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IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

- - -

STATE OF OHIO, ex rel. :  
DENNIS J. VARNAU, :  
Relator/Petitioner, :

vs. : CASE NO. CA2009-02-10

DWAYNE WENNINGER, :  
Respondent/Defendant. :

- - -

DEPOSITION

of DWAYNE L. WENNINGER, taken before me, Mary E. White, a  
Registered Professional Reporter and Notary Public in and  
for the State of Ohio at Large, as on Cross-Examination,  
at the Mount Orab Inn, 100 Leininger Street, in the  
Village of Mount Orab, County of Brown, and State of Ohio,  
on Thursday, the 27th day of August, 2009, beginning at  
2:04 p.m.

- - -

1 APPEARANCES:

2 On Behalf of the Relator/Petitioner:

3 THOMAS G. EAGLE, ESQ.  
THOMAS G. EAGLE COMPANY  
4 3386 North State Route 123  
Lebanon, Ohio, 45036

5  
6 On Behalf of the Respondent/Defendant:

7 PATRICK L. GREGORY, ESQ.  
717 West Plane  
8 Bethel, Ohio, 45106

9  
Also Present:

10 DENNIS VARNAU  
11 GLENN BOHL

12 - - -  
13 INDEX TO EXAMINATION

14 DWAYNE L. WENNINGER PAGE  
15 Cross-Examination by Mr. Eagle ..... 3

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17 INDEX TO EXHIBITS

18 PLAINTIFF'S EXHIBITS INTRODUCED  
19 1 - 1/20/04 Letter from Sandra Martin to the  
20 Brown County Board of Elections ..... 16

21 - - -  
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1 MR. EAGLE: Swear the witness please.

2 - - -

3 DWAYNE L. WENNINGER,

4 a witness of lawful age, having been by me first duly  
5 cautioned and sworn, testified on his oath as follows:

6 - - -

7 CROSS-EXAMINATION

8 BY MR. EAGLE:

9 Q Sir, can you give us your full name please?

10 A Dwayne Lee Wenninger.

11 Q And for the court reporter's benefit, one more  
12 time, spell your last and first name.

13 A Dwayne Lee Wenninger, D-W-A-Y-N-E, middle name  
14 Lee, L-E-E, last name Wenninger, W-E-N-N-I-N-G-E-R.

15 Q Sir, have you ever had your deposition taken  
16 before?

17 A Yes.

18 Q Great, I'm just -- for my benefit then, I'm  
19 going to review with you just a few ground rules for -- in  
20 order to make this a little bit easier for everybody to  
21 get through.

22 First of all, we've been formally introduced  
23 just a few minutes ago. You know my name is Thomas Eagle  
24 and I'm representing Dennis Varnau concerning the  
25 particular case. You were aware of that, were you not?

1           A     Yes.

2           Q     Great.  I'm going to be asking you some  
3           questions this afternoon about what you may know about  
4           that situation and things related to it.

5                     I'll ask if at any time during this deposition I  
6           ask you a question either that you can't hear or not sure  
7           that you understood, if you'll bring that to my attention,  
8           I will do my best to repeat or rephrase anything so you  
9           can hear it and you are confident you understood it, okay?

10          A     Yes.

11          Q     I'll also ask that if at any time during the  
12          course of the deposition I ask you a question, if you  
13          could make an effort to answer with a clear verbal  
14          response such as a yes or a no, rather than a headshake or  
15          a gesture or an uh-huh or huh-uh, it'll make it all easier  
16          for all of us to make sense out of what you meant to say  
17          when the time comes to read it.  Can you try to do that?

18          A     Yes.

19          Q     Great.  Can you first then tell me please, sir,  
20          what day you graduated from high school?

21          A     I don't know the day.  The year is 1986.

22          Q     How about the month?

23          A     I don't remember.

24          Q     You don't remember the month you graduated from  
25          high school?

1 A No.

2 Q What was the high school name?

3 A Western Brown High School.

4 Q And where is it located?

5 A Mount Orab, Ohio.

6 Q Do you recall were you working -- that is were  
7 you employed at the time that you were in high school?

8 A I don't remember.

9 Q All right. Can you tell me please then what you  
10 did immediately after graduation from high school?

11 A Went to -- school.

12 Q When did you start school, immediately after  
13 high school?

14 A It was immediately after high school. The day,  
15 I'm not for sure.

16 Q Then when you use the word immediately or when I  
17 do, what would you say, it was within a few days of  
18 graduation, within a few months of graduation, what's your  
19 best estimate as you recollect?

20 A Within a month or two.

21 Q And where was it that you went to school after  
22 you graduated from high school?

23 A Technicron Technical Institute.

24 Q If you could spell Technicron for the court  
25 reporter please?

1           A     I do not know.

2           Q     All right.  So that was the -- you didn't go to  
3 school anywhere between high school and Technicron?

4           A     Correct.

5           Q     And do you remember the day you started at  
6 Technicron?

7           A     No, I do not.

8           Q     Do you remember the month?

9           A     No.

10          Q     Were you employed while you were going to school  
11 at Technicron?

12          A     No.

13          Q     Were you -- employed anywhere between high  
14 school and Technicron?

15          A     No.

16          Q     Do you remember the last day you actually  
17 attended Technicron?

18          A     No.

19          Q     Do you remember how many classes you took at  
20 Technicron?

21          A     No.

22          Q     Mr. -- you have filed with some of your court  
23 papers an affidavit from a Lee Spievack.  I hope I'm not  
24 butchering his pronunciation, S-P-I-E-V-A-C-K.  Are you  
25 familiar with that affidavit?

1 A Yes.

2 Q He says in the affidavit that it was sometime in  
3 August of 1986 that you began school at Technicron; do you  
4 believe that to be true?

5 A Yes.

6 Q Would you disagree with his statement that it  
7 was August?

8 A No.

9 Q All right. If I were to suggest to you that  
10 your diploma or certificate from Technicron says  
11 graduation of October 23rd of 1987, would you deny that?

12 A I would not deny it.

13 Q Would you have any reason to dispute it?

14 A No.

15 Q Great. So would it be true then that you were  
16 attending school at Technicron and nowhere else but on a  
17 full time basis from August 1986 or August 1st, what  
18 Mr. Spievack's affidavit says, to October 23rd of 1987?

19 A I believe that to be correct, yes.

20 Q What do you remember then about the number of  
21 hours per day or the number of classes you took while at  
22 Technicron?

23 A I don't remember the number of hours. It was --  
24 it was -- best of my knowledge, it was a half a day  
25 course, minimum. I don't know the exact amount of time.

1 That's been 20 years ago. I have -- I do not remember.

2 Q Do you know whether or not at that time  
3 Technicron was on a quarter or a semester system?

4 A I do not know.

5 Q Do you have any recollection then of how many  
6 different classes that you took while at Technicron?

7 A No.

8 Q Do you recall how many different maybe -- did  
9 you get report cards?

10 A I don't remember.

11 Q Don't remember that either. Are you familiar  
12 with the quarter and semester system generally in Ohio?

13 A Briefly.

14 Q If I were to ask you questions about how many  
15 months or weeks there might be in a quarter or semester,  
16 how many hours there are in a quarter versus a semester,  
17 are you familiar with it enough to answer any questions  
18 like that?

19 A No, I'm not.

20 Q And you don't know then whether Technicron was a  
21 quarter system or semester system when you attended it,  
22 would that be --

23 A Correct.

24 Q -- correct?

25 A I have no idea.



1 Q Do I understand correctly then that your diploma  
2 at Technicron was in microprocessing and robotics?

3 A Yes.

4 Q Do you happen to know what chapter of the Ohio  
5 Revised Code Technicron was teaching under or operating  
6 under at that time?

7 A No.

8 Q Are you able to say whether or not you ever  
9 earned 90 quarter credit hours as defined by the Ohio  
10 Administrative Code while you were at Technicron?

11 A I cannot answer that. I do not know.

12 Q Are you able to say whether or not you achieved  
13 or received or earned 60 semester credits while you were  
14 at Technicron as is defined under the Ohio Administrative  
15 Code?

16 A I don't know how to answer that.

17 Q Are you able to say whether you've ever earned  
18 90 credit -- 90 quarter credits or 60 semester credits  
19 anywhere since you graduated from high school?

20 A No. Not that I know of. I cannot answer that.

21 Q Did you ever go back to Technicron for any  
22 reason after the date on your diploma, October of 1987?

23 A No.

24 Q All right. What is it, sir, that you understand  
25 to be the requirements for you to maintain, after elected,

1 qualifications to be a sheriff in the state of Ohio?

2 A The best of my knowledge, is you have to have a  
3 valid peace officer's certificate. You have to have at  
4 least -- you have to be a resident of the state of Ohio I  
5 believe for at least one year.

6 You have to give your history for the past six  
7 years of residency and you have to have either two years  
8 of education or two years of supervisory experience.

9 Q All right. I don't think I stated the question  
10 that way I intended to.

11 A Oh, I'm sorry.

12 Q You answered the question I think as to what  
13 your understanding of what you have to do to run for  
14 sheriff.

15 What about after you -- a person has already  
16 achieved the office of sheriff, what is your understanding  
17 of what you -- what a person has to do after that to  
18 continue to be qualified?

19 A I'm sorry.

20 Q That's all right.

21 A That's -- there's 16 hours of continuing  
22 education provided through the Buckeye State's Sheriff's  
23 Association.

24 Q Anything other than that that you know of?

25 A No, not that I know of.

1           Q     You're probably required, are you not, to  
2 maintain your Ohio peace officer training commission  
3 certification during --

4           A     Yes.

5           Q     -- the entire time --

6           A     Yes.

7           Q     -- would that be true?

8           A     Yes.

9           Q     Are you required to maintain anything other than  
10 the 16 hours of continuing education, if you know?

11          A     There's firearm requalification.

12          Q     What is your understanding of your firearms  
13 requalification required to have to maintain  
14 qualifications as sheriff in Ohio?

15          A     That your Ohio -- through OPOTA, which is the  
16 state of Ohio -- it's a once a year qualification. It's  
17 an annual qualification.

18          Q     What is your understanding then as to what would  
19 happen if a person who is holding the office of sheriff in  
20 Ohio were for some reason to lose their Ohio peace officer  
21 training commission certification while in office? What  
22 would that mean, if you know?

23          A     They would be an invalid peace officer.

24          Q     Great. What would happen if, hypothetically  
25 speaking, again for a sheriff if they did not have their

1 12 months of annual firearms qualification, for example?

2 A They would be invalid police officer.

3 Q And would the same be true, for example, if they  
4 didn't maintain their continuing education per year?

5 A Yes.

6 Q Okay. Are you familiar with the term break in  
7 service as it applies to peace officers?

8 A Yes.

9 Q What do you understand that to mean?

10 A If an officer leaves one agency and -- and  
11 leaves and goes to another agency at a later period of  
12 time, that continues a break in service and -- sometimes  
13 through OPOTA, they are required to take additional  
14 classes to get their certification.

15 Q What do you understand would happen if a person  
16 was -- did have Ohio peace officer training commission  
17 certification as a peace officer but then had a break in  
18 service? What does that mean as far as their  
19 certification is concerned if you know?

20 A It means their certification from one to four  
21 years, when you have to take a refresher course -- it's  
22 a -- I don't know how many hours that is, and then after  
23 four years, you have to take the whole course back over  
24 again to maintain a valid peace officer's certificate.

25 Q And when you say after four years, do you mean

1 after a four-year break in service?

2 A Correct.

3 Q Would I be correct understanding that you're  
4 saying after a four-year break, you have to start over?

5 A Yes.

6 Q And after a one-year break, what's the  
7 difference?

8 A There's between one and four years, it's a  
9 refresher course and it's required by the OPOTA to keep  
10 your certificate valid.

11 Q Great. So in order -- you don't have to start  
12 completely over, you can kind of do something in between  
13 starting over?

14 A Correct.

15 Q Great. Have you ever had a break in service  
16 during the entire time you've had an Ohio peace officer  
17 training commission certification as a peace officer?

18 A No.

19 Q All right. In some of the pleadings that you  
20 have filed in this case, you have referenced a change in  
21 the law regarding qualification to be sheriff which -- you  
22 say became effective in December of 2003. Are you  
23 familiar generally with the law that I'm talking about?

24 A Yes.

25 Q Great. What do you understand that law to have

1 changed?

2 A That the -- Board of Proprietary School and  
3 Board of Regents certificate is basically the same  
4 education and would meet the qualification for Chapter  
5 311.

6 Q All right. Now, do you know -- and how did that  
7 apply to you, by the way, if it did?

8 A I don't know if it did or not.

9 Q Do you know whether or not that amendment in the  
10 law applied to any person who was either then or since  
11 then holding the law -- the office of sheriff in the state  
12 of Ohio?

13 A I don't know.

14 Q Do you know of anyone particular that did?

15 A No.

16 Q Do you talk to other sheriffs from time to time  
17 on a professional basis --

18 A Yes.

19 Q -- socially?

20 A Yes.

21 Q Ever heard any other sheriff ever say that that  
22 law helped them or affected their qualification for  
23 sheriff in any way?

24 A No.

25 Q All right. Are you, generally speaking,

1 familiar with a Sandra Martin?

2 A Yes.

3 Q Who is Sandra Martin?

4 A She's an ex-employee of Brown County sheriff's  
5 office.

6 Q When was she employed by the sheriff's office?

7 A I don't know the exact time. I believe back in  
8 the nineties.

9 Q Was it while you were associated with the  
10 sheriff's department of Brown County?

11 A Yes.

12 Q Were you aware that Sandra Martin had apparently  
13 at one point in time filed a protest regarding your  
14 candidacy to be sheriff in Brown County?

15 A Yes.

16 Q If I could -- I'm sorry. What do you understand  
17 happened to her protest?

18 A She -- it's been such a long time ago. I know  
19 there was a protest filed but I don't think it went  
20 anywhere -- I believe the Board of Elections and -- I  
21 don't know what the outcome was.

22 Q Great. I'm going to hand to you what I've  
23 marked as -- and an extra one for your counsel, if you  
24 could look at that for me.

25 When you're ready, tell me if you've ever seen

1 what I've now marked as plaintiff's exhibit number 1.

2 When you're ready, sir, let me know.

3 MR. GREGORY: It's the same thing.

4 THE WITNESS: Oh, okay. Okay. I'm ready.

5 BY MR. EAGLE:

6 Q Okay. Great, what is that if you know?

7 A It's a letter from Sandra Martin to the Brown  
8 County Board of Elections.

9 Q Great. Essentially if I could gist it a little  
10 bit, withdrawing the protest, true?

11 A Yes.

12 Q So did you understand that she did in fact  
13 did -- withdraw her protest rather than have the Board of  
14 Elections actually make a decision on it?

15 A Not till this was brought to my attention.

16 Q Great. Did you -- I'm sorry. I asked you a --  
17 some questions previously about some amendments that were  
18 made to the sheriff's qualifications laws and you remember  
19 answering some of those questions for me?

20 A Yes.

21 Q Did you believe that you believed that you met  
22 the educational qualifications to be sheriff in Ohio prior  
23 to that amendment?

24 A Yes.

25 Q All right. Other than the protest that I've



1 asked you about by Sandra Martin, have there been any  
2 other protests either of your candidacy or your election  
3 to serve as sheriff for Brown County besides hers?

4 A Mr. Varnau.

5 Q Mr. Varnau filed one. Anyone else that you know  
6 of besides those two?

7 A Not that I know of.

8 Q Were there any that you recollect then, sir,  
9 protests to either your candidacy or election or --  
10 qualification to serve as Brown County sheriff at any time  
11 prior to the 2000 election?

12 A There was three signatures that was given to the  
13 prosecutor which then -- went to -- a grand jury.

14 Q And -- so I don't skip around on you too much,  
15 what happened in regard to those three signatures and  
16 whatever that -- that -- that process?

17 A That -- I was taken to -- the case was taken to  
18 a grand jury, a special prosecutor was -- how I was taken  
19 to a grand jury. I was indicted for election  
20 falsification and I was found not guilty.

21 Q Great. Did you ever speak personally to any of  
22 the jurors on that case after the verdict?

23 MR. GREGORY: Note our objection for the record.

24 MR. EAGLE: Yes, sir.

25 MR. GREGORY: You can answer.

1           THE WITNESS: Okay. I spoke to -- one juror  
2 but -- nothing was brought up to -- two jurors but nothing  
3 was brought up. That was casual conversation.

4           MR. EAGLE: Great. Would it be correct then  
5 that you have no direct information at all as to what the  
6 basis was for the decision making of the jury in your  
7 case?

8           MR. GREGORY: Objection. I'll instruct the  
9 witness not to answer.

10          MR. EAGLE: Let me rephrase the question and see  
11 if that doesn't solve the problem and it's a yes or a no  
12 first.

13           Do you have any firsthand information at all as  
14 to what the basis was in the mind of any juror as to the  
15 not guilty verdict? And this would, first of all, just be  
16 a yes or a no at this point.

17          MR. GREGORY: Objection. Instruct him not to  
18 answer.

19          MR. EAGLE: Basis, please?

20          MR. GREGORY: The record has been sealed and --  
21 he's not -- no one's allowed to divulge information.  
22 That's set forth in our answers to interrogatories.

23          MR. EAGLE: All right.

24          MR. GREGORY: We would use the same basis.

25 BY MR. EAGLE:

1 Q Did you recollect, Mr. Wenninger, bringing up in  
2 some of your pleadings the result of the trial being a not  
3 guilty verdict as you just disclosed to us? Do you  
4 remember that being in the pleadings that your counsel has  
5 filed for you?

6 A Can you --

7 Q Sure.

8 A -- answer the question -- I don't --

9 Q Have you read the pleadings that your attorneys  
10 have filed for you in this case?

11 A Yes.

12 Q Great. And do you recollect that in fact  
13 there's references to the result of the trial as being a  
14 not guilty verdict?

15 A I would have to look at the docket and see for  
16 ourself, please.

17 Q Do you know whether or not there is any record  
18 in the sealed case other than the actual verdict of not  
19 guilty as to -- as to why any of the jurors made the  
20 decision that they made? That would be a yes or a no,  
21 first of all.

22 MR. GREGORY: Objection. Same basis. Sealed  
23 record.

24 BY MR. EAGLE:

25 Q All right. All right. I asked you then the

1 question about whether or not anyone filed a protest to  
2 your candidacy, your election or your qualifications to  
3 serve as sheriff in 2000 and you told me about the three  
4 signatures, turning it over to a prosecutor, being  
5 indicted, being tried and being found not guilty. You've  
6 told me about that one.

7 Were there any others prior to the 2000  
8 election, any other protests of your election, candidacy  
9 or qualifications for sheriff?

10 A Not that I know of, no.

11 Q Were there any protests filed by any person  
12 relating to your candidacy, your election or your  
13 qualifications to serve as sheriff prior to the 2004  
14 election that you know of?

15 A Not that I know of.

16 Q Were there any protests that you know of  
17 relating to or challenging your candidacy, your election  
18 or your qualifications to serve as sheriff prior to the  
19 2008 election?

20 A Would that be the general election or the  
21 primary?

22 Q Either.

23 A It would be Mr. Varnau.

24 Q And my two previous questions related to 2000  
25 and 2004 would also be either primary or general election.

1       Would your answers be the same?

2           A     Yes.

3           Q     Great.  So for 2008, the only one you know of  
4       was the one filed by Mr. Varnau; would that be correct?

5           A     Yes.

6           Q     Great.  So you've identified for me then so far  
7       three protests of some form or another to your candidacy,  
8       your election or qualifications of sheriff being the one  
9       reflected in plaintiff's exhibit number 1 by Ms. Martin,  
10      the one relating to the three signatures resulting in the  
11      indictment and the jury trial and the third one being that  
12      filed by Mr. Varnau.  Are those the only three that you  
13      know of?

14          A     Best of my knowledge, yes.

15          Q     Great.  In regard to the three signatures  
16      relating to the prosecution that you told us about, was  
17      that protest or that challenge ever brought before any  
18      Board of Elections in 2000?

19          A     Not that I know of.

20          Q     To your knowledge then was -- what -- was any  
21      protest of your candidacy, your election or your  
22      qualifications to serve as sheriff ever brought before a  
23      Board of Elections other than Mr. Varnau's relating to the  
24      2008 election that you know of?

25          A     Other than --

1 Q And Ms. Martin's, thank you.

2 A No.

3 Q All right. You already told us that  
4 Ms. Martin's -- hers was voluntarily withdrawn by her,  
5 correct?

6 A Yes.

7 Q Are you aware of any decision making of any kind  
8 by the Board of Elections as to whether or not  
9 Ms. Martin's protest was either a valid or invalid  
10 protest?

11 A I do not know.

12 Q Great. All you know is that it was withdrawn  
13 before such a decision was made, correct?

14 A Yes.

15 Q In regard to Mr. Varnau's protest of the  
16 election in 2008, what is your understanding of how --  
17 what became of that?

18 A The protest was -- he doesn't have a right to  
19 protest because he's an independent candidate.

20 Q Terrific. So that was never decided by any  
21 Board of Elections either, was it, as to whether the  
22 protest was valid or not. It was dis-- dismissed or  
23 denied on procedural grounds, true?

24 A Correct.

25 Q All right. Has, to your knowledge, any Board of

1 Elections anywhere ever actually decided in a contested  
2 proceeding as a result of any protest whether or not you  
3 in fact were qualified to run for or hold the office of  
4 sheriff of Brown County?

5 A I do not know.

6 Q Have you ever seen any Board of Elections  
7 minutes or publication or notes, any findings after any  
8 official investigation as to your candidacy, election or  
9 qualifications for sheriff?

10 A The only one was the letter from the Board of  
11 Elections, reference Mr. Varnau's protest.

12 Q And we already talked about that one which was  
13 based upon the procedural grounds that you said because he  
14 was independent as opposed to party affiliated; true?

15 A True.

16 Q All right. So other than that, you don't --  
17 haven't ever seen and don't know of any published or  
18 written notes or minutes or decisions of any Board of  
19 Elections and to -- regarding the actual qualifications  
20 for you to either run for or hold the office of sheriff,  
21 true?

22 A Can you restate --

23 Q Yes.

24 A -- that again?

25 Q Yes, yes. When I asked you originally whether

1 or not you were aware of or ever seen any published or  
2 written notes, minutes or other written decisions of any  
3 Board of Elections actually ruling upon your  
4 qualifications to run for or serve or hold the office of  
5 sheriff, I asked you do you know of any, have you ever  
6 seen any. You mentioned Mr. Varnau's which we established  
7 was a procedural decision.

8 Do you know of any that ever decided yes, you  
9 were or no, you were not qualified to be sheriff either --  
10 or run for the office?

11 A As far as a protest?

12 Q Yes, sir.

13 A As far as a protest and a decision, no. But as  
14 far as the Board of Elections makes a decision every  
15 election and certifies each candidate every time he runs  
16 to make sure that he meets the qualifications and --  
17 according to our Board of Elections, I've met the  
18 qualifications not once, but twice, but three times.

19 Q And those have never been -- there's never been  
20 any investigation by them, do you know of, as to whether  
21 or not you did in fact meet the qualifications?

22 A Not to my knowledge.

23 Q There's never been any contested decision by  
24 the -- in front of the Board of Elections that you know  
25 of?



1 A No.

2 Q Regarding your qualifications to serve or hold  
3 the office of sheriff, correct?

4 A Correct.

5 Q Thank you very much. All right. I'm going to  
6 show you -- if I can step over here --

7 A Sure.

8 Q -- for just a second --

9 A Absolutely.

10 Q -- what purports to be the brief of you --

11 A Uh-huh.

12 Q -- filed on behalf of you by either Mr. Gregory  
13 or Mr. Rosenhoffer or both, okay?

14 A Yes.

15 Q I'm going to direct your attention to what's  
16 attached and marked as Appendix A being records from Brown  
17 County Board of Elections, okay?

18 And attached to that is something that purports  
19 to be a memorandum on behalf of you, one -- two pages,  
20 apparently signed by Mr. Gregory, Mr. Rosenhoffer. Do you  
21 see that?

22 A Yes.

23 Q Have you ever seen it before?

24 A Yes.

25 Q Great. Looking at this -- let's see -- in the

1 next to the last paragraph on page one of the memorandum,  
2 it recites the statement that Ms. Martin's conclusion  
3 about basically -- I know I'm paraphrasing -- the basis  
4 for the jury's acquittal of you as not guilty of  
5 intentionally falsifying the application is referenced as  
6 pure speculation and for the court reporter's benefit, as  
7 it is, as likely that the jury found that  
8 Sheriff Wenninger in fact met the qualifications to become  
9 sheriff and determined that his prosecution be a political  
10 witch hunt. Did I read that pretty much accurately?

11 A Yes.

12 Q Great. Can you tell me what if any basis you  
13 know of for that statement in regard to the possibility or  
14 the speculation that the jury's verdict may have been as a  
15 result of what your counsel put in that letter?

16 MR. GREGORY: Objection. Putting into -- his  
17 opinion as to what the jury felt the criminal case and --

18 MR. EAGLE: Specifically to help you out, I  
19 avoided the word opinion on purpose because his opinion  
20 and your opinion and my opinion are equally valid or  
21 invalid as to that and it would be equally speculative.

22 MR. GREGORY: Can you read back the question?  
23 Or -- you want -- let me just -- let me -- let me listen  
24 to the question again.

25 MR. EAGLE: Thank you.

1 (The requested question was read back.)

2 MR. GREGORY: I think it falls within the sealed  
3 record. I really do.

4 MR. EAGLE: Asking what basis he knows of for  
5 the statement made by his counsel in a record that's been  
6 filed with the Court of Appeals in this particular case,  
7 you're asserting he can't answer the question as to the  
8 basis for that statement because what?

9 MR. GREGORY: He can answer as to the basis --

10 MR. EAGLE: Yes.

11 MR. GREGORY: -- for the statement.

12 MR. EAGLE: Yes, yes. That's what I'm asking.

13 MR. GREGORY: He can't answer as to what was in  
14 the minds of the jury.

15 MR. EAGLE: Unless -- yes, I -- unless he has a  
16 basis outside of the sealed record for that which would  
17 be not -- and of course it would not be attorney-client  
18 privilege. That would not be a proper basis.

19 MR. GREGORY: If you want to add that to your  
20 question.

21 MR. EAGLE: Yes, I will.

22 MR. GREGORY: Okay.

23 MR. EAGLE: Consider that added to the question.

24 MR. GREGORY: Okay.

25 BY MR. EAGLE:

1           Q     And let me try to make it as a -- as a -- as an  
2 omnibus question. Looking again at the last paragraph  
3 there in that document I showed you written by your  
4 counsel, what if any basis do you have for any information  
5 as to what any juror may have used as the basis for its  
6 verdict other than what might actually be contained in a  
7 sealed record of the Court of Common Pleas, any?

8           A     None.

9           Q     Great. Do you then -- would I also be  
10 correct -- and your counsel can help you with if they  
11 want -- I'm going to show you, but not mark as an exhibit,  
12 a printed hard copy of a decision reported in the -- at  
13 125 Ohio Miscellaneous 2nd 55, being State versus  
14 Wenninger.

15                     Do you understand that case to be in relation to  
16 the criminal prosecution referenced by your counsel and  
17 formally as the sealed record? Is that the same one or is  
18 it a different one?

19                     MR. GREGORY: If you know, you can answer.

20                     THE WITNESS: It appears to be the one, yes.

21 BY MR. EAGLE:

22           Q     Great. And would I be correct that, although  
23 it's probably obvious, you've only been criminally  
24 prosecuted for election related issues once?

25           A     Yes.

1 Q There's never been --

2 A No.

3 Q -- more than one? Okay, great. All right. Can  
4 you tell me -- thank you. Can you tell me please whether  
5 or not there are currently any other lawsuits pending  
6 either against you personally or against or relating to  
7 the Brown County sheriff's office other than this one here  
8 today between yourself and Mr. Varnau?

9 A There may be two or three other lawsuits but I  
10 do not know the names or -- what the particulars were on  
11 the case as far as in the capacity of the Brown County  
12 sheriff's office, that's how I'm named in the lawsuit.

13 Q And are you able today to tell me anything that  
14 you understand about the allegations of the filing parties  
15 in any of those cases?

16 That is, in other words, you said there's two or  
17 three. Can you pick one and say well, this is what  
18 they're alleging?

19 MR. GREGORY: Tom, could I --

20 MR. EAGLE: Yes, sir.

21 MR. GREGORY: Can I make a request?

22 MR. EAGLE: You may.

23 MR. GREGORY: Would you qualify your question to  
24 include or exclude foreclosures or -- and do you want him  
25 to answer as to any -- you said -- I think you limited it

1 to lawsuits.

2 Do you also mean any -- written grievances filed  
3 by police officers or internal matters that are not  
4 formally lawsuits but are --

5 MR. EAGLE: Thank you. I'm going to rephrase  
6 the question for you. Do you currently know of any civil  
7 lawsuits pending either against you individually or  
8 against the Brown County sheriff's office not including  
9 foreclosures of real estate, not including any internal  
10 employee grievances for employment related matters?

11 MR. GREGORY: Thank you.

12 THE WITNESS: Yes.

13 BY MR. EAGLE:

14 Q What?

15 A I don't know the -- names of the complainants.  
16 I do know there's at least two of them.

17 Q What do you know about those two? And I don't  
18 want you to tell me about what your side of that story is.  
19 What is their side of the story if you know?

20 A One is about -- one we got was an in home  
21 incarceration. The latest was in home incarceration  
22 complaint and the other one was about a stolen vehicle  
23 complaint.

24 And there may be others but at this time, the  
25 best of my knowledge, that's the only two that comes to my

1 mind.

2 Oh, excuse me, there is one more. Just came to  
3 mind. The -- there's one in -- Fayetteville also that  
4 comes to mind where there's a -- it's about a reference --  
5 we was -- exhuming a piece of ground for -- on a search  
6 warrant and there's -- there's one waiting in the courts  
7 on that.

8 Q But to the best of your knowledge today, those  
9 are the only ones you're currently aware of?

10 A Yes.

11 Q Are you aware of any other times that anyone has  
12 ever challenged or investigated your qualifications to  
13 either run for or hold the office of sheriff other than  
14 those you've already told me about here today in the  
15 various forms?

16 A Correct.

17 Q Don't know of any others then, correct?

18 A No.

19 Q I'm going to direct your attention one more time  
20 to the same statement in your attorney's memorandum,  
21 again, the exact same paragraph. You see where it  
22 references basically a dispute about what a juror may have  
23 had in their mind or not --

24 A Yeah.

25 Q -- correct? Do you -- would you --

1 A Could you rephrase that?

2 Q Yes, sir, I can. Would you agree with me that  
3 there's no way for anyone other than the jurors themselves  
4 to know why they made a basis for why they decided what  
5 they decided?

6 A Correct.

7 Q All right. Can you tell me please, have you  
8 ever worked for the Ripley police department?

9 A Auxiliary.

10 Q When?

11 A I do not know the exact dates. It was somewhere  
12 back in the late nineties. '99, right around that era,  
13 back then. I do not know the exact time.

14 Q So if I were to ask you then, for as specific as  
15 you can as to when you started doing that, the best answer  
16 you could give me is what you just gave me, late '99 or  
17 so, generally?

18 A Correct.

19 Q And what was the work that you did --

20 A Auxiliary.

21 Q -- for Ripley police department?

22 A Auxiliary patrolman.

23 Q And what does that mean?

24 A You're a -- you're a volunteer for the police  
25 department and do what's necessary as far as -- keeping



1 the peace and -- protecting the public.

2 Q Okay. A volunteer, do what's necessary. Would  
3 I be correct then that -- who's the su-- would be the  
4 supervisor over auxiliary police officers for Ripley?

5 A Chief Harvey Bowman.

6 Q And did -- did you actually get called upon to  
7 perform the duties of a police officer for Ripley?

8 A I don't remember.

9 Q Do you ever remember doing anything as a police  
10 officer for Ripley?

11 A I don't remember.

12 Q Were you ever sworn in as a police officer for  
13 Ripley?

14 A Yes.

15 Q Do you know who?

16 A No.

17 Q Do you know when?

18 A No.

19 Q How about where?

20 A Best of my knowledge, the administration  
21 building in Ripley, Ohio.

22 Q And was it -- was it a situation where you  
23 actually showed up and raised your hand like -- kind of  
24 like you did an hour or so ago or was it a piece of paper  
25 oath, that you just sign something like a notary?

1 A No, raise your hand.

2 Q All right. And you actually did that?

3 A Yes.

4 Q But you don't remember who administered the  
5 oath?

6 A No.

7 Q At -- do you know personally or have you ever  
8 seen any certifications or authorizations of any kind  
9 issued by the Ohio Board of Regents in relation to  
10 Technicron Technical Institute?

11 A I believe so, yes.

12 Q What do you think you ever have seen?

13 A There was one docket I believe that came from  
14 Technicron -- or came from the Board of Regents.

15 Q Okay. And what are -- what can you tell me  
16 about what you're referring to so I can try to find it?

17 A I -- it's been such a long time ago. I just  
18 remember seeing a docket. Without looking -- without  
19 seeing the docket, I could not tell you what it --

20 Q Are you saying docket?

21 A Or -- paper, letter.

22 Q Document?

23 A Maybe a letter, yes.

24 Q Okay. A letter. And do you remember who it  
25 came from?

1 A No.

2 Q Do you remember what it said?

3 A No.

4 Q All right. Do you remember ever seeing other  
5 than a letter, any type of an actual certificate or  
6 certified document issued by the Ohio Board of Regents for  
7 Technicron Technical Institute?

8 A No.

9 Q Do you -- have you ever seen or do you know of  
10 whether or not Technicron or anyone else on its behalf has  
11 ever filed any Ohio Board of Regents documents with the  
12 Ohio Secretary of State?

13 A I don't know.

14 Q Do you have any knowledge or do you know  
15 anything about what the State Board of Proprietary School  
16 Registration had to do with Technicron Technical Institute  
17 in 1987?

18 A No.

19 Q Do you know whether or not or have any  
20 information as to how Technicron Technical Institute was  
21 associated in any way, if it was, with the Ohio Board of  
22 Regents in 1987 or at any time after that?

23 A I don't know.

24 Q Can you tell me please who it was that you last  
25 had your firearms qualification instruction from prior to

1 today?

2 A My officer, Dave Stamper.

3 Q Who is it?

4 A Dave Stamper.

5 Q When was that?

6 A I don't know the exact time. We have it at the  
7 office. Sometime September, October, sometime in that --  
8 end of fall.

9 Q Do you remember who you were last qualified for  
10 firearms training for purposes of Ohio peace officer  
11 training commission certification prior to the election in  
12 the year 2000?

13 A No.

14 Q Do you have records relating to your firearms  
15 qualifications anywhere that you know of?

16 A No.

17 Q So if I were to ask you at any time from the  
18 year 2000 up to last fall, that you've already told me  
19 about, who did your firearms qualifications or training or  
20 if there's any documents in relation to that, would you be  
21 able to answer that question for any of those years other  
22 than last fall?

23 A Last year, yes. Last -- we keep records two  
24 years, last year and the year before. Other than that,  
25 the qualification would be Dave Stamper or Lee -- Sergeant

1 Lee Meyer, who is now retired from the Brown County  
2 sheriff's office.

3 Q Do you have an independent recollection of other  
4 than those two times where you did any firearms  
5 qualifications prior to '07?

6 A The Ohio peace officers when I took the peace  
7 officers training in 1988 and 1989, I went through the  
8 qualifications.

9 Q What about since then, are you able to tell me  
10 where you received firearms qualifications since then?

11 A Every year at the J.V.S. school which was either  
12 performed by Dave Stamper or -- retired Sergeant Lee  
13 Meyer.

14 Q All right. So would it be either Stamper or did  
15 you say Meyer?

16 A Yeah, Lee Meyer, M-E-Y-E-R.

17 Q Would it have been performed with anyone else  
18 that you can think of other than at the Ohio peace  
19 officers training academy or one of those two persons at  
20 J.V.S.?

21 A Peace officers training academy would have  
22 been -- best of my knowledge, would have been Mike Murphy  
23 and -- and Mr. Bennett and maybe -- Mr. Schmidt  
24 (phonetic).

25 I'm not for sure. It's been 20 years ago but

1 there was two or three instructors at the training academy  
2 back in '88 and '89.

3 Q All right. So other than those persons and  
4 those places that you've just named for me in about the  
5 last five minutes or so, are you aware of any other  
6 location or persons who you -- that ever provided to you  
7 any firearms training or qualification?

8 A No.

9 Q And I had previously asked you what information  
10 if any you had about the association between the  
11 Technicron Technical Institute and the Ohio Board of  
12 Regents.

13 I'm going to ask you -- and I may have asked you  
14 the same question in regard to the State Board of  
15 Proprietary something or other.

16 I'm going to ask you the same question, what  
17 information if any do you have about any associations  
18 between Technicron Technical Institute and the State Board  
19 of School and College Registration at any time before  
20 1988, do you have any?

21 A No.

22 Q How about after 1988, do you have any?

23 A Not to my knowledge. Only an opinion.

24 Q What -- what's that opinion?

25 A The opinion that the Board of Proprietary School

1 fell under the Board of Regents.

2 Q And when you say that -- is there any basis for  
3 that opinion other than what you've seen in your  
4 attorney's arguments on your behalf?

5 A No.

6 Q Is there anything left out?

7 A No.

8 Q I saw in one of your prior answers you had  
9 indicated you had received some type of training through  
10 the University of North Florida?

11 A Yes.

12 Q Am I getting that right?

13 A Yes.

14 Q What was that?

15 A Homicide investigation.

16 Q When was that?

17 A I don't know the exact time. Sometime in --  
18 2002 maybe, 2003. I'm not for sure on the exact year but  
19 sometime in that relative -- that time.

20 Q Great. And tell me what you can about what kind  
21 of a program that was, how long it was, daily or weekly or  
22 whatever it was.

23 A I believe it was a 40-hour one week course.

24 Q Forty hour, one week. And did you obtain or did  
25 that in any way have any benefit to you as any

1       certifications that you had at that time or since then?

2           A       They just advised -- they give us a cer-- some  
3       type of certificate and they advised that would add on to  
4       your continuing education.

5           Q       So I would be correct that the only -- formal  
6       education you have had since you graduated from high  
7       school other than your continuing education credit hours,  
8       16 hours I think you said a year --

9           A       Yes.

10          Q       -- that you've ever had would be the Technicron  
11       Technical Institute that we already talked about, true?

12          A       Correct and then the -- Florida education.

13          Q       The Florida thing?

14          A       Yes.

15          Q       But I assume that was also part of your  
16       continuing education, was it?

17          A       No, that was something --

18          Q       What was it?

19          A       -- above and beyond. That was something we did  
20       on our own.

21          Q       Let me show you and your counsel, for  
22       assistance, what is time stamped at the top filed in the  
23       Court of Appeals, August 10th, 2009 and it's titled  
24       relators exhibits filed in support of motion for summary  
25       judgment, et cetera, et cetera.



1                   Have you ever seen this set of materials before  
2 just this minute? And look at it and take as much time as  
3 you need, please.

4                   MR. GREGORY: Are you asking him if he knew  
5 the --

6                   MR. EAGLE: The first question is has he ever  
7 seen it before today because it would be somewhat  
8 unfair --

9                   MR. GREGORY: The pleading or the documents?

10 BY MR. EAGLE:

11                 Q     All of the above, the pleading and the attached  
12 documents.

13                 A     I don't remember if I've actually seen this but  
14 I remember seeing some of the dockets as I thumb down  
15 through it, yes.

16                 Q     Have you looked at those enough that if I were  
17 to ask you right now -- and I'm not sure I want to go  
18 through it page by page -- but whether you or your counsel  
19 have any dispute with the authenticity of any of those  
20 records? That they are what they say they are?

21                 MR. GREGORY: Well, note our objection for the  
22 record and you can answer if you know.

23                 THE WITNESS: I don't know.

24 BY MR. EAGLE:

25                 Q     All right. When -- and I apologize but when did

1 you say you -- became a volunteer auxiliary police officer  
2 for Ripley, was it late '99, is that what you said?

3 A That could be a possibility. Somewhere in that  
4 time frame.

5 Q And what were you doing for a living prior to  
6 that?

7 A I worked at the Brown County sheriff's office.

8 Q Was there a gap of any kind between your  
9 employment with the Brown County sheriff's office and your  
10 position that you described for me for Ripley police  
11 department?

12 A No.

13 Q Did you continue in both at the same time?

14 A No. One took over exactly -- before the other  
15 took over so there was not a break in service.

16 Q You had previously indicated that you spoke to  
17 two jurors on your criminal trial. Do you remember  
18 telling me that?

19 A Yes.

20 Q Without telling me at this point anything that  
21 they said, what were their names?

22 A I have no idea. I -- I'm drawing a blank. I  
23 know their face -- one of them is a female and one of  
24 them's a male but I do not know their names at this time.

25 Q All right. What do you recollect either of them

1 telling you?

2 A Just casual passing I believe. Maybe at the  
3 Brown County fair, hi, how you doing. Other than that --  
4 nothing other than that.

5 Q Great. I need to take just a few minutes break,  
6 please. Off the record.

7 (A brief recess was taken.)

8 BY MR. EAGLE:

9 Q Back on the record. Sir, I'm going to direct  
10 your attention --

11 A Yes.

12 Q -- if I can, maybe get some dates pinned down a  
13 little bit better. I'm going to show you what looks to be  
14 like -- you know what that form is, don't you, that I'm  
15 showing you, which is marked as exhibit 2A in our  
16 documents being an OPOTC records, it looks like a cover  
17 letter from the Attorney General's office and attached to  
18 that, a form, SF--

19 A SF400.

20 Q -- 481 -- you know what that form is, I guess,  
21 do you not?

22 A Yes.

23 Q Great. And does it in fact have your signature  
24 on the next page?

25 A Yes.

1 Q Great. And then directing your attention to the  
2 following pages of that, does it not reflect -- so we can  
3 pin down the dates a little bit, Brown County sheriff's  
4 office, your term -- it says ended 12/19 of '99 and Ripley  
5 started 12/19 of '99 so that pins down, does it not, when  
6 you started with Ripley?

7 A Yes.

8 Q All right. Terrific. Now, on the -- the very  
9 next page, which is -- so that we're looking at it  
10 correctly, it says received from the peace officer  
11 commission February 3rd of 2000, says that you were  
12 commissioned or appointed with the Ripley police  
13 department on January 22nd of 2000. Do you see that?

14 A Yes.

15 Q Do you know who filled this form out? Is that  
16 your handwriting?

17 A I cannot answer that.

18 Q All right. Is that your signature on the next  
19 page where it says signature, requesting individual?

20 A It appears to be.

21 Q All right. Do you have any reason to dispute  
22 the figures that are on the form in regard to Brown County  
23 sheriff's deputy position to September 7th of '99 and  
24 Ripley police appointment January 22nd of 2000?

25 A Yes.

1 Q What?

2 A This date here is not the correct date and --  
3 neither is this date here.

4 Q Do you know where that information came from  
5 then?

6 A No. No, this date here possibly -- 9/07, I'm --  
7 I'm not for sure exact -- I can't answer that. I don't  
8 know.

9 The -- the date would be the -- correct date  
10 would be which is on -- the appointment sheet right above  
11 here which was 12/19 of '99 and -- I started -- the  
12 correct date was 12/19 of '99 and the official start at  
13 Ripley was 12/19 of '99.

14 Q Great. Can you -- and I'm -- I'm going to test  
15 your memory to some extent. Would you agree with me or  
16 not that you were first sworn in as Brown County sheriff  
17 on January 1st of 2001?

18 A That -- that would be close but I cannot -- the  
19 best of my knowledge, yes, but I cannot answer it  
20 correctly.

21 Q Could you recollect that you were sworn in then  
22 at the second term January 3rd, 2005?

23 A That sounds correct, yes.

24 Q All right. Let me look for one thing and then  
25 we'll be done. I'm going to -- show you and your counsel

1 a letter dated July 21st, 2009 from Leslie Meyers, the  
2 fiscal officer for village of Ripley. Are you familiar  
3 with that person?

4 A I know who she is.

5 Q Great. Have you ever seen this document before  
6 that you know of?

7 A No.

8 Q Great. Let me turn you then to the one, two,  
9 three, fourth page which purports to be a peace officer  
10 commission and oath of office. Does that look to be your  
11 signature?

12 A It appears to, yes.

13 Q All right. And it's dated January 22nd of 2000,  
14 is it not?

15 A Yes.

16 Q All right. In fact, it has a notary at the  
17 bottom for the same date, Harvey Bowman?

18 A Yes.

19 Q Great. And that matches up -- with -- the date  
20 on the page of the exhibit 2A, Ripley police department,  
21 1/22 of 2000 as well, does it not?

22 A Yes.

23 Q All right. And you still think that date's  
24 incorrect though?

25 A Yes.

1           Q     All right.  And so is the dates on this  
2 document, being the certified copy from Ripley, is that  
3 incorrect as well?

4           A     Yes.

5           Q     What's incorrect about it?

6           A     The date.

7           Q     They dated it and notarized it the wrong day is  
8 what you're saying?

9           A     I cannot answer that.

10          Q     Okay.  Why is it then that you think this one is  
11 wrong, that is the peace officer commission and oath of  
12 office is wrong and not the other one?

13          A     Because the -- you don't have a break in service  
14 when you go from one agency to the other.  We started that  
15 the same day.  I do remember that.

16          Q     Okay.  All right.  Terrific.  Just a second.  
17 Would it be permitted for you to function as a police  
18 officer prior to actually taking the oath?

19          A     No.

20          Q     So you would have to be sworn in before you  
21 could hold the office and perform the duties, true?

22          A     Correct.

23          Q     All right.  Just a second please.  No other  
24 questions for you today, sir.  I appreciate your time.  
25 Thank you.

1                   Court reporter, please, I'll take mine with me.  
2                   She can have that one. I'll let your counsel talk to you  
3                   about signature or waiving.

4                   MR. GREGORY: We'll waive signature. She's  
5                   going to call me. Are you ordering a transcript?

6                   MR. EAGLE: Don't know yet.

7                   (The deposition was concluded at 3:05 p.m.)

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1 STATE OF OHIO :  
2 : ss C-E-R-T-I-F-I-C-A-T-E  
3 COUNTY OF GREENE :

4 I, Mary E. White, a Registered Professional  
5 Reporter and Notary Public in and for the State of Ohio at  
6 Large, duly commissioned and qualified;

7 DO HEREBY CERTIFY that the above named DWAYNE L.  
8 WENNINGER, was by me first sworn to testify to the truth,  
9 the whole truth, and nothing but the truth; that his  
10 testimony was recorded by me in stenotype and thereafter  
11 reduced to typewriting; that signature was expressly  
12 waived; and was taken at the time and place hereinabove  
13 set forth, by agreement of counsel as stated.

14 I FURTHER CERTIFY that I am not a relative or  
15 attorney of either party, nor in any manner interested in  
16 the event of the action.

17 IN WITNESS WHEREOF I have hereunto set my hand  
18 and affixed my seal of office on the 8th day of September,  
19 2009.

20  
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23  
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\_\_\_\_\_  
MARY E. WHITE, RPR  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires 03-02-11.

- - -