

VOLUME: II
 PAGES: 1 - 252
 EXHIBITS: 25 - 27

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DOCKET
 NO. 08-04641-B

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JOHNSON GOLF MANAGEMENT, INC.,

Plaintiff,

vs

TOWN OF DUXBURY, and
 NORTH HILL ADVISORY COMMITTEE,
 CONSISTING OF MICHAEL DOOLIN, CHAIRMAN,
 SCOTT WHITCOMB, ROBERT M. MUSTARD, JR.,
 MICHAEL MARLBOROUGH, ANTHONY
 FLOREANO, MICHAEL T. RUFO, THOMAS K.
 GARRITY, RICHARD MANNING, W. JAMES FORD,
 and GORDON CUSHING (EX OFFICIO)
 and CALM GOLF, INC., and
 CHARLES LANZETTA,

Defendants

-----X

CONTINUED DEPOSITION OF ROBERT S. TROY,
 taken on behalf of the Plaintiff, pursuant to
 the applicable provisions of the Massachusetts
 Rules of Civil Procedure, before Jessica F.
 Story, Certified Shorthand Reporter and Notary
 Public in and for the Commonwealth of
 Massachusetts, at the offices of Follansbee &
 McLeod, LLP, 536 Granite Street, Braintree,
 Massachusetts, on Wednesday, September 5, 2012,
 commencing at 10:18 a.m.

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9 ALSO PRESENT:

10 Douglas Johnson
11 Jason Laramee
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I N D E X

<u>Deposition of:</u>	<u>Page</u>
ROBERT S. TROY	
Examination by Mr. Follansbee	6, 249
Examination by Mr. Kesten	35
Examination by Mr. Kreiger	216
Examination by Mr. Edge	223

<u>Exhibits</u>	<u>Page</u>
25 Gordon Cushing Affidavit	139
26 December 14, 2011 Memo	187
27 Richard MacDonald Draft Affidavit	187

P R O C E E D I N G S

MR. FOLLANSBEE: This is a continuation of the deposition of Attorney Troy that was begun on Thursday, June 28, 2012.

On the issue of privilege, are we beyond all the privilege issues at this juncture, the attorney-client privilege?

MR. GILL: That depends on, I guess on what you ask.

MR. FOLLANSBEE: Okay.

MR. GILL: I would suggest that you're probably going to be all right if you ask the same questions that caused problems last time.

MR. FOLLANSBEE: Okay. That will be my intent is to go back.

MR. GILL: What else you ask, I don't know.

MR. FOLLANSBEE: Well, essentially I'm addressing the issues that we had the last time where you raised attorney-client privilege and there was some discussion about whether or not the waivers that were effectuated by the town was controlling, and I just wanted to make sure

1 we're beyond all that.

2 MR. GILL: Ask away.

3 MR. FOLLANSBEE: Thank you.

4

5 EXAMINATION BY MR. FOLLANSBEE:

6 Q. Counsel, I'm showing you what was marked Exhibit
7 Number 11 at your earlier deposition, and it's
8 the settlement proposal from my office directed
9 to your attention on or about January 16, 2009.

10 MR. GILL: Excuse me. Hang on a second.

11 I just have to find it. Got it. Go ahead.

12 Q. Upon receiving that did you attempt to verify
13 any of the information that was in that letter?

14 A. This document I received, I believe the day
15 after the award was made by the town and I --
16 the answer is yes, I did.

17 Q. And did you try to determine whether or not CALM
18 Golf had any assets other than the \$169
19 reflected in the total assets on this bid?

20 MR. GILL: Just, before you answer that,
21 I want to confirm with counsel for the town that
22 privilege is waived regarding these questions.

23 MR. KREIGER: Yes.

24 MR. GILL: And he can answer?

1 MR. KREIGER: Yes.

2 A. I'm sorry. I didn't get the question.

3 Q. The question was, did you attempt to confirm the
4 fact that CALM Golf didn't have any assets other
5 than the \$169 shown on their balance sheet?

6 A. When I received this document I sent it to
7 Mr. Cushing and Mr. MacDonald. My best memory,
8 I spoke to Mr. Cushing and Mr. Edge and I
9 received a written response to the allegations
10 from Mr. Edge shortly thereafter which I then
11 forwarded to the town manager and Mr. Cushing
12 for their review and determination.

13 Q. Did you endeavor to find out whether or not the
14 other company that was running the Rockland Golf
15 Course, CP&L, Incorporated, was in bankruptcy?

16 MR. GILL: So again, counsel for the
17 town, I assume that the privilege is waived on
18 this. And I think the practical way to speed it
19 up is what we'll do is I'll assume that the
20 privilege is waived unless you guys speak up.

21 MR. KREIGER: That's fine.

22 Q. The question was, did you attempt to verify
23 whether or not CP&L, the company that was
24 running the Rockland Golf Course, was in

1 bankruptcy?

2 A. I asked Mr. Cushing and Mr. Edge to respond to
3 the matters that are contained in the letter.

4 Q. What was the response from Mr. Cushing?

5 A. Mr. Cushing had looked into it. He had some
6 information. I don't recall. I don't remember.

7 Q. And do you recall what Mr. Edge responded?

8 A. His was in writing. It was forwarded to town
9 hall.

10 Q. What did it say?

11 A. It was a point by point rebuttal.

12 Q. Rebuttal?

13 A. Yes.

14 Q. And did he rebut the fact that CP&L was in
15 bankruptcy?

16 A. I don't recall specifics on it.

17 Q. Did he indicate that CALM Golf had assets other
18 than assets shown on their financial statement?

19 A. My memory was it was a two or three-page
20 detailed response which was received shortly
21 there after this document here, I believe.
22 Also, that I forwarded this document to
23 Mr. Edge, too.

24 MR. GILL: You're talking about Exhibit

1 11.

2 THE WITNESS: Exhibit 11. I'm sorry.

3 Q. Did you discuss Exhibit 11 with Mr. MacDonald?

4 A. I did.

5 Q. And what did you say to Mr. MacDonald and what
6 did he say to you?

7 A. I don't remember.

8 Q. Did you indicate to Mr. MacDonald that it would
9 be problematic for the Town of Duxbury if the
10 information that CALM had given was shown to be
11 untrue?

12 A. As I said, I don't remember the conversation.

13 Q. You don't remember it?

14 A. No. I have no memory.

15 Q. Did you discuss the settlement proposal with any
16 of the selectmen in Duxbury?

17 A. I don't know whether I did or not.

18 Q. Is it your custom and practice as an attorney to
19 forward settlement proposals to your clients?

20 A. My instructions were to forward everything. And
21 I did, in fact, forward everything to the town
22 manager. The town manager then, you know, made
23 the determination as to what conversations he
24 would have with the selectmen. It's entirely

1 possible he could have discussed it.

2 Q. Did you review any documents to prepare for
3 today's testimony?

4 A. Not any specific documents, no.

5 Q. What did you do to prepare for today's
6 testimony, if anything?

7 A. Well, I -- for today or the deposition in
8 general?

9 Q. The deposition. Why don't we start with today
10 and then I'll ask what you did to prepare the
11 last time. So specifically for today, what did
12 you do to prepare?

13 A. For today I spoke with my counsel, I reviewed my
14 deposition transcript from the previous session,
15 and I just looked at the file. Nothing
16 specific.

17 Q. When you say you looked at the file, what
18 constitutes the file?

19 A. The file is very -- I didn't look at the whole
20 file. I just looked at some documents that I
21 had assembled. I don't recall specifically what
22 they were.

23 Q. Well, with regard to Exhibit Number 11, did you
24 give any thought to the concept of rescinding

1 the award to CALM Golf based on this
2 information?

3 A. That was not my position to make any decisions
4 with respect to that. I forwarded the
5 information to town hall, specifically to
6 Mr. Cushing and to Mr. MacDonald, and there was
7 discussions.

8 And beyond that it was not a matter of
9 my, you know, giving any thought. My thoughts
10 were, you know, more in the nature of providing
11 the information to the town manager and
12 answering any questions that he would have about
13 it.

14 Q. Now, did either Mr. Cushing or Mr. -- you said
15 you had some discussions. What do you remember
16 about the discussions with Cushing and MacDonald
17 concerning Exhibit Number 11?

18 MR. COVINO: Objection.

19 A. I don't remember anything about them.

20 Q. On the top of the second page of Exhibit Number
21 11 it indicates that Mr. Lanzetta knowingly and
22 willfully lied to the Town of Duxbury about the
23 experience of CALM Golf.

24 Did you explore whether or not CALM Golf

1 had any experience operating a golf course?

2 A. I believe Mr. Edge responded to that.

3 Q. What was his response?

4 A. I don't remember. It was in writing. I don't
5 remember.

6 Q. Had Mr. Cushing ever told you that the company
7 that had run Rockland, owned by Mr. Charles
8 Lanzetta, was in bankruptcy?

9 A. I think Mr. Johnson had told us that. I think
10 he had e-mailed it during the process.

11 Q. And you had become aware of that?

12 A. I became aware of the allegation, yes.

13 Q. And did you do anything yourself to determine
14 whether that allegation was true or false?

15 A. I did as directed by the town manager.

16 Q. What was your ultimate determination regarding
17 CP&L, Incorporated?

18 A. I didn't make any determination.

19 Q. What did you find out when you looked into it
20 concerning whether or not they were in
21 bankruptcy?

22 MR. COVINO: Objection.

23 A. I don't think I found out anything. I think --
24 I believe -- my best memory is that I accepted

1 Mr. Johnson's representation as being accurate.
2 I think Mr. Cushing might have given me some
3 information on that.

4 Q. Did you have any discussions concerning this bid
5 process in late 2008 and early 2009 with
6 Mrs. Sullivan on the board of selectmen?

7 A. I don't think any discussions. I could have.

8 Q. Did you have any correspondence from
9 Mrs. Sullivan regarding the North Hill Golf
10 Course?

11 A. I'm sure I did.

12 Q. What do you remember about any correspondence
13 that she may have sent?

14 A. I don't remember anything specific about it.

15 Q. In reviewing the file, did you review any
16 correspondence from Mrs. Sullivan?

17 A. No. I think I looked at the e-mails that you
18 had asked me about at the last deposition from
19 Mrs. Sullivan and Mr. Martecchini.

20 Q. And what was the substance of those e-mails?

21 A. That they didn't pertain to the North Hill --
22 they didn't pertain to the bids.

23 Q. What did they pertain to?

24 A. I don't remember but I remember I looked at

1 those.

2 Q. You reviewed them since your last session but
3 you don't remember what they pertained to?

4 A. I know they did not pertain to North Hill, no.
5 I reviewed them actually after the last session.
6 I don't remember that.

7 Q. Do you know why they would show up on your
8 billing records for the North Hill Golf Course
9 matter?

10 A. I don't. They did not pertain to the bid
11 process, let's put it that way, and I don't
12 remember what they pertained to. I don't know
13 why they have been billed that way.

14 That, you know, the billing, you know,
15 what category they were put in, sometimes there
16 were imprecisions about that. In other words,
17 an administrative thing could have been put in.
18 I don't remember what. I would have to look and
19 see.

20 Q. Did you have any conversations with the board of
21 selectmen regarding the possibility of
22 rescinding the award to CALM Golf and awarding a
23 contract to Johnson Golf in the winter of 2009
24 and early spring of 2009?

1 MR. COVINO: Objection.

2 MR. GILL: I assume the privilege is
3 waived with regard to this?

4 MR. KREIGER: Yes. I thought we had a
5 standing agreement on this.

6 MR. GILL: Yes, but he is -- he's now
7 asking questions about conversations with the
8 board of selectmen that occurred after the
9 lawsuit was filed which might well pertain to
10 the exception that was contained in the vote of
11 the board of selectmen.

12 MR. KREIGER: That exception was
13 superseded by the subsequent vote of the board
14 of selectmen in litigation between the town and
15 Mr. Troy. All privilege is waived.

16 MR. GILL: I wasn't aware that there had
17 been a vote since.

18 MR. KESTEN: All privilege is waived,
19 Bob. You can trust us. I guess you can't, but.

20 MR. GILL: So are you telling me then the
21 board has voted to waive all privilege with
22 regard to between Mr. Troy and the town?

23 MR. KREIGER: All privilege has been
24 waived.

1 MR. GILL: When was the vote, please.

2 MR. KREIGER: Sometime this summer.

3 MR. GILL: So it was -- the last vote you
4 sent me, Art, was on June 7th. You're saying
5 the privilege has been further waived since you
6 sent me that?

7 MR. KREIGER: Privilege is waived by
8 operation of the law with the filing of the suit
9 against Mr. Troy by the town. And yes, the
10 selectmen decided to waive all privilege after
11 that.

12 MR. GILL: And are you telling me they
13 took a vote and did that in some formal way?

14 MR. KREIGER: Yes.

15 MR. GILL: When did they do that?

16 MR. KREIGER: I don't know the date.

17 MR. GILL: Was it in July?

18 MR. KREIGER: June or July. Probably
19 July.

20 MR. GILL: All right. Do you have a copy
21 of that with you?

22 MR. KREIGER: No.

23 MR. GILL: Mr. Kesten, do you have a copy
24 of that vote?

1 MR. KESTEN: I'm not being deposed.

2 MR. GILL: Well, if you have it I'd ask
3 you to show it to us.

4 MR. KESTEN: Right.

5 MR. GILL: You're refusing?

6 MR. KESTEN: I'm not telling you I have
7 it. I'm not telling you I don't have it. The
8 privilege has been waived by the Duxbury
9 selectmen.

10 MR. GILL: Do you have a copy, Art?

11 MR. KREIGER: No.

12 MR. GILL: Go ahead.

13 A. I'm sorry. The question again?

14 Q. I have no idea what the question is.

15 MR. KREIGER: You were talking about the
16 selectmen, about rescission of the award to
17 Johnson.

18 A. That -- my best memory is that in the executive
19 session contemporaneous with this time period
20 that was discussed in executive session.

21 Q. And did you have any input in that discussion?

22 A. Other than discussing the offer of, if you want
23 to call it offer of settlement.

24 Q. I'd call it a settlement proposal.

1 A. All right.

2 Q. That's what it's captioned if you look at the
3 front page of Exhibit Number 11.

4 Did the selectmen ask you what your
5 recommendation was on this matter?

6 A. No.

7 Q. Did they ever ask you your recommendation as to
8 whether or not to settle the lawsuit or to
9 continue it?

10 A. At this particular time period the selectmen
11 were very resolute in defending the lawsuit.
12 They were not interested in exploring offers of
13 settlement.

14 Q. And who was on the board of selectmen at that
15 time? And now I'm referring to January 2009.

16 A. I believe it was Mrs. Sullivan, Mr. Martecchini
17 and Mr. Witten.

18 Q. Is it your memory that all three of those
19 individuals were resolute in defending the
20 lawsuit and not settling?

21 A. My memory is that Mr. Martecchini and
22 Mrs. Sullivan were more, I'd say vociferous.
23 Mr. Witten as a general rule was more laid back.
24 But no, there was -- my memory was it was pretty

1 much unanimity that the town should defend the
2 action he had taken.

3 And actually, the focus at that time was
4 really not on this matter. The focus was on the
5 injunction. The board was very committed to
6 having the town freed from the injunction.

7 Q. Why was that?

8 A. Because they felt that the injunction should be
9 vacated and that --

10 Q. Did you give them any advice on whether or not
11 the injunction should be vacated?

12 A. I provided them with a copy of the judge's
13 order. I also in this period of time or in the
14 early months of 2009, I provided them with the
15 judge's findings, specifically the finding that
16 has been referred to that Johnson had a strong
17 likelihood of success, and I did that in
18 writing.

19 Q. And did you go over that with the board of
20 selectmen in executive session after the judge
21 issued it?

22 A. I can't remember. In executive session I would
23 answer any questions that they asked.

24 But yes, I -- they understood that the

1 judge's findings, you know, had included
2 language that supported some of the claims in
3 terms of likelihood of success on the merits.
4 That had to be explained what the criteria was
5 for the issuance of injunctive relief.

6 Q. And is it your memory that the decision of Judge
7 Smith which was issued on or about February 2nd
8 of 2009 had the same information concerning the
9 fact that CALM Golf did not have the requisite
10 experience or assets to be qualified?

11 A. Do I recall? I remember that, yes.

12 Q. Did you communicate that to the selectmen?

13 A. As I say, I sent them the -- I sent definitely
14 to the town manager and I believe all three of
15 the selectmen got a copy of that order.

16 And in a subsequent memorandum I
17 explained different -- maybe not a memorandum, a
18 letter -- different portions of Judge Smith's
19 order, including those findings that you have
20 talked about, that detail that on some issues
21 that Johnson Golf had a likelihood of success on
22 the merits. That was done in writing.

23 Q. In the course of preparing for your own
24 testimony, had you reviewed Mr. MacDonald's

1 testimony at all in his depositions?

2 A. Mr. MacDonald's testimony?

3 Q. Yes.

4 A. I have seen Mr. MacDonald -- well, I was at his
5 first deposition and I have seen his second
6 deposition, yes. Now I've seen it. Yes, I
7 have.

8 Q. Are you aware that in his second deposition he
9 claims that he never received Exhibit Number 11
10 from you?

11 MR. COVINO: Objection.

12 A. No. I'm not aware of that. But it's in the
13 billing records that he received it.

14 Q. Are you aware that Mr. MacDonald has testified
15 that he was not made aware of any settlement
16 proposals from Johnson Golf Management?

17 MR. COVINO: Objection.

18 A. I'm not aware of that, but Mr. MacDonald was
19 made aware of all settlement proposals and they
20 were all discussed at length and the records
21 confirm that.

22 Q. Which records are those? Your billing records?

23 A. My billing records, yeah, confirm when things
24 were sent. And when a document came into my

1 office it automatically was sent to town hall
2 and routed. Every document. There weren't any
3 documents that I received that I did not forward
4 to town hall. Mr. MacDonald received
5 everything.

6 As a matter of fact, the selectmen
7 received the settlement proposal in hand that
8 Mr. MacDonald gave Mr. Johnson, delivered to
9 them at the meeting. I'm sorry. Not Mr.
10 Johnson. My apologies. Mr. Johnson --

11 Q. You're referring to several instances, well, at
12 least one instance where Mr. Johnson went on his
13 own and --

14 A. Gave them the package. There's no question. My
15 records will reflect that it was not a
16 discretionary decision when to send documents to
17 town hall.

18 Q. It was done across the board?

19 A. It was done across the board every -- during the
20 time when I was town counsel. I did that from
21 the very beginning, made sure that every
22 document that I received or sent was sent to
23 town hall. They were all sent to town hall.

24 Q. Now, after -- I know you didn't attend

1 Mr. Lanzetta's deposition. Did you have
2 occasion to read Mr. Lanzetta's testimony in his
3 depositions?

4 A. At some point I did. Yes, I did.

5 Q. And do you recall that Mr. Lanzetta had
6 testified that CALM Golf had never run the
7 Rockland Golf Course?

8 MR. COVINO: Objection.

9 A. I don't recall that. I'm not saying he didn't,
10 but I don't recall it.

11 Q. Would that have become a concern of yours if you
12 were made aware of the fact that Mr. Lanzetta
13 had testified under oath that his company had
14 only run the Abington Golf Course and had never
15 run the Rockland Golf Course?

16 MR. GILL: Objection.

17 A. I think the problem I have is these were not --
18 it was not my job to make decisions and to have
19 concerns about making decisions.

20 My job was to provide the information to
21 the town manager, and the town manager, with
22 respect pursuant to his authority, could then
23 give me instructions. So I provided the
24 information, all the information that I was able

1 to provide to town hall.

2 And beyond that I did not receive any
3 instructions because, quite candidly, the
4 direction that town hall was taking, the town
5 manager in particular, was defending the lawsuit
6 and see if you can get the injunction dissolved
7 and see if you can, you know, win the case on
8 legal issues, is what I persistently attempted
9 to do through summary judgment.

10 Q. Now, in October and November of 2010 you had
11 meetings with the representatives of CALM Golf
12 and the principals of CALM Golf; is that
13 correct?

14 A. I don't remember the date. At one point we had
15 a meeting at Mr. Edge's office.

16 Q. And that was with Mr. Lanzetta and Mr. Morosco
17 and yourself and the town manager, Mr. Edge and
18 Mr. Geary?

19 A. No. The town manager did not attend the
20 meeting. I'm sorry. I may have the wrong --
21 I'm sorry. I thought you were talking about the
22 date of the -- I don't remember the dates so I
23 have to tell you that. So if you can help me
24 focus. I think you're talking about --

1 MR. GILL: Let him clarify the question.

2 Q. I'll clarify it.

3 A. I'm sorry.

4 Q. In the fall of 2010 the decision was made by the
5 town to rescind the award to CALM Golf. Do you
6 remember that?

7 A. Yes.

8 Q. And before that decision was made you had a
9 meeting with the principals of CALM Golf and
10 some representatives of Duxbury; is that right?

11 A. Right. Judge Smith --

12 MR. GILL: Just a yes or no.

13 A. Yes.

14 Q. Who was at that meeting?

15 A. The meeting at town hall was, I believe that
16 Mr. MacDonald was there. It was his meeting. I
17 was there. I believe Mr. Cushing was there,
18 although I'm not certain that Mr. Cushing was
19 but I believe he was. I believe Mr. Lanzetta
20 was there, and I think there was another person
21 there. I believe that was mister --

22 Q. Mr. Morosco?

23 A. Mr. Morosco. And mister -- I think Mr. Geary
24 was there and I believe Mr. Edge was there.

1 Q. Now, at that meeting did anyone from the town
2 advise the folks from CALM Golf and their
3 counsel that the award of the contract was going
4 to be rescinded?

5 A. No. Because it wasn't -- it was not -- that
6 meeting was predicated on the possibility or
7 what then appeared to be the belief that the
8 injunction was going to be dissolved. And
9 Mr. MacDonald had asked for that meeting to
10 interview Morosco and Lanzetta, and I believe to
11 meet them, I had never met them, and to see
12 whether they were prepared to run the course if
13 the award were validated.

14 Q. Did the principals of CALM Golf and their
15 counsel indicate to the town they were ready to
16 run the course?

17 A. Not to Mr. MacDonald's satisfaction.

18 Q. What was the stumbling block as far as
19 Mr. MacDonald was concerned?

20 MR. GILL: Objection. You can answer.

21 A. Well, my memory is -- you're asking me what was
22 the stumbling block for Mr. MacDonald. I don't
23 know what his thoughts were, except to the
24 extent that I remember in observing the meeting

1 that there were three points that I thought I
2 talked about at the last deposition. One was
3 that they were -- had made commitments to be in
4 Florida.

5 Q. This is Mr. Morosco and Mr. Lanzetta?

6 A. I believe at least one of the two. I don't
7 remember, but I think both of them were in
8 Florida, or at least one of them was in Florida.
9 One of them did more of the talking than the
10 other. I don't know which one was. And it was
11 a PGA, some kind of a camp or something,
12 something down in Florida. I don't remember
13 what it was.

14 Obviously if the injunction was going to
15 be dissolved, Mr. Johnson was going to be taking
16 his equipment out of the course and the
17 transition had to be made, and this had to be
18 done before December when they usually collect
19 the dues.

20 And so I know Mr. MacDonald was troubled
21 by the fact that they were -- at least one of
22 them or both were not going to be available to
23 make the transition to get the course started.

24 The second was they had said that they

1 weren't sure they could comply with the terms of
2 the bid, and some suggestions that the bid had
3 to be -- not the bid but, I guess the bid
4 modified and they would pay less money. And I
5 think Mr. MacDonald rejected that possibility at
6 that -- during that meeting.

7 And the third was that since the time
8 they had put the bid in, my memory is they said
9 they had received another award from some golf
10 course in the area. I think, I think it was
11 actually one that Mr. Johnson --

12 Q. Are you talking about Strawberry Valley in
13 Abington?

14 A. I'm not sure, but it could have been there. It
15 was local. It was around the Duxbury area.
16 They were hesitant or they weren't reassuring
17 that they were going to be able to do it.
18 That's what I observed of Mr. MacDonald and
19 that's what he talked about after they left.

20 Q. At that point when you had the conversation with
21 Mr. MacDonald and he indicated that those were
22 his concerns, did you and Mr. MacDonald discuss
23 the option of giving the contract to Johnson
24 Golf?

1 A. Well, Johnson Golf --

2 MR. GILL: That would be a yes or no.

3 A. No.

4 Q. That was never discussed?

5 A. No.

6 Q. Why wasn't that discussed?

7 A. Because the award had already been --

8 Mr. Johnson's bid had already been rejected.

9 Q. When was Mr. Johnson's bid rejected?

10 A. When the award was made to CALM Golf.

11 Q. There was nothing in Mr. Johnson's bid that
12 caused the town to reject it other than the fact
13 that CALM Golf was rated in an identical fashion
14 and offered more money, correct?

15 MR. GILL: Objection.

16 A. Correct.

17 Q. So the merits of Johnson Golf's bid had not been
18 addressed; it was simply you had already made an
19 award to CALM Golf, correct?

20 MR. GILL: Objection.

21 MR. KREIGER: Objection.

22 A. Correct.

23 MR. GILL: I just, I don't think this
24 witness made an award to anybody. I think you

1 mean the town.

2 MR. FOLLANSBEE: The town. If I
3 indicated he made the award, I'll correct that.
4 It's the town that made the award. I mean the
5 Town of Duxbury, not Robert Troy individually.

6 MR. GILL: There you go.

7 MR. FOLLANSBEE: If I can take a
8 five-minute break, I might be pretty close to
9 being finished.

10 MR. GILL: Sure.

11

12 (Recess taken.)

13

14

15 Q. When the decision was made to reject the bid of
16 CALM Golf in 2010, was it the position of the
17 Town of Duxbury not to give an award to Johnson
18 because he had sued them?

19 MR. GILL: Objection.

20 MR. COVINO: Objection.

21 A. My memory of what the town manager's
22 instructions were were to talk to the Inspector
23 General, find out how we can go out to bid
24 again. I don't think there was even -- I don't

1 think -- I don't remember Mr. MacDonald even
2 conjuring up the possibility that at that point
3 he could go back and pick one of the other
4 people that had -- whose bid had been rejected.

5 Q. Correct me if I'm wrong, in his award letter
6 didn't Mr. MacDonald say that the non-price
7 proposals of Johnson Golf and CALM Golf were
8 absolutely equal, and the only reason he was
9 giving it to CALM Golf was because they had more
10 money?

11 MR. COVINO: Objection.

12 A. I don't remember without seeing it. My memory
13 is that the evaluations were -- the evaluators
14 had found that in terms of the non-price
15 criteria, that they were almost equal, if not
16 equal, and that because CALM Golf was giving out
17 more money, that he was awarding it to CALM
18 Golf. I remember that.

19 Q. They were both rated highly advantageous,
20 correct?

21 A. They were both rated highly advantageous.

22 Q. Now, did any of the selectmen ever say in your
23 presence or to you that they were going to fight
24 this injunction and get the injunction over with

1 because they were never going to give a contract
2 to Johnson because he had sued them?

3 A. I don't remember that.

4 Q. Did Mrs. Sullivan ever indicate to you that she
5 was very upset over the fact that a company that
6 had sued them was running the golf course?

7 A. Mrs. Sullivan was not -- Mrs. Sullivan was quite
8 specific in maintaining the position that, you
9 know, the town should defend the action, and to
10 some extent I think that the original board in a
11 more measured sense shared that sentiment. When
12 Mr. Donato came on board he had a different
13 perspective.

14 Q. And how would you characterize Mr. Donato's
15 perspective?

16 MR. GILL: Objection. You can answer.

17 A. I think that Mr. Donato was concerned about the
18 process and that I think he felt that the town
19 had made a mistake.

20 Q. And would you characterize Mr. Donato's position
21 as reasonable and logical?

22 MR. GILL: Objection.

23 MR. COVINO: Objection.

24 A. I, you know, have worked for, I can't tell you

1 how many, between 50 and 100 selectmen. I never
2 try to characterize any of their positions.
3 It's not my place to do that. I mean, he
4 obviously had his point of view and he
5 maintained it.

6 Q. The memo that you spoke about earlier this
7 morning from Attorney Edge, did Attorney Edge
8 indicate that CALM Golf had ever run the
9 Rockland Golf Course?

10 MR. COVINO: Objection.

11 A. It wasn't a memo. It was a letter.

12 Q. Okay. I stand corrected. Did the letter
13 indicate that CALM Golf had ever run the
14 Rockland Golf Course?

15 MR. KREIGER: Objection.

16 A. I don't remember it, but I don't think anyone
17 ever represented that CALM Golf had run the
18 Rockland Golf Course. It was -- I think the
19 position was that Lanzetta and Morosco, or maybe
20 just Lanzetta, I don't know, had run the
21 Rockland Golf Course and that the corporate
22 entity was not important. I think that was
23 their position.

24 Q. And having reviewed the RFP, you were aware that

1 the RFP specifically said that in evaluating the
2 non-price proposals you had to consider the
3 company and not the individuals, correct?

4 MR. COVINO: Objection.

5 A. That's been a, you know, that's been a point of
6 contention from --

7 Q. Whether it's a point of contention, isn't that
8 what the RFP said?

9 A. It speaks for itself and how it's interpreted by
10 the parties.

11 MR. FOLLANSBEE: I have nothing further.

12 MR. GILL: It appears to me Mr. Kesten is
13 preparing to ask questions, and I want to say
14 for the record, I had brought to Mr. Kesten's
15 attention that we would object to any questions
16 by him for ethical reasons and that we feel that
17 any questions by Mr. Kesten or Mr. Kreiger are
18 inappropriate.

19 MR. FOLLANSBEE: I'll put on the record
20 that Mr. Gill, by having his associate send me
21 an e-mail, has accused me and Mr. Kreiger, but
22 I'll just focus on me, of unethical behavior.
23 It is completely inaccurate. Mr. Troy has
24 committed perjury in his affidavit. Mr. Troy

1 knows it. Mr. Gill probably knows it.

2

3 EXAMINATION BY MR. KESTEN:

4 Q. Mr. Troy, what did you do to prepare for your
5 deposition?

6 MR. GILL: Those are totally
7 inappropriate comments and I'm going to object
8 to them, but you go ahead and we will treat it,
9 as we said in our memo, as a question of ethical
10 violation.

11 A. The question? I'm sorry.

12 Q. What did you do to prepare for your deposition
13 on day one?

14 A. I was prepared by you.

15 Q. When?

16 A. During a number of sessions.

17 Q. When?

18 A. I don't have the dates.

19 Q. Can you give a hint? When was it?

20 A. I was prepared by you at various meetings at
21 your office.

22 Q. Where was it?

23 A. At your office.

24 Q. Who attended?

1 A. I'm sorry. Don't interrupt me.

2 I was prepared at various meetings at
3 your office, at Duxbury Town Hall, at the
4 Duxbury Senior Center, during phone
5 conversations, during any number of interactions
6 with you.

7 I was prepared by Mr. Kreiger at his
8 office, and I was prepared by Mr. Gill and
9 Mr. Covino at their office.

10 Q. Now, as to your preparation with me, when did it
11 begin?

12 A. It began sometime at the point when you
13 determined that I was going to be the witness
14 for the town.

15 Q. You and I had a discussion about you having to
16 testify very early in the case, didn't we?

17 A. I'm sorry. Are you testifying?

18 Q. We had a conversation about your -- the need for
19 you to testify very early in this case, didn't
20 we?

21 A. Are you testifying?

22 Q. It's a question.

23 A. I can tell you about what I said. I'm not going
24 to tell you what you said. You can talk about

1 what you said.

2 Q. Here's the question. You and I had a
3 conversation early in this case about the need
4 for you to testify, didn't we?

5 A. I don't know what you're talking about. Early
6 in the case? What is the date of the
7 conversation?

8 Q. When is the first time you and I discussed you
9 being a witness in this case?

10 A. I don't remember.

11 Q. Do you have any idea?

12 A. It was at some point subsequent to the pretrial.

13 Q. The pretrial in November of 2011?

14 A. Yes.

15 Q. And at what point did you inform me that the
16 town manager was not going to waive the
17 privilege and you would not be testifying?

18 MR. GILL: I'm going to object to that.

19 A. I don't remember that.

20 MR. GILL: I'm going to object to that
21 for two grounds. One is I don't think it's
22 likely to lead to relevant evidence in this
23 case.

24 And second of all, you're now getting

1 into conversations between Mr. Troy and his then
2 attorney which are privileged, and that
3 privilege belongs to Mr. Troy.

4 Q. Tell me when I became your attorney.

5 MR. COVINO: Objection.

6 A. You became my attorney when you suggested to me
7 that I was not going to function as the trial
8 counsel but as the witness for the case which
9 was going to give a chronology.

10 Q. So --

11 A. The narrative, as you said.

12 Q. So at that point I agreed to be your lawyer and
13 that I would keep your confidence from the Town
14 of Duxbury. Is that what you're saying?

15 MR. GILL: Wait a second.

16 MR. COVINO: Objection.

17 MR. GILL: Is this -- I'm going to cut
18 this off because you're not getting
19 conversations between lawyer and client, and
20 those are privileged. They are not relevant to
21 this case. We're not going to answer questions
22 of that nature.

23 Q. When did you have private conversations with me,
24 Mr. Troy, without anybody else being there?

1 A. I had a number of private conversations with
2 you.

3 Q. When and where?

4 A. I don't have the detail of all the
5 conversations. We had many conversations. We
6 had e-mail transmissions. We had phone
7 conversations, a number of phone conversations.

8 Q. Okay.

9 A. And we had a number of conversations at various
10 times with and without other people.

11 Q. When did we have private attorney-client
12 conversations? When?

13 A. I just answered that.

14 Q. No, you haven't.

15 A. We had numerous private attorney-client. I was
16 speaking with you because I believed that you
17 were representing me in my capacity.

18 Q. Not the town?

19 A. No.

20 Q. Just you?

21 A. In my capacity as a witness for the town. I was
22 not functioning as counsel.

23 Q. So were all our conversations that we had since
24 that pretrial privileged conversations?

1 MR. COVINO: Objection.

2 A. I leave that for the Court to decide.

3 Q. You were operating under the belief, right, that
4 I was your lawyer and these were private
5 conversations, right?

6 MR. GILL: I'm going -- no. No. I'm
7 going to object because we're going too far now
8 into the privileged area. It is not relevant in
9 any way to this case so I'm going to instruct
10 him not to answer that.

11 Q. Mr. Troy, the meeting we had in my office on
12 April 13th, do you remember that meeting where
13 you brought the files up?

14 A. I do.

15 Q. Was that a privileged conversation?

16 MR. COVINO: Objection.

17 A. Those --

18 MR. GILL: I'm going to cut this off
19 again and instruct you not to answer. This is
20 not relevant in this case.

21 You're only entitled in this case, in my
22 judgment, to ask him what he did to prepare for
23 this deposition. He said that he met with you,
24 he met with Mr. Kreiger, he met with me and

1 Mr. Covino. Now let's move on from that.

2 MR. KESTEN: I just want to know the
3 dates of the meeting, Bob. I'm trying to
4 explore.

5 MR. GILL: Ask him the dates. If he
6 remembers, he'll tell you.

7 Q. Do you have any records of any of these dates?

8 MR. GILL: That's a different question.
9 You said you wanted to know when they were. You
10 want to know that, ask him.

11 MR. KESTEN: Mr. Gill, do not interfere
12 with my deposition. If you're going to object,
13 you can. You can advise him not to answer.
14 Other than that, knock it off.

15 MR. GILL: That's what I'm doing.

16 Q. Mr. Troy, do you have any records of any of the
17 dates of these so-called privileged meetings?

18 A. No records.

19 Q. Do you have any memoranda whatsoever of any of
20 these privileged meetings?

21 MR. COVINO: Objection.

22 MR. GILL: Objection. I will instruct
23 him not to answer.

24 MR. KESTEN: You're instructing him not

1 to answer?

2 MR. GILL: Yes.

3 Q. Mr. Troy, when were you first hired by the Town
4 of Duxbury?

5 A. I believe in 1986.

6 Q. And you've been town counsel ever since until
7 May 4th?

8 A. I believe so.

9 Q. When is the first time you assisted the town in
10 any RFP process or procurement process
11 whatsoever?

12 A. I don't remember.

13 Q. How many had you done? How many had you
14 assisted the town in before this one?

15 A. I don't remember.

16 Q. Any clue?

17 MR. GILL: You're asking him to guess?

18 Are you asking him to guess?

19 MR. KESTEN: I'm not answering your
20 questions.

21 Q. Any clue as to how many?

22 MR. GILL: I'm going to instruct you not
23 to guess or speculate.

24 A. No. I don't know the number but there were not

1 a lot of them, no.

2 Q. Under ten?

3 A. I can't give a number. That spans almost 30
4 years. I have no idea.

5 Q. Were you familiar with the requirements of 30B
6 before the summer of 2008?

7 A. Somewhat.

8 Q. Who first instructed you to become involved in
9 the -- strike that.

10 Were you involved at all in the RFP
11 process, the one before being involved in North
12 Hill? The one before the 2009 one? Do you
13 understand the question? It's poorly phrased, I
14 know. Do you understand it?

15 A. I was involved in several before.

16 Q. Involving North Hill?

17 A. Yes.

18 Q. What was your involvement in the previous ones?

19 A. Whatever I was requested to do, I did. I don't
20 remember them.

21 Q. You have no idea? You have no memory of what
22 you did at all?

23 A. No.

24 Q. Did you ever help draft an RFP before the one in

1 2008?

2 A. I could have reviewed them probably. I don't
3 remember drafting them, no.

4 Q. So did you -- when you reviewed them, did you
5 make any changes before the one in 2008?

6 MR. COVINO: Objection.

7 A. I don't remember. I believe so.

8 Q. Now, when did you first become aware that there
9 was going to be a new RFP drafted for North Hill
10 in 2008?

11 A. I don't remember.

12 Q. When were you first told that you would be
13 involved in that?

14 A. I wasn't told that I was going to be involved in
15 it. I was just -- there was some discussion
16 intermittently about the term ending and there
17 was going to be a new RFP issued.

18 Q. So how did you become involved?

19 A. I became involved as directed.

20 Q. How? Directed by who?

21 A. The town manager would give me instructions.

22 Q. So what's the first thing he told you to do?

23 A. I don't remember that.

24 Q. What did he tell you to do?

1 A. I don't remember.

2 Q. You have no memory of anything he told you to
3 do?

4 MR. COVINO: Objection.

5 A. I don't remember anything specific. Whatever I
6 was instructed to do would be incrementally. In
7 other words, if I was told to do one task, I
8 would do it, then I was instructed to do
9 another. Many times I received instructions
10 through other people.

11 Q. Like who?

12 A. In other words, Mr. Cushing would call me and
13 say that the town manager had said for me to
14 talk to him.

15 Q. To talk to Mr. Cushing?

16 A. Right. Or to look at something.

17 Q. What did you do in the fall of 2008 with regard
18 to the RFP, Mr. Troy?

19 A. I met with the town manager and Mr. Cushing. I
20 made some suggestions to draft the RFP that
21 Mr. Cushing had prepared. I answered some --
22 drafted some answers to some questions that the
23 bidders had asked. I consulted with the town
24 manager and Mr. Cushing as directed.

1 Q. Now, at some point you received a draft RFP to
2 look at, right?

3 A. Correct.

4 Q. How did you get it?

5 A. I don't remember.

6 Q. And who did you get it from?

7 A. I assume Mr. Cushing, but I don't know.

8 Q. You don't know. When's the last time you looked
9 at any of these materials?

10 MR. GILL: Objection.

11 A. What materials?

12 Q. The e-mail, the drafts. When's the last time
13 you looked at them?

14 A. I haven't look at them for awhile.

15 Q. When did you first remember -- since 2008,
16 when's the first time you remember that you had
17 written in the phrase comparable business
18 enterprise?

19 MR. GILL: Objection.

20 A. I don't remember.

21 Q. You recall that you were not remembering this in
22 2010, right?

23 MR. COVINO: Objection.

24 A. I'm sorry?

1 Q. Do you recall that in 2010 you didn't remember
2 that you had put that phrase in?

3 A. Is this a communication that I had with you?

4 Q. No.

5 A. No. I don't know what you're talking about.

6 Q. Do you remember me asking you whether or not,
7 whether you had put that in after Gordon
8 Cushing's deposition?

9 MR. GILL: Objection.

10 A. I'm not waiving a privilege.

11 Q. You think that's a privileged communication?

12 A. I do.

13 Q. At that point I had agreed to represent you?

14 A. Yes.

15 Q. When did I first agree to represent you?

16 MR. GILL: Now wait a minute. I am going
17 to object. I'm going to instruct you not to
18 answer. We're not going down this road.

19 Q. Mr. Troy, you and I were co-counsel in this
20 case, correct?

21 A. At some point.

22 Q. When?

23 A. I don't remember.

24 Q. How did I become involved?

1 A. You became involved at some point after
2 Ms. Ecker was -- entered an appearance, left
3 your firm, I guess. I don't know how you became
4 involved.

5 Q. No. I said when.

6 A. I don't know that.

7 Q. You don't know that?

8 A. I don't remember the dates, no.

9 Q. Okay. Do you remember my appearance in the
10 pretrial?

11 A. I do.

12 Q. Was I your lawyer then?

13 MR. COVINO: Objection.

14 MR. GILL: Objection. We're not going
15 down this road. This is appropriate in the
16 other case if you want to pursue it there. It's
17 not in this case.

18 MR. KESTEN: Well, are you going to go
19 ahead and advise him not to answer?

20 MR. GILL: I will.

21 MR. KESTEN: I just want to make sure the
22 judge sees it, so let's put it on the record.

23 MR. GILL: That's fine.

24 Q. (By Mr. Kesten) Mr. Troy, do you recall after

1 Gordon Cushing's deposition you and I discussed
2 Mr. Cushing's testimony that you had inserted
3 the language comparable business enterprise?

4 A. No. I don't remember that.

5 Q. Do you recall you telling me that you had not?

6 MR. COVINO: Objection.

7 MR. GILL: Objection.

8 A. No. I don't recall that.

9 Q. At the time of Gordon Cushing's deposition which
10 was the summer of 2011, did you remember that
11 you had put that language in?

12 MR. GILL: Objection.

13 A. I don't remember when I --

14 Q. Remembered?

15 A. -- remembered it.

16 Q. Do you remember when you forgot it?

17 MR. GILL: Objection.

18 MR. COVINO: Objection.

19 A. I don't remember any -- with any specificity any
20 of the -- what I did until I -- at a point
21 whenever I reviewed the documents.

22 Q. When was that?

23 A. I don't remember that either, but it was some
24 point after --

1 Q. Was it February of 2012?

2 A. I don't remember.

3 Q. Was it April of 2012?

4 A. I don't remember.

5 Q. So, Mr. Troy, do you now remember doing that or
6 are you just relying on documents?

7 A. I remember finding the document and seeing the
8 language that I had inserted into the document
9 and I remember seeing it there, yes.

10 Q. No. I understand. So are you only relying on
11 that document for your memory that you inserted
12 the language or do you now -- have you now -- do
13 you now have a memory?

14 A. No. I remembered when I saw the, all of the
15 notations on the documents that I had put those
16 notations as suggestions to Mr. Cushing in the
17 document that was transmitted back to him.

18 Q. Do you now have a memory, an actual memory of
19 how those notations came to be or are you simply
20 relying on the fact that you found this
21 document?

22 A. No. When I saw the document and saw my
23 notations I remembered that I had written them
24 in.

1 Q. So you now have an independent memory of that?

2 A. My memory was refreshed by looking at the
3 document, yes.

4 Q. My question is, so you were refreshed and now
5 you remember?

6 A. I remember that I wrote those notations in, yes.

7 Q. When? When did you write those notations?

8 A. At some point during the -- between the time
9 when I met with the town manager and Mr. Cushing
10 and between then and when the RFP was issued.

11 Q. Why did you write that notation in?

12 A. Because I was asked to.

13 Q. By?

14 A. By -- I was asked to make my suggestions by the
15 town manager and put them in a document and send
16 them to Mr. Cushing which in turn were vetted by
17 the other people who were in the e-mail chain.

18 Q. The question I have is, these specific
19 notations, I have the notations that you have so
20 far produced unless you find something more, but
21 my question is, that particular notation, why
22 did you have that?

23 A. What is the question?

24 Q. Why did you add -- let me -- let's back up. I

1 withdraw the question.

2 In the previous RFPs for North Hill, you
3 reviewed those?

4 A. I did.

5 Q. And all of them, all the previous ones contained
6 the requirement that any bidder for North Hill
7 had to have experience in running a municipal
8 golf course, correct?

9 MR. COVINO: Objection.

10 A. No.

11 Q. No?

12 A. No.

13 Q. Which ones don't?

14 A. The first RFP that I worked on was open to
15 people other than those who ran golf courses.

16 Q. Which one was that?

17 A. I'm thinking it was one that I did in
18 conjunction with Mr. Grex.

19 Q. With who?

20 A. Grex.

21 Q. Spell that, please.

22 A. G-r-e-x.

23 Q. Who's he?

24 A. He was the town manager of Duxbury.

1 Q. When was that?

2 A. During his tenure.

3 Q. When was that?

4 A. I don't know.

5 Q. When was his tenure?

6 A. I have no idea. I don't remember his tenure.

7 Q. You have no idea?

8 A. He was the first town manager of Duxbury.

9 Q. So you're talking in the '80s?

10 A. '80s.

11 Q. How about the '90s and 2000's; did any of those
12 RFPs contain language allowing people -- strike
13 that.

14 How was it phrased in that one?

15 A. I don't remember that.

16 Q. Do you have it?

17 A. Somewhere I have it, sure.

18 Q. You have it?

19 A. Sure.

20 Q. In your files?

21 A. I believe so, yes.

22 Q. And how would I --

23 A. I'm sure the town has it, too.

24 Q. Where?

1 A. I have no idea. That's -- I don't know where
2 the town stores things.

3 Q. You said you're sure they have it. I'm
4 asking --

5 A. I'm sure RFPs which are issued by the town, that
6 the town would have a copy of what it issued.

7 Q. And you have it in your files?

8 A. I believe I do.

9 Q. And when was the last time you looked at it?

10 A. Oh. I don't remember.

11 Q. Within the last year?

12 A. At some point during the litigation I think I
13 looked at all the files, but I don't remember.

14 Q. At some point. You've done it since this case
15 was filed?

16 A. I would say so.

17 Q. And you saw that one?

18 A. I saw what?

19 Q. So sometime in the last three years you saw this
20 RFP that you reviewed for Mr. Grex? You looked
21 it up?

22 A. I saw the file, yes.

23 Q. No. That's not --

24 A. I saw the documents.

1 Q. My question is, did you see that RFP? That's
2 the question. Not -- I don't care that it was
3 in your file.

4 A. I don't remember. I can't recall with
5 specificity. There's thousands of pages.
6 Whether I saw it or whether I saw that it was
7 included, I know there was a document that was
8 issued that -- for the North Hill Golf Course
9 that did not require the prerequisites that you
10 have just identified.

11 Q. What did it require?

12 A. I don't remember but it didn't require what you
13 asked, that you manage golf courses.

14 Q. Did it require comparable business enterprises?

15 A. I don't know that. I don't remember.

16 Q. Did you use that RFP in formulating your
17 suggestions for this one?

18 A. I don't know.

19 Q. You don't?

20 A. No.

21 Q. Now, the previous three RFPs before 2008 all
22 required management by a -- management
23 experience by the bidder, didn't they?

24 A. I don't remember that.

1 Q. The draft you got required it?

2 A. The original draft, yes.

3 Q. And whose idea was it to change it?

4 A. I was told -- well, there would have been
5 discussions, it was going to open up the
6 process, should it be opened up to encourage
7 more bidders, prior to the meeting that I had
8 with Mr. Cushing and Mr. MacDonald.

9 At that meeting Mr. MacDonald, I'm not
10 sure if Mr. Cushing discussed the issue, and I
11 was told to open up the process about some more
12 language.

13 Q. What discussions were there before the meeting?

14 A. There were some discussions of administrative
15 type things, intermittent discussions that the
16 process was going to be opened up. I don't
17 remember specifically.

18 Q. What is an administrative type thing?

19 A. Well, a lot of the business that I did was when
20 I went to town hall I would meet with the town
21 manager, and a number of discussions were held
22 about a number of different issues. That's how
23 we communicated.

24 Q. So, that wasn't the question. The question I

1 asked for you -- I forget what the question is.

2 The question I have for you, are you
3 telling me that you had previous meetings with
4 the town manager at which you and he discussed
5 opening up the process?

6 A. There was previous conversations at meetings
7 with the town manager in which it was discussed
8 that the bid process should be opened up, but I
9 believe that there might have been discussion,
10 and I didn't attend the meetings. I might have
11 learned there was some discussion about that at
12 meetings in the North Hill Committee.

13 Q. Who told you that?

14 A. I don't remember anyone telling me. My memory
15 -- this is just my memory of how I remember the
16 issue of opening up the bid to other bidders
17 other than people who are running golf courses.

18 Q. The issue of opening up the bid to other bidders
19 you learned was discussed by the North Hill
20 Advisory Committee?

21 A. I believe that I received some information that
22 that issue had been discussed.

23 Q. From who?

24 A. At one of the meetings. I have no memory as to

1 who I learned that or any of the other
2 information that I learned. I was at meetings
3 all the time at Duxbury Town Hall.

4 Q. With Mr. MacDonald?

5 A. And others.

6 Q. Like?

7 A. When Mr. MacDonald would have meetings, various
8 people would join the meetings, people from town
9 hall.

10 Q. Like?

11 A. Selectmen.

12 Q. Like? Give me the universal people that might
13 have given this information.

14 A. I don't remember that.

15 Q. Anybody?

16 A. It was someone, obviously, who operated within
17 the framework of town hall. I remember -- it
18 could have been at a meeting with Mr. Cushing.
19 There was a meeting during 2008 with Mr. Cushing
20 and Mr. MacDonald. This is about this matter.

21 I believe there was some meetings in
22 which Mr. Madden may have joined us but I'm not
23 sure. I don't remember that type of detail. I
24 wouldn't remember. This would be a routine

1 matter.

2 Q. I understand. So the universal people so far is
3 Mr. Cushing, Mr. MacDonald, Mr. Madden?

4 A. The universal people would be everybody that
5 worked in town hall and the board of selectmen.

6 Q. So could have been board of selectmen members?

7 A. Absolutely.

8 Q. Like who? Who was interested in this?

9 MR. COVINO: Objection.

10 A. I don't think who -- the question is who was
11 interested. I think the selectmen from time to
12 time on any number of issues that were present
13 would provide input at meetings, and at their
14 own meetings I believe there was a meeting on
15 the North Hill matter.

16 If my memory is right there was a major
17 meeting in either -- there was a major meeting
18 in 2007, I believe there was a major meeting in
19 2008.

20 Q. What's a major meeting?

21 A. It was a major public session with the board of
22 selectmen on issues relating to North Hill.

23 Q. There's nothing in those tapes that indicates
24 anything about them discussing opening up the

1 process, is there? That didn't happen at these
2 meetings, did it?

3 MR. COVINO: Objection.

4 A. There are no tapes because when I went to get
5 the tapes, they were erased.

6 Q. Mr. Troy, was there any discussion at these
7 so-called major meetings of opening up the
8 process?

9 A. I wasn't at the meetings.

10 Q. So you don't know what happened at meetings?

11 A. No.

12 Q. Okay. So were there -- is it fair to say that
13 Mr. MacDonald never indicated to you that he did
14 not want Johnson Golf to get the next contract?

15 A. Yes.

16 Q. And did he -- what did he tell you to do with
17 regard to the process?

18 A. I want to make sure that I made -- Mr. MacDonald
19 never said that he wanted the process to work so
20 that Johnson Golf did not get the award.

21 Q. That is the question. How about Mr. Cushing?

22 A. The answer to that is yes.

23 Q. How about Mr. Cushing?

24 A. Mr. Cushing never said that, no.

1 Q. Any member of the board of selectmen ever say
2 that?

3 A. No.

4 Q. So it's fair to say your instructions were to
5 make the process legal?

6 MR. COVINO: Objection.

7 MR. KESTEN: You're objecting, too? Both
8 of you?

9 MR. COVINO: Yes.

10 MR. KESTEN: Art, weigh in. David,
11 please.

12 MR. EDGE: I do not object to the
13 question.

14 A. Did I get an instruction as to make it legal?

15 Q. Yes.

16 A. Yes.

17 Q. What was your instructions to -- your advice
18 regarding this process?

19 A. There weren't any one set of instructions. The
20 instructions were simply to undertake whatever
21 was discussed at the meeting in September of
22 2008 with Mr. MacDonald and Mr. Cushing.

23 Q. That was your first involvement, this meeting?

24 A. Well, that was the first meeting specifically

1 about this. There were previous discussions
2 about the fact that it was going to go out to
3 bid prior to that as I had just told you.

4 Q. With unnamed people?

5 A. With people that are unnamed because I have no
6 reason to remember them.

7 Q. Other than what's in your mind?

8 A. Other than the fact that I have a memory of
9 discussions, yes.

10 Q. Right. So the first meeting you recall about
11 this process happened in September of 2008?

12 A. Well, the first meeting that was specifically
13 scheduled to do the RFP or to get the ball
14 rolling, that was in September of 2008.

15 Q. What does that mean, specifically scheduled?
16 Were there previous meetings that weren't
17 previously scheduled?

18 A. Right. Because the practice, as I just
19 explained to you, the practice in most town
20 halls is that when the lawyers deal with the
21 manager or the administrator, a number of issues
22 are discussed at the table at the same time.

23 Q. Were there previous meetings prior to September
24 regarding North Hill between you and

1 Mr. MacDonald or anyone else at town hall?

2 A. There were.

3 Q. In 2008?

4 A. There were discussions at town hall. If you
5 want to call them meetings, I guess you could
6 term them meetings.

7 Yes. There were discussions I believe at
8 various times throughout 2008 about the fact
9 that the contract was ending and that it was
10 going to be -- there were discussions -- I know
11 the North Hill Committee was holding its
12 discussions. Sometimes the North Hill Committee
13 spoke or communicated with the selectmen.

14 And sometimes in addition to the
15 meetings, the North Hill Committee and the
16 meetings of the board of selectmen, there were
17 meetings at town hall with the town manager and
18 other town officials in which the procurement
19 process was discussed.

20 Q. That you were present at?

21 A. I was present, yes, but they weren't officially
22 scheduled meetings.

23 Q. What does that mean?

24 A. Well, the meeting in September --

1 MR. GILL: Excuse me, sir. Are you
2 taking pictures?

3 MR. JOHNSON: No. I'm looking at my
4 photos.

5 MR. GILL: Because your flash is going
6 off. It's kind of distracting.

7 MR. JOHNSON: I'm sorry.

8 MR. GILL: I'd ask you to stop.

9 MR. JOHNSON: I didn't know I was doing
10 that.

11 MR. GILL: Thank you.

12 Q. There's a question out there.

13 A. I thought I answered it. I don't remember the
14 question. What is the question?

15 Q. What is the difference between a scheduled
16 meeting and other meetings that you had with
17 people about the topic?

18 A. Well, when somebody walks into your office and
19 begins speaking to you about something, that's
20 not a scheduled meeting. But if you invite
21 someone and you have a client come into your
22 office and it's a two o'clock on a specific date
23 to talk about a specific case, that's a
24 scheduled meeting.

1 Q. And you are saying that the first scheduled
2 meeting about North Hill was the September
3 meeting?

4 A. I am saying that my memory is that the first
5 meeting that was officially set up to do the
6 RFP, not about North Hill but about the RFP for
7 North Hill prior to the RFP process beginning,
8 the first scheduled meeting -- let me rephrase
9 that because actually, the night before the
10 meeting that I had with Mr. Cushing and
11 Mr. MacDonald there was a meeting of the North
12 Hill Committee and Mr. Cushing.

13 So the first -- I wasn't at that meeting.
14 First meeting that I was at immediately prior to
15 the commencement of the RFP process that was an
16 officially scheduled meeting of the RFP was in
17 September, the first week in September of 2008.

18 Q. And you have an independent memory of this date,
19 of this meeting? Or you're relying on your
20 bills?

21 A. No. I don't have an independent memory of
22 the -- I have a memory of the meeting, yes.
23 Vague memory, but I don't remember the date. I
24 know it was in the first two weeks of September

1 of 2008.

2 Q. Have you reviewed your bills and ascertained
3 there was a September meeting? Is that how you
4 know?

5 A. No. I remembered it when I reviewed all the
6 e-mails that were attended to the RFP process.

7 Q. When was that?

8 A. That would have been earlier this year. I don't
9 remember when.

10 Q. So that was -- by the time of this first
11 scheduled meeting that you are now talking
12 about, had you done anything with regard to the
13 RFP?

14 A. No.

15 Q. That is when you began your review of the RFP?

16 A. Yes.

17 Q. What were you instructed to do?

18 A. I was instructed -- Mr. Cushing, I believe,
19 brought a draft of the RFP that he had discussed
20 with the North Hill Committee the night before
21 and there was some discussion about that. That
22 meeting --

23 Q. At this meeting? This scheduled meeting?

24 A. I wasn't finished.

1 Q. Sorry.

2 A. And the RFP was looked at by Mr. MacDonald, and
3 not in a specific sense but in a general sense,
4 and there was discussion about opening up the
5 process to other bidders and how that could be
6 done at that meeting.

7 Q. Who discussed it?

8 A. Mr. Cushing and, I don't remember but
9 Mr. MacDonald was -- I don't remember whether he
10 participated in the discussion but he was there.

11 Q. Was this an idea -- did you get any information
12 at the meeting that this idea had come from the
13 North Hill Committee?

14 A. I didn't get any -- I don't remember who had
15 discussed the idea. I just remember the idea
16 was discussed.

17 Q. You have no -- okay. And did someone instruct
18 you to modify the RFP to achieve that?

19 A. First of all, I didn't write any of the RFP. I
20 just made suggestions. So what I did was to
21 take the document and I made a number of
22 suggestions which were then forwarded to
23 Mr. Cushing and then shared with the people, the
24 selectmen, I believe, the North Hill Committee

1 and some other people that were on the e-mail
2 chain.

3 Q. What other people?

4 A. I think Mr. Madden was on the e-mail chain, I
5 think the selectmen, I think at least one member
6 of the North Hill Committee.

7 Q. Who's that?

8 A. Mr. MacDonald.

9 Q. That --

10 A. I don't remember.

11 Q. Now, at that meeting, the September meeting
12 you're talking about, were you instructed by
13 someone to make suggestions which could be
14 incorporated into the RFP to open the process to
15 people who are not managing golf courses?

16 A. Right. Mr. Cushing made that suggestion.

17 Q. Mr. Cushing?

18 A. Mr. Cushing, I believe, suggested it and
19 Mr. MacDonald approved it.

20 Q. Mr. Cushing suggested doing that?

21 A. That's my memory, yes.

22 Q. Was it his idea or did he tell you --

23 A. I don't know.

24 Q. -- he had gotten that from other people?

1 A. My memory of this meeting is not that specific.
2 It was a routine meeting and I don't remember
3 anything other than we were putting out another
4 RFP, this is what we need to do. That's all I
5 remember about it.

6 Q. But you have a specific memory it was
7 Mr. Cushing that told you he wanted to suggest
8 to you language which would open it up?

9 A. Yes.

10 Q. And did you do it right there or did you do that
11 later?

12 A. I don't remember.

13 Q. When did you first remember this conversation?
14 Say in the last two years, when did you -- the
15 first time you remembered that Mr. Cushing had
16 told you, made a suggestion to add the language?

17 A. I don't remember that.

18 Q. You didn't remember it on April 4th.

19 A. I'm sorry?

20 Q. You didn't remember it on April 4th.

21 A. Are you testifying?

22 Q. Did you remember it April 4th?

23 A. What is April 4th?

24 Q. A meeting held with you, me and your entire law

1 firm, some guy, Mr. Cushing and Mr. MacDonald in
2 the Mural.

3 A. This is at a time when you were representing me,
4 Mr. Kesten.

5 Q. Mr. Troy, there were others there. Nice try.

6 A. Well, you can ask --

7 MR. GILL: Let's -- Mr. Kesten, stop with
8 the -- stop with the ad hominem remarks.

9 Q. Did you remember at the meeting that you had
10 that Mr. Cushing had told you to insert the
11 language?

12 A. I don't remember specifically everything that
13 was discussed at that meeting. I don't remember
14 whether I remembered that or not.

15 Q. So it's possible that you regained this memory
16 after April 4th?

17 MR. GILL: Objection.

18 A. It's not a question of regaining it. It's a
19 question of refreshing my memory during the
20 course of time when I looked at various
21 documents.

22 Q. So was your memory refreshed after April 4th?

23 A. I don't remember whether my memory was refreshed
24 afterward or -- I don't remember what my memory

1 was on April 4th.

2 Q. Okay. Now, how many times, on how many separate
3 occasions did you suggest modifications in an
4 RFP?

5 A. I believe on two, but I don't have a specific
6 memory other than the documents that I have.

7 Q. Were all your suggestions incorporated into the
8 RFP?

9 A. No.

10 Q. What was not?

11 A. I don't remember.

12 Q. Did you make a suggestion to add the language
13 that the town reserves the right to cancel all
14 the awards? Did you make that suggestion?

15 A. That, I believe was discussed. There had been a
16 problem with some type of bid previous to that,
17 and I think that I had made a, maybe a
18 suggestion. I believe I discussed at the
19 meeting in September that that was very
20 important that that be included in the document.

21 Q. Because it wasn't at the time?

22 A. I don't remember whether it was in it or it was
23 not in it.

24 Q. Well, if it was in it then you're saying it was

1 there and it may have already been there before?

2 A. No. There was just reference to something, an
3 issue on procurement in which that issue had
4 come up, and I remember saying make sure that's
5 in there. I don't know whether it was in there
6 or not.

7 Q. Okay.

8 A. Because I don't remember really, you know,
9 reviewing the -- looking at details of the
10 document beyond the general sense at the
11 September meeting.

12 Q. But you did look at it in detail subsequent to
13 September before it went out, right?

14 A. Almost immediately I made a set of suggestions,
15 but not that day. I took it back to my office.

16 Q. You made a set of suggestions. Then subsequent
17 to that did you make further suggestions?

18 A. I did, yes.

19 Q. How long did that go?

20 A. I don't know. It was a relatively -- the whole
21 thing was a short period of time.

22 Q. Were there any further meetings?

23 A. No.

24 Q. The only meeting you had was in September?

1 A. Yes.

2 Q. The rest of your input up until the time the RFP
3 went out was how?

4 A. I'm sorry?

5 Q. How did you make your input after that meeting
6 up until the time the RFP went out?

7 A. I don't understand what that means.

8 Q. Well, you made suggestions, right?

9 A. I made two sets of suggestions.

10 Q. How did you communicate those to Mr. Cushing or
11 Mr. MacDonald or anyone?

12 A. I sent my suggestions, I believe, to Mr.
13 Cushing.

14 Q. How?

15 A. I don't know. I have no idea.

16 Q. How? What's your normal course of business in
17 sending documents to the town?

18 A. What I do now?

19 Q. Then.

20 A. Well, then probably they were faxed.

21 Q. Who does the faxing at your office? Who did the
22 faxing at your office in the fall of 2008?

23 A. I don't know. I have no idea.

24 Q. How would you receive the new drafts? How did

1 you receive the new drafts in 2008?

2 A. I don't know.

3 Q. As of the time that the RFP went out which was
4 October, I believe -- do you recall it was in
5 October?

6 A. No.

7 Q. Do you recall when it went out?

8 A. It was September.

9 Q. The RFP went out in September?

10 A. Right.

11 Q. September what?

12 A. I don't know the date.

13 Q. Okay. When you reviewed the RFP in September
14 before it went out, did you note any
15 modifications to it other than yours since you
16 saw the first draft in September until it went
17 out?

18 A. I didn't analyze it.

19 Q. So you don't know?

20 A. There could have been.

21 Q. But you don't know?

22 A. Did I know then or do I know now?

23 Q. Well, let's start then.

24 A. I believe that there were things deleted, yes.

1 Q. From the time -- by other people?

2 A. I believe there was some discussions. I'm not
3 even sure they ever ended in -- no. I believe
4 some things were deleted about some type of
5 practice field.

6 Q. Who did that?

7 A. Mr. Cushing.

8 Q. Okay. Did anyone else make any additions or
9 deletions to the RFP or the management contract
10 from the time of the meeting when you were
11 handed the draft until it went out on September
12 26th?

13 A. Anyone else other than who?

14 Q. You and Mr. Cushing.

15 A. I just made suggestions. Mr. Cushing did the
16 entire document. I didn't delete anything or
17 add anything. Mr. Cushing did the entire
18 document.

19 Q. Okay. And I take it -- well, these others
20 deletions. So other than -- did you see any
21 changes in the document that were suggested and
22 incorporated by anyone else besides you and
23 Mr. Cushing?

24 A. No, not that I remember.

1 Q. As you understood the system back then the RFP
2 went out in September, right? Yes?

3 A. Yes.

4 Q. And the proposals were due back when; do you
5 recall?

6 A. I believe in October.

7 Q. And as you understood the process, how was it
8 going to work from there? Proposals come back.
9 Where do they come to?

10 A. After that I didn't understand. After that it
11 was being conducted at town hall so I didn't
12 have any -- I wasn't given any instructions to
13 do anything other than answer some questions.
14 So I don't know what they -- how they were
15 planning on doing it.

16 Q. What was your understanding of the 30B process
17 in October of 2008? What was your understanding
18 of how the 30B process worked?

19 A. I didn't have any understanding.

20 Q. You didn't know 30B?

21 A. I was not told to do anything with respect to
22 that so I wasn't focused on it.

23 Q. I'm not asking if you were focused on it or told
24 to do anything. I'm asking you, did you

1 understand how the 30B process worked?

2 A. I understood in a general sense, sure.

3 Q. Proposals come back. What's supposed to happen?

4 A. I did not focus on that.

5 Q. I'm not asking if you focused on that. I'm
6 asking for your knowledge about the 30B process
7 in October of 2008. What was your --

8 A. I don't remember what my knowledge was at that
9 time.

10 Q. What's your knowledge now?

11 A. My knowledge would be in a very general sense I
12 would know.

13 Q. What do you know? Proposals come back. What's
14 supposed to happen?

15 A. I believe they are -- would be given to the
16 evaluators and the evaluations are to be done by
17 the evaluators.

18 Q. Yep.

19 A. And then the procurement officer is to open the
20 evaluations and read them and look at the price
21 proposals. And then after that -- no. It could
22 be done simultaneously, open the price and the
23 non-price proposals.

24 Q. It should be done simultaneously as you

1 understand it?

2 A. It could be.

3 Q. Is that the way the Inspector General suggested
4 it be done?

5 MR. GILL: Objection. You can answer.

6 A. I don't know how the Inspector General
7 suggested. I believe that the manual says it
8 can be done -- either the non-price proposals
9 can be opened first or they -- I think they can
10 be opened concurrently, too. It's in the
11 manual.

12 Q. So everything you're telling me as to the state
13 of your knowledge comes from the manual?

14 A. Everything I remember right now is just general.
15 I don't know where it comes from. Just general
16 knowledge.

17 Q. You just said it's in the manual.

18 A. I know there is a part about that in the manual.
19 Yes, there is.

20 Q. It says that you can open them concurrently, at
21 the same time?

22 A. Yes, I believe so.

23 Q. Did you know that in October?

24 A. No.

1 Q. Were you asked?

2 A. I wasn't focused on anything about that.

3 Q. I'm not asking if you were focused.

4 A. I didn't know it. I didn't look it up.

5 Q. As you understood it, as of the date the bids
6 went out, September 26th, was that going to be
7 the end of your involvement with the bidding
8 process?

9 A. Until I was -- well, I didn't have any
10 understanding whether it was going to be the end
11 or what was going to happen. I just would
12 receive an assignment as directed.

13 And so I guess when the bids went out I
14 didn't know that there were going to be
15 questions so I didn't know what was going to
16 happen. Generally I didn't, you know,
17 participate in the RFP process unless asked.

18 Q. Well, was there concern -- did anyone tell you
19 of any concern they had about this RFP process?
20 This particular one?

21 A. I don't remember anything about that.

22 Q. Were there any discussions about Mr. Johnson's
23 propensity to sue?

24 A. There could have been. I don't remember.

1 Q. You have no memory of that?

2 A. I don't have any memory of that, no.

3 Q. So once the RFP went out and the proposals came
4 back, when is the -- what's the next thing that
5 you learned about the RFP process?

6 A. Well, there was some questions.

7 Q. Questions. Okay.

8 A. And I prepared drafts, response suggestions,
9 sent them back to the recreation director.

10 Q. Then once the proposals came back?

11 A. I don't think I heard anything more after that.

12 Q. Until?

13 A. At some point I got a call saying that there was
14 -- they wanted to have a meeting about the -- I
15 believe I got a call that the proposals had been
16 opened and that there was some discussion but I
17 didn't get any real information. There was
18 just, I got a scheduling inquiry, could we
19 schedule a meeting on North Hill.

20 Q. From who?

21 A. You had to come up to town hall.

22 Q. From who?

23 A. From Barbara Ripley, and I believe I actually
24 got a call from the town manager, too.

1 Q. Richard MacDonald called you?

2 A. Yes.

3 Q. What did he tell you?

4 A. Just that there were issues and they needed to
5 meet.

6 Q. There was a problem?

7 A. I don't remember him saying it was a problem.

8 Q. There were issues?

9 A. Issues.

10 Q. Now, you say as you understood the process back
11 then the proposals were opened once they come
12 back and then they were given to the evaluators,
13 right? Yes?

14 A. Yes.

15 Q. And the evaluators do price evaluations and --
16 I'm sorry. They -- not the evaluators. The
17 bidders have to give sealed price evaluations;
18 price proposals and non-price proposals, right?

19 A. Yes.

20 Q. And the price proposals are sealed, correct?

21 A. I think they're all sealed but I don't know.

22 Q. Separately?

23 A. I assume they are. I think there's two sets of
24 envelopes.

1 Q. Right. One is the price proposal; one is the
2 non-price proposal?

3 A. Right.

4 Q. So once opened, when the bids come in, are there
5 price proposals?

6 MR. GILL: Are you asking if that's what
7 happened?

8 MR. KESTEN: That's right.

9 MR. GILL: I'm going to object to the
10 question. If you understand the question, you
11 can answer it.

12 A. No. I don't understand the question.

13 Q. When the process -- when the bid comes in, two
14 envelopes, each bidder submits two envelopes, a
15 sealed non-price proposal and a sealed price
16 proposal, right?

17 A. I believe so.

18 Q. What does the town open? What is the town
19 supposed to open?

20 A. I can't answer that, I said. I believe that
21 they -- when the bids come in the evaluators are
22 given the non-price proposals.

23 Q. Opened? They have to be opened?

24 A. They open them, right.

1 Q. Who opens them? The town?

2 A. I have no idea.

3 Q. Or the evaluators?

4 A. I have no idea.

5 Q. Okay. But the evaluators get the non-price
6 proposals, right?

7 A. I assume so, yes.

8 Q. And the price proposals stay sealed?

9 A. Yes.

10 Q. And then the evaluators turn in their
11 evaluations?

12 A. Yes.

13 Q. And then the town -- the procurement officer
14 reviews the evaluations?

15 A. Yes.

16 Q. Had that happened before you got this call from
17 Mr. MacDonald?

18 A. I believe so.

19 Q. So is it fair to say Mr. MacDonald told you
20 there was a problem with the evaluations?

21 A. I don't remember him saying there was a problem,
22 no. I just remember there was a need to come to
23 town hall and that -- very little information.
24 That's all I remember.

1 Q. But he told you they had reviewed the
2 evaluations, right?

3 A. I believe they said they had opened the -- I
4 don't remember what he said. I'd be
5 speculating. I can't remember.

6 Q. Did he tell you whether they had opened the
7 price proposals already?

8 A. I can't remember.

9 Q. When's the last time you talked to Barbara
10 Ripley?

11 A. When's the last time I talked to her?

12 Q. Yeah.

13 A. I don't remember. I guess the day she left.

14 Q. Did you ever talk to her about this process?

15 A. About the price proposals?

16 Q. This whole process, yes.

17 A. Yes. Certainly, I did.

18 Q. Did you talk to her since she left town hall?

19 A. No.

20 Q. I have.

21 A. Okay.

22 Q. Now, so when did you go to this meeting? Was
23 that a scheduled meeting, Mr. Troy?

24 A. This was a scheduled meeting, yes.

1 Q. When was this?

2 A. It was, I believe it was the day before
3 Thanksgiving.

4 Q. And you went to town hall?

5 A. I did.

6 Q. You met in Mr. MacDonald's office?

7 A. MacDonald.

8 Q. Mr. MacDonald's office?

9 A. Yes.

10 Q. Who was there?

11 A. I believe it was Mr. Cushing and me, and I
12 believe Barbara Ripley was there.

13 Q. She was. What happened?

14 A. We -- someone had brought the envelopes in and
15 the non-price proposals and the price proposals
16 were opened, they had already been opened. They
17 had had a previous meeting, and the evaluations
18 were also opened. And the focus of the meeting
19 was on the evaluations and there were problems
20 pointed out in the evaluations.

21 Q. Pointed out by who?

22 A. I was asked to look at them. I don't remember
23 who pointed them out, either Mr. Cushing or
24 Mr. MacDonald.

1 Q. Either Mr. Cushing or Mr. MacDonald pointed out
2 that they had -- is it fair to say that -- is it
3 true that they told you that when they had
4 opened these evaluations previous before calling
5 you they noted there was a problem with some of
6 the evaluators' work?

7 A. They could have said that. I don't remember. I
8 don't really remember anything specifically that
9 was discussed. I just remember that the focus
10 was on the problems with the evaluations and
11 what could be done. Could the award -- that was
12 the key inquiry is could the award be made in
13 these circumstances.

14 Q. Now, were the price proposals -- did you have
15 any understanding on that day that the price
16 proposals had been opened previously?

17 A. Yes. That they had been opened at a previous
18 meeting.

19 Q. So in the previous meeting they told you they
20 opened both the evaluations and the price
21 proposals?

22 A. Everything. They had opened everything.

23 Q. And what were you told to do and by whom?

24 A. At some point, I think it was Mr. MacDonald who

1 -- there was a concern about the time table and
2 whether or not there would be enough time to
3 rebid the whole process. And so the question
4 was is there any way that given these
5 evaluations, that the award can be made.

6 Q. Who asked the question?

7 A. Mr. MacDonald.

8 Q. And what did you say?

9 A. I said I didn't know, I'd have to look into it.

10 Q. Well, did you look at them at this meeting?

11 A. I looked at them. Yes, I did.

12 Q. How long was the meeting?

13 A. I don't remember exactly. It was not a short
14 meeting but it was not a long meeting. I mean,
15 it wasn't -- it was a fairly long meeting, maybe
16 an hour.

17 Q. An hour. You keep time -- you kept time records
18 then, correct?

19 A. I did.

20 Q. Do the individual entries as they appear in your
21 office, do they have the time for each event?

22 A. No, they don't.

23 Q. They don't?

24 A. No.

1 Q. So how do you get the aggregate time?

2 A. The aggregate time is done by a total.

3 Q. How do you get the total?

4 A. I actually don't do the input so I don't know.
5 They input various data.

6 Q. Do you input times?

7 A. I don't do any inputting but the person who does
8 the billing does.

9 Q. Based on information you give them?

10 A. Yes.

11 Q. What information do you give them?

12 A. I give them information about how long the
13 meeting is.

14 Q. How do you do that?

15 A. I usually do it contemporaneously.

16 Q. How and on what?

17 A. I can do it on a telephone call. I talk to the
18 office all the time or I -- sometimes if it is
19 something that I am doing in the office it's not
20 -- I give them a record.

21 Q. A timesheet?

22 A. Not really a timesheet, just a record of what I
23 did and who I talked to.

24 Q. And how long it took?

1 A. Right.

2 Q. And do they input that information into your
3 computer system?

4 A. I assume they do, yes.

5 Q. So where is it now?

6 A. Where is what information?

7 Q. The information as to how long each event took
8 in your 2008 and 2009 bills.

9 A. It's a total aggregate sum. We have two types
10 of bills. Some clients want an itemized bill
11 and the bill shows each amount of time. Others
12 don't request that and there's an aggregate
13 total.

14 Q. Well, Mr. Troy, isn't it true that the bills
15 that you -- that are generated by your office
16 all have individual times?

17 A. No.

18 Q. And that for some of your clients such as
19 Duxbury you have someone taking the individual
20 times, not just the aggregate?

21 A. No.

22 Q. No?

23 A. I don't know the answer to that. I don't know
24 how the bills are --

1 Q. Who would know?

2 A. Huh?

3 Q. Who would know?

4 A. Again?

5 Q. Who would know?

6 A. I assume the people who produce the bills.

7 Q. Who is that?

8 A. Gail O'Neill is the person primarily, but there
9 are other people.

10 Q. Gail O'Neill?

11 A. Yes.

12 Q. And she works for you?

13 A. Yes, she does.

14 Q. How long has she worked for you?

15 A. Maybe 15 years.

16 Q. What's her title?

17 A. I would say she's the office administrator.

18 Q. Who are the other people that might know?

19 A. I don't know exactly who. There's been a number
20 of people who assist. I don't know the names.

21 Q. So Mr. Troy, do you remember telling me and
22 Gordon Cushing and Richard MacDonald on April 4,
23 2012 that you had bills in the office which had
24 individual time records? Do you remember

1 telling us that?

2 MR. COVINO: Objection.

3 A. Anything that I told you on April 4th of 2012 I
4 told you in confidence.

5 Q. In front of Richard MacDonald and Gordon
6 Cushing?

7 A. I don't remember telling you anything in front
8 of them.

9 MR. GILL: Let him finish the answer.

10 Q. The April 4th meeting in the Mural Room with
11 Gordon Cushing and Richard MacDonald, you
12 remember that, right?

13 A. Yes.

14 Q. Do you remember at that meeting with them
15 sitting there, you telling all of us that you
16 did have individuals records with individual
17 times in your office and you would get them?

18 A. No. I don't remember telling you that.

19 Q. Do you remember a discussion about that topic?

20 A. You might have asked something about that. I
21 did not tell you that because I knew that would
22 not be a correct answer.

23 Q. You remember asking me what?

24 A. I remember you peering over my shoulder and

1 looking at my records and saying -- because the
2 records had been made available to you and you
3 made an inquiry about that. I do remember that,
4 yes.

5 Q. What did you say?

6 A. I just said I think -- I don't remember exactly
7 so I'm not going to speculate. It's
8 speculation. I remember you making some inquiry
9 about it, yes.

10 Q. Had you checked into it since and discovered
11 there are no such records?

12 A. I understand that when the bills are issued and
13 they're finalized there's an aggregate total.
14 Beyond that, I don't know. I'd have to, you
15 know, refer you to -- you would have to look
16 into how the bills are constructed. I don't
17 know.

18 Q. Okay. So did you call the office of the
19 Inspector General during this meeting?

20 A. I don't recall specifically when I called the
21 office of the Inspector General. But sometime,
22 at some point during this period of time I did
23 call the office of the Inspector General.

24 Q. Do you have any memory as to whether or not you

1 called them on November 26th from town hall?

2 A. I don't. I have a general memory that was
3 corroborated by other people that suggested that
4 it was during that meeting or at another meeting
5 thereafter, but I don't remember exactly when it
6 was. I remember there was a meeting that I left
7 the room and I made a call and I came back, but
8 I don't remember the meeting, no.

9 Q. So you made a call during this meeting?

10 A. No. I didn't say I made a call during this
11 meeting.

12 Q. You just said you remember a meeting where you
13 left the room and made a call.

14 A. Exactly, at some point, but not -- I'm not sure
15 it's this meeting.

16 Q. Mr. Troy, I just want to be clear. You remember
17 this phone call to the Inspector General
18 happened during the meeting in which you left
19 the meeting to make the call?

20 A. No. That's not what I said. I said that I
21 remember a meeting.

22 Q. Yeah.

23 A. Some meeting.

24 Q. Yeah.

1 A. I made a call to the Inspector General and came
2 back into the room, but I'm not sure it was this
3 particular -- it was this call.

4 Q. I got you.

5 A. The initial call. That's what I'm saying.

6 Q. Right. That's what I asked you. You
7 specifically remember it was a meeting?

8 A. No. I do not remember it was a meeting.

9 Q. What?

10 A. I remember that I made a call to the Inspector
11 General at a meeting at town hall and I returned
12 to the room, but whether or not that's the call
13 that was made during this time period, I'm not
14 sure, no.

15 Q. This could have been another call?

16 A. Yes. Absolutely. Not another call. It could
17 have been a call that I made to the Inspector
18 General. I made a general inquiry, and I'm not
19 certain as of the time or the place or when I
20 made it, except I have a memory that I contacted
21 the Inspector General and made a general inquiry
22 about issues relating to the evaluations.

23 Q. Tell me about your prior contact with the
24 Inspector General before this call.

1 A. I'm sorry?

2 Q. Had you ever consulted the Inspector General for
3 advice about anything?

4 A. Yes.

5 Q. Like what?

6 A. I can't remember.

7 Q. You have no memory of anything?

8 A. I would call the Inspector General about issues
9 that related to the jurisdiction.

10 Q. Like what?

11 A. I believe that I had made calls to the Inspector
12 General at various times about different issues.
13 I can't remember any of -- I don't remember.

14 Q. Give me an issue.

15 A. I don't remember. It must have been a
16 procurement issue.

17 Q. Procurement?

18 A. I assume. That seems --

19 Q. Why do you assume? So you believe -- you have a
20 memory that you made multiple calls to the
21 Inspector General in the past about procurement
22 issues? Is that what you're telling me?

23 A. Yeah. During, you know, I have been practicing
24 municipal law for 35 years and I very clearly

1 have called the Inspector General. As a matter
2 of fact, I had the Inspector General -- we had
3 communication with the Inspector General on
4 previous issues regarding North Hill.

5 Q. You did?

6 A. Right.

7 Q. Cool. When?

8 A. I don't remember.

9 Q. Previous RFPs?

10 A. Yes.

11 Q. Who did you talk to then?

12 A. I don't remember.

13 Q. Did you know the names of anybody up there in
14 the fall of 2008? Did you know the names of
15 anybody on the Inspector General's staff?

16 A. No.

17 Q. No. Did you know who the Inspector General was?

18 A. Sure.

19 Q. How did you know that?

20 A. I knew who he was because, just like I knew who
21 the secretary of state was. It's just --

22 Q. You had talked to the Inspector General's office
23 about prior procurement of the North Hill
24 management contract?

1 A. Yes. That had been previous. Not this year.

2 Q. Right.

3 A. But previous, yes. There were -- there had been
4 some protests or something in the earlier times.

5 Q. So did someone tell you to call the Inspector
6 General in 2008?

7 A. I believe the town manager asked me to check
8 with the Inspector General, yes.

9 Q. When was that?

10 A. I believe at this meeting.

11 Q. So at this meeting the town manager told you to
12 check with the Inspector General?

13 A. Yep. Or to check to make sure -- you know, he
14 didn't -- he generally wasn't specific about
15 directives. He'd say, I want to make sure it's
16 legal, check that it's legal, something like
17 that.

18 Q. Which is it? Pick.

19 A. I don't remember. I don't remember with
20 specificity details of meetings like this. So
21 this is one of many of hundreds of matters that
22 I've handled with the Town of Duxbury, and I
23 don't remember the specific details of a meeting
24 that took place four years ago, no.

1 Q. So you don't remember whether the town manager
2 asked you to check with the Inspector General?
3 Is that your final answer?

4 A. I remember that he at some point --

5 MR. GILL: I am going to object to the
6 form of that.

7 A. I remember that he asked at some point that I
8 check it with the Inspector General, and I
9 believe it was at that meeting but I don't have
10 a specific memory. Or to check that it's legal
11 or something like that.

12 Q. Which is it?

13 A. I don't remember. I don't remember. Not that
14 -- I don't know that that makes any difference.

15 Q. Excuse me?

16 A. I don't know that it makes any difference.

17 Q. You prepared an affidavit that Gordon Cushing
18 executed indicating that the town manager asked
19 you to check with the Inspector General. You do
20 know that?

21 A. I did not prepare that affidavit.

22 Q. You didn't?

23 A. No, I did not.

24 Q. Who prepared it?

1 A. I only prepared one affidavit with respect to
2 this matter that I did with Mr. MacDonald and
3 Mr. Cushing. Other than that, I didn't prepare
4 any of the affidavits.

5 Q. Who does it then?

6 A. Whoever was signing the affidavit and a lawyer.

7 Q. Who?

8 A. I don't know. You'd have to show me the
9 specific affidavit. I don't know, but I know I
10 only prepared one.

11 Q. Well, before my firm got involved, Mr. Troy,
12 when affidavits were filed on behalf of the town
13 in this case, was there anyone besides you and
14 your office that prepared them?

15 A. My office prepared them.

16 Q. Who?

17 A. I don't remember you preparing any affidavits.

18 Q. I understand. I know.

19 A. Or preparing anything.

20 Q. I know. You did all the work. You prepared
21 everything. You represented the witnesses.

22 Now the question I have for you is,
23 there's an affidavit that was filed in this case
24 which Gordon Cushing signed in a pleading that

1 you filed in which he indicates you were asked
2 by Mr. MacDonald to contact the Inspector
3 General before the bids were rejected.

4 A. Right.

5 Q. Do you recall that happening?

6 A. No. I don't recall the affidavit but --

7 Q. Do you recall that happening?

8 A. No. But if Mr. Cushing signed an affidavit, I
9 assume that is correct, that's his understanding
10 that it's his memory of whatever happened.

11 Q. Well, but you don't remember that?

12 A. I didn't prepare the affidavit.

13 Q. But you don't remember that? You don't remember
14 that happening? Do you have a memory, yes or
15 no, that Mr. MacDonald told you to call the
16 Inspector General before the bids were canceled?
17 Do you have such a memory?

18 A. That is a different question than you asked
19 before. Between the time of November 26th and
20 when the bids were rejected --

21 Q. December 1st.

22 A. Mr. MacDonald did ask me to check with the
23 Inspector General, yes.

24 Q. That's your final answer?

1 A. At some point.

2 Q. You have a memory now that he told you to call
3 the Inspector General and check?

4 A. It's a different question. You asked whether I
5 remember at the meeting of November 26th --

6 Q. No, I didn't.

7 A. Yes. That's what you said.

8 Q. You can review this transcript. You'll see that
9 I didn't. All I want from you is your final
10 memory, Mr. Troy. I just want your final
11 answer.

12 So you're now telling me you now remember
13 that at some point before the bids were canceled
14 Mr. MacDonald instructed you to call the
15 Inspector General?

16 MR. GILL: I'm going to object to the
17 question. Let's not have argument, please,
18 Mr. Kesten. If you would ask him a clean
19 question, he will answer it.

20 MR. KESTEN: It's really clean.

21 Q. Mr. Troy, do you remember as you sit here today
22 that Mr. Richard MacDonald told you to call the
23 Inspector General prior to the time that the
24 bids were rejected in December of 2008?

1 A. Mr. MacDonald told me to call the Inspector
2 General or something to the effect to make sure
3 that it was legal between the time when the bids
4 were brought to my attention on November 26th
5 and when they were rejected.

6 Q. So your memory now is that you might have called
7 the Inspector General or you might not have
8 called the Inspector General to make sure it's
9 legal?

10 A. My memory is that it was one or the other, and
11 to make sure that it was correct.

12 Q. So he may have asked you to call the Inspector
13 General?

14 A. I don't remember with specificity what he said.
15 No, I don't.

16 Q. I want to be clear. You're now telling me you
17 may not have called the Inspector General?

18 MR. COVINO: Objection.

19 A. I'm not telling you anything different when
20 you're asking questions. I'm now telling you
21 what is my final answer. My answer that I have
22 is a general memory and I have told you what my
23 general memory is.

24 Q. That either he told you -- just, I'm making sure

1 that I'm right, that we have it. That either he
2 told you to call the Inspector General or he
3 simply told you to make sure it's right?

4 A. I've answered this question.

5 Q. That's your answer? Those are the two choices?

6 A. It's not a question of choices. My memory is
7 that he told me to make sure it was legal or to
8 check with the Inspector General. But
9 regardless of what he told me I also have a
10 general memory that during this period of time,
11 I don't recall the specifics, I did call the
12 Inspector General and asked a question.

13 Q. And you may have called on your own initiative,
14 not having been so instructed by Mr. MacDonald?

15 MR. COVINO: Objection.

16 A. I don't remember. I think that Mr. MacDonald
17 was very interested in making sure that whatever
18 was done was done legally.

19 Q. Okay. Now, where were you when you made this
20 call?

21 A. I don't remember.

22 Q. What are the possibilities?

23 A. No idea.

24 Q. No idea?

1 A. No.

2 Q. Was the call made during business hours?

3 A. I don't know. Well, obviously business hours
4 because I talked to somebody, obviously.

5 Q. So, and the bids were rejected when?

6 A. I'm not exactly sure when they were rejected.
7 The letter came from town hall but I believe it
8 was in early December.

9 Q. Well, you drafted the letter, right?

10 A. I did. I drafted the letter, yes, but I didn't
11 send the letter.

12 Q. Correct. You drafted a letter so Mr. MacDonald
13 could sign it from his hospital bed, remember?

14 A. Mr. MacDonald suggested to me that he -- I
15 didn't know that he was in a hospital bed, no.
16 I did not know.

17 Q. You didn't?

18 A. No.

19 Q. You weren't communicating with Barbara at the
20 time about who was going to sign?

21 A. I knew he was out of the office. I didn't know
22 he was in the hospital.

23 Q. Now, Mr. Troy, when was the decision made to
24 rescind the bid?

1 A. The decision was made at some point prior to my
2 being instructed to draft the letter and a
3 telephone call from Mr. MacDonald.

4 Q. The decision was made -- the decision was
5 communicated to you on a telephone call?

6 A. Yes.

7 Q. Weren't you at a meeting the day after the
8 Thanksgiving weekend?

9 A. I believe there was a -- I believe there was a
10 meeting on the Monday after Thanksgiving but I'm
11 not certain of that. I don't have a clear
12 memory as to that.

13 Q. Do you have any memory of it?

14 A. I have a vague memory, but not specific, no.

15 Q. What's your vague memory of that meeting?

16 A. That there was a meeting and the issues were
17 discussed and my interpretation of the
18 evaluations were discussed -- was discussed.

19 Q. And you remember this meeting happening when?

20 A. I'm not sure that it happened because if there
21 were additional meetings it would have been the
22 morning of the Monday following the other
23 meeting, but I'm not sure if there was but I
24 think there was.

1 Q. There might not have been a meeting?

2 A. I have no documentation there was a meeting so I
3 would need something to refresh my memory. I
4 have a vague memory that there was a meeting
5 that Monday morning, yes, but I'm not sure.

6 Q. Now, at the time of that meeting, this was --
7 this was the second meeting -- strike that.

8 The meeting after, the first meeting
9 after Thanksgiving, had you talked to the
10 Inspector General yet?

11 A. I don't remember when I talked to the Inspector
12 General.

13 Q. But you do remember it was before the decision
14 to rescind the bids was made?

15 A. Yes.

16 Q. And you passed on, I take it, the information
17 you got from the Inspector General to
18 Mr. MacDonald and Mr. Cushing?

19 A. I believe so.

20 Q. Tell me the conversation you had. You called up
21 and somebody says hello. Did you call the
22 general number?

23 A. I don't remember any of the specifics.

24 Q. Anything?

1 A. About -- no. About a phone call, no.

2 Q. You remember nothing about the phone call?

3 A. What I do remember about the phone call is that
4 I asked questions about -- the primary inquiry I
5 was looking at was whether or not the
6 procurement officer could interpolate the data
7 and in effect try to superimpose the intent of
8 the evaluator.

9 I also talked about what the situation
10 was, that one of the evaluators had used
11 incorrect terminology and not explained the
12 reasons or the composite rating, and that one of
13 the evaluators, if my memory -- I don't have it
14 in front of me. I'd have to look at it to
15 refresh my memory again. One of the evaluators
16 did not give a composite evaluation or reasons.

17 Q. You told them about all that?

18 MR. GILL: I'm sorry. I didn't hear you.

19 Q. You told them about all that?

20 A. I asked about what the requirements were. I
21 don't remember the specific conversation. I
22 remember that, though. I remember that there
23 was a discussion about that issue. What was
24 said, I don't know.

1 I also -- I remember them concluding and
2 saying that the rebid would be the wisest course
3 because there would be a lot of challenges from
4 bidders. That's all I remember.

5 Q. What do you remember telling them? You just
6 gave me a whole thing about the bids and the
7 discussions. Hang on. Let me finish. You gave
8 me a whole thing about the status of the
9 evaluations.

10 My question is, is that what you told
11 them? Why did you --

12 A. I don't remember specifically what I told them.

13 Q. Do you remember anything?

14 A. I knew it was generic. It was not about this
15 particular thing. I asked questions generically
16 because I wanted to get information.

17 Q. Did you tell them who you were?

18 A. No.

19 Q. You didn't?

20 A. No.

21 Q. This was an anonymous call?

22 A. It was not an anonymous call. I just said I had
23 an inquiry.

24 Q. Did you talk to a male or a female?

1 A. I don't remember. I believe it was a male,
2 though, but I'm not sure.

3 Q. Did you talk to the person who answered the
4 phone or did they patch you through to somebody?

5 A. No. I don't remember that, either. I don't
6 remember.

7 Q. You never identified yourself?

8 A. No.

9 Q. And did you get the name of the person who you
10 talked to?

11 A. No.

12 Q. Did they tell you who they were?

13 A. I don't know. I don't remember that, either.

14 Q. That's your story?

15 A. It's not a story. It was a routine conversation
16 and I had no reason to make any records of it.

17 Q. In your previous, had you ever made a general
18 anonymous inquiry to the Inspector General
19 before this one?

20 MR. COVINO: Objection.

21 A. It was not a general, anonymous inquiry. It was
22 a simple question. I asked the Inspector
23 General's Office a question, a legal question.
24 He -- I was ultimately looking at the issues and

1 I looked at them in terms of the manual and the
2 Inspector General's manual and any other
3 information that I got.

4 Q. Mr. Troy, I'm focused on your conversation with
5 the Inspector General. You are now telling us
6 under oath you never identified yourself?

7 A. I'm saying that I don't have any memory of
8 identifying myself.

9 Q. You didn't identify your name?

10 A. No.

11 Q. You didn't give them your role or anything about
12 the entity you were talking about, right?

13 A. You've asked me all this.

14 Q. I want to be clear. So that's what you're
15 telling us?

16 A. I've given my answer.

17 Q. Had you ever done that before? Have you ever
18 called the Inspector General before and gotten
19 advice without identifying yourself?

20 A. I don't remember whether I would. I routinely
21 called the state agencies and other agencies and
22 ask questions and don't identify myself.

23 Q. Really?

24 A. Yes.

1 Q. What do you tell them? You're a concerned
2 citizen?

3 A. As a question, it's never asked. If you have a
4 legal question, you ask a state agency for
5 guidance, they give you the guidance.

6 Q. Of course they do.

7 A. Right.

8 Q. And they say who am I speaking to, right? I've
9 done it thousands of times.

10 A. I don't know what your experience is.

11 Q. In your experience you have had any number of
12 conversations with state agencies in which
13 you've never identified your name?

14 A. Yes. Absolutely.

15 Q. All right. Give me another one besides the
16 Inspector General that you did that to.

17 A. I don't recall things of that nature in
18 specifics because it is something that is done
19 every day. As a matter of fact, I have called
20 agencies on numerous occasions and asked
21 questions about matters within their
22 jurisdiction and I've received information, yes.

23 Q. That's not -- of course you have. No question.

24 A. Without identifying -- without any issue, yes.

1 Q. Without telling them your name?

2 A. Yes. Absolutely.

3 Q. When did you start telling the Inspector General
4 your name during these communications about
5 North Hill in 2008? When did you begin
6 identifying yourself?

7 A. I don't remember. I remember at some point the
8 Inspector General then communicated with us,
9 meaning me, and called me.

10 Q. Okay.

11 A. I think that was after the complaints that were
12 filed by Johnson.

13 Q. So Mr. Troy, what are the universal telephones
14 you used for this alleged conversation?

15 A. I don't know that.

16 Q. Well, you have no idea? So it could be your
17 cell phone?

18 A. I don't know what phone call was made on which
19 lines or anything specific about when I made the
20 call.

21 Q. So Mr. Troy, I'm talking about the universe of
22 phones available to you to make calls on. Your
23 cell phone is one, right?

24 A. I assume.

1 Q. So, you assume?

2 A. Right.

3 Q. You had a cell phone on you, right, at that
4 time?

5 A. On me, I don't know.

6 Q. Do you carry a cell phone?

7 A. Sometimes.

8 Q. Do you have a cell phone now?

9 A. I do. I don't have it with me. I do.

10 Q. You could have used a phone in town hall?

11 A. Could have.

12 Q. You could have used a phone in your office?

13 A. Could have.

14 Q. At Troy Wall Associates?

15 A. True.

16 Q. Who was your provider in 2008?

17 A. I don't know.

18 Q. You don't know. Who would know?

19 A. I don't know.

20 Q. You don't know who would know?

21 A. Oh. Who would know. I'm sorry. I thought you
22 said who is it now. I'm sorry. The people in
23 the office would know because they pay the
24 bills.

1 Q. Who's that?

2 A. Gail O'Neill would know.

3 Q. Okay. So she pays the phone bills?

4 A. She does.

5 Q. Could you have made this call from your house?

6 A. Could have.

7 Q. Where do you live?

8 A. Where do I live?

9 Q. Yeah.

10 A. I live in Cohasset.

11 Q. What's your address?

12 A. 150 Nichols Road.

13 Q. Is that where you were living in November and
14 December of 2008?

15 A. I believe so.

16 Q. What was your phone number there at that time?

17 A. I do not want my phone number on the record of
18 this transcript. I'll write my phone number
19 down.

20 Q. Okay. Give it to me. Is it secret?

21 A. No.

22 Q. Does Mr. Cushing know your phone number?

23 A. He could.

24 MR. KESTEN: Do you, Gordon?

1 MR. CUSHING: Cell.

2 MR. KESTEN: Not the home, okay.

3 Q. Who pays the bills for your home phone?

4 A. I do.

5 Q. Who's your provider?

6 A. I believe it is Verizon.

7 Q. Was it Verizon back then?

8 A. I believe so.

9 Q. Are there any other phones that were available
10 to you in November and December of 2008 from
11 which you may have made this supposed phone
12 call?

13 A. Yeah. I could have used any phone that was
14 available.

15 Q. Like what?

16 A. Any phone that I had access to, but I don't
17 remember specifically. I don't remember where I
18 was when I made the call. I told you that. I
19 can't tell you, but at some point my best memory
20 is and I believe that I made a call to the
21 Inspector General.

22 Q. Either November 26th or December 1st, right?

23 A. Yes. 2nd or 3rd, whatever date it was.
24 Whenever it was, yes.

1 Q. Well, it wasn't -- strike that.

2 Do you recall a discussion after
3 Thanksgiving during which -- well, strike that.

4 What did you do after this November 26th
5 meeting in regard to giving the town advice?

6 A. I wrote a memo.

7 Q. Where is this memo?

8 A. Where is it?

9 Q. Yeah.

10 A. I'm missing your question.

11 Q. You're missing my question? Where is it?

12 A. It's in the file.

13 Q. What's it called?

14 A. What is it called? It's just a memo about the
15 evaluations. I don't remember what it's called.
16 I can't remember that.

17 Q. When's the last time you saw it?

18 A. Sometime back. I've seen it. It's part of the
19 file.

20 Q. When is the last time you saw it?

21 A. I don't remember that. I don't remember the
22 last time.

23 Q. Was it since April of 2012 that you looked at
24 this --

1 A. Could have been.

2 Q. -- memo?

3 A. Could have been.

4 Q. Could have been. It's in the file, the file
5 that you gave me?

6 A. It is. I believe it is, yeah.

7 Q. And it's dated when?

8 A. Around the period of time that we're talking
9 about. I don't remember.

10 Q. Did you deliver this memo to Mr. MacDonald and
11 Mr. Cushing before the decision was made to
12 rescind the award?

13 A. It was e-mailed.

14 Q. Did you e-mail this memo?

15 A. Yes.

16 Q. Do you still have this e-mail?

17 A. I believe so.

18 Q. Terrific. We'll get to see it.

19 Did you e-mail this memo to them? First
20 of all, did you e-mail -- who did you e-mail it
21 to?

22 A. I assume to Mr. MacDonald.

23 Q. And did you e-mail a memo before the decision
24 was made to rescind the -- stop the process?

1 A. Yes.

2 Q. Did the memo contain any recommendations?

3 A. I spoke to Mr. MacDonald about it also on the
4 telephone because I believe he did have a health
5 issue at some point and he was not at town hall.

6 Q. I'm asking about the memo.

7 A. Yes.

8 Q. Did you deliver this memo?

9 A. I didn't deliver it.

10 Q. Did you e-mail this memo to town hall before
11 Mr. MacDonald made the decision to rescind?

12 A. Yes.

13 Q. What information was in the memo?

14 A. The memo was a summary of or an analysis of
15 whether or not Mr. MacDonald as the chief
16 procurement officer could interpolate the data
17 on the evaluations in such a way as to make the
18 award.

19 And it talked about that, and it was
20 basically an effort to do a numerical evaluation
21 and assign it the criteria that the evaluators
22 had used.

23 Q. So this is a memo in which you analyzed the
24 evaluations?

1 A. Yeah. That was what my task was.

2 Q. To analyze the evaluations?

3 A. Right.

4 Q. Why? Why would you bother?

5 A. Because the evaluators -- the question was
6 whether or not the data that was in the
7 evaluations, was that sufficient to make an
8 award.

9 Q. Well, this would take about three minutes,
10 right?

11 A. No. I don't agree.

12 Q. Why?

13 A. Because it needed analysis and it needed to see
14 whether or not the award could be made.

15 Q. Well, those are two different issues. The data
16 in the evaluations were straightforward. Each
17 evaluator had graded them based on a number of
18 criteria, right?

19 A. That's correct, but they had used improper
20 terminology.

21 Q. In the composite?

22 A. Right.

23 Q. Right. That's it?

24 A. In the what? I'm sorry.

1 Q. The composite.

2 A. No. I don't think that's true. I think they
3 used improper criteria throughout and one of
4 them did.

5 Q. He did?

6 A. I'd have to look at it. My memory is --

7 Q. Mr. Troy, it's a check off. Isn't it a check
8 off where you check off highly advantageous,
9 advantageous, not advantageous, unacceptable?

10 A. I'd have to look at them. If you want to direct
11 my attention, you'd have to give me documents
12 and direct my attention to them.

13 Q. Here's my question.

14 MR. FOLLANSBEE: They're right in front
15 of the computer, all the original exhibits.

16 MR. GILL: When would you like to break
17 for lunch?

18 MR. KESTEN: One o'clock.

19 MR. GILL: I'd like to take a short
20 break.

21

22 (Recess taken.)

23

24 Q. You have before you, it looks like Exhibit 10?

1 A. I do.

2 Q. And can we agree that the improper language was
3 used in the composite?

4 A. This rating of Floreano has improper language in
5 the composite.

6 Q. Right.

7 A. And also, I don't see in this, it's missing
8 here. I don't see there are any reasons.

9 Q. Well, let's forget the reasons for the moment,
10 but the improper language is the composite for
11 Floreano, right?

12 A. Yes.

13 Q. And the other guy, what's his name?

14 A. Dixon.

15 Q. Dixon doesn't have a composite?

16 A. Exactly.

17 Q. Right. And that's readily apparent the first
18 time you look at them. It's right there, right?

19 A. Right.

20 Q. And the question you asked the IG in this
21 anonymous conversation was whether the town
22 could interpolate the actual evaluations to make
23 a composite, right?

24 A. Right.

1 Q. And did you have any discussions with anyone
2 about the possibility of giving these
3 evaluations back to Floreano and Dixon and
4 having them finish?

5 A. Not that I remember.

6 Q. How come?

7 A. I'm not sure that you can legally do that.

8 Q. Well, did you ask anyone?

9 A. No. I actually didn't think -- I never -- it
10 does not -- I do not believe that you can
11 legally do that.

12 Q. Did you ask anyone?

13 A. No.

14 Q. Okay. Did you believe that you might be legally
15 able to interpolate?

16 A. That's what I was looking into.

17 Q. So that's what you thought might be possible?

18 A. Exactly.

19 Q. The other one you didn't ask about?

20 A. No.

21 Q. This person who you believe to be a male at the
22 Inspector General's Office told you you could
23 not interpolate?

24 MR. GILL: Objection. You can answer.

1 A. The system that I was attempting to see whether
2 it would work would be a numerical system, and I
3 don't know whether they said that but I learned
4 that at some point either from the conversation
5 or from the Inspector General's manual, one or
6 the other. I don't remember which.

7 Q. What does that mean?

8 A. In other words, my effort was to see whether or
9 not you could take the answers to the criteria
10 and assign values to them and thereby interpret
11 whether qualified would mean highly
12 advantageous.

13 So, for instance, here for Johnson Golf
14 Management Floreano has all highly advantageous.
15 So what my inquiry was, could the procurement
16 officer interpret qualified and say this is a
17 highly advantageous.

18 Q. Okay. And they said no?

19 A. I'm not sure they said or that I learned it at
20 some point, that the way that I was attempting
21 to analyze it didn't comply.

22 Q. What advice did you get from this unknown person
23 at the Inspector General's Office?

24 A. I don't remember the specific advice --

1 Q. Any advice?

2 A. -- beyond what I've told you. I've told you
3 everything I remember about it, that if the town
4 made -- attempted to make the award based on the
5 fact that the composite scores had not been done
6 in accordance with the statute, there would be
7 many challenges but -- that's what I remember
8 chief, there would be many, many challenges.

9 Q. From whom?

10 A. From other bidders. Maybe all of them. Whoever
11 didn't get the award, I assume. At that point I
12 had no idea who was going to get the award.

13 Q. Who was going to get the award. Well, had you
14 interpolated who would have gotten the award?

15 A. The interpolation would have been that I had
16 done using these evaluations, interpolating
17 them, Johnson Golf would have got the highest
18 scores.

19 Q. When did you recognize that?

20 A. I recognized that after I did the analysis that
21 I did.

22 Q. Before the bids were rejected?

23 A. Yes.

24 Q. Did you share that analysis with the town?

1 A. Yes.

2 Q. Who?

3 A. Mr. MacDonald.

4 Q. Now, did Mr. MacDonald indicate he would have
5 any problem in awarding it to Johnson Golf if it
6 was legal?

7 A. No.

8 Q. The person at the Inspector General, did they
9 recommend to you that the best course would be
10 to start over?

11 A. What they recommended was that if the composites
12 were not done correctly, the challenges to the
13 award if it were made would be such that there
14 would be considerable delay in resolving it, and
15 that the best thing would be to go out to bid,
16 rebid, and correct it.

17 And there was also some discussion about
18 the evaluators being trained properly to do
19 that. There was some discussion about that,
20 they had resources available. I remember that.

21 Q. So you talk to this anonymous person?

22 A. Yes.

23 Q. This anonymous person told you the Inspector
24 General had resources to train the evaluators?

1 A. I'm not sure the person was anonymous, either.
2 I didn't know that. I'm not saying -- I don't
3 remember it, but who knows. I have no reason to
4 remember. I'm not sure that person was
5 anonymous.

6 Q. So that person may have given you their name?

7 A. They could have.

8 Q. May you have given them your name?

9 A. No. I didn't give them mine.

10 Q. You wanted to maintain anonymity?

11 A. I specifically wanted information so I could
12 take the information back to the town and have
13 the town make a decision rather than to flag
14 something ahead of time that was going to be a
15 problem. I wanted to give the town the
16 information that I got and let the town apply it
17 to the facts.

18 Q. So you wanted -- it was important to you that
19 the Inspector General not know who you were or
20 why you were calling?

21 A. No. It was important just to get what the legal
22 -- what the legal answers to the questions were
23 outside of miring it down in a particular award,
24 yes.

1 Q. Right. So you consciously wanted to be
2 anonymous?

3 A. I didn't consciously want to be anonymous. I
4 wanted to get the information in what I thought
5 was the most objective manner.

6 Q. You determined that would be by being anonymous?

7 A. Absolutely. Right.

8 Q. There was a discussion about the Inspector
9 General being available or staff being available
10 to train evaluators?

11 A. Right.

12 Q. Did you pass this all on to the town?

13 A. I did.

14 Q. So then you drafted the letter?

15 A. That was drafted, you know. I don't remember
16 when but that was drafted. I believe -- I'm not
17 sure when it was drafted. It was drafted and
18 sent to town hall.

19 Q. But after all this?

20 A. Yeah.

21 Q. After this conversation? That was my question.

22 A. Yeah.

23 Q. So you passed this to Mr. MacDonald, and
24 Mr. MacDonald indicated to you he would then,

1 based upon your advice, would rescind the award
2 and start over?

3 A. It wasn't my advice, no, I gave him.

4 MR. KREIGER: I object to the word
5 rescind.

6 MR. KESTEN: Good point. Stop the
7 process, cancel the process.

8 Q. You didn't give any advice?

9 A. No. I reported to him what I thought was the
10 options available to him.

11 Q. What did you tell him he could do?

12 A. I said you can go ahead and you can make an
13 award but it's going to be subject to
14 challenges.

15 Q. To Johnson Golf?

16 A. No. No. It wasn't to Johnson Golf, no. The
17 price proposals hadn't even been considered at
18 this time. At least we had no discussion about
19 them. They had been opened, we knew what they
20 were, but you can make an award -- there was
21 never any discussion about who the award was
22 going to go to.

23 Q. You analyzed the price proposals?

24 A. Correct.

1 Q. And the non-price proposals?

2 A. But the statute requires you would have to go
3 through each of the, just as they ultimately
4 did, you'd have to go through each of the
5 evaluations and the non-price proposals and look
6 at price proposals, and none of that was ever
7 done.

8 Q. Right. The statute requires that you look at
9 the proposals?

10 A. Right.

11 Q. Non-price and price?

12 A. Right.

13 Q. And the evaluations?

14 A. And make a determination.

15 Q. Based on all three things?

16 A. Right. None of that had been done.

17 Q. You had done it, hadn't you? You had reviewed
18 all that stuff?

19 A. No. I had looked at all of the stuff. I had
20 not put myself in the position that I was
21 looking to make the determination as to who
22 would get the award.

23 So to return to what I was saying what
24 the options were, he could make an award, he

1 could go ahead and do that process which he
2 hadn't done --

3 Q. The interpolation?

4 A. No. Do the process of looking at the prices,
5 the non-prices, and using the interpolation
6 which was risky, or look at doing the whole
7 thing over and rebid.

8 Q. Did you make a recommendation?

9 A. No, I did not.

10 Q. You left it completely up to him?

11 A. I asked, but it was pretty clear from, if you
12 just look at what we had just discussed given
13 the calendar, and I think we talked about this,
14 that this was early December and the contract
15 was expiring at the end of December, that it
16 didn't seem wise to get into a process where we
17 would be in flux because the course would then
18 be closed, and the easier thing appeared to be
19 to rebid it.

20 Q. Did you tell him all these things that you're
21 telling us? It wouldn't be wise?

22 A. I don't know what I said to him. I don't
23 remember the conversation.

24 Q. The question is, did you, Bob Troy, make a

1 recommendation as town counsel to Mr. MacDonald
2 -- was Mr. Cushing there, by the way?

3 A. Not at that telephone call.

4 Q. This was a telephone call?

5 A. Right.

6 Q. He based the determination based on your
7 providing information to him on a telephone
8 call?

9 A. He was not available.

10 Q. Thereafter you had a meeting on December 1st,
11 it's in your billing records, where you met with
12 Mr. Cushing and Mr. MacDonald and went over all
13 this stuff?

14 A. Yeah. No. That's not correct.

15 Q. It's not?

16 A. No. It is not in my billing records because
17 that's why I'm uncertain that the meeting
18 actually happened. I remember the meeting but
19 it is not in my billing records and --

20 Q. But you remember the meeting?

21 A. I have a vague memory that we met but I'm not
22 certain that we did, and -- but I have a
23 specific memory that we spoke. I spoke to
24 Mr. MacDonald and that is in my billing records

1 which I have used to refresh my memory. And
2 that memory is that this was discussed, the
3 information that I had.

4 Incidentally, I had looked and relied on
5 the Inspector General's manual, too, in
6 addition. I used that as part of my analysis,
7 and based on that, Mr. MacDonald said something
8 to the effect that, you know, the way he spoke
9 is not in legalisms. I want it to be clean, I
10 want it to be legal, draft me something. We're
11 going to do it over again. We're going to do it
12 right, something like that.

13 Q. So he made the decision, he communicated the
14 decision to you during a telephone call after
15 this meeting?

16 A. Yes.

17 Q. Okay. And you drafted the letter?

18 A. Yes.

19 Q. And did you give any reasons in this letter?

20 A. Did I give any reasons? Well, the reason that
21 is in the -- in what I drafted, the reason was
22 that it was in the public interest to rebid the
23 project -- the process.

24 Q. So you considered that a reason?

1 A. Yes.

2 Q. You e-mailed this draft to Barbara Ripley,
3 right?

4 A. Yes.

5 Q. And it went out?

6 A. Yes.

7 Q. Okay. And when did you -- did you have the
8 discussion with Mr. MacDonald and did you have a
9 discussion with Mr. Cushing as well about the
10 training for the next set of evaluations to make
11 sure it was legal?

12 MR. GILL: Objection. You can answer.

13 A. That was spoken at sometime. I don't remember
14 when.

15 Q. Before he made the decision or after?

16 A. I don't remember that.

17 Q. But you did pass this on to them?

18 A. At some point before, yeah. Before we -- I
19 might have even talked to Mr. Cushing, too. I
20 don't remember, because I met with him and so I
21 I'm not sure when, but that was definitely
22 passed on.

23 Q. To Mr. Cushing? To who?

24 A. I'm sorry?

1 Q. To who? Passed it on to who?

2 A. I believe both Mr. Cushing and Mr. MacDonald,
3 that there was training available and they
4 should be trained. And also that it would be
5 better if people who were not on the North Hill
6 Committee not serve as evaluators.

7 Q. Had there been anybody on the North Hill
8 Committee in the previous set?

9 A. I believe that Mr. Floreano was on the North
10 Hill Committee and Mr. Cushing was also on the
11 North Hill Committee, ex-officio.

12 Q. So shortly thereafter the suit was filed?

13 A. Yes.

14 Q. And you handled the defense all from the
15 beginning?

16 A. I did.

17 Q. And the Court, there was Judge Smith even then?

18 A. It was.

19 Q. What was your understanding of Judge Smith's
20 connection to Johnson Golf?

21 A. His connection to Johnson Golf?

22 Q. Yeah.

23 A. Other than the fact I think there was some
24 information that Mr. Follansbee had said at the

1 beginning of his presentation that there was
2 another case, I believe he had another case with
3 Johnson Golf.

4 Q. You learned this from Mr. Follansbee?

5 A. I believe Mr. Follansbee said that, yes.

6 Q. So that's where you learned it?

7 A. I believe so.

8 Q. Okay. Now, the Court allowed the town to
9 proceed, right? Johnson Golf tried to stop it
10 but the Court allowed you to proceed, right?

11 A. Yes.

12 Q. What did you do to ensure that the evaluators
13 were trained?

14 A. That wasn't my job. I didn't do anything.

15 Q. Nothing?

16 A. I just told them there was training available
17 and I was assured that the training was going to
18 be provided.

19 Q. Who assured you?

20 A. I believe the town manager did. Yes. The town
21 manager said that we're going to do it right.

22 Q. And he told you we'll train them?

23 A. He said -- yeah. They'll make sure that it
24 won't happen again, that they don't know how to

1 fill out the forms.

2 As a matter of fact I remember a
3 conversation with the town manager and
4 Mr. Cushing in which it was talked about how
5 there were materials available and to give them
6 to the evaluators ahead of time, because I don't
7 believe they were given any training the first
8 round or I don't think they were given anything,
9 and to give them some information about how to
10 do it because it doesn't seem like it's that
11 difficult to fill out a form.

12 Q. What information did you tell them?

13 A. The Inspector General had information about how
14 to fill out the forms.

15 Q. What information?

16 A. I don't know what the information was.

17 Q. What did you tell Gordon he should do?

18 A. Gordon was familiar with the procurement
19 process, and I don't know whether there was -- I
20 believe that Gordon did give them some
21 information about how to fill it out but I don't
22 know what it was. I wasn't in that level of
23 involvement.

24 Q. You had been told by the Inspector General, I

1 thought you said you were, by this possibly
2 anonymous person, that they had training
3 available. That's what you told us.

4 A. Yeah. Training and materials available, yes.

5 Q. Who was going to do that? Who did they have
6 available to do the training?

7 A. I didn't get into that level of detail.

8 Q. Did you tell Mr. Cushing or Mr. MacDonald that
9 the Inspector General, that you had called them
10 and they would provide training?

11 A. I know that Mr. Cushing had talked to the
12 Inspector General before so I assumed he would
13 know how to get whatever needed to be done. I
14 didn't get into that. I wasn't asked to. If I
15 were asked to do it I would have done it. I
16 wasn't asked.

17 MR. GILL: Sir, perhaps it is a good
18 place to stop. It's one o'clock.

19 MR. KESTEN: Sure. How quickly can you
20 come back? It's up to you.

21 (Discussion off the record.)

22

23 (Recess taken.)

24

1 (The question was read back.)

2 Q. So did you?

3 A. Did -- I'm sorry?

4 Q. Did you tell either Cushing or MacDonald or both
5 of them that you had talked to the Inspector
6 General and they were available to train the
7 evaluators?

8 A. Yes. And that they had materials, too.

9 Q. So you told them that?

10 A. Yes.

11 Q. When?

12 A. I don't remember when. It was sometime after.
13 It could have even -- it could have been either
14 when I spoke to Gordon Cushing after the --
15 immediately after the bids were rejected, or I
16 think I met again subsequently with Richard and
17 Gordon at some point after the bids had been
18 rejected sometime in early December.

19 Q. Before or after you found out there was a
20 lawsuit?

21 A. Probably before.

22 Q. So there might have been another meeting after
23 the one which you think may have occurred on
24 December 1st?

1 A. There could have been, yes, I think.

2 Q. What was that meeting for?

3 A. It either could have been an administrative one
4 in which we were just talking about other
5 things, doing other work, or it could have been
6 a scheduled meeting. Probably it was if it was
7 an administrative one.

8 MR. KESTEN: Would you mark this as the
9 next exhibit.

10 (Exhibit No. 25 ID marked.)

11 Q. Have you had a chance to look at this, Mr. Troy?

12 A. I have.

13 Q. Who prepared it?

14 A. I believe that this affidavit was the subject of
15 interactions between Gordon Cushing and Craig
16 Jordan.

17 Q. You had nothing to do with it?

18 A. I didn't have anything to do with the writing of
19 it, no.

20 Q. Did you have -- so but you recall that Craig
21 Jordan interacted with Gordon Cushing and he
22 produced this? Craig Jordan wrote this?

23 A. No. The way the affidavits are done, I don't
24 know this specific one, is either a meeting or a

1 conversation on the telephone, or they're sent
2 up to the individual after a telephone
3 conversation who was going to sign it to look at
4 it and cross check it, that it's accurate.

5 Q. And did you look at this affidavit before it was
6 filed in court?

7 A. I might have, yeah. I might have reviewed it,
8 yes.

9 Q. And you see in paragraph 10, do you agree or did
10 you agree when you saw this statement sometime
11 in 2010? Did you? Was that your memory then?

12 A. No. This is not my affidavit. This is not my
13 memory. This is Mr. Cushing's affidavit.

14 Q. I know what it is. My question is, when you
15 looked at paragraph 10 before this was filed
16 which apparently was sometime in 2010, when you
17 looked at paragraph 10 did it reflect your
18 memory?

19 A. Did it affect my memory?

20 Q. Reflect that, how you remember it.

21 A. I don't know, no. I don't know whether it
22 reflected my memory.

23 Q. Is that your memory now?

24 A. I don't remember it. As I've just told you I

1 don't remember anything specific about it.

2 Gordon's memory may very well be better than my
3 memory.

4 Q. Oh. So you did tell Craig Jordan to tell Gordon
5 to lie at his deposition?

6 MR. GILL: Objection.

7 A. No.

8 Q. That was Gordon's memory.

9 A. No. I don't think that was Gordon's memory.

10 Q. Did you talk to Craig Jordan on the cell phone
11 during Gordon Cushing's deposition?

12 A. I don't know whether I talked to him during it,
13 but I talked to him prior to. I could have
14 talked to him during it. I don't know.

15 Q. Did Craig Jordan tell you that Gordon Cushing
16 was testifying that you had inserted the
17 language comparable business entity?

18 A. No. We didn't talk about that. We talked about
19 -- my memory is that we talked about the
20 description of my role in actually drafting the
21 RFP.

22 Q. And what did he tell you?

23 A. What did who tell me?

24 Q. Craig.

1 A. I don't remember what he told me.

2 Q. You said you talked about the description of
3 your role in drafting the RFP.

4 A. I don't remember Craig talking to me
5 specifically about what was said. I remember
6 before the deposition talking to him and
7 speaking to him about that as part of his
8 preparation which you had done previously
9 with --

10 Q. Gordon?

11 A. -- Gordon, that my role in drafting the RFP was
12 limited. That's the only thing I remember about
13 it.

14 Q. When did you first find out that Gordon had
15 testified or was going to testify at his
16 deposition that you had recommended inserting
17 the language comparable business entity? That
18 it was you?

19 MR. KREIGER: Objection.

20 A. I don't remember.

21 MR. KREIGER: Objection to the term
22 entity, if I heard you correctly.

23 MR. KESTEN: Is it enterprise? Whatever.

24 MR. KREIGER: Okay.

1 MR. KESTEN: His objection's noted and
2 ignored. Whatever that language, comparable
3 something language.

4 Q. Did you learn about it at around the time of
5 Gordon Cushing's first deposition?

6 A. I don't remember that, no.

7 Q. Do you recall talking to me about it?

8 A. I don't remember when I talked to you about it.

9 Q. At the time of -- okay. So there's another
10 meeting before the lawsuit, you think?

11 A. I believe so.

12 Q. And did you take any steps to ensure that the
13 town would train the next set of evaluators
14 besides telling, you claim that you told Gordon
15 Cushing --

16 A. Right.

17 Q. -- that they can call the Inspector General and
18 get training?

19 A. No. I did not and do not do that as part of my
20 duties unless instructed to do so. That's
21 administrative work at town hall.

22 Q. So that wasn't the question, whether you do it
23 as part of your duties. The question is, did
24 you take any steps to ensure it happened?

1 A. I said no. I don't do that.

2 Q. So you didn't?

3 A. I did not.

4 Q. Thank you.

5 You had numerous communications with the
6 Inspector General's Office throughout December,
7 right?

8 A. Throughout the summer?

9 Q. December of 2008.

10 A. I had some conversations, yes. Yes, there were.

11 Q. What about?

12 A. They -- apparently there were two investigations
13 initiated, or maybe they weren't initiated.
14 There were two complaints made by, I believe
15 Johnson Golf, and then I would call them. I
16 don't know that it went to December.

17 I believe that I called them after the
18 second meeting in which the second round was
19 considered, I believe that was in January, and
20 there was some issues about that.

21 Q. You didn't talk to --

22 A. I also talked to them about the public records
23 thing, too.

24 Q. You didn't talk to them in December about -- in

1 December of 2008 about the bidding process?

2 A. As part of those calls, yeah. There were --
3 that was what their complaints were.

4 Q. What were their complaints?

5 A. I don't know. They were complaints made with
6 the Inspector General. They weren't made to me.

7 Q. What were you talking to them about in December
8 of 2008?

9 A. It was about the North Hill, either ongoing or
10 past or prospective issues about the bidding
11 process. I have no -- I don't remember what I
12 talked to them about.

13 Q. In subsequent calls after the anonymous call
14 that you made to the person who may or may not
15 have been anonymous before the bidding process
16 was stopped, in the subsequent calls did you
17 identify yourself?

18 A. I'm sorry?

19 Q. In the subsequent conversations did you identify
20 yourself?

21 A. Well, I think that it began by they called me
22 and then I did call them. Yes. I probably
23 identified myself. I'm sure I did because by
24 then what we were talking about are actual

1 issues related to a complaint that had been
2 filed and issues that related to inquiries about
3 the rebidding process that the town manager had
4 asked me to look into.

5 Q. Had the town manager asked you to look into the
6 rebidding process?

7 A. No. Issues that related to the rebidding
8 process, to the RFP, the second RFP.

9 Q. Right. The rebid. So what issues had arisen
10 regarding that?

11 A. I don't remember them.

12 Q. Do you remember any?

13 A. Not particularly.

14 Q. But --

15 A. Well, no. One of them, I do remember one. One
16 was the question of whether or not Johnson in
17 filing the complaint had violated the process by
18 disclosing in the complaint its bid.

19 Q. And who raised this issue?

20 A. I don't remember who raised it. It was just an
21 issue raised, because I believe it was when --
22 this was after the complaint was issued.

23 When the complaint was received, someone
24 could have -- I believe the complaint was sent

1 to the town manager and I believe the selectmen
2 were also aware of it and there could have been
3 some communication. I don't know. I don't
4 remember.

5 Q. Somebody raised an issue of whether Johnson Golf
6 had done something wrong by this lawsuit?

7 A. Right. By including in it the bid and whether
8 that tainted the process.

9 Q. And had you discussed this with the Inspector
10 General's Office?

11 A. Yes.

12 Q. Who were you talking to at that point?

13 A. I don't know.

14 Q. You don't remember?

15 A. No.

16 Q. Was it a man or a woman?

17 A. I think I spoke to both. Or sometimes other
18 people in the office would make a call and then
19 I might call back and talk to the person,
20 depending on the information. I think my
21 billing records have some of the names.

22 I remember I talked to John Craven, I do
23 remember that, and I talked to him a number of
24 times. There was a woman I talked to, I can't

1 remember her name, about -- that was about the
2 issue of there had been a complaint that we were
3 withholding the first round non-pricing and
4 price proposals and the evaluations.

5 Q. Okay. Did you, prior to the evaluations being
6 opened in January of 2009 for the second bidding
7 process, did you ascertain whether the
8 evaluators had gotten trained?

9 A. I had been told they were going to be trained.

10 Q. Did you ascertain whether the evaluators had
11 gotten trained?

12 A. I didn't have any conversation about that.

13 Q. As you sit here today --

14 A. No. I'm sorry. Let me take that back. Yes.
15 There was some -- I received some information,
16 and I believe it was from Gordon Cushing, that
17 they had been provided with some instructions.

18 Q. Written instructions?

19 A. I don't know. I didn't ask about that. I can't
20 remember whether they were written or oral or
21 whatever they were, but they were told how to
22 fill out the form so it wouldn't happen again.

23 Q. Well, you mean told how to fill out the form in
24 terms of what -- in terms of making sure they

1 put in composites or in terms of making sure
2 they actually read the requirements and followed
3 them?

4 A. I don't know what the -- I can't remember
5 specifically what it was. I knew it was that
6 the town manager, I remember, was not happy that
7 the forms were not completed in the first round
8 as expected, and I can't remember a specific
9 conversation but I have a vague memory that
10 there was discussion that Gordon should --
11 people were selected, make sure that they -- and
12 I believe that I said that, too, that they
13 should -- now that I'm thinking about it, they
14 should make sure they know how to fill out the
15 form.

16 Q. And you told them there was training available
17 at the Inspector General's Office, right?

18 A. Yeah. That was said, yes, at some point.

19 Q. By you?

20 A. Correct.

21 Q. Did you ever ascertain whether that happened?

22 A. Yes. I just -- I ascertained that the
23 evaluators were told by Mr. Cushing or given
24 something to tell them how to fill out the form.

1 Q. I'm talking about the training --

2 A. No.

3 Q. -- from the Inspector General's office. That's
4 the question. Did you ever ascertain whether
5 the Town of Duxbury, your client --

6 A. Right.

7 Q. -- of 25 years at that point had actually gotten
8 training from the Inspector General's Office so
9 this wouldn't be screwed up again?

10 A. No. That was an administrative function. I
11 wasn't asked to do that.

12 Q. I didn't ask you that question.

13 A. No. But I answered.

14 Q. No, you didn't.

15 MR. GILL: That's not --

16 Q. I asked you whether you ascertained whether it
17 happened. Yes or no.

18 MR. GILL: Please, Len, let's not argue
19 with the witness.

20 MR. KESTEN: The witness is arguing with
21 me.

22 MR. GILL: Let me finish. Put a question
23 to him and he'll answer to the best of his
24 ability.

1 Q. Did you ascertain whether or not the
2 administrative people or someone in the town had
3 in fact gotten training for the evaluators from
4 the Inspector General's Office?

5 A. I don't remember.

6 Q. And what was your role with regard to the second
7 award? What were you asked to do and by whom?

8 A. The second award I did not -- I believe my best
9 memory is that I didn't hear anything about the
10 second award until I was told to show up at town
11 hall. And this time there was going to be an
12 opening of bids and I was going to be there at
13 the opening.

14 Q. Opening of bids or evaluations?

15 A. The whole thing was being done --

16 Q. Mr. Troy --

17 A. -- I believe.

18 Q. Mr. Troy --

19 A. Let me think. I'm not sure. I can't remember
20 that.

21 Q. Mr. Troy, you are aware of the difference of
22 opening the bids and opening the evaluations?

23 A. I believe that in January there was a meeting
24 scheduled. I don't think the evaluations had

1 been opened but I don't know that. I don't
2 remember. I don't know. I know that I was --
3 the next time I show up about this at town hall
4 outside of this, the case has been filed and we
5 had had meetings about that is at the -- in
6 early January. I forget the date.

7 And at that time that was the meeting in
8 which the evaluations were looked at and the
9 proposals were looked at and the price was
10 looked at and the town manager made a decision.

11 Q. The evaluations. So you were at a meeting. Who
12 was at this meeting?

13 A. My memory is that the town manager and me and
14 Mr. Cushing and Barbara Ripley.

15 Q. Were the evaluations looked at, as far as you
16 understood it, for the first time at this
17 meeting?

18 A. I don't know. It was the first time I saw them.

19 Q. Did you have any information from anyone that
20 they had already looked at them before this
21 meeting?

22 A. I don't remember that.

23 Q. How about the price proposals; were those opened
24 at the meeting or were they already opened?

1 A. No. They were not opened.

2 Q. So they were sealed at this meeting?

3 A. Right.

4 Q. So what happened at this meeting? Who looked at
5 what? How did it work?

6 A. I think that if I remember right it was just
7 the -- each of the bids were considered. Gordon
8 was primarily the person who communicated the
9 information about the bidders and the golf, and
10 the town manager was interested in who -- I
11 believe this is -- as a matter of fact it went
12 that they took the highest bid first and looked
13 at it, and as -- because the town manager was
14 interested in getting the most money, I forget
15 who the highest bid was, but whoever that was
16 was looked at.

17 The town manager got the input. He had,
18 you know, some information himself but I'm not
19 going to say he had a lot. It was primarily
20 from Gordon Cushing, and then a decision was
21 made by the town manager as to whether or not he
22 was going to bypass. That's how it went down
23 until it got down until the bottom two.

24 Q. Now, Mr. Troy --

1 A. Not the bottom two. The final two.

2 Q. When people that were -- the information in
3 writing provided to the people at this meeting,
4 yourself, Mr. Cushing, Mr. MacDonald and Barbara
5 Ripley, was the bids themselves, right? The
6 non-price proposals were there?

7 A. I believe they were, yes.

8 Q. The evaluations, right?

9 A. Yes.

10 Q. And the price proposals?

11 A. Yes.

12 Q. And 30B, you understood at the time, requires
13 that that's what you rely on to make the award;
14 nothing else, right?

15 A. Yes.

16 Q. So who looked at the bids, the non-price
17 proposals at this meeting?

18 A. I believe that Mr. Cushing had looked at the
19 bids and the town manager also had them and --
20 but he didn't look at them in detail.
21 Mr. Cushing had looked at the bids.

22 Q. Before this meeting?

23 A. I don't know whether he looked at them before.
24 I don't know what had happened before. I knew

1 that -- I know when we were at the meeting he
2 looked at them.

3 Q. So at the meeting Mr. Cushing was reviewing the
4 bids themselves?

5 A. Yes.

6 Q. Were you?

7 A. I looked at them probably. I don't remember
8 looking at them but I could have.

9 Q. So you have no memory of looking at them?

10 A. I remember thumbing through but I didn't know
11 anything about the, any of really -- the
12 complexities of the bids was something I was not
13 familiar with, the stuff about actually running
14 the golf course and that, I didn't know very
15 much about that.

16 Q. So Mr. Troy -- well, Mr. Troy, the evaluators
17 were civilian volunteers, right?

18 A. I assume. I don't know anything about how the
19 volunteers were picked.

20 Q. I didn't ask you how they were picked. They
21 were civilian volunteers, right?

22 A. I don't know if they were volunteers or what the
23 situation was. I don't know what you mean by
24 civilian either, but.

1 Q. This wasn't -- they weren't paid for this?

2 A. I don't think so.

3 Q. And their job was to look at these bids and
4 evaluate them in various categories, right?

5 A. Correct.

6 Q. Did you guys do the same thing at this meeting?

7 A. No. We looked at evaluations.

8 Q. You didn't look at bids?

9 A. The non-price proposals?

10 Q. Yeah.

11 A. No. Except in a cursory way. No. Because
12 that's what the evaluators were supposed to do.

13 Q. Backing up to your previous testimony before
14 lunch, you said that the procurement officer is
15 obligated to look at the non-price proposals?

16 A. Right.

17 Q. At the evaluations and the price proposals?

18 A. Right.

19 Q. So you're telling me you guys didn't look?

20 A. You asked me about me. You said me -- excuse
21 me. You didn't -- no. That's not what you
22 asked. You said did I.

23 I actually had the statute and I had the
24 Inspector General's manual with me. I was using

1 that. Gordon had the, to my best memory, the
2 stack of the proposals, and Richard had access
3 to them and I believe he looked at them in a
4 cursory way but not that in depth because he
5 relied on the fact that Gordon had the expertise
6 and the familiarity with the people involved to
7 give him information, and he trusted what Gordon
8 said.

9 Q. But Mr. Troy, who actually looked, who in this
10 meeting actually reviewed the bids themselves?
11 You're telling me Gordon had anecdotal knowledge
12 or whatever knowledge.

13 A. 30B envisions that the evaluators do the
14 principal job of looking and vetting out, that's
15 why it's all by category, at the various
16 components. And they give a checklist, and this
17 is primarily what was looked at at the meeting.

18 And you are asking me whether or not the
19 procurement officer, instead of going by the
20 evaluators, did he do at that time a separate
21 and independent analysis of the bids, the
22 non-price bids, and he did not do anything other
23 than a cursory examination at that time.

24 Q. So you're testifying today that nobody in the

1 town other than the three evaluators ever
2 reviewed the non-price proposals before
3 making --

4 A. No. I'm not testifying to that.

5 Q. So who did that?

6 A. I don't know who did it other than what
7 happened. Before the meeting, I do not know
8 what had happened. I don't know whether the
9 town manager had looked at them. I believe that
10 Gordon had looked at them, but I don't know
11 that. You would have to ask him that.

12 But I do know that at the meeting that
13 they were there and they were looked at in a
14 cursory manner. The town manager -- Gordon had
15 -- was very familiar with the proposals, so
16 whether he had done that at that time or
17 beforehand, I assume he did it beforehand. I
18 don't know.

19 And the -- I was there trying to answer
20 any legal questions because obviously I was not
21 qualified to talk about the golf entities.

22 Q. You weren't qualified to talk about the bidding
23 process?

24 A. No. That's not what I said. I said I was not

1 qualified to talk about the golf entities.

2 Q. What does that mean?

3 A. Well, the people who were making proposals and
4 what their proposals were, because I knew
5 nothing about golf and I knew nothing about the
6 whole -- beyond a legal perspective I had no
7 information about them.

8 Q. Well, in the previous -- it was the same people
9 that bid that had bid in the previous round,
10 right?

11 A. I believe so.

12 Q. And you had already studied -- you had studied
13 their non-price proposals?

14 A. I had looked at them, yes.

15 Q. You said you reviewed them at length?

16 A. I did not study them. I reviewed them is the
17 correct word, but I reviewed them in the context
18 of -- what I was doing principally was looking
19 at the evaluations, the first round evaluations.

20 Q. In the first round evaluations did you review
21 the bids themselves?

22 A. In a cursory manner I did.

23 Q. So you never actually looked at them? What does
24 cursory mean? What does that mean?

1 A. I looked -- for instance, I think there was
2 things like a bond was required, stuff like
3 that, and I just looked at that section to make
4 sure that the bond was there.

5 And, you know, different things that were
6 clearly -- I don't remember them right now
7 because, you know, I haven't looked at them for
8 awhile, but whatever was clearly required I
9 might look at to make sure that X was there.
10 That was -- that's all.

11 Q. You mean --

12 A. To make sure that it wasn't disqualified.
13 Because the function of the statute as I
14 understand it is that after the evaluators make
15 their evaluation, that's the whole purpose of
16 the evaluation process is to take the evaluation
17 process or criteria away from the procurement
18 officer and put it in the hands of people who
19 will not make the decision.

20 Q. Are you done?

21 A. That's the evaluator's role.

22 Q. Are you done?

23 A. Yes.

24 Q. So you checked the non-price proposals in the

1 first round even though the evaluators had
2 already done their thing, right?

3 A. Only in a cursory manner.

4 Q. You were looking for things that were obvious
5 shortcomings, right?

6 A. Yes.

7 Q. You noted, for example, that one of the bidders
8 had submitted an inappropriate price proposal,
9 right, in round one?

10 A. Well, I didn't -- yeah. That was noted at the
11 meeting. We had seen that at the meeting, that
12 someone had put something other than a cash
13 price proposal.

14 Q. I'm asking you about --

15 A. Well, I already knew that. The meeting took
16 place beforehand. I already knew that so I
17 didn't note that afterwards. I just -- you just
18 asked me what I did afterwards.

19 Q. You knew that before the meeting?

20 A. No. I just said I knew at the meeting.

21 Q. At the meeting someone discovered that they had
22 put an inappropriate price proposal?

23 A. I think it was Gordon.

24 Q. Gordon?

1 A. Gordon said this is a percentage something and
2 we talked about it so that's not allowed. That
3 is not allowed under the bid specifications.

4 Q. And then when you took everything in to write
5 your memo over the weekend -- did you write this
6 memo over the weekend?

7 A. Yes.

8 Q. You did?

9 A. Yes.

10 Q. You worked when? Saturday? Sunday?

11 A. I work every day.

12 Q. On this memo. When did you work on this memo?

13 A. I don't remember what day. It was Thanksgiving.
14 I don't have a record of when I worked
15 Thanksgiving. No, I don't know.

16 Q. You didn't charge them?

17 A. It's not that I didn't charge them. I don't
18 know what days I did it. That's two different
19 questions.

20 Q. Okay. But that would be on your bill, right?

21 A. No.

22 Q. No?

23 A. No, it would not. As a matter of fact because
24 if I do work on the weekends I inputted it the

1 following business day.

2 Q. Well, I don't care when you input it, but are
3 you telling me your bills wouldn't reflect you
4 worked on Saturday or Sunday?

5 A. No, they don't.

6 Q. The bill would reflect that you worked on
7 Monday?

8 A. Yes.

9 Q. So when you worked on this memo, did you review
10 the non-price proposals?

11 A. You just asked me this question.

12 Q. And what's your answer?

13 A. I've already answered it.

14 Q. What's your answer?

15 A. I'm not going to add to my answer.

16 Q. I'm not asking you to add. What did you say?

17 A. You can read back the answer.

18 Q. So Mr. Troy, what are you -- okay. When you
19 made your review of the price proposals over the
20 Thanksgiving weekend in November of 2008 --

21 A. The review of the price proposal was not
22 ancillary, so what I was looking at to -- what I
23 was looking at was whether or not the criteria
24 that had been clearly established in the

1 category selections by the evaluators, could
2 that somehow be interpreted by the chief
3 procurement officer to, in effect, make a
4 composite overall rating. That's what I was
5 looking for.

6 Q. In order to do what you just said you had no
7 need to look at non-price proposals whatsoever
8 or the price proposals, correct?

9 A. That's what you said. No, I don't agree.

10 Q. Really?

11 A. No.

12 Q. So what were you looking for when you made your
13 review of the non-price proposals? What were
14 you looking at? What were you looking at?

15 A. The price proposals were just numbers, except
16 for one which was a percentage, so that was
17 pretty easy information to sort. This data,
18 which I'm referring to the data in Exhibit 10,
19 are checkmarks.

20 Q. I'm not asking you about that. I'm asking you
21 about non-price proposals.

22 A. No. You asked me what I was looking for.

23 Q. In the non-price proposals.

24 A. No.

1 Q. That's the question. I'm limiting --

2 A. I'm going to finish my answer.

3 Q. Of course you are. I hope you do.

4 A. The answer is, this data was also at different
5 categories. Financial information, for
6 instance. So when I looked at the checkmark by
7 Dixon on financial information, he has not
8 advantageous. I might have, I don't remember
9 but I could have then looked at the non-price
10 proposal issue to just kind of glean at what his
11 finding was, what he based it on, what the
12 finding was based on.

13 Q. Bingo. I'm with you. I'm down. So you were
14 checking that evaluations against the actual
15 non-price proposals to ensure that the
16 evaluators had done something that was rational?

17 MR. COVINO: Objection.

18 A. No. That's not what I was doing.

19 MR. KESTEN: Please note the objection of
20 Mr. Covino. It's his turn.

21 A. I was not checking that. I was checking to see
22 if -- when I saw forms that did not have an
23 overall rating, I was trying to understand the
24 relationship between the information that they

1 provided and the information they didn't
2 provide.

3 Q. What you just said makes no sense. It has
4 nothing to do with what you said before.

5 Here's my question. Just checking these
6 things for the composite is different from what
7 you said. Didn't you just tell me --

8 A. I'm sorry. You're --

9 Q. Didn't you just tell me that when you noted that
10 Mr. Dixon had said not advantageous financials,
11 you then checked the non-price proposals?

12 MR. COVINO: Objection.

13 A. I said I could have. I didn't say I did. I
14 said I could have.

15 Q. You could have done anything.

16 A. I could have done anything and I don't remember
17 what I did, but I remember that I had a cursory
18 examination of the non-price proposals.

19 Q. When did you note that CALM Golf, for example,
20 had never exhibited audited financial
21 statements?

22 A. I don't know that I even noted that.

23 Q. Well, this guy over here, Follansbee and his com
24 padre here, Johnson, were drumming this since

1 January 2008. Actually, before that. You never
2 checked that?

3 MR. KREIGER: Objection. January 2009.

4 MR. FOLLANSBEE: 2009 is correct, Art.

5 MR. KESTEN: Well, Johnson was trashing
6 them before.

7 MR. KREIGER: You referred to January
8 2008. That's my objection.

9 A. Now you're talking about litigation.

10 Q. No. I'm talking about when did you ascertain --
11 well, you just said you never did.

12 A. No. I didn't say I never did. I said I didn't
13 remember doing that. That's what I said. I
14 didn't say I never did. I said I didn't
15 remember doing that.

16 Q. Okay. Do you now remember doing it?

17 A. No.

18 Q. Do you now know from --

19 A. I said I didn't remember doing it on the day in
20 question or the weekend in question. You're
21 confusing your questions and I need to make sure
22 that -- I don't understand your questions.

23 Q. Okay.

24 A. If you're saying did afterwards at some point in

1 time after these people you just said had filed
2 the lawsuit --

3 Q. Yep.

4 A. -- did I then look to see whether or not what
5 they were saying was correct or incorrect.

6 Q. Yep.

7 A. That's a different question.

8 Q. Okay. Go ahead. Answer it.

9 A. At that point all of the allegations in the
10 complaint we looked at prior to filing an
11 answer.

12 Q. So, okay. So did you at that point in December
13 of 2008 of the year, December of the year of our
14 Lord 2008, not Art and my Lord, did you --

15 MR. KREIGER: Objection.

16 Q. Did you then check to see whether or not CALM
17 Golf had in fact submitted audited financial
18 statements as required by the RFP?

19 A. I did, yes. At some point I did that, yes.

20 Q. In December of 2008?

21 A. No, not in December 2008.

22 Q. That's when the lawsuit was filed.

23 A. I said after the lawsuit, before filing the
24 answer.

1 Q. Yeah.

2 A. That's not December 2008.

3 Q. When did you ascertain that?

4 A. I don't know. I have no memory. I don't
5 remember the dates. Why would I remember that.

6 Q. Well, because you're a sentient human being with
7 a mind.

8 A. I don't remember it. No, not that detailed.

9 Q. Okay. So any time did you ascertain --

10 A. I assume at some point in 2009, yes.

11 Q. And at that point did you then ascertain that
12 they also hadn't done it in the second round?

13 A. Let me correct. When I reviewed it in terms of
14 the complaint that was being filed, I only
15 reviewed the second round. The first round I
16 wasn't looking at anymore. The first round in
17 my view, you know, was moot.

18 So whatever I -- what I just testified,
19 prior to filing the answer I would have looked
20 at the allegations regarding CALM Golf's lack of
21 certified or whatever, the attested financial
22 statements, and I would have looked into seeing
23 whether that allegation was correct.

24 Q. I didn't ask you what you would have done. I'm

1 trying to find out what you did.

2 A. I don't remember beyond -- I don't remember what
3 I did.

4 Q. Is it fair to say at sometime -- no.

5 MR. KESTEN: Where's that January 16th
6 letter?

7 MR. FOLLANSBEE: It might be Exhibit 11.
8 It is Exhibit 11.

9 Q. So at some point in 2009 did you become aware
10 that in fact CALM Golf had not submitted audited
11 financial statements in the second round of
12 bidding?

13 A. If that were one of the allegations in the
14 complaint, if that was an allegation that was
15 made, I looked into it. I would have looked at
16 whatever allegation was made and seen whether or
17 not I believed that allegation was correct or
18 incorrect, and then I would have weighed
19 whatever effect it would have.

20 Q. Well, at what point did you recognize that, for
21 example, Mr. Studley's evaluations were wholly
22 incorrect with regard to financials?

23 A. I don't remember.

24 MR. EDGE: Objection.

1 Q. Did you ever learn that?

2 A. I'd have to see Mr. Studley's evaluation.

3 Q. Mr. Studley gave them highly advantageous on
4 finances.

5 A. I need to see the document in order to answer
6 the question.

7 Q. I'm asking your memory.

8 A. I don't remember.

9 Q. You don't remember?

10 A. I don't remember.

11 Q. Okay. So you go to this meeting in January
12 where people are going over these bids, right,
13 on the evaluations, but at the meeting you're
14 telling me your memory is that nobody looked at
15 the non-price evaluations other than in a
16 cursory manner?

17 A. No. That's not what I said.

18 Q. Okay.

19 A. Nobody looked at non-price proposals other than
20 everybody looked at the evaluations carefully.
21 I believe there were three sets of them made.
22 There was only three people at the meeting.

23 Q. The non-price proposals, nobody looked at those
24 except in a cursory manner, correct?

1 A. Correct. Because -- nobody looked at them in a
2 cursory manner except that Mr. Cushing had them
3 available and he -- my memory is that he
4 exhibited knowledge of contents of what they
5 were. He remembered them or had looked at them.
6 I don't know what he did.

7 Q. So Mr. Cushing, you're saying, I'm sure he's
8 going to disagree with you when the time comes,
9 was reviewing the non-price proposals at that
10 meeting and then telling what was in them? Is
11 that what you're saying?

12 A. No. I'm saying to the extent that anybody had
13 knowledge of the non-price proposals,
14 Mr. Cushing had that knowledge. I believe he
15 had the proposals in his hand and I believe he
16 had knowledge of what they were.

17 Where he had got that knowledge and when
18 he got the knowledge, I do not know and I didn't
19 think was important to know. He was able to
20 articulate in a comprehensive fashion the
21 strengths and weaknesses of each of the people
22 as they were being discussed, each of the
23 entities.

24 Q. Based on the non-price proposals or based on

1 independent knowledge of these people?

2 A. I don't know that knowledge.

3 Q. Well --

4 A. I did not think nor did -- I don't remember the
5 town manager saying tell me what you know
6 independently of the proposals or what do you
7 know. I don't remember it being that
8 sophisticated. I remember it being more down to
9 earth and more simple.

10 Q. What do you mean down to earth?

11 A. Not a technical or legalistic. Just, this is
12 who these people are. This is their --
13 Mr. Cushing knew who the different individuals
14 were and he also knew what their proposals were
15 and he was able to describe them.

16 Q. Was he describing the proposals or was he
17 providing information to the procurement officer
18 in the presence of town counsel as to things
19 about these people outside of the non-price
20 proposals?

21 A. I don't know. I don't remember. You'd have to
22 ask Mr. Cushing his memory. I don't remember.
23 I don't know that I, that, you know, the level
24 of knowledge that I was able to separate the

1 two. He was providing input about the golf
2 proposals and what the various proposals had.

3 Q. Proposals?

4 A. Right. That's what we were reviewing. It was
5 not a session we were talking about people. It
6 was a session in which we were reviewing.

7 Q. The proposals only?

8 A. The proposals.

9 Q. That was my question. You're only reviewing
10 proposals themselves, not any other knowledge?

11 A. No. I'm not saying -- to the extent he had
12 knowledge, I don't know what knowledge he
13 gleaned from the proposals and what knowledge he
14 gleaned otherwise. It appeared that he was just
15 talking about the proposals.

16 Q. The proposals?

17 A. My memory of it, yes. I don't remember anything
18 else being talked about.

19 Q. When did you advise Mr. Cushing and
20 Mr. MacDonald that it would be illegal to
21 consider anything outside the proposals?

22 A. I think we talked about that when we got the
23 bankruptcy information.

24 Q. That it would be illegal to consider anything

1 outside the proposals, right? You discussed
2 that issue?

3 A. That was discussed back earlier when I think
4 that Mr. Cushing had got a communication about
5 the -- not CALM but whatever the other company
6 was, that they were in bankruptcy.

7 Q. So everyone knew it, you knew it, and you made
8 sure that they knew that they were not allowed
9 to consider anything except what's in the
10 proposals?

11 A. Yeah. And I think that's in the -- that's in
12 the manual of the Inspector General.

13 Q. Oh. It's the law, yeah.

14 So all Mr. Cushing was telling you as you
15 understood it was what he had gleaned from the
16 proposals themselves?

17 A. I don't remember him saying anything other than
18 what the proposals -- I just -- that's all I
19 remember.

20 Q. So --

21 A. I don't remember a lot of what was said except
22 to the extent that when I took down notes, you
23 know, I then used as a basis for the award
24 draft.

1 Q. The fictitious letter?

2 A. I'm sorry?

3 Q. The fictitious letter that says over
4 Mr. MacDonald's signature that he reviewed the
5 non-price proposals and ascertained from them
6 that CALM Golf --

7 A. No. I don't think -- I wouldn't call it a
8 fictitious letter.

9 Q. Well, it says that, right?

10 A. I sent Mr. MacDonald a draft of the proposed
11 award for him to review. He reviewed it, we
12 talked. He didn't tell me anything that was
13 contrary. I didn't know that he didn't review
14 it.

15 Q. You were there.

16 A. No. No. I did not know that Mr. MacDonald had
17 not reviewed it in the timeframe other than when
18 I was there.

19 Q. You believe that Mr. MacDonald had reviewed
20 non-price proposals in detail before this
21 meeting?

22 A. I had no idea what Mr. -- there was no
23 conversation about that. I don't know what he
24 did or what he did not do, but I did know that

1 he had access to them and that he approved the
2 language that was drafted.

3 Every single thing that was ever sent to
4 Mr. MacDonald, Mr. MacDonald saw beforehand, and
5 everything he discussed, and there were changes
6 made sometimes. If he was satisfied --
7 Mr. MacDonald is someone who reads everything.

8 Q. There's -- I understand that Mr. MacDonald
9 signed the fake letter, but you drafted it?

10 A. It's not a fake letter. I disagree with that
11 characterization. That's your characterization.

12 Q. When you were at this meeting Mr. MacDonald did
13 not examine the non-price proposals, right?

14 A. No. I didn't say that. That's not what I said.

15 Q. What did you say?

16 A. I said that Mr. MacDonald did examine the
17 non-price proposals in a cursory fashion.

18 Q. In a cursory fashion?

19 A. Right.

20 Q. And was it based on that cursory --

21 A. And I believe Mr. MacDonald said that, also.

22 Q. Was it based on that cursory review of the
23 non-price proposals at this meeting with you
24 present that you drafted the language that, I

1 have reviewed these proposals and am satisfied
2 that CALM Golf has assets and finances to run
3 this place?

4 A. I don't know that that is what was said. But, I
5 mean, I don't know. I need to see the document.
6 If you can refer to me anything that I drafted.

7 Q. Did you ever -- did you put the language about
8 his review of the non-price proposals in? Was
9 that your draft, or did he amend it and add
10 that?

11 A. No. That was -- I don't -- once again you are
12 using language that I don't know that is
13 correct.

14 Q. It's called English.

15 A. It's called what?

16 Q. English.

17 A. I don't -- no. I'm not talking about the
18 structure of the sentence. I'm talking about
19 I'm not sure that you are correctly replicating
20 the language in the document.

21 Q. There's no language. I'm talking about his
22 description of his review of the non-price
23 proposals. Was that something that you drafted?

24 A. I drafted the -- if your question is did I draft

1 the document that he signed.

2 Q. No. That's not my question. Listen to my
3 question. My question is, that portion of the
4 document that he eventually signed which
5 describes his review of the non-price proposals,
6 did you draft that?

7 A. The answer is yes. The document that I drafted
8 for Mr. MacDonald, he reviewed it and he
9 suggested no changes.

10 Q. So it went out as you drafted it?

11 A. As I drafted it, correct.

12 Q. Okay.

13 A. It went -- no. It went out from his office.

14 Q. As you drafted it?

15 A. After I drafted it and then he reviewed it and
16 had it placed on his stationary and he then
17 signed it.

18 Q. I don't know what you're talking about. You
19 wrote the thing. He made no changes as far as
20 you recall?

21 A. That's correct.

22 Q. You based your understanding that he had
23 reviewed the non-price proposals on what?

24 A. I based it on the fact that I was at the

1 meeting, he had appeared to have information
2 about the proposals. And he also asked Gordon a
3 lot of questions about the proposals and he
4 received information from Gordon about them,
5 including information about whether -- I
6 specifically remember there at the end of the
7 meeting there was conversation between
8 Mr. MacDonald and Mr. Cushing on something to
9 the effect of I know Johnson can run the course
10 but CALM has offered more money. Can -- are you
11 sure, Gordon, that CALM can run this course if I
12 give them the award. And I do remember that.

13 Q. Okay. Thanks.

14 Did Gordon say -- what's that got to do
15 with reviewing the non-price proposals? My
16 question to you is, what did you base the letter
17 that you drafted, what did you base your
18 statement about MacDonald's review of the
19 non-price proposals?

20 A. I based --

21 Q. What you told me right now is he asked Cushing
22 questions and Cushing answered. That's not
23 review of the non-price proposals.

24 A. No. Mr. MacDonald showed familiarity with the

1 different proposals. He seemed -- I did not say
2 to him have you read them, when did you read
3 them. That was not my place to do so. He also
4 asked Gordon questions about it and it was very
5 clear that Gordon was very, very familiar with
6 the non-price proposals.

7 And to the extent that either
8 Mr. MacDonald had looked at them himself or had
9 discussed them with Gordon or he was relying on
10 Gordon to review the non-price proposals, I
11 don't know that, but it appeared that he was
12 familiar with the non-price proposals.

13 Q. Now, these notes you took at this meeting, where
14 might they be?

15 A. What does that mean?

16 Q. Where are they?

17 A. I have no idea where they are. I have no idea.
18 I assume they're in the wastebasket.

19 Q. You threw them out?

20 A. I don't keep any notes after I do a document.
21 That's it.

22 Q. This document, Exhibit 4 is it, you destroyed
23 your notes?

24 A. I don't destroy my notes. I did as I do every

1 document when I complete a document.

2 Q. You destroyed your notes?

3 A. No. I save the document and then I send it.

4 Q. What do you do with the notes?

5 A. I put them in the wastebasket.

6 Q. What do you expect will happen?

7 A. That's different. I don't know what happens to
8 them after the wastebasket. They go to the
9 dump, I guess.

10 Q. Right. So they're gone?

11 A. They're gone for sure. Whether they're
12 destroyed, I don't know.

13 Q. Good point. They may still be decomposing
14 somewhere. If we dig up the dump maybe we'll
15 find them.

16 A. Yes.

17 Q. Tell me something, what was your understanding
18 of the equipment that CALM Golf had?

19 A. I need to see the document. What are you
20 directing my attention to?

21 Q. On the bottom. It's underlined.

22 A. The equipment would be whatever equipment was
23 included in the proposal.

24 Q. In the non-price proposal, right?

1 A. Yes.

2 Q. Which was none?

3 A. I don't know.

4 Q. Yes, you do.

5 A. No, I do not.

6 Q. You've done lots of work about this. You've
7 written memos about this.

8 A. Right. But I do not know what are the
9 components of the list of equipment that they
10 had. No. I don't remember that.

11 Q. They had no equipment.

12 A. They didn't have any equipment, no. They had a
13 list of equipment and a letter of credit which
14 said they can procure the equipment.

15 Q. There you go. So you based this language that
16 they had adequate equipment on the basis that
17 they could buy it?

18 MR. EDGE: Objection.

19 A. They weren't going to buy it.

20 Q. They weren't going to buy it?

21 A. No.

22 Q. If they got the bid they'd buy it?

23 A. No. I believe the documentation was that they
24 were leasing it.

1 Q. When?

2 A. Whenever. I don't know. I don't have the
3 details. I know --

4 Q. What did they get a letter of credit for if they
5 were leasing it?

6 A. To show they were -- they had the money
7 available to get the money to get the equipment.
8 I assume a lease requires some money.

9 Q. I thought you said they were already leasing.

10 A. They what?

11 Q. I thought you said they were already leasing.

12 A. No. I didn't say that.

13 Q. They were going to lease it?

14 A. My memory is, and this is just my memory without
15 looking at documents, is that there was a list
16 of equipment and there was a letter of credit
17 saying that they could lease the equipment.

18 Q. But at the time they had no equipment?

19 A. They didn't, no. They didn't have the -- they
20 didn't buy the equipment or lease the equipment
21 before they got the award. No. I don't think
22 so.

23 Q. Okay. So when you wrote they had the equipment,
24 what you meant to write was they will get it

1 someday?

2 MR. EDGE: Objection.

3 A. Well, it says satisfied the criteria, the
4 experience, the organizational capability, the
5 maintenance equipment and staff and sufficient
6 financial information. Yes.

7 They -- when they -- when you use the
8 term staff, they obviously hadn't hired people
9 to run something they hadn't gotten the award
10 for. There must have been a list of some people
11 that they were going to have and the --

12 Q. You checked that?

13 A. I had not checked it but I assume that just
14 looking at that statement, that the idea when
15 you put a bid in is that you have certain
16 people, that you're going to have a golf pro,
17 stuff like that, that you don't hire the person
18 thinking of opening it. You're going to
19 get them.

20 Q. Mr. Troy, had you checked the non-price
21 proposals to ascertain whether any of these
22 statements were actually true?

23 A. No. The evaluators -- I relied on the
24 evaluators' findings and I placed a cursory

1 review of the non-price as was needed to write
2 this.

3 MR. GILL: We've been going an hour since
4 lunch. Why don't we take a short break.

5 I will bring to your attention, though,
6 you had indicated you would have three hours.
7 You've been going three hours. Hopefully we'll
8 be coming to an end so the others will have a
9 chance to ask questions before the end of the
10 day.

11 MR. KESTEN: I will finish my questioning
12 when I finish my questioning.

13 MR. GILL: We had advised everybody by
14 e-mail and had asked everybody how long they
15 were going to be. If they weren't going to be
16 done today, we were going to get a limine order.

17 MR. KESTEN: We're going to go to court
18 anyway.

19 MR. GILL: Based on the fact that you all
20 said you were going to be done, we did not do
21 that. So I am putting you all on notice.

22 MR. KESTEN: We got your e-mails.

23 MR. JOHNSON: Are you the judge here,
24 buddy?

1 MR. KESTEN: Stop. Knock it off. It's
2 appropriate for him to say that.

3 MR. EDGE: I'd also like to point out we
4 are a defendant in this case and we have the
5 opportunity to question. This questioning is
6 not relevant to this case and this is
7 essentially questioning for the other case,
8 so --

9 MR. GILL: We are not a party.

10 MR. EDGE: -- we would like to proceed
11 with our questions today based on the fact that
12 we are a defendant in this case. Bob Troy is
13 not.

14 MR. GILL: I hear you. We are not a
15 party. This is up to you lawyers who are the
16 parties in the case to work it out. So we'll
17 leave for a second and let you do that. I
18 understand what you're saying.

19 MR. EDGE: Okay.

20

21 (Recess taken.)

22

23 (Exhibits No. 26 & 27 ID marked.)

24 Q. Mr. Troy, so the letter goes out, the award

1 letter, second lawsuit's filed.

2 A. No. The second lawsuit -- the first lawsuit was
3 filed, right. The amended complaint, yes.

4 Q. You went to a hearing on the motion in limine
5 for the injunction, correct? Yes?

6 A. Yes.

7 Q. And who did you bring with you from the town?

8 A. I believe Mr. Cushing and Mr. MacDonald.

9 Q. And Judge Smith issued his opinion on February
10 2nd?

11 A. He did. I don't know the date, but.

12 Q. He did. And you said earlier today that you
13 then wrote a memorandum to the town about your
14 understanding of the opinion?

15 A. I -- yeah. I sent the -- whenever the order
16 came in I sent that up. I think there was a --
17 there could have been an executive session, I
18 don't have a date, after that with the
19 selectmen. And some point in either February or
20 March I sent a letter to the selectmen in which
21 I talked about certain aspects of Judge Smith's.

22 Q. What did you say?

23 A. I don't remember.

24 Q. Anything at all? Do you remember anything about

1 this?

2 A. It was about the injunction and about -- I do
3 know that it made note of the fact that the
4 judge had made the finding that there was a
5 likelihood of success in the merits on certain
6 aspects of the plaintiff's complaint.

7 Q. So --

8 A. It might have been a motion for reconsideration.
9 I'm not sure. There was something that happened
10 after, between January and February, but I don't
11 remember what it was.

12 Q. Well --

13 A. But I had to write -- I wrote something.

14 Q. To the selectmen?

15 A. Huh?

16 Q. To the selectmen?

17 A. Yes. And the town manager.

18 Q. You think it was a letter?

19 A. It was a letter.

20 Q. Analyzing this thing?

21 A. Well, yeah. The letter had some analysis in it.

22 Q. When's the last time you saw this letter?

23 A. Sometime not too long ago. I don't remember.

24 Somebody, actually one of the lawyers had found

1 it.

2 Q. Where?

3 A. In the file in the computer. I don't know where
4 he found them. Somebody just -- I think there
5 was some discussion about what I had said and
6 about, there had been some allegation that the
7 selectmen weren't told such and such, and one of
8 the lawyers in my office said, well, remember
9 this, and I saw it.

10 Q. Is this something that you gave to me on April
11 13th in that file?

12 A. That's -- to the best of my knowledge you were
13 given everything in the file.

14 Q. Right. But I don't have any such letter.

15 A. I don't know.

16 Q. But you believe this finding by somebody in your
17 office, was that more recent than April 13th?

18 A. It was sent to town hall.

19 Q. When?

20 A. When it was brought to my attention. It was
21 more recently, yes. Yeah. But whatever I sent,
22 town hall also has copies of everything that was
23 sent to them.

24 Q. Not my question, Mr. Troy. My question is, I'm

1 trying to ascertain whether you believe that the
2 letter that you're now telling me about is
3 residing in the paper file that you brought to
4 me after the town instructed you to give me all
5 the documents in this case.

6 A. Yeah, I believe it is.

7 Q. You believe it's there?

8 A. Yes, I do.

9 Q. So whoever in your office finds it on -- they
10 found it in a paper file?

11 A. No. It wasn't a paper file. No. Somebody
12 found it. I don't know how they found it.
13 Someone found something that contradicted an
14 allegation that had been made and brought it to
15 my attention.

16 Q. You had just testified that the thing they found
17 was a letter that you wrote January or February
18 or March of 2009 --

19 A. Right.

20 Q. -- in which you told the selectmen and
21 Mr. MacDonald, you gave some analysis of Judge
22 Smith's opinion?

23 A. Yes.

24 Q. Okay. And did they find this letter on paper

1 format?

2 A. I don't know where it was found. I was given a
3 paper copy of it. I don't know how they found
4 it.

5 Q. Who gave it to you?

6 A. It was either Eric McKenna or Craig Jordan, one
7 or the other.

8 Q. Where is Craig?

9 A. Jordan is in Rio de Janeiro.

10 Q. Permanently?

11 A. I have no idea. He's expected to come back but
12 I don't know when he's coming back.

13 Q. Where is he from? Where is his family?

14 A. He's from Sandwich.

15 Q. Sandwich. Are his parents living?

16 A. They are.

17 Q. And they're in Sandwich?

18 A. They are.

19 Q. What are their names?

20 A. Scott Jordan, and I believe it's Sally Jordan.

21 Q. He's expected to come back?

22 A. He's expected to. He got married and he's
23 waiting approval from Immigration for his wife
24 to come back.

1 Q. Cool.

2 You testified this morning that there was
3 an executive session after the injunction came
4 sometime in February or March?

5 A. I believe there was. I thought I just testified
6 to that now. I don't remember doing it this
7 morning but I could have. I believe there was
8 an executive session, yes.

9 Q. To discuss this litigation?

10 A. In which it was discussed, but I don't remember.
11 I don't have -- I just remember that around the
12 time of the beginning of litigation there was
13 some type of -- it could have even been in
14 December. From the time that suit was filed up
15 until the injunction was issued and maybe
16 thereafter I believe there was an executive
17 session.

18 Q. As of February of -- as of March 1st of 2009 had
19 anybody associated with the Town of Duxbury,
20 employees or public officials, ever provided you
21 any information that they didn't want Johnson
22 Golf to get this contract?

23 A. No. They didn't want Johnson to get the
24 contract? No. Nobody ever said that, no.

1 Q. Some people were upset about the injunction?

2 A. Exactly. Let's put it this way. From the time
3 the lawsuit was filed. The people in the town
4 almost without exception were expressive of the
5 idea that the lawsuit should be defended, that
6 it was more about the lawsuit, and that there
7 was some anger and resentment towards Johnson
8 Golf.

9 Q. Expressed by whom?

10 A. Expressed in varying degrees by almost everybody
11 who was involved in it.

12 Q. Is it true that you were -- that you advised the
13 town as led by Mr. MacDonald in 2009 after the
14 injunction issued that in your opinion the judge
15 was wrong?

16 A. I do not remember giving any specific advice. I
17 remember at that time at the beginning
18 suggesting that it was better to live with the
19 injunction. There was some issue about that,
20 whether the injunction should be appealed to
21 work out something with Johnson for that year,
22 that season, so that the golf course stayed
23 open.

24 I believe certain aspects of the judge's

1 order were open to question, but I did not
2 encourage the selectmen to appeal the
3 injunction.

4 Q. That wasn't the question. The question I have
5 for you is, isn't it true that you told the
6 selectmen and Mr. MacDonald that the judge was
7 wrong in the law?

8 A. No. I wouldn't say that.

9 Q. What did you tell them?

10 A. I don't remember what I said. I have no memory
11 of any of the countless executive sessions we
12 had. I don't remember what I said.

13 Q. I'm not asking you about the executive sessions.
14 I'm asking you about the advice you gave your
15 client. What did you tell them about the
16 lawsuit? Are you going to win, are you going to
17 lose, how would it turn out. What did you tell
18 them?

19 A. As I said, I documented a number of issues. The
20 selectmen were -- or at least I provided the
21 town manager and presumably the selectmen on
22 them. And beyond that I don't recall any
23 specific advice one way or the other.

24 The injunction was issued. My

1 instructions from the town manager, and to the
2 extent the selectmen were involved, were to
3 continue to pursue the defense of the case, and
4 that's what I did.

5 Q. And you never gave them any advice on what you
6 thought the strengths or the weaknesses of the
7 case was?

8 A. No. There is no question that there are a
9 number of strengths and weaknesses to every
10 case, and this case is no exception. And to the
11 extent that we discussed those, in this case as
12 in every case I advised the selectmen of what
13 the strengths and weaknesses were.

14 Q. So did you tell them if they were -- whether
15 they were likely to win or lose this case?

16 A. No. I've never done that in any case.

17 Q. You told me.

18 A. I did not tell you anything of the sort.

19 Q. Okay. Did you have any role -- strike that.

20 Prior to 2008 had you had any lawsuits
21 filed on behalf -- filed against the town that
22 were referred to the insurer?

23 A. Did -- I'm --

24 Q. Prior to December of 2008.

1 A. Right.

2 Q. Had you been town counsel in lawsuits where they
3 were referred to the insurer?

4 A. Yes.

5 Q. Did you have any role in not referring this one?

6 A. I had no role in referring the case. That was
7 not my responsibility.

8 Q. You had no role there?

9 A. In referring this case?

10 Q. In not referring this one in December.

11 A. No, absolutely not.

12 Q. How about in referring it?

13 A. No.

14 Q. Two years later you had no role?

15 A. Two years later I made an inquiry as to why the
16 insurance company, which I understood wasn't
17 going to get involved in the injunctive part of
18 the case, why they had not entered an
19 appearance, and the town manager said he would
20 check. And he subsequently notified me that
21 they had sent in and he sent me back the
22 reservation of rights letter.

23 Q. Where did you gain the understanding that the
24 insurance company was not getting involved when

1 the case was first filed?

2 A. No. My understanding was that the insurance
3 policy did not provide coverage for the issues
4 that related to litigating an injunctive order.

5 Q. So you just knew that from your knowledge of
6 insurance law?

7 A. No. I knew that from my general knowledge. But
8 actually, Mr. MacKinnon confirmed that to
9 Mr. MacDonald and me.

10 Q. Two years later?

11 A. Yes.

12 Q. Two years before did you understand that? At
13 that point was that your state of knowledge,
14 that the insurance company would not provide a
15 defense of this case?

16 A. No. I assumed that the insurance company had
17 been notified. I assumed in this case and every
18 other case, all the cases that we had with the
19 insurance counsel, that notification's almost
20 routinely given as soon as the complaint is
21 filed.

22 Q. So what triggered -- what piqued your interest
23 in the fall of 2010?

24 A. Because it appeared in the fall of -- not the

1 fall of 2010 but late 2010 when we had filed the
2 appeal at appeals court, I believed then it was
3 likely the injunction would be dissolved.

4 And as part of that I said to the town
5 manager why has the insurance company not sent
6 anybody or have you received anything. I made
7 some inquiry about the paperwork. And
8 subsequently I received a notification back from
9 Maya, whatever it is, that there was a
10 reservation of rights sometime, I believe,
11 January.

12 Q. So you --- okay. Got it. Got your story.

13 Now --

14 MR. GILL: It's three o'clock. It seems
15 to me the questions you're asking have nothing
16 to do with this case. They only have to do with
17 the other case.

18 Q. So in 2011 in December you and I appeared in
19 front of the board of selectmen, right?

20 A. I don't know. We could have.

21 Q. You don't remember this?

22 A. I don't remember any -- I don't remember the
23 date. I remember appearing at the selectmen,
24 yes, but I don't remember the date.

1 Q. What do you remember happening when you and I
2 appeared in front of the selectmen?

3 A. What do I remember happening?

4 Q. Yeah.

5 A. I remember a lengthy communication from
6 Mr. Dahlen and I remember you speaking. And
7 other than that, I don't remember anything.

8 Q. Do you remember that I was suggesting that maybe
9 the case should be settled?

10 A. No.

11 Q. Do you remember that you were saying that the
12 case was strong?

13 A. I don't remember saying that, but I certainly
14 think that the town had a reasonably cogent
15 presentation that, you know, it could make. It
16 certainly did, yeah.

17 Q. A cogent presentation?

18 A. Yeah. A cogent defense.

19 Q. And you were advocating not settling?

20 A. No. I was not advocating that.

21 Q. No?

22 A. No.

23 Q. Let me show you what I've marked as Exhibit
24 Number 26.

1 MR. KREIGER: What is it? Is it this?

2 A. All right. I'm familiar with that.

3 Q. Why did you prepare this?

4 A. I actually did not prepare this.

5 Q. Let me guess. The kid from Rio de Janeiro?

6 A. Mr. Jordan did it, I believe.

7 Q. Did you look at it?

8 A. Sure.

9 Q. Did you agree with it?

10 A. It wasn't a matter of agreeing with it. This
11 memo was generated because Mr. Dahlen made a
12 phone call requesting the memo.

13 Q. How many years out of law school is Craig
14 Jordan?

15 A. I don't know. Three. I'm guessing.

16 Q. Mr. Dahlen, the chair of the board of selectmen,
17 asked you to prepare a memo about this case
18 after the meeting you and I had with the board
19 and you had Craig Jordan do it?

20 A. He helped me do it, yes.

21 Q. He helped you do it?

22 A. He actually did the memo. He wrote the memo. I
23 might have made some, you know, grammatical
24 corrections.

1 Q. And then you signed it?

2 A. And I signed it. No question.

3 Q. No question. That's like -- okay.

4 So let's look at it. These aren't
5 numbered but the third page.

6 A. All right.

7 Q. I take it you provided the information about the
8 phone call to John Craven to Mr. Jordan?

9 A. No.

10 Q. You didn't provide this information?

11 A. No.

12 Q. Did he make this phone call?

13 A. No. He prepared this information based on, you
14 know, merely what would have been in the file.
15 I don't know what he -- I didn't give him -- he
16 didn't ask me anything about any material.

17 Q. So you signed a memo to Mr. Dahlen indicating
18 that you made a phone call, spoke with John
19 Craven, talked about a lengthy -- you had a
20 lengthy dialogue, and you gave him none of this
21 information? Jordan just got it out of
22 somewhere? That's what you're telling me under
23 oath?

24 A. No. He would have got the information from the

1 documents in the file. As a matter of fact I
2 think there was a -- I think there was -- this
3 was -- this information was contained in the
4 court transcript and Judge Smith was given this
5 information in 2009.

6 Q. Really?

7 A. Yes.

8 Q. So you think he got this from a court
9 transcript? You didn't tell him any of this?

10 A. I don't know where he got it. He pretty much
11 put together the memo based --

12 MR. GILL: If you know you've got to say
13 something. If you don't know, say you don't
14 know.

15 A. No, I don't know.

16 Q. But it's true, right?

17 A. What is true?

18 Q. That on December 15, 2009 following the town's
19 decision to reject all the bids town counsel
20 contacted John Craven. All the stuff written in
21 here is true. That happened, right?

22 A. I assume that it's true, yes. I believe that
23 it's true.

24 Q. Well, it's your life, not mine.

1 A. Right.

2 Q. You did it.

3 A. Right. On December 15th I -- either I or
4 somebody from the office, I'm not sure who,
5 began a dialogue with John Craven. As a matter
6 of fact, on the 15th I believe. I believe that
7 prior to that John Craven had called me, but on
8 the 15th I spoke to John Craven, yes.

9 Q. It's coming back to you?

10 A. It was a lengthy dialogue.

11 Q. So it's now coming back to you?

12 A. I know that from mid December through January
13 2009 John Craven and I had a number of
14 conversations.

15 Q. That's not the question. The question is about
16 this conversation which is written about in
17 detail which apparently is flowing back to you,
18 Bob. You remember it now?

19 A. No. Remembering -- I'm sorry.

20 MR. GILL: There's no question to you.
21 Let's put a question to him.

22 Q. Do you now remember a lengthy conversation with
23 John Craven on December 15, 2009?

24 MR. FOLLANSBEE: I think that's a typo.

1 It's 2008.

2 MR. KESTEN: 2008, yeah.

3 A. I remember a lengthy dialogue with John Craven
4 during December and January, December 2008 and
5 January 2009. And dialogue was not -- a
6 conversation. It was a series of conversations.

7 Q. All with John Craven?

8 A. A lot of them were. Not all with John Craven,
9 but a lot of them were.

10 Q. And ultimately they confirmed that you had done
11 the right thing in rejecting the bids?

12 A. By letter.

13 Q. But hadn't they advised you to reject the bids?

14 A. Hadn't they, I'm sorry?

15 Q. Advised you to reject the bids.

16 A. No. I told you what they had done. They had
17 said -- they had given the requirements of the
18 law. They thought that the law had met -- they
19 said you could proceed but if you did there
20 would be problems with respect to appeals by a
21 number of the bidders.

22 Q. Was that John Craven you talked to in this first
23 conversation that he talked to you about that,
24 yet this conversation is not mentioned in this

1 memo?

2 A. I don't know that. I need to check. I don't
3 know who I talked to the first time. But I will
4 say this, that I talked to John Craven and I did
5 speak with other people, too, in the Inspector
6 General's Office. And other people in my office
7 did, too.

8 Q. Do you know of any reason that first
9 conversation didn't make it into the memo?

10 A. I had no idea.

11 MR. GILL: It's now 3:10. How much more
12 do you have?

13 MR. KESTEN: I don't know.

14 MR. GILL: Can you give me an estimate?

15 MR. KESTEN: 25 minutes tops. Less.

16 MR. GILL: Is that going to leave you
17 with enough time, Mr. Edge?

18 MR. EDGE: I can't guarantee that. I'm
19 going to object to any further questioning other
20 than that. This is irrelevant questioning to
21 the matter at hand.

22 MR. KREIGER: Can I -- David, I have no
23 idea why you're saying this questioning is
24 irrelevant. This is not about the other case.

1 This is about the bidding process in this case.

2 And I will also say this. There is no
3 basis for anybody to treat four o'clock as a
4 deadline, the deadline that was unilaterally
5 proposed by Mr. Troy's counsel that we finish
6 today. There's no deadline at four o'clock.

7 MR. KESTEN: Correct.

8 MR. GILL: In my judgment most of the
9 questions that Mr. Kesten has put to the
10 witness, not all, but most of the questions and
11 most of the time has been taken up, not with --
12 not dealing with that case but with issues with
13 regard to the other case. That's not
14 appropriate. We've tolerated it. We're not a
15 party to this case. So let's move it along so
16 we can be done, please.

17 Q. (By Mr. Kesten) What triggered the town's -- in
18 your -- as you understood it, the town's
19 decision to revoke CALM Golf in the fall of
20 2010?

21 A. The injunction had been lifted for a period of
22 time. At that point the town manager was
23 contemplating what would be done next. And so
24 the first order of business that he decided was

1 appropriate was to bring CALM Golf in and to see
2 whether they're ready to go, and I've already
3 talked about that.

4 Q. That's what it was?

5 A. Following, he directed that he -- to then see --
6 and actually, Judge Smith at this time had also
7 said that the town could go out to rebid. There
8 had been talk about rebidding.

9 Judge Smith said he wasn't going to
10 prevent the town from doing that, and the town
11 manager asked me to check with the Inspector
12 General as to whether or not we could do that
13 legally, and I did.

14 And the Inspector General said that we
15 could, and at that point then there was a
16 meeting held with the Inspector General, and
17 then there was a -- it went out.

18 It was recommended by the Inspector
19 General an IFB be utilized instead of an RFP.
20 Mr. Lambiase had been trained in the meantime,
21 and he then took over the responsibilities of
22 the procurement and he worked with the Inspector
23 General's office.

24 MR. KESTEN: You know I didn't ask him

1 any of that. You understand to the time issue,
2 a lot of it is because your client wants to
3 talk.

4 MR. GILL: He's doing the best he can to
5 answer your question.

6 MR. KESTEN: The question was what
7 triggered it. He's going on about the whole
8 process.

9 THE WITNESS: I thought that was the
10 issue.

11 MR. GILL: He's telling you what the
12 answer is. Ask another question if you have
13 one.

14 MR. KESTEN: No, he's not.

15 Q. So why was the injunction lifted?

16 A. Well, the injunction was lifted because Judge
17 Smith -- the town had moved to have it lifted
18 because the bond had not been posted.

19 Q. And then they fixed it, right?

20 A. They did, and then the injunction was put back
21 in effect.

22 Q. Right. And -- okay. In terms of the invitation
23 for bid, whose idea was it to put in the
24 language calling for a ten-day termination?

1 A. That was an administrative meeting with the town
2 manager and I believe Betsy Sullivan. It was
3 said that the town should not have to go through
4 this again, and I was asked to get language to
5 tighten up the process by which the town could
6 take its land back, take possession of its land
7 back.

8 And in response to that I drafted
9 language that had certain components in it which
10 included that one which was sent to the
11 Inspector General by Mr. Lambiase.

12 Q. So it was Ms. Sullivan's idea?

13 A. I believe it was Ms. Sullivan's idea that it
14 should be tightened up.

15 Q. Tightened up. And so, and then you drafted the
16 language that said they can't go to court and
17 they couldn't challenge any decisions?

18 A. I drafted and sent it to town hall. I sent it
19 to Mr. Lambiase who in turn, I believe, sent it
20 to the Inspector General.

21 Q. And you believe that's legal?

22 A. Yeah. I believe that the town has the right.
23 And as a matter of fact in a previous --

24 MR. GILL: Just yes or no.

1 A. Yes. Okay. Yes.

2 Q. Thank you.

3 Let me show you what I've marked as
4 Exhibit 27. What is that?

5 A. What is it?

6 Q. What is that?

7 A. It appears to be a draft affidavit of the town
8 manager.

9 Q. Who prepared it?

10 A. I did not but somebody from my office did.

11 Q. Somebody from your office did. Based on what?
12 What was used to prepare this?

13 A. They used whatever documentation was in the
14 file.

15 Q. Did you review this?

16 A. I don't know that this affidavit was filed, but
17 -- and I don't know. I would have reviewed it,
18 though, yes.

19 Q. Now, Mr. Troy, did you represent Mr. MacDonald
20 at his first deposition?

21 A. I did.

22 Q. And you were there when Mr. MacDonald testified
23 that he didn't remember any of this stuff?

24 A. I did, yes.

1 Q. And why would you suggest that he file this
2 affidavit now remembering things four years
3 later?

4 MR. GILL: I think he testified it wasn't
5 filed.

6 MR. KESTEN: I said why would you suggest
7 that it be filed.

8 MR. GILL: I'm going to object to the
9 question because there's no predicate that he
10 did suggest it was filed.

11 Q. Go ahead.

12 A. I'm not saying that I did suggest that.
13 Mr. MacDonald at the time of the first
14 deposition was unable to answer the questions
15 because he had not reviewed any documents.

16 Subsequent to that he had reviewed
17 documents and indeed had seen a lot of the
18 memorandum and everything that I had written.
19 So to the extent that he hadn't, I believe he
20 had information after this first deposition
21 which he gleaned and learned from his review of
22 the documentation.

23 Q. Could you please look at paragraph 12. Did you
24 ever -- did Mr. MacDonald ever tell you that he

1 remembered this?

2 A. That Mr. MacDonald remembered it?

3 Q. Yeah.

4 A. He received the letter.

5 Q. Upon rejection of all bids town counsel
6 contacted the office of the Inspector General
7 after they were rejected, right?

8 A. Yes. The town manager had -- actually was
9 aware, and we discussed throughout December of
10 2008 that I was talking with the Inspector
11 General.

12 Q. Did you tell the town manager that you had
13 actually talked to them before the bids were
14 rejected?

15 A. Yes.

16 Q. That didn't make it into the affidavit.

17 A. It wasn't pertinent.

18 Q. Why didn't you file it?

19 A. I have no idea why. I don't know what this was,
20 part of some pleading that --

21 Q. Mr. Troy, do you recall that I told you not to
22 file it because Mr. MacDonald would be lying if
23 he signed it?

24 A. No. I don't recall that at all.

1 Q. I do.

2 A. You can testify to that.

3 Q. I will. He thanked me.

4 MR. KREIGER: Hang on a second.

5 MR. KESTEN: Hang on one moment.

6 (Discussion off the record.)

7 Q. Mr. Troy, on either day one of the deposition or
8 day two of the deposition, are you taking any
9 medications or any medicines or is there any
10 other reason why your memory would be affected?

11 A. Well, I'm taking medication. I hope it doesn't
12 affect my memory.

13 Q. Are you taking any medication which may have
14 affected your memory?

15 A. I have no idea. I don't know what -- I know
16 what my medication is but I don't know whether
17 it affected my memory.

18 Q. What medication have you taken today that you
19 are still under the effect of?

20 A. I take the same medicine every day.

21 Q. What is it?

22 A. Crestor.

23 Q. What is that?

24 A. It's cholesterol.

1 Q. Cholesterol. That's it?

2 A. No. Hydrochlorothiazide.

3 Q. What is that for?

4 A. Diarrhetic.

5 Q. Anything else?

6 A. Atenolol.

7 Q. What's that?

8 A. A beta blocker.

9 Q. Anything else?

10 A. Lisinopril.

11 Q. What is that?

12 A. I don't know.

13 Q. What's it for?

14 A. Blood pressure.

15 Q. Blood pressure. Anything else?

16 A. No.

17 MR. KESTEN: Okay. And I am reserve --
18 not reserving. I am going to go to court to
19 compel the answers to the attorney-client
20 questions, and if we get any more documents that
21 Mr. Troy has still not given the town, this is a
22 repeated request noted.

23 MR. GILL: So I'm going to object to
24 you're asking questions if you're moving up to

1 do that.

2 MR. KREIGER: I am and you can.

3 MR. GILL: And I will save you the
4 trouble and say we're not going to answer them.
5 It's Mr. Edge's turn as far as we're concerned.

6

7 EXAMINATION BY MR. KREIGER:

8 Q. Mr. Troy, I just want to ask you about one
9 topic. At the beginning of your questioning by
10 Mr. Kesten in response to a question about your
11 deposition preparation you said that you had
12 been prepared by him and you also said you had
13 -- in that answer that you had been prepared by
14 me.

15 Do you recall that answer?

16 A. I do.

17 Q. When do you believe I prepared you for your
18 deposition?

19 A. When I was at your office during the several
20 occasions I was there you told me you were going
21 to prepare me for the deposition. You asked me
22 to give the information that I gave you, and I
23 gave it to you freely understanding that you
24 were going to be representing me.

1 And I even went to the point of telling
2 you that --

3 MR. GILL: Let's not get into the
4 privileged --

5 THE WITNESS: Okay.

6 MR. GILL: -- communication. Do you have
7 anything else?

8 Q. When were those meetings in my office?

9 A. I don't recall the date. I don't have the date
10 with me.

11 Q. Are you referring to the date in April when you
12 and Craig Jordan brought up the files?

13 A. Yes.

14 Q. April 25th and 26th?

15 A. I don't know the dates. I don't have the dates
16 with me.

17 Q. Any other dates?

18 A. I believe that I was at your office three times
19 or four times. I'm not sure. I don't have the
20 dates.

21 Q. The second two times, the third and fourth times
22 were with Mr. Gill and others?

23 MR. GILL: I'm going to interrupt here.
24 There is no relevance.

1 MR. KREIGER: He has testified in this
2 deposition that I prepared him. I'm cross
3 examining him on that testimony.

4 MR. GILL: Why is that relevant to any
5 issue in this case?

6 MR. KREIGER: It's relevant -- you know,
7 I don't even have to answer that.

8 MR. GILL: We're not going to answer
9 questions unless you give an explanation. I'm
10 trying to be reasonable but I can't be
11 reasonable without an explanation.

12 MR. KREIGER: The relevance to this case
13 is his understanding my role as town counsel,
14 his role as now former town counsel but then
15 town counsel and witness in this case.

16 MR. GILL: Why is that relevant to any
17 claims made by Johnson?

18 MR. KREIGER: It's relevant. His role in
19 the case is relevant to the town's liability. I
20 am defending the town.

21 MR. GILL: What the conversations were
22 between you and the town are, it seems to be in
23 no way relevant to the Johnson Golf course claim
24 against the town.

1 Obviously we know there are relevant
2 other issues pending between you and your client
3 and Mr. Troy, but they're not in this case so
4 we're not going to do it in this case.

5 MR. KREIGER: Okay. I'm responding to --

6 MR. GILL: The second point is that Len
7 represents the same client that you have. He
8 asked the questions. We had a conversation
9 about this before. I do not think that the town
10 has the right to have two lawyers ask questions
11 of the same witness in the same deposition.

12 That's particularly true when you were
13 sent out e-mails to all of you folks asking how
14 long you were going to be. You didn't
15 communicate that you were going to take any
16 time, so it seems to me that the fact that you
17 changed your mind since we filed our motions is
18 pretty good proof that these questions are
19 asked, not having to do with this case, but to
20 have to do with the other issues.

21 MR. KREIGER: I'm not even going to
22 respond to any of that.

23 MR. GILL: If you have any questions that
24 go to the merits of the Johnson Golf case, ask

1 them, but I want to ask you how long it's going
2 to take because Mr. Edge has indicated he's got
3 questions and he's entitled to ask them.

4 MR. KREIGER: My questions would have
5 been done by now. My questions --

6 MR. GILL: So you've got less than five
7 minutes worth of questions?

8 MR. KREIGER: Yes, which I told Mr. Edge.
9 I told him I have five to ten minutes.

10 MR. GILL: You didn't tell me.

11 MR. KREIGER: I understand that.

12 Q. (By Mr. Kreiger) Do you recall that the third
13 and fourth times you were in my office you were
14 with Mr. Gill and/or others?

15 A. I believe so.

16 Q. We didn't do any deposition preparation those
17 days, right?

18 A. No. Well, except that you asked questions, but
19 no.

20 Q. But you didn't answer any questions?

21 A. No.

22 Q. We didn't have a substantive discussion about
23 the case, right?

24 A. You're correct.

1 Q. About the depositions?

2 A. Yes, you are.

3 Q. Those are the four times you were ever at my
4 office, correct?

5 A. That's correct.

6 Q. The first of those four times was the first time
7 you and I had ever met?

8 A. Yes, it is.

9 Q. I believe it was the first time we had ever
10 spoken?

11 A. I believe so.

12 Q. Or communicated? All right. Okay. And have
13 you ever received any written indication of an
14 attorney-client relationship between us?

15 MR. GILL: I'm going to put this to an
16 end.

17 MR. KREIGER: Either instruct him or
18 don't. I don't want another speech.

19 MR. GILL: I'm going to give one.

20 MR. KREIGER: Then do it. I know why.
21 You said it six times.

22 MR. GILL: No. I have another reason,
23 too. You know the answers to these questions
24 because the communications were between the two

1 of you.

2 MR. KREIGER: Any lawyer at a deposition
3 is entitled to get the witness' testimony even
4 though the lawyer knows the answer.

5 MR. GILL: This has nothing to do with
6 this case. I'm going to instruct him not to
7 answer in this case. You will be able to ask
8 him about all of these at a properly noticed
9 deposition in the other case at an appropriate
10 time.

11 MR. KREIGER: You've also moved to
12 disqualify him in the other case and that,
13 coupled with the tactic of not letting him
14 answer in this case is an attempt to deprive the
15 town of the ability to get Mr. Troy's
16 deposition. Either instruct him --

17 MR. GILL: If you'd like to talk about
18 how you can depose him in the other case, you
19 have not approached me about that at all. I'm
20 instructing him not to answer that question in
21 this case now today.

22 MR. KREIGER: All right.

23 MR. GILL: It is now 3:30.

24 MR. KREIGER: Bob, we would have been

1 done long ago. You're taking up David's time
2 and blaming us. Just cut it out. Let me just
3 ask that question again so it's clean and you
4 can instruct him.

5 Q. (By Mr. Kreiger) Do you have any written
6 indication from me, and by that I mean a letter
7 or e-mail, of an attorney-client relationship
8 between us?

9 MR. GILL: Objection. It calls for, I
10 think, privileged information and judgments of
11 law, so I'm going to instruct him not to answer.

12 MR. KREIGER: Okay. Thank you.

13
14
15 EXAMINATION BY MR. EDGE:

16 Q. Mr. Troy, you've testified quite a bit today
17 about the steps you took during the Johnson Golf
18 litigation, advice you gave to your client, the
19 town.

20 Is it fair to say that everything you've
21 testified to today refers to acts you did on
22 behalf of the Town of Duxbury?

23 A. As opposed to what? I don't understand the
24 question.

1 Q. Did you do it in a role as a representative of
2 the Town of Duxbury, everything you have
3 testified about today?

4 MR. GILL: Did he do it in his role as
5 the town counsel?

6 Q. Did you do it in the role as a representative
7 for the Town of Duxbury?

8 A. Yes. I don't know that I'm a representative of
9 the Town of Duxbury. I represent the Town of
10 Duxbury, or I did represent the Town of Duxbury.

11 Q. So you represented them?

12 A. For 27 years.

13 Q. But you might not be a representative of them;
14 is this what you're telling me?

15 A. I'm familiar with the term representative. I
16 don't understand what you -- that means.

17 Q. Did you do this in regard to your role as town
18 counsel?

19 A. Absolutely.

20 Q. Okay. You were obtained by the Town of Duxbury
21 to act as their town counsel?

22 A. Yes.

23 Q. When you gave advice regarding what they should
24 or should not do in this case, were you doing it

1 on behalf of them as their town counsel?

2 A. I was doing it on behalf of the town.

3 Q. Is it your understanding they took steps based
4 on your advice due to the fact that you were
5 their town counsel?

6 A. Some of the steps they took because I gave them
7 advice. Some of the steps they did on their
8 own. In everything that I did I was town
9 counsel.

10 Q. Very good.

11 A. As opposed to having a private role. I didn't
12 have --

13 Q. You had no private role in this matter
14 whatsoever?

15 A. No. No.

16 Q. In November of -- sorry. In the fall of 2010
17 you testified there was a meeting held at town
18 hall?

19 A. Yes.

20 Q. At which you were present, I was present and a
21 lot of other people were present, correct?

22 A. Yes.

23 Q. At that meeting you had testified that
24 representatives of CALM Golf were asked whether

1 they were prepared to run the golf course at
2 that time?

3 A. Right.

4 Q. And it is your testimony that subsequent to that
5 meeting, that Richard MacDonald decided that he
6 was not satisfied that CALM Golf was capable of
7 running the golf course; is that correct?

8 A. Immediately after the meeting.

9 Q. And at that meeting had he instructed you at
10 that time whether to ask the Inspector General
11 whether it was appropriate to rebid the
12 contract?

13 A. I think that that had been talked about before
14 that, too. But after the meeting he then said
15 that -- my memory is something to the effect is
16 we have got to do it over and we've got to do it
17 right.

18 Q. You said that prior to that there was some
19 discussion of rebidding the contract. What does
20 that refer to?

21 A. I think that in -- before in court that we had
22 told -- I'm not sure whether it was before. I
23 can't say. I shouldn't say. Prior -- around
24 that time -- my memory of the calendar is not

1 good.

2 It was either before that or after that
3 we told the Court this is what we're planning on
4 doing, we're planning on rebidding. It might
5 have been after. I'm sorry. I don't remember
6 when it was.

7 Q. The town awarded the contract in January
8 thereabouts of 2009; is that correct?

9 A. Yes.

10 Q. Between January 2009 and that meeting in the
11 fall of 2010, were there any discussions that
12 you were privy to regarding the possibility of
13 rebidding the contract?

14 A. Yes.

15 Q. When did those discussions take place?

16 A. They took place, I think two separate occasions,
17 once in your office and once in my office in
18 which the town made an offer to settle the case,
19 basically. Whatever it was, year that was.

20 The town was saying that Mr. Johnson and
21 his company could finish the year, the golf
22 year, because the one good thing that was
23 happening about all of this was the golf course
24 was open and being run. And that at the end of

1 that everyone would agree to wipe the slate
2 clean and rebid, go out and bid again.

3 That was talked about at your office at
4 some point. I don't remember the date in my
5 office. You might have been at the one in my
6 office. You could have been. I don't remember.

7 Q. This discussion about rebidding the contract was
8 based on the concept that the parties to the
9 case would agree to the rebidding process?

10 A. Yes.

11 Q. Was there ever a discussion about rebidding the
12 contract without the approval of the parties in
13 this case?

14 A. Not until the Court issued -- I mean, the
15 decision involving the injunction. Because we
16 were under a court order, we couldn't agree to
17 that.

18 Q. You were under a court order? You could not
19 rebid the contract?

20 A. Without the permission of the Court, yes. And
21 finally in one of the sessions with the Court it
22 was brought to the Court's attention. The Court
23 during this fall period of time said, you know,
24 I'm not saying I'm not going to let the town,

1 or, I don't have the paper in front of me but
2 said something to the effect that, you know, I'm
3 going to consider letting the town rebid.

4 Q. The Court said they would consider letting the
5 town rebid in some sort of pleading? Is that
6 what you're saying?

7 A. No. It was a hearing and the Court actually
8 volunteered it and said at some point I'm not
9 saying I'm not going to let the town rebid.

10 Q. Subsequent to the meeting you had with the
11 representatives of CALM Golf at town hall you
12 made the decision that you wanted -- or strike
13 that. The town wished to rebid the contract; is
14 that correct?

15 A. I didn't make the decision.

16 Q. That's why I rephrased it to say the town.

17 A. Yeah. The town manager made that decision and
18 he told me at the end of the meeting after you
19 and your representatives -- you and your
20 representatives of CALM Golf left. And I
21 believe, I'm not positive but I believe
22 Mr. Cushing and I, or it may have just been me,
23 but I think Mr. Cushing was there and the town
24 manager talked.

1 Q. Just to draw your attention to Exhibit 26 which
2 is the memo that you drafted or memo from your
3 office.

4 A. Yes. Okay.

5 Q. The second to last page of that.

6 A. Yep.

7 Q. The second paragraph says, "subsequent to the
8 town's decision to reject all bids." Do you see
9 where I'm looking at?

10 MR. GILL: Second to last paragraph?

11 MR. EDGE: Second to last page. I'm
12 sorry. Second paragraph.

13 MR. GILL: Thank you.

14 Q. It says, "subsequent to the town's decision."
15 Do you see where I'm pointing to?

16 A. Right.

17 Q. I'm assuming first of all, subsequent is an
18 error in syntax, that that meant prior to the
19 town's decision to rescind the bid and award the
20 contract, not subsequent to the decision.

21 A. Well, I think the meeting -- there was a meeting
22 that took place but before that. Had I been in
23 contact with the Inspector General, that's my --

24 Q. If I may, just the wording of this paragraph, am

1 I correct to say that the actual wording saying
2 the town decided to reject all bids and rescind
3 the award of the contract to CALM Golf and then
4 contacted the Inspector General to seek
5 assistance on how to rebid the contract? My
6 question is, what happened first? Did you
7 decide to rescind the bid or did you contact the
8 Inspector General?

9 A. It has to be read -- the November -- the day the
10 town revoked the award to CALM Golf, that was at
11 the hearing of the court and you were given it
12 at court. I gave it to you. I don't know.
13 Once again, I can't answer your question. I
14 need my file to put the whole thing together.
15 I'm sorry. I can't answer.

16 Q. Prior to submitting on this November 24, 2010
17 the rescission or the revocation letter, had you
18 contacted the Inspector General in regards to
19 whether you had the right to rebid the contract?

20 A. I believe we had. I believe I did.

21 Q. Is there any document that reflects that?

22 A. I think at this time Mr. Lambiase was involved
23 and I was working with him. Either I did it or
24 he did it. I don't know. There was some

1 communication. We kind of looked at it. I
2 don't remember. I'm sorry.

3 Was the communication before the letter,
4 if that's what you're saying? Absolutely. Yes.
5 The letter just memorialized what we had been
6 told.

7 Q. Was there any communication prior to the meeting
8 that was held at town office in the fall of
9 2010?

10 A. I don't think so, no. The meeting that you and
11 your people were at?

12 Q. Yes.

13 A. No, I don't think so.

14 Q. So subsequent to that meeting you contacted the
15 Inspector General's Office?

16 A. Yes.

17 Q. In regards to a discussion of the rebidding
18 process?

19 A. Yes. I believe that's correct.

20 Q. Did you inquire as to whether you had the right
21 to rebid the contract during any of those
22 discussions?

23 A. I understood it as twofold. We needed -- the
24 question was could we revoke an award, and now I

1 remember the answer. The answer was that we
2 could revoke the award as long as we had not
3 entered into a contract. That's what the
4 Inspector General told either me or Lambiase.

5 The second thing is we understood that in
6 addition to -- there were two hurtles that we
7 had to get the Court to allow us to do. We
8 couldn't do it. The Court dissolving the
9 injunction --

10 MR. GILL: Could you guys keep it down
11 down there. It's a little distracting.

12 MR. KREIGER: Sorry.

13 MR. GILL: I'm sorry to interrupt.

14 Q. Now I'm thrown off.

15 (The last paragraph of the answer was
16 read back.)

17 Q. You were saying that the Inspector General
18 informed you that you had the right to revoke an
19 award of contract?

20 A. Not an award. If a contract had not been
21 entered into, that -- the difference was once
22 you entered into a contract and signed a
23 contract you could not revoke the award, but at
24 any time up until the time of -- up until the

1 time when you actually executed a contract you
2 could revoke an award.

3 Q. For any basis?

4 A. I don't know. I don't know that we -- that I
5 looked at that. I don't know. I don't know the
6 answer to that, any basis.

7 Q. So you don't know whether --

8 A. I would know if I had my file. I don't have the
9 file here with me.

10 Q. Do you have any recollection if you provided the
11 Inspector General your specific or the town's
12 specific reasons for revoking this contract?

13 A. No. I think it was theoretical again.

14 Q. You just asked if one can revoke the contract?

15 A. We just wanted to know if -- what the frame of
16 the reference of the law was.

17 Q. Was it your understanding the Inspector General
18 was telling you that you could revoke a contract
19 for any reason?

20 A. You can't revoke the contract.

21 Q. The award of the contract.

22 A. The award.

23 Q. The award of the contract. Excuse me. Prior to
24 the actual signing of the contract?

1 A. Yes.

2 Q. But you're not sure whether you asked whether
3 that could be for any reason?

4 A. I don't remember anything beyond that, no.

5 Q. Have you ever asked that question before during
6 this litigation of the Inspector General?

7 A. I don't remember. I don't know that it was --
8 it would have come up, but I don't know.

9 Q. Between the time the litigation was filed in
10 December of 2008 and sometime in fall of 2010,
11 you never inquired whether you had the right to
12 simply rebid this contract under the RFP
13 process?

14 A. No. During that time we were under the court
15 order. We made a -- I made vigorous efforts to
16 try to resolve the case in the town's favor and
17 I was unsuccessful.

18 And so as long as the injunction was in
19 place, we were -- we accepted the authority. We
20 had no choice but to accept the authority of the
21 Court and there was no ability to do anything
22 about it.

23 Johnson was in and running the course
24 until the Court said otherwise, and we accepted

1 that. We weren't even thinking about any
2 rebidding except for the voluntary settlement
3 offer that we made for everybody to agree to do
4 it that way.

5 Q. When you discussed this with Mr. MacDonald and
6 he advised you that, to look at the process of
7 rebidding the contract, was there any discussion
8 of inquiring of CALM Golf to supplement any of
9 their submissions that they made to the town?

10 A. No, not that I remember.

11 Q. So the entire decision was based on what was
12 presented at that meeting?

13 A. I would say so.

14 Q. At no point from the commencement of litigation
15 through that meeting was there any inquiry made
16 of CALM Golf about their capacity to run the
17 golf course?

18 A. Not that I remember, because the injunction was
19 in effect. We weren't planning on anyone else
20 running it because the Court had -- and also
21 once the season began -- that's why the offer, I
22 said, was in two different parts.

23 Once the season began from December or
24 January on, the town kind of owned whoever was

1 running it then in the sense you can't come
2 after one person, collect all the money, then
3 bring someone else in. It wasn't something that
4 the town can handle.

5 Q. At any point subsequent to the revocation of the
6 contract was there any discussion between your
7 offices or yourself or any member of the town
8 and representatives of CALM Golf?

9 A. Not that I remember.

10 Q. Was there any discussions -- back to the
11 beginning of the initial RFP process. Do you
12 have any recollection of ever speaking to
13 Charles Lanzetta or Tony Morosco about this
14 matter, about the RFP process?

15 A. No. I never spoke to them. I never met them
16 until the day in 2010.

17 Q. Do you have any knowledge of anyone involved in
18 this litigation that's been mentioned in this
19 litigation other than obviously their counsel
20 that had any discussions with Charles Lanzetta
21 or Anthony Morosco about the RFP proposal?

22 A. Not that I know of. I had no knowledge of
23 anybody talking to anybody.

24 Q. Did Mr. MacDonald ask you for any advice

1 subsequent to that fall 2010 meeting whether the
2 contracts should be rescinded or revoked, the
3 award of contract should be revoked to CALM
4 Golf?

5 A. No. Mr. MacDonald made his mind up at that
6 meeting. He was very emphatic about it. At the
7 end of the meeting he was very -- he said
8 something to -- I'm trying to think. I don't
9 have a good feeling about this or some -- this
10 is not going to work. I don't know what it was,
11 but that was it.

12 He had decided, particularly when
13 Mr. Morosco and Mr. Lanzetta said they weren't
14 going to be able to meet the payment terms, they
15 needed to do it for less money. As soon as he
16 heard that they wanted the town to give it to
17 CALM Golf but at a lower price, that was not
18 going to go anywhere with him. I don't think
19 legally it could.

20 Q. You're testifying that CALM Golf stated they
21 would be able to run the golf course but not at
22 the price they had originally submitted during
23 the RFP process?

24 A. Well, no. They said -- they were hesitant they

1 were not going to be able to do the price that
2 they had bid and they needed to have
3 negotiations about that amount, that then they
4 were unsure.

5 The question was this. Was -- I'm going
6 to say late October or November of 2010, I
7 think, I don't know if I'm right about the date,
8 and the membership fees and everything started
9 up in December.

10 So the question that Mr. MacDonald was
11 interested in, are you going to be ready to go
12 and run this thing and get it off the ground in
13 January, and then my memory is that they
14 faltered on that point. They didn't say no, but
15 their responses were not persuasive to Mr.
16 MacDonald and he was concerned that they weren't
17 going to be able to do it.

18 Then they mentioned they were running
19 another course that they had gotten since the
20 first round or second round, whatever, third.

21 Q. When you contacted the Inspector General's
22 Office to discuss the revocation of this award
23 of contract, do you remember who you spoke to?

24 A. No.

1 Q. Did you put any of your questions in writing to
2 the Inspector General?

3 A. I don't think so.

4 Q. Or his office?

5 A. I don't think so.

6 MR. EDGE: Just give me one minute.

7 Q. Is it your understanding the Inspector General
8 has the authority to -- a binding authority on
9 the interpretation of the procurement act?

10 A. I don't think it's binding.

11 Q. Did you do any independent legal review of
12 whether it was appropriate to revoke CALM Golf's
13 contract in 2010?

14 A. It wasn't a contract.

15 Q. Award of contract.

16 A. Well, the statute says -- there's a statutory
17 provision. It says you can reject it at any
18 time. You can reject a bid at any time. And
19 since there wasn't an award made there was no --
20 yes, I did. I looked into it. That's why we
21 asked the Inspector General. You can revoke a
22 bid at any time on, I think it's section 30B9.
23 I may be wrong.

24 Q. You can revoke an individual bid at any time?

1 A. No. You can revoke -- pull back and rebid
2 something at any time. That's statutory.

3 Q. So theoretically at the beginning of this
4 litigation you could have at any point simply,
5 according to your interpretation, you could have
6 simply pulled back the rebid?

7 A. Well, no. But after you made the award it's not
8 clear that you can revoke the award. That was
9 the question that we were looking into.

10 In other words, the bidding process had
11 been completed, the second round, in January of
12 2009 and award had been made. By virtue of
13 making the award, all the other bids had been
14 rejected. The only thing that was left on the
15 table was the award to CALM Golf.

16 And the question was could that -- the
17 question that I was asked to look at then was
18 what I consulted the Inspector General. And I
19 looked, and my memory is that there was no black
20 and white law on that question.

21 Q. But you advised the town that it was sufficient
22 to -- that it was appropriate to revoke CALM
23 Golf's contract based therefore solely on advice
24 given to you by the Inspector General?

1 A. No, not their contract.

2 Q. Award of contract.

3 A. I advised them that the town could revoke the
4 award of the contract to CALM Golf based on the
5 information I received from the Inspector
6 General and my own analysis of it, subject to
7 the Middlesex Superior Court allowing the town
8 to do so. And that's exactly what happened,
9 because the Court also said the town could do
10 it.

11 Q. You're telling me that you interpret the law and
12 what the Inspector General's Office has told you
13 to allow you to pull back any bid prior to the
14 award of contract?

15 A. No. What I'm saying -- what I'm saying is the
16 town has a statutory right to reject all bids,
17 any and all bids under 30B. Once an award is
18 made and a contract has not been entered into,
19 the town, based on the information that we
20 received from the Inspector General, may revoke
21 that award.

22 And when an injunction is issued by a
23 court you also need to get the permission of the
24 Court to do so. That was the game plan. That's

1 what we tried to do, because the town manager
2 said he wanted to do it over and he wanted to do
3 it right.

4 Q. Did the town at some point petition the Court
5 simply to rebid the contract?

6 A. The judge in one of the sessions in the fall of,
7 I believe 2010, said on the bench that he was
8 not going to prohibit the town from rebidding
9 the contract.

10 Q. I understand that. But in February of 2009 the
11 judge issued his decision, issued the
12 injunction.

13 So between February 2009 or at some point
14 in 2010, fall of 2010, did the town take any
15 steps to petition the Court simply to rebid the
16 contract, as according to you it's their right
17 to do under 30B6?

18 A. I don't know.

19 Q. Did you have any discussions --

20 A. I don't remember that.

21 Q. Did you have any discussions with anyone, with
22 the town, any officials at the town about the
23 possibility of simply rebidding the contract?

24 A. I don't know that. Except I will say that given

1 the judge's repeated rulings, it would be
2 unlikely that was, you know, that at that time
3 it was going to happen. The judge, I believe,
4 mentioned the fact that he might allow the town
5 to do that only when he saw that there was
6 problems in getting the bonds to keep the thing
7 going.

8 Q. Did you ever contact the Inspector General in
9 this time period, between February of 2009 and
10 fall of 2010, to ask them whether you had the
11 right to simply petition the Court to rebid?

12 A. No, I did not.

13 Q. Am I correct to say that all your communications
14 with the Inspector General were entirely oral?

15 A. No.

16 Q. Okay. There are written communications between
17 you and the Inspector General?

18 A. Well, the Inspector General issued two letters.

19 Q. Let me rephrase.

20 Am I correct to say that you -- the
21 communications initiated by you were oral?

22 A. I don't know.

23 Q. Do you have any recollection of writing any
24 document, any letter, any memo, any

1 correspondence, any e-mail to the Inspector
2 General?

3 A. No. I don't have any memory of that. But as
4 you know, there are thousands of pages in this
5 case. But I don't remember that, no. I met
6 with the Inspector General, too. I mean, it was
7 -- I met at the office of the Inspector General.

8 Q. Again, it was an oral communication, though? No
9 transcript of that communication?

10 A. Not that I know of.

11 MR. EDGE: Just a couple more minutes.

12 Q. In the second proposals, review of the non-price
13 proposals, after that was done, those were done,
14 you had a meeting between you and Mr. MacDonald
15 at which Mr. Cushing was also present. Do you
16 recall that?

17 A. There was --

18 Q. Was that your testimony?

19 A. There was one meeting. There was only one
20 meeting on the second set. There was not two
21 meetings. There was one meeting, one meeting.
22 The decision was made that day. It wasn't
23 issued that day but it was made that day.

24 Q. Mr. Cushing was present; is that correct?

1 A. Yes.

2 Q. Under what role was he present at that meeting?

3 A. I don't know. He was the recreation director
4 and he was doing the procurement.

5 Q. He had reviewed the first set of proposals; is
6 that correct?

7 A. I believe so.

8 Q. Was there any discussion about the impropriety
9 of having him present for the second set of
10 proposals after he reviewed the first set of
11 proposals?

12 A. No. I don't remember that, but I don't think
13 that -- I think his role was giving
14 Mr. MacDonald information.

15 Q. Was he an evaluator at that time? He wasn't an
16 evaluator of the second set of proposals,
17 correct?

18 A. No.

19 Q. So is it your understanding that a non-evaluator
20 was providing information to the evaluators at
21 that meeting?

22 A. Well --

23 MR. KREIGER: Objection.

24 A. Well, he was just providing information that was

1 contained in the non-price proposals.

2 Q. As far as you recall, did he make any reference
3 to any distinctions between the first proposal
4 and the second proposal filed by any of the
5 bidders?

6 A. I don't remember any of that, no.

7 Q. Okay. Now, you testified before that you had
8 been involved in some RFPs for the town?

9 A. Right.

10 Q. Does the town routinely provide these proposals
11 to you before they submit them?

12 A. Before -- are you talking -- not the proposals.

13 Q. No. The request for -- the RFP, before they
14 send the RFP.

15 A. Yeah. I would look at -- I don't remember. I
16 think there was a consultant or something that
17 was involved in the previous one, but I don't
18 think that I looked at them. Not --

19 Q. Your testimony is that you looked at every one
20 of them?

21 A. No. No. No. I just -- certain ones.

22 Generally, no. I did not do RFPs, no.

23 Q. It wasn't the normal course of action for the
24 town to have you review the RFP before?

1 A. No. I only did a very limited amount. The golf
2 course. I'm not even sure there were any other
3 ones. There was some other things that I did.
4 I can't remember what it was. Some maybe
5 building or -- I don't know. I can't remember.

6 Q. The decision to revoke the award of contract to
7 CALM Golf was made entirely by Richard
8 MacDonald, correct?

9 A. Absolutely.

10 Q. Subsequent to that meeting did you have any
11 written communication between you and
12 Mr. MacDonald about that decision?

13 A. What type of communication?

14 Q. Any communication that referenced that decision.

15 A. Not that I remember, no.

16 Q. Did you put any -- did you draft any memos? Did
17 you draft any documents regarding the meeting
18 that took place in fall of 2010 at the town
19 office?

20 A. Not that I remember.

21 Q. And the decision to revoke the award was made at
22 that meeting subsequent to the departure of CALM
23 Golf and their representatives?

24 A. By Mr. MacDonald.

1 Q. By Mr. MacDonald?

2 A. Yes.

3 MR. FOLLANSBEE: I have one question.

4 MR. GILL: Dare I ask whether it pertains
5 to this case?

6 MR. FOLLANSBEE: It absolutely does.

7

8

9 FURTHER EXAMINATION BY MR. FOLLANSBEE:

10 Q. Attorney Troy, would you agree that CALM Golf in
11 the first RFP process having used a price
12 proposal based on a percentage of revenue
13 rendered their bid non-conforming and ineligible
14 for an award of the contract?

15 A. Yes.

16 MR. EDGE: Objection.

17 MR. FOLLANSBEE: That's it. Thank you.

18

19 (The deposition concluded at 3:58 p.m.)

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CERTIFICATE

Commonwealth of Massachusetts
Essex, ss.

I, Jessica F. Story, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify: that ROBERT S. TROY, the witness whose deposition is hereinbefore set forth, was satisfactorily identified by his Massachusetts driver's license, having been previously duly sworn by me, and that such deposition is a true record of the testimony given by the said witness.

I further certify that I am not a relative or employee or counsel or attorney for any of the parties, or a relative or employee of such counsel or attorney, nor am I financially or otherwise interested in the outcome of the action.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 8th day of September, 2012.

Jessica F. Story, CSR, RPR

My commission expires
on September 13, 2013

Instructions: You are entitled to read and correct your deposition. Please carefully read your testimony, making any necessary changes or corrections by identifying the page and line number, the change desired and the reason. Do not mark the actual transcript. Then date and sign the bottom of this page.

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CERTIFICATE

I, ROBERT S. TROY, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

Signed under the pains and penalties of perjury this ____ day of _____, 2012.

ROBERT S. TROY