

CONFIDENTIAL REPORT  
TO THE  
TOWN OF HAMILTON, MASSACHUSETTS BOARD OF SELECTMEN  
REGARDING AN INVESTIGATION OF OFFICER MICHAEL D. MARCHAND

This consultant was retained by the Town of Hamilton Board of Selectmen (Board) to conduct a limited investigation of five specified issues involving a prior Town investigation of certain actions by Officer Michael D. Marchand (Marchand). The earlier investigation was ordered by the Board in April of 2007 and conducted by the Chief of Police (chief) and an outside investigator shortly thereafter. In December of 2007 Marchand filed a request for injury leave under the provisions of MGL Ch 41, s.111F. The Board opted to provide Marchand with a six-month administrative leave with pay while it reviewed the situation. This investigation is part of that review.

Relevant documents were reviewed in preparation for interviews with selected individuals. The documents included executive session minutes of Board discussions of various Marchand activities and behaviors that had raised concern regarding both Marchand and possible increased risk of litigation against the Town caused by those actions, transcripts of a Board hearing provided Marchand on November 26 and December 12, 2007, various summaries or timelines prepared by Town Administrator Candace Wheeler (Wheeler) and Town Counsel Donna MacKenna (MacKenna), medical reports (two from treating providers, one from an EAP counselor, and one requested by the Town from an independent physician ), and e-mail correspondence between MacKenna and Officer Karen Wallace(Wallace).

Marchand was interviewed on January 17, 2008 at the offices of Brody, Hardoon, Perkins, and Kesten at One Exeter Place, Boston. His attorney, Michael Sacco, Esq., accompanied him. At the time of the interview Marchand delivered a notebook containing various documents to this consultant. These included a roster of police department personnel, a list of people he interacted with on duty, a Police Department problems list, a list of questions to be considered, a brief overview of his personal situation, a list of selected department and Town officials with comments, an eight page introductory story line, a fifteen page log for the period January through September, 2007, two letters from the Hamilton Police Benevolent Association (police union) dated January 22 and February 21, 2007 to the Chief of Police, the same medical reports as noted above, results of a laboratory test for possible steroid use, two department activity reports showing individual officer activity for the years 2000 through 2007, information regarding Town ambulance operations and EMT refresher courses, and a copy of a notice dated November 27, 2007 from the Ipswich Police Department advising him that his license to carry a fire arm had been suspended based on information provided by the Hamilton Police Department. Copies of some correspondence between his counsel and counsel for the Town were also included.

Interviews were also held with Town Administrator Candace Wheeler at Town Hall, with Town Counsel Donna MacKenna at her Boston office, and with Board of Selectmen Chair William Bowler (Bowler) at his Hamilton Office. The following public safety personnel were interviewed at Police Headquarters: Chief Cullen, Lt. Nyland, Sgts. Grant and Dupray, Officers Shaw, Wallace, Hatfield, Trepanier, and Nagy, Dispatch Chief Ann Marie Cullen and Dispatcher Harrison. Police personnel in the police bargaining unit, except for Sgt. Grant and Officer Trepanier, were accompanied by Attorney Joseph Sandulli, counsel for the union. The union had previously held one or two meetings with the membership to prepare for the interviews. Sergeant Grant presented six statements signed by him at the beginning of his interview. During the interviews I received copies of three letters that had been sent by Marchand to union officials. Town Counsel MacKenna provided some additional documents from her files as requested.

I address the Board's questions in the separate sections that follow. My views and comments are based on over forty years experience as a municipal human resources director. I am not an attorney, however, and legal questions or concerns should be referred to counsel. In some instances I have found it necessary to include background data in an attempt to ensure that this stand alone report is understandable.

#### QUESTION ONE

##### WAS THE BOARD OF SELECTMEN'S DECISION TO AUTHORIZE AN INVESTIGATION AN APPROPRIATE ONE?

The matters that led to the investigation began to come to the attention of the Town Council and the Board Chair beginning in December of 2006 following Marchand's unsuccessful attempt, along with his brother-in-law and a friend, to retrieve his niece from her mother who had taken the niece to Mexico. Marchand was certainly familiar to officials before this. He was a very active officer on patrol duty with an especially high arrest and citations record, and he was vigorous in his duty as the department prosecutor in the local court. He had the reputation as "tough" in dealings with local youth, telling them that he would be "watching them". He had a militaristic, physically strong and imposing presence. Most officers I interviewed considered Marchand as one of the department's best officers. In addition, he was actively involved in the community with fundraising for the cupola on the public safety building in January 2007.

In August of 2006 Marchand and his companions went to Mexico in an attempt to retrieve his niece. The girl's mother and father, Marchand's brother-in-law, had been involved in divorce proceedings in Kansas City where they resided and where the father operated a restaurant. In March of 2006 the mother took the child, without the father's knowledge or authorization, to Mexico, her country of origin. At the time the parents shared custody of the child. Shortly thereafter the father, who reportedly was extremely upset over the removal of his child, placed his restaurant under the management of an employee and moved in with Marchand and his family in Ipswich. In past visits Marchand and his family became very close with the young girl, and the entire family

was now extremely upset and worried about the situation with the niece in Mexico. Marchand began contacting agencies such as the Federal Bureau of Investigation, the Texas Rangers, and others that may have been able to assist with the finding and return of the niece. It soon became apparent that these agencies would not be able to do anything. Marchand describes months of listening to his wife crying every night about the situation, as well as dealing with his brother-in-law's reactions. A plan to take direct action evolved.

It appears that Marchand told most of his co-workers about his plan on a one-on-one basis. It is likely that he also told court employees with whom he interacted. He describes his preparation as including letting his hair grow, losing about twenty-five pounds, and growing a goatee. It seems his co-workers universally attempted to dissuade him from what was perceived to be a potentially dangerous undertaking. Nonetheless, while on vacation, Marchand and the others went to Mexico. The mother and child were located, but the attempt to return the child was unsuccessful. Marchand suffered a knife wound in an encounter with friends of the mother. He placed a telephone call in the middle of the night through the Hamilton Police Department to a friend, a fellow police officer on duty, and advised him of what had transpired. He gave up the effort and the three returned home within a couple of days. He reportedly talked to anyone and everyone about the venture. It is likely that the stories grew a little in the telling in accordance with a reported tendency of Marchand. In reality, despite any bravado, it is likely that Marchand experienced a tremendous let down and a perceived loss of face in the eyes of his associates.

In December 2006 an anonymous letter was sent to Town Counsel. The letter, subsequently found to have been written by Officer Karen Wallace, raised a hodgepodge of issues concerning the chief and Marchand. Wallace claimed that Marchand may have used an inflated title in his dealings with the FBI, and that he and his companions had gone to Mexico by private aircraft and bypassed customs. She also claimed that Marchand, during the fight in which he was knifed, seriously injured a man. Finally, she reported that Marchand was talking about going back to Mexico to make a further attempt to retrieve his niece. Similar information began to reach the Board Chair from colleagues who had heard stories from individuals they dealt with in the District Court.

At about the same time, January 2007, Marchand was participating, with permission from the chief, in a Town approved fundraising effort for a cupola to be installed on the roof of the recently completed public safety building. A cupola had been included in the original plans, but deleted due to a funding shortfall. The goal was to raise \$15,000. The vehicle for the fund raising was to be a comedy night and dinner. It appears that some believed that Marchand may have been too emphatic in his pitch to merchants for support and Board members were receiving comments, but not formal complaints, regarding the same when they would have contacts with the merchants on the street, at Rotary Club meetings, etc. In addition, Marchand wore his uniform at times while making solicitations in direct violation of instructions by the chief. Marchand's work in raising funds and planning the event seems to have won him a role at the comedy night/dinner on February 10<sup>th</sup>. On that night he reportedly gave a long (30 to 40 minute) somewhat

rambling welcome speech while attendees were waiting to begin dinner. In the speech he reportedly referenced and made light of comments about his fund raising efforts. Some attempts at humor included off color stories and were inappropriate. Efforts by the chief to have him curtail his remarks were not successful, although Marchand commented from the stage that he was aware of the efforts. While the fundraising was quite successful, Marchand's behavior through out the process, coupled with perhaps exaggerated stories of his Mexico trip, began to cause some officials to wonder if Marchand was consistently a good representative of the police department and the Town.

Sometime early in the year Town Counsel was contacted by Officer Wallace regarding her formerly anonymous letter and the two began a work relationship in which MacKenna encouraged Wallace to provide her with any information, including official police department records, pertaining to Marchand which might reflect on his judgment and possible tendency towards excessive force. MacKenna explained in our interview that she was concerned about possible litigation and wanted to minimize the risk of the same. It appears that MacKenna began accepting the allegations made by Wallace as true without checking with others. She wanted to keep her source secret. Bowler was receiving similar information from his law office colleagues who practiced in the District Courts and would hear comments regarding Marchand from personnel working or practicing there.

Sometime in early April 2007 Bowler decided to meet with MacKenna and Wheeler regarding his concerns about Marchand. He learned that MacKenna had heard much of the same information that he was hearing. There was a concern about an apparent escalation in the number of incidents involving Marchand, with something happening almost on a weekly basis, thereby raising questions about Marchand's behavior and the risk of litigation arising from those behaviors. It was determined that the matters needed to be raised with the full Board.

At a meeting of the Board on April 17, 2008 MacKenna described the following incidents based, she said, on police reports written by Marchand and apparently copied and sent to her by Officer Wallace:

1. A July 2006 event at the Newburyport courthouse where Marchand assisted in subduing a female prisoner on request of court personnel. Marchand was injured in the process. There were suspicions that Marchand gets involved in such situations more often than other officers, that there is not a reason for him to be there, and that the reports he writes up are falsified.
2. A March 11, 2007 event at the Newburyport Court where Marchand assisted in subduing a male prisoner at the request of a Wenham officer. Marchand was injured as he subdued the prisoner and handcuffed him behind his back. Again the concern was what Marchand was doing at the scene when there were court personnel to handle the matter.
3. A March 27, 2007 event at the Hamilton Shopping Center where Marchand responded to complaints of a man drinking beer in his car. As Marchand approached the car on foot, he saw the man appear to reach under his seat causing

Marchand to draw his service weapon and order the man to show his hands. Marchand and the man had had an altercation some time in the past.

4. A March 28, 2007 event where Marchand participated in entering a home in a search for a man on an arrest warrant. Marchand reportedly roughed the individual up and took him outside and threw him against a cruiser until he was advised that the man was not the suspect.
5. An April 12, 2007 event at the Newburyport Court where Marchand reportedly confronted a defense attorney in such a manner that the attorney was more shaken than ever before in 24 years of practice.

In addition, MacKenna commented at the meeting on the cupola fund raising and Mexico trip matters. Mr. Bowler reported on another reported event in which Marchand, after losing a case in court, swept a large number of papers and binders off a table. There was some discussion of rumors that Marchand might be using steroids.

MacKenna also reported that Attorney Jack Collins, Labor Counsel for the Town, believed that the chief should be doing an internal investigation to find out what is going on with Marchand. She was concerned that Marchand's actions could cause lawsuits against the Town. It appears that the Board gave significant credence to the information presented by MacKenna in view of her status as Town Counsel.

A few days later the Board met again and, apparently for the first time, informed the chief about their concerns. The chief was advised that the Board was concerned about lawsuits and believed that an investigation was necessary to put to rest concerns about Marchand's actions or to move forward with provision of proper assistance to him, or if indicated, disciplinary action or reassignment.

The chief, although apparently not previously advised of the purpose of the meeting, was able to address some of the Board's concerns and provide some additional information and opinions. He was, in general, quite supportive of Marchand. His comments covered the following matters:

1. Court security is lacking. He had received letters of commendation for Marchand from court personnel as a result of his assistance.
2. Very little is actually known about the Mexico trip which was on Marchand's off duty time. The chief knew of no illegal activity. There was little he could do.
3. He has always received good reports regarding Marchand from court personnel, including the presiding judge, and knew of nothing wrong, but he would look into it.
4. There was no evidence of intimidation in fundraising for the cupola. The union may have initiated the issue for its own reasons.
5. The chief was present at the time the attempt was made to serve the arrest warrant. The department reacted with great care based on a report by a neighbor who was also a Hamilton police officer. No one was roughed up.

The chief indicated that he would conduct an investigation and would like to be assisted by either Sgt Dupray or Lt. Nyland. Later, after the chief departed the meeting, MacKenna, reacting to Board concern that the investigation be complete, indicated that she would send the chief an e-mail listing the many concerns.

A few days later on April 23, 2007 the Board and the chief talked again about the investigation. The chief advised that he had talked with a retired FBI agent who was now in charge of internal affairs for the Essex County Sheriff in connection with looking into allegations that Marchand had used an incorrect title in his dealings with the agency. He now believed that it would be better to obtain assistance in the investigation from this individual who was outside the department than to use department personnel to assist him. The Board agreed.

It is clear that the original decision by the Board to authorize and institute an investigation of Officer Marchand was fully appropriate. The Board was concerned about behaviors of Marchand that MacKenna was warning could lead to lawsuits. An apparent escalation in frequency of such behaviors was particularly troublesome. Labor Counsel had reportedly suggested an investigation. The Board wanted more information. No charges were lodged against Marchand. There was no suggestion that Marchand should be discharged or even disciplined unless later information indicated the need for the same, but there was some concern that he might need retraining or an anger management program. There was no attempt to control the outcome of the investigation. The Board took a very responsible action in directing an investigation.

## QUESTION TWO

WHAT WAS THE QUALITY OF THE INVESTIGATION INSOFAR AS THE MANNER IN WHICH IT WAS UNDERTAKEN BY THE CHIEF

The chief was assigned to conduct an investigation which he did not believe was necessary. He had indicated his belief that Marchand was a good police officer and his belief that the suggestions of wrongdoing were inaccurate. He did not have any significant administrative support available to him, and, in any case, might not have used such assistance if it were available in view of confidentiality concerns. In retrospect, it might have been better had he assigned Lt. Nyland to perform the investigation since he was a trained internal affairs investigator, the issues were really not unusual or complex, and, more importantly, he likely would have had more time than the chief to devote to the task. Finally, the purpose of the investigation presented to the chief in discussions over several days seemed vague and further definition would likely have assisted the chief in accomplishing the task. It seemed that the chief saw his task to confirm or repudiate the concerns raised by MacKenna and others. He did not seem to see the investigation as a vehicle to determine 1) if the actions taken by Marchand were necessary; 2) were they accomplished in the best possible way considering the circumstances; 3) was there

unnecessary, avoidable risk created for the Town; 4) did Marchand or others show a need for additional training; 5) what role did others play in the situations; 6) did Marchand exhibit behaviors that needed modification and how might this be accomplished. Additional guidance might have led to an investigation and report that was more helpful to the Board.

The idea of requesting the assistance of Gerald Mohan, Director of Internal Affairs for the Essex County Sheriff's Department, who was also a retired FBI Agent, in the investigation was understandable. It was hoped that he would be able to interface with the FBI on the issue of possible use of an inflated title by Marchand as well as determining if that agency had any information it could provide relative to Marchand's trip to Mexico. However, the odds of obtaining significant information from the FBI on an open case, even if the information was available, are low. Without this possible benefit, the downside of using an investigation team comprised of the chief of police and the Sheriff's Department director of internal affairs/retired FBI agent outweighed the possible benefit, in my opinion. The team was overpowered for the task, somewhat similar to using a sledge hammer to kill a mosquito.

The allegations of improper behavior by Marchand in the Court were relatively minor. However, the composition of the investigative team likely raised questions in the minds of interviewees as to whether Marchand may be a suspect in more serious wrongdoing. This seems particularly likely in view of possible concerns of a "fishing trip" about what happened during Marchand's Mexico trip, a matter, it can be assumed, most were aware of. Consequently, a chilling impact on witnesses, with the possible exception of the judge and attorneys, could have been expected as people would try to avoid becoming involved in a possible "mess" as well as possibly hurting Marchand whom they liked and who, in several cases, provided assistance to them. I do not have full knowledge of how the investigating team presented the purpose of its visits, but it seems that it was in the nature of asking about problems with or complaints about Marchand. It is not uncommon for individuals, even those who may have commented about a concern privately, to present a different, neutral, or contradictory story in a formal situation where information could be attributed to them and possibly lead to later requests to provide written statements or to testify in a disciplinary or other forum. Whether this occurred in this case cannot be known with certainty.

The chief was correct, in my view, to notify Marchand of the investigation. He seems to have given Marchand a sufficient although brief overview of what was to be examined notwithstanding Marchand's later objections on this point. Marchand's wish to have an outside investigator, whether by design or by chance, was satisfied by the involvement of Mr. Mohan.

The investigation results were submitted in five documents, three reports written by the chief dated April 23, May 10, and June 8, 2007, and two documents written by Mr. Mohan dated April 26 and May 11, 2007.

The chief's reports, particularly the April 23<sup>rd</sup> report, do not reflect the extent of his probing of issues or any attempt to reconcile apparently conflicting information. There is little information for individuals in decision-making roles to use in deciding next steps. It is not clear if Marchand has a view on how, if possible, he can avoid physical contact with prisoners in court, or avoid injury and minimize legal risk to the Town if it is necessary to become involved. There is no information regarding the context of the reported interactions with the defense attorneys that may have shed light on the issues. There seems to be little evidence of probing regarding the Mexico trip, particularly the planned use of a private aircraft for the return trip and the cost thereof, and what this possibly suggests as to intent, and any plans for a repeat trip.

The investigation of the fund raising for the cupola is certainly inadequate. It fails to address the comments Board members received, Marchand's own comments at the dinner on Feb 10, 2007, and the verbal or written reports from Officer Hatfield and Sergeant Dupray. While there well may have been an absence of threats or intimidation, there may have been inappropriate solicitation of businessmen in the form of hopes, wishes, suggestions, etc. expressed that should have been addressed. Perhaps the chief believed that the issue had been addressed sufficiently and that the Board was ready to move on. As a minimum, the investigation should have recognized the need for an immediate, comprehensive and explicit fund raising policy.

The report on the shopping center arrest and the Homestead Circle incident might have been more helpful to the Board if information from officer reports of the incidents and related incidents had been included. For example, even allowing for the possibility that it might have been better for a uniformed officer to approach the individual drinking beer in his vehicle, it was not reported that the individual in the vehicle had five years ago charged Marchand with an ax when Marchand, the chief and other officers were trying to remove him from his home. Certainly once an officer perceives another possible threat to his safety as Marchand must have as he approached the vehicle, he has an absolute right to minimize risk and to prepare to defend himself in accordance with approved procedure, which Marchand did. Marchand was not pointing his weapon at the individual in the vehicle. Perhaps there could have been some brief analysis regarding preferred tactics in this situation, if any, and the reasons they were not employed at the time. More information about the Homestead Circle incident would have illustrated the care the department took in attempting to serve the arrest warrant and the lack of violence towards the person concerned.

Mr. Mohan's reports are well prepared and cover the aspects of the investigation he was asked to assist with. With regard to the report of interview with Attorney Stone, further detailed specification or examples illustrating his comments that Marchand raised his voice and was personally and verbally aggressive, as well as the report that he appeared to be becoming more and more angry, would have been helpful. This type of information likely would have been useful to the EAP counselor and others.

### QUESTION THREE

#### WERE THE RESULTS OF THE INVESTIGATION PROPERLY HANDLED?

The results of the investigation were properly handled in accord with the law and within department practice and procedures. Some voluntary additional steps may have benefited Marchand and the department. Comments on these are included at the end of this section.

The lack of detail and the serial submission of the reports in this case, along with the scheduling issues inherent in local government, must have made it difficult for the Board to manage this issue. In the end, the Board determined that the only action as to Marchand was a referral to the Town provided EAP for examination of possible anger issues. It does not seem that Marchand was adequately informed about the results of the investigation at this point and it probably would have been helpful if this had happened.

The EAP referral outcome was appropriate. Based on the information I have acquired about Marchand's behaviors, this is the action I would have recommended on the assumption that the process would have included examination of contributing factors in Marchand's personal and family life as well as those in the workplace.

The investigation results were kept confidential in accordance with usual practice. Marchand had requested that the results be made public in the belief that the investigation would serve to "clear him" and "restore his reputation". It is unlikely that he will think this was accomplished as there never were allegations or charges raised against him by the Town from which he would be cleared or not cleared and the report does not address this issue.

I believe that it would have been appropriate, given the nature of this case and subject to Marchand's permission, to schedule meetings with department members to provide them with an oral summary of what had been going on, the reasons, the report findings, and Town reaction to them. There has been considerable turmoil in the department over this matter and it likely would have been beneficial to provide information and to answer questions.

In addition, I believe that it would have been appropriate to consider Marchand's request that court personnel, at least the key figures, be briefed on the investigation to counter any rumors of what had been going on with Marchand and to answer any questions they may have had. This would be my opinion even if Marchand were to be reassigned to other duties.

## QUESTION FOUR

WERE ACTIONS TAKEN BY INDIVIDUAL POLICE OFFICERS IN REPORTING POSSIBLE WRONG DOING IN RELATION TO THE MARCHAND MATTER APPROPRIATE, AND WAS THE MANNER IN WHICH THESE WERE REPORTED AND INVESTIGATED APPROPRIATE?

It appears that most of the members of the Hamilton Police Department were not involved, in general, in the reporting of possible wrongdoing by Marchand. A possible exception is what might be considered an oblique report in a January 22, 2007 letter signed by the members of the police union executive board asking that a policy be established pertaining to fundraising by members of the department with clear reference to the ongoing fundraising. There was no question that this letter involved Marchand's fundraising for the cupola. The lack of any other formal or informal reports, dropped dimes, etc., even given the propensity of police officers not to "squeal" on each other, likely suggests that the members did not perceive significant wrong doing, if any, on Marchand's part. This is consistent with the view held by almost all of the officers I interviewed that Marchand was an above average officer, even if they did not always agree with him.

The January 22, 2007 letter requesting fundraising guidelines, and two follow up letters, even if motives on the part some of the signatories were at best mixed, were not inappropriate. The union as such does not seem to have played any inappropriate role in this matter. There are two notable individual exceptions, however. Officers Arthur Hatfield (Hatfield) and Karen Wallace do seem to have been involved in the matter. While they are both officers of the union, it would be unfair to say that the union was involved in the matter because of their individual actions.

Hatfield has been an officer for many years. It is a common belief in the department that he and Chief Cullen have had a very strained relationship for a number of years. He appears to consider Marchand as the "chief's boy". Wallace and Marchand were friends seemingly until around the time Marchand was planning his trip to Mexico. She was briefly enrolled in law school and Marchand believes that she desired his additional duty as police prosecutor. She denies this and the person who reportedly advised Marchand of the same denies doing so. It appears that Hatfield and Wallace collaborated on some of the following actions, while some may have been individual actions.

On December 8, 2006 a letter was sent to the Massachusetts Ethics Commission signed by "concerned citizens". The letter states that "We write to ask..." It is believed to have been the work of Hatfield and Wallace. The letter references a past request to the Commission to check various matters regarding Chief Cullen and requests that the same be done again. One of the complaints was that the Chief allegedly works overtime rather than utilize reserve officers and may be attempting to enhance his pension. The letter seems to be an attempt to discredit and embarrass the chief.

At about the same time (December 2006) an anonymous letter was sent to Town Counsel MacKenna. It subsequently was found to have been written by Wallace. The letter starts with personal complaints about the chief and then moves into a report of the Marchand Mexico trip and her statement that a criminal act was committed during the trip and ignored by the chief. MacKenna is advised in the letter that the matters should be "handled though the District Attorney's Office first, and possibly from there the Attorney General's office and the Ethics Commission". The letter closes with a list of complaints similar to those reported in the letter to the Ethics Commission with additional comments regarding a gift account and a secretary whose hours of employment were reduced in a budget reduction. Hatfield was a supporter of the secretary who later retired from her position.

On or around January 13, 2007 Hatfield reportedly overheard conversations in the station between a couple of employees who were discussing a telephone conversation one or both had overheard between Marchand and whom they believed was the manager of a local market. Marchand was supposedly strong arming the manager and soliciting a donation of \$1,000.00 for the cupola fund. Hatfield notified Officer Shaw, the union president, and Sergeant Dupray. He did not notify the chief or Lt Nyland. He did, however, take it upon himself to investigate the matter with the manager, a task that was outside of his responsibilities. He requested the manager to advise the owners of the market that other members of the department did not want them to donate anything to the cupola fund. In the end, the company did not make a donation. The project was one that the chief was obviously interested in. Marchand was a key fundraiser. Hatfield told the manager that he would notify the chief and the Ethics Commission. No direct report seems to have been made to the chief, but the January 22 letter requesting fund raising guidelines was prepared and sent to the chief. It appears that he and/or Wallace also questioned other business people in Hamilton.

Sergeant Dupray later advised the chief that he had heard that Marchand had perhaps pressured the market manager to donate to the cupola fund. The chief immediately sent Dupray to investigate what had happened. Dupray reported back that the manager confirmed Hatfields' report in part, but that, in his opinion, the manager was not intimidated or overly pressured.

Wallace, a short time after sending the anonymous letter, contacted MacKenna 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 through e-mail, by telephone, or in somewhat frequent meetings between the two. Wallace commented in one e-mail that MacKenna's neighbors were becoming nosy about seeing her cruiser parked in the neighborhood near MacKenna's house while she waited for MacKenna to arrive home. Records of most of the exchanges do not exist. In

an April 2007 e-mail to the Board Chair Bowler, MacKenna reported that in January Wallace had been in contact with the Essex County DA's office regarding her concerns about Marchand. Wallace claimed that she was advised that the matters had been referred to the Attorney General's office, and that the DA's office did nothing and did not seem inclined to do so. In a May e-mail to MacKenna, Wallace reports that she had not heard from the ethics investigator who supposedly was going to contact the DA's office, which concerned her. She was requesting MacKenna to go to the DA's office with her to update them. She wanted to give the DA's office a chance and exhaust all avenues with them before going to the state Attorney General's office. MacKenna reports that she met only with Wallace, and not other officers.

Hatfield and Wallace are employees of what is frequently referred to as a para military organization with a chain of command or supervision. Any concerns about Marchand should have been raised successively, if necessary, from their sergeant through the Lieutenant, the Chief, the Town Administrator, to the Board of Selectmen. It was inappropriate, in my view, for them to undertake unauthorized investigations with the public relative to Marchand's conduct. It was certainly inappropriate, in my opinion, for them to raise matters involving the department directly with the District Attorney's office and to plan to bring them to the Attorney General's office. It seems clear to me in this case that Wallace and Hatfield were operating to support their own agendas, and not in the best interests of the Town, the department, or Marchand. Wallace claims that she was concerned about Marchand's well being. She states she was interested in preventing any action by Marchand that would result in injury to another and for which she would feel guilt if she had not taken action. While I cannot say that there was no element of these reasons underlying her actions, I suspect that much of her motivation was less benign and more self-serving. Certainly, the fact that she appeared to be attempting to get the District Attorney's office to investigate and perhaps prosecute Marchand undercuts her claims that she was concerned about his well being.

Hopefully the Board will examine this situation and take steps to prevent any future actions by these officers that it agrees are inappropriate. 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.

#### QUESTION FIVE

WERE THE ACTIONS TAKEN BY TOWN COUNSEL DONNA MACKENNA  
RELATIVE TO INVESTIGATIONS OF OFFICER MARCHAND APPROPRIATE?

Town Counsel Donna MacKenna became involved in the Marchand matter when Wallace sent her what was then an anonymous letter and shortly thereafter contacted her in person regarding Marchand and other matters. MacKenna's concern was that

Marchand's reported erratic actions could lead to litigation against the Town and she wanted to monitor the situation in order to minimize the risk of this happening. This, was of course, a proper and laudable goal in accord with her duty to the Town. However, it appears that that MacKenna became overly involved with Wallace over the next several months and neglected to share and/or evaluate the information she received from her with responsible parties on a timely basis. She may have independently had her own negative view of Marchand's behavior towards the citizens of Hamilton. In one instance she reported that the mother of her son's then girl friend commented regarding how tough Marchand was with youth. It would have been appropriate for her to share concerns with Chief Cullen, and had she done so, she may well have learned that some of the concerns raised by Wallace were not real.

MacKenna began collecting reports, as discussed above, from Wallace in the January 2007 time frame. The chief first learned about the concerns on April 20, 2007 when he was invited to a Selectmen's meeting to discuss them. He obviously was aware of the individual events as they occurred, but did not attach the same significance to them as did MacKenna. Once MacKenna and the Board began their discussions, MacKenna seemed to take on a "prosecutorial role". Perhaps she was seeing herself as a devil's advocate. In one instance, MacKenna reported information that turned out to be incorrect. I am not suggesting that she knowingly did so, but rather that she accepted and reported information received from Wallace without critical evaluation. This instance involved the attempt by Marchand and other officers to serve a warrant on an individual in a home on Homestead Circle. MacKenna reported to the Board that Marchand "...entered the house, grabbed the suspect, roughed him up, and took him outside and threw him against the police cruiser until he was told that this wasn't the suspect..." This is quite different from the chief's first hand account of what occurred. Chief Cullen reported that the incident was handled in a very professional manner totally absent of any inappropriate actions. In another instance pertaining to the beer drinking incident at the Hamilton Shopping Center, MacKenna reports that Marchand "...not in uniform or a marked cruiser, goes up and draws a weapon on him". This description would likely suggest to most people that Marchand was pointing his weapon at the individual, rather than, as was reported by the chief, simply removing the weapon from the safety holster and keeping it available, pressed against the holster, in view of movements by the individual susceptible to various interpretations as to risk.

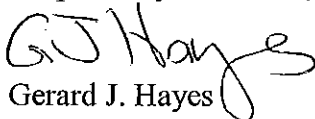
In January Wallace reported to MacKenna in the apparent first of an exchange of e-mails that Marchand had demanded more than \$1,000.00 from the manager at Crosby's market and that Hatfield had spoken to the manager and would be contacting the Ethics Commission Investigator while Wallace would be running it by Jack Dawley at the District Attorney's Office. MacKenna replied that she believed "your (Wallace's) planned steps are appropriate". Wallace later confirms that she had made these contacts and that Marchand had had a few more incidents including "drawing his gun down on a person drinking beer in a car." Other e-mails from Wallace to MacKenna, which reflect Wallace's role and MacKenna's involvement, reported or commented on such matters as Wallace obtaining court incident reports, department use of recovered stolen property and other such property that might be missing, that Marchand "broke down crying"

when the chief spoke with him regarding the pending investigation, that she would supply MacKenna with copies of letters (unknown origin-could be the union) provided to the chief, a request that MacKenna call her to fill her in on how a Selectmen's (executive session) meeting went, that Art (Hatfield) really appreciates all that MacKenna had done, that Marchand was making statements that someone was trying to get him fired, that Wallace saw the chief at the Wenham Police Department and that "we don't usually see that too often", wondering how "we" get background information regarding Marchand to the EAP therapist, that Wallace was working on getting information on who called the chief from the AG's office beyond knowing that it was a Ben, a thank you for dinner, transmittal of information regarding the non reappointment vs. firing for just cause of police chiefs which Hatfield was adamant MacKenna have.

Some of the e-mails between Wallace and MacKenna were discovered by friends of Marchand in May 2007 and copies were provided to him and to the chief. One was a response to a Wallace e-mail wherein she reported to MacKenna that Marchand had returned as Prosecutor after a short replacement by Sgt Janes. MacKenna acknowledged the information and added: "I heard that he was not humbled". A second e-mail from MacKenna, in response to the e-mail wherein Wallace reported that Marchand was talking about someone trying to fire him, commented that "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 that we have enough to get Mike fired but something will be done." The e-mail referencing the non-reappointment vs. the firing for cause of police chiefs was also discovered. These communications illustrate, in my opinion, an inappropriate involvement by MacKenna in the police department, and, perhaps unknowingly, in department politics.

The above concludes my report on the five questions posed by the Board. I would be pleased to answer any questions.

Respectfully submitted,



Gerard J. Hayes

May 1, 2008