

**THE ATTORNEY GENERAL'S REPORT OF THE INCIDENT BEGINNING AT THE
CROWNE PLAZA HOTEL ON DECEMBER 23, 2013, INVOLVING STATE
REPRESENTATIVE DAVID CAMPBELL & NASHUA POLICE COMMISSIONER
THOMAS J. PAPPAS SR.¹**

INTRODUCTION

The Office of the Attorney General conducted an investigation of the events that occurred on December 23, 2013, triggered by the killing of five ducks outside the Crowne Plaza Hotel in Nashua, New Hampshire. The purpose of this report is to summarize the Attorney General's findings and conclusions with regard to the actions of David Campbell the individual who struck and killed the ducks, and Thomas J. Pappas, Sr., who at the time was a Nashua Police Commissioner.

The facts presented in this report are without input from Campbell, except for the limited information he provided to Nashua police after the incident. On February 3, 2014, Campbell, through his attorney, declined to be interviewed during the Attorney General's investigation. All other witnesses contacted by the Attorney General's Office agreed to be interviewed.

FACTS

Late in the afternoon on Monday, December 23, 2013, a small group of former New Hampshire legislators met at Fratello's restaurant in Manchester for an annual holiday gathering. Among those in attendance were Pappas and Campbell. Pappas arrived at approximately 5:00 p.m. and Campbell arrived at approximately 5:30 p.m. Pappas drank a beer and ate hors d'oeuvres, Campbell ordered a drink and ate hors d'oeuvres as well. Pappas and Campbell both left the gathering between 6:00 p.m. and 6:30 p.m. Pappas left to finish Christmas shopping and did not know where Campbell went.

At approximately 8:00 p.m., Campbell arrived alone at the Speaker's Pub, located in the Crowne Plaza Hotel in Nashua. Two men who work in the same building as Campbell, Stephen Bottari and Bruce Baird, joined Campbell at the bar. This was not a planned meeting. Thereafter, Gyung Ok Cahill joined the men. Campbell had called Cahill and asked her if she wanted to meet for drinks at the bar. While all four were together, Bottari and Baird each drank two beers and each ate a cheeseburger. Campbell ate a lobster roll and drank a glass of Sauvignon Blanc. Cahill drank a Grey Goose (vodka). Bottari paid for the food and drinks.

At approximately 9:15 p.m., the four ordered another round of drinks. The men each drank a glass of Patrón (tequila), and Cahill had another Grey Goose. Campbell paid for the four drinks, and the bartender, Cindy Sumrall, took the payment at approximately 9:48 p.m. Bottari and Baird left after the bill was paid. While Campbell and Cahill remained in the bar for a short while, they did not order any additional food or drinks. Sumrall recalled that Campbell asked for another water. Campbell and Cahill left the bar at the same time, and a short time later, Sumrall

¹ On February 4, 2014, Thomas J. Pappas, Sr., tendered his immediate resignation as a member of the Nashua Police Commission to Governor Margaret Wood Hassan.

saw Campbell waiting for Cahill outside the bathroom. No witness saw either Campbell or Cahill leave the hotel or get into their vehicles.

The road in front of the hotel is split into two one-way driveways. The road forks near the northern corner of the hotel. A driver leaving the restaurant parking lot is required to take the one-way fork to the right; the one-way fork to the left passes immediately in front of the hotel, where hotel guests are dropped off. There is a small pond between the roadways. Water for the pond includes overflow from the indoor pool, and as a result does not ice over in the winter. The pond is inhabited by ducks. The ducks are not the property of the hotel.

At approximately 10:00 p.m., Stanley Clark, a van driver for the Crowne Plaza Hotel, arrived with a Southwest Airlines' crew. The passengers got out of the van and recovered their luggage. Southwest Airline pilot James Murphy remained near the rear of the van, and a female flight attendant was on the sidewalk. The remainder of the crew had moved into the lobby of the hotel.

Clark has worked for the Crowne Plaza Hotel for approximately seven years. He informed investigators that when he drops off passengers, the ducks will leave the pond and approach the passengers for food. Airline crews look forward to seeing the ducks, and often bring leftover snacks from the flight to feed the ducks. Clark and other hotel staff confirmed that it is rare for a car to go in the wrong direction in front of the hotel. They also noted that while an occasional duck had been hit, albeit rarely, the striking and killing of five ducks had never occurred before.

When Campbell approached the intersection instead of traveling to the right, he drove left, against the one-way traffic. The front of Clark's van was pointing toward Campbell's car. Clark was standing at the driver's side door of the van. The door was open. The van's headlights were illuminated and the van's engine was running. Clark was facing the interior of the van, and therefore heard, but did not see, Campbell's car pass immediately behind him. Clark heard a scream, a thump and a commotion as Campbell's car drove by him in the wrong direction. Campbell did not slow down as he struck the congregating flock of ducks, killing five of the ducks.

As Campbell continued driving the wrong way, Murphy pulled out his cell phone and gave chase to get a picture of the license plate as he was unsure if Campbell would stop. Campbell, however, did come to a stop at the end of the one-way driveway. When Campbell got out of the car, Murphy stated you crushed those ducks. Campbell's reply was, they should have moved. Murphy's observations of Campbell's gait and odor of alcohol led him to ask the others to call the police as Murphy thought Campbell had been drinking.

Connor Lippman, the hotel's security officer, exited the hotel through the front entrance after the ducks had been struck and killed, but before Campbell had slowed to a stop. He heard Murphy's request that the police be called and he made the call. He told the dispatcher that "[t]here's a gentleman who is drunk. He ran over four or five ducks, right in the parking lot. And ... we might have an altercation between him and another guest." In response to the call, Nashua police officers Michael Hatzipetros and Nicholas Jowders responded. Lippman stated in

interviews that he did not personally observe signs of intoxication, but reached that conclusion because he had earlier seen Campbell in the bar, knew Campbell was driving in the wrong direction, knew Campbell had run over the ducks, and heard Murphy say that Campbell was drunk.

Murphy said that, when he called back to Lippman to call the police because he thought Murphy had been drinking, Campbell asked him not to do that. Campbell said either that it would ruin his life or that it would ruin his reputation. (The witnesses are consistent in noting that Campbell said something concerning ruining his reputation.) Campbell also said that he thought that the ducks were going to move. None of the witnesses interviewed by the Attorney General's Office observed Murphy make any verbal or physical threats to Campbell. The witnesses said that Murphy kept a few feet between himself and Campbell, and although Murphy was yelling at Campbell, there did not appear to be any risk of physical violence. None of the witnesses indicated that Murphy was being inappropriate in light of what Murphy had just witnessed Campbell do to the ducks.

Campbell got back into his car, and announced that he was just going into the garage and that he was not trying to leave. Campbell proceeded into the garage and parked his car. After Campbell stepped out of his car, witnesses saw him drink something from a bottle. As he walked from the garage, he spit out whatever he had taken to rinse his mouth. He then walked up the sidewalk toward the hotel entrance. He attempted to enter the hotel through the doors nearest the garage, but the doors were locked. He then entered the hotel through the front doors. Lippman heard Campbell announce he was sorry and that he was not leaving, he was just going inside to wait. Campbell then entered the hotel lobby. That was the last time the witnesses at the scene saw Campbell.

Clark looked back in the direction Campbell had come from and saw a car driven by a woman, subsequently identified as Cahill, stopped a short distance in front of his van. Clark went to the car and told Cahill she would have to back up and go out the other way. She promptly backed up and left using the correct one-way driveway.

Upon arriving at the scene, Hatzipetros and Jowders first spoke with Lippman. Lippman gave them information regarding Campbell's actions, and informed the officers that Campbell had parked his car in the garage. Hatzipetros also spoke with Murphy, Clark, and another witness, Christopher Best. Murphy told the officer that Campbell was traveling at approximately fifteen miles per hour and accelerated through the ducks.

When the police arrived, Campbell's identity was unknown to the witnesses. Hatzipetros attempted to run Campbell's license plate, but legislative plates are not stored on the DMV database, so he was unable to immediately identify Campbell. Hatzipetros attempted to read the VIN number on the dashboard of the car, from which he would be able to identify the registered owner of the vehicle. The VIN number, however, was covered with a piece of paper and could not be read. Hatzipetros contacted the Nashua dispatcher, who was able to obtain Campbell's identity from State Police.

At that point, Hatzipetros and Jowders attempted to locate Campbell. Hatzipetros and Jowders met with the desk clerk, who informed them that Campbell was not registered as a guest. A holiday party was letting out at about that time, and the officers asked partygoers as they were leaving if they knew Campbell, but no one recognized the name. Hatzipetros and Jowders also met with Sumrall at Speaker's Pub. She said that at about 8:05 p.m., Campbell was in the restaurant for dinner with three other people. Hatzipetros asked her if Campbell appeared intoxicated and she said he had not.

Hatzipetros also went to Murphy's hotel room. Murphy informed Hatzipetros that he had identified Campbell from the House of Representatives website, and provided Hatzipetros with Campbell's contact information from the website. Murphy also said he would be willing to provide a voluntary written statement. Hatzipetros also obtained written statements from Clark and Lippman.

Jowders checked the area inside and outside the hotel for any signs of Campbell. Finding no sign of Campbell, Jowders attempted to call Campbell using the number he found online using the search "State Representative." When Jowders called the number listed for Campbell, the number rang. At the end of the ring there was a beep, which Jowders understood to mean the phone was in use. The call went to voicemail. The voicemail greeting indicated it was David Campbell's voicemail. Jowders left a message identifying himself as Officer Jowders of the Nashua Police Department. His message said that Campbell needed to call the Nashua Police as they needed to get in touch with Campbell to figure out what was going on. Jowders estimated he left the message at approximately 10:40 p.m. Approximately five minutes later, Jowders again called Campbell's phone. The phone rang and again went to voicemail. Jowders said that since the ring did not beep at the end as it had previously, he concluded Campbell was not on the phone. Jowders could not recall if he left a second message. At approximately 11:05 p.m., Jowders drove around the businesses in the area near the hotel to look for Campbell, but was unable to locate him. Jowders left the scene when he did not locate Campbell around the hotel. Hatzipetros left shortly thereafter.

After leaving the Crowne Plaza, Campbell called Pappas's home telephone several times. Campbell and Pappas have been friends since the mid-1970s when both served in the New Hampshire House of Representatives. Pappas was asleep and was woken up by his son, who said either that Campbell was on the phone, or that he had left an urgent message asking Pappas to call him back. When they spoke, Campbell told Pappas something to the effect that he had "screwed up" and had hit some ducks at the Crowne Plaza. Campbell further stated that he had been confronted by someone who was hostile, and then had walked to his office. Pappas recalled Campbell telling him that Pappas needed to give him a ride. Pappas hung up without asking why Campbell needed a ride. Campbell had never before called Pappas at night asking for a ride. Nonetheless, Pappas stated he did not think twice about the request because when a friend asks for a ride, he instinctively says yes.

As Pappas drove to Campbell's office, Campbell called Pappas's cell phone and stated he would be outside his office. Campbell's office is located at 20 Trafalgar Square, which is adjacent to the Crowne Plaza Hotel.

Pappas drove to the parking lot on the north side of the Trafalgar Square building. When he did not see Campbell he drove around the building and saw Campbell there about fifty feet away. Pappas said that Campbell walked to the car, got in, and buckled his belt without any problems. He reported he detected no odor of alcohol from Campbell. Campbell instructed Pappas to take him to a lady friend's apartment and gave directions near the Pheasant Lane Mall. The investigation revealed that the woman who lived at that address was Rocel Gonzales.

Pappas said that while they were in the car, they discussed the hitting of the ducks and the confrontation with Murphy. According to Pappas, the subject of why Campbell needed a ride from Pappas at 11:00 p.m. after hitting five ducks did not come up. Pappas recalled that Campbell's explanation for why he had hit the ducks was that his foot had slipped off the brake.

While still on Amherst Street, heading away from the area of the Crowne Plaza, Campbell checked his voicemail and informed Pappas that he had a message from the police saying they wanted to talk to Campbell. When asked why he did not go to the police station at that point, Pappas stated he did not think of it. Pappas stated that he did tell Campbell that he was a Nashua Police Commissioner and could not ignore the call, and that they needed to respond to the call. According to Pappas, Campbell did not say anything in response.

Pappas described the unfolding situation as being "confronted with a conflict." It was a conflict he had never been confronted with before, so he needed to think through what to do. Thus, he spent the next 10–15 minutes thinking through what he needed to do. And while he was thinking, he continued to drive Campbell away from the scene of the incident to the other end of Nashua to an unknown apartment of an unknown woman. Pappas determined "that the right thing to do was to call the police." If they wanted to see Campbell that night, then Campbell needed to go to the police station. If Campbell needed a ride, Pappas told him he would "come get him, and give him a ride." If the police wanted to see Campbell the following day, he would give Campbell a ride if needed. Pappas noted that when he told Campbell that they needed to call the police, Campbell said, "I understand. That's fine."

On Main Street near City Hall, Pappas recalled Campbell making a comment that it would look bad politically that he had hit the ducks, but that it would be worse if he had been drunk. Pappas did not ask what Campbell meant by this statement.

Pappas continued on to Campbell's lady friend's apartment, but neither man made any attempt to contact the Nashua Police Department. When Pappas and Campbell arrived in front of the three-story apartment complex, Campbell directed Pappas to, Campbell got out of the car, made a brief call to Pappas's cell phone, walked up to the apartment building, entered the front door, and rang a door buzzer for one of the apartments. In regard to the call that Campbell had just made to Pappas's cell phone, Campbell informed Pappas that the message would record the time. Pappas did not question what this message was about. Campbell then exited the building, walked back to the car, and informed Pappas that his friend was not home, but should be home soon. Pappas asked Campbell if he wanted him to wait, but Campbell said no. Pappas informed Campbell that he was going to contact the police and let them know where Campbell was. Pappas again told Campbell he needed to go when the police wanted him, and if needed, Pappas would give him a ride. Campbell told Pappas that he considered Pappas to be his lawyer, and

that Campbell considered all of their conversations that evening to be privileged. Pappas left the apartment complex alone and returned home. While Pappas was an attorney and considered Campbell to be a friend and a client, when he called the police (after dropping Campbell off), he described Campbell as his "friend." As for a prior legal representation of Campbell, the only time Pappas could recall representing Campbell was more than a decade before, when he assisted Campbell with a matter regarding Campbell's purchase of his home.

Pappas did not personally listen to the message Campbell left for him at approximately 11:21 p.m. while they were at the apartment complex. As part of the investigation, Pappas turned the message over to investigators. The message stated in full the following:

Tom. It's David. I'm at a friend's house on the South end. Ah, please call me, when you get a chance. But, hurry up, 'Cause, my cell phone is dying.

Pappas recognized he had a conflict in light of his role as Police Commissioner and concluded he could not provide legal representation to Campbell. He called his former law partner, Daniel Duckett, because he handled criminal matters. Pappas left Duckett a voicemail message requesting a call.

Pappas next turned his attention to calling the Nashua Police Department. He called the phone number he had available to him, but when the Chief's voicemail picked up, he hung up without leaving a message. Unable to find the general Nashua Police Department phone number, he asked his wife how to find the number. His wife asked why he was calling the police, and Pappas gave her a general description of his interaction with Campbell. Pappas's wife suggested he not go to the police station to inform them about his interaction with Campbell, but instead that he do it by telephone so there would be a recording of what he said. Pappas's wife recognized that Campbell had put Pappas in a terrible position.

Nashua police Sergeant Carlos Camacho was the station supervisor the night of December 23-24, 2013. At about 12:15 a.m., he received a call from Pappas. Camacho knew Pappas was a commissioner, and noted that photographs of all of the commissioners are hanging on the station wall. Camacho had never before spoken to a commissioner at that time of the evening, and never before for anything more than a question of where the Chief was. The conversation between Pappas and Camacho shortly after midnight was recorded, and went as follows:

C: *Sergeant Camacho.*
P: *Ah, Sergeant Camacho. It's Tom Pappas. How are you?*
C: *Hey, how are you doing, Commissioner?*
P: *Good. Um, I understand that, um, you folks are looking for a David Campbell?*
C: *David Campbell? Um. I'm not sure. Let me. Is anybody looking for David Campbell? (Unknown Voice: Yeah. He ran, he ran over, and killed five ducks at the Courtyard.) Oh. Is that the accident? Yeah. Yes, Sir. They were looking for him, earlier, on second shift.*
P: *Yeah. Um. He's a friend of mine. He.*
C: *Okay.*

P: He's, he's at a friend's house.

C: Okay.

P: Um, I don't. His phone died. Um, I can. Ah, is it okay, if, if I have him come to the station tomorrow morning?

C: Ah, Yeah. 'Cause, I, I think, the Officer that was working on it. That is working on it. He's, ah. He already left for the day.

P: Okay.

C: Um, so, I think that would be best. Do you want him to just talk to, ah, Officer Hatzipetros, tomorrow? Or, come in, in the morning? I don't have the details of what happened. Yeah. I think, I think, that'll be fine, Commissioner, if he just comes in.

P: Okay.

C: Um.

P: Should he ask for anybody in particular?

C: It's, ah, Officer Hatzipetros who is, ah, investigating it.

P: Okay.

C: Um, but, he comes in on second shift. Let me see if he's working tomorrow. He might be off, tomorrow.

P: Okay.

C: Yeah. It says, he's working tomorrow at three o'clock.

P: All right.

C: So, maybe, maybe, if, if he can, if he can leave a message in the morning, ah, for Officer Hatzipetros. And, that will show that that he called.

P: Yeah.

C: And, then, he. And, then, they'll tell him that he comes in at three. And, he can call him at three o'clock, and make an appointment to see him.

P: Okay. I'll have him call the station in the morning. And.

C: And, then, he can leave him a message. Yeah.

P: Okay. I'll have him do that.

C: All right. Thank you, Commissioner.

P: You're welcome.

C: All right. Ba-Bye.

P: Bye, now.

Pappas next called Campbell's cell phone, spoke with Campbell, and informed Campbell that he needed to call the police station in the morning to schedule a meeting with Hatzipetros. Campbell called the station the next morning at approximately 9:00 a.m., and rather than schedule a meeting, gave the officer who answered the phone a phone number for Hatzipetros to call him.

At approximately 4:09 p.m. on December 24, 2013, Hatzipetros called Campbell. Hatzipetros asked Campbell if he would come to the police station, to which Campbell stated that he was in Massachusetts, and would be back on December 27th. Thus, Hatzipetros conducted a telephone interview. Campbell informed Hatzipetros that on December 23rd he went to move his vehicle from the Speaker's Pub parking lot to the hotel's parking garage. He gave no explanation for why he was moving his car into the hotel's parking garage. Campbell said

that as he drove past the hotel drop off area he observed several people feeding the ducks. He told the officer that the people were not supposed to feed the ducks as there are signs advising guests not to feed the ducks. He stated that after he drove over and killed the ducks, he pulled his vehicle over. Campbell said when he exited his car he encountered an angry man who stated he was a marine, and was going to make Campbell feel how the ducks felt. Campbell informed Hatzipetros that upon seeing his House of Representatives license plate, the marine said he was going to ruin Campbell's life. Campbell said to Hatzipetros that he grew very nervous, entered his vehicle, and continued to the parking garage where he parked for the evening. Campbell stated he stayed in the area for five to ten minutes, and eventually entered the lobby. Once in the lobby, Campbell said he left the area and went to his office at 20 Trafalgar Square. He informed Hatzipetros that he realized his phone was off and called a friend for a ride home. He said that he spent the remainder of the evening at home.

Hatzipetros asked Campbell about the number of drinks Campbell consumed at Speaker's Pub, and whom Campbell had dinner with. Campbell noted he had two drinks and had dinner with three friends. Campbell added that he was not intoxicated. When Hatzipetros asked Campbell if he knew that the passenger drop-off area was one-way, Campbell said he did not know the road was one-way. He further stated that signs were not posted. However, Campbell did admit that he had been going to the hotel for more than twenty-three years. Campbell said that he saw the ducks as he drove through the drop-off area. He noted that ducks had been at the hotel for twenty-three years and that they normally moved out of the way when someone drove by. Campbell estimated his speed to be fifteen miles per hour as he drove through the drop-off area in the wrong direction. He also told the officer that he double tapped his brakes to slow down, but his foot slipped, causing him to hit the gas pedal by mistake. Campbell admitted drinking water after he got out of his vehicle, saying he was on antibiotics and he was parched. Campbell stated he had not intentionally covered the VIN number for his vehicle. When asked who picked him up from his office, Campbell responded that Pappas, who was his lawyer, picked him up and gave him a ride home. Campbell also added that his phone died that night and he was unable to receive any calls.

On December 27, 2013, the date when Campbell stated he would be back in New Hampshire, Hatzipetros called Campbell and asked if he would be willing to come to the station for an interview. Campbell stated that he would need to speak with Eric Wilson, his attorney, prior to speaking with Hatzipetros. Hatzipetros next spoke with Wilson, who informed Hatzipetros he could speak with Campbell on December 30th at Wilson's office.

On December 30, 2013, Hatzipetros met with Campbell and Wilson. Campbell provided the officer with a similar versions of the events of December 23rd. Campbell noted there was no one-way sign in the way in front of the hotel. Campbell stated he was unaware of the one-way arrow markers on the way. Campbell stated he was not aware that passengers were being dropped off as he drove through and that he normally drove through the drop-off area in the wrong direction. Campbell stated that when he went to the hotel lobby, he was aware that the police had been called. Campbell was asked whether, in light of what Campbell described to be Murphy's actions, Campbell felt the need to notify the police of those actions. Campbell replied that he did contact the police, apparently referring to Pappas's call after midnight. Hatzipetros

noted that Pappas's call was approximately two hours after the incident, but Campbell made no response and the interview ended.

Campbell was subsequently charged with, and found guilty of, illegal taking of waterfowl in violation of RSA 209:6. Based on the totality of the evidence, this was the charge that the Nashua Police determined was the most appropriate charge to bring. After the Nashua Police released the reports of the incident pursuant to a right-to-know request, there was a request for a review of this incident as it involved a then sitting Nashua Police Commissioner and a member of the House of Representatives.

On January 15, 2014, prior to the Attorney General launching a formal criminal investigation, Attorney Russell Hilliard wrote to Attorney General Foster on behalf of Pappas. Pappas, through Hilliard, provided the Attorney General with the following description (but noting it was excluding his privileged communications with Campbell) of the events of the evening of December 23rd:

During the late evening on December 23 David Campbell called me at home. My wife and I were asleep in bed. My teenage son answered the phone, came into our bedroom, and handed me the phone. I had a brief conversation with David.

I got dressed and drove to David's office building, which I have visited many times. David's office building is across a parking lot from the hotel. There is a parking lot on each side of David's office building. It has a glass lobby that has a door from the lobby facing each parking lot. I drove into the parking lot in between the hotel and the office building, but did not see David, so I drove around the back of the building to the parking lot on the other side of the office building. I stopped my car in the parking lot and observed David come to my car from approximately 50 feet away without any difficulty. David was not stumbling or having any problem with coordination. At the time that I picked David up at his office building I had no knowledge that the police had been called or that the police were involved.

After I gave David a ride, I drove home and called the police department because the police had attempted to contact David. (My cell phone battery was dead so I had to call from home.) I identified myself as Tom Pappas, and asked to speak with the desk sergeant. I also identified myself to the desk sergeant as Tom Pappas. I told the desk sergeant that I was calling on behalf of David Campbell who was a friend of mine. I asked if the police were looking to speak with David Campbell. The desk sergeant checked and then told me that the police were looking to speak with David Campbell. I asked the desk sergeant if they would like David Campbell to come to the police station that evening. The desk sergeant checked again and informed me that the matter had been assigned to Officer Hatzipetros and that Officer Hatzipetros had gone home. The desk sergeant checked to see if Officer Hatzipetros was working on December 24. The desk sergeant confirmed that Officer Hatzipetros was working on December 24, and told me to ask David Campbell to call the department in the morning on December 24. The desk sergeant stated that Officer Hatzipetros would not be in until his shift began at 3:00 p.m. on December 24, but that David Campbell should call in the morning, and the

department would give Officer Hatzipetros the message and that Officer Hatzipetros would contact David after his shift began to make arrangements to speak with him.

I have not contacted the police department regarding this matter since I called the desk sergeant on the evening of December 23 and the desk sergeant confirmed that the police would like to speak with David. On January 3, the police chief called me at my office. I speak with the police chief quite often regarding police matters. We spoke about some police matter, and then he told me that Officer Hatzipetros would be calling to interview me. The Chief asked if Officer Hatzipetros should call me at the office or at home, and asked whether the attorney-client privilege would apply to my conversation with David Campbell. I informed the chief that the attorney-client privilege would apply, but that I would check with David to determine whether I should continue to assert his privilege. The chief also said that the department was looking into charging David Campbell with violating a fish and game statute that was referred to in a newspaper article. I called the chief back on my way home from the office, told him that Officer Hatzipetros could call me at home, and that I would continue to assert David Campbell's attorney-client privilege? On January 3, 2014, Officer Hatzipetros called me at home. I told Officer Hatzipetros that I had represented David Campbell for many years, that I had an attorney-client relationship with him, and that my conversation with David on December 23 was a privileged communication. I told Officer Hatzipetros that he could ask me questions over the phone or he could do so in person. He told me that since the attorney-client privilege applied he did not need to ask me any questions.

On January 16, 2014, Attorney Hilliard sent the following e-mail message to Attorney General Foster:

Joe--Following up the statement I provided you from Tom yesterday he and I have now listened to the tape recordings on the Nashua Telegraph website.

The one of Tom's call to the police department differs from his distinct recollection, as he had provided his best recollection of events that happened that late night three weeks ago, both in an earlier statement to the press, and to you.

He does, however, want to be sure that his statement to you is supplemented by this additional information--

ANALYSIS

Campbell refused to cooperate with the Attorney General's investigation. His version of the facts, therefore, is based entirely upon statements given to Hatzipetros. He stated to Hatzipetros that he had been going to the Crowne Plaza hotel for over twenty three years. All hotel witnesses stated that it was very unusual for a car to proceed in the wrong direction, as Campbell did on December 23rd. All hotel witnesses stated that while an individual duck had been hit by a car, albeit rarely, five ducks have never been killed in one incident. Campbell admitted he was aware of the presence of the van in the road, he saw the ducks, and he observed individuals feeding the ducks. While Campbell claimed not to know the drop-off area was a one

way road he was quick to point out that he knows there are signs that say do not feed the ducks. Murphy estimated Campbell's speed to be approximately fifteen miles per hour, which is the same speed Campbell estimated to Hatzipetros that he was traveling.

Campbell told Hatzipetros that Murphy threatened to make Campbell feel how the ducks felt. That is the same thing he told Pappas in the car as they drove away from the scene. No witness at the scene heard Murphy make that statement to Campbell. Campbell said Murphy said he was going to ruin Campbell's life. The witness at the scene who heard the exchange reported that Campbell said something about his life being ruined if the police were called.

Campbell told Hatzipetros that he called a friend and that friend dropped him off at home where he spent the remainder of the evening. When asked the name of his friend, Campbell told the officer that Pappas, who was his lawyer, picked him up from his office and gave him a ride home. Pappas, however, reported he dropped Campbell off at Campbell's lady friend's apartment, and left him there that night. Gonzales confirmed that weeks later, Campbell told her he had gone to her apartment after killing the ducks. Thus, it appears that Campbell's statement to the officer was untruthful.

Campbell informed Hatzipetros that his phone died that night, and he was unable to receive any phone calls. However, Jowders called Campbell's phone and could tell that Campbell was on the other line. On Amherst Street, as Pappas was driving Campbell to Gonzales's apartment, Campbell picked up the message left by Jowders, and informed Pappas that the police wanted to speak with him. At 11:21 p.m., Campbell left Pappas the cryptic message about being at a friend's house in the South End. After Pappas spoke with Camacho at 12:15 a.m., Pappas called Campbell's cell phone and spoke with him, telling Campbell that he would need to make arrangements to go to the police station the next day. Thus, Campbell's statement to Hatzipetros, that his phone died that night and he was unable to receive any calls, was likewise untruthful.

As Campbell and Pappas were parting ways and after Pappas told Campbell that Pappas had to call the police, Campbell told Pappas that he considered Pappas to be his lawyer, and as such, Campbell considered all their conversations that evening to be privileged. Prior to an interview with Hatzipetros, Pappas contacted Campbell to ask Campbell if the attorney-client privilege should be asserted. Campbell informed Pappas that he should assert the privilege. As a result, Pappas stated that for many years he had an attorney-client relationship with Campbell when Hatzipetros attempted to interview Pappas about the events of December 23rd. Before being interviewed by the Attorney General's Office, Pappas's attorneys obtained consent from Campbell's attorney to talk about all communications with Campbell that evening. With one exception more than a decade earlier in relation to the purchase of Campbell's home, Pappas could not recall any instance where Campbell was his client. Although Pappas had many conversations with Campbell over the years, as a colleague regarding legal issues Campbell was addressing in his law practice, Pappas could not recall any other instance (other than the matter about the house purchase) in which he had represented Campbell in an attorney-client relationship. Further, Pappas conceded he had not practiced criminal law and was not equipped to provide legal advice regarding a criminal matter. Therefore, Campbell and Pappas did not have an ongoing attorney-client relationship at the time of this event. Thus, it appears that

Campbell attempted to create such a privilege, to prevent Pappas from revealing their discussions about the incident and where Pappas brought Campbell.

After exiting Pappas's vehicle, and while standing next to Pappas's vehicle, Campbell, using his cell phone, left the following message on Pappas's cell phone:

Tom. It's David. I'm at a friend's house on the South end. Ah, please call me, when you get a chance. But, hurry up, 'Cause, my cell phone is dying.

Campbell then told Pappas that he had left the message, and said something to the effect that the message would record the time. Pappas stated he discovered the message a couple of weeks later, and never listened to the message. Pappas's attorneys confirmed that the message was marked as unopened when they recorded it so as to provide it to the Attorney General's Office. In the absence of any explanation by Campbell, the message left by Campbell on Pappas's phone while standing outside Pappas's car can only rationally be described as an attempt to suggest an alternative version of the events after Campbell killed the ducks and left the scene. The message was never raised with police, nor was it otherwise ever used with any attempt to deceive.

When Pappas initially received the call at home from Campbell, he said a friend needed his assistance, and he would always help a friend in need. Once he picked up Campbell, he almost immediately took on divergent roles. He had responded to Campbell as a friend and perhaps according to his thinking an attorney, but he quickly learned that the Nashua Police wanted to speak with Campbell, about the incident at the Crowne Plaza. This placed Pappas in a difficult position because he was then a member of the Nashua Police Commission. As Police Commissioner, Pappas recognized he would need to take some action and told Campbell he was going to call the police. While Pappas concluded he needed to call the police, he did not do so until he returned home and only after he attempted to secure a criminal attorney for Campbell.

When he called the police, Pappas did not tell Camacho that he was not calling on official business as a Commissioner, although he did subsequently note that Campbell was a friend of his. He also did not indicate that he was calling as Campbell's attorney. Pappas told Camacho that Campbell's phone was dead. It is unclear what logical basis Pappas had for making that statement since Pappas knew Campbell's cell phone was working when he dropped him off. Further, Pappas called Campbell's cell phone after speaking with Camacho. Pappas asked Camacho, "[I]s it okay, if, if I have him come to the station tomorrow morning?" Pappas did not ask if the police wanted to speak with Campbell that night. Pappas informed the Attorney General, through the letter from Hilliard, that he had "asked the desk sergeant if they would like David Campbell to come to the police station that evening." No such question was asked during the phone call. Pappas informed the Attorney General in that letter that his cell phone was dead, so he had to call from home. At least as of 10:55 p.m., when he spoke with Campbell on the way to Campbell's office, the cell phone was working. When asked how Pappas would connect the police with Campbell if the police did in fact want to speak with Campbell that evening, the only answer Pappas could provide was that he would take the police to the three-story apartment complex and ring every apartment door buzzer until one of them acknowledged that Campbell was in the apartment.

While Campbell's and Pappas's versions of the events in many regards are simply not credible, their actions do not give rise to criminal violations as explained below.

The Nashua Police fully investigated the incident involving Campbell striking and killing the ducks at the Crowne Plaza. Based on their investigation, they concluded that the most viable charge was illegal taking of waterfowl in violation of RSA 209:6. Based on this investigation, the Attorney General concludes that the Nashua Police did not abuse their discretion in bringing this charge. This charging decision was based solely on the facts and was not influenced by either Pappas's or Campbell's positions. The Attorney General considered whether a charge of reckless operation was warranted and consulted with the Nashua Police as to whether, based on the information gathered during the Attorney General's investigation, such a charge was warranted. After consultation with the Nashua Police and based on all the evidence, it was determined that this was not a viable charge given the width of the driveway, Clark's position, and Campbell's speed. Based on the Attorney General's review of the evidence, including a review of the scene and discussions with the Nashua Police, the Attorney General concludes that the Nashua Police's decision not to bring a reckless driving charge was well within their prosecutorial discretion.

In regard to Pappas's conduct, the crimes that were considered were official oppression (RSA 643:1) and hindering apprehension (RSA 642:3). Under RSA 643:1,

[a] public servant, as defined in RSA 640:2, II, is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

Under RSA 640:2, II(a), a public servant means:

Any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function.

As a Nashua Police Commissioner, Pappas was a public servant as defined by statute. However, he did not commit an unauthorized act which purported to be an act of his office with a purpose to benefit himself or another. He called the Nashua Police Department and identified himself as Tom Pappas. He noted he was aware that the police were looking for Campbell. The sergeant responded that the police had been looking for Campbell earlier. Pappas inquired if it was okay for Campbell to go to the station in the morning. The sergeant indicated that would be fine as the officer working on the case had left. While Sergeant Camacho called Pappas "Commissioner" and Pappas did not indicate he was not calling as a Commissioner, Comacho said Pappas's position did nothing to affect the way he handled the case. Given the fact that the incident involved the killing of ducks and the investigating officer had gone home, the police would have told anyone to deal with the investigating officer the following day. Further, Pappas's intention was to notify the police that he was aware the police were looking for Campbell.

Based on these facts, the State could not prove beyond a reasonable doubt that Pappas committed the crime of official oppression.

Under RSA 642:3, I(b), a person is guilty of hindering apprehension or prosecution

if, with a purpose to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he ... [p]rovides such person ... transportation ... or other means for avoiding discovery or apprehension

The statute “is drawn from section 242.3 of the Model Penal Code (MPC). Consistent with the MPC, the State must prove that the defendant’s purpose was to hinder apprehension, prosecution or conviction.” *State v. Brown*, 155 N.H. 164, 166 (2007) (citations omitted). The offense does not require proving “many of the common-law elements, including knowledge of the identity of the perpetrator, knowledge of the underlying felony, and ... that a felony actually have been committed.” *Id.* (quotation, brackets, and ellipsis omitted). “The approach focuses instead upon whether the defendant purposely hindered law enforcement.” *Id.* at 167 (quotation omitted).

Pappas picked up Campbell after he left the Crowne Plaza. At the time Pappas picked Campbell up, he was unaware the police had been called. Shortly after he picked Campbell up, Pappas became aware the police were looking to talk with Campbell. While Pappas drove Campbell to an unknown woman’s apartment complex, Pappas called the police department and stated:

- I understand that, um, you folks are looking for David Campbell?
- He’s, he’s at a friend’s house.
- Ah, is it okay, if, if I have him come into the station tomorrow morning?

Given that Pappas called the police and told them that Campbell was at a friend’s house, that he further asked the police if it was okay if Campbell came to the station in the morning, and that the police said yes because the investigating officer had gone home and the investigation had concluded for the evening, the State could not prove beyond a reasonable doubt that Pappas acted with the purpose to hinder law enforcement. Therefore, the State could not prove that he committed the crime of hindering apprehension or prosecution.