

Page 1

VOL. I
PAGES 1-102
EXHIBITS See Index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL ELBERY, Plaintiff,
vs.
DANIEL SKLUT, JAMES CARLIN,
STEPHEN FAUCHER, CARL HANSON,
CHESTER JOHNSON, JAMES HURLEY,
WAYNE SAMPSON, ROBERT MCGINLEY,
and THE TOWN OF SHREWSBURY,
Defendants.

No. 97-11743-MLW

MICHAEL ELBERY, Plaintiff,
vs.
ROBERT SHEKETOFF, KIMBERLY
HOMAN, and SHEKETOFF & HOMAN,
Defendants.

No. 98-10163-MLW

DEPOSITION of CHESTER G. JOHNSON,
a witness called on behalf of the plaintiff,
taken pursuant to the applicable provisions of
the Federal Rules of Civil Procedure, before
Marie C. Leonard, Certified Shorthand Reporter,
Registered Professional Reporter, and a Notary
Public in and for the Commonwealth of
Massachusetts, at the Norfolk Law Library,
57 Providence Highway, Norwood, Massachusetts, on
Friday, June 4, 1999, commencing at 2:01 p.m.

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Page 4

PROCEEDINGS

MS. FAHEY: Nothing is reserved
but the witness will read and sign under the
pains and penalties of perjury, waiving the
notarization.

MR. ELBERY: What's that mean,
that the thing's reserved?

MS. FAHEY: If we have objections
or motions to strike, you're going to say it.

MR. ELBERY: Well, you can also do
it later, right?

MR. COPPOLA: I don't believe so
if you don't reserve it. It depends --

MS. FAHEY: We're taking the
deposition according to the Federal Rules.

MR. ELBERY: There's a whole bunch
of evidence here. There's a whole bunch of stuff
you ain't going to be able to use in this case
that you're using. Okay. If you think you're
going to be using all this nonsense, that ain't
happening. I'll tell you that.

I want to have the right to motion
to the court on these depositions, to go to the
judge and say, Look it, here's a motion in

Page 2

APPEARANCES:

Michael G. Elbery
168 Fairfield Street
Needham, Massachusetts 02492
for the plaintiff Michael Elbery,
pro se

Pierce, Davis, Fahey & Perritano, LLP
(By Elizabeth M. Fahey, Esq.)
Ten Winthrop Square
Boston, Massachusetts 02110-1257
for the defendants Daniel Sklut,
James Carlin, Stephen Faucher,
Carl Hanson, Chester Johnson,
James Hurley, Wayne Sampson,
Robert McGinley, and the Town of
Shrewsbury

Sugarman, Rogers, Barshak & Cohen, P.C.
(By Joseph J. Coppola, Esq.)
101 Merrimac Street
Boston, Massachusetts 02114-4737
for the defendants Robert
Sheketoff, Kimberly Homan, and
Sheketoff & Homan

Page 5

limine; and I want all this -- all this evidence,
as certain exhibits that you tried to put into
the last deposition, I want those all excluded,
certain evidence, certain things that isn't
eligible, isn't allowable as admissible as
evidence at a trial. There's certain things that
the lieutenant said that is not admissible. So
that's all not even going to be allowed at trial.

MS. FAHEY: Let's proceed with the
deposition.

MR. ELBERY: Okay. I reserve the
right to strike at a later date and to object at
a later date on both Hurley's and all
depositions.

MS. FAHEY: I offered you that at
the beginning of Hurley's deposition and you
rejected it.

MR. ELBERY: I didn't understand.
You went too fast.

MS. FAHEY: If you want to take
the deposition, including Hurley's and all the
police officers, with the parties agreeing that
all objections, except as to the form of the
question, and motions to strike are reserved

Page 3

I N D E X

Deposition of:	Page
CHESTER G. JOHNSON	
Examination by Mr. Elbery	7
Exhibits	Page
No. 11 Incident Report 94010387 - Page 4	52
No. 12 Newspaper Article	58
No. 13 Incident Report 94010436 - Page 1	68
No. 14 IOU	75
No. 15 Incident Report 940103371 - Page 3	78

Page 6

until the time of trial, I'm agreeable to that.

MR. ELBERY: And motions to
strike?

MS. FAHEY: I'm agreeable to that.

MR. ELBERY: Okay.

MS. FAHEY: I proposed that at the
beginning of Hurley's deposition.

MR. ELBERY: Yes. Right. Put
them what normally applies. I don't have them
like memorized.

MS. FAHEY: I have.

MR. ELBERY: So the only thing we
don't have to object to now is the form of the
question and the form of the answer?

MS. FAHEY: The only thing you
have to object to is the form.

MR. ELBERY: Is the form. Now,
the answers, I can object to anything they say at
a later date?

MS. FAHEY: Absolutely.

MR. ELBERY: Okay. That's
reasonable.

MR. COPPOLA: Makes it easier.

MR. ELBERY: Yes. I mean, Jesus,

1 no point. How the hell can you do both at the
2 same time? It just makes it harder to do. Are
3 we ready?

4 CHESTER G. JOHNSON, a witness
5 called on behalf of the plaintiff, first having
6 been duly sworn, on oath deposes and says as
7 follows:

8 EXAMINATION BY MR. ELBERY

9 Q. Okay. Sir, can you identify yourself,
10 please?

11 A. My name is Chester Johnson. I'm a police
12 officer in the Town of Shrewsbury.

13 Q. And how long have you worked there?

14 A. Since approximately 1980.

15 Q. Okay. And what's your rank now?

16 A. Lieutenant.

17 Q. When did you become a lieutenant?

18 A. I became a lieutenant a year ago May.

19 Q. Okay. And what's your function with the
20 Shrewsbury Police Department? Do you have a
21 special function?

22 A. I'm in charge of the services division.

23 Q. Services? What is that to a layman?

24 (Discussions off the record)

1 Q. What's that mean, "service division"?
2 Are you an arson investigator and that stuff?

3 A. At one time I was, yes. Now I'm not.

4 Q. Oh, okay.

5 A. I'm reassigned now.

6 Q. What's the "service division"? What is
7 that? What do you do? I don't understand what
8 that means.

9 A. The court filing complaints, court
10 scheduling training, that type of thing.

11 Q. Oh, okay. All right. And what was your
12 prior employment before you were a Shrewsbury
13 police officer?

14 A. Boy, did a bunch of everything.

15 Q. Oh, okay. Okay. That's fine. Now,
16 what's your date of birth?

17 A. 12/28/56.

18 Q. Okay. And what's your educational
19 background?

20 A. I hold a bachelor's degree in criminal
21 justice. I've been to all kinds of training as
22 far as fire investigations, interview
23 techniques. How detail do you want me to get?

24 Q. Okay. Where did you get the bachelor's

1 degree?

2 A. Western New England College.

3 Q. Where's that? Out in Springfield?

4 A. Yes.

5 Q. Okay. So you had all kinds of police
6 training, right?

7 A. Shrewsbury Police Department, what they
8 do is they have like a set program or a schedule
9 that they send you periodically --

10 Q. Is that how they do it or --

11 A. -- for in-service training, for routine
12 everyday in-service training, like criminal law
13 update.

14 Q. Right.

15 A. That's once a year.

16 Q. Okay.

17 A. Any specialized training you're assigned
18 to go.

19 Q. Okay. Whether you -- depending on what
20 you are doing for them --

21 A. Right.

22 Q. -- different services or arson
23 investigator, different --

24 A. Right.

1 Q. Okay. All right. Now, I'm going to
2 bring you back to 8/4/94, 8/5/94, when the E-Z
3 fire occurred on Route 9 in Shrewsbury. Can you
4 tell me when you first became aware of that fire?

5 A. Approximately noontime the following
6 day. It was like -- I think this fire was on the
7 4th at ten o'clock at night. Approximately
8 noontime, one o'clock, the following day.

9 Q. Okay. The following day on the 5th. And
10 how did you become aware of that?

11 A. I had come home -- I was on vacation. I
12 had come home that morning, and there was -- the
13 pager was going off to call the fire -- police
14 station.

15 Q. Okay. And where were you coming home
16 from? Where were you?

17 A. Where was I on vacation?

18 Q. Yes.

19 A. Cape Cod.

20 Q. Okay. How long had you been there?

21 A. I don't remember. I don't know if it was
22 a week or two days. I don't remember.

23 Q. Okay. All right. Okay. And where did
24 you go on vacation?

1 A. I don't remember.

2 Q. Okay. Who did you go with?

3 A. My family.

4 Q. Okay. So you got a wife and kids; is
5 that right?

6 A. Uh-huh.

7 Q. Okay. Now, when you got to E-Z Mini
8 Storage on 8/5, what did you do? What were your
9 activities? I mean, what was your objective?
10 What did you do to fulfill that objective?

11 A. Well, they called me in to investigate
12 the fire. That's what I was assigned to at that
13 time.

14 Q. Okay. And how did you do that?

15 A. The first person I met when I got there I
16 believe was the fire chief who was out in front
17 of the building.

18 Q. Okay.

19 A. And I'm just trying to remember now, so I
20 can get a sequence of events. I talked to the
21 fire chief or the captain or both, you know,
22 together, got the backup of, you know, what
23 happened, you know, things like that; and then I
24 proceeded to start an investigation of the origin

1 and cause.

2 Q. Okay. What's the fire chief and the
3 captain's name? I can't remember.

4 A. The fire chief was Duhamel. I'm not sure
5 who the captain was then. I think the captain
6 changed, you know, from the night before. I
7 don't know.

8 Q. Was that Captain Miller?

9 A. No.

10 Q. I see Miller as one of the names.

11 A. It was one of two. I can tell you that.

12 I don't know which one it was, but it was one of
13 two.

14 Q. Okay. Do you remember what you said to
15 them --

16 A. No, I --

17 Q. -- what you talked about or what they
18 said to you?

19 A. No.

20 Q. You don't remember?

21 A. Not without reading the report.

22 Q. Okay. So it would be on the report?

23 A. Right. I did a -- we did a couple of
24 page report on where the fire happened.

Page 13

1 Q. Okay. Did you take any pictures or
2 videos that day?
3 A. I didn't, no.
4 Q. Okay. Did you take any notes?
5 A. No.
6 Q. You didn't take any notes? Okay.
7 Before, after, or during you didn't take any
8 notes?
9 A. No.
10 Q. Okay. Now, did you have any
11 participation in the gun arrest of Mike Elbery on
12 8/5/94? What did you -- what was your
13 involvement in that? How did you participate in
14 that?
15 A. I wasn't involved in it. My only
16 participation in it was the fact -- maybe you'll
17 be able to give me the exact time -- when I was
18 talking to you at the fence there.
19 Q. Okay.
20 A. That was my only involvement.
21 Q. Okay.
22 A. But I know that whole incident.
23 Q. Okay. And what did you say to me at the
24 fence there?

Page 14

1 A. Oh, jeez, I don't remember, Mike.
2 Q. Okay.
3 A. I think you were concerned about your
4 damage to the car, you know, how bad the car was,
5 something like that.
6 Q. Okay.
7 A. There was no conversation as to --
8 Q. And do you remember what I said to you
9 that day at the fence or any other time that day?
10 A. You just wanted to know as soon as you
11 could come in, as soon as we could release the
12 front line there to let you -- you'd like to come
13 in. I said, Okay, fine. You know, as soon as
14 it's done, we'll find out and get you in here.
15 Q. Okay. And did you mention anything to me
16 about guns at that point?
17 A. Nope. Not that I know of, no.
18 Q. Okay. And when did you first note that
19 there were any guns in that E-Z unit?
20 A. Oh, boy, I'd be guessing. I don't know
21 when. You know, in the process of the
22 investigation. I don't know when. But at one
23 point I became aware there was. I could see --
24 you know, I went by the car. I could see the gun

Page 15

1 in the car, and it was in a clear -- some type of
2 grayish clear plastic bag.
3 I could make out Uzi. That's all
4 I could -- you know, it was the shape of a rifle
5 box; but I couldn't tell what it was.
6 Q. Okay. Do you remember any conversations
7 you had with anybody that day on 8/5 when you got
8 to E-Z? Do you remember any conversations you
9 had with anybody, any other Shrewsbury police
10 officers?
11 A. I'm sure I talked to them all, you know,
12 because there was -- when I got there they had a
13 perimeter set up --
14 Q. Right.
15 A. -- you know, around the fire scene; and
16 there was different officers at different
17 locations around the perimeter. So, you know, in
18 the course of the investigation, I would talk to
19 each one of them. Do you follow me?
20 Q. Uh-huh.
21 A. You know, what did you see, that type of
22 deal.
23 Q. Okay.
24 A. But I -- for names, I --

Page 16

1 Q. Do you remember anybody that you talked
2 to or what you and they said then? Do you
3 remember anybody?
4 A. About the fire investigation?
5 Q. Yes.
6 A. Oh, yes. No. It was just -- that would
7 be a routine. You know, what did you see, how
8 long had you been at the post, or --
9 Q. Do you remember any of the actual
10 conversations?
11 A. Not from the perimeter, no. Inside
12 conversations, you know, as we're digging into
13 the fire scene itself, you know, inside, yes.
14 Q. You remember some of the conversations?
15 A. Inside, sure.
16 Q. Inside the perimeter?
17 A. Inside the building, correct.
18 Q. Okay.
19 A. In the perimeter inside.
20 Q. Pertaining to the arson investigation?
21 A. Yes.
22 Q. What about the arrest of Michael Elbery
23 pertaining to the guns in the car, do you
24 remember any conversations you had with anybody

Page 17

1 in or outside the perimeter?
2 A. At one point -- who it was, Mike, I don't
3 know. I can explain to you. At one point I
4 became aware they were obtaining a search warrant
5 to search the bin. Who told me, I don't know.
6 It would either have to be Carl Hanson -- I'm
7 trying to remember who else was standing there.
8 I'd be guessing but it could have been Jimmy
9 Hurley.
10 Q. Okay.
11 A. But that is a guess. Do you follow me?
12 If I recall, Carl Hanson I know, because he told
13 me specifically they were -- they were trying to
14 obtain a search warrant.
15 Q. All right. But the only time you
16 remember talking to me -- or did you hear me
17 talking to anybody else?
18 A. Yeah. Saw you talk -- you talked to
19 Jimmy Hurley.
20 Q. Did you hear that conversation?
21 A. No. But I -- I mean, he went over to the
22 fence, and it was --
23 Q. But you saw that?
24 A. Yup.

Page 18

1 Q. Okay.
2 A. And there was somebody else that went
3 over there, too. I don't remember who but it was
4 one of our guys that was talking to you, too, one
5 of these group, Carl or --
6 Q. You saw someone else. Okay. And did you
7 -- but you didn't hear that, any of those
8 conversations?
9 A. Nope.
10 Q. You saw them talking to me, but you
11 didn't hear what they said or what I said, right?
12 A. No. Because I didn't -- no. He went
13 over to where the fence was because you were --
14 you know, they were keeping you out, and they
15 were on the inside, so --
16 Q. Okay. Did you hear me talk to anybody
17 else that day?
18 A. Oh, boy, I don't remember.
19 Q. Okay.
20 A. I don't think so.
21 Q. All right.
22 A. I --
23 Q. Did you see any -- did you see me talk to
24 any of the police officers on the Shrewsbury

Page 19

Page 22

1 Police Department? Like James Coates, did you
2 see me talking to him?

3 A. I don't think Coates was even at the
4 scene, but I --

5 Q. Okay.

6 A. I don't remember. I don't remember. He
7 wasn't part of my investigation. I don't
8 remember.

9 Q. Okay. Now, after 8/5, after 8/5 did you
10 have any conversations with me, like till -- like
11 the two or three days I was locked up in jail,
12 did you and I have any conversations, do you
13 remember?

14 A. I don't remember.

15 Q. Okay.

16 A. If you can refresh my memory? You know,
17 I mean, if I did, I'll be happy to tell you.

18 Q. To be honest with you, I can't remember
19 talking to you.

20 A. I can't remember. If I did, I would talk
21 about --

22 Q. I'll answer your question. I don't
23 remember talking to you.

24 A. Yes. I don't remember.

Page 20

1 Q. You know, it was a long time ago. So did
2 you hear me talking to anybody else when I was
3 locked up those three days?

4 A. Not that I remember, no.

5 Q. Okay. So you didn't -- you don't
6 remember me talking to anybody else?

7 A. Nope. I remember you there but I don't
8 remember -- you weren't a rowdy person. You know
9 what I mean?

10 Q. Right.

11 A. But you didn't stick out, so --

12 Q. Okay. All righty. Did you talk to any
13 of the E-Z employees? I don't know if you call
14 it "The Lock Up" or "E-Z." At that time, I think
15 it was E-Z at that point. Did you talk to any of
16 these employees?

17 A. Yes, I did.

18 Q. Okay. Do you remember the content of the
19 conversation, the substance of those
20 conversations?

21 A. Yeah. The type of fire, how they
22 discovered it, things like that.

23 Q. Just anything besides arson
24 investigation?

Page 21

1 A. No.

2 Q. Okay.

3 A. Nope.

4 Q. And how about the neighbors, there's some
5 neighbors?

6 A. Yup. Talked to the -- the neighbor right
7 where you were, that neighbor that owns that
8 print shop, I can't think of his name. Burkhardt.

9 Q. Right.

10 A. Talked to him. You know, did he see
11 anybody suspicious, that type of thing; but
12 nothing other than fire investigation.

13 Q. Okay. And did you ever talk to Attorney
14 Robert Sheketoff? No?

15 A. First time I heard that name was today.

16 Q. Okay. All right. And did you ever talk
17 to any T&G reporters?

18 A. I can firmly say no because I don't talk
19 to reporters.

20 Q. Okay. So you didn't talk to any T&G
21 reporter about my arrest at E-Z, right?

22 A. No, I wouldn't. I just don't talk to
23 them. They don't take it personally, but that's
24 just not my job.

1 Q. Okay. Do you remember what the other
2 people were doing around the E-Z fire on that --
3 around the E-Z Mini Storage complex, what they
4 were doing that day? Do you remember anything
5 about what the other SPD officers were doing or
6 the fire department people, or do you remember
7 anything that was --

8 A. Well, I could just tell you what -- after
9 I got there and I took over the scene, more or
10 less, the fire scene --

11 Q. Right.

12 A. -- I gave specific instruction at that
13 point of, you know, where to stand, where to make
14 sure the perimeter was secure, that type of
15 thing. I didn't want anybody in or out of there.

16 Q. How many Shrewsbury police were there at
17 that point?

18 A. I'm going to guess there was probably
19 three.

20 Q. Three. Do you know who they were?

21 A. I called Sergeant Faucher down to assist
22 me with the fire investigation, but he wasn't on
23 the perimeter. Perimeter officers, I don't -- we
24 couldn't -- I don't know who they were.

Page 23

1 Q. Okay.

2 A. Because we had -- I remember we called
3 for a couple of other officers. We couldn't get
4 them and we ended up putting a firefighter out
5 front with one of the police officers, because
6 Route 9, because so many people, and so many
7 people wanted to get in.

8 Q. That would be outside people trying to
9 get in?

10 A. At the front gate.

11 Q. You mean customers trying to find out --

12 A. They were trying to find out, right.

13 Q. Because there was a big fire?

14 A. Right.

15 Q. It was a big fire. There was a lot of
16 damage, and a lot of people were injured, right?

17 A. Financially injured. I don't think
18 anybody was injured injured.

19 Q. Yes, financial injury. Their property
20 damaged. Now, you had to have a police officer
21 out front, right, directing traffic? As I
22 remember, when I got there, there was a police
23 officer there because there was so much activity?

24 A. At the front gate and I made sure -- I

Page 24

1 wanted one at the front gate. Because the other
2 gates were locked. The rear gate had a padlock
3 and chain on it that wasn't used. It was
4 bolted. So I wasn't really worried about anybody
5 coming in there.

6 The front gate was opened because
7 -- in fact, there were two front gates. They're
8 sliding gates, the electric gates.

9 Q. Right.

10 A. One for entry and one for exit. I made
11 sure -- because there was a -- give me a second.
12 I'll remember his name. Nolan, the owner of the
13 complex --

14 Q. Right.

15 A. -- he -- he was there then.

16 Q. He was there that day?

17 A. He flew in.

18 Q. Oh.

19 A. He was there, you know, when -- we talked
20 to him and he was very concerned, because the
21 people wanted to get in and were very upset,
22 because they couldn't tell him anything. Like
23 you had a storage compartment and didn't know
24 what was there. People were upset. So he asked

Page 25

1 me if I could put a police officer on this front
2 gate for this purpose, just to keep the peace.
3 And I remember calling for two and
4 I got one. And I added a firefighter with him,
5 because I wanted a couple because there were two
6 gates. So there was a firefighter out with him
7 and, more or less, just for the people -- just to
8 tell them what was happening.
9 Q. How many would you estimate,
10 approximately, in the time you were at E-Z, tried
11 to get in to see their belongings or at the gate
12 or in or around the outer perimeter looking in as
13 spectators, because it had been in the paper
14 earlier that day? Do you remember what your
15 guess is approximately?
16 A. I'd safely say 20 to 30 that -- say about
17 20 to 30, you know, during the period of the day.
18 Q. Okay. Now, did you take any evidence
19 that day?
20 A. Yes, I did.
21 Q. Okay. And was that related to the arson,
22 to my arrest, or something else?
23 A. Just the fire investigation.
24 Q. Just the fire investigation. Okay.

Page 26

1 Okay. Did you interview anybody relating to the
2 E-Z fire that day?
3 A. Yes.
4 Q. Okay. Who did you interview?
5 A. In order -- I don't know. But, for fire
6 investigation purposes, I'm going to say I
7 interviewed at least 25 -- 25 people, you know,
8 on-site and off-site, by phone and not by phone.
9 It included insurance people. You know, they
10 were calling because there was -- just about
11 every insurance carrier imaginable was calling
12 because the persons that had insurance all had
13 different companies. So, of course, they were
14 calling. So --
15 Q. Which persons had insurance?
16 A. People in the -- in the bays, personal
17 belongings in the bays at the storage facility --
18 Q. Yes.
19 A. -- as soon as they heard about the fire,
20 they immediately called the insurance company;
21 and then insurance companies were calling.
22 Q. None of them had insurance that covered
23 that, did they?
24 A. Yes, they did. Yes, they did. Some of

Page 27

1 them did.
2 Q. Because the newspaper said, I think,
3 contrary to that. Do you remember any of these
4 people that you had interviews with? Any of
5 these insurance companies, do you remember their
6 names? Do you remember any of the names of the
7 insurance companies that E-Z had? Nolan's
8 company?
9 A. Oh, yes. I can't remember the name,
10 Mike, but it's -- oh, give me a second. It will
11 come back. It was actually -- he had actually
12 two -- there was two companies involved.
13 Q. Right.
14 A. One was a contents carrier.
15 Q. Right.
16 A. And one was a building carrier, structure
17 carrier. They're separate companies.
18 Q. Right.
19 A. I didn't ask a lot about what the
20 companies do.
21 Q. You don't remember their name?
22 A. No, I don't.
23 Q. Who is this guy "Cronin"?
24 A. Who is he? That's what I was -- I was

Page 28

1 going to say that without even asking. What
2 happened was this person I had talked to from the
3 insurance company -- or the name will come to me;
4 and if it does, I'll tell you -- asked me where I
5 was in the investigation; and I told him, Look,
6 you know, it's a major fire. I'd like a -- I'd
7 like you to send out the origin and the cause
8 person, which is a private company who the
9 insurance companies hire --
10 Q. Right.
11 A. -- to not work with me, but to work on --
12 up two separate investigations. There was so
13 much destruction of the building. I figured it
14 would be more comfortable for them to do it while
15 we were doing the overhaul and removing the
16 product, you know, as we were emptying bins out,
17 to have their own person on the scene.
18 Q. Okay.
19 A. They contacted Phoenix Investigations and
20 that's --
21 Q. Is that who he works for?
22 A. Phoenix. Owns it. It's P-h-o-e-n-i-x.
23 Q. That's Cronin?
24 A. Right, Daniel Cronin. He's the owner of

Page 29

1 that company.
2 Q. Where he's located out of? Was the
3 office in Lynn or something?
4 A. Yes. Boston area, yup.
5 Q. Boston?
6 A. Yes, Boston area. It could be Lynn.
7 Q. You don't remember at this --
8 A. He's a good guy. I worked with him
9 before.
10 MS. FAHEY: Just for the record --
11 (Discussion off the record)
12 MR. ELBERY: If he both talk -- we
13 forget that she's here. It's -- you know --
14 Q. Anyways, you don't know where this guy --
15 where his office is, huh?
16 A. No.
17 Q. Okay. What insurance company did he work
18 for? Did he work for Nolan --
19 A. Correct.
20 Q. -- or did he work for the insurance
21 company, Nolan's insurance company?
22 A. Nolan's insurance company.
23 Q. Oh, okay. Because we see his name in one
24 of those reports. Do you know what the charges

Page 30

1 were against me that day, do you know?
2 A. At one point I became aware.
3 Q. Yes.
4 A. I don't know when.
5 Q. Yes. Do you recall what -- can you tell
6 me?
7 A. Oh, specific -- you know, how many and
8 what they were --
9 Q. Yes. There were six --
10 A. They just said that you had guns, and you
11 weren't supposed to have them. That's what I
12 learned of it. Where and when, I don't know.
13 Q. Okay. Okay. How long have you known
14 me? I mean, you never knew me real closely but
15 you've known of me?
16 A. I met you once a long time ago in CVS
17 parking lot. We met with our vehicles stopped.
18 It was like two or three in the morning.
19 Q. All right.
20 A. You were going fast down South
21 Quinsigamond Ave. I pulled up next to you in the
22 parking lot. You said, I live down here around
23 the corner. I said, Okay, slow down. You said
24 you were going to get a prescription or

Page 31

Page 34

1 something. And the next time I saw you then
 2 was --
 3 Q. That was it? That was -- you wrote me up
 4 for driving to endanger because somebody
 5 complained I honked my horn?
 6 A. I don't think I wrote you up.
 7 Q. I was with my wife. It was about
 8 eight o'clock at night.
 9 A. I don't think I wrote you up.
 10 Q. Then the whole thing had been snuffed. I
 11 guess those people didn't want to be witnesses,
 12 huh?
 13 A. Honestly, I don't remember. If you say I
 14 did, I did, you know, but I don't remember.
 15 Q. Okay. All right. Do you know this guy
 16 "Thomas King"?
 17 A. I know of him.
 18 Q. Okay. Have you ever talked to him
 19 personally?
 20 A. Oh, sure.
 21 Q. Okay. Have you ever talked -- when's the
 22 last time you talked to him?
 23 A. A long time ago, four or five, six years
 24 ago.

Page 32

1 Q. Okay. And did you notice anything, any
 2 kind of injury to his eyes, anything malignant
 3 about his eyes, anything out of the normal about
 4 his eyes?
 5 MS. FAHEY: Objection to form.
 6 You don't have to answer until he corrects the
 7 form. You can't ask four questions.
 8 MR. ELBERY: What's wrong with
 9 it?
 10 MS. FAHEY: You asked four
 11 questions at once.
 12 MR. ELBERY: Do all the time,
 13 Mrs. Fahey. What's wrong?
 14 Q. Did you notice anything bad about his
 15 eyes?
 16 A. No.
 17 Q. Any of his -- notice he didn't have a
 18 glass eye or any kind of malfunction or
 19 noticeable damage to his eye?
 20 A. Not when I talked to him.
 21 MR. ELBERY: I just did it again.
 22 A. Not when I talked to him.
 23 Q. Okay. And after -- do you know anything
 24 about this attempted mayhem charge that they put

Page 33

1 me in jail for for ten years?
 2 A. No, I don't.
 3 Q. Did you see him before or after that?
 4 You saw him after '92?
 5 A. If -- the only way I could answer that
 6 is: If after '92 he was still working as a
 7 police officer, I'll have to say yes. If he was
 8 -- if he wasn't -- you know what I mean? I
 9 could be off on the year. You know, I'm saying
 10 four, five, six years.
 11 Q. All right. Do you know anything about
 12 him being demoted from a detective, down demoted
 13 to a patrolman, because of an incident back in
 14 '92?
 15 A. No, I don't.
 16 Q. Never heard anything like that?
 17 A. No.
 18 Q. Okay. Do you know somebody named
 19 "Christina Mann"?
 20 A. Yes. I -- I know who she is, yes.
 21 Q. Did you ever talk to her?
 22 A. I don't believe so.
 23 Q. You never talked to her within close
 24 proximity?

1 A. No.
 2 Q. Okay. All right. How do you know her?
 3 A. If it's the Christina Mann I'm assuming,
 4 if it's the right person, her father is a
 5 firefighter in town.
 6 Q. And how old is this Christina Mann that
 7 you're talking about? How old would she be
 8 today?
 9 A. She'd still be in her 20s, early 20s.
 10 Q. Kinglet -- does she live on Kinglet Drive
 11 or something like that?
 12 A. Yes.
 13 Q. Her father's a firefighter. Did you ever
 14 hear that her face got mutilated by glass?
 15 A. Yes, I did.
 16 Q. All right. Did you ever see her face?
 17 A. No, I didn't.
 18 Q. But you heard that happened --
 19 A. Yes.
 20 Q. -- involving a barroom incident with King
 21 and myself?
 22 A. Involving a barroom incident. I don't
 23 know who was involved.
 24 Q. But you never saw her face?

Page 35

1 A. No, I didn't.
 2 Q. Did her father say that her face got
 3 mutilated?
 4 MS. FAHEY: Objection. How does
 5 this have anything to do with our case?
 6 MR. ELBERY: I don't know. I
 7 really don't know.
 8 MS. FAHEY: You don't have to
 9 answer the question.
 10 Q. Did you see me get arrested on 8/5/94?
 11 A. Yes, I did.
 12 Q. Okay. And where did -- where exactly did
 13 that happen?
 14 A. If my memory serves me correctly, it was
 15 right in front of your booth, your rented bay.
 16 Q. Very good. And who besides myself was
 17 there?
 18 A. I think it was Hurley and Carl Hanson,
 19 but -- I think. I'm assuming they were -- I know
 20 there was at least two police officers talking to
 21 you, because I was over by the front of my
 22 cruiser.
 23 Q. And who put the handcuffs on me, do you
 24 remember?

Page 36

1 A. That I don't know.
 2 Q. Where exactly were you standing?
 3 A. I was at the cruiser. I had brought my
 4 cruiser around the back of the building, and I
 5 was at the front of my cruiser. I remember
 6 because I was putting my dog back in the car when
 7 they had you over there.
 8 Q. And how far away was that from where I
 9 was?
 10 A. I can just tell you it was in the
 11 intersection of the two buildings, so maybe
 12 50 feet, 60 feet.
 13 Q. All right. Did you hear anybody say
 14 anything? You were 50, 60 feet away. Did you
 15 hear anybody say anything?
 16 A. I could hear talking, but I -- what it
 17 was, I don't know. I couldn't --
 18 Q. Okay. So didn't hear me -- you couldn't
 19 understand what I was saying --
 20 A. No.
 21 Q. -- and what they were saying?
 22 A. No.
 23 Q. Okay. And did you have any involvement
 24 with checking my -- to see if I was legally

Page 37

1 licensed in Massachusetts to have possession of
2 those guns?
3 A. No.
4 Q. Okay. Did you hear anybody talk about
5 that issue, whether I had a legal right to have
6 those guns, that I had an FID card at the time?
7 A. On the radio once there was talk.
8 Somebody was checking to see if there was. But
9 who it was, I don't remember.
10 Q. And what day was this?
11 A. I don't remember.
12 Q. What's a "Pamet computer record"? Do you
13 know what that is?
14 A. "Pamet" is a police -- what do you call
15 it -- hardware or -- it's what the whole police
16 department is on, whether you're dispatching --
17 or "Pamet" is the maker of the system, the
18 computer system.
19 Q. So all your --
20 A. It's a digital computer.
21 Q. So all your records are in there?
22 A. Right.
23 Q. Okay. Well, what's "Pamet"? Is that a
24 manufacturer, or something, of software?

Page 38

1 A. Pamet's a software company, correct.
2 Q. Oh, okay. Okay. So they have a special
3 -- I can't remember the word they use for
4 specialized applications, but it's an application
5 program specifically made for the police?
6 A. Right. It's called "Police Server."
7 Q. Okay. All right. So you keep all your
8 records in there. Okay. Where would -- where
9 would an FID card -- if I got an FID card from
10 the Shrewsbury Police Department, where would you
11 guys keep that, a record of that? I mean, you
12 wouldn't keep the original, because I got the
13 original, right? I had the FID card --
14 A. No. The F --
15 Q. What kind of record do you have of that?
16 MS. FAHEY: Objection to form.
17 Q. Do you want me to repeat it?
18 A. I just don't know what --
19 Q. Okay. If -- like myself, I got an FID
20 card from the Shrewsbury Police Department in the
21 '80s. I had the original, right, the
22 cardboard. I don't know that they use that
23 anymore. The second part of the question is:
24 Where would guys keep -- what kind of records

Page 39

1 would you guys have?
2 A. The top of the -- if the FID card was
3 issued by us --
4 Q. Right.
5 A. -- you know, back then --
6 Q. Right.
7 A. -- there's -- there was a carbon. A
8 cardboard was on the bottom of it. Almost like a
9 motor vehicle ticket, you know, there's several
10 copies.
11 Q. Right.
12 A. One goes to Boston, I believe; and then
13 you get that hard copy, the cardboard copy.
14 There's a copy kept at the police station, you
15 know, of the original --
16 Q. Oh.
17 A. -- docket, you know, the --
18 Q. Yes.
19 A. -- one with the copies --
20 Q. Yes.
21 A. -- kept with your application.
22 Q. Oh, I see. So how many parts?
23 A. I don't know how many parts.
24 Q. There's got to be at least three then,

Page 40

1 right? You keep one; I keep -- I keep the
2 original -- the bottom; you guys keep one; the
3 Public Safety keeps one, or whatever they call
4 it?
5 A. Right. I would say at least three, yes.
6 Q. At least a three-part copy. And where
7 did you keep that in the Shrewsbury Police
8 Department?
9 A. That's still kept. All firearms records
10 have to be kept forever.
11 Q. Okay. And how are those organized,
12 categorized or cataloged --
13 A. I --
14 Q. -- so you can get to them? I mean, is it
15 alphabetical?
16 A. I'd be guessing. I'd be guessing how
17 they're in their files.
18 MS. FAHEY: Don't guess.
19 A. No. I'm saying if I answer you I'd be
20 guessing.
21 Q. Okay. Now, where in the Shrewsbury
22 Police Department is that stuff located?
23 MS. FAHEY: Now?
24 MR. ELBERY: No. Then.

Page 41

1 A. Then, I don't know.
2 Q. Okay. Where is it kept now?
3 A. Now it's upstairs in the -- over the
4 garage end of the station.
5 Q. Over the garage?
6 A. That's where all the hard copy files are,
7 you know, up in that area.
8 Q. Okay. Is it in a safe or a metal or
9 steel file or something?
10 A. There are steel filing cabinets,
11 four-drawer steel filing cabinets.
12 Q. Fireproof? The typical ones that an
13 office would use, those kind of --
14 A. Yes. The standard four-drawer and
15 five-drawer --
16 Q. Oh. Oh.
17 A. -- standard filing cabinets.
18 Q. Oh, all right. Good. Did you ever learn
19 that I had an FID card or --
20 A. No. I never -- I never looked it up. I
21 never --
22 Q. Okay.
23 A. I was never involved in it.
24 Q. Did anybody from the Worcester Police

Page 42

1 Department or any other government agency, police
2 agency tell you that my FID card was revoked on
3 8/5/94?
4 A. No.
5 Q. Okay. Did you hear -- do you know if
6 anybody was told that, anybody in the Shrewsbury
7 Police Department?
8 A. No, I don't. I wouldn't.
9 Q. I want you to look at something. Will
10 you take a look at this document. It's -- for
11 this deposition it's Exhibit 9. It's already
12 been marked. And I want you to look at the red
13 X. It's No. 6. And I want you to read that for
14 me, for the reporter, and tell me what that
15 means.
16 MS. FAHEY: Just for the record,
17 it's No. -- Exhibit 9 from Hurley's deposition --
18 MR. ELBERY: Oh.
19 MS. FAHEY: -- right?
20 MR. ELBERY: Okay. Hurley's.
21 A. I don't know.
22 Q. What kind of an arrest is that, do you
23 know?
24 A. I --

Page 43

Page 46

1 Q. What kind of charge is that?
 2 A. I don't know what -- I could tell you why
 3 that's written like that. But what the longhand
 4 version of it is, I don't know. Why it's written
 5 like that is it's a -- that's a Pamet system. If
 6 we put in the 269 10H, the Police Server System
 7 will come up with a series of highlighted
 8 sections under 269 10H, which -- which charge
 9 you'd like to use; and they're highlighted on the
 10 bottom of the screen, and you arrow over to which
 11 one. But there's only so many characters in the
 12 lines, so we'd be able to abbreviate it across.
 13 Q. Oh, okay.
 14 A. What the abbreviation stands for, I don't
 15 know. I --
 16 Q. What about No. 6, it says something about
 17 a motor vehicle sticker? What does that mean, do
 18 you know?
 19 A. No. That's -- that's the one I'm talking
 20 about.
 21 Q. Oh.
 22 A. That's the one I'm saying.
 23 Q. Well, that wouldn't be --
 24 A. It's abbreviated.

Page 44

1 Q. That --
 2 A. I don't know what that "NTR" is an
 3 abbreviation --
 4 Q. That wouldn't be 269, would it? That
 5 wouldn't be under Chapter 269?
 6 A. It could be. I'd be guessing if I
 7 answered you. I don't know.
 8 Q. Motor vehicle sticker? Okay.
 9 A. Well, it says -- it says, No sticker.
 10 Q. Yes.
 11 A. You're saying it says, Motor vehicle
 12 sticker. I'm saying, to get the correct
 13 definition --
 14 Q. Yes.
 15 A. -- you'd have to see what the long -- you
 16 know, what all the abbreviations mean.
 17 Q. Oh, okay. All right. Okay. You never
 18 spoke to Bob Sheketoff, right? You never spoke
 19 to Bob Sheketoff? I think I already asked you
 20 that.
 21 A. No, I didn't.
 22 Q. Okay. Do you know if Bob Sheketoff ever
 23 informed anybody on the Shrewsbury Police
 24 Department that I had an FID card?

Page 45

1 MR. COPPOLA: Objection. You can
 2 answer. I'm just objecting to the question.
 3 A. The first time I heard his name was
 4 today.
 5 Q. Okay.
 6 MR. ELBERY: What's the grounds
 7 for the objection?
 8 MR. COPPOLA: It's a very broad
 9 and vague question. Did he ever -- does he know
 10 if anyone -- if he ever told anyone at Shrewsbury
 11 Police Station about an FID card?
 12 MR. ELBERY: Then I would follow
 13 up with who, when, and where. But that's okay.
 14 I'm just curious. I'm learning. Really, I'm not
 15 learning at all. I'm the best.
 16 (Discussion off the record)
 17 MR. ELBERY: That's good. I want
 18 it to be on the record. A lot of people are
 19 going to read this stuff a few years from now. I
 20 have very important cases in the courts. My
 21 cases cause earthquakes.
 22 Q. All right. What's the Shrewsbury Police
 23 Department policy on checking FID cards if they
 24 come across somebody that has guns that doesn't

1 have with them an FID card?
 2 A. I don't know. I'd be guessing.
 3 Q. Okay. So you've never been involved in a
 4 gun arrest?
 5 A. I have, sure.
 6 Q. So don't you have to ask for license and
 7 that kind of thing?
 8 A. The gun arrests I was involved with I
 9 don't believe -- there was no licenses.
 10 Q. There was no license. They never --
 11 people never made a claim that they had a
 12 license?
 13 A. Right.
 14 Q. Okay. Well, what if anybody said, Hey,
 15 yeah, those are my guns, but I got a license, but
 16 it ain't on me; what do you do?
 17 A. What would I do?
 18 Q. Yes.
 19 A. I would check from the issuing town to
 20 start with.
 21 Q. Well, how would you find out what the
 22 issuing town is?
 23 A. I'd ask you.
 24 Q. Oh, you'd ask me. Okay. All right.

Page 47

1 A. And if you told me you lived in Berlin,
 2 I'd call Berlin --
 3 Q. Okay.
 4 A. -- or have the dispatcher call.
 5 Q. Oh, okay. Is that what you're supposed
 6 to do?
 7 A. I think that's just common sense.
 8 Q. I agree with you. Not only that, I think
 9 that's what the law says you have to do. Okay.
 10 Did you have any conversation from 8/5/94 forward
 11 in time about my -- my arrest for guns on 8/5?
 12 A. Yeah. After you were arrested, I had
 13 conversation with -- oh, I think it was Carl. It
 14 was either Carl Hanson or Wayne Sampson --
 15 Q. Okay.
 16 A. -- or Jimmy Hurley. It was one of the --
 17 it was one of the officers that were there.
 18 Q. Do you remember the substance of those
 19 conversations?
 20 A. I said, What's going on?
 21 Q. Okay. And what did they say?
 22 A. And that's when they -- they said they
 23 had a search warrant for the bin that I spoke
 24 about, and that's when I had learned that you

Page 48

1 weren't supposed to have possession of a gun.
 2 That's what they told me.
 3 Q. That's what they told you?
 4 A. Right.
 5 Q. Did you do any investigation into that
 6 issue, whether I was --
 7 A. For what?
 8 Q. -- whether I was licensed or not?
 9 A. Nope.
 10 Q. Okay. Now, I think I already asked you
 11 this question. But we did no -- from 8/5 to the
 12 time I was in Concord Prison, which is about
 13 8/10, you only had the one conversation with me
 14 that you remember at the fence, right? Is that
 15 -- is that a good --
 16 A. To the best of my recollection, yeah.
 17 Q. Okay. That's what I remember you saying,
 18 too. Okay. Do you know -- oh, I think you
 19 handled this, so you probably got -- the Benois,
 20 the managers at E-Z on 8/5 -- they lived upstairs
 21 in the building. They had a residence there --
 22 what did they get arrested for, and do you know
 23 the date?
 24 A. The date, I don't know. They didn't get

Page 49

1 arrested. He did.
 2 Q. He was the only one that got arrested?
 3 A. Right.
 4 Q. Okay. I got to show you an incident
 5 report. They ask -- there's something about
 6 Mirada rights -- Miranda rights to -- oh, man.
 7 MR. ELBERY: Do you have my
 8 exhibit on --
 9 MS. FAHEY: Or this one?
 10 MR. ELBERY: No. Just this.
 11 MS. FAHEY: Okay.
 12 Q. What did John Nolan get arrested for, or
 13 what did he get charged for, do you know? He's
 14 the guy who shut off the sprinklers.
 15 A. I don't believe John Nolan got arrested
 16 at all.
 17 Q. Did he get charged with a crime?
 18 A. I believe -- give me a second. I'm not
 19 sure if I set a show cause hearing up for him or
 20 not for the sprinklers. I'd have to look. I
 21 don't know if it got to that stage or not.
 22 Q. So you don't know whether he got arrested
 23 or not?
 24 A. I know he wasn't arrested for anything,

Page 50

1 but I'm not sure if I took a clerk's hearing out
 2 or not against him. I'm not sure, Mike.
 3 Q. Okay. Did you read John -- Benoit,
 4 what's his first name?
 5 A. I believe it's Allan.
 6 Q. Did you read him his rights on
 7 April 14th?
 8 A. Oh, I don't remember. I remember reading
 9 him his rights at one point; but when, I don't
 10 know.
 11 Q. Okay. Is that -- do you remember the
 12 year?
 13 A. No, I don't remember.
 14 Q. Okay. And -- let me see.
 15 MR. ELBERY: I think you have it
 16 over here. Did I take that back? Do you have
 17 Exhibit I?
 18 MS. FAHEY: I?
 19 MR. ELBERY: Yes. If I'm looking
 20 at --
 21 A. Bingo.
 22 MS. FAHEY: Can we have that
 23 marked as Exhibit 11?
 24 MR. ELBERY: It's already marked.

Page 51

1 Or isn't it already marked? Something in there
 2 is marked.
 3 (Discussion off the record)
 4 MS. FAHEY: This will be 11.
 5 We'll go in consecutive order.
 6 MR. ELBERY: Again, are you sure
 7 it isn't -- it's already marked.
 8 MS. FAHEY: Well, we're only
 9 copying the one page of the Exhibit --
 10 MR. ELBERY: Oh, okay. You want
 11 to make another -- in that group of papers --
 12 MS. FAHEY: Yes.
 13 MR. ELBERY: -- you want to make
 14 another exhibit number.
 15 MS. FAHEY: So this is --
 16 MR. ELBERY: That's part of Police
 17 Incident Report 9401387?
 18 MS. FAHEY: Yes.
 19 MR. ELBERY: It's like page 4.
 20 MS. FAHEY: Page 4 of it.
 21 MR. ELBERY: I think we already
 22 got an Exhibit -- it's page 1 of that group.
 23 MS. FAHEY: As Exhibit 5.
 24 MR. ELBERY: As Exhibit 5. Okay.

Page 52

1 So we're going to make page 4 Exhibit 11. And --
 2 MS. FAHEY: Okay.
 3 MR. ELBERY: Well, you're going to
 4 do that, and then you're going to let Lieutenant
 5 Johnson answer the question.
 6 MS. FAHEY: Sure.
 7 (Exhibit No. 11 Incident Report
 8 94010387 - Page 4 marked for
 9 identification)
 10 A. It shows -- could you ask me what the
 11 question is again?
 12 Q. Sure.
 13 A. Thanks.
 14 Q. On that page you're looking at for that
 15 Incident Report 94010387, it says that you read
 16 Benoit his Miranda rights on April 14th --
 17 A. Right.
 18 Q. -- is that correct?
 19 A. Yes, it is.
 20 Q. Okay. And what year was that, do you
 21 know? Because that incident report is the E-Z
 22 fire incident, right?
 23 A. Correct. This would be -- that would be
 24 April of that following year. So it would be

Page 53

1 '90 --
 2 Q. Of '95?
 3 A. Right.
 4 Q. Okay. Now, if I can just see that for a
 5 sec?
 6 A. Sure.
 7 Q. Who's the -- you're the author of this,
 8 right, of this report, right? Is that you?
 9 A. Uh-huh. Yes, it is.
 10 Q. Okay. So you wrote that report?
 11 A. Yes, I did.
 12 Q. Okay. Now, how long after an incident
 13 takes place, like E-Z took place on the 4th and
 14 5th of August, how long after that would it be,
 15 how much time would elapse before you write the
 16 report?
 17 A. It's all different.
 18 Q. Okay. But, I mean, generally?
 19 A. It's all different. It depends on what
 20 the crime is.
 21 Q. Was Benoit -- he was read his rights on
 22 the 14th for what crime, the arson or
 23 embezzlement?
 24 A. It will have to say it in the report.

Page 54

1 I'd have to read the report.
 2 Q. It doesn't.
 3 A. Because I don't even remember where I
 4 read it. So I'd have to read the report to find
 5 out.
 6 Q. It doesn't say. I know he got arrested
 7 for the embezzlement.
 8 A. Can I take a second to read this to
 9 refresh my memory or --
 10 Q. Sure.
 11 MS. FAHEY: Does this have
 12 anything remotely relevant to do with your claims
 13 in this case?
 14 MR. ELBERY: It has a lot to do
 15 with it.
 16 MS. FAHEY: You can read it then.
 17 It's a five-or six-page report.
 18 MR. ELBERY: Yes. But only one --
 19 one small portion pertains to the Miranda. In
 20 other words, the report goes from 8/5/94 onto
 21 April of '95 at a minimum. The end of it's the
 22 only part that involves Benoit and what he was
 23 saying.
 24 A. The time he was given Miranda was when he

Page 55

Page 58

1 was picked up on the warrants.
 2 Q. The warrants for what arrest, for what
 3 crime?
 4 A. Larceny by check, I -- I believe.
 5 Q. Okay.
 6 A. There was a bunch of them.
 7 Q. It had nothing to do with the E-Z arson
 8 then?
 9 A. No.
 10 Q. Okay. I read this report.
 11 A. The part you're reading is my analysis
 12 about the statement.
 13 Q. Of his statement?
 14 A. Right.
 15 Q. Review of statement given by Mr. Benoit
 16 to Mr. Cronin. Analysis of the two statements?
 17 A. Right.
 18 Q. This guy was a suspect for that arson,
 19 right?
 20 A. At that time, yes.
 21 Q. Okay. You were going to arrest this guy
 22 for this arrest, right?
 23 A. Pardon?
 24 Q. You were going to arrest this guy,

1 A. I'm the investigating officer. You're
 2 asking me?
 3 Q. You were the main man?
 4 A. Right. You're asking me?
 5 Q. Yes.
 6 A. First of all, I never talk to the
 7 newspaper.
 8 Q. Okay.
 9 A. And, second of all, to answer your second
 10 question, no, they were not. These two, whoever
 11 those two suspects are, they were not the
 12 Benois.
 13 Q. Do you know who those two suspects were?
 14 A. No, I don't.
 15 Q. Okay. Who gave the paper that info?
 16 Sampson, huh?
 17 A. I'd have to read on. I don't know.
 18 Q. I think it was Sampson, yes. All right.
 19 Well --
 20 MS. FAHEY: Can I have that page
 21 so she can mark it, please?
 22 MR. ELBERY: Yes.
 23 MS. FAHEY: Thank you.
 24 (Exhibit No. 12 Newspaper Article

Page 56

Page 59

1 Benoit, for this arson, right?
 2 A. Not at that time, no.
 3 Q. Benoit was getting set up here, wasn't
 4 he?
 5 A. I take offense to the way you ask that
 6 question.
 7 Q. And, if you read this thing, this guy's
 8 getting squared in; he's getting -- he's getting
 9 fed to the sharks here, ain't he?
 10 MS. FAHEY: Objection.
 11 A. No.
 12 Q. Okay. Do you know where Al Benoit is
 13 now?
 14 A. Today, no.
 15 Q. Do you know where he is in the last year?
 16 A. Three Park Street, P-a-r-k, in Oxford.
 17 Q. The two suspects that they talk about in
 18 the Worcester T&G --
 19 MR. ELBERY: You want this,
 20 right? This is part of the exhibits.
 21 MS. FAHEY: Oh, thanks.
 22 MR. ELBERY: Okay.
 23 Q. -- Lieutenant Johnson, who are those two
 24 suspects? There was a big article in the

1 marked for identification)
 2 MR. ELBERY: Okay. Give me that
 3 back, please.
 4 Q. Do you know anybody named "Sherry
 5 Boulet"?
 6 A. No, I don't.
 7 Q. How about a guy named "Don Brillhart"?
 8 A. No, I don't.
 9 Q. Okay. Do you know where Robert Breen is
 10 right now?
 11 A. He -- you ask that with a smile. Robert
 12 Breen right now is in custody somewhere. Where,
 13 I don't know. But he's in -- he's in custody
 14 somewhere.
 15 Q. And he got arrested by you guys once in
 16 '96, is that right, for house -- he broke into
 17 -- he stole something out of a woman's house?
 18 A. Was that way back in '96? I remember
 19 that incident. I don't think it was that long
 20 ago though.
 21 Q. Okay.
 22 A. Actually, he was arrested twice by us.
 23 Q. And what was the first time --
 24 A. The first --

Page 57

Page 60

1 Worcester T&G.
 2 MS. FAHEY: Can we have that
 3 marked as Exhibit 12?
 4 MR. ELBERY: Whatever you -- well,
 5 again, all those exhibits that I'm using in that
 6 packet, I can hold it and you can get it at the
 7 end, right?
 8 MS. FAHEY: Yes. Yes.
 9 Absolutely.
 10 MR. ELBERY: Okay.
 11 MS. FAHEY: And you're going to
 12 walk out with the originals.
 13 MR. ELBERY: Yes.
 14 MS. FAHEY: No problem.
 15 MR. ELBERY: Because I got to hold
 16 onto them.
 17 MS. FAHEY: You can read it.
 18 We'll mark it as an exhibit.
 19 A. I have no idea.
 20 Q. Were those the Benois?
 21 A. No. That I can say no. No.
 22 Q. The Benois weren't the suspects in that
 23 particular article? Because you were -- you were
 24 the --

1 Q. -- the other time?
 2 A. The first one was a warrant arrest that I
 3 picked him up on, and the warrant was from --
 4 Q. Springfield?
 5 A. No. That's where I picked him up.
 6 Q. Oh.
 7 A. The warrant was from Lowell.
 8 Q. Lowell?
 9 A. PD Lowell.
 10 Q. All right. And that's -- you got
 11 involved in -- okay. That's on that 940133 -- I
 12 don't remember the report number. All right.
 13 Are you familiar with any kind of -- you must be
 14 -- the evidence system at the Shrewsbury Police
 15 Department?
 16 A. Yes.
 17 Q. Okay. What's the E number, the property
 18 ID number, E number? Let me show it to you.
 19 These E numbers, property ID number, what is
 20 that, do you know?
 21 A. This must be an old sheet. Yes. It was
 22 a 1990 sheet. These E numbers, each piece of
 23 property gets an E number, which means an
 24 evidence number.

Page 61

1 Q. Right.
2 A. And it has all that E90, you know, 00041
3 designation as a piece of evidence.
4 Q. Well, if there's an arrest, all the
5 evidence that is taken from that arrest has the
6 same E number, and then each -- each piece of
7 evidence has a separate DXX number?
8 A. DXX number.
9 Q. Okay. So all the DXX numbers are
10 different for each item of evidence, and then
11 there's one E number? All of them have the same
12 E number, right? Isn't that how that -- isn't
13 that --
14 A. Well, it can -- it can be.
15 Q. Oh.
16 A. And I say, "It can be."
17 Q. Oh.
18 A. It all depends if you logged it in, if
19 you log each separate item in, you can -- you'll
20 end up with -- you could end up with a different
21 E number for several items. If you log it in how
22 the Police Pamet Server is supposed to log in --
23 Q. Right.
24 A. If we were going to do this room, we'd

Page 62

1 ask for an E number. It would automatically give
2 us an E number. It would list everything under
3 that one number, and they'd all have separate
4 DXX numbers.
5 Q. Right. All separate DXX.
6 A. But, if you hit -- a lot of guys hit a
7 return key, instead of a previous screen key,
8 which automatically the computer gives it a new
9 E number. Same case, same evidence.
10 Q. Same arrest?
11 A. Same thing.
12 Q. Is that --
13 A. If you hit -- correct.
14 Q. Okay. If you have an incident, you could
15 have several arrests with the same incident,
16 right? An incident report has an incident
17 number. And you usually have one arrest, but you
18 could have more than -- and each arrest has an
19 A number, right?
20 A. Right.
21 Q. But you could have more than one arrest
22 per incident, right?
23 A. Oh, sure. Sure.
24 Q. Yeah. But, if you had more than one

Page 63

1 arrest on an incident, say, you had two arrests,
2 how many E numbers would you have?
3 A. If you had more arrests?
4 Q. If you had two arrests.
5 A. Right.
6 Q. Say they arrested me and somebody else --
7 A. Okay.
8 Q. -- okay, on that incident number, which
9 is 4 -- 94010436. My arrest, which had an A
10 number, an arrest number --
11 A. Right.
12 Q. -- and say they arrested my partner --
13 A. Okay.
14 Q. -- Billy the Kid, and they give him an
15 arrest number. Okay.
16 A. Well, they don't give the arrest number.
17 The computer does.
18 Q. Okay. The computer.
19 A. Right.
20 Q. So we each got an arrest number --
21 A. Uh-huh.
22 Q. -- that pertained to that incident
23 number?
24 A. Right.

Page 64

1 Q. Now, all the evidence you take out -- all
2 the evidence that you take out against him
3 wouldn't have the same E number as the evidence
4 you take out against me, would it?
5 A. If -- if we log in separate evidence.
6 Q. Oh.
7 A. If -- you know, the only way I can
8 explain that is we both get arrested.
9 Q. Right.
10 A. I get picked up on a warrant. You get
11 picked up for possession of a coffee cup.
12 Q. Right.
13 A. We both get different A numbers. The
14 same incident number but different A numbers.
15 Q. Right.
16 A. They log the coffee cup in under your
17 name. My name will show up on that arrest, also,
18 as having -- being involved with the coffee cup
19 incident, because it's the same incident number.
20 The computer automatically associates an incident
21 number with anything that, you know, the computer
22 does with that incident number. It correlates
23 everything into one. It might -- can I look
24 through here? I might be able to give you an

Page 65

1 example of --
2 Q. Sure. Go ahead.
3 A. Oh, okay. No. This -- I thought this
4 was something different. I'm sorry. On this
5 Exhibit No. 7 from -- marked -- from Hurley,
6 where it says codefendants up top, you know, it's
7 listed as -- listed as you're the defendant, you
8 know, in this particular incident number.
9 Q. Yes.
10 A. If I was arrested with you here, no
11 matter what I was arrested for and if they use
12 the same incident number, I'd be listed as your
13 codefendant; and the computer just automatically
14 assumes that. Why -- you know, it's a Pamet
15 Police Server -- I call it a problem. It's not
16 a problem, because it makes it easier for
17 everybody. But that -- they just -- the computer
18 puts it in all together for us.
19 Q. If they were both arrested?
20 A. Right.
21 Q. What if there wasn't an arrest?
22 A. If they use the same incident number,
23 it's automatically going to put your name right
24 there. It's automatically going to put my name

Page 66

1 right there. They could --
2 Q. Where are they going to do this?
3 A. If they use the same incident number --
4 it doesn't matter how they use it.
5 Q. Oh.
6 A. -- if my name goes under that same
7 incident number, I'm automatically going to be
8 associated with this evidence automatically.
9 Q. Okay. Automatically.
10 A. The computer -- the computer -- I don't
11 know if there's a term "correlates" or puts it
12 together. That's what the computer does.
13 Q. Okay.
14 MR. ELBERY: Now, Attorney Fahey,
15 do you have 94010387?
16 MS. FAHEY: The incident report?
17 MR. ELBERY: Uh-huh. Is it an
18 exhibit?
19 MS. FAHEY: The first page of it
20 is Exhibit 5.
21 MR. ELBERY: Okay.
22 MS. FAHEY: Do you want me to show
23 it to the officer?
24 MR. ELBERY: Yes, please.

Page 67

Page 70

1 Q. Now, Lieutenant Johnson, can you tell me
2 the number of the report you have in front of
3 you?
4 A. 94010387.
5 Q. Okay. And that incident pertains to
6 what?
7 A. The fire at the E-Z Mini Storage.
8 Q. Okay. Is there anything on there about
9 the arrest of Michael Elbery?
10 A. On the first page, no.
11 Q. Okay. Anything on there at all about
12 Elbery, in that report?
13 A. Through the whole -- I'd have to read
14 it. I --
15 Q. Okay. All right.
16 MR. ELBERY: Now, Attorney Fahey,
17 can you give Lieutenant Johnson a copy of
18 94010436?
19 Q. Now, sir, can you read the number of the
20 report you have in front of you?
21 A. Just what you asked for, 94010436.
22 Q. And what does that incident pertain to?
23 A. Michael G. Elbery, arrested party.
24 Q. Okay. And what are the charges against

1 A. Personally, yes.
2 Q. Okay. Now, did anybody else go over
3 there?
4 A. Yes.
5 Q. Okay. Who went over there?
6 A. I don't remember. I'd have to look --
7 it's in the report. I sent an officer over to
8 take a report for me from the night clerk. The
9 guy's name was Klug, K-l-u-g.
10 Q. All right. Now, who -- what report does
11 this information --
12 A. To take a statement from Klug in regards
13 to things that Breen had said.
14 Q. That's this report? More than one report
15 or how many reports did Klug get into? You're
16 talking about this report right here, not the one
17 you just had, 94013371?
18 A. I'd have to read -- no. I'm sorry. I
19 said -- what I said was: It will be in a
20 report. Who I sent over there, I don't have -- I
21 don't remember his name.
22 Q. You don't remember the officer's name?
23 A. No. I mean --
24 Q. It was before or after you went over

Page 68

Page 71

1 him?
2 A. Well, under the dispatcher remarks it's
3 listed as possession of a firearm without ID
4 card, five counts, and possession of ammunition
5 without an ID card.
6 Q. Okay. All right. Now, who if --
7 MR. ELBERY: Could we see
8 Exhibit I again? Is that in here?
9 (Discussion off the record)
10 MS. FAHEY: The last police report
11 that was shown to the officer I'll have marked as
12 the next -- just the first page of it as the next
13 exhibit.
14 (Discussion off the record)
15 (Exhibit No. 13 Incident Report
16 94010436 - Page 1 marked for
17 identification)
18 Q. This is 94013371. Can you tell me who
19 got arrested on that report?
20 A. I'll have to look through the report. It
21 doesn't list an arrested party on the -- on the
22 side. The dispatcher remarks states that's
23 arrested.
24 Q. Yes. It says, Arrested. I could never

1 there?
2 A. Before.
3 Q. Okay. And you sent him over there to
4 talk to Klug?
5 A. Yes.
6 Q. How come?
7 A. Klug had made statements to the station
8 somehow -- I don't know -- in regards to being
9 flimflammed out of -- I think it was \$20.
10 Q. When did he make that statement?
11 A. I'd be guessing about that. I don't
12 know.
13 Q. You don't remember?
14 A. No, I don't know. I -- I became aware of
15 it when the station called me. Somebody from the
16 station -- and I'm not sure who the officer is --
17 called me and told me that.
18 Q. Do you remember what they said?
19 A. No, I don't.
20 Q. Do you remember the officer?
21 A. I can't. It's in the report. I know
22 it's in a report. It's in one of my reports.
23 Q. Which report is it, do you know?
24 A. I don't know. I'd have to look. I'd

Page 69

Page 72

1 figure out who got arrested.
2 A. If I read this report --
3 Q. Did Breen get arrested?
4 A. I believe this is the day that I picked
5 up Breen on the warrant that I referred to
6 earlier --
7 Q. Okay.
8 A. -- in Springfield.
9 Q. All right.
10 A. I -- and the only way I say that, just to
11 be clear, is the dispatcher remarks put it on
12 here, because they have -- from Lynn PD and PD
13 Lowell, so unless they found another one later
14 on, but that's -- that has to be the same one.
15 Q. Okay. All right. Now, in your arson
16 investigation when did you first -- when did you
17 first go over to the motel that's next-door, the
18 Holiday Inn, the Days Inn Motor Hotel?
19 A. Personally, I went there several days
20 after.
21 Q. Several days after?
22 A. Personally.
23 Q. Was that the first time you went over
24 there?

1 read it.
2 Q. Is there more than one Shrewsbury Police
3 Department report that Klug gets mentioned?
4 A. That I don't know. I don't know.
5 Q. Okay. Because he's in this report,
6 94013371.
7 A. Is there a statement in there from him.
8 Q. Yup, right there.
9 A. That -- that would be about right,
10 August 7th, it states here, because that would be
11 -- that would fit. It was two or three days --
12 you know, my memory's coming back as I'm reading
13 it. It was a couple of days later. Because I
14 was tied up that first few days at the scene, and
15 I branched out after that and started to go
16 interview people outside the scene.
17 Q. But that -- that report there you're
18 reading, right, that's your report or the other
19 officer?
20 A. Well, this looks like my report. Like I
21 say, I'd have to read the whole report.
22 Q. Where's the other officer's report?
23 A. I don't think he did one. I don't think
24 the officer did one.

Page 73

1 Q. He didn't do one?
 2 A. Not that I know of. All he did was call
 3 me with the information.
 4 Q. Okay. And what information did he give
 5 you?
 6 A. He said that the clerk, Klug, remembers
 7 getting flimflammed out of some money. I think
 8 it was \$20.
 9 Q. And what day did he get flimflammed?
 10 A. The night of the fire. That's why --
 11 Q. Okay.
 12 A. -- I went back to it.
 13 Q. Okay. And who got the Hiney IOU?
 14 I'll repeat that for you. Who got
 15 the Hiney IOU? It's kind of a weird name,
 16 Hiney. Who received that?
 17 A. I don't remember.
 18 Q. You don't know which officer received
 19 that?
 20 A. No, I don't.
 21 Q. Is it the same officer that you sent over
 22 a few days before?
 23 A. I -- I don't know. I don't know.
 24 Q. Where did -- did Klug give you the Hiney

Page 74

1 IOU, or did you find the Hiney --
 2 A. I don't -- I don't personally remember
 3 seeing -- I know what you're referring to because
 4 it was -- it was -- and that's how I tracked him
 5 down, Breen; but I don't remember actually coming
 6 in physical contact with him.
 7 Q. How did the Shrewsbury Police get the
 8 Hiney IOU?
 9 A. I don't know.
 10 Q. Did Klug give it to somebody?
 11 A. One of the officers. As I said, I don't
 12 know. I don't know who it was. I don't know.
 13 Q. Okay. What day did he give it to him?
 14 A. That I don't know. We can -- I could
 15 find that out. We could look it up in the
 16 evidence. It would tell us what day it was
 17 logged in.
 18 Q. Did Hurley have anything to do with that?
 19 A. I don't remember.
 20 MR. ELBERY: This is Exhibit J to
 21 my opposition to the defendants' motion for
 22 summary judgment on this case, Elbery versus --
 23 on another case, Elbery versus Louison; and I
 24 have here a Hiney IOU, Robert Hiney IOU. And I'm

Page 75

1 going to let Lieutenant Johnson take a peek at
 2 this, and I know Attorney Fahey wants to make
 3 this an exhibit at this deposition.
 4 Okay. So we're going to give it a
 5 number, and then we're going to do some analysis
 6 on this.
 7 (Discussion off the record)
 8 (Exhibit No. 14 IOU marked for
 9 identification)
 10 Q. Okay. Lieutenant Johnson, if I could
 11 have you look at this document. Whose writing is
 12 this?
 13 A. I don't know.
 14 Q. Okay. You did this investigation, right?
 15 A. Right.
 16 Q. And you wrote that report 94013371?
 17 A. To the best of my knowledge, yes.
 18 Q. Okay. But you don't know whose writing
 19 that is?
 20 A. Nope.
 21 Q. Okay. Whose writing is this? And what
 22 do those initials stand for?
 23 A. I don't know.
 24 Q. Is it Robert Klug?

Page 76

1 A. I don't know. I don't even see a "K" in
 2 there actually. Oh, maybe an "X" or a "K." But
 3 I don't know.
 4 Q. Okay. And it says -- the IOU says, I
 5 borrowed -- I, Robert Hiney, borrowed \$20 for
 6 Dennis -- and that's a sic -- from Dennis at Days
 7 Inn. Will be paid 8/5/94. Robert Hiney,
 8 12 Corzier Street, Worcester, Mass. It's got a
 9 phone number that's supposed to be his father's
 10 house. And then it's signed Robert Hiney.
 11 When did all this take place?
 12 A. That was the night of the fire.
 13 Q. Which would have been what? What date?
 14 A. 8/4.
 15 Q. 8/4. And --
 16 A. Can I -- let me --
 17 Q. Go ahead.
 18 A. It could have been early morning 8/5. I
 19 don't -- you know what I mean? I don't know. He
 20 comes in at 11 o'clock, Klug, so --
 21 Q. What's a small 65, it says? What's that
 22 say?
 23 A. I don't know. That's the first time I
 24 actually saw that document.

Page 77

1 Q. Okay.
 2 MR. ELBERY: Now, Attorney Fahey,
 3 do you have -- is this one of the clear and
 4 readables you brought in?
 5 MS. FAHEY: I told you at the
 6 beginning of the deposition, pursuant to your
 7 deposition notice, we brought you the original of
 8 this.
 9 MR. ELBERY: Okay.
 10 MS. FAHEY: It's marked as
 11 Exhibit 4.
 12 MR. ELBERY: Okay.
 13 MS. FAHEY: And I am leaving with
 14 the original Exhibit 4.
 15 MR. ELBERY: All right.
 16 Okey-doke.
 17 MS. FAHEY: When it's an
 18 appropriate time, Mike, I'd like to take a break
 19 to use the bathroom, and I want to call my
 20 office.
 21 MR. ELBERY: All right. Go
 22 ahead. You're on the stopwatch. Go.
 23 (Recess)
 24 MR. ELBERY: Okay. Now, are we

Page 78

1 ready?
 2 THE WITNESS: Uh-huh.
 3 Q. Lieutenant Johnson, you interviewed this
 4 guy Klug on August 7th of 1994; and here's the
 5 result of that interview, right?
 6 MS. FAHEY: You're showing him a
 7 police report. Can we have that first page
 8 marked as an exhibit? Is this -- did you ever
 9 mark as Exhibit --
 10 (Discussion off the record)
 11 MS. FAHEY: Okay. Then we need to
 12 have this page marked as Exhibit 15, please.
 13 (Exhibit No. 15 Incident Report
 14 940103371 - Page 3 marked for
 15 identification)
 16 A. The question, please?
 17 Q. Okay. So you talked to this fellow Klug
 18 that's over at Days Motor Inn, and what day did
 19 you do that?
 20 A. It says here August 7th --
 21 Q. Okay.
 22 A. -- at 11 o'clock.
 23 Q. And what did he tell you?
 24 A. Want me to read it here?

Page 79

Page 82

1 Q. No. Just summarize. You don't have to
2 read it. Just summarize.
3 A. He said that this guy was in sitting by
4 the lounge, asked for a couple of coffees. They
5 talked about the O.J. Simpson case. He went
6 outside and came back in. He said that he had
7 worked for Breen Plumbing Company in Worcester.
8 He wanted to borrow \$65 to go to Tewksbury,
9 Mass. And he finally ended up -- Klug finally
0 ended up giving him \$20.
1 Q. Did Klug tell you anything else? Did
2 Klug tell you anything else that's not in that
3 report?
4 A. Oh, no. No. Not that I remember, no.
5 Q. Okay. Did he mention anything else?
6 A. Nope. I -- the only thing that's in --
7 not in this report that I can -- I could tell you
8 what I told him. And I remember this because I
9 talked to him two or three times later on.
0 That's not in the report. Like I called him the
1 next night, you know, things like that. So that
2 if he comes back, you know, things of that
3 nature, please give me a call, that type of
4 thing, but nothing else, you know, who took the

1 Q. Okay. And what time did you do that?
2 A. Oh. All I could tell you is it was after
3 11 p.m. I can't tell you what time. Just after
4 11 p.m., because the people came in at 11 p.m.
5 Q. These two security guards came in after
6 11 p.m.?
7 A. They work the 11 to 7 shift, I guess.
8 Q. Eleven to seven shift?
9 A. If my memory serves me correctly, yes.
10 No. Hold that. I'm sorry, Mike. Klug worked 11
11 to 7. The UPS guys work 3 to 11. So it would be
12 after 3 and before 11. I'm sorry.
13 Q. Okay. What's their names?
14 A. I don't know.
15 Q. What did they look like?
16 A. Sixties. A couple of old security
17 guards, you know, to paraphrase them.
18 Q. Why did you go down there?
19 A. I was trying to corroborate a story that
20 was given to me.
21 Q. Who did these UPS guards work for?
22 A. I -- I don't know. It was a security
23 company but I don't know. You know, they're not
24 -- they had a little patch on their shoulder.

Page 80

Page 83

1 investigation, no.
2 Q. So you would have put everything that's
3 crucial to the investigation in that report,
4 right?
5 A. No.
6 Q. No? You wouldn't have put crucial
7 information in that report?
8 A. Oh, I would have, sure.
9 Q. I mean, this guy Breen was your suspect,
0 right? Wasn't he your suspect at that point?
1 A. I'd like to say he was one of many I'd
2 like to track down, yes.
3 Q. Okay. So information about him would be
4 important. What did Klug -- who did Klug say
5 this guy was at that time? At 8/7/94 Klug made
6 claim that some guy was talking to him, this guy
7 that wanted \$65? Who did this guy Klug -- who
8 did -- did Klug pin a name on this guy? Who did
9 he -- what did he -- what did he say was his
0 name?
1 A. The only thing he said his name was, was
2 on that note, Robert Hiney.
3 Q. He said it was -- the guy's name was
4 Robert Hiney?

1 I'm not sure of the name of the company.
2 Q. Who put the Hiney IOU into evidence?
3 A. I don't know.
4 Q. Who allowed you to view the UPS film?
5 A. That I don't know.
6 Q. Did you view a film, a video film?
7 A. I don't remember.
8 Q. It says on your report you viewed a film
9 down at UPS?
10 A. I don't remember. I could have and I --
11 you know, I don't know.
12 Q. Mr. Breen was seen on -- I'm reading from
13 page 7 of Incident Report 94013371. Mr. Breen
14 was seen on camera and talked to two security
15 guards for approximately 15 minutes before he
16 showed up at Days Inn. Did you see this guy on
17 camera? You wrote this?
18 A. I don't remember.
19 Q. You're the investigating officer?
20 A. Yes.
21 Q. It says, Mr. Breen was seen on camera.
22 Who saw him on camera, you or them?
23 A. I don't know. I don't remember.
24 Q. You don't remember?

Page 81

Page 84

1 A. Uh-huh.
2 Q. Let me see it. Did he tell you anything
3 else? Did he give you anything else at that
4 point?
5 A. Not that I remember.
6 Q. Do you have the Hiney IOU?
7 A. Do I, no.
8 Q. Whose got it? Whose got it?
9 A. If it was logged into evidence, it -- if
0 it's logged into evidence, then it must be in
1 evidence.
2 Q. Okay. The Shrewsbury Police Department
3 has it?
4 All right. Where was the Hiney
5 IOU found?
6 A. I don't know.
7 Q. What was the exact time it was found?
8 A. I don't know.
9 Q. Okay. When did you go down to UPS
0 relating to this arson investigation?
1 A. A couple of days after the fire itself, I
2 believe.
3 Q. What did you do down there?
4 A. Talked to two security guards.

1 A. Nope.
2 Q. Could it be because nobody saw him on
3 camera?
4 A. What's the question?
5 Q. That's the question.
6 A. You're accusing me of lying, is the
7 question?
8 Q. No.
9 A. Okay.
10 Q. I'm asking you a question.
11 A. Okay. What is the question?
12 Q. How do I get to see this -- these people
13 that saw him on camera?
14 A. I don't know.
15 Q. And when did you do this report 94013371?
16 A. I don't remember.
17 Q. When did you write it?
18 A. I don't remember, Mike. The last -- the
19 last --
20 Q. Well, it pertains to activity in 1994,
21 does it not?
22 A. Uh-huh. Yes, it does.
23 Q. Okay. All the activity, it starts right
24 after the E-Z fire, and it goes on a few -- a few

Page 85

1 months, right, until you arrest him on
 2 October 11th or thereabouts, right?
 3 A. Who?
 4 Q. You arrested Breen as a result -- there
 5 was somebody arrested as a result of this -- this
 6 report reports that somebody was arrested and
 7 that was Breen. You already answered that
 8 question. Arrested at SP, at Springfield. You
 9 picked up Breen on 10/11. That's the date of
 10 this report.
 11 This report concerns activity from
 12 what time? 8/5 to 10/11, am I correct, '94,
 13 1994; am I correct?
 14 A. I'd have to look at the report if I'm
 15 going to say yes.
 16 Q. Here you go.
 17 A. Well, it contains information all the way
 18 up to April 14th of '95. That's marked as
 19 Exhibit 11. It's the same report, I believe.
 20 Q. What time does it go up to?
 21 A. April of '95 it looks like.
 22 Q. What takes place in April of '95 in that
 23 report?
 24 A. That was the Miranda on Benoit.

Page 86

1 Q. Not on that report. You're mixing that
 2 with 87, which is in front of --
 3 A. There's two reports here?
 4 Q. Yes, there's two reports.
 5 A. Oh, okay. I'm sorry. I'm sorry.
 6 Q. I'll show you where it begins.
 7 A. Okay. Thanks.
 8 Q. These pages here are 371. The last three
 9 digits of that report is 371. Tell me the time
 10 period that that report encompasses, what
 11 activity? Starting when and ending when?
 12 A. I can't tell you when it ended.
 13 Q. And when was the last activity you report
 14 on? When did that take place? It would have to
 15 be 10/11, wouldn't it?
 16 A. No. No.
 17 Q. No. What took place in that report after
 18 October 11th?
 19 A. No, no. You said when it was written.
 20 Q. I'm asking you about the activity you're
 21 reporting on, and then you tell me when it was
 22 written. I'm asking you both.
 23 A. I can't tell you when it was written. I
 24 could tell you when it was typed.

Page 87

1 Q. Okay. When was it typed?
 2 A. It was typed on 2/18 of '98.
 3 Q. Okay. So you're telling me this thing
 4 didn't get typed until four years -- almost four
 5 year after the incident. Why is that?
 6 A. I can't explain that. I mean, I can but
 7 it's --
 8 Q. Will you explain it to me.
 9 A. Well, I can explain only to a certain
 10 degree. First of all, the investigation is still
 11 currently going now, and I'm also subject to
 12 federal grand jury guidelines; so I can't discuss
 13 it.
 14 Q. Why federal jury guidelines? What's it
 15 got to do with federal?
 16 A. I -- I'm under orders not to discuss it.
 17 Q. Okay. And that's the reason why this
 18 report didn't get typed until four years after
 19 the incident?
 20 A. No. I said there's various reasons. I'm
 21 saying when it got typed was 2/18/98, I believe.
 22 2/18, 2/28 -- what date is on that?
 23 Q. 2/18/98.
 24 A. 2/18. Our reports are transcribed on

Page 88

1 tape, and then the secretary types them.
 2 Q. When did you put this report on tape so
 3 that she can -- so the secretary can type it?
 4 A. That would be -- that would be ongoing
 5 from the date of the occurrence until it was
 6 typed, tape recorder.
 7 Q. So, if the last -- after the last
 8 incident pertaining to this report, you put --
 9 when did you put it on tape? After the activity
 10 that was reported took place, when did you put --
 11 when did you put this report on tape?
 12 A. From the time of my first inception of
 13 the investigation until the time I finished.
 14 Q. So you did it a little at a time?
 15 A. Correct.
 16 Q. You put a little bit of this at a time on
 17 the tape?
 18 A. Correct.
 19 Q. How did you do that?
 20 A. I put my reports in chronological order
 21 as the events happened.
 22 Q. But you just said you put the report on
 23 the tape a little at a time?
 24 A. Right.

Page 89

1 Q. Well, how could you do that?
 2 A. It's easy.
 3 Q. Well, how -- well, tell me.
 4 A. If I -- if I was going to do a report
 5 today of what transpired today, when I get home
 6 today, I'll put it on tape.
 7 Q. Okay.
 8 A. And then the tape will stay right there.
 9 Two weeks from now, if I have conversation with
 10 this group again, I'll just continue right on
 11 that tape until it's completed; and then it's
 12 given to the secretaries to type.
 13 Q. Who gave -- did you tell Lieutenant -- at
 14 the time Lieutenant Sampson, did you give him the
 15 information or allow him to obtain a search
 16 warrant for my E-Z unit back on 8/5/94?
 17 A. I don't remember.
 18 Q. Well, did you tell anybody that I allowed
 19 you to go into my E-Z unit?
 20 A. I don't know if that was directly or
 21 indirectly, but I remember that part of the
 22 conversation. I believe that was with Sergeant
 23 Faucher.
 24 Q. Okay. Well, let me ask you this: Did

Page 90

1 you ever claim that I allowed you to go into my
 2 E-Z unit?
 3 A. I don't remember.
 4 Q. You don't remember?
 5 A. Huh-uh.
 6 Q. Well, did you ever tell -- did you ever
 7 give -- wasn't it you who gave Sampson the
 8 information over the phone so he could obtain a
 9 warrant for the -- the search warrant rather?
 10 You don't remember?
 11 A. I don't remember. I -- if there's a
 12 search warrant, it will be in the affidavit, I
 13 mean, if that will help you.
 14 Q. Yeah, I know. I know that. Okay. When
 15 you talked to Klug --
 16 A. Yup.
 17 Q. -- that's the only -- that -- you didn't
 18 ask him -- did you ask him about evidence you
 19 already had?
 20 A. No, I didn't.
 21 Q. You didn't do that?
 22 A. No.
 23 Q. You weren't concerned about evidence you
 24 already had?

Page 91

1 A. No. I had already knew what the note
2 said. The officer who had the note, whoever that
3 officer was -- it should be on the evidence sheet
4 -- that's the officer that called me and told me
5 he obtained a note somehow. I don't know. I
6 already told you that. Upon learning that I
7 myself called Klug and says, Hey, what's going
8 on?
9 Q. You called him?
10 A. Uh-huh.
11 Q. Is that what this report is on 8/7?
12 A. I don't know if that's the -- the phone
13 call or in person. I talked to him personally,
14 and I called him on several occasions.
15 Q. The tag is right here, isn't it? Who's
16 the officer?
17 MS. FAHEY: You're referring to
18 Hurley Exhibit 4?
19 MR. ELBERY: Yes. On Exhibit 4,
20 Hurley deposition.
21 Q. So you're saying you knew about -- you're
22 saying you knew about the IOU before 8/7 or after
23 8/7?
24 A. No, no. It could have -- when I talked

Page 92

1 to Klug, I had already known about the IOU.
2 Q. Well, how come you didn't ask him about
3 it?
4 A. The officer told me what it said; so I
5 called Klug to find out exactly what the story
6 with the guy was, what happened, you know.
7 Q. Yes. But it's not in the report?
8 A. I told you a lot of things are not in the
9 report. That, to me, is just -- that's common
10 everyday police practice. If one officer tells
11 me something, I'll take what he told me and then
12 continue on with it. That's what I did.
13 Q. Okay. Now, you wrote this report.
14 Initially you couldn't find an IOU; am I
15 correct? Initially when I asked for it, you said
16 it didn't exist; am I right?
17 A. I didn't know you asked me for it. I
18 don't think we ever talked about it.
19 Q. Through document production I asked for
20 that, and you didn't have it, right?
21 A. I have no idea.
22 Q. And then after you said you didn't have
23 it --
24 A. I never said that. I told you I never

Page 93

1 said that. I -- this is the first time we're
2 having a conversation about a note.
3 Q. That's what it says in the document
4 production, and your attorney forwarded me the
5 answers to those document requests. That's what
6 it says. That's what it says.
7 A. Well --
8 Q. Are you aware -- --
9 MS. FAHEY: There's no question
10 before you.
11 Q. Are you aware that's what it says?
12 MR. ELBERY: Do you have the
13 Exhibit I?
14 THE WITNESS: I don't think we
15 marked one I, right?
16 MS. FAHEY: We didn't. That's
17 his. No, I don't.
18 Q. This is -- it says here, All IUs taken --
19 All IOUs taken allegedly from the plaintiff's E-Z
20 Storage container?
21 A. Right. I remember that conversation,
22 yes.
23 Q. Okay.
24 A. Right. To -- you asked me specifically

Page 94

1 where the IOU came from. Klug at Days Inn.
2 Nothing about your storage container. That's
3 what that's referring to. That's what I was
4 asked.
5 Q. Okay. You didn't --
6 A. That's what I was answering.
7 Q. You didn't have an IOU at that point,
8 right?
9 A. Not from your storage container. I still
10 don't, no, sir.
11 Q. Okay. You didn't have any IOU?
12 A. Klug's IOU.
13 Q. You created that afterwards, right?
14 A. No, sir. On that document it will give
15 you the date that was logged into the system.
16 Q. And what's that date?
17 A. I -- I don't know. I had never seen that
18 before.
19 Q. 8/5, that's the date?
20 A. I -- if I can take a look, I could tell
21 you how the computer prints it, sure. Entered
22 2/5 -- 8/5/94, and there's an E number. And it
23 says, IOU, handwritten.
24 Q. What's the E number?

Page 95

1 A. 9400300.
2 Q. Okay. And what's that E number pertain
3 to?
4 A. That's the property number the computer
5 gave it. That's the next piece in. Automatic
6 number. We can't -- you don't assign them E
7 numbers. The computer does it automatic. You
8 can't -- the computer does that of an incident.
9 Q. A new event that triggers a new number,
10 right?
11 A. You can't -- you can't enter a piece of
12 evidence without an incident number being in the
13 computer.
14 Q. Okay. What would the incident number be
15 for that?
16 A. 94010436.
17 Q. Which is my arrest, right?
18 A. I don't know. We have the report.
19 Q. All right.
20 MR. ELBERY: Okay. I'm all done
21 with this witness.
22 MS. FAHEY: Great.
23 MR. ELBERY: Now, we got to --
24 (Discussion off the record)

Page 96

1 MS. FAHEY: Why don't we put this
2 on the record for now. The chief is here. Do
3 you want to start the chief?
4 MR. ELBERY: What time is it?
5 MS. FAHEY: It's about five of
6 four.
7 MR. ELBERY: It takes you that
8 long to go to the bathroom. I mean, you know, we
9 got to be out of here by 4:20. We don't have any
10 time for this. It's all done.
11 MS. FAHEY: He's waited here all
12 day since like 10:30.
13 MR. ELBERY: Well, what do you
14 want me to do? What are you going to do, get two
15 questions in at this rate, and then we're going
16 to have to pick up again? It's too late. We got
17 to start him fresh. It's time to go. They're
18 going to lock up.
19 MS. FAHEY: Let's finish the
20 discussion then on the record concerning the
21 depositions on the 9th.
22 MR. ELBERY: Okay. Let's get
23 these exhibits done, okay?
24 MS. FAHEY: Well, I -- if it's

Page 97

Page 100

1 agreeable with you, I'll just then see if --
 2 while we finish this discussion, I can see if the
 3 lieutenant could go to the Xerox machine. Would
 4 that be agreeable?
 5 MR. ELBERY: No, it wouldn't. It
 6 wouldn't be agreeable at all. We got a lot of
 7 work to do. That's why I can't do any more
 8 depositions, because we got about 15 minutes
 9 worth of work to do before we can even think
 10 about getting out of here, okay? Does that make
 11 sense to you?
 12 MS. FAHEY: Because you had
 13 represented --
 14 MR. ELBERY: No, I didn't.
 15 MS. FAHEY: -- that you reasonably
 16 could conclude five police officers' depositions
 17 today --
 18 MR. ELBERY: No. No, I didn't.
 19 MS. FAHEY: -- I've had --
 20 MR. ELBERY: I reasonably could
 21 have if they had been reasonable but they were
 22 not. So that's the end of it. It didn't get
 23 done. I don't want to argue with you anymore.
 24 MS. FAHEY: I'm going to suggest

1 schedule of what officers are available.
 2 (Whereupon the deposition
 3 was concluded at 3:59 p.m.)
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Page 98

Page 101

1 -- I am suggesting now --
 2 MR. ELBERY: I'm not starting
 3 anybody else today.
 4 MS. FAHEY: No. I appreciate
 5 that.
 6 MR. ELBERY: It's too late.
 7 MS. FAHEY: I appreciate that.
 8 MR. ELBERY: It's too late. I
 9 don't want to argue with you anymore.
 10 MS. FAHEY: I'm suggesting we just
 11 discuss the schedule on the length, and I'm
 12 going --
 13 MR. ELBERY: Not right now. Let's
 14 get done what has to get done before we get
 15 locked out of here. I'm not giving you my
 16 exhibits.
 17 MS. FAHEY: Before we suspend with
 18 the deposition, before the -- while we're still
 19 on, the deposition is concluded, I'm going to --
 20 I am suggesting that we take the deposition in a
 21 room at the Shrewsbury Town Hall, and that way I
 22 can have the police officers --
 23 MR. ELBERY: No. No. No. I
 24 don't care what you suggest, Mrs. Fahey. I'm not

1 CERTIFICATE
 2
 3
 4 I, CHESTER G. JOHNSON, do hereby
 5 certify that I have read the foregoing transcript
 6 of my testimony, and further certify that said
 7 transcript is a true and accurate record of said
 8 testimony.
 9 Dated at _____
 10 this _____ day of _____, 1999.
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CHESTER G. JOHNSON
 SIGNED UNDER THE PAINS AND
 PENALTIES OF PERJURY

In re: Michael Elbery vs Daniel Sklut, et al.
 and
 Michael Elbery vs Robert Sheketoff, et
 al.
 6/4/99 - Depo of CHESTER G. JOHNSON

Page 99

Page 102

1 interested in going to Shrewsbury, period. I'm
 2 not interested in getting lynched. Okay. I
 3 don't want any more nonsense out of you. Okay.
 4 I tell you where the deposition's going to be
 5 held, and it's not going to be held in Shrewsbury
 6 or anyplace in Worcester County.
 7 And let's get on with these
 8 exhibits. I don't have any more time to waste.
 9 And the reporter can turn this off, please.
 10 MS. FAHEY: Well, she will when
 11 it's concluded and it's not concluded.
 12 MR. ELBERY: It is concluded.
 13 It's my deposition.
 14 THE STENOGRAPHER: Both of you
 15 have to agree.
 16 MR. ELBERY: I'm not talking to
 17 her anymore.
 18 THE STENOGRAPHER: Is this on or
 19 off?
 20 MR. ELBERY: She --
 21 MS. FAHEY: It's on for one more
 22 minute. I'm going to see what officers are
 23 available on the 9th, and I will let you know on
 24 Monday or Tuesday, as soon as I can get the

1 CERTIFICATE
 2
 3 Commonwealth of Massachusetts
 4 Norfolk, ss.
 5
 6 I, Marie C. Leonard, Certified
 7 Shorthand Reporter, Registered Professional
 8 Reporter, and a Notary Public in and for the
 9 Commonwealth of Massachusetts, do hereby certify:
 10 That CHESTER G. JOHNSON, the
 11 witness whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that such
 13 deposition is a true record of the testimony
 14 given by the said witness.
 15 IN WITNESS WHEREOF, I have
 16 hereunto set my hand and notarial seal this 31st
 17 day of August, 1999.
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 19
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 23
 24

Marie C. Leonard
 CSR, RPR

My commission expires
 on June 29, 2001