

Page 1

VOLUME: I
PAGES: 1-150
EXHIBITS: 1-3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL ELBERY,)
Plaintiff,)
vs) No. 97-11743-MLW
DANIEL SKLUT, JAMES CARLIN,)
STEPHEN FAUCHER, CARL HANSON,)
CHESTER JOHNSON, JAMES HURLEY,)
WAYNE SAMPSON, ROBERT MCGINLEY,)
and THE TOWN OF SHREWSBURY,)
Defendants.)
MICHAEL ELBERY,)
Plaintiff,)
vs) No. 98-10163-MLW
ROBERT SHEKETOFF, KIMBERLY)
HOMAN, and SHEKETOFF & HOMAN,)
Defendants.)
DEPOSITION of ROBERT SHEKETOFF, taken on
behalf of the Plaintiff, pursuant to the applicable
provisions of the Federal Rules of Civil Procedure,
before Barbara A. Keedwell, a Certified Shorthand
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Norfolk Law
Library, 57 Providence Highway, Norwood,
Massachusetts on Wednesday, September 1, 1999,
commencing at 12:00 p.m.
IRENE M. ARABIAN, INC.
65 E. INDIA ROW, 20-E, BOSTON, MA 02110

Page 2

APPEARANCES:
Michael G. Elbery
168 Fairfield Street
Needham, Massachusetts 02492
for the plaintiff Michael Elbery,
pro se.
Sugarman, Rogers, Barshak & Cohen, P.C.
(By Joseph J. Coppola, Esquire)
101 Merrimac Street
Boston, Massachusetts 02114-4737
for the Defendants Robert Sheketoff,
Kimberly Homan, and Sheketoff & Homan.

Page 3

I N D E X
Testimony of: Direct Cross Redirect Recross
Robert Sheketoff
By Mr. Elbery 4
E X H I B I T S
Exhibit No. Description Page
1 Pretrial Conference Report 56
2 Affidavit of Counsel in Support of Amended Motion to Suppress 116
3 Affidavit of Counsel in Support of Motion to Suppress (Warrantless Search)" 121

Page 4

P-R-O-C-E-E-D-I-N-G-S
MR. COPPOLA: You want to put some stipulations on the record?
MR. ELBERY: And you should do them -- we should do that. The stipulation is that save all objections until later, except as to the form, but if you want to elaborate on that, you go ahead, but that's bascially what I stipulate to.
MR. COPPOLA: And motions to strike. And the witness will read and sign the deposition.
ROBERT SHEKETOFF, first being duly sworn, deposes and says as follows:
DIRECT EXAMINATION
BY MR. ELBERY:
Q. Give us your name, please.
A. Robert Sheketoff, S-H-E-K-E-T-O-F-F.
Q. And your occupation?
A. I'm an attorney.
Q. And what states are you licensed in?
A. I'm licensed in Massachusetts; and I'm an inactive status but I have a license in California.
Q. Okay. Do you have a specialty?
A. Criminal law.
Q. No particular part of criminal law?

1 A. I would say no, but --
 2 Q. Okay. That's all right.
 3 A. Most of my cases are probably crimes of violence.
 4 Q. So most of your clients are behind bars when you
 5 you're dealing with them?
 6 A. That's probably correct.
 7 Q. So you're not really used to dealing with people
 8 face-to-face in your office that are your clients,
 9 right?
 10 A. That's not correct.
 11 Q. All right. And what's your educational background?
 12 A. I have a JD from Yale Law School in 1975, and I have
 13 a BA from Brandeis University in 1971, and I
 14 graduated high school in 1967.
 15 Q. All right. And so your age -- what year were you
 16 born?
 17 A. 1948.
 18 Q. '48. Okay. All right. Did you represent somebody
 19 named Michael Elbery?
 20 A. Yes, I did.
 21 Q. Okay. And when did you represent him?
 22 A. In the -- I would say in the time frame of about
 23 1994 and thereafter.
 24 Q. Okay. And what kind of cases did you represent him

1 in?
 2 A. I represented him on appeal, on direct appeal of a
 3 conviction in the Worcester Superior Court for
 4 mayhem and other offenses and I represented him --
 5 Q. Was that mayhem or attempted mayhem?
 6 A. I believe it was attempted mayhem. And I
 7 represented him on a case in the Worcester jury of
 8 six which were gun charges.
 9 Q. Okay. And the attempted mayhem charges actually
 10 under Mass. law, assault with intent to mayhem?
 11 MR. COPPOLA: Is that a question?
 12 MR. ELBERY: I formed it in a question.
 13 The inflection of my voice was that of in a
 14 question.
 15 A. I don't have a specific memory of whether it was
 16 charges of attempted mayhem or assault with intent
 17 to mayhem. They amount to the exact same thing.
 18 Q. Yes, I agree, but some people make a big thing out
 19 of it which to me is nothing but form, but such as
 20 it is to say -- form, a lot of the law is form.
 21 A. I think you might be right that it was assault with
 22 intent to mayhem.
 23 Q. There's nothing really on the statutes in
 24 Massachusetts as attempted mayhem but some legal

1 people get very upset with that terminology. Let me
 2 ask you something else about that case. That was
 3 kind of an oddball case, the case against Elbery, it
 4 was oddball in that there was no probable cause
 5 found in those charges; is that correct?
 6 MR. COPPOLA: Objection. Compound.
 7 A. Okay. It is unusual, but not unheard of for the
 8 commonwealth to lose a problem cause and still
 9 indict, but it is unusual.
 10 Q. So you've heard of other cases without gaining new
 11 evidence that someone who's found to be in no
 12 probable cause at the district level on the
 13 particular charges is then indicted without any new
 14 evidence?
 15 A. Yeah, because the law is that they're not required
 16 to get a finding of probable cause before they
 17 indict.
 18 Q. I understand that, separate jurisdictions, but
 19 nonetheless it's -- I've yet to find a case of that
 20 nature.
 21 A. I've heard of such cases.
 22 Q. I've heard of one, but there was new evidence, and
 23 that's in Massachusetts.
 24 But next question. The other odd part

1 about that case was that the attempted mayhem, the
 2 alleged weapon was what?
 3 MR. COPPOLA: Objection.
 4 A. A finger, a thumb.
 5 Q. Actually they claimed it was a thumb.
 6 A. A thumb.
 7 Q. Okay. And Elbery was the only person in the state's
 8 history to be convicted of attempted mayhem where
 9 there was no weapon involved, am I correct?
 10 A. I can't answer that.
 11 Q. I am correct.
 12 A. You might be correct.
 13 Q. As far as cases of record, I don't know how many
 14 people got railroaded on the same kind of thing out
 15 in Worcester where they didn't have any money or
 16 knowledge and couldn't make an issue out of it.
 17 Let me go on to the next question before
 18 Attorney Coppola gets further irritated. I know he
 19 wants to shine today. Okay.
 20 Regarding the gun case, Attorney
 21 Sheketoff, that you represented Elbery on back in
 22 '94, what did Elbery contend regarding those
 23 charges as to innocence.
 24 MR. COPPOLA: Objection.

1 MR. ELBERY: What's the objection?

2 MR. COPPOLA: There's no time frame
3 stated.

4 MR. ELBERY: Yeah, there was, 1994 when he
5 represented me on the gun charges. I'm asking him
6 what I, who is Elbery, contends as far as his
7 innocence on the gun charges.

8 MR. COPPOLA: I don't know what you mean
9 "contends." To whom? I mean are you talking about
10 a conversation.

11 MR. ELBERY: You don't know what the word
12 "contends" means?

13 MR. COPPOLA: I know what it means, but in
14 the context of this question --

15 MR. ELBERY: Look, we're going to be here
16 all afternoon if you start this business, okay? You
17 know what the word "contends" means. Now let's stop
18 the monkey business. We're not going to get
19 anywhere if you do this, all right? If I have to
20 define -- you know, if we're going to define words
21 -- define a word and then redefine the word, we're
22 going to get nowhere, okay? You know what the word
23 "contends" means.

24 Q. What did I say in terms of my guilt or innocence to

1 that charge?

2 A. Right. You told me that the guns were in the
3 storage locker, that they were your guns, but that
4 you had not intended to violate any law and that --
5 I can't remember if you said, you know, you were
6 just storing the -- you may have said, and this is
7 half conjecture and half vague memory --

8 MR. COPPOLA: Don't.

9 A. -- you may have said something to the effect that,
10 you know, you didn't know what to do with them. You
11 didn't want them in your home after you were
12 convicted. But I can't really remember exactly what
13 you said except that the guns were yours and that
14 you weren't, you know, trying to violate any law.

15 Q. Okay. Did I mention --

16 MR. ELBERY: You want that door closed?

17 THE WITNESS: I don't care.

18 Q. What did I -- what did I say in terms of my FID card
19 being valid or invalid?

20 A. You said that you had an FID card from the
21 Shrewsbury Police Department. That you had moved
22 from the address that you had given the Shrewsbury
23 Police Department. You had never received any
24 notice, to your knowledge, that the Shrewsbury

1 police had revoked your FID card. That your wife
2 had your FID or could get it or something to that
3 effect and, in fact, she showed it to me at some
4 point in time.

5 Q. Okay.

6 A. You want all comments that you made about the FID
7 card?

8 Q. No, no, that's -- no, not at this point, no. I'll
9 take you through all the steps chronologically. Did
10 I ever maintain anything else but innocence to those
11 charges?

12 A. We had discussions about what the law meant. In
13 other words, you took the position and maintained it
14 from the beginning to the end that you were, quote,
15 unquote, innocent, but we had discussions about what
16 innocence meant in this context.

17 Q. What do you mean by that? You mean what -- the
18 interpretation of the law?

19 A. Right, what the interpretation of law would be. In
20 other words, a person may believe that they're not
21 committing any crime at all, but they, in fact, may
22 be committing a crime by doing -- by violating some
23 -- what is in reality a regulatory statute because
24 the regulations are going to be interpreted in a way

1 that the person didn't perceive it.

2 Q. Okay. And that happens in today's America because
3 the laws are so complex, people are violating laws
4 and they don't even know it; isn't that true?

5 MR. COPPOLA: Objection.

6 A. I'm sure that people violate laws when they're not
7 intending to violate the law, yes.

8 Q. But I argued with you silly the whole time that you
9 represented me on those gun charges that I was
10 innocent, did I not?

11 MR. COPPOLA: Objection.

12 A. You took the position from the very beginning, and I
13 never heard you waiver from this position, that you
14 were, in your mind at least, innocent, that you had
15 not intended to violate any law.

16 Q. Now, you mentioned something about that I put them
17 in the storage container, which is a truism, to get
18 the -- you mentioned something about to get them out
19 of my house?

20 A. Yeah, I just have some vague memory, I can't swear
21 that this is correct, but you did -- when you first
22 told me about the guns being in the storage locker
23 you probably -- and I have some vague memory that
24 you may have said something about, you know, what

1 were you supposed to do with them, you know. I
2 can't remember if you -- you know, I mean you didn't
3 want them in your house or something to that
4 effect. I don't really know. That could be my
5 conjecture.

6 MR. COPPOLA: It's not helpful for you to
7 assume or --

8 Q. Why did I say I didn't want them in the house?

9 MR. COPPOLA: It's not helpful for you to
10 assume or guess. Talk about what you remember and
11 as to your knowledge.

12 A. I have some vague memory we discussed why the guns
13 were in the locker, but I don't really remember what
14 it was and why you wouldn't want them in the house?
15 I don't know why.

16 Q. Did I ever say I didn't want them in the house?

17 A. Not that I specifically recall.

18 Q. Did I ever tell you that the reason I moved those
19 guns was because of a felony conviction?

20 A. I can't recall a specific conversation where you
21 said that.

22 Q. Can you tell me when you first learned that Mike
23 Elbery had an FID card?

24 A. I think you told me that in a phone conversation.

1 Q. Okay. When was the phone conversation?

2 A. Right around the time of the fire.

3 Q. In your interrogatories, answers to my
4 interrogatories, without citing a particular number,
5 you state it was the same day, I believe, as just
6 before my arrest or the same day?

7 A. Yeah. I can't remember if the first time we talked
8 about it was the day -- the day of the fire or the
9 next day. I can't remember if you were arrested on
10 the day of the fire or the next day. I think it was
11 probably the next day. But I can't remember if the
12 first time you called me was the same day you were
13 arrested and then you were arrested later that day
14 or it was the day before. I can't remember. I
15 don't have that sequence clear in my mind, but it
16 was right around the time of the fire.

17 Q. Now, you represented me prior to 8/5/94 when I got
18 arrested.

19 A. True.

20 Q. Did we ever talk about these guns?

21 A. Never to my memory.

22 Q. Did I ever talk to you -- did I ever ask you, What
23 should I do? I'm a convicted felony? Did I ever
24 say anything like that?

1 A. Not that I recall.

2 Q. Did I ever say, Gee, I got all these guns, I'm a
3 convicted felon now. Should I hide the guns?

4 A. No, I don't remember any discussion about guns prior
5 to right around the fire.

6 Q. Okay. That makes sense because you were
7 representing me on an appeal, had nothing to do with
8 guns.

9 A. I remember absolutely no conversation with you about
10 guns prior to right around the time of the fire.

11 Q. Did I ever tell you prior to 8/5/94 that I put --
12 excuse me, I'm reading this wrong. This is kind of
13 a -- just a repeat question. Did I ever tell you
14 that I put the guns -- why I put the guns in the E-Z
15 storage?

16 A. You may have told me why you put the guns in the E-Z
17 storage when we had a conversation, that first
18 conversation around the time of the fire. And I was
19 saying at the beginning that I have some vague
20 memory about you didn't want them in your house, but
21 the truth of the matter is that's an extremely vague
22 memory, I can't swear that that's true. And I have
23 no specific recollection of anything you said about
24 why you put them in the E-Z storage.

1 Q. Did I tell you why I didn't want them in the house?

2 A. I can't remember if you even said that. I just have
3 a vague memory that we had some discussion about why
4 they ended up in E-Z storage.

5 Q. In a Massachusetts criminal case if the prosecution
6 does not cooperate or answer the discovery on that
7 particular criminal case what procedure should a
8 defense attorney on that case take?

9 MR. COPPOLA: Objection. You're asking a
10 question that's properly asked of an expert
11 witness. He's here as a fact witness.

12 A. So I answer that? I don't think there is a one
13 proper thing to do. I mean there are several
14 possibilities. One is to keep it in your back
15 pocket and complain at the time of trial if the
16 commonwealth tries to produce something they hadn't
17 produced before. Another is to seek a court order
18 compelling the commonwealth to produce what they
19 said they were going to produce. And there may be
20 other ones.

21 Q. What was the first one? I didn't catch it.

22 A. Keep it in your back pocket and when the
23 commonwealth tries to introduce something they were
24 supposed to have produced during discovery, you're

1 supposed to object and say they didn't provide this
2 ahead of time, they were ordered to do it and it
3 shouldn't be used. So it's -- I think either one of
4 those techniques would be appropriate depending on
5 how you view the particular case.

6 Q. The second one would be to get a court order, to go
7 to the judge and get a --

8 A. And ask that the judge compel them to do it.

9 Q. In the case that you represented Elbery on back in
10 '94 regarding the Shrewsbury Police Department gun
11 charges, taking the set of facts that you're already
12 aware of, in a case like that wouldn't it be a
13 defense attorney's duty to present a license, FID
14 card, or FID card if that attorney knew it existed?

15 MR. COPPOLA: Objection.

16 A. Present it to who?

17 Q. To the judge presiding in the case?

18 MR. COPPOLA: I'm going to object. Again
19 you're asking him questions properly directed toward
20 an expert witness and Mr. Sheketoff's not here as an
21 expert, he's here as a fact witness.

22 A. I'm not sure if you're asking me -- when you say "to
23 the judge," if you're asking me to the judge in the
24 Shrewsbury -- who was dealing with the Shrewsbury

1 case or the judge who was dealing with the stay of
2 execution.

3 Q. No, the judge handling the criminal case, it would
4 not have been Toomey at the revocation hearing, he
5 didn't have the case. The district judge.

6 A. I can think of circumstances where it would be
7 appropriate to show the judge the FID card and I can
8 think of circumstances where it wouldn't be the
9 prudent thing to do. It depends on what stage of
10 the proceedings you're talking about and, you know,
11 what level of cooperation you have from the
12 defendant.

13 Q. What -- in the case against Elbery you know the
14 facts. What about that particular case?

15 MR. COPPOLA: I'm going to object. I
16 don't know what facts you're referring to. The
17 record will not be clear, or so-called facts.

18 A. In the Elbery case in the Shrewsbury, whatever
19 district court that was --

20 Q. Westboro?

21 A. -- Westboro District Court, I didn't have the FID
22 card. The only time I ever saw the FID card your
23 wife or ex-wife, I think, I can't remember if it's
24 wife or ex-wife at that time, I think probably wife,

1 but I'm not 100 percent positive, showed it to me on
2 the day of the stay of execution revocation hearing
3 and that's the only time I ever physically saw it.
4 She wouldn't give it to me. And certainly at trial
5 one would want to present it to the trier of fact
6 that an FID card existed because if the FID card
7 existed and it was lawfully yours, it would be most
8 of the charges that were lodged.

9 Q. You knew for sure on 8/10/94 that Mike Elbery had an
10 FID card; is that correct?

11 A. Correct, I did.

12 Q. Now, on 8/10/94 you examined that FID card --

13 A. I did.

14 Q. -- didn't you? Okay. Did you take any notes when
15 you looked at that FID card?

16 A. Not that I recall.

17 Q. Okay. But prior to 8/10/94, Elbery told you that he
18 had an FID card, am I correct?

19 A. I believe he did.

20 Q. In fact, that was the first question you had for
21 him; isn't that correct?

22 A. I don't recall that. I mean I cannot recall how the
23 conversation went. We had a phone conversation
24 before you were arrested during which you told me

1 basic things like that there were guns in the
2 storage locker, that you were afraid the police were
3 going to go in there and I'm sure during that
4 discussion we had some discussion about licenses,
5 but I can't remember the exact order of this
6 conversation.

7 Q. Where in Massachusetts on 8/5/94 in the period
8 within six months after that were there copies of
9 Mike Elbery's FID card?

10 MR. COPPOLA: Objection.

11 A. I'm not sure where they would be. Maybe the
12 Shrewsbury police keep copies of FID cards. If they
13 issued it, they would have it, I would assume.

14 Q. What other bureaucracy?

15 A. None that I'm aware of.

16 Q. What about the Department of safety?

17 A. I don't know if they get copies of FID cards. Maybe
18 they do.

19 Q. Back on 8/5/94 through April of 1995, were you able,
20 capable?

21 MR. COPPOLA: Objection.

22 Q. Did you have any health problems?

23 A. I don't recall any specific health problems. I
24 certainly didn't have any health problems that kept

Page 21

1 me from working most of those days, if not all of
2 them.
3 Q. Okay. You had no chronic illness back in that
4 period of time?
5 A. I had no chronic illnesses.
6 Q. Did you have any mental problems?
7 A. Not that I'm aware of.
8 Q. Okay. Nothing that would prevent you from doing a
9 defense attorney's job, am I correct?
10 A. Correct.
11 Q. Okay. There was nothing impeding you from doing
12 your job back then?
13 MR. COPPOLA: Objection.
14 A. There was no impediment that I'm aware of.
15 Q. No wars or natural disasters, anything like that?
16 A. That were directly impacting me?
17 Q. Yes.
18 A. No. I'm sure there were wars somewhere, and I'm
19 sure there were natural disasters.
20 Q. Yes. But none down on State Street in Boston or
21 thereabouts, right?
22 A. No, none that I'm aware of.
23 Q. Were you back on 8/5/94 through 1995 able to do your
24 job as a defense attorney for Mike Elbery regarding

Page 22

1 the SPD gun charges?
2 MR. COPPOLA: Objection.
3 A. Was I able to do my job? Yes.
4 Q. There was nothing stopping your ability to do that
5 job, was there?
6 A. Correct.
7 Q. Was there anything from stopping you or making you
8 unable to obtain copies of Mike Elbery's FID card
9 from the Department of Safety?
10 A. Well, I wasn't aware that the Department of Safety
11 had an FID card copy; but if they did, I would have
12 not tried to get a copy from the Department of
13 Safety because my client did not want me to turn
14 over the FID card to the Commonwealth of
15 Massachusetts. I knew it existed, I had been shown
16 it by his wife or ex-wife and I saw no reason to get
17 a copy of something that I knew he had the original
18 of.
19 Q. Was there anything stopping you or making you unable
20 to obtain a copy of the Shrewsbury Police Department
21 record of my FID card via a court order?
22 MR. COPPOLA: Objection.
23 A. No. And I think I moved in discovery for any
24 documents concerning your license

Page 23

1 MR. ELBERY: what was the objection?
2 MR. COPPOLA: "Was there anything,"
3 that's a little broad. I mean --
4 Q. I want to cover all boundaries. If there is
5 something -- was there something stopping you?
6 MR. COPPOLA: How about four walls around
7 the police department. I mean what are you talking
8 about?
9 Q. The four walls wouldn't stop you from getting a
10 court order, would they?
11 MR. COPPOLA: Unless the judge denied it.
12 So I'm objecting. It is vague. What are you
13 referring to?
14 Q. Did you do that? Did you present the judge with a
15 court order demanding that discovery from the SPD?
16 A. Did I present the judge with a court order? No, I
17 didn't present the judge with a court order. But I
18 did ask in my discovery, at least it's my best
19 memory, I haven't seen my discovery motion, that the
20 commonwealth produce all documents that it intended
21 to rely on at trial.
22 Q. Did you ask the various judges on that case for a
23 court order to get those records from the SPD?
24 A. My best memory is that I asked either in the

Page 24

1 pretrial conference report or in a motion to
2 discovery for all documents that the commonwealth
3 was going to rely on at trial. My concern at that
4 time was that the commonwealth would come up with
5 some document revoking the license, the FID card
6 license and that was a concern I had based in part
7 on my client's beliefs.
8 Q. What were your client's beliefs in regards to the
9 revocation?
10 A. My client believed that if the Shrewsbury Police
11 Department was given the opportunity, they would
12 create some documentation to show that the FID card
13 had been revoked prior to the date of the search of
14 the storage locker. My client had some concerns
15 that since he had moved from the original address
16 that he had when he originally got the FID card that
17 they could claim that they sent a letter to that
18 address or that they tried to contact him there or
19 something. But there was some concern by my client
20 of the fact that he had -- he didn't have the exact
21 same address that he had when he got the FID card.
22 And there was the major concern by my client that
23 the Shrewsbury police would create documentation
24 that showed that the FID card had been revoked.

1 even -- and by "create" I mean make it up for this
 2 case.
 3 Q. What did you do to obtain proof that Mike Elbery had
 4 an FID card on 8/5/94?
 5 A. I saw it. His wife showed it to me.
 6 Q. Okay. What attempts did you make to secure copies
 7 of the FID card in absence of revocation from the
 8 Massachusetts Department of Safety?
 9 A. None.
 10 Q. You didn't do anything to secure the information
 11 that the Department of Safety had --
 12 A. That's right.
 13 Q. -- regarding Elbery's FID card and absence of
 14 revocation from the Department of Safety?
 15 A. Right, I did nothing vis-a-vis the Department of
 16 Safety. I was concerned with what documents the
 17 commonwealth would attempt to introduce at trial and
 18 I made a discovery request either in the pretrial
 19 conference report or in an independent motion for
 20 all documents that the commonwealth intended to rely
 21 on at trial.
 22 Q. Okay. What did you do to secure copies of Elbery's
 23 FID card in absence of revocation letter of that FID
 24 card from the Shrewsbury Police Department?

1 MR. COPPOLA: Objection.
 2 A. Well, again --
 3 MR. COPPOLA: How do you secure the
 4 absence of a revocation letter. The question's
 5 vague.
 6 MR. ELBERY: If they don't have it,
 7 there's an absence of it. There's various methods
 8 you can use to secure through a criminal case
 9 documents. They were claiming the FID card -- or
 10 certain people claimed that it was revoked, okay?
 11 They have -- under the law they have a duty to
 12 present that revocation if it's in -- if it's
 13 requested through discovery.
 14 A. Right. Well, my best memory --
 15 MR. COPPOLA: Maybe you can rephrase the
 16 question. My objection stands, but you can answer
 17 it.
 18 A. My best memory is that I asked in discovery for all
 19 documents that the commonwealth intended to rely on
 20 at trial. If they were going to rely on a
 21 revocation letter that had been written by the
 22 Shrewsbury Police Department or the Department of
 23 Public Safety or anybody else, they would have had
 24 to produce that document under the discovery request

1 that I made.
 2 Q. So you never obtained a court order through the
 3 various judges on those criminal cases to obtain the
 4 evidence of Elbery's FID card and lack of revocation
 5 of that FID card on 8/5/94 or prior?
 6 A. I don't agree with that assertion because I believe
 7 that there was a discovery request that was made
 8 either in the pretrial conference report which when
 9 signed by the judge has the force of a court order,
 10 or as an actual allowed independent motion. I can't
 11 remember the details of it. But there was a request
 12 made, which I believe was allowed for a discovery of
 13 all documents that the commonwealth intended to rely
 14 on at trial.
 15 Q. Was there anything stopping you from getting a court
 16 order to obtain the FID card from my wife?
 17 MR. COPPOLA: Objection.
 18 A. You never asked me to do that. I assumed that when
 19 the time came that you would give me the FID card,
 20 which in your mind the time would be at trial, and
 21 that before that that you were holding on to it
 22 either, one, because you didn't trust me; or two,
 23 because you didn't trust the Shrewsbury Police
 24 Department; or three, you didn't trust the Worcester

1 county DA's office; or four, you didn't trust any of
 2 us and you didn't want them to have that document in
 3 their possession or a copy of that document so that
 4 they could make up paperwork to try and show that it
 5 wasn't really in effect. I assumed right from the
 6 beginning that you would give me that card when it
 7 came time for trial. In fact, you may have said
 8 such or something like that to me. I mean I'm
 9 representing you and your interests and you had
 10 control of that card. And when you felt that it was
 11 time to give it to me, I figured you'd give it to
 12 me.
 13 Q. You examined Elbery's FID card on 8/10/94, am I
 14 correct?
 15 A. I had it in my hand and looked at it, that's
 16 correct.
 17 Q. It's a very plain document, isn't it?
 18 A. I don't -- it is a very simple document.
 19 Q. FID card in Massachusetts?
 20 A. I don't remember it in any detail right now. I
 21 don't have one myself.
 22 Q. Who was that particular FID card issued by?
 23 A. I believe it was the Shrewsbury Police Department,
 24 but I don't remember specifically; but that's my

1 best memory.
 2 MR. ELBERY: I have to take a two-minute
 3 break, my apologies.
 4 (Recess)
 5 Q. How many times did you speak to my wife?
 6 A. Only one that I can specifically remember, but I'm
 7 sure it was more than once.
 8 Q. And when was that time?
 9 A. That I specifically remember is in the car in front
 10 of the Worcester Superior Court when she showed me
 11 the FID card. And I'm sure there was a phone call
 12 to arrange that meeting 'cause it wasn't a chance
 13 meeting, but I don't really remember it.
 14 Q. And what did she say to you and what did you say to
 15 her, do you remember?
 16 A. Not really, except that she wouldn't let me have the
 17 FID card, that's what I remember.
 18 Q. You asked her for the FID card?
 19 A. I believe so.
 20 Q. Okay. Did you ask her for a copy of that FID card?
 21 A. Not that I recall. I didn't notice a xerox machine
 22 in the car.
 23 Q. What did she do after she showed you the FID card?
 24 A. She took it back.

1 Q. And what did you do?
 2 A. I went into the courthouse.
 3 Q. This is kind of a repeat question, but -- did you
 4 speak to my wife after 8/10/94?
 5 A. My best memory is that I must have spoken to your
 6 wife after 8/10/94, but I have no specific
 7 recollection of any conversation with your wife
 8 after that date.
 9 Q. Okay.
 10 A. I noticed something in the file which was a power of
 11 attorney to your wife and I just have no specific
 12 memory of that at all.
 13 Q. This is a little time-out, the recorder's going to
 14 keep on recording if she'd like. That was in the
 15 Goldstein case. Arthur Goldstein, my former
 16 attorney, was going to sue me, remember, I got the
 17 car back in time, it was in the newspaper.
 18 Goldstein was suing me for 90,000.
 19 A. He wanted the car and your wife moved it.
 20 Q. My wife moved it. Anyways, he put a restraining
 21 order, a court order from me and my wife touching
 22 the car, but they couldn't find the car. The judge
 23 ordered me -- I was in Concord prison, he ordered me
 24 to put insurance on that Corvette to make sure

1 Goldstein was okay, that the property remained in
 2 good condition for his value for his lawsuit. I
 3 defaulted on that lawsuit. When I got in Concord
 4 prison, I talked to the jailhouse lawyers, they told
 5 me to file under Rule 60, the criminal -- civil
 6 code. Barbara Boxer, not Barbara Boxer, Barbara
 7 Butler overturned that default, I get a new chance
 8 in the Goldstein case, two years, overturned the
 9 whole thing. I won that case. The jury found that
 10 Goldstein was committing fraud and the superior
 11 court judge agreed. That's what that power of
 12 attorney was about.
 13 A. So there probably was some discussion with your wife
 14 around that power of attorney, but I don't remember
 15 it.
 16 Q. Okay. Did you try to contact her after 8-10-94?
 17 A. I don't have any specific memory of any further
 18 contact with her initiated by me or otherwise. But
 19 while I don't have a specific memory, I also believe
 20 that we did speak after that date.
 21 Q. Okay. But you remembered there were other things
 22 going on that you might have spoken to her about
 23 besides the gun case?
 24 A. Yes.

1 Q. Did you ever try to contact her after 8/10/94 in
 2 regards to my FID card?
 3 A. Not that I specifically recall.
 4 Q. Immediately after that 8/10/94 revocation hearing
 5 before Superior Court Judge Dan Toomey, did you try
 6 to contact my wife?
 7 A. Not that I recall.
 8 Q. Did you ask me to contact her?
 9 A. Not that I recall.
 10 Q. Why did you want her with the FID card on 8/10/94
 11 prior to the revocation hearing out in front the
 12 Worcester courthouse?
 13 A. Well, my defense to -- I can't remember how many gun
 14 charges there were. Can you refresh my memory? Was
 15 it seven or eight?
 16 Q. (Indicating).
 17 A. Six. Five of the gun charges, to the best of my
 18 memory, were FID card violations in the sense that
 19 the commonwealth was alleging that it was illegal
 20 possession of these guns because you didn't have an
 21 FID card. One charge was a carrying charge. So to
 22 the vast majority of charges an FID card, a valid
 23 FID card would be a complete defense. So you had
 24 told me you had an FID card, I wanted to see it, you

1 know, to have it in my possession.
 2 Q. Were you going to do anything with it?
 3 A. Well, I was going to represent to the Court that it
 4 existed.
 5 Q. Because at that point he would have had to let me
 6 go, right?
 7 A. Not exactly. The FID card would be a defense to
 8 five of the six charges, assuming there were six
 9 charges, and I know it was some number like that, it
 10 would not be a defense to the sixth charge. You
 11 were on a stay of execution of sentence. The judge
 12 could take any reason to switch the balance and put
 13 you back in jail. And that you might be not guilty
 14 as a matter of law, and I emphasis the word "might,"
 15 to five of the six charges would not be much help at
 16 a stay of revocation hearing.
 17 Q. What if there weren't any charges at that point?
 18 A. There may not have been any charges yet, but I
 19 thought we had already been --
 20 Q. No, no. What if the charges against me on 8/5/94
 21 via the Shrewsbury Police Department had been
 22 dropped by 8/10/94?
 23 MR. COPPOLA: Objection.
 24 A. What if that?

1 Q. Yeah.
 2 MR. COPPOLA: Calls for speculation.
 3 A. All right. If by 8/10/94 the Shrewsbury Police
 4 Department had dropped all charges and there were no
 5 outstanding charges of any kind against you, the
 6 commonwealth had made a motion to revoke your stay
 7 and I believe they based that motion, I have to see
 8 it 'cause this is going by memory, I believe that
 9 they based that motion on your new arrest and if
 10 that was the grounds for their motion, I'm sure
 11 their motion would have been denied if there were no
 12 outstanding -- if the charges for which you had been
 13 arrested had already been dropped.
 14 Q. Dropped or dismissed by a judge?
 15 A. Or dismissed by a judge. But on a stay of execution
 16 of sentence the judge can do anything he or she
 17 wants. It's a matter of grace, it's not a matter of
 18 right, and a judge finding out that you were in
 19 possession of a large number of weapons, whether it
 20 was lawful or not, could have decided to revoke the
 21 stay.
 22 Q. But of course that's not what he was saying at that
 23 revocation hearing if you read the transcript,
 24 right?

1 A. Right. It's true that at the revocation hearing the
 2 judge did not say that he was revoking your stay
 3 because you had guns, he had a different reason,
 4 which was your arrest for the guns, at least that's
 5 my best memory. But it's been my experience over
 6 the years that judges pick the easiest reason to
 7 pick, and when that reason's not there, there are
 8 often other secondary reasons for reaching the same
 9 result. Toomey, as you may recall, wanted at some
 10 point in time to revoke your stay based on the fact
 11 that someone had seen you go into a barroom.
 12 Q. Into a restaurant.
 13 A. A restaurant that had a bar in it, I was about to
 14 say, even though it was a place that you could eat.
 15 Q. By the way, that was an attorney in Worcester who
 16 was looking for brownie points, but he didn't have
 17 the guts to stand up as a witness so there was no
 18 witness. Toomey had banned me from all liquor -- to
 19 sharpen an edge -- to sharpen an ax, insult me,
 20 because I owned a bar in Worcester and there stemmed
 21 my problems with the police, that he banned me from
 22 any alcohol establishment and that was the root of
 23 that whole thing. Plus he banned me at a later
 24 point after that hearing that you're talking about

1 that was in April of '94, he banned me from going in
 2 any liquor stores. How he had any right to do that
 3 is beyond me.
 4 A. If that was a question, because a stay is an act of
 5 grace, so to speak, by a district court or a
 6 superior court trial judge, they can impose
 7 conditions on the stay that wouldn't make too much
 8 sense, you know, under other circumstances.
 9 Q. That we agree on. Okay. I think I asked you this
 10 question already. You don't remember what my wife
 11 said to you on 8-10? I guess you were in her car?
 12 A. I was in her car. She showed me the FID card.
 13 Besides that I can't -- and that she wanted it back,
 14 she wouldn't let me take it with me. Besides that I
 15 can't remember any conversation that we had.
 16 Q. Now, isn't it true that I arranged to make that
 17 meeting via phone calls?
 18 A. That may very well be true that you were the one. I
 19 know it wasn't a chance meeting. Whether I talked
 20 to your wife directly and we talked about where we
 21 would meet or whether you called me and told me she
 22 would meet me at such and such a place, at such and
 23 such a time, I can't remember.
 24 Q. Did you attempt to have her or try to get her to

Page 37

1 come into the court with that FID card?
 2 A. I can't recall. I may have. I may not have.
 3 Q. What attempts did you make to secure that FID card
 4 from her to present it to the Court?
 5 A. I asked her for it and she said I couldn't have it.
 6 Q. You asked her. How many times did you do that?
 7 A. To the best of my memory, I only asked her once.
 8 Q. That one time in the car?
 9 A. Right.
 10 Q. On 8/5/94, how many times did you talk to Mike
 11 Elbery?
 12 A. Well, I don't remember the specific date. What day
 13 was the fire?
 14 Q. 8/5/94?
 15 A. And what day were you arrested?
 16 Q. 8/5/94. I'm sorry, that's wrong. I was arrested on
 17 8/5/94.
 18 A. And 8/4/94 was the fire?
 19 Q. The fire. I wasn't there, although they tried to
 20 jack up charges against me for arson on that fire
 21 years later. According to the records I've read and
 22 newspaper articles the fire started at 10 -- between
 23 10 and 11 p.m. on 8/4/94, and it was put out
 24 sometime in the wee hours of the morning of 8/5/94.

Page 38

1 A. Assuming that that's correct, and I have no reason
 2 to doubt you on that, the -- I believe I spoke to
 3 you two times on that day, once before you were
 4 arrested and once after you were arrested.
 5 Q. Okay. And do you remember the contents of the
 6 conversation on that day, 8/5/94, the day I was
 7 arrested, do you remember the contents of that first
 8 conversation before I was arrested?
 9 A. Yeah. Well, I don't remember the whole
 10 conversation, but I do remember that you were there
 11 at the scene, so to speak, or had just been there.
 12 That you told me that a fire had occurred and that
 13 you thought the police were going to go into your
 14 storage locker and that there were guns in there
 15 and, you know, what you should do about that.
 16 Q. Did I make any comments about a Shrewsbury cop
 17 talking to me prior to that time?
 18 A. You may have. I can't -- I wouldn't say that you
 19 didn't, but I don't specifically remember it.
 20 Q. Did I tell you during that first conversation on
 21 8/5/94 prior to being arrested that the cops were
 22 already in my unit snooping around?
 23 A. You may have said that. I have a memory about you
 24 being concerned that they were about to search that

Page 39

1 unit; that, you know, this was not some imagination
 2 that you had, that they might wander in there, but
 3 there was something that made you believe that they
 4 were about to or had just -- or, you know, that they
 5 were interested in it. My memory is that you firmly
 6 believed that they were, you know, about to search
 7 that unit.
 8 Q. I was specifically concerned about that, excited
 9 about that issue?
 10 A. I believe so.
 11 Q. Did I tell you about any conversations I had with
 12 any police at the E-Z Mini Storage prior to me
 13 calling you?
 14 A. You may have, but I don't specifically remember it.
 15 Q. Now, when I talked to you in that first conversation
 16 prior to my arrest on 8/5/94, that conversation on
 17 8/5/94, where were you?
 18 A. At my office.
 19 Q. Okay. Where was I, do you know?
 20 A. No. For some reason I thought you were like there,
 21 or had just been there. I don't know if you had a
 22 cell phone or you were at a pay phone, but I have an
 23 impression that you were like there or at least had
 24 just been there.

Page 40

1 Q. Okay. At that time did you give me any legal
 2 advice?
 3 A. Yeah. I'm not certain, but I believe we discussed
 4 whether or not you should get in there and get the
 5 guns and remove the guns and I thought that that was
 6 not a good idea. That's a vague memory.
 7 Q. Did you ask me anything about the FID card or if I
 8 had one?
 9 A. I have no specific memory about that, but I assume,
 10 and it's only an assumption, that we did -- you did
 11 mention to me that you did have an FID card.
 12 Q. Did you say anything about the police in that
 13 conversation about how to -- how I should handle the
 14 police?
 15 A. Not that I specifically recall. But I think there
 16 was some discussion about not consenting to a
 17 search.
 18 Q. Now, after that initial phone call, what was the
 19 next time that we communicated?
 20 A. My best memory is that you had been arrested and
 21 they were -- and you were calling me from the lockup
 22 at the Shrewsbury Police Department.
 23 Q. Okay. And do you know what time that was?
 24 A. I do not

1 Q. And where were you when I called you?
 2 A. I believe I was at my office.
 3 Q. Okay. And do you remember which cop you spoke to in
 4 that conversation?
 5 A. No.
 6 Q. Okay. Do you remember speaking to a Shrewsbury cop?
 7 A. Vaguely.
 8 Q. Okay. And what did I say to you during that
 9 conversation?
 10 A. Well, that you had been arrested. And I don't have
 11 a memory of anything else.
 12 Q. And what did you say to me regarding that
 13 conversation or during that conversation?
 14 A. I really can't recall anything else that was said
 15 during that conversation.
 16 Q. When was the next time we communicated?
 17 A. Probably at the arraignment.
 18 Q. Do you remember the date of that arraignment?
 19 A. I do not. I think it was the next day, if the next
 20 day wasn't on a weekend. It was certainly shortly
 21 after the day of the fire, and it was at the
 22 courthouse.
 23 Q. The Westboro courthouse?
 24 A. Yes.

1 Q. Now, do you remember any content or conversation
 2 that we had on that day of arraignment?
 3 A. No. I mean I believe I asked you some stuff for
 4 bail issues, you know, but I don't have a specific
 5 memory of the conversation.
 6 Q. Do you remember anything that I said or that you
 7 said to me that you -- vice versa? Nothing?
 8 A. No. Well, I remember that you said, I believe,
 9 that you could make the \$5,000 bail, that wasn't a
 10 -- I mean because we did take a bail appeal and --
 11 but I don't think the reason we took the bail appeal
 12 was that you couldn't make it.
 13 Q. Okay. They set the bail at 5,000?
 14 A. I believe so.
 15 Q. Okay. When you say "bail appeal," what do you mean?
 16 A. When a district court judge sets a bail, you can
 17 tell the judge that you want a bail appeal and go to
 18 the superior court to have a superior court judge
 19 decide what the appropriate bail should be.
 20 Q. You advised me not to pay the \$5,000 bail?
 21 A. I don't remember. I believe that we decided -- I
 22 don't remember. But I know -- I remember that we
 23 took a bail appeal. So from that fact I reasoned
 24 backwards that there was -- there must have been a

1 decision not to immediately post the \$5,000 bail.
 2 Q. But I told you I could make the \$5,000 without any
 3 problem, right?
 4 A. I believe you did.
 5 Q. What was the bail originally set at when I first got
 6 arrested, do you remember?
 7 A. No.
 8 Q. Do you remember 50,000 bucks?
 9 A. I don't remember.
 10 Q. And the judge lowered it to five? Okay. When was
 11 the -- now, did you go to that bail appeal to
 12 superior court with me?
 13 A. I think that was the same day as the revocation, the
 14 stay of revocation hearing and we decided to
 15 withdraw the bail hearing and just be heard on the
 16 stay of revocation hearing.
 17 Q. Okay. So there was never any appeal on that bail to
 18 the superior court to your memory?
 19 A. Right, there was never any hearing on that.
 20 Q. But you didn't go to any court hearing after that
 21 date with me, right?
 22 A. No. I think the day for our bail appeal was the
 23 same day as the bail revocation hearing, I mean the
 24 stay revocation hearing, and that what we did was we

1 said we would withdraw the bail appeal and then we
 2 had a hearing on the stay revocation, but I'm not
 3 positive about that.
 4 Q. So on 8/8/94, the day of the arraignment at
 5 Westboro, do you have any memory that I had to go to
 6 a hearing on that same day to Worcester Superior
 7 Court before Toomey?
 8 A. No, none. And it's unusual for the bail appeal to
 9 happen the same day, but possible. Usually it's a
 10 day or two days later.
 11 Q. All right. Now, when was the next time that you
 12 communicated with me that you remember after the
 13 arraignment?
 14 A. I don't have a specific memory of a next time except
 15 seeing you at the bail -- at the stay revocation
 16 hearing.
 17 Q. So the next event you remember regarding your
 18 representation of me, of Mike Elbery was the bail
 19 revocation hearing on 8/10/94, right?
 20 A. Yes.
 21 Q. At Worcester Superior Court --
 22 A. Yes.
 23 Q. -- is that right? And that was before Superior
 24 Court Judge Dan Toomey, right?

Page 45

1 A. Yes.
 2 Q. Okay. I didn't like Toomey too much, did I?
 3 A. He had been your trial judge and you felt that --
 4 you had said to me that you thought he had, you
 5 know, been too helpful to the prosecution and was
 6 not on your side.
 7 Q. I bet I said that. What conversations between Mike
 8 Elbery and yourself occurred on 8/10/94 at that bail
 9 revocation hearing, do you remember?
 10 A. No.
 11 Q. You don't remember anything said between me and you?
 12 A. No.
 13 Q. Remember any arguments after that bail revocation
 14 hearing when I was put in lockup when he revoked my
 15 bail?
 16 A. No. We had an argument that day?
 17 Q. You don't remember?
 18 A. I do not remember. We --
 19 Q. Did we ever have any arguments?
 20 A. Yes.
 21 Q. Long before the gun charges, am I correct?
 22 A. Long before the gun charges.
 23 Q. When you were just representing me on the appeal,
 24 the gun charges didn't exist at that point. Prior

Page 46

1 to 8/5/94 we had a lot of arguments; isn't that
 2 right?
 3 A. No. Prior to 8/4/94 had I actually filed your
 4 brief?
 5 Q. No.
 6 A. I don't think we had a lot of arguments prior to
 7 8/5/94.
 8 Q. A lot of disagreements, didn't we?
 9 A. No, I wouldn't say we had a lot of disagreements
 10 prior to the gun charges. I think the disagreement
 11 started after the gun charges. I mean we had
 12 disagreements about the brief; we had disagreements
 13 about the gun charges; we had disagreements about
 14 the motion for new trial. I don't think we had
 15 heated disagreements before that.
 16 Q. What conversations did you have with the Shrewsbury
 17 Police Department regarding Mike Elbery and his
 18 arrest on 8/5/94?
 19 A. Well, I had some conversation in that phone call
 20 where I spoke to you after you were arrested and I
 21 believe they told me what the charges were. And
 22 they may have said other things, too, but I don't
 23 have any specific memory of it.
 24 Q. You don't remember the cop?

Page 47

1 A. I don't remember the cop's name. And I think that's
 2 the only conversation I had with anybody from the
 3 Shrewsbury Police Department other than in the
 4 courtroom on the witness stand.
 5 Q. Okay. And we already went over the conversation
 6 between me and you regarding that phone call, and
 7 you don't have any memory, right?
 8 A. No. I remember you telling me you were arrested.
 9 Anything specific beyond that I don't recall. I
 10 mean we may have discussed the FID card, you may
 11 have discussed, you know, getting a hold of your
 12 wife, we may have discussed the bail. We may have
 13 discussed a number of things. I'm sure we talked
 14 for more than just ten seconds, but I have no
 15 specific memory of that.
 16 Q. Did you tell any member of the Shrewsbury Police
 17 Department, any member of that department that Mike
 18 Elbery had an FID card?
 19 A. Not that I'm aware of.
 20 Q. Did you ever say to them, Hey, there must be a
 21 mistake here, you got to let this guy go, he's got
 22 an FID card. What's the story?
 23 A. No.
 24 Q. So you never said, Hey, the guy just said he had an

Page 48

1 FID card. I talked to the guy, he said he had an
 2 FID card. You guys issued it. Look it up in your
 3 records. You never said anything like that?
 4 A. Correct.
 5 Q. You never said, Listen, if you don't let that guy
 6 Elbery out right now, instamatically (sic) because
 7 he's got an FID card that was issued by you bums, if
 8 you don't let him out this instance, I'm going to
 9 sue you under 42 USC Section 1983. You never said
 10 anything like that?
 11 A. That's correct.
 12 MR. COPPOLA: Let the record reflect
 13 Mr. Elbery's talking into his thumb and pinky I
 14 guess.
 15 MR. ELBERY: Very good, he's correct, I
 16 admit it, I did it. That's a reasonable facsimile
 17 thereof, a theatrical maneuver, if you will, of a
 18 telephone.
 19 MR. COPPOLA: I just wanted the record to
 20 be clear.
 21 MR. ELBERY: Want to make sure that
 22 Coppola does not copy me. If you see Coppola making
 23 that theatrical gesture in the future in a courtroom
 24 proceeding, stop him because he's cheating, he's

Page 49	Page 51
<p>1 copying.</p> <p>2 Q. What efforts did you make to tell the Worcester DA's</p> <p>3 office that I had an FID card?</p> <p>4 A. Well, I said that you had an FID card at the stay of</p> <p>5 revocation hearing, there was a Worcester DA there,</p> <p>6 and it was in open court, and there was some sort of</p> <p>7 discussion because I made a motion or it was in the</p> <p>8 pretrial conference report that they would produce</p> <p>9 all documents that they intended to rely on at</p> <p>10 trial. So other than that I can't recall any</p> <p>11 specific discussion with the Worcester DA's office.</p> <p>12 Q. Okay. Now that Worcester DA at the revocation</p> <p>13 hearing on 8/10/94, his name was Mike Ball; is that</p> <p>14 correct?</p> <p>15 A. I believe you are correct on that.</p> <p>16 Q. Now, you crusaded vigilantly, it's on the</p> <p>17 transcript, that Elbery had an FID card at that</p> <p>18 hearing; am I correct?</p> <p>19 MR. COPPOLA: Objection.</p> <p>20 A. I did say at that hearing that Elbery had an FID</p> <p>21 card.</p> <p>22 Q. Now, telling Ball really doesn't do any good because</p> <p>23 at that point at the revocation hearing that wasn't</p> <p>24 the issue?</p>	<p>1 to the Worcester DA's office, and a representative,</p> <p>2 Mr. Ball was there, that these charges are frivolous</p> <p>3 because Mr. Elbery's maintaining that he has an FID</p> <p>4 card, and if that's true, I want you to check into</p> <p>5 it immediately, these charges are frivolous, then I</p> <p>6 would assume that the Worcester DA's office would</p> <p>7 have dropped the charges.</p> <p>8 Q. But nonetheless, Toomey had no authority to drop</p> <p>9 anything or dismiss anything at that point at that</p> <p>10 forum.</p> <p>11 A. That's true.</p> <p>12 Q. So Mike Ball was the only member of the Worcester</p> <p>13 DA's office that you told that Elbery had an FID</p> <p>14 card?</p> <p>15 A. No -- that may be true, but I believe that in the</p> <p>16 course of discovery and signing a pretrial</p> <p>17 conference report or making a motion for discovery,</p> <p>18 whatever we did in the district court, the DA was</p> <p>19 aware that that was a contention.</p> <p>20 Q. A contention. What did he reply to you? Did he</p> <p>21 say, Put it up?</p> <p>22 A. No, I don't recall any specific reply.</p> <p>23 Q. Did he ever say, The burden of proof is on you.</p> <p>24 Let's see it.</p>
Page 50	Page 52
<p>1 A. Well, what was the issue at the revocation?</p> <p>2 Q. They weren't -- Ball was not the DA in charge of the</p> <p>3 criminal case, the gun case, that was the wrong</p> <p>4 forum to present the FID card to have any effect on</p> <p>5 the charges, am I correct?</p> <p>6 A. No, I don't think you're correct. It's the exact</p> <p>7 same DA's office, it's not some, you know, huge 300</p> <p>8 person law firm.</p> <p>9 Q. But the gun charges were not before Toomey at that</p> <p>10 revocation hearing; am I correct?</p> <p>11 A. Well, whether or not there was any legitimacy to the</p> <p>12 gun charges was an issue before Toomey. Because if</p> <p>13 Toomey felt that the gun charges were, you know,</p> <p>14 completely nonsense, then he would not have allowed</p> <p>15 the commonwealth's motion to revoke your bail on the</p> <p>16 grounds of a new arrest. He may have allowed it on</p> <p>17 other grounds; namely, that you shouldn't have been</p> <p>18 -- you know, given your situation you shouldn't</p> <p>19 have had so some guns, but the issue of, you know,</p> <p>20 what these gun charges were about was to some extent</p> <p>21 an important issue at the revocation hearing.</p> <p>22 Q. But no matter what Toomey thought he couldn't</p> <p>23 dismiss those criminal charges against me?</p> <p>24 A. Well, if Toomey had said at the revocation hearing</p>	<p>1 A. No. The problem that you seem to be ignoring is</p> <p>2 that it doesn't solve all the problems in the case.</p> <p>3 You were also charged with carrying a firearm and</p> <p>4 having an FID card does not resolve that charge, you</p> <p>5 need a special license to carry a firearm, which is</p> <p>6 different than an FID card.</p> <p>7 Q. I'm well aware of that, that's in fact if you're</p> <p>8 carrying by Mass. law, but that's a separate issue.</p> <p>9 A. It was always my position that neither you, nor the</p> <p>10 Shrewsbury Police Department seemed to have noticed</p> <p>11 that the statute had changed and that the old gun</p> <p>12 law was now a newer gun law and it had changed the</p> <p>13 definition of carrying. I believe then and I</p> <p>14 believe now that the Worcester -- the Shrewsbury</p> <p>15 Police Department was operating under some old law</p> <p>16 concept, and certainly you were. And that we did</p> <p>17 have an argument about.</p> <p>18 Q. Notwithstanding that I totally disagree with you on</p> <p>19 that, I believe I understood the law then and I</p> <p>20 certainly understand it much more now, there was</p> <p>21 absolutely no reason in the world why I should have</p> <p>22 been charged with carrying, it was absolutely</p> <p>23 ludicrous and that is the reason why Zide found me</p> <p>24 not guilty and everybody else did and there is some</p>

1 interesting documents I'll present in summary
 2 judgment.
 3 But getting on to the next question. Did
 4 you ever say to the DA that was handling the case at
 5 the Westboro District Court level, did you ever say
 6 to him, Hey, this guy Elbery, my client's got an FID
 7 card. You guys are screwing this all up. You can't
 8 hold him?
 9 A. No. Are you asking me did I think that the --
 10 Q. No, I'm asking you: Did you ever say anything
 11 similar to that?
 12 A. Yeah, I'm saying in some discussion about discovery
 13 I believe that the FID card may have come up. I'd
 14 have to see the paperwork to see it, but I have no
 15 specific memory of saying anything along the lines
 16 of, You have no case because my client has an FID
 17 card.
 18 My client was very insistent that I get
 19 every conceivable document that the Shrewsbury
 20 Police Department might have before anything was
 21 shown to the DA about an FID card because my client
 22 believed that if they knew what the defense was,
 23 that we had an FID card, and they saw the FID card,
 24 that they would make up the necessary paperwork to

1 show that it had been revoked.
 2 Q. Taking off on that comment you just made, here's a
 3 pretrial conference report on that case. It says,
 4 Defense in part based on the license. Isn't there
 5 -- there's something that doesn't equate there?
 6 A. No, there's nothing in my mind that doesn't equate
 7 there. In your mind there might be something that
 8 doesn't equate there. I kept everything as vague as
 9 possible about when the license was issued, who it
 10 was that gave you the license, et cetera, et cetera,
 11 at the specific request of my client.
 12 Q. You kept it vague?
 13 A. Vague, yeah, license, based on a license. You want
 14 to show me the pretrial conference report?
 15 MR. COPPOLA: Mark that as an exhibit.
 16 MR. ELBERY: Whatever you want to do.
 17 Q. You should have a copy of it.
 18 A. Why should I have a copy of it. I gave you my
 19 entire file.
 20 Q. I submitted that to you. I submitted to you all
 21 those documents in discovery as required by the
 22 federal rules. I assume you have that document. If
 23 you don't, please tell me.
 24 A. Yeah, I've never seen this document before. But it

1 says right --
 2 Q. You must have seen it, it's got your writing on it.
 3 A. I signed this document, I filled out part of it --
 4 Q. You've seen it before.
 5 A. I got it from you. But I mean in connection with --
 6 since I gave you the file, I have not seen it
 7 since. And I'm not sure you got this from me.
 8 Maybe you did. Maybe you got it from the court.
 9 Because I don't think I would have a copy attest
 10 from the clerk magistrate. Why would I get a copy
 11 attest. But maybe you did get it from me.
 12 Q. That's your writing; isn't it?
 13 A. Not a copy attest is not my writing.
 14 Q. What about --
 15 A. My signature, it's my signature. Large part of --
 16 Q. You've seen this document before?
 17 A. I've seen a similar document before.
 18 Q. That's a forgery?
 19 A. No. I'm just saying, Michael, that --
 20 Q. It's a copy of the original; am I right?
 21 A. Right. And it's --
 22 Q. It's the same document.
 23 A. -- got a clerk's stamp on it, yeah, and it says
 24 right here on it. File on license and its alleged

1 revocation. So whether that was -- so I did make a
 2 specific request for that which was agreed to by the
 3 commonwealth.
 4 MR. COPPOLA: Can we mark this as an
 5 exhibit, please?
 6 (Exhibit No. 1 marked for identification)
 7 A. So while I have no specific memory of discussing
 8 with the Westboro DA your quote, unquote, license,
 9 it's obvious from the document that I did.
 10 Q. I didn't catch it?
 11 A. It's obvious from the document that I did discuss
 12 your license because it's on this document that we
 13 both signed.
 14 Q. So it's safe to -- this document, this pretrial
 15 conference report, Exhibit 1, you had this on
 16 September 8th, 1994. So the police -- the DA's
 17 office knew that you were claiming license and FID
 18 card, they knew you were claiming that Elbery had an
 19 FID card at that point. You were claiming it as a
 20 defense, as it says, Defense in part based on a
 21 license. So it would have been no secret to the
 22 Shrewsbury Police Department that I through you was
 23 claiming, Hey, I got an FID card; am I correct?
 24 MR. COPPOLA: Objection.

Page 57

Page 59

1 A. Well --

2 MR. COPPOLA: Compound. What's the
3 question?

4 MR. ELBERY: That's how people talk in
5 compound sentences, you know. You're going to
6 criticize me if I speak in small sentences.

7 MR. COPPOLA: This is a deposition.

8 A. Well, the document --

9 MR. COPPOLA: If you want him to answer --
10 hold on a second. If you want him to answer a
11 question, you said a bunch of things before the
12 question I don't know that the witness agrees with.

13 MR. ELBERY: Well, if he doesn't, he can
14 tell me.

15 MR. COPPOLA: Well, you asked about five
16 or six things.

17 MR. ELBERY: Now I forget the question so
18 we'll do it again.

19 MR. COPPOLA: Okay.

20 MR. ELBERY: You're earning your pay.

21 MR. COPPOLA: Just try to keep the record
22 clear.

23 MR. ELBERY: You can do this if you want
24 '(demonstrating). I mean you're earning your pay,

Page 58

1 you're doing a good job. We're paying attention, to
2 you. You're getting attention, okay? I'm paying
3 attention to you.

4 Q. Per this document --

5 MR. COPPOLA: Ironically I'm helping you,
6 but go ahead.

7 A. Go ahead. Per this document what?

8 MR. ELBERY: I don't know how you're
9 helping me, really. What do you think they're going
10 to strike these answers out because I got a compound
11 question, you're going to be able to say something
12 else at trial? Come on. You know, what are they
13 going to say, Oh, that's a compound. No, no, he can
14 change his testimony at trial, that was a compound
15 -- it doesn't make any difference what the answer
16 was. Is that what they're going to do?

17 Q. We have a document here, Exhibit 1, the pretrial
18 conference report. If you look at this, Robert, if
19 you look at this information on this pretrial
20 conference report. It would be clear to the DA's
21 office that was handling this case at Westboro court
22 that Elbery was claiming that he had an FID card; am
23 I correct?

24 MR. COPPOLA: Objection.

1 A. No, I don't agree with -- well, I agree with you to

2 a limited extent. I have kept it vague. I say,
3 File on license. I don't say what kind of license.

4 I don't say if it is a license to carry, I don't say
5 if it's an FID card, and I haven't put down what
6 police department. And my vagueness was a direct
7 result of your orders that I be as vague as possible
8 so that the Shrewsbury police would have the least
9 opportunity possible to create phony documents to
10 show that the license had been revoked. Now do I
11 think your position was foolish? That's another
12 question entirely.

13 Q. So you're telling me that this pretrial conference
14 report that you asked for certain pieces of
15 discovery, actually you're asking for nothing?

16 A. No, that's not what I'm telling you. I'm telling
17 you I made it as broad as possible, as vague as
18 possible so that I can get what I want without
19 alerting them in, you know, neon lights that what
20 I'm talking about is a Shrewsbury FID card. And I
21 do that for a specific reason. Because my client is
22 convinced that if I put it in neon lights, the
23 Shrewsbury Police Department will go and create a
24 document that says, We revoked his license prior to

Page 60

1 this search, prior to the discovery of the guns.
2 Now do I think my client's position is foolish?
3 Yes, because the Shrewsbury Police Department was in
4 reality on notice a long time ago that if they
5 wanted to create such a document, they should have
6 created such a document. But do I cater to my
7 client's wishes because I don't see any downside in
8 catering to my client's wishes? Yes, I do. So
9 that's my answer.

10 Q. So from that line of thinking you could never
11 present the FID card?

12 A. No. From that line of thinking at some point in
13 time they have to produce whatever documents they're
14 going to rely on at trial. When you're satisfied --
15 when my client is satisfied that they are now in a
16 position that they cannot create a phony document
17 for the purposes of trial, my client is going to
18 show them this FID card and beat 90 percent of the
19 case. And we have a legal theory that maybe it
20 beats a hundred percent of the case.

21 Q. And that's already been decided as a matter of law,
22 hasn't it?

23 A. By who?

24 Q. The judge who heard the case.

Page 61

Page 63

1 A. Oh, you mean Judge Zide issued a decision based on a
2 motion to dismiss?

3 Q. No.

4 A. Judge Zide had an evidentiary hearing in your case?
5 I don't know what happened in your case, I wasn't
6 counsel of record anymore.

7 Q. There you go, you don't know.

8 A. I don't know.

9 Q. I was found not guilty on all six charges, you
10 admitted to that in your answer.

11 A. All I know is what you told me and what the document
12 entries reflect. You told me that the cops didn't
13 show up at your trial and that he entered not guilty
14 verdict at the request of your lawyer as opposed to
15 dismissal. And the docket seems to reflect you got
16 not guilty, so that's what I know. I wasn't there.

17 Q. So it's been decided as a matter of law?

18 MR. COPPOLA: Objection.

19 A. You know, that's your opinion that the legal issues
20 in your case were decided as a matter of law.
21 What's been decided as a matter of law is that you
22 are not guilty of these charges, that's what's been
23 decided. Now, decisions for not guilty happen for
24 many different reasons. For legal reasons; for

Page 62

1 practical reasons; for factual reasons, for all
2 kinds of reasons.

3 Q. But so far I'm the only one in this case that has
4 that information.

5 A. What information are you talking about? Why it was
6 that you were acquitted?

7 Q. Mm-mm.

8 A. You're right. I wasn't there, I don't know. The
9 docket entries that I've seen don't reflect what the
10 reason was, at least to my memory they don't.

11 Q. And I also have documents that prove what I'm
12 saying.

13 A. That prove what?

14 Q. Why I was found not guilty.

15 A. Well, the only reason why I know you were found not
16 guilty is what you told me, which is that the police
17 didn't show up.

18 Q. That's the only evidence in the case, isn't it?

19 MR. COPPOLA: What are you talking about?
20 What case?

21 A. His jury of six trial.

22 MR. ELBERY: The same case we've been
23 talking about.

24 MR. COPPOLA: The only evidence --

1 MR. ELBERY: I can't keep on -- you know,
2 you get upset when we put in too many words before
3 the question. Now you want me to keep on reminding
4 you that we're talking about the gun case. What do
5 you think we're talking about, the Boston
6 Strangler? Obviously we're talking about the gun
7 case. You got to keep in with the context of the
8 conversation.

9 Q. How many times did we meet between 8/10/94 and
10 4/3/95?

11 A. What happened at 4/3/95? The motion to --

12 Q. That's when I was found not guilty.

13 A. How many times did we meet?

14 Q. Yeah.

15 A. I don't have a clue.

16 Q. We meet at Concord prison?

17 A. I believe we did.

18 Q. Okay. You came up there, obviously I didn't go to
19 you, I was up there. How many times did you go to
20 Concord prison, do you remember?

21 A. No. But I wouldn't be surprised if it was more than
22 once.

23 Q. And you had other inmates you were talking to up
24 there, right?

Page 64

1 A. If I came up to see you, I don't remember the
2 specific day, if there were other clients that I had
3 at the prison, I probably would have called others
4 out too.

5 Q. Do you remember telling me you had five other
6 clients up there?

7 A. No. But I may have had more than five clients. I
8 can't remember.

9 Q. Do you remember giving my name as a reference to a
10 Black inmate who was up on a 15 year drug charge and
11 he spoke to me about you --

12 A. No.

13 Q. -- as a result of that?

14 A. No.

15 Q. Okay. Okay. Do you remember speaking to me at the
16 suppression hearing at Westboro District Court?

17 A. Yeah, you were sitting next to me.

18 Q. Do you remember any of the conversations that you
19 and I had during that suppression hearing? I
20 believe it was 9/21 of 1994.

21 A. Not specifically, although you had suggestions and,
22 you know, questions that you wanted answered and
23 stuff like that, but I don't remember any specifics.

24 Q. And how many phone conversations after 8/5/94 did we

1 have, do you remember?
 2 A. After the suppression hearing?
 3 Q. No, after the arrest.
 4 A. I don't remember.
 5 Q. Do you remember anything that you and I said during
 6 any of those phone calls?
 7 A. No, not specifically, but I'm sure we talked about
 8 the case. We talked about, you know, what should be
 9 done for the motion to suppress, we talked about
 10 various theories of, you know, guilt or innocence on
 11 these charges. I remember an ongoing argument that
 12 we had, which is reflected in some of the
 13 correspondence, between, you know, old gun law and
 14 new gun. Your position with me was that unless it
 15 was on your person or in your vehicle under your
 16 control it was not carrying, and my position was
 17 that was the old law, not the new law, you seem to
 18 be operating under the same misapprehension that the
 19 Shrewsbury Police were is my memory. The Shrewsbury
 20 police charged you with carrying for the one gun
 21 that was in the car and the rest they charged you
 22 with possession of, and I believe they were thinking
 23 old law concepts at the same time. And I remember
 24 having very heated discussions with you about that.

1 Q. That we were on the same wavelength.
 2 A. On the issue, that it was the old law, that the car
 3 somehow was --
 4 Q. How can we be of the same opinion if they were
 5 charging me with carrying and I said I'm not
 6 carrying.
 7 A. Well, in this sense you were on the same
 8 wavelength. You believed that in order to be found
 9 guilty of carrying, the gun had to be on your person
 10 or in your possession under your control in an
 11 automobile. And I believe the Shrewsbury -- and
 12 that was the old law. And you insisted to me that I
 13 was nuts to say that that was not the law and I
 14 insisted to you that you were nuts.
 15 Q. Okay. And what did you say was the law?
 16 A. That if it was not in your home or in your place of
 17 business, it was carrying.
 18 Q. And what else did I tell you?
 19 A. Well, I don't know what else you told me.
 20 Q. Didn't I keep screaming at you that the E-Z Mini
 21 unit was totally under my control, that I was the
 22 only lessee and that that was the same as my home or
 23 business?
 24 A. There is no question that the two of us took the

1 Q. What was your position on that, on the gun in the
 2 car?
 3 A. That I believe the Shrewsbury police also thought
 4 that they were operating under the old law, that it
 5 was the gun in the car they charged you with
 6 carrying. Am I wrong about that?
 7 Q. It doesn't say that anywhere.
 8 A. Well, but there was a specific gun.
 9 Q. To answer your question, I know I'm not being
 10 deposed, but I have yet to see that anywhere in any
 11 document.
 12 A. Which gun it was that --
 13 Q. Which gun or where it was.
 14 A. Yeah. I think it was the gun in the car that they
 15 were claiming -- there was a rifle in the car, am I
 16 right, and a handgun in the car and --
 17 Q. I believe there were quite a few guns in the car.
 18 It was quite a long time ago.
 19 A. I think most of the guns were in the storage unit,
 20 not in the car, but in any event, it's my memory
 21 that it was the gun in the car that the Shrewsbury
 22 police thought was the carrying charge and that you
 23 and them were on the exact same wavelength on this
 24 issue.

1 same position that as a matter of law our defense
 2 would be that whether the new law or the old law
 3 applied -- once I convinced you that the new law
 4 applied -- that we would argue that this was the
 5 equivalent of your home or your business and
 6 therefore you weren't carrying. Yes, we took that
 7 position. And was it your idea as opposed to my
 8 idea? No, I would say it was both of our idea. We
 9 both thought that that was the defense to go to,
 10 that our argument would be that the E-Z Mini,
 11 whatever it was called, was the equivalent of a home
 12 or a place of business, that if you didn't have
 13 enough room in your house, that you had to rent a
 14 storage locker somewhere, that was your house, that
 15 was the equivalent of your house. And there was no
 16 case law on it, none, no decided case to tell us who
 17 was right or wrong.
 18 Q. The fact of the matter there were piles of case law
 19 the Sayegh (phonetically) case, there's a whole gang
 20 of them that say public place, okay. Motion -- you
 21 said the motion was out. The law became -- the only
 22 difference between what you say happened in '91, the
 23 old law pre-'91, and the new law was motion not the
 24 concept anymore in relation to carrying. The

1 definition of carrying became public place. Any way
 2 you cut it those guns, none of them were in a public
 3 place and that was the law and it was nothing new.
 4 The Sayegh case back in '79 by the SJC said the same
 5 damn thing and the district attorney's office has a
 6 whole summation and annotation on that law and back
 7 then when the law changed, as little as it did, it
 8 changed ever so little, they point out that the only
 9 difference now, the concept to look for isn't
 10 movement, movement does not connote -- does not
 11 equal carrying, public place equals carrying, okay?
 12 I argued with you blue in the face that there's no
 13 way that I should be charged with a 269 10A charge
 14 because those guns that they charged with me with
 15 were all in my private storage unit and there's no
 16 way I could get carrying. Your argument was because
 17 they were in a car -- that was your argument -- they
 18 were in the car, therefore it's carrying. They were
 19 in the car, therefore it's carrying. They were in
 20 the car, therefore it's carrying. One of the guns
 21 was a handgun, therefore it's carrying. That's what
 22 you kept on saying to me.

23 MR. COPPOLA: Is there a question?

24 Q. Isn't that what I said? Isn't that what you said

1 parade, crusade, and this is one of the letters I
 2 sent you, your client's best case, not the police's
 3 case, did you ever read that? Did they teach you
 4 that at Yale?

5 MR. COPPOLA: Objection.

6 A. They taught me to vigorously and zealously defend my
 7 client. You confuse the difference between having
 8 an honest discussion with your client about where
 9 the law may or may not go with what you say in the
 10 open court, there's a big difference. What I said
 11 to you, Michael, to answer the first question that
 12 you asked me that I said it's somewhat similar, I
 13 did say to you my legal argument will be that your
 14 storage locker is the equivalent of your home or
 15 your business. That wasn't your idea; I'm not
 16 saying it was my idea. You agreed with it, I agreed
 17 with it. That was obviously our best argument. I
 18 said they had taken the position and this was what I
 19 believed, maybe I'm wrong, they had taken the
 20 position that the gun in the car, the handgun in the
 21 car was the carrying based on my view of their old
 22 law concept that it was in a car therefore it was
 23 carrying. I thought the gun in the car presented
 24 the worst problem for us for two reasons. No. 1,

1 rather?
 2 A. Yes, I did say something like that. I said, If in
 3 fact --
 4 Q. You admit that. Go ahead.
 5 MR. COPPOLA: He hasn't finished his
 6 answer.
 7 A. I said something like that, Michael. As usual
 8 twisted out of its --
 9 Q. Twisted?
 10 A. Twisted off its foundation completely. Michael, you
 11 may not remember this, but it's reflected in the
 12 correspondence, you insisted to me that the gun law
 13 required it to be on your person or under your
 14 control in a vehicle, that's what you insisted to me
 15 for a very, very long time. Do you deny that?
 16 Q. And so what -- I don't admit that at all, okay.
 17 A. In addition --
 18 Q. I don't admit that at all. So what if I did, what
 19 difference would it make?
 20 A. The law had changed, Michael.
 21 Q. Who was the lawyer, me or you? Who was I paying?
 22 Look it, did you ever read -- and it's a book right
 23 out there, it's Volume 1 or Volume 2 of Professional
 24 Malpractice, did you ever read -- you're supposed to

1 you were charged with carrying, the FID card doesn't
 2 take that away. No. 2, it's in a car which may mean
 3 that it's not in your home or place of business, not
 4 because the old law said car, but because the new
 5 law talks about home or place of business. If it's
 6 in a car an appellate court could take the position
 7 that it is not in your home or place of business,
 8 and that was a discussion that I had with you. Many
 9 times we had this discussion.
 10 Q. They could take the position?
 11 A. Yeah, they could.
 12 Q. Based on what, new world order law? Based on what?
 13 They have to base it on the Massachusetts law. Man,
 14 I don't believe you're still saying this nonsense, I
 15 don't believe it. I do not believe you're saying
 16 this. Fortunately these are all issues of law, we
 17 don't have to put up with this mumbo jumbo, okay?
 18 A. I don't care what you believe or you don't believe,
 19 Michael.
 20 Q. You may dislike this statement but "I know the law."
 21 A. I'm sure you believe you know the law, I'm sure you
 22 do.
 23 Q. You don't think I know it?
 24 A. No, I think you know a lot of the law, Michael.

1 you've dedicated a lot your time to the law and you
 2 know a lot of the law.
 3 Q. Let me tell you something --
 4 A. You were just as sure when you said to me during the
 5 course of my representing you in the gun case, you
 6 said to me, I know the law. Sheketoff, I know the
 7 law, and if it's not on my person --
 8 Q. And I was right?
 9 A. -- not in my car, it's not carrying.
 10 Q. And I was right, wasn't I?
 11 A. No, you were wrong about that, completely wrong
 12 about that.
 13 Q. I was?
 14 A. Yeah.
 15 Q. Well, how come I got all not guilty's by the mere
 16 designation of an FID card. We didn't even present
 17 the FID card, we presented a letter stating that I
 18 had an FID card. I was right about everything from
 19 day one.
 20 A. I'm sure you were, Michael --
 21 Q. You're not the only one?
 22 A. -- and I'm sure the tape recording of the hearing
 23 before Judge Zide will show that you won because
 24 Judge Zide believed that if you had an FID card it

1 beat the carrying case.
 2 Q. Good. You get that tape recording, save me the
 3 effort.
 4 A. You mean you don't have that tape recording?
 5 Q. No, I don't. I don't have to have it.
 6 A. Oh, you were there and that's what happened?
 7 Q. That's right. You got any contrary evidence, huh?
 8 Let me tell you something, they haven't twisted and
 9 mangled the laws so bad yet that the common man
 10 can't understand the law so that he has -- most of
 11 them still have to beg to figure out what the laws
 12 are, but some of us still can figure them out, some
 13 of us can still figure them out. They haven't yet
 14 convoluted and made the laws so volumous (sic) and
 15 twisted and mangled that the man -- that the
 16 citizenry has to always beg to figure out what the
 17 laws are. I know what the law is. I can't believe
 18 you're still telling me the same mumbo jumbo you
 19 told me in that prison.
 20 A. In other words, you concede that I haven't changed
 21 my story.
 22 Q. You told me when I was in prison, not that I'm being
 23 deposed here, but I believe, and tell me if I'm
 24 wrong -- here's the question. As you've already

1 admitted, you told me that I was guilty of carrying,
 2 you told me that repeatedly because there was a gun
 3 in the car and tell me if I'm -- isn't that what you
 4 just got through saying?
 5 A. No, I did not get through saying that. And the fact
 6 that I said something so different from that but you
 7 interpret it as the same thing might put a light off
 8 in your head that the exact same thing happened when
 9 we were talking about it in prison. I'm talking to
 10 you about what the commonwealth could argue. I'm
 11 not talking --
 12 Q. Who cares what the commonwealth could argue.
 13 A. Well, because what the commonwealth --
 14 Q. You were representing me, not the commonwealth.
 15 A. Michael, in order to decide what is in your best
 16 interest I have to look at both sides of the case.
 17 Is it possible that you could be found guilty of
 18 carrying this gun, that's the issue that I have to
 19 consider, not can I make an argument that says
 20 you're not guilty, that's only one part of my job.
 21 The other part of my job is to decide whether or not
 22 another argument can be made that you are guilty
 23 that could be adopted by an appellate court, that's
 24 part of my job. And part of my job is to discuss

1 with you the fact that there are other ways to view
 2 these facts, and when there are other ways to view
 3 the facts, there are risks involved. And if there
 4 are risks involved, you have to know about them
 5 before you decide what's in your best interest.
 6 Q. But for the record Robert Sheketoff while I was in
 7 prison regarding this case repeatedly said to me
 8 that there's a gun in the car even though it's an
 9 E-Z Mini storage locker locked up in that garage
 10 locker, that's carrying. I got to go on to the next
 11 case here.
 12 A. No, that is not true. If that was a question to me,
 13 that is not true.
 14 Q. Sounds like what you've just been saying.
 15 A. And I understand, Michael, why you keep saying this
 16 because you refuse to hear what I'm saying which is
 17 that I did discuss with you that the commonwealth
 18 can make that claim, and I would discuss it with
 19 anyone right now charged with the same
 20 circumstances.
 21 Q. So you admit to --
 22 MR. COPPOLA: Objection.
 23 A. I admit to discussing with you that commonwealth can
 24 make that claim.

1 MR. COPPOLA: Court reporter needs a
2 break.
3 (Recess)
4 MR. ELBERY: How about this one, Coppola,
5 Mr. Jones, your car is ready. Ready all ready?
6 Remember that commercial?
7 MR. COPPOLA: No.
8 MR. ELBERY: The Cadillac Center in
9 Norwood.
10 Q. Let's see. Do you remember how many phone -- do you
11 remember how many phone conversations after 8/5/94
12 we had?
13 A. No.
14 Q. Do you remember the content of any of those
15 conversations?
16 A. Well, a lot of things we've just been discussing.
17 Q. You gave me both of your phone numbers, right?
18 A. True.
19 Q. When you spoke to me at Concord prison, do you
20 remember what months it was?
21 A. No.
22 Q. Or what dates?
23 A. But the prison keeps records of visits.
24 Q. Okay. Just after I got arrested on 8/5/94, you took

1 a European vacation for two weeks; or how long?
2 A. I haven't been to Europe since I was in high
3 school --
4 Q. Okay.
5 A. -- so I don't think it was a European vacation. I
6 did take a trip to China, but I can't remember
7 exactly when it was. It might have been in that
8 time frame.
9 Q. The court complaint, the document, after the cops
10 applied for the complaint, where does that
11 originate?
12 A. The court complaint?
13 Q. Yes.
14 A. In order to get a complaint a cop has to go to the
15 clerk's office in the district court that he wants
16 to have the complaint issue at.
17 Q. Is there any way that those complaints are issued --
18 that the cops have them at the police station and
19 they make them up at the police station?
20 MR. COPPOLA: Objection.
21 A. In order to get the complaint issued they have to go
22 to the clerk's office. In order to draft the
23 complaint itself, I believe most clerks do it right
24 there in the office, but that's not to say that it

1 would be inappropriate for a cop to draft up the way
2 he wants it to read and to go in and to swear to it
3 in front of the clerk.
4 Q. Would he have those documents at the police station?
5 MR. COPPOLA: Objection. Do you know?
6 A. I don't know.
7 Q. Did you review all Shrewsbury Police Department
8 arrest documents and court documents regarding the
9 arrest of Elbery on 8/5/94?
10 MR. COPPOLA: Objection.
11 A. I've reviewed all the documents that were provided
12 by the commonwealth in discovery.
13 Q. Both police and the DA's office. Oh, okay, through
14 discovery. All right. Why did you allow the
15 Shrewsbury Police Department to change and increase
16 one of the charges against me?
17 MR. COPPOLA: Objection.
18 A. Change and increase one of the charges against you?
19 Q. One of the charges was changed and increased, not an
20 additional charge, but of the initial six, one of
21 those six was changed and it was increased, changed
22 from a 10H to a 10A.
23 A. And when did that occur?
24 Q. Uh-huh, you answer the question.

1 MR. COPPOLA: Objection.
2 A. I don't know what you're talking about.
3 Q. You don't know anything about that?
4 MR. COPPOLA: Objection.
5 A. That's correct.
6 Q. But you did have privy to all those documents, am I
7 correct, the arrest record?
8 MR. COPPOLA: Objection.
9 A. I had all -- I'm sorry.
10 MR. COPPOLA: When you say "those
11 documents," I don't know what you're talking about.
12 A. I had all documents that were provided in discovery
13 by the DA's office. And you now have all those
14 documents.
15 Q. So all the documents I have I got from you and you
16 would have got them from the DA's office; correct?
17 MR. COPPOLA: Objection. How does he know
18 what you have.
19 A. All the documents that were in my file that I gave
20 to you, you got from me. And the only place that I
21 got documents concerning police reports was in
22 discovery.
23 Q. Why per Interrogatory No 17 in an affirmative
24 defense. No. 3 the SPD, the Shrewsbury Police

1 Department to blame for the arrest of Elbery on
 2 8/5/94 and repeated complaint, items in my
 3 complaint?
 4 MR. COPPOLA: Objection. I don't know --
 5 what are you referring to? Are you referring to a
 6 document?
 7 MR. ELBERY: Your answers to my
 8 interrogatories, No. 17 and his answer to my
 9 complaint, No. 3, Affirmative defense No. 3.
 10 MR. COPPOLA: What about it? Is there a
 11 question?
 12 Q. Yeah.
 13 A. Why do you say I say that?
 14 Q. Why do you blame the Shrewsbury Police Department?
 15 A. Because I didn't arrest you. I didn't arrest you.
 16 Q. Okay. And you also blame all the other counts in my
 17 complaint on them --
 18 MR. COPPOLA: Objection. That's not --
 19 you're mischaracterizing --
 20 Q. -- besides the arrest?
 21 MR. COPPOLA: -- the document. And I'd
 22 like the witness to see the document and for a
 23 specific question to be asked regarding it.
 24 Q. Well, do you find the Shrewsbury Police Department

1 of any blame --
 2 MR. COPPOLA: Objection.
 3 Q. -- regarding any of the counts in my complaint?
 4 MR. COPPOLA: Objection.
 5 MR. ELBERY: What's the objection to
 6 that?
 7 MR. COPPOLA: Blame for what? We don't
 8 even know what you're claiming.
 9 Q. I just said to the counts in my -- the items in my
 10 complaint, what I'm complaining about.
 11 MR. COPPOLA: Who knows what that is.
 12 Your complaint is unintelligible.
 13 MR. ELBERY: It is? Then how come you
 14 answered it?
 15 A. All right. Do I blame the Shrewsbury Police
 16 Department? I'm not sure what that question means.
 17 Does the question mean if I was an appellate court
 18 and got to decide what the law should be, would I
 19 decide that the Shrewsbury Police Department acted
 20 improperly and improperly charged you?
 21 Q. What's an appellate court got to do with it?
 22 A. Well, because that's who decides whether someone
 23 acted improperly or not.
 24 Q. I thought a jury did that.

1 A. Well, to some extent a jury does, so --
 2 Q. But in terms of what I'm complaining about in my
 3 complaint?
 4 MR. COPPOLA: What are you complaining
 5 about?
 6 Q. And did you answer that complaint? Do we understand
 7 why we're here?
 8 MR. COPPOLA: Well, I'm not going to let
 9 him comment about a complaint or the whole
 10 document. It's not a specific question.
 11 MR. ELBERY: All the counts in my
 12 complaint against him, Elbery versus Sheketoff.
 13 MR. COPPOLA: We denied them. So what's
 14 the question?
 15 Q. The question is: Why are you blaming the cops for
 16 it?
 17 MR. COPPOLA: You're mischaracterizing --
 18 I don't know what you're characterizing, but --
 19 MR. ELBERY: Well, now you're answering
 20 the questions. I thought he was supposed to answer
 21 the questions.
 22 MR. COPPOLA: Well, ask a question.
 23 MR. ELBERY: I just did. You were able to
 24 answer it. Why isn't he able to answer it? You

1 understand the question, you just answered it. Now
 2 I want him to answer it.
 3 MR. COPPOLA: I understand why it's vague
 4 and not answerable.
 5 MR. ELBERY: You don't want to answer the
 6 question, fine. It's down on paper, it's 3 and 17.
 7 Interrogatory 17, Answer 3, affirmative defense.
 8 Q. How many times did I go to your office after July of
 9 1995?
 10 A. What occurred in July of 1995?
 11 Q. I got out of jail, I got out of prison, they
 12 released me on parole.
 13 A. I don't know.
 14 Q. You don't know how many times?
 15 A. No.
 16 Q. Do you remember what we talked about?
 17 A. We talked about the motion for new trial. We talked
 18 about lawsuits against other people.
 19 Q. Which people were they?
 20 A. I don't know. We talked about shopping for a lawyer
 21 to do the motion for new trial.
 22 Q. Who was I going to sue back then that I talked to
 23 you about?
 24 A. You actually showed me some complaints at some point

1 in time.

2 Q. That was in '97.

3 A. Well, you said after '95 so -- oh, you mean right
4 after, when you first got out?

5 Q. You were right, I'm wrong. You were right. You're
6 answering the question right. I'll ask you
7 another.

8 Do you remember 12/14/97 visit, that was
9 Christmas Eve, I know you don't practice that
10 Christmas business but remember me going to your
11 office? To me it's a special date, I don't know, to
12 you it might not mean nothing. Do you remember me
13 being in your office that day? I came in, I was
14 like incoherent because I was tired. Do you
15 remember me coming to your office on that date?

16 A. I remember a number of visits from you. That
17 specific one I don't specifically recall.

18 Q. Do you remember that was the date I had
19 documentation I was suing the Shrewsbury cops, I was
20 talking to you about it, and you referred to it,
21 that's why.

22 A. I remember a conversation about other lawsuits and
23 you were bringing documentation. I remember some
24 conversation about you telling me at some point in

1 Q. But I had paid you to do the motion for new trial,
2 right?

3 A. You had paid me a fee at the very beginning of our
4 relationship to do a direct appeal and a motion for
5 a new trial if it proved necessary.

6 Q. Okay. You were going to exhaust all state remedies
7 related to that attempted mayhem conviction; am I
8 correct?

9 A. Correct.

10 Q. And I paid you 15 grand for that?

11 A. Approximately.

12 Q. And we got to a point where I found that the work
13 you produced was unacceptable and you didn't want to
14 do anything else so that was the end of that.

15 MR. COPPOLA: Objection.

16 A. We came to a point where you told me that you found
17 the work unacceptable and you were not going to use
18 me to do the -- to actually litigate the motion for
19 new trial. My best memory is that you were -- you
20 agreed with the issue that I wanted to raise in the
21 motion for new trial but had many other issues that
22 you wanted to raise that I didn't think much of.

23 Q. I did that motion for new trial.

24 A. You filed it?

1 time that they were trying to frame you for the
2 arson at the place and you had documents about it, I
3 remember.

4 Q. And I brought the documents in for you to look at?

5 A. Yes.

6 Q. And you made commentary on it, right?

7 A. Yup.

8 Q. Well, that was -- to refresh your memory that was
9 12/24/97. Okay. Okay. But do you remember -- I
10 came to your office a few times?

11 A. I'd say that's true.

12 Q. Yeah. But do you remember any of the dates besides
13 12/24/97? Do you remember any of the conversation
14 -- it was about the motion for new trial, do you
15 remember?

16 A. We had conversations about the motion for new
17 trial. We had conversations about other lawsuits
18 that you were filing and we had conversations about
19 shopping for a lawyer to do the motion for a new
20 trial. I mean you would call me and we would talk
21 about various lawyers you had seen and what I
22 thought of them and what your impressions of them
23 were because you were looking for someone to do the
24 motion for new trial

1 Q. Yes, July 8th, the whole gang of those copies were
2 going around, they're all over the place, they're in
3 the federal court. Louison's got a copy. They're
4 everywhere, so you want -- you know, I got a copy of
5 one you did for me. I got no time for this.

6 Do you know a guy named Attorney Richard
7 Egbert?

8 A. I do.

9 Q. And did you ever talk to him about me?

10 A. Yes.

11 Q. Okay. Do you want to tell me what he said to you.

12 A. Well, you get to ask the questions. Ask me a
13 question.

14 Q. What did he say to you about me?

15 A. This is a relatively recent conversation where he
16 got a subpoena to show up at a deposition and my
17 name was on the subpoena in the sense that it was
18 somebody against me and he called me to find out
19 what it was about.

20 Q. Did you ever have any conversations with him about
21 me prior to 19 -- to August 5th, 1994?

22 A. No. And it's not just that I don't remember, I
23 would say that I never had a conversation with him
24 about you.

Page 89

Page 91

1 Q. But you knew he was my lawyer for a short period of
 2 time prior to me hiring you?
 3 A. I believe that that's true because you told me
 4 something along those lines. I don't remember
 5 specifically, but I believe you said you had seen
 6 him and that for whatever reasons it hadn't worked
 7 out or something like that.
 8 Q. Okay. Did you ever attempt to motion to dismiss any
 9 of the gun charges that I was arrested for on
 10 8/5/94?
 11 A. No.
 12 Q. You said in one of your interrogatories that you
 13 answered for me that you told a judge that I had an
 14 FID card. Which judge was that?
 15 A. Toomey.
 16 Q. Besides Toomey, any other judge?
 17 A. Well, not that I can specifically recall. It's
 18 clear from looking at the pretrial conference report
 19 which is given to a judge and signed by him that I
 20 made some claim that we were going to have some
 21 license defense. And I don't know -- there was a
 22 lobby conference on your case in the jury of six and
 23 it may have been discussed with that judge, but I
 24 don't have specific memory of what was said in the

1 Worcester revocation letter or something like that.
 2 They never gave me --
 3 Q. Concerning a license to carry which had nothing to
 4 do with this case.
 5 A. There was nothing relevant to this case that they
 6 ever produced.
 7 Q. They never produced -- they told you they had no
 8 revocation of FID, right?
 9 A. I don't recall if they told me that or not. What I
 10 do recall is that they never produced any document
 11 as a result of that pretrial conference report that
 12 showed a revocation of the FID card.
 13 Q. And you specifically asked for a revocation of FID
 14 card?
 15 A. Well, what I specifically asked for, if I can see
 16 the document. What I specifically asked for was the
 17 file on license and its alleged revocation.
 18 Q. And what did they give you? Did they ever tell
 19 you --
 20 A. I don't specifically remember what they gave me. I
 21 think they might have given me that Worcester
 22 thing. I don't specifically remember. But I know
 23 they did not give me any document that would lead me
 24 to believe that they had a revocation letter in

Page 90

Page 92

1 lobby conference.
 2 Q. Did you ever get a court order to obtain records of
 3 Michael Elbery's FID card in any related revocation
 4 of his FID card from a Shrewsbury police?
 5 A. What I got is what's on the pretrial conference
 6 report.
 7 Q. So you never went to a judge, a district judge in
 8 Massachusetts that presided on that gun case, the
 9 gun charges against me and asked him for a court
 10 order to get information about my FID or revocation
 11 of the FID from the Shrewsbury Police Department?
 12 A. I disagree with that because the pretrial conference
 13 report has the force of a court order. The judge --
 14 the parties agree to something, the judge signs off
 15 on it, it's the equivalent of a court order.
 16 Q. What did they produce to you regarding that pretrial
 17 conference record? You asked for certain
 18 information, what did they give you?
 19 A. I don't recall. But they certainly didn't give me
 20 any revocation letter.
 21 Q. They never did?
 22 A. No.
 23 Q. Did they ever give you --
 24 A. Or if there was a revocation letter, it was a

1 their hand that would revoke your FID card.
 2 Q. Did they ever tell you that there was no revocation
 3 letter?
 4 A. I can't say one way or the other.
 5 Q. Did they ever tell you that Elbery had an FID card?
 6 A. I can't say one way or the other, but it was -- what
 7 was important to me at the time was that they did
 8 not have a letter revoking it.
 9 Q. When you say "the Worcester thing," you meant the
 10 revocation of my license to carry; is that correct?
 11 A. I meant some document that I saw as irrelevant to
 12 this case, I can't --
 13 Q. It was a revocation of a separate license, not the
 14 FID license?
 15 A. Not the FID license that I believed had been issued
 16 by Shrewsbury. So whatever that Worcester thing
 17 was, if it was their intention to try and use that
 18 as proof that you didn't have an FID card, I thought
 19 they were off base.
 20 Q. Did they ever try to do that?
 21 A. Not that I'm aware of. I mean I can't specifically
 22 recall why I had that document, if it came in
 23 discovery or what. I assume it came in discovery,
 24 but I'm not positive.

Page 93	Page 95
<p>1 Q. Did you ever get a court order to obtain a record of</p> <p>2 Mike Elbery's FID card and any related revocation of</p> <p>3 that FID card from the Massachusetts Department of</p> <p>4 Safety?</p> <p>5 A. No. The only thing, I did was --</p> <p>6 Q. The answer to that is no?</p> <p>7 A. That's right. The only thing I did was the pretrial</p> <p>8 conference report.</p> <p>9 Q. Did you ever get a court order through discovery of</p> <p>10 the case in Westboro and Worcester District Court</p> <p>11 relating to the gun charges of 8/5/94 against Mike</p> <p>12 Elbery from a judge in order to obtain Mike Elbery's</p> <p>13 record of FID card with the SPD and any related</p> <p>14 revocation of that FID card?</p> <p>15 MR. COPPOLA: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. Well, again, I consider the pretrial conference</p> <p>18 report, which has to be signed by a judge, which --</p> <p>19 yeah, this document -- it's hard to read a</p> <p>20 signature, but you can see something is there as a</p> <p>21 court order. In other words, it's my legal position</p> <p>22 and my understanding of the law that when a pretrial</p> <p>23 conference report is signed and signed off on by the</p> <p>24 judge it has the -- it's equivalent of a court</p>	<p>1 A. I have no memory of moving to compel them to do</p> <p>2 that. And if the docket entries reflect that I did</p> <p>3 it, I'm sure they're accurate.</p> <p>4 Q. Do you agree that the 8/5/94 -- strike that.</p> <p>5 Let me rephrase the question. Do you</p> <p>6 agree that the charge against Elbery via Chapter 269</p> <p>7 10A resulted from the Shrewsbury Police Department</p> <p>8 finding a firearm in Elbery's car that was in the</p> <p>9 E-Z unit.</p> <p>10 MR. COPPOLA: Objection.</p> <p>11 A. That's my best memory of their theory of why there</p> <p>12 was a 10A violation.</p> <p>13 Q. Do you agree that the 10H charges, the five 10H</p> <p>14 charges against Elbery as a result of the 8/5/94</p> <p>15 arrest were the result of the SPD finding five</p> <p>16 rifles in Elbery's E-Z unit?</p> <p>17 MR. COPPOLA: Objection.</p> <p>18 A. I can't remember if they were all rifles, but I</p> <p>19 agree that it appeared to me that their theory of</p> <p>20 prosecution was that the guns were found in that</p> <p>21 unit.</p> <p>22 Q. You agree that all the charges. That -- all six</p> <p>23 charges whether 10H or 10 A all resulted from guns</p> <p>24 that belonged to Elbery that were in his storage</p>
Page 94	Page 96
<p>1 order.</p> <p>2 Q. Okay. And if the prosecution doesn't cooperate, you</p> <p>3 can go one next step and go to the judge and get a</p> <p>4 court order, even though this has the effect of a</p> <p>5 court order, you can go the next step and say, Hey,</p> <p>6 judge, these people aren't cooperating, the</p> <p>7 Shrewsbury police issued an FID card back to him in</p> <p>8 1982 and these cops aren't forwarding them the</p> <p>9 information. You order them, Judge, you order them</p> <p>10 to produce this stuff. You serve them up with a</p> <p>11 court order and tell them to do it right now.</p> <p>12 MR. COPPOLA: Objection.</p> <p>13 A. Okay. As I said earlier in the deposition, there</p> <p>14 are two basic things you can do when the</p> <p>15 commonwealth fails to comply with discovery. One is</p> <p>16 you can move the judge for an order to compel them</p> <p>17 to comply; and two, you could put it in your back</p> <p>18 pocket and object to them trying to produce anything</p> <p>19 at trial that they failed under their obligation to</p> <p>20 give to you before trial during discovery.</p> <p>21 Q. Okay. But you never motioned to compel them --</p> <p>22 A. That's correct.</p> <p>23 Q. -- to come up with the FID card and associated</p> <p>24 related revocation of the FID card?</p>	<p>1 unit at E-Z on 8/5/94?</p> <p>2 A. That was the commonwealth's only theory that I could</p> <p>3 see.</p> <p>4 Q. On Interrogatory No. 3 you answered -- my</p> <p>5 Interrogatory No. 3, which court did you inform that</p> <p>6 Mike Elbery had an FID card on 8/5/94? I think you</p> <p>7 already answered this.</p> <p>8 A. I said a court?</p> <p>9 Q. Yeah.</p> <p>10 A. Well, it would have been the Worcester Superior</p> <p>11 Court on 8/5/94, you know, about -- no, whatever.</p> <p>12 Q. 8/10?</p> <p>13 A. 8/10/94.</p> <p>14 Q. But that was the only court, that's what you're</p> <p>15 referring to in that interrogatory?</p> <p>16 A. It's probably what I was referring to. I don't have</p> <p>17 the interrogatory in front of me. But now that I</p> <p>18 see the pretrial conference report, as I said</p> <p>19 before, it's clear that the Westboro District Court</p> <p>20 also knew that I was claiming some sort of a</p> <p>21 license.</p> <p>22 Q. Do you agree that had you presented the FID card to</p> <p>23 any of the district judges that presided over the</p> <p>24 case against Elbery relating to the 8/5/94 charges</p>

Page 97	Page 99
<p>1 that he would have been immediately released and</p> <p>2 charges dismissed?</p> <p>3 MR. COPPOLA: Objection.</p> <p>4 A. No.</p> <p>5 Q. Why don't you agree with that?</p> <p>6 A. Well, for several reasons. First, the FID card does</p> <p>7 not go to the carrying charge, it doesn't resolve</p> <p>8 the carrying charge. Second, that assumes a</p> <p>9 prosecutor not making the kinds of representations</p> <p>10 that the prosecutor made at the stay revocation</p> <p>11 hearing, you know, that they were going to discover</p> <p>12 some sort of revocation. Third, it relies on a</p> <p>13 whole bunch of legal things that you have said to me</p> <p>14 earlier today that, you know, you can't believe I'm</p> <p>15 still feeding you that nonsense, or words to that</p> <p>16 effect, but those are legal things that are not as</p> <p>17 clear to me as they appear to be to you.</p> <p>18 Q. Do you agree that if you simply told the district</p> <p>19 court judge that presided over the case against Mike</p> <p>20 Elbery relating to the 8/5/94 gun charges, if you</p> <p>21 simply told the judge that Elbery had an FID card,</p> <p>22 that the case would have been dismissed or at least</p> <p>23 the judge forced to put the burden on the cops to</p> <p>24 counter that statement?</p>	<p>1 charges, wouldn't the case have ended right there on</p> <p>2 those 10H charges?</p> <p>3 A. Yeah, if there was no revocation letter and if the</p> <p>4 commonwealth was smart enough to argue that -- was</p> <p>5 not smart enough to argue that it worked as a matter</p> <p>6 of law, the revocation. Or one of the things we</p> <p>7 worried about is the fact that you had moved.</p> <p>8 Q. Yeah, but that ain't the law.</p> <p>9 A. I don't know, Michael, what is the law? Have you</p> <p>10 seen a case that says that if there's no letter of</p> <p>11 revocation, that it's still good and valid? Is</p> <p>12 there such a thing?</p> <p>13 Q. Read the statute.</p> <p>14 A. I've read a lot of statutes.</p> <p>15 Q. You don't need a case, just read the statute. You</p> <p>16 don't even have to go that far --</p> <p>17 A. I've read a lot of statutes --</p> <p>18 Q. Read the Jones case.</p> <p>19 A. -- that have surprised me.</p> <p>20 Q. Read the Jones case, read the statute, it's 140,</p> <p>21 129B and 129C. Okay. The notification had to be in</p> <p>22 writing. Okay. As you already know. Okay.</p> <p>23 A. But as you already know, we worried about the fact</p> <p>24 that they were going to claim they sent it to your</p>
Page 98	Page 100
<p>1 A. No.</p> <p>2 Q. Why?</p> <p>3 A. For basically the same reasons I just said. The FID</p> <p>4 card only goes to five of the six charges.</p> <p>5 Q. What about the other five charges?</p> <p>6 A. Do I think that the FID card is a complete defense</p> <p>7 to the other five charges? Yes, with this little</p> <p>8 proviso, that I believe that those other five</p> <p>9 charges on the same theory that the gun charge --</p> <p>10 that the carrying charge was made about the gun in</p> <p>11 the car, that the other five charges -- well --</p> <p>12 strike that. If you get a complaint dismissed in</p> <p>13 the district court before jeopardy is attached</p> <p>14 because they have a problem with their case, they</p> <p>15 can bring it again if they can straighten out their</p> <p>16 problem.</p> <p>17 Q. I know that.</p> <p>18 A. So --</p> <p>19 Q. Or they can indict you in superior court.</p> <p>20 A. Right.</p> <p>21 Q. A separate jurisdiction. Or the feds can indict</p> <p>22 you, separate sovereignty. But how does that answer</p> <p>23 the question? If the FID card had been presented to</p> <p>24 one of those presiding judges on the five 10H</p>	<p>1 old address.</p> <p>2 Q. What is the alternative there, stay in jail, worry</p> <p>3 about them making up a revocation letter, is that</p> <p>4 what you do, just stay in jail? You didn't answer</p> <p>5 the question.</p> <p>6 A. Oh, that was a question?</p> <p>7 Q. Yeah. What's the alternative then, to stay in jail</p> <p>8 because you're afraid that the cops are going to</p> <p>9 make up a revocation letter?</p> <p>10 MR. COPPOLA: Objection.</p> <p>11 MR. ELBERY: What's the objection? That's</p> <p>12 a question?</p> <p>13 A. Well, you mean what would I have done in your</p> <p>14 circumstances? I would have given me the</p> <p>15 identification card, the FID card on day one, but I</p> <p>16 wasn't in your circumstances --</p> <p>17 Q. You didn't answer my question.</p> <p>18 A. -- you were in your circumstances.</p> <p>19 Q. You said I was afraid they were going to fabricate a</p> <p>20 revocation card.</p> <p>21 A. Yes, that's what you told me.</p> <p>22 Q. So what difference does that make? Does that mean</p> <p>23 the remedy there, the course of action a defense</p> <p>24 attorney should take is I stay in jail because I</p>

Page 101

1 think a revocation -- that the cops are going to
 2 fabricate something?
 3 A. You weren't in jail on that charge. In order to get
 4 out of jail, you had to either win your appeal or
 5 get your stay reinstated. Dismissing five of the
 6 six charges was not going to get your stay
 7 reinstated. Judge, he only violated one law, he
 8 didn't violate six, therefore let him out.
 9 Q. What if six out of six charges got thrown out, got
 10 dismissed, went away, didn't exist anymore?
 11 A. Did you get your stay back after that happened?
 12 Q. Yeah.
 13 A. Oh, you did.
 14 Q. No. I'm asking you, you just said five or six I
 15 wouldn't have got my stay. What if six of six went
 16 by?
 17 A. We've already had this discussion. The reason that
 18 Toomey said that he was taking away your stay was
 19 because of this new arrest. If that was no longer
 20 his reason, he may have had another reason; namely,
 21 what are you doing with all these guns?
 22 Q. Might. Did you say might?
 23 A. That's right I said might.
 24 Q. You do not know that?

Page 102

1 A. I did not know that.
 2 Q. You're synthesizing a defense here.
 3 A. I'm not synthesizing a defense. What I'm doing is
 4 giving you my best judgment based on my experience
 5 of the criminal justice system.
 6 Q. Which doesn't -- okay. Do you agree that you only
 7 needed to alert the judge at the suppression hearing
 8 at Westboro District Court related to these gun
 9 charges that Elbery had an FID card and it would
 10 have been as a matter of law an illegal search and
 11 seizure?
 12 A. No.
 13 Q. Why?
 14 A. Well, did they ask you if you had an FID card? I
 15 mean it's not -- it's not a simple question. My
 16 answer is no.
 17 Q. If during that suppression hearing you had presented
 18 -- if you had said to the judge, Hey, judge, my
 19 client here's got an FID card. Isn't it a matter of
 20 law that the whole case would have ended right there
 21 and then, there would have been found an illegal
 22 search and seizure?
 23 A. No, because carrying requires more than an FID card.
 24 Q. Read the Sayhee case, okay? What if you produced at

Page 103

1 that suppression hearing regarding the gun case,
 2 what if you produced the FID card?
 3 MR. COPPOLA: Objection.
 4 A. Well, I couldn't produce the FID card because you
 5 wouldn't let me do it. But in my opinion, it
 6 doesn't matter because it doesn't go to the carrying
 7 issue.
 8 Q. You were arguing I was guilty of carrying.
 9 A. No, I was not arguing you were guilty of carrying.
 10 I was saying there was an argument to be made that
 11 you were guilty of carrying, that's all I said to
 12 you, Michael. If there's no argument to be made,
 13 you have a great case. If there's an argument to be
 14 made, you've got to do a risk analysis.
 15 Q. Wait a minute. Aren't you supposed to argue on my
 16 behalf rather than their behalf?
 17 A. Yes, I'm supposed to be argue on your behalf in open
 18 court. I'm supposed to be truthful with you when
 19 we're having an attorney/client privilege.
 20 Q. Aren't you supposed to present my best case and do
 21 everything you can to exhaust all possibility to get
 22 me out of jail instamatically, as quickly as
 23 possible?
 24 A. My job is to zealously represent you.

Page 104

1 Q. So you agree with me --
 2 A. No, I don't agree with you, Michael. My job is to
 3 zealously represent you.
 4 Q. Isn't it to get me out of jail as fast as you can?
 5 A. That would be a goal, yes.
 6 Q. Wasn't your goal to get me out of jail as fast as
 7 you could?
 8 A. Yeah, my goal was to get you out of jail as fast as
 9 I could with the least amount of time possible.
 10 Q. And that's what you're supposed to do, right?
 11 A. A defense lawyer is supposed to zealously represent
 12 his client.
 13 Q. Why did you fail to investigate the records of
 14 Michael Elbery's FID in absence of revocation letter
 15 of that FID at 8/5/94 with the Massachusetts
 16 Department of Safety via a court order?
 17 A. It was my opinion that I did the appropriate thing
 18 by requesting on the pretrial conference report and
 19 getting an agreement that the file on your license
 20 and its alleged revocation be produced by the
 21 commonwealth by agreement. Now, if they had
 22 produced something that led me to believe that they
 23 had created a document that might have been other
 24 avenues to try and establish that, but they didn't

1 produce such a thing.
 2 Q. I didn't follow your answer. What did you say?
 3 A. I said what I just said. You can ask the court
 4 reporter to read it back.
 5 Q. I didn't comprehend that at all. Can you read that
 6 back to me?
 7 (The reporter read back the record
 8 as directed)
 9 Q. Thank you. I still don't understand it. Okay.
 10 Okay. Why did you fail to investigate the records
 11 of Mike Elbery's FID card in absence of revocation
 12 letter of that FID card at 8/5/94 via a court order
 13 of the SPD records, Shrewsbury Police Department
 14 records?
 15 MR. COPPOLA: Objection. Assuming facts.
 16 He's already testified to the contrary.
 17 A. Yeah, there's an -- what I did is reflected on the
 18 pretrial conference report.
 19 MR. ELBERY: I'm asking him this time why
 20 he didn't do it.
 21 A. I'm saying I did it.
 22 MR. COPPOLA: He said he did it.
 23 Q. Oh, you're saying that is a court order or the --
 24 A. Yes, I'm saying it's the equivalent of a court.

1 Q. And when they didn't come up with what I had and
 2 there was no revocation, what did you do then?
 3 A. You mean did I make a motion to compel?
 4 Q. Yes.
 5 A. No, I did not make a motion to compel.
 6 Q. How come?
 7 A. What did I want compelled?
 8 Q. You wanted my FID card from the Shrewsbury Police
 9 Department, so you can say to --
 10 A. I had your FID card, it was in your possession or
 11 your wife's possession. I didn't need your FID
 12 card.
 13 Q. Of course you -- you didn't need it?
 14 A. I didn't need it from the Shrewsbury Police
 15 Department, you had it.
 16 Q. Why are you asking for it there if you didn't need
 17 it?
 18 A. I'm asking for the file on the license and its
 19 alleged revocation. I'm asking for every
 20 conceivable document they could have that they could
 21 claim put that license out of commission.
 22 Q. How about this. If you had the FID card from the
 23 Shrewsbury police --
 24 A. Yeah

1 Q. -- you take it to the judge --
 2 A. Yeah.
 3 Q. -- and you say, Hey, let my man out of jail, he's --
 4 you know, let him out of jail?
 5 A. You're charged with carrying, Michael. And if you
 6 thought it was such a good idea, why didn't you give
 7 me the FID card.
 8 Q. Well, I didn't have the FID -- I don't have to
 9 answer questions. I was in jail. How did you
 10 expect me to have the FID card? By the way, Bob,
 11 did you know -- here's the question. Did you know
 12 the statute says, not the case but the statute,
 13 there is a case called the Jones case, the statute
 14 says that the cops can't arrest me if I don't have
 15 the FID card on me, that's not a crime. That if
 16 they say, Are those your guns? Where's the FID
 17 card? That they can't arrest me, that it is not a
 18 crime, that they have to allow me to go get the FID
 19 card. Did you know that?
 20 A. Do I know this Jones case by name? No.
 21 Q. It's a statute too, the statute 129B and C. They
 22 can't arrest you, it's illegal to arrest you for
 23 that. They couldn't arrest me as a matter of law
 24 for a whole gang of things, including the fact that

1 if I claim I've got an FID card, they can't arrest
 2 me, they have to let me go get the thing. I can't
 3 believe you don't know this. You didn't know that?
 4 How come you didn't know that?
 5 MR. COPPOLA: Objection.
 6 A. How come I didn't know what?
 7 Q. What I just said? You're not listening to me.
 8 A. Which part of what you just said, Michael?
 9 Q. Did you know that the statute back in 1994, Chapter
 10 140, Section 129B and C says that if somebody
 11 doesn't have an FID card, you can't arrest them for
 12 it, you have to allow them to go and get the FID
 13 card.
 14 MR. COPPOLA: Objection. I'm sure the
 15 statute doesn't say that.
 16 MR. ELBERY: The blind leading the blind.
 17 You guys can't be this bad.
 18 Q. You didn't know that? Is the answer yes or no?
 19 A. I'm not sure what the statute says. But the basic
 20 legal principle that it's not a crime to not have
 21 your FID card on you, if you have a valid FID card,
 22 sounds reasonable to me. I would assume that that
 23 would be the law.
 24 Q. Okay. The Shrewsbury Police Department and DA's

1 office honored the discovery via the pretrial
 2 conference report, Exhibit 1, as you asked for in
 3 that conference report, didn't they, they replied,
 4 didn't they?
 5 A. They sent me documents, yes.
 6 Q. Okay. And if we take a look on that gun case, the
 7 further affidavit of counsel in support of amended
 8 motion to suppress, No. 2, you state that "Attached
 9 hereto and marked Exhibits 1 and 2 are records
 10 provided to me by the commonwealth as discovery
 11 concerning the revocation of the defendant's license
 12 to carry firearms." However, I never got Exhibits 1
 13 and 2. But they responded, didn't they? They
 14 responded way back in September that there was no
 15 revocation of the FID card, didn't they?
 16 MR. COPPOLA: Is that the question?
 17 MR. ELBERY: Yeah.
 18 MR. COPPOLA: Did they respond or --
 19 Q. That they responded that there was no revocation of
 20 the FID card, it's right there in black and white.
 21 Way back in September they responded that way,
 22 didn't they?
 23 A. I would say that's not -- it's somewhat correct, but
 24 not totally correct. Looking at the affidavit that

1 I signed, and this is going back some time and I
 2 don't remember the stuff specifically, but what I
 3 say in here, in addition to what you just read, is
 4 that I have seen the defendant's firearm
 5 identification card. Apparently I did.
 6 Q. You're reading another numbered paragraph.
 7 A. Right.
 8 Q. Read No. 2.
 9 A. No, you read No. 2 and now I'm reading 4. "I've
 10 seen the defendant's firearm identification card and
 11 have been provided no discovery by the commonwealth
 12 showing that said card has been revoked." Now if
 13 the commonwealth had written me a letter that said
 14 that there was no discovery, there was no revocation
 15 there was nothing, and had committed itself to that
 16 position, I would have not written this paragraph
 17 that way. I'm writing this paragraph that way to
 18 say that -- you know, it's an inference that it has
 19 not been revoked because there's nothing that
 20 they've given me, even though they're under an order
 21 to give me, that shows that it was revoked. And
 22 partly --
 23 Q. What happened to Exhibits 1 and 2 regarding
 24 paragraph 2 that I read to you off that document?

1 It says, "The attached hereto marked Exhibits 1 and
 2 2 are records provided to me by the commonwealth as
 3 discovery concern the revocation of the defendant's
 4 license to carry firearms." You never gave me
 5 Exhibits 1 and 2, but I infer, just as you said,
 6 there was no -- they admitted at that early date
 7 that there was no revocation. But what happened to
 8 Exhibits 1 and 2?
 9 A. Where did you get that from? My file?
 10 Q. Bob, it's got your signature on it. Who cares where
 11 I got it from.
 12 A. Because if you got it from the clerk's office and it
 13 doesn't have Exhibits 1 and 2 on it, then --
 14 Q. I got nothing from the clerk's office. Everything I
 15 got I got from you or Brecher or the cops in
 16 discovery, but this has your name on it.
 17 A. Right. I'm not saying I didn't author that
 18 document. You're saying why doesn't this particular
 19 document in your hand have Exhibits 1 and 2
 20 attached? I don't know. My secretary forgot to
 21 attach Exhibits 1 and 2? If you got it from the
 22 clerk's office, I'd say my secretary forgot to
 23 attach it to the filing.
 24 Q. Am I correct -- I'm asking you: Am I correct after

1 reading paragraph 2 of this particular document per
 2 the affidavit of counsel in support of amended
 3 motion to suppress signed by you and on October 26
 4 of 1994, that the commonwealth at this early date
 5 wasn't making any claim whatsoever that I had --
 6 that my FID card had been revoked by anybody? Right
 7 here. You knew that early on?
 8 A. No, I didn't know that early on. What I knew --
 9 Q. Why did you write that then?
 10 A. Am I allowed to answer the question, Michael? What
 11 I knew early on, and this is based on the pretrial
 12 conference report, is that they were telling me that
 13 his license had been revoked, so that's why I wrote
 14 it this way, File on license and its alleged
 15 revocation. I knew based on what you had told me
 16 that there was a very strong probability that they
 17 had never revoked your license, it was the
 18 possibility they had done it and sent it to your old
 19 address, but that was only a possibility. The
 20 probability is that they had never done it. In
 21 their first batch of discovery to me they had
 22 nothing about a revocation about your license at
 23 least nothing about your revocation of your license,
 24 FID license from Shrewsbury. I think there was

Page 113

1 something about Worcester that they sent me, so --

2 Q. But not regarding the FID card?

3 A. Right, not regarding -- so what I said in this

4 affidavit to the Court was that based on the

5 discovery that has been provided to date, there was

6 no evidence given to me that the card had ever been

7 revoked. And so it was my assumption as early as,

8 whatever this date was, October 26 of 1994, that

9 they had not gotten -- the DA had not seen anything

10 that showed that the identification -- the FID card

11 had been revoked. That didn't mean to me, as

12 happens in many many cases, that later on some time

13 near the time of trial I saw and behold documents that

14 had never been provided earlier show up.

15 Q. But they complied with the discovery agreement,

16 didn't they?

17 A. If you've been in this business for any period of

18 time, you'd know that discovery is often piecemeal.

19 If you get a letter that says, We have nothing else

20 and will have nothing else, then they've complied.

21 But typically they come up with things at the last

22 minute.

23 Q. You think that's what they're going to say. I don't

24 believe that at all and that's not what the law says

Page 114

1 you're not responding to my question.

2 A. What was your question?

3 Q. I'm not getting anywhere with you. But what it says

4 it says. Okay.

5 A. Michael, if you show me the cover letter with the

6 commonwealth's discovery, you might be able to

7 refresh my memory. They sent me some discovery.

8 The discovery they sent me did not include an FID

9 revocation.

10 Q. I'm not going to play double talk with you anymore,

11 okay? This thing says, Concerning the revocation of

12 the defendant's license; concerning the revocation,

13 "concerning," okay? You're talking about the

14 revocation, okay? It's not -- it's easy here,

15 okay? I get you before a jury, okay, and you start

16 that, it's going to be different, okay? All right?

17 So, you know, you can give me --

18 MR. COPPOLA: There's no question. You

19 don't have to --

20 Q. You can give me the insulting answer here, but don't

21 think you're going to -- don't think that I'm

22 agreeing with you, okay?

23 A. I've never been under that illusion.

24 Q. Thank you, you admit to that.

Page 115

1 A. That I never thought you agreed with me, right.

2 Q. And I never did, you admit to that, I never agreed

3 with you on anything. Once you got the 15 grand I

4 never agreed with you on anything. After that it

5 was all downhill. We disagreed on every God damn

6 thing.

7 A. Why did you hire me for the gun charges?

8 Q. Because when you got the handcuffs on, right, you

9 don't have access to the Yellow Pages, not that I'm

10 supposed to be questioned here, and you've got one

11 lawyer that you're doing business with already and

12 you know his phone number, guess who you call? You

13 don't call your wife, you call the lawyer. It's

14 that's simple. Now you're going to ask me that on

15 the 29th, I know, but you already got the answer.

16 And that's the only reason why I called you. Let me

17 tell you, I didn't want to call you, I had no

18 choice, you know. It's the cliché the yuppies use,

19 caught between a rock and a hard place. Well,

20 that's where I was. And I stayed there for eight

21 months, my man, I stayed there for eight months and

22 I shouldn't have been there. Experience is the

23 greatest teacher, let me tell you.

24 Paragraph No. 4 of the further affidavit

Page 116

1 of counsel in support of the amended motion to

2 suppress regarding the gun case. It says that "I

3 have seen the defendant's firearm identification

4 card and have been provided no discovery by the

5 commonwealth showing that said card has been

6 revoked."

7 A. That's what it says.

8 Q. Okay.

9 MR. COPPOLA: Can we mark that as an

10 exhibit?

11 MR. ELBERY: I don't want to mark it as an

12 exhibit. You can, if you want.

13 (Exhibit No. 2 marked for identification)

14 MR. COPPOLA: Just for the record I'm

15 going to show the exhibit to Mr. Sheketoff. The

16 handwriting that's in the margin and underneath the

17 oath that's not yours, is it?

18 A. Doesn't appear to be.

19 MR. COPPOLA: And that wasn't there when

20 you signed this?

21 A. No, it wasn't.

22 MR. COPPOLA: Okay.

23 MR. ELBERY: You're making an issue out of

24 nothing

1 MR. COPPOLA: I'm just --
 2 MR. ELBERY: The little handwriting is in
 3 pencil, for the record, and it says, No. 29 P period
 4 3, has a little star on it. And then down at
 5 Paragraph No. 4 of that same document there's a
 6 little star in pencil and then it says -- little
 7 tiny writing at the bottom of the page it says,
 8 After ruling, and then on the other side of the
 9 right margin is a little star and the word "revoked"
 10 is underlined, all is in pencil that I did for my
 11 notes so that I could more comprehensively and
 12 efficiently do this for this deposition.
 13 For the record, none of those notes were
 14 referred to in this deposition, had no meaning
 15 whatsoever other than an index system.
 16 (Witness reads)
 17 MR. ELBERY: For the record, we're only on
 18 that one document, you're not supposed to read the
 19 whole thing.
 20 Q. Where is the Shrewsbury Police Department went into
 21 the E-Z unit on 8/4/94 as well as 8/5/94?
 22 MR. COPPOLA: Where is it?
 23 MR. ELBERY: Yeah, where is it?
 24 MR. COPPOLA: You don't know where it is.

1 Q. I'm going to read you --
 2 A. There's a search warrant -- in support of the search
 3 warrant the affiant has to sign an affidavit and so
 4 there was an affidavit at some point in time that I
 5 saw.
 6 Q. I'm going to read the document, this document was
 7 produced during the case Commonwealth versus Elbery,
 8 the same gun case that we've been talking about,
 9 Elbery got arrested on 8/5/94 for six gun charges.
 10 This document is the affidavit of counsel in support
 11 of motion to suppress, parentheses, warrantless
 12 search, close --
 13 MR. COPPOLA: Make that an exhibit.
 14 Q. -- close parentheses.
 15 MR. COPPOLA: I'm going to ask to, so --
 16 MR. ELBERY: Let me finish, then we'll
 17 make it an exhibit.
 18 Q. It's signed by Attorney Robert Sheketoff on the 19th
 19 of September 1994. Paragraph No. 3 of that
 20 paragraph says this, "That the affidavit of
 21 Lieutenant A. Wayne Sampson discloses a warrantless
 22 entry or opening of the defendant's storage
 23 container on August 4th and August 5th of 1994."
 24 Now I'm going to have Attorney Sheketoff read this

1 to agree with me that's what it says. But my
 2 question is --
 3 MR. ELBERY: I'm creating a basis,
 4 Attorney Coppola for this question, that's why I'm
 5 giving you all this verbiage so you won't complain,
 6 I have to create a basis so I can ask the question.
 7 Q. The question is this: Where is the affidavit that
 8 says that the cops went in Elbery's unit on August
 9 4th and 5th? And if you want to answer to the
 10 question, there's the document, because I don't have
 11 such an affidavit. I never got it.
 12 MR. COPPOLA: We gave you everything we
 13 have.
 14 MR. ELBERY: Didn't say you didn't, but I
 15 presume because it says that that there's something
 16 that I don't have that I should have.
 17 A. Well --
 18 MR. COPPOLA: And you're asking him where
 19 is it?
 20 MR. ELBERY: That's right.
 21 MR. COPPOLA: Okay. Go ahead.
 22 Q. I'm asking him did he write it, and where is that
 23 affidavit?
 24 A. Yeah, I wrote it, that's my signature. And it's --

1 looking at it, even though I don't have a specific
 2 memory of it, I'm sure I said that. And whenever
 3 you file an application for a search warrant, it has
 4 to be accompanied by an affidavit. Now they got a
 5 search warrant to search your locker after they had
 6 been in there and made certain observations with it
 7 in connection with the fire and so there's an
 8 affidavit on file in the Westboro District Court
 9 which issued the search warrant that's signed by
 10 Lieutenant A. Wayne Sampson that either -- or
 11 Samson, maybe I misspelled his name there, that
 12 either I read while I was standing in the clerk's
 13 office and actually read the thing or that I had a
 14 copy of it at some point in time. So that's -- I'm
 15 talking about -- in this document I'm talking about
 16 the affidavit in support of the search warrant.
 17 Q. So according to the affidavit that you read they
 18 admit in writing they went in my storage unit on the
 19 4th of August as well as the 5th?
 20 A. Right. But it may have been -- their claim may have
 21 been the fire department that went in there on that
 22 day.
 23 Q. That's not what it says.
 24 A. It says, Discloses a warrantless entry of the

1 opening of the defendant's storage container on
2 August 4th and August 5th of 1994. It's not
3 specific enough and I have no memory of what the
4 affidavit actually says for me to go from this to
5 the conclusion that it was the police that went in
6 on August 4th. It may be. I don't know. At some
7 point I read that thing and that's what I drew from
8 it.

9 MR. ELBERY: You want to make this an
10 exhibit?

11 MR. COPPOLA: There's three so far.
12 (Exhibit No. 3 marked for identification)

13 A. So I believe the Westboro District Court still has
14 this. I don't think they destroy affidavits or
15 search warrants.

16 MR. COPPOLA: We're back on the record.
17 Q. You agree that those five 10H charges would have
18 been dismissed if you presented the FID card,
19 because in the pretrial, in this Exhibit I the
20 pretrial conference report you put "defense in
21 part." You meant the five 10H charges, right?

22 A. Yeah, I don't know exactly what I meant, but I think
23 a firearm -- I don't know what I meant back there
24 exactly. But I think the five gun charges that were

1 based on not having an FID card they had serious
2 problems with those charges. If you had an FID
3 card, they had serious problems with those charges.

4 Q. But I did have an FID card.

5 A. Yes, you did.

6 Q. So if it had been presented to one of those judges
7 along the bump, from the arraignment to the trial in
8 between there, including at the arraignment, if it
9 had been presented or even to the cops before the
10 arraignment, right?

11 A. The Shrewsbury cops didn't know you had an FID
12 card?.

13 Q. Of course they knew. Of course they knew. Do you
14 agree that they knew?

15 A. I believe that they did. That's speculation on my
16 part. But I believe that they did.

17 Q. When you asked me the question you didn't seem like
18 it was a matter of speculation at all. It was an
19 obvious, it was a truism.

20 A. I believe that it's true, but I don't have any facts
21 to back that up, but I just find it impossible to
22 believe that they didn't know since their department
23 issued it.

24 Q. You have plenty of facts to back it up. You look at

1 discovery in this case, there's a whole pile of
2 documents that they admit -- that they put in
3 writing that I had an FID card at that date and that
4 they knew it, it's in writing.

5 A. Well, was that a document that I ever saw?

6 Q. Well, Bob, you're the defendant's -- it goes to you
7 if it goes to them. Okay.

8 Now, we got one more document in here.

9 The -- we got a thing -- Commonwealth versus Elbery
10 regarding that case which is the gun charges that
11 we're talking about in this deposition, we got a
12 document here called "The post hearing memo in
13 support of amended motion to suppress" which is
14 authored by a fellow named Robert Sheketoff and he
15 wrote that -- he wrote that document up on -- would
16 you believe he doesn't date it. So much for the
17 Yale Law School education. But anyways, if you look
18 at this document, Part C, it says, "Consent.
19 Attorney Sheketoff agreed that the E-Z unit," in
20 fact, he argues vigilantly for his then client and
21 the defendant Elbery, "that the E-Z unit was the
22 equivalent of a home for the purposes of Mass.
23 Chapter 269 10A." Specifically it says, "The
24 defendant had a reasonable expectation of privacy in

1 his storage bin which was equivalent to a private
2 storage area in a rented home or apartment. See
3 Commonwealth versus Hamilton," and it gives a citing
4 and in parentheses that case, the area was a motel
5 room which was by the court of appeals found to be
6 the same as for the purposes of Chapter 269 10A to
7 be exactly the same as a home or an apartment. You
8 want to review that, Robert? Bingo, there we go.
9 And the question is: Did you agree in writing, did
10 you argue vigilantly that Elbery's E-Z container was
11 actually the equivalent of his home? Read that.
12 Tell me whether you did or you didn't. I'll give
13 you a hint, it's in writing you did.

14 MR. COPPOLA: Speaks for itself.

15 MR. ELBERY: I'm asking him, though. It
16 goes before a jury it will speak for itself, no
17 doubt.

18 MR. COPPOLA: What's the question?

19 A. Did I author this? Yes, I authored this. Did I
20 argue in here that for purposes of what you'd call
21 the Fourth Amendment and Article 14 that the storage
22 locker was the equivalent of a private storage area
23 in a rented home or apartment? Absolutely. Would I
24 have argued at trial that the storage locker was for

1 purposes of 10A? This was not for purposes of 10A,
 2 this was for purposes of a motion to suppress. But
 3 would have argued at trial to a judge for a required
 4 finding of not guilty at the close of the
 5 commonwealth's case that the storage area was the
 6 equivalent of a home or business? Absolutely. That
 7 was my best argument.
 8 Q. Now, you say it's not for the purposes of 10A but
 9 for the purposes of suppression. Wasn't the charge
 10 10A?
 11 A. Whatever the criminal statute that you're alleged to
 12 have violated is irrelevant for this particular
 13 motion because what this motion is about is saying
 14 that entry into that area was the equivalent of
 15 entry into a home. You had a reasonable expectation
 16 of privacy that society recognizes and that entry
 17 should be considered the same as an entry into your
 18 home. It doesn't matter if you're charged with a
 19 gun violation, if you're charged with, you know,
 20 stealing, you know, whatever, it doesn't matter what
 21 the charge is. If you're asking me would I have
 22 made this argument in the context of 10A?
 23 Absolutely. That was your best argument, that was
 24 your argument that would make this not a carrying

1 charge. Whether you had an FID card or you didn't
 2 have an FID card, it wasn't carrying if it was in
 3 your home or in your place of business. This was
 4 your best argument.
 5 Q. It was your argument, was it not?
 6 A. I say "yours," I mean our best argument.
 7 Q. Weren't you arguing that at that point on paper?
 8 A. No, I was arguing --
 9 Q. You were arguing that that E-Z unit was the same as
 10 a house, as my home, were you not?
 11 A. For purposes of Article 14 analysis, yes. And I
 12 would have argued --
 13 Q. Stop, who cares what the purposes are. You were
 14 arguing at that point that the house by a matter of
 15 law -- that the E-Z unit is the same as a house?
 16 MR. COPPOLA: Objection.
 17 MR. ELBERY: That's what it says.
 18 MR. COPPOLA: Yeah, but you're not --
 19 you're taking it out of context.
 20 MR. ELBERY: That's what it says, doesn't
 21 it?
 22 MR. COPPOLA: Yeah, but you're taking it
 23 out of context. I'd appreciate it if you'd let me
 24 put my objection on the record, then I'll let you

1 speak and do whatever you want.
 2 A. I agree that I am arguing in this paragraph that for
 3 purposes of Article 14 and the Fourth Amendment your
 4 private storage area is the same as a rented home or
 5 apartment. And I further agree that this was your
 6 best argument for why you were not guilty of
 7 carrying a gun.
 8 Q. Very good. That's as much as I'm going to get out
 9 of you. I'll go on to the next area.
 10 MR. COPPOLA: How many more areas do you
 11 have? Are you going to go much longer?
 12 MR. ELBERY: What time is it?
 13 MR. COPPOLA: It's almost three.
 14 MR. ELBERY: No, we'll be --
 15 Q. You agree that the revocation hearing of 8/10/94
 16 before Judge Toomey, it's on the transcript, that I
 17 had a valid FID card?
 18 A. I said it out loud to him I believe. I don't know
 19 if I said valid. I said you had a firearm
 20 identification card that I had seen it.
 21 Q. You were arguing that I had -- and you were also
 22 arguing at that hearing that's all that was needed,
 23 didn't you?
 24 A. No.

1 Q. Read the transcript. During that hearing did any
 2 word -- did the word "carrying" ever come up?
 3 A. Why would I suggest it to the judge?
 4 Q. Did they suggest it? Was it ever a word spoken
 5 about carrying during that hearing? Was there?
 6 A. What Michael Ball knew or didn't know is a different
 7 story than what I knew or didn't know. My job in
 8 the back room with you is to explain to you what I
 9 see as all the problems in the case. My job in the
 10 courtroom without misrepresenting to the Court is to
 11 advocate your strongest position. Your strongest
 12 position was that a valid FID card took care of all
 13 the charges. That was your strongest position.
 14 Q. Well, I agree with you that was my strongest
 15 position, that was my case. And that's what you
 16 should have done, right?
 17 A. That's what I argued to Judge Toomey.
 18 Q. And you only did that at the 8/10 revocation
 19 hearing, you never did it anywhere else, and the
 20 other where else is what counted, right, because
 21 that case wasn't before Toomey, right? So I agree
 22 with you that was my best case. That was my only
 23 case. I agree with you that's what you should have
 24 done. But you did it the wrong place, didn't you?

Page 129

1 A. No.
 2 Q. If you did the --
 3 A. I made your best -- Michael, you got to let me
 4 answer the question or do you consider no to be a
 5 sufficient answer.
 6 Q. Yeah, I consider that enough because I know what I'm
 7 going to get out of you. If you did the same thing
 8 before one of those district court judges that
 9 presided over my gun case, it would have been all
 10 over, wouldn't it?
 11 A. Not in my opinion.
 12 Q. Not in your opinion?
 13 A. You're charged with carrying on one of the --
 14 Q. Aren't you supposed to present the client's best
 15 case instead of holding back for unbeknownst reason
 16 because you claim that he didn't know what a 10H
 17 charge was and the car made him guilty and he was
 18 afraid that the police would fabricate a revocation
 19 letter? What sense does that make? If you had --
 20 here's the question. If you had done the same thing
 21 before a district judge presiding over that gun case
 22 that you did before Toomey on 8/10, the case would
 23 have been all over, right?
 24 A. Wrong.

Page 130

1 Q. Okay. But instead of -- here's the question. But
 2 instead you rambled on about Elbery worrying about
 3 the cops falsifying a revocation letter on the FID
 4 card and that Elbery didn't know what a 10A charge
 5 was. What difference does that make? What is the
 6 alternative? Leave Elbery in jail? What is the
 7 alternative? Leave Elbery in jail because of those
 8 factors?
 9 MR. COPPOLA: Objection. Totally
 10 mischaracterizes the record and his testimony. I
 11 don't even know what your question is. Alternative
 12 to what?
 13 MR. ELBERY: You know what it was. You
 14 don't like the question.
 15 MR. COPPOLA: What is the --
 16 MR. ELBERY: You don't like the question,
 17 but guess what, the jury will like the question, and
 18 it is a very simple question, it's an overpowering
 19 question and the answer is overpowering.
 20 MR. COPPOLA: Then ask it.
 21 Q. I did. Ask you the next question and then we'll be
 22 out of here. These are all the same categories as
 23 the last category. Why did you refuse my orders
 24 after I was arrested and hired you to represent me

Page 131

1 regarding the 8/5/94 gun charges as follows. Here
 2 are the orders. After the bail revocation hearing
 3 on 8/10/94 I ordered you to call my wife and tell
 4 her to present the FID card to Judge Toomey. Why
 5 didn't you take that order and do what I told you?
 6 MR. COPPOLA: I object.
 7 A. You never gave me that order.
 8 Q. I didn't, huh? Is that right?
 9 A. And I would add, Michael, that any order that you
 10 gave me you would often, if not always, reduce to
 11 writing and send me letter upon letter about it. Do
 12 you have a writing on that order?
 13 Q. You would have them all, wouldn't you?
 14 A. I gave you my entire file.
 15 Q. But they went to you, right?
 16 A. Right. I never got any such letter from you and I
 17 never got any such order from you.
 18 Q. You sure? Is your memory okay?
 19 A. Yeah, on that it's pretty good.
 20 MR. COPPOLA: Are you talking about --
 21 what time frame?
 22 MR. ELBERY: Just as I said, 8/10/94 after
 23 the revocation hearing. Read the transcript, what
 24 Toomey says.

Page 132

1 Q. So you don't remember me ordering you to get my wife
 2 in and to get her ass up here with the FID card
 3 instamatically?
 4 A. Yeah and --
 5 Q. What did you tell me?
 6 A. Don't remember you ordering me to do that. And
 7 what's more illuminating to me is that your wife
 8 never showed up with the FID card. You weren't
 9 talking to her at that point in time.
 10 Q. I wasn't?
 11 A. No.
 12 Q. Look at the prison record, you're completely wrong
 13 about that.
 14 A. No, I'm not wrong about that.
 15 Q. How would you know that?
 16 A. Michael, what I'm suggesting with my sarcasm is of
 17 course you were talking to her at that point in
 18 time. Now, if you had ordered me to get the FID
 19 card from her and I refused your order, you would
 20 have also ordered her to bring it to me.
 21 Q. After I ordered you to get my wife to bring the FID
 22 card to Toomey right after the revocation hearing,
 23 what did you say to me when I was behind bars in the
 24 lockup?

1 A. Right after the revocation hearing?
 2 MR. COPPOLA: Objection.
 3 Q. Right.
 4 MR. COPPOLA: He already said you didn't
 5 order him to do it.
 6 Q. This is a different question.
 7 A. Putting aside the fact that you didn't order me to
 8 get the FID card from your wife, I don't remember
 9 any specific thing that you said to me after the
 10 revocation hearing. I don't have a clear memory of
 11 any specific conversation that day.
 12 Q. Didn't you tell me, No, it doesn't make any
 13 difference, Judge Dan Toomey doesn't know the gun
 14 laws, he's only a superior court judge, that only
 15 the district court judges get involved with the gun
 16 laws, that he doesn't know what he's talking about.
 17 I'm not going to do it. You refused to take my
 18 order, didn't you?
 19 A. No, I didn't.
 20 Q. You kept telling me I was wrong and that Toomey was
 21 wrong?
 22 A. Did I tell you that the FID card -- whether it was
 23 that day or some other time we definitely talked
 24 about the FID card and I definitely told you that in

1 my opinion an FID card would not end the issue of
 2 the carrying charge.
 3 Q. And you told me after I ordered you to get my wife
 4 to bring the FID card to Toomey, you told me, No, it
 5 doesn't make any difference, I'm not doing it. I'm
 6 not presenting the FID card to anybody. Isn't that
 7 what you told me when I was behind bars, and you
 8 left.
 9 MR. COPPOLA: Objection.
 10 Q. And I called you on the phone a whole gang of times
 11 after that, didn't I, telling you to present the FID
 12 card to those judges, didn't I?
 13 A. No, you did not. Nor did you ever send your wife to
 14 my office with the FID card; nor did you ever mail
 15 me a xerox copy of the FID card; nor did you ever
 16 press me to get the FID card from your wife.
 17 Q. I didn't have --
 18 A. Why didn't you write me a letter that said, Get that
 19 FID card and present it.
 20 Q. We'll see what the jury believes. Why did you not
 21 follow my orders when I told you repeatedly to
 22 dismiss all the charges, motion to dismiss, why
 23 didn't you do it?
 24 A. I did not think a motion to dismiss was in your best

1 interest.
 2 Q. You can't lie about that, right, because you put
 3 that in writing, didn't you?
 4 MR. COPPOLA: Objection.
 5 A. What?
 6 Q. I got the letter right here. That's your letter
 7 right there. You can't lie about that.
 8 MR. COPPOLA: Objection.
 9 A. I didn't file a motion to dismiss.
 10 Q. And I ordered you continually to do it so much you
 11 got to the point that you said, Your little epistles
 12 really get to me; isn't that correct? I begged.
 13 A. Let me see the letter. I don't know if that's
 14 correct or --
 15 Q. I don't want you looking at the letter. We've taken
 16 too much time. We'll look at it in court. Let the
 17 jury -- when we got more time let the jury --
 18 A. I did not file a motion to dismiss for you. Did you
 19 want me to file a motion to dismiss? You did want
 20 me to file a motion to dismiss.
 21 Q. So you admit I ordered you to do that.
 22 A. I can't remember if it was an order. We discussed
 23 it, that you wanted a motion to dismiss filed and I
 24 didn't do it.

1 Q. And why didn't you file the motion to dismiss? I
 2 kept on telling you, didn't I, that the FID card was
 3 all I needed, was valid and that was the end of it,
 4 good night, the case is over, and you wouldn't do it
 5 and you tortured me when I was behind bars, laughing
 6 in my face, didn't you?
 7 A. No, I never laughed in your face, Michael. Did I
 8 have screaming arguments with you? Absolutely.
 9 Q. What were the screaming arguments over?
 10 A. The one that I remember the most is the one about
 11 the -- or to give you a year in jail. Yeah, that's
 12 the one I remember the most.
 13 Q. And that is when you laughed in my face when I said
 14 it in the Worcester courthouse that time and later,
 15 you refer to that -- I got out of jail you were
 16 scared to death because your secretary left. Do you
 17 remember that?
 18 A. No.
 19 Q. You don't remember that?
 20 A. No, I don't even --
 21 Q. You were petrified, you ran down the stairs you were
 22 scared to death.
 23 A. Of who?
 24 Q. There was only one other person there. Why did you

1 have your secretary -- order your secretary to stay
2 in the office? And when you found out she had gone
3 at 5:30, you were terrified.

4 MR. COPPOLA: Objection.

5 A. You mean you're saying that at some point in time
6 when you were in my office you terrified me?

7 Q. No, that's not what I'm saying.

8 A. Then what are you saying? I don't understand your
9 question.

10 Q. Why were you terrified?

11 A. Of what?

12 Q. Of me.

13 A. I don't remember ever being terrified of you, but I
14 do remember that you used your physical presence as
15 an intimidating factor on more than one occasion
16 with me, but I'm not --

17 Q. How did I do that? By being present?

18 A. Yeah, by being present, because I'm a little guy and
19 you're a big guy, you're easily intimidating.

20 Q. So you didn't follow my orders to dismiss the
21 charges to file a motion to dismiss, you're
22 admitting that?

23 A. I did not file a motion to dismiss.

24 Q. You didn't follow my orders to file a motion to

1 dismiss of the 10H charges, did you?

2 A. I did not file a motion to dismiss. You wanted a
3 motion to dismiss filed and I didn't file it.

4 Q. Do you remember saying to me, You'll win on the 10H
5 charges?

6 A. Yeah, I think that if you're charged with a 10H and
7 you have an FID card, you win.

8 Q. And do you remember me saying, Well, okay, Bob.

9 Look, if you want a motion to dismiss all the
10 charges it's a -- give me at least a motion to
11 dismiss the 10H charges, don't you remember that?

12 A. I do not remember that. I do not deny that it
13 happened. It may have happened you wanted a motion
14 to dismiss filed and I didn't file it. Did your new
15 lawyer file a motion to dismiss?

16 Q. No, he didn't and I'll tell you why because you're
17 going to ask me anyways. The reason is because as
18 soon as I hired Brecher, Brecher went right to the
19 cops and he said, What are you doing? And the cops
20 said and the DA's office said simultaneously, Tell
21 your client, tell Elbery that we'll dismiss the
22 charges. Brecher came to me at Gardner prison and
23 said, I have good news for you. You only hired me
24 for a few days, the case is over. They agree to

1 drop the charges. I said, Ken, that's great, but
2 I'm going to decline because I want to sue these
3 people and if I do that, I can't sue them 'cause
4 I've been talking to the jailhouse lawyers in the
5 last few weeks about the case and I learned, after I
6 fired you, that if I dismiss the case -- this is
7 well after I was doing business with you -- that if
8 I dismissed the case, I couldn't sue. I told
9 Brecher, I said, Not only that, in the other cases
10 they threatened me with reprisal via superior court,
11 separate jurisdiction. I said, I want this
12 finalized with not guilty, okay?

13 Now, why did you not do as I ordered
14 regarding the order that I gave you to tell each
15 judge that presided over the case, there were
16 various judges at the Westboro and Worcester level,
17 the six-man jury level, I ordered you to tell them,
18 I ordered you to tell each of those judges that I
19 had an FID card at the various hearings, the
20 arraignment, the bail revocation, the suppression,
21 the Worcester six-man jury. Why didn't you do it?

22 A. Well, first of all, you never ordered me to do it.
23 Second of all, I did do it in some places. And
24 that's my answer.

1 Q. The pretrial conference?

2 A. The pretrial conference. I did it in the appeals
3 review.

4 Q. That isn't doing anything. You got to tell them,
5 Hey, judge this guy's got an FID card. I shouldn't
6 have been arrested. Hey, judge, this guy had a
7 license. Hey, judge, you got to let the guy go.
8 You can't say, Hey, I'm looking for some vague
9 license, you know, vague -- you don't even put
10 nothing down. You got to do more than that, okay?
11 I ordered you at the beginning of this case, way
12 back in August and September of 1994 when you were
13 doing this discovery, that pretrial conference
14 business, I ordered you, because they weren't
15 responding, I ordered you to get to the judge and
16 get a court order and make them, or what you call
17 motion to compel, make them produce the FID card,
18 the Shrewsbury police to produce the FID card 'cause
19 I knew they had a record of it. I ordered you to
20 get a court order through discovery of that case and
21 make the Shrewsbury police produce the FID card
22 record in the absence of a revocation of that FID
23 card. Why didn't you do it?

24 MR. COPPOLA: Objection.

Page 141

1 A. Well, all right. First of all, you never ordered me
2 to do it. You were --
3 Q. Did I ever want you to do it?
4 A. Absolutely.
5 Q. What is the difference?
6 A. You don't know the difference between saying to me,
7 Shketoff, what I think you have to do here is get
8 them committed that there is no revocation letter.
9 And I did that.
10 Q. But I'm saying get a court order and make them
11 produce it. Because you were telling me, when I was
12 behind bars, they won't respond, they won't
13 respond. So I was telling you -- I was giving you
14 an order. Look it, go to the judge and make these
15 guys -- they got the records, I told you that. I
16 wanted you to do that, okay? That's an order,
17 that's an order, Bob. Why didn't you do it?
18 A. It was an order? I didn't realize you were ordering
19 me around at the time.
20 Q. You've been saying this through this whole
21 deposition, Mike Elbery wanted me to do this and
22 that. I wanted you to get a court order through
23 discovery and make that district judge -- have the
24 Shrewsbury police give him the record of the FID

Page 142

1 card. I told you that repeatedly.
2 A. Right. And I got a pretrial conference report
3 allowed by a judge that said that they were to turn
4 over their file on any licenses on alleged
5 revocation thereof.
6 Q. You're missing the point, my friend.
7 A. I guess I am.
8 Q. They didn't respond here and I knew it, and you were
9 telling me they wouldn't respond. You sent me this
10 document, it's here, and you said, They're not
11 responding. And I told you, Make them respond. You
12 go to the judge and get a court order or what you
13 call a motion to compel and you wouldn't do it.
14 A. I don't agree to that because I don't remember any
15 such conversation that --
16 Q. I did.
17 Q. You just admitted the conversation that I wanted you
18 to do it.
19 A. I do admit you had a conversation with me where you
20 wanted me to get them to produce any revocation
21 letter that they were going to claim existed so that
22 when we went to be trial we wouldn't be faced with
23 a -- you know, something coming out of the blue with
24 a revocation letter

Page 14

1 Q. What about the FID card. Didn't I tell you to get
2 information from them about the FID card?
3 MR. COPPOLA: What is the question?
4 Q. Didn't I order you to get the FID card, to get a
5 court order from the judge requiring the Shrewsbu
6 police to produce their records of my FID card with
7 them as well as the revocation letter that somebody
8 was claiming that had been produced? I still don't
9 know to this day who is claiming that except for
10 Michael Ball.
11 A. Right. What I asked for --
12 Q. The answer is yes?
13 A. No. What I asked for on the pretrial conference
14 report was the file on the license and its alleged
15 revocation. The only thing I got, according to the
16 affidavit that you showed me later, at least as of
17 September 8, 1994 was nothing about the revocation.
18 It was about some --
19 Q. You're avoiding the question, I don't blame you for
20 avoiding the question. Here's the question again:
21 I ordered you to get a court order from the district
22 judge after you told me this pretrial conference
23 report was of no use, they weren't responding to
24 your request, I asked you -- I told you, I said, You

Page 144

1 can get the judge to make these people through a
2 court order, or what you call a motion to compel, I
3 told you, Get the judge to order these Shrewsbury
4 cops to produce those documents 'cause I know that
5 they got them, okay? And you didn't do it. Why
6 not?
7 A. Well, I don't agree with most of the premise in your
8 assertion. I don't remember any such conversation.
9 You were concerned that they would show up with a
10 phony letter at the last minute, that was a concern
11 of mine, too; but they didn't produce any such
12 document. You got a trial date; they still haven't
13 produced any such document. You go to trial, they
14 can't produce it then.
15 Q. So the answer is to leave me in jail when I could
16 have been out on 8/5/94?
17 A. You're stay of revocation was taken away on 8/5/94
18 No, excuse me, 8/10/94, you know, that's why you
19 were in jail. You weren't in jail because this case
20 was proceeding.
21 Q. I have to agree with you. But the point is I still
22 had the charges against me, I was still -- I agree
23 with you. Toomey said in the transcript if
24 something changes, come see me. Remember he said

1 it? He said it three times. He said it. And I had
 2 a big yelling match with you in the lockup.
 3 MR. COPPOLA: Is that a question?
 4 MR. ELBERY: That's a question.
 5 A. I don't remember Toomey saying that three times.
 6 Q. Look at the transcript. I'm not going to --
 7 A. I don't remember having a yelling match with you and
 8 I certainly don't remember you directing me to get
 9 your wife to get the FID card. And this is creative
 10 thinking on your part.
 11 Q. Do you think anybody is going to believe that after
 12 what Toomey said at that hearing? I've got a
 13 transcript of it. Do you think anybody's going to
 14 believe you? Do you think anybody's going to
 15 believe that?
 16 MR. COPPOLA: Objection.
 17 A. Is that your theory for creating a new concept of
 18 what happened?
 19 Q. Do you think that anybody's going to believe that I
 20 didn't give you all these orders?
 21 MR. COPPOLA: Objection.
 22 A. You know, I don't know what people are going to
 23 believe. All I know is what my best memory is of
 24 what the events are and that you apparently have a

1 vivid imagination.
 2 Q. Do you agree that I kept on saying through the whole
 3 case that I had an FID card and that I was innocent?
 4 MR. COPPOLA: Objection.
 5 A. No, I do not disagree that you took the position
 6 that you were innocent. Because you did not carry a
 7 gun on your person or in a vehicle, that was your
 8 position.
 9 Q. Here's another order I gave you, and I'm asking you
 10 why you didn't carry through with it. I gave you an
 11 order to get a court order from the district judges
 12 who presided over the case, the various judges, to
 13 obtain the record of my FID card and the lack of
 14 revocation of that FID card from the Massachusetts
 15 Department of Safety. Why didn't you do it?
 16 A. I don't remember any such order or discussion.
 17 Q. I gave you that order and you said -- I said, Go to
 18 the Mass. Department of Safety. I said, It's well
 19 known anybody that's got a gun knows they got a copy
 20 of the FID card. You said to me, tell me if I'm
 21 wrong, You need to get a court order, I just can't
 22 go in and get that information. I said, Then go get
 23 a court order. It was your suggestion. I said, Go
 24 get one. Do you remember that?

1 A. I do not.
 2 Q. Then why didn't you do that?
 3 A. I don't remember being asked by you to do it.
 4 Q. How far is State Street from Ashburton Place?
 5 A. Very close.
 6 Q. Very close. All you had to do is walk up the street
 7 with the court order and I would have been out of
 8 jail, boom. One thing for sure the malicious
 9 prosecution would have been over, right?
 10 A. Malicious prosecution?
 11 Q. You don't want to call it malicious prosecution?
 12 The six gun charges would have been over. You want
 13 to argue -- whether I was in jail or not, who
 14 cares. You can argue that all you want. The point
 15 is those six gun charges wouldn't have existed. All
 16 you had to do is go to the Department of Safety, get
 17 those records and go to the judge, Here, judge, here
 18 you go, let the guy out of jail. I know what you're
 19 going to say, there was a 269 10A charge.
 20 A. Right.
 21 Q. But that will be decided as a matter of law in this
 22 case by a federal judge before anything else happens
 23 in the summary judgment process; am I correct?
 24 A. I'm not sure what you're referring to. You may be

1 correct, you may be incorrect. I don't know what
 2 your question is asking.
 3 Q. Let me put it another way. I believe all those
 4 issues will be decided for us so we don't have to
 5 argue about it anymore.
 6 Now, why were you seeing a psychiatrist
 7 back in 1994.
 8 MR. COPPOLA: Objection. Directing him
 9 not to answer. Speculation.
 10 Q. Remember we had an argument before the gun case and
 11 you said to me, What are you, my psychiatrist? What
 12 were you seeing a psychiatrist for?
 13 MR. COPPOLA: Objection. Direct him not
 14 to answer.
 15 Q. You're not going to answer?
 16 MR. COPPOLA: He's not going to answer.
 17 MR. SHEKETOFF: You're supposed to leave
 18 the exhibits with the stenographer, then when she
 19 gives us the transcript of the stenographic record,
 20 she can give us copies.
 21 MR. ELBERY: I can't leave that particular
 22 -- I can't leave that document here.
 23 (Whereupon the deposition was concluded
 24 at 3:25 p.m.)

1 Excerpt from Rule 30(e):
Submission to Witness; Changes; Signing.
2 When the testimony is fully transcribed the
deposition shall be submitted to the witness for
3 examination and shall be read to or by the witness,
unless such examination and reading are waived by
4 the witness and by the parties. Any changes in form
or substance which the witness desires to make shall
5 be entered upon the deposition by the officer with a
statement of the reasons given by the witness for
6 making them.

7 *****

8 I, ROBERT SHEKETOFF, have examined the above
9 transcript of my testimony and it is true and
10 correct to the best of my knowledge, information,
11 and belief. Any corrections are noted on the errata
12 sheet.

13
14 Signed under the pains and penalties of perjury
15 this _____ day of _____,
16 19____.

17
18
19
20 ROBERT SHEKETOFF
21
22
23
24

1 CERTIFICATE
2 COMMONWEALTH OF MASSACHUSETTS)
3 PLYMOUTH, SS.)

4
5 I, Barbara A. Keedwell, a Certified
Shorthand Reporter and Notary Public in and for the
Commonwealth of Massachusetts, do hereby certify
6 that there came before me on the 22nd day of
September, 1999, ROBERT SHEKETOFF, who was duly
7 sworn by me; that the ensuing examination upon oath
of the said deponent was reduced to typewriting
8 under my direction and control; and that the within
transcript is a true record of the questions asked
9 and answers given at said deposition.

10 I further certify that I am neither 190x2256Y attorney nor counsel for, nor related to or employed
11 by any of the parties to the action in which this
deposition is taken; and, further, that I am not a
12 relative or employee of any attorney or financially
interested in the outcome of the action.

13
14 In witness whereof, I have hereunto set my
hand and seal this 18th day of October, 1999.

15
16
17
18
19 Barbara A. Keedwell,
20 Certified Shorthand Reporter
and Notary Public

21 My commission expires
22 February 2, 2001
23
24