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Mr. Richard Low  
Chairman, Board of Selectmen  
Hamilton Town Hall  
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P.O. Box 429  
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December 9, 2008

Dear Chairman Low:

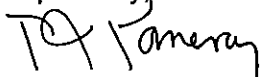
Enclosed please find the Final Report on the investigation into numerous issues regarding the Hamilton Police Department.

I understand that these issues have been very taxing upon the community, the Police Department, the staff, and the Board of Selectmen. I want to thank you for the outstanding assistance provided by your Town Administrator, Ms. Candace Wheeler.

I would be pleased to answer any questions that the Board may have.

Thank you for allowing me to be of service to the Town of Hamilton.

Respectfully,

  
Robert J. Pomeroy, Esq.

CONFIDENTIAL

December 9, 2008

**Final Report and Findings of Investigation to the  
Town of Hamilton, Massachusetts  
Board of Selectmen**

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Procedural History

The Board of Selectmen, in April 2007, ordered an investigation into the reported actions of Officer Michael Marchand. This initial investigation was conducted by the Chief of Police and an outside investigator.

Subsequent to that investigation, the Board of Selectmen retained a consultant, Mr. Gerard J. Hayes. Mr. Hayes was to conduct a further investigation limited to five specific issues regarding the prior investigation. Mr. Hayes submitted the report of his investigation to the Board of Selectmen on May 1, 2008. (Hayes Investigation)

The Town of Hamilton retained this consultant in late July, 2008 to conduct an investigation into a number of other issues that arose during the course of the Hayes investigation. Additionally, this consultant was tasked to review the actions taken by certain police officers relative to the initial investigations in order to determine if any of those officer's actions were violative of the Police Department's Policies & Procedures or Rules & Regulations.

The additional issues that arose during the course of the Hayes investigation were beyond the scope of that investigation and included a wide range of allegations of inappropriate activities within the Police Department. The allegations were made by various individuals involved in the original investigations. These matters were all ancillary to the focus of the previous investigation.

This most recent investigation commenced with a review of the results of the two previous investigations along with a review of the numerous documents provided by the Town of Hamilton, Mr. Hayes, and others. Consequently, a list of allegations that appeared to require further investigation was compiled by this investigator and submitted to the Chairman of the Board and the Town Administrator, on August 17, 2008. The list of allegations included only those matters that were not the subject or focus of the previous investigations. This list of some twenty or so allegations comprised the first part of this investigation. The second part of the investigation was a review to determine whether the actions taken by individual police officers in reporting possible wrongdoing in the so-called Marchand matter were appropriate.

Not unexpected, many rumors have percolated through the police department and the Town regarding this most recent investigation. One persistent rumor that should be publicly dispelled is that the "Town" received an advanced copy or draft of this report and subsequently directed that certain items in the report be deleted or modified. It needs to be made perfectly clear that no Town official previewed this written report. At the outset of this investigation, this investigator reviewed all existing documents from a number of sources and extracted from those documents any potential issues that this investigator believed warranted further investigation. This investigator was given wide latitude by Mr. Richard Low, Chairman of the Board of Selectmen, to determine what issues were believed to require further investigation, including any other issues that may crop up during the course of the investigation. As previously stated, a list of issues was compiled and submitted to the Chairman of the Board and the Town Administrator on August 17, 2008. All of the issues contained in that original list were investigated with one exception. This investigator recommended that since the State Office of Emergency Medical Services was commencing their own independent investigation into the allegations of fraudulent training records, that it would not be prudent for this investigator to conduct a parallel investigation into the exact same issues.

During this investigation, interviews were conducted with twenty-seven individuals, some on multiple occasions. Additionally, information was obtained from a number of other sources.

For the purposes of the first part of this report, each document that contained an allegation of mis-conduct will be titled, and each allegation contained within that document will be set out in bullet points. The findings of this investigation into each of those matters will then follow.

It should be noted that although this consultant is also an attorney, the contractual relationship with the town is not one of attorney / client. This consultant was retained solely as a consultant and investigator. Therefore, nothing contained in this report should be construed as a legal opinion or legal advice. Any legal opinions or legal advice should be sought from Town counsel, labor counsel, or other counsel representing the Town.

## Part I

### **"Anonymous" Letter to Town Counsel Ms. Donna MacKenna – Undated, but believed to be December 2006**

- **Allegation that a police sergeant, while on duty, utilized a police cruiser to drive to the airport and transport an off-duty officer (Marchand) home.**

The Hayes report provides details about an August 2006 trip that Officer Michael Marchand, his brother-in-law, and a friend took to Mexico in an effort to retrieve Marchand's young niece from an alleged parental kidnapping. Although the niece was reportedly located during the trip to Mexico, efforts to return the child to the United States were unsuccessful.

In interviews with Officer Michael Marchand, he stated that in their attempt to retrieve his niece, he was assaulted and suffered a knife wound inflicted by friends of the child's mother. Marchand and his party returned to the United States by air and arrived in Brownsville, Texas on what he believes was August 9, 2006. Marchand stated that he and his brother-in-law returned to Boston the next day via air travel. Marchand stated that upon arriving at Logan Airport, (sometime between 10AM and 2PM) he placed a telephone call to the Hamilton Police Emergency Operations Center whereupon he stated that he spoke to Chief Dispatcher Anne Marie Cullen.

Marchand stated that he explained to Ms. Cullen that he had needed transportation from the airport to his home (in Ipswich). According to Marchand, Ms. Cullen placed his call on hold, returned shortly thereafter and told Marchand that the Chief (Walter Cullen) would take care of making arrangements to transport him. Marchand stated that he did not know what specific officer would be coming to pick him up, only that someone would be on his or her way to retrieve him. Marchand stated that Sergeant Paul R. Grant arrived at the airport, in uniform, to pick him up. He recalled that Grant was driving an unmarked silver vehicle that Grant had parked in the State Police barracks parking lot. Marchand stated that Grant took him and Marchand's brother-in-law to Marchand's home in Ipswich.

In interviews with Sergeant Paul R. Grant, he stated that he recalled being in the police station when the call from Marchand was received. Grant stated that he believed that he may have actually spoken to Marchand on the telephone but it is possible that he merely received the information from Chief Dispatcher Cullen. Grant stated that he did recall Chief Dispatcher Cullen stating to him that Marchand did not sound well on the telephone. Sergeant Grant stated that he asked Chief of Police Walter Cullen if he could take the unmarked police cruiser to Logan Airport in order to transport Marchand home. Grant stated that Police Chief Cullen gave his permission to do so.

Grant stated that this incident occurred during the day shift, although he was not positive of the date. Grant stated that he was in uniform and that he proceeded in an unmarked police vehicle to Logan Airport where he parked at the State Police barracks. He recalled that he spoke momentarily to a State Police Trooper he knew. Grant stated that he retrieved Marchand and his brother-in-law and took them to Marchand's home in Ipswich. Grant stated that he later reported back to the Chief and advised him about Marchand's condition.

Chief Walter Cullen stated that he had no recollection of any discussions whatsoever regarding Marchand calling for a ride home from the airport. Chief Cullen confirmed that Sergeant Paul Grant was assigned to the day shift on August 9 and 10, 2006 but that he recalled no conversation with Sergeant Grant regarding any requests by Marchand for a ride from the airport. Chief Cullen also stated that he does not recall giving anyone permission to go to the airport to pick Marchand up. In fact, the Chief stated that although there was much discussion within the Department about Marchand's talked

about plans to go Mexico, he stated that he did not know that Marchand actually went on the trip until after he returned. Chief Cullen stated that he was not even aware of this allegation about the use of the police vehicle until he was told that it was included as a topic in the anonymous letter received by Town counsel approximately four months after Marchand's return trip from Mexico.

Chief Dispatcher Anne Marie Cullen stated that she had no recollection of Marchand calling for a ride from the airport. Cullen stated that officers normally call the dispatch center only on the unrecorded line so there would be no recording of Marchand calling. Cullen was asked to research the police taped lines for August 9 and 10, 2006 to determine if a recorded call from Marchand existed. Cullen later reported that she did not locate any such call on a recorded line.

The trip to Logan airport would have included a ride of approximately 25 miles from Hamilton to Logan Airport, approximately 25 miles from Logan Airport to Marchand's home in Ipswich, and about 8 miles back to the Hamilton Police Station. The entire trip would likely have taken about 2 hours.

Both Officer Michael Marchand and Sergeant Paul R. Grant admit without reservation that a town police vehicle was used to transport Marchand home from Logan Airport. Marchand claims that Chief Dispatcher Anne Marie Cullen informed him that Chief Walter Cullen would "take care of" providing transportation for him. Sergeant Grant readily admits that he utilized an unmarked police vehicle to transport Officer Marchand home from the airport. However, Grant is adamant that he requested, and received, permission from Chief Walter Cullen to do so.

Sergeant Grant is an experienced police officer. It is difficult to imagine how he would explain an unexcused extended absence from the community if he were required at a police call for service, or if his police vehicle was involved in an accident while outside of the community.

However, if Sergeant Grant did not obtain permission to leave the community in order to transport Marchand home, he would have been in violation of Department Rule 9.12. Additionally, use of Department vehicles for personal business or pleasure is a violation of Department Rule 11.7.

The Board of Selectmen should consult with labor counsel to discuss if a hearing should be held to determine if disciplinary action is warranted in this matter.

- **Allegation that Officer Marchand filed a false report that affected Officer Black.**

It is believed that this allegation involves a police call for services that Officer Michael Marchand and Officer Karen Wallace responded to on October 1, 2005 at approximately 10:18 AM. It should be noted that Officer Black was Officer Karen Wallace's maiden name.

According to police reports on file, Officers Marchand and Wallace were dispatched along with Lyons Ambulance Service to a residence on a report of a possible drug overdose incident. The officers located a female suspect seated in a motor vehicle. After the officers coaxed the suspect from the vehicle, the suspect forcefully shoved a stretcher at a paramedic thereby causing the paramedic to be knocked back.

Officer Michael Marchand filed a written report on the incident. In Marchand's original report dated October 1, 2005, a portion of the report read: *"At this time the suspect attempted to run, pushing Ofc. Wallace. Ofc. Wallace grabbed the defendant, and was thrown sideways by the suspect, pinning each between the ground and the stretcher. After a short but violent struggle, the out of control suspect was handcuffed."* Later in his report, Officer Marchand reported sending a copy of his report to the Beverly Police Department for their review as the suspect had a firearms permit issued from the Town of Beverly.

In interviews with Officer Marchand, he stated that a couple of days after the incident, he was approached by Officer Karen Wallace who was enraged (*"out of her mind"*) about Marchand's report of the incident. Marchand claimed that Wallace told him she was angry with him due to her belief that Marchand's report made it appear that Wallace *"got her ass kicked"* by the suspect. Marchand stated that he told Wallace that there was nothing to be embarrassed about since the suspect held an advanced black belt in the martial arts. However, Wallace insisted that Marchand revise his narrative report of the

incident. Marchand stated that in order to "keep peace" with Wallace, he revised his report so that the actual details of the assault were changed from: "*Ofc. Wallace...was thrown sideways...*", to now read: "*At this time the suspect assaulted Ofc. Wallace. (See Ofc. Wallace supplemental rpt.)*"

On October 3, 2005, Wallace wrote her own narrative of the incident that appears entirely consistent with Marchand's original narrative except that Wallace's narrative makes no mention of her being "*thrown sideways*" by the suspect. Instead, Wallace's report reads: "*At this point she (suspect) abruptly stood up and pushed the stretcher into the female medic's legs and began swinging her arms at the other paramedic. A brief struggle ensued, I grabbed a hold of her head and upper body and pushed her down onto the stretcher.*"

The differences between the two officers' versions of the event appear rather insignificant. In fact, an incident in which more than one officer writes a report should certainly contain some differences due to the fact that no two individuals interpret the same event exactly nor do they use identical language to express in writing what they observed. This does not necessarily translate into the fact that one of the officers is incorrect in their observations or report of the incident. It merely indicates that each officer viewed the event from his/her own unique point of view.

The evidence does not support any claim that Marchand filed a false police report.

- **Allegation that the Chief works overtime to "boost his retirement".**

In certain circumstances, if permitted by the Town, the Chief may work "overtime". If the Chief works "paid details", certain procedural requirements need to be adhered to prior to the Chief working the "details". In any event, public retirement pensions are calculated upon a formula that is comprised of four factors:

1. The employee's number of years of creditable service in the retirement system;
2. The employee's age at retirement;
3. The average of a specified number of years of the employee's salary;
4. The employee's group classification as determined by the State Retirement Board

Simply put, overtime payments are not a factor in any officer's retirement allowance and cannot be used to increase a pension. This allegation can simply be dismissed as false.

- **Allegation that the Chief is called for overtime work prior to calling in a reserve officer to work.**

Chief Cullen stated that for approximately fifteen years, it has been his policy to require a minimum of two police officers on all shifts. The Chief stated that approximately three years ago, due to the difficulty of filling vacancies, the union filed a grievance regarding this practice. The Chief stated that this prompted him to allow the overnight shift to run with as little as one full time police officer coupled with one reserve officer. Prior to this period in time, the Chief stated that he never worked any overtime as Chief. The Chief stated that he met with Selectman Chairman William Bowler, described the problem to him and offered to work some extra shifts himself on an overtime basis. Chief Cullen said that Selectman Bowler then granted permission for the Chief to work some overtime shifts.

Thereafter, the Chief stated that he would occasionally work an overnight shift so that there would be two regular full-time officers on the shift. The Chief does not do the scheduling, so he does not control his own overtime. The scheduling is done by Officer Shaw and the Chief is the last person called and only when no other regular full-time officer is available, or willing, to work. Regarding detail work, the Chief said that during the last year he worked details at two football games when no one else was available or was willing to work.

According to the federal Fair Labor Standards Act, the Chief would likely be categorized as an "exempt" employee. An employee classified as "exempt" is not required to be paid overtime for hours worked beyond his/her normal work week. However, nothing in the Fair Labor Standards Act prohibits the employer from paying an exempt employee overtime wages if the employer so chooses. The Chief is not creating his own overtime, the Chief does not schedule his own overtime, and the Chief is only eligible for overtime when all regular full-time officers are not available or do not choose to work overtime. As

previously stated, any overtime hours worked by the Chief has no effect on his future pension earnings.

It is clearly a management prerogative to determine the number and types of employees suitable to complete the Town's work. It seems that the particular practice described here between the Town and the Chief is best left to the Chief's supervisors to determine what constitutes an acceptable arrangement or best practice for the Town of Hamilton.

- **Allegation that the Chief has direct supervision over his son, a reserve officer.**

Chief Cullen's son, Sean P. Cullen, is a reserve police officer in the Town of Hamilton. On June 2, 2003, prior to Sean P. Cullen being appointed as a reserve police officer, Chief Cullen filed a notice of Disclosure of Appearance of Conflict of Interest, and a notice of Disclosure of Financial Interest with the Town of Hamilton. In the documents, Chief Cullen disclosed that Sean Patrick Cullen was his son.

On June 16, 2003, Attorney Jack Collins, labor counsel for the Town of Hamilton, wrote a letter to Town Administrator Candace Wheeler summarizing the steps needed to be accomplished in order to comply with the Massachusetts Conflict of Interest Law where Chief Cullen's son may be a candidate for appointment.

In that letter, Attorney Collins advised that state law provides a mechanism for avoiding the "anti-nepotism" provision of the state statute. Essentially, Attorney Collins advised that Chief Cullen was required to advise the Board of Selectmen of the nature and circumstances of the matter (his son's candidacy for appointment) and make full disclosure of his interest. Attorney Collins stated that the Chief already satisfied this requirement by filing the disclosure notices with the Board of Selectmen.

Attorney Collins further advised that the Board of Selectmen could then follow either of two courses of action. The Board could prohibit the Chief from having any role in the appointment process, or the Board could allow the Chief to participate if the Board believed it had no viable alternative in completing the appointment process without the Chief's participation.

Attorney Collins also stated that, in the event that the Chief's son was appointed, the Chief could not be involved in direct supervision, evaluation, or assignment of his son without again filing a disclosure and receiving the Selectmen's prior written authorization.

Apparently, in early 2007, someone made a complaint to the State Ethics Commission regarding this same issue. Town Administrator Candace Wheeler stated that she discussed this issue with an Ethic's Commission investigator and informed the investigator of the following:

1) Chief Walter Cullen filed a Disclosure of Financial Interest notice with the Board of Selectmen dated June 2, 2003. The notice informed the Board that Sean P. Cullen was a candidate for appointment as a reserve police officer and that Sean Cullen was Chief Walter Cullen's son.

2) Chief Walter Cullen filed a Disclosure of Appearance of Conflict of Interest notice with the Board of Selectmen dated June 2, 2003. The notice informed the Board that Sean P. Cullen was a candidate for appointment as a reserve police officer and that Sean Cullen was Chief Walter Cullen's son.

3) The Selectmen chose to completely manage the appointment process. The Selectmen appointed a committee to interview the candidates and to recommend the hiring decisions to the Selectmen for their vote.

4) The Chief is not involved in the assignment of shifts for reserve police officers. The assignment of shifts for both full-time and reserve officers is performed exclusively by a full-time police officer who is also a union official. This official utilizes a system of seniority for assigning regular recurring shifts, and an alphabetical rotation list for sporadic shifts such as the filling of overtime shifts and police details.

5) In Hamilton, the highest ranking officer on a shift is the "Officer in Charge" who provides the direct supervision of the regular and reserve officers on that shift. In general, the Chief's role is one of overall management of the Department. The Chief will very occasionally work a shift when no other officer will take it, so it is technically possible that he could end up on shift with his son. However, the Police Chief was

informed in the June 16, 2003 opinion from Attorney Collins that the Chief cannot be involved in direct supervision, evaluation or assignment of his son unless again filing a disclosure with the Board of Selectmen and receiving the Selectmen's written authorization.

On June 12, 2007, documents show that an investigator with the State Ethics Commission wrote to the Chief stating that they had discussed with the Chief a concern that the Chief may have participated in the hiring of his son and son-in-law (David Mastrianni) as Reserve Officers, and that the Chief may supervise his son on those occasions when they work the same shift. The investigator wrote: *"we are satisfied that this matter does not require any further action on our part"*.

- **Allegation that there is a "gift account" that "needs to be looked at".**

The anonymous writer provided no further information and left to the imagination what was meant by the phrase "needs to be looked at".

Chief Cullen stated that the Police Department occasionally receives gifts from the public. Specifically, there are one or two individuals that may donate several hundred dollars a year. The Chief stated that there is a gift account established with the Town Treasurer and that all gifts are turned over to this account. The Chief stated that the Town authorized this account approximately 10 years ago as had been done with similar gift accounts for the library and cemetery.

Town Administrator Candace Wheeler, Finance Director Deborah Nippes-Mena and this investigator met to discuss the "Police Gift Account". The Finance Director stated that there is an authorized Police Gift Account # 278. A review of deposits for the past four years to the Police Gift Account show deposits in the following amounts for the year specified:

2005 - \$1,350

2006 - \$450

2007 - \$1,700

2008 - \$1,500

Expenditures for the same four-year period were as follows:

2005 – (\$694.99)

2006 – (\$624.36)

2007 – (\$2,092.68)

2008 – (\$8,772.40)

The balance in the Police Gift Account as of September 25, 2008 was \$3647.38. The Finance Director stated that she reviews all expenditures from accounts and that the expenditures from the Police Gift Account appear to be legitimate police related expenditures.

Regarding the gift account, the anonymous writer alleged that the Chief's former secretary "*knew too much*", "*and still does*". "*This is possibly why he wanted to get rid of his secretary.*"

An interview was conducted with the Chief's former long-time secretary. It was apparent that she did not have a particularly high regard for Chief Cullen. She also blames him for the reduction of her position from full time to part time. (Chief Cullen stated that budget reductions required the reduction in hours.) However, the only information that the former secretary could provide regarding the gift account was that the Chief would occasionally spend funds from the account on items such as lunch for several individuals that the Chief may be meeting with. The secretary stated that although she personally believed that this type of spending was excessive and unwarranted, she had no reservations that the Chief could not justify the expenditures as "police related."

It is recommended that the Town ensure that the Board of Selectmen formally accepts any gift to the Town. If the Board desires, they may consider placing parameters on the expenditures of funds from any gift account maintained by the Town.

- **Attorney H. Ernest Stone letter dated May 10, 2007 to Town Counsel Donna MacKenna - Questioning Officer Marchand's Judgement**

Attorney Stone stated in his letter that he was writing to memorialize the circumstances of an interview conducted with him by Chief Cullen and an investigator on May 7, 2007 regarding their investigation into some alleged actions of Police Prosecutor Michael Marchand.

In the letter, Attorney Stone stated that during that May 7, 2007 interview, he volunteered information about an interaction he had with Officer Marchand, the Hamilton Police Prosecutor. Attorney Stone stated in the letter that he represented a client in a criminal matter. Attorney Stone alleged that, as part of a favorable sentencing recommendation for his client, the Police Prosecutor, with the Chief's approval, proposed an off the record arrangement whereby the client was to agree to "abandon" \$1,200.00 in cash that had been seized by the police. The Police Department would then retain the full \$1,200.00, thereby allegedly circumventing the statutory one-half share normally awarded to the District Attorney's office. Attorney Stone stated that he was "concerned" about this "arrangement" as it was off the record and called into question the prosecutor's judgment. Attorney Stone went on to write that his client had an innocent explanation for why he had a relatively large sum of cash in his possession, including a letter from a relative who claimed to have given the client that exact amount of currency for school.

A review of the Police case incident file includes a report filed by Detective Kenneth A. Nagy. Detective Nagy stated in his report that on January 27, 2006 at approximately 7:00 PM, he received information that a drug deal would take place in the vicinity of the front of Dunkin Donuts, on Walnut Road, at approximately 8:00 PM. The tipster described the vehicle to be driven by the drug dealer and also described the vehicle that would be driven by the purchaser.

Detective Nagy placed the area under surveillance and observed the alleged purchaser's vehicle enter the lot and park. A short while later, the vehicle described by the tipster as the seller's vehicle entered the lot. Detective Nagy utilized his video camera to record the events. Detective Nagy observed a lone male subject exit the "seller's" vehicle and approach and get into the "buyer's" vehicle. The "seller" was

carrying a plastic bag in his hand. Detective Nagy saw the interior light of the "buyer's" vehicle illuminate. The occupants appeared to be counting something. When it appeared that the transaction was completed, police officers approached the vehicles. Officers observed a bag of marijuana between the driver's seat and the console. The "buyer" told police that he came to Hamilton to purchase ½ ounce of marijuana from his friend (the "seller"). The "buyer" told police that he paid his friend \$180 in cash in exchange for the marijuana. The "buyer" later made a written statement to the police detailing the event.

The "seller" was arrested by the police. A second bag of marijuana was found in his pocket. Also found in his pocket was \$180 in folded twenties. In a separate pocket was another \$49 in cash. Located in the "seller's" vehicle was another \$900 in cash and a marijuana joint. In a videotaped interview, the suspect confessed to the sale of the ½ ounce of marijuana for \$180.00.

The "buyer" had told police that the "seller" returned from school out of state a few days earlier and that he had brought back ¼ pound of marijuana to sell and that he had sold all of it except the ½ ounce he sold this date.

The "seller" told police several variations of a story and claimed that he never really had ¼ pound of marijuana and that he just claimed to have had that much to impress his friend. The suspect claimed he received the \$900 from his aunt as payment for work and also as a birthday gift (the suspect's birthday was almost four months prior to the date of this incident). The suspect was asked for the name of his aunt to which he replied that he did not want his family to know of his drug arrest. Detective Nagy offered to tell the aunt that the vehicle was not properly registered (which was true), and that during the inventory search prior to being towed, a large sum of money was found. Nagy said he would ask the aunt to verify the sum and the denominations of the currency. The suspect would not consent to this. Later, in an undated letter apparently written in preparation for the pending court case, a woman wrote "To Whom it may concern" that she had given the suspect \$800 on the day preceding his arrest. The woman states in the letter that the \$800 was intended for birthday money, a Christmas gift, and for helping out with different jobs around her house. The same woman also provided a copy of a sales slip showing she sold a vehicle for \$1000 cash a week prior to the arrest. The inclusion of the sales slip seemed to be included for the purpose of demonstrating that the woman actually

possessed \$1000 in cash immediately preceding her transfer of \$800 to the subject in question.

The suspect was arraigned in court and his case began the journey through the district court system. Several months later, and while the criminal case was still pending in court, Officer Michael Marchand transported the \$1129 in cash taken from the defendant on the night of the arrest to the Essex House of Correction in order to subject the cash to a drug sniff by a trained K-9. One Deputy took the cash and hid it under a large plastic container within a large room. A short while later a second deputy with a drug sniffing K-9 entered the room. The K-9 searched the room and became highly agitated over the plastic container that contained the cash. The K-9 handler stated to Officer Marchand that the indication from his K-9 was that the cash reacted positively to the presence of drugs.

On December 28, 2006, the defendant appeared in court represented by Attorney Stone. According to Police Prosecutor Marchand, he and Attorney Stone had been engaged in plea bargaining negotiations relative to the disposition of the defendant's case. Officer Marchand states that he had discussed the plea negotiations with Chief Cullen. It seems that the Chief and Officer Marchand believed that the suspect should not be entitled to a return of the \$1129 as they believed that those funds were illicit. Marchand suggested that as part of a plea agreement, the Defendant would have to plead guilty or admit to sufficient facts to the court on the charge of Possession of Marijuana, a reduced charge from Distribution of the controlled substance. Marchand stated that he would also agree to a recommended sentence of probation but that the Defendant would have to forfeit the \$1129 to the Police Department. The Defendant would thus agree to not claim the \$1129 that the Department still held. The money would therefore become "abandoned" and become Town property.

Chief Cullen stated that he was aware of Marchand's plea agreement recommendation and stated that he told Marchand to check it out with the District Attorney's office. Marchand claims that he talked about this briefly in a busy court room with an Assistant District Attorney who had no apparent objection.

The court record indicates that the defendant either pled guilty, or admitted to sufficient facts and was thereby found guilty, on December 28, 2006 to the reduced charge of possession of marijuana. The defendant was sentenced to 18 months administrative probation and ordered to pay court costs and a drug analysis fee.

Two potential Massachusetts statutes are applicable here. Massachusetts General Laws, Chapter 94C, Section 47 provides that certain enumerated property shall be subject to forfeiture to the Commonwealth. Some of the property specified in this statute includes "*all moneys....furnished or intended to be furnished by any person in exchange for a controlled substance...., all proceeds traceable to such an exchange..., and all moneys used or intended to be used to facilitate any violation...*" (of certain enumerated laws related to drug violations).

This statute specifies that the property described above is subject to forfeiture upon motion of the attorney general or district attorney, and may be declared forfeit by any court having jurisdiction over the property or having final jurisdiction over any related criminal proceeding. The Commonwealth also has the option of initiating a separate forfeiture proceeding against the property by filing suit.

In this case, part of the plea agreement could have included an agreement for the court to enter a judgment of forfeiture against the \$1129 and the property would have been forfeited to the Commonwealth. The statutes governing these forfeitures provide that the District Attorney's Office receive one-half of the proceeds and the remaining one-half is to be divided among the law enforcement agencies that participated in the seizure of the assets.

The second set of statutes applicable here relate to abandoned property. Massachusetts General Laws, Chapter 137, Section 7 provide that if property which has been stolen, lost, abandoned or taken from a person under arrest comes into the possession of a police officer, he shall deliver that property to the member of the department that is responsible for such property. The department must then adhere to the notice provisions of the statute. Section 8 of the same Chapter provides that any such property that remains unclaimed in the possession of the police department for one month, and the

owner remains unknown, or fails after notice to retrieve the property, then the department may sell the property (excepting money) at public auction.

In this case, it is obvious that part of the negotiated plea agreement between the police prosecutor and the defendant rested upon the defendant forfeiting or abandoning the \$1129 in cash. The defendant simply could have refused the prosecutor's offer. The District Attorney could potentially have commenced a forfeiture proceeding in which the defendant could have offered his explanation of how he came into possession of the cash. The defendant could have insisted that the disposition of the cash be put "on the record" as part of the court's disposition. Since the disposition was not "on the record", the defendant could potentially have demanded the immediate return of the money at the conclusion of the court proceeding. However, none of this occurred. It seems clear that both parties knew exactly what they bargained for – the defendant had his charges reduced and received a sentence of probation; the police department ensured the defendant was found guilty and retained the \$1129.

During this investigation, the cash was found to still be in possession of the police department. I have recommended to Chief Cullen and Town Administrator Candace Wheeler that the cash is turned over to the office of the Town Treasurer.

The Office of the District Attorney should be contacted in order to obtain guidance regarding the safeguarding of any future cash seizures pending their disposition. Some District Attorneys have guidelines requiring all cash seizures be turned over to their office within a specified period of time following the seizure. This method assures that the District Attorney has timely notice of any seized monies along with the benefit of absolving the Police Department of any responsibility for safe guarding the property once it has been turned over to the District Attorney.

Any future disposition of seized assets in court should be placed "on the record" with a "judgment of forfeiture" entered so that there is no dispute or questions raised about the proper disposition of seized property. Here, there is no question that the defendant knew that the police had seized the cash in his possession at the time of his arrest. The defendant has never tried to recover the cash, either. Whether the cash at issue here

was truly "abandoned" by the defendant remains a legal question beyond the scope of this investigation.

Any future judicially forfeited money or proceeds received by the Police Department should follow the statutory requirements and, when received by the Police Department after adjudication by the court, be deposited according to statute in a special law enforcement trust fund maintained by the Town Treasurer. By statute, these funds may be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical assistance or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police deems appropriate. *MGL C.94C, S47(d)*.

**Letter to the Ethics Commission – Anonymous "Concerned Citizens"-  
Dated 12-08-06**

- **Another anonymous letter specifically targeting the Chief of Police. The letter alleges that there are two named individuals that are related to the Chief that work at an ambulance service.**

The Town of Hamilton Police Department operates their own ambulance service that provides Basic Life Support (BLS). In the event that advanced care is required, an Advanced Life Support (ALS) ambulance from Lyons Ambulance service is called.

According to Chief Walter Cullen, Lyons is the closest ambulance service, has an excellent reputation, and has been the Town's only Advanced Life Support ambulance back-up service. The Town of Hamilton exclusively utilizes Lyons Ambulance Service as the Advanced Life Support back-up to the Town's Basic Life Support ambulance service. Chief Cullen states that the Town and Lyons have had this relationship for approximately fifteen years. Chief Cullen stated that the Hamilton Police Department performs approximately 300 ambulance runs a year and approximately 20% (60) require that Lyons Ambulance be called for ALS. Lyons ambulance service provides similar services for several surrounding communities.

According to Chief Cullen, his son Sean P. Cullen, is a full time employee with Lyons Ambulance Service and has been so employed for approximately 10 years. Chief Cullen

stated that his son-in-law, David Mastrianni, is also a full time employee with Lyons Ambulance Service and has been so employed for approximately 15 years. Both Sean P. Cullen and David Mastrianni are, or were, Reserve police officers in Hamilton. (David Mastrianni recently resigned as a Reserve police officer in Hamilton).

Massachusetts General Laws, Chapter 30B, the Uniform Procurement Act, applies to municipal and state procurement of supplies and services. However, the statute creates thirty four exceptions in which the Uniform Procurement Act does not apply. One of the enumerated exceptions wherein the Act does not apply is a contract for ambulance service by a governmental body.

The Town of Hamilton and Lyons Ambulance Service have not entered into a contract for services, per se, but the Chief of Police on behalf of the Hamilton Police Department, and Lyons Ambulance Service, have entered into an Agreement to Provide Mutual Aid Back-Up Ambulance Service.

The Town of Hamilton should ensure that it is the decision and vote of the Board of Selectmen to determine what particular ambulance service to contract with for services. Town counsel should be consulted in order to determine if the Chief of Police should file a Disclosure of Financial Interest and/or a Disclosure of Appearance of Conflict of Interest regarding the employment of his son (an immediate relative), and son-in-law (not considered an immediate relative), by the ambulance service that the Town maintains an exclusive relationship with.

- **There is also information contained in the letter stating that the Chief's wife is the Chief Dispatcher. The letter appears to insinuate that there is some violation of the ethics laws regarding nepotism.**

The E-911 Public Safety Answering Point (PSAP) is located in the new public safety building that houses the Police Department on one side of the building, the Fire Department on the other side of the building, and the Emergency Operations Center (Dispatch) in the middle. The PSAP is a combined dispatch center for the Towns of Hamilton and Wenham. The Town of Hamilton is the employer of the Dispatchers and receives reimbursement from the Town of Wenham. The Dispatch Department, or

Communications Center, has a Chief Dispatcher, Anne Marie Cullen. Anne Marie Cullen is the wife of Police Chief Walter D. Cullen. However, the Dispatch center is an entirely separate Town Department from both the Police and Fire Department. The Chief of Police does not exercise supervisory control over his wife in the workplace. Therefore, there appears to be no validity to any claims of conflict of interest or nepotism.

- **The letter also alleges that there have been instances wherein a dispatch officer leaves his dispatch post in order to work as a police officer, yet is paid from the dispatch payroll.**

On December 19, 2005, at approximately 10:18AM, officers of the Hamilton Police Department responded to a residence and subsequently discovered that an apparent murder had occurred (Blackhall case). Two suspects were taken into custody.

Chief Cullen found it necessary to bring off duty police officers in to work to assist. Payroll records from the Police Department indicate that Reserve Officer Keith Holloran worked at the crime scene from 1:30 PM to 9:00 PM. Holloran is also a Dispatcher. Holloran had been scheduled to work as a Dispatcher from 11:00 AM to 7:00 PM that same day. According to Chief Dispatcher Anne Marie Cullen, Holloran began his shift at 11 AM, shortly after the murder incident had been reported. Anne Marie Cullen stated that additional officers were requested at the crime scene. Cullen stated that she gave Holloran permission to leave his dispatch position and report to the crime scene. Cullen stated that she was remiss at the time in not deducting 5.5 hours of compensatory time from Holloran's compensatory time account for the time he spent at the crime scene on police business. Cullen stated that she has now made the proper deduction.

Chief Walter Cullen, Chief Dispatcher Anne Marie Cullen and Sergeant Paul Grant all agreed that this one incident is the only incident in their collective memory in which a dispatcher was performing police duties rather than his assigned dispatch duties.

- **The letter contains an allegation of “forged 911 State training tapes” accomplished some years in the past.**

This same allegation was also made in another document and will be discussed in detail later in this report.

#### **Statement of Sergeant Grant – January 5, 2008**

- **Allegation that all of the Hamilton police officers’ training in less than lethal force has expired and “not done in accordance with State regulations”.**

Less than lethal weapons that are authorized by the Hamilton Police Department include Oleoresin Capsicum (pepper spray), the issued police baton, and the beanbag shotgun round.

The Hamilton Police Department has adopted and promulgated certain Policies and Procedures drafted by the Municipal Police Institute (MPI). The Municipal Police Institute is the training and policy arm of the Massachusetts Chiefs of Police Association.

According to Chief Walter Cullen, MPI Policy and Procedure #400 – Use of Force, has been promulgated by the Hamilton Police Department. Less than lethal force, also sometimes referred to less accurately as Non-Deadly Force, is defined as *“that degree of force which in the circumstances is neither likely nor intended to cause death or serious physical injury.”*

Section VI of MPI policy #400 states that only issued or approved equipment will be carried on duty and used when applying any level of non-deadly force. Section VII of the same policy states that *“All officers shall be properly trained, and certified when appropriate, in the use of any non-lethal weapons (such as batons or chemical substances) before being authorized to carry such weapon.”*

The Municipal Police Training Committee (MPTC) (formerly, the Massachusetts Criminal Justice Training Council), serves the Commonwealth by establishing police training standards and by providing formal training and personal development programs to police officers.

A representative from the Municipal Police Training Committee (formerly the Municipal Police Training Council) stated that the Municipal Police Training Committee requires only that police officers obtain initial training in the use of OC (pepper spray) and in the use of the police baton at the recruit training level. The MPTC does provide a certification and recertification process but it is only applicable to instructors of OC and baton training. Although there are various recommendations from a number of sources recommending that Police Departments provide supplemental or refresher training, the Municipal Police Training Committee has no such mandates and leaves to the individual police department the determination of when additional or refresher training is necessary. The Hamilton Police Department's Use of Force Policy also does not require any re-certification or refresher training in less than lethal weapons.

Regarding the less than lethal weapon known as the beanbag shotgun round – a normal shotgun from which a cloth-cased lead filled shot is used as a disabling projectile (a beanbag), the Municipal Police Training Council does not provide training or re-certification in such weapons. According to a representative of the Training Council, historically such training is accomplished by the department that purchased the weapon and the training follows the manufacturer's recommendations. In Hamilton, two officers possess instructor certification for this type of less than lethal weapon. The Police Department has promulgated a policy on the use of such weapon and all officers that are permitted to use this weapon have received the required initial training.

Under Section X (L) Training and Qualification, of the same Use of Force Policy, it states that *"All officers shall qualify with their issued service weapon(s) and any other weapon they are authorized to carry while on duty at least annually."* Some officers may believe that *"any other weapon they are authorized to carry"* refers to less than lethal weapons. However, a close reading of this section makes it readily apparent that *"any other weapon"* refers solely to "firearms" and not less than lethal weapons.

The Municipal Police Training Committee requires only that police officers qualify with their firearms annually. The Hamilton Police Department adheres to this requirement. Again, there are recommendations from various sources that suggest firearms qualifications take place two, three or four times a year and at various times of the day and night and in all types of weather. Some police departments may have Special

Operations teams that may qualify at the firing range on a monthly basis and may demand an even higher passing score. Funding is usually the determining factor when training beyond what is mandated.

The Town of Hamilton is not alone with constraining fiscal budgets. The issue of police recruit training, veteran in-service training, and lack of funding is a topic at the meetings of many professional police organizations.

In conclusion, provided that Hamilton Police officers receive proper initial training in the use of OC (pepper spray), the police baton, and the beanbag shotgun projectile, and only carry those less than lethal weapons authorized by the Police Department, the police department will remain in compliance with any current standards that are promulgated by the Municipal Police Training Committee. Additionally, the Police Department should adhere to any other training requirements that the manufacturer of the beanbag shotgun projectile recommends.

- **Allegation that one officer refused to attend required training and is not, as of the date of this allegation, qualified with a firearm.**

In an interview with Chief Walter Cullen, he stated that Sergeant Paul Grant (Training Officer) informed him that Reserve Police Officer David Mastrianni failed to attend firearms training. Chief Cullen stated that he called Mastrianni about this issue. Mastrianni, who Chief Cullen stated worked very little as a Reserve Police Officer, told the Chief that he was not aware that there was a sign up roster for firearms training. Chief Cullen stated that he told Mastrianni that he was required to attend firearms qualification. Mastrianni failed to attend the required training. Recently, Mastrianni resigned as a Reserve Police Officer in Hamilton. The issue is now moot.

**Officer Karen Wallace – E-mail to Town Counsel – April 9, 2007**

- **Allegation of “property missing” – two men’s watches valued at \$1,543.50.**
- **A reference to two televisions being mounted in the police station (the e-mail infers that the two televisions were in property storage at one time)**

In a report written by Detective Kenneth A. Nagy, he stated that on October 29, 2006, a resident reported that she realized that her wallet had been stolen. The victim reported receiving a telephone call from her credit card company about suspicious activity on her credit card. The victim then realized that her purse and several other credit cards were missing from her motor vehicle.

During the course of Detective Nagy's investigation he quickly developed a suspect who had access to the victim's car the previous day. Detective Nagy contacted the various credit card companies and compiled a list of stores where the fraudulent transactions occurred. Detective Nagy obtained a video surveillance tape from one store that clearly showed the suspect making the fraudulent purchases. Detective Nagy contacted another merchant who sold two Movado watches to the suspect for \$1543.50 that was charged to the victim's credit card. Detective Nagy also obtained a copy of a sales receipt from another store where the suspect purchased two flat screen panel televisions, again using the victim's credit card.

During the course of his investigation, Detective Nagy learned that the suspect lived in a nearby community. Subsequently, Detective Nagy obtained an arrest warrant for the suspect as well as a search warrant for the suspect's apartment. Along with police officers from the community in which the suspect resided, Detective Nagy and Officer Michael Marchand went to the suspect's residence. The officers found no one at home at the residence so they obtained a key to the apartment from the property manager and properly executed the search warrant.

Along with various other items, officers located one of the flat panel televisions that had been set up and installed in a room in the apartment. They also located a box for a Movado watch. Further investigation led to a witness. Questioning of the witness at another location led to the recovery of the second flat panel television that had been hidden in some woods. The officers also recovered a Movado watch that had been secreted inside a gas grill. The next day, the suspect turned himself in to Detective Nagy. The suspect also turned over the second Movado watch to Detective Nagy.

On December 6, 2006, the suspect was found guilty of the larceny and credit card charges. Prosecutor Michael Marchand states in a written report that he contacted the

credit card companies by phone and by mail concerning the property that was fraudulently purchased. Marchand wrote a report in which he stated that there was no response from the three credit card companies.

Once again, Massachusetts General Laws, Chapter 137, Section 7 is applicable as it relates to abandoned property. The statute provides that if property which has been stolen, lost, abandoned or taken from a person under arrest comes into the possession of a police officer, he shall deliver that property to the member of the department that is responsible for such property. The department must then provide notice to the property owner. Section 8 of the same Chapter provides that any such property that remains unclaimed in the possession of the police department for one month, and the owner remains unknown, or fails after notice to retrieve the property, then the department may sell the property (excepting money) at public auction.

Here, the owners of the property that was recovered were the credit card companies. The victim whose purse and credit cards were stolen suffered no financial loss from the purchases made with their stolen credit cards. The merchants who sold the property suffered no financial loss.

This scenario is played out repeatedly in police departments throughout the country. Sometimes, credit card companies simply may not respond to inquires regarding recovered property that was purchased with stolen credit cards. Often, a representative of the company will simply advise the police that the company has no further interest in the property. Usually, the property has been opened from the original packaging and has been used or damaged.

After the property has gone unclaimed for one month, the relevant statute states that the department may sell the property at public auction. Many municipalities hold a yearly auction to dispose of property such as this that has come into the possession of the police department. Many municipalities also auction a number of stolen / recovered bicycles or other found property that goes unrecovered. Frequently, municipalities use this same auction to dispose of used municipal vehicles or other used equipment or furniture. Of course, items that have been abandoned, or go unrecovered that may be useful to the community do not necessarily have to be auctioned. After going unclaimed

for one month, the property belongs to the municipality. Those items that the municipality can put to good use are not required to be auctioned. There should be a system in place to coordinate the placement of such property to the various departments.

The auction serves multiple purposes. First, it raises revenue. Second, it allows a municipality to dispose of unwanted items that can be clogging storage space.

Property and evidence management must be meticulously maintained. Police evidence and property storage is a complicated task requiring a system of checks and balances. Audits are a must and audit teams normally should be comprised of those responsible for the evidence and property function along with someone from another division within the same police department, or by obtaining assistance from another police department, or from outside consultants that will conduct an audit. Seized firearms and controlled substances create their own special issues and must also be audited and slated for destruction when no longer of evidentiary value.

In this particular case, the two Movado watches were located - still in the police evidence room. The two flat screen televisions were also in police custody and have been converted to use by the Police Department. They are now prominently visible in the police station.

In summary, the "missing property" was not missing. However, given the publicity of the allegations, and the apparent lack of a regular town auction to dispose of property in a timely fashion, the police department should undertake a complete audit of all existing evidence and property to ensure that items are both accounted for and disposed of when appropriate.

The audit process could take several days and will entail matching evidence and property along with police incident reports. Evidence and property that is required to be maintained should be categorized into a system. Evidence and property no longer required to be maintained should be segregated and those items suitable for auction should be listed with a copy presented to the Town Administrator. The notice requirements of the applicable statutes should be adhered to with verifying records

maintained. Auction records should be kept detailing exactly what property was presented for auction, what was received by the auctioneer, and what was disposed of coupled with a corresponding list of the proceeds garnered from the auction. Firearms and drug evidence no longer required to be kept should be disposed of in accordance with state statutes regulating the disposal of firearms and controlled substances.

Essentially, in any property and evidence system, all property and evidence coming into the possession of the police department needs to be meticulously maintained. The records need to be complete and should track the item from the time it comes into the possession of the police department until it is disposed of.

Chief Cullen has announced that he intends to retire shortly. The new Chief will undoubtedly require that an audit be conducted upon his assuming command. The Town of Hamilton could initiate the audit process in very short order. The Town should strongly consider obtaining the services of an outside audit team for an initial audit of evidence and property.

**Materials presented by Officer Michael Marchand – January 17, 2008**

- **Allegation of “mis-use” of State and Federal grants, including an allegation of “forged documentation” regarding these grants.**

The crux of this allegation surrounds a grant awarded to the Town of Hamilton Police Department in 2001.

In March of 2001, the Commonwealth of Massachusetts Executive Office of Public Safety announced that “Byrne” federal grant funds were available to local police departments. “Byrne” grants are federal grants that are funneled through and administered by, the Executive Office of Public Safety to local police departments. The 2001 grant funds were limited to three project areas all involving the improvement of police records management systems.

Chief Cullen stated that the Hamilton Police Department applied for this particular grant in 2001. The Chief stated that Sergeant Donald Dupray wrote the grant application and

was responsible for administering the grant as the Project Director. The Chief provided this investigator with documents from Dupray's files regarding this grant. The documents include a grant application listing Chief Cullen as the Financial Officer, and Sergeant Dupray as the Project Director. The file copy is not dated nor is it signed.

The grant application sought funding for integrating electronic mug shot capabilities with the Department's existing records management system. As part of the application, the Police Department sought to purchase a computer workstation with monitor, printer, digital camera, digital imaging software and some training. The total project cost was listed as \$8250.00. The conditions of the grant specified that the Town was required to provide a hard cash match of 25%. Therefore, the grant would provide \$6104.17 and the Town was required to provide \$2145.83.

The grant application included the following timetable provided by the Department:

- Upon receipt of funding; immediate purchase of hardware and software
- Two weeks after funding; installation and training complete
- Three weeks after funding; electronic mug shot system in full use

As is the case with most grants, there was a lengthy list of special conditions including the submission of all required financial reports.

On June 11, 2001, Chief Cullen received a letter from the Executive Office of Public Safety informing him that the Hamilton Police Department was one of 50 local police departments selected to receive a grant award. The award letter reiterated that the Department would receive \$6104.17, and that the Department was required to commit a hard cash match of \$2145.83. The letter specified that the grant period would cover July 1, 2001 through June 30, 2002. The letter also stated that the Department would soon receive the grant contract.

On June 20, 2001, Chief Cullen received numerous documents from the Executive Office of Public Safety that are associated with such grants. It appears that all of the documents were completed but the documents in the file contain no signatures.

On August 3, 2001, Chief Cullen received further correspondence from the Executive Office of Public Safety detailing the requirements to submit financial and progress reports associated with the grant.

On December 13, 2001, Sergeant Dupray sent out a memo to Hamilton Police officers regarding the police computer system. In that memo, Sergeant Dupray stated that the imaging system would be purchased "very soon".

The file provided by the Chief contains a March 25, 2002 quote from IMC, the Department's records management software vendor, for the imaging software.

Records from the Executive Office of Public Safety confirm that the Police Department was sent a check in the amount of \$6104.00 on July 9, 2002. The Town Finance Department confirms that the Chief deposited the funds into the Town's Police Grant fund.

Initially, the Chief was informed that there were allegations about irregularities with a grant. The Chief stated that the only grant that there would be an issue with would be concerning the digital imaging grant from 2001. The Chief stated that he received the grant but did not purchase the equipment. When asked why the grant funds were not used to purchase the equipment, the Chief stated that he could not acquire the \$2145.83 hard cash match required of the Town. The Chief stated that the \$6104 provided by the grant was deposited into the Town's grant account but remained unspent.

Later, it was requested that the Chief provide copies of any documents regarding this particular grant. On October 3, 2008, this investigator met with the Chief and he provided a folder of documents regarding the grant.

On November 6, 2008, Chief Cullen informed this investigator that he had now purchased the software from the 2001 grant for \$5850.00. It was later determined that the software was installed on October 6, 2008, three days after the Chief provided the grant documents to this investigator. The invoice from the software vendor was dated October 24, 2008.

Several issues now present themselves. Although the grant funds were used to purchase the digital imaging software, the purchase did not occur for over six years after the expiration of the grant period. The Department cannot demonstrate that the other equipment in the grant proposal was ever purchased (the computer workstation, monitor, printer, digital camera or training). Further, the Department cannot demonstrate that it provided the required hard cash match of \$2145.83. There are other allegations floating around about this grant. These allegations could very well be resolved with an examination of the original grant documents submitted by the Police Department to the Executive Office of Public Safety. Unfortunately, the Executive Office of Public Safety cannot locate the Hamilton grant file.

The Hamilton Police Department received grant funds in the amount of \$6104.00 and has now, over six years later, spent most of those funds for the purpose for which they were originally intended. The Finance Director for the Town of Hamilton will need to coordinate with the Executive Office of Public Safety to determine the appropriate method to rectify the issue of the hard cash match and the unexpended grant funds.

The Town's current finance director is well acquainted with the proper procedures for handling state and federal grants. In the past, grant funds in Hamilton were placed in a commingled account thereby creating accounting difficulties. The current finance director is aware that each grant must have its own separate account. The Finance Director must also be supplied with all grant documentation for every grant to ensure that all expenditures are for the purposes required of the grant and that all financial and progress reports are in compliance with the conditions of the grant.

- **Allegation that the Chief Dispatcher took an exam for another dispatcher**

Mary Ruth Stocking, who left the department in 2001, had been employed as a dispatcher at the Hamilton Emergency Operations Center.

According to published reports, Stocking says that she and her lawyer met with Town Administrator Candace Wheeler in the fall of 2000 and told her that someone had forged Stocking's signature on a medical dispatcher course exam. Stocking says that she never

took the exam. According to the reports, Stocking discovered the forgery when she opened an envelope addressed to her and found a copy of the exam, with a score of 98, over a signature that was not hers. Stocking claims that Wheeler told her the matter would be taken care of. (Salem News; September 26, 2008)

Background:

Chief Dispatcher Anne Marie Cullen had been critical of Stocking's dispatcher performance during the Sharpe murder incident in July of 2000. Additionally, Cullen found Stocking's attitude and performance had been deteriorating for some time. According to the Town Administrator's recollection and notes of subsequent meetings with Anne Marie Cullen, Cullen described a situation wherein Stocking was becoming increasingly difficult to work with and had begun to refuse training. According to the Town Administrator's recollection and notes, Cullen stated that Stocking was repeatedly reminded to take the self-administered Emergency Medical Dispatch re-certification examination. Cullen told Wheeler that Stocking refused to take the exam. Cullen stated that Stocking had passed the exam in the past and that her certification was about to expire.

The Emergency Medical Dispatch re-certification exam is the product of a private company, The National Academy of Emergency Medical Dispatch, of Utah. The company describes itself as *"a non-profit, standard setting body for Emergency Medical Dispatcher training curricula and certification and recertification requirements."*

Emergency Medical Dispatch (EMD) qualification or certification is not required in the Commonwealth of Massachusetts although EMD certification for dispatchers that dispatch ambulances may be required beginning sometime in 2009.

An October 31, 2000 meeting was held with Town Administrator Candace Wheeler, Stocking, and her attorney to discuss Stocking's issues with the Town including her claims that she was injured and/or disabled from performing her dispatch duties due to episodes in the workplace. The Town Administrator's notes of the meeting indicate that one of the issues Stocking mentioned regarding training was that she had not taken the National Academy of Emergency Medical Dispatch re-certification exam despite

receiving notice that she had. Stocking stated that in May of 1999, Cullen went on vacation and left Stocking in charge. Stocking had the keys to the mailbox and retrieved the mail finding a letter from the National Academy of Emergency Medical Dispatch commending her for passing the EMD re-certification exam. Stocking told Wheeler that she had never taken the re-certification exam but had taken the initial EMD certification exam four years prior.

In an interview with Mary Ruth Stocking, she generally confirmed the news accounts of her story and confirmed the contents of the October 31, 2000 meeting she had with Town Administrator Wheeler and her attorney. Stocking stated that the issue of the EMD recertification test had been a contentious matter for a month or two between her and Anne Marie Cullen. Stocking stated that Cullen insisted that Stocking take the test. Stocking refused to take the test because she stated that she believed that since EMD certification was not required, it was therefore not necessary. Additionally, Stocking stated that the applicant must possess certain training prerequisites to take the exam, prerequisites that Stocking claimed she did not possess.

A review of the application form for the exam indicates that the applicant is required to confirm that they 1) have completed the recertification exam; 2) have completed appropriate Continuing Dispatch Education during the two previous years (a list of training courses are attached to the application form); 3) that the applicant possesses current CPR certification. The applicant must sign and date the form. The applicant's signature reflects that the applicant affirms that the exam answers are their own work and that the information contained in the application is correct.

Stocking was able to provide the original letter dated May 29, 1999 from the National Academy of Emergency Medical Dispatch in which she was congratulated for passing the EMD recertification exam with a grade of 94% (not 98% as had been reported in the newspaper). Accompanying the letter were a National EMD Certification card, and a uniform rocker patch. (A rocker patch is a small patch designed to be worn above the normal Department patch on a uniform). Stocking also provided the original EMD exam that she was given to self-administer. A review of the original exam document shows that Stocking had completed all but three of the fifty questions on the self-administered exam. The three questions not completed had penciled in question marks next to the

question. The application form containing the applicant's personal information and signature had not been completed. Stocking stated that her attorney at the time was unable to obtain the original exam that had been sent to the National Academy for Emergency Medical Dispatch. Stocking recalls her attorney advising her that the National Academy did not retain the exams.

Minutes from the Board of Selectmen's meeting of October 26, 2000 indicate that the Board received correspondence from an attorney stating that an Emergency Communications Operations employee (Stocking) was contending that she was suffering a workplace injury as a result of the Sharpe murder and its aftermath. The record indicates that Town Administrator Candace Wheeler was asked to interview the people involved. The three members of the Board at the time were Mr. David Neill; Mr. Peter Twining (Chairman) and Mr. John Serafini, Jr. Mr. Neill recused himself from the discussion.

Minutes from the November 20, 2000 meeting, in which Mr. Neill again recused himself, state that Ms. Wheeler presented the Board a summary of her conversation with Stocking and that there were two components: events of the night in question and Stocking's interaction with Anne Marie Cullen over that incident; and Stocking's overall attitude regarding her work. The minutes read that "*Ms. Wheeler then reviewed her interview with Anne Marie Cullen, with comments from Ms. Cullen*" (emphasis added). Neither the detailed substance of Wheeler's report to the Board, nor any of Cullen's comments were included in the minutes. The minutes do reflect that Anne Marie Cullen was present at the meeting as she was also a member of the Personnel Board that had attended to discuss the previous item on the agenda.

There are two more sets of other Board meetings in which the Stocking matter was discussed but those notes refer only to Stocking's claim of injury.

Mr. Peter Twining and Mr. John Serafini, Jr. were recently interviewed as to their recollection of the Stocking matter.

Mr. Twining stated that his Board members were keenly aware of any public safety issues. He recalls the Stocking issue in which she claimed being disabled over issues with the Sharpe murder. Mr. Twining had no recollection at all of any allegations of *"phantom test taking or test record keeping"*. He stated that he *"can't imagine not remembering something of this nature."* if it had been brought to the Board's attention.

Mr. John Serafini, Jr. stated that he remembered the Stocking matter coming before a Board meeting. Mr. Serafini had no recollection of the issue of any claims by Stocking that Anne Marie Cullen took an exam for her. Mr. Serafini believes that this would have been a serious enough issue that he would have remembered it. Mr. Serafini stated that had the Board been aware of this issue, they most certainly would have followed through with it.

Town Administrator Candace Wheeler kept copious notes of her meeting with Mary Ruth Stocking and her attorney, and of her meetings with Anne Marie Cullen. Wheeler remembers briefing the Board on the issues involving Stocking. Wheeler stated that she believes that the Board was made aware of all the issues regarding Stocking including her allegations that Anne Marie Cullen took the EMD test for her.

Subsequent to the November 20, 2000 meeting, the Stocking matter continued to be discussed among Town officials. The notes from the Town Administrator reflect that she had another meeting with Anne Marie Cullen on July 2, 2001. The Town Administrator's notes from that meeting clearly indicate that Candace Wheeler and Anne Marie Cullen discussed the Stocking EMD issue. Wheeler's notes reflect Cullen's comments that Stocking was *"repeatedly reminded to take test and didn't"* and that Stocking *"had refused to take the self test for Emerg Med Dispatch. It was about to expire."* Further, that Stocking *"signed her form for recert. Good for 2 yrs."* The notes reflect that Cullen explained the nature of the EMD exam and that Cullen *"was confident she (Stocking) was capable cuz she had passed before."*

In a brief initial interview with Anne Marie Cullen she stated to this investigator that the Board of Selectmen already did an investigation into this allegation and that they did not

substantiate Stocking's complaint. Cullen stated that the Ethics Commission also did an investigation into this matter.

Several weeks later, a subsequent interview was conducted with Anne Marie Cullen. Chief Walter Cullen was present. Chief Cullen advised this investigator that the allegation made by Stocking was eight years old and that his wife would not discuss the matter further. However, Anne Marie Cullen was willing to state that she was present at the November 20, 2000 meeting with the Board of Selectmen when Town Administrator Candace Wheeler discussed the Stocking matter with the Board. Cullen stated that she recalled Wheeler briefing the Board on Stocking's claim of injury. Cullen stated that she did not personally make any comments about the matter during the meeting. Cullen stated that she did not recall the Town Administrator advising the Board about the EMD test issue. Further, Cullen stated that she was not even aware of Stocking's allegation about the EMD test until "about 5 years later" when Chief Walter Cullen received a call from an investigator from the Ethics Commission. Anne Marie Cullen stated that she remembered her husband telling her that the investigator stated that they had received the allegation about the EMD test issue and that he would be in further contact if needed. Both Chief Walter Cullen and Anne Marie Cullen stated that they had no further contact or correspondence with the Ethics Commission regarding this matter.

The Board of Selectmen should contact labor counsel to discuss if a hearing should be held to determine if disciplinary action is warranted in this matter.

- **Allegation that "Cupola" funds were not properly accounted for.**

In January of 2007, a number of individuals were participating in a Town approved fundraising effort to purchase a cupola to be installed on the roof of the newly constructed public safety building. A cupola had been included in the original plans for the building, but it was deleted due to cost. The fundraising goal was to raise \$15,000. The fundraising event was a dinner and comedy night that was held in early February of 2007. The event was held at the Pingree School.

Chief Walter Cullen stated that a number of individuals participated in the planning for the fundraiser. The Chief stated that one of the primary advocates for restoring the

cupola to the building project was his wife, Chief Dispatcher Anne Marie Cullen. Chief Cullen stated that police officers, firefighters and some citizens participated in organizing the event. Dr. Kalil Boghdon, Chairman of the Public Safety Building Committee, confirmed this.

Chief Cullen stated that a number of individuals sold tickets to the fundraising event. The tickets sold for \$50 each. Chief Cullen stated that Officer Michael Marchand took a lead role in the fundraiser.

Chief Cullen stated that he received all of the proceeds from the ticket sales and that Marchand had a list of donors. Chief Cullen stated that ticket proceeds were in the form of both checks and cash. Chief Cullen stated that he turned over all checks to the Town Treasurer and that the checks were deposited into the "Public Safety Gift Account" also known as the "Cupola Fund". Chief Cullen stated that any cash proceeds from ticket sales were retained by him to pay for expenses for the event. Chief Cullen stated that those expenses included payment for the two bartenders at the fundraiser, payment for the Pingree school custodian, the purchase of soda, ice, beer, wine and liquor, bar supplies and condiments, miscellaneous food other than that provided by the caterer, paper products, plastic glasses, centerpieces, and decorations.

The Chief kept no receipts for any items that he paid for in cash. In retrospect, Chief Cullen stated that it would have been better if he had also deposited the cash into the Public Safety Gift Account to pay for the items associated with the fundraiser. Chief Cullen stated that his recollection is that he received mostly checks as payment for the tickets to the fundraiser but that some payments were in cash. The Chief stated that proceeds from the bar receipts on the night of the fundraiser were used to pay for the alcoholic beverages and ice. The Chief stated that he personally paid the package store in cash the following day. Although the Chief had no recollection of the exact amount of, or any receipt for the beverages, he stated that he believed it was approximately \$800-\$900 paid to the package store. The manager of the package store confirmed the Chief's account. Chief Cullen stated that he alone handled any cash payouts for expenses and that he still had \$1105 cash on hand from the event.

The Chief estimated that 200 or more people attended the event. However, the Chief stated that "he had no idea how many tickets were sold." The Chief stated that he did not

personally sell any tickets but that tickets were available in the Dispatch center. During the event, a 50/50 cash raffle was also held to raise money. The Chief stated that he estimated the revenue from the raffle at \$400-\$500. It was later confirmed by another individual that actually won the raffle, that \$500 was brought in from the raffle, with ½ then distributed as the prize so that the raffle netted \$250.

A couple of months after the fundraising event, the Board of Selectmen commenced the first investigation into the alleged activities of Officer Michael Marchand. During the course of that investigation, Marchand stated that he lost his trust in Chief Cullen. As stated earlier in the procedural history section at the beginning of this document, in April of 2007 the Board of Selectmen ordered an investigation into certain alleged actions of Officer Marchand. Subsequently, Officer Marchand submitted a number of documents to the Town. Those documents included allegations by Marchand that during the fundraising for the cupola, Chief Cullen *"kept no records of any of these donations that I could see, and threw away the names of the donors and the funds they gave."*

Chief Cullen stated that Officer Marchand never provided him with any list of donors.

During subsequent interviews, Officer Marchand claimed that as he received them, he handed over to the Chief all of the proceeds from the ticket sales. Marchand stated that he believed that the amount of cash was sizeable, perhaps up to 50% of the ticket sales. Marchand stated that on one occasion he went to the Chief's office for the purpose of turning over the proceeds from some ticket sales. Marchand stated that Sergeant Paul Grant was in the Chief's office when Marchand arrived. Marchand stated that when he submitted the ticket proceeds to the Chief, there was a small piece of paper with the names of the donors attached to the cash and checks. Marchand stated that he and Grant witnessed the Chief take the slip of paper and throw it away. In an interview with Sergeant Grant, he also asserted that this same incident took place. Grant stated that when Marchand saw the Chief throw the list of donors away, Marchand told the Chief that the paper he just threw away contained a list of the donors for those tickets. Grant stated that the Chief said "I don't care about that."

Marchand's belief is that many more tickets were sold to the event than persons who actually attended. Marchand's belief is that anywhere from 280 to 350 tickets may have

been sold. However, Marchand stated that he personally retained no list of the donors or list of the tickets actually sold.

During the course of this investigation, several individuals stated that they helped selling tickets to the event. One firefighter, Skip Mullen, stated that he recalled selling approximately 12 tickets. Mullen's recollection was that 11 of those tickets were paid for by check and 1 with cash. Mullen stated that the raffle held during the event raised \$500 with ½ then being distributed as a prize. Mullen stated that Michael Marchand personally purchased two event tickets so that Mullen and his guest could attend the event. Officer Marchand confirmed this and stated that he handed Chief Cullen \$100 in cash on the night of the event for these two tickets.

Anne Marie Cullen stated that a number of individuals were involved in the fundraising effort. Cullen stated that she was one of the primary sponsors of the movement to have the cupola placed on the building. Cullen stated that she recalled talk among several individuals about fundraising and the decision to hold a comedy night and dinner as the means to raise the revenue. Cullen stated that she did not recall who printed the tickets, or whether they were professionally printed or the product of a home computer. Cullen stated that she did not personally sell any tickets and did not recall how the tickets were distributed for sale. Cullen recalled that Officer Marchand sold the majority of the tickets. Cullen stated that a number of volunteers helped with setting up the event. She believed that the Pingree School donated the services of the custodian. Cullen stated that she was not involved in the bar operation and had no idea how much revenue was taken in from the bar. Cullen had no recollection of a raffle occurring. Cullen stated that she believed that Mr. Brian Hill sold the tickets for the bar.

Mr. Brian Hill, a firefighter, stated that he did, in fact, sell the tickets for the bar. Under this system, customers would first purchase beverage tickets from Hill, and then use those tickets for the beverages. The bartenders did not receive any cash other than tips. Hill could not recall the price of the drinks but guessed that it may have been \$1 for soda, \$4 for beer or wine, and \$5 for a mixed drink. Hill did recall that there were three levels of tickets available for purchase. Hill stated that he was very busy during the evening. He recalled that near the end of the event, someone told him that the bar would be closing. He remembered that someone took the metal cash box from him but he

could not recall with any certainty who that person was. Hill stated that he never counted the cash receipts himself.

Another firefighter that was responsible for procuring the bartenders, and the bartenders themselves, were interviewed. None were involved in selling the tickets for the bar and none knew what the bar proceeds were. The bartenders could not recall what they were paid, but did say that they received a stipend in addition to tips. Information was provided by various individuals naming two other firefighters as possibly being involved in the bar ticket sales. Both of these individuals were interviewed. Neither possessed any further relevant information about the proceeds from the bar.

Dr. Kalil Boghdon stated that he recalled selling 15 -20 event tickets with the proceeds containing both checks and cash. Dr. Boghdon stated that he turned over the proceeds of his sales to Anne Marie Cullen.

Mr. Don Costin recalled selling approximately 35 tickets with the proceeds mostly in checks, but with some cash. Costin states that he turned over his proceeds to Officer Marchand.

Records provided by the Town's Finance Director indicate that the Public Safety Gift Account had \$14,085 deposited into the account by Chief Cullen. According to the Finance Director, the Town Treasurer stated that all funds deposited into the account were checks and not cash.

\$14,085 equates to the sale of approximately 280 tickets that were paid for by check alone. It is unknown how many tickets were sold in total or how many tickets were paid for using cash. The Chief had \$1105 cash on hand after all expenses were paid including the \$250 cash that was raised during the raffle. The Chief recently deposited the \$1105 in cash that remained from the fundraiser. No one interviewed had any recollection of the amount of the bar receipts.

Revenue

Ticket sales by check	\$14,085
Ticket sales by cash	???

Raffle	\$250
Bar receipts	???
Cash on hand	\$855
Minimum revenue total	\$15,190

Expenses documented

Cupola	\$10,607.95
Caterer	\$2,600.00
Liquor Insurance	\$517.50
Supplies	\$161.55 (Documented)
Refreshments	\$900.00 (Maximum Estimate)
Bartenders	???
Janitor	???
Other supplies	???
Minimum total	\$14,787

At a bare minimum, expenses were \$14,787. However, it is known that there were additional expenses. It is not known how much. At a minimum, revenue was \$15,190 not including any cash sale of tickets and with no real estimate of bar receipts from the event. We know that \$1105 in cash remained on hand after all expenses were paid and \$200 remained unspent in the Public Safety Gift Account.

The goal of the fundraising effort, to install a cupola on the new Public Safety Building, was accomplished. There seems to have been great community support and enthusiasm for the project. Unfortunately, the record keeping and cash handling was not anywhere near where it should have been. Consequently, questions were raised. Unfortunately, those questions cannot be adequately answered. At this point in time it is impossible to have a more precise accounting than that presented here.

## Part II

**To determine whether the actions taken by individual police officers in reporting possible wrongdoing in the so-called Marchand matter were appropriate.**

In December of 2006, Town Counsel Donna MacKenna began receiving correspondence containing allegations about the behavior of Officer Michael Marchand.

To put this correspondence in context, Marchand had returned from Mexico a few months earlier - in August of 2006.

The December 2006 letter was anonymous but was later found to have been authored by Officer Karen Wallace. As the Hayes report aptly described it, this anonymous letter *"raised a hodge podge of issues concerning the chief and Marchand."* The issues concerning the Chief of Police have been addressed in Part I of this report. This second part of the report will confine itself to attempting to determine whether the actions taken by individual police officers in reporting possible wrongdoing were appropriate.

In the anonymous letter, the writer states that she is making direct contact to Town Counsel with her concerns due to her belief that *"my Chief can be verbally abusive and threatening. I have been the victim of his outrage more than once and it was uncalled for."* Shortly thereafter she writes: *"Unfortunately, I feel I have to stay anonymous until I can be assured that the Selectmen and you will do what is right, especially concerning the next matter."* When reading the letter, it is plain that the writer is a police officer in Hamilton.

The writer continues on to state that *"the department"* is concerned with Officer Marchand and his conduct. The letter then relates the writer's version of the story of Marchand's trip to Mexico to retrieve his niece. The writer described Marchand's conduct as *"an attempted parental kidnapping plot committed by one of his (Chief's) officers"*. The writer further describes Marchand's trip to Mexico as *"this was a criminal act no matter what the excuse is..."*

The writer also stated that *"Officer Marchand was also involved in filing a false report which affected Officer Black. Officer Wallace addressed this matter with Michael and informed the Chief. However, nothing was done with either of these issues."*

The writer advised Town Counsel that the matters brought to light in the letter should be *"handled through the District Attorney's Office first, and possibly from there the Attorney General's Office and the Ethics Commission."*

The writer then makes allegations regarding:

- 1) The Chief working overtime to boost his retirement;
- 2) The Chief working overtime rather than calling in a reserve officer;
- 3) The Chief directly supervising his son;
- 4) Allegation that there is a gift account "that needs to be looked in to"

These last four matters, along with the allegation of Marchand filing a false report affecting Officer Black were dealt with earlier in this report.

At about the same time that this letter was written, another letter dated December 8, 2006 was sent to the Massachusetts Ethics Commission. The essence of this anonymous letter are the allegations reported on earlier in this report regarding Chief Cullen's relationship to his son and son-in-law as reserve police officers; the Chief's wife Anne Marie as the Chief Dispatcher; the Chief's overtime issue; and the repeated allegations of Mary Ruth Stocking regarding Anne Marie Cullen. As the Hayes report stated, this anonymous letter *"is believed to have been the work of Officer Arthur Hatfield and Officer Karen Wallace"*. Obviously, the two letters contain extremely similar material.

Shortly, this report will go into further detail about the activities and correspondence of some of Hamilton's police officers regarding their own apparent investigation and the reporting of activities about certain members of the police department. It seems that this is an appropriate time to discuss exactly what steps a police officer may or should take if faced with a situation in which the officer believes that there is wrongdoing in the police

Department. Of course, the word "wrongdoing" can encompass a variety of charges. There may be situations wherein a patrol officer would simply make different management decisions if they were in the position to do so. A patrol officer may believe in a different management style than that demonstrated by their superiors. There is always the issue of day to day interpersonal conflict that can occur in any organization. Every organization has those that do not necessarily work well with others or may, for a variety of reasons, have their own agenda. These situations encompassing everyday workplace conflict can be differentiated from those in which a subordinate has reason to believe that serious misconduct or even criminal activity is occurring within the organization. If one suspects that a fellow police officer or even a supervisor is involved in criminal activity, what is the proper course of action?

Police Departments are quasi-military organizations. There are uniforms, rules, regulations, policies, procedures, and a military like rank structure. The chain of command is clear. Officers carry weapons and are empowered by law, in certain circumstances, to deprive a citizen of liberty by detention or arrest, by the seizure of property, or even by depriving a citizen of life. However, the police are not autonomous. The Chief of Police in any police department reports to someone who is their superior: a Police Commissioner, a Town Manager, a Board of Selectmen, a Mayor, Aldermen or City Council.

The Town of Hamilton Police Department has promulgated a fairly standard Rules & Regulations Manual and a Policy & Procedures manual. Some of those rules or policies may be worth re-stating here. For the sake of brevity, the following quotes from the rule or policy manual may not contain the entire rule or policy and may only contain excerpts.

- Rule 4.7 Department Correspondence – *"Officers shall not use Department letterhead for private correspondence nor shall they send any written communication about police business to any person, firm or other law enforcement or public agency without the consent of the Chief of Police or his designee. All official Department communications by telephone or otherwise, outside of the community without the permission of the Chief is prohibited."*

- Rule 5.0 Neglect of Duty – *“Officers are required to be attentive to and not neglect their sworn duty. Officers must not absent themselves from their assigned duty without leave. They must not leave their assigned post or assignment without being properly relieved...”*
  
- Rule 5.1 – Neglect of Duty – *“Officers shall not be absent from their assigned duty without leave, leave their post, sector, community or assignment without being properly detailed, relieved or making required notifications...”*
  
- Rule 6.0 Public Statements and Free Speech – *“A police department is a paramilitary organization which is unique in the public service, and, as such, has a justifiable need for esprit de corps, harmony, discipline and confidentiality. Close personal or confidential relationships are often required.” There is also a need to maintain a chain of command. Statements which undermine the working relationship between officers and superiors are disruptive to the mission of this agency. This is especially true where such statements are simply bickering or personal disputes with one’s superiors.” “Certain types of speech by officers are not constitutionally protected. These include: speech which is knowingly false; statements made as an extension of a personal dispute; statements resulting from a personality conflict; speech promoting or endorsing private services; profanity or name calling; and speech which causes significant disruption of morale.”*
  
- Rule 6.1 – Public Criticism of the Department – *“An officer of the Department shall not make any vexatious or unnecessary complaint against another member of the department, nor criticize any other officer, except in the line of duty nor shall the officer maliciously gossip about any superior, order, policy, procedure, case or event that should remain police information; nor shall an officer cause to discredit, lower the morale of personnel in the department, or of any individual in the department. To this end, officers shall make maximum utilization of the chain of command, and also the grievance procedure of the department as described in the applicable collective bargaining agreement.”* (Caution – a local federal Judge found facially unconstitutional another police department’s rule that was strikingly similar to this rule)

- Rule 6.7 – Dissemination of Official Information – *“Officers shall treat as confidential all matters relating to investigations, internal affairs, and personnel. Officers shall treat the official business of the police department as confidential and shall conform to the following guidelines: a. Information regarding official business shall be disseminated only to those for whom it is intended in accordance with established departmental procedures b. Access to departmental files, records and reports shall be limited to those officers and employees authorized by the Police Chief. C. Official records shall not be copied, or removed from a police facility except in accordance with established departmental procedures ....”*
- Rule 6.13 – Use of Department Records, Reports and Communication – *“All communications to municipal officials shall be forwarded through the Chief of Police, unless specifically authorized otherwise.”*
- Rule 6.14 – Dealing with Local Officials – *“Officers shall not confer with or forward communications to local officials on police matters without first notifying the Police Chief, except as otherwise provided by statute.”*
- Rule 7.01 – Insubordination – *“Officers shall not be insubordinate. Insubordination shall include: any failure or deliberate refusal to obey a lawful order (written or oral) given by a Superior Officer or as otherwise specified above. It shall also include any disrespectful, mutinous, insolent, or abusive language or action toward a superior whether in or out of the presence of the superior.”*
- Rule 9.12 – Leaving the Community – *“Officers shall not leave the limits of the community and enter another city or town unless it is necessary in the performance of duty. An officer shall inform his Commanding Officer or the dispatcher prior to leaving and again upon returning. “In all such cases, a subsequent report will be submitted, in writing, for the attention of the Chief, to include the circumstances, the reasons for leaving the community and the period of absence.”*

- 9.21 – Report Rule Violation – *“Officers shall, upon observing or otherwise becoming aware of a violation by another officer of the force or by an employee of the Department’s of Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other Departmental directives or as governed by law, report said violations to their Superior Officer who will be responsible for appropriate action, report submission and follow-up.”*
- 10.15 – Criminal Conduct – *“Officers shall not commit any criminal act (felony or misdemeanor), or violate the criminal laws or statutes of the United States or of any state or local jurisdiction (by-law/ordinance), whether on or off duty. An officer may be guilty of violating this rule regardless of the outcome of any criminal court case.”*
- Rule 12.5 Departmental Records/Reports/Citations - *“The removal of any record...document, or other official file from the Department, except by process of law or as directed by the Chief of Police is prohibited. Additionally,... the duplication of any information from Department files... is prohibited”*
- Internal Affairs – Policy – *“The primary responsibility of the Internal Affairs function is to respond to allegations of misconduct against the police department and its employees. The Internal Affairs section will be responsible for receiving, registering, and controlling the investigation of complaints against employees; supervising and controlling the investigation of alleged misconduct within the department...” “The responsibility for supervising, conducting, coordinating, and maintaining the Internal Affairs function of the Department lies with the Officer in Charge of Internal Affairs.” “In smaller departments, this function may be delegated....., or even performed by the Chief.”*

The Rules & Regulations and Policies & Procedures outlined above do not exist in a vacuum. If they did, this case would be a simple matter indeed.

The Commonwealth of Massachusetts has also enacted a statute commonly known as the “Whistleblower” law (M.G.L. C149,s185). This statute provides that a public

employer may not take adverse employment action against an employee because the employee disclosed to a supervisor an activity, or policy, or practice of the employer that the employee reasonably believed posed a risk to public health, safety or the environment. The employee is also protected if he provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any activity, policy or practice which the employee reasonably believes poses a risk to public health, safety or the environment by the employer.

Generally, the employee is first required to bring the activity to the attention of a supervisor and afford the employer a reasonable opportunity to correct the activity, policy or practice.

However, notice to the employer is not required in several situations including if the employee makes the disclosure to a public body for the purpose of providing evidence of what the employee reasonably believes is a crime. A public body includes a popularly elected local government body or any member or employee thereof.

As one court stated, the requirement that the employee provide written notice to the employer before reporting wrongdoing to the public body *"is to give the employer unequivocal notice and opportunity to clean up its own house before the matter is taken outside."*

Public employers are required to display a notice reasonably designed to inform employees regarding their protection, and obligations, under this statute. The notice must include the name of the person the employer has designated to receive the written notifications provided for in the statute. Many municipalities, including Hamilton, have not promulgated to its employees the notice required of this statute. The Town should do so.

In addition to the Whistleblower protections described above, the First Amendment also gives protection to employees in certain situations. Once again, if workplace retaliation occurs as a direct result of the employee's speech, the employee may look for redress under the Federal civil rights statute.

In that forum, the court would examine the underlying statements made by the plaintiff employee to determine if the speech touched on matters of "public concern". As the Supreme Court reflected, there is *"the common sense realization that government offices could not function if every employment decision became a constitutional matter."* Courts have made it clear that an employee's free speech rights, in certain circumstances, may be more restricted than the rights of citizens at large. Everyday employment disputes do not usually qualify for constitutional protection. Essentially, the court would decide if the plaintiff employee's statements addressed a matter of "public concern."

When we examine the various statements made by the employees (the potential whistleblowers) in this case, it will become obvious that the statements or complaints about fellow employees fell across a wide spectrum ranging from the trivial to the potentially serious.

If the statements of the whistleblower meet the standard of touching upon a matter of "public concern", the whistleblower's accuracy and motive may be relevant. However, regarding the whistleblower's accuracy, the courts have found that a person is entitled to speak upon matters of public concern without putting his employment in peril, even if he gets the details wrong. To obtain an even clearer picture of how the court stands regarding the whistleblower's motive is the following quote: *"Likewise, a plaintiff who personally dislikes, or bears a grudge against, a particular individual does not necessarily lose his right to make statements regarding that individual that raise matters of public concern, even if his motive in making the statements derives partially or completely from personal animus."* Wagner v. Holyoke, 214 F.Supp.2d 78 (Mass. 2003). However, a knowingly false or recklessly made statement may not be protected.

To continue on with what transpired next in Hamilton, one can look to the Hayes report that capsulated the matter as follows:

*"Wallace, a short time after sending the anonymous letter, contacted MacKenna (Town counsel) regarding Marchand. She indicated that she was concerned about Marchand and his performance and possible use of excessive force. The Mexico trip was paramount in her concerns, but there were other issues. She claimed that she had*

*discussed matters with the chief, but was getting nowhere. MacKenna asked Wallace for any documents, including official police reports, that she could find pertinent to her concerns. Wallace copied numerous police reports and provided them to MacKenna. The reports dealt with six or seven various incidents from October 2005 to July 2007. Other information was exchanged though email, by telephone, or in somewhat frequent meetings between the two. ...." "Records of most of the exchanges do not exist."*

In an effort to provide a totally transparent investigation into what occurred, and what may have been the motives behind certain activities, it is necessary to include the details of much of the correspondence and other documents that exist.

An examination of the correspondence between Town counsel and Officer Wallace are outlined below. Other relevant events have been inserted in order to provide a frame of reference as to the timing of events.

- January 18, 2007 – Email from Wallace to Donna MacKenna -Wallace writes that Marchand has undertaken a fund to raise money for a cupola on the new station. Wallace claims that Marchand "*demanded more than \$1000*" from the manager at Crosby's market. Wallace reports that Officer Arthur Hatfield spoke to the manager and will be contacting the Ethics Commission. Wallace indicates that she will bring this matter to the District Attorney's office. Wallace comments that the name for the "*cupola fund*" should be changed to the "*extortion fund*".

Town counsel's response to Wallace included the statement "*I believe your planned steps are appropriate.*"

Comment: Officer Arthur Hatfield wrote an undated, unaddressed, memo concerning his actions about the Crosby Market allegations. Hatfield wrote that he "*overheard officers conversing*" and that "*one told the other that one of our officers had strong armed a businessperson to donate money to the cupola fund.*" Hatfield wrote that when he heard who the businessperson was and that the officer "*demanded at least \$1000 be donated to the fund*" that he took it upon himself to investigate the claim.

Hatfield wrote that he visited the manager at Crosby's Market who stated that several weeks earlier the business received a letter from Officer Michael Marchand requesting a donation for the cupola fund. Hatfield states in his memo that the manager told him that Marchand approached some time later and *"expressed concern that he hadn't seen a donation yet."* Hatfield states that the owner of the market told the manger to inquire as to how much of a donation was requested. Hatfield writes that the manager called Marchand who stated that if the market wanted the good rapport with the Department to continue, then the department would expect no less than \$1000. Hatfield writes that the manager told him he *"was quite taken aback from the amount requested and the demeanor in which this request was made. He advised me that he felt intimidated and was taken back further when Officer Marchand slammed the phone down at the end of the conversation."*

Hatfield then wrote that he advised the manager to *"let the owners of the market know that we did not want them to donate anything"* and that Hatfield would contact the Police Chief and/or the Ethics Commission. Hatfield wrote that the manger *"expressed relief when he heard this."*

Hatfield did not contact the Chief but it appears that he did advise Sergeant Dupray who brought the matter to the Chief's attention.

As soon as the Chief heard the information from Dupray, Chief Cullen ordered Sergeant Dupray to investigate the allegation regarding Marchand and the manager from Crosby's market. Sergeant Dupray advised the Chief on January 12, 2007 that, after interviewing the manager from Crosby's Market, that the manager *"felt neither intimidated nor overly pressured by Officer Marchand."*

Officer Wallace had no personal knowledge of what transpired between the manager at Crosby's Market and Officer Marchand. Wallace merely repeated what Officer Hatfield had apparently told her. Arthur Hatfield and Sergeant Dupray's investigations had been completed prior to Wallace sending the email to Town counsel.

In a recent interview with the market manager, he insists that he felt no pressure to make a donation. The manager stated that he has known Marchand for a long time, got

along very well with him, and was not intimidated by him. The manager stated that he never believed that there would be any repercussions if no donation was made. *"It was easy for me; all I had to do was pass along the request."* The manager did state that he thought that Marchand's request for \$1000 was too high and that he was *"taken aback"* by the amount of the request. The manager also stated that Marchand did not slam the phone down after their conversation and he never *"expressed relief"* when Hatfield told him about reporting this matter to the Chief or the Ethics Commission.

Although the market's owners had decided to make a donation of \$500, they did not do so at the suggestion of Officer Arthur Hatfield.

On January 22, 2007, the Union sent a letter to Chief Cullen stating that *"some members of the community are uncomfortable with the fund-raising effort for the cupola."* The union then requested that the Chief promulgate guidelines for fund-raising. The letter has the names of Brian Shaw, Donald Dupray, Karen Wallace and Arthur Hatfield as the union officials sending the letter.

February 2007 – Wallace observed using the Department computer to Google search information about Marchand and the trip to Mexico

February 16, 2007 – Marchand states that an official from the Mexican Embassy recalls a police officer from Hamilton calling and inquiring about Marchand's trip to Mexico

February 21, 2007 - The union sent a follow up letter to the January 22, 2007 correspondence to the Chief. The union states that they still have not received any guidelines regarding soliciting from the Chief.

Letter from George H. Ricker, Jr. (dated August 14, 2007) in which he states that sometime after the fundraising event in February of 2007, he was approached by Officer Hatfield who inquired if Marchand was overly aggressive or applied pressure on Ricker to buy tickets for the fund-raising event. Ricker states that he was impressed with Marchand's enthusiasm and the fund raising event. Ricker states that some time later, Officer Karen Walsh (Wallace) asked Ricker the same type of questions.

March 18, 2007 - The union posted a letter to its members apologizing to all of the members *"for any confusion the contents of a letter sent to Chief Walter Cullen on 01-22-07 caused."*

- April 2, 2007 E-mail from Wallace to MacKenna – Wallace states that she has *"a lot of info for you. Mike has had a few more incidents this week including drawing his gun down on a person drinking a beer in a car."* Wallace also states that she had spoken with the ethics commission and with someone at the District Attorney's office.

Comment: The allegation regarding Marchand drawing his gun *"on a person drinking beer in a car"* has been referred to as the "Plaza Incident" that occurred on March 22, 2007. Reports had been filed by Sergeant Paul Grant and Officer Brian Shaw.

In the "plaza incident", reports indicate that Officer Marchand encountered a subject drinking alcohol while parked in a motor vehicle. Marchand approached the vehicle and recognized the subject from prior dealings in which the subject had attacked Marchand with an axe. Marchand observed the subject reaching under the driver's seat. For his safety, Marchand drew his weapon but reportedly kept it down by his leg. Other police officers arrived on scene and the subject was placed under arrest.

Lieutenant William Terry of the Beverly Police Department sent a letter dated April 29, 2007 to the Hamilton Board of Selectmen. In that letter, Terry, a qualified police firearms instructor stated that upon request, he had reviewed the incident and opined that *"Officer Marchand was justified in drawing his service weapon in this instance. Additionally, his actions were restrained in that he kept his weapon low and out of view of the subject and the public."*

- April 9, 2007 – E-mail from Wallace to MacKenna – Wallace informs MacKenna that she *"has the court incident reports"* and that *"he had a similar incident last year with a female prisoner."* Wallace also states that she has *"a time line on the false report incident and my dealings with the chief on that matter."* Wallace writes on, apparently continuing a previous conversation about flat screen

televisions where she now writes *"The t.v.'s have been mounted in the new station. One in dispatch and the other in the next room. However, other property missing. 2mens watches values at \$1543.50. I have reports."*

Comment: On March 8, 2007, one month prior to Wallace's latest e-mail, an Assistant Chief Court Officer for the Newburyport District Court wrote to Chief Cullen commending Officer Michael Marchand for his actions in assisting court personnel with taking control of an extremely disruptive inmate and defusing a potentially dangerous situation wherein the inmate came close to breaking the window that separated the prisoner lock up area from the courtroom.

The same court officer wrote a letter to Chief Cullen about one year prior – on July 14, 2006, again praising Officer Marchand for his assistance in controlling an abusive female prisoner.

The *"false report issue"* discussed in this email likely refers to the same allegations contained within the "anonymous" December 2006 letter to Donna MacKenna. In that letter, the writer alleged that Officer Marchand filed a false report regarding the October 1, 2005 incident in which Marchand and Wallace dealt with a female that was experiencing an overdose. This matter was reported on in detail in the first part of this report. As stated earlier, Wallace disagreed with Marchand's version of the events during the incident and Wallace interpreted Marchand's report as casting her in a bad light.

The issue of the two televisions and the two *"missing"* watches was covered in detail in the earlier portion of this report. The televisions are, in fact, mounted in the police station. The two *"missing"* watches were located in the evidence room.

- April 17, 2007 E-Mail from Wallace to MacKenna – Wallace inquires of MacKenna- *"Do you need my report from Lieutenant Terry for tonight's meeting"*.

Town Counsel meets with the Board of Selectmen and describes five incidents involving Officer Marchand that were based on police reports apparently copied by Officer Wallace and provided to MacKenna:

1. The July 14, 2006 situation at the Newburyport Court House where Marchand assisted in subduing a female prisoner upon the request of court personnel.
2. A March 11, 2007 incident at the same court house where Marchand assisted subduing a male prisoner at the request of a Wenham officer.
3. The "Plaza incident" from March of 2007 previously described.
4. A March 28, 2007 event where Marchand participated in entering a house in search of a man on an arrest warrant.
5. An April 12, 2007 event at the Newburyport Court house where a defense attorney reported being confronted by Officer Marchand.

Attorney MacKenna also discussed with the Board the fundraising for the cupola and Marchand's trip to Mexico. Selectmen Bowler reported on another event in court where Marchand was alleged to have swept a large number of papers off of a table.

*(Investigated by Gerald Mohan during the first investigation - In his April 26, 2007 report he writes that he interviewed the court-house employee who was allegedly the victim / witness when Marchand was reported to have swept papers off a table. The victim /witness stated that there was no truth to the allegation and that the incident never occurred.)*

- April 20, 2007 E-Mail from MacKenna to Chief Cullen; Selectmen; Town Administrator – MacKenna sends Chief Cullen the list described above along with a list of six potential witnesses
- April 24, 2007 E-Mail from Wallace to MacKenna – Wallace relates her account of a meeting between the Chief, Officer Marchand and Sergeant Grant. However, Wallace was not present at the meeting. Wallace does state that *"There have been no repercussions against Arthur or I. Art states that Ernie had filled him in and that he doesn't care if he is blamed. He is enjoying his bad boy image!!"*

- April 24, 2007 -E-Mail from MacKenna to Board of Selectmen and Town Administrator that her "source" was in contact with the District Attorney's Office in January and has *"talked with them numerous times"*.
- April 24, 2007 E-Mail from MacKenna to Chief Cullen; Selectmen; Town Administrator – MacKenna provides additional information regarding two more issues with Marchand – an incident in July of 2006 in subduing a female prisoner in court and an allegation that Marchand *"stormed into court probation office and swept off counter in anger"*

*(Again – This was Investigated by Gerald Mohan during the first investigation. In his April 26, 2007 report he writes that he interviewed the court-house employee who was allegedly the victim / witness when Marchand was reported to have swept papers off a table. The victim / witness stated that there was no truth to the allegation and that the incident never occurred.)*

- April 25, 2008 E-Mail from Wallace to MacKenna Wallace writes that she thinks that MacKenna *"should be aware of the letters given to the Chief"*.

Comment: The e-mail was entitled "wallace court officers report" and may reference the letter sent to Chief Cullen by the Assistant Chief Court Officer on March 8, 2007 in which Marchand was commended for his assistance controlling the prisoner.

- April 27, 2007 E-Mail from Wallace to MacKenna - Wallace writes that she *"heard that Mr. Bowler was looking into the gun incident."* Wallace then relates that during this incident (the Plaza incident from March 22, 2007) *"Due to Mike's screw up in putting in the wrong person's information this form was voided and a second form was filled out by Sergeant Dupray."*

Comment: The form that Wallace refers to is a Registry of Motor Vehicle Immediate Threat Form that is used to request that the Registry immediately suspend a driver's license due to the operator being a threat.

- April 26, 2007 E-Mail from Wallace to MacKenna - Wallace provides the telephone number of the lead Assistant District Attorney at Newburyport Court because *"I thought you might need Mora Bailey's phone number."* Wallace reports that Marchand was back in court and that *"The Chief did not take him off the schedule. Mike had done that on his own."*

Town counsel replied: *"yes, and I heard that he was not humbled. Thanks for the info."*

- April 30, 2007 E-mail from MacKenna to Wallace – MacKenna reports to Wallace that she spoke with Maura Bailey at the District Attorney's Office and that *"She said that she has no knowledge of any incident involving MM (Marchand) that should be a matter of concern to the town."* MacKenna details the reported allegations about Marchand's behavior in court and states that Bailey says she *"knows of nothing helpful with regard to an investigation into MM (Marchand)."* MacKenna ends by telling Wallace *"Sorry."*
- April 30, 2007 – E-mail from Wallace to MacKenna - Wallace writes that it is *"discouraging that they complain about Mike but no one wants to do anything about it..."* Wallace then requests that MacKenna call her after her meeting (Selectmen's meeting) scheduled for that evening to *"let me know how it went."*

MacKenna responds: *"Sure, I'll call you."* MacKenna then states that it appears to her that Marchand *"has done a good job of preempting any negative comments."*

- May 1, 2007 7:59AM E-Mail from Wallace to MacKenna – Wallace states that she will be speaking with Maura Bailey (Assistant District Attorney). Wallace then states that she heard that the Town hired an investigator. Wallace suggests that she would call Lieutenant William Terry (Beverly Police) and suggest that if he is contacted by an investigator, she *"wouldn't mind"* if Terry *"told them about the false report last year"*

Comment: The investigator referred to was Gerald Mohan who conducted the initial investigation with Chief Cullen. The "false report" is again the incident from October 2005 in which Wallace and Marchand dealt with a woman who was violent and assaulted Wallace.

- May 1, 2007 11:57AM E-mail from MacKenna to Chief Cullen, Selectmen and Town Administrator – MacKenna writes that Assistant District Attorney "Maura Bailey is said to have information about a false or exaggerated report submitted by Mike having to do with the subduing of the male prisoner in March. Also, I just heard that Lt. Terry is said to have knowledge of an exaggerated or false report that Mike submitted some time ago regarding the arrest of a female reported as a possible drug overdose...."

Comment: Marchand reported that Assistant District Attorney Maura Bailey advised him that Officer Wallace and Town counsel had been in contact with her searching for any improper behavior on Marchand's part while in court. Marchand stated that he advised the Chief of this information on the same day that he learned about it himself.

Marchand stated that he received similar information from the Clerk of Court, Kathy Early. Marchand stated that he advised the Chief that ADA Bailey and the Clerk of Court requested that Wallace not be investigating matters in the court unless she was on official business.

Marchand stated that he learned that Wallace went to the home of a victim witness advocate from the District Attorney's office to inquire about Marchand's behavior in court.

- May 3, 2007 E-Mail from Wallace to MacKenna – Wallace writes that she has not yet heard from the ethics investigator. "Art (Hatfield) wanted me to tell you that he really appreciates all you have done."
- May 9, 2007 E-Mail from Wallace to MacKenna - Wallace writes that she has been told to "watch her back as he (Marchand) is getting very angry". Wallace also writes that she has not heard from the ethics investigator. Wallace asks

Mackenna to provide her information as to the date of the next meeting with the Chief and the Board of Selectmen. Wallace then suggests that Mackenna accompany her to the District Attorney's Office *"to give them a chance to exhaust all our avenues with them before going to Martha Coakley's Office."*

Mackenna responds: *"We are meeting with the Chief this evening." "I think the chief has enough information that he is not going to be able to repeat his statement from last week that he had heard nothing negative. I don't think we have enough to get Mike fired but something will be done. Yes, watch your back! Those of us involved are likely to feel repercussions, even if only indirectly. And given that the Chief may perceive that he has put his own credibility and reputation on the line and backing Mike, then repercussions are likely to come from many angles."*

- May 11, 2007 E-Mail from Wallace to MacKenna - Wallace inquires of Town counsel *"When is Mike going to the therapy program for anger management? And how do we get the background information on Mike to the therapist. By letter or would someone from the town speak to them in person and share everyone's concerns? I can put an outline together on behavior issues I have seen and a history on his past if that would be helpful?"* Wallace continues she will not be able to park the cruiser in MacKenna's neighborhood any longer as the *"neighbors are very very nosy."*
- May 19, 2007 – Email from Hatfield to "Ron" (believed to be a retired police chief from a nearby community). Hatfield inquires about the non reappointment of a police chief and the ramifications. "Ron" replies with some generic information regarding the appointment and non-reappointment of a police chief.
- May 19, 2007 – Email from Wallace to MacKenna – Wallace writes that she *"found the confusion on the issue according to the other police chiefs and Arthur, the discrepancy lies between not reappointing and firing for just cause..." "Arthur was adamant about you knowing this information."*

On July 6, 2007 Marchand was on duty and received a telephone call from an employee of the victim of an attempted breaking and entering incident. The incident had been investigated by Officer Wallace the prior evening. Later the same day, Marchand received another telephone call, this time from the victim herself. Marchand wrote two supplemental reports detailing his conversations with the callers. Marchand reported to Chief Cullen and Sergeant Grant that the caller's had more information about the crime and were concerned about the investigation being followed up. Chief Cullen told Marchand to give the reports to Detective Nagy for follow up. Later, Detective Nagy informed Officer Wallace of his intention to follow up on her investigation. According to Nagy, Wallace became enraged.

On July 8, 2007, Chief Cullen held a meeting in his office with Officer Marchand, Sergeant Grant, Detective Nagy and Officer Wallace regarding the investigation. Wallace reportedly became angry and defied orders from Sergeant Grant and Chief Cullen to sit down. Wallace stormed out of the office, lifted her hand and, according to Sergeant Grant and Marchand, stuck out her middle finger to the group.

- July 10, 2007 E-mail from MacKenna to Board of Selectmen – Town Counsel advises Selectmen and Town Administrator that *"There has been another incident in the police department that was brought to my attention over the weekend."* MacKenna relates that Wallace visited her and related that Marchand had written two supplemental reports on Wallace's breaking and entering investigation. MacKenna stated that Wallace believed that Marchand's reports raised concerns about the adequacy of Wallace's investigation. Subsequently, the Chief reassigned the investigation to Detective Nagy. MacKenna stated that Wallace contacted her because Wallace believed that Marchand had written inaccurate reports. Wallace claimed that Marchand was retaliating against her for what she has said about Marchand in the past. MacKenna states that she advised Wallace to go the Chief as he is her supervisor.

MacKenna wrote that Wallace contacted her on Sunday after meeting with the Chief. "It did not go well." Wallace told MacKenna that she felt "ganged up on" and that when she got up to leave she "flipped her hand to say she was leaving"

and the Chief accused her of giving him the finger. Wallace states that she believes she may have been suspended.

A review of the reports of the incidents indicates that Officer Wallace wrote a report of an incident that occurred on July 5, 2007 at 10:30 PM. The report was titled "*Property Damage at (victim's address deleted by this writer).*" The nine line report by Wallace states that she responded to a "*possible attempted breaking and entering.*" Wallace states she spoke with a house sitter who reported that she had left the residence for a four hour period and upon returning noticed that "*the back door handle had been pulled off and the door was unlocked.*" The sitter checked the house and stated that nothing appeared to be missing or disturbed. Wallace writes "*A check of the exterior showed a set of foot prints heading off into a wooded area behind the house.*" In Wallace's report, she stated that the house sitter told her that upon arriving home, she heard someone whistling from the back area of the house. Wallace states that "*It appears that the door handle was pulled off and no pry marks were found. The homeowner will be returning this week and will contact us if any property is missing.*"

The next morning, around 11:50 AM, Marchand wrote a report in which he states that he received a call from a painter that was doing work at the site of the residence that Wallace responded to the previous evening. The report states that the caller was waiting to hear from the investigating officer due to the fact that she had some additional information. Marchand wrote that the caller told him she was unsure if the door handle had been fingerprinted or seized by the investigating officer and that earlier the same day she observed a suspicious motor vehicle in the area. She described the vehicle and occupants to Marchand. In the caller's opinion, the occupants of the vehicle were casing the area. Marchand writes that the caller would like a call back from the investigating officer. Marchand writes that "*Per Sgt. Grant and Chief Cullen the case will be given to Detective Nagy for proper follow up.*"

Marchand wrote a second supplemental report later the same day. In that report, Marchand wrote that at 3:15 PM, he received a call from the owner of the home in question. According to Marchand, the owner was upset that the door handle had been left at the scene and that a worker had now re-installed the handle thereby damaging any possible fingerprints. Marchand wrote that the home owner wondered if Detectives

would be updating her as to what occurred and what the police were doing about the crime. Marchand wrote that he advised the owner that Detective Nagy would be calling her.

On July 7, 2007, Officer Wallace wrote a follow up report titled *"Inaccurate report follow-up"*. In that report, Wallace recounts that on July 7, 2007, she was approached by Detective Nagy about her initial report of the incident in question. Nagy told Wallace that Marchand had written a supplemental report and that Nagy was following up on the incident. Wallace read Marchand's report in which he stated that he spoke with a woman (referred to here as Ms. C). According to Marchand's report, Ms. C is a painter who reported the crime to Officer Wallace. Wallace told Nagy that Ms. C was not present at the scene and that Wallace had only spoken to the house sitter (referred to here as Ms. T). Wallace stated in her report that she told Nagy that she intended to speak with Ms. C as Marchand's report was inaccurate. Wallace continues on describing how she informed Nagy that due to certain observations that Wallace made at the scene, it did not appear that a break occurred. Wallace stated that she told Nagy that she would do a follow up investigation involving any fingerprints that needed to be done and that she would advise Nagy of her results.

Wallace went and interviewed Ms. C who stated that there was confusion. Ms. C stated she heard about the break from her brother who also works at the same residence. The brother got his information from Ms. T (who originally reported the incident). Ms. C advised Wallace about the suspicious vehicle she had described to Marchand over the phone. Wallace stated that she *"could not follow what she (Ms. C) was saying as it appeared she had spoken to several people."* Wallace states that she then provided Ms. C copies of Marchand's reports and asked Ms. C to *"circle what she said and initial it."* Ms. C reviewed Marchand's report and made notations on the report and circled some items. According to Wallace, and Ms. C's comments, she appeared frustrated that she was continually confused with Ms. T who was actually the reporting party. Wallace then repeated the same process with the homeowner and asked her to critique Marchand's report. The home owner wrote on the bottom of the copy of Marchand's second supplement that her house sitter told her that the police wanted her to call. She called the police to find out what she was supposed to do. The home owner stated that she had no concerns that the police did not do a good job. The home owner stated that the door

handle had come loose in the past and that she was not upset that the worker re-installed the door handle. Wallace then states in her report that *"I further explained that the foot prints in the back yard were probably mine as I checked around the house that night."*

Wallace concludes her report with her statement that she contacted Detective Nagy and informed him that the report was inaccurate and that she would be speaking with the Chief. Wallace then indicates at the bottom of her report that she was sending copies of her reports to the Board of Selectmen, Town Counsel Donna MacKenna and Attorney Neil Rossman. Wallace did not explain why her initial report stated *"A check of the exterior showed a set of foot prints heading off into a wooded area behind the house"* while her supplemental report stated she told the home owner *"I further explained that the foot prints in the back yard were probably mine as I checked around the house that night."*

A report filed by Sergeant Scott Janes states that Wallace came to him on July 7 in the evening and spoke to him about Marchand's two supplemental reports. Janes wrote that Wallace was upset and believed that Marchand's reports portrayed her in negative way and that she would be speaking to the Chief about the matter.

Detective Nagy's report of the incident states that on July 7 upon arriving to work the evening shift he met Officer Marchand in the parking lot. Marchand told Nagy that he left Nagy a voice mail about a case the Chief wanted him to follow up on. Nagy states that Marchand was in a hurry and told him to call him if he had any questions.

Nagy obtained copies of the reports. He observed Wallace in the station and advised her that he was told to follow up on the investigation. Nagy stated that his practice is to always consult the initial investigating officer first. Nagy states that Wallace told him that there were some foot prints found in the rear of the home but that Wallace stated that the foot prints were her own. Wallace then began to read Marchand's supplemental reports and declared that they were inaccurate and that she would be speaking with the Chief about it. Nagy writes that Wallace advised him that she would take care of the investigation. Nagy writes that he advised Wallace that he had been ordered to conduct

the follow up investigation to which Wallace replied *"I'm going to take care of this, and if the Chief has a problem with it, he can come and see me."*

Shortly thereafter, the home owner (victim) called and requested to speak with Detective Nagy. Nagy advised the caller that Officer Wallace may be contacting her. While still on the line with Nagy, Wallace arrived at the home owner's residence.

Nagy writes that on July 8 at approximately 11:00 AM as he was getting ready to leave his home to go the police station, he received a telephone call from Marchand stating that he had been called in to see the Chief regarding the case. Nagy states that upon arriving at the station, he went to the Chief's office. In the Chief's office were the Chief, Marchand, Sergeant Grant and Wallace. Nagy writes that he told the Chief all of the details of what had transpired. Nagy states that when he related the part of the story about Wallace's statement to him *"I'm going to take care of this, and if the Chief has a problem with it, he can come and see me."*, that Wallace stated *"That's not the truth, I didn't say that."* Nagy then states that he questioned Wallace about denying what he just told the Chief. Nagy states that Wallace then stood up and stated *"That's it. This is a set up. This meeting is over. You'll be hearing from my attorneys."* Nagy writes that the Chief repeatedly told Wallace to sit back down. Nagy writes that Wallace then began to walk out of the office and the Chief stated *"Officer Wallace, I am the Chief of Police and I am ordering you to come back here and sit down."* Nagy writes that Wallace continued to walk away and was now out of sight. Nagy states he could *"hear her yelling something about harassment and a set up."* Nagy writes that Sergeant Grant told Wallace that she was disobeying a direct order from the Chief of Police. Nagy states he heard Grant say, *"Now you're going to give me the finger?"* to which he heard Wallace reply *"It was this finger."*

Sergeant Grant's report indicates that Chief Cullen requested that Grant meet him in his office on July 8 at approximately 11:20 AM. Grant states that Wallace was already seated in the Chief's office. Wallace began to explain the details of the investigation when Grant suggested that Marchand be present to clarify the reports. Marchand and Wallace were discussing the incident when Nagy arrived. Grant stated that Wallace disagreed with Nagy's statement and *"jumped up grabbed her paperwork and went for the door and stated this is over."* Grant states that Chief Cullen ordered Wallace to sit

down. Wallace said "This is a set up and stormed out the door." Grant states that the Chief repeated his order to sit down two more times. Grant states that he told Wallace that she was disobeying a direct order "to which she stuck up her right hand giving me the finger." Grant states he then yelled "You're giving me the finger!" Grant states that Wallace said "No, it was this finger" while showing Grant her pointing finger. Wallace then left the building.

Marchand's report of the incident in the Chief's office states that Wallace was pointing out inaccuracies in Marchand's reports. Marchand brought his original hand written notes from his telephone calls with him to the meeting. Marchand states that he asked Wallace what inaccuracies she was referring to. Marchand stated that there was a "definite possibility" that he misunderstood Ms. C when she was on the phone. Marchand states in his report that Wallace was "agitated" and "speaking in loud confrontational manner". Marchand states that he questioned Wallace as to why she would be so angry if he had made a mistake or if there was a miscommunication between him and the caller. Marchand states in his report that the Chief inquired of Wallace why she referred to the incident as an attempted breaking and entering if that was not the case? Wallace told the Chief that she did file a supplemental report. The Chief pointed out that Wallace did indeed file a supplemental report, but two days after the initial report, and a day after Marchand wrote supplemental reports and after he had assigned the case to Nagy to follow up. Marchand wrote that Grant told Wallace that he and the Chief made it clear that Nagy was to do the follow up investigation, that she was aware of those orders and that she chose to disobey them. Marchand writes that the Chief also questioned Wallace as to why she disobeyed his orders and why her first report was so incomplete. Marchand states that an argument ensued when Nagy told the Chief what Wallace told him about completing the investigation herself. Marchand then relates the same events about Wallace refusing to be seated, walking out and clearly giving the "finger" as she walked away.

- July 13, 2007 Email from MacKenna to Board of Selectmen and Town Administrator – MacKenna advises that she met with Wallace again. Wallace reports that she learned that she was not suspended from duty. MacKenna writes about Wallace "*There are some changes that she thinks will somewhat*

*improve things.*" MacKenna states that Wallace told her that there has been a reorganization of shifts and personnel. Under the new schedule, Marchand will no longer be supervised by Sergeant Grant. *"Karen and Arthur Hatfield will now be supervised by Sgt. Grant."* *"Karen thinks this can work okay, although she expects Sgt. Grant to nitpick stuff. She thinks some of that is already going on, such as finding the password to her locker area changed while she was out. She is keeping a log of everything and she is talking to a lawyer... but I do not think she is on the verge of suing."*

- August 1, 2007 E-Mail from Wallace to MacKenna – Wallace writes about a variety of rumors within the Department concerning Marchand including a rumor that he *"wrote a scathing letter about the Chief to the Selectmen."* Wallace asks Town counsel if she has seen the letter. Wallace suggests that if the letter exists and if it is *"threatening in any way or if it shows emotional instability"*, *"his gun permit should be pulled."*

MacKenna replies that she has not seen such a letter but would be *"interested in seeing it if it exists."*

Wallace replies about various issues and states *"I will ask Lt. and get his opinion on Mike's state of mind. Could you ask Bill if he received the letter?"*

MacKenna replies that she has checked around and has no evidence that Marchand has sent such a letter. She cautions Wallace that the letter issue appears to be a rumor so she recommends that Wallace say nothing to anyone about it – *"we don't want to start any rumors."*

Wallace replies that she was merely reporting what *"several people have said."*

- September 10, 2007 E-Mail from MacKenna to Candace Wheeler - MacKenna provides Wheeler an attachment that is a two page list of issues / events regarding Marchand. MacKenna states that Wheeler may

share this with Dr. Scott *"with a strong caveat that the accuracy of the descriptions has not been verified....."*

September 18, 2007 - Detective Kenneth Nagy reports that at approximately 8:01 AM while at work, he noticed that a prior user of the computer in the patrol room had left a web page from WebMD open and that there was an article on the screen about Narcissistic Personality Disorder. Nagy then discovered that someone had printed the four page article and posted it on the patrol room board immediately behind the computer's work station. The date on the printout was 9/17/07. Several passages in the article had been highlighted. Detective Nagy immediately assumed that whoever had done this was trying to make reference to Officer Marchand. Nagy removed the posting, made copies and obtained a camera with the intention of taking a picture of the computer screen.

Nagy states that while about to take the photo, he observed Officer Wallace enter the building and inquire if he had seen an article for school that she had left in the patrol room last night. Nagy pointed to the article posted on the wall. Wallace removed the article and Nagy took a photo of Wallace holding the article in her hand. Wallace became upset and demanded that Nagy erase the photo. According to Nagy, Wallace continued to argue and Nagy advised her to see the Chief. Nagy then conversed with Officer Wetson who stated that Wallace had earlier asked him if he had seen the article that she "had posted".

- December 3, 2007 E-Mail from Wallace to MacKenna - Wallace requests that Town counsel inform her regarding from which of Wallace's email accounts were the emails that were found by another member of the Department.

MacKenna replies with the information.

Comment: E-mails between Wallace and MacKenna were found in the Police Department and copies given to Marchand.

January 31, 2008 – Chief Walter Cullen sends a memo to all officers regarding Officer Marchand. Chief Cullen states that he *“conducted an investigation and did not substantiate any wrongdoing on Officer Marchand’s part.”*

**Conclusion:**

As stated earlier, the question becomes, what is the proper course of action if an officer suspects that a fellow officer, or even a supervisor is involved in criminal activity?

The Department’s Rules & Regulations provide the ready answer. Restated again here, Rule 9.21 requires that, *“Officers shall, upon observing or otherwise becoming aware of a violation by another officer of the force or by an employee of the Department’s Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other Departmental directives or as governed by law, report said violations to their Superior Officer who will be responsible for appropriate action, report submission and follow-up.”*

It is clear from the Department rules that an officer *“shall”* report violations of Department rules (which includes any criminal conduct) to their Superior officer. The Superior officer is then responsible for any further appropriate action.

If the rule violation (or criminal activity) involves the supervisor himself, the Whistleblower law provides an avenue in which to report the wrongdoing. As stated earlier, under this statute, in certain circumstances, an employee may be protected against retaliatory action by his employer for disclosing to a public body (includes an elected local government body or employee thereof) information about activity that the employee reasonably believes is in violation of a law or poses a risk to public safety.

The Whistleblower statute requires that the employee first provide notice to the employee’s supervisor and has afforded the employer a reasonable opportunity to correct the activity. However, the notice is not required in certain circumstances including if the disclosure is made for the purpose of providing evidence of what the employee reasonably believes to be a crime.

Officer Wallace's "anonymous" letter to Town counsel in December of 2006 contained a list of allegations of wrongdoing, mostly involving the Chief. The first allegation that Wallace makes in the letter was about Marchand's trip to Mexico. No one had yet investigated Marchand's trip, yet Wallace concluded that Marchand's conduct "was a *criminal act no matter what the excuse.*" Assuming for the moment that Wallace reasonably believed Marchand's trip to Mexico be a criminal act, the Department rules required Wallace to report this activity to her superior officer. It is then the Superior's duty to take appropriate action. There is no record of Wallace making written notice to her employer; however she could claim that she made the disclosure (Whistleblower) to an employee of the local elected body (Town counsel) for the purpose of providing evidence of what she believed to be a crime. A question arises as to the reasonableness of Wallace's belief that Marchand's trip to Mexico was a crime. The same questions could be posed regarding the other allegations in the letter.

Wallace then began a series of contacts with Town counsel. There were numerous e-mails and personal visits. In the first documented e-mail, Wallace writes about the fundraising efforts and states that she will be bringing the matter to the attention of the District Attorney.

Wallace had previously suggested in the anonymous December letter to Town counsel that the matter "*should be handled through the District Attorney's Office first, and possibly from there the Attorney General's office.*" Wallace now took it upon herself by stating that she would personally bring the matter to the attention of the District Attorney. Town counsel responded with the statement "*I believe your planned steps are appropriate.*" Wallace would likely assert that she was encouraged by Town counsel to continue with her planned course of action. An alternative course of action when dealing with an employee whistleblower whose information has not been verified could be to merely thank them for passing the information along and assure them that the matter would be handled appropriately. The information could then be conveyed to the Board of Selectmen who could decide how best to proceed.

By this point, Officer Arthur Hadfield wrote that he became aware of allegations regarding improper fundraising. All Hatfield needed to do, and should have done, was to follow Rule 9.21 and notify his supervisor. Apparently, Hatfield did notify his supervisor,

but he also took it upon himself to conduct his own investigation into Marchand's fundraising activities by interviewing the manager of Crosby's market. Conducting an internal investigation into a fellow employee was well beyond Hatfield's responsibilities and was in violation of the Department's Internal Affairs policy.

In January of 2007, the union sent a letter to Chief Cullen expressing their concerns about the cupola fund raising efforts. The union requested that the Chief promulgate guidelines regarding solicitation. In my opinion, if the union had concerns, this was the proper course of action to pursue. The request seems a reasonable, and prudent, measure. It seems that either fundraising should be prohibited, or guidelines should be promulgated.

In February of 2007, Officer Wallace was observed in the police station making internet searches specifically targeting Marchand and his trip to Mexico. Clearly, Wallace was continuing her own internal affairs investigation.

A resident and owner of a business in Hamilton, Mr. George Ricker, Jr., wrote a letter in which he states that he was questioned by both Officers Wallace and Hatfield about Officer Marchand's fundraising efforts. Ricker had no negative issues with Marchand's fundraising efforts. Wallace and Hatfield were again conducting their own, unauthorized internal affairs investigation.

In April, Wallace advised MacKenna about Marchand and the so called "Plaza Incident" that was fully described earlier in this report. This incident was an ordinary police investigation that resulted in a simple arrest, and the involved officers wrote reports. Supervisors read the reports. There was nothing out of the ordinary about this incident -- except that Michael Marchand was involved and Wallace apparently formed the opinion that Marchand's drawing of a weapon was not warranted. Based on her own belief of impropriety, Wallace brought this police investigation to the attention of Town counsel.

Wallace then began gathering information and reports regarding Marchand's activities at court. Wallace again placed herself in the role of investigator, not whistleblower. Wallace also reported to Town counsel on the issues regarding the two flat screen televisions

and the "missing property." Again, this was a routine police investigation involving an arrest, the execution of a search warrant, and the recovery of property.

In April, Town counsel met with the Board of Selectmen and described five incidents involving Marchand. These incidents were based on police reports apparently copied by Wallace and provided to MacKenna.

Wallace informed Town counsel about the "false report" written by Marchand when Wallace and Marchand responded to a report of an overdosed female. As discussed in detail earlier, the differences between Marchand's version of the event and Wallace's version of the same event, are insignificant and not material. This appears to be the extension of a purely personal dispute and not the type of issue that the "Whistleblower" statute was designed to encompass.

In the April 24, 2007 e-mail from Wallace to MacKenna, Wallace writes that neither she nor Hatfield have suffered any repercussions. Wallace states that "*Art states that Ernie filled him in and that he doesn't care if he is blamed. He is enjoying his bad boy image!*" Since it seems clear that the goal of the investigation was the criminal prosecution and/or administrative discipline of a fellow employee, one may find Wallace's comments to be rather cavalier.

Town counsel states in an email that her "source" (Wallace) had been in contact with the District Attorney's office numerous times. Again, this appears to be verification that Wallace was continuing her internal affairs investigation.

In April 2007, Wallace writes to MacKenna and again mentions the "Plaza Incident". Wallace relates that Marchand made an error in filling out a form for the Registry of Motor Vehicles and that it had to be re-done by Sergeant Dupray. Marchand may certainly have made a mistake on a form. The form may certainly have needed correction. However, this was hardly worthy of reporting to Town counsel and could be found to be more akin to grade school tattling.

In late April 2007, in an e-mail to Wallace from Town counsel, counsel relates that the Assistant District Attorney has no knowledge of any incidents involving Marchand that

should be a concern to the Town. MacKenna ends her message to Wallace by apologizing with a "Sorry." This one word reply could easily lead a reader to believe that counsel and Wallace were actually disappointed that they did not uncover information with which to either prosecute Marchand criminally or take administrative action such as termination or suspension from duty. This one word reply could also infer that the investigators possessed pre-conceived notions about the outcome of their inquiry. Apparently, those notions were dashed by the Assistant District Attorney's lack of information to corroborate the negative rumors about Marchand. Wallace replies that it is *"discouraging that they complain about Mike but no one wants to do anything about it."* MacKenna then replies that Marchand *"has done a good job of preempting any negative comments"*, thereby apparently insinuating that Marchand has either obstructed justice or tampered with the investigation. Wallace asks that MacKenna call her after her meeting in Executive session with the Selectmen. MacKenna agrees to call.

By now it becomes even more apparent that Wallace was no longer simply an informant or whistleblower. It appears that Wallace had become an investigator for, and close confidant of, Town counsel.

On May 1, 2007 when Wallace discovers that the Town has hired an investigator (Gerry Mohan), Wallace suggests to Town counsel that Wallace would call Lt. Terry (Beverly Police) and tell him she *"wouldn't mind"* if Terry *"told them about the false report last year."* Once again, this is the incident in which Marchand and Wallace had to confront the female overdose victim. Remember that Marchand had sent a copy of his original report to Beverly Police so that they could review the firearms license status of the suspect. The original report is the version that Wallace believed made her look like she *"got her ass kicked."* Wallace was again attempting to steer the investigation.

Marchand learned that both Town counsel and Wallace had been in contact with Assistant District Attorney Maura Bailey. Marchand says that Bailey told him that the two were on a "fishing trip". Marchand stated that the Clerk of Court advised him that Wallace was asking for information about him. Marchand also learned that Wallace visited the home of an employee in the District Attorney's office, again inquiring about Marchand.

In a May 3, 2007 e-mail, Wallace advises Town counsel that *"Art wanted me to tell you that he really appreciates all you have done."* It is obvious that Wallace had kept Hatfield in the loop on what was transpiring.

On May 9, 2007 Wallace actually suggested that Town counsel accompany her to the District Attorney's office to *"give them the opportunity to exhaust all our avenues with them before going to Martha Coakley's office."* "Our avenues" certainly implies "our" investigation.

Mackenna responds to Wallace implying that *"something"* will be done with Marchand. Town counsel then makes some remarks about Chief Cullen's credibility being at stake and implies that he may become a source of retaliation.

Wallace is the Chief's employee in a para-military organization. Remarks of this sort are again indicative of the close working relationship between counsel and Wallace.

One of the most disturbing e-mails from Wallace to MacKenna takes place on May 11, 2007 when Wallace inquires *"When is Mike going to the therapy program for anger management? And how do we get the background information on Mike to the therapist. By letter or would someone from the town speak to them in person and share everyone's concerns? I can put an outline together on behavior issues I have seen and a history on his past if that would be helpful?"* On September 10, 2007, MacKenna sends such an outline of "behavior issues" to the Town Administrator to be forwarded to a named doctor. MacKenna cautions the Town Administrator that *"the accuracy of the descriptions has not been verified."*

In a telling e-mail that conveys the extent of the relationship between Wallace and MacKenna, Wallace states that she will not be able to park the cruiser in MacKenna's neighborhood any longer as the *"neighbors are very very nosy."* There are other e-mails that discuss having dinner together and the sending of a birthday card.

The May 19, 2007 e-mails demonstrate that Hatfield and Wallace are providing information to Town counsel about the non-reappointment of a police chief and the ramifications thereof. Once again, it seems clear that Wallace and Hatfield have an agenda, and that agenda includes getting rid of the Chief.

In July 2007, Wallace is involved in the attempted breaking and entering investigation in which she claims that Marchand was again writing false reports. This culminated in the meeting in Chief Cullen's office where reports indicate that Wallace was insubordinate and made an obscene gesture. Wallace wrote her own official police report on the incident and indicated that she was sending copies to the Board of Selectmen and her own private attorney. By so doing, Wallace was likely violating more than one Department rule.

In another disturbing email on August 1, 2007, Wallace inquires if MacKenna is aware of "a scathing letter" that Marchand allegedly wrote. Wallace suggests that if the letter exists and if it is "threatening in any way or shows emotional instability", "his gun permit should be pulled." Again Wallace continues on with her personal investigation when she states: "I will ask Lt. and get his opinion on Mike's state of mind."

On September 18, 2007 Wallace was found to have posted an article on the police station bulletin board regarding "Narcissistic Personality Disorder". Detective Nagy immediately assumed that this article, with some areas highlighted, was intended to refer to Officer Marchand. Again, this seems to indicate that Wallace exhibited animosity toward Marchand.

The subject matter of the correspondence between Wallace and Town counsel was Officer Michael Marchand and Chief Walter Cullen. The correspondence demonstrates a serious effort was undertaken to have Marchand and /or Cullen prosecuted criminally and to remove them from their employment.

It appears that regulations, rules and policies of the police department were violated by Wallace and Hatfield. Labor counsel would need to examine each specific incident described above and make a legal determination if the protections afforded "whistleblowers" encompasses any of the activities of Wallace and Hatfield.

Additionally, labor counsel will need to examine if any of the actions of Wallace and Hatfield are afforded First amendment protection. Some matters were so trivial (not rising to the level of "public concern") as to offer little or no protection from sanctions by

the employer for violation of department rules and regulations. Other allegations were serious enough that the issues undoubtedly met the legal hurdle and are likely to be considered protected speech.

However, even if some of the actions of Hatfield and Wallace are not afforded "whistleblower", or First Amendment protection, and are deemed to be violations of the Department's Rules and Regulations, I must agree with the conclusion reached in the Hayes report wherein he states: *"Board discretion for disciplinary action in this case, even if otherwise indicated, may be limited by the involvement of Town counsel in the actions of Wallace."*

Respectfully submitted,

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