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<p>VOL. I PAGES 1-208 EXHIBITS 1-10</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>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.</p> <p>No. 97-11743-MLW</p> <p>MICHAEL ELBERY, Plaintiff, vs. ROBERT SHEKETOFF, KIMBERLY HOMAN, and SHEKETOFF &amp; HOMAN, Defendants.</p> <p>No. 98-10163-MLW</p> <p>DEPOSITION of JAMES J. HURLEY, 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 9:13 a.m.</p> <p>IRENE M. ARABIAN, INC. 65 E. INDIA ROW, 20th FLOOR, BOSTON, MA 02110 (617) 367-8888</p>	<p>PROCEEDINGS</p> <p>MR. ELBERY: Before you start, do we have to make --</p> <p>MS. FAHEY: We usually put stipulations on the record. And, if you're agreeable, I would like the witness to be able to read and sign the deposition transcript making whatever corrections he thinks is appropriate and doing this under the pains -- signing it under the pains and penalties of perjury; and I'd like to waive the notarization and the filing of the deposition with the court. Are you agreeable with that?</p> <p>MR. ELBERY: About the corrections, I'm agreeable, because he has that right. The filing, I have -- I disagree with you on that. Okay. I don't know what the particular rules are, but I don't go along with you on that. What was the other one?</p> <p>MS. FAHEY: Waiving the notarization. So that we have his signature, but he doesn't have to get his signature notarized. He can just sign his errata sheet under the pains and penalties of perjury.</p>
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<p>APPEARANCES:</p> <p>Michael G. Elbery 168 Fairfield Street Needham, Massachusetts 02492 for the plaintiff Michael Elbery, pro se</p> <p>Pierce, Davis, Fahey &amp; 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</p> <p>Sugarman, Rogers, Barshak &amp; Cohen, P.C. (By Joseph J. Coppola, Esq.) 101 Merrimac Street Boston, Massachusetts 02114-4737 for the defendants Robert Sheketoff, Kimberly Homan, and Sheketoff &amp; Homan</p> <p>Also Present: Chester G. Johnson</p>	<p>MR. ELBERY: Yes. Because that's what I always thought.</p> <p>MS. FAHEY: Normally -- I can't say normally. There are often stipulations. Like we're going to reserve objections, except as to the form of the question. We're going to reserve motions to strike and all objections, except as to the form of the question, until the time of trial.</p> <p>MR. ELBERY: Wait a minute. Say that all again.</p> <p>MS. FAHEY: I'd like to agree that we'll reserve all objections, except as to the form of the question, and reserve motions to strike until the time of trial.</p> <p>MR. ELBERY: I don't think that's a good idea. I think you should have to raise the objection now, so I can respond and correct it.</p> <p>MS. FAHEY: Then I will.</p> <p>MR. ELBERY: Otherwise, how can I correct it?</p> <p>First thing we're going to do, one at a time here, Lieutenant Johnson. But I can't</p>
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<p>INDEX</p> <p>Deposition of: Page JAMES J. HURLEY Examination by Mr. Elbery 10</p> <p>Exhibits Page No. 1 Rights Form Label 9 No. 2 Statement of Rights dated 8/5/94 9 No. 3 Crime Lab Report dated 8/5/94 9 No. 4 Evidence Label 9 No. 5 Incident Report No. 94010387 - Page 1 25 No. 6 Master Card Detail Listing - M8603791 - Page 1 80 No. 7 Property Record - Page 1 80 No. 8 Property Detail Listing 97 No. 9 Booking Sheet dated 8/5/94 120 No. 10 Docket Sheet 206</p>	<p>have you hanging at the door. I don't feel comfortable with you here. Please.</p> <p>MS. FAHEY: Sure. There is only going to be one deposition at a time. Lieutenant Johnson is here. He is a party. Normally the party has a right to be here and just listen, not participate in the deposition.</p> <p>MR. ELBERY: Here's the problem. This is sequestration. He's going to hear the questions in advance, and he's going to hear his answers. I don't want that. I want him out of here.</p> <p>MS. FAHEY: Then he's --</p> <p>MR. ELBERY: I don't want --</p> <p>MS. FAHEY: Then he's willing to leave.</p> <p>So we'll just let you know as soon as it's your time. Will you close the door, please?</p> <p>MR. JOHNSON: Yup. (Chester G. Johnson not present)</p> <p>MS. FAHEY: And then, before we begin, you'd asked me off the record, Mike, about what we brought to the deposition. And, in</p>

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compliance with the subpoena to Lieutenant Hurley, he has brought a legible copy of -- actually, this is an original.  
 MR. HURLEY: It's an original.  
 MS. FAHEY: He's brought the original of --  
 MR. ELBERY: Okay. If I can see that?  
 MS. FAHEY: -- what you'd asked; and I'd have what came with the subpoena marked, as well as the original.  
 MR. ELBERY: That was the one on paper?  
 MS. FAHEY: And this is a legible copy of another one you wanted.  
 MR. ELBERY: Okay. At lunchtime I'll make copies of these. Is that a deal?  
 MS. FAHEY: Well, let's just have it all marked now.  
 MR. ELBERY: Okay. Mark it.  
 MS. FAHEY: All right.  
 MR. ELBERY: Okay. If you want to mark it.  
 MS. FAHEY: And this is the

1 attached to the lieutenant's deposition notice,  
 2 to bring a legible copy of. No. 3 he was  
 3 requested to bring a legible copy of. And No. 4  
 4 he was requested to bring a legible copy of. We  
 5 can't make one to the plaintiff's satisfaction,  
 6 so we brought the original, which I will be  
 7 leaving with.  
 8 MR. ELBERY: Are we ready?  
 9 JAMES J. HURLEY, a witness called  
 10 on behalf of the plaintiff, first having been  
 11 duly sworn, on oath deposes and says as follows:  
 12 EXAMINATION BY MR. ELBERY  
 13 Q. Lieutenant Hurley, it's not sergeant;  
 14 it's lieutenant now?  
 15 A. Lieutenant.  
 16 Q. Okay. You got a promotion when?  
 17 A. Three years ago.  
 18 Q. Okay. Can you give me your full name,  
 19 sir?  
 20 A. James J. Hurley.  
 21 Q. Okay. And you're a lieutenant in the  
 22 Shrewsbury Police Department?  
 23 A. That's correct.  
 24 Q. When did you start working for the

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original. I'm going to keep custody of the original.  
 MR. HURLEY: You can have that one.  
 MS. FAHEY: I have this one.  
 MR. HURLEY: This is the original.  
 MS. FAHEY: This one, this is the original, which you have been complaining that we've been covering up and not been able to produce. We cannot make a copy of this to your satisfaction. So I brought this original, which you cannot keep, but which you can inspect and you can try to make your own copy.  
 MR. ELBERY: Can we do this at lunchtime? We're not going to waste any time doing that, and I'll make copies at lunchtime. Is that agreeable?  
 MS. FAHEY: We'll have all four marked now.  
 MR. ELBERY: Okay.  
 MS. FAHEY: And then you can make copies at your leisure.  
 MR. ELBERY: Good. Thank you.  
 MR. HURLEY: So I'm in compliance

1 Shrewsbury Police Department?  
 2 A. April 13, 1986, on or about.  
 3 Q. Okay. And when did you get promoted to  
 4 sergeant?  
 5 A. On or about 1989.  
 6 Q. Okay. What's your date of birth?  
 7 A. 3/19/62.  
 8 Q. That makes you what, 37?  
 9 A. That's correct.  
 10 Q. What's your educational background?  
 11 A. I graduated St. John's High School in  
 12 Shrewsbury. I have a bachelor's degree from  
 13 Worcester State College in Worcester. And I have  
 14 a master's degree in criminology from Anna Maria  
 15 College in Paxton. And I'm a graduate of New  
 16 England Institute for Law Enforcement, executive  
 17 at Babson College.  
 18 Q. Interesting. I went to Babson myself. I  
 19 have an M.B.A. from that college.  
 20 Police training, tell me about  
 21 your police training over the years.  
 22 A. Specifically?  
 23 Q. Are you trained in the U.S.  
 24 Constitution? Do they train you in relation to

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with the subpoena.  
 MR. ELBERY: I didn't hear that.  
 MS. FAHEY: All these documents were requested, I think, at least for Lieutenant Johnson's deposition.  
 MR. ELBERY: Yes.  
 MS. FAHEY: So those are produced Lieutenant Hurley's deposition, but it's for the deponents from the Shrewsbury Police Department.  
 MR. ELBERY: Yes.  
 (Exhibit No. 1 Rights Form Label marked for identification)  
 (Exhibit No. 2 Statement of Rights dated 8/5/94 marked for identification)  
 (Exhibit No. 3 Crime Lab Report dated 8/5/94 marked for identification)  
 (Exhibit No. 4 Evidence Label marked for identification)  
 MS. FAHEY: And, just for the plaintiff, the plaintiff can keep the original of it 1, which was requested by Exhibit 2,

1 the law of the land, which is the U.S.  
 2 Constitution?  
 3 A. I have received training in Massachusetts  
 4 criminal law at the Massachusetts Criminal  
 5 Justice Training Council Academy in Fall River.  
 6 Q. Do they teach you about the U.S.  
 7 Constitution in relation to the Fourth Amendment  
 8 and the Fourteenth Amendment?  
 9 A. Yes.  
 10 Q. Okay. Do they teach you Massachusetts  
 11 state law?  
 12 A. Yes.  
 13 Q. Okay. Do they teach you the gun laws?  
 14 A. I don't remember.  
 15 Q. Are you familiar with Chapter 140 of the  
 16 Massachusetts Code, General Laws, Massachusetts  
 17 Code?  
 18 A. Somewhat, yes.  
 19 Q. Somewhat?  
 20 A. Yes.  
 21 Q. You're an officer of the law. You're  
 22 supposed to be familiar with all the laws, aren't  
 23 you? Are you not supposed to be familiar with  
 24 all the laws?

<p>Page 13</p> <p>1 A. I do not know all the laws of the 2 Commonwealth, no. 3 Q. Have you been trained in relation to 4 Chapter 269 of the Massachusetts General Laws? 5 A. I have received some training in that, 6 yes. 7 Q. Are you familiar with the set of laws 8 269, Chapter 269? 9 A. Some of it, yes. 10 Q. Are you telling me you're ignorant of the 11 gun laws? 12 MS. FAHEY: Objection. Form. 13 Q. You don't know all the Massachusetts gun 14 laws? 15 A. No. Not off the top of my head I don't. 16 Q. You're not familiar with the 17 Massachusetts gun laws? 18 MS. FAHEY: Objection. Asked and 19 answered. 20 Q. Okay. Answer the question. 21 MS. FAHEY: You can answer. 22 A. I am familiar with Chapter 269, 10A, 23 requires a mandatory one year, possession of a 24 firearm. As to Chapter 269, Section 1, I cannot</p>	<p>Page 16</p> <p>1 that's on Route 9 in Shrewsbury. 2 Are you familiar with that 3 location and that fire? 4 A. Yes, I am. 5 Q. Okay. Do you remember that those -- 6 those dates in relation to that fire? 7 A. I have somewhat of a recollection, yes. 8 Q. Okay. Tell me all the activities that 9 you engaged in back then. 10 A. Morning of the fire, to the best of my 11 recollection -- 12 Q. What morning would that be? On the 4th? 13 On the 5th? 14 A. Let me see the report. August 5, 1994. 15 Q. August 5, 1994? 16 A. Yes. 17 Q. Okay. Okay. Can you tune me in to the 18 time? You said "morning." Are we talking 19 11 a.m. or 1 a.m.? 20 A. I don't recall. 21 Q. Okay. Give me your answer. What were 22 you doing? 23 A. I was contacted to go to the E-Z Mini 24 Storage.</p>
<p>Page 14</p> <p>1 tell you anything about that. I am familiar with 2 some of the Massachusetts General Laws regarding 3 firearms. 4 Q. Okay. Do you know somebody named 5 "Hulagu" or "Ogidi"? 6 MS. FAHEY: Can you spell those, 7 please, "Hulagu" or "Ogidi"? 8 Q. Are you familiar with those names? 9 MS. FAHEY: Can you spell those, 10 please? 11 MR. ELBERY: I can't, not right 12 now, but I will. 13 A. I am not familiar with that pronunciation 14 of any name that I can recall at this time. 15 Q. Okay. How about "Tamelain," are you 16 familiar with that name? 17 A. That pronunciation, at this time I have 18 no recollection of any name, no. 19 Q. Okay. Let me ask you this: Did you 20 testify at a grand jury against me within the 21 last two months? 22 A. No. 23 Q. Do you know of any indictment procedures 24 against me that are ongoing right now?</p>	<p>Page 17</p> <p>1 Q. Okay. Who contacted you? 2 A. I don't recall. 3 Q. Okay. Were you on duty? 4 A. Yes, I was. 5 Q. Okay. What time -- when did you get on 6 duty on that particular day? 7 A. My assigned hours would have been 7:45 to 8 4:15. 9 Q. Okay. So you would have been contacted 10 after you started, got on duty, or before that? 11 You would have been contacted when you got to the 12 Shrewsbury Police Department? 13 A. I was contacted when I got to the police 14 department; that's correct. 15 Q. Okay. So it would be after 7:45 or 16 thereabouts, correct? 17 A. That's correct. 18 Q. Okay. So you were told to go to the E-Z 19 Mini Storage, right? 20 A. That's correct. 21 Q. Okay. Was it called "The Lock Up" then 22 or "E-Z Mini Storage"? 23 A. I don't recall. 24 Q. Okay. But we know what we're talking</p>
<p>Page 15</p> <p>1 A. I am unaware of any indictment procedure 2 at this time. 3 Q. Have you been in contact with somebody 4 named "Louis Aloise"? 5 A. I know Louis Aloise. I have seen Louis 6 Aloise at a courthouse over the period of the 7 past five years. I have no direct recollection, 8 nor do I recall any conversation regarding him. 9 Q. Has anybody acted as an intermediary 10 between you and Louis Aloise? 11 A. No. 12 Q. Has there been any conversation between 13 you and any other person regarding Louis Aloise 14 in relationship to me? 15 A. No. Not to the best of my recollection. 16 Q. Okay. Okay. Now, I'm going to bring you 17 back in time here. We're going back, way back to 18 8/4/94. We're going to go through to 8/5/94. 19 Okay. That's August 4th of 1994 and August 5th 20 of 1994. These questions are going to be in 21 relation to you, and I want you to tell me all 22 your activities that you were engaged in on those 23 two days relating to the fire at E-Z Mini 24 Storage, which is also known as "The Lock Up"</p>	<p>Page 18</p> <p>1 about. It's synonymous. One's the same as the 2 other, right? 3 A. I know The Lock Up one on Boston Turnpike 4 also is E-Z Mini Storage. 5 Q. Okay. Very good. Tell me what you did, 6 Lieutenant Hurley, on that day. 7 A. I arrived. I was assigned to collect 8 evidence and photograph storage bins. 9 Q. You were told to photograph storage bins? 10 A. That's correct. 11 Q. And how did you do that, with a camera or 12 a video camera? 13 A. I believe we used both. 14 Q. Okay. You used both. Okay. What else 15 did you do? 16 A. I photoed the bins, took the evidence 17 from officers. They gave it to me. 18 Q. From officers? 19 A. Officers. Any officer who was at the 20 scene -- 21 Q. Yes. Okay. 22 A. -- who gave me evidence. And I would tag 23 it and record it. 24 Q. Okay. And where's all that? Where's all</p>

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1 that evidence?

2 A. It would be at the Shrewsbury Police

3 Department.

4 Q. Okay.

5 A. It would have been brought to the

6 Shrewsbury Police Department. Its whereabouts

7 now, I don't know.

8 Q. And how's that organized? Under incident

9 number, is it not?

10 A. It's organized -- in 1994 it was

11 organized under incident numbers and evidence

12 numbers.

13 Q. Okay. So all that should be under

14 94010387, right?

15 A. To the best of my knowledge, yes.

16 Q. Okay. But I haven't received any of that

17 evidence, have I?

18 A. I don't understand what evidence you're

19 looking for.

20 Q. That evidence.

21 A. What evidence?

22 Q. That evidence of 94010387, which is in

23 answer to my --

24 A. No. I have 94010436.

Page 20

1 Q. That's the incident of the arrest of

2 Michael Elbery, is it not?

3 A. That's correct.

4 Q. But that's not -- that's not the --

5 that's not the -- that's not the E-Z Lock Up

6 incident. Sir, I'm going to present to you a

7 document here; and it's got on it Incident

8 94010387. I want you to review it, and I want

9 you to tell me what that incident report relating

10 to this number pertains to.

11 MS. FAHEY: Can we have this

12 marked as the next exhibit?

13 MR. ELBERY: No. Because I'm

14 taking it back. That's the only one I got.

15 MS. FAHEY: I know. We can make a

16 copy of it.

17 MR. ELBERY: Oh, we can certainly

18 make a copy, of course.

19 MS. FAHEY: Just mark it as

20 Exhibit 5, I guess.

21 Q. Your answer?

22 A. Can you repeat the question?

23 Q. The question is -- the question is --

24 may I see that list?

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1 To repeat, the question is: This

2 document, which is a Shrewsbury Police Department

3 incident report, is No. 94010387. It relates to

4 what incident? Does it not relate to the fire at

5 E-Z Mini Storage as opposed to 94010436, which is

6 the arrest of Michael Elbery?

7 Let me point something out to you,

8 Lieutenant Hurley. Could you read that line

9 right there?

10 A. Am I permitted to answer the first

11 question?

12 MS. FAHEY: I guess so. And

13 answer this last one.

14 THE WITNESS: will you just note

15 that I wasn't allowed to answer the question?

16 MS. FAHEY: Yup.

17 Q. You're allowed to answer the question.

18 You're going to answer all the questions. You're

19 avoiding the answer. You're avoiding the

20 answer.

21 A. Can I answer the first question?

22 MS. FAHEY: Sure.

23 MR. ELBERY: Liz, this is going to

24 take a long time if we are going to take this

Page 22

1 method.

2 MS. FAHEY: You haven't given him

3 a chance to answer any of these last questions

4 you've asked him. Can he just answer the

5 question?

6 MR. ELBERY: He's been flipping

7 pages now for five minutes.

8 MS. FAHEY: He hasn't flipped a

9 thing.

10 MR. ELBERY: He hasn't? I've been

11 watching him.

12 Could you, reporter, make note

13 that Lieutenant Hurley is delaying, and he's been

14 flipping the same report now for five minutes?

15 MS. FAHEY: Objection. That is

16 absolutely false, Mike; and I'm not going to stay

17 here if you are going --

18 MR. ELBERY: We will take a watch

19 and time the guy if this keeps up.

20 MS. FAHEY: The first question,

21 which is --

22 Q. What does that incident number, that

23 Incident Report 94010 --

24 MS. FAHEY: 387?

Page 23

1 A. 387 refers to --

2 Q. What incident?

3 A. E-Z Mini Storage fire. It is also

4 cross-referenced to the arrest of Robert Breen

5 and --

6 Q. No, no. There's two different reports

7 there. You're going to the second report. It

8 has nothing to do with Breen. You're on 9401 --

9 you're on the next report.

10 MS. FAHEY: Can he just finish his

11 answer?

12 MR. ELBERY: That's not the --

13 he's doing it wrong. He's trying to

14 deliberately --

15 A. There's a note that there were two

16 reports given to me.

17 Q. There's another report between 387 --

18 it's called 94013371 and that's the one with

19 Breen. Please, Lieutenant Hurley, don't go to

20 that report. Tell the court reporter -- you

21 already said that 94010387 pertains to the E-Z

22 Mini fire; am I right?

23 A. That's correct.

24 Q. Okay. Just these pages, sir, you tell me

Page 24

1 what -- if you want to go on and describe it, go

2 ahead. But those pages, please, and tell the

3 reporter, sir, whether there's anything in those

4 pages, in that report, about Robert Breen? Is

5 there anything there about Robert Breen?

6 A. Not having read the report in its

7 entirety, the eight pages, which I'm presented

8 with, I do not know on cursory, but --

9 Q. But you didn't have any problem making a

10 cursory review of the report and saying Breen?

11 MS. FAHEY: Can you please not

12 interrupt him? Let him finish his answer.

13 A. Making a cursory review of the report, I

14 do not see Mr. Breen's name appearing in

15 94010387.

16 Q. Are you done with that report?

17 A. I'll need to refer to it if there are any

18 other questions about it.

19 Q. You're entitled to that. You're entitled

20 to that. You're entitled to that. We want to

21 make it as easy as possible for you. Okay.

22 MS. FAHEY: I thought you were

23 agreeable to having that marked?

24 MR. ELBERY: Yes. Do you want to

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1 mark it right now? Where are you going to keep  
2 it?  
3 MS. FAHEY: You can have it back,  
4 and we can put it on the floor here or the chair  
5 just so we know to make a Xerox copy of it.  
6 MR. ELBERY: Oh, all right.  
7 (Exhibit No. 5 Incident Report  
8 No. 94010387 - Page 1 marked for  
9 identification)  
10 MS. FAHEY: For the record, this  
11 page 1 is contained within a letter dated  
12 March 6, 1998, from Brad Louison to Michael  
13 Elbery enclosing the defendants' response to the  
14 plaintiff's first request for the production of  
15 documents.  
16 Q. Okay. Lieutenant Hurley, do you have a  
17 copy of the Shrewsbury Police Department Incident  
18 94010436?  
19 A. Yes, I do.  
20 Q. Okay. And what does -- what is that  
21 incident and what was the date of the incident?  
22 A. The date of the incident is 8/5/94, and  
23 it's the arrest of Michael G. Elbery,  
24 31B Chilmark Street, Worcester, date of birth

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1 2/8/52.  
2 Q. Okay. So you know where I lived on this  
3 date, right? You didn't have any problem with  
4 that, right?  
5 A. I have an address here that was for you  
6 on that date.  
7 Q. You wrote that report up, right?  
8 A. No, not the initial. I wrote up the  
9 supplemental report, which begins on page 2.  
10 Q. Who wrote that? Who wrote that report?  
11 MS. FAHEY: The first page? The  
12 first page?  
13 MR. ELBERY: No. The report.  
14 Q. I mean, there's more than one page to the  
15 report; is there not?  
16 A. Correct, there are.  
17 Q. Who wrote that?  
18 A. There are --  
19 Q. Who wrote the report?  
20 A. There are seven pages to the report. It  
21 appears that, according to the narrative  
22 indication on the page, Lieutenant A. Wayne  
23 Sampson wrote page 1 through page 2. And the  
24 narrative indicates that Sergeant J. Hurley added

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1 a supplement to this report, which goes from  
2 page 2 through page 7.  
3 Q. Getting back to the property, the  
4 evidence that you got from the various officers  
5 at E-Z Mini Storage, you collected evidence?  
6 A. Yes. Anything that was brought to me --  
7 Q. Okay.  
8 A. -- it was tagged.  
9 Q. Well, you're the property officer, the  
10 evidence officer, are you not?  
11 A. I'm the evidence officer of the police  
12 department, yes.  
13 Q. Okay. So any evidence you catalog and  
14 categorize?  
15 A. That would be given to me, yes, I would.  
16 Q. Okay. Well, what if it wasn't given to  
17 you, would it ever go to a court of law? Would  
18 evidence that an officer has that didn't go to  
19 you, would it ever -- could it be presented to a  
20 court of law by the Shrewsbury Police Department?  
21 MS. FAHEY: Objection. It calls  
22 for a hypothetical.  
23 Q. Oh, no. Answer the question. That's not  
24 a hypothetical at all.

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1 A. Yes.  
2 Q. What -- the answer is: Yes. It would go  
3 to a court of law even though it didn't go  
4 through you?  
5 A. The question was: Could it go to a court  
6 of law? And the answer was: Yes.  
7 Q. Okay. Let me ask you another question.  
8 All evidence that is produced by the Shrewsbury  
9 Police Department, is it cataloged? Is it  
10 categorized and cataloged by you?  
11 A. The answer would be: Any evidence which  
12 I give out from the property in evidence room is  
13 cataloged and categorized by myself.  
14 Q. That's not what I asked you.  
15 A. I can't speak -- I can't speak on behalf  
16 of the entire agency.  
17 Q. There's a criminal case against the  
18 defendant. And the evidence that the Shrewsbury  
19 Police Department has relating to that case  
20 against that defendant, does it have to be  
21 cataloged by you?  
22 A. No.  
23 Q. Does it have to be handled by you, filed  
24 by you, indexed by you?

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1 A. No, to categorized. No, to filed. No,  
2 to indexed. Not on all occasions.  
3 Q. On which occasions?  
4 A. I don't -- I don't understand the  
5 question.  
6 Q. You just said, "Not on all occasions."  
7 I'm asking you which occasions?  
8 A. Which occasions for what?  
9 Q. Which occasions does it have to go  
10 through you? Does the evidence have to be  
11 cataloged, categorized, and indexed by you before  
12 it can be presented before a court of law against  
13 that criminal defendant?  
14 A. When an officer brings evidence to me and  
15 turns it in, I categorize it. I put it into the  
16 property in evidence room.  
17 Q. And when would you do that? All evidence  
18 is presented against a defendant or just  
19 sometimes?  
20 A. The majority of cases go through me.  
21 There are cases that do not go through me where  
22 evidence is used in court.  
23 Q. And why would that happen? Would it get  
24 an E number, a property ID number?

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1 A. The first question, Why would this  
2 happen, various circumstances dictate that.  
3 Would it get an E number, the second question, if  
4 the officer does not present it to me, it's not  
5 entered into the property in evidence log at the  
6 station. No. It would not have any number.  
7 Q. So what about the chain that's required?  
8 That would be lost, right?  
9 A. If it is not presented to me, there would  
10 be no chain of custody through the evidence  
11 officer at the station.  
12 Q. So what would the arresting officer do,  
13 keep the evidence in his back pocket all that  
14 time?  
15 A. No.  
16 Q. Is it put in the Shrewsbury Police  
17 Department? Is it kept with the DA's office?  
18 What does he do with this evidence?  
19 A. Could be left at the Shrewsbury Police  
20 Department. The second question, could it be  
21 kept at the DA's office, yes, it could be kept at  
22 that location.  
23 Q. Where else?  
24 A. Can't answer that.

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1 Q. Why not?  
 2 A. I have never kept evidence outside of the  
 3 property in evidence room, so I don't know the  
 4 answer.  
 5 Q. Okay. Going back to E-Z Mini Storage, on  
 6 8/4, 8/5/94, the evidence that was given to you  
 7 at that incident, at that fire at E-Z, on that  
 8 date, was that evidence filed under 9401387?  
 9 A. 9401387?  
 10 MS. FAHEY: 94010387, I think.  
 11 Q. Right. 94010387? That's that exhibit  
 12 right there. It was filed under that exhibit,  
 13 right?  
 14 A. I don't recall whether the fire evidence  
 15 was filed under this number or not.  
 16 Q. Well, what other number would it be filed  
 17 under?  
 18 A. It could have possibly gone under  
 19 94010436, or it could have gone with the fire  
 20 department.  
 21 Q. Let me ask you this: An incident number  
 22 such as 94010436, all the evidence that you  
 23 collect that's given to you, that you collect,  
 24 okay, each piece of evidence has a separate

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1 number, a DXX number, but they all have the same  
 2 property ID number; is that correct?  
 3 A. The answer to the first question, the DXX  
 4 number, at the time that the evidence was taken  
 5 in under 94010436, they did not receive a DXX  
 6 number.  
 7 Q. They didn't, huh?  
 8 A. No.  
 9 Q. Would all the evidence that was collected  
 10 for that Incident Report 94010436 have the same  
 11 property ID number?  
 12 A. Our property ID number at that time would  
 13 have been an E number.  
 14 Q. An E number. They start with "E"?  
 15 A. Correct?  
 16 Q. Everything that was taken from that  
 17 incident would start with that same E number; am  
 18 I right?  
 19 A. To the best of my recollection, they  
 20 would have been sequential going with each piece  
 21 of evidence, to the best of my recollection.  
 22 Q. So each piece of evidence would have a  
 23 different E number; is that what you're trying to  
 24 tell me?

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1 A. To the best of my recollection, yes, at  
 2 that time.  
 3 Q. Okay. Tell me, going back to 8/4/94,  
 4 8/5/94, E-Z Mini Storage, what you did in  
 5 relation to the arrest of Michael Elbery? For  
 6 the arrest of Michael Elbery, what was your  
 7 function?  
 8 A. My primary function at that point was I  
 9 tagged in the firearms that were located in  
 10 Michael Elbery's storage bin.  
 11 Q. What else?  
 12 A. That's the -- I don't recall any other  
 13 functions that I undertook at that point. I was  
 14 primarily assigned to the logging of evidence.  
 15 Q. All right. What did you see Michael  
 16 Elbery do that day? What did you see Michael  
 17 Elbery -- done to Michael Elbery that day?  
 18 A. What did I see Michael Elbery do, for the  
 19 first question, I saw Michael Elbery stand near  
 20 the fence; and I had a conversation with Michael  
 21 Elbery at the fence. And I also saw Michael  
 22 Elbery taken into custody at E-Z Mini Storage.  
 23 Q. Okay. "Taken into custody." You saw him  
 24 arrested?

1 A. Correct.  
 2 Q. Where?  
 3 A. Inside the fence at E-Z Mini Storage.  
 4 Q. Whereabouts?  
 5 A. Near the building that was burned.  
 6 Q. What time?  
 7 A. I don't recall.  
 8 Q. Who else was there?  
 9 A. To the best of my recollection, I know  
 10 Lieutenant A. Wayne Sampson was there. I don't  
 11 remember whether there were others present.  
 12 Q. What did you hear him say to Michael  
 13 Elbery?  
 14 A. To the best of my recollection, it was:  
 15 You're being placed under arrest for illegal  
 16 possession of firearms.  
 17 Q. What did Michael Elbery say to them?  
 18 A. I don't recall.  
 19 Q. What else did Michael Elbery say that day  
 20 that you heard?  
 21 A. Michael Elbery stated to me, at the  
 22 fence, that he was a convicted felon, and he  
 23 can't do anything anymore.  
 24 Q. What else did he say?

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1 A. That's it. That's all I recall.  
 2 Q. What did you say before that?  
 3 A. I believe I said, There appear to be some  
 4 guns in your storage bin, Michael.  
 5 Q. Could you repeat that again for the  
 6 reporter? What did you say to Michael Elbery  
 7 before he made a reply?  
 8 A. I said, I believe there are some guns in  
 9 your storage bin, Michael.  
 10 Q. And where was Michael at that time?  
 11 A. On the other side of the fence.  
 12 Q. And where were you?  
 13 A. I was inside the fence at E-Z Mini  
 14 Storage.  
 15 Q. How far away were you?  
 16 A. Approximately the distance we are now,  
 17 maybe even closer.  
 18 Q. Did you hear anybody else say anything to  
 19 Michael Elbery that day?  
 20 A. Not to the best of my recollection, no.  
 21 Q. What about after that?  
 22 A. Not to the best of my recollection. I  
 23 don't recall the conversations.  
 24 Q. You don't remember anything?

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1 A. Not to the best of my recollection at  
 2 this time.  
 3 Q. What about after he was arrested, after  
 4 Michael Elbery was arrested, what did -- did you  
 5 hear him say anything?  
 6 A. There was some conversation between you,  
 7 Michael Elbery, and myself on the way to court  
 8 that I recall, transporting you to court.  
 9 Q. What was the conversation, do you  
 10 remember?  
 11 A. I don't recall. I recall we talked in  
 12 the car on the way over.  
 13 Q. Okay. You don't remember what you said?  
 14 A. Correct.  
 15 Q. And you don't remember what I said?  
 16 A. To the best of my recollection.  
 17 Q. What about after that, any -- do you  
 18 remember any conversation after that that you had  
 19 with him?  
 20 A. Yes. We had a deposition in Boston.  
 21 Q. Okay. Okay. So everything in the  
 22 deposition will be recorded. Anything after the  
 23 deposition that you remember was said between you  
 24 and I?

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1 A. Yes. When we were talking, you asked why  
2 I was at the deposition. Attorney Fahey stated  
3 because I was a party. I had a right to be  
4 there. And you stated that I was a  
5 coconspirator.

6 Out in the hallway here you asked  
7 me or Elizabeth Fahey, my attorney, if we had the  
8 documentation that you requested; and you asked  
9 if it was the real documentation or the cover-up  
10 documentation.

11 Q. Okay. And is it the real documentation  
12 or the cover-up documentation?

13 A. There was no cover-up documentation.  
14 There was -- it is only real documentation.

15 Q. That's what you said. Okay. Now, let me  
16 go back to 8/4, 8/5/94. You had Michael Elbery  
17 locked up in a five-by-seven jail for three days;  
18 am I correct?

19 A. I don't recall that it was three days.

20 Q. How many days?

21 A. I don't recall.

22 Q. Okay.

23 A. I don't have a calendar in front of me.

24 Q. Do you recall that you had him locked up?

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1 A. Michael Elbery was arrested on 8/5/94.

2 Q. Okay. What did you hear him say during  
3 that period of time in that jail, anything?

4 A. I don't recall any conversation.

5 Q. Did you talk to him?

6 A. At this point, I don't have any memory of  
7 that.

8 Q. What did you do in terms of investigation  
9 of those guns?

10 A. They were tagged and put into property in  
11 evidence, brought to the State Police Fingerprint  
12 Lab in Leominster, and later brought to the State  
13 Police Ballistic Lab in Boston.

14 Q. Okay. Did you link those guns to any  
15 major crimes through the ballistic tests, to any  
16 Brink's robberies or anything like that or any  
17 murders? What was the result of those tests?

18 A. The results of the test that I received  
19 were that they're firearms as prescribed under  
20 Massachusetts Law.

21 Q. As prescribed by -- there's a  
22 Massachusetts law that prescribes guns?

23 A. That's my understanding of it, yes. They  
24 were certified as being firearms under

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1 Massachusetts law.

2 Q. You mean they were handguns?

3 MS. FAHEY: Proscribe I think  
4 you're meaning.

5 Q. "Proscribe" means stop?

6 A. They were certified that they were  
7 firearms, and I received a certificate for that.

8 Q. How enlightening, such revelations. And  
9 you did all that testing, all that energy, for  
10 the cops to tell you that they were guns, that  
11 they were firearms? Come, come, Lieutenant  
12 Hurley. What was the objective of all those  
13 tests?

14 A. The objective of the test, as required  
15 for prosecution of a court case, is we need  
16 certification that the weapon is fireable; and  
17 that is certification done by the state police at  
18 the ballistic lab.

19 Q. Okay. What do they do the ballistic test  
20 for?

21 A. To receive a certificate to show that the  
22 firearms can operate and even, in fact, it can  
23 fire projectiles.

24 Q. They do a ballistic test to determine

1 that, in fact, the firearm is operable; is that  
2 what you're telling the court?

3 A. If you're asking me what a "ballistic  
4 test" is, the ballistic test is done at the lab.  
5 I cannot answer that.

6 Q. Did you not just tell me that they do a  
7 ballistic test on those guns?

8 A. I give them the guns. I go back later  
9 and I pick up the guns.

10 Q. They do a ballistic test --

11 A. Take finger --

12 MS. FAHEY: Can he finish the  
13 answer? Don't interrupt the witness.

14 A. I don't -- I don't know their particular  
15 day. They give me the guns back, and they give  
16 me certification from the ballistic unit of the  
17 state police saying that these weapons that I  
18 turned in are firearms that can fire projectiles.

19 Q. Did they do a ballistic test?

20 A. I have no knowledge of it.

21 Q. Well, you just said two seconds ago that  
22 they did?

23 A. You're asking me if they did a ballistic  
24 test. I am telling you that the weapons were

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1 test fired. If that is a ballistic test, then  
2 yes.

3 Q. You said -- and the reporter has it  
4 down. You said that they did a ballistic test.  
5 Now you're changing your answer.

6 A. I'm not changing my answer.

7 MS. FAHEY: There's no question  
8 before you. You don't need to estimate.

9 Q. Are you telling me they didn't do a  
10 ballistic test or they did do a ballistic test?

11 A. I'm telling you they test fired the  
12 weapon at the ballistic lab. That is what I  
13 understand is a ballistic test.

14 Q. Are you telling me two minutes ago you  
15 didn't say that they did a ballistic test?

16 A. I said two minutes ago they test fired  
17 the weapons at the lab, and I consider that a  
18 ballistic test.

19 Q. That's not what you said. Okay. Did you  
20 take any notes on 8/5, 8/4/94 at E-Z relating to  
21 my arrest and the arson?

22 A. I don't recall.

23 Q. Oh, would you normally take notes?

24 A. On most crime scenes, yes, I would. I

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1 would take evidence notes, which would then be  
2 transcribed into the property in evidence record.

3 Q. Well, what happened to the notes?

4 A. They would have been transcribed in the  
5 reports that were given to me.

6 Q. Well, where are they now? I don't see a  
7 transcription now.

8 A. I gave you a copy of the evidence report.

9 Q. This is just a listing of items. There's  
10 no notes.

11 A. That's what I would have at the scene.

12 That's the item as it came to me. If I took  
13 notes on that day, I have no memory of it at this  
14 time.

15 Q. Okay.

16 A. Specifically I took no notes on 8/4.

17 Q. 8/4. Well, you -- what about 8/5, did  
18 you take notes on 8/5?

19 A. I was there on 8/5. I don't recall  
20 taking any notes at this time.

21 Q. Okay. What questions did you ask of  
22 other people that were around the scene there at  
23 E-Z back on August 5th of '94 or August 6th of  
24 '94? Did you interview anybody else on those

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Did you question anybody besides me, anybody that you didn't arrest, any citizen? Did you question anybody, interview anybody?

A. I was not involved in the investigation. I handled the property.

Q. Okay. Who were the investigating people from that -- who investigated?

A. The primary investigator from the police department would have been at that time Sergeant Chester Johnson, now Lieutenant Chester Johnson, and fire officials.

Q. Okay. Now, you're talking -- you're talking about the arson, the E-Z fire? Are you talking about the arrest of Michael Elbery or the E-Z fire?

A. I'm talking about the E-Z fire.

Q. Okay. What about -- what about questions -- you were the complaining officer regarding the arrest of Michael Elbery, weren't you?

A. Do we have that document? I thought it was Lieutenant Sampson.

Q. 436, you got it right there, sir. It says you're the complainant. What questions and interviews did you do pertaining to the arrest of Michael Elbery?

MS. FAHEY: Can you ask him, please, one question at a time and let him answer?

A. I don't see anywhere on here that that indicates that I was the complainant. I submitted a supplemental report, listing my activities on that day, to Lieutenant A. Wayne Sampson's report.

Q. Okay. What about the other documents, the application for arrest and the numerous proliferation of documents that result from an arrest that -- before a summons is issued or a warrant is issued, does your name appear as complainant?

A. I don't recall. I was under the impression it was Lieutenant Sampson.

Q. You recall Lieutenant Sampson being the complainant?

A. The complaint is computer generated; and, coming from this, where he is listed as primary

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1 an important case. It was very controversial; am  
2 I right?  
3 A. Would disagree with the fact that it was  
4 controversial. There would have been  
5 conversation if somebody asked me what was going  
6 on or a supervisor who I brought in.  
7 Q. Okay. Because the case -- although  
8 Michael Elbery was arrested on 8/5/94, the case  
9 didn't conclude until April of '95; am I correct?  
10 A. That's sounds correct.  
11 Q. So you would have had -- you were  
12 involved in that arrest, right?  
13 A. As far as taking property A evidence,  
14 yes.  
15 Q. So you would have had numerous  
16 conversations, am I right or wrong, because there  
17 was a suppression hearing, and there was a  
18 discovery -- criminal discovery under Mass. Law?  
19 So you would have been involved somewhat with  
20 that; am I right?  
21 A. Somewhat.  
22 Q. Okay. And do you remember any of those  
23 conversations relating to this case, the arrest  
24 of Michael Elbery for guns?

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1 A. To the best of my memory, the only  
2 conversation I can recall was then police chief  
3 Robert McGinley requesting me -- strike that --  
4 requesting someone to look up -- several months  
5 after your arrest, to look up and see whether  
6 there was an FID card issued by the Shrewsbury  
7 Police Department.  
8 Q. How long ago -- how many months would  
9 that have been after the arrest, what date?  
10 A. Several.  
11 Q. Several months. Okay. Did you see  
12 anybody else taking pictures or videos that day  
13 in and around E-Z Mini Storage or several days  
14 following this fire on 8/4/94?  
15 A. I was assisted at the scene by one  
16 officer. I don't recall who it was who also took  
17 pictures. Other than that, I don't have any  
18 memory of whether it made the news or whether the  
19 company videot or fire department. I have no  
20 memory of that.  
21 Q. You didn't see the fire department taking  
22 pictures?  
23 A. I have no memory of it.  
24 Q. All right. Staying back at 8/4/94,

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relative, it's my understanding that he would  
have been the complainant. I have no direct  
recollection of seeing the complaint --

What does --  
-- application.

What does "complainant" mean?

The individual requesting the action from  
court.

Okay. Did you investigate or question  
anybody about the arrest of Michael Elbery on  
8/5/94?

Not to the best of my knowledge.

Did you talk to any other officers on the  
Shrewsbury Police Department about the arrest of  
Michael Elbery on 8/5/94?

I'm sure there were some conversations in  
anyway, etc. I don't have any direct  
recollection of it.

That sounds like a contradiction,  
right?

Maybe I shouldn't say knowledge. I  
don't have any memory of it.

You don't remember. As a matter of  
fact, there must have been because it was

1 8/5/94, the E-Z Mini fire and the arrest of  
2 Michael Elbery, because they're two events that  
3 are almost at the same time. Can you tell me all  
4 the conversations you had -- I guess in your case  
5 it would be 8/5 because you said you didn't get  
6 there until 8/5/94; is that correct?

MS. FAHEY: Objection.

A. I did not --

MS. FAHEY: Form. You can  
answer.

A. I did not arrive at the E-Z Mini Storage  
fire, nor was I aware it had occurred until  
8/5 --

Q. So from --

A. -- 94.

Q. Can you tell me all the conversations you  
had from 8/5/94 onwards after -- and after that  
regarding the E-Z arson and the arrest of Michael  
Elbery for the guns --

MS. FAHEY: Objection. Asked and  
answered.

MR. ELBERY: well, I haven't  
finished. Let me finish.

Q. -- with E-Z Mini Storage or The Lock Up

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1 employees?  
 2 A. No. I couldn't recall all of those.  
 3 Q. Did you have any conversations with the  
 4 E-Z Mini Storage people, Lock Up employees,  
 5 either management or employees or the owner?  
 6 A. To the best of my knowledge, at this time  
 7 I don't recall any conversations with him.  
 8 Q. Okay. How about the same question but to  
 9 E-Z Mini Storage neighbors, people that live  
 10 next-door, did you have any conversations with  
 11 those people?  
 12 A. No.  
 13 Q. How about businesses next-door, did you  
 14 have any conversations with people in businesses  
 15 next-door?  
 16 A. Myself personally, no.  
 17 Q. Okay. How about with the fire chief and  
 18 Shrewsbury Police -- Shrewsbury Fire Department  
 19 employees?  
 20 MS. FAHEY: About the fire?  
 21 Q. About the fire, the arrest of Michael  
 22 Elbery, from 8/5 -- 8/4, 8/5 on, did you have  
 23 any conversations with them?  
 24 A. I'm sure there were conversations, yes.

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1 Q. What were they, sir?  
 2 A. I don't recall specific conversations.  
 3 Q. Were they about the fire, were they about  
 4 Michael Elbery, or both?  
 5 A. I'm sure they were about both.  
 6 Q. But you don't remember the substance or  
 7 any nature of conversation other than it was  
 8 about those topics?  
 9 A. I believe we were at the scene for  
 10 several hours, I believe. I'm sure there was  
 11 discussion about it. I don't recall the  
 12 substance. I have no memory of specifically what  
 13 they were at this time.  
 14 Q. Who was at the scene?  
 15 A. There were firefighters and police  
 16 officers at the scene.  
 17 Q. What other kind of government people were  
 18 at the scene? Public Works, were there not?  
 19 A. I don't recall Public Works being there.  
 20 Q. Any other people from the state or from  
 21 the local Shrewsbury municipal government, any  
 22 other type of employees there? I mean, the mayor  
 23 wasn't there? Weren't there people, the road  
 24 workers or something?

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1 A. Four questions.  
 2 MS. FAHEY: Objection. Three or  
 3 four questions.  
 4 A. Four questions ahead, were there any  
 5 state or local officials there, to the best of my  
 6 knowledge, no. Was the mayor there, Town of  
 7 Shrewsbury does not have a mayor.  
 8 Q. Were there other municipal employees  
 9 there that you know of?  
 10 A. Not to the best of my recollection, no.  
 11 Q. Okay.  
 12 A. I don't -- I don't recall who was there  
 13 as far as those employees that could have been  
 14 there. I don't have any memory of it.  
 15 Q. What about private investigators from the  
 16 insurance companies?  
 17 A. I don't --  
 18 MS. FAHEY: What about them?  
 19 What's the question?  
 20 Q. Were they there?  
 21 A. I don't recall talking to anybody who  
 22 identified themselves as a private investigator  
 23 for the company.  
 24 Q. Do you remember anybody there from an

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1 insurance company, a fire -- they call them "fire  
 2 adjusters." Do you remember anybody being at E-Z  
 3 Mini Storage or The Lock Up on 8/5 that was from  
 4 an insurance company or from an insurance  
 5 appraiser, those kinds of people, do you remember  
 6 anybody?  
 7 A. No.  
 8 Q. Okay. Were the Benois there? Do you  
 9 remember the Benois?  
 10 A. It's my understanding that Mr. Benoit  
 11 that used to run -- or later ran Storage USA was  
 12 the manager at The Lock Up. I had one dealing  
 13 with Mr. Benoit at Storage USA. If that is the  
 14 same Mr. Benoit, my understanding is he's the  
 15 manager; and he may have been present.  
 16 Q. Okay. Him and his wife managed the  
 17 place, and they lived in the -- upstairs in the  
 18 building, right, on premise?  
 19 A. My understanding is that the manager  
 20 lived upstairs. I don't know whether they're  
 21 husband or wife. I understand his name was  
 22 Benoit.  
 23 Q. Okay. Okay. Did you talk to them? Did  
 24 you see them do anything? That's two questions

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1 but I know you can handle them. You've  
 2 demonstrated that already.  
 3 A. Did I talk to them, I don't have any  
 4 memory of any conversations with them at this  
 5 time. And the second question was?  
 6 Q. Did you see -- what did you see them do?  
 7 A. I have no memory of seeing them.  
 8 Q. Okay. Do you know somebody named  
 9 "Attorney Robert Sheketoff"?  
 10 A. Do I know him personally, no. I've heard  
 11 the name before.  
 12 Q. You've heard the name. How -- what does  
 13 the name -- what does that name mean to you?  
 14 What do you know about that person?  
 15 A. I believe he's a codefendant in one of  
 16 the multiple civil actions which have been filed  
 17 against me.  
 18 Q. Okay. And back in 1994, 1995 what did  
 19 you know him as? Did you know him back then?  
 20 A. I believe, to the best of my  
 21 recollection, at some point he represented you.  
 22 Q. Okay. As a defense attorney on the guns,  
 23 is that what your -- did you know that?  
 24 A. I don't recall which case it was.

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1 Q. Okay. But you know it now because I just  
 2 told you, okay? All right?  
 3 A. No, I don't. I don't --  
 4 Q. Did you ever speak to Robert Sheketoff?  
 5 A. I spoke with several attorneys that  
 6 represented you at various times. I don't recall  
 7 any specific conversation with Mr. Sheketoff.  
 8 Q. You spoke to several attorneys that  
 9 represented me?  
 10 A. I believe at one point you were  
 11 represented by Mr. Aloise in this matter.  
 12 Q. In which matter?  
 13 A. The gun matter.  
 14 Q. You spoke to Mr. Aloise in the gun  
 15 matter, huh?  
 16 A. It's my understanding and my belief that  
 17 at some point Mr. Aloise represented you in some  
 18 case, and that Mr. Aloise contacted me. If it  
 19 was the gun matter he represented you in, that  
 20 could be it.  
 21 Q. Okay. And what date was that, sir?  
 22 A. I don't recall what date it was.  
 23 Q. And what was the essence of the  
 24 conversation?

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1 A. I don't recall.  
 2 Q. But it was after the E-Z Mini fire, huh?  
 3 Do you recall that at some point?  
 4 A. I don't recall.  
 5 Q. Well, it would have to be if he was  
 6 representing me on the -- on the arrest? It  
 7 would have to have been because the arrest was  
 8 after the fire; am I correct?  
 9 MS. FAHEY: Objection. He's told  
 10 you he doesn't know on what charge Mr. Aloise  
 11 represented you.  
 12 MR. ELBERY: It's a different  
 13 question, Attorney Fahey.  
 14 MS. FAHEY: Please don't interrupt  
 15 me.  
 16 A. Could you repeat the question?  
 17 Q. You spoke to Attorney Aloise concerning  
 18 this gun case where he represented me; is that  
 19 correct?  
 20 A. As stated previously, I don't recall what  
 21 case it was on. It could possibly have been the  
 22 gun case. I did speak to Attorney Aloise at some  
 23 point regarding the only case that he represented  
 24 you on.

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1 Q. But you don't remember anything about the  
 2 conversation or what it was about, the essence of  
 3 it, the content of the -- the substance of the  
 4 conversation?  
 5 A. The essence, no. The content, no. The  
 6 substance, no.  
 7 Q. Okay. What did you see James Coates do  
 8 that day when I was arrested on 8/5/94? What did  
 9 you see James Coates -- do you know a fellow  
 10 named "James Coates"? And I realize it's two  
 11 questions, but I know you can handle it.  
 12 MS. FAHEY: Objection.  
 13 A. What did I see James Coates do? I  
 14 believe he transported you to the station. Do I  
 15 know an individual named "James Coates"? There  
 16 is an Officer James Coates who is an employee of  
 17 the Shrewsbury Police Department.  
 18 Q. Okay. And he was employed back in '94,  
 19 and he's still employed with them, right?  
 20 A. He was employed back in '94, and he is  
 21 currently employed with the department.  
 22 Q. Okay. What's his rank now?  
 23 A. He's a patrolman.  
 24 Q. Okay. What -- what's he look like, sir?

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1 A. He's probably 5 feet tall, thin build.  
 2 Q. Did you say --  
 3 A. Dark hair.  
 4 Q. Did you say 5 feet?  
 5 A. Yes, an estimate.  
 6 Q. Okay.  
 7 A. He's one of the smaller officers in the  
 8 department.  
 9 Q. Okay. All right. How old a guy is he?  
 10 A. I don't know what his age is. He's older  
 11 than I am.  
 12 Q. He's older than you. Okay. All right.  
 13 What did James Coates do that day?  
 14 A. To the best of my recollection and  
 15 memory, he transported you to the station.  
 16 Q. Anything else?  
 17 A. I'm aware that his signature appears on  
 18 the rights form.  
 19 Q. So what would that mean?  
 20 A. That would have meant he would have  
 21 signed the rights form indicating -- if I could  
 22 see the rights form -- that he was the arresting  
 23 officer.  
 24 Q. Signing the rights form would mean that

1 he was the arresting officer?  
 2 A. That's the section that he signed under.  
 3 It doesn't indicate he is the arresting officer.  
 4 Q. It does not indicate that he is the  
 5 arresting officer. So how did you come to a  
 6 conclusion that he was the arresting officer?  
 7 A. Well, that indicates that Officer Coates  
 8 had you in his custody at some point and advised  
 9 you of his -- of your Miranda warning and your  
 10 right to use the telephone; and then, as a matter  
 11 of practice, he signed as the arresting officer  
 12 that he advised you of those rights.  
 13 MR. ELBERY: Can I see where his  
 14 signature is?  
 15 MS. FAHEY: I'm showing Mr. Elbery  
 16 Exhibit 2.  
 17 Q. Where are you talking about, Lieutenant  
 18 Hurley? Right here?  
 19 A. Yes.  
 20 Q. Now, this -- this was a document that I  
 21 could not read that I've been trying to get ahold  
 22 of for almost a year; am I right? This is the  
 23 document. All of a sudden I can read it, right?  
 24 A. That's the document that you provided to

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1 me asking me for a copy of.  
 2 Q. Because your attorney sent me this  
 3 through discovery and I couldn't read it.  
 4 MS. FAHEY: What you said you  
 5 couldn't read, for the record -- and it's on  
 6 Exhibit 2. You have an arrow. And you said you  
 7 couldn't read this evidence label or this --  
 8 THE WITNESS: Rights form.  
 9 MS. FAHEY: -- rights form. So we  
 10 brought you an original of this rights form,  
 11 which you can keep. But even on that copy that I  
 12 gave you that's what didn't come out on the  
 13 Xerox.  
 14 MR. ELBERY: Okay.  
 15 MS. FAHEY: Everything else is  
 16 fairly legible.  
 17 MR. ELBERY: And this was first  
 18 given to me on what date? This Exhibit 2 -- at  
 19 this deposition this is labeled Exhibit 2, and  
 20 this is the statement of rights. This -- this is  
 21 -- this was first given to me at what time,  
 22 discovery of this case? When did you first  
 23 present this to me?  
 24 MS. FAHEY: I don't recall today.

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1 I -- you attached that piece of paper.  
 2 MR. ELBERY: This came to me  
 3 through --  
 4 MS. FAHEY: That piece of paper  
 5 that you're holding, Exhibit 2, came to you  
 6 through discovery from -- or on behalf of all of  
 7 the Shrewsbury Police defendants. You may well  
 8 have gotten a copy of it from Attorney Louison.  
 9 You may well have gotten a copy of it from me.  
 10 The only part of Exhibit 2 which  
 11 you've ever said you couldn't read is on the  
 12 bottom right-hand corner. You never said you  
 13 couldn't read the signature on the bottom right  
 14 corner. You said you couldn't read the stuff on  
 15 the bottom left.  
 16 MR. ELBERY: Okay.  
 17 Q. Okey-dokey. So you never had any  
 18 conversation with Attorney Sheketoff, did you?  
 19 A. There was --  
 20 MS. FAHEY: Objection.  
 21 A. -- an attorney, who I believe was  
 22 possibly Sheketoff, who represented you in one of  
 23 the criminal cases that you are involved in, and  
 24 that contacted me from the Boston area. I don't

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1 know whether his office was in Boston or not. If  
2 that was Attorney Sheketoff, there was some  
3 conversation. I do not recall what it was.  
4 Q. What was the date?  
5 A. I don't recall.  
6 Q. And you don't even know the case?  
7 A. I don't recall.  
8 Q. But you know you talked to him, or you  
9 think you talked to him?  
10 A. I believe I talked to him. To the best  
11 of my memory, an attorney from Boston, who may  
12 have been Sheketoff, called and requested some  
13 type of information from the department.  
14 Q. Okay. But what did you see people doing  
15 on 8/5/94, 8/6/94, 8/4/94 in and around E-Z Mini  
16 Storage during that investigation? What did you  
17 see people doing?  
18 A. 8/4/94, I have no memory of any  
19 investigative techniques or observations at that  
20 point. When the fire began, I was at home. 8/5,  
21 I saw a standard arson investigation ongoing.  
22 When I arrived, 8/6, I have no memory of any type  
23 of investigation at E-Z Mini Storage. I do not  
24 know who was present at the property on that

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1 date, to the best of my memory, at --  
2 Q. Tell me again what you did on --  
3 A. -- to the best of my memory at this time.  
4 Q. Tell me again what you did on 8/5.  
5 A. 8/5, I took property in evidence from  
6 officers --  
7 Q. What did you see other people do?  
8 A. -- property in evidence from officers who  
9 brought it to me to turn in.  
10 Q. What did you see other people doing? Did  
11 you see -- what did you see the other police --  
12 A. What did I see other people doing? I saw  
13 many people doing many other functions consistent  
14 with an ongoing arson investigation.  
15 Q. What about the fire department people,  
16 what were they doing?  
17 A. They were conducting activities  
18 consistent with an ongoing arson investigation  
19 remaining at the scene of a major fire.  
20 Q. What did you see James Coates do?  
21 A. I saw James Coates transport you to the  
22 police department to the best of my memory at  
23 this time.  
24 Q. Anything else?

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1 A. No.  
2 Q. Would this have been after I got  
3 arrested?  
4 A. Yes.  
5 Q. And I got arrested at E-Z Mini Storage,  
6 right?  
7 A. Yes.  
8 Q. Michael Elbery?  
9 A. Yes.  
10 Q. Okay. What did you see James Sampson do  
11 that day --  
12 A. Nothing.  
13 Q. -- when you did first see him?  
14 A. Nothing.  
15 Q. You never saw him that day?  
16 A. No. No.  
17 Q. You never saw him that day?  
18 A. I never saw anyone named "James Sampson."  
19 Q. I'm sorry. Wayne Sampson? Lieutenant --  
20 he was a lieutenant; now he's the chief?  
21 A. I saw him place you under arrest at the  
22 scene.  
23 Q. You saw Wayne Sampson place me under  
24 arrest?

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1 A. To the best of my recollection and  
2 knowledge, had Officer Coates transport you to  
3 the station. He presented you with a search  
4 warrant at the scene.  
5 Q. Then he arrested me?  
6 A. After the execution of the search  
7 warrant.  
8 Q. In the general -- general vicinity of E-Z  
9 Mini Storage, Lieutenant Hurley, who else did you  
10 see around there that day? What else was going  
11 on?  
12 A. Outside the fence line there were people  
13 watching what was going on. Inside the fence, as  
14 far as the arson investigation went, other than  
15 that, there were multiple people inside the  
16 fence. Any specific activities, I don't recall  
17 at this time.  
18 MS. FAHEY: Excuse me. This may  
19 be a lawyer from -- I don't recognize him but --  
20 (Discussion off the record)  
21 (Recess)  
22 (Attorney Coppola present)  
23 MR. ELBERY: Ready to go?  
24 Q. Okay. Before we were interrupted, we

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1 were talking about E-Z Mini Storage, the  
2 vicinity. You were saying there was a lot of  
3 people around. They were looking over the fence,  
4 is that correct, Lieutenant Hurley?  
5 A. That's correct.  
6 Q. Okay. Because it had been in the  
7 newspaper earlier that day? That was a big fire,  
8 was it not?  
9 A. I don't know whether it had been in the  
10 newspaper that day. It was a major fire.  
11 Q. It was a major fire. What was the amount  
12 of damage to that fire? What did they estimate  
13 that at?  
14 A. I don't know.  
15 Q. Two million, does that refresh your  
16 memory?  
17 A. No.  
18 Q. Okay. But it did a lot of damage? About  
19 50 people got burnt out that owned -- that rented  
20 storage containers there; am I correct?  
21 A. It did a lot of damage, to the first  
22 question. I have no knowledge of how many people  
23 it burnt out.  
24 Q. Okay. And that was the biggest fire in

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1 five years in Shrewsbury, right?  
2 A. I couldn't answer that.  
3 Q. Okay. How many people did you see, would  
4 you guesstimate, in the time you were there, from  
5 like what, eight in the morning till five at  
6 night?  
7 A. I don't recall if those were the hours.  
8 Q. How many hours were you there, sir?  
9 A. Several.  
10 Q. Okay. How many people would you  
11 guesstimate were in the vicinity of that E-Z Mini  
12 Storage complex?  
13 A. I wouldn't guesstimate. I would  
14 approximate or estimate that there were probably  
15 -- outside the fence line, at any given point,  
16 there could have been as many as 15 or as few as  
17 3 or 4.  
18 Q. At any one time?  
19 A. At any given time.  
20 Q. And there was a police officer -- they  
21 had to have a police officer out front on duty to  
22 direct the traffic and the flow of people in and  
23 out, did they not, sir?  
24 A. I don't recall that.

<div>1 Q. Okay. Okay. But there were a lot of</div> <div>2 people in and out, rubberneck and curiosity</div> <div>3 factor, that kind of thing, people looking for</div> <div>4 their goods that had rented units in that complex</div> <div>5 at that business?</div> <div>6 A. I don't -- I don't understand what you</div> <div>7 mean by "in and out." There were people coming</div> <div>8 to E-Z Mini Storage, yes.</div> <div>9 Q. Okay. All right. Over that period of</div> <div>10 time, several hours that you were there --</div> <div>11 A. Again, I don't know whether they were in</div> <div>12 and out, if that's what you're saying, meaning</div> <div>13 into the storage area and out; but there were</div> <div>14 people coming to E-Z Mini Storage to inquire</div> <div>15 about their property.</div> <div>16 Q. Okay. All right. But the same people --</div> <div>17 it wasn't just one group of 15 that came and</div> <div>18 stayed; they would come in; they'd leave; more</div> <div>19 people would come in and leave; am I correct?</div> <div>20 A. I would say that's an accurate depiction.</div> <div>21 Q. Thank you. Thank you. Now, we're going</div> <div>22 to go back to the -- what you do with evidence,</div> <div>23 okay, at the Shrewsbury Police Department, since</div> <div>24 you're the property officer.</div>	<div>Page 67</div>	<div>1 MS. FAHEY: Can we just have it</div> <div>2 marked as an exhibit? We'll go make a copy</div> <div>3 during lunch. You'll leave here with all your</div> <div>4 originals.</div> <div>5 MR. ELBERY: Well, you got to give</div> <div>6 it back to me because I'm going to be referring</div> <div>7 to it.</div> <div>8 MS. FAHEY: Fine.</div> <div>9 Q. On the document I have in front of me,</div> <div>10 Shrewsbury Police Department Master Card Detail</div> <div>11 Listing, dated February 28, 1999, in the top</div> <div>12 left-hand corner outlined in red there is what</div> <div>13 appears to be a master card number. The first</div> <div>14 few letters of "master" are cut off. It says,</div> <div>15 M8603791. That indicates that there is a master</div> <div>16 card for Michael Elbery with that number.</div> <div>17 Okay. And this master card is</div> <div>18 broken down into three sections, right -- four</div> <div>19 sections, four major information sections; is</div> <div>20 that correct, sir?</div> <div>21 A. One, two, three, four -- there's at least</div> <div>22 five that I can see.</div> <div>23 Q. Okay. And what are the five?</div> <div>24 A. The first section indicates the name,</div>	<div>Page 70</div>
<div>1 A. Was the property officer.</div> <div>2 Q. You were at that time?</div> <div>3 A. Correct.</div> <div>4 Q. Back in '94 you were the property</div> <div>5 officer, right? You were the police officer in</div> <div>6 charge of evidence, property?</div> <div>7 A. I was a supervisor overseeing the</div> <div>8 evidence section, yes.</div> <div>9 Q. Okay. Tell me -- tell me the flow of</div> <div>10 documents, sir. You've got things like the</div> <div>11 master card detail listing and property records</div> <div>12 and evidence tags and property detail listing.</div> <div>13 Tell me in chronological order which documents</div> <div>14 are filled out first.</div> <div>15 A. In this particular incident, to the -- I</div> <div>16 shouldn't say that. My understanding of the</div> <div>17 software provided to me through the police</div> <div>18 department is the master card is generated. That</div> <div>19 can either be through a report, past or present.</div> <div>20 I then access the property in evidence file in</div> <div>21 the police department computer, software system.</div> <div>22 I enter each evidence -- piece of</div> <div>23 evidence into the property and maintenance --</div> <div>24 property and evidence maintenance section. There</div>	<div>Page 68</div>	<div>1 address, and physical appearance and personal</div> <div>2 information of Mr. Elbery. Section 2 indicates</div> <div>3 vehicles. Section 3, offense and activity</div> <div>4 summary. Section 4, his address history.</div> <div>5 Section 5, his property summary.</div> <div>6 Q. Okay. Can I have that back, please?</div> <div>7 The A numbers on the second -- the</div> <div>8 third section, the offense and activity summary,</div> <div>9 the A numbers represent arrest numbers?</div> <div>10 A. On the same document marked</div> <div>11 February 28th, under offense and activity</div> <div>12 summary, the A numbers, the ones highlighted in</div> <div>13 red, indicate an arrest in 1994, Arrest No. 794.</div> <div>14 Q. But the answer to my -- let me ask you</div> <div>15 the question again. The A -- each arrest has a</div> <div>16 separate number that is prefaced with an A; is</div> <div>17 that correct?</div> <div>18 A. In the Shrewsbury Police Department</div> <div>19 computer system, the A indicates an arrest</div> <div>20 activity.</div> <div>21 Q. Okay. So every time you arrest somebody</div> <div>22 they get a number that begins with an A? Each</div> <div>23 arrest has a -- has a new and distinct A number;</div> <div>24 is that correct?</div>	<div>Page 71</div>
<div>1 is then generated a hard copy of that record and</div> <div>2 property labels of that record.</div> <div>3 Q. Where do the evidence tags come in?</div> <div>4 A. Those are the property labels.</div> <div>5 Q. An evidence tag is a property label?</div> <div>6 A. Correct. The physical evidence tag is an</div> <div>7 oak tag. A property tag is --</div> <div>8 Q. And this was back in '94?</div> <div>9 A. And those comprise -- physically put on</div> <div>10 an oak tag at that time and then attach it to any</div> <div>11 items. They could be physically put on the</div> <div>12 envelope. They could be physically put on the</div> <div>13 item. My understanding of a property tag is the</div> <div>14 computer-generated label.</div> <div>15 Q. I want you to take a look at this</div> <div>16 document. It's called a "Master Card Detail</div> <div>17 Listing." And I want you to tell me about the</div> <div>18 number. This is mine. This is the master card</div> <div>19 detail listing that you folks have on me. Okay.</div> <div>20 And there's a number M8603791.</div> <div>21 MS. FAHEY: Can we have that one</div> <div>22 page marked?</div> <div>23 MR. ELBERY: No. Because I got to</div> <div>24 refer to it.</div>	<div>Page 69</div>	<div>1 A. Under the computer software system that</div> <div>2 we currently use and was used at the time of your</div> <div>3 arrest, it is my understanding that each arrest</div> <div>4 is given a unique A arrest identifying number.</div> <div>5 Q. Thank you, Lieutenant Hurley. It</div> <div>6 probably would have been easier for you if you</div> <div>7 just said yeah.</div> <div>8 Okay. Sir, I'm going to direct</div> <div>9 your attention here to the address history of</div> <div>10 Michael Elbery on this master card detail</div> <div>11 listing. Can you take a peek at that for me?</div> <div>12 What's that tell you? Where I</div> <div>13 lived, right?</div> <div>14 A. It indicates your address history.</div> <div>15 Q. So you didn't have any problem with where</div> <div>16 I lived, right?</div> <div>17 A. It indicates your address history.</div> <div>18 Q. You have a whole history, am I correct,</div> <div>19 sir?</div> <div>20 A. There is an address history on the master</div> <div>21 card, yes.</div> <div>22 Q. So you guys -- you guys were keeping</div> <div>23 track of me, weren't you?</div> <div>24 Sir, can you answer the question?</div>	<div>Page 72</div>

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1 A. The answer is the computer generates an  
2 address history from activity which is entered  
3 into the computer. As for us guys keeping track  
4 of you, I have no direct knowledge of anybody  
5 keeping track of your whereabouts.  
6 Q. This address history here is from '91  
7 through '94, 1991 through 1994?  
8 A. That's correct.  
9 Q. Did you know where I lived from 1991  
10 through 1994?  
11 A. Did I know?  
12 Q. Did the Shrewsbury Police Department,  
13 according to that document, know where I lived in  
14 that period of time?  
15 A. The question is: Did I know where he  
16 lived? The answer is: I knew at one point he  
17 resided on 370 Oak Street. Did the Shrewsbury  
18 Police Department know? The record indicates  
19 that there was data input into the computer  
20 indicating Mr. Elbery had a 370 Oak Street,  
21 Shrewsbury address in 1991.  
22 There was data put in in 1992  
23 indicating he had a 370 Oak Street address in  
24 Shrewsbury. There was data put in in 1994

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1 indicating a 31B Chilmark Street, Worcester  
2 address.  
3 Q. Did the Shrewsbury Police Department know  
4 where I lived in that period of time?  
5 MS. FAHEY: Objection. Asked and  
6 answered.  
7 MR. ELBERY: He didn't answer the  
8 question. He avoided the question. I'm asking  
9 the question again. He answered a different  
10 question.  
11 A. The Shrewsbury Police Department record  
12 system, which you showed me, has --  
13 Q. That's not the question I asked you.  
14 A. I can't answer on behalf of the entire  
15 agency. The Shrewsbury Police Department had a  
16 record of addresses, which had been entered into  
17 the computer, stemming from events which you were  
18 involved in.  
19 Q. I'm going to direct your attention to the  
20 fifth section. It's the property summary  
21 section. Okay. You got item number. You got  
22 some -- some headings here. There's six headings  
23 -- subheadings here. And the first one is item  
24 number and then property number and then type and

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1 date in, last in, description and comment.  
2 The first thing I want you to do  
3 is tell me what "DXX" means next to each one of  
4 these item numbers, and does --  
5 A. DXX03 -- whatever the number is in this  
6 case -- they vary throughout here -- would be the  
7 item number assigned by the Shrewsbury Police  
8 Department computer to the property which  
9 follows.  
10 Q. So each piece of property has a separate  
11 DXX number; is that correct?  
12 A. At the current time, yes.  
13 Q. "Current time" meaning now?  
14 A. Today.  
15 Q. What about back then?  
16 A. No.  
17 Q. So what did you do back then, just throw  
18 it in a big pile?  
19 A. No.  
20 Q. What did you do back then to keep track  
21 of the evidence?  
22 A. We used E numbers.  
23 Q. You used E numbers. Okay. Tell me about  
24 the E numbers that you used back then.

1 A. They're evidence numbers which begin with  
2 an E. The year would be indicated by the first  
3 two digits. The remainder of the digits would  
4 indicate the evidence number.  
5 Q. Well, now the system works for every  
6 arrest, every item that pertains to that arrest,  
7 every property item has the same E number and a  
8 different DXX number; is that correct?  
9 A. I'm not sure whether -- at the current  
10 time whether each piece of property has the same  
11 E number. Each piece of property at the current  
12 time is given an individual DXX number or a  
13 unique property identifier number --  
14 Q. Well --  
15 A. -- in compliance with the NIBRS system.  
16 Q. Well, why don't we look --  
17 A. NIBRS, N-I-B-R-S.  
18 Q. What's a "NIBRS System"?  
19 A. Numerical based incident reporting  
20 system.  
21 Q. All right. If we can look at my  
22 master card detail listing, can you look at  
23 E No. 9400293? It repeats on page 2. It goes on  
24 to the next page. Okay. That E No. 9400293 is

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1 all -- pertains to all the evidence that was  
2 collected for what arrest, for what arrest  
3 number?  
4 A. E9400 --  
5 Q. 293. Okay. It repeats. You got a whole  
6 -- you got this number next to a whole bunch of  
7 property items, right, with all these property  
8 items? They all have different DXX numbers.  
9 What does this number -- what arrest does it  
10 pertain to?  
11 A. On the document dated February 28, 1999,  
12 it indicates that E9400293 attaches to all act --  
13 293 attaches to evidence taken on the date of  
14 8/5/94 through the entire end of the report.  
15 Q. What was the arrest?  
16 A. The arrest was your arrest at the E-Z  
17 Mini Storage.  
18 Q. On what date?  
19 A. 8/5/94.  
20 Q. What was the arrest for?  
21 A. Illegal possession of a firearm.  
22 Q. One firearm?  
23 A. Several firearms.  
24 Q. And what was the incident number?

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1 A. The incident number is not indicated on  
2 the property and summary section.  
3 Q. What was the incident number for the  
4 arrest of Michael Elbery for guns back on 8/5/94?  
5 A. 94010436.  
6 Q. Thank you. All property that's used as  
7 evidence for an arrest has the same E number; am  
8 I correct?  
9 A. According to that documentation, all the  
10 property had the same E number for 8/5/94.  
11 Q. And that's the way you do it at the  
12 Shrewsbury Police Department? If you arrest  
13 somebody and you take evidence, it all has the  
14 same E number or property number, right, for  
15 that?  
16 A. Not at the current time. Back then it  
17 appears that that was the case, yes.  
18 Q. That was the case back then?  
19 A. Yes.  
20 Q. That's interesting. Say that again.  
21 Back then, if there's an arrest, all the property  
22 or evidence taken relating to that arrest all has  
23 the same E number, correct?  
24 A. According to that document, yes, it does.

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1 Q. According to this document. Is there  
2 something wrong with this document? It came from  
3 -- it came from the Shrewsbury Police  
4 Department, came out of your computer.

5 A. The answer to the question, Is there  
6 something wrong with that document, there does  
7 not appear to be anything wrong with that  
8 document.

9 Q. Thank you. Thank you. Thank you,  
10 Lieutenant.

11 What's a "property record"?  
12 A. That is the sheet generated for the  
13 property which was taken in from Michael Elbery.

14 MS. FAHEY: Can we have that  
15 marked as Exhibit 7, just that page?

16 MR. ELBERY: Yes. But I -- I got  
17 to look at this thing. I got to hold --

18 MS. FAHEY: Sure. There's a chair  
19 behind you, and I thought we might put it in the  
20 middle; and you can have all the exhibits so you  
21 can refer to them anytime. Is that agreeable?

22 MR. ELBERY: I got to hold it in  
23 my hand for a while.

24 MS. FAHEY: Fine.

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1 MR. ELBERY: We can use it as an  
2 exhibit. I mean, we can make copies. I have no  
3 problem with that.

4 MS. FAHEY: Fine. I want that --  
5 can you have her put the sticker on Exhibit 6 and  
6 7 then --

7 MR. ELBERY: Oh, sure.

8 MS. FAHEY: -- please?

9 MR. ELBERY: Sure.

10 (Exhibit No. 6 Master Card Detail  
11 Listing - M8603791 - Page 1 marked  
12 for identification)

13 (Exhibit No. 7 Property Record -  
14 Page 1 marked for identification)  
15 (Recess)

16 Q. I got to repeat it to you because I lost  
17 track when we went off the record. The "property  
18 record," tell me what -- what is it? Tell me  
19 what its function is.

20 A. The property record's function is to  
21 record the property which comes into the police  
22 department.

23 Q. Now, is that categorized or cataloged by  
24 arrest or by incident number?

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1 A. By arrest, yes. By incident number, yes.

2 Q. It's organized by -- what is the  
3 controlling number, or is it -- is it controlled  
4 by the property number?

5 A. At that point in time, it could be  
6 controlled -- to the best of my recollection, it  
7 could be controlled by incident number. It could  
8 be controlled by an arrest number.

9 Q. Well, both?

10 A. To the best of my knowledge, yes.

11 Q. Isn't that rather confusing?

12 A. No. We don't always need an arrest to  
13 have evidence.

14 Q. And this is in addition to the property  
15 detail list? Is this a separate function?

16 A. The property detail listing?

17 Q. I don't have one in front of me, sir.

18 A. I can't answer the question if I can't  
19 see it.

20 Q. You don't know what a "property detail  
21 listing" is?

22 A. Not unless I see it.

23 Q. Here's one right here. Is that a  
24 separate document? It has a separate function?

1 MS. FAHEY: Can the first page of  
2 this be marked as Exhibit 8, property and detail  
3 listing?

4 MR. ELBERY: Sure.

5 A. The property detail listing which  
6 Mr. Elbery has given me, which he said he did not  
7 have, is a detail listing of activity on the  
8 property.

9 Q. Okay. Now can you answer my question?

10 Is the property detail listing a separate  
11 function from the property record?

12 A. Yes and no.

13 Q. Can you explain that?

14 A. Yes. The -- can I see the document?

15 Q. Which one?

16 A. The property -- both. I need to refer to  
17 both of them.

18 Q. Here's the detail listing, and there's  
19 the property record.

20 A. The "property record" is a record of the  
21 quantity, description, serial number, type,  
22 condition, make, model, and the storage location  
23 of the item. The "property detail listing"

24 contains much of the information on the property

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1 record and is generated from the property record  
2 and indicates -- the property detail listing  
3 indicates the activity history on that piece of  
4 property.

5 Q. The property detail listing is organized  
6 according to what?

7 A. On the document I have in front of me,  
8 the property detail listing can be organized from  
9 the arrest number, the incident number, or a  
10 property number, on the 1997 document.

11 Q. Being the property officer, you seem to  
12 have a hard time with this. Why is that,  
13 Officer?

14 A. That's an opinion. I don't have a hard  
15 time with it. It's a computer-generated  
16 document, which is linked together by software.

17 Q. Do these -- do these computers make  
18 mistakes?

19 A. I couldn't answer that question.

20 Q. You couldn't. Has the computer ever made  
21 a mistake?

22 A. I couldn't answer that question.

23 Q. Why can't you answer it?

24 A. I don't know whether the computer would

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1 make a mistake, whether it would be human error  
2 that made a mistake, a mechanical malfunction.

3 Q. I didn't ask you about human error.

4 A. To my knowledge, no, I don't know if the  
5 computer ever makes a mistake.

6 Q. Never? Did you ever claim the computer  
7 made a mistake?

8 A. No. I see where you're going with this.  
9 No.

10 Q. You never did, huh?

11 A. Nope.

12 Q. But you acknowledge that it never made a  
13 mistake that you know of?

14 A. Never made a mistake that I know of.

15 Q. The words "received, dispatched, arrived,  
16 and cleared," what do they mean to you?

17 A. "Received" could be acknowledgment of a  
18 message. It could be --

19 Q. As it appears on -- strike that. I'm  
20 going to repeat the question. As it appears on a  
21 Shrewsbury Police Department incident report,  
22 what do the words -- what does the word  
23 "received" mean on the top column?

24 A. It would indicate the received date and

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1 time of a particular incident.  
 2 Q. Received by who?  
 3 A. The dispatcher.  
 4 Q. And he'd have his name next to that,  
 5 right? There would be a date and a time?  
 6 A. There is a name next to the date and time  
 7 indicating the dispatcher.  
 8 Q. What's "dispatch" mean?  
 9 A. "Dispatch" means the dispatch center.  
 10 Q. What's it mean?  
 11 A. It means the dispatch center. That's  
 12 dispatch.  
 13 MR. ELBERY: He's not answering  
 14 the questions.  
 15 A. You asked me what the word "dispatch"  
 16 means. That means the communications center.  
 17 Q. You're describing a noun. I'm asking you  
 18 about a verb, okay?  
 19 A. I don't understand the question then.  
 20 Q. You're not answering the question. You  
 21 haven't been answering the questions quite a few  
 22 times, and I've been putting up with it. I want  
 23 you to start answering the questions.  
 24 On these incident reports, on the

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1 top column it says, "Received." It has an  
 2 officer's name next to it and a date and a time.  
 3 What's "received" mean? What function is he  
 4 undertaking when it says "received"?  
 5 A. On the Shrewsbury Police Department  
 6 Incident Report 940 -- 94010436, which I'm  
 7 referring to, on the top there is the word  
 8 "received" in a block across the top of the  
 9 page. That indicates the time that the police  
 10 activity was received by the dispatcher.  
 11 Q. And that would have been who on this  
 12 particular report?  
 13 A. The dispatcher would have been  
 14 C. Faucher.  
 15 Q. What's Sampson's name mean on that  
 16 report?  
 17 A. He's listed as one of the officers who  
 18 was involved in this incident.  
 19 Q. Sampson, Sklut, and Hanson? It's the  
 20 same report you have, sir. Do you see that under  
 21 Sampson, it says, Sklut and Hanson?  
 22 A. It says, Sklut and Hanson.  
 23 Q. Sklut?  
 24 A. Sklut and Hanson. Yes, I see that.

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1 Q. Okay. So they were all involved in that  
 2 incident, right?  
 3 A. That's correct.  
 4 Q. Okay. So they're all involved. What's  
 5 "involved" mean? They all participated in the  
 6 arrest of Michael Elbery on 8/5/94; isn't that  
 7 correct?  
 8 A. The term "involved" means that they  
 9 participated. And were they all involved -- the  
 10 second question, Were they all involved in the  
 11 arrest of Michael Elbery, they were all present  
 12 at this incident is what that indicates. It  
 13 doesn't indicate whether they were actually  
 14 involved in the physical arrest of you or not.  
 15 They were involved in the investigation.  
 16 Q. They were involved in the investigation?  
 17 A. Correct.  
 18 Q. They were present on 8/5/94, were they  
 19 not?  
 20 A. I have personal knowledge that Lieutenant  
 21 Sampson --  
 22 Q. No, no, no. What does the document say,  
 23 Lieutenant Hurley?  
 24 A. It says that they were involved in the

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1 incident.  
 2 Q. And the incident is, according to  
 3 94010436, the arrest of Michael Elbery; isn't it  
 4 not?  
 5 A. The answer is: That's correct. I don't  
 6 have any personal knowledge whether they were  
 7 present, which you asked me before, at E-Z Mini  
 8 Storage.  
 9 Q. Okay. But the document -- the document  
 10 94010436 discloses that Shrewsbury Police  
 11 Department Officer Sampson, Sklut, and Hut -- and  
 12 Hanson were all involved in the arrest of Michael  
 13 Elbery?  
 14 A. Correct.  
 15 Q. Okay. Now, on the flip side, you got  
 16 C. Faucher, Carlin. Then you got the word  
 17 "arrest." Then you got the word "complaint."  
 18 And that's under a heading box called,  
 19 Dispatcher, super, night, nature and then type.  
 20 Tell me about what these people did. Who is  
 21 "Faucher"? What did he do that day? Is he the  
 22 dispatcher, the super, the nature, or the type?  
 23 A. Faucher, he did nothing. If you're  
 24 referring to Steve Faucher, he is the sergeant.

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1 Q. Steve -- wait a minute. Wait a minute.  
 2 The initial says "C"?  
 3 A. That's correct.  
 4 Q. Why is his name Steve? Isn't that "S"?  
 5 A. If his name was Steve, it would be "S,"  
 6 yes. "C. Faucher" is not Steve Faucher. It's  
 7 Carolyn Faucher. She was the dispatcher on  
 8 duty. It's not he. It's a she.  
 9 Q. Okay. Well, that's why I asked you the  
 10 question. I want to find out this information,  
 11 sir. What's Carlin's name down there for?  
 12 A. He would have been the shift supervisor.  
 13 Q. Okay. And he was directly involved in  
 14 the arrest, right? He was the supervisor?  
 15 MS. FAHEY: Objection. One  
 16 question at a time, please.  
 17 A. Was he directly involved in the arrest, I  
 18 can't answer that. I don't have a memory of it.  
 19 He was the shift supervisor on that shift in  
 20 charge of the uniform division.  
 21 Q. And his name is down on the incident  
 22 report, right?  
 23 A. As the shift supervisor in charge of the  
 24 uniform division, correct.

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1 Q. What's "arrest" and "complaint" mean?  
 2 A. The nature of the incident was an arrest,  
 3 and the incident type was a criminal complaint.  
 4 MS. FAHEY: It's 5 of 11. You had  
 5 represented that the Lieutenant's deposition  
 6 would take a little bit longer than an hour. I  
 7 have someone coming at -- actually, they may both  
 8 be outside.  
 9 MR. ELBERY: Well, there's nothing  
 10 I can do about that, Attorney Fahey. You know  
 11 this has taken far longer than I thought. You  
 12 know there's nothing I can do. Your client is  
 13 being deliberately obstinate, and if you want to  
 14 -- this can go on until Tuesday as far as I'm  
 15 concerned. I don't care.  
 16 Okay. Most of these questions  
 17 could have been answered yes or no. He's trying  
 18 to make this as long as possible. Well, he ain't  
 19 going to break me. All right. He ain't going to  
 20 break me. He's going to answer every question.  
 21 (Discussion off the record)  
 22 MS. FAHEY: I'm not responding to  
 23 your --  
 24 MR. ELBERY: I don't care. We're

<div>Page 91</div> <div>1 going on to the next question. All right. 2 MS. FAHEY: Nothing that the 3 plaintiff said was true. 4 MR. ELBERY: Is there anything 5 else you want to ask before I go on with this? 6 MS. FAHEY: I have four other 7 officers available and scheduled for today, and I 8 don't want to have them sit outside for hours and 9 hours. 10 MR. ELBERY: Well, then tell 11 Hurley to hurry up and answer the questions and 12 stop being obstinate and stubborn. 13 MS. FAHEY: He's answering the 14 questions. I'm just trying to get your best 15 estimate of how much longer you think you're 16 going to be. So, if I can hold off the other 17 officers coming over, I will do that. 18 MR. ELBERY: I don't have an 19 answer to your question. I'd advise talking to 20 your client and telling him to stop what he's 21 doing. All right. If that -- if he wants to 22 keep up with this technique, we're going to have 23 to be here a long time. I don't like what he's 24 doing. I wanted to get out of here today, and it</div>	<div>Page 94</div> <div>1 A. Supplemental narrative. 2 Q. Did he sign this incident report, sir? 3 A. There's no signature attached to it. 4 Q. But he's the author, right? 5 A. To the best of my knowledge, he is. 6 Q. Okay. He's got me down for what, the 7 arrest of me for what? You said he arrested me 8 for five counts? 9 A. Those are the dispatcher's remarks at the 10 top, not Lieutenant Sampson's, now currently 11 Chief Sampson. You need to see the court 12 complaint, see whether those match. 13 Q. What is a "complaint"? Tell me about a 14 complaint. What is a "complaint"? That's issued 15 by the court? 16 MS. FAHEY: Objection. 17 A. A complaint can be issued by the court, 18 yes. 19 Q. It's a piece of paper, right? 20 A. It can be a piece of paper, yes. 21 Q. In this case, was it a piece of paper? 22 Was it a document from the court? 23 A. As a matter of practice, that is the 24 format which the court issues complaints, yes.</div>
<div>Page 92</div> <div>1 doesn't look like it's going to happen. 2 I want answers. I don't have an 3 answer to your question. Furthermore, you're 4 probably the one who told him to do it. Do you 5 mind if I get on with the questions? 6 (Discussion off the record) 7 MS. FAHEY: This officer has been 8 totally cooperative and responding to your 9 questions. 10 MR. ELBERY: I'm sure he has 11 been. I'm sure he has been. 12 Q. Lieutenant Hurley, what were the charges 13 against Michael Elbery on 8/5/94? 14 A. If I could see the master card listing, I 15 would need that to give you the specific charges. 16 MS. FAHEY: That's Exhibit 6. Can 17 you take a look at Exhibit 6? Wait a minute. 18 Q. Wouldn't there be various documents you 19 could look at to find that information? 20 A. There could be various documents. 21 Q. Sir, how about the -- how about the 22 incident report, the arrest of Michael Elbery? 23 A. I have a copy of 94010436 in front of me. 24 Q. Okay. So you got the same one I got in</div>	<div>Page 95</div> <div>1 Q. Okay. After you arrest somebody -- for 2 instance, you arrested me on 8/5/94. The 3 incident report is dated what? 4 A. The incident report pertaining to your 5 arrest is dated 8/5/94. 6 Q. Okay. And when would you apply for the 7 complaint? 8 A. The next available court date. 9 Q. "The next available court date." Well, 10 if I was arrested on a Friday, which is 8/5, when 11 would you apply for the arrest? 12 A. The application for the court complaint 13 would be generated with the paperwork for your 14 arrest, and it would be brought to court on the 15 next court date that was open. 16 Q. "The next court date," which would be -- 17 back then it would have been a Monday, right? 18 A. I don't have a calendar in front of me. 19 Q. Well, if the 5th of August was a Friday, 20 you would have applied for a complaint -- 21 A. The complaint would have been generated 22 on the 5th. If you were not -- 23 Q. No. I'm talking about the application 24 for the complaint.</div>
<div>Page 93</div> <div>1 front of me. It gives you the same data. What's 2 the data say? What does it say the arrest is 3 for? 4 A. It says, Michael Elbery, 2/8/60 -- 5 2/8/52, 31B Chilmark Street in Worcester, for 6 possession of a firearm without an ID card, 7 five counts, and possession of ammunition without 8 an ID card. 9 Q. Now, can you answer the question? What 10 was I arrested for on 8/5/94? 11 A. I would need to see the complaint 12 application. This indicates that the dispatcher 13 -- entered dispatcher remark -- that's your 14 word. That is what you were -- entered 15 dispatcher remark indicates that you were 16 arrested for possession of a firearm without an 17 ID card, five counts, and possession of 18 ammunition without an ID card. 19 Q. And who was the author of this incident 20 report? 21 A. The author of the incident report, 22 starting with the narrative, Section 1, is 23 Lieutenant A. Wayne Sampson. 24 Q. Uh-huh.</div>	<div>Page 96</div> <div>1 A. The application for the complaint, if 2 we're referring to the piece of paper, the 3 three-part form which the court provides to the 4 police department, that would have been generated 5 on 8/5/94, along with your booking sheet. 6 Q. The booking sheet? 7 A. Correct. 8 Q. Okay. And they'd all have the complaint 9 date as what, 8/5 or 8/8? 10 A. That would list the date of offense as 11 8/5. I couldn't say what they listed for the 12 date of the complaint. I don't know whether it 13 would have been 8/5 or 8/8. 14 Q. What about the return date, when would 15 that have been? 16 A. The return date on -- 17 Q. On this complaint. 18 A. I don't understand. An application for a 19 complaint, return date? 20 Q. There's a little block that says, Return 21 date, on the application for complaint. What 22 date would that have been? 23 A. I've never filled it out before. 24 Q. You've never filled it out?</div>

<p>Page 97</p> <p>1 A. On an application for complaint that's 2 generated at the Shrewsbury Police department. 3 MS. FAHEY: Can we take a 4 two-minute break here? 5 MR. ELBERY: Sure. Go ahead. 6 MS. FAHEY: And can we mark 7 Exhibit 8, please? 8 MR. ELBERY: What? 9 MS. FAHEY: The property detail 10 listing. 11 MR. ELBERY: We hadn't marked it? 12 MS. FAHEY: I don't think so. 13 MR. ELBERY: Oh, okay. 14 MS. FAHEY: Six and seven, but not 15 eight. 16 MR. ELBERY: Okay. 17 (Exhibit No. 8 Property Detail 18 Listing marked for identification) 19 (Recess) 20 Q. Okay. Lieutenant Hurley, we're getting 21 back to the paperwork. That's where we left 22 off. And we want to know about complaint, 23 summons and complaint, application for complaint, 24 incident report, and various dates. Now, when --</p>	<p>Page 100</p> <p>1 date on it is. I haven't seen a criminal 2 complaint application in many years. 3 Q. This says, Summons and complaint. 4 MS. FAHEY: Are you reading from a 5 complaint? 6 MR. ELBERY: Yes. 7 Q. You don't know what that is? 8 A. I can't see the document you're referring 9 to. 10 Q. Okay. Do you know what a "summons and 11 complaint" is that results from an arrest? 12 A. Yes, I do. 13 Q. And are you familiar with a block on that 14 document that says, Return date? 15 A. On which document? 16 Q. Return date and time on a summons and 17 complaint issued from the Westboro Court, are you 18 familiar with that -- that term? 19 A. I'd have to see the -- I am familiar with 20 the term. 21 Q. I am not going to show it to you. I want 22 you to answer the question. Are you familiar 23 with it? 24 A. Am I familiar with the term, yes, but</p>
<p>Page 98</p> <p>1 you mentioned something, the complaint is issued 2 at the same time when -- when is the booking 3 sheet -- you said something about a document 4 called a "booking sheet"; is that what you said? 5 A. Yes. 6 Q. What is that and when is it issued by the 7 Shrewsbury Police? 8 A. The "booking sheet" is the 9 computer-generated hard copy of the data taken 10 from the defendant, and it is issued once the 11 booking of the defendant is completed. 12 Q. So this should have the exact charges; am 13 I right? 14 A. Issued by -- 15 Q. It should tell -- should tell a reader 16 what the -- 17 A. If I could answer the first question, 18 please. Provided that there were no further 19 investigations, any additional violations were 20 disclosed, there should be a record of the 21 initial charges that were given to the booking 22 officer on the defendant. 23 Q. Okay. So the court don't do that; the 24 Shrewsbury Police do that, right?</p>	<p>Page 101</p> <p>1 I -- 2 Q. Okay. What's it mean? 3 A. Summons and return, the "summons" 4 refers -- 5 Q. No, no. Return date and time? 6 A. I can't answer that without seeing the 7 document. 8 Q. Why not? 9 A. I would like to see the document. 10 Q. Then answer this question. Are you 11 familiar with the term "return date and time" on 12 a summons and complaint issued from the Westboro 13 Court? 14 A. Not without seeing the document. I 15 couldn't tell you what it is. I couldn't tell 16 you what information goes in there. I do not 17 have that document in front of me. 18 Q. You don't know what it means? 19 A. I know what the word "summons" means. I 20 know what "return date and time" means. 21 Q. What does it mean? What does it mean? 22 A. "Summons" is a -- 23 Q. No. "Return date and time?" You just 24 said you know what that means. Tell me what that</p>
<p>Page 99</p> <p>1 A. The Shrewsbury Police generate the 2 application and the booking sheet at the police 3 station. 4 Q. And that's before the complaint is 5 issued? 6 A. A complaint is separate paperwork, which 7 is completed at the courthouse. 8 Q. And it's signed by a judicial officer; is 9 that correct? 10 A. That is one of several signatures that 11 appear on it. 12 Q. Now, the return date that we were talking 13 about before you had your little break there, 14 that appears on the complaint; and what does that 15 indicate? 16 A. Which complaint? The criminal complaint 17 at the court or the application for the 18 complaint? 19 Q. The criminal complaint. 20 A. At the court, I'd have to see one and 21 look at it. 22 Q. So you don't know what a "return date" 23 is? 24 A. I don't recall seeing what the return</p>	<p>Page 102</p> <p>1 means. 2 A. It means the return date and time. I 3 don't know -- 4 Q. What -- 5 A. I don't know -- 6 Q. You do know. 7 A. I don't know what that document is you're 8 referring to that you have in your hand that 9 you're asking me about. 10 Q. On a standard summons and complaint 11 issued by the Westboro Court that you do business 12 with for hundreds of years -- and you do know 13 what that means? 14 A. A standard summons and complaint -- 15 MS. FAHEY: Objection. 16 A. -- issued by the Westboro Court, in a 17 summons is issued by the court, an officer on his 18 summons that he serves has a separate sheet, and 19 he marks the date and time that he served the 20 summons. The court may -- I don't know, not 21 seeing that complaint and having it to refresh my 22 memory. But, to the best of my memory, the court 23 may record also when the summons and complaint 24 are returned from the police or from the mail or</p>

<div>Page 103</div> <div>1 from the person who served it. 2 Q. Well, Officer Hurley, I'm going to 3 commend you on your answer because I didn't 4 understand a thing you said. A brilliant job of 5 double-talk if I've heard one. The date of the 6 complaint relating to the arrest, when should 7 that be? 8 A. The date of the complaint, depending on 9 the document that you are looking at, if you are 10 looking -- 11 Q. I'm looking at a complaint. That's the 12 document. What should that date be? 13 A. If you're looking at a complaint issued 14 from the court -- 15 Q. Yeah. 16 A. -- my understanding, to the best of my 17 knowledge on court procedure, is the court dates 18 it. The date of the complaint as -- I can't 19 answer that. I don't know whether it's the day 20 of arrest or the date you record. 21 Q. Well, I was arrested on Friday afternoon, 22 after the courts were closed; am I correct? 23 A. That's correct. 24 Q. So there's no way the complaint could be</div>	<div>Page 106</div> <div>1 I'd like to take a lunch break at 2 12:30, and it will either be in the middle of or 3 at the end of this witness' testimony or in the 4 -- at some point in the middle of Johnson's 5 testimony. Is that agreeable with you? And then 6 you can tell me about what time you want the 7 chief to return this afternoon. 8 MR. ELBERY: I'll finish him 9 before we go to lunch. And, if we could, just a 10 half hour lunch? 11 MS. FAHEY: Sure. But it needs to 12 be around 12:30, 1:00. 13 MR. ELBERY: Let's finish this guy 14 first. Okay. That's when we're going to have 15 lunch, when we're finished this guy, not until 16 then. 17 What you want to do with that guy, 18 all I want him to do is be available. I'm not 19 committing myself any more than that. I need 20 everybody to be available. The next deponent 21 might be nice and cooperative and easy. I got to 22 get back to this questioning, Mrs. Fahey. 23 MS. FAHEY: Well, we're going to 24 take a break just for --</div>
<div>Page 104</div> <div>1 dated on 8/5/94, because I was arrested on 2 8/5/94, after the court's were closed; am I 3 right? 4 A. The paperwork that we would have sent 5 over for the application would probably have been 6 dated 8/5/94. I don't know whether the court 7 dates that date. 8 Q. Because you guys originate that piece of 9 paper, the application? 10 A. Sure. The Shrewsbury Police Department 11 generates that piece of paper, yes. 12 Q. You originate it? 13 A. Yes. 14 Q. Okay. 15 A. Yes. 16 Q. So it would be date -- but when the 17 complaint has originated from the court, that 18 couldn't have been dated 8/5, could it? 19 A. Well, again stated, I don't know whether 20 the court used the date on our complaint 21 application. 22 Q. You do know that? 23 A. No. I don't work for the court. 24 (Recess)</div>	<div>Page 107</div> <div>1 MR. ELBERY: No. We're not taking 2 a break. 3 MS. FAHEY: Well, I'm going to 4 tell the chief he can leave for -- 5 Q. Can I have an answer to this, Lieutenant 6 Hurley? 7 MR. ELBERY: Don't go away with my 8 documents. 9 (Recess) 10 MR. ELBERY: Can I run my 11 deposition, please? 12 MS. FAHEY: Sure. 13 Q. I give you back the document. Do you 14 remember the question, or do you want me to 15 repeat it? 16 A. You asked if there were two different 17 names on the top of the document. 18 Q. I've asked you -- I asked you to observe 19 the little box over to the left side that says, 20 Booking report; and then on the heading, I asked 21 you to observe that, and it says something else. 22 What does it say, Custody report, or something 23 like that? 24 A. The little box over on the side you're</div>
<div>Page 105</div> <div>1 Q. Lieutenant Hurley, we're going to go to 2 something we picked up on along the way; and I'm 3 going to ask you a question about it. It's a 4 little change of pace. The arrest booking 5 report, also known as the "arrest-custody 6 report," okay, I've got a copy of it, and I'm 7 going to show it to you. It's got two names, 8 right? 9 A. I haven't seen it. 10 Q. Okay. If you look at it, I want you to 11 look at the heading, and then I want you to look 12 at the little box that's checked off by a 13 typewriter. 14 MS. FAHEY: Can this be marked as 15 Exhibit 9? 16 MR. ELBERY: Sure. 17 MS. FAHEY: Thank you. While he 18 looks at it, I've noticed through the window that 19 Chief Sampson has arrived; so there are now two 20 police officers out there waiting to be deposed. 21 Unless you think you're going reach the chief 22 before 1:30, I'm going to suggest that he leave 23 and return sometime later this afternoon when you 24 think you might get to him.</div>	<div>Page 108</div> <div>1 referring to says, Arrest booking report. 2 Q. Okay. 3 A. On the top it says, Arrest-custody 4 report. 5 Q. So it kind of has two different names; is 6 that correct? 7 A. It's a booking sheet, is what we refer to 8 it as. 9 Q. Okay. Can I see it back? 10 A. Absolutely. 11 Q. Okay. Now, tell me, Officer -- or, 12 Lieutenant, what is this thing supposed to be? 13 A. Booking report. 14 Q. And it tells -- what's it tell you? 15 A. It lists Mr. Elbery's name, first, last, 16 and middle. It would indicate any aliases that 17 he would have given at the time of booking, his 18 address, city, and the state of residence, his 19 sex, his race, his age, his height, weight, hair, 20 eyes, complexion. It indicates his build, any 21 peculiarities, scars, marks, or tattoos. 22 It indicates his date of birth, 23 his place of birth, Social Security number. 24 There's blocks for other descriptive</div>

<p>Page 109</p> <p>1 information. It gives his operator's license --  2 Q. That's enough.  3 A. -- and state.  4 Q. What does it --  5 A. For the record --  6 Q. What does it give in terms of arrest  7 information?  8 A. For the record, that is not a complete  9 description of this report.  10 Q. What does the booking report that you  11 have in your hand, what information does it  12 denote in terms of the charges against Michael  13 Elbery on 8/5/94?  14 A. It indicates that on 8/5/94, under the  15 block marked, Offenses, reason for custody, that  16 Mr. Elbery was taken into custody for possession  17 of a firearm without an ID card, Offense 700,  18 Massachusetts General Law 269 10H, five counts,  19 and one count of no inspection sticker, false  20 motor vehicle document, violation of 269 10H.  21 Q. Not having a sticker on a motor vehicle  22 is a violation of 269 10H?  23 A. Nope. That would probably be a forged  24 motor vehicle document. That would be a</p>	<p>Page 112</p> <p>1 Q. Coates was the booking officer?  2 A. He transported you to the station.  3 Q. So he did all this?  4 A. I have no direct knowledge of it.  5 According to that, that is what it indicates. I  6 did not see you in the process.  7 Q. Where does it say he is the booking  8 officer?  9 MS. FAHEY: "That" you're  10 referring to, Lieutenant, as Exhibit 2?  11 Q. And where does it say "booking officer"?  12 A. It says, Arresting officer.  13 Q. It says, Arresting officer?  14 A. That's correct.  15 Q. Okay. But on this document it has your  16 name and his name, Hurley and Sampson, right?  17 MS. FAHEY: This document ought to  18 be marked as Exhibit 9.  19 MR. ELBERY: Yes.  20 A. The computer-generated name and -- for me  21 and appears on that document, yes.  22 Q. Okay. So on this document here that you  23 just read, there's a sticker violation. You said  24 falsified document of a sticker?</p>
<p>Page 110</p> <p>1 Chapter 90 violation.  2 Q. Okay. Did you charge me with falsifying  3 a document; is that what you're saying here?  4 A. The record indicates that someone charged  5 you -- or, when they were going through the  6 booking process, entered no sticker, false motor  7 vehicle document.  8 Q. Who did that?  9 A. I have no idea.  10 Q. No idea?  11 A. To the best of my recollection, I know  12 there was some conversation with -- then Sergeant  13 Hanson discussed something with -- about an  14 inspection sticker on the report. I have no  15 knowledge of it though.  16 Q. Did you see this phony inspection  17 sticker?  18 A. Not to my recollection, no.  19 Q. But this is saying -- No. 6 says, No  20 sticker, false motor vehicle. What's that "DOC"  21 mean?  22 A. Document, D-O-C.  23 Q. Document. So it means what, that the  24 motor vehicle sticker on that ZR1 Corvette --</p>	<p>Page 113</p> <p>1 A. That's what the record indicates, yes.  2 Q. Okay. Do you know anything about that?  3 A. No.  4 Q. That makes two of us.  5 Now, the other five items are all  6 possession, all 269 10H; am I right?  7 A. That's what the record indicates, yes.  8 Q. Okay. And that's what I was arrested  9 for, right?  10 A. I don't recall. I'd have to see the  11 application for the complaint. I'm not sure  12 whether it was 10H or 10A under Massachusetts  13 General Law 269. 10A, I believe, is the  14 mandatory one year in jail. 10H does not carry  15 the one-year mandatory.  16 Q. That's fine. I'm glad I didn't ask you  17 that, but that's -- that's very nice to know.  18 A. But that's my answer.  19 Q. It wasn't my question. My question is  20 this: Where's the 269 10A? Here, here, take a  21 look at it. Why don't you show me where it is,  22 because I can't find it.  23 MS. FAHEY: For the record, he's  24 showing him what will be marked as Exhibit 9.</p>
<p>Page 111</p> <p>1 A. I'm not saying that. I'm saying that  2 there was some discussion about it. That could  3 be a data input error on the part of the operator  4 of the computer, also.  5 Q. The computer operator made an error?  6 A. The officer putting the data in.  7 Q. He made this big error, huh?  8 A. Could have. I don't have any firsthand  9 knowledge of it.  10 Q. But it's signed by Lieutenant Sampson and  11 you?  12 A. Let me see that. It's not signed by me  13 anywhere.  14 Q. No? Your name isn't on there?  15 A. There's a computer-generated name on that  16 document. My signature does not appear on it.  17 Q. Okay. No signature. So no one had --  18 who is responsible for this document, the  19 computer operator?  20 A. The booking officer generates the  21 computer document.  22 Q. And who was the booking officer?  23 A. According to the rights form, it was  24 Officer Coates.</p>	<p>Page 114</p> <p>1 A. The officer who input this input it under  2 269 10H.  3 Q. He did, huh?  4 A. Yup.  5 Q. No kidding. Let me ask you this: Is  6 that officer responsible for anything, or is he  7 just a wacky who makes a lot of mistakes?  8 MS. FAHEY: Objection.  9 A. That would call for a conclusion. And I  10 would say Officer Coates is a veteran officer.  11 Q. He is a veteran officer, so he knows what  12 he's doing?  13 A. Officer Coates has an understanding of  14 law enforcement.  15 Q. Okay. But he's independent of the  16 dispatcher; am I correct, two different people?  17 And the computer operator, that's a third person;  18 am I correct? These are all independent people;  19 am I correct?  20 A. If you go back to the first question, Is  21 Officer Coates independent from the dispatcher,  22 the answer is yes. Officer Coates is a male  23 patrolman. The dispatcher is Carolyn Faucher.  24 She's a female dispatcher. Is Officer Coates</p>

<div>Page 115</div> <div>1 independent from the computer operator, a third 2 person, that calls for a conclusion, which I've 3 previously stated I was not present during the 4 booking process. 5 Q. Well, is it a different person, the 6 computer operator? Is that a different person 7 from Carolyn Faucher and Officer Coates? Is that 8 a third person? 9 A. That would call for a conclusion. I 10 could state that -- 11 Q. Who would -- 12 A. -- Carolyn Faucher could not do the 13 booking because she's the dispatcher assigned to 14 the dispatch section. Officer Coates -- I didn't 15 view the booking process. I don't know whether 16 he did the booking. According to our exhibit, 17 which is the statement of rights form, he was 18 present and advised you of your rights. I would 19 believe at that point he was the booking officer. 20 Q. Who did the computer work? 21 A. As I stated, I was not present when the 22 computer work was done. I don't know what it 23 indicates on the form. I have no knowledge of 24 that. I am going from the rights form, which</div>	<div>Page 118</div> <div>1 of the arrest, and then I was present at the time 2 of the arrest. Could there have been other 3 police officers present at the time of arrest, 4 yes. I have no memory at this point of who they 5 were. 6 Q. Well, when you saw me arrested at E-Z 7 Mini Storage, what other officers were there 8 physically? 9 MS. FAHEY: Objection. Asked and 10 answered. 11 MR. ELBERY: I'm asking the 12 question again because I don't remember the 13 answer. I don't think I asked it. I didn't ask 14 that exact question. I missed that question. 15 A. I have firsthand knowledge that 16 Lieutenant Sampson was present and myself. 17 Officer Coates transported you, to the best of my 18 memory and recollection, to the station. Those 19 are the officers I have a memory of specifically 20 as being there. 21 Q. Sampson, you, Coates, and who else? 22 A. Coates was present to transport you. 23 Whether he was present at the time of arrest, I 24 don't recall. Could there have been other</div>
<div>Page 116</div> <div>1 shows that Officer Coates was present during the 2 booking, because he signed the form. 3 Q. He didn't sign this form though? 4 MS. FAHEY: Exhibit 9 is what 5 you're referring to? 6 A. As I previously stated, there were no 7 signatures which appear on that form to the best 8 of my recollection. 9 Q. But your name's on it, and Sampson's name 10 is on it? 11 A. My name appears as part of the 12 computer-generated document. 13 Q. Who generated that document? 14 MS. FAHEY: Exhibit 9? 15 MR. ELBERY: Yes. 16 A. As I previously stated, to the best of my 17 knowledge, I did not see the booking procedure. 18 I do not know who put the booking information in 19 the computer. The rights form indicates that 20 Officer Coates was present during the booking. 21 Q. Did Officer Coates produce this? 22 MS. FAHEY: Exhibit 9? 23 MR. ELBERY: Exhibit 9. 24 A. To the best of my knowledge, Officer</div>	<div>Page 119</div> <div>1 officers there, possibly. I don't have any 2 memory -- 3 Q. Just names, sir? 4 A. -- at this point in time. 5 Q. You, Lieutenant -- or you are Lieutenant 6 Hurley, Wayne Sampson, Coates, and did I miss 7 one? 8 A. I believe that's what I said. 9 Q. Okay. Just the three? 10 A. Yes. 11 Q. That's all your memory is? 12 A. To the best of my memory at this time, 13 yes. 14 Q. To the best of your memory, is the three, 15 right? 16 Okay. Did anybody monkey around 17 with this thing? 18 MS. FAHEY: Exhibit 9 you're 19 referring to? 20 MR. ELBERY: Exhibit 9. 21 Q. Is this the original Exhibit 9? 22 A. The answer to your first question, Did 23 anybody monkey around with it, if you're 24 referring somebody tampering with the document,</div>
<div>Page 117</div> <div>1 Coates was present during the booking. I have no 2 knowledge of who physically typed in the 3 information because I was not present during the 4 booking procedure. 5 Q. But it would have been somebody else, 6 right? 7 A. To the best of my knowledge, I have no 8 direct knowledge of who typed the information in 9 because I was not present. The rights form 10 indicates that Officer Coates was present during 11 part of the booking procedure. 12 Q. There were a lot of other officers 13 involved in the booking procedure, weren't there, 14 involved in this arrest? How many other officers 15 were involved in this arrest? 16 MS. FAHEY: Objection. 17 A. The first question, How many other 18 officers were involved in the booking procedure, 19 I have no personal knowledge of who was at the 20 station doing the booking because I was not 21 present at that time and did not see anybody do 22 the data input. How many other officers were 23 involved in the arrest, I have previously stated 24 that Lieutenant Sampson was present at the time</div>	<div>Page 120</div> <div>1 the answer is no. If you're asking if anybody 2 tampered with it, as you did in the second 3 question, the answer is no. 4 Q. So this -- I never got charged with this 5 falsification of a motor vehicle sticker, right? 6 A. I would have to see the court application 7 to see whether you were charged with that. 8 Q. Do you have any documentation that 9 indicates that I was charged with falsifying a 10 motor vehicle sticker? 11 A. I have no memory of you being charged 12 with falsification of a motor vehicle sticker at 13 this time. 14 Q. So where did this come from, do you know? 15 A. I was not present during the booking 16 procedure. 17 MS. FAHEY: Can we have Exhibit 9 18 marked, please, now? 19 (Discussion off the record) 20 (Exhibit No. 9 Booking Sheet dated 21 8/5/94 marked for identification) 22 Q. How long have you known Michael Elbery? 23 A. Several years. 24 Q. Starting when?</div>

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1 A. My first knowledge of Michael Elbery, to  
2 the best of my recollection at this time, is when  
3 I took you into custody for an assault and  
4 battery by means of a dangerous weapon warrant on  
5 South Quinsigamond Ave. while you were carrying a  
6 loaded gun. South Quinsigamond Ave., it's  
7 Q-u-i-n-s-i-g-a-m-o-n-d Avenue, in Shrewsbury.  
8 You were taken into custody on an outstanding  
9 warrant for your arrest while you were driving a  
10 motor vehicle down South Quinsigamond Ave., and  
11 you were carrying a loaded Glock 9 millimeter  
12 handgun.  
13 Q. That was in 1990?  
14 A. I don't recall the specific date.  
15 Q. Was it February 28, 1990?  
16 A. I don't recall the specific date.  
17 Q. Okay. And what kind of -- what kind of a  
18 car was I driving, do you remember?  
19 A. To the best of my recollection, it was a  
20 larger vehicle.  
21 Q. It was a Cadillac, right, a brand-new  
22 Cadillac?  
23 A. It could have been.  
24 Q. Was it a brand-new Cadillac?

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1 A. I don't recall.  
2 Q. And the warrant for my arrest wasn't  
3 issued by the Shrewsbury Police Department, was  
4 it?  
5 A. No, it was not.  
6 Q. It was issued by the --  
7 A. The Worcester Police.  
8 Q. Okay. And what was the charge, sir?  
9 A. To the best of my recollection, it was  
10 assault and battery by means of a dangerous  
11 weapon.  
12 Q. But, actually, the charge was assault  
13 with a dangerous weapon or by means of a  
14 dangerous weapon, right? In other words, nobody  
15 got hurt. The evidence of assault --  
16 A. The answer to --  
17 MS. FAHEY: Can he just answer?  
18 A. The answer to the first question, Right,  
19 was the question, to the best of my recollection,  
20 the charge was assault and battery by means of a  
21 dangerous weapon.  
22 Q. Okay. May I correct you? The charge was  
23 assault with or by means of a dangerous weapon.  
24 And what was the disposition on that case?

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1 A. I don't recall. I wasn't involved in  
2 that.  
3 Q. Well, I was asked back in September, when  
4 you deposed me. Didn't I tell you and didn't you  
5 know anyways that the disposition of that case  
6 was not guilty before a jury of six?  
7 A. It could have been a not guilty charge.  
8 Q. Okay. Let me ask you another question,  
9 sir. Assault by means of a dangerous weapon, the  
10 elements for that crime do not require any  
11 touching, do they?  
12 MS. FAHEY: Objection. We're  
13 going to stick to what is reasonably related to  
14 the facts in this case. So if you could proceed  
15 along those lines. This is not even tangentially  
16 relevant.  
17 MR. ELBERY: Well, how do you know  
18 what the question is, Mrs. Fahey? You know, I  
19 haven't even finished the question. Okay. He's  
20 just -- he's just made derogatory -- false  
21 derogatory comments about what I was arrested  
22 for, okay; and this is going to be publicized,  
23 because the national media is interested in my  
24 cases. Okay. So I want to get the record

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1 straight, and I'm not going to allow the record  
2 to be twisted.  
3 I got important cases here.  
4 Okay. They lynched an innocent man out in  
5 Worcester County.  
6 MS. FAHEY: Nothing relative to  
7 what did or didn't happen in Worcester County is  
8 remotely --  
9 MR. ELBERY: May I continue?  
10 MS. FAHEY: -- relevant to this  
11 case.  
12 MR. ELBERY: It isn't, huh? All  
13 this happened -- this case happened in Worcester  
14 County.  
15 MS. FAHEY: The Lieutenant has  
16 answered your questions to the best of --  
17 MR. ELBERY: Quiet.  
18 MS. FAHEY: -- his memory --  
19 MR. ELBERY: Quiet.  
20 MS. FAHEY: -- as truthfully as he  
21 knows how.  
22 MR. ELBERY: Fine. Let us  
23 continue.  
24 MS. FAHEY: You continue with

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1 something --  
2 (Discussion off the record)  
3 Q. Assault with a dangerous weapon is a  
4 favorite of the police so that they can grind  
5 axes against people, because they don't need any  
6 evidence, except for say-so; isn't that true?  
7 All you need is somebody to point a finger and  
8 say he did this and that. But where did you get  
9 hit? I didn't get hit. That's all they have to  
10 say. Isn't that a favorite tool --  
11 MS. FAHEY: Objection.  
12 Q. -- of the police?  
13 MS. FAHEY: Objection.  
14 A. In response to the first question, Isn't  
15 assault by means of a dangerous weapon a favorite  
16 of the police, my answer on that, based upon the  
17 question before --  
18 Q. That wasn't my question.  
19 A. -- on the question before me, I can't  
20 answer for other police officers. Arrests made  
21 by this officer --  
22 Q. You can't --  
23 A. Can I answer the question, please?  
24 Arrests made by this officer are

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1 based upon probably cause. I don't understand  
2 your question saying what is a favorite of the  
3 police; and then your long rambling after that  
4 with multiple questions, I don't recall.  
5 Q. Isn't it convenient for the police to use  
6 that charge when they want to grind an ax against  
7 somebody --  
8 MS. FAHEY: Objection.  
9 Q. -- because they don't need any evidence,  
10 all they need is a finger-pointing and say-so?  
11 MS. FAHEY: Objection.  
12 A. The term "convenient" calls for an  
13 opinion. "Ax grinding" calls for an opinion.  
14 And this officer makes arrests based on probable  
15 cause. I cannot answer for other police  
16 officers.  
17 Q. Well, let me ask you this, Lieutenant  
18 Hurley, since you make arrests with probable  
19 cause: Did Michael Elbery have an FID card on  
20 8/5/94?  
21 A. It's the opinion of this officer that  
22 with your license to carry being suspended that  
23 you did not have a statutory right to have or  
24 possess weapons, and I had no knowledge if you

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1 had a license to carry when you were arrested.  
2 Q. Well, what does a license to carry have  
3 to do with this case anyways?  
4 A. There were handguns found in your storage  
5 bin, and there were other firearms found.  
6 Q. So you understand the law to mean in this  
7 -- in the State of Massachusetts in '94 that I  
8 was required to have a license to carry to have  
9 rifles in a storage container?  
10 A. No. It's my position and my feeling on  
11 this case is when your license to carry was  
12 suspended by the Worcester Police Department you  
13 no longer had a right to possess firearms in  
14 Massachusetts.  
15 Q. Now, that's -- that's --  
16 A. I never had any knowledge that you had an  
17 FID card issued by the Shrewsbury Police  
18 Department till it came up in court.  
19 Q. Oh, you were in court?  
20 A. No. I was not in court. I'm aware of  
21 what this case is all about through your many  
22 filings.  
23 Q. So how in court did you find out I had an  
24 FID court? What court date? Which court date?

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1 A. What court date, the first question, I  
2 don't recall --  
3 Q. You don't recall?  
4 A. -- which court.  
5 Q. You got --  
6 MS. FAHEY: Can he finish the  
7 answer, please?  
8 A. The second question, before we move on to  
9 the third, Which court date, I don't recall; but  
10 at some point the Worcester County District  
11 Attorney requested a search of the hard copies of  
12 FID cards be conducted at the Shrewsbury Police  
13 Department, which an FID card that was issued to  
14 you was found and reported to the Worcester  
15 County District Attorney's Office and  
16 subsequently suspended by Chief McGinley.  
17 Q. Okay. When did all that happen?  
18 A. I don't have the suspension letter in  
19 front of me but on or about the date on the  
20 suspension letter.  
21 Q. Okay. How long did you know that Michael  
22 Elbery had guns?  
23 A. I had knowledge on the date that you were  
24 arrested that you had a firearm.

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1 Q. Well, wait a minute. You just said in  
2 1990?  
3 A. The date that you were arrested in 1990.  
4 We're still talking about the assault or assault  
5 and battery with a dangerous weapon warrant. I  
6 had knowledge from that point on that you  
7 possessed --  
8 Q. Okay.  
9 A. -- had previously possessed weapons.  
10 Q. Let me ask you something. In this  
11 country is it illegal -- is it legal for a  
12 citizen to possess firearms?  
13 MS. FAHEY: Objection.  
14 A. In this country it is legal for citizens  
15 to possess firearms in compliance with federal  
16 and state statute.  
17 Q. All right. There's nothing unusual about  
18 an American citizen bearing arms, is there?  
19 MS. FAHEY: Objection.  
20 A. I can't speak for all American citizens.  
21 Q. I'm not asking you to. In 1994 were guns  
22 legal?  
23 MS. FAHEY: Objection.  
24 A. In 1994 guns were regulated by state and

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1 federal statute and had to be possessed in  
2 compliance with those laws.  
3 Q. Okay. Do you know a guy named "Thomas  
4 King"?  
5 A. Yes, I do.  
6 Q. How long have you known him?  
7 A. Several years.  
8 Q. Starting when?  
9 A. I don't recall exactly. My dealings with  
10 Thomas King would have been in the official  
11 capacity of the job. Thomas King was a detective  
12 on the Westboro Police Department who I came to  
13 know sometime during my employment as a police  
14 officer. I don't recall the specific date.  
15 Q. And did you know him in 1990?  
16 A. I don't recall.  
17 Q. Did you know him in 1992?  
18 A. I don't recall.  
19 Q. Are you familiar with a case that Thomas  
20 King was involved in where a guy named "Michael  
21 Elbery" got ten years in state prison?  
22 A. Yes, I am. And I've read the newspaper.  
23 Q. Okay. Did you ever talk to King  
24 personally about this case?

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1 A. We had some conversation about it, yes.  
2 Q. Did you see him after 1992 about that  
3 case, about that incident? Obviously, you must  
4 have to have conversation about it?  
5 A. That -- that's a correct assumption,  
6 yes. Specifically when, I don't know.  
7 Q. Okay. But after that incident you just  
8 said you had conversation with him about it.  
9 Now, I assume it wasn't on the phone?  
10 A. I don't recall.  
11 Q. Anything wrong with King's eye?  
12 A. I don't have any -- I have no knowledge  
13 of the alleged or injury which Mr. Elbery has  
14 been convicted of. I'm not a doctor. I can't  
15 make that assumption for that.  
16 Q. I'm not asking you to be a doctor.  
17 A. You're asking me if there's anything  
18 wrong with Thomas King's eye.  
19 Q. Did you see Thomas King --  
20 A. If I could answer the question, please.  
21 You're asking me if there is anything wrong with  
22 Thomas King's eye. I am not qualified to make  
23 that determination.  
24 Q. Did it look like there was anything wrong

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1 with his eye?  
2 A. Again, I'm not qualified to make that  
3 determination.  
4 Q. Does it look like there's anything wrong  
5 with my eye?  
6 MS. FAHEY: Objection.  
7 A. I am not qualified --  
8 MS. FAHEY: You don't have to  
9 answer that. That is totally unrelated to this  
10 lawsuit.  
11 Q. You can't observe somebody and come to a  
12 conclusion, Gee, it looks like his eye -- it  
13 looks like his eye --  
14 MS. FAHEY: Objection. You don't  
15 have to answer that either.  
16 Q. Did Thomas King ever tell you that he had  
17 a detached retina?  
18 MS. FAHEY: Objection. That also  
19 is totally unrelated.  
20 MR. ELBERY: No, it isn't at all.  
21 No, it isn't at all.  
22 A. I don't have any specific memory of a  
23 direct conversation between Thomas King and  
24 myself regarding a detached retina at this time.

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1 I am aware that there was a -- there was some  
2 type of an injury that was connected with your  
3 case, between Mr. King and yourself, on the  
4 incident that happened in Worcester. Other than  
5 that, I have no direct memory of any of that  
6 conversation with King, etc.  
7 Q. Okay. But he falsified those injuries;  
8 am I correct?  
9 MS. FAHEY: Objection.  
10 Q. He lied?  
11 A. I don't --  
12 Q. He lied in trial and got me ten years in  
13 prison?  
14 MS. FAHEY: Objection.  
15 Q. Isn't that what happened?  
16 MS. FAHEY: Objection.  
17 Q. How about a Christina Mann, do you know  
18 who Christina Mann is?  
19 A. I know who Christina Mann is. If she is  
20 the female that I believe she is, she resides in  
21 Shrewsbury. I have never -- strike that. I  
22 believe I have met her on one occasion.  
23 Q. Yes. When was that?  
24 A. 1997 or '98.

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1 Q. Okay. And why did you meet with her?  
2 A. She was filing a complaint or considering  
3 filing a complaint with the agency.  
4 Q. About what?  
5 A. A separate incident.  
6 Q. Anything to do with me?  
7 A. No.  
8 Q. All right. Did you speak to her in  
9 person or over the phone?  
10 A. I believe she came in in person.  
11 Q. Okay. What does she look like?  
12 MS. FAHEY: Objection. Does that  
13 have anything to do with this case?  
14 MR. ELBERY: Yes, it does.  
15 MS. FAHEY: Could you briefly  
16 explain what?  
17 MR. ELBERY: No. I'm not giving  
18 any -- I'm not giving my -- I'm not showing you  
19 my cards.  
20 A. To the best of my recollection, when she  
21 came to the Shrewsbury Police Department, she was  
22 a female, small-to-medium build, sandy brown or  
23 blonde hair.  
24 Q. Did you see any scars on her face?

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1 A. I don't recall.  
2 Q. You don't recall? She's a good looking  
3 girl, isn't she?  
4 A. That would call for a conclusion.  
5 Q. That's fine. Answer the question.  
6 MS. FAHEY: Objection.  
7 Q. You can conclude.  
8 A. Being --  
9 Q. Did she look good to you? Was she  
10 attractive?  
11 MS. FAHEY: Objection.  
12 A. Being happily married, I wouldn't even  
13 comment on that.  
14 Q. You wouldn't. You do other things  
15 though, wouldn't you?  
16 MS. FAHEY: Objection.  
17 Q. You saw Christina Mann in person.  
18 A. Can we go back to the --  
19 Q. You don't remember seeing any scars on  
20 her face?  
21 A. The question as to whether I would do  
22 anything else, the answer is no. Did I see any  
23 scars on her face, as I've previously stated  
24 during this questioning, I have no knowledge or

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1 memory of any scars on her face.  
2 Q. Okay. So, if she testified in a court of  
3 law that she had stitches put above and below her  
4 eye and you didn't see any scars in that  
5 beautiful young girl's China complexion face, she  
6 was probably lying, wasn't she?  
7 MS. FAHEY: Objection. You don't  
8 have to answer.  
9 Q. That calls for a conclusion.  
10 A. Thank you for the answer.  
11 Q. She was lying, wasn't she?  
12 MS. FAHEY: Objection.  
13 Q. It's well known, isn't it?  
14 MS. FAHEY: Objection.  
15 A. That would call for a conclusion.  
16 Q. She lied in court to get King out of  
17 trouble, didn't she?  
18 A. That calls for a conclusion. And I was  
19 not present, nor do I have any knowledge of that  
20 incident.  
21 Q. How many arrests did you participate in  
22 arresting Michael Elbery?  
23 A. I'm aware of at least two criminal  
24 arrests which I have been involved in.

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1 Q. Okay. And do you know what the charges  
2 were in each of those times?  
3 A. As we previously covered, going back to  
4 the incident you say started in 1991, to the best  
5 of my recollection, I arrested you for a -- a  
6 warrant from the Worcester Police Department --  
7 Q. Okay. What about the second?  
8 A. -- for -- if I could answer the question,  
9 please. -- for assault and battery by means of a  
10 dangerous weapon. The second incident stems from  
11 this. To the best of my knowledge and  
12 recollection, not seeing the court complaint, you  
13 were arrested, illegal possession of firearms and  
14 other related violations such as ammunition, to  
15 the best of my recollection.  
16 Q. Okay. And what about another incident of  
17 intimidation of a witness, didn't you charge me  
18 with that? Weren't you involved in that?  
19 A. No. I had absolutely nothing to do with  
20 that.  
21 Q. Didn't you question me that night?  
22 A. Not to my --  
23 Q. -- when you and Walsh arrested me? You  
24 don't remember that?

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1 A. I don't even recall picking you up on  
2 that. I believe that was Officer Hester's case.  
3 Q. But you were there? You questioned me,  
4 didn't you?  
5 A. I don't recall.  
6 Q. And what was the disposition on all those  
7 cases?  
8 A. I believe the intimidation of a witness  
9 case was disposed of with a finding of either not  
10 guilty or dismissal. As you have previously  
11 stated to me today, the assault by means of a  
12 dangerous weapon case was, as you said, dismissed  
13 or not guilty with eventual ramifications for the  
14 suspension of your firearms license by then Chief  
15 Coakley of the City of Worcester, to the best of  
16 my knowledge.  
17 Q. That's a police state; they can vio --  
18 they can take that away from you for any reason;  
19 isn't that correct?  
20 MS. FAHEY: Objection.  
21 A. I don't understand what you mean by  
22 "police state," and I understand --  
23 Q. In other words, a citizen in this  
24 state --

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1 A. If I could finish answering the  
2 question. If my memory serves me correct, you  
3 had a hearing before a district court judge, who  
4 I believe was Patrick Fox, who issued a ruling  
5 that you were not a fit person to have a firearm  
6 in the Commonwealth of Massachusetts.  
7 Q. And that corrupt judge will do anything  
8 the police want him to do; isn't that correct?  
9 MS. FAHEY: Objection.  
10 A. That's incorrect. The judiciary branch  
11 of the government is independent from the police.  
12 Q. In theory, isn't that correct?  
13 MS. FAHEY: Objection.  
14 A. In reality.  
15 Q. So there's no way there could ever be a  
16 kangaroo court in Worcester County; is that  
17 right?  
18 MS. FAHEY: Objection.  
19 A. I -- if you refer to a kangaroo court as  
20 being a court with kangaroos, the answer is no.  
21 Anything else would be speculation. I think what  
22 you're driving at is that it was a facade and  
23 that's incorrect.  
24 Q. No. What I'm driving at is that the U.S.

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1 Constitution is basically ignored in Worcester  
2 County; isn't that correct?  
3 MS. FAHEY: Mike, for the last  
4 half hour approximately --  
5 MR. ELBERY: Quiet. Quiet.  
6 MS. FAHEY: -- your questions have  
7 been totally unrelated --  
8 MR. ELBERY: Shush.  
9 MS. FAHEY: -- to your lawsuit in  
10 this case.  
11 MR. ELBERY: I don't want to hear  
12 from you.  
13 A. The United States Constitution still  
14 governs Worcester County. It's the law of the  
15 land.  
16 Q. Okay. What was the disposition --  
17 MR. ELBERY: Can I have this,  
18 Mrs. Fahey? You sure this -- make a note that  
19 this is related.  
20 Q. What was the disposition of the third  
21 arrest, the gun charges that we've been talking  
22 about all day? What was the disposition of that,  
23 Lieutenant Hurley?  
24 A. My understanding is they were dismissed

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1 by the Worcester County District Attorney's  
2 Office.  
3 Q. That was your understanding. Who gave  
4 you that information?  
5 A. That was a discussion at one of the  
6 meetings regarding the case.  
7 Q. Who's "we"?  
8 A. Between legal counsel and the police  
9 department.  
10 Q. Who's the legal counsel?  
11 A. Currently it's Elizabeth Fahey. But it  
12 was Bradford Louison, until you sued him in the  
13 last lawsuit.  
14 Q. Did you know that I went to trial on  
15 April 5th of 1995 on those six gun charges at  
16 Worcester District Court before Judge Zide; did  
17 you know that?  
18 A. No. I wasn't aware that there was a  
19 trial held.  
20 Q. There was a trial held. And do you know  
21 what the disposition of that trial was on all  
22 six --  
23 A. As I previously --  
24 Q. -- gun charges?

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1 A. As I previously stated, my understanding  
2 of the case is that the charges were dismissed by  
3 the Worcester County District Attorney's Office.  
4 Q. Did you know that I went to trial before  
5 Judge Zide and the -- and the --  
6 A. As I --  
7 Q. I'm not finished, please.  
8 A. I apologize.  
9 Q. -- the finding was a not guilty on  
10 April 5th of 1994, if I have the correct date, on  
11 all charges?  
12 A. As I previously stated --  
13 Q. I'm not -- I'm not finished, sir,  
14 please.  
15 A. Okay. Maybe you could indicate when you  
16 finish with the question?  
17 Q. Did you know -- did you know --  
18 A. You're starting another question.  
19 Q. Did you know that nobody from the  
20 Shrewsbury Police Department showed up for that  
21 trial?  
22 A. The answer to the first question, did I  
23 know that you went to trial April such and such a  
24 date, 1995, the answer is no. As I previously

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1 stated, I was unaware that there was a trial. It  
2 is my understanding that the Worcester County  
3 District Attorney dismissed the cases. Did I  
4 know that no one showed up at the trial, my  
5 answer is, yes, that has come up before even at  
6 deposition or in a discussion; and, obviously, if  
7 I didn't know about it, I wouldn't have been  
8 there.  
9 Q. Very good. If you weren't there, you  
10 wouldn't have known about it?  
11 A. Well, if I didn't know about it, I  
12 wouldn't have been there.  
13 Q. If you didn't know about it, you wouldn't  
14 have been there?  
15 A. Right. If I don't know about something,  
16 I wouldn't be there.  
17 Q. Let me ask you this: How come nobody  
18 from the Shrewsbury Police Department showed up  
19 for the trial of that case?  
20 A. As I stated, I was unaware of the April  
21 1999 trial date, which you have discussed.  
22 MS. FAHEY: April '99.  
23 THE WITNESS: '95, whatever date  
24 he has said that this trial that I had no

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1 knowledge of occurred.  
2 A. I did not know about it. I would not be  
3 present for it.  
4 Q. You're supposed to know about it. You  
5 were one of the officers involved in the arrest?  
6 A. I did not know about the trial. As I  
7 previously stated, I wasn't even aware that there  
8 was a trial held. I was under the belief that --  
9 Q. How often does that happen --  
10 A. I was under --  
11 Q. -- Lieutenant Hurley?  
12 A. I didn't interrupt you, Michael. Could I  
13 finish the answer, please?  
14 I was unaware of the trial, and my  
15 belief was that the case was dismissed by the  
16 DA's Office.  
17 Q. Did you know that nobody from the  
18 Worcester DA's Office showed up to prosecute that  
19 case?  
20 A. I was unaware of that.  
21 Q. How often does that happen?  
22 A. I couldn't comment on those types of  
23 statistics. I don't have them available to me.  
24 Q. Where are the FID cards, your records of

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1 those, where are they kept in the Shrewsbury  
2 Police Department today, right now?  
3 A. FID card records today, it's my  
4 understanding that today, not having any personal  
5 firsthand knowledge, because I'm not involved in  
6 the licensing process at the Shrewsbury Police  
7 Department, that the FID cards are kept in  
8 various locations. There is a copy of the FID  
9 card which is physically kept in a storage area  
10 upstairs in a restricted area of the police  
11 station, and then another copy is then sent to  
12 the Firearms Record Bureau located at  
13 200 Arlington Street in Chelsea, Mass.  
14 Q. Is that the Department of Public Safety?  
15 A. That is a part of the Department of  
16 Public Safety. It would be the Firearms Record  
17 Bureau.  
18 Q. Okay. And the record that's kept in the  
19 Shrewsbury Police Department is a copy of the  
20 actual FID card?  
21 A. I would believe so, yes.  
22 Q. And it's upstairs someplace?  
23 A. It's upstairs in a restricted area.  
24 Q. Restricted from -- by -- restricted --

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1 who's restricted?  
2 A. At the current time the property in  
3 evidence officer has access to those records.  
4 Q. And that was you back in '94, right?  
5 A. Back in '94 it was, yes.  
6 Q. Yes. Okay. So you --  
7 A. I'm talking today.  
8 Q. So you weren't restricted from going in  
9 there back in '94?  
10 A. Back in 1994 the FID cards were archived  
11 in a restricted area over the garage of the  
12 police station, not in the property in evidence  
13 room to the best of --  
14 Q. Okay. And were you --  
15 A. -- to the best of my knowledge.  
16 Q. Were you allowed to have access to those  
17 records back then? You being the property  
18 management evidence clerk or whatever it's  
19 called.  
20 A. To the best of my knowledge and  
21 recollection, yes, I did.  
22 Q. Okay. And the chief of police and  
23 Sampson and all those guys, would they have  
24 access?

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1 A. To the best of my recollection, they're  
2 -- they would, yes.  
3 Q. Okay.  
4 A. It would -- it would go on the level of  
5 security lock that was on the door.  
6 Q. How --  
7 A. I can't say firsthand what level of --  
8 Q. How hard --  
9 A. -- security key they had.  
10 Q. How hard -- if you wanted to find a  
11 record of somebody's FID card that was issued by  
12 the Shrewsbury Police Department today, if you  
13 wanted to find that record today, say it was  
14 issued years ago, how hard -- is it in a locked  
15 file, or how hard would it have to be to get to  
16 it? I mean, you don't have to go through the  
17 Chinese Red Army or something like that, do you?  
18 A. I won't comment on the Chinese Red Army.  
19 I'm not familiar with the Chinese Red Army or  
20 what you mean by it. I have never seen a Chinese  
21 Red Army man near the firearms records. Today,  
22 to access firearms records, as we would have done  
23 in 1994, we would have verified through the  
24 master card entry on a record whether one had

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1 been issued; and then if we needed to physically  
2 see it, we would have had to go to the restricted  
3 area and sort through boxes of records to find  
4 the card.  
5 Q. So you're saying that there should be a  
6 record of that on the master card?  
7 A. If the FID card was issued. It was my  
8 understanding that when they were issued they are  
9 recorded on the master card.  
10 Q. Okay. So everybody that goes to the  
11 Shrewsbury Police Department that gets an FID  
12 card issued ends up having a master detail card?  
13 A. That's correct.  
14 Q. Well, was that the policy back in '94?  
15 A. To the best of my knowledge and  
16 recollection, not being involved in the licensing  
17 process at the Shrewsbury Police Department, I  
18 would say it would -- that would be correct.  
19 However, I have not seen it done. I have seen  
20 people, when I pull their master card up, have  
21 entries that they have FID cards.  
22 Q. Okay. So, if that's not on my master  
23 detail card listing, what happened?  
24 A. It could be clerical error. I have

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1 reviewed your master card previously, and I see  
2 that there was an indication that you made  
3 application. There was no indication to lead us  
4 that that card had been issued.  
5 Q. Well, would the application be down on  
6 the master card detail listing?  
7 A. On your specific master card, which I  
8 have viewed, it indicates that you did apply for  
9 an FID card. It does not state that it was  
10 issued.  
11 Q. It states that I applied for one?  
12 A. To the best of my knowledge and  
13 recollection of your master card, when I reviewed  
14 it, it does.  
15 Q. Who in the Worcester Police Department  
16 told you my FID card was revoked?  
17 A. I don't recall. I don't recall whether  
18 an officer told me or I followed up on the arrest  
19 from the assault and battery, as I recall, by  
20 means of a dangerous weapon or, as you would say,  
21 an assault by means of a dangerous weapon,  
22 warrant arrest. I don't know whether I followed  
23 up on that case with a letter reporting that you  
24 were in possession of a firearm when arrested on

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1 a warrant, which is also a violation of the law.  
2 So there were many mitigating factors.  
3 Q. The fact of the matter is there's no  
4 violation of the law; am I correct?  
5 A. Under Chapter 269 10H, Anyone who  
6 possesses a firearm or weapon when arrested on a  
7 warrant can be charged with possessing a  
8 dangerous weapon, which is a felony.  
9 Q. If he's licensed?  
10 A. If he's licensed. Anyone who is in  
11 possession of a weapon when arrested on a warrant  
12 within the Commonwealth can be charged under  
13 Chapter 269 10H, I believe it is.  
14 Q. Even if he has a license to carry?  
15 A. That is my understanding of the law.  
16 Q. That's your understanding of the law?  
17 A. That's correct.  
18 Q. So, if a guy is charged with rape and  
19 gets picked up on a warrant and he's got a gun on  
20 him that he's licensed for, he can get charged  
21 for the rape and having a gun?  
22 A. That's my --  
23 Q. Even if he wasn't convicted previously of  
24 a felony?

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1 A. That's my understanding of the law.  
2 Q. Well, back in '90, when you picked me up  
3 on a warrant that was -- was issued by the  
4 Worcester Police Department for assault with a  
5 dangerous weapon and I had a Glock 9 millimeter  
6 on me that was -- that I had a license -- and I  
7 also had a Massachusetts license to carry a  
8 firearm, how come you didn't arrest me for that,  
9 for carrying a firearm?  
10 A. I didn't charge you for it.  
11 Q. Why didn't you? You just said that's the  
12 law?  
13 A. That's the law. Officer discretion.  
14 Q. Officer --  
15 A. And, quite frankly, Michael --  
16 Q. Officer's discretion?  
17 A. Could I finish? Quite frankly, Mike, at  
18 that time, if you recall, you were rather  
19 pleasant and courteous to me.  
20 Q. So that makes the difference?  
21 A. When you arrest somebody and they're  
22 carrying a loaded handgun, the fact that you told  
23 me you had it made a big difference to me.  
24 Q. Under the law it makes a difference, huh?

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1 A. It made a difference to me.  
2 Q. Oh. So you do whatever you damn well  
3 please, don't you, Lieutenant Hurley?  
4 MS. FAHEY: Objection.  
5 A. The answer to that question is, no, I  
6 don't do as I damn well please. I do as the law  
7 prescribes and the law gives me, as a police  
8 officer, discretion. The same as if I stopped  
9 somebody for speeding. I can either write them a  
10 ticket or not write them a ticket.  
11 Q. But speeding isn't --  
12 A. The same as if somebody is disturbing the  
13 peace, I can arrest them; I can summons them; I  
14 cannot charge them. The same as if I arrest  
15 somebody and they're carrying a handgun, a bat, a  
16 knife, or anything prescribed under 269 10. I  
17 have the discretion of whether to charge them or  
18 not as a police office in the Commonwealth.  
19 Q. Oh, is that so? That's very  
20 interesting. That's very interesting, Lieutenant  
21 Hurley. I'm glad you told me that.  
22 When did anybody, to your best  
23 knowledge, on the -- when did anybody on the  
24 Shrewsbury Police Department first inquire if

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1 Michael Elbery had an FID card on 8/5/94?  
2 A. I have no knowledge of the exact date.  
3 Q. Okay. Do you have any knowledge that  
4 anybody on the Shrewsbury Police Department made  
5 an inquiry as to whether Michael Elbery had an  
6 FID card on 8/5/94?  
7 A. Yes.  
8 Q. Who made that inquiry?  
9 A. I don't recall who made the inquiry, but  
10 I know there was a letter generated by then Chief  
11 of Police Robert K. McGinley suspending your  
12 license to carry after it was brought to his  
13 attention by the Worcester County District  
14 Attorney's Office that you, in fact, had an FID  
15 card issued out of the Shrewsbury Police  
16 Department.  
17 Q. What's the -- what's the Shrewsbury  
18 Police Department's policy on checking to see if  
19 somebody has an FID card? If it comes to your  
20 attention a citizen has possession of firearms,  
21 whether they're handguns or rifles, what do you  
22 do?  
23 A. We would check with the department-record  
24 system, to wit, the computer and see whether that

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1 individual was issued an FID card. We would  
2 check with officers' personnel knowledge whether  
3 the individual had an FID card. And at the  
4 current time there's now a statewide system in  
5 effect in the Criminal History System Bureau's  
6 computer to check online whether there are  
7 licenses to carry or FID cards issued to  
8 individuals. That system went into effect  
9 approximately a year ago.  
10 Q. Okay. What kind of computer systems did  
11 you have in 1994?  
12 A. In 1994 we had the Pamet in-house  
13 computer, and we had a CHSB computer with access  
14 to the Registry, the interstate crime index,  
15 out-of-state registration files, and NCI system.  
16 Q. And this would all give you information  
17 on the FID card?  
18 A. None of those would give you information  
19 on an FID card, except for the Shrewsbury Police  
20 Department in-house computer system and --  
21 Q. Pamet?  
22 A. Pamet, which should indicate whether or  
23 not an FID card was issued. "Pamet" is  
24 P-a-m-e-t.

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1 Q. Do you know the difference between a  
2 license to carry and an FID card?  
3 A. I understand that a license to carry  
4 allows one to possess a handgun under the  
5 restrictions set forth by that chapter and  
6 section, and that an FID card allows the  
7 possession of Long guns, L-o-n-g, under the  
8 restrictions set forth in that statute.  
9 Q. And that's all you know about it?  
10 A. I know that you cannot possess a handgun  
11 with an FID card, except in the exception of your  
12 home.  
13 Q. Your home?  
14 A. Correct.  
15 Q. So, if you had -- if you had a handgun in  
16 your garage, under Mass. Law in 1994, if you had  
17 an FID card also, you'd be perfectly legal; am I  
18 correct?  
19 A. If that garage is part of your residence,  
20 yes, it would be.  
21 Q. How about a leased storage unit?  
22 A. That is a -- really a point of law which  
23 I would say my opinion is no. I believe the  
24 court in this case ruled yes.

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1 Q. Where do you come up with that fact?  
2 A. It's my understanding that you were found  
3 not guilty because you produced a valid FID card,  
4 and that this storage area was leased to you.  
5 Q. So you know that?  
6 A. That's what I've heard.  
7 Q. Where did you hear it?  
8 A. During discussion about the case.  
9 Q. So you shouldn't have arrested me, right?  
10 A. That's not my position. My position --  
11 that's not my position.  
12 Q. What is your position?  
13 A. My position is that your license to carry  
14 firearms was revoked in Massachusetts by the  
15 Worcester Police Department for being a convicted  
16 felon, and -- strike that -- not for -- the 1991  
17 incident and that at the time that you were  
18 arrested you were a convicted felon in possession  
19 of firearms and had no statutory authority to  
20 possess those firearms.  
21 Q. Was my FID card revoked on August 5,  
22 1994?  
23 A. Your FID card was not revoked by the  
24 Shrewsbury Police Department, but it is our

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1 opinion that statutorily you were prohibited from  
2 possessing firearms.  
3 Q. And what law says that?  
4 A. The Massachusetts General Law.  
5 Q. Which one?  
6 A. I don't have it currently. Offhand,  
7 under 269 10 of the licensing authority, it is my  
8 understanding of the law that a convicted felon  
9 cannot be in possession of a firearm or cannot  
10 possess a firearm. I know that from when I  
11 purchased a firearm. It's a question that's  
12 asked on the form. And that your license to  
13 carry was revoked, your authority to carry  
14 firearms in Massachusetts.  
15 Q. Well, what does license to carry have to  
16 do with this case, Lieutenant Hurley?  
17 A. License to carry is an authority to carry  
18 firearms in Massachusetts.  
19 Q. Who was carrying a firearm?  
20 A. You had them under your possession and  
21 control. It's the same as carrying.  
22 Q. They were in a garage, were they not?  
23 A. They were in a storage bin.  
24 Q. They weren't on my person?

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1 A. The answer -- were they in a garage, the  
2 answer is no. They were in a leased storage bin,  
3 leased to Mr. Michael Elbery. Were they on your  
4 person, no. They were under your possession  
5 and/or control.  
6 Q. But not on my person? I wasn't carrying  
7 them, right?  
8 A. The answer was they are not on his  
9 person. They were under his possession and/or  
10 control.  
11 Q. And that's all you need an FID card for,  
12 right?  
13 A. My opinion and position is that  
14 statutorily a convicted felon does not have a  
15 right to possess firearms in Massachusetts, and  
16 that your license to carry was revoked by then  
17 Chief Coakley of the City of Worcester Police  
18 Department.  
19 Q. Okay. Where does it say in the  
20 Massachusetts General Laws that a felon can't  
21 possess firearms?  
22 A. I don't have the chapter and section with  
23 me. I can't say whether it says that in the  
24 Massachusetts General Law. It's my

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1 understanding --  
2 Q. Well, you just did.  
3 A. If I could finish the question?  
4 MS. FAHEY: Please don't interpret  
5 him.  
6 A. It's my understanding of case law,  
7 federal and state statutes is a convicted felon  
8 -- and you are a convicted felon -- cannot  
9 possess --  
10 Q. Not for long.  
11 A. -- a firearm. At the current time of  
12 this deposition and when you were arrested in  
13 1994, you were convicted of attempted mayhem,  
14 trying to physically poke an individual's eye out  
15 with your thumb, during a barroom fight.  
16 Q. That's what they framed me for, right?  
17 A. That's what you were convicted of.  
18 MS. FAHEY: Objection.  
19 THE WITNESS: Please note the --  
20 Q. Although the evidence presented to the  
21 jury, right?  
22 MS. FAHEY: Objection.  
23 THE WITNESS: Please note the  
24 objection.

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1 A. And, to the best of my knowledge, you  
2 were convicted in a lawful trial in the Worcester  
3 District Court on a violent crime of attempted  
4 mayhem, where you attempted to poke an  
5 individual's eye out. Being a convicted felon  
6 and having a license to carry that was revoked,  
7 we do not believe -- and it is our opinion and it  
8 is my opinion till this day -- that you do not  
9 have the right to carry firearms in Massachusetts  
10 and/or possess or control them.  
11 Q. Where does it -- were you enforcing  
12 federal law or state law?  
13 A. I am not a federal officer.  
14 Q. Well, how come you keep on talking about  
15 the federal law?  
16 A. Federal law we --  
17 Q. Federal law has nothing to do with this  
18 case, okay?  
19 A. All rights not reserved, the federal --  
20 Q. Did you ever contact the Bureau of  
21 Alcohol, Tobacco and Firearms about this case?  
22 THE WITNESS: Could we please note  
23 for the record that Mr. Elbery did not allow me  
24 to answer his first question?

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1 A. The second question is: I did not  
2 contact the Bureau of Alcohol, Tobacco and  
3 Firearms. Someone within the agency did. And  
4 there were representatives of the Bureau of  
5 Alcohol, Tobacco and Firearms at the incident at  
6 the storage place.  
7 Q. Okay. Who contacted the BATF?  
8 A. I have no idea who contacted them. I'm  
9 sure it was --  
10 Q. Why were they contacted?  
11 A. Because at the time that you were  
12 arrested -- strike that. At the time the weapons  
13 were located during your arrest, we were  
14 questioning whether they were fully automatic  
15 assault weapons or semiautomatic assault weapons  
16 and whether any applicable federal statutes  
17 applied.  
18 Q. And it took you that big of a job to  
19 figure that out, whether they were automatic or  
20 semiautomatic, huh?  
21 A. I am not familiar with the mechanical  
22 operations of a firearm, and I could to this day  
23 not tell you whether a gun is fully or  
24 semiautomatic unless I saw the firearm. I do not

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1 own, possess, or have an assault weapon.  
2 Q. You don't have any semiautomatic weapon?  
3 A. I have a semiautomatic firearm issued to  
4 me by the department. That is the one and only  
5 weapon that I own.  
6 Q. Well, isn't that what an assault weapon  
7 is? Isn't that what they call an "assault  
8 weapons" to confuse the American public?  
9 MS. FAHEY: Objection.  
10 A. That calls --  
11 MS. FAHEY: You may answer.  
12 A. That calls for a conclusion.  
13 Q. No, it doesn't even.  
14 A. Yes, it does. It's a hypothetical. It's  
15 an opinion.  
16 Q. An assault weapon is issued by a  
17 government that's always fully automatic. In  
18 this country they're calling "assault weapons"  
19 semis, which have been around since 1898 --  
20 MS. FAHEY: Objection.  
21 Q. -- and you got one, right --  
22 MS. FAHEY: Objection. This is  
23 way beyond --  
24 Q. -- to trick the American public --

<div>Page 163</div> <div>1 MS. FAHEY: You don't need to 2 answer that. 3 Q. -- so that -- so that they can take their 4 guns away from them; isn't that correct? 5 MS. FAHEY: Objection. 6 Q. Let me ask you something. What are your 7 children going to inherit -- 8 MS. FAHEY: Objection. 9 Q. -- in this country? 10 MS. FAHEY: Objection. You don't 11 need to answer that. 12 Q. They're going to inherit a police state, 13 aren't they? 14 State all the procedures you took 15 to conclude that Michael Elbery had an invalid 16 FID card on 8/5/94? 17 A. To the best of my recollection, I checked 18 the department computer system, which indicated 19 that no FID card had been issued to Michael 20 Elbery by the Shrewsbury Police Department at 21 that point in time. 22 Q. Okay. You checked this -- the Pamet 23 computer? 24 A. To the best of my recollection, yes. I</div>	<div>Page 166</div> <div>1 box inside your Corvette, an Uzi can either be 2 fully or semiautomatic and can be possessed -- if 3 I understand the law correctly, it can either be 4 possessed with an FID card or a pistol permit, 5 also known as a "license to carry." 6 Q. That's why you checked to see if I had an 7 FID card? 8 A. That's correct. 9 Q. And the Uzi was the only nonrifle in that 10 storage container? 11 A. No. I believe there were two handguns 12 that were found, also. 13 Q. Two? 14 A. To the best of my recollection, yes. 15 Q. Well, why weren't there charges on those? 16 A. My belief -- my understanding was that 17 you were charged -- as I stated early on in the 18 deposition, that there were some 269 10A charges 19 against you. I was not involved. 20 Q. 10A or 10H? 21 A. 10A, as in alpha. 22 Q. Okay. How many of those charges? 23 A. My understanding was there was one for 24 each of the handguns that was found in your</div>
<div>Page 164</div> <div>1 also had personal knowledge that -- 2 Q. Why did you do that? 3 MS. FAHEY: Can he finish? 4 A. If I can answer the first question, 5 please. And I also had personal knowledge that 6 your license to carry had been revoked by then 7 Chief Coakley at the City of Worcester Police 8 Department, and that revocation had been upheld 9 by Judge Patrick Fox of the district court on 10 your appeal. I also had personal knowledge that 11 you were a convicted felon per our discussion at 12 the fence line and then from monitoring your case 13 in courts. 14 Q. And you monitored my cases in the court? 15 A. Excuse me. The paper. 16 Q. In the paper? 17 A. Right. 18 Q. And in the courts? 19 A. In the paper. 20 Q. Well, you just said in the courts? 21 A. And then I tried to -- 22 Q. You've been watching my cases, right? 23 A. And then I corrected this -- myself, 24 Michael.</div>	<div>Page 167</div> <div>1 charge facility. 2 Q. And how many handguns were found? 3 A. To best of my knowledge and recollection 4 at this point, as I have previously stated, there 5 were two found. 6 Q. Two handguns. And one of those is an Uzi 7 or that's separate? 8 A. I don't recall. 9 Q. So you admit then that it would only 10 require an FID card? 11 A. That's not what I said. Right next to -- 12 and, if you look at the photos we provided you, 13 there was the outline of what appeared to be a 14 Long gun in the Corvette. That would also 15 require an FID card, where the Uzi could or could 16 not require an FID card. It might require a 17 licence to carry. 18 Q. Well, what about a handgun in somebody's 19 house, what would that require? 20 A. A handgun in somebody's house could -- 21 Q. Back in '94? 22 A. It could require a license to carry or an 23 FID card. 24 Q. If somebody's got a handgun in their</div>
<div>Page 165</div> <div>1 Q. Why did -- 2 A. Go ahead. 3 Q. Why did you check the computer again to 4 find my FID card? 5 THE WITNESS: Please note that he 6 did not allow me to finish my question to the 7 last -- my answer to the last question again. 8 A. And if you could proceed now with the 9 next question? 10 Q. Do you want to finish the answer you're 11 complaining about? 12 A. If you'd stop interrupting me, I could 13 probably keep track of them all, Michael; and we 14 could move on. 15 Q. Maybe you're building up a web that 16 you're getting tangled in here, my boy. 17 A. That's an opinion. 18 THE WITNESS: Please note my 19 objection to the insinuation. 20 Q. Might be some fact. Might be fact. 21 Why did you check -- what prompted 22 you to check to see if I had a valid FID card on 23 8/5/94? 24 A. Because when we originally saw the Uzi</div>	<div>Page 168</div> <div>1 bedroom, back in '94, if somebody had a handgun 2 in their bedroom, what would that require? 3 A. In their own personal bedroom of their 4 residence it would require an FID card. 5 Q. Okay. And that's why you checked to see 6 if I had an FID card? 7 A. That's not what I said. 8 Q. Who on the Shrewsbury Police Department 9 did you speak to about my arrest for the guns 10 back in '94? You were one of the participating 11 officers. What -- you've already told us that 12 you were involved in numerous conversations. Who 13 in particular on the Shrewsbury Police Department 14 and the Worcester DA's Office did you talk about 15 -- did you talk to in regards to that arrest? 16 MS. FAHEY: Objection. 17 MR. ELBERY: what's the 18 objection? 19 MS. FAHEY: Multiple questions. 20 A. I spoke to various members of the 21 Shrewsbury Police Department, including, to the 22 best of my recollection at this time, now Chief 23 Wayne Sampson, Lieutenant -- called -- now 24 Lieutenant Chester Johnson, Lieutenant Daniel</div>

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1 Sklut, Lieutenant -- strike that -- Sergeant  
2 Steve Faucher, and I'd have to say everybody else  
3 who's a plaintiff in the four civil actions that  
4 you filed against us. We've all had discussions  
5 about your arrest.

6 MS. FAHEY: You mean defendant.  
7 A. Defendant, excuse me. Brad -- any of the  
8 defendants that are named as codefendants in the  
9 four civil actions you have against us, we have  
10 all discussed the case.

11 Q. Did you ever contact the Massachusetts  
12 Parole?

13 MS. FAHEY: About you?

14 A. As I've indicated in the  
15 interrogatories --

16 Q. About me?

17 A. As I've indicated in the defendants'  
18 request for interrogatories, I have no direct  
19 knowledge of contacting anyone at the  
20 Massachusetts Parole Board regarding you. There  
21 is electronic notification of the Parole Board,  
22 if a BOP were to be run on you.

23 Q. Did you ever make an inquiry about me?

24 A. Yes. I have made inquiries about your

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1 BOP.

2 Q. When did you do this?

3 A. I have made inquiries on this BOP as part  
4 of the request for documentation in the gathering  
5 of this case -- the case file for this case. I  
6 believe the last one was in 1997.

7 Q. The last one was in '97?

8 A. That's correct.

9 Q. Did you speak to a man named "John  
10 Chambers"?

11 A. I don't have any recollection of speaking  
12 to him.

13 Q. None?

14 A. No.

15 Q. How about Robert Moynihan?

16 A. No recollection of speaking to him.

17 Q. Why did you make that inquiry in '97?

18 A. Several reasons, being the request for  
19 documentation to provide to Bradford Louison, him  
20 being one, production to other attorneys who are  
21 involved in the case, Elizabeth Fahey, and  
22 attorneys at Reardon & Reardon in Worcester.

23 Q. Why did you tell John Chambers you were  
24 wrapping up another case against me?

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1 MS. FAHEY: Objection.

2 A. I've previously stated that I have no  
3 recollection of talking to John Chambers. And,  
4 as I've previously stated, I know of no case,  
5 indictment, or any investigation pertaining to  
6 Michael Elbery at this time or since the incident  
7 at the E-Z Mini Storage.

8 Q. Okay. Who -- going back to 8/5/94 at E-Z  
9 Mini Storage, who opened my Corvette?

10 A. To the best of my recollection, going  
11 from my report, which would be 94010436,  
12 referencing the report, it states at some point  
13 in the report that I believe then Caola Locksmith  
14 came to the Shrewsbury Police Station to open up  
15 the Corvette.

16 Q. Did one of the officers involved in my --

17 A. Page -- let me finish the question.

18 Page 3, Paragraph 2, The Corvette was  
19 additionally towed to the station and --

20 Q. What are you reading from, what document?

21 A. As I've previously stated, 94010436,  
22 page 3, Paragraph 2. The Corvette was  
23 additionally towed to the station, and  
24 subsequently Caola Locksmith Company had to come

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1 out and open up the Corvette to retrieve what was  
2 an Uzi and a Remington 870 Shotgun.

3 Q. What happened to the rest of the stuff?

4 A. The rest of what stuff?

5 Q. That was in the car.

6 A. Specifically?

7 Q. Any other guns in the car?

8 A. The record here indicates that there was  
9 an Uzi and a Remington 870 --

10 Q. Okay.

11 A. -- shotgun.

12 Q. And that's it, huh?

13 A. To the best of my knowledge, that is what  
14 the report indicates came out of the Corvette at  
15 that time.

16 Q. Okay. The next question: One of the  
17 participating officers, Carl Hanson, what did he  
18 go to jail for?

19 MS. FAHEY: Objection.

20 THE WITNESS: Does that mean  
21 answer?

22 MR. ELBERY: What's the  
23 objection?

24 MS. FAHEY: How is it remotely

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1 relevant to this?

2 MR. ELBERY: Credibility. That's  
3 what it's remotely --

4 A. Sergeant --

5 Q. What, am I pulling your leg or  
6 something? Guy went to jail for stealing from  
7 Boy Scouts.

8 A. That's incorrect. Then Sergeant Carl  
9 Hanson of the Shrewsbury Police Department was  
10 convicted and sentenced to time in jail for  
11 embezzlement from the Police Explorer Post to the  
12 best of my knowledge.

13 Q. What's the "Police Explorer Post"?

14 A. It is a youth group from the police  
15 department. And, to finish the question for the  
16 official record, it was the Shrewsbury Police  
17 Department that brought forward the information  
18 on the embezzlement to the Worcester County  
19 District Attorney's Office.

20 Q. How much time in jail did he do?

21 A. I have no knowledge of that. He spent --  
22 I don't know what his sentence was. I can't  
23 remember what happened. I know that he spent  
24 some time in jail.

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1 Q. When were the Benois arrested for  
2 embezzlement?

3 A. I have no knowledge of any arrest of the  
4 Benois, nor did I participate in any.

5 Q. How long does it take -- after an  
6 incident occurs that the Shrewsbury Police  
7 Department is involved, how long does it take  
8 before you're generally -- before you write up a  
9 -- write the incident up and sign off on it?

10 A. We don't write the incident up.

11 Q. Who does?

12 A. They're not written up.

13 Q. Typed up? You got some exhibits --

14 A. The secretaries type them up.

15 Q. Okay. And how long after the incident  
16 does that usually get done?

17 A. It can vary in the secretary pool from  
18 anywhere from three days to three months, depends  
19 on how busy they are.

20 Q. Three days to three months. And when  
21 does the officer sign off on those?

22 A. I don't believe an officer signs off on  
23 his own report, no.

24 Q. No. Well, if an incident took place in

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1 1994, would it be likely that it would get signed  
2 -- could an officer sign off at the end of that  
3 incident report in February of 1998?  
4 A. If an incident occurred in '94 --  
5 Q. Yes.  
6 A. -- could an officer sign off on it in  
7 February of 1998?  
8 Q. Yes.  
9 A. Yes, it's possible.  
10 Q. So four years behind time?  
11 A. That's not what I said. I didn't say we  
12 were four years behind time. If the document  
13 would generate a required approval before it was  
14 sent out, an officer would sign off on it.  
15 Q. Require -- what kind of approval does it  
16 need?  
17 A. Usually administrative.  
18 Q. What does that mean? Who's the  
19 administrator?  
20 A. It was a sergeant or higher.  
21 Q. And what, he's got to review it?  
22 A. Before it went out, yes.  
23 Q. Out where?  
24 A. Depending on where it was going.

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1 Q. Well, don't you produce some of these  
2 incident reports and they don't go anywhere; they  
3 just sit in your file?  
4 A. That's correct.  
5 Q. Who were the two suspects pertaining to  
6 the E-Z arson of 1994 that were in the Worcester  
7 T&G?  
8 A. I have no knowledge as to who  
9 specifically was in the Telegram & Gazette. I  
10 specifically know who was one primary suspect  
11 from my reading of the reports and the case. The  
12 discussion we had is that that's an ongoing  
13 investigation, and that Mr. Benoit at some point  
14 was charged with some type of involvement, as  
15 well was Mr. -- I think it was Nolan, the owner  
16 of the E-Z Mini Storage, with some type of  
17 involvement in violation for crimes that occurred  
18 over at E-Z Mini Storage.  
19 Specifically I know Mr. Nolan was  
20 -- a clerk's hearing was set up that he shut off  
21 or permitted the shut of the inside sprinkler or  
22 something like that.  
23 Q. And that was in the newspaper, right?  
24 Remember that?

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1 A. No.  
2 Q. Did he get arrested for that --  
3 A. I don't --  
4 Q. -- or he didn't get arrested?  
5 A. I don't -- don't --  
6 Q. You just said he got arrested?  
7 A. I don't think I said that. I said he was  
8 charged, and I don't believe -- for shutting off  
9 a sprinkler system.  
10 Q. He was charged?  
11 A. I am familiar with a clerk's hearing for  
12 probable cause to see whether a complaint could  
13 be sustained. It was taken against Mr. Nolan.  
14 Q. Did he get charged?  
15 A. I have no knowledge. I wasn't involved  
16 in that investigation.  
17 Q. Who's "Sherry Boulet"?  
18 A. I have no idea who Sherry Boulet is --  
19 Q. Who's Don --  
20 A. -- at this point in time to the best of  
21 my knowledge.  
22 Q. Who's "Don Brillhart"?  
23 A. I have no knowledge who Don Brillhart is  
24 at this point in time to the best of my

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1 knowledge.  
2 Q. Where's Robert Breen right now?  
3 A. My last known address of Mr. Breen would  
4 be Worcester County House of Correction.  
5 Q. So you arrested him in '96, am I correct,  
6 for breaking into some woman's house?  
7 A. I don't believe it was '96.  
8 Q. What year was it?  
9 MS. FAHEY: Objection. How is  
10 this remotely relevant?  
11 MR. ELBERY: I think it's very  
12 relevant.  
13 A. I don't recall the specific date of the  
14 arrest.  
15 Q. But you had -- in '97 you had Breen in  
16 jail on a charge via the Shrewsbury Police  
17 Department; am I correct?  
18 A. I'd have to look at Mr. Breen's arrest  
19 record to verify that.  
20 Q. Who's "Cronin Investigations"?  
21 A. I have no idea at this time or any  
22 recollection, to the best of my knowledge, at  
23 this time who Cronin Investigations is.  
24 Q. What does the word "codefendant" mean?

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1 A. The word "codefendant" means someone who  
2 has been charged with another individual in a  
3 crime.  
4 Q. Thank you. Does Breen have a master card  
5 detail listing?  
6 A. I'd have to look at the master card  
7 detail to see what's on it.  
8 Q. Well, he's been arrested by you folks,  
9 right?  
10 A. That is correct. I don't remember  
11 whether he has a master card detail. I'd have to  
12 look at documents.  
13 MS. FAHEY: I think 5, 6, 7 and 8  
14 are over there.  
15 Q. You're not with familiar with your own  
16 documents?  
17 A. Michael, we've been here several hours.  
18 I'm asking to see the master card detail list to  
19 know whether he has one. I'll be happy to answer  
20 the question. If you don't want to produce it, I  
21 have my answer; and I have no answer at this time  
22 as to whether he has one. If I could see the  
23 master card detail, I'll be happy to answer.  
24 Q. If I had one, I wouldn't be asking the

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1 question, obviously.  
2 A. I have a master card detail over there.  
3 If I could look at what type of document it is,  
4 if it is a master card and evidence sheet, I'll  
5 be happy to tell you whether Mr. Breen has one.  
6 Q. If Robert Breen has been arrested by the  
7 Shrewsbury Police Department, would he have a  
8 master card detail listing?  
9 A. I'd have to see what you're referring to  
10 as "master card detail listing." If he has been  
11 arrested he -- if that's what a master card  
12 detail listing is, then, yes, he has one.  
13 THE WITNESS: Please let the  
14 record show that Mr. Elbery would not show me a  
15 master card detail listing for this answer.  
16 Q. So you don't seem to be very familiar  
17 with your own documents?  
18 A. Michael, you have shown me so many  
19 documents at this time with different titles.  
20 All I was asking was to see the document so I  
21 could give you a correct and accurate answer.  
22 You have declined to show me. Could we please  
23 move on?  
24 Q. I'm testing to see if you know your own

<p>Page 181</p> <p>1 documentation that's produced by your employer. 2 I don't have to do that. That's the point of my 3 question. 4 MS. FAHEY: There's no question 5 before you. 6 A. There's no answer. 7 Q. I don't need your criticism. 8 MR. ELBERY: Let that be on the 9 record. 10 Q. I have every right to ask you a question 11 without presenting documentation. 12 A. Could we move on? 13 Q. What method of Miranda do you generally 14 use at the Shrewsbury Police Department? 15 MS. FAHEY: Objection. How is 16 this remotely relevant to your claims? 17 MR. ELBERY: You know, I'm tired 18 of your nonsense, Mrs. Fahey. Okay. I'm not 19 going to have you ask me what the relevance is 20 every time I ask a question. 21 MS. FAHEY: Well, I don't like to 22 instruct my client that he need not answer the 23 question. 24 MR. ELBERY: I don't want you</p>	<p>Page 184</p> <p>1 Officer James Coates gave you your Miranda 2 warning. It is signed that he gave it to you by 3 you and by Officer Coates that it was given to 4 you. 5 MR. ELBERY: Are you happy with 6 the relevance now, Attorney Fahey? 7 MS. FAHEY: Not part of your 8 claim. Whether you were given your Miranda 9 rights or not, has nothing to do with your claim 10 of civil rights violations. 11 MR. ELBERY: I disagree and I wish 12 you would stop doing that. What I present as 13 evidence is not for you to determine. 14 THE WITNESS: Could we please move 15 on to the next question? 16 MR. ELBERY: Do you understand 17 me? And I would appreciate you to stop the 18 needless interrupting for the sake of trying to 19 shake me down. There's absolutely no point of 20 these comments. 21 Q. Did you ever tell -- do you know a guy 22 named Mike Ball from the Worcester District 23 Attorney's Office? 24 A. I know who Mike Ball is. He's the</p>
<p>Page 182</p> <p>1 instructing your client at all. He's here to be 2 -- not here to be coached by you. He's here to 3 answer the questions. You're not supposed to 4 answer the question for him. I want -- I got a 5 question here and I want it answered. 6 MS. FAHEY: I don't think that's 7 remotely relevant. 8 MR. ELBERY: I don't care what you 9 think. 10 MS. FAHEY: You don't have to 11 answer that. 12 Q. What method of Miranda does the 13 Shrewsbury Police Department use? 14 THE WITNESS: For the record, let 15 it be known by this defendant that I feel that 16 there is -- Mr. Elbery is intimidating -- trying 17 to intimidate my counsel. I'm happy to answer 18 the question; however, I feel that I have the 19 right to consult with counsel, and I don't feel 20 I've been afforded that. 21 A. Miranda, to finish, at the Shrewsbury 22 Police Department is part of a written form, 23 which we have already marked an exhibit on the 24 statement of rights. Miranda rights are given</p>	<p>Page 185</p> <p>1 assistant district attorney with Worcester County 2 District Attorney John Conte's office -- or was 3 an assistant district attorney. I don't know 4 whether he's currently still employed or what the 5 dates of his employment were. 6 Q. Sir, now if you could just -- some of 7 these just answer "yes" or "no," you know, 8 instead of repeating all the information that I 9 gave you in the question, it will go a lot 10 faster. I know you're going to do what you're 11 going to do; but, you know, you're wearing 12 yourself out. You look awful stressed out 13 there. You know, it's just taking a hell of a 14 lot of time. 15 MS. FAHEY: There's no question. 16 MR. ELBERY: No. It's not a 17 question. 18 THE WITNESS: It's not relevant. 19 It's wrong. Could we just move on? 20 Q. Did you ever tell him my FID card was 21 revoked? 22 A. I have no recollection of any 23 conversations, to the best of my memory, 24 regarding conversation with Assistant District</p>
<p>Page 183</p> <p>1 orally. Miranda may not -- or may not 2 specifically even have to be given to a defendant 3 based on the type of questioning or the situation 4 that they are in. 5 Q. Which method do you use mostly? 6 A. I have used both methods on various 7 occasions. 8 Q. When arresting Michael Elbery -- 9 MR. ELBERY: And your relevance, 10 Attorney Fahey, should have been obvious. 11 Q. -- from the documentation you've already 12 shown me, with relation to the arrest on 8/5/94 13 of Michael Elbery, which method did you use? 14 A. Can I see the document? 15 MS. FAHEY: Sure. 16 A. As we have previously gone over numerous 17 times, Mike Elbery's Miranda warning was given to 18 him in writing and signed by him, which is marked 19 as Exhibit No. 2 as part of this deposition. 20 Q. Okay. So that means it wasn't read to 21 me; I had to read it and then sign it? 22 A. As I previously stated during this 23 deposition, I was not present during the booking 24 procedure. I have no personal knowledge of how</p>	<p>Page 186</p> <p>1 Attorney Mike Ball. 2 Q. Did anybody from the Shrewsbury Police 3 Department tell you my FID card was revoked on 4 8/5/94? 5 A. I have no recollection of any 6 conversation with any member of the Shrewsbury 7 Police Department regarding your license to -- 8 strike that -- your FID card being revoked. As I 9 stated earlier in this deposition, my 10 understanding was after accessing your master 11 card that you had not been issued an FID card. 12 Nowhere on your master card does it show you were 13 issued an FID card. 14 Q. Okay. So you looked at the master card 15 instead of looking through FID cards, right? 16 A. As I've previously stated, I accessed the 17 in-house computer system, which did not indicate 18 you had been issued an FID card. 19 Q. But the FID card copies were upstairs, 20 right? 21 A. As I previously stated, they were kept in 22 a restricted area. 23 Q. And how are they organized or cataloged? 24 A. I don't recall.</p>

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1 Q. Were they thrown in a big bucket?  
2 A. No. It wouldn't have been a bucket. I  
3 don't recall -- if they were probably put in  
4 boxes.  
5 Q. They were put in boxes? Do you shake up  
6 the box so you can't ever figure out what's in  
7 there? It was just an impossibility physically  
8 for you to find a copy of my FID card that was  
9 upstairs?  
10 MS. FAHEY: Objection.  
11 A. For the record, we did not shake up the  
12 box to make it physically impossible for us to  
13 find your FID card.  
14 Q. Well, let me ask you this: On 8/5/94, if  
15 you went upstairs over the garage where the FID  
16 cards were kept and looked in the boxes, whether  
17 copies, originals, or whatever it is, copy of the  
18 FID cards, was mine -- was it located -- how hard  
19 of a job would it have been for you to retrieve a  
20 copy of the documentation that showed that I was  
21 -- had a legal FID card on 8/5/94?  
22 A. If you're asking --  
23 (Discussion off the record)  
24 A. In 1994, on the date of the incident, had

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1 your computerized master card indicated you had  
2 an FID card, we would have gone upstairs and  
3 pulled that FID card if deemed necessary. Back  
4 in '94 -- we would have had to go back to 1982  
5 and go through 12 years of records. How they  
6 were stored at that time, years, dates, months, I  
7 have no knowledge of.  
8 Q. How about alphabetical order?  
9 A. I have no knowledge of that.  
10 Q. You don't have any knowledge of it, huh?  
11 And you kept the records?  
12 A. I never said I kept the records. Chief  
13 McGinley is the official keeper of records for  
14 the agency.  
15 Q. Now, if your computer said I had an FID  
16 card, what would you have done then? Would you  
17 have retrieved the record then?  
18 MS. FAHEY: Objection. Asked and  
19 answered.  
20 A. I stand by my previous answer.  
21 Q. Which was what? I don't remember you  
22 answering that.  
23 A. Regarding your statutory authority to  
24 possess a firearm.

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1 Q. That's not an answer to the question.  
2 A. That's your answer.  
3 Q. I'll ask the question again. If your  
4 computer gave you information that I had an FID  
5 card on 8/5/94, would you have retrieved a copy  
6 of that FID card that you keep in the Shrewsbury  
7 Police Department?  
8 A. I can't answer that. That's a  
9 hypothetical.  
10 Q. It is?  
11 A. Yes. Because the record does not  
12 indicate that you had an FID card.  
13 Q. Well, let me ask you this: If a citizen  
14 -- if you were checking a citizen's record that  
15 somebody in Shrewsbury, Town of Shrewsbury, and  
16 found out on the computer system that they had an  
17 FID card, would you go -- would you go and  
18 retrieve a copy of it?  
19 A. It's, again, a hypothetical situation.  
20 Without knowing more specifics of it, such as in  
21 your case --  
22 Q. I can ask you a hypothetical.  
23 A. -- whether or not they're a convicted  
24 felon, whether or not their licence to carry was

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1 revoked --  
2 Q. You're not answering the question.  
3 A. I can't answer the question. I have  
4 given my answer.  
5 Q. You're not going to answer the question?  
6 A. I have given my answer.  
7 MR. ELBERY: Make a record he's  
8 not answering the question. I'll go before the  
9 federal judge to get him to answer the question  
10 at his expense.  
11 Q. How many civil suits have there been in  
12 the Shrewsbury Police Department over the last  
13 ten years?  
14 MS. FAHEY: You can answer that to  
15 the best of your knowledge.  
16 A. To the best of my knowledge, not being  
17 privy of the parties of all of them, there have  
18 been two or three that I'm aware of. And, again,  
19 those were allegations. I'm not aware of any  
20 convictions.  
21 Q. Convictions. They were criminal civil  
22 rights case --  
23 A. Finding against us.  
24 Q. They were criminal civil suits?

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1 A. I never said criminal.  
2 Q. You said convictions?  
3 A. You got a civil disposition. There's no  
4 conviction. It wasn't a finding of civil rights  
5 violations. There have been -- to my knowledge,  
6 there have never been any violations of civil  
7 rights, correct.  
8 Q. You said conviction and that's what I --  
9 A. There have never been any findings of  
10 civil rights violations issued against us.  
11 Q. Either civil or criminally?  
12 A. Either civil or criminally that I am  
13 aware of.  
14 Q. Okay. How did Robert Kievra know he was  
15 going to be charged with arson back in 1997?  
16 A. I have no knowledge of how Robert Kievra  
17 knew that he was going to be charged with arson  
18 based on the fact that I did not know you were  
19 going to be charged with arson back in 1997, nor  
20 have I ever known you were going to be charged  
21 with arson. As I have previously stated, I have  
22 not -- nor am I aware of any type of  
23 investigation or pending criminal complaints  
24 against Michael Elbery. You'd have to ask

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1 Mr. Kievra that question.  
2 Q. Say that again.  
3 A. You'd have to ask Mr. Kievra that  
4 question. You'd have to ask Mr. Kievra that.  
5 Q. No, no.  
6 MS. FAHEY: Do you want her to  
7 read back the answer?  
8 MR. ELBERY: That's all right. It  
9 doesn't make any difference.  
10 Q. You just said you weren't aware of any  
11 criminal investigation against Michael Elbery; is  
12 that what you said?  
13 A. I believe I stated that numerous times,  
14 that I was a party to or knew about.  
15 Q. Did you ever speak to Robert Kievra?  
16 A. Robert Kievra called me before Christmas,  
17 a day or two days before Christmas, I believe it  
18 was, stating that he was going to run an article  
19 that he had been contacted on, to the best of my  
20 recollection, by yourself; and he was going to  
21 run it about this big lawsuit that had been filed  
22 umpteen months before. And that was the Telegram  
23 & Gazette. And I told him, at that point, that I  
24 had no comment on it, which is a standard

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1 procedure for the police department. We do not  
 2 comment on pending litigation.  
 3 Q. Okay. Now, you said "before Christmas."  
 4 What year was that?  
 5 A. I don't recall. Just remember it being  
 6 on -- in the Worcester Telegram --  
 7 Q. Okay. So you remember --  
 8 A. -- because I believe --  
 9 Q. -- the article being --  
 10 A. -- it was the paper the day before  
 11 Christmas.  
 12 Q. Was the article -- was the date before  
 13 Christmas? This is the Telegram.  
 14 A. Yes.  
 15 Q. Did you speak to Kievra relating to this  
 16 article before the article came out or after the  
 17 article came out?  
 18 A. I don't recall. I believe I'd have to --  
 19 I'd have to say before.  
 20 Q. Before. Well, that makes sense. I  
 21 mean --  
 22 A. I know he spoke to Lieutenant Sampson  
 23 because he was --  
 24 Q. You spoke to Kievra -- you're saying that

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1 Kievra spoke to you and Lieutenant Sampson, now  
 2 Chief Sampson, prior to that article coming out  
 3 on December 24th?  
 4 A. To the best of my recollection, the  
 5 agency was contacted. I believe it was myself.  
 6 I remember seeing Lieutenant Sampson's name in  
 7 the paper. I would have referred to -- to  
 8 Sampson if he come to me as standard journalism  
 9 and -- you know, because I deal with Bob Kievra  
 10 on a regular basis, as I do with the Worcester  
 11 Telegram & Gazette, in my position. They always  
 12 try to get comments from both sides of a story  
 13 before it's published.  
 14 I know Lieutenant Sampson --  
 15 specifically his name was mentioned in the  
 16 article. I speak with Bob Kievra on a regular  
 17 basis, so --  
 18 Q. You speak to him on a regular basis?  
 19 A. Bob Kievra is assigned to cover  
 20 Shrewsbury for news as part of the towns he  
 21 covers, yes.  
 22 Q. How many times did you speak about me,  
 23 Michael Elbery?  
 24 A. At the most, once.

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1 Q. Did he mention --  
 2 A. Would not --  
 3 Q. -- mention anything to you about the fact  
 4 that I'm involved with a -- involving the  
 5 Fourteenth Amendment against me for a cover-up?  
 6 A. No. He did not mention that. But that  
 7 was inevitable, since I spoke to him, because  
 8 anyone who becomes associated with this, their  
 9 name shows up, they get sued as part of your  
 10 conspiracy.  
 11 Q. Why? Because you manipulate them as  
 12 puppets?  
 13 A. That's your opinion, Michael; and you're  
 14 entitled to it. The answer is: No, I manipulate  
 15 no one. You were convicted in a court of law.  
 16 You didn't like it.  
 17 Q. What does a conviction in a court --  
 18 A. That's --  
 19 Q. What does that have to do with this case?  
 20 A. That's what this is all about, Michael.  
 21 Q. You say that.  
 22 A. This isn't about Jim Hurley locking you  
 23 up for a firearm. This isn't about Wayne Sampson  
 24 and Chester Johnson. This is about you. You

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1 have a felony conviction and don't like it.  
 2 That's what the case is about. That's my  
 3 opinion --  
 4 Q. That's your opinion.  
 5 A. -- on the case.  
 6 Q. Okay. All right. And you don't like  
 7 that?  
 8 A. I didn't say that. I have absolutely no  
 9 problem with you at all. If you drove down the  
 10 street and drove by me, Michael, I'd wave to  
 11 you. If you drove by me at 70 miles an hour, I'd  
 12 give you a ticket. I have no ax to grind with  
 13 you. I'm not involved in a conspiracy against  
 14 you. I have nothing to do with you.  
 15 I remember you and having a nice  
 16 conversation with you one time when you were  
 17 arrested. I remember you being very nice and you  
 18 had a loaded firearm on you and you were  
 19 arrested.  
 20 Q. But I was legally entitled to have a  
 21 loaded firearm on me?  
 22 A. Not that particular instance.  
 23 Q. I wasn't?  
 24 A. On 269 you could have been charged. We

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1 already covered that.  
 2 Q. Yes. Well, I'm going to alert you to  
 3 something, Lieutenant Hurley. You don't know --  
 4 you don't seem to know the law very well now or  
 5 back in '94. As a matter of fact, I was legally  
 6 -- did you know that I was legally entitled to  
 7 have that loaded 9 millimeter pistol, and there's  
 8 not a thing you could do about it, as you did not  
 9 do a thing about it?  
 10 MS. FAHEY: Objection. That's  
 11 really asked and answered.  
 12 A. That's right. He's talking about '94.  
 13 MR. ELBERY: I'm trying to give  
 14 you a little information, because he's misstating  
 15 the law.  
 16 A. Stating '94.  
 17 Q. Okay. What happened to all the photos --  
 18 A. I have provided what I have.  
 19 Q. Let me finish the question. A whole  
 20 bunch of photos were taken on 8/5/94 of E-Z, and  
 21 they were put into exhibits at the suppression  
 22 hearing of 10/21/94 at the Westboro Court. What  
 23 happened to the photos?  
 24 A. I have provided you with the photos that I

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1 have.  
 2 Q. Okay. What happened to the video,  
 3 because -- what happened to the --  
 4 A. I have provided you with what I have,  
 5 Michael. The answer is: If I do, what happened  
 6 to --  
 7 Q. You have not done that? Where is the  
 8 video? I saw you with a video camera. I saw you  
 9 point it at me. Where's the video?  
 10 A. At this point, without looking at the  
 11 property in evidence records, etc., I don't know  
 12 where it is. Is it in property in evidence? It  
 13 could be.  
 14 Q. But you admit you took them? But who's  
 15 got them?  
 16 We'll get them. We'll get them.  
 17 The application for complaint after an arrest was  
 18 made, that form, that document, where does it  
 19 originate from?  
 20 A. Which application are you talking about?  
 21 The complaint at the courthouse or the one that's  
 22 generated at the police station?  
 23 Q. You kind of answered the question. The  
 24 one from the courthouse is called a "complaint"?

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1 A. Okay.  
2 Q. Am I right or wrong?  
3 A. To the best of my knowledge and  
4 recollection, if that's what you're referring  
5 to --  
6 Q. No, I'm not.  
7 A. -- I --  
8 Q. I'm asking you a question.  
9 A. I don't know. I haven't seen one in four  
10 years.  
11 Q. And a "criminal complaint," are you  
12 familiar with that document?  
13 A. I'm familiar with a complaint, criminal  
14 complaint, criminal process. Whether it's a  
15 complaint or otherwise, that is generated at the  
16 police station --  
17 Q. Okay.  
18 A. -- if that is the one --  
19 Q. Okay. Where do you keep these forms?  
20 A. Where do we keep them? In various  
21 locations.  
22 Q. You don't have to go to the court to get  
23 one and bring it back to the Shrewsbury Police  
24 Department?

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1 A. They're brought back in bulk.  
2 Q. In bulk. So you got a whole bunch of  
3 them, so you can use them. You fill them out,  
4 bring them to the court, and the court issues the  
5 complaint that they so desire?  
6 A. They're reviewed by the magistrate that  
7 determines whether there's probable cause set  
8 forth in the body of the complaint --  
9 Q. Okay.  
10 A. -- to issue it. So the complaint would  
11 have been reviewed by a magistrate for probable  
12 cause.  
13 Q. What's a -- what's this? What's that  
14 document called? Docket? Let me find one here.  
15 MS. FAHEY: Is this an appropriate  
16 time to take a lunch break?  
17 MR. ELBERY: Yes. Just let me ask  
18 him about one document here, and then we'll go to  
19 lunch.  
20 Q. Have you ever seen a document like this?  
21 MS. FAHEY: Can we have this  
22 marked as Exhibit 10?  
23 A. Yes, I have.  
24 Q. Okay.

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1 A. This is --  
2 Q. What does that -- what is its function?  
3 A. This is a document that I've asked if I  
4 could see earlier on in the deposition. It's the  
5 docket for the criminal complaint against Michael  
6 Elbery, which shows, as I stated, that there were  
7 269 10A complaints and 10H complaints taken  
8 against Michael Elbery by --  
9 Q. How many 10As?  
10 A. One.  
11 Q. Okay.  
12 A. With the complainant being the police  
13 department, being Shrewsbury. Then Lieutenant  
14 Wayne Sampson is the officer signing the  
15 complaint. The court officer would have been  
16 myself, Sergeant Hurley.  
17 Q. Okay. And when did that document -- when  
18 is it produced and by who?  
19 A. It is produced by the Westboro Court.  
20 Q. Okay. And what do they need in terms of  
21 other documentation before they can do that?  
22 A. They would need the application generated  
23 by the Shrewsbury Police Department.  
24 Q. What about the complaint, does the

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1 complaint that's issued by a court -- after you  
2 submit the application for the complaint, does  
3 the complaint get produced before the docket or  
4 at the same time?  
5 A. Could you run that -- run that sequence  
6 of events by me again?  
7 Q. Does that docket, that document you have  
8 in your hand, get produced at the same time or at  
9 a different time than the complaint that's issued  
10 by the court?  
11 A. This is -- this docket and the complaint,  
12 I can't answer that. I don't work for the  
13 court. I can only --  
14 Q. From your experience, years of experience  
15 as an officer, you should know.  
16 A. My experience is that this docket's the  
17 criminal complaint.  
18 Q. Let me see it. Okay. You're saying  
19 that's the same thing. What's missing from the  
20 top? Do you have any idea? I can just see the  
21 word "docket." It's cut off. What should be  
22 above that? Everything given to me is cut off.  
23 I never get a full caption on any of the  
24 documents. Everything is cut off at the top.

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1 What should that say?  
2 A. After the word "docket," half the docket  
3 number, and it shows that you were represented by  
4 Attorney Sheketoff.  
5 Q. What should be after that that's cut off?  
6 A. After the word "docket," half of the  
7 docket number.  
8 Q. Okay. Nothing -- no other words should  
9 be up here, like summons --  
10 A. Not a --  
11 Q. -- or a complaint?  
12 A. I'd have to --  
13 Q. Okay. I thought -- maybe not -- that  
14 your attorney -- maybe one of the attorneys does  
15 here. Okay. But we won't belabor it. But these  
16 dates here, what's 8/8/94 represent? Do you know  
17 what that means? 8/8/94, what is that date?  
18 What would that be? What happened on 8/8/94, do  
19 you know?  
20 A. I have no idea. That's court paperwork.  
21 Q. Court paperwork. So you guys don't know  
22 nothing about this even though you're using this  
23 to try to convict me?  
24 A. That's a court-generated document.

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1 MS. FAHEY: Objection.  
2 A. I do not work for the court. That is  
3 their paperwork.  
4 Q. Okay. You're the complainant, right, on  
5 this?  
6 A. I am the complainant on behalf of the  
7 Shrewsbury Police Department based on the fact  
8 that, at that time, I was assigned as the court  
9 officer and was responsible for bringing the  
10 application over to court and making sure that a  
11 signed court application was available for the  
12 clerk magistrate prior to finding probable cause  
13 to issue the complaint.  
14 Q. Is the complainant the same as the  
15 arresting officer?  
16 A. No.  
17 Q. What's the difference?  
18 A. I, as a court officer, was assigned to  
19 sign the complaint at the Westboro District  
20 Court. That was my job function.  
21 Q. What was it now?  
22 A. I, as a court officer, was assigned by  
23 Chief McGinley and was responsible for signing  
24 court complaints at the Westboro District Court.

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1 Q. So you were the -- you had two functions  
2 at that time?  
3 A. Oh, I had many functions. I wore  
4 multiple hats at that time.  
5 Q. Okay.  
6 A. I did lots of things.  
7 Q. Of all those people working there, you  
8 were the evidence officer and you were the court  
9 officer?  
10 A. That's correct.  
11 Q. What did the other guys do?  
12 A. Various job assignments. Sklut was  
13 uniform. Johnson was assigned to --  
14 Q. Now, you're sure you don't know who  
15 "Hulagu" was?  
16 A. As I've previously stated, given that  
17 pronunciation of that name, to the best of my  
18 knowledge and recollection, at this time I have  
19 no knowledge of that individual.  
20 Q. What about "Ogidi," do you know him?  
21 A. As I've previously stated early on in the  
22 deposition, given that pronunciation of that  
23 name, I have no knowledge or memory of anyone by  
24 that name.

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1 Q. What about "Tamerlain"?  
2 A. As I stated early on in the deposition, I  
3 have no knowledge or memory or recollection of  
4 anyone with that name, given that pronunciation.  
5 Q. Okay.  
6 MR. ELBERY: Well, what time is  
7 it? What time do you have there, Mrs. Fahey?  
8 MS. FAHEY: I have one o'clock.  
9 MR. ELBERY: Oh, my goodness. We  
10 are off.  
11 (Exhibit No. 10 Docket Sheet  
12 marked for identification)  
13 (Whereupon the deposition  
14 was concluded at 1:01 p.m.)  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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1 CERTIFICATE  
2  
3  
4 I, JAMES J. HURLEY, do hereby certify  
5 that I have read the foregoing transcript of my  
6 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.  
11  
12  
13  
14 JAMES J. HURLEY  
15 SIGNED UNDER THE PAINS AND  
16 PENALTIES OF PERJURY  
17 In re: Michael Elbery vs Daniel Sklut, et al.  
18 and  
19 Michael Elbery vs Robert Sheketoff, et  
20 al.  
21 6/4/99 - Deposition of JAMES J. HURLEY  
22  
23  
24

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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 JAMES J. HURLEY, the witness  
11 whose deposition is hereinbefore set forth, was  
12 duly sworn by me and that such deposition is a  
13 true record of the testimony given by the said  
14 witness.  
15 IN WITNESS WHEREOF, I have  
16 hereunto set my hand and notarial seal this 31st  
17 day of August, 1999.  
18  
19  
20 Marie C. Leonard  
21 CSR, RPR  
22 My commission expires  
23 on June 29, 2001  
24