

1
2 COMMONWEALTH OF MASSACHUSETTS
3 Essex, ss. Superior Court Department
of the Trial Court
4
5 C.A. No. 2006-02328D

6 WILLIAM M. LONERGAN and DIANE WHITNEY-WALLACE, ON
BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
7 Plaintiffs,
8 vs.
9 JAMES W. FOLEY, PETER A. FOOTE, ALEXANDER B.C.
MULHOLLAND, JR., DONALD F. WHISTON, ELIZABETH A.
10 KILCOYNE, PATRICK J. MCNALLY AND EDWARD B. RAUSCHER,
PEOFFEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH,
11 Defendants and Plaintiffs-in Counterclaim,
12 vs.
13 DISTRICT ATTORNEY FOR THE ESSEX DISTRICT, ATTORNEY
GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, ET ALS.,
14 Defendants-in-Counterclaim.

15
16
17 DEPOSITION OF JAMES W. FOLEY, a
witness called on behalf of the Plaintiffs, taken
18 pursuant to the applicable provisions of the
Massachusetts Rules of Civil Procedure before Cynthia
19 A. Powers, Shorthand Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at the law
20 offices of Todd & Weld, LLP, 28 State Street, Boston,
Massachusetts, on Friday, April 4, 2008, commencing at
21 10:07 a.m.
22
23 KACZYNSKI REPORTING
72 CHANDLER STREET, SUITE 3
24 BOSTON, MASSACHUSETTS 02116
(617) 426-6060

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By Mr. Todd 4

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5 Afternoon Session 137
6
7

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1 APPEARANCES:
2 J. Owen Todd, Esquire
Tyler E. Chapman, Esquire
3 David Meier, Esquire
William Hardt, Esquire
4 Todd & Weld, LLP
28 State Street
5 Boston, Massachusetts 02109
(617) 720-2626
6 Representing the Plaintiffs
7
8 William H. Sheehan, III, Esquire
MacLean, Holloway, Doherty,
9 Ardiffe & Morse, P.C.
8 Essex Center Drive
10 Peabody, Massachusetts 01960
(978) 774-7123
11 Representing the Defendants and
Plaintiffs-in-Counterclaim
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1 PROCEEDINGS
2 MR. TODD: Now, for the record when
3 the stenographer asked Mr. Foley for the picture
4 identification, which is required under the rule,
5 Mr. Foley responded that he did not have a picture ID
6 with him for some circumstance, but has agreed to fax a
7 copy of the driver's license to me and I will furnish
8 it to the court stenographer. Stipulations? I don't
9 know what they have done in the past.
10 MR. SHEEHAN: I would say that we'll
11 read and sign within thirty days.
12 MR. TODD: Not before a notary?
13 MR. SHEEHAN: Waive the notary,
14 reserve all objections and motions to strike would be
15 fine with us.
16 MR. TODD: Fine, and we'll let the
17 usual rules with respect to the errata sheets and so
18 forth within that period of time.
19 MR. SHEEHAN: Sure.
20 JAMES W. FOLEY,
21
22 having been duly sworn by the Notary Public,
23 was examined and testified as follows:
24

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1 weapon?
 2 A. Yes.
 3 Q. How many years did you spend in the
 4 job of police officer in the Town of Wenham?
 5 A. I was a patrolman from 1984 to 1988.
 6 Q. And thereafter did you work for the
 7 Wenham --
 8 A. Yes, in 1988 I became a sergeant.
 9 Q. Let me clarify the question. I'm
 10 asking how long did you spend in the Town of Wenham
 11 Police Department?
 12 A. I'm sorry, from 1982 until 2005.
 13 Q. And from 1984 to 2005 as a full-time
 14 police officer?
 15 A. Correct.
 16 Q. Who was the chief when you came on in
 17 1984?
 18 A. Edward Harrington.
 19 Q. Did he remain chief up until the end?
 20 A. No, he did not.
 21 Q. When did he cease to be chief?
 22 A. He ceased to be chief in 19 -- the end
 23 of '84 or the beginning of 1985.
 24 Q. And who succeeded Mr. Harrington as

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1 2005 --
 2 A. Yes, I did.
 3 Q. -- with the Town of Wenham?
 4 A. Correct.
 5 Q. What were the circumstances
 6 surrounding your leaving the post office?
 7 A. The police department.
 8 Q. The police department?
 9 A. At the time I was the acting -- I was
 10 doing two jobs at that point. I was the acting town
 11 manager for the Town of Ipswich.
 12 Q. Okay. So that's why you left?
 13 A. Yes.
 14 Q. So you left to become or you were
 15 already the acting manager?
 16 A. I was doing both actually.
 17 Q. When did you become the acting manager
 18 of the Town of Ipswich?
 19 A. July of 2004.
 20 Q. When did you leave, when in 2005 did
 21 you leave the police department of Wenham?
 22 A. I believe in -- July 2005 -- January
 23 of 2005, I believe. I'm not sure of the exact date,
 24 but --

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1 chief?
 2 A. Peter L. Cames, C-A-R-N-E-S.
 3 Q. And how long was he chief?
 4 A. 1985 until 1994.
 5 Q. By whom was he succeeded?
 6 A. William MacKenzie.
 7 Q. How long was he chief?
 8 A. 1994 until -- he was still there when
 9 I left.
 10 Q. In 2005?
 11 A. Correct.
 12 Q. Now, with what rank did you retire?
 13 A. Lieutenant.
 14 Q. And you mentioned that you were
 15 sergeant at one point in time?
 16 A. 1988, I believe.
 17 Q. 1988 until when? When did you become
 18 lieutenant?
 19 A. 1998.
 20 Q. Did you ever apply for a captaincy?
 21 A. No, I did not.
 22 Q. I'm sorry?
 23 A. No, I did not.
 24 Q. All right. Now, you left that job in

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1 Q. All right. So you already had the job
 2 as acting manager?
 3 A. Correct.
 4 Q. Was that a full-time job?
 5 A. It was, yes, more than a full-time
 6 job, yes.
 7 Q. Now, were there any disciplinary
 8 reasons involved in your leaving the job as police
 9 officer in Wenham?
 10 A. I've never been disciplined, no.
 11 Q. My question to you, were there any
 12 disciplinary reasons involved in your leaving the
 13 police department of the Town of Wenham?
 14 A. No, I resigned from the Town of
 15 Wenham.
 16 Q. And there were no disciplinary
 17 reasons?
 18 A. I resigned.
 19 Q. No?
 20 A. No, I resigned.
 21 Q. Were there any charges brought against
 22 you while you were a police --
 23 A. Officer, no.
 24 Q. -- officer?

1 Q. Incidentally, another thing I thought
2 of -- that's the trouble with these breaks -- when you
3 left the Wenham Police Department in March of 2005, did
4 you take with you a copy of your personnel file?

5 A. No, I did not.

6 Q. Did you ever request a copy of your
7 personnel file?

8 A. I think I might have requested a copy
9 of my certificates in my file.

10 Q. Do you have any objection if we
11 request a copy of your personnel file with the Wenham
12 Police Department?

13 MR. SHEEHAN: We'll take that request
14 under consideration.

15 MR. TODD: I'd like an answer to the
16 question whether he is willing to. Whether you produce
17 it or not is another question.

18 MR. SHEEHAN: You may answer the
19 question.

20 A. I don't think I have a problem with
21 producing a file.

22 Q. Well, it's not in your possession, is
23 it?

24 A. Today, no, but I do have -- I believe

1 interfere with your functioning as a police officer for
2 40 hours or more a week, did it?

3 A. No.

4 Q. Now, do you recall who it was that
5 approached you and asked you if you would agree to be a
6 feoffee?

7 A. Mr. Whiston.

8 Q. Do you know whether it was a unanimous
9 agreement that you become a feoffee?

10 A. I believe Mr. Whiston told me that
11 both he and Mr. Mulholland and Mr. Hayes had
12 unanimously voted that I become a feoffee.

13 Q. Do you know if there is a record of
14 the meeting at which you were voted in as a feoffee?

15 MR. SHEEHAN: Object to the form. You
16 may answer.

17 Q. Well, let me change the form. Do you
18 know whether there is a record of the meeting at which
19 the feoffees agreed to ask you to become a feoffee?

20 MR. SHEEHAN: Objection. You may
21 answer.

22 A. I do not know.

23 Q. Well, is there a record of the meeting
24 in which the feoffees agreed to make Mr. Foote a

1 I have my file which is all my training certificates
2 somewhere in my house, and I'll look for that.

3 Q. My question to you was whether you had
4 an objection to our asking the Wenham Police Department
5 to produce a copy of your personnel file?

6 A. I don't know.

7 MR. SHEEHAN: You may answer.

8 A. No, no.

9 Q. Now, when you became a feoffee in 1988
10 up to March of 2005, during that period when you were a
11 Wenham police officer, did your duties as a feoffee
12 interfere in any way with your duties as a police
13 officer?

14 A. No.

15 Q. You were able to serve as a full-time
16 police officer with whatever overtime was required;
17 correct?

18 A. Correct.

19 Q. And as a police officer you work at
20 least 40 hours a week, do you not?

21 A. Or more.

22 Q. Or more?

23 A. Or more.

24 Q. And what you did as a feoffee did not

1 feoffee?

2 MR. SHEEHAN: Objection.

3 MR. TODD: I'm sorry?

4 MR. SHEEHAN: Objection of form.

5 A. I do not know if it was recorded -- I
6 do not know.

7 Q. Okay. We'll get into the records in a
8 little while. Let me ask you what were your
9 qualifications to be a feoffee in 1988?

10 A. I don't know.

11 Q. What were your qualifications to
12 manage 30 plus acres of real estate?

13 A. I don't know if I was asked to be a
14 feoffee to give expertise in one thing or a number of
15 things.

16 Q. That's not my question. My question
17 is what were your personal qualifications to be a
18 manager of 30 plus acres of real estate?

19 A. I think one of the reasons I was asked
20 was my expertise in public safety and security, not in
21 real estate management.

22 Q. Thank you. Let me get back to my
23 question again.

24 A. I'm sorry.