being directed from
11 the Attorney General's Office of the State of New
12 Jersey?

13 A That it was being directed?

14 Q That the investigation into these tickets
15 was being pushed by the Attorney General's Office of
16 the State of New Jersey?

17 A I don't believe I would have said that, because
18 I don't have no knowledge of that.

19 Q You never told Officer Oliveira that?

20 A I don't believe so.

21 Q Officer Santoro?

22 A No.

23 Q Officer Snyder?

24 A No, sir. To my knowledge, they were never

1 involved with the case.

2 Q I am not asking you whether they were ever
3 involved, did you ever tell those three officers that
4 they were the ones pursuing it, "they" being the
5 Attorney General's Office?

6 A No, sir.

7 Q Are you familiar with a Mr. Duckworth?

8 A Yes, sir.

9 Q Is Mr. Duckworth a personal friend of
10 yours?

11 A No, sir.

12 Q I noted a -- if you are looking at the
13 reference, I believe it is the 17th of September, I
14 don't have it in front of me and I will have to come
15 look over your shoulder.

16 That was the wrong date, it is 9/1/08, it
17 indicates "Meeting at the school with Dominick
18 reference Phil Duckworth's daughter." Is that the
19 Phil Duckworth that we are talking about?

20 A Yes.

21 Q He does some work for the police depart-
22 ment?

23 A Yes.

24 Q Do you know his daughter?

1 A No, but there was a domestic violence case with
2 his family involving the daughter and child custody.

3 Q So you intervened and went to the school
4 to get involved with the domestic violence case with
5 Mr. Duckworth's daughter?

6 A Did I intervene?

7 Q You got involved.

8 A Yes, I went over there.

9 Q Was that a criminal investigation?

10 A No, that was already conducted.

11 Q Did Mr. Duckworth ask you to go over?

12 A No.

13 Q Did Officer Zeveney ask you to go over
14 with him?

15 A He might have asked me to go over there with
16 him, yes.

17 Q But you don't remember how you came to go
18 to Mr. Duckworth's daughter's school?

19 A No, I go to the school all the time, but I don't
20 remember that day why I went.

21 Q This was specifically to meet with at the
22 school, with Dominick regarding Mr. Duckworth's
23 daughter?

24 A Right.

1 Q And that wouldn't be just in general, it
2 would be for a specific purpose.

3 A I don't believe I met with the daughter, it was
4 in reference to the daughter.

5 Q You met with the teachers?

6 A Probably the Superintendent.

7 Q Regarding the domestic violence claim?

8 A No, it was more or less on who would be picking
9 up the kid at the school, it had something to do with
10 child custody, as I recall. This is a civil case
11 that is pending between the two parents and child
12 custody.

13 Q Did the school ask you to get involved?

14 A No, I don't believe so. Actually, they might
15 have called, but I don't know. If they called, they
16 called Officer Zeveney, they didn't call me.

17 Q Did Mr. Duckworth ask you to get involved?

18 A No.

19 Q Did you do a report regarding this?

20 A No, it was an investigation, I had meetings with
21 the Superintendent all the time.

22 Q On September 15, 2008, it reads, "Meeting
23 over at the school with the nurse in reference to
24 Elizabeth Duckworth's complaint." I don't think you

1 have that page.

2 A Oh.

3 Q Here it is. You went back to the school
4 regarding Ms. Duckworth, Elizabeth Duckworth. Is
5 that Mr. Duckworth's daughter?

6 A Yes, it is. Really, I don't know if Elizabeth
7 is the mother or the daughter; actually, I don't know
8 the family that well.

9 Q Do you know why you went to the school
10 that day?

11 A No, I don't.

12 Q Do you know who asked you to go to the
13 school that day?

14 A I must have gotten a call from the nurse
15 herself.

16 Q But you are not sure?

17 A I wouldn't have just gone to the nurse's office.

18 Q I want to get back to something you
19 mentioned earlier. You said you made several
20 telephone calls to the Prosecutor's Office that went
21 unreturned.

22 A That is right.

23 Q Was that between the May 2009 meeting and
24 the July 2nd notification that there was a packet

1 available to you?

2 A Yes.

3 Q Were you calling Lieutenant Farneski?

4 A No, I was asking for the Chief himself.

5 Q How many phone calls did you make?

6 A I don't remember.

7 Q More than five?

8 A It might have been five, but I don't know. I
9 know they went unreturned. He would always send me
10 an e-mail rather than talking with me on the phone.

11 Q Aside from the two e-mails that I showed
12 you, E-21 and E-22, were there additional e-mails
13 that you received from Chief Hurley in regards to
14 your telephone calls?

15 A There was one on July 2nd which actually told me
16 that I could come down and get the package.

17 Q That is the only other one?

18 A Yes.

19 Q So the May 27, June 12 and July 3 were the
20 only three e-mails?

21 A Yes, sir, that I recall.

22 Q Was E-21 in response to a phone call that
23 you made?

24 A I believe so, I don't remember getting E-21.

1 Q So E-22 is from Chief Hurley to you. Do
2 you recollect making a phone call to him on that day
3 and receiving an e-mail?

4 A I don't know if it was that day, but I think
5 that was as a result of me leaving several messages
6 and then he just sent me the e-mail back.

7 Q Do you recollect being advised that
8 Officer Wahba had intended to sue the Township with
9 regard to certain treatment that he felt was illegal?

10 A Prior to being served with the paper, I mean
11 that is the first time I heard of it is when I got a
12 tort claim, I was being sued.

13 Q You got a Tort Claims Notice?

14 A Yes.

15 Q And you received that here at police
16 headquarters?

17 A That is correct.

18 Q Do you remember the date that you received
19 it?

20 A The 22nd.

21 Q Of September?

22 A Yes.

23 Q Do you remember how you received it?

24 A I was given it by the Clerk, the Township Clerk.

1 Q And you were a named defendant in that?

2 A That is right.

3 Q Or a potential defendant in the Tort
4 Claims Notice.

5 A Yes.

6 Q And you are also a defendant in a lawsuit
7 being brought by Officer Wahba against Franklin
8 Township?

9 A That is right.

10 Q Do you recollect telling the officers in
11 this department in or about January of 2009 that
12 Officer Wahba was going to get indicted by the
13 Prosecutor's Office from this investigation in this
14 matter?

15 A January of 2009?

16 Q Yes.

17 A No.

18 Q You didn't tell any officer in this
19 department that?

20 A I don't remember telling anybody that, being
21 indicted?

22 Q You don't remember, or it didn't happen.

23 A No, I never said anything like that.

24 Q Prior to your testimony today, did you

1 review documents to prepare --

2 A Did I what?

3 Q Did you review any documents to prepare
4 for your testimony today?

5 A No, sir.

6 Q Did you review any statements made by
7 anybody to the Prosecutor's Office?

8 A No.

9 Q No statements made to the private
10 investigators?

11 A No, sir.

12 MR. METS: Could we take a couple of
13 seconds? I might be done.

14 (Off the record.)

15 MR. METS: Just a few more questions.

16

17 BY MR. METS:

18 Q With regard to the assignments in the
19 police department, are you in charge of assigning
20 officers?

21 A As far as officer in charge.

22 Q Shift assignments?

23 A Not really, it is done by the officer in charge.

24 I might make a recommendation, but --

1 Q But normally they, for example, Officer
2 Zeveney would come to you and say, "I want to move an
3 officer to a different shift", and maybe not seek
4 your approval, but seek your advice and guidance on
5 whether to do it.

6 A Yes, unless I think it is really not a good
7 idea. I will say, "Whatever you want to do", but
8 what we have been trying to do in the last few years
9 is getting officers to work with different officers
10 so shifting people around in January of every year.

11 Q As of January 2009, Officer Wahba was
12 switched to work with Officer Zeveney on his shift;
13 is that correct?

14 A That is correct.

15 MR. METS: That is all I have.

16 THE HEARING OFFICER: Mr. O'Reilly, do you
17 have anything else?

18 MR. O'REILLY: Could I just see the
19 exhibits?

20 Do you have the entire thing?

21 MR. METS: That is all I have, and that is
22 all I put in. I don't know what was attached to
23 it, but --

24 MR. O'REILLY: Thank you.

1

2 REDIRECT EXAMINATION BY MR. O'REILLY:

3 Q I will show you what was marked previously
4 as E-18, and instead of -- it has a Bates stamp at
5 the bottom of the page, FT00646.

6 A Yes, that is correct.

7 MR. O'REILLY: Could I have this marked as
8 E-18A?

9 MR. METS: Let me see it for a minute.

10 E-18A would be the full document?

11 MR. O'REILLY: Yes.

12 (Exhibit E-18A, consisting of the complete
13 document of E-18, marked for identification.)

14 Q I will show you what is marked as E-18A,
15 you were asked questions about this. Is this the
16 entire document that was faxed?

17 A I sent 21 pages -- I believe there are 21 pages
18 here.

19 Q Does that document contain -- how many
20 pages is that?

21 A Fifteen.

22 Q Is that the Arbitrator's decision in the
23 prior case?

24 A Yes.

1

2 Q Nothing to do with the Internal Affairs,
3 was it?

4 A No.

5 Q If you look at those pages, if you went
6 right through the page, the first page of E-18A, it
7 starts off at the top of the page at 9:22; is that
8 correct?

9 A 922.

10 Q And 9:22 is pages 1, 2, 3, 4, 5, 6, 7, 8,
11 9, and look on the bottom of the page, each page of
12 the decision --

13 MR. METS: That is 9:22 a.m.?

14 MR. O'REILLY: Yes.

15 A In the upper left hand corner it says 9:22.

16 Q And down on each page there is a reference
17 in the middle.

18 A Yes.

19 Q If you go to page 9 there is no page 10,
20 it goes to page 11.

21 A Yes.

22 Q So 10 we know is missing, and then we have
23 11, 12, 13, right?

24 A Yes.

1 Q And 14 is missing.

2 A No, actually 14 is there.

3 Q Fifteen is missing?

4 A Fifteen is missing, yes.

5 Q Then the last page is out of sequence, but
6 that is transmitted at 9:39; is that correct?

7 A That is correct.

8 Q And that is indicated to be page 3 of a
9 number of pages.

10 A That is correct.

11 Q Did you send after the initial
12 transmission, did you also send pages 10, 15 --
13 anything else that was missing? Do you recall that?

14 A No, because I don't remember sending this out.
15 I remember I definitely asked for the Internal
16 Affairs policy, but I don't remember sending this
17 out.

18 Q Does that refresh your recollection as to
19 what you sent out?

20 A I'm sorry, I really don't remember ever sending
21 this out.

22 Q That doesn't refresh your recollection at
23 all?

24 A No.

1 Q Do you actually recall what you sent out
2 on that day?

3 A I do remember he asked for a copy of our policy
4 and procedures dealing with Internal Affairs.

5 Q That is not my question. Do you recall
6 exactly what you sent him on that date?

7 A On that date, no, but -- I remember sending
8 something.

9 MR. O'REILLY: I have nothing further.

10 MR. METS: I have no objection to E-18A.

11 THE HEARING OFFICER: I didn't hear the
12 offer. Did you offer that in evidence?

13 MR. O'REILLY: I was going to, but I have
14 to make copies.

15 THE HEARING OFFICER: Okay.

16 MR. O'REILLY: I will withdraw that. I
17 will not put it in.

18 MR. METS: Judge, we can try to save time,
19 or I will have to subpoena Mr. Tabenkin --

20 THE HEARING OFFICER: I don't understand
21 enough of what is going on to make a decision.
22 I suggest the two of you talk that over and
23 decide how you are going to handle it.

24 MR. O'REILLY: I only used it for the

1 purpose of trying to refresh his recollection as
2 to what he said.

3 THE HEARING OFFICER: If it is used to
4 refresh his recollection, it is not going into
5 evidence on that basis. If there is another
6 basis, we will see, but I don't know that.

7 Are you done with redirect, Mr. O'Reilly?

8 MR. O'REILLY: I am, your Honor.

9 THE HEARING OFFICER: Will you have any
10 recross, Mr. Mets?

11 MR. METS: Just a question on E-18A for
12 identification.

13

14 RE CROSS EXAMINATION BY MR. METS:

15 Q I will ask you to look at that, the fax
16 cover sheet. Is that your handwriting?

17 A Yes, it is.

18 Q And the fax number is Mr. Tabenkin's?

19 A I am not sure of the number, that was the number
20 I was given to fax those documents. I don't know his
21 number.

22 Q You wrote "see attached files" in there.

23 A Yes.

24 Q Do you recollect whether or not on this

1 day or any other day you faxed this decision to Mr.
2 Tabenkin?

3 A No, I don't remember doing that, no.

4 Q Do you know what this refers to on the
5 second page, July 1st, 2008, 10:56 a.m.,
6 CPMP908-730-6540?

7 A No. Is that the date it was sent?

8 Q I don't know what that is.

9 Do you remember providing a copy of this
10 Arbitrator's award to the investigators?

11 A No, they asked for three pieces of paper from
12 me, and no, I don't remember giving that to them or
13 being requested to give it to them.

14 Q What were the three pieces of paper you
15 were asked to give to them?

16 A The one with the report, the one page document
17 that you have in evidence.

18 Q The document you drafted?

19 A Right, the phone records, and there were some
20 towing records they asked for, and that was it.

21 Q That is it?

22 A Yes, sir.

23 Q Do you recollect providing this Arbitra-
24 tor's award to anybody involved in this matter?

1 A No, sir.

2 Q You do remember receiving it, though,
3 right?

4 A Yes.

5 MR. METS: That is all I have.

6 THE HEARING OFFICER: Thank you. You know
7 there is a Sequestration Order in effect.

8 THE WITNESS: I understand.

9 THE HEARING OFFICER: Which would prohibit
10 you from talking about the case or your
11 testimony today with anyone until the matter is
12 resolved.

13 THE WITNESS: Yes, your Honor.

14 THE HEARING OFFICER: Thank you.

15 (Witness excused.)

16 MR. O'REILLY: Shall we break for lunch?

17 THE HEARING OFFICER: What else do you
18 have?

19 MR. O'REILLY: Lieutenant Farneski.

20 THE HEARING OFFICER: It is 1:20, we will
21 return at 2:20.

22 (Whereupon, a luncheon recess was taken.)

23

24 A F T E R N O O N S E S S I O N

1

2 J E F F F A R N E S K I, Hunterdon County

3 Prosecutor's Office, is sworn.

4

5 DIRECT EXAMINATION BY MR. O'REILLY:

6 Q Officer Farneski, what is your rank?

7 A I am a lieutenant.

8 Q And for whom do you work?

9 A Hunterdon County Prosecutor's Office.

10 Q And how long have you been there?

11 A About 24 years.

12 Q Did you have occasion to receive an

13 official investigation sometime in 2008?

14 A Yes.

15 Q Do you recall when that was?

16 A I got it on September 24, 2008.

17 Q On your report you indicate a date of

18 September 23rd. What was that date?

19 A I believe that is when -- I had met with Dan

20 Hurley, the Chief of Detectives on the 24th, and he

21 told me he had previously met with Dominick Zeveney

22 and Ken Mandoli from Franklin Township, and that is

23 the date I believe he told me he met with them and

24 that is why I wrote down on the report that he

1 previously me with them.

2 Q Do you know if that was the date?

3 A No, I wasn't present at the meeting, it could
4 have been an oversight on my part.

5 Q That particular date that you used, did
6 you use it in subsequent documents like an affidavit
7 for telecommunications?

8 A Yes, I believe I did.

9

10 Q And that is just the date on your report?

11 A Yes.

12 Q For instance, when you did the telecom-
13 munications, at some point during the investigation
14 did you ask for certain phone records?

15 A Correct.

16 Q And in doing that, how is that done that
17 you get those records?

18 A I put together an affidavit of probable cause
19 and submitted to Judge Coleman.

20 Q And when you were getting those records,
21 what specifically were you getting the records for?

22 A I was getting the records for initially Michael
23 Mascaro's telephone or the number he presented to
24 Communications. I went for Patrolman Wahba's cell

1 phone numbers with the numbers I was provided.

2 Q And were orders issued by the Judge?

3 A Yes.

4 Q Now, during the course of the investiga-
5 tion, did you also have occasion to take taped
6 statements from various individuals?

7 A Yes.

8 Q Who was it that you took statements from?

9 A I took statements from Patrolman Zeveney,
10 Patrolman Snyder, Patrolman Wahba and Michael
11 Mascaro.

12 Q And did you record those statements?

13 A Yes.

14 Q How were they recorded?

15 A They are recorded on cassette tapes, all of
16 them, as well as two of the statements were also
17 videotaped.

18 Q Which ones were videotaped?

19 A Patrolman Wahba and Patrolman Snyder.

20 MR. O'REILLY: Judge, if we could at this
21 time mark the original tapes?

22 THE HEARING OFFICER: Yes.

23 (Exhibit FT-33, consisting of the Zeveney
24 tape, marked for identification.)

1 Q Are the audio and video the same?

2 A I think they should be the same, I think on Tim
3 Wahba the cassette tape ended at some point and
4 nobody was in the monitoring room, we try not to have
5 people in there during Internal Affairs, to switch
6 the tape, so the DVD has everything, because it is
7 longer, it is a three hour DVD, while the tapes are
8 90 minutes.

9 Q With regard to Officer Snyder, the tape
10 and the video are the same?

11 A I believe so. I don't think it went half the
12 time.

13 (Exhibit FT-34, consisting of the audio-
14 tape of Tim Snyder, marked for identification.)

15 (Exhibit FT-34A, consisting of the video-
16 tape of Tim Snyder, marked for identification.)

17 (Exhibit FT-35, consisting of the Mascaro
18 tape, marked for identification.)

19 (Exhibit FT-36, consisting of the Tim
20 Wahba audiotape, marked for identification.)

21 (Exhibit FT-36A, consisting of the video-
22 tape of Tim Wahba, marked for identification.)

23

24 BY MR. O'REILLY:

1 Q Lieutenant Farneski, on what dates did you
2 tape FT-33?

3 A Who is that?

4 Q Zeveney, Patrolman Zeveney.

5 A Zeveney I interviewed on October 3, 2008.

6 Q And when did you interview Patrolman
7 Snyder?

8 A Snyder, October 8, 2008.

9 Q What about Mr. Mascaro?

10 A October 14, 2008.

11 Q And Officer Wahba?

12 A October 16, 2008.

13 Q Now, in the course of this investigation,
14 did you learn that Mr. Mascaro had been the subject
15 of seven tickets?

16 A Yes.

17 Q So Mr. Mascaro had been charged with seven
18 violations on summonses?

19 A That was the allegation, that there were
20 summonses issued.

21 Q Did you obtain those summons books?

22 A Yes.

23 Q Did you verify that there were seven
24 summonses written?

1 A Well, initially, I reviewed the documents that
2 were provided to me, the accident report, and I
3 believe it was -- I was given the accident report
4 which had the summons numbers on it. I subsequently
5 went to the court and reviewed the records with the
6 Court Administrator there and determined the
7 summonses were never received by the court.

8 Q Did you also obtain any other documenta-
9 tion from Franklin Township?

10 A Yes.

11 Q What was the other documentation that you
12 got?

13 A The summons log, I received a summons log and an
14 invest. log and an accident log book, and we
15 subsequently found the original summons book in
16 the archives of the Franklin Township Police
17 Department.

18 Q From your review of the accident report
19 and the summons log and the summons book itself, had
20 Mr. Mascaro, in fact, been charged?

21 A Yes.

22 Q Did you take a statement from Mr. Mascaro?

23 A Yes, at some point.

24 Q Is it fair to say that that statement, he

1 was an individual who was charged with motor vehicle
2 violations?

3 A Correct.

4 Q Did you advise him of the fact you were
5 taking a statement from him?

6 A Yes. When I took the sworn taped statement,
7 yes, I did.

8 Q And do you have that tape with you?

9 A Yes.

10 Q And at some point after you took the
11 statement from Mr. Mascaro, you took a statement from
12 Officer Wahba; is that correct?

13 A Yes.

14 Q And Officer Wahba was the last statement
15 that you took, correct?

16 A Yes.

17 Q That was videoed as well?

18 A Correct.

19 Q Was he aware that it was videoed?

20 A At that point, he was the target of a criminal
21 investigation, and I would have had to videotape and
22 inform him of his rights, that is the procedure.

23 Q Did you inform him of his rights?

24 A Yes, I did.

1 Q Did you tell him it was on the record?

2 A Yes, I did.

3 MR. O'REILLY: Your Honor, if I could play
4 first Mr. Mascaro's statement and then play
5 Officer Wahba's statement? One is an audio, and
6 I have transcripts, Judge.

7 THE HEARING OFFICER: Any objection to
8 anything that has been proposed?

9 MR. METS: No.

10 THE HEARING OFFICER: While there may be
11 transcripts, I understand just speaking to the
12 parties earlier, that there may have been some
13 disagreement about the wording or some inaudible
14 parts of the transcripts, and I will use the
15 transcript as a fact finder the same as the jury
16 would, and that would be as an aid to my
17 listening to the tapes, the tapes itself are the
18 evidence and the transcripts will help.

19 MR. METS: I just have, as to the Wahba
20 tape or whatever they have, I don't have an
21 objection, but I do have one for Mascaro, unless
22 he will be produced to testify.

23 MR. O'REILLY: I don't think he has to be,
24 it is a declaration as the charged individual

1 under the summonses.

2 MR. METS: But not in this hearing.

3 THE HEARING OFFICER: Let me hear the
4 basis of the objection.

5 MR. METS: It is a hearsay objection. I
6 have no ability to cross-examine this
7 individual. He wasn't a target, he was just a
8 witness in the Prosecutor's investigation.

9 THE HEARING OFFICER: The objection is a
10 hearsay objection, Mr. O'Reilly.

11 MR. O'REILLY: The exception is, Judge,
12 that it is a declaration against interest,
13 because he is the individual charged with the
14 seven summonses. They are the subject of this,
15 and they are missing, so that is a fact
16 throughout his testimony.

17 The other part is any statement he makes
18 with regard to his interaction with Officer
19 Wahba becomes the basis for charges with regard
20 to whether or not Officer Wahba did certain
21 things that Officer Wahba later denies in his
22 statement as to whether or not he had any
23 interaction with Mr. Mascaro.

24 THE HEARING OFFICER: Okay, I don't think

1 it is an exception under the statement against
2 his interest if he is not the subject of this
3 particular hearing. Whether or not it has any
4 evidential value, whether it is hearsay, I
5 suppose we don't follow the strict rules of
6 hearsay in this hearing. I will hear the tape
7 and decide what value, if any, it has, and I
8 will hear your arguments on both sides of the
9 table after I have heard the tape.

10 MR. METS: From what I heard of Mr.
11 O'Reilly's putting it in, it is in for the truth
12 of what Mr. Mascaro asserted that conflicts with
13 Officer Wahba's statement.

14 THE HEARING OFFICER: I don't know that it
15 conflicts.

16 MR. METS: I am saying that is the reason
17 he said he is putting it in.

18 THE HEARING OFFICER: Again, I don't know
19 whether he is right or you are right, or whether
20 it does, in fact, conflict. That may have to be
21 resolved at some point, but if I am going to
22 have to make a decision on the admissibility of
23 the statement or an audiotape, I am going to
24 hear the audiotape and I will make whatever

1 decision I make based on your arguments and what
2 I hear on the tape.

3 MR. METS: I understand the point about
4 arguing whether it conflicts or doesn't
5 conflict, but I am having a problem seeing how
6 this gets in for the truth of the matter from a
7 tape, without producing the witness.

8 THE HEARING OFFICER: Again, I am not
9 saying it is getting in, I may or I may not use
10 that as a basis for factual findings, but unless
11 I hear the tape and hear the circumstances, I
12 can't make that kind of a decision. If you are
13 trying a case to the jury, the jury is not aware
14 of the Rules of Evidence and cannot separate
15 themselves from the factual value, the truth of
16 the matter or whether it is evidential or not.
17 I can do that. I am aware of those rules, and I
18 will decide whether or not it is something that
19 is reliable as we discussed earlier in the case.

20 I think you were the one that brought up
21 the point that hearsay is often admitted in
22 administrative hearings, and my point at that
23 time and my point will continue to be that the
24 basis for admissibility of hearsay statements

1 are reliability, and that is the basis of
2 hearsay objections. They are not reliable.
3 There is no confrontation. You don't have a
4 chance to cross-examine and delve into the
5 various things we are all aware of. So we will
6 see whether this has any value at all, and if it
7 doesn't, whether Mr. O'Reilly wants to call Mr.
8 Mascaro or not, and whether it affects the fact
9 finding at all. I don't know the answer to
10 that, so I will hear the tape and then I will
11 hear your arguments as to its admissibility as
12 evidence.

13 MR. O'REILLY: Could we have the
14 transcript marked?

15 (Exhibit FT-35A, consisting of the
16 transcript of the tape, marked for identifica-
17 tion.)

18 MR. METS: Judge, I pose the same
19 objection.

20 THE HEARING OFFICER: Understood.

21 (Whereupon, the tape marked as FT-35 was
22 played.)

23 MR. O'REILLY: I would now like to have
24 him play the videotape of Officer Wahba. First

1 I need to have the typed transcript statement
2 marked.

3 (Exhibit FT-36B, consisting of the
4 transcript of the videotape, marked for
5 identification.)

6 (Whereupon, the videotape is played.)

7 MR. METS: Could you stop that, please? I
8 mentioned this earlier. I am missing seven
9 pages of the statement.

10 THE HEARING OFFICER: I go from page 2 to
11 page 9. Wait a minute, I think they are mixed
12 up.

13 (Discussion off the record.)

14 (Whereupon, the videotape is played.)

15 MR. O'REILLY: Should we end this and
16 start on Wednesday at 10?

17 THE HEARING OFFICER: Yes. What are your
18 thoughts on scheduling beyond Wednesday, if this
19 will be going beyond Wednesday?

20 Do you have any witnesses beyond this
21 witness, Mr. O'Reilly?

22 MR. O'REILLY: No, sir.

23 THE HEARING OFFICER: So I anticipate that
24 we will finish with him on Wednesday. Will you

1 call any witnesses, Mr. Mets?

2 MR. METS: Yes.

3 THE HEARING OFFICER: Do you have any kind
4 of rough idea of how long it will take to
5 present your case?

6 MR. METS: Probably two more days.

7 THE HEARING OFFICER: Two more days beyond
8 Wednesday?

9 MR. METS: Yes.

10 THE HEARING OFFICER: We can reconvene
11 then, and I will give a written opinion based on
12 the evidence and your summations.

13 MR. METS: Question, when should we have
14 them done? These hearings all have two
15 elements, liability and damages. There is the
16 liability, but there has been no testimony on
17 Officer Wahba's background or anything from the
18 Township's point of view and --

19 THE HEARING OFFICER: This is my
20 assumption, I may have assumed incorrectly. I
21 assumed that there would be a guilty phase and
22 penalty phase, just to put it in other terms,
23 that if there was a finding --

24 MR. METS: I like the word "liability"

1 better.

2 THE HEARING OFFICER: It is like a death
3 penalty case. If there were a finding contrary
4 to your position, then there would have to be
5 again another phase, the proper word is not
6 coming to me right now, but I don't know whether
7 you would need testimony about that or make
8 submissions or whatever.

9 MR. METS: A lot of times because we do
10 have personnel records and a lot of that is
11 documentary records, unless we have -- sometimes
12 we have civilians come in to testify as to the
13 officer and what he does on the street. Then we
14 could submit a very brief summation to you in
15 writing.

16 THE HEARING OFFICER: Let's not get to
17 that yet, that may not be necessary. I am
18 trying to think ahead as to what more work we
19 may have to do. We are pushing the envelope out
20 past the first of the year, it seems to me,
21 potentially.

22 Is there anything else for today?

23 I will see you all on Wednesday at ten.

24 (Whereupon, the hearing was adjourned to

1 November 18, 2009, at 10:00 a.m.)
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C E R T I F I C A T E

I, JACQUELINE KLAPP, a Certified Court
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