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11 12 13 14 15 16 17 18 19	COMMONWEALTH OF MASSACHUSETTS  Essex, ss. Superior Court Department of the Trial Court  C.A. No. 2006-02328D  WILLIAM M. LONERGAN and DIANE WHITNEY-WALLACE, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs.  JAMES W. FOLEY, PETER A. FOOTE, ALEXANDER B.C. MULHOLLAND, JR., DONALD F. WHISTON, ELIZABETH A KILCOYNE, PATRICK J. MCNALLY AND EDWARD B. RAUSCHER, FEOFFEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH, Defendants and Plaintiffs-in Counterclaim, vs.  DISTRICT ATTORNEY FOR THE ESSEX DISTRICT, ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, ET ALS., Defendants-in-Counterclaim.	22 33 66 77 88 99 10 111 121 133 144 151 161 177 188 199 20	By Mr. Todd 4  Afternoon Session 137  E X H I B I T S  Number Page 1 Letter, 3/4/05 18 2 Letter, 12/7/99 140 2 3 Letter, 1/21/00 141 3 4 Letter, 10/30/01 144 5 Letter, 11/20/01 151 6 Letter, 12/19/01 169
21 22 23 24	10.07 a.m.  KACZYNSKI REPORTING 72 CHANDLER STREET, SUITE 3 BOSTON, MASSACHUSETTS 02116 (617) 426-6050	21 22 23 24	
1 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 11 7 18 19 20 21 22 23 22 4	APPEARANCES: J. Owen Todd, Esquire Tyler E. Chapman, Esquire David Meier, Esquire William Hardt, Esquire Todd & Weld, LLP 28 State Street Boston, Massachusetts 02109 (617) 720-2626 Representing the Plaintiffs William H. Sheehan, III, Esquire MacLean, Holloway, Doherty, Ardiff & Morse, P.C. 8 Essex Center Drive Peabody, Massachusetts 01960 (978) 774-7123 Representing the Defendants and Plaintiffs-in-Counterclaim	1 2 3 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 4  PROCEEDINGS  MR. TODD: Now, for the record when the stenographer asked Mr. Foley for the picture identification, which is required under the rule, Mr. Foley responded that he did not have a picture ID with him for some circumstance, but has agreed to fax a copy of the driver's license to me and I will furnish it to the court stenographer. Stipulations? I don't know what they have done in the past.  MR. SHEEHAN: I would say that we'll read and sign within thirty days.  MR. TODD: Not before a notary?  MR. SHEEHAN: Waive the notary, reserve all objections and motions to strike would be fine with us.  MR. TODD: Fine, and we'll let the usual rules with respect to the errata sheets and so forth within that period of time.  MR. SHEEHAN: Sure.  JAMES W. FOLEY,  having been duly sworn by the Notary Public, was examined and testified as follows:

		Page 1	3		Page 1
1	weapon?		1	2005	
2	A. Yes.		2	A	. Yes, I did.
3		any years did you spend in the	3	(	with the Town of Wenham?
4		er in the Town of Wenham?	4	A	Correct,
5		patrolman from 1984 to 1988.	5	Ç	. What were the circumstances
6		ereafter did you work for the	6	surround	ling your leaving the post office?
7	Wenham		7	Α	. The police department.
8		1988 I became a sergeant.	8		. The police department?
9		clarify the question. I'm	9	A	. At the time I was the acting I was
10		id you spend in the Town of Wenham	10	doing two	jobs at that point. I was the acting town
11	Police Department		11	manager	for the Town of Ipswich.
12		y, from 1982 until 2005.	12	Q	. Okay. So that's why you left?
13	1072	om 1984 to 2005 as a full-time	13	A	. Yes.
1 -	police officer?		14	Q	. So you left to become or you were
15	A. Correct.		15	already t	he acting manager?
16		as the chief when you came on in	16	A	I was doing both actually.
17	1984?		17	Q	When did you become the acting manage
18	A. Edward	Harrington.	18	of the To	wn of Ipswich?
19		remain chief up until the end?	19	A.	July of 2004.
20	A. No, he d		20	Q	When did you leave, when in 2005 did
21	Q. When d	id he cease to be chief?	21	you leave	the police department of Wenham?
22	A. He cease	ed to be chief in 19 the end	22	A.	I believe in July 2005 January
23	of '84 or the beginni	ng of 1985.	23	of 2005, 1	believe. I'm not sure of the exact date,
	0 1 1 1		1 - 1	*	
24	Q. And wh	o succeeded Mr. Harrington as	24	but	
2:1	Q. And wh	o succeeded Mr. Harrington as Page 14	1	but	Page 16
	Q. And wh	A CANADA AND AND AND AND AND AND AND AND AN	1		~
1	chief?	A CANADA AND AND AND AND AND AND AND AND AN	1	Q	Page 16 All right. So you already had the job manager?
1 2	chief? A. Peter L	Page 14	1	Q. as acting	All right. So you already had the job
1 2 3	chief? A. Peter L	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief?	1 2	Q. as acting A.	All right. So you already had the job manager?
1 2 3 4	chief? A. Peter L Q. And ho A. 1985 ur	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief?	1 2 3	Q. as acting A. Q.	manager? Correct. Was that a full-time job?
1 2 3 4	chief? A. Peter L Q. And ho A. 1985 ur Q. By who	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? til 1994.	1 2 3 4	Q. as acting A. Q.	All right. So you already had the job manager?  Correct.
1 2 3 4 5	chief?  A. Peter L Q. And he A. 1985 ur Q. By whe A. William	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? till 1994. om was he succeeded?	1 2 3 4 5	Q. as acting A. Q. A. job, yes.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time
1 2 3 4 5 6	chief?  A. Peter L Q. And he A. 1985 ur Q. By whe A. William Q. How lo	Page 14 Cames, C-A-R-N-E-S. ow long was he chief? atil 1994. om was he succeeded? I MacKenzic.	1 2 3 4 5 6	Q. as acting A. Q. A. job, yes. Q.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time Now, were there any disciplinary
1 2 3 4 5 6 7	chief?  A. Peter L Q. And he A. 1985 ur Q. By whe A. William Q. How lo	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? atil 1994. om was he succeeded? a MacKenzie. ng was he chief?	1 2 3 4 5 6 7	Q. as acting A. Q. A. job, yes. Q. reasons in	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time
1 2 3 4 5 6 7	chief?  A. Peter L. Q. And ho A. 1985 ur Q. By who A. William Q. How lo A. 1994 un	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? oil 1994. om was he succeeded? MacKenzic. ng was he chief? til he was still there when	1 2 3 4 5 6 7 8	Q. as acting A. Q. A. job, yes. Q. reasons in officer in	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time Now, were there any disciplinary volved in your leaving the job as police
1 2 3 4 5 6 7 8 9	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? oit 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ?	1 2 3 4 5 6 7 8 9	as acting A. Q. A. job, yes. Q. reasons in officer in A.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham?
1 2 3 4 5 6 6 7 8 8 9	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un Hefi. Q. In 2005 A. Correct.	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? oit 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ?	1 2 3 4 5 6 7 8 9	Q. as acting A. Q. A. job, yes. Q. reasons in officer in A. Q.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no.
1 2 3 4 5 6 7 7 8 8 9	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un Hefi. Q. In 2005 A. Correct.	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? till 1994. om was he succeeded? MacKenzic. ng was he chief? til he was still there when ?	1 2 3 4 5 6 7 8 9 10 11	Q. as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplina	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any
1 2 3 4 5 6 7 8 9	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un I lefi. Q. In 2005 A. Correct. Q. Now, w A. Lieutena	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? till 1994. om was he succeeded? MacKenzic. ng was he chief? til he was still there when ?	1 2 3 4 5 6 7 8 9 10 11 12	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinar police dep	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the
1 2 3 4 5 6 7 8 8 9 0 1 1 2 3 4	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un I lefi. Q. In 2005 A. Correct. Q. Now, w A. Lieutena	Page 14 Cames, C-A-R-N-E-S. ow long was he chief? til 1994. om was he succeeded? MacKenzic. ng was he chief? til he was still there when ? ith what rank did you retire? ant. a mentioned that you were	1 2 3 4 5 6 7 8 9 10 III 12 13	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinar police dep	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham?
1 2 3 4 5 5 6 6 7 7 8 8 9 9 0 0 1 1 2 2 3 3 4 4 5 5 6 6 6 7 6 6 6 7 7 7 8 8 9 9 9 0 0 1 1 2 2 3 3 4 6 7 7 8 8 8 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	chief?  A. Peter L. Q. And ho A. 1985 ur Q. By who A. William Q. How lo A. 1994 un I left. Q. In 2005 A. Correct. Q. Now, w A. Lieutena Q. And yo	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? oil 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ? ith what rank did you retire? out. ou mentioned that you were out in time?	1 2 3 4 5 6 6 7 8 9 10 11 12 13 14	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinat police dep A. Wenham.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham? No, I resigned from the Town of
1 2 3 4 5 5 6 6 7 7 8 9 0 0 1 1 2 2 3 3 4 5 5 5 5	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un I left.  Q. In 2005 A. Correct. Q. Now, w A. Lieutenz Q. And your sergeant at one poin	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? oil 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ? ith what rank did you retire? out. ou mentioned that you were out in time?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinat police dep A. Wenham.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham?
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1 2 3 4 4 5 5 6 6 7 8 8 9 0 0 1 2 2 3 3 4 4 5 5 6 6 7	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un I left.  Q. In 2005 A. Correct. Q. Now, w A. Lieutena Q. And yo sergeant at one poi A. 1988, I le Q. 1988 un	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? offil 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ? ith what rank did you retire? ont. on mentioned that you were ont in time? pelieve.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinar police dep A. Wenham. Q. reasons? A.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham? No, I resigned from the Town of  And there were no disciplinary
1 2 3 4 5 5 6 6 7 7 8 9 0 0 1 1 2 2 3 3 4 4 5 5 6 6 7 7 3 3 1	chief?  A. Peter L. Q. And ho A. 1985 ur Q. By who A. William Q. How lo A. 1994 un I left.  Q. In 2005 A. Correct. Q. Now, w A. Lieutena Q. And yo sergeant at one poi A. 1988, I le Q. 1988 un ieutenant? A. 1998.	Page 14 Carnes, C-A-R-N-E-S. ow long was he chief? offil 1994. om was he succeeded? MacKenzie. ng was he chief? til he was still there when ? ith what rank did you retire? ont. on mentioned that you were ont in time? pelieve.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinat police dep A. Wenham. Q. reasons? A. Q.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham? No, I resigned from the Town of  And there were no disciplinary I resigned.
1 2 3 4 5 6 6 7 8 8 9 9 0 1 2 2 3 3 4 4 5 6 6 7 7 8 9 9 0 1 2 2 3 3 4 4 5 6 6 7 7 8 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	chief?  A. Peter L. Q. And ho A. 1985 ur Q. By who A. William Q. How lo A. 1994 un I left.  Q. In 2005 A. Correct. Q. Now, w A. Lieutena Q. And yo sergeant at one poi A. 1988, I le Q. 1988 un ieutenant? A. 1998.	Page 14  Carnes, C-A-R-N-E-S.  ow long was he chief?  til 1994.  om was he succeeded?  MacKenzic.  ng was he chief?  til he was still there when  ?  ith what rank did you retire?  ant.  a mentioned that you were  nt in time?  believe.  til when? When did you become	1 2 3 4 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19	as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinat police dep A. Wenham. Q. reasons? A. Q. A.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham? No, I resigned from the Town of  And there were no disciplinary  I resigned. No? No, I resigned.
1 2 3 4 4 5 5 6 6 7 8 8 9 0 0 1 1 2 3 3 4 4 5 5 5 6 6 7 7 8 9 1 1 2 2 3 4 4 5 5 6 6 7 7 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	chief?  A. Peter L. Q. And he A. 1985 ur Q. By whe A. William Q. How lo A. 1994 un Hefi.  Q. In 2005 A. Correct. Q. Now, w A. Lieutenz Q. And your Gergeant at one point A. 1988, He Q. 1988 un ieutenant? A. 1998. Q. Did you	Page 14  Carnes, C-A-R-N-E-S.  ow long was he chief?  til 1994.  om was he succeeded?  MacKenzic.  ng was he chief?  til he was still there when  ?  ith what rank did you retire?  ant.  a mentioned that you were  nt in time?  believe.  til when? When did you become	1 2 3 4 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. as acting A. Q. A. job, yes. Q. reasons in officer in A. Q. disciplinat police dep A. Wenham. Q. reasons? A. Q. A. Q. Q.	All right. So you already had the job manager? Correct. Was that a full-time job? It was, yes, more than a full-time  Now, were there any disciplinary volved in your leaving the job as police Wenham? I've never been disciplined, no. My question to you, were there any ry reasons involved in your leaving the artment of the Town of Wenham? No, I resigned from the Town of  And there were no disciplinary  I resigned. No?
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	Page	61	Page
1	Q. Incidentally, another thing I thought		l interfere with your functioning as a police officer for
1	of that's the trouble with these breaks when you	1	40 hours or more a week, did it?
3	2 once 2 open ment in that on or 2003, the	:   E	A. No.
4	, or the jour copy of jour personner me,	2	Q. Now, do you recall who it was that
5	Section Control of the Control of th	:	approached you and asked you if you would agree to be
6	e you over request a copy of your	1 6	feoffee?
7	personner mer	1 7	A. Mr. Whiston.
8	Burney a copy	8	Q. Do you know whether it was a unanimous
9	======================================	9	
10	e year may easily objection in the	10	A. I believe Mr. Whiston told me that
11	request a copy of your personnel file with the Wenham	11	both he and Mr. Mulholland and Mr. Hayes had
12	Police Department?	12	unanimously voted that I become a feoffee,
13	MR. SHEEHAN: We'll take that request	13	Q. Do you know if there is a record of
14	under consideration.	14	
15	MR. TODD: I'd like an answer to the	15	
16	question whether he is willing to. Whether you produce	16	may answer.
17	it or not is another question.	17	Q. Well, let me change the form. Do you
13	MR. SHEEHAN: You may answer the	18	know whether there is a record of the meeting at which
19	question.	19	the feotlees agreed to ask you to become a feoffee?
20	A. I don't think I have a problem with	20	MR. SHEEHAN: Objection. You may
21	producing a file.	21	answer.
22	Q. Well, it's not in your possession, is	22	A. I do not know.
200,000	*40		
23	it?	23	O. Well, is there a record of the meeting
	A. Today, no, but I do have I believe	24	Q. Well, is there a record of the meeting in which the feoffees agreed to make Mr. Foote a
	A. Today, no, but I do have - I believe	24	in which the feoffees agreed to make Mr. Foote a  Page 64  feoffee?
24	A. Today, no, but I do have I believe  Page 62  I have my file which is all my training certificates	24	in which the feoffees agreed to make Mr. Foote a  Page 64  feoffee?  MR. SHEEHAN: Objection.
24 1 2	A. Today, no, but I do have I believe  Page 62  I have my file which is all my training certificates somewhere in my house, and I'll look for that.	1 2	in which the feoffees agreed to make Mr. Foote a  Page 64 feoffee?  MR. SHEEHAN: Objection. MR. TODD: I'm sorry?
24 1 2 3	A. Today, no, but I do have I believe  Page 62  I have my file which is all my training certificates somewhere in my house, and I'll look for that.  Q. My question to you was whether you had	24 1 2 3	Page 6.  feoffee?  MR. SHEEHAN: Objection.  MR. TODD: I'm sorry?  MR. SHEEHAN: Objection of form.
1 2 3 4 5	A. Today, no, but I do have — I believe  Page 62  I have my file which is all my training certificates somewhere in my house, and I'll look for that.  Q. My question to you was whether you had an objection to our asking the Wenham Police Department	1 24 2 3 4	in which the feoffees agreed to make Mr. Foote a  Page 64 feoffee?  MR. SHEEHAN: Objection. MR. TODD: I'm sorry?
1 2 3 4 5 6	Page 62 I have my file which is all my training certificates somewhere in my house, and I'll look for that.  Q. My question to you was whether you had an objection to our asking the Wenham Police Department to produce a copy of your personnel file?	1 2 3 4 5	Page 60 feoffee?  MR. SHEEHAN: Objection.  MR. TODD: I'm sorry?  MR. SHEEHAN: Objection of form.  A. I do not know if it was recorded I do not know.
1 2 3 4 5 6 7	Page 62  I have my file which is all my training certificates somewhere in my house, and I'll look for that.  Q. My question to you was whether you had an objection to our asking the Wenham Police Department to produce a copy of your personnel file?  A. I don't know.	1 2 3 4 5 6	Page 60 feoffee?  MR. SHEEHAN: Objection.  MR. TODD: I'm sorry?  MR. SHEEHAN: Objection of form.  A. I do not know if it was recorded I do not know.  Q. Okay. We'll get into the records in a
24 1 2 3 4	Page 62  I have my file which is all my training certificates somewhere in my house, and I'll look for that.  Q. My question to you was whether you had an objection to our asking the Wenham Police Department to produce a copy of your personnel file?  A. I don't know.  MR. SHEEHAN: You may answer.	1 2 3 4 5 6 7	Page 6.  Page 6.  feoffee?  MR. SHEEHAN: Objection.  MR. TODD: I'm sorry?  MR. SHEEHAN: Objection of form.  A. I do not know if it was recorded I do not know.  Q. Okay. We'll get into the records in a little while. Let me ask you what were your
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