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HEARING FOR THE REMOVAL
OF MAYOR THOMAS RICE

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BE IT REMEMBERED, this hearing was held
before the North Canton City Council, at the North
Canton City Council Chambers, 145 North Main Street,
North Canton, Ohio, on Tuesday, September 8, 2004,
commencing at 5:07 p.m.

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- Jon Snyder, President
- Marcia Kiesling, Council Member
- Daniel Peters, Council Member
- Greg Sarbach, Council Member
- Dave Lindower, Council Member
- Doug Lane, Council Member
- Doug Foltz, Council Member

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1 APPEARANCES:

2 On behalf of the City of North Canton:

3
4 Paul J. Pusateri, Attorney at Law
5 Buckingham, Doolittle & Burroughs
6 4518 Fulton Drive, Northwest
7 Canton, Ohio 44718

8 On behalf of Mayor Thomas Rice:

9 Leonidas E. Plakas, Attorney at Law
10 Christopher M. Huryn, Attorney at Law
11 Tzangas, Plakas, Mannos & Raies
12 800 Unizan Plaza
13 Canton, Ohio 44702

14 On behalf of David Held:

15 Mel L. Lute, Attorney at Law
16 Baker, Dublikar, Beck, Wiley & Mathews
17 400 South Main Street
18 North Canton, Ohio 44720
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1 MR. SNYDER: I would like to call the hearing
2 for the removal of Mayor Tom Rice pursuant to
3 Ordinance 89-04 to order. We have opening remarks by
4 the Director of Law, Paul Pusateri.

5 MR. PUSATERI: Okay. I just want to go
6 through just how these things proceed. First of all,
7 these are pursuant to the charges of North Canton
8 council against Mayor Thomas Rice pursuant to Section
9 506 of the North Canton charter. The charges, along
10 with the report of Frank Forchione, have been given
11 to the court reporter as Exhibit 7 and part of the
12 Record. And the dates for this hearing have been set
13 and these are dates that have been agreed upon
14 between myself and the attorney for Mayor Rice. And
15 those dates are September 8th, which is of course
16 today, 9th, 14th, 15th, 16th. And October 5, 6 and
17 7, 2004, of course. Starting at 5 p.m. assuming we
18 need all those days and times.

19 Now, there are six charges that the council
20 is bringing against the mayor that they will take
21 testimony on throughout this hearing and I gave a
22 handout to each member of council as to order of
23 those charges and that order is important and I'll
24 explain why in a minute. And I also gave the
25 attorneys for Mayor Rice that list of charges as well

1 I N D E X

2 WITNESS:

3 DAVID HELD

4 DIRECT EXAMINATION:

5 MR PUSATERI: 30, 138
6 MR. SNYDER: 37, 49, 130
7 MS. KIESLING: 80
8 MR. PETERS: 111
9 MR. SARBACH: 120
10 MR. LANE: 123
11 MR. LINDOWER: 126
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1 in the order. The first charge is mayor willfully,
2 knowingly and wrongfully hiring, retaining and
3 protecting a city employee.

4 Number 2, you can follow on the list if you
5 would like. Mayor -- 2, Mayor willingly, knowingly
6 pressuring employees to buy fund-raising tickets.

7 Number 3, Mayor willingly and knowingly using
8 office to promote a political action committee.

9 Number 4, Mayor willingly and knowingly
10 selling fund raising -- fund-raiser tickets to
11 employees during work hours.

12 Number 5, Mayor willingly -- willfully and
13 knowingly nondisclosure of relationship with the law
14 firm of Johnson & Angelo.

15 Number 6, Mayor knowingly, willfully attempt
16 to buy Heiser property without disclosure to city.

17 Now, I also provided to counsel for the mayor
18 and as well to all the council members the documents
19 and our exhibits that we have as of now in this, in
20 this particular proceeding. And if you have those
21 documents in front of you and I want to explain how
22 they're organized. If you notice, there are, the
23 first documents we have is Exhibit 1. Now, Exhibit 1
24 is made up of a number of pages. If you look at the
25 bottom right-hand page of, corner of each page you

1 have Exhibit A, 1A, Exhibit 1B, all the way through.
2 You can see Exhibit 1N. So any time during this
3 proceedings that someone could refer to exhibit by
4 saying Exhibit 1N, for instance, and we know exactly
5 what page they're referring to. Now, Exhibit 1, the
6 whole packet of the Exhibit 1 matches up with the
7 first charge, do you understand? So these, these go
8 along with the first charge.

9 Now, if you'll notice in your next stack
10 there is no Exhibit 2. That's because at this point
11 I don't see any records that go along with the second
12 charge. Now, that may change through this hearing,
13 there may be documents introduced, so I left that
14 exhibit open, you know, for later use if we need it.

15 And I'm going to Exhibit 3, the same, same
16 order applies. This applies to the third charge on
17 this list I gave you, and each document, each page is
18 numbered. So at all times when you're referring to a
19 particular document, it would be very helpful for the
20 Record if you would say Exhibit 3N or 3B because we
21 all know the documents you're referring to.

22 The same with Exhibit 4. There is no Exhibit
23 4 because at this time I don't know of any documents
24 that apply to that fourth charge. That may change
25 later on.

1 Exhibit 5 deals with the fifth charge and
2 Exhibit 6 deals with the sixth charge, and there is a
3 seventh exhibit that I did not give council. That is
4 the, those are the charges themselves with the Frank
5 Forchione report attached, attached to it. That's
6 Exhibit 7 and that's been given to the court
7 reporter.

8 Any questions on how those documents are
9 organized? And I've shared all this with the counsel
10 for Mayor Rice so he has all this already. Now, I
11 understand that there may be documents later that are
12 added to the documents we have now and I believe that
13 we'll agree to the authenticity of these documents if
14 I'm not mistaken; is that correct, Mr. Plakas?

15 MR. PLAKAS: Generally yes.

16 MR. PUSATERI: I understand you're not
17 necessarily agreeing to any of the admissibility or
18 what they actually say or stand for, but just
19 authenticity. What that allows us to do is not
20 necessarily have to bring any custodian of records to
21 testify that it is a document that is produced in the
22 normal course of business.

23 It just -- now, witnesses. There are, there
24 is a list of witnesses that are part of the charges
25 that have been given to the mayor's attorneys already

1 and council all have as well. Now, I talked to
2 Mr. Huryn today, I don't know if all those witnesses
3 will testify, but they have been identified. In
4 addition, there have been three other witnesses that
5 have been identified. Well, two now, Kim Cooksey and
6 Tim Morrow, in a letter that I sent to the mayor's
7 attorney a couple days ago that they have as well.

8 In addition, after going through some of
9 these documents there may be a need to call finance
10 director Julie Herr just to distinguish some
11 documents from the other documents. Now, I requested
12 from council some time ago that they give me a
13 complete list of witnesses. I need to know here in
14 the next day or two, by the end of the week what
15 witnesses you believe at this time will actually
16 testify. I spoke with Mr. Huryn today about that and
17 they will also provide me with that list as well.

18 And part of the reason is so that I can get a
19 subpoena out to each one of these witnesses, and they
20 would like you to give them a list of witnesses first
21 so they know what witnesses they may need, which to
22 me seems fair, so if council will give me those
23 witnesses in writing exactly who you think will
24 testify in this, in this hearing. I understand that
25 may change, but I want to be able to give them that

1 as soon as possible. Okay?

2 All the witnesses will be subpoenaed, and
3 that's authorized by the charter, and also the
4 charter harmonizes with the state law, in particular
5 RC 733.38. And people who don't respond to the
6 subpoenas are potentially could be held in contempt
7 of court. There's an oath that each witness will be
8 given before their testimony. That oath will be
9 given by President Jon Snyder. By RC 733.39, any
10 member of a legislative body can give that oath. I
11 talked to Jon earlier and he volunteered to give that
12 oath. The oath of each witness will be read, Do you
13 swear that the testimony you're about to give in this
14 hearing will be the truth, the whole truth and
15 nothing but the truth so help you God.

16 Now, pursuant to RC 733.39, witnesses shall
17 be entitled to the same privileges and immunities and
18 compensation as allowed as witnesses.

19 Now, questioning of witnesses. I would
20 suggest that to council that when you question the
21 witnesses that we stay in the same order as the
22 charges to keep this hearing as orderly as possible.
23 And when you're questioning a witness if there's a
24 witness that can be questioned on multiple charges,
25 if you say this concerns Charge 1 based off that list

1 I gave you and let them know which charge concerns.
 2 If you keep that order I think in the end it will
 3 help the Record a great deal. So when each
 4 councilman takes a chance, takes a turn questioning
 5 and keeps the same order, I would appreciate it.

6 Now, the questioning of witnesses, and I've
 7 discussed it with Mr. Huryn today, I'll ask
 8 foundational questions of witnesses to get them
 9 established as to the basis of their testimony of
 10 each witness on each charge that they're going to
 11 testify, and at the next each member of council will
 12 have an opportunity to ask each witness questions as
 13 well. Then Mr. Plakas and Mr. Huryn, the attorneys
 14 for Mayor Rice, can ask questions, and then after
 15 that, as I discussed with Mr. Huryn today, if there
 16 are any miscellaneous questions that I feel are
 17 uncovered, which I think highly unlikely, need to be
 18 covered for the Record, good or bad, either way I'll
 19 follow up with those questions as well. And of
 20 course, Mr. Plakas will have an opportunity to ask
 21 any questions, and if council has any questions they
 22 can ask as well but I think we need to continue that
 23 order of questioning throughout the hearing.

24 So I'll keep track of that so you don't have
 25 to worry about that. Do you have any further

1 suggestions about how we question the witnesses,
 2 Mr. Plakas or Mr. Huryn, in the order of
 3 presentation?

4 MR. PLAKAS: As you know, we have objected to
 5 a great many of the procedural infirmities. We've
 6 made a record of that previously and in my opening
 7 remarks I will confirm for the Record what our
 8 concerns are again for the Record.

9 MR. PUSATERI: That's fine. But as to the
 10 order of the questioning of witnesses, do you have
 11 any objection to that, how I just made it out?

12 MR. PLAKAS: No.

13 MR. PUSATERI: I appreciate it.

14 MR. PLAKAS: Not as to the order.

15 MR. PUSATERI: I appreciate it. Now, I think
 16 that I will remind council that these questions need
 17 to be related to the charges only and/or the
 18 credibility of the person who's testifying. Okay, I
 19 don't want, I mean nothing else is really relevant to
 20 this hearing and I'll be here throughout the hearing
 21 to remind and advise council if I believe questioning
 22 is becoming out of focus.

23 All right. We need to focus on the six
 24 charges and ask questions, specific questions to
 25 those charges only. Or as to the credibility of the

1 witness who is testifying. Those two things. And I
 2 will also instruct to council, and I don't need to
 3 tell this to Mr. Plakas, but it's important that you
 4 try to form specific questions that solicit specific
 5 answers instead of general questions. And once
 6 again, I'll be here to advise and help council
 7 through that process.

8 And then after the hearing is concluded there
 9 will be a deliberation of council in deciding the
 10 merits of many of these charges based off the
 11 testimony and/or the documents that have been
 12 presented through these proceedings and then
 13 deliberation will be just with council.

14 Now, at this time I will open the floor to
 15 opening comments. I do not have any additional
 16 opening comments other than I just express to
 17 council, however, I did talk to Mr. Huryn today and I
 18 believe Mr. Plakas will have an opening statement of
 19 maybe ten to 15 minutes long. I hope not any longer
 20 than that. Other than that, it's yours.

21 MR. PLAKAS: Thank you.

22 MR. PUSATERI: You're welcome.

23 MR. PLAKAS: Good evening. As indicated, my
 24 name is Lee Plakas. And along with my partner,
 25 Christopher Huryn, we represent the mayor in this

1 situation. Therefore, if it please council, if it
 2 please the president of council, most importantly if
 3 it please the citizens of council and I guess I would
 4 be remiss if I didn't also suggest that my remarks
 5 will also be directed to any kangaroos that may be in
 6 the room.

7 Having said that, I think the greatest
 8 responsibility that any public official can ever have
 9 is to protect the rights of citizens. And by
 10 protecting the rights of citizens, I think you
 11 protect this country and the fabric of this country.
 12 Among those citizens' rights that are most important
 13 for you and all of us to protect are the right of
 14 citizens to elect their public officials. And in the
 15 event that there is a movement to remove a publicly
 16 elected official, then I think it's incumbent upon
 17 each and every one of you, each and every one of us,
 18 to preserve the integrity of that process by which
 19 you seek to remove an official, a public official
 20 who's been elected by the citizens of this community.

21 We believe, and will put on the Record and
 22 intend to show that these proceedings are suspect.
 23 It matters not whether I refer to them as what I
 24 think they are, a kangaroo court. What will matter
 25 is how history refers to them and each and every one

1 of you. The citizens of this community, this entire
2 community, deserve better than a proceeding that
3 anybody can later declare was suspect. Once we allow
4 our public rights to be taken by something that is
5 deemed by the verdict of history to be suspect, then
6 we all suffer.

7 In my brief comments I will outline for the
8 Record and for history's review the objections that
9 we lodge about this proceeding. We understand that
10 of course there is a city charter. But a city
11 charter doesn't empower anybody to violate the
12 statutory laws, the Ohio constitution, the federal
13 constitution, or those rights that we in America have
14 regarded as sacrosanct. There's certain rights,
15 there's certain standards of fairness. I'm
16 particularly troubled by the fact that the Ohio state
17 legislature in its wisdom has set up a very viable,
18 unassailable alternative to what you're about to
19 embark on. And that's very clearly put out in Ohio
20 Revised Code Section 733.72. If any of you truly,
21 truly, in your heart of hearts suspect that a public
22 official has done something that requires his
23 removal, then there's a procedure. And that
24 procedure is not something that history can later say
25 was a kangaroo court. And that procedure will -- is

1 quicker, more efficient, and less costly than the
2 next two months of these hearings will be. That
3 procedure is merely you as a body, you as an
4 individual or any citizen can file a Complaint on the
5 same charges with the Stark County Common Pleas
6 Probate Court and have this matter proceed with all
7 the due process rights and constitutional rights that
8 every one of you would want if your future and your
9 career was being judged. And I'm very concerned as
10 to why in the face of a quicker, simpler, and less
11 expensive alternative we're here now.

12 We expect to show and will show and will
13 outline very briefly in our opening that this body,
14 in the institution of these proceedings, has a
15 predetermined verdict. It's biased and there is
16 actual conflict of interest. I've practiced in
17 courts throughout this country for 28 years. They
18 have never taught me in law school, we never had a
19 case about someone who could lose his reputation and
20 his career by appearing before a body where that body
21 initiates the Complaint, that body is the witness to
22 the facts upon which they complain, that body
23 establishes the procedural rules, that body
24 establishes the evidentiary rules, that body is the
25 judge, the jury and the executioner, and that body,

1 and the ranking officer of that body, will directly
2 benefit both financially and in terms of his career
3 and political position if in fact they find the mayor
4 has committed some act that's disagreeable to them.

5 Compounding my concern and my inability to
6 even fathom that this can happen in our country is
7 the fact that the standards that you will apply are
8 standards that are undefinable. I think history will
9 judge these proceedings. More importantly, I think
10 that there's evidence that's clear and will be
11 brought out that you, yourselves, or some of you,
12 have already judged the proceedings, and we will, at
13 the end of our remarks, specifically ask members of
14 you who have already determined their verdict to
15 recuse themselves just like you would want any judge
16 or juror if you were being tried to not sit in
17 judgment because that's the test. Would you want
18 yourself, being the juror, to judge the facts in this
19 case if you were in Tom Rice's position. That's the
20 test. Would you feel comfortable with yourself as
21 the juror.

22 In the materials that have already been
23 provided to Mr. Pusateri, we have already identified
24 just the tip of the iceberg of some of the things
25 that have concerned us. And we don't have to dig

1 real hard to find the tip of the iceberg, all we have
2 to do is read the local papers. And in the materials
3 presented to Mr. Pusateri we've pointed out that the
4 president of council has been quoted as saying, "The
5 charges show a significant pattern where the mayor
6 covered for an employee. They show a total disregard
7 for the policies of the city." That was Mr. Snyder's
8 comment.

9 Councilperson Kiesling was quoted as saying,
10 "The city council's anticipated hearing to remove the
11 mayor from office is something we have to do because
12 the facts warrant it. The facts state that he acted
13 improperly on at least four different times and the
14 only way we can remove him is to have a trial." It
15 sounds as if that juror has made up her mind.

16 However, if there would be any doubt as to
17 the attitude of that particular judge and juror and
18 executioner in this case, I would add another quote
19 coming from her. "As the leader of the city, if he
20 really, truly, honestly believes that council didn't
21 discuss issues adequately, he should have the balls
22 to get up and speak publicly about it." Now here we
23 have on behalf of the city council of North Canton
24 somebody saying "He should have the balls." And I
25 dare say that probably Ms. Kiesling was not referring

1 to a soccer ball when she was making that comment.
 2 We can probably agree on that, can't we?
 3 MS. KIESLING: Probably.
 4 MR. PLAKAS: Now, it concerns me if the
 5 president of the council would be telling others in
 6 positions that he's going to be the mayor. And it
 7 would concern me if in fact another public official
 8 would feel so strongly about the comments made that
 9 that public official -- Chris will pass out this
 10 affidavit to each one of you on council -- that that
 11 public official states under oath subject to the
 12 penalties of perjury that as recently as September
 13 3rd, 2004, which I believe is Friday, he had a
 14 conversation with the president of council, and
 15 Mr. Snyder, the president of council, said that when
 16 he becomes the mayor of North Canton, he hopes to
 17 have an amicable relationship with Plain Township.
 18 When he becomes the mayor. All he has to do is
 19 orchestrate these proceedings and he can become the
 20 mayor.
 21 And what did this other public official say
 22 and think about a procedure and a proceeding where a
 23 person has the power to remove someone else so he can
 24 become the mayor? He said what each and every one of
 25 us would say. "My impression from our conversation

1 was that Mr. Snyder has already decided that he will
 2 soon be the next mayor of North Canton, and I found
 3 Mr. Snyder's comments about his being mayor to be
 4 inappropriate." And this is sworn under oath. And
 5 if anyone in this room has any doubt that those are
 6 inappropriate, then we're from a different planet.
 7 Now, in addition to that, I would also submit
 8 that there will be testimony under oath, and here we
 9 have the affidavit of Kathy Magel, who has served
 10 reasonably and honestly as a councilperson here.
 11 MS. KIESLING: Yeah.
 12 MR. PLAKAS: And her testimony under oath is
 13 and will be --
 14 MR. SNYDER: This is not germane to the
 15 charges.
 16 MS. KIESLING: Yeah, that's for sure.
 17 MR. PLAKAS: Excuse me?
 18 MR. SNYDER: Sir, I'm not on trial here.
 19 This is not germane to the hearing.
 20 MR. PLAKAS: I thought I heard Mr. Pusateri
 21 made a point that the issues in this case include the
 22 credibility of the witnesses. You will be a witness
 23 in this case. As part of the process to get to the
 24 truth of that, this community deserves the right to
 25 know about your credibility and your motivation and

1 why things are happening --
 2 MR. PUSATERI: Mr. Plakas --
 3 MR. SNYDER: We will allow no outbursts, no
 4 clapping. Please. This is a hearing. Please honor
 5 the decorum, deportment of said hearing.
 6 MR. PLAKAS: Mr. Snyder, the difficulty in
 7 these proceedings that may be, I hope that you start
 8 to glean, is that as the, the judge, the jury, the
 9 prosecutor, the witness, you are on trial just like
 10 every other witness who walks into any valid
 11 courtroom is on trial. So you can't have it both
 12 ways. There's a way to not do that, and normally
 13 what happens in civilized society is someone in your
 14 position who will gain directly from this proceeding
 15 steps back, recuses himself and says to the
 16 community, There's enough facts here, you don't need
 17 me to orchestrate this, I rely on the rest of my
 18 council members to do the right thing, and that's the
 19 way to do it. Otherwise, I have a right, Mayor Rice
 20 has a right, but more importantly these citizens have
 21 a right to delve into everyone's credibility and
 22 motivation. Doesn't that seem fair to you?
 23 MR. SNYDER: Yes, sir, if I have an
 24 opportunity to refute it I have no problem. I'm
 25 realizing these affidavits are the statement of two

1 people and that's their opinion. Swearing it under
 2 oath is not necessarily meaning that they are true.
 3 MR. PUSATERI: Let me interrupt here, too,
 4 Mr. Plakas. I've allowed you to elaborate on these
 5 issues in your opening statement, not simply as the
 6 opening statement, but I mean, you guys, this hearing
 7 goes forward on these types of issues I will advise
 8 council not to allow that type of questions.
 9 Mrs. Magel will testify what she heard from
 10 Mr. Snyder are not relevant to the case. These are
 11 the exact issues that were litigated yesterday before
 12 Judge Brown and he dismissed your claim.
 13 MR. PLAKAS: He actually did not because he
 14 didn't allow Ms. Magel to testify.
 15 MR. PUSATERI: Let me finish my statement,
 16 please. You can finish those issues before the
 17 court. They are not relevant to the six charges that
 18 are at hand today. I understand the credibility
 19 issue, and if we get to that and where you question
 20 his credibility as to the testimony we'll deal with
 21 that as we go, but to question the panel itself and
 22 the council itself at this point as to their
 23 motivation, Judge Brown said yesterday it is not
 24 relevant as to the case I cited in my brief. This
 25 was a case where the individual was removed and the

1 person sitting on the council that removed herself
2 because it was an ex-spouse of hers. So that is not
3 constitutional so that's not an issue of this case.
4 Once again it's an opening statement so I'll allow
5 you to continue.

6 MR. PLAKAS: Thank you.

7 MR. PUSATERI: I'll advise council when it
8 comes to testimony to limit that.

9 MR. PLAKAS: And the reason that these issues
10 that I just raised prior to the interruption are
11 relevant is because the charter of North Canton
12 itself, Section 6.01, states that no elected or
13 appointed officer shall have any financial interest,
14 direct or indirect, in any contract or proceeding.
15 No elected officer shall have a financial interest,
16 direct or indirect, in any proceeding to which the
17 municipality is a party. And if that occurs, the
18 proceedings can actually be declared voidable by the
19 mayor.

20 MR. PUSATERI: But let me respond to that
21 quickly. That can be party of litigation. In
22 addition to that.

23 MR. PLAKAS: Mr. Pusateri, I'm raising that
24 because I'm going to ask the council to enforce their
25 own charter, and if in fact they believe that the

1 person, elected official who's a party to this
2 proceeding, Mr. Snyder, has a direct or indirect
3 financial interest in these proceedings, then
4 something's got to happen because that's what your
5 charge is. I mean, it's just plain English. So
6 that's why I'm raising it at the end of my remarks.
7 I'll make that in the form of a motion. If
8 Mr. Snyder decides to recuse himself, that's fine and
9 you and I don't have to argue it.

10 MR. PUSATERI: I understand, but the point
11 being is we're not here today and this hearing is not
12 concerning any charges against Mr. Snyder. The
13 charges here are against Mayor Rice by council. If
14 there's a later date there's another hearing in the
15 future against Mr. Snyder concerning these issues
16 then those issues and those questions will be
17 relevant, but they're not to this particular
18 proceeding.

19 MR. PLAKAS: Well, I guess --

20 MR. PUSATERI: If you want to finish your
21 opening statement.

22 MR. PLAKAS: Sure. Since you raised
23 something in the midst of my opening statement I
24 thought I'd respond. I guess in fairness I think you
25 would agree the issue of what are relevant or not are

1 not something that are spelled out or either you or I
2 to be able to look at what's relevant is what
3 Mr. Snyder apparently thinks is relevant as well as
4 what the rest of the councilpeople think is relevant,
5 so therefore you and I both know we're in uncharted
6 waters on this.

7 MR. PUSATERI: I don't disagree we're in
8 uncharted water, but you and I both know we've tried
9 cases before, we know what's relevant issues and what
10 is not. I'll be advising council throughout what is
11 relevant through each of these issues.

12 MR. PLAKAS: For the Record, Mr. Pusateri has
13 already heard, but we will just for the purposes of
14 the Record and historical review as we go forward
15 identify that we hereby do in fact object to these
16 proceedings for a number of reasons, and those
17 include the inapplicability, vagueness and ambiguity
18 of Section 5.06 of the North Canton city charter and
19 any proceedings thereunder. We object because the
20 standard utilized in these proceedings and the
21 standard for the ultimate determination violate due
22 process and are void for vagueness. We object
23 because they fail to comply with the statute that we
24 previously made a reference to, and that's 733.72.
25 We object because we believe that there's other

1 properly constituted bodies that do in fact have
2 jurisdiction and can in fact give this body guidance
3 that haven't been utilized, and those include, but
4 are not limited to, the Ohio Ethics Commission, the
5 Ohio Election Commission, as well as reiterating the
6 probate court. We object because we believe that the
7 proceedings will be tainted because of conflict of
8 interest as previously noted. And also because of
9 the bias and prejudice and the statements that taint
10 these activities made by a councilperson previously
11 noted and the president of the council.

12 We believe that the proceedings are invalid
13 because of the procedural deficiencies of Resolution
14 89-04 wherein the ultimate resolution passed was not
15 that presented initially to council, and we've
16 presented that previously to Mr. Pusateri. We object
17 because these proceedings, especially in regard to
18 the last two charges added, violate the Sunshine Law
19 because the last two charges are the result of open
20 deliberation of council but only a portion of council
21 and Mr. Snyder then directed the law director to add
22 those two.

23 We object because although the charter makes
24 provision for providing legal counsel to the mayor or
25 any official in issues arising out of their public

1 duties, that legal counsel has not been provided. We
 2 object and have raised the issue with regard to the
 3 insurance company for the city not providing
 4 reimbursement for legal expenses. And just to, to
 5 shorten this, Mr. Pusateri, I've noted then for the
 6 Record and I think we can agree that we don't have to
 7 go into greater detail than that and we can submit to
 8 you documents that confirm and contain in more detail
 9 the objections that we have.

10 MR. PUSATERI: That is fine. And each one of
 11 those issues were litigated yesterday before Judge
 12 Brown.

13 MR. PLAKAS: So the answer to my office is
 14 fine.

15 MR. PUSATERI: Sure, that's fine, and those
 16 are issues that you can take up with the appellate
 17 court.

18 MR. PLAKAS: Okay.

19 MR. PUSATERI: That's not what we're
 20 litigating here in this hearing.

21 MR. PLAKAS: Finally we object because it's
 22 clear no crime has been committed. There's been no
 23 citation from the ethics commission, there's been no
 24 violation of Ohio's election laws. For all those
 25 reasons we respectfully subject -- suggest that the

1 only thing that Mayor Rice has done wrong, ladies and
 2 gentlemen of council, is he's fallen out of your
 3 political favor. Accordingly we would request that
 4 these proceedings be dismissed. Alternatively we
 5 would request at this moment that the president of
 6 council, Mr. Snyder, withdraw or recuse himself from
 7 these proceedings. And also similarly we would
 8 request that Councilperson Kiesling also withdraws or
 9 recuses herself from these proceedings.

10 MR. PUSATERI: Mr. Plakas, maybe I should
 11 suggest we make these affidavits exhibits if you want
 12 to. Exhibit 8 and 9, just to have them for the
 13 Record, would that be fine? So we'll make Lou
 14 Giavasis Exhibit Number 8, is that fine, and Kathleen
 15 Exhibit Number 9, and add those to the Record and
 16 I'll make sure I get a copy to the court reporter so
 17 she has them for the Record.

18 I don't know if council have any comments to
 19 make. There are seven of you so I would hope that it
 20 would be short and sweet comments if you're going to
 21 have any comments.

22 MR. SNYDER: The only thing I would like to
 23 say is, number one, Mr. Plakas is certainly noted in
 24 the Record and I have no intention of recusing myself
 25 from this hearing. Mrs. Kiesling?

1 MS. KIESLING: No, I do not.

2 MR. SNYDER: And we have no intention of
 3 dismissing the charges other than that this is not a
 4 criminal hearing, there are no charges being brought
 5 or against the mayor. This is a hearing against
 6 Section 506 of the City of North Canton and by vote
 7 of council we feel that we have the authority to move
 8 forward.

9 In 1960 when the charter was written, it was
 10 written in there that it gives the power to the
 11 council to police its own elected officials. As the
 12 council and the mayor are elected by the public to do
 13 the business of the public, and we felt at that time
 14 by a majority, more than a majority vote that we
 15 would move forward with the charges as so noted.

16 My only question before I proceed, relative
 17 to the order of charges, Mr. Pusateri, is it your
 18 wish, sir, that we finish one charge at a time or
 19 that each question by council members include all six
 20 charges and move and defer to the next one?

21 MR. PUSATERI: I think that's the better way
 22 to do, each council member have questions. That's
 23 the way I would do it.

24 MR. SNYDER: We move along, so each time a
 25 member of council questions a witness they would

1 question if the witness is relative to all six
 2 charges, that would be fine?

3 MR. PUSATERI: I believe there would be only
 4 a few witnesses, if not just one, that would concern
 5 all six charges.

6 MR. SNYDER: But we could continue with that.

7 MR. PUSATERI: I agree. With that we can
 8 call the first witness unless Mr. Plakas, anything
 9 else you would like to cover before we start?

10 MR. PLAKAS: I think I've covered it, thank
 11 you.

12 MR. PUSATERI: All right. You're welcome.
 13 Mr. Held is the first witness and he's here pursuant
 14 to subpoena that I personally served on him, and if
 15 anyone wants to see the return of service on that
 16 subpoena it's with the clerk of council.

17 MR. SNYDER: Okay. Good evening, Mr. Held.

18 THE WITNESS: Good evening.

19 MR. PUSATERI: Mr. Held, Mr. Snyder will read
 20 that oath and you need to affirm that.

21 MR. SNYDER: Would you stand and raise your
 22 right hand. Do you swear that the testimony you're
 23 about to give in this hearing will be the truth, the
 24 whole truth and nothing but the truth so help you
 25 God?

1 THE WITNESS: Yes, sir.
 2 MR. SNYDER: Do you affirm that?
 3 THE WITNESS: Yes, sir.
 4 WHEREUPON,
 5 DAVID J. HELD,
 6 who, having been first duly sworn, testified as
 7 follows:
 8 MR. SNYDER: Please state your name and
 9 address and employment for the Record, sir.
 10 THE WITNESS: David Held. 458 Dillon Circle,
 11 North Canton, Ohio, 44720.
 12 MR. PUSATERI: At this point then I'll ask
 13 some foundational questions.
 14 MR. SNYDER: Please.
 15 DIRECT EXAMINATION
 16 BY MR. PUSATERI:
 17 Q Mr. Held, do you have a copy of the charges?
 18 A Yes, I do.
 19 Q I provided you a copy. It would be a help if you
 20 pulled those out and looked at those as I asked some
 21 questions of you.
 22 Okay, you have a copy of the charges?
 23 A Excuse me, Mr. Pusateri. For the Record, I'd like to
 24 be stated I was given a subpoena this afternoon to
 25 appear by the law director, Mr. Pusateri, at 12:10

1 p.m. this afternoon. He hand delivered that to me.
 2 States for the Record, Before the council and the
 3 City of North Canton subpoena for hearing to
 4 investigate allegations of misconduct of Mayor Thomas
 5 Rice to David Held. You are required to appear and
 6 testify before the North Canton city council in the
 7 matter of the removal hearing of Mayor Tom Rice on
 8 September 8, 2004, at 5 p.m. in the North Canton
 9 council chambers in the North Canton city council.
 10 Herewith do not fail under penalty of law. In
 11 witness my hand of council of the City of North
 12 Canton this 8th day September, 2004. Thank you.
 13 Q I'm kind of behind you in asking questions, so if you
 14 just face council, don't worry about looking at me
 15 when I ask questions.
 16 A Okay.
 17 Q And these are just foundational questions. I'm going
 18 to go through some of the paragraphs in the charges
 19 and just to establish what your testimony is and more
 20 specific questions will be coming from council.
 21 A Okay.
 22 Q So what you are going to be looking at is now Exhibit
 23 7 to the Record and that is the charges. So if you
 24 could turn to page 15 of the charges we're going to
 25 start with the Charge 1, this concerns the hiring,

1 retaining, protecting a city employee.
 2 A Yes, sir.
 3 Q Okay, look at page 84. That paragraph states that
 4 "According to then law" -- or sorry. "According to
 5 then city administrator, David Held, Mayor Rice
 6 insisted on the hiring of an employee by the name of
 7 Michael Hickey without going through the proper
 8 employment process." Do you recall that to be
 9 accurate?
 10 A I would like to elaborate on that.
 11 Q More than welcome to.
 12 A With the -- previous to myself taking the position of
 13 city administrator there was a city employee that was
 14 charged and convicted of contaminating the water
 15 supply. I'm sorry, let me correct that. There were
 16 allegations that had taken place at that time. He
 17 was not charged. The hiring process that we had I
 18 did not feel was adequate so I had modeled a hiring
 19 process -- shortly after I took the position in
 20 December of 2001 I had modeled a hiring process after
 21 our police department. And if I remember correctly,
 22 the only thing we left out of that process were the
 23 going to the homes of the applicant, homes of friends
 24 and so forth to get character assessment. We did
 25 follow that process, with the only exception of

1 checking into ODOT where Mr. Hickey was presently
 2 employed.
 3 And when I had brought that to the mayor's
 4 attention, he felt that it was not proper to check
 5 into Mr. Hickey's present employer. He mentioned to
 6 me that I should know that as an administrator and
 7 that I needed to make sure to get this done. Because
 8 I was dragging my feet too long.
 9 Q Okay. Are you finished then?
 10 A Yes.
 11 Q Now turn your attention to the next paragraph,
 12 Paragraph 85. You probably don't know the fact, and
 13 you have right next to you on the top of your
 14 briefcase the exhibits -- well, no, you don't.
 15 Excuse me. What's been already marked as Exhibit,
 16 Exhibit 1 and given to the court reporter, for the
 17 Record does it not show that Mr. Hickey was hired on
 18 March 25th, 2000?
 19 A What exhibit am I looking at?
 20 Q That's Exhibit 1A. That's the front page right
 21 there.
 22 A Yes, that's, that's correct.
 23 Q Okay.
 24 A That's what the record shows.
 25 Q When you look at Paragraph 86, it charges, it states

1 that, that according to Mr. Held, the proper
 2 background checks were not completed on Mr. Hickey
 3 before his hiring into the City of North Canton. I
 4 think you've already answered this question. Do you
 5 have anything else to elaborate from that paragraph?
 6 A Yes. The procedure itself was carried out by the
 7 administrative assistant, Kim George, who, who
 8 actually did the work of checking the employment and
 9 went through the process. And but again to my, if I
 10 recall correctly, the one area that we did not follow
 11 up on was with ODOT. There may have been a check but
 12 I would have to defer to Ms. George as to whether or
 13 not we even checked that he was employed there or
 14 not.
 15 Q Then Paragraph 87 indicates Mister -- Mayor Rice
 16 instructed Mr. Held not to complete the background
 17 check on Mr. Hickey and to hire him. Is there
 18 anything else to that?
 19 A No. Again, that was a point of contention with
 20 myself and the mayor, again because I was overly
 21 concerned that we weren't being as thorough as we
 22 possibly could and I wanted to proceed with the ODOT
 23 check, but there was certainly a sense of urgency on
 24 the mayor's behalf to complete the process and to my
 25 recollection he stated that I was dragging my feet on

1 this.
 2 Q Okay. If you just read down to the next paragraph
 3 that states that since his employment with the City
 4 of North Canton, Mr. Hickey has been involved in
 5 various inappropriate activities. Are you aware of
 6 any inappropriate activities that Mr. Hickey has been
 7 involved in?
 8 A Inappropriate activities. I'm assuming you're
 9 referring to interaction with city employees?
 10 MR. PLAKAS: I'm not sure who to object to.
 11 I don't know, I'm not sure what it reveals is hiring
 12 someone without a background check and now we're
 13 going into some parties' allegations of charges with
 14 Mr. Hickey. Is Mr. Hickey on trial too?
 15 MR. PUSATERI: Objection noted, I guess.
 16 It's my understanding that there were inappropriate
 17 activities that Mr. Hickey was involved in and not
 18 properly disciplined on as the charge enumerated and
 19 that was found by Mr. Forchione to be the case. So I
 20 think it's relevant to this.
 21 MR. PLAKAS: If we can, what I would like in
 22 this proceeding, as I understand it the president of
 23 council is the person that rules on these things so
 24 in those situations where issues come up, evidentiary
 25 issues or procedural issues, I think it's fair to

1 have the president of council for the Record make
 2 those determinations, if that's what this procedure
 3 is.
 4 MR. PUSATERI: That's fine. But I'll advise
 5 him and I'll advise him on the basis of the
 6 questioning, and if Mr. Snyder would like to continue
 7 the line of questioning we'll go forward.
 8 MR. SNYDER: I believe that the charge was
 9 stated was that it was protecting, hiring --
 10 inappropriately hiring and protecting the employment
 11 of an employee outside of the scope of North Canton
 12 city charter and North Canton rules relative to
 13 discipline and relative to disciplinary action to be
 14 taken. As well as the actual hiring process of that
 15 employee. So with that I will continue to allow him
 16 to continue but your objection is surely noted, sir.
 17 MR. PUSATERI: Sure. At this point I'll
 18 defer to Mr. Plakas and not ask the specifics of
 19 those inappropriate activities and allow council to
 20 ask those questions in their specific questions.
 21 BY MR. PUSATERI:
 22 Q But at this point, Mr. Held, I'll just ask you simply
 23 were you aware of various inappropriate activities
 24 that Mr. Hickey was involved in while he was employed
 25 with the City of North Canton?

1 A Yes.
 2 Q Okay. And we'll skip Paragraph 89 and we'll skip to
 3 Paragraph 90 and allow specific questions from
 4 council to ask those questions. My question then is
 5 Paragraph 91 of the charge states that Mr. Hickey was
 6 not reprimanded or demoted in any way for these
 7 inappropriate activities. Is that your memory,
 8 without going into detail of that, of the particular
 9 instances?
 10 A In some instances there was not a reprimand. In all
 11 instances there was no demotion. In one particular
 12 circumstance to my memory there was a disciplinary
 13 letter that was sent by Joe Olesky of the street
 14 department.
 15 MR. PUSATERI: Okay. Now I'll allow council
 16 to ask more specific questions on those particular
 17 instances.
 18 MR. SNYDER: Thank you.
 19 MR. PUSATERI: Sorry.
 20 MR. SNYDER: Thank you.
 21 DIRECT EXAMINATION
 22 BY MR. SNYDER:
 23 Q Mr. Held, for the Record, sir, prior to your present
 24 employment you were employed by the City of North
 25 Canton.

1 A That's correct.
 2 Q And what capacity, sir, was that?
 3 A As the city administrator.
 4 Q And how long did you hold that position?
 5 A From December 1st, 2001, till --
 6 Q And you did in fact leave at your own volition, I
 7 guess, didn't you?
 8 A No, I was let go by Mr. Rice.
 9 MR. PUSATERI: Mr. Snyder, maybe you
 10 misunderstood. Let me go through all the charges.
 11 MR. SNYDER: I didn't.
 12 MR. PUSATERI: Let me go through and
 13 establish why he's here and what charges he's going
 14 to testify to and I'll allow you to.
 15 MR. SNYDER: Please continue, Mr. Pusateri.
 16 MR. PUSATERI: That's fine.
 17 BY MR. PUSATERI:
 18 Q So if I turn your attention now, Mr. Held, to page 8
 19 of the charges, this will deal with the second charge
 20 we're dealing with this hearing and mayor's
 21 willfully, knowingly pressuring employees to buy
 22 fund-raising tickets. Paragraph 39 states that
 23 according to the Forchione report that Dave Held
 24 claims he was pressured by Mayor Rice to sell
 25 fund-raising tickets for the mayor's campaign and at

1 one time was forwarded 50 tickets to sell.
 2 A That's correct.
 3 Q Once again I'll allow council to elaborate on the
 4 specific charge.
 5 A Actually there were two occasions.
 6 Q Okay. Paragraph 40 states that Mr. Held advised Mr.
 7 Rice the employees were not interested in buying
 8 tickets. I guess there's something missing here.
 9 Was there a direction by Mayor Rice for you to sell
 10 tickets to employees?
 11 A Yes.
 12 Q Okay. I'll allow council to ask more specific
 13 questions.
 14 Paragraph 41, Mr. Held stated to Attorney
 15 Forchione that Mr. Rice threatened the employees, in
 16 particular Mr. Held stated that Mr. Rice told
 17 Mr. Held to tell the employees that they work at the
 18 pleasure of the mayor. Is that consistent with your
 19 memory, Mr. Held?
 20 A Yes. On the first statement Mr. Held stated to
 21 Attorney Forchione that Mr. Rice threatened the
 22 employees. There were a number of occasions, it was
 23 very consistent, that I was told by Mr. Rice to tell
 24 the employees that they worked at the pleasure of the
 25 mayor. That was repeated weekly. Sometimes daily

1 basis. That was made crystal clear to me.
 2 And as far as the first line, Mr. Held stated
 3 to Attorney Forchione that Mr. Rice threatened the
 4 employees. The threats, I would have to say I cannot
 5 recall the direct threats to other employees unless
 6 they were present with some of my discussions with
 7 Mayor Rice. But I know that it was stated on, on a
 8 regular basis, and I know that there were a number of
 9 employees, two or possibly three, that were very
 10 aware that the mayor had stated to me and were
 11 witness to that, Tell the employees that they work at
 12 the pleasure of the mayor, which is clearly
 13 understood.
 14 Q Was that related, in relation to also selling
 15 fund-raising tickets?
 16 A Oh, yes.
 17 Q Paragraph 42 of the charges states that at one time
 18 when the statement was made the city engineer, Jim
 19 Benekos, was present. Do you concur with that
 20 paragraph?
 21 A Yes.
 22 Q Paragraph 43, it appears you elaborated on that where
 23 that phrase, Tell the employees that they work at the
 24 pleasure of the mayor, was repeated frequently?
 25 A Yes, that's correct. It was frequent.

1 Q Now if you turn to the third charge, the third charge
 2 is mayor willfully, knowingly using his office to
 3 promote a political action committee.
 4 A What page?
 5 Q Page 12, I believe. I'm sorry. And Mr. Held, I'll
 6 tell you I don't know if you know anything about this
 7 or not, that's why I'm asking you to see if this is
 8 something you'll testify to or not. So and I don't
 9 believe in these charges it states anything here
 10 about you knowing anything about this, and if you
 11 don't that's what we need to find out now.
 12 So in a general, general impression are you
 13 aware of this political action committee that Mayor
 14 Rice was involved in creating?
 15 A Yes.
 16 Q Okay. And so Paragraph 64 indicates Mayor Tom Rice
 17 led a group to discourage citizens from signing a
 18 referendum petition. Do you see that?
 19 A Well, there was certainly an initiation of the
 20 political action committee by Mr. Rice.
 21 Q I would also hope that constructive that you testify
 22 from your own personal knowledge on this subject.
 23 Once again, in the charges when I put together I
 24 didn't see where you were associated with this, but
 25 if, if you have information you can then --

1 A The political action committee began with Mr. Rice
2 from city hall. Yes, I do know that.
3 Q You know that firsthand knowledge?
4 A Firsthand.
5 Q Do you know, just a general question, you can read
6 these paragraphs if you want, but did Mayor Rice use
7 his office to promote -- the office of mayor to
8 promote a political action committee?
9 A In the beginning the mayor wanted to send a letter to
10 the residents discouraging them from signing the
11 petition that was being circulated and I had advised
12 that I didn't think that he was able to do that. And
13 so shortly after he had discussed this sending out a
14 letter from the mayor's office discouraging the
15 residents from signing the petition I had called
16 Chuck Matthews at the board of elections and asked
17 him if that was proper to do so and he said
18 definitely not. That if -- there should not be any
19 sort of political activities come out of city hall.
20 MR. PLAKAS: President Snyder, if I may, and
21 I don't know if you have ruled on the evidentiary
22 procedure. I would object to third-party hearsay
23 statements. For, you know, 200 years our country's
24 consistent, every court that's ruled on it has
25 determined that they're not reliable. An example is

1 a third-party statement that Mr. Held just testified
2 to. There's no way of knowing without bringing that
3 person in whether or not they said that, so I would
4 respectfully request that you, in the interests of
5 fairness and the integrity of this hearing, suggest
6 to the -- any questioner, including Mr. Pusateri and
7 the witnesses, that they refrain from third-party
8 hearsay statements.
9 MR. SNYDER: Sir, I do appreciate your
10 statement. Mr. Pusateri, sustain your objection.
11 Mr. Pusateri -- Mr. Held, please refrain from
12 testifying about things you did not see yourself.
13 MR. PUSATERI: Let me state this hearing is
14 not as formal as trial setting but I certainly agree
15 with Mr. Plakas against getting into hearsay is a
16 dangerous avenue to go to. I would suggest that
17 council has witnesses testify as to their personal
18 knowledge. So --
19 A Okay. Well, shall I go on?
20 Q Yes, you can go on.
21 A So after my phone call to the board of elections I
22 advised the mayor that it wasn't, certainly that
23 would not be proper for us to do that, that political
24 action committee would have to be initiated, and he
25 asked that I do it. I felt it was not proper for me

1 to do it because I was the city administrator. Then
2 he told me that my wife should do it, and I said I
3 didn't want her to do that either. And then he
4 stated to me that, I don't remember the exact quote,
5 but he'd find somebody else.
6 Q Okay. Council can follow up with questions on this
7 particular charge.
8 Let's move to the fourth, fourth charge. It
9 starts on page 14 of the charges, Mr. Held. States
10 that the mayor willfully, knowingly sold fund-raising
11 tickets to employees during work hours. Do you have
12 personal knowledge of that fact?
13 A Mayor Rice had given me fund-raising tickets at city
14 hall to sell. If I remember correctly, there was a
15 stack of 50 of them with a rubber band on them and
16 they were \$25 apiece and I was told -- and they were
17 numbered, as to what tickets they had a specific
18 number on them and there was a list that was kept by
19 the mayor's administrative assistant, Kim George. As
20 to what tickets I had and what numbers were on them
21 and any tickets were not sold I was instructed to
22 return them.
23 Q Did Mayor Rice instruct you to sell those to
24 employees?
25 A Yes.

1 Q In this charge, look at Paragraph 77 and 78. States
2 that there's a particular employee, Mike Hickey, was
3 selling these tickets to employees, and also
4 Paragraph 79. Were you aware of Mr. Hickey selling
5 these fund-raising tickets?
6 A Yes. It was brought to my attention that that was
7 taking place.
8 Q And who brought that to your attention?
9 A Kim Cooksey had brought it to my attention, and then
10 I followed up with Joe Olesky. He was less specific
11 on what was taking place and stated he made it clear
12 to everybody that -- okay, I'm sorry.
13 MR. PLAKAS: Your Honor. Mr. President.
14 MR. SNYDER: Again, that's a third party,
15 sir.
16 A Okay. So yes, it was brought to my attention that
17 there were tickets being sold and I did discuss that
18 with city employees that that was taking place.
19 Q Okay. Mr. Held, I'll now focus your attention on the
20 fifth charge, that's the mayor willfully and
21 knowingly nondisclosure of relationship with the law
22 firm of Johnson & Angelo.
23 A What page is that?
24 Q Starting with page 6. And the gist of this charge is
25 that Mayor Rice had a separate relationship with this

1 law firm and didn't disclose it to the city but yet
2 promoted the hiring of this law firm to deal with the
3 labor negotiations in 2003. And I'd ask, instead of
4 going through each one of these paragraphs, what is
5 your knowledge of that situation? Do you have
6 knowledge. First of all, do you have knowledge of
7 that situation?

8 A Yes.

9 Q Okay. At the time when this firm, Johnson & Angelo,
10 was hired to negotiate the labor contracts, did you
11 know that Mister, or Mayor Rice had a separate
12 relationship with this law firm via Jack DeSario?

13 A I know that there were discussions and that there
14 were meetings but I was not aware of a contractual
15 relationship between Jack DeSario and Mayor Rice.
16 That was on the political end and my responsibility
17 was on the administrative end, and Mayor Rice and
18 myself certainly agreed on a number of occasions that
19 I was on the administrative end and on the political
20 end I felt it was not in my area of responsibility.

21 Q Okay. At some point you found out later that Mayor
22 Rice had actually entered into a contract with Jack
23 DeSario for campaign services?

24 A That's correct.

25 MR. PLAKAS: Your Honor, if I may

1 respectfully, I would respectfully suggest that, that
2 counsel refrain from leading a friendly witness.
3 Generally we have a very good outline and I think the
4 procedure is fair if the witness is asked do you know
5 about this subject rather than leading the witness
6 into confirming the statement made here. I think the
7 witness appears to be someone that can read the
8 listing and he can very quickly answer yes, I do
9 know, or I don't know.

10 MR. SNYDER: All right, sir.

11 MR. PUSATERI: At this point I'm just trying
12 to establish foundation. Council can ask questions
13 after. I'll move on to the Charge 6. And council
14 can follow up with specific questions on that charge.

15 (Mr. Lindower leaving room.)

16 BY MR. PUSATERI:

17 Q Charge 6 goes with the mayor willfully, knowingly
18 attempting to acquire what's known now as the Heiser
19 property without disclosing his attempt to purchase
20 or acquire this property to the city. And again, I
21 don't know if you were aware of the situation as it
22 was taking place, Mr. Held. I don't mention your
23 name anywhere in the charges, I haven't seen anything
24 in Mr. Forchione's report indicating your knowledge
25 of this as was taking place. But to establish what

1 your testimony is going to be tonight, do you know
2 anything about this, did you know anything about this
3 as it was taking place?

4 A Mr. Rice brought it to my attention that he had a
5 desire for a small section of the Heiser property.
6 It was part of a larger section, I believe it was
7 eight acres that was in the process of being donated
8 to the city. And if I remember correctly it was in
9 April, possibly the beginning of May of that year
10 that he made it clear to me that he was going to take
11 some action legally to obtain the property by adverse
12 possession and that it was important that it be done
13 now rather than after the property was donated to the
14 city because then it wouldn't make that transaction
15 possible.

16 (Mr. Lindower returning.)

17 MR. PUSATERI: With that I do not have any
18 more foundational questions. I think we understand
19 now what Mr. Held's testimony will deal with
20 basically, the foundation of it, and now we'll turn
21 it over to council to ask specific questions. I have
22 not determined how, you know, who will ask questions
23 first. But Mr. President, you can make that
24 determination on each one of these charges but I
25 would suggest once again we follow the order of

1 charges so it's a clear Record.

2 MR. SNYDER: If it please council, I will ask
3 Mr. Held first and then at that point I would defer
4 to the right to Member Kiesling and so forth. Is
5 that comfortable? Thanks, Mr. Pusateri.

6 DIRECT EXAMINATION

7 BY MR. SNYDER:

8 Q Mr. Held, to finish my conversation, as I was a
9 little zealous in beginning my questioning of you,
10 you said you were left go by the city?

11 A By Mayor Rice.

12 Q Is there reason given why you were?

13 A Formally? No, he just handed me a letter that said
14 that, that he was relieving me of my duties.

15 Q Okay. Let me draw your attention to the first
16 charge. The mayor willfully, knowingly, unlawfully
17 hiring and retaining and protecting an employee,
18 being one Mr. Michael Hickey. Are you familiar with
19 the charges in North Canton that states that the
20 administrator will hire department heads and the
21 people under the department heads in the City of
22 North Canton?

23 A Yes, I realize that's in the charter.

24 Q That's normally the procedure, sir, is that the
25 members of the city's staff are charged under the

1 mayor are hired by the director of administration?
 2 A Yes.
 3 Q Then you mentioned that you did institute a hiring
 4 process prior to the hiring of Mr. Hickey?
 5 A Yes.
 6 Q Prior to the hiring of Mr. Hickey your knowledge was
 7 there was someone that either the department head,
 8 that being the Building and Grounds, I believe he was
 9 hired in the Department of Recreation, Park and
 10 Recreation, had someone in mind for that position?
 11 A Well, according to the labor agreement, we need to
 12 consider internal candidates for any position that is
 13 posted. And if I remember correctly, there were two
 14 internal candidates that had put in a letter of
 15 intent for that position. And one gentleman was from
 16 the water treatment plant and another gentleman was a
 17 part-time fire fighter.
 18 Q Now, sir, have you any independent knowledge of any
 19 relationship, this would be knowledge that you know
 20 of yourself, not thirdhand information, where the
 21 mayor was, was friends or social friends of
 22 Mr. Hickey or Mrs. Hickey?
 23 A Yes. As I understand he had long-standing
 24 relationship with, with the family. For a number of
 25 years.

1 Q Okay. Now, it states in here that Mr. Hickey's
 2 employment record, he was hired I believe the 20th
 3 day of March 2002. Normally when an employee is
 4 hired the order goes to the Department of Finance to
 5 Jeff and set up wages and so forth, all that
 6 information?
 7 A Yes, that's correct.
 8 Q And that order is executed, sir, with your signature?
 9 A That's correct.
 10 Q Now, do you normally sign that longhand?
 11 A Yes. Or initial it.
 12 Q I notice that the Exhibit 1, 1E does just have an
 13 initial. If you would look to that, that is your
 14 initial, sir?
 15 A Well, when I first took a look at this I was, I mean
 16 that's certainly not typically how I initial things.
 17 I mean, if you look back at some of the other areas,
 18 I mean I have initialed thousands of documents while
 19 I was here and for the most part I'm fairly
 20 consistent with how I initial things. But I was, I
 21 definitely questioned whether or not that was my, my
 22 initials from myself because I also had a document,
 23 and I'm curious to know what is in Mr. Hickey's
 24 present file, but as I understand through the course
 25 of events there was the hiring and the payroll notice

1 also had one with my signature stamp on it on March
 2 20th, 2002, and I'm not sure what copy is in the
 3 payroll office and what copy is in Mr. Hickey's
 4 personnel file but I know that there are two copies,
 5 one that I have with me here and this one here.
 6 There's definitely two of them on that date. One
 7 with a signature stamp and one with an initial.
 8 Q Okay. And it was normally your process to stamp
 9 those hirings or do you sign them?
 10 A Oh, no, I like to sign them. Certainly I think it's
 11 important that my signature go on all the documents,
 12 especially something as important as hiring, hiring
 13 an employee. In some cases when you have a stack of
 14 them like hiring part-time employees such as
 15 lifeguards and summer workers I know on one occasion
 16 I had authorized Kim George to utilize my signature
 17 stamp, if I remember correctly, but I was very
 18 careful about that. And but for the most part I like
 19 to initial it myself or sign.
 20 Q Okay. Coming back to the actual hiring of
 21 Mr. Hickey, were you instructed by Mayor Rice to hire
 22 Mr. Hickey?
 23 A Yes. He made that very clear.
 24 Q And you were instructed also by Mayor Rice to halt
 25 the general policy that you had instituted as far as

1 background check of new employees?
 2 A Well, I wanted to pursue ODOT and do a reference
 3 check from ODOT, and that's when Mayor Rice made it
 4 very clear to me that I should not proceed with that.
 5 Because it was Michael Hickey's present employer and
 6 it was not necessary and I should know better.
 7 Q Did you question Mayor Rice's intent at that point
 8 or --
 9 A Well, I wasn't comfortable with it myself, I made it
 10 clear I wasn't comfortable with that, but there was
 11 certainly a sense of urgency on his behalf to get him
 12 hired. Because again, it was dragging on too long,
 13 in his opinion.
 14 Q Was there normally a person in your position, the
 15 second-highest ranking official in the city, you
 16 could object to that and say, Well, that's just not
 17 the proper hiring procedure, but did you feel or did
 18 Mayor Rice articulate to you or put you in some
 19 position that you felt uncomfortable feeling
 20 compelled to hiring him outside the normal hiring
 21 process?
 22 A Well, Mr. Rice made it very clear to me and again on
 23 a weekly basis that I work at the pleasure of the
 24 mayor. He instructs me what needs to get done and I
 25 am to get it done. He made that very clear. Often

1 a, on a weekly basis.
 2 Q Even if it was outside the scope of the ordinances,
 3 charter and rules of the City of North Canton?
 4 A Well, I was always, it was my intention, there were,
 5 there were two objectives that I thought were primary
 6 in the City of North Canton. One is to follow the
 7 process. Critical to do that. Secondly, is to
 8 operate everything in a manner of full disclosure.
 9 Often times not productive, often times it's not the
 10 most efficient, often times these activities require
 11 a great deal of time. But I felt most comfortable in
 12 light of the situation that the city was in where we
 13 have the federal EPA that was investigating the city
 14 over the water contamination, the BFI, I was very
 15 nervous so I made it a regular habit of checking with
 16 the finance director, law director, keeping council
 17 members informed, and this was typically on a verbal
 18 basis. Just so that everybody was in the loop.
 19 On a regular basis in our department head
 20 meetings we had three objectives. Number one was
 21 safety. Number two, service -- safety to all the
 22 employees and safety to the residents. Number two,
 23 service to our employees and service to our
 24 residents, and finally number three, open
 25 communication. And then towards the second year that

1 I was working here we added cooperation. But it was
 2 driven home on a regular basis. And --
 3 Q After Mr. Hickey was hired in apparently March, I
 4 think a couple months, less than a couple months
 5 later did he have an incident with a backhoe?
 6 A That's correct.
 7 Q And the normal disciplinary procedure there would be?
 8 A I believe if I remember correctly that Kim Cooksey,
 9 he had expressed to me he wanted to put a letter in
 10 his file and I believe there was a letter in his file
 11 on that.
 12 Q Yes, I think you're referring to Exhibit 1H is a
 13 letter signed by Brad Hill?
 14 A Okay. I'm sorry, Brian Hill.
 15 Q Excuse me. Kim Cooksey and witnessed by Brian Hill?
 16 A Yes.
 17 Q Okay. Then to move along a little bit, and then in
 18 May of '03 were you approached by an employee in the
 19 finance department with a complaint relating to
 20 sexual harassment charge?
 21 A There was, it was brought to my attention by one of
 22 the employees in the finance department that there
 23 was a situation where --
 24 MR. PLAKAS: Your Honor.
 25 MR. SNYDER: Sir.

1 MR. PLAKAS: Third-party hearsay statements.
 2 MR. SNYDER: Okay. Thank you.
 3 Q Was there a complaint lodged?
 4 A As I understand there was a complaint that was
 5 certainly given to me face to face by an individual
 6 and but they requested that, that I not take any
 7 formal action other than transferring that
 8 individual, Mr. Hickey, out of the department. And I
 9 had encouraged that individual to, if there was a
 10 problem of that nature, because it did occur outside
 11 the normal work hours, it was on a Saturday if I
 12 remember correctly, that she file a police report.
 13 MR. PUSATERI: Let me interrupt. I'm sorry,
 14 Mr. President. As far as the hearsay exception,
 15 there is a hearsay exception as to police records.
 16 If there are business records that you could allude
 17 to that are more specific, those are --
 18 BY MR. SNYDER:
 19 Q There is another statement, a letter to Chief Grimes
 20 of the North Canton police department by Lieutenant
 21 Joe Nist who did take the statement of the
 22 complainant. And I refer to Exhibit 1, I believe
 23 that's, is that Z?
 24 MR. PUSATERI: I think it's J.
 25 MR. SNYDER: J.

1 MR. PUSATERI: Yes.
 2 Q And do you have that in front of you, Mr. Held?
 3 A Yes, I do.
 4 Q I believe that's the wrong one. I beg your pardon.
 5 It is letter J, yes. I was one ahead of myself.
 6 Addressed to you from Chief Grimes. Who did -- was
 7 that at your request that that be investigated?
 8 A Certainly I had made the statement to the individual
 9 that they needed to talk to the, the police
 10 department in the city of North Canton because I felt
 11 that there, it was important that there at least be a
 12 record of it. And I have read through this document
 13 and I find it to be accurate.
 14 Q Now, did you advise the mayor of this situation?
 15 A Yes.
 16 Q And he said to you, sir?
 17 A He felt that it was outside of the scope of my duties
 18 as administrator because it did not take place during
 19 city time. And that I better leave it alone or I'm
 20 going to have big problems.
 21 Q And what did you understand that to mean, you were
 22 going to have big problems?
 23 A That there would be, that I would be making a
 24 wrongful allegation against Mr. Hickey.
 25 Q Is there not policy in force at that time I believe

1 under Ordinance 89 any allegation made relative to
 2 sexual harassment, be it on the premises or off that
 3 there be an investigation?
 4 A There's not in the personnel handbook there's not,
 5 that is not noted. However, I understand it is noted
 6 as a city ordinance. Sexual harassment policy.
 7 Q Okay. And then we move along I believe in, that was
 8 in May or June. Approximately August of that same
 9 year did you have a resident call in and complain,
 10 make --
 11 MR. SNYDER: And there is a document, there
 12 is a complaint, is that outside the hearsay?
 13 MR. PUSATERI: Once again it's a document
 14 kept in the course and scope of business or in the
 15 function of a political entity and it's an exception
 16 to the hearsay rule. Council can hear that. If
 17 we're going to follow hearsay in detail we can refer
 18 to the specific comments in those documents because
 19 it is an exception to the hearsay.
 20 MR. SNYDER: Right.
 21 Q That would be Exhibit 1M and 1N. I believe they
 22 refer to that as an incident report?
 23 A It's call for service.
 24 Q Call for service. And then in your capacity as
 25 administrator were you advised of that situation?

1 A I'm sorry, advised?
 2 Q Either by the police department or by the resident or
 3 by Mr. Hickey's immediate supervisor?
 4 A Well, my recollection of the events is that this
 5 resident called Kim Cooksey at the park department
 6 stating that there was an employee that was not
 7 wearing a shirt on a mower and was, had chased or
 8 harassed her daughter. Who was walking their two
 9 dogs. And at that point as I remember, Mr. Cooksey
 10 advised the lady to call the city administrator,
 11 which was myself, and at that point he went out to
 12 check -- well, first off, as I understand, he had
 13 called Joe Olesky, the immediate supervisor. Was
 14 unable to get ahold of him, so then he went out and
 15 checked on Mr. Hickey and did see that he was driving
 16 the mower without a shirt on. But as I understood
 17 did not see any individuals in the area.
 18 Then shortly, well, simultaneously as that
 19 was taking place the lady did call my office, she was
 20 clearly upset and crying on the phone. And said that
 21 there was an individual, a city worker, and she
 22 described the individual, they didn't have their
 23 shirt on and had chased their daughter out of the
 24 park and yelling at them, yelling at her saying that
 25 she was not allowed to have dogs in the park. And

1 she asked me if that was true that we did not allow
 2 dogs in the park and I said, Well, no, of course not.
 3 Dogs are allowed in the park. And then she asked me
 4 if we had any personnel problems with this individual
 5 and she wanted to find out who it was, and of course,
 6 I was unable to answer her questions at that time
 7 because I just didn't have any firsthand knowledge.
 8 Q Okay. And again, did you make the mayor aware of
 9 that situation?
 10 A Yes.
 11 Q And his instructions to you?
 12 A He said he thought it was BS and that I better be
 13 real careful with allegations.
 14 Q And did he allude to who he thought was behind that
 15 situation?
 16 A His political enemies.
 17 Q Were these, this 15-year-old girl and her mother were
 18 his political enemies?
 19 A No, he felt that his political enemies put this lady
 20 up to this, and I stated that she was clearly upset
 21 and crying and I didn't think that that was the case.
 22 Q And at that time did you write this up and place it
 23 in his employment file?
 24 A No.
 25 Q And why not, sir?

1 A Because the mayor again reminded me that, that I
 2 better be very careful as to these sort of
 3 allegations because I have no evidence as to whether
 4 it was true or not and, and so clearly there was a
 5 point of contention between myself and the mayor as
 6 to how we go about it.
 7 But again I was uncomfortable as well because
 8 I wanted to make sure that we follow everything
 9 properly. It was a delicate situation because I
 10 didn't -- I wasn't there so I didn't see this
 11 situation happen. The only thing that I knew is
 12 there was a resident that was clearly upset and I
 13 wanted to show that we were taking it seriously, but
 14 at the same time I didn't want to infringe on
 15 Mr. Hickey and jump to any conclusions.
 16 So I did talk to Mr. Hickey about that and he
 17 stated to me that he didn't remember having -- he had
 18 written a letter in reference to that but I think it
 19 was Exhibit 1Q. And if you don't mind, I'd like to
 20 read that before --
 21 MR. PUSATERI: I think that's Exhibit 1P.
 22 A 1P. It says, "I, Michael Hickey, am charged with
 23 conduct unbecoming a city employee for not wearing a
 24 shirt on said date of August 20th, 2003, while mowing
 25 grass at Eastwoods Park. I was presented a notice of

1 disciplinary action letter on September 2, 2003, at
 2 approximately 12:30 p.m. I asked Joe Olesky" -- and
 3 again this letter is from Michael Hickey. I'm sorry.
 4 "Approximately 12:30 p.m. I asked Joe Olesky who
 5 seen me without my shirt on why they didn't say
 6 anything to me right then and there while mowing.
 7 His reply was that you were seen. Well, I tried to
 8 think back to that day two weeks ago and do remember
 9 Kim Cooksey driving by and wondering why he was
 10 driving by down here. Also I told Joe Olesky that I
 11 didn't have my shirt on and that I didn't know that a
 12 city employee had to have a shirt on at all times
 13 until now. I've only been employed by the City of
 14 North Canton for approximately a year and a half and
 15 didn't realize that. I don't believe that there is a
 16 dress code listed. But my problem with this issue is
 17 why no one came to me and asked me why I didn't have
 18 my shirt on or why Kim Cooksey didn't stop and ask or
 19 tell me to put my shirt back on when he drove by the
 20 park. My explanation for that, for not having my
 21 shirt on that time while mowing Eastwoods Park is
 22 that gasoline from the blower I was using to blow off
 23 the tennis courts was leaking on the back of my shirt
 24 and I didn't know it until the gasoline went through
 25 my shirt to my skin. I didn't want to go home during

1 work hours so when I was done mowing at Eastwoods
 2 Park I went back to the park garage to get another
 3 shirt out of my car that I used to work out in that
 4 morning before work. After getting another shirt I
 5 continued my mowing at Schneider Valley. Also I
 6 don't agree with the letter stating that this is my
 7 second offense resulting in a one day off without
 8 pay. I have never been warned about an issue that
 9 has come up in the past. A few disagreements were
 10 brought to my attention but no warnings. I am sorry
 11 for any inconvenience in this matter and will try
 12 harder to do what is right."
 13 And that's basically what Mr. Hickey's
 14 response was to me and he did not have any
 15 recollection of any sort of exchange or altercation,
 16 or if I remember correctly that the young girl was
 17 even present with her dogs. He was absolutely
 18 surprised at the allegation.
 19 Q Okay.
 20 A He had no knowledge of it.
 21 Q In your independent memory, sir, when Mr. Hickey was
 22 hired he was hired into the Department of Buildings
 23 and Maintenance; correct?
 24 A That's correct.
 25 Q And consequent to the problem with the city employee

1 who does work in the city hall area, Mr. Hickey was
 2 transferred?
 3 A That's correct.
 4 Q And he was transferred at the request of the mayor?
 5 A That's correct.
 6 Q And I notice after this incident with the employee
 7 that possibly an alleged sexual harassment he was
 8 transferred to the parks department to remove him
 9 from the situation?
 10 A That's correct.
 11 Q But I notice he was given a pay raise. Is that
 12 normally how we discipline employees; we move them
 13 and give them a pay raise?
 14 A No.
 15 Q At whose request was the pay raise given?
 16 A Well, certainly there was -- the mayor made it very
 17 clear that any memos or any decisions such as hiring
 18 were to go exclusively through the mayor. He made
 19 that very clear to me from the very beginning when I
 20 started working for him. So there was not a hiring
 21 decision, nor was there a promotion that was to be
 22 given without his consent. That was made very clear
 23 to me.
 24 Q Sir, isn't the charter very clear on the fact that
 25 the hiring is done by the city administrator?

1 A Yes.
 2 Q To keep out the political aspect of it?
 3 A Yes.
 4 Q Okay. Let me see if there's anything else. Most of
 5 this investigation came about from the allegations
 6 that were made against Mr. Hickey. Is it your
 7 testimony, sir, that Mayor Rice instructed you not to
 8 include anything in Mr. Hickey's permanent employment
 9 file?
 10 A When it was in reference to the lady in the finance
 11 department, yes, he made that crystal clear to me
 12 because he felt that it was outside, it happened
 13 outside of the normal working hours.
 14 Q And this allegation that was alleged, you had an
 15 opportunity at that time, I believe you were in
 16 negotiations with the labor unions here in the City
 17 of North Canton, the collective bargaining
 18 agreements, and you were working with the attorneys
 19 Johnson & Angelo?
 20 A Yes.
 21 Q And they were present when you were informed about
 22 this allegation of these problems?
 23 A I wasn't quite sure how to handle it given the input
 24 from the mayor, and again I wanted to follow the
 25 process. And at the time we were going through labor

1 negotiations and we had Mike Angelo that was hired by
 2 the city to do labor negotiations, so what I did was
 3 just to make sure that everybody was on the same page
 4 and very clear of the situation before any decisions
 5 were made I had Police Chief Mike Grimes, Joe Olesky
 6 of the street department and Kim Cooksey and myself
 7 present in my office, we had a meeting prior to one
 8 of our labor negotiations meetings and I invited the
 9 labor attorney, Mike Angelo, into the meeting and it
 10 was discussed in there, I asked him how he thought we
 11 should proceed given the circumstances and he made it
 12 very clear that Mike Hickey should be fired.

13 Q And his reason, sir? Did he give a reason?

14 A Because clearly the employee had a pattern of
 15 behavior that was, could be a detriment to the city.

16 Q That detriment being a financial detriment?

17 A He didn't say.

18 Q Mr. Olesky is Mr. Hickey's immediate supervisor?

19 A That's correct.

20 Q And he was apprised of all these different
 21 allegations that went on?

22 A Yes.

23 Q We'll get into that.

24 A Now, some of these allegations were, what happened,
 25 the difficult part is people would come to me as city

1 administrator and say, David, I want to bring this to
 2 your attention but I don't want anything done. I
 3 don't want to lose my job and I don't want any
 4 problems.

5 MR. PLAKAS: Your Honor.

6 MR. SNYDER: Sir.

7 MR. PLAKAS: If I could respectfully suggest
 8 this is actually worse than hearsay because it
 9 doesn't even attribute the statement to any living
 10 person. So --

11 MR. SNYDER: Sustained. We'll move on then.

12 A Well, all right. Let me rephrase that then. There
 13 certainly was a number of employees made it very
 14 clear to me that they did not want formal action
 15 taken but they wanted --

16 MR. SNYDER: You're into the, back --

17 MR. PLAKAS: Yeah, you're right back at the
 18 same place.

19 MR. SNYDER: It's not a statement direct that
 20 we can have.

21 A I guess I want to make it clear that I was in a
 22 difficult position to take action formally because I
 23 did not have cooperation from victims.

24 Q Okay. And I'll move along, reserving some time later
 25 possibly come back to some of them. I will move now

1 to Charge 2, which is the mayor willfully and
 2 knowingly pressuring employees to buy fund-raising
 3 tickets. Did the mayor request that you sell any
 4 fund-raising tickets?

5 A Yes.

6 Q And what, what did he say to you when -- did he
 7 actually give you the tickets yourself?

8 A Yes, he did. Initially he told me that he wanted a
 9 hundred tickets sold, but then I was formally given
 10 by the mayor 50 tickets. That was at his first
 11 fund-raiser. While I was with city hall. And of
 12 course, that frustrated me so I took them and put
 13 them in my briefcase and stuck them in the car.

14 And then at the second fund-raiser, it was
 15 Kim George that had handed me another 50 tickets and
 16 she told me that they were numbered and that I had to
 17 account for all of them. And that if any were not
 18 sold I was to return them.

19 Q And did the mayor himself express to you his desire
 20 for you to sell those tickets?

21 A Definitely.

22 Q And did he instruct you to sell them to employees?

23 A Yes.

24 Q Do you remember his exact words to you?

25 A Well, there was a number of occasions, so it was made

1 very clear to me. And he reminded me that this is
 2 how politics work and that these people work at the
 3 pleasure of the mayor, and I was concerned because of
 4 the nature of our charter that this could be a
 5 problem. Because as I understood it, it was my
 6 interpretation as city administrator is that you have
 7 a full-time city administrator in order to keep the
 8 politics out of the daily operations of the city.
 9 Mayor Rice made it very clear to me that my focus
 10 should be on two things, which is votes and signs,
 11 votes and signs, votes and signs, and that I should
 12 leave the daily operation to the department heads.
 13 That was stated consistently throughout my two years
 14 on a regular basis. And it put me in a very
 15 difficult position.

16 And I did not punch signs into the ground, I
 17 bought a ticket, maybe two, but I did not put signs
 18 in the ground and I was not selling tickets. That
 19 didn't happen. And it wasn't going to happen, and I
 20 made it clear the first year and I made it clear the
 21 second year. And that was a problem.

22 Q Now, were you ever in your office, sir, here at city
 23 hall, which is where the office of Mayor Rice is and
 24 the office of two administrative assistants, in that
 25 office when city equipment such as telephone or fax

1 or computer or any electronic equipment was used to
 2 sell tickets that you observed?
 3 A There were reminder phone calls to department heads
 4 on the day of the fund-raiser that if they didn't get
 5 their tickets that they should get them, that they
 6 should be there. As exempt employees they work at
 7 the pleasure of the mayor. I mean that was, you
 8 know, clearly communicated through various channels.
 9 Q And they actually used the telephone here to call
 10 department heads?
 11 A I remember on one occasion specifically yes, there
 12 was a phone call made from the administrative
 13 assistant down at the police department, which
 14 probably, I don't know, maybe 4:15 on the day of the
 15 second fund-raiser.
 16 Q Okay. And what, what was -- were there any penalties
 17 leveled, levied, excuse me, if a department head or
 18 an exempt employee refused to buy a ticket?
 19 A One thing I want to make real clear here is I was put
 20 in -- it made, it was a very difficult situation and
 21 I felt for all the employees. Including Miss George.
 22 It wasn't easy because there is that mindset of how
 23 politics should work and what that relationship is
 24 with the city and I think that people were very
 25 confused. I think the city employees were very

1 confused. As I understood it from the employees,
 2 they were not used to having to buy or even being
 3 requested to buy campaign tickets. There were
 4 individuals, as I understood, that may have
 5 participated willingly in the past but certainly
 6 things had changed since I was in that position. It
 7 was expressed to me on a regular basis that they were
 8 nervous, and again I think Miss George, it put her in
 9 a extremely difficult situation. Very difficult
 10 spot. And I know that she supported the mayor and I
 11 supported the mayor. But at the same time, I didn't
 12 want any problems. I didn't, I didn't want them. I
 13 just wanted to make sure that I focused
 14 administratively on my duties and I wanted to stay as
 15 far away from the politics as possible. I made it
 16 clear on a regular basis. And it was a major point
 17 of contention. For two years.
 18 MR. PUSATERI: Can you ask that question
 19 again. I'd ask Mr. Held to listen to the question
 20 you specifically asked on that point.
 21 BY MR. SNYDER:
 22 Q My question was, and I'll reframe that to include my
 23 final question on that subject. Have you any
 24 independent knowledge, sir, or are you aware of or
 25 did the mayor ever tell you of any reprisals, firings

1 or employees left go or employees threatened to be
 2 left go if they weren't in cooperation with the
 3 mayor, and I say this respectfully, the agenda of
 4 signs and tickets and votes?
 5 A He told me actually on a couple of occasions that he
 6 didn't care what anybody else thought, that the four
 7 people in this office, once he was to get an economic
 8 development director in this position, the economic
 9 development director, the administrative director and
 10 the two administrative assistants were his campaign
 11 team and they work at the pleasure of the mayor and
 12 this is how politics work and if you don't you can
 13 you get the blank out. And that was made crystal
 14 clear to me. And I made it crystal clear to him if
 15 that was the case then fine, I was out, and it was
 16 dropped.
 17 MR. PUSATERI: Let me clarify the point.
 18 MR. PLAKAS: I would just object. Clearly
 19 he's been asked the question twice, he's given a
 20 different answer because he's got a speech prepared.
 21 MR. PUSATERI: Mr. Plakas, you will have
 22 cross-examination. I just want to make sure we get a
 23 answer to the question. I don't know what the answer
 24 is going to be.
 25 (Mr. Peters leaving room.)

1 BY MR. SNYDER:
 2 Q Let me ask one final question then I'll move on, sir.
 3 Have you any knowledge of an employee of the
 4 City of North Canton under the tutelage of the mayor
 5 ever left go to set an example or to send a message
 6 to the other remaining employees in the city?
 7 MR. PUSATERI: Let him finish the question.
 8 Just wait.
 9 MR. SNYDER: Okay. That's the question.
 10 MR. PUSATERI: Go ahead. I'm sorry.
 11 A Okay. The administrative assistant to the mayor was
 12 let go I understand it in November of 2001. That was
 13 a month before I took office. I believe her name was
 14 Constance. She was let go by the mayor. And then
 15 Chris Barnes was let go I believe in January of,
 16 January or February --
 17 Q I believe transferred, I think it is.
 18 A Well, she was let go from her position as an
 19 administrative assistant.
 20 Q Right.
 21 A Then she applied for another position as water meter
 22 reader. And so I think what happened is that -- this
 23 is just my impression is that --
 24 MR. PLAKAS: Mr. President.
 25 Q No, I can't, I can't allow that, Mr. Held. I mean

1 did the mayor ever say to you that that action he
2 took was to send a message to the other employees
3 under his authority?

4 A No, I don't think that action was taken exclusively
5 to send a message.

6 Q That's all, that it only requires a yes or no.

7 A But it was stated that it did send a message.

8 Q Right.

9 A But that was not the reason.

10 Q Not the intent, so that's all I need to know.
11 Appreciate it.

12 (Mr. Peters returning.)

13 Q I'm going to wrap it up with one question in the
14 packet and hand over to my colleagues, the mayor
15 willfully, knowingly forming a political action
16 committee in the office of the mayor, which is using
17 the office and his power as the mayor to form that
18 PAC. As you originally testified, and I won't go
19 back to that and be redundant to those statements,
20 but you were present when the mayor created that PAC
21 in the, in his office, and a PAC was created in an
22 effort to thwart a referendum that was being
23 circulated to stop the purchase of the Arrowhead
24 Country Club?

25 A Well, the individual that created the PAC was, as I

1 recall, was Victor Berardi. He formally went down to
2 the board of elections and designated himself as the
3 treasurer, but the initiation, the recruitment of
4 Victor Berardi took place with Mayor Rice at city
5 hall.

6 Q Were you ever present in the office of the mayor and
7 that of administrator's office when money that was
8 given to that PAC was being counted in that office by
9 the mayor and his assistant, Kimberly George?

10 A Yes.

11 Q And that money, was that all in cash or checks?

12 A Well, I was standing a few feet away from the, from
13 the desk, but there was definitely cash, I'm not
14 exactly sure in what amount, but it was clearly being
15 counted by Mayor Rice at Kim George's desk with Kim
16 George sitting there and they put the envelopes, I'm
17 not sure how many were there but they put the cash in
18 the envelopes and Mayor Rice instructed me to call
19 Victor Berardi and have him come up and pick up his
20 campaign contributions. If I remember correctly it
21 was after a Rotary meeting. And that he had some
22 campaign contributions.

23 The mayor also asked me to provide a hundred
24 dollars cash, or initially it was \$200 cash to give
25 to him for the PAC, and then it was, I told him that

1 I can't give \$200 cash because as I understand you
2 can only give a hundred dollars cash. He said, Well,
3 give me a hundred dollars cash. And I said, If I'm
4 going to give money I'll give -- number one, that I
5 was reluctant to give any money, but he made it very
6 clear to me that I needed to give money. And so it
7 was agreed upon that my wife would write a check even
8 though I don't think it really made much of a
9 difference because she is my wife.

10 So my wife sent a hundred-dollar or two
11 hundred-dollar check to Victor Berardi. And, and I
12 did not make the phone call and I refused to make the
13 phone call and I was told to get the blank back in my
14 office because this is how politics works.

15 Q Of course, now when you gave that contribution, sir,
16 you gave that under duress because it was illegal to
17 give \$200 in cash?

18 A I did not want to give it.

19 Q Because it was illegal or because you didn't --

20 A I don't think it was proper. I didn't think it
21 was --

22 Q You gave it because you felt that your job was in
23 jeopardy?

24 A I felt that my job was in jeopardy on a weekly basis.
25 I mean, that was made crystal clear to me.

1 Q But in this particular instance where you gave the
2 money to the PAC at the direction of the mayor, you
3 felt if you didn't give it there would be some
4 reprisal and you would be let go or your life would
5 be miserable?

6 A I felt there would be reprisal definitely.

7 Q Do you have any knowledge, independent knowledge if
8 any equipment in the city administrative offices were
9 used to communicate with anybody, that being in
10 violation of election law, communicate with
11 Mr. Berardi or anybody else relative to that?

12 A As I understand --

13 Q I believe we have an exhibit on that. There's an
14 exhibit marked where there's been communication using
15 the city computer or an e-mail to Mr. Berardi?

16 A E-mails were sent to Mr. Berardi.

17 Q From the city hall administrative offices?

18 A There was --

19 Q I won't ask you to testify to that, sir. Mr. Berardi
20 will testify to that next week or a week after.

21 A I would like to make sure for the Record to make
22 sure, clear what I'm testifying to. Does anybody
23 know what exhibit that is?

24 MS. KIESLING: 3.

25 A Exhibit 3.

1 Q Exhibit 3E.
 2 A This is an e-mail.
 3 MR. PUSATERI: This is Exhibit 3A.
 4 A B, 3B.
 5 MR. SNYDER: No, I think it's Exhibit 3O.
 6 MR. PUSATERI: 3O, I'm sorry.
 7 Q This is an e-mail from city hall to Victor Berardi?
 8 MR. PUSATERI: I apologize.
 9 A There's two, there's two e-mails.
 10 Q Right.
 11 A There's one 3A, it's actually this is from Victor
 12 Berardi to Kim George. "Miss George. Attached is a
 13 revision to the flyer you sent me. In addition to
 14 wording to focus on intent, I did change some of the
 15 page margins, et cetera, to keep it close to the
 16 original page size. I really have no idea if this is
 17 a problem with printing. I am heading out for a
 18 while and will be in contact soon. Sincerely, Victor
 19 Berardi." This is April 30, 2003, at 11:33 a.m.
 20 And there's another e-mail -- I'm sorry, and
 21 then there's a response to that from Kim George on
 22 the same date at 11 -- I'm sorry. The one that was
 23 sent was 12:42 p.m. April 30 and is the response.
 24 I'm sorry. "Victor" -- this is from administrative
 25 assistant Kim George. "You may want to mention at

1 the Canton Repository -- "You may want to mention
 2 that the Canton Repository had endorsed council's
 3 action. Kim, Administrative Assistant, Mayor's
 4 Office." That was sent from the mayor's office. And
 5 there's another correspondence here, Kim George had
 6 sent on April 30th, 2003, at 11:33 a.m., this looks
 7 like a repeat. That's a repeat. And then there's
 8 another from Kim George which is on Exhibit 3P. This
 9 was from Kim George at KGeorge@NorthCantonOhio.com,
 10 which is city hall. And it says, "Subject:
 11 Arrowhead. Here is the attached information that we
 12 discussed with you."
 13 Q Okay. Have you any independent knowledge or any
 14 recollection where either campaign meetings or
 15 campaign literature or any telecommunications or fax
 16 or computers were used out of the mayor's office for
 17 campaign purposes or were meetings held relative to
 18 his campaign using the facility?
 19 A There were telephone calls to Bernie Clements, the
 20 printer.
 21 Q I mean besides the PAC itself. During the reelection
 22 process was the, have you any knowledge, independent
 23 knowledge or did you witness any meetings taking
 24 place relative to, that were done here on this
 25 premises?

1 A With the mayor's campaign?
 2 Q For the mayor's campaign.
 3 A No, there were no meetings.
 4 Q Okay. There were no phone calls or anything used to
 5 do that?
 6 A No.
 7 MR. SNYDER: That's all. If I may, I'll end
 8 my questioning at this point and reserve my right to
 9 complete later on if that's all right with my
 10 colleagues.
 11 MR. PUSATERI: I suggest perhaps we may want
 12 to take a break here.
 13 MR. SNYDER: I was going to suggest that
 14 possibly the reporter that needs a break. We will
 15 take about seven minutes to seven and we will
 16 reconvene at 7 p.m.
 17 (WHEREUPON, a recess was taken.)
 18 MR. SNYDER: Back on the Record.. Member
 19 Kiesling.
 20 DIRECT EXAMINATION
 21 BY MS. KIESLING:
 22 Q First question I guess obviously Charge Number 6, the
 23 hiring, retaining, protecting the city employee is
 24 where I'll begin. You spoke earlier you changed
 25 procedural, you didn't feel it was adequate. What

1 did you change, what did you see needed to be changed
 2 in the original procedures?
 3 MR. PUSATERI: Miss Kiesling, ask you ask one
 4 question at a time.
 5 Q What was changed?
 6 A In reference to?
 7 Q The original procedure and then the one you ended up
 8 with. One that mirrored the police.
 9 A Michael Hickey, is that what you're speaking to?
 10 Q No, you said you enacted a new policy on hiring.
 11 A Yes, we did. We modeled on the police department
 12 hiring procedure, and the only thing I did remember
 13 that we did not include in that was the home visits.
 14 Q Right.
 15 A To friends and neighbors of the individual that's
 16 hired because we did feel that was more appropriate
 17 for police work rather than a service worker.
 18 Q My question is how did the new procedure differ from
 19 the old procedure.
 20 A To my knowledge, there was, I never found a
 21 procedure. I mean, there may have been an informal
 22 procedure but there was not an area for service
 23 workers. I do not recall, I mean there was some
 24 preliminary work as far as payroll notices and so
 25 forth but there may have been historically some, a

1 procedure that was followed but I didn't have, I
 2 certainly wasn't aware of a document that stated
 3 these are the checks like a checklist, and that's
 4 what I felt was important.
 5 Q So you --
 6 A So certainly it was a procedure, but I felt it was
 7 important to have a checklist as far as what exactly
 8 was done. And so that's what we, that's what I had
 9 put together.
 10 Q And in your checklist a background check of previous
 11 employers was included?
 12 A Yes.
 13 Q Okay. Another question, we're talking about Exhibit
 14 1B. We'll start with the hiring when Mr. Hickey was
 15 hired in March of 2002. It is your signature stamp.
 16 Did you stamp this document with your signature
 17 stamp?
 18 MR. PUSATERI: Which particular exhibit?
 19 MS. KIESLING: 1B.
 20 MR. PUSATERI: Thank you.
 21 A This first packet here?
 22 MR. SNYDER: It says Exhibit 1.
 23 BY MS. KIESLING:
 24 Q It says Exhibit 1 right at the bottom.
 25 A Here we go. All right. I'm sorry. And what is it?

1 Q Exhibit 1B?
 2 A No.
 3 Q Do you know who did put the stamp on that?
 4 A On 1B? It would -- I would have to see, I didn't see
 5 here.
 6 MR. PLAKAS: Objection.
 7 Q Okay. That's fine. Who else works in the office?
 8 Who else worked in the office?
 9 A The only person that had the signature stamp at that
 10 time, there were two signature stamps. One was in
 11 Linda Teis's possession and the other was Kim George.
 12 I had taken the signature stamp away from Kim, or
 13 from Linda Teis and had given both of them to Kim
 14 George.
 15 Q Thank you. The next document, 1C, again your
 16 signature stamp for transferring him out of the
 17 department after the potential sexual harassment with
 18 a fellow employee. Did you put the stamp on there?
 19 A No.
 20 Q There again, Ms. George, Ms. George had your two
 21 stamps at that point also?
 22 A Yes, there was, I recognize on Exhibit 1C the date
 23 6/10/03 is Kim George's signature, or I'm sorry, her
 24 handwriting.
 25 Q Thank you. On Exhibit 1D, did you put your stamp on

1 the, what did we do on that one, promotion of July
 2 27th?
 3 A No.
 4 Q Is the date your handwriting?
 5 A No. I recognize that as Kim George's.
 6 Q Thank you. 1E you're not, if I recall correctly,
 7 you're not sure if that's actually your --
 8 A Well, I certainly have a question because I've got a
 9 document that was copied out of the personnel file to
 10 Mr. Hickey. I can't recall the date, but clearly my
 11 signature stamp was on that on April 25, 2002. They
 12 are duplicates. One has initials on there that I do
 13 not, I do not recognize those as coming from myself,
 14 and I have another that it's an exact same form but
 15 it has a signature stamp.
 16 Q Okay.
 17 MR. PUSATERI: Can I just interrupt?
 18 Ms. Kiesling, are you asking, you've asked him if did
 19 he stamp, but my question to you, are you asking him
 20 was someone else authorized, did he authorize someone
 21 else to stamp?
 22 MS. KIESLING: Thank you.
 23 MR. PUSATERI: So can you clarify it for the
 24 Record.
 25 Q Did you authorize someone to stamp it?

1 A No. I made it very clear, there was a couple of
 2 instances that made it very clear to Kim George that
 3 I did not appreciate her using my signature stamp.
 4 And in spite of that it still occurred. And I think
 5 it was because I would have to say there was always a
 6 sense of urgency.
 7 MR. PLAKAS: Objection, Your Honor. He's
 8 guessing what Kim George is thinking.
 9 MR. SNYDER: You have to be very specific,
 10 Mrs. Kiesling, as to ask him questions.
 11 A I didn't authorize.
 12 Q I did say to these exhibits. Did you not authorize
 13 anyone to use your signature stamp?
 14 A No.
 15 Q Thank you. Did you confront her when you realized
 16 that your signature stamp had been used?
 17 A I did on January 22nd.
 18 Q Did you confront the mayor that --
 19 A No.
 20 Q -- an employee was using your signature stamp?
 21 A No, I did not confront it directly, no, I did not,
 22 because once again, I knew that was something that
 23 was going to happen. I didn't like the process that
 24 was being taken. There was another instance when we
 25 called the board of control meeting and I was not

1 aware that the board of control meeting was called
2 and I believe if you look at the record it was on
3 January 22nd of 2004 and that was the last time,
4 that's where I objected to the use of my signature
5 stamp. And I brought it to Kim George's attention on
6 that day and I believe it was around 9:30 on January
7 22nd, I may have to double check the date. I asked
8 her for a copy of the meeting for the board of
9 control and she asked me why I wanted it. I said I
10 want to see it. She said, "What for," and I said,
11 "How did you authorize the --"

12 MR. PLAKAS: Your Honor.

13 MR. SNYDER: Sir.

14 MR. PLAKAS: Hearsay.

15 A Okay.

16 MR. SNYDER: Again, Mr. Held.

17 A I'm sorry. There was a meeting that was called, my
18 signature stamp was utilized. I did not authorize
19 it. At that point I requested that both signature
20 stamps be given back to me.

21 Q Thank you.

22 A And they were. That was shortly before I was let, I
23 was let go.

24 Q What was her response to you during the Hickey --

25 MR. SNYDER: Pardon me. He cannot, he

1 cannot.

2 Q He cannot tell me what she said back to him. That's
3 fine. I'll ask her.

4 I'm trying to go through questions that have
5 already been asked.

6 A It wasn't a pleasant experience.

7 MR. PLAKAS: It seems like the witness is
8 answering questions that haven't been asked. I
9 didn't hear a question to that last answer.

10 MR. SNYDER: No, sir, I didn't.

11 MR. PUSATERI: That's fine.

12 MR. PLAKAS: I'm not sure if anyone else did
13 but I didn't hear a question before that last answer.

14 MR. SNYDER: I'd have to admonish Mr. Held,
15 please do not answer until you've been asked a direct
16 question if you don't mind.

17 THE WITNESS: Yes, sir.

18 MR. SNYDER: Thank you.

19 BY MS. KIESLING:

20 Q When were you made aware of Mr. Hickey sexually
21 harassing a fellow employee?

22 MR. PLAKAS: Objection.

23 Q Is that an objection? Oh. Allegedly. Allegedly.
24 However, there is a police report that's filed, so a
25 Jackson Township --

1 MR. PLAKAS: You know that's not what the
2 report says. Wow.

3 Q There's an exhibit.

4 MR. PUSATERI: Can you just ask a specific
5 question off that exhibit.

6 MS. KIESLING: Off this exhibit?

7 MR. PUSATERI: Sure. That's an exception.

8 Q This exhibit, which also includes a memo to
9 Administrator Held from the chief of police from
10 Joseph Nist.

11 MR. PUSATERI: Okay. What exhibits are you
12 talking about? Identify them.

13 MS. KIESLING: I1, IJ, 1K.

14 MR. PUSATERI: Okay. Now, as stated earlier,
15 those are exceptions to the hearsay rule so you can
16 ask specific questions off those exhibits. The
17 comments that are made on the exhibits, you can state
18 those and ask questions based on the comments made in
19 the exhibits. Do you understand my --

20 MS. KIESLING: I understand completely. I'm
21 sorry I didn't realize I was not asking correctly.

22 A What exhibit are we looking at?

23 Q 1 still. I1, J, K.

24 A Just so that we're clear on this, this is an e-mail.

25 MR. PUSATERI: This is I1, right.

1 Q Uh-huh.

2 MR. PUSATERI: Okay.

3 Q This is an e-mail?

4 A I'd like for this to be read into the Record if
5 that's okay with council.

6 MR. PUSATERI: It's already part of the
7 Record as an exhibit.

8 THE WITNESS: Am I able to read into the
9 Record?

10 MR. PUSATERI: Certainly. I'm just
11 acknowledging it's part of the exhibit.

12 MR. PLAKAS: Your Honor.

13 MR. SNYDER: Sure it is.

14 MR. PLAKAS: It is a matter of the Record and
15 we would object to the witness directing his own
16 examination in his own agenda.

17 THE WITNESS: I was simply reading the
18 document so that everyone is clear.

19 MR. SNYDER: Mr. Held, allow me at this
20 point, it is a part of the Record. However, if you
21 prefer if we need it read in the Record I will ask
22 either that the law director or Mrs. Kiesling read
23 into the Record. Mrs. Kiesling, would you read that
24 into the Record.

25 MS. KIESLING: This is an e-mail to Chief

1 Grimes from Joseph Nist, May 24, 2003. "I received a
 2 call today from the employee" -- I'm not going to
 3 name her name at this moment, it's in the documents.
 4 "She advised me Mike Hickey has been harassing her.
 5 She had called and left a message to Kim Cooksey.
 6 This problem occurs after work hours as well as at
 7 work. Specifically last night Mike showed up at
 8 Harmon's Pub after hearing Laurie tell Chris she was
 9 going there for a birthday party for a friend. He
 10 showed up and took a seat at a private party. He has
 11 told he could take better care of her than Donny, her
 12 husband. This was said to her on more than one
 13 occasion both at work and away. She politely told
 14 him they were both married and she is happily
 15 married. She said she does not want him fired but is
 16 concerned when he tells her he had driven by her
 17 house. Until last night after showing up at her
 18 friend's birthday party and then following her to
 19 Sylvester's she has become concerned. She said she
 20 attempted to leave Sylvester's after she thought he
 21 went into the bathroom. He followed her to her car
 22 and demanded why she tried to leave and not say
 23 goodbye. She returned inside to remain with her
 24 girlfriends. I suggested she talk to Mr. Held and
 25 yourself. Also I told her to file a report when such

1 incidents occur. She asked me to advise you of this
 2 conversation on Tuesday, May 27th."
 3 Were you advised, obviously on May 27th by
 4 Chief Grimes in Exhibit IJ wrote you a letter?
 5 MR. PUSATERI: I think it's Exhibit 1I.
 6 A No, it's IJ.
 7 I find this to be accurate.
 8 Q It's all accurate. What was your next step? What
 9 happened next?
 10 A There's another Exhibit IJ.
 11 Q Yes. What happened after IJ?
 12 A Let me read through this here.
 13 MR. PUSATERI: Hold on. The mayor wants to
 14 change his tape. He's taping this. That's fine.
 15 Okay. Are you ready? Okay. Sorry.
 16 A If you don't mind, have you this read into the Record
 17 also.
 18 MR. PUSATERI: Once again, this is part of
 19 the Record. I mean, I don't know if we have time to
 20 read this but you can ask specific questions off it.
 21 Say, This sentence says, Do you find that to be true
 22 or as an example, but I am not saying you can't read
 23 it into the Record but it's already a part of the
 24 Record. It's up to you, Mrs. Kiesling.
 25 Q I don't need to read it. It's essentially the same

1 letter just reiterating what happened that night.
 2 Do you remember what occurred next after you
 3 received this letter from Mister -- from the chief of
 4 police?
 5 A I know that I spoke with Laurie Hertler, she came to
 6 my office. She was directed to by Finance Director
 7 Julie Herr, and I did sit down and have a discussion
 8 with her and Laurie Hertler's comments aligned
 9 with --
 10 MR. PLAKAS: Objection.
 11 MR. SNYDER: Mr. Held, I can't allow you
 12 to --
 13 A So I did talk with her.
 14 Q Were you aware of a pending, in Exhibit 1K and IL,
 15 the police reports from Jackson Township? When were
 16 you made aware of those, that there actually was a
 17 report filed?
 18 A It was at a later date. But I certainly had
 19 encouraged that action to be taken place.
 20 Q The next step --
 21 A I had encouraged that action by the worker to file a
 22 police report.
 23 Q Once the police report was filed, what is the normal
 24 next step?
 25 A Well, there was, and I'm not sure of the definitions

1 but there was, I do not believe that there was a
 2 police report that was filed. This is just a record
 3 that discussions had taken place with the police
 4 chief, but as I understand there was a reluctance to
 5 file a police report in North Canton but there was a
 6 police report as I see in one of the exhibits filed
 7 in Jackson Township. Although the individual was not
 8 named.
 9 Q After this came to your attention, what would have
 10 been the next step?
 11 A Well, at some point, I can't remember exactly the
 12 time line but I did speak with, with the individual,
 13 and then some time after that is when we had the
 14 complaint from the resident over the issue of the
 15 young lady, and then it was sometime after that that
 16 we had the meeting with Johnson & Angelo,
 17 specifically Mike Angelo. And he had suggested,
 18 given the circumstances, that we --
 19 MR. PLAKAS: Objection.
 20 MR. SNYDER: Again that's a third party,
 21 Mr. Held. We have nothing, no documents.
 22 A Okay. Well, we were advised.
 23 MR. PUSATERI: That's fine.
 24 A By other our attorney.
 25 MR. PUSATERI: Okay. Go ahead.

1 A We were advised by the attorney as to what action to
2 take.

3 Q Did you ever contact our law director, Roy Batista,
4 or Tom Treadon?

5 A It was Roy Batista, and I think, I don't recall but I
6 know that he was unavailable. He may have been out
7 of town but it was, I think he was winding down his
8 activities with North Canton.

9 Q Did either one of them get back to you on the issue?

10 A I spoke with Tom Treadon and I told him that we did
11 have Gary Johnson here and I briefly had described
12 the circumstances to him and he had said that if
13 Johnson & Angelo, if Mike Angelo was available that,
14 you know, certainly we could discuss that with him.
15 Considering that his specialty was labor, labor law.
16 But I'm not exactly sure of the conversation.

17 Q Let's move on to Exhibit 1M. The teenage girl. In
18 the park incident. I understand first of all Kim
19 Cooksey came to you?

20 A Yes.

21 Q Did the mother want any action taken at that point or
22 was she just asking you questions?

23 A There was a lot of questions that were asked about
24 the employee. And again, I must have had three or
25 four telephone conversations with her. I was very

1 uncomfortable with what had taken place and I wanted
2 to make sure I had encouraged her to fill out a
3 police report and clearly she was reluctant to do
4 that. And then that's when I had asked the chief,
5 Chief Grimes to go out or to have somebody go out to
6 the house and speak with her.

7 Q And Chief Grimes did; obviously.

8 A And Chief Grimes had sent Lieutenant Strausser, a
9 detective, out there to talk to her, as I understand
10 it.

11 Q And this is an actual --

12 A This is a call for service.

13 Q A call for service?

14 A Not a police report. So it's clear in the police
15 report that, that the resident was, did not want to
16 fill out a police report. But she had serious
17 concerns about doing that. She was, she was afraid.

18 MR. PLAKAS: Objection, Your Honor.

19 A She made that clear to me.

20 Q Can I ask do you know why she was afraid?

21 MR. PLAKAS: Objection.

22 MR. PUSATERI: You can ask. Let me clarify.
23 You can ask specific questions off this document.
24 Say it says A, B, C. Were you aware of that or
25 something of that nature. If you want. That's fine,

1 Marcia. You're fine, Ms. Kiesling. I know you're
2 not trained in this so it's okay.

3 Q In the document 1M as in Mary it states, "Lieutenant
4 Strausser received a call from Mrs. Schneider. She
5 said that she didn't think she wanted us talking to
6 her daughter. She said they were afraid of," and
7 it's blacked up, Mr. Hickey, "and the possibility
8 that he may retaliate. The mother said she would
9 discuss it further with her husband that evening and
10 possibly get back with Lieutenant Strausser." Is
11 this the way you -- is this what happened?

12 A That's how I had it described by me. By the
13 resident.

14 Q And I guess my next question is, just because they
15 didn't file an actual report against the gentleman,
16 does that mean it shouldn't go in his file? We have
17 this document. Is this document enough to place in
18 his personnel file?

19 A Well, once again you have, that's where I was --

20 Q That's when you asked Mr. Angelo?

21 A That's why I deferred to Mr. Angelo because I wasn't
22 quite sure. There was clearly an allegation. And I
23 wasn't quite sure how to handle it so that's where we
24 deferred to Mike Angelo.

25 Q Okay. And Mr. Angelo told you to fire him; is that

1 correct?

2 A That's correct.

3 Q I'm sorry, that's hearsay. Did you say that earlier?

4 MR. PLAKAS: So it's double hearsay.

5 MS. KIESLING: Double hearsay. Exactly.

6 MR. PLAKAS: Hearsay repeated.

7 Q In Mr. Hickey's statement after his reprimand for not
8 wearing a shirt on duty, in Exhibit 1P he states, I
9 believe, "I also don't agree with the letter stating
10 that this is my second offense resulting in one day
11 off without pay." However, exhibit back further, it
12 was a backhoe incident. 1H. Am I wrong to assume
13 that that was the second offense?

14 A The backhoe incident, if I remember correctly, was
15 the first incident.

16 Q Therefore the shirt was the second offense. So
17 Mr. Hickey stated incorrectly in his letter that he
18 should not be reprimanded because it was only his
19 first offense. The next document --

20 MR. PUSATERI: You have to say yes or no.
21 You can't nod your head for the court reporter.

22 A Yes. Well, the first incident obviously on record
23 was the backhoe incident. And then as I see here,
24 there was a second incident also. What exhibit is
25 that?

1 Q Well, I guess now it's 1R. Where Mr. Olesky,
 2 actually it's the original one is 1O.
 3 Anyways, I'm going to 1R. Mr. Olesky was his
 4 direct boss, his superintendent. Decided not to give
 5 him a day off without pay. Do you know -- I can't
 6 ask you that. Well, you're his immediate boss. Why
 7 did Mr. Hickey not get a day off without pay?
 8 MR. PLAKAS: Objection.
 9 MR. PUSATERI: It's his personal knowledge.
 10 He can answer.
 11 MR. PLAKAS: Well, it's only -- respectfully,
 12 Paul, it's only his personal knowledge if it was
 13 something that was stated to him by a third party who
 14 can't be examined though as to that issue.
 15 MR. PUSATERI: He can answer a question if he
 16 knows why he was not disciplined. That's if he
 17 knows.
 18 Q I'll rephrase it. Did you tell Joe Olesky not to
 19 discipline him?
 20 A It was discussed that, that there needs to be --
 21 MR. PLAKAS: Objection.
 22 Q Yes or no. Did you? Did you tell Joe Olesky not to
 23 discipline him after his second offense?
 24 A The discipline was adjusted, definitely, and I made
 25 it clear to him that I was instructed that --

1 MR. PLAKAS: Objection. I don't hear him
 2 answering the question.
 3 Q Who adjusted --
 4 MR. PUSATERI: Let him answer the question.
 5 MR. SNYDER: The question was, Mr. Held, did
 6 you instruct Mr. Olesky not to discipline the
 7 employee. You personally. Did you instruct
 8 Mr. Olesky not to discipline.
 9 A Well, this clearly is a letter of discipline.
 10 MR. PLAKAS: Object.
 11 Q I mean the day off.
 12 MR. SNYDER: The question is did you or did
 13 you not instruct Mister --
 14 A Initially I was advised legally --
 15 MR. PLAKAS: It seems like that's a very
 16 clearly put question to him. Councilperson Kiesling
 17 very clearly asked him the same question. It seems
 18 like it could be a very clear and quick yes or no.
 19 A State the question again.
 20 MR. SNYDER: Did you at any time instruct
 21 Mr. Olesky to discipline the employee or did you not
 22 take any corrective against the employee. You as in
 23 your capacity as administrator.
 24 A Okay, I need clarification on --
 25 MR. SNYDER: I'm asking you did you coach

1 Mr. Olesky or guide him in the -- she has asked that.
 2 In the manner to which Mr. Hickey should be or should
 3 not be disciplined.
 4 A Yes.
 5 Q Were you advised by someone else to adjust the
 6 discipline?
 7 A Yes.
 8 Q Who?
 9 A Well, I was given instruction by the labor attorney,
 10 Mike Angelo, that he was to be fired.
 11 MR. PLAKAS: That would be the tripling of
 12 that hearsay.
 13 A I'm not quite sure how to answer your question
 14 without --
 15 MR. PUSATERI: Are you asking a specific
 16 question as to one, the mayor giving him
 17 instructions?
 18 MS. KIESLING: Right.
 19 MR. PUSATERI: Ask him that question
 20 specific.
 21 Q Did the mayor advise you to adjust the discipline?
 22 A He told me that I need to be very careful and in the
 23 course -- am I allowed to answer the question?
 24 MR. PUSATERI: Yes. You're fine, you're
 25 fine.

1 MR. SNYDER: You're fine.
 2 A All right. He would tell me that I need to be very
 3 careful about these allegations because we didn't
 4 need a lawsuit against the city, and he also told me
 5 that he thought it was a bunch of BS that was
 6 initiated by his political enemies. Which I
 7 disagreed.
 8 Q I will move on to, actually it is going backwards but
 9 in our exhibit it's moving on to 1S, 1T, 1U.
 10 Mr. Hickey's ODOT records. They're here, last
 11 exhibits. When were you made aware of, good Lord,
 12 his previous record at ODOT?
 13 A I was not aware of any records from ODOT while he was
 14 employed by the city. There were rumors that there
 15 was an incident. However, once again I did not
 16 contact ODOT for a reference check.
 17 Q Because you were asked not to?
 18 A Yes, that's correct.
 19 Q On IV, it's in the Record, it states that Mr. Hickey
 20 was going to a predisiplinary meeting that would
 21 have been on February 1st. When was Mr. Hickey fired
 22 or hired?
 23 A March 25th.
 24 MR. PUSATERI: March 25th.
 25 A 2002.

- 1 Q I was going through the time line here, I'm sorry.
 2 There's only an incident.
 3 MR. PUSATERI: These records, once again,
 4 Ms. Kiesling, are part of the record so -- excuse me.
 5 Q Is that me or you? I'm sorry. I'm just trying to
 6 get through them.
 7 MR. PUSATERI: I'm not saying you can't ask
 8 questions about them. However, Mr. Held I think
 9 clearly stated he was not aware of any of this while
 10 he was employed.
 11 A No. I had no, there was no documentation that was
 12 presented to me as far as ODOT.
 13 Q So we obtained these records afterwards obviously.
 14 Would it have been normal procedure to hire a
 15 gentleman who was on disciplinary leave pending a
 16 hearing from his former employer? Do you think you
 17 would have hired that gentleman had you known these
 18 facts? You personally, not the mayor.
 19 A You're asking me, just for clarification, you're
 20 asking me if I would have hired an employee had I
 21 known that they were --
 22 Q On a disciplinary leave of absence pending a hearing
 23 is what these records state.
 24 A No, I would not.
 25 Q He would not be employed by the City of North Canton?

- 1 A I would not have hired him.
 2 Q Thank you. Well, move on to 2, which is knowingly,
 3 willingly pressuring employees to buy fund-raising
 4 tickets. Because you changed the numbers, the
 5 charges. I need to get back to where I was supposed
 6 to be.
 7 MR. PUSATERI: Sorry I confused you.
 8 MS. KIESLING: You did. That's all right.
 9 Q Previously Mr. Snyder had spoke about you being given
 10 50 fund-raiser tickets and the mayor stating, you
 11 know, please sell these tickets to employees. Did
 12 anyone else hear that conversation?
 13 A Yes, I believe Jim Benekos.
 14 Q After you were given these tickets you said you threw
 15 them in your briefcase and you went home. Did
 16 anybody -- was anybody around at that point after the
 17 mayor has left, Ms. George left?
 18 A I was given the tickets. Shortly after I was given
 19 the tickets, might have ten, five, gosh, maybe a
 20 couple minutes later Kim Cooksey walked into the
 21 office and saw that I had the campaign fund-raiser
 22 tickets at my desk and saw me throw them in my
 23 briefcase.
 24 Q Okay. Did he hear the mayor say, of course --
 25 MR. PUSATERI: I think the proper question,

- 1 was he present while the comment was made, but you
 2 don't know whether he was or not.
 3 Q Other than Jim Benekos, Kim Cooksey was there when
 4 the mayor --
 5 A I don't believe he was present.
 6 Q He came later?
 7 A That's correct.
 8 Q When you were angry and threw them in your briefcase?
 9 A That's correct.
 10 Q Did you sell any tickets year one or year two?
 11 A No. I bought.
 12 Q Bought the first year?
 13 A Right. But I think that first year definitely and
 14 the second year I believe I also did, yeah.
 15 Q You bought both years. But did you sell any to --
 16 A If I remember correctly, yes.
 17 Q Did you sell any to employees?
 18 A No.
 19 Q Did you see any employees selling tickets on city
 20 time?
 21 MR. SARBACH: I think it would be one
 22 speaker. Mr. Plakas, would you check the microphone
 23 to see if it's getting feedback from the speaker?
 24 MR. PLAKAS: I'd be happen to. What would
 25 you like me to do, change the microphone?

- 1 MR. PUSATERI: Just move on.
 2 A No, I did not see, I did not visibly see the city
 3 workers changing tickets.
 4 Q Okay. I'm going to move on to the PAC. Let me find
 5 all my information here. I need to know, did
 6 Mr. Berardi come to the mayor or did the mayor go to
 7 Mr. Berardi, and do you know. Do you know this?
 8 A I saw Mr. Berardi walk up. I was heading down to the
 9 restroom, I saw Mr. Berardi coming up the stairs.
 10 This is after I know there was a phone call made from
 11 city hall asking Mr. Berardi to come to city hall
 12 because I was asked to make the phone call to Mr.
 13 Berardi and I refused and then the phone call, there
 14 was a phone call that was made, I'm not sure if it
 15 was Kim George or the mayor but they were the only
 16 two that were in the office, and then Victor Berardi
 17 came. And then, of course, when I saw him come
 18 through I went back into the office rather than going
 19 to the restroom and I saw him come to the window.
 20 Q Did you -- Mr. Berardi, you already said Mr. Berardi
 21 picked up money. The witnesses -- what was the
 22 purpose of the PAC?
 23 A It was a political action committee, it actually was
 24 something about preserve green space in the city of
 25 North Canton, something along those lines, and it was

1 to encourage people, I don't recall the specifics of
2 the literature that was mailed out but it was
3 basically to encourage residents not to sign a
4 petition.

5 Q All my other questions I think have been asked other
6 than you elaborated but you didn't answer
7 specifically I guess yes or no, did you feel
8 pressured to donate to this PAC? Your wife donated,
9 but did you as a family?

10 A Absolutely. Absolutely.

11 Q By whom?

12 A Mr. Rice.

13 Q All right. We'll go on to 4, which is willfully,
14 knowingly selling fund-raiser tickets. No, you
15 already answered those.

16 Law firm. Why -- I don't know if you know
17 the answer. Why did we as a city, you as an
18 administration, decide to hire the law firm of
19 Johnson & Angelo to negotiate our contracts?

20 A Jack DeSario is an attorney, he lives across the
21 street from me. He was chairman of the Ohio Ethics
22 Commission for six years. He's also a Ph.D. from
23 Mount Union. Talked to him regularly because he's
24 written like five books on local government and he
25 was always available to give me input. I said if we,

1 that we have labor negotiations coming up and I
2 didn't have any experience in negotiating labor
3 contracts and the labor attorney, Bob Tscholl, that
4 had historically done work for the city, made it
5 clear to us that he would not be available to do the
6 labor negotiations but that he could hire a
7 nonattorney to do the labor negotiations for the
8 city. And through the discussions with our law
9 director at the time, Roy Batista, it was, he
10 expressed that it made him uncomfortable that a
11 nonattorney be doing the negotiations under the
12 direction of Attorney Bob Tscholl.

13 So at that point I had asked Jack DeSario if
14 he knew anybody that specialized in labor agreements.
15 We wanted to make sure, or I wanted to make sure it
16 was done right. He had given me the name of three
17 law firms. I was also looking to find a law firm
18 that was not going to have a conflict with the city
19 because if I remember correctly, there was a series
20 of incidents with legal consultation, whether it was
21 a conflict or because they were involved with the
22 city in one capacity or the other, so I wanted to
23 make sure we found a firm that did not have any
24 conflict of interest with the city.

25 Two names were given to me. One, Lily &

1 Holderman by Jack DeSario, and one was Johnson &
2 Angelo. Johnson & Angelo had clearly had more
3 expertise in labor agreements and we asked for an
4 assessment in labor agreements and we did that at a
5 cost of five to seven thousand dollars. The
6 assessment was done by Johnson & Angelo, and of
7 course, after the assessment was made after
8 discussing it with Roy Batista, Council President
9 Snyder and Councilman Dave Lindower, we kept them
10 informed of it, it would be best to continue with
11 them to do the labor, labor negotiations. And that's
12 when Gary Johnson was in contact with the city and
13 myself for the assessment and he, then he transferred
14 that to Attorney Mike Angelo for the labor
15 negotiations.

16 Q Was the mayor involved in the decision process?

17 A The mayor was made fully aware that we were pursuing
18 an assessment and he told me to make sure that the
19 council president and the chairman of the personnel
20 committee, which is Dave Lindower, Jon Snyder, that
21 they were in the loop in agreement. So we proceed
22 with the assessment. And then I had brought in Gary
23 Johnson to meet with the mayor in his office prior to
24 council passing any agreement to hire him. So he was
25 aware of it.

1 Q Did at any time -- it's stated in Mr. Forchione's
2 report, did at any time did Mr. Lindower or
3 Mr. Snyder form a committee to decide upon this firm?

4 A A formal?

5 Q Do you know of a committee of those two gentlemen
6 deciding upon this firm?

7 A No, there was no committee.

8 Q Thank you.

9 A I kept them in the loop.

10 Q Right. Right, but they didn't make the decision?

11 A But there was never a time when myself and Dave
12 Lindower and Jon Snyder nor any other members of
13 council met.

14 Q Okay.

15 A To discuss this. I did meet personally with Dave
16 Lindower and discussed it over the phone with Jon
17 Snyder.

18 Q I'm assuming you did but I'm just going to ask. Is
19 it at this point did you know Mr. DeSario was part of
20 the Johnson & Angelo firm?

21 A Yes. Mayor Rice pointed out to me when Johnson &
22 Angelo had given me some promotional literature
23 promoting their firm, Mayor Rice pointed out in his
24 office, excuse me, that Jack DeSario had an
25 affiliation with Johnson & Angelo and he asked me if

1 it was a problem. I didn't think it was a problem.
 2 Why was it a problem if my neighbor was a member of a
 3 law firm that we're going to do business with that I
 4 had no financial agreement with.
 5 Q Did you know at that time the mayor had contacted
 6 Mr. DeSario to be his campaign advisor?
 7 A No. I was aware there was discussions but I was not
 8 aware of any contractual relationship. Nor was it
 9 discussed nor did I want to know as to the political
 10 activities of the mayor because I felt there was an
 11 importance to preserve the integrity of the daily
 12 operations of the city that I stay away from the
 13 political end of council members and also the mayor.
 14 Q Do you know at any time the mayor disclosing any
 15 information -- that's probably hearsay.
 16 When did you find out that Mr. DeSario was
 17 also his campaign advisor? How far into the
 18 negotiations? Let's see. The assessment was May.
 19 The fund-raising was June. I think we got the
 20 assessments back like by July, negotiations started
 21 early August. When did you find out Mr. DeSario was
 22 hired by the mayor? Do you remember?
 23 A I'm not exactly sure of the date but it was sometime
 24 after.
 25 Q When you found that out?

1 A Actually I didn't realize until there was a
 2 investigation and, of course, all that information
 3 was brought to the surface.
 4 Q Investigation by whom? Chuck?
 5 A No. The, I believe it was the ethics. The ethics
 6 investigation. Or no, I'm sorry. Frank Forchione's
 7 investigation.
 8 Q Oh, so that far?
 9 A Right. But again, I knew there were discussions, I
 10 knew that there were meetings between Mr. DeSario and
 11 Mr. Rice, but I was, I was not apprised of any
 12 contractual relationship. I wasn't told and I didn't
 13 ask.
 14 MS. KIESLING: All right. That's all I have
 15 on that one.
 16 Next one, the Heiser property. You just
 17 stated his comments to you. I don't know that I have
 18 any other questions about the Heiser property. Let
 19 me look at my notes. I do not have any comments
 20 about the Heiser property at this point. So I will
 21 love to be able to ask you more questions in the end
 22 possibly but I will defer now.
 23 MR. SNYDER: Thank you, Member Kiesling.
 24 Member Peters, you may begin your Q and A.
 25 DIRECT EXAMINATION

1 BY MR. PETERS:
 2 Q Most of my questions have been answered. I need some
 3 clarification of some issues here.
 4 In regards to the first charge, willfully,
 5 knowingly and wrongfully hiring, retaining,
 6 protecting an employee. You mentioned there was two
 7 people that currently work for the city, that worked
 8 for the city at that time that put in for those
 9 positions. That put in for that position?
 10 A That's correct.
 11 Q Were they interviewed?
 12 A One was interviewed. One was given an interview by
 13 Kim Cooksey. It was the full-time employee at the
 14 water treatment plant. And he was interviewed, yes.
 15 Q And the other one was not?
 16 A The other one I do not believe was given, he
 17 certainly was not given an interview by me, and I
 18 think because he was a part-time employee and he was
 19 not a part of the labor agreement therefore it didn't
 20 require us to give him, to consider him.
 21 Q Okay. You interviewed them or Kim Cooksey
 22 interviewed them?
 23 A Kim Cooksey.
 24 Q Kim Cooksey. Did he give any recommendation to you
 25 in regards to that employee that he interviewed?

1 Recommendations of either hiring him for the position
 2 or not hiring him for the position?
 3 A You mean that individual?
 4 Q Yes. The one he interviewed.
 5 A Yes.
 6 Q And what was his recommendation?
 7 A That he thought he would be a good candidate.
 8 Q Okay.
 9 A For the park department.
 10 Q Now, you mentioned as far as the hiring process, you
 11 put in the new process. Was anyone put through that
 12 process before the hiring of Michael Hickey? Were
 13 there anyone hired under that process?
 14 A Well, the pros or checklist we put together hiring
 15 employees was really geared towards outside
 16 employees.
 17 Q Okay.
 18 A People that were employed outside the city. But
 19 certainly we wouldn't have to do a background check
 20 in order to transfer an employee from one department
 21 to the other but it certainly, when you look at the
 22 labor agreement it states that you need to consider
 23 the employee that works in the city and you make that
 24 decision based on their qualifications, their
 25 seniority, and I forget what the third area was.

1 MR. PUSATERI: I think his question was,
 2 correct me if I'm wrong, Mr. Peters, but was anybody
 3 before Mr. Hickey put through that hiring process
 4 from the outside. That was established by you.
 5 A No. The only one, if I recall correctly, was put
 6 through that hiring process was Mike Hickey.
 7 MR. PUSATERI: Okay. The answer was no to
 8 that question.
 9 A Yes. The answer is no.
 10 Q The answer is no, but he wasn't put through the whole
 11 process?
 12 A Again, I believe the form checked that there were
 13 background, there was a background check or reference
 14 check but I certainly did not check with ODOT. And
 15 to my knowledge there was no other individual that
 16 checked with ODOT.
 17 Q Okay. Forgive me here. At some point you mentioned
 18 the phrase "dragging your feet" during the hiring
 19 process. Was that language used by the mayor
 20 directly to you?
 21 A Yes.
 22 Q He said that you were dragging your feet?
 23 A Yes.
 24 Q And the sense of urgency, that's just a feeling you
 25 had?

1 A Yes.
 2 Q He didn't say that there was an urgency to fill that
 3 position?
 4 A No, he told me to get it done.
 5 Q Okay. And Mr. Cooksey felt, or -- I can't ask that.
 6 Okay. So going to Exhibit -- okay. Just so I'm
 7 clear. 1B, 1C, 1D, for sure you did not stamp those?
 8 A I definitely did not stamp those.
 9 Q Now, this, and this is a payroll notice, 1B I'm
 10 looking at, that's a payroll notice. Is this the
 11 official form when an employee is hired? Does that
 12 make it official, I should say.
 13 A Yes, it's a copy so this is required by the finance
 14 department so that the individual gets paid.
 15 Q Okay. Just so I understand, you did not stamp that
 16 so --
 17 A No.
 18 Q And the only person that had, there was only one
 19 person that had those stamps?
 20 A That's correct.
 21 Q So you did not hire Michael Hickey, Kim George hired
 22 Michael Hickey?
 23 A I did, did not authorize the use of my signature
 24 stamp. I don't understand why the signature stamp
 25 has to be used. Why I couldn't -- there was one time

1 in my two years that I took a period of time off for
 2 a lengthy period, which was when my wife had our
 3 fifth child, and, and I believe at that time there
 4 were like POs and so forth that my signature stamp
 5 was used on that.
 6 Q Okay. But what I'm trying to get at is as far as the
 7 hiring process within the city, the director of
 8 administration has a final say on whether that person
 9 is hired or not?
 10 A As delegated by the mayor, I believe that's how it's
 11 written in the charter.
 12 Q But you basically did not hire him.
 13 A Well, I authorized this signature stamp.
 14 Q Okay. So the payroll notice is the official document
 15 needed to hire someone and that's not you that did
 16 that?
 17 A No.
 18 Q As far as the qualifications for the job, there are
 19 certain qualifications that are required for that
 20 position for the, I'm sorry, for the position Michael
 21 Hickey was hired for. Park, recreation, building and
 22 grounds. Are there any specific qualifications for
 23 that position?
 24 A There's a job description that is laid out in the,
 25 for the park and, or for the building and

1 maintenance, yeah, there are specifications that are
 2 laid out for building and maintenance.
 3 Q And if you don't meet those specifications then you
 4 are not considered for that?
 5 A Well, there wasn't, like if I remember correctly, in
 6 the job description there wasn't like a certification
 7 that was required so there was some area of
 8 subjectivity as to whether or not somebody is
 9 required. I believe in the job description there's
 10 dealing with fixtures and things like that and
 11 ideally we would like a candidate that has some
 12 experience in that area.
 13 Q Okay. Now during that hiring process, I know you
 14 didn't all the way to the background check, but did
 15 you feel that Mr. Hickey was qualified for this
 16 position?
 17 A There were other positions that he was certainly, the
 18 position of, a position which was not available in
 19 the park department but would have been best suited
 20 for him.
 21 Q Okay. And this is going back to what Council Member
 22 Kiesling was asking you about the Exhibit 10. And
 23 then 1R. Okay. 10, this is his official notice of
 24 disciplinary action. On September 2nd.
 25 A Uh-huh.

1 Q Does this have to be approved by you, being
 2 Mr. Olesky's superior?
 3 A I don't recall what the labor agreement, what the,
 4 what the city, I'm not sure what the labor agreement
 5 advises but clearly this is done by Joe Olesky.
 6 Q Okay. But you were aware of this when this happened?
 7 A Yes.
 8 Q And then eight days later he decides to basically
 9 take it all back?
 10 A Yes.
 11 Q And from what it looks like in 1R, he's considered
 12 response to the letter?
 13 A He's required, if I remember correctly, according to
 14 the labor agreement or we had asked that he reply to
 15 this in writing and he did.
 16 Q Okay. What I'm trying to understand is, as his, as
 17 Mr. Hickey's immediate supervisor Joe Olesky has the
 18 ability to reprimand somebody, put it in their file
 19 and take it back? Does any of that have to go
 20 through director of administration?
 21 A Clearly, clearly Joe Olesky was operating under my
 22 direction.
 23 Q Okay. In regards to the disciplinary action being
 24 rescinded, were you told to rescind that?
 25 A It was made very clear to me that it was unacceptable

1 according to Mayor Rice, the suspension.
 2 Q So Mayor Rice basically told you to rescind that?
 3 A Yeah, he made that clear. I'm not sure of the
 4 terminology, but that I am creating a problem with
 5 this.
 6 Q Okay. Okay. That's all I have on that one.
 7 Number 2, I don't have many questions for you
 8 on 2. Mayor Rice, did he direct you, did he say for
 9 you to sell tickets to city employees?
 10 A Yes.
 11 Q Those were his exact words? Okay.
 12 A Well, I'm not sure if that's the exact words but he
 13 made it clear to me that I needed to make sure that
 14 these employees buy tickets and support the mayor.
 15 Q Okay.
 16 A It was made crystal clear to me.
 17 Q Okay. Let me skip down to number 6. Mayor
 18 willfully, knowingly attempt to acquire the Heiser
 19 property without disclosing to the city. It was your
 20 testimony earlier that it was his intentions to
 21 acquire the property and he said that it had to
 22 happen before the city acquired the property. Is
 23 that correct?
 24 A Mayor Rice had made that clear to me, yes.
 25 Q Did he tell you why he had to, he felt it was

1 necessary to try to acquire it before?
 2 A Because he was not able to take the property away
 3 from the city or secure the property from the city.
 4 MR. PETERS: Okay. That's all I have for
 5 now.
 6 MR. PUSATERI: May I suggest to the president
 7 of counsel, it's up to you, of course, but it seems
 8 like everybody is really sluggish. Maybe a
 9 five-minute stretch would be warranted.
 10 MR. SNYDER: Absolutely. It is 8 p.m. We'll
 11 take a five-minute needs break and stretch and resume
 12 at 8:05.
 13 (WHEREUPON, a recess was taken.)
 14 MR. SNYDER: We're back on the Record. Thank
 15 you, Member Peters. Member Sarbach.
 16 MR. SARBACH: Thank you, Mr. Chair. I would
 17 like to commend my fellow members. I wish that I had
 18 legal background. They asked very good questions. I
 19 think in fact they have taken about all my questions.
 20 For not having a legal background I think they are
 21 very commendable. I understand counsel doesn't have
 22 a veterinary background so I guess we're all in the
 23 same background with not having certain things.
 24 DIRECT EXAMINATION
 25 BY MR. SARBACH:

1 Q I'd like to -- Mister, Mr. Held, Mr. Held, before the
 2 meeting this evening did anybody ask something to the
 3 effect of "Remember Jesus is watching you" or words
 4 to that effect?
 5 A Yes.
 6 Q Did you take, did you take that as a threat?
 7 A I wouldn't take it as words of encouragement.
 8 Q Do you feel your testimony tonight would, would hold
 9 up to the truth scale of Jesus, in your opinion?
 10 A In my opinion?
 11 MR. PLAKAS: Objection, Your Honor.
 12 MR. SARBACH: I can't ask his opinion?
 13 MR. SNYDER: We have the fact of Jesus so we
 14 cannot unfortunately, I'm sure a few people here are
 15 close to God.
 16 A I was told I need to be careful about what I said
 17 because Jesus is watching.
 18 MR. PLAKAS: Objection.
 19 Q Well, that's probably good advice of all of us.
 20 A Can I state on the Record who stated that to me?
 21 Q Yeah, would you tell me?
 22 MR. PLAKAS: Objection.
 23 A Kim George's husband.
 24 Q Okay.
 25 MS. KIESLING: You got to say it a little

1 louder, your objection.

2 MR. PUSATERI: Let's move on.

3 Q Item 2 with regard to the fund-raising activities,
4 just a clarification. After all these questions this
5 is my only question.

6 You stated that on several occasions you were
7 told to advise the employees that they served at the
8 pleasure of the mayor; is that correct?

9 A I'm sorry, state that again.

10 Q You were told to advise your employees by Mayor Rice
11 that they served at the pleasure of the mayor?

12 A Repeatedly.

13 Q Now, that was in direct conjunction, that wasn't just
14 for any gift for employees, that was direct
15 association with selling his fund-raising tickets; is
16 that correct?

17 A Yes.

18 Q So there's no ambiguity there. There's not two
19 different things?

20 A No.

21 Q They were one in the same thing?

22 A Correct.

23 MR. SARBACH: That's basically all I have.

24 MR. SNYDER: Thank, Mr. Sarbach. Mr. Foltz?

25 MR. FOLTZ: I have nothing.

1 MR. SNYDER: Mr. Lane?

2 MR. LANE: Yeah. Pardon me.

3 DIRECT EXAMINATION

4 BY MR. LANE:

5 Q You stated, Dave, that prior to Mr. Hickey that
6 basically your new plan or your new hiring practice
7 went into effect with his hiring; is that correct?

8 A If I remember correctly, he was the first hire that
9 we employed this checklist.

10 Q Did you have a ballpark idea of how many employees
11 were hired after him during your remaining term? It
12 doesn't have to be exact. I'm just trying to get an
13 estimate.

14 A Two or three.

15 Q Okay. And nobody, those rules were never
16 circumvented for those other two, three, four
17 employees?

18 A It was never brought up.

19 Q It was just the one employee?

20 A It was specifically brought up for one employee.

21 Q Okay. My other questions are pretty much been asked
22 about the Johnson Angelo situation and I think
23 they're better directed at Mr. DeSario. I was trying
24 to get a time line in my mind and I think you've
25 pretty well established but basically he's your

1 neighbor, you had a lot of conversations with him,
2 the man is a member of a law firm, he also was on the
3 ethics commission?

4 A That's correct.

5 Q As well being a professor. So in February, March of
6 '03 at that point in time the city entered into a
7 contract, council is now mentioned, the mayor
8 reviewed these and we went on from there. The mayor,
9 according to your recollection, sometime in May or
10 part of this packet, I believe it was the end of May
11 entered into a political agreement with Mr. DeSario.
12 According to this packet of information we have in
13 the exhibits, and I can look it up if you want me to
14 refer to a specific one.

15 MR. PUSATERI: I'll help you if I can find it
16 for you. Go ahead.

17 Q Just a general. From that moment on in May or June,
18 whatever it was, through the time of your departure,
19 you had no knowledge that the mayor was working with
20 Mr. DeSario in a political capacity; right?

21 A No, I was made aware after Frank Forchione's report.

22 Q Right. Okay. So during the remaining part of your
23 tenure --

24 A But during that investigation it was brought to my
25 attention. I'm not exactly sure of that date.

1 Q Right, right. But you were gone by that time is what
2 I'm trying to say.

3 A No, no. I'm confused.

4 Q Mr. Forchione started the investigation after you
5 left.

6 A Yes, after. That's correct.

7 Q All right. And Mr. DeSario, did he have any actual
8 working relationship with the city involving Johnson
9 & Angelo or he was just more or less a go-between
10 that directed you to that law firm and at that point
11 in time he stepped out of the picture; correct?

12 A No, Mr. DeSario simply, I asked him for some
13 recommendations. He gave them to me and that was the
14 extent of his involvement with me.

15 Q Okay. So he never at any point in time ever involved
16 himself in city business or any of that?

17 A No.

18 MR. LANE: Okay. I think that's all that I
19 have. I'm just trying to get a time line. Thank
20 you. Thank you.

21 MR. SNYDER: Are you yielding out there?

22 MR. LANE: Yeah. I'm sorry.

23 MR. SNYDER: Thank you very much, Mr. Lane.

24 THE WITNESS: Excuse me, President Snyder.
25 When you were talking about Jack DeSario you were

1 saying like as far as any sort of contractual
2 arrangement with Jack DeSario, there was none, he was
3 never contracted with the city for any operation.

4 BY MR. LANE:

5 Q Yeah, I was trying to distinguish, I know he works
6 from the law firm, you gave us that.

7 A Right.

8 Q But he never did anything for the city at that point
9 in time?

10 A No, other than helping me direct me with his own
11 opinion that I would ask for, but there was never any
12 contractual arrangement.

13 MR. LANE: Okay. Thank you.

14 MR. SNYDER: Mr. Lindower.

15 MR. LINDOWER: Thank you, Mr. Snyder. This
16 is the best part about being the last guy on the
17 block. There aren't a whole lot of questions left to
18 answer, but I'd like to clarify a couple of issues if
19 I could.

20 DIRECT EXAMINATION

21 BY MR. LINDOWER:

22 Q Mr. Held, the mayor's position is a part-time
23 position with the city; is that correct?

24 A Correct.

25 Q I'm asking these questions for the audience more than

1 anything. The administrator's job is a full-time
2 eight-hour-a-day job 24 hours a day, technically; is
3 that correct?

4 A That's correct.

5 Q If you refer to Exhibit 1I, 1J, 1K, 1L, 1M and 1N as
6 in Nancy. I, J, K, L, M, N. Collectively if you
7 look at those my question to you is, were those
8 documents in Mr. Hickey's personnel file when you
9 were fired?

10 A You're asking if I, J -- 1I, I'm sorry. 1I, 1J --

11 MR. PUSATERI: 1I is 1I.

12 A I'm sorry, 1I. 1I, 1J, 1K.

13 Q 1L, 1M and also 1N.

14 A No, to my knowledge these were not, I certainly did
15 not place them in his personnel file nor did I direct
16 anyone to place them in the personnel file.

17 Q You had access to all employee personnel files; is
18 that correct?

19 A That's correct.

20 Q Okay. But you can't say at this particular point in
21 time that those documents that I just named were in
22 that file?

23 A They were not in the file.

24 Q Okay. And also just to make clarification to the
25 audience, call for service in the police department

1 is not necessarily an official report; however, it is
2 notification.

3 MR. LINDOWER: I'm going to try to save a
4 little bit of time if I can. With Mr. Plakas' and
5 Mr. Pusateri's permission to do so, I want to -- I
6 don't want to get up here and make any kind of a
7 speech but I would like to clarify a couple of issues
8 if I could. The reason I'm not going to delve into
9 some of these issues more than what I have.

10 Mr. Plakas or Mr. Pusateri, stop me if I'm --

11 MR. PLAKAS: I have no objection.

12 MR. LINDOWER: I was on the North Canton
13 police department for 35 years. I retired December
14 the 31st of 1999. As the chief of police. The
15 reason I say that is because I'm familiar with the
16 recordkeeping system the police department uses as
17 well as the city in general. Just over those few
18 years I've managed to pick up the procedure process.

19 The one issue that concerns me more than
20 anything here tonight is in the order of presentation
21 of charges is Item 1, which is willingly, knowingly
22 and wrongfully hiring, retaining and protecting city
23 employee. There have been several questions asked
24 tonight that I think are going to pretty much clarify
25 that issue as far as I'm concerned. In 35 years I

1 have been, had the opportunity to testify in court
2 many times. I'm familiar with the rules of hearsay,
3 rules, rules of evidence and so forth so I don't want
4 to belabor that issue by going over some of the
5 statements that have already been made or questions
6 made by other members. As far as Item Number 2, 3,
7 4, 5 and 6 on the order of presentation, I think
8 there's been enough questions asked already to, to
9 give enough ammunition, let's say, to pursue those
10 issues further and I'm sure that Mr. Plakas will on
11 his cross-examination probably ask questions in
12 regards to those, as well as Mr. Pusateri. So with
13 that I'm going to not remark any more on those
14 issues.

15 However, I am concerned again about Item
16 Number 1 simply because of the fact, and here again,
17 Mr. Plakas, stop me if I'm on the line. There are
18 certain things that must be done when hiring an
19 employee to work for a city, where as the police
20 chief I was responsible for those people being the
21 kind of people that we wanted to work here. I feel
22 that if in fact someone is not properly background
23 checked or record checked or they're monitored well
24 enough by supervisors and by administration in this
25 particular case, that the city is putting itself in

1 an extremely liablous position. Should that person
2 conduct themselves improperly one way or another,
3 they could cost the city millions at that time or
4 even in fact someone's life. So having said that,
5 that's my reason for delving so much into Issue
6 Number 1. I'm going to stop at that right there
7 because I don't really have any further questions to
8 ask as far as like I say, 2, 3, 4, 5 and 6. That's
9 really all I have to say.

10 MR. SNYDER: Thank you, Member Lindower, for
11 your kind comments. I just have a couple questions
12 relative to Item Number 5. I did not address that in
13 my initial questioning. And I want to clear up some
14 things for the Record. And from probably January of
15 '03 through approximately March as these, as the
16 exhibits state, on the exhibits, I don't know, are
17 they numbered for the Johnson & Angelo charge, would
18 that be Exhibit 5?

19 MR. PUSATERI: It's I believe 5.

20 MR. SNYDER: It would be Exhibit 5, and I'll
21 try to confine my statements to those exhibits so
22 that I do not use hearsay.

23 REDIRECT EXAMINATION

24 BY MR. SNYDER:

25 Q And again, I'm not a trained attorney, but anyway,

1 through January of '03 through 3/5, is that 3/5/03,
2 Mr. Held, in my asking you about your own independent
3 recollection, you had ongoing conversations with the
4 law firm of Johnson & Angelo?

5 A Okay. Again for clarification, you're asking me if I
6 had an ongoing --

7 Q Just general conversation relative to hiring the firm
8 to be the negotiating body for the labor --

9 A We had the assessment.

10 Q Right.

11 A Then after the assetsment there was communication.

12 Q Right. Prior to that, though, you mentioned, and I
13 want to clear the Record that Member Lindower and
14 myself, Member Lindower being the chairman of
15 personnel and safety, I being the chairman of both
16 finance and the president of this council, we were
17 not party to the actual hiring of the firm assessment
18 hiring?

19 A No.

20 Q That was under the statutory limit of \$25,000?

21 A Right.

22 Q And that was done through the administration?

23 A Felt it was important, as well as the mayor, to keep
24 you informed.

25 Q Right. But I mean, we were not told prior to the

1 hiring, we were told after they were done, the
2 assessment, which is well within the legal statutory
3 limit. I'm not questioning your --

4 A Right. I'm not sure of the time line on that.

5 Q Because I know at that particular time after the
6 assessment I was told what the cost was and so forth
7 and I was given as the finance chairman an estimated
8 cost of \$18,000?

9 A Yes. The assessment that was done was clearly I went
10 through Roy Batista on that.

11 Q Right. Which is done as proper through the law
12 department?

13 A Right.

14 Q Should any outside counsel be hired that is the
15 stipulation of the rules of council?

16 A Law Director Batista is the one that okayed it.

17 Q Right. That's not a problem and I understand that.
18 What I'm getting at, after February 28th that year,
19 '03, the mayor, Tom Rice, entered into contractual
20 obligation with Jack DeSario, DJS or whatever his
21 consulting firm is, as so noted on one of these
22 exhibits. And you said that at that time the mayor
23 alluded to the fact that Jack DeSario was a member of
24 the firm of Johnson & Angelo, either of counsel or an
25 active participant as far as a rainmaker for that

1 particular firm; is that correct? Did the mayor say
2 to you, call you into his office, say to you, Look
3 here, Jack DeSario, who is my campaign guy, is a
4 member of that firm? Did he say that?

5 A No. The mayor, the mayor made it clear to me that
6 when I handed him the documentation of promotional
7 literature of Johnson & Angelo, it was sitting on his
8 desk and he was looking through the information. He
9 said, "Look it here. Jack DeSario" -- this isn't a
10 quote, this is to summarize it, "Jack DeSario has
11 affiliation with this firm." He said, "Do you think
12 that's a problem?" I said, "No, why would that be a
13 problem that Jack DeSario is a neighbor of mine and
14 he is affiliated with the law firm Johnson & Angelo."
15 I did not see a problem with that.

16 Q All right. Pursuant to that was Mr. Johnson or
17 Mr. Angelo ever present in the office of the mayor
18 when you were in the offices of either the
19 administrator's, which is adjoining office, or the
20 mayor's office?

21 A Yes.

22 Q Prior to council being informed you were going to
23 hire the firm of Johnson & Angelo?

24 A Yes. I introduced Gary Johnson to Mayor Rice in his
25 office.

1 Q And did you have any independent recollection of the,
2 them being solicited for a campaign donation, the law
3 firm of Johnson & Angelo, when they were actively
4 engaging in contracts with the City of North Canton?

5 A No.

6 Q You have no personal knowledge of that?

7 A No.

8 Q But I think, well, again, I believe the statement of
9 campaign contributions which begins with number 5L
10 we'll hold on to the fact that Gary Johnson did in
11 fact give a contribution to the committee to elect
12 Mayor Rice while he was in contractual obligation
13 with the city. Do you see that on there anyplace?

14 A What item is that?

15 Q I believe that's on 5. There's so many of them here.

16 It's a statement.

17 A Maybe we didn't get it.

18 MR. PUSATERI: It's 5R.

19 MR. SNYDER: 5R.

20 MR. PUSATERI: That's correct.

21 A Yes, I'm aware of that.

22 Q And that also Mr. Jack DeSario, a member of that
23 firm, is noted on the mayor, on the campaign
24 literature as principal and also chief of DNR
25 Consultants also gave a contribution to the mayor's

1 president of council or Mr. Lindower as the chairman
2 of personnel that Mayor Rice had a separate contract
3 with a member of the firm of Johnson & Angelo to whom
4 we were asked to approve invoices that ultimately
5 totaled some \$56,000? Did you ever advise me of
6 that, sir?

7 A I'm not following what you're saying.

8 Q Did you at any time in your capacity as director of
9 administration send to me either a memo, an e-mail or
10 call me on the telephone and tell me that Mayor Rice
11 was involved in a private contract with a member of
12 the firm of Johnson & Angelo?

13 A I wasn't aware of it.

14 Q Right. Did the mayor ever direct you to tell me as
15 president of the council or chairman of finance or to
16 tell Mr. Lindower, who was the personnel chairman,
17 that he was involved in any contractual agreement
18 with a member of the law firm of Johnson & Angelo
19 whom we ultimately paid \$52,000?

20 A No.

21 Q The original assessment, if I recall, sir, that you
22 told me was \$18,000; is that correct? I mean as far
23 as the billing for the labor agreement?

24 A If I remember correctly, we had, they had given us a
25 quote of five to seven thousand dollars to make an

1 campaign?

2 A So it's --

3 Q Are you aware, sir, of the provision in the charter
4 that prohibits anybody doing business with the city
5 taking money from the city as alluded to at the
6 beginning of Mr. Plakas' opening statement referring
7 I assume to my raise in pay should I get it, which I
8 don't really care for, but that's neither here nor
9 there.

10 A Well, I'm aware what the charter states.

11 Q But again, I just want to make sure that I'm clear,
12 neither Mr. Lindower nor myself were in the actual,
13 had any part in the hiring of the law firm of Johnson
14 & Angelo originally; correct?

15 A You mean for the assessment?

16 Q Yes.

17 A No. That communication was --

18 Q Internally through the law department?

19 A Through Mayor Rice. It was certainly brought to his
20 attention. He didn't take an active role in the
21 assessment. He didn't have a strong, you know, he
22 was okay with what we were doing. But what Roy
23 Batista --

24 Q Excuse me. But at any time in your capacity as
25 director of administration, did you notify me as the

1 assessment of all our eight labor agreements, and as
2 we proceeded with hiring Johnson & Angelo the
3 original appropriation for negotiations I believe was
4 in the neighborhood of \$18,000, yes.

5 MR. PUSATERI: Ordinances that are attached,
6 Exhibit 5B starting there. If that helps council.
7 And I gave those to Mr. Rice earlier.

8 Q I wanted to ask you to recall in your memory, sir, if
9 you could, where we entered into a contract to have I
10 believe that's called Tower 2 refurbished and did the
11 mayor direct you at any point in the summer I
12 believe, well, it would have been last summer of '03
13 to, when it was not completed and we were coming into
14 a situation where the demand on the city water would
15 exceed our normal demand and our ability to deliver
16 water through our normal channels without that water
17 tower in operation, did he direct you to get that
18 water tower in operation?

19 A Oh, absolutely. He made it very clear, stressed the
20 urgency to get the water tower completed.

21 Q And in your capacity as director of administration,
22 did you consult with the law firm of Johnson & Angelo
23 regarding any matters that would cause you to
24 expediate getting Tower 2 into operation?

25 A We asked Johnson & Angelo for an opinion in reference

1 to the matter of the water tower, a separate opinion
 2 which they billed you for.
 3 Q Was the mayor aware of that?
 4 A Yes.
 5 Q Did you consult with me in my capacity as president
 6 of the council or as in my capacity as chairman of
 7 finance before that done?
 8 A No.
 9 MR. SNYDER: Okay. That's all that -- I
 10 think that's all I have at this particular time.
 11 MR. PUSATERI: Can I just ask clarification
 12 for Mr. Held?
 13 REDIRECT EXAMINATION
 14 BY MR. PUSATERI:
 15 Q It's appropriate at this point, I just need to ask,
 16 maybe it's unclear in my mind, getting late, but the
 17 initial contact with the law firm of Johnson & Angelo
 18 was through you via DeSario, is that how you
 19 understand it?
 20 A That's correct.
 21 Q All right. And it wasn't the mayor that introduced
 22 you to Johnson & Angelo, it was DeSario that
 23 introduced you to the firm?
 24 A That's correct.
 25 MR. PUSATERI: That's what I wasn't clear.

1 Thank you.
 2 MR. SNYDER: One question before we continue.
 3 A question of procedures, Mr. Pusateri.
 4 MR. PUSATERI: Yeah.
 5 MR. SNYDER: If we end our portion and defer
 6 to Mr. Plakas at this point to cross-examine, do we
 7 have an opportunity then to come back and rebut?
 8 MR. PUSATERI: Oh, absolutely. Certainly.
 9 Sure. I mean, that's not rebut but you have, you'll
 10 be allowed to ask additional questions. It's not a
 11 rebuttal.
 12 MR. SNYDER: At this time I defer to you,
 13 sir, and you take as much time as to where you're
 14 uncomfortable or tired or whatever it is and we can
 15 adjourn the meeting to tomorrow evening.
 16 MR. PLAKAS: First of all, I do have no
 17 problem, no objection to you redirecting the witness,
 18 and I think after we get done with your cross then I
 19 would expect the same courtesy.
 20 MR. SNYDER: Absolutely.
 21 MR. PLAKAS: At this point in order to be
 22 more efficient and effective with the use of your
 23 time and also the citizens' time, I would ask that we
 24 recess for the evening and I will use the time to
 25 effectively marshal and focus the questions so that

1 we won't be all over the board. I ask that for a
 2 couple reasons. We have not had the opportunity to
 3 have any discussion or questioning with the witness.
 4 We had asked for that, but for reasons beyond the
 5 control of Mr. Pusateri or myself we were not able to
 6 do that. I do note that from the records of the
 7 city, the law department's billing records, that in
 8 fact Mr. Pusateri did get the opportunity to speak
 9 with the witness with regard to the Hickey matter,
 10 which is obviously a major issue that's come up, so
 11 we haven't had that opportunity so tonight is the
 12 first night we've heard anything as to what he's
 13 going to testify to. The documents that we've got
 14 that all of you have been using and properly are
 15 familiar with, we got those today. So we'll be able
 16 to, during the evening break, review all the
 17 information that have been put forth and tomorrow
 18 come back and make more efficient, I promise, use of
 19 our time.
 20 MR. SNYDER: I appreciate it. Is 5:15
 21 comfortable to you, sir?
 22 MR. PLAKAS: That would be fine.
 23 MR. SNYDER: Then at this time, Mr. Held, we
 24 will --
 25 THE WITNESS: Mr. President, Mr. Plakas has

1 just brought to the attention of the city council
 2 that he had requested a meeting with Mr. Pusateri,
 3 myself, and my attorney had sent a letter to
 4 Mr. Pusateri and if you wouldn't mind, would you
 5 comment as to why.
 6 MR. LUTE: Mel Lute on behalf of Mr. Held,
 7 and his counsel in the civil action that's pending in
 8 Stark County filed by the mayor. There's numerous
 9 John Doe defendants, Mr. Held being presently the
 10 only one named individually. Because that action is
 11 pending and discovery is ongoing in it, to protect
 12 Mr. Held's interests we felt it was inappropriate for
 13 him to meet and be questioned by counsel for Mayor
 14 Rice despite the fact that was what was asked for by
 15 Mr. Pusateri. In all due respect, that simply would
 16 have been inappropriate from the standpoint there was
 17 a pending civil action. That letter was sent to
 18 Mr. Held is correct. That was the action that was
 19 taken.
 20 MR. SNYDER: Do you have all the documents
 21 that you need?
 22 MR. PLAKAS: The documents we used today were
 23 presented to us today. I'm not exactly sure what
 24 time they came.
 25 MR. PUSATERI: No, they were given to us

1 before.
 2 MR. PLAKAS: They were given to us right
 3 before the meeting.
 4 MR. PUSATERI: Excuse me? No, you had those
 5 documents for some time.
 6 MR. HURYN: I guess, Paul, for clarification,
 7 in the form that they were given to us today. The
 8 exhibit numbers and which documents that are going to
 9 be used at forum that was discussed by counsel, that
 10 was presented to me.
 11 MR. PUSATERI: That's right.
 12 MR. PLAKAS: At any rate, for all those
 13 reasons, Mr. President, we would respectfully ask we
 14 adjourn until 5:15 tomorrow.
 15 MR. SNYDER: I appreciate that. At this
 16 particular time, Mr. Held, I will tell, I will note
 17 you're still under oath. I would ask you to please
 18 at this point do not discuss your testimony with
 19 anybody until you return tomorrow evening at 5:15. I
 20 do want to thank you on behalf of the City of North
 21 Canton council and Mayor Rice for coming tonight.
 22 Nothing else to come before this hearing, I will
 23 adjourn it and we will reconvene tomorrow evening at
 24 5:15.
 25 -----

1 Hearing adjourned at 8:40 p.m.
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CERTIFICATE

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 3
 4 STATE OF OHIO)
)SS
 5 STARK COUNTY)
 6
 7 I, Laurie Maryl Hart, a Registered Merit
 8 Reporter and Notary Public in and for the State of
 9 Ohio, duly commissioned and qualified, do hereby
 10 certify that this hearing was by me reduced to
 11 Stenotype and afterwards transcribed by
 12 computer-aided transcription, and that the foregoing
 13 is a true and correct transcription.
 14
 15 I do further certify that this hearing was
 16 taken at the time and place in the foregoing caption
 17 specified. I do further certify that I am not a
 18 relative, counsel or attorney of either party, or
 19 otherwise interested in the event of this action, or
 20 is the court reporting firm with which I am
 21 affiliated under a contract as defined in Civil Rule
 22 28(D).
 23
 24 IN WITNESS WHEREOF, I have hereunto set my
 25 hand and affixed my seal of office at Canton, Ohio,
 on this 13th day of September, 2004.

 Laurie Maryl Hart, RMR & Notary Public.
 My commission expires January 6, 2007.