

 ORIGINAL

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STATE OF NEW HAMPSHIRE

THE GOVERNOR AND EXECUTIVE COUNCIL

Governor: John H. Lynch

Executive Council Members:

- Hon. Raymond S. Burton (First District)
- Hon. John D. Shea (Second District)
- Hon. Beverly A. Hollingworth (Third District)
- Hon. Raymond J. Wieczorek (Fourth District)
- Hon. Debora B. Pignatelli (Fifth District)

\* \* \* \* \*

IN RE:

COMMISSIONER BODI 10-001

\* \* \* \* \*

REMOVAL PETITION held before Governor John H. Lynch and the Executive Council at the Legislative Office Building, Rooms 301 - 303, 33 North State Street, Concord, New Hampshire, on Monday, September 20, 2010, commencing at 9:08 a.m.

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Assistant Attorney General

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Court Reporter:

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Licensed Court Reporter  
Registered Merit Reporter  
NH LCR No. 26 (RSA 310-A)

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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RE CROSS
Joseph Fussell	57	103	113	116
Mark Bodi	126/223	--	--	--
Daniel Eaton	172	212	--	--

\* \* \* \* \*

E X H I B I T S

PETITIONER'S: FOR ID IN EVIDENCE

1 - Search warrant December 14, 2009	--	Prior to hearing
2 - Search warrant December 15, 2009	--	Prior to hearing
3-A - Photograph	--	Prior to hearing
3-B - Photograph	--	Prior to hearing
3-C - Photograph	--	Prior to hearing
3-D - Photograph	--	Prior to hearing
3-E - Photograph	--	Prior to hearing
3-F - Photograph	--	Prior to hearing
4 - Administrative Notice	--	Prior to hearing

E X H I B I T S

PETITIONER'S: FOR ID IN EVIDENCE

5 - Commissioner Bodi's oath -- Prior to hearing

6 - Chapter P-251 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing 157

7 - Chapter O-405 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing --

8 - Memo dated December 9, 2009 Prior to hearing --

RESPONDENT'S

A - Transcript of Mark Bodi's Grand Jury testimony Prior to hearing 171

B - Suspension letter dated February 19, 2010 Prior to hearing --

C - WITHDRAWN

1	E X H I B I T S		
2	RESPONDENT'S:	FOR ID	IN EVIDENCE
3	D - Senior Assistant Attorney General		
4	Jane Young's letter dated		
5	February 25, 2010 with subpoena	Prior to	
6	duces tecum	hearing	--
7	E - Senior Assistant Attorney General		
8	Jane Young's letter dated	Prior to	
9	March 8, 2010	hearing	--
10	F - Letter dated March 18, 2010		
11	to Attorney Jane Young from		
12	Attorney Phil McLaughlin	Prior to hearing	--
13			
14	G - Letter dated May 6, 2010		
15	to Attorney Jane Young from		
16	Attorney Phil McLaughlin	Prior to hearing	--
17	H - Letter dated May 12, 2010		
18	to Clerk, Merrimack		
19	County Superior Court from the		
20	Attorney General with "Motion to		
21	Unseal" filed under seal	Prior to hearing	--
22			
23			

E X H I B I T S

RESPONDENT'S: FOR ID IN EVIDENCE

I - Mark Bodi's  
 Response (by  
 Attorney  
 McLaughlin)  
 dated May 21,  
 2010 to Attorney  
 General's Motion  
 to Unseal with  
 Affidavit of  
 Mark Bodi

Prior to  
 hearing

--

J - Court Order  
 dated June 4,  
 2010 regarding  
 unsealing of  
 records

Prior to  
 hearing

--

K - Letter dated  
 June 22, 2010  
 to Governor  
 and Council  
 from Attorney  
 McLaughlin

Prior to  
 hearing

--

L - Motion dated  
 June 28, 2010 to  
 Clarify Court  
 Order and/or  
 Unseal Transcript

Prior to  
 hearing

--

M - Order dated  
 August 5, 2010  
 issued by  
 Merrimack County  
 Superior Court

Prior to  
 hearing

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N - Recorded interview  
 of Joseph Fussell

Prior to  
 hearing

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E X H I B I T S

	RESPONDENT'S:	FOR ID	IN EVIDENCE
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2	RESPONDENT'S:	FOR ID	IN EVIDENCE
3	O - Recorded interview		
4	of Chief Eddie	Prior to	
5	Edwards	hearing	--
6	P - Recorded interview		
7	of Major Todd	Prior to	
8	Feyrer	hearing	--
9	Q - Recorded interview		
10	of Chief Eddie	Prior to	
11	Edwards	hearing	--
12	R - Recorded interview		
13	of Randy Filiault	Prior to	
14		hearing	--
15	S - Recorded interview		
16	of Representative	Prior to	
17	Dan Eaton	hearing	--
18	T - WITHDRAWN		
19	U - Brochure entitled,		
20	"Senate Ways and		
21	Means Committee,		
22	SB 181, Liquor		
23	Commission		
24	Modernization	Prior to	
25	Act 2009"	hearing	--
26	V - Chronology of		
27	events prepared	Prior to	
28	by Chairman Bodi	hearing	--
29	W - Deposition of		
30	Chief Eddie	Prior to	
31	Edwards	hearing	--
32	X - Deposition of		
33	Major Todd	Prior to	
34	Feyrer	hearing	--

	E X H I B I T S		
	RESPONDENT'S:	FOR ID	IN EVIDENCE
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2	RESPONDENT'S:	FOR ID	IN EVIDENCE
3	Y - Text of NH RSA		
4	176:1, 2, 3, 4,	Prior to	
5	7 and 8	hearing	--
6	Z - Investigator		
7	Richard Tracy's		
8	Memorandum to		
9	File dated	Prior to	
10	February 11, 2010	hearing	--
11	AA - Chairman Bodi's		
12	letter dated		
13	February 11,		
14	2010 to Senior		
15	Assistant General	Prior to	
16	Jane Young	hearing	--
17	BB - Transcript of		
18	voice mail		
19	message dated		
20	February 9,		
21	2010 from		
22	Chairman Bodi		
23	to Investigator	Prior to	
24	Richard Tracy	hearing	--
25	CC - WITHDRAWN		
26	DD - WITHDRAWN		
27	EE - Copy of Attorney		
28	General's Office	Prior to	
29	Web page	hearing	--
30	FF - Union Leader		
31	August 6 and	Prior to	
32	August 7, 2010	hearing	--
33			

E X H I B I T S

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RESPONDENT'S:	FOR ID	IN EVIDENCE
GG - Attorney General response and disclosure of September 13, 2010	Prior to hearing	--
HH - Harvey Hill Memorandum	Prior to hearing	--
JJ - Letter addressed to Whom It May Concern from Joseph Fussell	Prior to hearing	125

## P R O C E E D I N G S

(The proceedings commence at 9:08 a.m.)

GOVERNOR LYNCH: Well, good morning, everybody. Thank you for coming this morning. Before we begin procedures, could I ask everybody to please shut your cell phones off, BlackBerries, television sets, whatever you have that potentially might make noise. So we're going to begin the proceedings with this. I'd like to ask for a motion designating me as the presiding officer of the proceedings.

COUNCILOR BURTON: Governor, I will make the motion that you preside here.

GOVERNOR LYNCH: Okay. Do we have a second?

COUNCILOR SHEA: Second.

GOVERNOR LYNCH: Okay. Any discussion? Seeing none, all those in favor, signify by saying aye. Opposed? Motion carries. I'd like to ask the Councilors if each of you would identify yourself for the record.

COUNCILOR PIGNATELLI: I'm Councilor Debora Pignatelli from Nashua.

1 COUNCILOR BURTON: And I am Ray Burton of  
2 Bath, New Hampshire serving Council District  
3 Number One.

4 COUNCILOR WIECZOREK: Ray Wieczorek,  
5 District Four.

6 COUNCILOR HOLLINGWORTH: Councilor  
7 Hollingworth, District Three.

8 COUNCILOR SHEA: John Shea, District Two.

9 GOVERNOR LYNCH: Thank you. And then I'd  
10 like to ask all of the members of the counselors  
11 to please introduce themselves. Ann.

12 MS. RICE: Good morning. I'm Ann Rice.  
13 I'm an Associate Attorney General.

14 MS. CUSACK: Good morning. Lynmarie  
15 Cusack, an Assistant Attorney General.

16 GOVERNOR LYNCH: Yes, please.

17 MR. MCLAUGHLIN: Good morning, Governor  
18 Lynch. Phil McLaughlin, Laconia. I represent  
19 Commissioner Bodi. I'm accompanied here this  
20 morning by my assistant who has but for a short  
21 period of time worked for me for 39 years. And if  
22 she's not here, we don't do anything. This is  
23 Charlene Morin.

1 GOVERNOR LYNCH: Charlene, welcome. The  
2 schedule for the day is we're going to have a  
3 hearing until noon, and then we'll break for an  
4 hour for lunch, and then we'll have a hearing one  
5 to three. With that said, if anybody needs a  
6 break for a short period of time, we can take  
7 breaks as needed.

8 This would be the proposed order and the  
9 conduct of the testimony. There will be opening  
10 statements not to exceed 40 minutes. We'd like to  
11 ask Attorney Ann Rice to speak first and then the  
12 Attorney General's Office -- I mean then, Attorney  
13 McLaughlin, you would be asked to speak as well,  
14 and then we would begin with the calling of the  
15 witnesses. So with that, I'd like to ask Attorney  
16 Ann Rice if you would like to begin.

17 MS. RICE: Actually, Governor, if you  
18 would, Attorney Cusack is going to make the  
19 opening statement.

20 GOVERNOR LYNCH: Okay.

21 MS. CUSACK: Good morning.

22 GOVERNOR LYNCH: Good morning.

23 MS. CUSACK: This case is about one

1 thing, and that is Commissioner Bodi's willingness  
2 to allow political influence to taint the law  
3 enforcement process. It is about an inability to  
4 maintain a presence of mind under perceived  
5 pressure. Ultimately, it is a case that  
6 implicates public trust, fairness and impartiality  
7 in law enforcement activities, and the facts are  
8 simple and straightforward.

9 You will hear that in December, 2009 an  
10 investigation was initiated regarding overservice  
11 at the Railroad Tavern in Keene, New Hampshire.  
12 As a result of that overservice, an investigation  
13 was commenced, an investigation that caused a  
14 sergeant from the Liquor Enforcement Division of  
15 the Liquor Commission to obtain a search warrant  
16 from a court. That search warrant allowed him to  
17 take -- to obtain video equipment that was in the  
18 bar for surveillance that evening, and on  
19 December 14th that's exactly what two  
20 investigators did along with the Keene Police  
21 Department.

22 While the investigation was ongoing and  
23 the execution of the warrant was taking place, a

1 call was placed by the licensee, the bar owner, to  
2 a Dan. A short time afterwards and moments before  
3 the execution of the warrant was finished,  
4 Representative Dan Eaton entered the licensee's  
5 establishment, the Railroad Tavern. He shakes a  
6 sergeant's hand from the Liquor Enforcement  
7 Division, and then he enters into a dialogue with  
8 the licensee.

9 As a result of that search warrant,  
10 Representative Dan Eaton places a call to  
11 Commissioner Bodi. Commissioner Bodi and he have  
12 a conversation about why he believes the -- and  
13 this is Representative Eaton believes he's being  
14 targeted by the Enforcement Division.

15 Now, you're going to hear evidence that  
16 Commissioner Bodi believed this was going to be a  
17 big problem. This was going to be a big problem  
18 because Commissioner Bodi will testify that  
19 Representative Eaton had been advocating publicly  
20 to move the Enforcement Division from the Liquor  
21 Commission to the Department of Safety. That was  
22 the first phone call.

23 You're also going to hear that these

1 investigators had to go back to the tavern because  
2 the first night when they were executing that  
3 warrant they attempted to retrieve surveillance  
4 tapes and put them on CDs. Now, those tapes  
5 went -- they found out only contained nine minutes  
6 of surveillance activity, and they wanted three  
7 hours of what happened in the bar on December the  
8 12th.

9 They went in. They executed the second  
10 warrant. The decision, however, was made at that  
11 time by the investigator to have to take the  
12 surveillance equipment out because attempts were  
13 made again to put the three hours onto disks, but  
14 it didn't happen. They were having problems with  
15 the surveillance equipment and downloading it.

16 The evidence will show that a second time  
17 Commissioner Eaton -- or excuse me -- Commissioner  
18 Bodi was called by Representative Eaton, and  
19 you'll hear Commissioner Bodi asked Representative  
20 Eaton, "What do you want me to do? What can I  
21 do?" You'll see that Commissioner Bodi doesn't  
22 attempt to learn the facts of what happened, of  
23 why those two search warrants were initiated; that

1 he doesn't want to be bothered by those facts. He  
2 just wants to placate Dan Eaton.

3 The evidence will show that  
4 Representative Eaton tells Commissioner Bodi when  
5 he asks what do you want me to do, "I want you to  
6 call the bar owner. Call the licensee." And he  
7 does this, Commissioner Bodi, despite an ongoing  
8 investigation. You will hear that when he calls  
9 the licensee, the licensee wants his equipment  
10 back; that the licensee was furious that the  
11 investigators told him that he would get the  
12 surveillance equipment back at the end of the  
13 case.

14 So what does the Commissioner do?  
15 Without getting any information about the  
16 investigation, he orders his chief law enforcement  
17 officer, Eddie Edwards, to have that equipment  
18 returned. He directs Eddie Edwards return that  
19 equipment. And you'll learn that this was not  
20 just any normal dialogue. This was a forceful  
21 conversation. So forcefully that -- so forceful  
22 that Commissioner Edwards didn't think he had a  
23 choice.

1           The Commissioner, you'll hear, believed  
2           there would be hell to pay. Hell to pay if the  
3           equipment was not immediately returned. The  
4           pressure, according to the Commissioner, was so  
5           great, despite no explicit demand by  
6           Representative Eaton that that equipment be  
7           returned, but it was so great, and he could tell  
8           by the tone of Representative Eaton's voice.

9           You will hear that this evidence was  
10          returned and directed to be returned less than 24  
11          hours after it was taken out of the Railroad  
12          Tavern on a Tuesday evening; that less than 27  
13          hours, on Wednesday evening, it was returned, all,  
14          again, while a law enforcement investigation was  
15          ongoing.

16          There's no evidence, Governor, members of  
17          the Executive Council, that this Commissioner  
18          believed there was an immediacy for the return,  
19          but the evidence will show that the return was  
20          completely contrary to the Liquor Commission's  
21          Enforcement Division's standard operating  
22          procedures. You will see that the Commissioner  
23          believed it was appropriate for him to pick up the

1 phone, talk to the bar owner, talk to this  
2 licensee and schedule a meeting with him, schedule  
3 a meeting with no regard for, again, this ongoing  
4 law enforcement investigation.

5 It was at the Commissioner's initiation  
6 that a meeting occurred with the licensee and  
7 Representative Eaton. You will see that, again,  
8 while these charges were pending he believed that  
9 a meeting is necessary because that's what  
10 Commissioners do, you'll hear him say. We fix  
11 it. We make it go away.

12 Ultimately, you'll hear how the  
13 Commissioner inserted himself with no regard for  
14 the law enforcement process. You'll see that he  
15 thinks the simplest fix, all I need to do is  
16 recuse myself. You'll also likely hear that  
17 Commissioner Bodi felt alone in what he described  
18 in his words as a jihad. He'll try to convince  
19 you he was alone, and there was nowhere he could  
20 turn. Absolutely nowhere. That somehow the AG's  
21 Office even turned him down when his people  
22 reached out for assistance.

23 We anticipate that Commissioner Bodi will

1 suggest that his staff reached out to the Attorney  
2 General's Office and asked for help with a public  
3 integrity matter, but you'll also hear that public  
4 integrity investigations involve potential  
5 criminal conduct by public officials. There,  
6 however, was no such evidence. Nobody complained  
7 of a criminal conduct on December 14th,  
8 December 15th, December 16th, December 17th, all  
9 while in Commissioner Bodi's mind he was in the  
10 midst of what he described as his personal siege.

11 But as you listen to this evidence,  
12 you'll simply see Commissioner Bodi reacted,  
13 believing what the owner, Randy Filiault, and  
14 Representative Eaton were telling him without ever  
15 finding out more, without allowing the  
16 investigative process to play out in the normal  
17 course, without asking his senior staff members to  
18 review this investigation, to -- to review the  
19 seizure that occurred. You'll hear he never  
20 considered alternatives. He simply let panic or  
21 lack of courage take over.

22 The testimony from each witness, Eddie  
23 Edwards, Todd Feyrer, the Commissioner himself,

1 will show that the Commissioner willingly allowed  
2 himself to be intimidated through fear of one  
3 legislator, one legislator who had taken a public  
4 stance on legislation that the Commissioner  
5 believed impacted his organization. From the  
6 Commissioner's perspective, again, he was under a  
7 siege, fighting the jihad, fending off an attacker  
8 who wanted, in his words, to slit his throat.

9 But you'll also be hearing that this  
10 agency had procedures for addressing such  
11 complaints as the complaints that Representative  
12 Eaton portrayed to him in those two phone calls.  
13 You're going to see, as you know, Commissioners,  
14 as did this Commissioner, take an oath of office,  
15 and that oath is to faithfully and impartially  
16 discharge their duties, to exercise their  
17 administrative power, the power that they have  
18 over their agencies, for the public good. You  
19 will see that a -- treating a licensee unequally  
20 because of a political connection places the  
21 public faith in law enforcement at risk.

22 This Commissioner, like all  
23 Commissioners, has to respond to citizens'

1 complaints. It's true. Phone calls come in all  
2 the time. Citizens call demanding -- demanding  
3 things that simply can't be delivered. It's a  
4 Commissioner's job to have the fortitude, to have  
5 the judgment to know what is proper and what is  
6 not.

7 The evidence will show that a cardinal  
8 rule in law enforcement and in the Law Enforcement  
9 Division at the Liquor Commission is to be fair  
10 and impartial, but that rule is broken. It's  
11 broken when a Commissioner acquiesces under the  
12 slightest bit of perceived political pressure and  
13 intercedes into that law enforcement  
14 investigation. And that's what's happened here.

15 At the end of the evidence, you will be  
16 asked to look at the standards necessary for  
17 removal. Malfeasance. Malfeasance is the  
18 wrongful conduct which interferes with the  
19 performance of an official duty. And  
20 misfeasance. Misfeasance is the improper  
21 performance of an act that a Commissioner may do.

22 We're not asking you, Governor, members  
23 of the Council, to pass judgment on Commissioner

1 Bodi's overall behavior or overall performance.  
2 That's not what the Petition alleges. We're  
3 asking you to do one thing, and that is to protect  
4 the integrity of the law enforcement process. The  
5 evidence will show that by injecting himself into  
6 the law enforcement process and letting political  
7 pressure affect his decision-making, Commissioner  
8 Bodi's conduct is such that at the end removal  
9 from office is appropriate. Thank you.

10 GOVERNOR LYNCH: Thank you, Attorney.  
11 Attorney McLaughlin.

12 MR. MCLAUGHLIN: Governor, members of the  
13 Council, Mark Bodi for eight months has sought the  
14 opportunity to tell the story himself from his  
15 perspective and have his say, and he has  
16 instructed me that he will deliver his own  
17 opening.

18 COMMISSIONER BODI: Your Excellency,  
19 Governor Lynch, honorable members of the Executive  
20 Council, Attorney Perrault, I want to thank you  
21 and acknowledge your earnest efforts to ensure the  
22 fairness of this hearing and for taking on a very  
23 difficult but important role during these

1 proceedings. I'm going to begin this morning with  
2 some housekeeping measures that I would like to  
3 bring to your attention followed by my intent to  
4 offer evidence statement and then begin my formal  
5 remarks.

6 First, Attorney McLaughlin and I have  
7 prepared --

8 MS. RICE: Can I approach for a minute?  
9 /I'd like to object to this. May we approach?

10 GOVERNOR LYNCH: Sure.

11 MR. MCLAUGHLIN: I would prefer whatever  
12 we do, Judge, Your Honor, Governor, that we do of  
13 record.

14 GOVERNOR LYNCH: That you do what?

15 MR. MCLAUGHLIN: Of record.

16 GOVERNOR LYNCH: Okay.

17 MS. RICE: As a normal process, opening  
18 statements are done by the attorneys. He is  
19 represented by an attorney, and the statements are  
20 simply a statement of what evidence is to come.  
21 By Commissioner Bodi's own remarks, he said that  
22 he was going to talk about the evidence and then  
23 make his own formal statement. If he wants to do

1 that, he has an opportunity under oath as a  
2 witness. I don't think it's appropriate where he  
3 is the witness, and he's represented by counsel  
4 that he's allowed to do this in a situation where  
5 he's not under oath. So I would ask that either  
6 Attorney McLaughlin give the opening statement or  
7 that he be put under oath and be allowed to cross-  
8 examine at some point.

9 GOVERNOR LYNCH: Okay.

10 MR. MCLAUGHLIN: The option of putting  
11 under oath is completely reasonable. May I do  
12 that at this time?

13 GOVERNOR LYNCH: If I could just consult  
14 with my --

15 (Governor Lynch consults with counsel.)

16 GOVERNOR LYNCH: I think we should permit  
17 Mr. Bodi to make his remarks if he would be  
18 willing to --

19 COUNCILOR BURTON: Governor, I would like  
20 to ask for this podium to be turned more square to  
21 the Governor and Council, if there's no  
22 objection.

23 (Attorney McLaughlin moves the podium.)

1 MR. MCLAUGHLIN: I most certainly have no  
2 problem with Mr. Bodi's being under oath from the  
3 very beginning. If the Councilors and the  
4 Governor wish it, I'll put him under oath now.

5 GOVERNOR LYNCH: If you would do that,  
6 that would be --

7 MR. MCLAUGHLIN: Thank you. Please face  
8 me, sir, and raise your right hand.

9 (Commissioner Bodi is placed under oath  
10 by Attorney McLaughlin.)

11 GOVERNOR LYNCH: Proceed, Mr. Bodi.

12 COMMISSIONER BODI: Thank you, Governor.  
13 First, Attorney McLaughlin and I have prepared a  
14 document, Exhibit V, which track the AG's  
15 investigation. I hope that Exhibit V and related  
16 exhibits will help assess if I was being  
17 uncooperative as the Attorney General has stated  
18 in his position and directly in his disclosure  
19 statement.

20 Secondly, we have prepared a document  
21 called a request. That is like a resume and  
22 provides a statement of my personal history and is  
23 a statement of my duties as a Commissioner at the

1 Commission on December, 2009. Thirdly, we have  
2 also prepared a second request in which I have  
3 attempted to set forth the chronology of events to  
4 the best of my recollection involving the matter.

5 With respect to my intent to offer  
6 evidence, the Attorney General has accused me of  
7 acting politically. The attorney -- in the  
8 Attorney General's own words in a document filed  
9 September 10th, he asserts, and I quote, "The sole  
10 issue before the Governor and Council is whether a  
11 Liquor Commissioner who injects himself into an  
12 ongoing law enforcement investigation for  
13 political purposes should remain in a position  
14 with enforcement oversight."

15 The following in part is evidence that I  
16 will present to refute the Attorney General. One,  
17 I did not direct an ongoing law enforcement  
18 investigation. Two, I did direct the return of  
19 camera equipment but not the film. Three, I  
20 attempted to manage the pressure exerted by  
21 Representative Eaton knowing that the Governor's  
22 Office knew about the Eaton problem as did the  
23 House leadership and the Senate leadership and

1 that I could not call upon them for help. Four,  
2 because of the likes of Dan Eaton, I did  
3 everything I could to get the Liquor Commission  
4 Modernization Act passed with ethics provisions to  
5 rein in the Eatons of this world.

6 My agency also on numerous occasions  
7 urged the creation of a new position, a senior  
8 legal counsel responsible for ethics compliance  
9 and ombudsman. This position was also included as  
10 an important provision in the Liquor Commission  
11 Modernization Act. Had this position been created  
12 as I and our senior staff had requested, it would  
13 have been invaluable assistance to me and our  
14 agency last December, and that was a request I  
15 made specifically to every single leader in the  
16 State House as well as the Attorney General, who  
17 is here today.

18 Five, I attempted to manage the Eaton  
19 pressure knowing in general that I could not turn  
20 to the Attorney General or the Deputy Attorney  
21 General who had supported behind the scenes the  
22 transfer of Liquor Enforcement Division to the  
23 Department of Safety. I attempted to manage

1 Representative Eaton knowing that my staff did not  
2 trust the Attorney General, had specifically asked  
3 the Attorney General's Office for help and were  
4 effectively told to look elsewhere.

5 Seven, political. The Attorney General  
6 says that I was acting political. I knew what I  
7 could do politically to curry Dan Eaton. He told  
8 me. He said to fire Dan Eaton.

9 MR. MCLAUGHLIN: Eddie Edwards. Your  
10 statement was, "He said to fire Dan Eaton." I  
11 believe you meant Eddie Edwards.

12 COMMISSIONER BODI: Excuse me. He said  
13 to fire Eddie Edwards. That was surely wrong and  
14 illegal, and I wasn't going to do it. Eight, I  
15 had to take into consideration the timing of the  
16 enforcement action at the Railroad Tavern. At  
17 best, a suspicious coincidence, and that Eaton and  
18 Filiault made serious claims that it was a  
19 payback, and it targeted enforcement action. It  
20 was my responsibility to deal with that serious  
21 claim.

22 Nine, I had the responsibility to deal  
23 with Filiault's claim that he needed his video

1 equipment back, otherwise, he would be set up for  
2 a license seizure. These were the considerations  
3 in my mind when I ordered the return of the  
4 equipment and not, as the Attorney General states,  
5 political purposes. And I will offer my testimony  
6 and evidence to prove the truth of what I have  
7 just said.

8 Before I begin my formal remarks, I want  
9 to thank my wife, Marie, who has stood by me  
10 unwaveringly, offering her support and  
11 encouragement through this, the most challenging  
12 event of my life. I would like to thank my family  
13 whose support for me has not diminished through  
14 the shame and humiliation of all sources and  
15 rumors that have been heaped upon me for eight  
16 months. I also want to thank my many, many  
17 friends for their truly humbling expression of  
18 support and their willingness to stand up and out  
19 on my behalf. They, together with the remarkable  
20 support of strangers from all over the State of  
21 New Hampshire, have rallied behind me, but not  
22 just behind me, Mark Bodi as a person, but behind  
23 an important cause, the right of a person to be

1 heard and not to be forced to resign under the  
2 threat of an indictment for a crime never  
3 committed.

4 You know, I only wish I could begin this  
5 morning by saying that it is a pleasure to be  
6 here. But you know unfortunately that's not the  
7 case any more than I suspect any one of you find  
8 pleasure in being here yourself. No, I take no  
9 pleasure in being here today to answer the  
10 Attorney General's actions that began with great  
11 fanfare, as you remember, as a criminal  
12 investigation under Mike Delaney's own personal  
13 supervision.

14 While you were patiently waiting for your  
15 report, which was long overdue, his office was  
16 threatening me through my attorney with criminal  
17 prosecution if I did not resign. Can you imagine  
18 such a thing? A secret effort to remove a  
19 Commissioner of the State of New Hampshire and  
20 slip the matter conveniently under the political  
21 rug. A Commissioner, who can only be removed by  
22 an act of this body. I have no doubt that the  
23 Attorney General did not tell any of you that his

1 office was trying to force me to make a deal.

2 "Resign," they said, to my attorney, "and we will  
3 nol-prosecute [sic]. It will all go away."

4 All the suspense, all this drama, all  
5 this secrecy, yet when the investigation  
6 ultimately concluded six months later it ended  
7 with not even a parking ticket's worth of  
8 violations. To this very day, there has been no  
9 written AG report on the railroad incident as you  
10 and the public were promised. In the end, as you  
11 know, I did not commit a crime. And the Attorney  
12 General himself said I did not commit a crime.

13 Mysteriously through all of this the  
14 Attorney General never wrote or explained why his  
15 office rejected providing assistance to the Liquor  
16 Commission Enforcement Division in executing those  
17 warrants. Critical assistance another State  
18 enforcement agency, the Justice Department, is  
19 obligated to provide, with all due respect,  
20 counselor.

21 Consider this very, very important fact.  
22 Had the Attorney General's Office assistance been  
23 rendered when they were asked to do so, their

1 participation at the scene would have established  
2 that there was nothing improper with those search  
3 warrants or what was taken. So there would have  
4 been no reason for Representative Dan Eaton to  
5 call me or anyone else, for that matter, and let  
6 me emphasize this one point.

7 And the counselor talks about the  
8 obligation of the Public Integrity Division only  
9 needing to take action if there's a criminal  
10 investigation. When you receive a call for help,  
11 you act on it. The Attorney General's Office has  
12 the highest level of responsibility in the State  
13 of New Hampshire for assisting other law  
14 enforcement agencies. That, in my opinion, is  
15 passing the buck.

16 In his FRM report, the mortgage scandal,  
17 the Attorney General himself was critical of the  
18 Department of Justice for failing to coordinate  
19 and cooperate with other State agencies. Well,  
20 that's what exactly what they did here. The  
21 Attorney General did. They failed to cooperate  
22 with another State agency. They failed to help  
23 when they were asked to.

1 In the FRM report, Mike Delaney also  
2 pointed out that the Department of Justice has an  
3 agency counseling role that should have become --  
4 should have become involved. That's an exact  
5 quote. Well, where was the agency counseling role  
6 when Major Todd Feyrer of the Liquor Enforcement  
7 Division called the Attorney General's Office and  
8 asked for help? Did they exercise and acknowledge  
9 that counseling role and give him any meaningful  
10 advice on how to handle this very sensitive  
11 subject with a very powerful State  
12 Representative? Did they refer the matter to  
13 others in the Justice Department? Did they have  
14 anybody -- anybody just pick up the phone call and  
15 call our Chief? Better yet, call me or one of my  
16 Commissioner colleagues to offer even a modicum of  
17 counseling advice that they themselves acknowledge  
18 they should provide? The answer is a striking  
19 no.

20 The Attorney General's Office essentially  
21 said that they were too busy to help. They did  
22 not even establish a written record of that  
23 telephone call that day unless I've missed it in

1 the 600 pages of documents that we've been  
2 provided as part of the discovery process, not  
3 even a written report that a call from another  
4 State law enforcement agency had requested  
5 assistance. Have we learned nothing from the FRM  
6 scandal?

7           Instead, the Attorney General has asked  
8 that you, members of this Executive Council, hand  
9 down to me the equivalent of the administrative  
10 death penalty. Not only being stripped of my  
11 appointment but fatally stripped of my good name  
12 and reputation. And for what? Because I  
13 perhaps -- perhaps made a mistake, an honest  
14 mistake at that, and a mistake, if one was made,  
15 was made in good faith. And what about my  
16 mistake? My misdeed? My high crime of  
17 malfeasance, as the Attorney General's Office will  
18 cry out at this hearing, because, according to  
19 him, I interfered with an investigation they  
20 literally ran away from. Far from it. Yes, I was  
21 doing my job, a very difficult job indeed, made  
22 even harder because our agency lacked a responsive  
23 Justice Department as well as the critical

1 resources we needed and asked for to support our  
2 business and enforcement legal needs.

3 Ladies and gentlemen, I appeared before a  
4 Grand Jury of 23 New Hampshire citizens who were  
5 brought together to review and judge my actions.

6 I answered every question honestly, never invoking  
7 the Fifth Amendment rights which would have easily  
8 allowed me to hide, duck or dock questions.

9 Perhaps I made a mistake. If so, I outlined the  
10 circumstances of how that mistake may have been  
11 made. I took responsibility for my conduct for a  
12 total of four days -- four hours over two  
13 different days. The Grand Jury listened  
14 attentively as I explained how I had tried to do  
15 the right thing and how I faced a significant  
16 obstacle in doing so.

17 My Grand Jury testimony, which I hope all  
18 of you will have an opportunity to read in its  
19 entirety, outlined very straightforwardly and in  
20 great detail what I did and why I did it. Because  
21 so many of the events of that day will be reviewed  
22 at this hearing, I'm going to spare you the  
23 exacting details, but contrary to how the Attorney

1 General has made my actions out to appear, at its  
2 core this is a very straightforward account and  
3 fact pattern, and the following summarizes it.

4 Liquor Commission officers were  
5 conducting routine surveillance outside the  
6 Railroad Tavern in Keene. An officer observed a  
7 woman leaving the establishment with others who  
8 appeared to be intoxicated. The officer  
9 questioned the group, determined the individual  
10 was not driving a vehicle and allowed them to  
11 proceed.

12 The following day the officer then  
13 prepared documents for search warrant decision to  
14 retrieve copies of a bar videotape recording the  
15 interior to determine if the woman -- the woman  
16 was in fact overserved. On December 14th, two  
17 Liquor Commission Division -- Enforcement Division  
18 officers and officers from the Keene Police  
19 Department arrived at the bar to execute the  
20 search warrant.

21 While they were there, Representative  
22 Eaton arrived with Representative Lerandau.  
23 Representative Eaton questioned the officers and

1           went behind the bar. So he went behind the bar in  
2           what the law enforcement community would describe  
3           as a crime scene, an area that is potentially a  
4           crime scene. While they were attempting to secure  
5           evidence, Eaton's presence at that bar  
6           intimidated -- intimidated the officers, as you  
7           will hear, and a Keene Police officer would later  
8           seriously question why Eaton was there as well.

9                        At this point, the bar owner strongly  
10           objected to their taking of his equipment and  
11           volunteers to make copies of whatever tapes they  
12           need. He did so, giving the requested CD evidence  
13           to the officers, and then the officers left the  
14           bar. Later that evening, when reviewing the CDs  
15           and recordings at his own home, the officer  
16           realized that the recordings are only nine minutes  
17           long instead of the 9 a.m. to midnight, as the  
18           counsel mentioned, time frame that they were  
19           seeking.

20                       The officer confers with his supervisor  
21           the following day and receives the necessary  
22           department and court approvals through a second  
23           search warrant, but now given Representative

1 Eaton's involvement in the first search warrant  
2 and the problems it created, the Enforcement  
3 Division's most senior staff requested the  
4 assistance of the Attorney General's Office.

5 Major Todd Feyrer contacts the Attorney  
6 General's Office Public Integrity Division  
7 specifically created to deal with inappropriate  
8 public conduct. The Attorney General runs the  
9 request up the chain of command and responds they  
10 will provide no assistance. They were too busy at  
11 all.

12 And I want to stop on this point because  
13 it's very, very significant in my opinion. Very,  
14 very significant. Because the Attorney General --  
15 and now they're attempting to pass the buck to  
16 me -- is saying well, they had no obligation to  
17 act because it wasn't a crime. We weren't  
18 reporting a crime. Well, isn't it their job to  
19 stop crimes? Does someone need to be shot before  
20 they take action? Do you believe that a sworn  
21 police officer who calls and outlines a State  
22 Representative who's arguably the third most  
23 important and influential person in the State of

1 New Hampshire, don't you think that that would  
2 trigger something that said something must be  
3 amiss? And maybe I mistook the counsel. She  
4 said, "No. We investigate crimes."

5 I don't think that that was the intent of  
6 the Public Integrity Division, and, Governor, you  
7 have appropriately indicated that ethics are  
8 important, and I would think that you would hold  
9 your Attorney General's Office to a much higher  
10 standard that if they received a phone call, they  
11 should have acted. That's what McLaughlin would  
12 have done, the former Attorney General, 'cause I  
13 asked him.

14 And this is a very, very significant  
15 point. I have responsibility for my department.  
16 But the much farther, more significant  
17 responsibility for acting on those is with the  
18 Attorney General. And I take umbrage to any  
19 suggestion whatsoever that they do not have a --  
20 even a modicum of responsibility in dealing with  
21 this. They should have by any reasonable standard  
22 and any reasonable -- I think you could take any  
23 previous Attorney General in the State of New

1 Hampshire, and they would ask them -- they would  
2 answer the same way.

3 With the assistance of the Keene Police,  
4 the second search warrant is executed on  
5 December 15th. This second time, not willing to  
6 take any chances of obtaining the right  
7 recordings, enforcement officers do not allow the  
8 bar owner to copy the CDs. Instead, they remove  
9 all of the recording equipment from the bar.

10 I received two phone calls from  
11 Representative Eaton, one following each search  
12 warrant. During the second call, Representative  
13 Eaton claimed -- he claimed that the Liquor  
14 Commission enforcement officers -- this is very  
15 important -- had seized equipment that was beyond  
16 the scope of the search warrant. What he was  
17 claiming was that our law enforcement agencies --  
18 our law enforcement officers were literally --  
19 literally breaking the law.

20 Now, I think that's pretty serious. He  
21 claimed, as my testimony reads, that this was  
22 payback for Eddie Edwards for Eaton's legislation  
23 to separate the Division of Enforcement and move

1 it to the Department of Safety. He went on  
2 profusely in his criticism and specifically about  
3 Officer Fussell, who was there that night,  
4 claiming he was rude and rogue. You know, Eaton  
5 made it sound as though our law enforcement  
6 officers came storming in with a second search  
7 warrant and soon afterwards ripped every bit of  
8 evidence and surveillance equipment off the wall.  
9 No.

10 Although he did not say so directly, my  
11 distinct impression that his goal was to have that  
12 equipment returned, and if he did not, as I  
13 conveyed to the Grand Jury, there would be hell to  
14 pay. That Representative urging -- and I did ask  
15 him, "What do you expect me to do?" What is wrong  
16 with that question? At that moment I felt that  
17 that request was one that would allow me to take a  
18 step forward in an effort to resolve this but not  
19 compromise my position, certainly not interfering  
20 with an investigation as I will and we will  
21 demonstrate later in our case.

22 So I called the bar owner. He echoed  
23 Eaton's assertion and then some. He stated that

1 he believed that because his complete surveillance  
2 equipment was seized, he would not be able to  
3 defend himself by having a tape recording against  
4 any future action by the enforcement bureau. So  
5 he felt that they're going to strip my equipment  
6 out. Eddie Edwards is out to get me. You guys  
7 are a bunch of rogue operators, and now I have no  
8 cameras in my -- in my facility. They're going to  
9 come in and say that I overserved somebody. I  
10 can't defend myself.

11 He went on -- the bar owner went on and  
12 on, extremely upset, mentioning the anguish his  
13 wife was suffering, the targeting of the  
14 Enforcement Division against him and the fact that  
15 Dan Eaton agrees with me. He supports me. He  
16 added that he was convinced that this increased  
17 targeting activity -- targeting activity would  
18 result in the loss of his business, basically his  
19 world would come to an end, and the man was  
20 virtually crying.

21 As the testimony in these documents will  
22 demonstrate, when he came to my office he was  
23 nearly crying. And, with all due respect,

1           Councilors, they were saying there was no  
2           pressure. We have a hysterical State  
3           Representative. We have a hysterical bar owner.  
4           We have a hysterical wife. We have a police  
5           officer in the documents that says he can't even  
6           sleep. He lost a night's sleep. Is this a little  
7           bit -- do you think it's a little bit stressful?  
8           My mind was clear. I knew what was going on. I  
9           knew what I had to deal with it. But yes, it was  
10          stressful.

11                 Following these telephone calls, I called  
12          our Chief, and I asked that we meet. The Chief,  
13          upon hearing the calls, was upset, too. He was  
14          telling me that he did not direct the law  
15          enforcement activity, and that was further --  
16          further evidence of Eaton's far-reaching hand. He  
17          told me his men had done everything they could  
18          possibly do to avert a confrontation with Dan  
19          Eaton, including asking the Attorney General's  
20          Public Integrity Office to assist because of Dan  
21          Eaton's involvement in the manner -- in the  
22          matter.

23                 The Chief and I had an open and honest

1 discussion and an angry one that night about the  
2 consequences and problems associated with  
3 Representatives -- Representative Eaton's very  
4 pressing call and his allegations. At the time I  
5 had some concerns myself about possible  
6 overenforcement, overreaching. Given the two  
7 phone calls that I had, all that had gone on in  
8 the Legislature and Eaton's criticism and the  
9 strange timing of this particular incident, my  
10 mind was swirling as I thought -- I queried the  
11 Chief about how, why, now. Why we're in Keene in  
12 legislat -- in Representative Eaton's district.  
13 Not only in his district but at the bar of his  
14 friend. I was trying to put all these pieces  
15 together. I didn't realize that otherwise this  
16 wasn't -- this wasn't Dan Eaton's district at  
17 all. He wasn't doing a good deed for his  
18 constituent. He was helping a buddy of his.

19 At that moment I had several concerns and  
20 responsibilities as a Commissioner. First, the  
21 monumental consequence if Eaton's allegations were  
22 true in any way. Very, very significant. Talk  
23 about ethics; that law enforcement people are

1 breaking the law.

2 Secondly, my obligation to protect the  
3 men and women of our Enforcement Division from the  
4 possible political interference and scandal from a  
5 politician with sinister motive. Again, with all  
6 due respect, Councilors, we have a State  
7 Representative who goes to a bar. It is not in  
8 his district. He is present in the physical space  
9 of a crime scene. That's a trigger point, in my  
10 opinion, for the Attorney General's Office. You  
11 should have asked -- in my opinion, with all due  
12 respect, you should have asked. What happened?  
13 What went on? Can you tell us a little bit more  
14 about what went on?

15 If you read the reports, as I have, these  
16 documented reports of the Keene Police, one of  
17 them was asked well, why did -- was Dan Eaton  
18 there to intimidate and interfere with the search  
19 warrants? And one of them said well, he wasn't  
20 really sure, but he couldn't figure out any other  
21 reason why. That was just the first search  
22 warrant. There was damn well plenty of reason for  
23 the Attorney General's Office to go there.

1 Plenty.

2 Third, my obligation, like it or not, to  
3 consider and respond to a licensee's complaints,  
4 particularly this one given its highly unusual  
5 allegations of targeting enforcement action and  
6 how the loss of the recording equipment will  
7 result in catastrophic consequences. Just because  
8 people complain, we need to respond to that. And,  
9 with all due respect to the Attorney General's  
10 Office, well, people complain all the time.  
11 That's my job as a Commissioner to determine which  
12 complaints are not appropriate and which  
13 complaints are appropriate..

14 Now, if you -- with all due respect --  
15 with all due respect, and I say this respectfully,  
16 had the Attorney Generals done that with greater  
17 diligence in the FRM scandal, they wouldn't be in  
18 the problem they are today. So it wasn't just oh,  
19 we get calls all the time. This was an important  
20 call. This was a different call. This was a  
21 significant call under very difficult  
22 circumstances.

23 Fourth, I have a responsibility and a

1 duty to protect the integrity of the Chief's  
2 position from events of a legislator. You know, I  
3 don't know what was going on between Eddie Edwards  
4 and -- and Representative Eaton. You know the old  
5 saying there was bad blood. There was. There was  
6 bad blood. But, you know, I am trying to run this  
7 agency, a 500-million-dollar business, and I don't  
8 have a law enforcement background. I agree with  
9 that. I served on the Crimeline in Manchester as  
10 a volunteer. I was a volunteer on the -- on the  
11 Fire Commission in Manchester, but they had this  
12 problem. It was very, very acute.

13 And, as everybody knows, in State service  
14 it would take seven months before we could get a  
15 personnel action to -- involved and to determine  
16 what the cause of it, even if we could, given the  
17 fact that he was a State legislator. That was a  
18 circumstance I had to live with, and I had to  
19 manage around. Everybody says well, Eaton's a  
20 problem. Eddie's a problem. Back and forth. You  
21 know, that's -- I can't step in and solve that.  
22 Much as I would like to, not possible.

23 Given the totality of the facts as I knew

1       them and the circumstances as they existed at that  
2       time, rightly or wrongly, I instructed the Chief  
3       to return the equipment in an attempt to loosen  
4       Eaton's assertive hand and to defuse a near  
5       explosive situation. I reasoned the equipment had  
6       no evidentiary value, and its return would quiet  
7       Eaton as well as the bar owner until we could deal  
8       with the matter with more guidance and knowledge.

9               As I conveyed to the Grand Jury, I never  
10       had any intent to suppress evidence or obstruct or  
11       interfere with the investigation in any way.

12       You're right, counselor, at that moment I did have  
13       nowhere else to turn. The Attorney General's  
14       Office had cut and run, and that had sent an  
15       important signal to me. You better not mess with  
16       Dan Eaton. Certainly I cannot call the Governor's  
17       Office to aid me in my decision and perhaps for  
18       very good reasons. And I certainly don't want to  
19       be disparaging to the Governor. He has enormous  
20       responsibilities. Um -- but his staff was very,  
21       very queasy about dealing with Dan Eaton, too.  
22       Extremely so.

23               And why wouldn't they be? We are in the

1 midst of a huge financial crisis, and here is a  
2 man who weighs and exhorts enormous pressure on  
3 the determination of the State budget on issues  
4 that will determine whether we succeed financially  
5 or not. You know, so in a town that is famous for  
6 not confronting problems and making difficult  
7 decisions, I made one. I believe I had the right  
8 to assume that if any paper work or court approval  
9 was needed for the return of the equipment, that  
10 our Enforcement Division would do it.

11 I had never seen a search warrant before,  
12 much less know how they were obtained or changed.  
13 I had not been overseeing the Enforcement Division  
14 long, and that was not a detail that I concern  
15 myself, nor should I. Nor should I. That's what  
16 the Chief and his Enforcement Division are for.  
17 Any more than you concerned yourself with all of  
18 the ministerial and important activities that are  
19 associated with that hearing. That's what the  
20 counselors are here for, the attorneys  
21 representing the Council and representing the  
22 Governor.

23 No, I made the decision to have the

1 equipment returned because the assertions of Eaton  
2 and the bar owner were making -- and this is very  
3 important, members of the Council and Governor.  
4 The assertions that they were making were over the  
5 equipment, not the evidence. The equipment and  
6 the fact that the equipment had been illegally  
7 seized. They wanted the equipment back. And I  
8 logically assumed the equipment was the cameras  
9 and such, not the tapes and CDs and certainly not  
10 anything that would be considered evidence.

11 Again, the facts of this case are very  
12 clear. The equipment was returned, but the actual  
13 evidence was retained. I did recuse myself from  
14 the manner -- from the matter when it was  
15 appropriate for me to do so, and you'll hear later  
16 in this hearing the very detailed events that went  
17 on and how I acted very appropriately. The matter  
18 was openly and fairly adjudicated. The bar owner  
19 surrendered his license, and the business was  
20 sold. Justice was served. As I said, I was not  
21 interfering with the criminal investigation. I  
22 was doing my job as a Commissioner.

23 Like an umpire on a field attempting to

1 manage and quickly resolve a very heated and  
2 volatile exchange between a group of players  
3 before all hell breaks loose and the benches are  
4 emptied out and a bigger mess erupts, get the  
5 emotionally charged combatants separated and  
6 settled, and resolve this dispute in a more  
7 reasonable setting. That's what I was attempting  
8 to do. I had nothing personally to gain or  
9 politically by returning -- returning the  
10 equipment. Surely none at all.

11 I am sure these two very capable  
12 counselors will be grilling me hard, grilling me  
13 hard about why didn't I take more time to review  
14 the facts, examine the search warrants or just  
15 tell Dan Eaton nothing could be done. Well, as  
16 Arthur Schlesinger, Jr. said, the great Pulitzer  
17 Prize winning historian and aide to President  
18 Kennedy, "Righteousness is easy in retrospect."

19 In that Grand Jury room insulated from  
20 the world of political agendas and special  
21 interests, these ordinary but in many ways  
22 extraordinary people nodded in agreement with me  
23 as my story unfolded more deeply on March 17th,

1 2010, the second time I testified. I looked those  
2 jurors, and I said to them, "If it was anyone in  
3 this room who had been at the bar that evening and  
4 acted the way Representative Eaton had, you would  
5 have been arrested." Were it not for the fact  
6 that Dan Eaton was a very, very powerful State  
7 legislator, this would never have been allowed to  
8 happen.

9 And I disagree respectfully with the  
10 Attorney General. He said "Well, what else can I  
11 do?" You know, we -- we -- there's no crime  
12 that's been committed here. You know, well,  
13 couldn't he even have timidly suggested to the  
14 Ethics Committee that maybe we should look at it?  
15 Couldn't we give them these documents and say  
16 here. Here's 600 pages of documents. You make up  
17 your own mind. Couldn't he have them look at what  
18 the Keene Police said about their concerns?  
19 Couldn't he have done something? Why did he not  
20 write a report? Why did -- you know, the Attorney  
21 General did not even answer the letter that was  
22 sent by the union. He hasn't even sent a final  
23 report to the Liquor Commission. He hasn't

1 written one word. Why? Why? Why is that?

2 I told the Grand Jurors not to indict me  
3 but to stand with me so I could keep the good  
4 fight going. I told members of the Grand Jury  
5 that it took me a while to find the high road, but  
6 when I did I took it. I also conveyed to the  
7 Grand Jury that this case had an opportunity to  
8 serve as an object lesson on how change and ethics  
9 are but hollow words unless we are willing to rock  
10 the boat in a responsible manner to enact true  
11 reform. I pledged to them if they permitted me to  
12 do so, I would continue that good fight.

13 Never before in my life have I been  
14 placed in a position requiring me to defend my  
15 reputation and honor. I certainly didn't expect  
16 that when I agreed to leave a prosperous career in  
17 the private sector and lend my expertise to State  
18 Government that I would now be facing the most  
19 profound personal and professional challenge of my  
20 life.

21 My reputation and good name has been  
22 clouded by the Attorney General without cause or  
23 concern for its consequences. Consequences not

1           only to me and my family but, more importantly,  
2           the consequence it would have in further weakening  
3           people's faith in good government, our elected  
4           officials and a need for real reform and stronger  
5           ethics, the very profound consequences "Foster's  
6           Daily Democrat" noted in their editorial of  
7           further discouraging people from the private  
8           sector to serve in State Government for fear that  
9           they would be subjected to such treatment and the  
10          negative consequences they noted associated with  
11          the message it would send to current and future  
12          Commissioners. Watch every decision you make or  
13          better yet avoid any decision that ever has even  
14          the hint of controversy of politics. Is that how  
15          we want our Commissioners to behave?

16                 There is no disrespect or dishonor, and I  
17                 intend none, in disagreeing with the Attorney  
18                 General or the Governor. In fact, I believe I  
19                 have the responsibility not only to be truthful in  
20                 what I say and do as a Commissioner but to  
21                 responsibly stand out and to speak out where I  
22                 believe it is in the public's interest to do so,  
23                 just as all of you do at the Executive Council.

1                   Today represents the very first time I  
2                   have had an opportunity to speak publicly about  
3                   the events that unfolded on December 14th. I am  
4                   here to clear the air and clear my reputation, to  
5                   tell you the story of what transpired not through  
6                   the biased and politically motivated lens of  
7                   others but in my own words as well as the force of  
8                   documented fact. A Grand Jury has exonerated me,  
9                   but it is your opinion of my actions is what  
10                  matters now. And I humbly appear before you to  
11                  ask that you reject the Attorney General's  
12                  Petition, but even after hearing all of the facts  
13                  presented in this hearing, you do choose to remove  
14                  me, I will still leave proud and gratified I had  
15                  the strength to stand up, speak out and fight hard  
16                  in the pursuit of my reputation.

17                  Slightly more than three years ago you  
18                  confirmed my nomination as a member of the State  
19                  Liquor Commission. By virtually all measures,  
20                  thanks to a great group of colleagues, the New  
21                  Hampshire Liquor Commission is better run, more  
22                  efficient, more profitable and more accountable  
23                  than ever before. Although appointed to the

1 position by Governor Lynch and very thankfully  
2 confirmed by each of you, my obligation is only to  
3 the people of the State. It is a sworn oath to  
4 exercise my judgment and responsibility to do my  
5 job to the best of my ability. That oath of  
6 office is no different than each of one -- each  
7 one you have taken to do the best you can in  
8 service to our citizens. I have every confidence  
9 that regardless of the outcome you will have done  
10 the same with respect to this hearing and my  
11 ultimate fate. Thank you.

12 GOVERNOR LYNCH: Thank you, Mr. Bodi.  
13 We'd now like to turn to Attorney Rice. If you  
14 would call your first witness.

15 MS. RICE: Thank you, Governor. We will  
16 call Sergeant Joseph Fussell.

17 GOVERNOR LYNCH: And I'm going to ask you  
18 to swear him in, too, Attorney Rice.

19 MS. RICE: Can you raise your right  
20 hand.

21 (Attorney Rice administers the oath to  
22 the witness.)

23 MS. RICE: Thank you. Can you take a

1 seat, please.

2 THE WITNESS: Yes, ma'am. Good morning.

3 TESTIMONY OF JOSEPH FUSSELL,

4 who was called as a witness and, having been first  
5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. RICE:

8 Q. And if you can state your name, and spell your  
9 last name for the court reporter, I would  
10 appreciate it.

11 A. Yes, ma'am. Joseph Fussell. F-u-s-s-e-l-l.

12 Q. How are you employed, Mr. Fussell?

13 A. As a sergeant for the New Hampshire State Liquor  
14 Commission, Division of Enforcement.

15 Q. How long have you worked for the Liquor  
16 Commission?

17 A. I was hired in May of 2006, and I've been employed  
18 full-time with the agency since that time.

19 Q. Okay. Now, have you also worked in other law  
20 enforcement agencies?

21 A. Yes, ma'am.

22 Q. I just want to make sure that the Governor and the  
23 Council members are hearing you, so if you can

1 sort of answer my question by turning to them, I  
2 would appreciate it.

3 A. Yes, ma'am.

4 Q. Thank you. What is -- so you are currently a  
5 sergeant for the Liquor Commission. What does  
6 your position entail?

7 A. Currently I'm assigned to the supervisor for the  
8 Special Investigations Unit, which is comprised of  
9 a team of investigators that specifically target  
10 some of the more intricate investigations such as  
11 fatalities or possibly an internal investigation  
12 that is handled through my -- the unit that I'm a  
13 part of as well as maybe a background on a future  
14 investigator that comes into the agency.

15 Q. And have you been in that position since you've  
16 been with the Liquor Enforcement?

17 A. No, ma'am. I started with an assigned piece of  
18 the Hillsborough County and basically field work  
19 where I would be the front line of the Liquor  
20 Enforcement Division answering complaints with the  
21 citizens or with some of the bars or proactive  
22 enforcement or whatnot.

23 Q. And might that include investigation of an

1 allegation of overservice?

2 A. Absolutely. Yes, ma'am.

3 Q. Now, I want to direct your attention to your  
4 involvement in the investigation of the Railroad  
5 Tavern which occurred in December of 2009. Do you  
6 recall what you were doing on the night of  
7 December 12th, 2009?

8 A. Yes, ma'am. I was assigned as a security -- as a  
9 security detail at the Keene Liquor Store from one  
10 o'clock till nine o'clock, and I think I left  
11 that -- the Keene Liquor Store at about 9:30.  
12 There's a lot of traffic coming in and out of the  
13 liquor store, so they put us down there to help  
14 out, make sure it's a safe environment.

15 Q. And at some point did you make your way over to  
16 the Railroad Tavern?

17 A. I did. At about 11:30 that night I parked my  
18 cruiser on Main Street in Keene, about 100  
19 yards -- 75 to 100 yards away from the front  
20 entrance of the Railroad Tavern.

21 Q. And what was your purpose in doing that?

22 A. Just to conduct surveillance. We had received a  
23 complaint from a -- the condo association in the

1 area that there were intoxicated people coming out  
2 of the establishment, disruptive people, waking  
3 the condo association -- the residents of the  
4 condo association up, loud noises, car horns  
5 beeping, people yelling and screaming outside. So  
6 I parked far enough away that I wasn't too obvious  
7 to the establishment and that I could document  
8 what sounds that I was hearing and what direction  
9 those sounds were coming from. There was an  
10 allegation that possibly those noises were coming  
11 from other establishments that may have shared the  
12 parking garage in that area with -- along with the  
13 Railroad Tavern, so I was there to confirm or  
14 dispel those allegations on the Railroad Tavern.

15 Q. So you were specifically there in response to a  
16 complaint about the Railroad Tavern?

17 A. Yes, ma'am.

18 Q. Now, can you -- did you observe anything of  
19 significance during that surveillance that  
20 ultimately caused you to get a search warrant for  
21 this Railroad Tavern?

22 A. Yes, ma'am. Um -- I arrived at 11:30. I would --  
23 minutes later, there was an individual that -- I

1 believe it was 13 minutes later after parking  
2 there, I observed an individual being carried from  
3 the front of the establishment -- um -- towards my  
4 direction. Um -- there's a small park in the area  
5 right inside the front of the establishment, and  
6 she was carried away from the front of the  
7 establishment and placed on a seat in front right  
8 in that park area where she began to -- you know,  
9 at that point I picked up my binoculars to try to  
10 get a closer image or see more detail of what was  
11 actually happening. It's a little easier to tell  
12 if somebody is impaired by being -- putting  
13 yourself closer to that person.

14 So at that time I could see that woman that  
15 was rocking back and forth. She was trying to  
16 smoke a cigarette at that time, and her friend  
17 left to go back in the bar, the Railroad Tavern,  
18 to try to -- look like regroup the rest of the  
19 party that was there so they could bring this  
20 person somewhere else.

21 Q. And did they ultimately do that?

22 A. They did. They did. They came out at about -- at  
23 approximately 11:55 that -- you know, 10 minutes

1 later on the 12th -- um -- the group came  
2 outside. A car pulled around the front, and  
3 somebody helped that woman up off the bench and up  
4 to the car and helped her into the car. At that  
5 time I pulled out of my parking spot. When the  
6 car started to pull away, I placed myself behind  
7 that car, and probably -- I didn't want to incite  
8 any alarm on the establishment with the blue  
9 lights on my cruiser, so I -- about a quarter of a  
10 mile or so I stopped the car to do a well-being  
11 check on the female that was carried to make sure  
12 she didn't need any medical assistance at that  
13 point and to make sure she wasn't driving the  
14 vehicle.

15 Q. Did you actually do that, Scott?

16 A. I did.

17 Q. And were you able to talk to the woman?

18 A. I was. I was able to talk to all the occupants in  
19 that motor vehicle, and the woman I identified was  
20 Michelle Clark. She was in the back seat of the  
21 vehicle. She was not driving. The driver was  
22 determined to be sober and not impaired -- too  
23 impaired to drive that motor vehicle. So I

1 conducted an investigation, a typical  
2 investigation we would conduct at the Enforcement  
3 Division. Was somebody overserved at an  
4 establishment?

5 Some of the facts that we try to determine and  
6 questions that I asked was where were you coming  
7 from. Even though I saw where she was coming  
8 from, I was asking the occupants of the car where  
9 were you coming from, and they confirmed the  
10 Railroad Tavern. I said, "Were you consuming  
11 alcohol at the Railroad Tavern?" In fact, they  
12 said they were. And then I asked, "Were you asked  
13 to leave the Railroad Tavern?"

14 Basically the reason I asked that question is  
15 to see if the Railroad Tavern employees are able  
16 to identify somebody that's consumed too much  
17 alcohol and if they identified that and took  
18 proactive steps to provide that safer environment  
19 for that person or eliminate the alcohol away from  
20 them, either -- if that's medical assistance or if  
21 that's finding a sober, responsible adult to take  
22 custody of that person.

23 And the response that I received was the

1 Railroad Tavern did not ask them to leave. Um --  
2 in fact, they left because her friends were so  
3 scared for her, the intoxicated woman's welfare,  
4 that they left before she was able to go home with  
5 another individual, a male individual, at the bar.

6 Q. Let me just ask you. What was your assessment of  
7 that woman's level of intoxication when you saw  
8 her in the car?

9 A. Well, I'm certified through the Chiefs of  
10 Police -- National Chiefs of Police Association as  
11 a drug recognition expert instructor, and I've  
12 trained police officers. I teach at the Police  
13 Academy impairment for the recruits. I've taught  
14 at the Maine Police Academy. This was definitely  
15 one of the most impaired woman I've -- I've seen  
16 in my career. Her eyes, when I would -- tried to  
17 speak with her, often very difficult for her to  
18 answer my questions or be understandable, but her  
19 eyes were wandering up, down, left and right, so  
20 she had a very difficult time maintaining muscle  
21 control with her eyes while she was looking at me  
22 while I was speaking with her, so she was very  
23 impaired.

1 Q. So based on those observations and what you saw,  
2 did you subsequently take another step in the  
3 investigation the following day?

4 A. I did.

5 Q. Now, before you go to the following day, did you  
6 have any conversation with any of the management  
7 at the Railroad Tavern that night after you  
8 observed this Michelle Clark?

9 A. Well, I documented that contact with the person.  
10 I made sure that she was in sober and responsible  
11 hands at the time; that she did not in fact need a  
12 ambulance to respond down -- um -- and I released  
13 them to her friends and ultimately her family  
14 members. I went back to my original location,  
15 conducted more surveillance, and I went back to  
16 the original reason I was at the establishment  
17 conducting surveillance, and I was documenting  
18 minute by minute what sounds I heard, where were  
19 they at.

20 Q. Let me just direct you.

21 A. Sure.

22 Q. Did you have some contact with the manager -- one  
23 of the managers at that point -- at some point

1 that evening?

2 A. About 40 minutes later I did.

3 Q. Okay. And what was that interaction?

4 A. Mike Lesage (phonetic) was the supervisor at the  
5 establishment, came outside and -- um -- spoke  
6 with me for about 10 or 15 minutes, and at that  
7 point I identified that this concern had taken  
8 place at the establishment, that I was looking to  
9 take administrative steps, possibly administrative  
10 action on the establishment for overserving or  
11 allowing somebody inside the establishment that  
12 was overserved.

13 Q. Okay. Now, I want to turn your attention to the  
14 next day, which would be December 13th. Did you  
15 take some -- excuse me -- December -- I'm getting  
16 mixed up on the dates here. The 13th. Did you  
17 take some administrative action or have some  
18 discussion?

19 A. On December 13th, I spoke with Sergeant Matt  
20 Elliott, who was the area supervisor. I informed  
21 him what I had seen and what interaction I had  
22 with the -- Michelle Clark. And at that point I  
23 decided that I'm going to be pursuing the

1 application for a search warrant for the video  
2 surveillance inside the establishment.

3 Q. And why would you get the video surveillance?

4 A. Because that's evidence in the case to bring  
5 before the Commission.

6 Q. So you were looking for evidence that she had  
7 actually been overserved in that bar?

8 A. I was looking at -- I was looking for specifically  
9 was she served in the bar. Did this investigation  
10 need to split and administratively, possibly  
11 criminally on the establishment or if there was an  
12 individual that was providing alcohol to an  
13 intoxicated person, was I able to identify that  
14 person, and depending on -- and that's the reason  
15 I tried to obtain or I did obtain that video was  
16 so that I could identify where she was getting the  
17 alcohol, what she was drinking. If she was  
18 drinking water, then the establishment -- you  
19 know, I dispel the administrative action or that  
20 she had consumed alcohol, so it was part of the --  
21 part of the process, yes, ma'am.

22 Q. So you -- you got a search warrant to get this  
23 video footage. Is that a typical step in a liquor

1 investigation?

2 A. Yes, ma'am. Either the video surveillance  
3 equipment and in combination of receipts or -- um  
4 -- tabs that the bar may have completed, credit  
5 card receipts -- um -- to help determine how much  
6 alcohol an individual may or may not have  
7 consumed.

8 Q. So did you actually obtain a search warrant?

9 A. Yes, ma'am.

10 Q. And I'm going to be showing you what's been marked  
11 for -- as an exhibit, Number 1, and, Sergeant  
12 Fussell, I want to ask you if you recognize that.

13 A. Yes, ma'am, I do recognize this.

14 Q. What are you looking at?

15 A. I'm looking at my signature, specifically on page  
16 four, signature with the Honorable Justice Boyle  
17 on page seven and, again, my signature on the  
18 affidavit on page 13.

19 Q. So that's the search warrant that you obtained for  
20 the Railroad Tavern, the first search warrant when  
21 you were looking for the video footage; is that  
22 correct?

23 A. That is correct.

1 Q. Okay. And when did you actually execute that  
2 warrant?

3 A. It was December 14th. I believe we arrived at the  
4 establishment at seven o'clock p.m. It was  
5 myself, Sergeant Elliott and the Keene Police --  
6 certain Keene Police officers.

7 Q. Why was the Keene Police there?

8 A. It's routine for us to have the local jurisdiction  
9 arrive and take part in the search just in case --  
10 you know, so they have the knowledge just in case  
11 a complaint arises out of that in the sense of a  
12 patron of the ownership calling that local police  
13 department. So they have a representative there  
14 to help answer any questions and show there's a  
15 combined effort between both agencies.

16 Q. So what did you do when you actually get to the  
17 Railroad Tavern?

18 A. I entered the tavern. I met the supervisor. I  
19 believe his name was Sean at the time. Inside the  
20 establishment, I gave him a copy of the search  
21 warrant. I explained to him that we were from the  
22 Liquor Enforcement Division, and we were executing  
23 a search warrant at the establishment at that

1 time. I explained the scope of the search warrant  
2 and what we were looking to seize, and he  
3 expressed that he didn't have some knowledge on  
4 how to operate the DVR for the video surveillance  
5 footage and had to notify the owner, Randy  
6 Filiault, at that time.

7 Q. Now, you weren't alone when you went. You said  
8 you were with Sergeant Elliott; is that correct?

9 A. That's correct.

10 Q. So were there any patrons there when you got  
11 there?

12 A. On this date, I believe there was. There was a  
13 patron inside the establishment at that time.  
14 They were in a booth in the restaurant portion of  
15 the establishment.

16 Q. So it was fairly empty?

17 A. It was fairly empty, yes, ma'am.

18 Q. So you said that the manager needed to call the  
19 owner of the bar to help you get the footage; is  
20 that correct?

21 A. Yes, ma'am, the owner needed to be called to  
22 obtain -- or there was a code -- a password to put  
23 in the DVR to be able to burn all the footage onto

1 a disk, and the owner needed to be called because  
2 apparently he was the only one that had that  
3 password to access the system to provide that  
4 information to us, and I urged it to have the  
5 ownership involved in the first -- in the first  
6 case.

7 Q. And the owner's name is?

8 A. Randy Filiault.

9 Q. So did Mr. Filiault come to the bar?

10 A. Yes, ma'am.

11 Q. And did he help you in getting the video footage  
12 that you were looking for?

13 A. Um -- he -- from my understanding, he did the best  
14 that he could. I -- I wasn't familiar with the  
15 system, and I know him as a business person. And  
16 I know that he was frustrated, but I was really  
17 imploring him to help me obtain that video  
18 surveillance footage. And I did explain that if  
19 the footage -- we're looking to obtain the footage  
20 from the specific three hours, and if that wasn't  
21 able to be obtained, then we were going to end up  
22 having to seize the system and submit that over to  
23 the forensics lab to be evaluated over at the

1 Department of Safety.

2 Q. So you had two options. Try and download the  
3 video or take the equipment.

4 A. Yes, ma'am.

5 Q. And so Randy Filiault assisted you in helping by  
6 putting in his password?

7 A. He put in the password, and I stood right beside  
8 him as he was burning -- started to burn the CDs  
9 off on the -- or the footage onto the CDs to make  
10 sure he wasn't deleting footage or damaging  
11 evidence or whatnot. And I watched as he did  
12 this. At one point when these CDs -- we had to  
13 burn one CD per camera, and there was nine  
14 cameras, eight of them functional.

15 So when we were burning these CDs, and I was  
16 handing them to Sergeant Elliott so he could -- he  
17 could view that on his computer to make sure that  
18 we could see, and we could document on our own  
19 what footage was being there, and they weren't  
20 blank CDs basically.

21 Q. And so Sergeant Elliott looked as you were handing  
22 him the CDs, and he just checked them quickly?

23 A. He was checking them quickly, yes --

1 Q. All right.

2 A. -- but it was confirmed that we could view them.

3 Q. During the -- while you were at the bar did anyone  
4 else arrive at the bar?

5 A. About 10 or 15 minutes before we left -- um --  
6 somebody I recognize to be Representative Dan  
7 Eaton entered the establishment through the front  
8 door. He was dressed similar to the way I'm  
9 dressed today, in a suit with a shiny pin on his  
10 lapel. I recognized him through having seen him  
11 in the State House before.

12 Q. How were you and Sergeant Elliott dressed that  
13 night?

14 A. I probably was wearing the same suit coat, and --  
15 um -- I was wearing a shirt and tie as well.

16 Q. Okay. So you said that you knew Representative  
17 Eaton. How did you know him?

18 A. Um -- having seen him in the past. Specifically,  
19 there was an opportunity that I may have had to  
20 speak at the study committee to move us over to  
21 the Department of Safety, and I -- I arrived to  
22 support our agency in that -- in that session.  
23 Did not end up speaking at it, however, I did

1 recognize him to be sitting on the study  
2 committee.

3 Q. And did you have any other information about  
4 Representative Eaton at that point in terms of you  
5 said that he was -- there was a committee to  
6 transfer Liquor Enforcement to Safety. Did you  
7 have any other information about Representative  
8 Eaton with respect to the Liquor Commission?

9 A. Well, I was aware that Representative Eaton had  
10 made open statements in the past that if my Chief  
11 is fired, then all of these problems are going to  
12 end. Um -- I have also heard allegations of our  
13 investigators going into specifically the Railroad  
14 Tavern and scaring the patrons away or -- um --  
15 acting disorderly inside the establishment, which  
16 in fact those were never substantiated. My Chief  
17 at the time who had told me about this tried to  
18 obtain the video footage of that, and it was  
19 nothing. And I believe Senators and other  
20 Representatives tried to gain access to that video  
21 surveillance footage for that incident, and it  
22 wasn't able to ever be produced.

23 Q. Okay.

1 A. So I knew that there was a -- there was a conflict  
2 between my -- my Chief and direct -- excuse me --  
3 Representative Dan Eaton. So I knew that at the  
4 time when he came in. I knew that at the time of  
5 the study committee.

6 Q. And when Representative Eaton came in, what did  
7 you do?

8 A. Um -- I knew -- I heard Holly Filiault, Randy's  
9 wife, announce, "Dan's here. Dan's here." She  
10 yelled it out loud enough for me to hear it. Then  
11 she walked Dan up towards the front of the bar,  
12 and I was on the employee side of the bar.  
13 Representative Eaton walked up towards me. I took  
14 a step forward, introduced myself, politely shook  
15 his hand, introduced myself, Sergeant Fussell,  
16 State Liquor Enforcement. He shook my hand, and  
17 he repeat -- he asked me to repeat who I was, what  
18 my name was, and then he looked like he was  
19 writing something down, which I assumed to be my  
20 name.

21 Q. And other than that short interaction, did you  
22 have any other interaction with Representative  
23 Eaton during the time that you were at the bar?

1 A. Those were the only words that we exchanged.

2 However, I felt he was investigating me and my  
3 actions at that time.

4 Q. What did he do to make you feel like you were  
5 being investigated?

6 A. Um -- it's not typical or it's not common for  
7 somebody to walk into an establishment, walk right  
8 up to the law enforcement officer conducting an  
9 investigation, shake his hand and not -- not in a  
10 friendly -- um -- I guess cordial manner of -- um  
11 -- exchanging names or how are you today or a  
12 smile. It was more -- it was very to the business  
13 to the point where he had ended up writing down  
14 something, which, in my opinion, would be taking  
15 notes or noting my name down.

16 Q. Okay.

17 A. Those were the only words that we did exchange at  
18 that time.

19 Q. Now, you said that you were -- you were behind the  
20 bar when you were downloading the information; is  
21 that right?

22 A. I was standing behind the bar when Randy Filiault,  
23 the bar owner, was downloading the information.

1 Q. And at -- at the time that Representative Eaton  
2 came in, had you already gotten all of the  
3 downloads done?

4 A. If we hadn't, it was very close, within a minute  
5 or two from having that complete. I don't know  
6 exactly, but if we weren't finished, it was very  
7 close, within a minute or two.

8 Q. And once you finished, what did you do? What did  
9 you and Sergeant Elliott do?

10 A. I proceeded to write the -- the receipt -- or the  
11 receipt for the property that we were seizing. I  
12 don't think there's a copy of it in the warrant,  
13 but we leave a receipt of the items that we seize  
14 at the bar so that they know what exact items we  
15 seized out of the bar. I proceeded to write that  
16 receipt out, at which point Holly Filiault, I  
17 believe, led Dan Eaton -- Representative Eaton  
18 behind the bar area where everybody started to  
19 focus back on the multiplexer system and look at  
20 video surveillance footage of an individual they  
21 thought I was investigating them on. So they --

22 Q. So let me just make sure I understand. So  
23 you're -- you're through downloading. You're busy

1 writing out a receipt, and at that point

2 Representative Eaton is asked to go behind the  
3 bar.

4 A. At some point from when the CDs were finished and  
5 I start writing the receipt, at that point -- at  
6 some point in between that -- I can't recall the  
7 exact thing I was doing at the time, but  
8 Representative Eaton came behind the bar.

9 Q. And did he physically interfere with anything that  
10 you were doing or that Sergeant Elliott was doing?

11 A. I didn't see any physical actions of interference,  
12 except for -- the only interference would -- I  
13 guess would be an implied interference of the  
14 whole group was -- was separated from Sergeant  
15 Elliott, and I -- when we attempted to speak with  
16 Mr. Filiault again, explain the receipt of the  
17 property -- um -- they did not want to have any  
18 conversation with us at that point. As a matter  
19 of fact, they wouldn't take the receipt from me.  
20 I had to leave it on the side of the bar, but that  
21 would be the only interference that we had at that  
22 time.

23 Q. Now, if you were executing a search warrant in a

1 liquor establishment somewhere, and a person came  
2 in and did exactly what Representative Eaton did,  
3 but you didn't have any background information on  
4 him; he was just some stranger that walked in, and  
5 he walked up and shook your hand and that sort of  
6 thing, do you think that you would have had the  
7 same feeling of intimidation?

8 A. I think my -- my word that I used in my letter to  
9 the Attorney General's Office was the word  
10 threatened. I don't believe I used the word  
11 intimidation. I could be corrected if I was  
12 wrong. But I was threatened because of actions  
13 he's taken in the past against my agency.

14 I'm a proud member of my agency. I'm a proud  
15 State employee, and I did not want my actions to  
16 interfere with the cost of more State money or --  
17 um -- the welfare of other division members that  
18 work at the Liquor Enforcement Division. If it  
19 was somebody else that I did not know their  
20 history or background, number one, I don't feel  
21 that their presence would threaten me or my -- my  
22 agency as a whole, and, number two, they would  
23 not -- wouldn't be allowed back behind the bar.

1 Q. Okay. Now, you said that you didn't use the  
2 word -- I want to clarify two things. You said  
3 that you sent a letter to the Attorney General's  
4 Office. Are you referring to the letter that you  
5 sent -- that you had sent to the union, and I  
6 believe you had sent it to the -- um -- the  
7 Speaker of the House; is that correct?

8 A. Yes, ma'am.

9 Q. And would you disagree with me that you used the  
10 word intimidating in that?

11 A. If I could take a look at it, it would refresh my  
12 memory.

13 (The witness reviews a document.)

14 A. Oh, yes, ma'am. Intimidating and aggressive.

15 Q. How long were you at the tavern total that night?

16 MR. MCLAUGHLIN: Excuse me, counsel.

17 Could you identify the date of the letter you  
18 showed?

19 (Attorney Rice shows a document to  
20 Attorney McLaughlin.)

21 MR. MCLAUGHLIN: Thank you.

22 THE WITNESS: On the 14th, I arrived at  
23 the establishment at approximately seven

1 o'clock p.m. and exited at approximately  
2 8:30 p.m., so about an hour and a half.

3 BY MS. RICE:

4 Q. Okay. And once you left the tavern did you talk  
5 to any of your supervisors about what you had  
6 done?

7 A. Yes, ma'am.

8 Q. Who did you talk to?

9 A. I called my immediate supervisor, Major Todd  
10 Feyrer, and advised him that we had executed the  
11 search warrant and that Representative Eaton did  
12 arrive during that execution of the warrant.

13 Q. Did you tell Todd -- Major Feyrer what your  
14 concerns were about Representative Eaton being  
15 there?

16 A. No, ma'am.

17 Q. Just the fact that he had come?

18 A. Yes, ma'am.

19 Q. Okay. So what did you do after that?

20 A. I went home. It was late in the night, and I went  
21 home, and Sergeant Elliott went home as well. And  
22 when I arrived home I began viewing the  
23 surveillance footage, as we all do. We work from

1 home often, and I wanted to see if all that  
2 footage we were looking for was in fact there, at  
3 which point I determined that it was only nine  
4 minutes plus a few seconds of video footage on  
5 each CD that we recorded. We didn't have all the  
6 evidence that we were looking for.

7 Q. Was that concerning to you?

8 A. It was very frustrating, yes, ma'am.

9 Q. So what did you do to address that?

10 A. The next morning I met with Deputy Chief Scott  
11 Dunn and discussed that the concerns of the video  
12 surveillance was not all recorded onto the disks  
13 -- um -- and discussed some of our various options  
14 on what we could do to try to obtain that  
15 footage. And we had fears that the footage may  
16 have been destroyed already at the establishment,  
17 so -- um -- but we figured we'd take a chance at  
18 another search warrant, go down and make another  
19 attempt at that to see if we can obtain that three  
20 hours of video surveillance with that second  
21 search warrant.

22 Q. So did you actually get a second search warrant?

23 A. Yes, ma'am.

1 Q. And I'm showing you what's been marked as  
2 Exhibit 2 and ask if you can identify that for me.

3 A. Yes, ma'am, I can identify this.

4 Q. Do you recognize that? I'm sorry. I interrupted  
5 you.

6 A. Yes, ma'am, I can identify this. My signature is  
7 on page four and 14 of the affidavit.

8 Q. And what is that?

9 A. The search warrant for the Railroad Tavern in  
10 Keene dated December 15th.

11 Q. This may be a document that the Councilors and the  
12 Governor are unfamiliar with. Let me just go  
13 through it with you. There is -- the first  
14 several pages is the application for the search  
15 warrant, correct?

16 A. Yes, ma'am.

17 Q. And then there's a document called affidavit?

18 A. Yes, ma'am.

19 Q. And is that something that you normally do when  
20 you do a search warrant?

21 A. Yes, ma'am.

22 Q. Does that set forth the facts for the judge to  
23 make a determination about whether there's

1           probable cause --

2           A.   Yes, ma'am.

3           Q.   -- to search?   Okay.   And then after the  
4           affidavit, there's a document called search  
5           warrant.   What's that?

6           A.   That's the actual warrant that the judge signs  
7           allowing any police officer in the state to  
8           execute this warrant.

9           Q.   And on page two of that warrant, does it outline  
10          the types of evidence that you're permitted to  
11          seize during your execution of the warrant?

12          A.   Yes, ma'am.

13          Q.   And then two pages later there is something called  
14          the return.   What's the return?

15          A.   The return is the property -- the following  
16          property is an inventory, the property taken  
17          pursuant to the warrant, and it's the items that  
18          we take pursuant to that warrant at the time.

19          Q.   So this would list the items that you took when  
20          you executed the warrant on December 15th?

21          A.   Yes, ma'am.

22          Q.   And what -- what happens with that return form?

23          A.   We have seven days by State law to return that --

1 the return that you're looking at to the -- back  
2 to the judge or the courthouse in that  
3 jurisdiction, which in this case would be the  
4 Keene District Court.

5 Q. So did you actually execute this warrant?

6 A. Yes, ma'am.

7 Q. And did you do it on the 15th --

8 A. Yes, ma'am.

9 Q. -- December 15th? What time did you get to the  
10 tavern?

11 A. At approximately 3:06 p.m. we arrived at the  
12 establishment.

13 Q. And who was with you at the time?

14 A. Again, Sergeant Elliott of the Division of  
15 Enforcement, and a Keene Police officer assisted  
16 as well in the execution of this warrant.

17 Q. Okay. Are you sure about the timing on that?

18 A. It was -- um --

19 MR. MCLAUGHLIN: I don't object to  
20 leading, counsel.

21 MS. RICE: Thank you.

22 BY MS. RICE:

23 Q. If your report says it was 5:06, would you

1 disagree with your report?

2 A. I believe that was a mistake on my part on  
3 military time. I think it was closer to 3:06, and  
4 I cleared, as you'll see lower in the report, at  
5 about 3:40 p.m.

6 Q. Okay. Thank you. So it was actually 3:06. I  
7 apologize for that --

8 A. Yes, ma'am.

9 Q. -- sergeant. So Sergeant Elliott was with you.  
10 Keene Police officer?

11 A. A Keene Police officer was there as well.

12 Q. And, again, was that at your request?

13 A. Yes, ma'am.

14 Q. What happened when you got to the tavern?

15 A. We arrived at the tavern. The bar owner was there  
16 at that time, Randy Filiault. I approached  
17 Mr. Filiault and handed him his copy of the second  
18 search warrant. I explained to him the problems  
19 that we have had from the recordings that we tried  
20 to obtain the day before and that we were in  
21 fact -- we did not have the recordings that we  
22 attempted to get. So I explained to him that we  
23 would try to make more copies. If that did not

1 work, we were gonna seize the system as a last  
2 resort, and at which time the -- we'd have more  
3 resources available to make that -- those copies.

4 Q. What was Mr. Filiault's reaction when you told him  
5 what you were planning to do?

6 A. He was more frustrated than the day before, more  
7 agitated that we were there executing another  
8 search warrant.

9 Q. And did you actually try again to download the  
10 video footage?

11 A. Yes, ma'am. Two or three times we tried on two or  
12 three disks, and it was the same result of nine  
13 minutes and a few seconds.

14 Q. So what -- at that point you realized you couldn't  
15 get the video. What did you do?

16 A. Um -- at that point what I did is I employed the  
17 Keene Police officer to keep Mr. Filiault away  
18 from the inside of the bar area while we proceeded  
19 to seize the multiplexer and the DVR and some  
20 power cords as well.

21 Q. Okay. I am showing you a package of pictures that  
22 are marked State's Exhibit 3. 3-A, B, C, D, E and  
23 F, I believe. I'll ask you to look at those. Do

1           you recognize those, Sergeant Fussell?

2           A. Yes, ma'am.

3           Q. What are they?

4           A. Pictures of -- thank you. Pictures of the  
5           multiplexer. The multiplexer is a fancy word for  
6           a video monitor. And the DVR. Thank you.

7           Q. So the first picture in that package there, is  
8           that the multiplexer and the DVR when they're in  
9           place at the bar?

10          A. Yes, ma'am.

11          Q. Okay. And what's the next picture?

12          A. Some wiring -- um -- that connected to the power  
13          or connected the -- um -- the cameras to that  
14          DVR. It was -- it went into the ceiling and out  
15          that hole as you can see. And then on the next  
16          picture you can see where those wires actually  
17          hook into the back of the DVR.

18          Q. So that's the DVR still in place; is that correct?

19          A. Yes, ma'am.

20          Q. Next picture?

21          A. You can see the camera ends from the tables. Um  
22          -- we photographed that as well.

23          Q. And the next picture?

1 A. The same thing with the wiring for the cameras.

2 Q. Okay. And the last picture?

3 A. That is the DVR after it was removed.

4 Q. Thank you. Why did you take all these pictures of  
5 wires and going into the ceiling?

6 A. Um -- I try to take pictures as much as I can when  
7 I'm seizing evidence. I want to make sure that  
8 everything is documented in the sense of how we  
9 removed it off the wall. Video or electronic  
10 equipment is a little different when it comes to  
11 being seized as evidence. You know, we try to  
12 photograph that in case the forensics lab needed  
13 to see how exactly it was plugged in and whatnot.

14 Q. Okay. When you took this equipment out, to your  
15 knowledge, did you do any damage to the walls or  
16 structure that was -- on which these were mounted?

17 A. No, I didn't do any damage to that, the structure  
18 or the tiles or whatnot. As a matter of fact,  
19 there was a piece of the power cord that I chose  
20 not to seize because it would -- it would really  
21 -- um -- take a lot of effort to pull it through  
22 the tile and possibly damage it at that time, so  
23 we decided not to seize that part; that we

1 probably had that part back at our office, which  
2 in fact we did. It was just a basic cable.

3 Q. So how long were you at the Railroad Tavern  
4 this -- when you executed this second warrant?

5 A. Approximately 35 minutes.

6 Q. Okay. And did Representative Eaton show up at all  
7 during that time?

8 A. No.

9 Q. What did you do after you left the tavern?

10 A. Went straight to headquarters up here in Concord  
11 right to my office where we started trying to view  
12 the video surveillance footage, and I called my  
13 supervisor on the way up to Concord at that time.

14 Q. So when you went to headquarters you started --  
15 you tried to view it and download it. Is that  
16 what you were going to do?

17 A. Yes, ma'am.

18 Q. Did you have any difficulty doing that?

19 A. I did. I did. I plugged the system in, obtained  
20 the power cords that we needed to provide the  
21 power to the monitor and the DVR. There was a  
22 password that was required to access the system or  
23 the footage on the system. So at that time I -- I

1 called Randy Filiault, the owner of the  
2 establishment, on his cell phone, and I had asked  
3 him for that password because remembering what the  
4 previous day that the employee said that the owner  
5 is the only one with that password.

6 So when I called the owner for that password  
7 -- um -- he was agitated, and he immediately asked  
8 me, "You're returning this back to me tomorrow,  
9 right?" And I said, "No. Typically it's seized,  
10 and either -- um -- at the end of a hearing or  
11 otherwise determined by the administration will be  
12 returned." At that point he said, "You probably  
13 ruined the system or broke the system. I don't  
14 have the password. I'm not helping you out with  
15 that password." So we ended our phone  
16 conversation, and I was able to contact ADT and  
17 access the system that way through the assistance  
18 of ADT.

19 Q. ADT is the company that -- that installs these  
20 things or was it ADT equipment?

21 A. Yes, ma'am, you can see their logo right on some  
22 of these pictures. On both of them actually. On  
23 3-A and 3-F you can see that.

1 Q. And once you -- once you got the password, were  
2 you able to download the video footage that you  
3 needed?

4 A. Yes, ma'am.

5 Q. And how long did it take you?

6 A. Out of the eight cameras, I did five cameras that  
7 day from 4:30 to two o'clock in the morning for  
8 just the five cameras.

9 Q. So at two o'clock that morning you had not gotten  
10 done all that you needed to do?

11 A. Correct.

12 Q. All right. And that following day -- or I guess  
13 it's the same day since you worked until two  
14 o'clock in the morning, but that -- later on that  
15 day what did you do with respect to this  
16 investigation?

17 A. The next day? I went down and started to  
18 interview the occupants of that motor vehicle that  
19 I had stopped, the five occupants, and they're  
20 sober and -- hopefully sober and responsible at  
21 this time, and I wanted to see if they could  
22 recall some of the incidents that happened or some  
23 of the actions that took place on the night of

1 September 12 -- or excuse me -- December 12th.

2 Q. And at some point during that -- while you were in  
3 Keene doing this interview, did you get a call  
4 from your supervisor, Major Feyrer, about the  
5 video equipment?

6 A. Yes, ma'am.

7 Q. What was that call?

8 A. About four o'clock or 4:30 in the afternoon Major  
9 Feyrer called me and asked me how much longer I  
10 needed that equipment for --

11 Q. What did you --

12 A. -- to get the surveillance footage off.

13 Q. And what did you tell him?

14 A. Probably until the next day, which would have been  
15 the 16th -- no. The 17th. Excuse me. And at  
16 that point he said that it needed to be done that  
17 day, and there was some dialogue back and forth.  
18 At this point I was in Keene. It was late in the  
19 afternoon. Even if I responded up to Concord,  
20 proceeded with copying the surveillance footage  
21 off the system, that it would take so many -- it  
22 would take so many hours: I guess three hours.

23 We were estimating an hour per camera. Three

1 hours longer, which at the -- at that point bring  
2 that back down to the bar. The bar would be  
3 closed. The owner would be inaccessible, so at  
4 that point Major Feyrer assigned Sergeant Elliott  
5 to bring the equipment down to Troop C barracks,  
6 the State Police barracks down in Keene where I  
7 was conducting my interviews, and we would work  
8 together to eliminate some of that time and to  
9 copy that footage off of the system onto disks.

10 Q. So this was a call at 4:30 in the afternoon that  
11 told you you've got to get the equipment back  
12 today, correct?

13 A. Later in the afternoon, four or 4:30. Between  
14 that time frame, yes, ma'am.

15 Q. And in your normal course of events you would not  
16 have been recording that. You would not have been  
17 downloading that day because you were doing other  
18 investigation; is that right?

19 A. I'm not sure if I had that on my plans -- my list  
20 of things to do that day. It certainly wasn't an  
21 exigent circumstance at that time that it needed  
22 to be done right then and there.

23 Q. Was it unusual for you to be told that you had to

1 return equipment that you seized pursuant to the  
2 warrant in that kind of speed?

3 A. Me personally, I'm not the evidence custodian or  
4 evidence technician. I don't return evidence. Um  
5 -- I -- it was the first time I was ordered to  
6 return evidence personally.

7 Q. And are you aware of other situations where you --  
8 evidence was required to be returned on something  
9 had been seized by a search warrant? Are you  
10 aware of other orders like that?

11 A. Yes.

12 Q. Okay. So when -- what is the normal process for  
13 removing -- or excuse me -- returning evidence  
14 that is seized pursuant to a search warrant?

15 A. We file a Motion with the Court, and the Court  
16 either grants or denies that Motion to return  
17 property.

18 Q. And when a Motion is filed with the Court, does  
19 that mean just actually going down and filing  
20 something with the Court itself?

21 A. It would be a Motion that we would typically hand  
22 to the Clerk of Courts, and we would be notified  
23 at a later date from that specific Court whether

1 or not that Motion was granted or denied.

2 Q. So this isn't something that gets decided  
3 immediately?

4 A. Typically, no.

5 Q. And you didn't file a Motion with the Court in  
6 this case, did you?

7 A. I did not.

8 Q. Do you know if anyone did?

9 A. Um -- to the best of my knowledge, there hasn't  
10 been a Motion filed.

11 Q. Now, you were -- as I understand it, you were  
12 investigating the violation that was overservice  
13 or technically called prohibited sales; is that  
14 right?

15 A. Right.

16 Q. And do you know if a formal charge was ever lodged  
17 against the tavern or against anyone there?

18 A. On the 17th, administrative paper work was  
19 delivered to the owner and the owner's wife of the  
20 establishment, which both have an equitable  
21 interest in the LLC. That administrative notice  
22 was delivered by Sergeant Elliott and Investigator  
23 St. Gelais (phonetic) at the Keene Police

1 Department.

2 Q. Okay. I'm showing you what has been marked as  
3 Exhibit 4 and ask if you recognize that.

4 A. I do recognize this.

5 Q. What is that?

6 A. This is Administrative Notice of Agency Action  
7 Against a Licensee. It has the information on how  
8 to answer to this complaint. On the top you'll  
9 see the box that was checked and the number that  
10 was circled and instructions there on how the  
11 proceeding steps would take place typically. The  
12 information of the establishment, the date of the  
13 offense, the name of the offense, and the RSA  
14 statute listed as 179:5, and the signature of  
15 the -- or the name of the person that served that  
16 administrative notice as well as the signature of  
17 the person that received it and that date.

18 Q. Let me look at that for just a second.

19 A. Yes, ma'am.

20 MR. MCLAUGHLIN: No objection to leading,  
21 counsel.

22 MS. RICE: Thank you.

23

1 BY MS. RICE:

2 Q. So this requires -- when someone is served with  
3 this it requires them to call the Liquor  
4 Commission within five days of receipt of this; is  
5 that correct?

6 A. Five business days, yes, ma'am.

7 Q. To schedule a hearing?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. And I think specifically the administrative  
11 assistant's office, which is the Chief's  
12 secretary.

13 Q. You keep talking about the Chief. Are we talking  
14 about Chief Eddie Edwards?

15 A. Yes, ma'am.

16 Q. Thank you. Do you know what happened to the  
17 charge of prohibited sales?

18 A. I am not 100 percent sure at this time where the  
19 administrative charge lies. I know that the  
20 establishment -- when an establishment goes out of  
21 business or sells the business, that we cannot  
22 proceed with administrative violations against  
23 that establishment or that person, however, we can

1 criminally, and I believe that's what's taking  
2 place right now.

3 Q. Are you aware that there was any kind of an  
4 investigation subsequent to the one that you did  
5 on December 14th at the Railroad Tavern?

6 A. Yes, ma'am.

7 Q. And what was that investigation?

8 A. That investigation entailed a patron that went  
9 inside the establishment, was overserved or  
10 consumed so much alcohol that they in fact, I  
11 guess, clinically died that night or that day and  
12 needed to be revived by medical officials, and  
13 this person's in his thirties. A young person.  
14 His blood level was .52.

15 Q. All right. Are you aware of -- in time frame how  
16 close in time it was to the December 12th incident  
17 that you watched?

18 A. Within a month.

19 Q. Just one second, please.

20 GOVERNOR LYNCH: Attorney Rice, excuse  
21 me. It's been requested that we take a break.  
22 Are you okay with doing that for five minutes?

23 MS. RICE: That's fine.

1 GOVERNOR LYNCH: And then we'll  
2 reconvene, and you can continue till lunchtime.  
3 So let's take a break for five minutes and then  
4 come back.

5 (The proceedings were recessed at  
6 10:53 a.m.)

7 (The proceedings reconvene at 11:00 a.m.)

8 GOVERNOR LYNCH: Why don't we all get  
9 started again, if we could, please. And the plan,  
10 as I said earlier, would be to go until noon.  
11 Then we'll take an hour break for lunch. Again, I  
12 want to ask anyone with cell phones, please turn  
13 them off. It can be distracting if they go off in  
14 the middle of the testimony. Attorney Rice.  
15 Thank you.

16 BY MS. RICE:

17 Q. Sergeant Fussell, I have just a couple more  
18 questions for you. After you had conducted these  
19 search warrants, did Commissioner Bodi ever talk  
20 to you about the execution of the warrants and  
21 what happened?

22 A. No.

23 Q. Did he ever ask you to talk about what

1 Representative Eaton did during his time at this  
2 Railroad Tavern?

3 A. No, not to me.

4 Q. Did he ever ask to see the pictures that you've --  
5 you talked about?

6 A. No, ma'am.

7 Q. Would those have been available in the days  
8 immediately after the execution of the search  
9 warrant?

10 A. They were immediately available once we took those  
11 pictures.

12 Q. Because they're digital photographs, right?

13 A. Yes, ma'am.

14 Q. Okay. And did you ever approach him and speak to  
15 him about your feelings about Representative  
16 Eaton?

17 A. Me personally?

18 Q. Correct.

19 A. No, I have not. We aren't allowed to approach the  
20 Commissioners and have conversations to such  
21 unless approved by administration.

22 Q. Okay.

23 A. Chain of command.

1 Q. And I just want to clarify one thing. Am I  
2 correct that in a typical case when evidence is  
3 seized that it is held until the case is disposed  
4 of; is that correct?

5 A. When evidence is seized on a search warrant?

6 Q. Yes.

7 A. Typically, that's the way I understand it. Has  
8 there been deviations in the past? I'm not sure.  
9 But, again, personally when I execute my search  
10 warrants, I execute the warrant, write the report,  
11 secure the evidence, and then I go on about my  
12 day-to-day job. I don't -- I'm not the one  
13 releasing the evidence, but --

14 Q. And there are policies in place that talk about  
15 seizing evidence, securing evidence; is that  
16 correct?

17 A. Yes, ma'am.

18 Q. Okay. And, in fact, you told Randy Filiault that  
19 his equipment was probably going to be tied up  
20 until the close or the disposition of the case;  
21 isn't that right?

22 A. Yes, ma'am.

23 MS. RICE: I have nothing further for

1 you, sergeant. Thank you.

2 THE WITNESS: Thank you.

3 GOVERNOR LYNCH: Thank you very much.

4 Attorney McLaughlin.

5 MR. MCLAUGHLIN: Governor, would it be  
6 all right with you if I were to turn so I would be  
7 speaking directly to the witness instead of facing  
8 you?

9 GOVERNOR LYNCH: Absolutely.

10 MR. MCLAUGHLIN: Is that okay with you,  
11 counsel?

12 MS. RICE: Pardon me?

13 MR. MCLAUGHLIN: I'd like to turn so I'm  
14 facing the witness. Is that acceptable?

15 MS. RICE: Sure. That's fine. Do you  
16 need help?

17 MR. MCLAUGHLIN: No.

18 (Attorney McLaughlin moves the podium.)

19 CROSS-EXAMINATION

20 BY MR. MCLAUGHLIN:

21 Q. Good morning.

22 A. Good morning, sir.

23 Q. Please pronounce your name for me.

1 A. Joseph Fussell.

2 Q. Fussell. Thank you. Phil McLaughlin.

3 A. Pleasure to meet you, sir.

4 Q. Mr. Fussell, I think the only time we met is out  
5 here briefly. I said, "Hello, and how are you?"  
6 And you said, "Hello and how are you?" Is that  
7 fair?

8 A. Yes, sir.

9 Q. Other than that, no contact?

10 A. Absolutely.

11 Q. You were just asked by Attorney Rice, if I  
12 recollect her words, in a typical case. Would you  
13 agree with me that once Representative Eaton  
14 showed up, there was nothing typical about this  
15 case?

16 A. It was atypical for my -- the cases that I've  
17 investigated, it -- I have not had that situation  
18 occur in any other case that I've investigated,  
19 but --

20 Q. How many times over the years have you felt  
21 intimidated by the presence of a State legislator?

22 A. That would be the first.

23 Q. You were shown an exhibit in this case -- I think

1 actually not marked -- showing an item,  
2 purportedly a letter written by you to whom it may  
3 concern, December 17th, correct?

4 A. Yes, sir.

5 Q. At that particular time on that date you actually  
6 wrote that you found the interaction with  
7 Representative Eaton to be intimidating, and you  
8 found him to be aggressive, correct?

9 A. Yes.

10 Q. You basically were there to execute a search  
11 warrant, were you not?

12 A. Correct.

13 Q. And normally that puts you in a position of  
14 reasonable authority, correct?

15 A. Yes, sir.

16 Q. And you find yourself with Representative Eaton  
17 there, who is basically taking name and badge  
18 numbers from you, correct?

19 A. He took my name.

20 Q. And probably did not make you feel particularly  
21 secure in that, correct?

22 A. Um -- correct.

23 Q. You thought he had an agenda, did you not?

1 A. I think I put it in the letter that on the last  
2 paragraph that I feared he was investigating my  
3 presence in the bar and my actions on my  
4 investigation at that time.

5 Q. And it would also be fair to say that when you saw  
6 him you recognized him, correct?

7 A. I did.

8 Q. And in recognizing him you knew that he had some  
9 history with respect to the Liquor Commission,  
10 correct?

11 A. Specifically Director Edwards, yes.

12 Q. And, from your point of view, you had heard that  
13 he was out for Eddie Edwards, correct?

14 A. In those -- yes. Yes, sir.

15 Q. Is that a decent frame -- I don't want to put  
16 words in your mouth.

17 A. No, I've -- I've heard -- I've heard that. I've  
18 heard this will end when Chief Edwards or Director  
19 Edwards is removed from his position.

20 Q. So if Commissioner Bodi were to testify that he  
21 had similar experiences and discussions with  
22 Eaton, that would at least be consistent with your  
23 understanding, correct?

1 A. If that's the same words, absolutely.

2 Q. Have you any idea why Dan Eaton appears to have  
3 some issue with Eddie Edwards?

4 A. None whatsoever.

5 Q. Do you know of anything Eddie Edwards ever did  
6 against the man?

7 A. I've -- I've -- it's intrigued me to the point  
8 that I've tried to find that out, and I haven't  
9 been able to find that out.

10 Q. Would you agree with me that if in fact you're  
11 correct in your assessment that Dan Eaton is out  
12 after Eddie Edwards, that seen from the position  
13 of a Commissioner, a Chairman, he may think he has  
14 some duty to defend Eddie Edwards?

15 A. We all like to defend the people that work for us,  
16 so I would like to see that -- um -- the  
17 supervisor for my boss would defend my supervisor  
18 as he would defend me.

19 Q. And when we get to the top of the chain you would  
20 certainly expect a Commissioner to defend a  
21 Director, would you not?

22 A. If the Director did no wrong, absolutely or, on  
23 the other hand, if a Director did wrong, that it

1 would be investigated and handled appropriately.

2 Q. All right. But here if somebody is demanding  
3 somebody's ouster, get rid of Eddie Edwards, fire  
4 Eddie Edwards, this will all go away, you would  
5 expect in that circumstance Commissioner Bodi to  
6 defend Edwards, would you not?

7 A. In every way he could.

8 Q. You had a chain of command on December 14th, 2009,  
9 did you not?

10 A. Yes, sir.

11 Q. And there were people in that chain below you  
12 answerable to you, correct?

13 A. Correct.

14 Q. And there were people above you to whom you were  
15 answerable, correct?

16 A. Correct.

17 Q. Who was directly above you, sir?

18 A. Major Todd Feyrer.

19 Q. Who was directly above him?

20 A. Deputy Chief Scott Dunn.

21 Q. Who was directly above him?

22 A. Director Edwards.

23 Q. Who was directly above him?

1 A. The Commission.

2 Q. You received an order to download the evidence and  
3 return the equipment, correct?

4 A. Yes, sir.

5 Q. Were you present when assumedly that order was  
6 given as alleged by Commissioner Bodi to Chief  
7 Edwards?

8 A. No.

9 Q. So you wouldn't know what was said, would you?

10 A. I was told to return that evidence that day.

11 Q. My question is were you present to hear the  
12 conversation between Bodi and Edwards?

13 A. No.

14 Q. You were told to return it by the major, correct?

15 A. Correct.

16 Q. Were you present to hear the words delivered by  
17 Eddie Edwards to the major about returning the  
18 equipment?

19 A. I was not.

20 Q. It would be fair to say that what you were told is  
21 what you reported in your note of December 17th.

22 I'm not trying to hide it. If you need it,  
23 whistle.

1 A. No.

2 Q. "My commanding officer then told me to gather the  
3 needed evidence and return the video data recorder  
4 that day." Correct?

5 A. Correct.

6 Q. And you did, correct?

7 A. Yes, sir.

8 Q. When you went there the first night, do I  
9 understand that you made an effort to download the  
10 digital product? I'll call it the film. Camera  
11 film. You made an effort to get the film that  
12 night without taking the cameras, correct?

13 A. Correct.

14 Q. Would it be fair to say that you did that so that,  
15 among other things, you would not be unduly  
16 interfering with the man's business?

17 A. And that was the purpose, yes.

18 Q. To try to basically be decent about it, correct?

19 A. Absolutely.

20 Q. You did not have to do that. You did it to be  
21 decent; is that correct?

22 A. Correct.

23 Q. All right. And when you went back the second

1 time, once again you attempted to download and  
2 found out you couldn't do it, correct?

3 A. Correct.

4 Q. Okay. That's what prompted you to take the  
5 equipment, correct?

6 A. Yes, sir.

7 Q. And then when you got the downloads done you  
8 returned the equipment, correct?

9 A. I was -- I -- correct. The next day we returned  
10 the equipment.

11 Q. Did anybody tell you not to go back to Judge Boyle  
12 and go in and see his clerk and say I need the  
13 judge's signature on this return?

14 A. No, sir.

15 Q. You were not directed to do that by the major?

16 A. No, sir.

17 Q. You were not directed not to do it by the major.

18 A. Correct.

19 Q. You wrote this to whom it may concern letter. And  
20 it would be fair to say that you did it out of  
21 concern, correct?

22 A. Correct.

23 Q. And it would be fair to say that while we're here

1 today with Commissioner Bodi, at least some of  
2 your concern was related to Representative Eaton.  
3 That would be correct, too, wouldn't it?

4 A. Correct.

5 Q. How many times have you appeared before a  
6 legislative committee investigating Mr. Eaton?

7 A. This would be my first time in front of any  
8 legislative committee.

9 Q. How many times have you been contacted by some  
10 agent of the Legislature to make inquiries about  
11 your complaint?

12 A. Can you ask the question again?

13 Q. Yeah. Has anybody called you from the Legislature  
14 and said hey, we have some issues here potentially  
15 with Dan Eaton. Can you give us a statement?

16 A. No.

17 Q. So your involvement in this basically has been  
18 focused upon what Commissioner Bodi allegedly has  
19 done wrong, correct?

20 A. Can you ask that question again, sir?

21 Q. Yes. Your involvement to this point has been with  
22 respect to what allegedly Commissioner Bodi has  
23 done wrong, correct?

1 A. My involvement to this point in this entire  
2 investigation, absolute -- it has not pertained to  
3 Mr. -- or Representative Eaton. It has pertained  
4 primarily to Chairman Bodi.

5 Q. Has it surprised you in any respect that you  
6 haven't been called upon to give some testimony or  
7 evidence with respect to Representative Eaton?

8 A. Shocking.

9 Q. Does that surprise you? Shocking, right.

10 MR. MCLAUGHLIN: No further questions.

11 GOVERNOR LYNCH: Redirect.

12 MS. RICE: Thank you.

13 REDIRECT EXAMINATION

14 BY MS. RICE:

15 Q. Sergeant Fussell, you have no idea if there are  
16 any legislative hearings or proceedings planned  
17 or -- you don't know what's happening with the  
18 Legislature in terms of any accusations against  
19 Dan Eaton; is that correct?

20 A. Correct. And I haven't been contacted either.

21 Q. Okay. You said that you would expect that the  
22 Commissioner would defend his employees. If you  
23 hadn't done something wrong, you would expect the

1 Commissioner would do what he could to defend you;  
2 is that correct?

3 A. If I acted in authority of my job and my  
4 responsibilities and duty as a law enforcement  
5 officer, I would expect to be defended if -- um --  
6 if an allegation had come across or investigated  
7 to the sense of that defense.

8 Q. So if there is a complaint that you have gone into  
9 a tavern like barnstormers or storm troopers and  
10 ripped surveillance equipment off the wall, would  
11 you expect that the Commissioner would look into  
12 that if there was a complaint like that?

13 A. I would hope so.

14 Q. And if there was a complaint lodged that you had  
15 exceeded the scope of the search warrant -- well,  
16 let me ask you. Did you exceed the scope of the  
17 search warrant in this case?

18 A. No, ma'am.

19 Q. And if there's a complaint that you did in fact  
20 exceed the scope of the search warrant, would you  
21 want to be defended about that?

22 A. I would want to be investigated on that to clear  
23 my name, yes, ma'am. I'd want to be defended.

1 Q. And there is a procedure in place in the Liquor  
2 Commission for internal investigations of that  
3 sort, aren't there?

4 A. Yes, ma'am.

5 Q. Lastly, about the Court Order for return of  
6 service. This was -- you were ordered to return  
7 the -- um -- the equipment at about four, 4:30,  
8 right?

9 A. I received a call about four, 4:30.

10 Q. Yeah. I worded that badly. I'm sorry. You  
11 received a call to do that about four or 4:30, and  
12 you were told to return it that night, correct?

13 A. Yes, ma'am.

14 Q. What time does the court close?

15 A. Um -- between four and 4:30 --

16 Q. Okay. So --

17 A. -- depending on which court, but no later than  
18 4:30.

19 Q. It -- you couldn't have filed a Motion at this  
20 point --

21 A. Correct.

22 Q. -- is that correct?

23 MS. RICE: Nothing further. Thank you.

## RE-CROSS-EXAMINATION

1

2

BY MR. MCLAUGHLIN:

3

Q. Did you go back and file a corrective Motion the next day?

4

5

A. I'm sorry?

6

Q. Did you go back and file a corrective Motion the next day?

7

8

A. No, sir.

9

Q. I'm not being critical. I'm just asking. Let me make this assumption. Suppose by the 21st Commissioner Bodi felt you had done nothing wrong. You certainly wouldn't expect an investigation at that point, would you?

10

11

12

13

14

A. Not if I -- not if he felt I did nothing wrong.

15

MR. MCLAUGHLIN: Thank you.

16

GOVERNOR LYNCH: Okay. At this point

17

I'll allow any questions from members of the

18

Executive Council before we go to the next

19

witness. Any questions from the Executive

20

Council?

21

COUNCILOR HOLLINGWORTH: No.

22

GOVERNOR LYNCH: Okay. Thank you very

23

much.

1 THE WITNESS: Thank you, Governor.

2 GOVERNOR LYNCH: Thank you.

3 COUNCILOR HOLLINGWORTH: Governor, can I  
4 ask this? Are we going to have an opportunity if  
5 after we review our notes to again ask a question  
6 or do we have to do it now?

7 GOVERNOR LYNCH: I think there's no plan  
8 at this point to bring witnesses back, so I think  
9 if you do have questions, now is the time to ask  
10 them.

11 COUNCILOR HOLLINGWORTH: I do. What --  
12 the letter that you wrote, what prompted you to do  
13 that?

14 THE WITNESS: Um --

15 COUNCILOR HOLLINGWORTH: And I believe it  
16 was the union and to the Speaker of the House.

17 THE WITNESS: To the Speaker of the  
18 House, we -- it was a formal request of inquiry on  
19 the actions in the presence of Representative  
20 Eaton in this investigation. And I think the --  
21 the most prominent reason that caused the actions  
22 to -- really the ball to start rolling was when I  
23 learned that Representative Eaton did not have

1 constituents in the City of Keene. At the time  
2 that I saw him there, as I understood it, here is  
3 a State Representative that covers this --  
4 somewhere in this area. I don't live in Cheshire  
5 County. I live in a bordering county, but I -- as  
6 I understood, he lived -- or he had constituents  
7 in Keene.

8           When I found that out, which was the  
9 17th, I found out that he didn't have constituents  
10 in Keene, and that's really what solidified that  
11 he had absolutely no reason or no purpose to be  
12 there. He wasn't there for -- with his family for  
13 dinner or for a drink. He was there. He looked  
14 official. He acted in a manner that somebody that  
15 was going to have a drink, a family, would not  
16 have acted. Although I did feel his actions were  
17 uncalled for before that date on the 17th when I  
18 wrote the letter -- um -- but when I found out he  
19 didn't have any constituents, I knew that -- that  
20 he was involving himself in something that he did  
21 not have a political -- um -- interest in doing  
22 that or for constituents or helping somebody out.  
23 It could be a potential bolt.

1 COUNCILOR HOLLINGWORTH: All right.

2 GOVERNOR LYNCH: Yes, Councilor

3 Wieczorek.

4 COUNCILOR WIECZOREK: Sergeant, can you  
5 tell me what the standard operating procedure is  
6 when you confiscate something? Because I've heard  
7 a couple different things here. What happens with  
8 the evidence? What's your standard procedure on  
9 it? On just what you did over there. What would  
10 you normally do?

11 THE WITNESS: Our standard operating  
12 procedure dictates that within 72 hours that  
13 evidence needs to be secured at head --  
14 headquarters office facility. Um -- if it's going  
15 to be secured and seized and presented later on in  
16 court, we have that 72 hours to do that.

17 COUNCILOR WIECZOREK: Well, who  
18 determines -- I mean is that a normal procedure?  
19 Is that whatever you get, you leave there and  
20 determine then if you need to have it there for 72  
21 hours or for any future hearings that you might  
22 have?

23 THE WITNESS: Well, for example, yes. If

1 I seize something at any point in my official  
2 duty, I seize drugs, alcohol or camera equipment,  
3 within 72 hours that has to be secured at our  
4 headquarters office. Now, if it's particularly  
5 the day that I seize it and went up and was  
6 secured in the temporary evidence so it would  
7 satisfy the operating procedure. If I kept it in  
8 my cruiser and didn't go home -- or didn't go to  
9 the headquarters office for a week, then I would  
10 be in violation of that policy. This is so that  
11 we don't have investigators securing evidence in  
12 their cruisers or in their houses, for that  
13 matter, because that does cause great concerns to  
14 the integrity of the investigation or the evidence  
15 or whatnot.

16 COUNCILOR WIECZOREK: Well, was that a  
17 normal procedure for you to have the equipment go  
18 back to the owner?

19 THE WITNESS: I -- personally I've never  
20 been asked to return equipment the next day, so  
21 that -- I would say that that is out of the  
22 ordinary for me.

23 COUNCILOR WIECZOREK: Sure.

1 THE WITNESS: But has equipment or  
2 evidence been returned in the past? Absolutely.

3 COUNCILOR WIECZOREK: Okay. Thank you.

4 THE WITNESS: Yes, sir.

5 GOVERNOR LYNCH: Any further questions?  
6 Sergeant, thank you very much.

7 THE WITNESS: Thank you, Governor.

8 GOVERNOR LYNCH: Thank you for your  
9 testimony.

10 COUNCILOR HOLLINGWORTH: I do have --  
11 excuse me.

12 GOVERNOR LYNCH: Oh. Go ahead.

13 COUNCILOR HOLLINGWORTH: You made a  
14 statement that you asked the Keene Police officer  
15 to come between the owner and yourself while you  
16 removed the equipment. Did you -- did you have a  
17 feeling that he was going to interfere with you  
18 talking the equipment?

19 THE WITNESS: I did. I did. He told me  
20 from the very beginning that -- from the very  
21 beginning, he started telling me that Patricia  
22 Russell, which is an old Commissioner of the  
23 Liquor Commission, is a personal friend of his,

1 and he said that in a manner that I perceived as,  
2 you know, you're going to get it because you're --  
3 you're -- you know, you're investigating me.

4 Number two, he would tell me adamantly,  
5 "You're not taking my equipment. You're not  
6 taking my equipment. You're gonna -- you're gonna  
7 have to go through my attorney." Um -- number  
8 three, in which -- in number two he didn't -- he  
9 was flipping through the yellow pages for an  
10 attorney, and he called Representative Eaton  
11 before he called his attorney.

12 And, number three -- um -- when I did  
13 employ that Keene Police officer, I did that  
14 strategically so it wasn't another member of my  
15 agency. It was a neutral and detached law  
16 enforcement officer, so that if -- if enforcement  
17 action had to be taken, it was taken by somebody  
18 neutral and detached from the Liquor Enforcement  
19 and to protect probably some allegations that we  
20 might have.

21 In fact, there was a number of times that  
22 I had to keep reminding that Keene Police officer,  
23 "He's coming behind the bar. Keep him outside of

1 the bar. Keep him outside of the bar." And part  
2 of his -- what he would do to distract the bar  
3 owner, Randy Filiault, and I'm speaking to the  
4 Keene Police officer, was reviewing the scope of  
5 the search warrant because he -- there was a  
6 discussion that I was outside of the scope of the  
7 search warrant when in fact the Keene Police  
8 officer was telling him yep, he's in the scope of  
9 the search warrant here. He can seize these  
10 items. So that was part of the -- part of the,  
11 you know, interference that he was trying to have,  
12 I think, with the coming back behind the bar and  
13 the investigation itself.

14 COUNCILOR HOLLINGWORTH: Thank you.

15 THE WITNESS: Yes, ma'am.

16 GOVERNOR LYNCH: Any further questions?  
17 Again, sergeant, thank you very much.

18 THE WITNESS: Thank you, Governor.

19 GOVERNOR LYNCH: Attorney Rice, your next  
20 witness.

21 MS. RICE: Governor, because there were  
22 some questions about the letter that Sergeant  
23 Fussell wrote to the union, perhaps we can mark

1 this.

2 MR. MCLAUGHLIN: No objection. I can  
3 submit it, please, to the tribunal. I've marked  
4 it JJ for ID. If you wish to strike the ID.

5 MS. RICE: Yes.

6 MR. MCLAUGHLIN: Governor, I don't know  
7 what your procedure is, but what I've done is I  
8 have made copies on the instruction of  
9 Mr. Perrault with respect to all exhibits. My  
10 understanding is that when we mark I am to give  
11 you, Mr. Perrault, I think, nine copies.

12 MR. PERRAULT: Actually we've been  
13 handing them out to the Councilors and to the  
14 Governor to go along, so if there's no objection,  
15 why don't we go ahead and just follow that  
16 procedure and get it out that way.

17 MR. MCLAUGHLIN: That's the original.

18 MS. RICE: Yeah, I wanted to give the  
19 original.

20 MR. MCLAUGHLIN: And do you want me to go  
21 forward and give him these copies?

22 MS. RICE: Sure.

23 MR. MCLAUGHLIN: I've got it marked as JJ

1 if it makes a difference.

2 MS. RICE: I just want to note that these  
3 have been highlighted, and it's being given as an  
4 exhibit. The highlighting is not part of the  
5 original letter.

6 MR. MCLAUGHLIN: That's true. There is  
7 highlighting on the second page, and I agree it  
8 should be stricken.

9 COUNCILOR HOLLINGWORTH: So we'll call  
10 that 5?

11 MR. PERRAULT: No, it will be JJ. The  
12 defendant's exhibits will be alphabetical.

13 (The identification marking was stricken  
14 from Respondent's Exhibit JJ, and the exhibit was  
15 received in evidence.)

16 MS. CUSACK: Thank you. The State would  
17 now call Commissioner Bodi to the stand.

18 THE WITNESS: I got to get my glasses.

19 MS. CUSACK: Certainly..

20 (Commissioner Bodi retrieves his  
21 glasses.)

22 (Commissioner Bodi takes the witness  
23 stand.)

1 TESTIMONY OF COMMISSIONER MARK BODI,  
2 who was called as a witness and, having been  
3 previously duly sworn, was examined and testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MS. CUSACK:

7 Q. Good morning, Commissioner Bodi.

8 A. Good morning.

9 Q. You and I have never really met before this  
10 morning for the first time or one other time where  
11 we just shook hands and said hello.

12 A. That's correct.

13 Q. I just want to remind you, sir, that you are under  
14 oath, and you're still under oath, and we don't  
15 need to do that process again.

16 A. Certainly.

17 Q. I don't know that you've ever testified in front  
18 of a panel like this before, but, if I could, just  
19 a couple things. I notice you nodded your head  
20 and then said certainly. One thing I would ask  
21 you to do since it is being recorded that your  
22 responses to me be verbal today and just not a  
23 shake of the head or a nod.

1 A. I'm -- I'm Italian, so I might go like this and  
2 nod, but if I do that, you can just correct me.

3 Q. Thank you. Thank you. Now, before we really get  
4 started, I just want to make sure to talk to you  
5 about some of the facts that I think you would  
6 agree that are not in dispute. You received at  
7 least two phone calls from Representative Eaton;  
8 is that correct?

9 A. Yes, counselor. To the best of my recollection,  
10 yes.

11 Q. And one after each of the executions of the search  
12 warrants. A phone call comes after each one of  
13 those search warrants.

14 A. Correct.

15 Q. Now, those phone calls talk to you about -- or  
16 Representative Eaton talks to you about how  
17 concerned he is about this establishment being  
18 targeted; is that correct?

19 A. Yes, that is correct.

20 Q. And you never step back, do you, sir, and talk to  
21 Sergeant Fussell and say what happened when that  
22 search warrant was executed?

23 A. No, I do not.

1 Q. You never even asked Chief Edwards can you get me  
2 the pictures or are there pictures of what took  
3 place out there. You don't do that, do you?

4 A. No, I do not.

5 Q. Now, in one of those phone calls, the second one,  
6 Representative Eaton asked you to call Randy  
7 Filiault, and you do that.

8 A. That's correct.

9 Q. And you know that at this point there's a pending  
10 investigation. And you know search warrants were  
11 delivered.

12 A. I'm just pausing because I want to be thoughtful,  
13 counselor. I certainly knew that search warrants  
14 were being executed. I don't think at the time I  
15 thought of it as a pending investigation, but if  
16 you would like to characterize it that way, that's  
17 up to you.

18 Q. Well, a search warrant is to seize equipment or  
19 to -- to get -- um -- evidence in an  
20 investigation, is it not?

21 A. It is.

22 Q. And the third fact that I want to just cover with  
23 you is you directed Eddie Edwards to return the

1 equipment seized pursuant to a warrant; is that  
2 correct?

3 A. That is correct.

4 Q. And that's something that you have never done  
5 before.

6 A. That is correct.

7 Q. And you direct him to do that within 24 hours of  
8 that equipment being seized.

9 A. I don't -- I'm not -- I don't recall the actual  
10 timing, but if that's your representation, I would  
11 agree with it.

12 Q. Well, you have a phone conversation with Eddie  
13 Edwards on Tuesday evening driving home from  
14 the -- the office, do you not?

15 A. Counselor, if you want to refresh my rec -- I'm  
16 not disagreeing with you. I just don't want to --  
17 so much time has passed, I just want to be  
18 certain. I certainly don't dispute that it was 24  
19 hours.

20 Q. Okay.

21 A. You know, I mean give or take an hour or two.

22 Q. So within a day you direct get that equipment  
23 back. The equipment is returned.

1 A. That's correct.

2 Q. Now, before the case goes through the regulatory  
3 process, you also meet with Representative Eaton  
4 and the bar owner, do you not?

5 A. That is correct.

6 Q. So pending investigation and regulatory process,  
7 and you're having meetings with a licensee who has  
8 been charged with a violation.

9 A. No. I had one meeting.

10 Q. All right. You have a meeting with a licensee who  
11 has been charged.

12 A. That's correct.

13 Q. And this was all done to mollify Representative  
14 Eaton.

15 A. I would state that that question is incorrect.

16 Q. Well, you testified before that this was all done  
17 to mollify Representative Eaton, didn't you? To  
18 get him off your back.

19 A. Counselor, I -- if you're referring to my Grand  
20 Jury testimony, I'd be happy to look at it and  
21 refresh my memory. As I recall, there were a  
22 number of factors that I was thinking about, and  
23 I'd be happy to articulate those for you, but I

1 would be more than happy to look at the Grand Jury  
2 testimony and -- and review that and recall any  
3 other facts that might be beneficial to the  
4 hearing.

5 Q. Just give me a moment.

6 A. Certainly.

7 (There is a pause in the proceedings.)

8 A. Counselor, while you're doing that, may I get a  
9 pad? I have some notes that I'd like to have with  
10 me. Thank you.

11 (Commissioner Bodi retrieves items.)

12 THE WITNESS: Thank you, counselor.

13 BY MS. CUSACK:

14 Q. Certainly. I'm referring -- and it looks like you  
15 have your Grand Jury testimony.

16 A. Yes, I do.

17 Q. I'm referring to day one. Page 28.

18 A. Yes.

19 Q. You were asked about the call that you made to  
20 Randy Filiault. And your response at line 14, "I  
21 would appease Representative Eaton and attempt to  
22 control what was becoming, it felt like, an  
23 out-of-body experience." So you're calling to

1 mollify Representative Eaton.

2 A. I wouldn't -- if I might just look at this  
3 carefully.

4 Q. Yes, sir.

5 A. Knowing the importance of it. And I want to  
6 provide, counselor, a very obviously truthful  
7 answer, but I'd like to be complete.

8 Q. I understand. And the question was to you you're  
9 attempting to mollify Representative Eaton.

10 A. I was attempting to loosen his -- his reaching  
11 hand, and if you would like to use the word  
12 mollify to describe that, I think it's been used  
13 in a number of different ways in different  
14 contexts, but that was my objective, yes.

15 Q. To attempt to control what was becoming an out-of-  
16 body experience. They're your words, sir.

17 A. Yes.

18 MR. MCLAUGHLIN: What's your question?

19 Excuse me. Is there a question pending?

20 MS. CUSACK: He just answered. He said  
21 yes.

22 MR. MCLAUGHLIN: What was the question?

23 MS. CUSACK: They're your words, sir.

1 MR. MCLAUGHLIN: I'm asking that there be  
2 questions to him.

3 BY MS. CUSACK:

4 Q. Are they not your words?

5 A. Yeah, they are my words.

6 Q. Thank you.

7 A. Would you like me to explain the context of the  
8 words or that would be adequate? Is my answer  
9 adequate for you?

10 Q. I was asked to ask you a question, so we'll move  
11 on. Now --

12 A. I'd be pleased to do that.

13 Q. Okay. Thank you. And I'm sure the Commission --  
14 the Governor and the members of this board already  
15 know the answer to some of these, but I just want  
16 for the record. You were appointed as  
17 Commissioner in April of 2007?

18 A. It was May 11th.

19 Q. Well, your appointment that -- you actually signed  
20 your oath of office on May 11th, but you were  
21 confirmed on April 18th, 2007.

22 A. Correct.

23 Q. And you did take an oath of office, did you not?

1 A. I did.

2 Q. We've marked that as an exhibit. That is yours,  
3 sir?

4 MR. MCLAUGHLIN: Page number, counsel?

5 MS. CUSACK: It is Number 5.

6 MR. MCLAUGHLIN: Thank you.

7 COUNCILOR WIECZOREK: Thank you.

8 BY MS. CUSACK:

9 Q. So that at the bottom is your signature in the  
10 middle of the page there?

11 A. Correct.

12 Q. And that oath of office -- and it's a  
13 constitutional oath. Would you agree?

14 A. Yes.

15 Q. And that oath of office says that you will  
16 solemnly swear and affirm that you will faithfully  
17 and impartially discharge and perform the duties  
18 incumbent on you as a member of the State Liquor  
19 Commission. Is that correct?

20 A. That is correct, counselor.

21 Q. Now, prior to this appointment you were a  
22 principal in a marketing firm.

23 A. That's correct.

1 Q. I'm sorry?

2 A. That's correct.

3 Q. And you became Chair of the Liquor Commission on  
4 February 13th, 2008, did you not?

5 A. I assume that date is correct.

6 Q. And your term actually ends on July -- in July of  
7 2013, does it not?

8 A. Correct.

9 Q. How many Commissioners are there in the Liquor  
10 Commission?

11 A. There are three.

12 Q. And at the time of this incident at the Railroad  
13 Tavern, were there two or three?

14 A. There were two.

15 Q. Who was the other Commissioner?

16 A. Commissioner Richard Simard.

17 Q. Thank you. Now, I think your counsel asked  
18 Sergeant Fussell some of these questions, but the  
19 Law Enforcement Division of the Liquor Commission,  
20 it comes directly under you, does it not? The  
21 Commission. The three Commissioners.

22 A. Oh, yes. Yes, counselor.

23 Q. And there's three Commissioners that direct the

1 Law Enforcement Division. The supervisor of that  
2 division is Chief Eddie Edwards?

3 A. That is correct.

4 Q. And there's a deputy in that division?

5 A. That is correct.

6 Q. And there's a major in that division?

7 A. Correct.

8 Q. And there are investigators. Do you know how many  
9 investigators there are?

10 A. Thirty or so sworn officers.

11 Q. And all of these sworn officers have law  
12 enforcement responsibilities.

13 A. That's correct.

14 Q. You do not, sir, as a Commissioner have a role in  
15 the investigative process, do you?

16 A. That's an interesting question.

17 Q. Well, let me ask you this.

18 MR. MCLAUGHLIN: Objection. Let the man  
19 answer.

20 THE WITNESS: I believe that the law  
21 under -- I think it's 176:3 provides me with the  
22 authority in certain circumstances to act and  
23 including in investigatory matters. Now, you

1 might not agree with that, but I think that I have  
2 an obligation -- for example, if -- um -- there  
3 was a very serious charge that was made that was  
4 highly unusual, perhaps the fact that a  
5 Commissioner was conducting some illegal  
6 activities, that I would have some responsibility  
7 to be directly involved.

8 BY MS. CUSACK:

9 Q. If one of your officers are what you said,  
10 conducting some illegal activity, then you would  
11 involve yourself?

12 A. No, I didn't say that. I said that I believed,  
13 and I think what the principal thrust of my answer  
14 is is that the law allows a Commissioner, and I  
15 have a duty to investigate certain issues that  
16 present themselves where I find they are  
17 warranted.

18 Q. Now, you mention 176:3, and the duties under that  
19 are to optimize the profitability of the  
20 Commission.

21 A. Correct.

22 Q. Maintain proper controls.

23 A. Um-hum.

1 Q. Assume responsibility for effective and efficient  
2 operation of the Commission and provide service to  
3 customers pursuant to the title.

4 A. That's correct.

5 Q. That's everything that 176:3 provides?

6 A. That's correct.

7 Q. Now, you say that you have a role in the  
8 investigative process. You don't go out, sir, do  
9 you, and conduct surveillance?

10 A. No, I do not.

11 Q. You don't go out, sir, and hand violations to  
12 someone who has been investigated, and there is a  
13 violation that is warranted, do you?

14 A. No, I do not.

15 Q. You don't have -- um -- the responsibility to tell  
16 the investigator go to this bar or go to this bar,  
17 do you, sir?

18 A. No, I do not.

19 Q. The investigative process is controlled by Chief  
20 Eddie Edwards.

21 A. I would -- I would disagree with the word  
22 control. Control seems to imply, I think, in this  
23 case that he has unilateral control and can affect

1 the total outcome, and that's not the way the  
2 process is designed. The Commission has, in my  
3 view, counselor -- I don't want to be  
4 argumentative. A Commissioner, particularly a  
5 Chairman, has significant authority with the  
6 Enforcement Division, works for the Commission,  
7 not the other way around. Just like you work for  
8 the Attorney General. And it is not the sole and  
9 exclusive domain of the Chief to control every  
10 single element any more than it is the Chief's  
11 control and responsibility to control every  
12 element of law enforcement. He comes under the  
13 responsibility ultimately of the Attorney  
14 General. So I just -- that's a matter of -- I'll  
15 put it clarification.

16 Q. And it's not your unilateral role to control it  
17 either, is it, sir?

18 A. Correct. Absolutely.

19 Q. There's a Commission of three.

20 A. Certainly.

21 Q. Let's turn your attention, if you would, please,  
22 to the first warrant that's issued. When did you  
23 first learn of the warrant being served?

1 A. I believe, to the best of my recollection, when  
2 Chief Edwards contacted me and advised me that  
3 Eddie -- excuse me -- that Representative Eaton  
4 was present at a bar in Keene that I had become  
5 knowledgeable that they were executing search  
6 warrants. That's the best of my recollection.

7 MR. MCLAUGHLIN: Excuse me, Governor. If  
8 it please the tribunal, I don't know if this will  
9 be helpful at all, but there is the issue of the  
10 specificity of memory over a several-day period  
11 and times. What Chairman Bodi did with my  
12 assistance is to prepare a document called -- it's  
13 informally called request. It's a chronological  
14 list of his best memory. I don't have a problem  
15 giving that to the State now if it will be  
16 helpful. I think it will be helpful to  
17 Commissioner Bodi.

18 MS. CUSACK: I don't think that we need  
19 to do that. I have his Grand Jury testimony that  
20 I think if he fails to have a recollection of  
21 what's going on, I'm asking questions out of this,  
22 and I can refresh his memory that way.

23 GOVERNOR LYNCH: Okay. Why don't you

1 continue.

2 MS. CUSACK: Thank you.

3 BY MS. CUSACK:

4 Q. So you learned from the Chief that evening that  
5 his people -- he didn't even know his people were  
6 out there surveilling the liquor -- the  
7 establishment, don't you?

8 A. Well, of course he knew. He called me and told me  
9 about it.

10 Q. Well -- but before that he did not know that they  
11 were going out there to conduct surveillance. He  
12 told you that, too, didn't he?

13 A. If you would like to point it out to me,  
14 counselor. Again, that was nine months ago,  
15 but --

16 Q. Sure. On day one of your testimony.

17 A. Um-hum.

18 Q. Page 15.

19 MR. MCLAUGHLIN: Line?

20 THE WITNESS: And what line are you  
21 referring to?

22 BY MS. CUSACK:

23 Q. Well, we're starting at one. "Edwards told you

1 that he was not aware that his officers were going  
2 to execute the search warrant." And you say, "I  
3 don't know if it was the search warrant so much as  
4 the surveillance. I had the impression that there  
5 was a secret from the nature of the phone call and  
6 what" -- in this case you're talking about  
7 Representative Eaton was trying to present. So he  
8 was telling you that he didn't know that his  
9 people were even going out there.

10 MR. MCLAUGHLIN: Object, Your Honor.  
11 Governor, I object to the form of the question.  
12 And it isn't to be annoying. It's because it's  
13 multifaceted, and counsel is essentially  
14 testifying. If the questions could just come one  
15 at a time so that they could be understood and  
16 answered. For example, the intrusion of the fact  
17 of what's actually being stated is something  
18 attributable to Mr. Eaton is not self-evident from  
19 the document itself.

20 GOVERNOR LYNCH: Counsel, if you would  
21 just rephrase the question.

22 MS. CUSACK: Sure. And I can -- I can  
23 move on.

1 BY MS. CUSACK:

2 Q. You have a conversation with Eddie Edwards that  
3 evening that you say, after he tells you that  
4 Representative Eaton was at the bar, "I'm sure  
5 I'll be hearing from him." Is that correct?

6 A. That's correct.

7 Q. And you say this because he had been advocating  
8 for the transfer of the Enforcement Division to  
9 the Department of Safety.

10 A. No.

11 Q. Is that your understanding?

12 A. No.

13 Q. What is your understanding of why you said, "I'm  
14 sure I'll be hearing from him?"

15 A. Because Representative Eaton was a constant and  
16 persistent critic of law enforcement, and his  
17 affiliation and affection for this bar owner was  
18 generally wide known. I didn't know a lot of  
19 specifics about it, so the fact that he was going  
20 to be calling me, as I had accurately predicted,  
21 was more based upon the events that transpired at  
22 this bar as opposed to his legislative activities  
23 to move the department.

1 Q. Well --

2 A. They're all part of it, but certainly not -- that  
3 wasn't the reason why I anticipated his call.

4 Q. But you didn't know what was transpiring at the  
5 bar because you had no facts about what happened  
6 on December 13 or December 14th, did you?

7 A. I -- I did have knowledge of what was going on at  
8 the bar. I had knowledge that search warrants had  
9 been executed.

10 Q. But you had no knowledge --

11 A. Let me finish, if I could.

12 Q. Certainly.

13 A. So the -- with the knowledge that search warrants  
14 were being executed, I immediately assumed and  
15 accurately so, that there was an enforcement  
16 action that was being taken in Keene, New  
17 Hampshire with an individual that I didn't know  
18 fully, but I knew -- I knew that Randy Filiault  
19 had had an -- had a connection with Commissioner  
20 Russell, and there were problems associated with  
21 all of that.

22 So I had knowledge that something had gone  
23 wrong there. They had issued search warrants, and

1 Representative Eaton had some connection to this  
2 establishment would be there. Had been there.  
3 And I knew that's -- and I had felt, and, as I  
4 said, accurately so, he would call me.

5 Q. Knowing that he would call you, did you have a  
6 conversation with anyone to learn what exactly  
7 transpired on December the 14th, 2009?

8 A. Can you repeat the question? Did I have a  
9 conversation with anybody --

10 Q. With anyone. Knowing that Representative Eaton  
11 was going to call you, did you have a conversation  
12 with anybody about what exactly transpired on  
13 December the 14th?

14 A. No.

15 Q. Right. We already know, sir, you didn't speak  
16 with Sergeant Fussell who was actually there on  
17 December the 14th, right?

18 A. Yes.

19 Q. And we know that you didn't speak with Sergeant  
20 Elliott who was also actually on the scene on  
21 December 14th; is that correct?

22 A. That's correct.

23 Q. And we know that the Keene Police Department were

1           there. Sir, you did not pick up the phone, did  
2           you, and call somebody from the Keene Police  
3           Department to ask what transpired, did you?

4           A. No, I didn't believe it was appropriate to do so.

5           Q. Okay. How about Commissioner Simard? You said,  
6           "I knew there was going to be a problem." Did you  
7           call Commissioner Simard and talk to him about  
8           what was happening at the Railroad Tavern in  
9           Keene?

10          A. No, I did not.

11          Q. Even though you instinctively knew this was going  
12          to be a big problem; is that correct?

13          A. So the question is that even though I knew this  
14          was a big problem, I didn't call --

15          Q. Call any of those people.

16          A. Well, if I might answer more fully, when I  
17          received the call, and I think my Grand Jury  
18          testimony indicates what I said was my answer  
19          was -- is that I'm sure I was going to be hearing  
20          from him. I made no prediction as to how big of a  
21          problem it would be. It certainly would have been  
22          inappropriate. I had no reason to call at that  
23          juncture the Keene Police certainly.

1           The Chief had adequately and appropriately  
2 advised me as Chairman of the activities, and I  
3 presumed that once I had received my call from  
4 Representative Eaton, as I had done as a matter of  
5 course routinely, I advised Chief Edwards. Each  
6 time I had a conversation with Representative  
7 Eaton, I advised Chief Edwards because there was  
8 this ongoing difficulty that existed with him.

9           Now, as for Commissioner Sim -- I'm not going  
10 to -- this is important. If I might have your  
11 indulgence for just one moment. With respect to  
12 Commissioner Simard, Commissioner Simard was  
13 relatively new at the Commission. He had no --  
14 absolutely no experience in enforcement, nor was  
15 that an area of any particular interest to him --  
16 to him. He had a limit -- extremely limited  
17 capacity to participate in this issue. So the  
18 burden of Representative Eaton's call in this  
19 enforcement action, I think I accurately predicted  
20 was on my shoulders.

21 Q. Now, in answering that question, sir -- you're  
22 finished?

23 A. Thank you.

1 Q. Thank you. You said -- you just said to the  
2 Governor and members of the Council that you made  
3 no representation about how big a problem this  
4 was. That's not accurate, is it?

5 A. It is. It is accurate.

6 Q. Well, I would direct your attention to page 12,  
7 line 10 of your Grand Jury testimony on day one  
8 where you say, "I immediately instinctively knew  
9 that this was going to be a big problem." Did you  
10 find that, sir?

11 A. Yeah, I did. Well, I thought you were referring  
12 to the dialogue that I had with Eddie Edwards at  
13 that particular moment, and he will testify to  
14 this. The only -- the only comment I made to him  
15 was is that I'm sure I will be hearing from him.  
16 Now, I instinctively knew certainly this  
17 Representative, and I stated that. It was going  
18 to be a big problem, but I did not say that to  
19 him.

20 Q. Now --

21 A. And, as it says in my Grand Jury testimony that  
22 you just read, counselor, so I knew. I knew  
23 instinctively, as I do about many problems that I

1 anticipate.

2 Q. Thank you. So --

3 A. And could I --

4 Q. -- Eddie --

5 A. Could I just ask for a little bit of water?

6 (Commissioner Bodi pours himself some  
7 water.)

8 THE WITNESS: And, counsel, may I further  
9 amplify that answer?

10 BY MS. CUSACK:

11 Q. Go ahead.

12 A. Thank you. I appreciate your -- your  
13 forbearance. But this is important. Each and  
14 every time Dan Eaton had contact with me or my  
15 Enforcement Division it was a problem. We had --  
16 we -- he had filed a number of bills in which we  
17 were hauled over to the Legislature. He made  
18 enormous amount of criticisms about how the  
19 Enforcement Division was being made. He was  
20 involved legislat -- legislatively in a number of  
21 activities. He was making comments to the  
22 hospitality association. So it wasn't just this  
23 event.

1           Every time Dan Eaton and I had an engagement,  
2           it was a very uncomfortable situation, enormously  
3           time-consuming for the Enforcement Division and  
4           for the New Hampshire Liquor Commission. So  
5           though certainly I realized the intensity of this  
6           one -- I don't mean to minimize that, counselor,  
7           but I did want to just provide some background for  
8           that.

9           Q. Well, again, Commissioner Bodi, you didn't know  
10           the facts about what was happening with that  
11           warrant or what your investigators were doing, did  
12           you?

13          A. No, I didn't.

14          Q. Okay. Now, when Eddie Edwards communicates with  
15           you about Representative Eaton being at the bar  
16           that evening, you don't tell him to call the  
17           Attorney General's Office, do you?

18          A. No.

19          Q. You don't work out a plan with Eddie Edwards that  
20           evening that you can learn what happened, do you?

21          A. I -- I believe, and I'm not positive that we had  
22           agreed to speak, but I would agree -- certainly  
23           agree with you that we -- I had no intentions of

1 working out a plan. How could I? How could I  
2 work out a plan unless I understood the nature of  
3 the call? There was no plan to make.

4 Q. Well, all right. But you instinctively knew,  
5 though, that there was going to be a big problem  
6 and didn't really know what it was going to be  
7 about.

8 A. I certainly agree with that statement, but, as I  
9 said, as my answer indicated, that I can't make a  
10 problem -- I can't make a plan on a problem I  
11 can't identify.

12 Q. But you had already just told the Governor and  
13 Council that you knew ever -- each and every time  
14 the complaint was going to be about what happened  
15 with your liquor investigators. That's what I  
16 heard you say.

17 A. In the interest of moving on, I'm going to agree  
18 with you.

19 Q. Okay. Now, you do finally get that call from  
20 Representative Eaton. And we learned already he  
21 called to tell you that he believes the restaurant  
22 is being targeted. That's correct?

23 A. That and other things, yes.

1 Q. Okay. And you tell him I don't really know  
2 anything about it yet. You'd look into it and get  
3 back to him. Is that correct?

4 A. Generally speaking, yes.

5 Q. Page 14, line 17 of your deposition -- or excuse  
6 me -- your Grand Jury testimony. Actually it  
7 starts on page 15.

8 MR. MCLAUGHLIN: Governor, if it please  
9 you and the Council, to the extent this may make a  
10 difference, I intend to offer the entirety of the  
11 Grand Jury testimony into evidence. I'd be happy  
12 to do it now. People could follow along literally  
13 if that would be helpful.

14 GOVERNOR LYNCH: If it's okay with you,  
15 counselor, when you're ready to examine the  
16 witness you could introduce the Grand Jury  
17 evidence at that time.

18 MR. MCLAUGHLIN: Certainly. My intention  
19 was just to --

20 GOVERNOR LYNCH: Be helpful. I  
21 appreciate that.

22 BY MS. CUSACK:

23 Q. Do you have that page, sir?

1 A. Oh. Excuse me. What line?

2 Q. Page 14.

3 A. Yes.

4 Q. And we'll actually start on line 16. You said, "I  
5 didn't know anything about it. I didn't know they  
6 were going to be there. And I said I will look  
7 into it, and I will get back to you."

8 A. Well, yes. Yes, counselor.

9 Q. You didn't write down his complaint, did you, sir,  
10 when he called you after that first warrant?

11 A. No, I did not.

12 Q. You didn't take any notes of what he was calling  
13 to complain about, did you?

14 A. No, I did not.

15 Q. You didn't write a letter memorializing his  
16 accusation, did you, sir?

17 A. No, it's not my practice to do so.

18 Q. You didn't even undertake an investigation of your  
19 own to determine if his allegations were accurate,  
20 did you, sir?

21 A. Well, you know, when I receive a telephone call  
22 from members of the Legislature, members of the  
23 Council, when they -- if I receive a call from Ray

1 Burton, and he says we have a restaurant up north,  
2 and he can't get his license, and it's going to  
3 take three weeks, I don't say well, I'm going to  
4 conduct an investigation. I pick up the phone,  
5 and I act. And I don't write it down. So I'm  
6 just -- I don't mean to -- I'm trying to be  
7 cooperative, but --

8 Q. I understand.

9 A. But I'm trying to be realistic here.

10 Q. I understand that, but the realistic situation  
11 from this call wasn't so and so isn't getting his  
12 license. The realistic call is your  
13 investigators, your enforcement team, is out there  
14 barnstorming and targeting a specific restaurant  
15 or a specific bar with other motivations other  
16 than what's going on at that bar. That's what  
17 Representative Eaton is telling you. And you  
18 don't write anything down.

19 A. But you're -- the implication in your question,  
20 counselor, if I might say so, is, you know, he was  
21 stating the obvious. I didn't need to write it  
22 down. It was quite apparent. His call was quite  
23 emphatic, as my Grand Jury testimony said. So,

1 again, I don't want to be argumentative, but I --  
2 I am a businessman, and I understand the urgency  
3 of a call, and the amount of the call that I was  
4 able to -- to recollect was more than adequate for  
5 me to respond, in my opinion. It might not have  
6 been for yours, and you're entitled to that, and  
7 the Council and the tribunal can judge that, but I  
8 certainly didn't find that a lapse of in any way  
9 in terms of how I responded, but I will -- I will  
10 agree to the point that you might have.

11 Q. This is a -- and you would agree that this is a  
12 specific allegation of wrongdoing. You would  
13 agree to that.

14 A. That is correct.

15 Q. And you have specific policies in place at the  
16 Liquor Commission to deal with allegations of  
17 wrongdoing, do you not, sir?

18 A. Yes, we -- we do. I don't know -- I know that  
19 they exist within the Enforcement Division, but  
20 yes, they do.

21 Q. And specifically there's a policy called,  
22 "Personnel 251" which is entitled, "Citizen  
23 Complaints and Internal Investigations." Is --

1 you would agree that there is such a policy?

2 A. Yes. Yes, I do agree. Absolutely. And is  
3 that -- may I ask, counselor, is that from the  
4 Enforcement Division?

5 Q. Yes, sir.

6 A. Okay.

7 Q. Showing you it. You've seen that before, have you  
8 not?

9 A. Oh, I can't recall specifically, but --

10 Q. Well, you see all the policies, don't you, of the  
11 Liquor Commission?

12 A. We -- well, you know, we have policy manuals. If  
13 you -- the policy manuals would stack this high  
14 (indicating) if you go through every procedure and  
15 store and everything else. So the answer -- the  
16 truthful answer is I'm not sure, but --

17 Q. But you are familiar with this policy.

18 A. I am familiar with it.

19 GOVERNOR LYNCH: Counsel, would you  
20 please -- I'm sorry to interrupt. Would you  
21 identify for the record exactly what you showed  
22 Mr. Bodi.

23 MS. CUSACK: And right now it's marked

1 for identification -- no. Actually it's a full --  
2 marked for identification.

3 MR. MCLAUGHLIN: I don't object to the ID  
4 being stricken and its being marked as a full  
5 exhibit.

6 MS. CUSACK: Okay. Thank you. It is the  
7 New Hampshire Division of Liquor Enforcement  
8 Licensing Administration and Operations Manual  
9 Policy on Citizen Complaints and Internal  
10 Investigations. Just for the record.

11 THE WITNESS: Correct.

12 MS. CUSACK: This is Number -- Exhibit  
13 Number 6, yes.

14 (The identification marking was stricken  
15 from Petitioner's Exhibit 6, and the exhibit was  
16 received in evidence.)

17 THE WITNESS: I know you had a question,  
18 there. I can't recall it at the present time, but  
19 I would like to respond to you if I could.

20 BY MS. CUSACK:

21 Q. Certainly, but let me ask you a question. I don't  
22 believe there was a question. We were just  
23 identifying this as a full exhibit, and I will ask

1 you a question about it.

2 A. Thank you.

3 Q. Sir, you understand that this policy establishes a  
4 uniform policy and procedure regarding complaints  
5 against division personnel, does it not?

6 A. It does.

7 Q. And you didn't tell Representative Eaton that you  
8 have a policy that requires him to put a complaint  
9 in writing and get it to you so that you can fully  
10 investigate it, did you?

11 A. No, I did not.

12 Q. You didn't tell Representative Eaton --

13 A. I -- I would like to state, though, that it is not  
14 an absolute requirement to put it in writing. Um  
15 -- and the -- you know, certainly if a senior  
16 legislator or if the Governor calls -- the  
17 Governor has called me about certain issues  
18 regarding the Liquor Commission. I wouldn't turn  
19 to him and say well, put it in writing. That's  
20 not appropriate.

21 Q. Did you call Chief Edwards into your office, sir,  
22 and say we've just received a complaint under this  
23 personnel policy I need you to investigate?

1 A. I did not do that. But to your point, which I  
2 think is a good one, counselor -- I think it is a  
3 very good one, and I would like to point this out  
4 to the tribunal. I contacted Eddie Edwards and  
5 made him aware of the substance and the nature of  
6 that call. Now, I am not stating that I don't  
7 have responsibility, but certainly the  
8 investigative authority contained in this policy  
9 in his department reviews all of those. Now, at  
10 some point he might have felt -- or we might have  
11 felt that that would have been done, but it is not  
12 my responsibility generally to turn to him and say  
13 you should request that Representative Eaton  
14 write -- put this down in writing to investigate  
15 it.

16 Q. Now, the nature of the complaint was against Chief  
17 Edwards, if you recall. Is that your  
18 recollection?

19 A. Yes.

20 Q. So you didn't turn to the deputy, Deputy Dunn, and  
21 say Deputy Dunn, we just had a complaint of  
22 wrongdoing by the Chief. I need you pursuant to  
23 this policy to investigate, did you?

1 A. No, I did not.

2 Q. Nor did you go to the third in the chain of  
3 command, Major Feyrer, and say I know there's this  
4 big problem. He's made these allegations. Please  
5 investigate. You didn't go to him either, did  
6 you?

7 A. No. I -- no, I did not. No. That's correct.

8 Q. So --

9 A. But I do want to point out, and this is important  
10 for the tribunal to understand, Representative  
11 Eaton was saying that the whole Enforcement  
12 Division was corrupt. He said they were rogue.  
13 He criticized -- he criticized Fussell. He  
14 criticized Eddie. He told me that -- when he  
15 wanted me to fire Eddie Edwards he said that Scott  
16 Dunn was corrupt, too, so I mean I don't know.  
17 I'm not sure it would have done any good to go to  
18 these people because he complained about all of  
19 them, but the answer is no.

20 Q. You didn't go to Police Standards and Training,  
21 for example, then to say I've had an individual  
22 make allegations against my entire Enforcement  
23 Division. I need you to investigate, Police

1 Standards and Training. Did you? I need you,  
2 Police Standards and Training, to go and do an  
3 investigation. You did not do that.

4 A. To do an investigation against my department? Is  
5 that what you're -- is that what you're asking?

6 Q. Sir, you've just said --

7 A. No. Is that -- is that the question?

8 Q. Absolutely.

9 A. At that point I didn't think it was necessary, but  
10 you're -- the answer to your question is yes.

11 Q. Well, he's just made an allegation against one  
12 individual, the Chief, and the investigators, and  
13 then you've testified now that it was the whole  
14 department that's corrupt. You didn't do an  
15 investigation to look into whether or not that  
16 department was corrupt.

17 A. I knew it wasn't corrupt. And we had -- we had  
18 demonstrated through data and fact, counselor, and  
19 we had done numerous investigations in the past, I  
20 might add, regarding Representative Eaton's  
21 allegations regarding targeting. We did -- I had  
22 ordered a complete statistical analysis of all of  
23 the infractions that were made against licensees

1 throughout the state, so I had already spent a  
2 great deal of time looking at and examining  
3 whether or not the Chief was behaving  
4 inappropriately as well as the department.

5 For example, when I was first appointed, I  
6 went over to see Colonel Barthelmes, and I asked  
7 him his opinion of Eddie Edwards and our  
8 Enforcement Division. I said, you know, "I don't  
9 know that. I am a marketing person." And he  
10 conveyed his opinion to me, which was quite --  
11 quite good in fact. So -- and I don't mean to  
12 parse things, but the fact of the matter is I had  
13 done an enormous amount of investigation, and with  
14 the legislative hearing and when Representative  
15 Eaton began to make these claims, which ultimately  
16 were -- um -- mendacious in nature, I had spoken  
17 with the hospitality industry. I had had several  
18 meetings with State legislators, so my point is I  
19 did, and I know you disagree, and I'll accept  
20 that.

21 Q. Well, you did not tell Representative Eaton that  
22 on December 14th when he's calling you, when you  
23 expect his phone call, you did not tell him that

1 Representative Eaton, we've already looked into  
2 all of these types of claims. They're simply not  
3 true. You didn't express anything that you just  
4 expressed to this tribunal to Representative Eaton  
5 that evening.

6 A. Yes, I did. Absolutely. I don't know where it is  
7 in here, but I said to him, "I'd be shocked if  
8 that was true," his assertion about Eddie Eatons  
9 [sic]. It's right in my Grand Jury testimony.

10 Q. Do you have a cite for that, sir? I didn't see  
11 one.

12 A. Well, it's in there as I recall it.

13 Q. Well, let's move on to the second warrant.

14 A. Thank you.

15 Q. You learn there's a second warrant. And how do  
16 you -- that has been executed. How do you learn  
17 that?

18 A. Um -- I believe, and I know our chronology of  
19 events has -- has -- having reviewed that with  
20 great specificity, but the Chief advised me of it.

21 Q. Right. And I can -- I'll direct your attention to  
22 page 24, line 22 of day one.

23 COUNCILOR HOLLINGWORTH: What was the

1 line?

2 MS. CUSACK: Line 22.

3 BY MS. CUSACK:

4 Q. When the question was asked you, "How do you learn  
5 that they go back to the Railroad Tavern," and  
6 that's for the second -- the issuance of the  
7 second warrant, you answer, "I received an  
8 additional phone call from Representative Eaton."

9 A. It could be.

10 Q. And this is the conversation where Representative  
11 Eaton complains to you that your investigators  
12 stormed the tavern.

13 A. Correct, counselor.

14 Q. They ripped the equipment off the wall.

15 A. Correct.

16 Q. What do you do, sir, to learn if they've ripped  
17 the equipment off the wall?

18 A. What do I learn to --

19 Q. What do you do to learn if they have ripped the  
20 equipment off the wall?

21 A. Um -- I believe I had a conversation with Eddie  
22 Edwards regarding it.

23 Q. Does he show you the pictures and say just not

1 true? They didn't rip anything off the wall.

2 A. No, he didn't.

3 Q. Do you say I want to speak to Sergeant Fussell to  
4 learn if this is true?

5 A. No, I did not.

6 Q. Did you say I think there was Keene Police  
7 officers there? I want to speak with them to  
8 learn if it's true that they ripped the equipment  
9 off the wall.

10 A. No, I did not.

11 Q. Your reaction was you felt like you were placed in  
12 an enormously difficult position; is that correct?

13 A. Well, I think you're characterizing it and saying  
14 that that was my sole reaction, and I would have  
15 to say that that's not my sole reaction. Now, you  
16 might refer to my Grand Jury testimony -- um --  
17 and note that -- um -- you know, I'd be happy to  
18 look at it, but I had a number of different  
19 reactions to it, and I think that's what's  
20 important for me to convey, but if you want to  
21 point that out, counselor, I'd be happy to look at  
22 it.

23 Q. Sure. At page 25. We'll start with line 21. And

1 this is, again, day one. You said, "I felt as  
2 though I was placed in an enormously difficult  
3 position." That's your testimony.

4 A. That's true. There were reasons for that, but  
5 that's true.

6 Q. And you also up at line seven say, "I apologize if  
7 my recollection is not specific because in the  
8 fury of all of this, I was trying to deal and  
9 grasp with the emotion and not so much of what was  
10 taken out." Meaning the equipment. So you were  
11 trying to deal with all the emotion, not learn the  
12 facts; is that correct?

13 A. That's correct. I -- that's correct. I shouldn't  
14 say that. I mean I think that there was a -- I  
15 think what I was intending to say is that there  
16 was an enormous amount of emotion associated with  
17 the two very hysterical phone calls that I had  
18 received. Enormously so. Now, when you receive a  
19 telephone call from arguably the third or fourth  
20 most important legislator in the State of New  
21 Hampshire, and he -- I wouldn't say at the top of  
22 his lungs but continues this diatribe about the  
23 unlawful acts of our law enforcement agency, the

1 fact that Eddie Edwards, our Chief of Enforcement,  
2 is doing this in specific retaliation for his  
3 legislative agenda and that Officer Fussell and  
4 other officers were rude and rogue, and we all  
5 know there's no evidence to that fact, that was a  
6 very -- very, very highly charged emotional  
7 event.

8 Combine that with the discussion I had with  
9 the bar owner, and that was also extremely  
10 emotionally charged. The man was in near tears in  
11 how he was describing it. So to the extent that I  
12 had some distraction by that, yes, I did,  
13 counselor. And those were the circumstances that  
14 I was presented with, and I needed to deal with  
15 them at that time within that context. And that's  
16 what I'm trying to convey to the Council members.

17 MS. CUSACK: I see that it is 10 minutes  
18 after 12. I know that you wanted to suspend.

19 GOVERNOR LYNCH: Are you at a good  
20 breaking point right now, counselor? Knowing that  
21 there might not be any good breaking point, but --

22 MS. CUSACK: It's a place -- I'm not  
23 really moving on to the next session, but it's a

1 place that's as good as any to take a break.

2 GOVERNOR LYNCH: Okay. Okay. So we're  
3 going to take an hour break.

4 COUNCILOR BURTON: I have a question.  
5 Attorney McLaughlin referred to a memo of memory  
6 of -- surrounding this particular event over  
7 there. Also, you have -- um -- referred to the  
8 Grand Jury book several times. I'd like a copy of  
9 that so I can follow along. And if that is -- at  
10 the end of the day I'm going to have to vote yes  
11 or no on a Removal Petition, and I want every  
12 piece of paper as I arrive to that decision.

13 MR. MCLAUGHLIN: What I have, Councilor  
14 Burton, is the following. Number one, I have made  
15 copies of the Grand Jury testimony. In the  
16 ordinary course, of course I would have called my  
17 client myself and would have had them for you. I  
18 have no quarrel with the fact that the State  
19 called him, but it does not permit me to get the  
20 documents before you before I examine him. So I  
21 have that.

22 Secondly, I am mindful of the fact that  
23 these issues about when something was said is

1 inherently problematic when you go back nine  
2 months, so what I did is I sat with Commissioner  
3 Bodi, and we created the best chronology he could  
4 remember and put it in a legal form that I  
5 described as a request for findings of fact.  
6 That's what I did. But it is -- it is his  
7 statement effectively of what he remembers as he  
8 remembers it. I don't think there's anything in  
9 there that's argumentative. I think it's fairly  
10 straightforward. It's either right or wrong, but  
11 it's just a list of what he remembers when.  
12 That's why I offered it before.

13 GOVERNOR LYNCH: What I would like to do,  
14 Councilor Burton, is that you consult with your  
15 legal advisors, and then you can decide to make a  
16 request when you come back.

17 MS. CUSACK: And this may make it easy,  
18 Your Honor, that we don't object to putting the  
19 Grand Jury testimony in. It's just easier for  
20 everybody to follow along as I will be going line  
21 by line in a number of areas, so that would make  
22 it easier. I would object at this point to the  
23 chronological events coming in. And I understand

1 the Councilor's point very well that -- that he'd  
2 like to have every piece of paper, and since  
3 Attorney McLaughlin just made the representation  
4 that it is a finding of fact, the State intends to  
5 also submit findings of fact, so perhaps what we  
6 can do is work out a joint finding of fact and  
7 request for rulings of law and submit that at the  
8 end of the case, and that would help the entire  
9 panel.

10 MR. MCLAUGHLIN: I think my chances of  
11 working out something would be nonexistent,  
12 counsel.

13 MS. CUSACK: And I don't understand that  
14 representation, counselor.

15 MR. MCLAUGHLIN: We would agree?

16 GOVERNOR LYNCH: Okay. This is what  
17 we're going to do. We're going to take a break,  
18 and we're going to consult with our legal advisors  
19 and then reconvene here in one hour.

20 (The proceedings are recessed at  
21 12:14 p.m.)

22 (Immediately prior to the proceedings  
23 resuming on the record, counsel inform the court

1 reporter that the identification marking on  
2 Respondent's Exhibit A can be stricken.)

3 (The identification marking was stricken  
4 from Respondent's Exhibit A, and the exhibit is  
5 received in evidence.)

6 (The proceedings reconvene on the record  
7 at 1:17 p.m.)

8 GOVERNOR LYNCH: So why don't we start up  
9 again. We're now back in session. Attorney  
10 McLaughlin, is it my understanding that there's  
11 been an agreement to have another witness come  
12 forward at this point and then go back to  
13 Mr. Bodi?

14 MR. MCLAUGHLIN: You're correct,  
15 Governor.

16 GOVERNOR LYNCH: And whose witness is  
17 it? Who's going to start off?

18 MR. MCLAUGHLIN: My witness.

19 GOVERNOR LYNCH: Okay. We'll then  
20 proceed.

21 MR. MCLAUGHLIN: Thank you.

22 GOVERNOR LYNCH: Thank you.

23 MR. MCLAUGHLIN: On behalf of Chairman

1 Bodi, I call Daniel Eaton to the stand.

2 Mr. Eaton, it's over there. Governor, shall I  
3 swear the witness?

4 GOVERNOR LYNCH: Sure. Please, if you  
5 would.

6 MR. MCLAUGHLIN: Please raise your right  
7 hand, sir.

8 TESTIMONY OF DANIEL EATON,  
9 who was called as a witness and, having been first  
10 duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MCLAUGHLIN:

13 Q. Please be seated. Mr. Eaton, my name is Phil  
14 McLaughlin. I'm an attorney. I practice law in  
15 Laconia, New Hampshire. I represent Mark Bodi.  
16 Please tell me your name, sir.

17 A. Daniel Eaton.

18 Q. Where do you live, sir?

19 A. In Stoddard.

20 Q. How are you employed?

21 A. Um -- I've been in real estate. For the moment,  
22 full-time legislator.

23 Q. Are you a member of the Legislature?

1 A. Yes, sir.

2 Q. In what capacity?

3 A. Um -- the majority floor leader.

4 Q. Do you have any committee assignments?

5 A. I do.

6 Q. What are they?

7 A. Finance Committee, Fiscal Committee, Rules -- um  
8 -- Joint Facilities, House Facilities. I think  
9 that's it.

10 Q. Mr. Eaton, am I correct in saying that to the best  
11 of my knowledge we have accommodated your request  
12 to testify at this time because you will be flying  
13 out later today?

14 A. That is correct, and I appreciate it.

15 Q. And I believe you have an appointment in  
16 Washington?

17 A. Correct.

18 Q. With respect to some governmental agency?

19 A. Correct.

20 Q. Which governmental agency?

21 A. Homeland Security.

22 Q. The nature of the appointment, sir?

23 A. Um -- it is master planning on the nationwide

1 deployment of a public safety broadband system.

2 Q. Representative Eaton, when I saw you I was about  
3 to say I believe this is the first time we've  
4 met. In fact, I don't recollect that we've ever  
5 spoken, have we?

6 A. I don't think so.

7 Q. Do I recollect correctly, however, that you were  
8 at a hearing last week when I was in attendance  
9 with Representative [sic] Rice?

10 A. Yes, sir.

11 Q. And you were there when Mr. Perrault convened the  
12 hearing?

13 A. Yes, sir.

14 Q. And at that time do I recollect correctly that  
15 Mr. Perrault said this is a public hearing?

16 A. Correct.

17 Q. And you were the only member of the public there?

18 A. Correct.

19 Q. Why were you there?

20 A. To see if I would get accommodation for my  
21 schedule.

22 Q. You were there during the entirety of the hearing?

23 A. I think I left early.

1 Q. If I represent to you that I received an E-mail  
2 from the Attorney General's Office indicating that  
3 my request that they cooperate to produce you for  
4 deposition had been turned down by you, would that  
5 be accurate?

6 A. That would be correct.

7 Q. Why?

8 A. I felt there was nothing to offer; that you had a  
9 copy of my entire record with them.

10 Q. As you look around, are there any other members  
11 here today of the House legislative leadership  
12 that are present observing your testimony?

13 A. I don't believe so.

14 Q. Thank you. How long have you been a member of the  
15 New Hampshire House, sir?

16 A. Cumulative total, 22 years.

17 Q. Was there some suspension in your tenure?

18 A. Yes.

19 Q. Please tell me the year you first began, the year  
20 you ended, the year you recommenced.

21 A. I began in 1976, ended in 1990 and came back in  
22 2002.

23 Q. What towns do you represent, sir?

1 A. Walpole, Alstead, Marlow, Stoddard, Nelson,  
2 Sullivan, Roxbury.

3 Q. Is Randy Filiault a friend of yours?

4 A. Yes, sir.

5 Q. Is he a political acquaintance of yours?

6 A. Yes, sir.

7 Q. Did he operate a tavern in Keene called the  
8 Railroad Tavern?

9 A. Yes, sir.

10 Q. Is Keene in your district?

11 A. No, sir.

12 Q. Were you near Mr. Filiault on the evening of  
13 December 14th, 2009?

14 A. I don't know the dates. I'm --

15 Q. Do you recollect being there during the execution  
16 of a search warrant?

17 A. Yes, sir.

18 Q. Was it a coincidence that you happened upon that  
19 search warrant?

20 A. No, sir.

21 Q. Had you received a call beforehand?

22 A. No, sir.

23 Q. If it were not a coincidence, then how is it that

1 you were there during the execution of the search  
2 warrant?

3 A. I was going to a county delegation meeting, and  
4 I'm taking your word on the date. Going to a  
5 county delegation meeting. I received a text  
6 message from Mr. Filiault stating that a search  
7 warrant was in progress. Um -- that was it. At  
8 the end of the county delegation meeting several  
9 of us county delegates usually go out for an  
10 aftermath of the meeting we had and planning for  
11 whatever we might do for the next meeting, and I  
12 suggested the Railroad Tavern just so I could find  
13 out what had happened.

14 Q. Have you reviewed your testimony here today with  
15 anyone, either party, me or the State, since  
16 Wednesday afternoon last week?

17 A. Um -- with anyone, no. I got the first copy of my  
18 statement to the Attorney General, I think,  
19 Wednesday or Thursday evening. I skimmed it  
20 briefly. I have not reviewed it with anyone.

21 Q. You have not consulted with anyone from either my  
22 staff or their staff?

23 A. No, sir.

1 Q. Apart from that statement that you previously gave  
2 to the Attorney General, have you reviewed any  
3 other materials in preparation for your testimony  
4 today?

5 A. No, sir.

6 Q. Since you were in Keene and since you knew that a  
7 search warrant was in the process of being  
8 executed at a friend's establishment, did you take  
9 pains not to show up so that there could be no  
10 misperception about your role?

11 A. No, sir. I assumed at -- I think the county  
12 delegation meeting got over around nine clock. I  
13 believe the text message I got was in the vicinity  
14 of seven o'clock and had every reason to believe  
15 that any search warrant would have been fully  
16 completed by that time.

17 Q. That's fair. But you got there and found that it  
18 wasn't, correct?

19 A. Correct.

20 Q. So naturally you left, didn't you?

21 A. No, sir. I went to the -- um -- side away from  
22 where that was operating and spoke to the owner's  
23 wife.

1 Q. After you took the names of the investigators?

2 A. Absolutely not.

3 Q. When did you take the names of the investigators?

4 A. Um -- I take objection to the format of that.

5 Q. What objection do you take?

6 A. That I went and took names.

7 Q. That's clearly my meaning. You did that, didn't  
8 you?

9 A. Um -- I wrote down a name --

10 Q. Why?

11 A. -- after -- after an inspector from behind the bar  
12 turned around and said, "Hello, Representative  
13 Eaton. How are you?" And put his hand out to  
14 shake, and I shook his hand. Someone I've never  
15 met before, and I was taken aback as to anyone  
16 knowing who I was during those circumstances. And  
17 he introduced himself, and I recognized him from  
18 something that I'd seen prior and wrote down the  
19 name to refer that to Commissioner Bodi to  
20 corroborate something we discussed previously.

21 Q. Mr. Eaton, as a housekeeping matter, it's often  
22 been pointed out to me indelicately that I tend to  
23 speak quickly and tend to interrupt people. That

1 is not my intention. Whatever else my intention  
2 may be, it is not to interrupt you. I did. If I  
3 do it again, if you just put your hand up. My  
4 intention is to let you speak completely before I  
5 present the next question.

6 A. I'm in the political arena. I'm very used to  
7 that.

8 Q. All right, sir. In addition to the fact that you  
9 knew Randy Filiault as a friend, you also knew him  
10 as a Keene politician, correct?

11 A. Known him as a Keene City Councilor and as the  
12 host of a political television program that I  
13 frequent.

14 Q. When you say you frequent, you mean you have been  
15 interviewed on it more than once?

16 A. Yes.

17 Q. The statement that you reviewed the other day  
18 taken by the Attorney General's Office was given  
19 to you -- was taken from you on February 1st of  
20 this year, was it not?

21 A. I'll take your word.

22 Q. Mr. Eaton, I know that I'm going to be examining  
23 you with respect to this statement.

1 A. Okay.

2 Q. It is not my intention to do it without your  
3 having it.

4 A. Thank you.

5 Q. I do not have copies for the Governor and  
6 Council. I don't anticipate that it will be  
7 offered into evidence. I'll leave that to the  
8 State, but what I'm going to do is to give you the  
9 statement that I believe commences on page 325.  
10 And, to the best of my knowledge, it ends on page  
11 361. If at any time I'm asking you to look at  
12 this, my intention is to give you full opportunity  
13 to look. Once again, I know my habits. If I  
14 interrupt, I'd like you to just tell me to wait.

15 A. Thank you.

16 Q. You're welcome. Although I suspect it will not be  
17 offered, for purposes of record control I've  
18 marked it as Bodi S for ID. Mr. Eaton, I think it  
19 would be best if I just sipped on my soda for a  
20 moment and have you look at this so you can assure  
21 yourself that I have done what I set out to do,  
22 which is to give you a full copy of what I  
23 understand your statement to be. So take your

1 time.

2 (The witness reviews the exhibit.)

3 A. It appears to be what I'm seeing.

4 Q. Thank you, sir. I will also alert you to the fact  
5 that you may well answer questions that are beyond  
6 the scope of what I may ask, and that may be a  
7 cause for me to look through my questions, pause a  
8 moment and not repeat myself if I can avoid it.

9 A. Certainly.

10 Q. That will be the explanation for my silence or any  
11 interruption, okay?

12 A. Certainly.

13 Q. In retrospect, Representative Eaton, having been  
14 at the Railroad Tavern on what we'll say  
15 December 14th, having gone in, having seen that  
16 there was a search warrant in process, have you  
17 second-guessed your judgment about the prudence of  
18 staying there at that time?

19 A. No, sir.

20 Q. Tell us why it is that you in fact stayed there at  
21 that time?

22 A. I was talking to the owner's wife. The officers.  
23 appeared to be in completion of what they were

1           doing. The officer had made an effort to  
2           introduce himself to me. Um -- and after that I  
3           still stepped away from what they were doing. The  
4           facility was open to the public. I believe there  
5           were a couple of members of the public still in  
6           the establishment. Um -- I saw no interference in  
7           any way, shape or form.

8           Q. You didn't?

9           A. Correct.

10          Q. Could you imagine someone else possibly seeing the  
11          situation as indicating interference?

12          A. I don't think so. Um -- I steered clear of  
13          whatever they were doing.

14          Q. Is it true that when you went into the tavern on  
15          December 14th, that even before that date you had  
16          personally formed an opinion that Mr. Filiault was  
17          the subject of harassment on the part of the State  
18          Liquor Enforcement people?

19          A. I think that's a fair statement.

20          Q. What had caused you to come to that conclusion?

21          A. I can't help you with dates and times, but  
22          probably six months prior -- um -- Mr. Filiault  
23          had asked me to stop by the tavern to look at a

1 videotape that he had that showed two enforcement  
2 officers enter the establishment -- um -- in --  
3 for lack of a better term, in pseudo-SWAT gear,  
4 enter onto the dance floor and stand there with  
5 their arms crossed, glaring at the crowd.

6 And as I watched the videotape people  
7 dissipated from the dance floor and dissipated  
8 from the tavern as a whole, and when the facility  
9 was essentially empty they smiled and walked out  
10 the door. Mr. Filiault had made representations  
11 of other situations that I'd be hard-pressed to  
12 recall at this point of a similar nature.

13 Q. And it was your view that, rightly or wrongly,  
14 Mr. Filiault was at least sincere in conveying to  
15 you his opinion that he was being targeted,  
16 correct?

17 A. Yes, sir.

18 Q. And it would be fair to say that at some point,  
19 among other things that you brought to  
20 Commissioner Bodi's attention following the 14th,  
21 was the fact that you had in fact seen the  
22 investigators there on the 14th before in a  
23 videotape, correct?

1 A. One of the investigators.

2 Q. Do you remember the name, sir?

3 A. I don't. It starts with F. Fossell. Fussell.

4 Q. Fussell.

5 A. Something along that line.

6 Q. Thank you. Apart from Mr. Filiault's conclusion  
7 that he was the target of special attention, did  
8 you also form an independent view that he was the  
9 target of harassment and special attention?

10 A. I'm not sure. I'd gotten phone calls -- um --  
11 over the past couple of years from multiple  
12 licensees stating different events, their opinion  
13 of what they felt were heavy-handed actions -- um  
14 -- in a cumulative total basis. I think I formed  
15 an opinion that that could be occurring.

16 Q. And, in fact, it would be fair to say, based upon  
17 your statements to the Attorney General's Office,  
18 that when you went in there on the 14th you had  
19 already had past experience of other establishment  
20 owners around the state complaining to you about  
21 heavy-handed enforcement, correct?

22 A. That is correct.

23 Q. You indicated that you had recollected seeing in a

1 prior video this Mr. Fussell in what I think you  
2 described as SWAT-like clothes.

3 A. Um-hum.

4 Q. The events we're talking about, according to  
5 December 14th, how long before December 14th had  
6 you seen that video?

7 A. Again, I'm --

8 Q. Your best estimate.

9 A. -- giving you a wild guess. Probably about six  
10 months.

11 Q. And it would be fair to say that when you saw that  
12 video, you were very upset by it, correct?

13 A. I don't think I was very upset. I was distressed,  
14 but I found it to be bizarre.

15 Q. Look at me for a second. I'm going to ask you a  
16 question that appears to contradict your answer.  
17 I'm not suggesting you're misleading.

18 A. Um-hum.

19 Q. I'm merely trying to get a record straight, okay.

20 A. Absolutely.

21 Q. That's it. Do you recollect telling the Attorney  
22 General's Office that you were stunned and  
23 distressed?

1 A. I think stunned and distressed is probably proper.

2 Q. Okay, sir. If you want to double-check the  
3 accuracy of the citation, I'll give you all the  
4 time you need, Mr. Eaton. You would be looking at  
5 page nine at the top, page 333 at the bottom, and  
6 I was referring to that full first paragraph about  
7 two inches in depth.

8 A. So the terminology would be stunned and  
9 dumbfounded.

10 Q. And it would be fair to say that among other  
11 things that you stated to the Attorney General at  
12 that time -- look at line six, sir -- that one  
13 evening Randy asked you to come behind the bar to  
14 look at his video, and it was a video of two  
15 officers in their jumpsuit gear or whatever it is  
16 they use, standing on the dance floor with their  
17 arms crossed, glaring at customers that were on  
18 the dance floor, and he showed me the time lapse  
19 that they stood there for probably half an hour  
20 roughly until the place was cleared out, and they  
21 grinned and walked out the door, and I was just a  
22 little stunned and dumbfounded. Is that a fair  
23 reading?

1 A. Yes, sir.

2 Q. So it would be fair to say then, would it not,  
3 that when you went there on the 14th you would  
4 have gone with a fixed view that in the past your  
5 friend, Mr. Filiault, had in fact been victimized  
6 and harassed at least with two people looking like  
7 SWAT officers standing there clearing the place  
8 out, correct?

9 A. No, sir.

10 Q. No.

11 A. No.

12 Q. You had forgotten the video incident when you went  
13 there on the 14th of December?

14 A. No, I had not forgotten that, but the simple fact  
15 is is the incident related here appeared to be an  
16 entry and an action and an exit. A search warrant  
17 is a different animal, and I would have no idea  
18 what had occurred to preempt that search warrant  
19 -- um -- whether it's legitimate, not legitimate.

20 Q. I think I've misled you.

21 A. Okay.

22 Q. I think my intention was to say to you that before  
23 you went to the tavern on the 14th of December you

1 had had a past significant experience in observing  
2 Mr. Filiault prove to you that there had been in  
3 your mind improper conduct by enforcement agents,  
4 correct?

5 A. That's a fair statement.

6 Q. Thank you. And it would also be fair to say that  
7 while you viewed the videotape that night no  
8 record was ever kept of that videotape, correct?

9 A. Which night?

10 Q. I'm sorry. When you viewed the videotape of the  
11 officers standing on the floor and remarked to  
12 Commissioner Bodi about it, you had learned that  
13 no record had been kept of that videotape,  
14 correct?

15 A. That is correct.

16 Q. Would it be fair to say -- I'm looking, sir, at  
17 page 15 near the bottom if you need to reference  
18 it -- that Mr. Filiault had stated to you that he  
19 had had multiple encounters with enforcement  
20 authorities from the Liquor Commission that he  
21 thought were bogus? Last two lines, sir.

22 A. Yes, sir.

23 Q. Would it be fair to say that following your

1 experience at the Railroad Tavern on the 14th that  
2 you had phone contact with Mark Bodi?

3 A. Yes, sir.

4 Q. Sitting here today, do you recollect whether you  
5 initiated it or he did?

6 A. I don't recall. I believe it was the morning  
7 after, but I don't recall.

8 Q. I accept it may have been the morning after. My  
9 question is do you recollect who initiated it,  
10 sir?

11 A. I don't recall.

12 Q. Do you recollect being asked by the Attorney  
13 General what the content was of your phone call  
14 with Commissioner Bodi on the 14th or 15th? I  
15 would invite your attention again, sir, to the  
16 middle of page 18.

17 A. Yes, sir.

18 Q. Mr. Eaton, if you would look at me for a moment.

19 A. Um-hum.

20 Q. Would you agree with me that your memory of what  
21 you told the Attorney General was sharper on  
22 February 1st than it would be here today on  
23 September 20th?

1 A. Substantially.

2 Q. So if I were to ask you your best recollection of  
3 what was said, would it be fair to say that that  
4 recollection would probably be aided by looking at  
5 the content of page 18?

6 A. Absolutely.

7 Q. Then I'm going to do just that. If you feel  
8 that's the best way to express it, I'm going to  
9 ask you, sir, if you would, when asked by the  
10 Attorney General the following question, please  
11 tell me your answer. Please stop. Listen. I'm  
12 going to read the question. "As a result of that  
13 second phone call from Randy telling you about the  
14 search warrant, the second search warrant, do you  
15 have any contact with anyone at the bureau or  
16 anyone at the Liquor Commission?" And your  
17 answer, sir. Take your time. Read it clearly.  
18 Out loud, please.

19 A. Do you want me to read the answer to the question?

20 Q. I do, except if you would look at me again.  
21 Whatever else may be said, I'm not trying to bring  
22 discomfort. If you want me to read it, I'd be  
23 happy to.

1 A. No, no, no.

2 Q. Do you want to read it?

3 A. "I had contact with Mark Bodi. I don't remember  
4 which one of us called. I think I probably called  
5 him and said, 'Do you remember the committee  
6 hearing?' I have to back up. During the  
7 committee hearing on whether to keep Enforcement  
8 to Safety or Enforcement Mark was at the witness  
9 table with Chief Edwards, and I brought up what I  
10 had seen on videotape of two officers standing,  
11 clearing the dance floor, and Chief Edwards said  
12 it wasn't true, and I certainly didn't have any  
13 copy to validate it. I called Mark and said, 'If  
14 there's a problem,' because Mark and I talked  
15 prior, if he wanted to start finding out some of  
16 the baselines of what he heard during the  
17 hearings, called and said, 'I don't know if this  
18 is true, but supposedly a warrant was served, but  
19 the officer went beyond the scope of the  
20 warrant.' It is apparently the officer that I met  
21 the other night who is also the officer that was  
22 in the videotape that I described in committee  
23 meeting, and if that is the case, we have a

1           problem."

2           Q. So if Commissioner Bodi were to testify that among  
3           the things you said to him was that it was your  
4           opinion that the officers went beyond the scope of  
5           the warrant, that would be true?

6           A. Um -- would you restate that, please?

7           Q. Yes. I'm saying if Commissioner Bodi were to  
8           testify that in his conversation with you one of  
9           the things that you said was that the officer went  
10          beyond the scope of the warrant, then his  
11          testimony would be consistent with your memory,  
12          correct?

13          A. Close. I think I said that I had been told by the  
14          tavern owner that the officers went beyond the  
15          scope of the warrant.

16          Q. Did you explain to Commissioner Bodi that you had  
17          been a police officer?

18          A. Um -- I don't think so, but I believe the  
19          Commissioner's fully aware of that.

20          Q. When were you a police officer?

21          A. I started in 1974, I think.

22          Q. How long did you remain, sir?

23          A. 1990.

1 Q. Is that a military service ribbon?

2 A. No, sir.

3 Q. The reason I ask is '74 rings a bell with me  
4 personally. I told you I'd go through and strike  
5 off questions. I'm trying to expedite it.

6 A. That's okay.

7 Q. I'm going to revisit a question I asked you before  
8 given the history that you've given here these  
9 last several minutes. Did it occur to you at any  
10 time as a seasoned and long-term legislator and  
11 past policeman that the young police officers who  
12 were there that night might have considered your  
13 presence to be intimidating to them?

14 A. No, sir, I don't.

15 Q. So if you did not consider it intimidating that  
16 evening, there essentially would be nothing that  
17 would restrain you from doing it again in similar  
18 circumstances, correct?

19 A. Correct.

20 Q. When you called and spoke with Commissioner Bodi,  
21 do I understand that in fact you called --  
22 correction -- that you had two conversations with  
23 Commissioner Bodi?

1 A. I believe so. There may have been more -- um --  
2 but I don't recall.

3 Q. As a result of those conversations, did you make  
4 it plain to Commissioner Bodi that you believed  
5 his people were overreaching?

6 A. No, sir, I had no reason to know one way or the  
7 other.

8 Q. Did you tell him that this was payback by Eddie  
9 Edwards?

10 A. I don't recall making that statement, but it's a  
11 long time ago.

12 Q. Is it consistent with something you think you  
13 might have said that evening?

14 A. I -- I think it was morning, and I don't think  
15 so. I thought I was doing Mark a favor by giving  
16 him a heads up that if the information that had  
17 been given to me were correct, and the officers  
18 had gone beyond the scope of the warrant, that he  
19 should have concerns and look into it.

20 Q. Do I understand you to say that in your judgment  
21 being at the bar on the 14th and making the  
22 reports you did is seen by you as doing a favor to  
23 the Liquor Commission?

1 A. No, sir. I think we're getting separate calls and  
2 separate dates intertwined here.

3 Q. We got the calls. We got the dates. The  
4 composite of it. Do you see yourself in making  
5 these contacts and remaining there at the Railroad  
6 Tavern on the 14th as somehow or other doing a  
7 favor to the Liquor Commission?

8 A. I don't know if I can answer that in any way,  
9 shape or fashion.

10 Q. Do you see it as a service to the State of New  
11 Hampshire?

12 A. I think with the phone call that I received from  
13 Mr. Filiault post search warrant that giving the  
14 Commissioner a heads up of an allegation of  
15 officers going beyond the scope of a search  
16 warrant, I absolutely considered that a favor.

17 Q. Do you consider that a service to the State of New  
18 Hampshire?

19 A. I'm not even sure how to answer that.

20 Q. Would it be fair to say that after you had your  
21 conversations with Commissioner Bodi you came away  
22 from those conversations believing that Mark Bodi  
23 would look into the situations that you were

1 describing to him?

2 A. I think that's a fair assessment.

3 Q. Was there some other conversation that you had at  
4 some point in which Mark Bodi said that camera  
5 equipment would be returned?

6 A. At some point the Commissioner called and said the  
7 camera equipment would be returned.

8 Q. I'm not sure of its significance, but on the 14th  
9 you were actually accompanied to the tavern by  
10 another State Representative, were you not?

11 A. Yes.

12 Q. Who, sir?

13 A. Representative Gus Lerandeau of Swanzey.

14 Q. I want to alert you, Representative Eaton, that  
15 I'm looking at page 27. I'll give you a chance to  
16 review it, but I will tell you that my intention  
17 is to ask you questions beginning with the first  
18 question apparently presented to you, "Where's  
19 that meeting held?" And then I expect that you  
20 should perhaps just read the rest of that  
21 statement that you gave.

22 A. Yes, sir.

23 Q. Okay, sir. The thrust of my question is this.

1 You recollect a personal meeting at Commissioner  
2 Bodi's office?

3 A. Yes, sir.

4 Q. In Concord?

5 A. Yes, sir.

6 Q. At the Commission headquarters?

7 A. Yes, sir.

8 Q. In company with Mr. Filiault?

9 A. And Representative Lerandeau as well.

10 Q. Any other person there, sir?

11 A. No, sir.

12 Q. You were asked if you recalled the date of the  
13 meeting, and you did not remember as of  
14 February 1st, 2010. Is that correct?

15 A. That is correct.

16 Q. But you're assuming it was sometime in this time  
17 frame of December 14, 15th, 16th?

18 A. I don't know what the dates are, but sure.

19 Q. Around the time of the search warrant?

20 A. Sometime post that, yes.

21 Q. Thank you. I think you indicated at one point  
22 that while you didn't know the date, you believed  
23 it was within two weeks of the search warrant

1 event, correct?

2 A. That is correct.

3 Q. All right, sir. The Commissioner called you to  
4 set up that meeting?

5 A. Yes, sir.

6 Q. And you were asked if you were surprised by that,  
7 and you responded no?

8 A. Correct.

9 Q. And tell us why you were not surprised by that.

10 A. In prior conversations with the Commissioner -- um  
11 -- he had stated that he was aware there were  
12 complaints from licensees about enforcement -- um  
13 -- that he was trying to meet with licensees and  
14 said that he had already visited different  
15 establishments, I believe, just talking with  
16 people. I don't even know if they identified  
17 themselves. And that I had discussed the complaints  
18 of Mr. Filiault plus, I believe, other licensees  
19 with him prior, and he said he would like to go  
20 sit and talk with those people at some point.

21 Q. Now, at some juncture would it be fair to say that  
22 if Attorney General Young stated to you in the  
23 form of a question, "Because he's starting to be

1 more responsive to issues." I'm going to wait  
2 until you find that, sir.

3 A. That's -- yep, I see it.

4 Q. And how did you respond at that time to Attorney  
5 General Young?

6 A. "Because he said for six months that he wanted to  
7 sit down and talk to people, find out what the  
8 problems are with Liquor Enforcement and what is  
9 going on. He said he's trying to get  
10 Enforcement's reputation back in place to  
11 alleviate problems."

12 Q. Are you familiar with Senate Bill 181?

13 A. Um -- it rings a bell, but if you'd refresh me,  
14 I'd be appreciative.

15 Q. Are you familiar with a proffer made by  
16 Commissioner Bodi called, "The Liquor Commission  
17 Modernization Act"?

18 A. I do recall, yeah.

19 Q. Are you familiar with legislation that wound its  
20 way through the New Hampshire House and Senate  
21 that would transfer the Enforcement Division of  
22 the Liquor Commission to the Department of Safety?

23 A. Yes, sir.

1 Q. Were you associated in any way with advocating  
2 that change?

3 A. I guess I would like a clarification on  
4 advocating. Um -- was I the sponsor of it? No.  
5 Was it put into the House Trailer Bill, which I  
6 believe is House Bill 2? Yes. Did I support that  
7 concept? Yes.

8 Q. House Bill 2. To an outsider, is that what I  
9 would call a reconciliation bill?

10 A. I think that's a fair assessment. House Bill 1 is  
11 the numbers, and House Bill 2 is the mechanics.

12 Q. Did you have any role at all in negotiating the  
13 content of the final version of House Bill 2?

14 A. In -- yes.

15 Q. Were you a conferee?

16 A. I guess that's where I was hesitating. I had a  
17 role in both the House version of putting it  
18 together, and then on the reconciliation of the  
19 conference committee, yes, I was a conferee.

20 Q. As a legislative leader, did you make inquiry  
21 throughout the state to see if there were interest  
22 groups that disfavored the transfer of Enforcement  
23 from Liquor to Safety?

1 A. I don't know that I made inquiries. I certainly  
2 talked to different people within the hallways.

3 Q. Which trade organizations in the state do you  
4 recollect favored the transfer of Enforcement from  
5 Liquor to Safety?

6 A. I honestly don't recall. You're in the middle of  
7 the whole budget process, and there's a multitude  
8 of organizations as well as State agencies -- um  
9 -- and other agencies that all had varying  
10 opinions.

11 Q. Do you recollect, and can you name a single agency  
12 or a single trade group that favored transfer of  
13 Enforcement from Liquor to Safety?

14 A. Sitting here right now -- um -- no. I think that  
15 the Department of Safety did favor it at one  
16 point. There were some law enforcement agencies I  
17 got phone calls from supporting and opposing.  
18 Both. And trade organizations, I don't recall.

19 Q. Do you have a personal view as to whether or not  
20 there was anyone in the House or Senate who was  
21 the most zealous advocate of the transfer other  
22 than you, sir?

23 A. Um -- within both chambers --

1 Q. Yes, sir.

2 A. -- I think yes.

3 Q. Who?

4 A. Um -- Representative Rip Holden. I think  
5 Representative Pantelakos, Representative  
6 Shurtleff. There are others I can't think of off  
7 the top of my head.

8 Q. When you were sitting in Mark Bodi's office with  
9 Randy Filiault -- Filiault, would you please  
10 describe to the Governor and the Council your  
11 observation of his general demeanor?

12 A. Of whose general demeanor?

13 Q. Mr. Filiault, sir.

14 A. Emotionally distraught.

15 Q. To the point of choking back tears?

16 A. That's accurate.

17 Q. Mr. Eaton, if you can look at me for a second.

18 Once again, it's page 33, sir. I'm going to say  
19 it's just about dead center of the middle of the  
20 page, and I'm going to withdraw that question so I  
21 can present it to you more systematically.

22 A. Certainly.

23 Q. I think what I'm going to do is just back off and

1           have you read that so you know what's there. The  
2           whole of it, sir.

3           A. The top of the page?

4           Q. Yes, sir.

5           A. Um --

6           Q. And just look up when you finish. There's no  
7           hurry.

8           A. If I may, can I start on the third line with --

9           Q. Sir, wherever you want.

10          A. Okay. "So going back to the meeting now." This  
11          would be -- um -- um -- Mr. Tracy asking the  
12          question. "So going back to the meeting now, what  
13          happened within two weeks of" --

14          Q. Excuse me, Mr. Eaton. I have antenna. I sense an  
15          objection coming. Listen to my question.

16          A. Sure.

17          Q. Read it to yourself.

18          A. I'm sorry.

19          Q. My fault. You did what I asked you to do.

20                                 (The witness reads the document to  
21                                 himself.)

22          A. Yes, sir.

23          Q. Does reading the page assist you in recollecting

1           what Mark Bodi's demeanor was during the course of  
2           that meeting?

3           A.   Yes.

4           Q.   What was his demeanor, sir?

5           A.   Calm, matter of fact.

6           Q.   Businesslike?

7           A.   Empathetic.   Businesslike.

8           Q.   And, once again, Mr. Filiault's demeanor?

9           A.   Um -- I think, as I said, emotionally distraught.

10          Q.   Do you see yourself as a person in the role of  
11           legislator where if something doesn't go your way,  
12           you will use your authority and power to punish  
13           people?

14          A.   No, sir.

15          Q.   Do you use your authority and power to perhaps  
16           affect the finances and budget of their  
17           departments?

18          A.   It's an interesting question, and you sit on the  
19           Finance Committee, and you certainly have an  
20           effect on almost every aspect of the budget.   Um  
21           -- if you're talking about what you believe to be  
22           good administration, absolutely.   If you're  
23           talking about persecution, absolutely not.

1 Q. Yes, I'm talking about personal rancor. If a  
2 person crosses you, will you take it out on them  
3 in their budget?

4 A. No, sir. And I think that that would be very  
5 difficult for almost anyone to do. The Finance  
6 Committee is made of 25 people. You're one of 25  
7 votes.

8 Q. Are you really? So you are co-equal in the  
9 Legislature with all the other legislators?

10 A. You have 400 people who are elected equally, and  
11 there are titles put forth -- um -- but you're one  
12 of 400 opinions. Do I have an ability on the  
13 floor of the House to -- um -- help some  
14 direction? Certainly. Do I have an ability in  
15 the committee to help some direction? Yes. Do I  
16 lose? Yes.

17 Q. But you're the go-to guy to fix things, aren't  
18 you?

19 A. I've heard that.

20 Q. You've heard it? Whom have you heard it from?

21 A. Um -- from members of the opposite party. From  
22 the Chair of the Finance Committee. From staff  
23 members. From department heads. From

1           Commissioners.

2           Q. Have you stated it yourself?

3           A. Probably.

4           Q. Would it be fair to say that you stated it in page  
5           36 of your statement on February 1st, 2010?

6           A. Yes.

7           Q. I think your quote was, "I fix stuff." Correct?

8           A. Um -- taken out of context in the final line, yes.

9           Q. But it's not out of context to say that you fix  
10           stuff, is it?

11          A. No.

12          Q. Which would give you somewhat more power than the  
13          other 400 and something members of the  
14          Legislature, correct?

15          A. In the formulation of the budget, yes.

16          Q. Is it your view that there are people who perceive  
17          you as being willing to exercise a vendetta  
18          against somebody and take out your disagreements  
19          with them in the budget process?

20          A. No.

21          Q. You're not seen that way?

22          A. No, sir.

23          Q. And you have never given anybody any cause to

1 believe that, correct?

2 A. No, sir.

3 Q. Once again, I'm going to tell you that I'd be  
4 happy to show you this, but I intend to read a  
5 small part of it. If it's unfair in your  
6 judgment, just whistle. Do you recollect --

7 MS. RICE: Can I have the number,  
8 please?

9 MR. MCLAUGHLIN: Yes. It's an article  
10 from the "Union Leader" that I thought I'd sent  
11 you, but perhaps not.

12 MS. RICE: I don't have it. Can I see a  
13 copy of it?

14 MR. MCLAUGHLIN: Okay. Just give me a  
15 second, and let me look at the ID number. Just a  
16 second.

17 MS. RICE: FF.

18 MR. MCLAUGHLIN: FF.

19 MS. RICE: FF for ID.

20 MR. MCLAUGHLIN: FF for ID, please,  
21 Charlene.

22 MS. RICE: Oh, we do have it.

23 MR. MCLAUGHLIN: Okay.

1 MS. RICE: Okay.

2 BY MR. MCLAUGHLIN:

3 Q. Thanks to Attorney Rice, I have a copy for you.

4 A. Thank you.

5 MR. MCLAUGHLIN: Counsel, the ordinary  
6 protocol is for me to ask permission to approach a  
7 witness. Do you want me to do that?

8 MR. PERRAULT: Sure.

9 MR. MCLAUGHLIN: Okay.

10 BY MR. MCLAUGHLIN:

11 Q. I'm asking you to take a look at a "Union Leader"  
12 article, Mr. Eaton, that at this point is marked  
13 FF for ID and ask if you have ever seen that  
14 article before.

15 A. I believe I have.

16 Q. Take a look at any part you want for as long as  
17 you want, and then please go to the last two  
18 paragraphs.

19 A. Yes, sir.

20 Q. The second to the last paragraph, beginning with  
21 the phrase, "That was the tone."

22 A. Um-hum.

23 Q. Please read it. Do you understand it?

1 A. Yes, sir.

2 Q. Is that a fair representation of what you said?

3 A. Yes, it is.

4 Q. Would you please read it.

5 A. "That was the tone and tenor and content of the  
6 conversation pure and simple, said Eaton, adding  
7 that pressuring department heads is neither my  
8 style nor how I operate."

9 Q. And then it would be fair to say that you went on  
10 in the last paragraph that you are reported to  
11 have stated, "Eaton said he thought I was doing  
12 him a favor by letting him know that there might  
13 be a fire starting." Correct?

14 A. I think that reflects what I previously stated to  
15 you.

16 Q. What is that fire, sir?

17 A. That if the enforcement officers had gone beyond  
18 the scope of the warrant, there is risk of  
19 liability to probably Mr. Bodi and the State of  
20 New Hampshire.

21 Q. And whatever else may be said, it would be fair to  
22 say that you did say that, those words or  
23 substantially similar to that, to Mark Bodi when

1           you met with him, correct? That there could be a  
2           fire started.

3           A. I don't know if I said those words to Mr. Bodi. I  
4           don't -- it's very possible. I don't know.

5           Q. Well, did you, in your judgment, let Mark Bodi  
6           know that there might be a fire starting?

7           A. I think that was the context of the phone call --  
8           um -- when I advised him that the allegation had  
9           been made that the officers may have gone beyond  
10          the scope of the warrant. That could be a fire  
11          starting.. He might want to look into it.

12          Q. I want to present the question to you again, sir.  
13          I'm sure I understand your answer. Are you saying  
14          that if a person in the position of a department  
15          head disagrees with you on a matter of importance,  
16          that you have never threatened that department  
17          head and essentially said you'll get even with  
18          him?

19          A. I believe that's a fair statement..

20          Q. Have you ever said to anybody that essentially if  
21          you don't do what I want, I'll punish you, and  
22          I'll punish your department?

23          A. No, sir.

1 Q. Mr. Eaton, I know that this isn't pleasant, so I  
2 do thank you for sitting there and listening to my  
3 questions. I hope you have a safe trip this  
4 afternoon. I'm sure that counsel will inquire.

5 A. Thank you.

6 CROSS-EXAMINATION

7 BY MS. RICE:

8 Q. Good afternoon, Representative Eaton. I have just  
9 a couple of questions for you. There has been  
10 testimony that your calls to Commissioner Bodi  
11 on -- after each of the search warrants, he  
12 characterized them as hysterical. Would you  
13 characterize your calls to Commissioner Bodi as  
14 hysterical?

15 A. I'd characterize them as anything but. They were  
16 very, very calm and very matter of fact. Um --  
17 calling to do a favor to say here's a heads up.  
18 You may have a fire starting that there is an  
19 allegation, and I don't know the facts of it, but  
20 an allegation that your officers went beyond the  
21 scope of a search warrant, and you might want to  
22 look into it -- um -- in a very casual manner but  
23 factual manner, and the Commissioner showed

1 appreciation. In fact, he said, "How do I find  
2 out about it?" And I said, "I don't know the  
3 details. The bar owner would. You may want to  
4 contact him."

5 Q. So you suggested that Commissioner Bodi look into  
6 it. Do an investigation on his own; is that  
7 correct?

8 A. Correct.

9 Q. And in that call to Commissioner Bodi, I believe  
10 you said that you didn't say the search warrant --  
11 the scope of the search warrant was exceeded. Am  
12 I correct in you're saying -- that you said I've  
13 been told that the scope of the search warrant was  
14 exceeded?

15 A. That is correct.

16 Q. Did you ask Commissioner Bodi to get the -- at any  
17 point did you ask Commissioner Bodi to get the  
18 recording equipment back to Randy Filiault?

19 A. Never.

20 Q. Did you discuss the recording equipment with him?

21 A. No, I think the only -- well, the only discussion  
22 was that a search warrant -- what I had been told  
23 is a search warrant -- subsequent search warrant

1 had been served. Recording equipment had been  
2 seized along with some tapes or CDs or some sort  
3 of recording devices and that in the process of  
4 serving that search warrant the officers may have  
5 gone beyond the scope of the warrant seizing items  
6 that were not specified in the warrant.

7 Q. Did you raise any concerns about the conduct of  
8 the officers who were at the bar on the night that  
9 you went to the bar and saw the search warrant  
10 being executed?

11 A. No.

12 Q. Did you see any reason to bring any complaints  
13 about their conduct?

14 A. No, they seemed to be very professional. I was  
15 just -- I was taken aback that someone whom I've  
16 never met knew me, knew who I was by name and by  
17 title.

18 Q. Okay. There was some questions about your  
19 oversight of the budget. There are three  
20 different divisions of the Finance Committee,  
21 aren't there?

22 A. Yes, there are.

23 Q. And are you on a particular one of those

1 divisions?

2 A. I'm on Division Two.

3 Q. And which -- do you know which division handles  
4 the Liquor Commission's budget?

5 A. That would be Division One.

6 Q. So that's not the one that you are on?

7 A. That's correct.

8 Q. Okay. There were two phone calls that you made.  
9 You seem to recollect that you called Commissioner  
10 Bodi twice, correct?

11 A. I believe so.

12 Q. And your reason for calling the first time was  
13 what?

14 A. That I recognized an officer that I had previously  
15 described to him -- or described to him seeing  
16 that officer in a videotape previously.

17 Q. So at that point you weren't making a complaint to  
18 Commissioner Bodi; is that correct?

19 A. Correct.

20 Q. So it was the second phone call after the second  
21 search warrant where you said you may have  
22 problems if your officers exceeded the scope of  
23 the warrant.

1 A. And that's correct.

2 Q. All right.

3 MS. RICE: I have no further questions.

4 Thank you.

5 THE WITNESS: Thank you.

6 GOVERNOR LYNCH: Thank you. Any  
7 redirect?

8 MR. MCLAUGHLIN: If you just give me one  
9 moment, Judge. I'm going to repeatedly call you  
10 Judge.

11 COUNCILOR WIECZOREK: Your Excellency is  
12 all right.

13 MR. MCLAUGHLIN: Governor, thank you very  
14 much. No redirect. Thank you very much,  
15 Mr. Eaton.

16 THE WITNESS: This goes to?

17 (The witness hands documents to Attorney  
18 Rice.)

19 MS. RICE: Thank you.

20 GOVERNOR LYNCH: Thank you, Mr. Eaton.

21 Oh, I'm sorry. Representative Eaton, can you come  
22 back here just for a moment. Anybody here from  
23 the Executive Council have questions for

1 Mr. Eaton?

2 COUNCILOR HOLLINGWORTH: If I could just  
3 have a moment, Governor.

4 (There is a pause in the proceedings.)

5 COUNCILOR HOLLINGWORTH: Yes, I do,  
6 Governor.

7 GOVERNOR LYNCH: Go ahead.

8 COUNCILOR HOLLINGWORTH: The meeting of  
9 the delegation, at what location to the tavern is  
10 it at?

11 THE WITNESS: Um -- the meeting of the  
12 delegation is at the county courthouse, and the --  
13 which is just off Central Square in Keene, and the  
14 tavern is located just off of Main Street, and I'm  
15 guessing -- um -- three blocks away.

16 COUNCILOR HOLLINGWORTH: And was it your  
17 practice to go to the -- to that tavern after most  
18 of your delegation meetings that were held in that  
19 location?

20 THE WITNESS: It's been a practice of  
21 several others to go to a variety of  
22 establishments -- um -- for a drink, a coffee.  
23 Sometimes it's Dunkin' Donuts. Sometimes it was

1 the tavern. Other times it was -- um -- another  
2 restaurant tavern on Main Street and Margaritas  
3 and -- a variety. We went around.

4 COUNCILOR HOLLINGWORTH: Now, you said  
5 you received a text message. Text message that  
6 there was a certain warrant in progress.

7 THE WITNESS: Correct.

8 COUNCILOR HOLLINGWORTH: And that was at  
9 what time?

10 THE WITNESS: I believe seven o'clock or  
11 just before.

12 COUNCILOR HOLLINGWORTH: And you were at  
13 the meeting at that time?

14 THE WITNESS: Correct.

15 COUNCILOR HOLLINGWORTH: And you -- you  
16 went to the tavern at what time?

17 THE WITNESS: I believe around nine or  
18 9:15.

19 COUNCILOR HOLLINGWORTH: Representative  
20 Eaton, the -- you said that you were taken aback  
21 that somebody knew you and knew you by title. You  
22 having been in politics for quite a few years, I  
23 find that that wouldn't be quite something

1 that's -- and having been myself -- be taken aback  
2 by that. Was there a particular reason why you  
3 thought that was strange?

4 THE WITNESS: If it was anyone inside the  
5 tavern in Keene, it wouldn't have fazed me in the  
6 least. It was a enforcement officer for the  
7 Liquor Commission who I have never met before in  
8 my life. And why he would know who I am is still  
9 beyond me.

10 COUNCILOR HOLLINGWORTH: I guess that's  
11 all for now.

12 GOVERNOR LYNCH: Yes, Councilor  
13 Wieczorek.

14 COUNCILOR WIECZOREK: Representative, a  
15 couple of questions. One, regarding your  
16 recording equipment. I want to get that straight  
17 so that I understand that. Did you say you never  
18 requested that the recording equipment be  
19 returned --

20 THE WITNESS: Never.

21 COUNCILOR WIECZOREK: -- to the tavern?  
22 You never did.

23 THE WITNESS: Never.

1 COUNCILOR WIECZOREK: Um-hum. Did you  
2 ever make a statement to anybody that if Eddie  
3 Edwards were to be relieved of his  
4 responsibilities, that everything would go away?

5 THE WITNESS: I made a statement that was  
6 a repetition of what someone else said to me,  
7 which I had -- um -- gonna guess at a gathering of  
8 licensees and various people stating problems that  
9 had occurred -- um -- their concerns, and someone  
10 at that meeting said there was no problem at the  
11 Liquor Commission that couldn't be solved without  
12 the removal of Director Edwards -- Chief Edwards,  
13 and -- um -- that would be the way that that was  
14 phrased; that that was a comment made to me.

15 COUNCILOR WIECZOREK: So you're not the  
16 originator of the statement. You just repeated  
17 it.

18 THE WITNESS: Correct.

19 COUNCILOR WIECZOREK: Okay. Thank you.

20 GOVERNOR LYNCH: Any further questions?

21 COUNCILOR HOLLINGWORTH: I do, Governor.

22 GOVERNOR LYNCH: Okay.

23 COUNCILOR HOLLINGWORTH: You said that

1 two individuals -- inspectors had came in from the  
2 prior events that you had seen in the videotape  
3 with the jumpsuits on and their arms crossed and  
4 stood on the dance floor. While you didn't have  
5 the tape for identification, is there any  
6 witnesses that were there or that could verify  
7 that that actually happened?

8 THE WITNESS: That would be the owner of  
9 the establishment, his wife -- um -- multiple  
10 employees of the establishment and probably  
11 multiple patrons of the establishment.

12 COUNCILOR HOLLINGWORTH: That's it.

13 GOVERNOR LYNCH: Any further questions?  
14 Again, thank you very much, Representative Eaton.

15 THE WITNESS: Thank you, Governor.  
16 Excuse me. Sorry.

17 GOVERNOR LYNCH: So, Attorney Rice, do  
18 you want to continue your questioning of Mark Bodi  
19 at this point?

20 MS. RICE: We can do that if that's what  
21 the Council and the Governor would like to do,  
22 sure. She may need a break.

23 GOVERNOR LYNCH: Oh, I'm sorry. Should

1 we take a -- do you need a break?

2 (The court reporter answers off the  
3 record.)

4 GOVERNOR LYNCH: Why don't we take a  
5 quick five-minute break.

6 (The proceedings were recessed at  
7 2:23 p.m.)

8 (The proceedings reconvene on the record  
9 at 2:30 p.m.)

10 GOVERNOR LYNCH: All right. Why don't we  
11 get started again if we could. Could we get  
12 everybody sitting down, please. We're going to  
13 get started again. I think we'll try to end close  
14 to three, but if you're in the middle of important  
15 questioning or if you're getting close to  
16 finishing up, we certainly can go a little bit  
17 longer, but we're committed to try to get  
18 everybody out by three. So if it's 3:15, that's  
19 probably okay, but you ought to probably just look  
20 at where you are in your questioning to determine  
21 what a good stopping point would be near three  
22 o'clock.

23 MS. CUSACK: Thank you, Governor.

1 (Commissioner Bodi resumes the witness  
2 stand.)

3 (Direct examination of the witness  
4 continues.)

5 DIRECT EXAMINATION

6 BY MS. CUSACK:

7 Q. Good afternoon, Mr. Bodi.

8 A. Good afternoon.

9 Q. And I would remind you that you are still under  
10 oath from this morning.

11 A. Thank you.

12 Q. I want to start -- when we finished off this  
13 morning we were talking about the execution of the  
14 second warrant, so I want to bring you back to  
15 that time. And you heard Representative Eaton  
16 just testify that his second phone call to you was  
17 to tell you that they -- the investigators  
18 exceeded the scope of the warrant. Do you recall  
19 that?

20 A. I do.

21 Q. And when he told you that these investigators  
22 exceeded the scope of the warrant, what did you do  
23 to look into what that warrant said?

1 A. I spoke to the Chief.

2 Q. Did you ask, sir, to see a copy of the warrant?

3 A. No, I did not.

4 Q. Have you ever before sitting here today looked at  
5 a copy of that warrant?

6 A. Before today?

7 Q. Yes, sir.

8 A. Only through the documents that were provided but  
9 not prior to that discussion.

10 Q. And so only through the documents that were  
11 provided in this 4:1 Removal Petition?

12 A. That's correct.

13 Q. Now, when you were made aware that there was this  
14 allegation that the warrant was exceeded and that  
15 you didn't bother to look at the warrant, did you  
16 have a conversation, sir, with anyone other than  
17 Chief Edwards about the propriety of exceeding the  
18 scope of a warrant?

19 A. About the propriety of it?

20 Q. What happens if someone exceeds the scope?

21 A. No, I did not.

22 Q. So you didn't call legal counsel and ask their  
23 advice on what happens when somebody exceeds the

1 scope of a warrant?

2 A. No, I did not.

3 Q. In fact --

4 A. If I -- if I might, just as a point of  
5 clarification. I am not exactly sure during the  
6 time frame, but there was a significant changeover  
7 at the Attorney General's Office at that time, and  
8 we would -- it was, I believe, after the fact that  
9 we had a permanent attorney assigned to us, so it  
10 wasn't as if we had -- many years Suzan Lehmann  
11 was our attorney. We had an in-house counsel who  
12 had been transferred, so we did not have an  
13 in-house counsel. And we had not -- even if one  
14 was -- had been appointed, which I don't think was  
15 the case, but I'm not positive -- um -- we didn't  
16 have an established relationship with anybody --  
17 anyone in the office, but I did not do as you  
18 suggested.

19 Q. Well, you said -- you mentioned the name Suzan  
20 Lehmann, so you did -- you have had contact with  
21 Assistant -- or Senior Assistant Attorney General  
22 Suzan Lehmann in the past.

23 A. I had.

1 Q. And, in fact, you had called her and sought her  
2 counsel on other issues that -- that arose in your  
3 tenure.

4 A. I had.

5 Q. And, in fact, one of those issues was the  
6 propriety of flying out to -- or flying from  
7 California from Washington when you were traveling  
8 for business, and someone else was paying the  
9 airfare. Do you recall that?

10 A. I don't think that that's an accurate  
11 characterization. I called her, as is my duty, to  
12 clarify. I was attending, as my statutory  
13 obligations require, a conference with the NABCA  
14 that they would reimburse me for, and I asked her  
15 the ethical appropriateness of my traveling from  
16 California -- from -- um -- I'm trying to think of  
17 where it was held -- um -- Washington to  
18 California and what would the ethical requirements  
19 be with respect to that.

20 Q. So -- so you were able to reach out to Suzan  
21 Lehmann in the past during your tenure prior to  
22 this incident?

23 A. That's correct.

1 Q. You make a decision that it was proper to call a  
2 bar owner during the pendency of an investigation,  
3 don't you?

4 A. Yes, I made that decision.

5 Q. And you did that without reaching out to somebody  
6 at the Attorney General's Office, including Suzan  
7 Lehmann, to talk about the ethical appropriateness  
8 of that.

9 A. Well, I can -- with respect to Suzan Lehmann, she  
10 had called me and told me that she was no longer  
11 working for us, so I couldn't call her. Um --

12 Q. And when did she make that phone call to you?

13 A. It was early on in the -- after Mike Delaney was  
14 appointed. Shortly thereafter she had advised us  
15 that she was no longer assigned to the -- or  
16 sometime after that fact that she was no longer  
17 assigned to Liquor Commission.

18 Q. Was it in December?

19 A. I can't recall.

20 Q. You've reached out and talked to Glenn Perlow on  
21 matters, Assistant Attorney General Glenn Perlow  
22 at the Attorney General's Office, too, haven't  
23 you?

1 A. I had one conversation with him.

2 Q. He was assigned to your Liquor Commission as the  
3 Attorney General representing -- or the Assistant  
4 Attorney General representing Liquor. That's  
5 your --

6 A. He -- he was assigned. I don't know whether he  
7 was assigned at the time I received that phone  
8 call. Um -- he may very well have been.

9 Q. Needless to say, there were people that you could  
10 have reached out to. You weren't alone, as you  
11 say, in this fight.

12 A. Well, I think in -- I felt I was alone. If you --  
13 if you want to represent that I wasn't, then  
14 that's fine.

15 Q. Well, you couldn't reach out to Commissioner  
16 Simard because he lacked capacity. That's your  
17 testimony, isn't it?

18 A. I didn't -- I didn't say he lacked capacity. What  
19 I indicated to you was that Commissioner Simard  
20 did not have sufficient knowledge nor did he take  
21 any interest in the matters of Enforcement. That  
22 opinion was widely known, and the -- I also was  
23 concerned about involving the Commissioner knowing

1 that he -- because there are only two of us, that  
2 he might have to sit in administrative hearing, so  
3 it was best under the circumstances that I did not  
4 confer with him substantively about the case.

5 Q. Because you were willing to talk substantively  
6 with the owner about the facts of this case during  
7 a pending investigation.

8 A. I'm not sure I understand the question,  
9 counselor. I didn't talk to him because I was  
10 willing?

11 Q. Right. You had decided that it's okay for me to  
12 talk to him. You shouldn't. You shouldn't,  
13 Commissioner Simard -- um -- learn anything about  
14 this because it's all on my shoulders.

15 A. That's not what I said. What I've conveyed and  
16 what I want to convey to counsel is I wanted to  
17 preserve the integrity of the process, A. And  
18 that it wouldn't be appropriate for two  
19 Commissioners to be there because we only had  
20 two. I advised Eddie Edwards that I was meeting  
21 with him. And, secondly, again, with all due  
22 respect to Commissioner Simard, that he wasn't in  
23 a capacity to assist me in other elements of the

1 decision-making process such as who would I ask  
2 him to call the Attorney General's Office.

3           Could I give this to Commissioner Simard and  
4 say Commissioner Simard, can you relieve me of  
5 this? I don't want to be involved. Will you  
6 chase this down with the Attorney General's  
7 Office? I, frankly, didn't feel he had the  
8 capacity to do that, so I'm just trying to be  
9 honest and open here. That's all I'm trying to be  
10 here.

11 Q. I understand that, sir, but we're not talking  
12 yet -- we haven't even gotten to the meeting that  
13 you initiated. We're still talking about the  
14 second warrant and the appropriateness of whether  
15 they should have gone in and what the scope of  
16 that warrant is, so I want to bring you back to  
17 that time.

18 A. Okay.

19 Q. Why was it, sir, appropriate for you to talk to  
20 the licensee?

21 A. Why was it appropriate for me to talk to the  
22 licensee? I was presented with a circumstance by  
23 Representative Eaton that had represented a

1 continuing criticism of the Liquor Commission and  
2 the Enforcement Division. In my view, it had  
3 reached an apex where he asserted that the Liquor  
4 Enforcement Division had broken the law. I also  
5 felt that it would be appropriate for me to hear  
6 about the complaints of the licensee, not  
7 necessarily review the facts of the case.

8 So I thought, given Representative's very  
9 strong involvement in this, his very significant  
10 interest in it, the fact that this had arisen,  
11 that it would be appropriate for me, particularly  
12 with the understanding that there wasn't anyplace  
13 to turn -- else to turn, that I could meet with  
14 them and better ascertain the nature of his  
15 concerns, meaning Representative Eaton's, as well  
16 as the licensee's and determine if there was even  
17 a modicum of credibility in some of these issues  
18 with respect to Mr. Filiault.

19 Q. Well, sir, you just talked about a modicum of  
20 credibility, but you had done nothing to look at  
21 your side of the story. You only wanted to hear  
22 the bar owner's side of the story. Isn't that  
23 true?

1 A. No, counselor. We asked the Attorney General's  
2 Office for help. Now, you know -- you know, the  
3 chief law enforcement of the Liquor Commission  
4 told me that he reached out to the Attorney  
5 General's Office. I asked him what the heck did  
6 he do, and he told me. Well, we went to the Keene  
7 Police. Because I knew Dan Eaton, and I knew his  
8 behaviors. And then he told me he called the  
9 Attorney General's Office, and he told me what the  
10 heck he said. And you know what? That sent a  
11 message to me. So I did do something. I just --  
12 I just -- we differ on that point, but I did do  
13 something, and I thought it was significant,  
14 whether you agree or not. I thought it was  
15 significant.

16 Q. All right. You said that the Chief called the  
17 Attorney General's Office?

18 A. His office called.

19 Q. So if later testimony comes out that it was Major  
20 Feyrer that called, it wasn't the Chief. You  
21 didn't -- the Chief never told you he called.

22 A. No. No, he didn't.

23 Q. Okay. So what does he tell you that Major Feyrer

1 says to the AG's Office when he called?

2 A. What does he say to me -- I want to be sure I  
3 understand you correctly, counselor -- about the  
4 conversation with Todd Feyrer?

5 Q. Yes.

6 A. He said to me that he was the one who had  
7 instructed Todd to call, and I thought that was  
8 appropriate action. And that Todd had placed a  
9 call, and he told me they said that they were too  
10 busy to help.

11 Q. Did he tell you --

12 A. He went on to say -- may I continue?

13 Q. Certainly.

14 A. He went on to say that he had instructed Major  
15 Feyrer -- because I grilled him on that point, on  
16 the point of the -- on the phone call. And he --  
17 and -- um -- I said, "Are you sure you -- are you  
18 sure he called?" And he said to me, "I was right  
19 there." And he said that -- um -- he said that he  
20 instructed him not to tell 'em it was Dan Eaton.  
21 And I said, "Why?" And he said, "Because I knew  
22 they wouldn't do anything."

23 Q. You're telling this tribunal that you called for

1 help because Dan Eaton was making allegations to  
2 you about law enforcement. So you reached out --  
3 your office reaches out for help from the AG's  
4 Office with a public integrity complaint. That's  
5 what you said in your opening, that we reached out  
6 with a public integrity complaint, but you never,  
7 sir, even told the AG's Office the name of the  
8 person that you're complaining about, did you?

9 A. I don't understand your question, counselor.

10 Q. You just testified that Chief Edwards told you he  
11 told Major Feyrer not to use Representative  
12 Eaton's name.

13 A. Yes.

14 Q. So you're reaching out for help to the AG's Office  
15 and saying don't tell him who we're calling about,  
16 but we've got a complaint.

17 A. I'm trying to stick with you, and I know this is  
18 an important section, so I'm saying I didn't -- I  
19 didn't ask him who the Attorney General's Office  
20 that he called?

21 Q. No, sir. That's not what I'm asking you.

22 A. Okay. Well, I'm just trying to answer your  
23 question completely and honestly.

1 Q. Okay. The question is -- we'll break it down for  
2 you. Major Feyrer calls someone at the AG's  
3 Office --

4 A. Yes.

5 Q. -- and is instructed by the Chief don't tell the  
6 AG's Office who we're calling about.

7 A. Correct. With you so far.

8 Q. And it's your earlier testimony that we reached  
9 out to make a public integrity complaint. Is that  
10 correct?

11 A. I -- I would agree with you if you say that's the  
12 case.

13 Q. You testified earlier that you reached out to make  
14 a public integrity complaint.

15 A. I don't have it in front of me. If you want to  
16 give it to me, I'll be happy to look at it.

17 Q. Sir, you said that in your opening.

18 A. Okay. All I said was if you said that, I believe  
19 you.

20 Q. So you called the Office of the Attorney General  
21 making a public integrity complaint, but you're  
22 unwilling to tell them who you're complaining  
23 about. That's what you want this tribunal to

1 believe.

2 A. That's exactly what I want them to believe because  
3 that's the fact, and that is the truth.

4 Q. Now, you say --

5 A. It wouldn't --

6 Q. Go ahead.

7 A. It wouldn't make a darn bit of difference. If  
8 somebody is robbing a bank, you don't have to tell  
9 them who it is. Somebody is robbing a bank. We  
10 told them it was a public official, and then they  
11 knew it was Dan Eaton. Excuse me.

12 Q. But you have no idea -- you have no idea what  
13 Major Feyrer expressed on that phone call, do you?

14 A. When you -- when you say I have no idea, I did  
15 have an idea. Did I know specifically? No.

16 Q. Did you even look into the allegations of what  
17 actually happened so you knew that Major Feyrer  
18 was saying X, Y, Z all happened? Did you know  
19 that, sir?

20 A. We have a chain of command. We have a chief. We  
21 have trained law enforcement personnel, counselor,  
22 who are extremely well-versed in procedures, who  
23 know how to conduct interviews, and they damn well

1 know how to ask for help. It was a reasonable  
2 assumption for me to believe if they're going to  
3 call the Attorney General's Office, they're not  
4 going to say I want someone to hold my hand down  
5 there. They needed help. And that's how I  
6 perceived it, and that's how I acted on it.

7 Q. And they had help down there, sir, didn't they?  
8 With the Keene Police Department. There was an  
9 independent observer there witnessing the search  
10 warrant being executed.

11 A. I wouldn't call that independent, frankly.

12 Q. Okay. There was the Keene Police Department. So  
13 there's some corruption in the Keene Police  
14 Department, too, sir?

15 A. Well, if you would read the investigative  
16 documents, you will note that the -- that one of  
17 the officers that were there at the scene at that  
18 time received a telephone call from his supervisor  
19 wanting to know what he was doing there, which is,  
20 in my view, highly unusual that -- let me finish.  
21 Highly unusual. So I consider the fact that this  
22 gentleman is a city councilor, and a search  
23 warrant is being served.

1           Commissioner -- excuse me. Representative  
2           Eaton is called to the scene. While they're at  
3           the scene with the Keene Police officers, who --  
4           um -- are there with a city councilor or soon to  
5           be city councilor, there is a telephone call made  
6           on his cell phone by the direct supervisor, who's  
7           not even on duty, asking what his presence is  
8           there. So I have nothing but respect for the  
9           Keene Police Department, all right. The  
10          responsibility in my view, and, again, I -- you  
11          know, this is my opinion. I just want to give you  
12          my opinion. That the Attorney General's Office  
13          was asked for help, and that was the force and  
14          factor in my making my decision.

15        Q. And, sir, the events that you were just describing  
16          about this Keene Police officer, that happened  
17          with the first search warrant, did it not?

18        A. I don't recall.

19        Q. Would anything refresh your recollection?

20        A. You're probably correct. Yes, it was.

21        Q. Okay. So we're talking still about the second  
22          warrant after you make this phone call to the AG's  
23          Office, you know that the Keene Police Department

1 are there, and I'm saying to you there's an  
2 independent witness from the Keene Police  
3 Department that sees what's going on.

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. And that Keene -- you say that -- if I read the  
8 transcripts of the Keene Police Department -- you  
9 obviously have, so you know that that Keene Police  
10 Department official said nothing was happening  
11 inappropriately with the warrant that was executed  
12 on day two. Doesn't it?

13 A. No, he did not say that.

14 Q. He did not?

15 A. No, not to my knowledge. I thought -- I thought  
16 that he stated that he -- his supervisor called  
17 him and asked -- asked what they were doing, and  
18 he said we're assisting the department. I don't  
19 think he offered a view as to the -- the -- um --  
20 propriety or the extent of the second search  
21 warrant, but I might be wrong.

22 Q. If I may?

23 A. By all means.

1 GOVERNOR LYNCH: Go ahead.

2 MR. MCLAUGHLIN: For the first time,  
3 Governor, I want to interpose an objection. My  
4 objection is this. Apparently Commissioner Bodi  
5 is about to be cross-examined on a report written  
6 after the event by a Keene Police officer who says  
7 something about what he may or may not have done,  
8 used for the purpose of challenging Commissioner  
9 Bodi's understanding of what the Keene Police  
10 officer's presence did or didn't reflect before  
11 the report was written. I don't know how it's a  
12 proper basis of cross-examination. I don't  
13 understand the logic of that. That's my concern.  
14 And if I may, with due respect, at the very least,  
15 it would be hearsay because there is no  
16 opportunity whatsoever for me to cross-examine  
17 that piece of paper that counsel is holding in her  
18 left hand.

19 GOVERNOR LYNCH: Have you seen --  
20 Attorney McLaughlin, have you seen this before  
21 today?

22 MR. MCLAUGHLIN: I don't know.

23 MS. CUSACK: It's in the records that we

1 sent to you.

2 MR. MCLAUGHLIN: Governor, the answer to  
3 the question is if there's a Bate stamp number, I  
4 can quickly find it. I just don't know.

5 MS. RICE: These are not Bate stamped.

6 MS. CUSACK: I can show it to you where  
7 it is.

8 MR. MCLAUGHLIN: Yeah. Yeah.

9 MS. CUSACK: Is this your book of  
10 discovery?

11 MR. MCLAUGHLIN: If you give me a second.

12 MS. CUSACK: If I might, just to respond  
13 while he's looking, I'm going to start with the  
14 hearsay objection -- or my hearsay objection  
15 first. As counsel knows, this tribunal does not  
16 apply the Rules of Evidence, so hearsay is an  
17 objection on an evidentiary basis. In this  
18 personnel action or removal action, such rules  
19 don't apply. Only relevance applies. So that  
20 would be my first objection, that under the  
21 hearsay rule it simply doesn't apply in this  
22 hearing. The second is Commissioner Bodi himself  
23 brought it up. He said when I read the Keene

1 Police officer's report. So that's the basis for  
2 which I'm asking this question.

3 GOVERNOR LYNCH: And, counsel, then where  
4 are you going with the questioning? What are you  
5 trying to determine?

6 MS. CUSACK: Well, Commissioner Bodi says  
7 that -- um -- nobody was able to tell him where or  
8 how this -- um -- warrant was carried out. Well,  
9 there's a Keene Police Department saying that  
10 there was nothing inappropriate that was going on  
11 on that second -- that night, the second warrant,  
12 that no one was pulling -- ripping surveillance  
13 equipment out of the walls, that this  
14 individual -- this Keene Police Department  
15 official recognized that everything was done  
16 appropriately, properly, with the utmost  
17 professionalism. That's my offer of proof.

18 GOVERNOR LYNCH: Let's just wait for  
19 Attorney McLaughlin to finish.

20 MS. CUSACK: Certainly.

21 MR. MCLAUGHLIN: Well, why don't you just  
22 show it to me.

23 MS. CUSACK: Sure.

1 MR. MCLAUGHLIN: The answer to your  
2 question, Governor, is that I've been provided at  
3 page 392 of the Bate stamp set of 604 pages, so  
4 the answer to the question is yes, I have it.  
5 And, if it's helpful, we would stipulate that the  
6 Keene Police Department thought that the search  
7 warrants were executed properly. I don't have an  
8 issue with that.

9 MS. CUSACK: Okay.

10 GOVERNOR LYNCH: So let me just -- so,  
11 counsel, you can proceed with your questioning.  
12 It's my goal to allow broad latitude in the  
13 questioning for both sides.

14 MR. MCLAUGHLIN: Thank you.

15 GOVERNOR LYNCH: So you would be afforded  
16 that as well, Attorney McLaughlin.

17 MR. MCLAUGHLIN: Knowing that, Governor,  
18 I will take that into consideration before  
19 proffering another objection. Thank you. I  
20 appreciate the guidance.

21 MS. CUSACK: Given that stipulation, then  
22 I don't need to continue with that line of  
23 questioning.

1 THE WITNESS: If I might, counselor?

2 MS. CUSACK: There's no question before  
3 you right now. Thank you.

4 MR. MCLAUGHLIN: Commissioner, in the  
5 absence of a question, despite your instinct, you  
6 can't just speak up.

7 THE WITNESS: Thank you.

8 MR. MCLAUGHLIN: You're welcome.

9 BY MS. CUSACK:

10 Q. So we know then, Commissioner, that you did not  
11 have any discussions with someone that was  
12 actually at the bar delivering those search  
13 warrants or witnessing the deliverance of those  
14 search warrants that second evening, did you?

15 A. No, I did not.

16 Q. I want to turn your attention then to this  
17 description that we've talked about earlier of the  
18 equipment return. During the phone call that you  
19 have with the bar owner, you learn that one of his  
20 goals is to get the equipment back; is that  
21 correct?

22 A. Yeah. Yes, I think that was -- um -- implied in  
23 his comments. I'm not sure that he said this is

1 my goal, but yes.

2 Q. And it's your testimony that you think he's  
3 hysterical on this phone call.

4 A. Yes.

5 Q. So you don't in that phone call -- um -- represent  
6 to the owner that you've got to look into this,  
7 there's a violation that is pending or there's an  
8 investigation pending, and I can't talk to you yet  
9 about what actually happened at the bar on  
10 December 14th and 15th. You don't have that  
11 conversation with him, do you?

12 A. I did tell him I had to look into it.

13 Q. But only from the perspective of wanting to know  
14 his side of the story. You tell Representative  
15 Eaton I want to look into it. You don't tell  
16 Representative -- or excuse me -- Randy Filiault  
17 that I need to look into that. Do you?

18 A. I said I would look into it.

19 Q. But you represent to the phone -- to Randy  
20 Filiault that you're going to get your equipment  
21 back, don't you?

22 A. Counsel, I'm not sure. I'd have to refer to my  
23 Grand Jury -- my testimony, but how I recall it

1 was that I speak to Eaton. He asks me to call  
2 Filiault. I called Filiault, and I was  
3 sympathetic to Filiault. I let him let his line  
4 out, if you will, and I said, "Let me get back to  
5 you." Then I spoke to Eddie Edwards so that I  
6 might learn more of what was going on. Then I  
7 called -- then I spoke to Filiault again and  
8 outlined the equipment, so that's the sequence of  
9 events at least as I understand them.

10 Q. But you just said so you can learn what's going  
11 on. You don't ask to see any documents, though,  
12 do you?

13 A. I'm going to accept your point, counselor, in the  
14 interest of time. I did not look at those  
15 documents. I did not ask anybody else. I did not  
16 do so. You're -- that's correct.

17 Q. But you represent to the owner in that phone call  
18 that you made to him that he would get his  
19 equipment back quickly, don't you? And I'll  
20 direct your attention, just to save time, to day  
21 two, page 15.

22 A. Oh. Excuse me. I apologize.

23 Q. That's okay.

1 A. Okay. I'm on page two, you said, counselor?

2 Q. Yes. And I'm directing you to lines 11 through  
3 14. And you say, "I did not convey to him that I  
4 will get you the equipment back." The question  
5 then was presented, "Or that the equipment will be  
6 returned." And you say, "I did indicate that,  
7 yes, counselor." So you indicated to  
8 Representative -- or to the bar owner, Randy  
9 Filiault, that you would get his equipment  
10 returned to him.

11 A. I did. I can't -- I just -- as I indicated to  
12 you, I'm not -- I believe it was during the second  
13 phone call, but I did say that to him.

14 Q. So you had more than one phone call with the bar  
15 owner?

16 A. I did.

17 Q. How many phone calls did you have with the bar  
18 owner?

19 A. I had those two.

20 Q. So you have two phone calls with Representative  
21 Eaton, two phone calls with the bar owner. Wasn't  
22 one phone call that you -- that the equipment now  
23 has been returned; can we have a meeting? That

1 was the second phone call?

2 A. No. The second phone call was is that the  
3 equipment would be returned.

4 Q. And when did you learn, sir, that one of your  
5 sergeants told the owner he wouldn't get the  
6 equipment back until the end of the case?

7 A. I couldn't answer that. I'm not even sure if I  
8 was ever made aware of that.

9 Q. I'm going to direct your attention to, again, day  
10 two, page 15, line two. And I'll read the  
11 question. "Do you remember that Representative  
12 Eaton may have been complaining because you had  
13 made -- you had made the representation that the  
14 equipment was going back -- was going to go back,  
15 but yet the field agent had told the bar owner  
16 that he wasn't getting the equipment back? Do you  
17 remember that conversation?"

18 MR. MCLAUGHLIN: Excuse me, counsel.

19 Could you give me the citation?

20 MS. CUSACK: Yes. Page 15, line --

21 MR. MCLAUGHLIN: Is this the second --

22 MS. CUSACK: This is page two.

23 MR. MCLAUGHLIN: Page?

1 MS. CUSACK: Fifteen.

2 MR. MCLAUGHLIN: Fifteen. Line?

3 MS. CUSACK: Two. Starting on line two.

4 MR. MCLAUGHLIN: Okay. Thank you very  
5 much.

6 BY MS. CUSACK:

7 Q. And you say, "I do remember that."

8 A. If I might read it. Do you remember --

9 (The witness reads to himself.)

10 A. So this statement is referring to Representative  
11 Eaton saying that to me as I understand this  
12 question. I'm not sure I even understand the  
13 question here. Do I remember that Representative  
14 Eaton may have been complaining -- but complaining  
15 to who? To me?

16 Q. To you, sir. You answered the question, "You do  
17 remember that?" So you understood the question on  
18 March 17th, 2009 -- excuse me -- 2010.

19 MR. MCLAUGHLIN: Excuse me. Objection  
20 with respect to this. He does say, "I do remember  
21 that," but the only relevance is in response to  
22 the question, and the question hasn't been  
23 presented. Can you read the question?

1 MS. CUSACK: I did, but I can read it  
2 back into the record.

3 MR. MCLAUGHLIN: You read it to him?

4 MS. CUSACK: I don't know that I need to  
5 read the question back into the record.

6 MR. MCLAUGHLIN: But the answer is  
7 irrelevant without the question.

8 BY MS. CUSACK:

9 Q. "Do you remember that Representative Eaton may  
10 have been complaining because you, Commissioner  
11 Bodi, had made the representation that the  
12 equipment was going back, but yet the field agent  
13 had told the bar owner that he wasn't getting the  
14 equipment back. Do you remember that  
15 conversation?" "I do remember that."

16 A. Yeah, I certainly remember it as part of the  
17 ongoing dialogue that was happening, but I do not  
18 recall that as a part of the conversation with Dan  
19 Eaton, but, again, in the interest of time.

20 Q. Well, sir, I just want to -- you recall being  
21 under oath on February -- in March of 2010, and it  
22 was much closer to the time of this event than it  
23 is in September of 2010. Isn't that true?

1 A. That is correct.

2 Q. And do you recall at the beginning of your Grand  
3 Jury testimony that counsel asked you or said to  
4 you if you have any questions of me or don't  
5 understand what I'm asking you, please feel free  
6 to ask me that question. Do you recall that  
7 conversation?

8 A. I do.

9 Q. So if there was any misunderstanding or  
10 clarification that would have been needed, you  
11 would have done it at that time, would you not  
12 have?

13 A. Sure.

14 Q. So after you have this phone conversation with  
15 Randy Filiault telling him he will get his  
16 equipment back, do you call the Chief?

17 A. Yes.

18 Q. And --

19 A. Excuse me. I spoke to the Chief prior to my  
20 talking to Randy Filiault, so I had -- I had a  
21 discussion with the Chief as I remembered it.

22 Q. All right. I'm turning your attention, sir, to  
23 day one, page 40, lines three through seven.

1 MR. MCLAUGHLIN: Page what again?

2 MS. CUSACK: Yes, sir.

3 MR. MCLAUGHLIN: One?

4 MS. CUSACK: Day one.

5 BY MS. CUSACK:

6 Q. Line three, sir. I'll read you the question.

7 A. Um-hum.

8 Q. "So I'm going to take you back to that Tuesday  
9 night, the 14th of December, after you have your  
10 conver -- after you have your conversation with  
11 the bar owner, and the bar owner has told you his  
12 side of the story, what do you do?" Answer:  
13 "Call the Chief." "What do you say? What's going  
14 on?" "I wasn't aware of the second subpoena."  
15 That's accurate? I've read that accurately?

16 A. Again, I think that's how I responded to you.

17 Q. No, sir. You said that you did not have a  
18 conversation -- you had the conversation with the  
19 Chief first. So we'll move on. And did you tell  
20 the Chief that evening when you're having the  
21 phone conversation with him -- I believe you were  
22 on your cell phone in your car. Is that accurate?

23 A. I know you're going to grab the Grand Jury

1 testimony, so -- I don't remember where I had the  
2 phone conversation with the Chief.

3 Q. You would agree that it probably would have been  
4 on your way home from work?

5 A. I will. I will.

6 Q. Okay. And did you tell him, the Chief, that this  
7 is out of control?

8 A. I would -- if you're representing that, counselor,  
9 that it's in the Grand Jury's testimony, I would  
10 agree.

11 Q. Well, I'll direct your attention to page 40, lines  
12 19 -- starting on line 18. "I felt that this was  
13 out of control. It was now out of control because  
14 two search warrants had been executed at the  
15 Railroad Tavern. This was now out of control."

16 MR. MCLAUGHLIN: Objection. Governor and  
17 Council, my experience is that if a prior  
18 statement -- the statement is going to be read,  
19 that the expectation is that the witness will have  
20 the opportunity to have the entirety of it read,  
21 not a segment of it read. The question is  
22 correct. I don't doubt it, but there are very few  
23 words read, and there are numbers of sentences

1 that place it in context. With respect, Governor,  
2 I ask that Mr. Bodi be permitted to give the  
3 entirety of his answer so that the Council can  
4 understand the context in which that answer was  
5 given.

6 GOVERNOR LYNCH: Your request is granted.

7 MR. MCLAUGHLIN: Thank you. Then if I  
8 may, counsel, if you would just invite him to --

9 MS. CUSACK: He certainly can look at the  
10 remaining --

11 MR. MCLAUGHLIN: Starting at line 18?

12 MS. CUSACK: Starting at line 18, and you  
13 can read through the rest of that, sir.

14 MR. MCLAUGHLIN: Thank you.

15 THE WITNESS: "I felt" --

16 BY MS. CUSACK:

17 Q. You can read it to yourself, sir, and then if you  
18 would like to answer the question.

19 A. Okay.

20 Q. So the question was, "After the execution of two  
21 search warrants and the phone calls, that you felt  
22 that this was out of control?" And your answer,  
23 sir?

1 A. The answer is if that is what I -- that is what I  
2 stated in these documents, but there are other  
3 very vivid circumstances that contributed to that.

4 Q. And we'll likely get to them.

5 A. I'm sure we will.

6 Q. Or your counsel will get to them. Now, you would  
7 also describe yourself through this event as  
8 battle fatigued, wouldn't you, sir?

9 A. I did. I did. Very much so.

10 Q. And you commiserate with the Chief on this phone  
11 call about how bad the situation is, don't you,  
12 sir?

13 A. I don't think I used that same woe is me attitude  
14 as you convey it, but I certainly -- I certainly  
15 communicated very strongly that it was a bad  
16 situation.

17 Q. Well, in fact, if I -- I could direct your  
18 attention --

19 A. Yeah, I know I used the word woe is me. Thank  
20 you.

21 Q. So in this conversation that you have with the  
22 Chief after the execution of the second warrant,  
23 do you learn from him exactly why they had to go

1 back?

2 A. He provided me some level of detail to it.

3 Q. And what was that level of detail?

4 A. That they hadn't obtained what they needed to.

5 Q. And then you tell the Chief you don't need the  
6 cameras, Chief. Return the equipment. Don't you?

7 A. I said more than that, but --

8 Q. You probably used some expletives that evening,  
9 didn't you?

10 A. I'm not going to go into that, counsel. I don't  
11 remember that, but it's likely. It's very likely.

12 Q. At some point you -- you -- and these were your  
13 words. You directed the Chief get that equipment  
14 back.

15 A. I did issue a directive. Absolutely.

16 Q. And at that time that you issued that directive,  
17 you had not discussed with anyone, other than a  
18 brief conversation with the Chief, about the  
19 appropriateness of getting that equipment back.

20 A. Well, I just want to clarify one point. I didn't  
21 say -- I didn't issue a directive to say get that  
22 equipment back. My directive was to retain the  
23 evidence and return the equipment. Now, that's --

1 and I'm -- I'm -- that was the directive. That  
2 was the intent of my directive. Now -- but it was  
3 a directive, certainly.

4 Q. And -- and, in fact, when you were talking to the  
5 Chief -- and in your Grand Jury testimony your  
6 testimony was that you directed him to get it back  
7 because you were in an emotionally weakened  
8 state.

9 A. No, that wasn't -- that's not a fair  
10 characterization, counselor.

11 Q. Okay. Let me direct your attention to page 44,  
12 line 23, and you can read starting from line 20 or  
13 anywhere on --

14 A. I don't -- I don't have to read that. I really  
15 don't. And I can respond to it honestly and  
16 forthrightly if you'd let me.

17 Q. Well, let --

18 A. I think that would benefit the tribunal.

19 Q. Let me -- before you have the opportunity, I'll  
20 just read to you at page 44, line 22, "My intent  
21 was, notwithstanding the fact that I was in an  
22 emotionally weakened state and thinking that if we  
23 had the evidence, that if the evidence could be

1 returned, that it would provide an opportunity for  
2 a cooling off period so that the licensee  
3 didn't -- this individual was paranoid, didn't  
4 feel," and then you said, "this individual was  
5 paranoid."

6 A. Thank you.

7 Q. Were you --

8 A. No, I'm very familiar with that portion of it.

9 GOVERNOR LYNCH: Counsel -- but I don't  
10 think you read the rest of the words correctly.

11 MS. CUSACK: Okay.

12 GOVERNOR LYNCH: I think on line 24 you  
13 read it that if the evidence could be returned,  
14 and it reads that if the equipment would be  
15 returned.

16 MS. CUSACK: If we had the evidence,  
17 that -- and then that if the equipment could be  
18 returned.

19 GOVERNOR LYNCH: Correct.

20 MS. CUSACK: And I apologize if I used  
21 the word evidence twice.

22 GOVERNOR LYNCH: Okay.

23 MS. CUSACK: I believe -- I thought I

1 used the word equipment. I apologize.

2 THE WITNESS: Now, if I might, counselor.

3 MS. CUSACK: There was no question  
4 pending.

5 BY MS. CUSACK:

6 Q. So you admit that you were in an emotionally  
7 weakened state.

8 A. I admit that the words that I used and I conveyed  
9 in that Grand Jury testimony were a weakened  
10 state. They certainly were not intended to convey  
11 what you are attempting here today, but I will let  
12 you do that, assuming that I'll have an  
13 opportunity to respond -- to outline that more  
14 fully later.

15 Q. Well, while we're talking about it, why don't you  
16 just go ahead and outline that.

17 A. Okay. Members of the tribunal, the Attorney  
18 General's Office is attempting to represent to  
19 you, as they had earlier using this out-of-body  
20 experience, which is a term of art -- um -- manner  
21 of speaking. It had nothing to do with what I was  
22 experiencing. As a matter of fact, I said it was  
23 becoming such, and now they're using this term

1 that I was in an emotionally weakened state to  
2 somehow suggest that my character, my ability to  
3 make a decision was diminished.

4 This was an issue that had gone on for the  
5 entire legislative session. We had been fighting  
6 Dan Eaton incessantly. He had introduced  
7 legislation that we had spent the entire summer  
8 on, and I will tell you we were trying to raise  
9 funds for the State of New Hampshire when it was  
10 crippled with this budget. My entire senior team  
11 was spending a disproportionate amount of time  
12 fighting the likes of Dan Eaton and fighting that  
13 legislation, and I was right here when he  
14 testified, talking about how licensees -- that  
15 there were problems with licensees, and not one --  
16 not one came forth during that entire session to  
17 do so. Not one. There wasn't one special  
18 interest group that came forth and complained  
19 about the Enforcement Division.

20 That's not to say there weren't problems.  
21 There were, and I was working on them. But he was  
22 pushing hard. He was pushing Eddie, and he was --  
23 he was representing untruthfulness to members of

1 the committee. This reached in a crescendo when I  
2 received these desperate calls, one from Dan  
3 Eaton, who obviously has a different recollection  
4 of this, and one from Filiault.

5 When a Marine is in a battle and fighting a  
6 tough fight, and there's gunfire running by  
7 their -- running by their head, and they're facing  
8 a very difficult situation, one would say well,  
9 they might be in an emotionally weakened state.  
10 That doesn't mean you're not able to do your  
11 duty. I was able to do my duty. But you're darn  
12 well right. I felt the emotion of that incident.  
13 I'm not afraid to admit it.

14 And I think -- I think my testimony here today  
15 and my ability to stand up to the charges that  
16 have been leveled against me demonstrates that  
17 I'm -- that I can manage stress pretty  
18 effectively. So, with all due respect, counselor,  
19 and I know you're doing your job, I reject the  
20 premise of your question, and I think, you know,  
21 in my opinion, it's something of a below the belt  
22 shot. I know you're doing your job.

23 Q. Thank you.

1 MS. CUSACK: Governor, I think this just  
2 might be an appropriate time to take our recess  
3 for the evening. It's 3:15.

4 GOVERNOR LYNCH: Okay. Thank you,  
5 counselor. So we will break for the day and  
6 resume at 9 a.m. tomorrow with Commissioner Bodi  
7 -- um -- still as the witness. I'd like to have  
8 the counsel, if you both consent to the admission  
9 of all the exhibits offered today.

10 MS. RICE: We certainly consent to the  
11 ones that the ID has been stricken from. I think  
12 there are a couple that have been referred to, but  
13 there's been no -- not been any ID stricken. We  
14 can certainly talk about those.

15 MR. MCLAUGHLIN: I think Attorney Rice is  
16 correct. I know that she may have some objections  
17 to exhibits that we may think of as having been  
18 tendered, and -- but in fairness I know she has to  
19 look at that systematically. I believe what I did  
20 originally, Governor, was to review with the  
21 attorneys the State exhibits, and I believe I  
22 stipulated to the admission of five of them and  
23 just reserved on -- I think of three of them to see

1 if there was some supportive testimony. Governor,  
2 when you have a moment, if I may make a special  
3 request?

4 GOVERNOR LYNCH: Okay. Now's  
5 appropriate.

6 MR. MCLAUGHLIN: Governor, Representative  
7 Eaton asked that his testimony be presented out of  
8 order. Completely reasonable request. My  
9 question to you is I have been dealing with a  
10 community college president, past president,  
11 Harvey Hill from the Claremont area, Charlestown.  
12 And Mr. Hill has suggested to me some restraints  
13 of time that I'm concerned this will run. Would  
14 you permit me to call Mr. Hill tomorrow out of  
15 order at the completion of Mr. Bodi's testimony?  
16 I anticipate my direct of him will be 10 to 15  
17 minutes, if that. And I would just like to be  
18 able to bring him down as a courtesy to him. He's  
19 not a part of this. Just bring him down, let him  
20 testify, let him be cross-examined, and let him  
21 go.

22 GOVERNOR LYNCH: Do you object to that?

23 MS. RICE: We do. He's refused to make a

1 proffer of what Harvey Hill would say. We don't  
2 know what it is. I suspect it has something to do  
3 with him, but we would object to it on the basis  
4 of relevance.

5 MR. MCLAUGHLIN: I'll make the proffer,  
6 Your Honor, if you want me to.

7 MS. RICE: I would prefer we make a  
8 proffer outside the presence of the audience and  
9 discuss this later.

10 MR. MCLAUGHLIN: My reason for not  
11 wanting to make a proffer before is because the  
12 anticipated testimony of Mr. Hill is at direct  
13 variance with the testimony of Mr. Eaton. On one  
14 hand, I want to do my job, and on the other hand I  
15 want to take care. My belief is that Mr. Eaton's  
16 testimony was inaccurate with respect to the  
17 question have you ever tried to pressure and  
18 threaten anybody. That's what I believe, and I  
19 believe it's central to his credibility on a lot  
20 of issues.

21 I have a witness that I intend to proffer  
22 who has had direct experience with Mr. Eaton.

23 That's what I'm doing. It's true. I did not want

1 to proffer that before, and I will tell you my  
2 reason. I'll just do it straightforwardly. It  
3 doesn't mean I'm right. It just means I believed  
4 conscientiously that if Mr. Eaton were privy to  
5 the testimony I intend to offer, that he would  
6 find a way to reason around it. I mean no  
7 disrespect to him. It may be unfair to him, but  
8 that's my thinking.

9 GOVERNOR LYNCH: What I'd like to do is  
10 ask Don and Jeffrey to meet with both of you and  
11 try to work this out, which they're able to do  
12 right this minute.

13 MS. RICE: Thank you.

14 MR. MCLAUGHLIN: Thank you.

15 GOVERNOR LYNCH: All right. Thank you  
16 very much. We will meet again tomorrow morning at  
17 nine o'clock.

18 (The proceedings are recessed at  
19 3:19 p.m.)

20 (The proceedings reconvene on the record  
21 out of the presence of the Governor and Council at  
22 3:26 p.m.)

23 MR. PERRAULT: My inclination, Phil, is

1 you were about to make an offer of proof, and I am  
2 trying to read between the lines here.

3 MR. MEYERS: I apologize. We didn't  
4 announce ourselves on the record. Do you have  
5 both of our names?

6 (The court reporter responds in the  
7 affirmative.)

8 MR. PERRAULT: I'm assuming that -- and  
9 we addressed this issue before, and you had  
10 indicated that you intended to call Mr. Hill in  
11 rebuttal, and my understanding is that you believe  
12 that in response to some testimony given by  
13 Representative Eaton that Mr. Hill has some direct  
14 rebuttal testimony to that.

15 MR. MCLAUGHLIN: That's correct.

16 MR. PERRAULT: All right. Can you make  
17 some offer of proof as to what specifically  
18 Mr. Hill will say that rebuts testimony that was  
19 given by Mr. Eaton?

20 MR. MCLAUGHLIN: Yes, I will. First,  
21 Mr. Perrault, I'd like you to understand that I'm  
22 doing this in the context of my understanding of  
23 the rules that apply. My understanding is that we

1 generally attempt to follow the rules of evidence  
2 as they exist subject to the perhaps looser, more  
3 flexible standard that's associated with  
4 administrative hearing.

5 Next, were I making this proffer in  
6 Superior Court, the proffer I would be making  
7 would be made under Rule 401 broadly, which is the  
8 definition of relevant evidence which states,  
9 "Relevant evidence means evidence having any  
10 tendency to make the existence of any fact that is  
11 of consequence to the determination of the action  
12 more probable or less probable than it would be  
13 without the evidence."

14 Secondly, I argue that in this particular  
15 case the credibility of Mark Bodi is at issue.  
16 The credibility of all witnesses is at issue. And  
17 the credibility is a material consideration when  
18 credibility pertains to a relevant fact, and one  
19 of the relevant facts is the question has to do  
20 with the question of Commissioner Bodi's testimony  
21 to this point and his anticipated testimony about  
22 his interpretation of the impact of Representative  
23 Eaton's involvement and his understanding of what

1 the consequences would be unless he found a way to  
2 deal with this situation.

3 For the purpose of addressing that issue  
4 toward the very end of his examination, I engaged  
5 in a colloquy with Representative Eaton where I  
6 essentially presented to him in as many ways as I  
7 could find a way to frame it some variation of  
8 have you ever threatened anybody? Have you ever  
9 said to anybody that if they don't do what you  
10 want, that you would take out vengeance on them?  
11 I'm not sure I used the word vengeance, but that  
12 was the -- I hope that was the essence of what I  
13 was doing. I was trying to be as clear as  
14 possible.

15 So then against that background, and  
16 believing that Representative Eaton's credibility  
17 is highly relevant to the -- that's my thesis,  
18 that it's highly relevant to the process. I will  
19 represent as follows. I had a contact. I do not  
20 recollect the sequence of contact. But the result  
21 of the contact was to be in touch with Harvey  
22 Hill.

23 I didn't know Mr. Hill. I called

1 Mr. Hill on the blind because I believed my call  
2 would be welcome, and the reason I believed it  
3 would be welcome is because I had been told it  
4 would be welcome. I don't apparently have copies  
5 of this, but this is Harvey Hill's profile. He  
6 appears to me to be a man in his seventies. He  
7 was the president of the New Hampshire Technical  
8 Community College in Claremont. This is his bio.  
9 The bio impresses me as that of being a man of  
10 considerable distinction. I will repeat. I don't  
11 know Mr. Hill.

12 COMMISSIONER BODI: He's currently on the  
13 board of the college.

14 MR. MCLAUGHLIN: He's currently on the  
15 board of the college. I do have copies. Here you  
16 go, Ann. Shall I bring this up? Shall I just  
17 give this to you?

18 MR. MEYERS: Sure. Sure. Of course.

19 MR. MCLAUGHLIN: Excuse me.

20 MS. CUSACK: Thank you.

21 MR. PERRAULT: Phil, in all candor, I'm  
22 much less concerned with who he is than I am with  
23 what he is going to say.

1 MR. MCLAUGHLIN: Certainly. Again, I'm  
2 not sure exactly of the scope of your question,  
3 but I'm just trying to lay the groundwork, and I  
4 would say he appears to me to be a credible  
5 person. And the answer to the question would be  
6 this. Mr. Hill called me. That's not accurate.  
7 I called Mr. Hill. Mr. Hill said he had a  
8 considerable run-in with Representative Eaton and  
9 that Representative Eaton vigorously intervened,  
10 insisting that Mr. Hill reinstate a State employee  
11 who was terminated by him. He ended his comments  
12 to me.

13 MR. PERRAULT: Terminated by him in his  
14 capacity -- in which capacity? As --

15 MR. MCLAUGHLIN: In his formal capacity  
16 as the interim president of the college that he  
17 had terminated a person, he believed, for cause.

18 MR. MEYERS: That Hill had?

19 MR. MCLAUGHLIN: That's correct.

20 MR. MEYERS: Yeah.

21 MR. MCLAUGHLIN: And that that person was  
22 a close friend of Dan Eaton and that Dan Eaton  
23 called him up and berated him, stated that his

1 decision to terminate was the stupidest decision  
2 of all. He stated that he ranted on about how  
3 hard this woman worked, what a great job she was  
4 doing, proceeded to state it was another person  
5 who should be fired who was incompetent, and then  
6 Mr. Hill said before hanging up he said he would  
7 go on a vendetta against the New Hampshire  
8 Community Technical College system and that he  
9 would get even.

10 And what I did not understand at the time  
11 is that Mr. Hill, as nearly as I can tell, made a  
12 contemporaneous memorandum to himself of that on  
13 July 3rd, 2007. I'll just give you the  
14 memorandum. Because he sent this to me, I  
15 believe -- I don't know that it was Friday,  
16 Saturday or Sunday. I don't remember. I have  
17 redacted the names of two employees, both of whom  
18 are women, because I felt in an abundance of  
19 caution it would be gratuitous to include their  
20 names. They have no part, role to play here. I  
21 also redacted the position of one because if the  
22 position had been known, the identity of the  
23 person would be known.

1 MR. MEYERS: Yeah. Yeah.

2 MR. MCLAUGHLIN: And I literally went  
3 over it several times so there would be no bleed  
4 through of the name.

5 MR. MEYERS: Yeah.

6 MR. MCLAUGHLIN: So in the circumstances,  
7 my client believes that it's in his interests to  
8 be able to prove, support his credibility, and to  
9 deal and attack effectively the issue of  
10 Representative Eaton's credibility on critical  
11 points that he be permitted to present an  
12 independent witness, whom I would offer to you had  
13 experiences with Mr. Eaton that are diametrically  
14 opposed to his testimony.

15 MR. MEYERS: Is it your intent to limit  
16 Mr. Hill's testimony specifically to this incident  
17 or are you going to elicit testimony with respect  
18 to his view of Representative Eaton generally or  
19 any other instance?

20 MR. MCLAUGHLIN: No, not generally and  
21 not in any other instance. I would anticipate  
22 asking him some questions to lay the foundation  
23 inquiring what his position was at that time --

1 MR. MEYERS: Right. Right.

2 MR. MCLAUGHLIN: -- what responsibilities  
3 he had to terminate someone. Was he thereafter  
4 contacted? By whom was he contacted? And what  
5 was the thrust of his communication? Did he make  
6 an independent memo of it?

7 MR. MEYERS: But after the foundation  
8 that you lay, as you just described it, do you  
9 intend to elicit testimony only on this memo  
10 that's recorded in this memorandum?

11 MR. MCLAUGHLIN: Yes.

12 MR. PERRAULT: I'm going to wait to hear  
13 from the State. I guess my initial reaction is  
14 that the memorandum doesn't come in unless there's  
15 some claim of reasonableness. It is hearsay. I  
16 mean if he's going to testify live, he's going to  
17 testify live. Unless he's challenged on his  
18 having recently fabricated this story, I don't see  
19 that the document comes in, Phil.

20 MR. MCLAUGHLIN: I don't have a problem  
21 with that. I'll anticipate he'll testify, but I  
22 will say this. And I have some concern in this  
23 regard. I'm not sure that this is true. I'm

1           telling you I have not met him. It's my  
2           impression -- I have the impression speaking to  
3           him that, one, he's willing to speak with me. He  
4           was not a happy camper. Two, I got the impression  
5           he was an older person, and I'm not certain of the  
6           acuity of his memory, but my guess is it's acute.  
7           So just subject to the proviso that I may have to  
8           use it to reinforce.

9           MR. PERRAULT: Let's --

10          MR. MEYERS: Sorry.

11          MR. PERRAULT: I was going to say let's  
12          hear from the State.

13          MR. MEYERS: Sure.

14          MR. PERRAULT: Obviously when you're  
15          making proffers of testimony, I've had more than  
16          one experience where someone has proffered  
17          testimony only to find that when the testimony is  
18          made, and this isn't in reference to you, Phil.  
19          I'm suggesting that, you know, an obligation on  
20          counsel generally. If they're proffering  
21          testimony, that they have a significant comfort  
22          level that indeed the testimony is going to be  
23          substantially as was proffered, so.

1 MR. MCLAUGHLIN: And that's exactly what  
2 I'm saying unambiguously. If I'm wrong, I'm  
3 wrong.

4 MR. MEYERS: Attorney Rice.

5 MS. RICE: I object on a number of  
6 grounds. First -- and I recognize, again, that  
7 the Rules of Evidence don't apply, but if under  
8 the Rules of Evidence based on a prior  
9 inconsistent statement of a witness is going to  
10 come in, which is essentially what this is, that  
11 witness needs to be confronted with that  
12 statement.

13 Attorney McLaughlin did not give  
14 Representative Eaton any opportunity to talk about  
15 this. He may -- you know, he -- um -- Attorney  
16 McLaughlin asked if -- um -- he -- if Dan Eaton  
17 had taken vengeance on someone or threatened  
18 someone or whatever those words were. Dan Eaton  
19 may have taken great -- um -- he may have  
20 disagreed entirely on the characterization of what  
21 the interaction with Mr. Harvey Hill was. I have  
22 no idea about it.

23 I do want to say before the hearing

1 started this morning I specifically went over to  
2 Phil and asked for a copy of the memorandum of  
3 Harvey Hill. He would not give it to me. Had I  
4 known this, and had I known that there was some --  
5 let me back up for a minute. I asked for a copy  
6 of the memorandum. Phil called Dan Eaton. We  
7 were not the ones that called Dan Eaton. He  
8 called him. He set Dan Eaton up for this by  
9 asking these question, and now he wants to call  
10 someone else to impeach what Dan Eaton said. It  
11 is simply unfair.

12 We all know Dan Eaton is gone. He can't  
13 rebut this now because he never had an opportunity  
14 to discuss it or question it. It was a general  
15 question that Phil asked him. And if Dan Eaton  
16 disagrees with it, you should be -- or the Council  
17 and the Governor are entitled to hear that, too.  
18 So it is simply unfair to do this. I'm talking  
19 about Rule 613, by the way, for prior statements  
20 of a witness. So for a number of reasons.

21 First, we -- this was not on the witness  
22 list. I mean the exhibit list when we started  
23 when we talked about it. Attorney McLaughlin

1 refused to give it to me, didn't give me any  
2 opportunity to even ask Dan Eaton about it, and  
3 now he's asking to put someone else on out of  
4 order, to question him about an incident that we  
5 had no opportunity to question Representative  
6 Eaton about. It is simply unfair.

7 Oh, right. We don't have any opportunity  
8 to call Representative Eaton back because he's out  
9 of town. He's gone. That's why we had to call  
10 him out of order in the first place.

11 MR. PERRAULT: Yeah, Phil, I mean you  
12 have to admit that your question wasn't  
13 specifically addressed as it related to -- I mean  
14 it was kind of open-ended in the sense of it said  
15 have you ever in your life threatened anyone. You  
16 know, whether you would have gotten away with that  
17 in a courtroom is another question given that  
18 we're not dealing with the Rules of Evidence, and  
19 you didn't specifically frame it in terms of do  
20 you recall any encounter with this Mr. Hill where  
21 you threatened so he had an opportunity to deny  
22 that. What is your response to that?

23 MR. MCLAUGHLIN: I don't agree with

1 either of your characterizations with respect. I  
2 framed it as carefully as I could, from my  
3 perspective, without being specific. I think that  
4 Mr. Eaton was very well-aware that I was  
5 challenging his credibility, and I was challenging  
6 questions of whether or not he ever used his  
7 legislative authority essentially to punish  
8 somebody who disagreed with him.

9 And it's true. I did not mention the  
10 name Harvey Hill. It's true. And I want to just  
11 proffer since we're talking on the record. I want  
12 to be clear about it. I view Representative Eaton  
13 as fundamentally noncredible. I have a problem  
14 with essentially presenting evidence to Mr. Eaton  
15 so that he can massage that evidence and feed it  
16 back to me. Now, that's exactly what I think of  
17 Mr. Eaton. That doesn't mean it's true. It means  
18 that is my experience in this case, and in behalf  
19 of my client I believe it to be true.

20 So yes, as an advocate I have to take  
21 care. I have to lay the best foundation I can,  
22 but I'll also say this. This isn't a Superior  
23 Court tribunal. This is a quasi-political

1 administrative tribunal. There is the question  
2 here -- there is the question of what is fair in  
3 terms of presenting relevant evidence, and I am  
4 dealing with a person in Mr. Eaton that I consider  
5 ultimately a hostile person, remarkably smooth,  
6 but, from my perspective, absolutely noncredible.  
7 So I did my best in the circumstances, and you're  
8 correct. I did not confront him with that. I did  
9 not use the name Harvey Hill.

10 MS. RICE: He asked if there were  
11 department heads that Dan Eaton had threatened or  
12 something like that. I don't know what Harvey  
13 Hill's position is. I don't know. I assume that  
14 it was the presidency at the time that this was,  
15 but, you know, Phil has just talked about  
16 fairness. It is fundamentally unfair to suggest  
17 that he should be able to call this witness after  
18 all of our opportunity is gone to question Dan  
19 Eaton about it.

20 If he wanted to call Dan Eaton -- he  
21 chose to call Dan Eaton. He chose to set this  
22 up. And he's prevented us from having any idea  
23 and any opportunity to confront Dan Eaton about it

1 if we wanted to. It's simply unfair.

2 MR. MEYERS: Can I just ask the  
3 question? You stated that you may -- that you  
4 didn't use Mr. Hill's name, but I'm not sure I  
5 understand why you chose not to mention Mr. Hill  
6 when you were questioning Representative Eaton.

7 MR. MCLAUGHLIN: Yes, because I believe I  
8 would have elicited a defensive response.

9 MR. MEYERS: That's what you were saying  
10 earlier.

11 MR. MCLAUGHLIN: Exactly. If I may, I  
12 have absolutely no problem whatsoever with  
13 Representative Eaton being recalled. I have no  
14 problem with his being contacted in Washington and  
15 put on a speaker phone here. I have no problem  
16 with a tape being made and played to him. I have  
17 no problem with any of that. I'm not trying to  
18 trick him. I'm trying to make sure that his  
19 evidence was clearly stated because I think he  
20 understood the question. And then I'm trying to  
21 impeach him. And the fact that he should have an  
22 opportunity to rebut that, I really don't have a  
23 problem with that, and I think it can be arranged

1 technically.

2 MS. RICE: This is gamesmanship. He  
3 could have asked Dan Eaton directly did you  
4 threaten Harvey Hill. And if Dan Eaton had said  
5 no, I never threatened Harvey Hill, I never did  
6 any of the things, then by all means have at it.  
7 Call Harvey Hill. But not when you don't ask him  
8 did you do this. It is simply not fair. It's not  
9 fair to Dan Eaton, and it's not fair to us. And  
10 this is just gamesmanship.

11 MR. MCLAUGHLIN: May I just respond  
12 briefly to that?

13 MR. MEYERS: Sure.

14 MR. MCLAUGHLIN: Without characterizing  
15 it as gamesmanship, I think what I also did is I  
16 presented to Mr. Eaton a clip from the "Union  
17 Leader" and invited him essentially to two  
18 paragraphs, and that clip is one in which he  
19 stated to the "Union Leader" that this sort of  
20 conduct is essentially not his style. That is to  
21 say he was talking about a style of conduct that  
22 he had, and this is simply beyond the pale, and he  
23 doesn't do these kind of things. So in that sense

1 I was also using that as a basis to create a  
2 record so that I could impeach that record.

3 I was not trying to surprise or ambush  
4 him with some oblique question. I was trying to  
5 do everything I could to ask him that question in  
6 a repeated way in different ways so as to give him  
7 every opportunity to say well, you know, sometimes  
8 I used my power this way or that way. He didn't.  
9 He simply, among other things, concluded it's not  
10 my style.

11 MS. RICE: And I disagree with that. He  
12 did say that that's what he said in the paper.  
13 But, you know, if -- if Phil wanted to be direct  
14 and give Dan Eaton every opportunity to respond,  
15 all he had to do was say did you do these things  
16 to Harvey Hill, and he did not do that.

17 MR. PERRAULT: Just give us a minute.

18 (Attorney Perrault consults with Attorney  
19 Meyers.)

20 MR. MEYERS: Do you know -- can I ask  
21 with respect to Eaton's availability, do we know  
22 whether or not he is available at any other time  
23 the rest of the week? Is he back here by, you

1 know, Wednesday or Thursday or --

2 MS. RICE: I don't believe he is. He may  
3 be back on Friday, but I don't know. I would have  
4 to confirm.

5 MR. MCLAUGHLIN: I thought that he had  
6 left -- I thought that he had left a message  
7 stating what his travel plan was and when he'd be  
8 back. I thought that that came in.

9 MR. PERRAULT: I thought there was an  
10 E-mail that addressed that.

11 MS. RICE: There may have been. I just  
12 don't know what it is.

13 MR. MEYERS: He sent an E-mail. I would  
14 have to go back and look at it. I know he was  
15 available today, and I thought he also might be  
16 available on Friday, but my recollection may not  
17 be perfect of that E-mail, so I just wondered  
18 whether either of you knew for sure.

19 MS. RICE: No.

20 MR. MCLAUGHLIN: Thank you. I've just  
21 found the E-mail. I can read it to you.

22 MR. MEYERS: Yeah.

23 MR. MCLAUGHLIN: "I have become aware

1 that I" -- excuse me. This is an E-mail Monday,  
2 September 13th.

3 MR. MEYERS: Yeah, that's the one.

4 MR. MCLAUGHLIN: "I've become aware that  
5 I've been listed on the witness list with a Motion  
6 to Compel Testimony. I will be happy to attend  
7 the hearing, and no Motion is necessary. I do  
8 respectfully request," et cetera. "Knowing that  
9 this hearing was forthcoming, I specifically asked  
10 Homeland Security to get the latest flight  
11 possible on the 20th so that I could be available,  
12 if needed, till 5 p.m. on that day. I also  
13 requested early return on the 23rd. I will be  
14 available at approximately 2 p.m. on the 23rd and  
15 all day the 24th."

16 MR. MEYERS: That's Thursday and Friday,  
17 right?

18 MR. PERRAULT: Um-hum.

19 MR. MEYERS: All right. One more minute,  
20 please.

21 (Attorney Perrault consults with Attorney  
22 Meyers.)

23 MR. MEYERS: Okay.

1 MR. PERRAULT: This is -- this was our  
2 combined wisdom on the issue, and I use those  
3 wards guardedly. We're going to allow Mr. Hill's  
4 testimony, restricted as it may be, and I do that  
5 with some reluctance, Phil, because I do think  
6 that -- whether it was intended or not, the  
7 practical effects of how this testimony was  
8 elicited was not to allow Representative Eaton to  
9 directly respond to these allegations, and as a  
10 consequence I'm going to give the State  
11 considerable latitude in finding some way to get  
12 before the Governor and Council Mr. Eaton's  
13 response to the specific allegations.

14 And that by latitude I mean if you have  
15 to contact him and get him to sign an affidavit,  
16 if you want to make a representation on the record  
17 of expected testimony after he's had a chance to  
18 be confronted with the evidence, I think in all  
19 fairness Representative Eaton ought to be able to  
20 have his say on what transpired between he and  
21 Mr. Hill.

22 This is -- I think it's a fairly specific  
23 response to testimony, and I'm sympathetic to the

1 State's position with regard to their claim of  
2 ambush. Given that there are some relaxed Rules  
3 of Evidence in these administrative hearings,  
4 you're going to have some latitude, and we'll  
5 communicate that to the Governor and Council in  
6 terms of your ability to respond to these  
7 allegations after you've heard the testimony.

8 MS. RICE: I trust then that there --  
9 didn't we agree that there was a sequestration  
10 order? I'm going to need to be able to explain to  
11 Representative Eaton what the testimony was.

12 MR. PERRAULT: Yeah, I can't imagine that  
13 Mr. McLaughlin will have any --

14 MR. MEYERS: You don't have any objection  
15 to that, do you?

16 MR. MCLAUGHLIN: I can't. May I just  
17 offer as a practical matter -- I don't know what  
18 your thinking is, but just as a practical matter  
19 we are here on Monday. Mr. Bodi is going to be  
20 back on tomorrow. We have Officers Edwards and  
21 Feyrer. My guess is it's going to run well into  
22 Wednesday probably before we're even dealing with  
23 my case, and apparently Mr. Eaton is going to be

1 back Thursday.

2 MR. PERRAULT: Yeah. I'll tell you what  
3 my thinking is very briefly, Phil. We avoided the  
4 the issue -- the constitutional issue of cross-  
5 departmental subpoenas and things of that nature  
6 because of Mr. Eaton's willingness to make himself  
7 available. We can't make representations -- I  
8 don't think anyone in this room can represent that  
9 he will agree to come back voluntarily again, and  
10 I would prefer to avoid that. And since I see  
11 this partially as a problem of your creation --

12 MR. MCLAUGHLIN: That's fair.

13 MR. PERRAULT: Then we're going to try to  
14 accommodate everyone, and we are going to give the  
15 State some latitude in addressing those specific  
16 allegations.

17 MR. MCLAUGHLIN: And I have no problem  
18 with that whatsoever. It seems to me to be fair.

19 MS. RICE: And you're telling us we need  
20 to take him out of order?

21 MR. PERRAULT: Yeah. Mr. Hill. What's  
22 the concern for Mr. Hill's schedule? I don't  
23 understand that.

1 MR. MCLAUGHLIN: The answer -- hold on.  
2 The answer is -- actually it's not a concern. I  
3 thought he was telling me that he would not be  
4 available the large portion of Wednesday. That's  
5 inaccurate. He's not going to be available the  
6 large portion of Thursday, and I was anticipating  
7 that the States's order of witnesses would take us  
8 through tomorrow and get us into Wednesday.

9 MR. PERRAULT: Let's blow up that bridge  
10 when we get to it. I don't see any reason to take  
11 him out of order at this point.

12 MR. MEYERS: All right. So he's not  
13 taking him out of order at this point, and  
14 Mr. Bodi will continue tomorrow. Is that right?

15 MS. RICE: That's correct.

16 MR. MEYERS: Okay.

17 MR. PERRAULT: All right. Good. Thanks.

18 COMMISSIONER BODI: Thanks.

19 MR. MCLAUGHLIN: Thank you.

20 (The proceedings conclude at 3:51 p.m.)  
21  
22  
23

CERTIFICATE OF REPORTER

I, Debra L. Mekula, Licensed Court Reporter of  
 the State of New Hampshire for the aforementioned  
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 and proceedings are contained fully and accurately  
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 hearing of the within cause at Concord, New  
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 same were transcribed by me, and that this is a  
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 same.

*Debra L. Mekula*

Debra L. Mekula, LCR, RMR

Licensed Court Reporter.

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