

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF CONNECTICUT

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4 RICHARD E. BURGESS,
Plaintiff,

5 V

6 TOWN OF WALLINGFORD; CHIEF DOUGLAS
7 L. DORTENZIO, in his Official and
Individual Capacities; SERGEANT
8 MICHAEL COLAVOLPE, in his Official
and Individual Capacities; OFFICER
9 GABRIEL GARCIA, in his Individual
Capacity; OFFICER DEVIN FLOOD, in
10 his Individual Capacity; AND MARK
VANAMAN,

11 Defendants.

12 * * * * *

13
14 DEPOSITION OF ANTHONY MARTINO

15
16 Taken on behalf of the Plaintiff in the above-entitled
17 cause, before Patricia Tyszka, Registered Merit Reporter,
18 License No. 46, Notary Public, in and for the State of
19 Connecticut, on Thursday, January 3, 2013, at 10:06 a.m.,
20 at the law office of Howd & Ludorf, 65 Wethersfield Avenue,
21 Hartford, Connecticut, pursuant to the Rules of Civil
22 Procedure.

23
24 TYSZKA COURT REPORTING SERVICES
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APPEARANCES

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For the Plaintiff:

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(860) 626-9991

For Defendants Town of Wallingford, Chief Dortenzio,
Sergeant Colavolpe, Officer Garcia, Officer Flood:

HOWD & LUDORF
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BY: KRISTAN MACCINI, ESQ.
(860) 249-1361

Also Present:

Richard Burgess

STIPULATIONS

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IT IS STIPULATED by counsel that formalities as to the proof of the authority of the Notary Public and sufficiency of Notice are waived.

IT IS STIPULATED and agreed between counsel that all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED and agreed that the deposition may be signed before a Notary Public.

1 ANTHONY MARTINO,
2 Of Wallingford Police Department, 135 North Main
3 Street, Wallingford, Connecticut 06492, having
4 first been duly sworn, was examined and testified
5 as follows?

6

7 DIRECT EXAMINATION

8

9 BY MS. BAIRD:

10 Q Good morning, Lieutenant Martino. How are you?

11 A Fine.

12 Q My name is Attorney Rachel Baird, and I represent
13 Rich Burgess in this case that he's filed against the Town
14 of Wallingford. Have you ever been through this
15 deposition process before?

16 A Probably about 10 years ago.

17 Q Okay. So as you are probably aware from your
18 previous experience, if you need to take a break, ask. If
19 you have any questions or don't understand my questions to
20 you, ask me to clarify. And if any other issues come up
21 or something isn't clear to you, feel free to ask your
22 attorney or to ask for a break. Okay?

23 A Okay.

24 Q Fair enough. So you're still employed by the
25 Wallingford Police Department?

1 A Yes.

2 Q And you're a lieutenant?

3 A Correct.

4 Q Let me ask you this. How many lieutenants are
5 presently on the Wallingford Police Department force?

6 A Seven.

7 Q What are the primary duties of your position as
8 lieutenant?

9 A I'm the records unit supervisor.

10 Q Okay. How long have you been the records unit
11 supervisor?

12 A I believe April or May of 2012.

13 Q And prior to being assigned the records unit
14 supervisor job, what job did you perform?

15 A Patrol unit supervisor.

16 Q And the patrol unit supervisor assignment that
17 you recently left in April of 2012, was that the same
18 assignment that you had back in May of 2010?

19 A Yes.

20 Q What shift were you supervising?

21 A Four p.m. to midnight.

22 Q So is it fair to say from May 2010 until
23 approximately April 2012, you were supervising the
24 4:00-to-midnight shift?

25 A Yes.

1 Q When did you start supervising the
2 4:00-to-midnight shift as a lieutenant?

3 A 2006. I'm not sure of the month.

4 Q Okay. So you did that for approximately six
5 years?

6 A Right.

7 Q How long have you been with the Wallingford
8 Police Department in total?

9 A In February it will be 24 years completed.

10 Q When did you become a lieutenant?

11 A In 2006.

12 Q What do the other current six lieutenants
13 assigned or who work for the Wallingford Police Department
14 do?

15 A There are three patrol lieutenants, one records
16 lieutenant, one administrative lieutenant, one traffic
17 lieutenant, and one detective lieutenant. I think that's
18 everyone.

19 Q What does the administrative lieutenant do? What
20 is his job?

21 A He works directly for the deputy chief, so he
22 does hiring practices; he does department policies and
23 procedures; he oversees traffic, community police, and
24 training.

25 Q Do you have an internal affairs unit or division

1 at the Wallingford P.D.?

2 A No.

3 Q Are you aware of approximately how many internal
4 affairs investigations have been conducted since May of
5 2010?

6 A I don't know.

7 Q Since becoming a lieutenant in 2006, how many
8 internal affairs investigations have you been directed to
9 conduct?

10 A I couldn't say. I'm not sure of the number.

11 Q How, if you know, are internal affairs
12 investigations assigned by the chief?

13 A Once a complaint is received, he assigns the
14 complaint, a copy of the written complaint, and a copy of
15 the IA form to the investigating supervisor.

16 Q How is it determined when a complaint's received,
17 who the IA investigator to going to be?

18 A That's a determination by the chief. I don't
19 know how he makes that determination.

20 Q Do you recall having conducted any I.A.
21 investigations since becoming a lieutenant in 2006?

22 A Yes.

23 Q And did one of those I.A. investigations have to
24 do with a complaint filed by Mr. Burgess?

25 A Yes.

1 Q Are you able to tell me a range -- in other
2 words, you said you couldn't remember how many
3 investigations you've done in total since 2006. Can I ask
4 you if it's been more than a hundred?

5 A No. Absolutely not.

6 Q Okay. Has it been more than 50?

7 A I don't believe so.

8 Q It could be more than 50, though?

9 A I don't know. I don't have a number. I'd like
10 to give you an accurate answer, but I don't have that with
11 me. I don't know how many I've been assigned over the
12 past six years.

13 Q Do you know if there are particular lieutenants
14 who are assigned more of the bulk of I.A. investigations
15 than other lieutenants?

16 A We're never made aware of any other
17 investigations, so we're just assigned our own.

18 Q Okay. So tell me a little bit about the training
19 you received when you became a Wallingford police officer.

20 A I went to the Connecticut police academy back in
21 1989, and once I received my certification I went into our
22 FTO program, our Field Training Officer program with the
23 department. At that time it was probably five weeks of
24 training with another training officer or two. Now it's
25 up to 14 weeks, I believe; 14 to 16 weeks. But at that

1 time it was about five to six weeks. And then you have a
2 two-year probationary period where you're evaluated
3 monthly by your immediate supervisor. And then after that
4 two-year period it gets reviewed by the chief and then
5 you've received your tenure at that point.

6 Q What kind of work did you do, if any, prior to
7 becoming a --

8 A I was a military police officer in the Air Force.

9 Q What years were you in the Air Force?

10 A 1983 to 1986.

11 Q Where were you stationed?

12 A Lackland Air Force Base and sunny Grand Forks Air
13 Force Base, North Dakota.

14 Q And you were an M.P. the entire time of your
15 service?

16 A Yes, I was.

17 Q Did you go into the service right after high
18 school?

19 A Yes, I did.

20 Q What year did you graduate high school?

21 A 1983.

22 Q What training, if any, did you receive in terms
23 of conducting internal affairs investigations?

24 A I went to a week-long internal affairs class
25 that's held at P.O.S.T. at the Connecticut police academy,

1 probably in 2006, 2007 thereabouts, within that year time
2 frame, I think. And that's conducted by IPTM, Institute
3 of Police Training and Management.

4 Q Do you know if that's something that police
5 officers do when they become lieutenants in the
6 Wallingford Police Department, that class?

7 A They can go to IA school as sergeants or
8 lieutenants. We don't have captains or above, so either a
9 sergeant or a lieutenant can go to the class. I mean
10 normally I think once you become a supervisor they send
11 you to that class. So it depends on the time frame.

12 Q Do you know if the other six lieutenants
13 currently with the police department attended that class,
14 the week-long training?

15 A I don't know for a fact if they have or not.

16 Q So let's go to May 16th, 2010. Do you recall an
17 incident that occurred at the Yale Billiards in
18 Wallingford --

19 A Yes.

20 Q -- being called in?

21 A Yes.

22 Q Prior to May 16th of 2010, had you heard of the
23 Yale Billiards club?

24 A Yes.

25 Q Had you been to the Yale Billiards club?

1 A I may have been in the Yale Billiards club on
2 calls here and there. I don't recall the dates or the
3 times or what types of incidents. I do know we were there
4 on a couple of occasions for some kind of disturbances;
5 I'm not sure what type.

6 Q And you were the patrol supervisor?

7 A I was the shift commander.

8 Q The shift commander.

9 A Correct. That was my position.

10 Q And was Officer Flood under your direction? You
11 were supervising him?

12 A He was under the direction of Sergeant Mike
13 Colavolpe. Mike Colavolpe was under my direction as my
14 sergeant.

15 Q Okay. How long had you and Sergeant Colavolpe
16 worked the same shift in that relationship where you
17 supervised him as your sergeant?

18 A Couple of years.

19 Q I'm going to hand you what's already been
20 admitted as Exhibit B just in case you want to refer to
21 it. So it's more a questioning than a test of your
22 memory. I'm not here to test your memory. So if you want
23 to refer to that at all or if you think there is another
24 document that would help you out in answering my
25 questions, just let me know.

1 A Okay.

2 Q Because it has been over two years.

3 A Thank you.

4 Q When did it first come to your attention on May
5 16th, 2010 that there was some kind of issue going on at
6 Yale Billiards?

7 A After the dispatch of the officers to Yale
8 Billiards.

9 Q When you were working as the shift commander on
10 May 16th, 2010, and in general as a shift commander, I
11 guess, what is your knowledge of dispatches that come into
12 the dispatch center during your shift? Are you aware of
13 all of them or --

14 A No. They're segregated from where my desk is
15 located; they're actually separated by a closed door. I
16 do have a radio console at the main desk, but I'm also
17 answering the phone, I take all the walk-in complaints and
18 enter them into CAD, talking to my officers about other
19 cases. So it's sporadic. Sometimes I'll hear calls and
20 sometimes I won't. The dispatch center is set up so they
21 work independently, so they basically work -- they have
22 what they call staff authority, so they basically
23 supervise themselves unless they need assistance.

24 Q And the dispatchers are civilians?

25 A Yes, they are.

1 Q Is dispatch instructed in any way by you as the
2 shift commander in terms of what calls to pass on to you
3 for your attention?

4 A Their policy states that if it's something,
5 quote/unquote, out of the ordinary, they're to bring it to
6 my attention. So things like police pursuits they're to
7 bring to my attention; out of the ordinary type of calls.
8 Day-to-day calls, no, they're not.

9 Q How was the situation at Yale Billiards on
10 May 16th brought to your attention?

11 A I overheard it on the radio, on my radio console.

12 Q And when you overheard it on your radio console,
13 what was it about it that drew your attention?

14 A A man-with-a-gun call.

15 Q And information that you overheard on your radio,
16 on your console, was that coming from dispatch?

17 A Correct.

18 Q Is that information part of the transcription
19 that's contained in your Exhibit B that you have in front
20 of you?

21 A Yes.

22 Q In looking at Exhibit B, do you recall at what
23 point in the conversation your attention was drawn to the
24 radio on your console?

25 A I couldn't specifically tell you.

1 Q And I'm referring to Exhibit B from the
2 July 27th, 2012 deposition of Mark Vanaman. I'm just
3 stating that for the record because I think there's two
4 Exhibit Bs floating around.

5 What response did you have or did you take, if
6 any, when your attention was drawn to this dispatch?

7 A My primary concern was that my sergeant was
8 responding, along with the officers, to oversee the call.
9 Normally what happens is I'll go in to dispatch and make
10 sure my supervisor is also responding, and they told me
11 that he was.

12 Q And did you stay in dispatch?

13 A No. My position -- I was kind of in and out. I
14 still have my own duties to do, to take care of, so I'm
15 back and forth.

16 Q What was the next involvement, if any, that you
17 had in this response to Yale Billiards?

18 A I don't believe I had much involvement. I
19 believe Sergeant Colavolpe was managing the incident.

20 Q Did you have any conversation with Robert Hilton,
21 the owner of Yale Billiards, in the time that Sergeant
22 Colavolpe and the other officers were responding to the
23 scene?

24 A I don't believe I talked to anybody at Yale
25 Billiards directly.

1 Q Did you have any conversation with an individual
2 named Mark Vanaman at any point while the response was
3 going on --

4 A No.

5 Q -- on the evening of May 16th?

6 A I believe the only contact they had with the
7 department was through the dispatchers.

8 Q And this isn't a situation where you got on the
9 radio that the dispatchers were using and talk to anybody?

10 A No. I think they had the matter well in hand,
11 and my supervisor was on scene with a number of officers.

12 Q Did you have any part in the decision-making of
13 what officers to send to the scene?

14 A No. That's the dispatchers' responsibility.
15 They send usually the immediate zone cars and then
16 whatever cars are closest as backup. That's just the
17 regular procedure.

18 Q If I could direct your attention to page six.
19 They're not numbered at the bottom, so you have to count
20 six pages in from the first page of Exhibit B. And I
21 believe your page six should start with "Dispatch: 1-2"
22 at the top?

23 A Right.

24 Q I see in the third line down, your name,
25 Lieutenant Martino. Do you see that?

1 A Yes.

2 Q In my review of this transcript it appears that
3 that's the first recorded statement by you in this
4 transmission. Do you agree with that?

5 A Yes.

6 Q And where were you that your voice was recorded
7 onto this transcription?

8 A I could have been at my desk, or dispatch has
9 independent radio console; you know, between two
10 dispatchers. So it could have been either place. I'm not
11 sure.

12 Q And so you would have been talking on your
13 radio --

14 A One of -- yeah. Either the desk radio or the
15 independent one, because that was a separate microphone.

16 Q What was the reason why you made that statement
17 at this point in the response to Yale Billiards --

18 A I think the sergeant was asking --

19 Q -- became involved?

20 A -- where the person was, and I believe dispatch
21 had the information; but they were busy with other calls,
22 so I went and answered him because I knew the information
23 he was asking.

24 Q And how did you know the information that
25 Sergeant Colavolpe needed?

1 A Just from being in and out of dispatch, kind of
2 overhearing what they were doing. Our dispatchers wear
3 headsets, so I don't hear anything audible from them.

4 Q Do you know how much time elapsed between the
5 statement that you made --

6 (Brief discussion held off the record.)

7 BY MS. BAIRD:

8 Q Do you know how much time elapsed between your
9 statement to the sergeant that he's apparently sitting on
10 a bench right to the left of Yale Billiards, and the
11 sergeant's response, "Okay, we got him"?

12 A I don't. I can't imagine it was that long of a
13 time.

14 Q And then you responded to the sergeant by asking,
15 "Is he secured"?

16 A Correct.

17 Q And what was the reason for your question, "Is he
18 secured"?

19 A To make sure that the scene was safe.

20 Q At that point where you ask the sergeant, "Is he
21 secured," what did you know about what was going on at
22 Yale Billiards?

23 A The only thing I knew from the radio
24 transmissions, that a man with a gun first inside the pool
25 hall, and then outside the pool hall, in the parking area.

1 Q As the shift commander, are there incidents of a
2 nature where you would respond to a scene?

3 A Not normally. Not unless it was an incident
4 involving one of my supervisors or a serious assault on
5 one of my officers, or what we call an incident command
6 structure, like a major disaster or things along those
7 lines. Otherwise, the way our structure is, no, I -- my
8 position is running headquarters.

9 Q Other than Sergeant Colavolpe, were there any
10 other sergeants on duty that night?

11 A I don't know if there were. There weren't any
12 other patrol sergeants.

13 Q The next involvement that I see with regard to a
14 recorded statement by you in this transcript, Exhibit B,
15 is on the tenth page in, which is the second page from the
16 back of Exhibit B. In the fifth line down, who were you
17 saying hello to? Oh, I'm sorry. The second line down.

18 A I believe that's Sergeant Colavolpe calling me?
19 I answered the phone at the main desk. Because this is
20 both radio and telephone.

21 Q I was just going to ask you that --

22 A Yeah. They combined it into one. It's radio and
23 telephone.

24 Q How are you able to tell that?

25 A Because I wouldn't answer "hello" on the radio.

1 I may get in trouble for that.

2 Q So if someone isn't familiar with what actually
3 occurred, it would be difficult to know?

4 A Yeah. And if you look on page one of Exhibit B,
5 the top line, it says: Taped transcript of telephone call
6 and radio. to differentiate.

7 Q So at some point Sergeant Colavolpe contacted you
8 by telephone --

9 A Yes.

10 Q -- during his response. Do you know where he was
11 when he contacted you by phone and you responded, "Hello"?

12 A I don't know where he was. I would have to make
13 the assumption that he was at Yale Billiards.

14 Q Were you surprised that the sergeant was
15 contacting you by telephone?

16 A No. That's normal to communicate by telephone.

17 Q And when you say "telephone," did he have a
18 telephone in his car; is that what you're talking about?

19 A No, they don't have telephones in their car. It
20 was either from Yale Billiards or from his cell phone.
21 I'm not sure.

22 Q And the reason it would have been recorded was
23 because it came in on your phone which was a recorded
24 line?

25 A The main desk and dispatch are all recorded.

1 Q What was your response to his statement to you,
2 "Hey are you familiar with, uh, they amended the statute
3 so you're able to open carry in public"?

4 A The statement I made on the next line?

5 Q Yes.

6 A "What, uh, where's that? Where's that written?"

7 Q Did you know what Sergeant Colavolpe was talking
8 about when he asked you that question?

9 A I didn't quite know what type of question he was
10 asking me. That's why I was asking.

11 Q Okay. Sure. And prior to him asking this
12 question, did you know if there was any issue at Yale
13 Billiards with regard to a man openly carrying a firearm?

14 A I knew that they reported a man with a gun that
15 was exposed.

16 Q And so the information you have at that point,
17 did you really have any idea of how the gun was exposed or
18 what the man was doing with the gun --

19 A I don't believe at that time at the dispatch
20 while they're investigating it, no, I wasn't sure what the
21 circumstances were.

22 Q And in response, when you said, "I don't know
23 anything about that," do you know what you meant when
24 you -- what was that? What did you not know anything
25 about?

1 A What he was referencing. I wasn't sure what his
2 question was. He didn't preface his question with what he
3 was doing, so it's difficult for me to make a
4 determination of what he's -- first, what he's talking
5 about and, secondly, to give him an accurate answer.

6 Q Did you know if he was talking about the statute
7 29-35 with regard to carrying a pistol or revolver with a
8 state permit?

9 A I was making the assumption that he was making
10 reference to Mr. Burgess and what transpired, but I wasn't
11 quite sure of the circumstances prior. He didn't give me
12 an explanation as to, "Hey, this is what I have and this
13 is what happened. Do you know?" So I wasn't sure what he
14 was asking me.

15 Q What did you do to attempt to clarify what he was
16 asking you?

17 A I called one of my counterparts at the time,
18 Lieutenant Wright -- and he at that time was the
19 administrative lieutenant -- and asked him if he was aware
20 of anything recently that addresses this.

21 Q And is that Wright W-r-i-g-h-t?

22 A Correct.

23 Q And his first name is what?

24 A William.

25 Q And why did you call Lieutenant Wright?

1 A He's one of my counterparts. He's an
2 administrative lieutenant and he works directly with the
3 administration and he does -- at that time -- he's now the
4 deputy chief, but at that time he did a lot of policies,
5 procedures, a lot of different things; and I wanted to
6 check with him to see if he was aware of something that
7 possibly I wasn't.

8 Q And what did you ask him?

9 A Basically the question that Sergeant Colavolpe
10 asked me.

11 Q So at the point when you called Lieutenant
12 Wright, you did have an understanding of what the sergeant
13 was asking?

14 A I asked him basically what the sergeant asked me.
15 Because that's all the information I had.

16 Q In looking at page 10 of Exhibit B that you have
17 in front of you, at what point in this conversation did
18 you call Lieutenant Wright?

19 A It was probably right after I spoke to Sergeant
20 Colavolpe.

21 Q Oh. What were you referring to when you said,
22 "It's a concealed, it's a concealed weapons permit"?

23 A That's how we've referred to weapons permits for
24 decades.

25 Q And do you know if the permit that you were

1 referring to is the one that under 29-35 allows an
2 individual to carry a pistol or revolver?

3 MS. MACCINI: Objection to form.

4 You can answer if you understood the
5 question.

6 A I don't really understand the question.

7 BY MS. BAIRD:

8 Q Do you know what statute regulates a concealed
9 weapons permit as you understood the permit to be at that
10 time?

11 A I don't believe the statute regulates a concealed
12 weapons permit. I think it's carrying. You're talking
13 about a pistol permit?

14 Q Yes.

15 A Am I aware of the statute?

16 Q Yes.

17 A Yes, I am.

18 Q And what I was asking you about was concealed
19 weapons permit. Were you referring to that statute with
20 regard to a permit that's issued that allows someone to
21 carry concealed?

22 A Yes. Yes.

23 Q And what are you referring to in this
24 conversation as "an application"?

25 A The pistol permit application.

1 Q Did you have one in front of you at that time?

2 A We have them at the main desk, yes.

3 Q And did you look at the pistol permit application
4 at the time?

5 A Yes.

6 Q And did that clarify for you the question that
7 the sergeant had had?

8 A There was nothing different on the application
9 that has been for years. So not really.

10 Q In proceeding on, there's a paragraph where
11 you're talking to Sergeant Colavolpe and it begins with,
12 "Wright said there was something in the legislature."

13 A Mm-hmm.

14 Q Had you already talked to Lieutenant Wright at
15 that point?

16 A Correct. I put him -- I put Mike on hold and I
17 had to go to another phone and then call.

18 Q Okay. And that's signified three lines up by,
19 "Yeah, hold on," where you say that?

20 A Yeah. Correct. I don't normally like to call
21 people back. I'm trying to get the answers he's looking
22 for.

23 Q How long did your conversation with Lieutenant
24 Wright last?

25 A It was very brief. I mean less than a couple

1 minutes. If that.

2 Q And what did you ask him?

3 A I basically posed the same question that Sergeant
4 Colavolpe asked of me, and that's when he gave me the
5 response that's documented here.

6 Q And again, what is that question?

7 A I asked him if he knew any new -- any law that
8 stated that it was permissible to carry a weapon in the
9 open. Or something along those lines.

10 Q And what was your understanding of the
11 information provided by Lieutenant Wright in response?

12 A Can I just refer to --

13 Q Yes.

14 A So Lieutenant Wright at the time gave me the
15 response that the statute is not clear on whether or not
16 it's permissible to open carry or not. It hasn't been
17 addressed clearly in the statute.

18 Q In that paragraph, what part of it -- in what
19 part of it are you relaying what Lieutenant Wright said,
20 and in what part of it is it you making a statement to
21 Sergeant Colavolpe?

22 MS. MACCINI: Objection to form.

23 BY MS. BAIRD:

24 Q I can go through each sentence. For example, it
25 says --

1 A I can answer.

2 Q Okay.

3 A I can give you a general.

4 Q Yes.

5 A It's both. It's -- basically Lieutenant Wright
6 told me, in my own words, so to speak; this is basically
7 what he told me if you go through it line by line.
8 Lieutenant Wright gave me the information probably for
9 90 percent of this paragraph, with the exception of the
10 breach of peace which is on the second to the last line
11 and the last line.

12 Q In the third sentence that begins with, "The
13 problem is, and like the idea with Bill Wright is, just
14 because it's, just because they may interpret it that way
15 doesn't mean you can walk into a bar with your gun out and
16 then refuse to conceal it and then walk around outside
17 with your gun out," is that something that Lieutenant
18 Wright said to you?

19 A That was a -- that was kind of a two-way
20 conversation that we had, and we were in agreement with
21 each other regarding that particular thought. Kind of a
22 back-and-forth dialogue.

23 Q Did you understand at that time, on May 16th,
24 2010, that it was unlawful to walk into a bar with your
25 gun out?

1 MS. MACCINI: Objection to form.

2 A Well, prior to Sergeant Colavolpe calling me,
3 Mr. Burgess was already under arrest. So it wasn't --

4 BY MS. BAIRD:

5 Q Right.

6 A -- for me to make a determination of whether or
7 not he was under arrest. He was asking me a question
8 after he was placed under arrest. So maybe I don't
9 understand your question.

10 Q Well, the third sentence says, "The problem is,
11 and like the idea with Bill Wright is, just because it's,
12 just because they may interpret it that way doesn't mean
13 you can walk into a bar with your gun out." And that's
14 why I was asking, "doesn't mean you can walk into a bar
15 with your gun out," is that you saying that or is that you
16 saying what Lieutenant Wright said?

17 A Again, it's hard to tell you at this point who
18 said what in particular word. What I can tell you is that
19 Lieutenant Wright and I were just speaking on the phone of
20 this issue and discussing it. I don't know who exactly
21 said what part of it. It was a culmination of both our
22 thoughts, I would say, to be as accurate as I can. I
23 can't say who exactly said what. I'm not sure.

24 Q Did you agree with that statement at the time,
25 that "just because they may interpret it that way doesn't

1 mean you can walk into a bar with your gun out"?

2 A I think it's reasonable to say that I was
3 referring to the disturbance being caused, more so than
4 the concept. I don't know if that makes it clearer. I
5 don't know any other way to answer it.

6 Q And going on then in that same sentence, "and
7 then refuse to conceal it." Was it your understanding at
8 the time that there was something unlawful about refusing
9 to conceal a firearm?

10 A I think it was in -- there was something that
11 transpired between Mr. Burgess and Mr. Vanaman where he
12 had requested him to conceal. Or maybe it was the owner
13 of the bar? I'm not sure. So that's probably where that
14 reference was.

15 Q Okay. And then finally, the third part of that
16 sentence it says, "and then walk around outside with your
17 gun out." Again, was it your understanding there was an
18 unlawful conduct there?

19 A It was my understanding there was a disturbance
20 based upon the fact that he was walking outside a bar. I
21 believe the statement that was made to our dispatchers, if
22 you look earlier in the transcript, was that there was a
23 man outside pacing with an exposed firearm.

24 Q Was there, to your knowledge, a law that
25 prohibited an individual from -- assuming he had a valid

1 permit, to carry a pistol or revolver in a bar at that
2 time in May 2010?

3 A As long as they weren't ingesting alcohol.

4 Oh, let me just also add to that: Or unless
5 it's posted by the establishment that they're not allowed
6 to do so.

7 Q Right. Assuming that there is no posting by the
8 premises owner that firearms are prohibited, and assuming
9 someone has a valid permit to carry, at that time in
10 May 2010, was there any law prohibiting an individual from
11 carrying --

12 A No.

13 Q -- a pistol or revolver in a bar?

14 A No.

15 Q The last sentence in that paragraph that we've
16 been referring to on the tenth page of Exhibit B where it
17 states, "So we need to charge, we need to charge him with
18 the breach," at the time you made that statement did you
19 know that Mr. Burgess was already under arrest?

20 A I did know. Sergeant Colavolpe informed me that
21 he was already under arrest.

22 Q Still on page 10, at the bottom you make a
23 reference to the State Police there?

24 A Yes.

25 Q And what were you making reference to the State

1 Police for?

2 A Because I always like to follow up with incidents
3 like this with the Firearms Unit. Because, you know, one
4 of the jobs as a shift commander is if you don't know the
5 answer or you want a clarification on the answer, or you
6 want to go over a case with somebody who does this on a
7 regular basis, you check with other agencies. That's
8 commonplace. You want to check with your peers. You want
9 to check with other agencies to see if they've had similar
10 type incidents.

11 Q Did you talk to anybody at the State Police?

12 A No, I didn't.

13 Q Did you attempt to get through?

14 A No. That was -- I think it was after hours, so
15 I'd have to talk to dispatch or State Police. So no, I
16 didn't call anybody.

17 Q At any point after May 16th did you follow up on
18 contacting the State Police about this case?

19 A I spoke to Barbara Mattson quite a while later.
20 She's one of the supervisors for the Firearms Unit.

21 Q And when you spoke to Detective Mattson quite a
22 while later, was it about Mr. Burgess's arrest?

23 A No. She actually came to the police department
24 to give us a certification on the weapons database.

25 Q And when Detective Mattson came to the police

1 department to --

2 A It was a training session.

3 Q -- to do this training session, did you talk to
4 her about Mr. Burgess's case?

5 A No. Actually, she brought up -- she had been
6 familiar with the case and a couple of others. She had
7 brought up the issue.

8 Q Did she bring it up with everybody in the
9 training session or just --

10 A There was only a small -- it was just a small
11 certification group. There were civilians in there, too.

12 Q And how did she bring it up?

13 A Well, she was giving a class on how you can
14 access the permit database, and she made a statement
15 regarding these recent incidents and said that the law is
16 silent on whether or not you can carry a weapon concealed
17 or otherwise, so you have to make determinations on a
18 case-by-case basis. And that was pretty much the gist of
19 her conversation with them.

20 Q Was that new information to you at the time --

21 A No, I think she -- I think because there were
22 incidents pretty close together, that I guess somebody
23 told her she should probably just address it with the
24 departments as she does training. That's just an
25 assumption; I don't know if that's the case. But she

1 brought it up.

2 Q And when Detective Mattson brought it up at this
3 training session and said that the statute was silent on
4 open or concealment, was that new information to you? Did
5 you know that the statute was --

6 A No; I always knew that the statute number
7 addressed whether or not it had to be concealed or
8 otherwise. It was not clear in the statute.

9 Q Do you know why you referred to the permit as a
10 concealed carry permit, at least on May 2010?

11 A It's been referred to as a concealed weapons
12 permit for as long as I've been in law enforcement. And
13 as a matter of fact, most NRA instructors still refer to
14 it as a concealed weapons permit. So, you know, it's
15 terminology that's used quite often.

16 Q On May 16th, 2010, what was your understanding of
17 whether an individual who held a valid permit and wasn't
18 otherwise prohibited by the premises owner from carrying,
19 what was your understanding of whether the pistol or
20 revolver had to be concealed?

21 A I always knew that the statute didn't address
22 either way whether or not it has to be concealed. And
23 again, it all had to do -- like it's a case-by-case basis
24 regarding the behavior of the person who's carrying the
25 weapon, concealed or otherwise.

1 Q So let me just go back to this page 10 then on
2 Exhibit B where you tell Sergeant Colavolpe "it's a
3 concealed, it's a concealed weapons permit." Was it your
4 intent by that statement to tell Sergeant Colavolpe that
5 the permit required that a weapon needed to be concealed?

6 A No. Again, it's just terminology that's been
7 used and it's still used to this day. That's how they've
8 referred to it. I've been a pistol permit holder since
9 the '80s, and that's how it's always been referred to, as
10 a concealed weapons permit.

11 Q And do you still refer to it that way as we're
12 sitting here today in 2013?

13 A I don't refer to it in any way. It's a pistol
14 permit. That's how I refer to it.

15 Q And to your knowledge, has there been any
16 amendment of the statute with regard to whether a person
17 holding a permit has to carry concealed or openly?

18 A No. I'm not aware of any amendment.

19 Q Am I understanding that at some point in time, at
20 least, on May 16th, 2010, you made reference to a permit
21 as a concealed weapons permit?

22 MS. MACCINI: Objection to form. Asked and
23 answered many times.

24 You can answer if you understood her
25 question.

1 A I made reference to the permit as a concealed
2 weapons permit. Yes.

3 BY MS. BAIRD:

4 Q Okay. When you used that terminology back in
5 May 2010, a "concealed weapons permit," did you believe it
6 was an accurate description of a permit?

7 MS. MACCINI: Objection to form.

8 A I guess to clarify, we used to use radio 10-codes
9 and now we don't; but some people who have been police
10 officers longer than others still use 10-codes and others
11 don't. It doesn't change the intent of using a particular
12 10 code.

13 In this case I refer to a concealed weapons
14 permit the way it's been referred to for decades. I
15 didn't attempt to give the sergeant the impression that
16 that's the way the weapon should have been carried.
17 That's the best way I can answer it.

18 BY MS. BAIRD:

19 Q Okay. And do you agree that there are some
20 officers who, as you've described, still use the radio
21 10-codes, but at some point they change?

22 A Some do, and some don't.

23 Q And that's what I want to ask you in terms of
24 using the terminology "concealed weapons permit." Have
25 you changed since May 2010, where you no longer use that

1 "concealed weapons permit" terminology?

2 A I've never been asked to use it since, and I
3 refer to it as a pistol permit. I think that's kind of
4 the way people refer to it now, "pistol permit." I don't
5 think they differentiate either way.

6 Q Then going on page 11, the last page of Exhibit B
7 that you have in front of you, you continued this
8 conversation with Sergeant Colavolpe. Was that a
9 continuation of the conversation on the phone, your phone,
10 where he called you from a phone?

11 A Yes.

12 Q And was it your understanding that Sergeant
13 Colavolpe was bringing Mr. Burgess back to the police
14 department?

15 A Somebody was bringing him in. I wasn't sure who.

16 Q What did you mean by your statement "Always fun
17 and games," the fourth line from the bottom?

18 A I think in a situation like that, just trying to
19 de-stress the officers a little. I think it was a
20 situation that needed a little brevity, so that's all that
21 was.

22 Q What was your role as the shift commander, if
23 any, in terms of Mr. Burgess being back to the department
24 and being booked?

25 A The shift commander determines the bond, if any,

1 and the shift commander reviews the charges, if any.

2 Q Did you have any conversation with Mr. Burgess
3 that evening while he was under arrest or after he was
4 released?

5 A I don't think so.

6 Q To determine bond, what information do you look
7 at?

8 A Prior arrest history, failure to appears. The
9 incident itself, the severity of the incident.

10 Q Did you set a bond?

11 A No, I didn't. I gave him a promise to appear.

12 Q Did you talk to Sergeant Colavolpe at all when he
13 returned, about the arrest?

14 A I probably did, but I don't remember at what
15 point; whether it was face-to-face or on the phone. But
16 I'm sure I talked to him at some point.

17 Q How about Officer Flood? Did you talk to him
18 that evening?

19 A I don't think I did. There were a number of
20 officers involved. I can't be certain who I talked to.

21 Q Was there any discussion about the issue of
22 whether an individual with a permit could open carry?

23 A No. Not with me, anyway.

24 Q What contacts did you have in terms of the
25 booking process? Were you there?

1 A No; I don't have any contact with that. The
2 shift commander's office is one floor up from the booking
3 room. I have a video feed from the desk and I can see
4 what's transpiring, but I can't -- I don't have audio.

5 Q You said that another job of the shift commander
6 is to review the charges?

7 A Correct.

8 Q Did you review the charge of breach of peace when
9 Mr. Burgess came back to the department after being placed
10 under arrest?

11 A Well, that's what Sergeant Colavolpe told me the
12 charge was on the phone. So at some point I'm sure I
13 reviewed it. And again, I can't remember who I reviewed
14 it with, whether it was the booking officer at the time,
15 which I think was Officer Garcia? But I can't be certain.

16 Q What does a review consist of?

17 A Well, a lot of times they'll arrest somebody for
18 a particular charge and they'll get back to headquarters,
19 and although they have the probable cause for that
20 offense, there may be additional offenses that are added
21 that they may not have thought of at the time, or they may
22 have got additional information after the fact from
23 witnesses or other people involved, and then those charges
24 may be added when they get to headquarters. Or they may
25 be lessened, depending on the circumstances. The shift

1 commander has an objective overview of each incident, so
2 sometimes it's good to look at everything that they may
3 not have looked at at the time.

4 Q How unusual or usual was it for you as a shift
5 commander to indicate to the sergeant, as you did on page
6 10 of Exhibit B, the transcript, that there needed to be a
7 charge, there needed to be a breach of peace charge?

8 MS. MACCINI: Objection to form.

9 A I'm sorry, I don't --

10 BY MS. BAIRD:

11 Q How common was it for you as a shift commander --
12 you had indicated you were objective, so I'm asking how
13 common was it for you as a shift commander to get involved
14 in a conversation with the sergeant out at the scene about
15 "we need to charge, we need to charge him with the
16 breach"?

17 A Oftentimes supervisors will call me and review a
18 case with me and go over charges with me and then ask me
19 my opinion. The problem -- the biggest problem I have
20 with that is that I'm not there, so I may give them my
21 opinion based on the information I received. That may or
22 may not change based on -- you know, based on the
23 investigation and where it goes. They ask for advice just
24 like any other employee.

25 Q Did the charge remain breach of peace after

1 Mr. Burgess's arrest?

2 A No. It was changed to disorderly conduct.

3 Q And who made that decision to change it to
4 disorderly conduct?

5 A I'm sure I was involved in the decision, but I'm
6 not sure if anybody else was involved in the decision or
7 not.

8 Q And once it was changed to disorderly conduct,
9 did that require a whole new review of the charge?

10 A No. I think the biggest thing that
11 differentiates disorderly from breach is breach addresses
12 striking somebody else; it doesn't rise to the level of an
13 assault. And since that was not the case, he was charged
14 with a lesser misdemeanor. Albeit a disturbance
15 misdemeanor, but the lower misdemeanor of disorderly
16 conduct.

17 Q And what exactly was your involvement in the
18 decision to change a charge from breach of peace to
19 disorderly conduct?

20 A I think I had a discussion with Sergeant
21 Colavolpe, although I -- right now I don't remember what
22 exactly transpired. But usually I'll discuss with either
23 the arresting officer or in this case a supervisor. I
24 don't always have a road sergeant working, so a lot of
25 times you'll have a direct discussion with an officer.

1 And that's how that transpires.

2 Q Were you provided information that led you to
3 believe there was probable cause that Mr. Burgess had
4 caused a disturbance?

5 A Provided information from the supervisor through
6 his officers, yes.

7 Q And what was the information that you relied on
8 in terms of probable cause that Mr. Burgess had caused a
9 disturbance and could be charged with disorderly conduct?

10 A I believe I was told he's caused a disturbance
11 both inside the establishment and outside the
12 establishment. And he was arrested based upon the fact
13 that they believed they had probable cause to make an
14 arrest for him creating the disturbance.

15 Q Okay. And were you provided information about
16 exactly what Mr. Burgess did to create that disturbance?

17 A I mean, not at that time, no. They don't review
18 the case with me, they just basically give me the
19 synopsis, if you will.

20 Q Were you involved in the decision to return
21 Mr. Burgess's firearm to him that evening after he was
22 released?

23 A Oh, there was no reason to seize it, so his
24 firearm was returned.

25 Q Did you consider contacting the Firearms Unit to

1 request that Mr. Burgess's permit be revoked?

2 A No.

3 Q Have you ever contacted the Firearms Unit to
4 request that an individual's permit be revoked?

5 A I may -- I may on one or two occasions, but I
6 can't be certain.

7 Q But you're aware that police departments have the
8 ability to --

9 A Yes.

10 Q -- do that. Correct?

11 A Yes.

12 Q And what was the reason why you made the
13 determination not to contact the Firearms Unit to request
14 revocation?

15 A Because the issue of his gun didn't have anything
16 to do with the reason why he was arrested. He wasn't
17 arrested for any firearms-related charges.

18 Q Other than openly carrying a firearm in Yale
19 Billiards, do you know of any other conduct that
20 Mr. Burgess engaged in where he caused what's been termed
21 "a disturbance"?

22 A I believe he was involved in a verbal altercation
23 with one of the patrons there; Mr. Vanaman, I believe. I
24 don't know if he was involved with any -- any other
25 altercations. I know he had a conversation with the owner

1 of the billiard hall on a couple of occasions; Mr. Hilton,
2 I believe.

3 Q And so was it information you relied on that the
4 verbal altercation was a cause of disturbance?

5 A I think the totality of the circumstances from
6 the beginning of the incident to the end led to the
7 disturbance charge.

8 Q Did Mr. Burgess ask you on May 16th, 2010, while
9 he was under arrest or just after he was released, to
10 investigate Mark Vanaman for disorderly conduct?

11 A He didn't ask me, no.

12 Q Did he file a complaint with you against Mark
13 Vanaman on May 16, 2010, the day of the arrest?

14 A No. I believe part of his complaint against
15 Officer Flood was that it wasn't investigated. So I
16 assigned an independent sergeant, Sergeant Sam Soukup, to
17 conduct an investigation based on Mr. Burgess's complaint
18 against Mr. Vanaman.

19 Q On May 16th, 2010, did you support the arrest by
20 the arresting officer of Mr. Burgess?

21 MS. MACCINI: Objection to form.

22 A Are you asking if I thought that there was
23 probable cause for the arrest?

24 BY MS. BAIRD:

25 Q Yes.

1 A Yes, I did think there was probable cause for the
2 arrest.

3 Q Did you get off at your normal time that evening
4 on May 16th; midnight?

5 A I'm not sure whether I did or not.

6 Q Do you recall anything else happening that day
7 that kept you overtime or --

8 A I don't believe so.

9 Q So is it fair to say the next day you worked,
10 came in 4:00; worked the 4:00-to-midnight shift?

11 A I mean, I worked my next shift; I'm not sure
12 whether it was the next day or after my days off. I'm not
13 sure what my schedule was then.

14 Q And when you work the shift, is it Monday through
15 Friday?

16 A No. It's -- you work a four-day on, two-day off
17 schedule, and your days off rotate one day forward every
18 week.

19 Q Okay.

20 A I can do a graph for you. It's confusing.

21 Q When was the next after May 16th, 2010 when you
22 got off shift that you heard about Mr. Burgess again?

23 A It wasn't until -- I'm not sure if it was not to
24 the IA complaint or that he wanted to make a statement
25 regarding Mr. Vanaman. I'm not sure of the time frame.

1 But I think the next time was when he made a complaint.

2 Q I'm going to hand you Exhibit G again, so if
3 there's anything in there that kind of helps you recall
4 things.

5 A Okay.

6 MS. MACCINI: Attorney Baird, when it's
7 appropriate, can we take a short break?

8 MS. BAIRD: Yes. I'm fine if you want to.

9 (A recess was taken at 11:05 a.m.)

10 (The proceedings resumed at 11:10 a.m.)

11 (Plaintiff Exhibit M marked for I.D.)

12 BY MS. BAIRD:

13 Q We've marked Plaintiff's Exhibit M entitled
14 Wallingford Police Department IA Complaint Form. I'll let
15 you have that. And the issue left was if you recall when
16 you were assigned the complaint filed by Mr. Burgess to
17 investigate.

18 A Right.

19 Q Does that refresh your recollection --

20 A Yes.

21 Q -- Exhibit M?

22 A Yes.

23 Q What was that date?

24 A The date of the complaint was May 17th, 2010, at
25 9:58 a.m., over the telephone. Received by telephone.

1 Q When did you become aware of the complaint?

2 A I think it was assigned to me a couple of days
3 later.

4 Q And who assigned it to you?

5 A Chief Dortenzio.

6 Q I know you said that you don't recall how many
7 IAs you've -- internal affairs investigations you've
8 performed, but do you recall being assigned any other
9 investigations, internal affairs investigations by the
10 chief, other than Mr. Burgess's complaint?

11 A Yes, because we're assigned both external and
12 internal on other officers. So yes.

13 Q When the chief assigned you this investigation
14 into Mr. Burgess's IA complaint, did you speak with the
15 chief directly about the assignment?

16 A No. We don't speak to the chief. He just sends
17 down a cover letter with the assignment, a copy of the
18 complaint form, and then any other documentation that may
19 or may not have been provided by the complainant.

20 Q What was your understanding when you were
21 assigned the investigation, of what the nature of the
22 complaint was?

23 A Based on the allegations here, false arrest;
24 weapon seized; false arrest for carrying a firearm in the
25 open; that another person involved in the incident wasn't

1 arrested.

2 Q Who was the complaint by Mr. Burgess made
3 against?

4 A Officer Devin Flood.

5 Q How long had Officer Flood at that time, in
6 May 2010, worked the same shift that you supervised?

7 A I can't be sure, but I want to say probably at
8 least a year, if not more. They rotate their shifts, so
9 I'm not really positive.

10 Q When you received the assignment to investigate
11 the internal affairs complaint of false arrest filed by
12 Mr. Burgess, had you already determined that there was
13 probable cause for his arrest?

14 A That determination was made the night he was
15 arrested, yes.

16 Q And the night he was arrested, you agreed with
17 that determination that there was probable cause for the
18 arrest.

19 A I supported the arrest and the probable cause for
20 the arrest, yes.

21 Q Were there other lieutenants in the department at
22 that time, in May 2010, who had not been involved at all
23 in Mr. Burgess's arrest?

24 MS. MACCINI: Objection to form.

25 A I don't think any of the lieutenants were

1 involved in his arrest, that I know of.

2 BY MS. BAIRD:

3 Q Were there other lieutenants in the department in
4 May 2010 that had not made any determination as to whether
5 there was probable cause for the arrest or not?

6 MS. MACCINI: Objection to form.

7 A I'm sorry. I just don't understand the question.

8 BY MS. BAIRD:

9 Q Sure.

10 A I apologize.

11 Q No. You had said that you supported
12 Mr. Burgess's arrest.

13 A Yes.

14 Q And is one reason you supported it because you
15 believed there was probable cause for his arrest?

16 A Yes. Everything -- I think I already answered
17 that.

18 Q Okay. And were there other lieutenants in the
19 department in May of 2010 who hadn't made any
20 determination as to whether they supported Mr. Burgess's
21 arrest?

22 A I wouldn't know that.

23 Q Well, do you have any record of the
24 involvement -- do you have any record of other
25 lieutenants, other than Lieutenant Wright --

1 A Okay.

2 Q -- having knowledge of Mr. Burgess's arrest?

3 A I'm not sure who had knowledge of it. I'm sure
4 other people knew about it just based upon the fact that
5 it's a smaller department and they're aware of cases that
6 are going on. I'm not sure who that would be.

7 Q Did any other lieutenants in the department have
8 the duty that you had on May 16th, 2010 to review
9 Mr. Burgess's arrest for a bond?

10 A No.

11 Q Okay.

12 A No.

13 Q Did any other lieutenants in the department on
14 May 16th, 2010 have the duty that you had as the shift
15 commander to review Mr. Burgess's arrest?

16 MS. MACCINI: Objection to form.

17 You can answer the question if you
18 understood it.

19 A Okay. My follow-up question would be prior to
20 the arrest or after? For the review.

21 BY MS. BAIRD:

22 Q As the shift commander on May 16th, 2010, did you
23 have -- was part of your function to review the charge
24 that Mr. Burgess was charged with?

25 A Yes.

1 Q To your knowledge, did any of the other
2 lieutenants working at the department on May 16th, 2010,
3 who were employed by the department on that date, have the
4 same duty to review the charge?

5 A No, I think -- unless I'm mistaken, I think I was
6 the only lieutenant working that night.

7 Q Were you concerned that the internal affairs
8 complaint filed by Mr. Burgess had been assigned to you?

9 A That's not a determination I make. That's a
10 determination the chief makes.

11 Q Did you believe that you had any conflict of
12 interest in investigating Mr. Burgess's complaint of false
13 arrest against Officer Flood?

14 MS. MACCINI: Objection to form.

15 A I don't make a determination of what I
16 investigate. That would be something you'd have to ask
17 the chief.

18 BY MS. BAIRD:

19 Q But certainly you do make determinations in
20 assignments where you may have a conflict of interest; am
21 I correct?

22 MS. MACCINI: Objection to form.

23 A I don't really know what I would change for a
24 conflict of interest assignment. I'm not really sure
25 what --

1 BY MS. BAIRD:

2 Q Well, let me just give you an example. For
3 example, your son is an officer in the Wallingford Police
4 Department.

5 A Right.

6 Q And you find out that he's involved in an
7 accident where somebody's killed, and you respond to the
8 scene not knowing it was your son involved.

9 A Right. That would certainly be a conflict of
10 interest.

11 Q So you know what I mean when I say "conflict of
12 interest."

13 A I do know what you mean. I'm not quite sure what
14 you mean in this instance. In other words, are you saying
15 was it a conflict of interest that the officer that the
16 complaint was made against worked for me?

17 Q No. My question more to the point was was it a
18 conflict of interest for you to investigate a claim of
19 false arrest where you had already made a determination
20 there was probable cause for the arrest?

21 A Well, I think the determination for probable
22 cause for arrest was made prior to them even returning to
23 the police department with Mr. Burgess. I supported the
24 probable cause for the arrest based on the information
25 that I was given by not only -- by one of my supervisors.

1 When I was assigned the IA complaint, I guess your
2 question would be did I think I could conduct an objective
3 investigation based upon the circumstances? My answer
4 would be yes.

5 Q What guidelines or policies did you operate under
6 in conducting the investigation?

7 A We have an internal affairs policy, but it's very
8 general. So every supervisor does their investigations a
9 little different, but we always go back to our basic
10 investigative skills that we've acquired over the years,
11 and we basically start with the complaint and investigate
12 it like we would any other case.

13 Q Did you contact Mr. Burgess regarding --

14 A I did.

15 Q -- the complaint?

16 A I did.

17 Q And what was the purpose of the contact?

18 A Procedurally we just make contact with the
19 complainant, let them know who we are and that we've been
20 assigned the investigation, even though the chief will
21 send them correspondence regarding that. And we normally
22 try to set up an interview time with the complainant or
23 their witnesses or whoever's involved and kind of get a
24 schedule together on how to do that.

25 Q Did you ask any officers to do any follow-up

1 investigation?

2 A No.

3 Q Do you know if any officers after May 16th, 2010
4 went back to Yale Billiards?

5 A I believe the chief assigned some officers to go
6 back to Yale Billiards.

7 Q And how do you know that?

8 A Just from information that I received later
9 from -- just as a course of conversation.

10 Q Was there any additional information that you
11 needed in terms of statements or evidence that hadn't been
12 gathered already to look into Mr. Burgess's complaint?

13 A I'm glad you asked that because I actually made a
14 point with Mr. Burgess at our interview that I was
15 conducting my investigation based solely on the incident
16 that occurred on that date and time, and nothing else.
17 And that was made very clear to him in our interview. So
18 anything that may or may not have been gathered after that
19 date I did not take into consideration.

20 Q Is there something in particular that had been
21 gathered after that date that you felt it was important to
22 tell Mr. Burgess you weren't considering that?

23 A I didn't know that anything else had been
24 gathered, so no. I did it strictly on his complaint
25 regarding the sequence of events that happened that night.

1 Q Did you look into the facts of the case and what
2 had occurred in the billiards hall prior to the officers'
3 arrival as part of your investigation?

4 A I based my investigation on the submitted police
5 reports.

6 Q Did you look at any written statement by Mr. Mark
7 Vanaman?

8 A I know I looked at statements. I couldn't tell
9 you what statements I looked at. But whatever was with
10 the case file that was obtained that day, that's what I
11 looked at.

12 Q Did you view any videos of what had occurred
13 inside the pool hall on the evening of May 16th?

14 A I wasn't provided with any video.

15 Q Do you know of any attempts to obtain video?

16 A No.

17 Q I'm going to direct your attention to page eight
18 of your Exhibit G, the internal affairs complaint, which
19 is a continuation from page seven of a synopsis of
20 Sergeant Michael Colavolpe's written response on
21 6/14/2010.

22 Is the written response that you're referring to
23 in Exhibit G by Sergeant Colavolpe Exhibit F?

24 A Okay. One second.

25 Q Sure.

1 A (Reviewing.) I think there are -- I mean I think
2 it's a synopsis, more or less. Well, I don't know --
3 these are questions I -- Exhibit F are questions I posed
4 to Sergeant Colavolpe regarding the incident.

5 Q I should have probably directed you to pages
6 three, four and five of Exhibit F --

7 A Yeah, I'm just a little confused here.

8 Yes. It refers to -- I believe the information
9 on page seven refers to Exhibit F pages one through
10 three. That's --

11 Q And if you look at Exhibit F, on the last page
12 there is a date there where Sergeant Colavolpe signed
13 it --

14 A Correct.

15 Q -- of June 14th, 2010.

16 A Okay.

17 Q And then if you look at Exhibit G, your IA
18 report, at page seven it talks about Sergeant Colavolpe's
19 written response on 6/14/2010.

20 A On page seven.

21 Q Yes.

22 A Okay. We're on the same page.

23 Q What is that Exhibit F, those questions you posed
24 to Sergeant Colavolpe?

25 A There's a number of different ways you can ask

1 questions in an internal affairs investigation. You can
2 verbally ask somebody a question regarding an incident;
3 you can send them an e-mail request for a response to
4 questions; you can request what we refer to as a special
5 report which basically says give me a synopsis of the
6 incident. More often than not, things like demeanor
7 traffic stops, things along those lines we'll ask for
8 special reports. You can ask specific questions in this
9 format; you can interview them on tape; you can take a
10 written statement; you can take a video and audio
11 recording. There's a number of different ways you can ask
12 questions. There's nothing in IA policy to say which way
13 should be used more than others.

14 Q Starting with page seven then of the IA report,
15 Exhibit G, it appears that one of the methods you chose to
16 obtain information from Sergeant Colavolpe was asking him
17 questions and him giving a written response; is that
18 correct?

19 A Yes.

20 Q Did you get information in any other way from
21 Sergeant Colavolpe with regard to the IA investigation?

22 A The only other information I would have obtained
23 from him would be on the night of the incident, I would
24 make the assumption.

25 Q Going on to page nine of Exhibit G, am I correct

1 that you used the same method with Officer Flood, where
2 you asked him questions and received written responses
3 from him?

4 A Yes.

5 Q Did you obtain information with regard to the IA
6 complaint in any other manner from Officer Flood?

7 A I don't believe so.

8 Q For example, you had talked about recorded
9 interviews or e-mails --

10 A No, no, no. There wasn't any other form of --
11 no. No. This was the only written response. I don't
12 do -- I do one particular type. If it's going to be
13 taped, it's going to be taped and there's not any others.

14 Q And on page nine you asked Officer Fraenza, and
15 he responded with written responses to your requests.
16 Correct?

17 A Yes.

18 Q And you did the same with Officer Gonzalez, page
19 10 of Exhibit G?

20 A Yes.

21 Q Now, going on to page 11, you tape-recorded an
22 interview with Mr. Burgess. Correct?

23 A Yes.

24 Q Is that because he was the complainant?

25 A I think based upon the fact that he was making

1 the allegation of false arrest, I wanted to make sure that
2 Mr. Burgess was represented in a taped media. So yes.
3 And Mr. Burgess also provided me with his own typed,
4 written statement prior to our interview, which I think
5 you also have.

6 Q And on page 17 you conducted a tape-recorded
7 interview with Anna Filipkowska. Correct?

8 A Yes; who I believe at the time was Mr. Burgess's
9 girlfriend.

10 Q And then on page 11 you interviewed Seth Tucker?

11 A Eleven?

12 Q Excuse me. Page 18 of Exhibit G.

13 A I believe I spoke to Mr. Tucker on the phone.

14 Q Okay. Why did you contact Mr. Tucker?

15 A I think his name was provided to me by
16 Mr. Burgess, if I'm not mistaken. Either on the complaint
17 form or -- (reviewing) -- yes, he's on the complaint form
18 as an additional witness, on the original IA complaint
19 form. Under Anna Filipkowska's name.

20 Q Did you record the interview with Mr. Tucker?

21 A It was over the telephone, so I don't know
22 whether I was on a recorded line or not. I don't believe
23 I was. It's difficult to do interviews at the main desk
24 because there's so much going on, so it was probably one
25 of the other offices.

1 Q Did you ask Mr. Tucker to come to the police
2 department to be interviewed?

3 A No. I was having kind of a difficult time
4 getting ahold of him; I guess we were missing each other,
5 so we finally ended up talking on the phone. And you see
6 the late hour, so we were going back and forth.

7 Q Did you take a written statement from Mr. Tucker
8 at any point?

9 A No. I didn't take a written statement from I
10 think anybody involved, handwritten statement.

11 Q What kinds of information were you looking for to
12 determine whether Mr. Burgess's complaint of false arrest
13 had any validity?

14 A If the arrest lacked probable cause, first and
15 foremost.

16 Q Now, based on the information that Sergeant
17 Colavolpe had provided you on May 16th, 2010, and
18 information you had obtained from other officers, you
19 supported the arrest on May 16th, 2010. Correct?

20 MS. MACCINI: Objection to form to your
21 continual use of "supported." I mean what do
22 you mean? He advocated his arrest? Or he
23 agreed that there was probable cause?

24 BY MS. BAIRD:

25 Q Are you comfortable with that, agreed there was

1 probable cause? I can ask it that way. Based --

2 A Based on the information I was provided at the
3 time the arrest was made, I believed, as did Sergeant
4 Colavolpe and the arresting officers, there was probable
5 cause to make a custodial arrest. Yes. I did not
6 investigate the incident from the desk, if that's what
7 you're referring to.

8 Q What questions did you determine in the internal
9 affairs investigation -- well, withdrawn.

10 How did you determine what questions to ask
11 Sergeant Colavolpe in the internal affairs investigation?

12 A I would say over 24 years of law enforcement
13 investigative experience, and what questions I needed to
14 obtain to accurately investigate the complaint. In
15 general. Your questions are never going to be the same
16 from one complaint to another. Just based on the
17 circumstances, trying to get to the bottom of whether or
18 not this complaint that was made by Mr. Burgess was, in
19 fact, valid.

20 Q So if the information that was provided to you on
21 May 16th of 2010 from Sergeant Colavolpe led you to
22 believe that there was probable cause for the arrest, were
23 you looking for Sergeant Colavolpe to say something
24 different in the internal affairs complaint to negate
25 that?

1 A I think that there are two different aspects
2 here. The first one is the determination of a criminal
3 custodial offense on the night of the incident. The
4 secondary question that has to be asked is if there was
5 anything procedurally done incorrect after the fact. If
6 there was any information that wasn't provided on the
7 night of the arrest that came to light during the course
8 of the IA complaint.

9 So it's two different things. You have your
10 first criminal complaint, and now you have an internal
11 complaint regarding an officer's conduct and whether or
12 not they did everything accurately.

13 Q Who had the ultimate responsibility for the
14 shift -- it's 4:00 p.m. to midnight?

15 A Correct.

16 Q The 4:00 p.m.-to-midnight shift on May 16th,
17 2010?

18 A I was the shift commander. The lieutenant on
19 each patrol shift is the person in charge.

20 Q So you were the person ultimately responsible for
21 any questions that arose from any arrests that occurred
22 during that shift from 4:00 to midnight on May 16th, 2010.

23 A Well, if you want to talk about the rank
24 structure, the way it works is that the sergeant on the
25 road is responsible for the road supervision of all

1 officers. I'm responsible for the sergeants under my
2 command. Ultimately, though, of course, much like the
3 chief is responsible for everybody, the lieutenant on each
4 patrol shift is ultimately responsible for all the
5 activities on their respective shifts. And that's just
6 basic rank structure.

7 Q I kind of got sidetracked. If you go back to
8 page eight of Exhibit G, at the top. This is a
9 continuation of a synopsis of Sergeant Colavolpe's written
10 response of 6/14/2010, which I have also put in front of
11 you, pages three through five of Exhibit F.

12 A Okay.

13 Q At the top of page eight of Exhibit G, the first
14 sentence says, "Once Sergeant Colavolpe arrived, he
15 directed Officers Gonzalez and Fraenza to the rear of Yale
16 Billiards."

17 A Okay.

18 Q Did you get that information from the written
19 responses prepared by Sergeant Colavolpe?

20 A I think it was probably a culmination of the
21 arrest reports, any supplement reports, the interoffice
22 memorandums they submitted. Kind of putting the incident
23 into chronological order.

24 Q Could you hand me Exhibit F? So looking at the
25 bottom of page three, on to page four of Exhibit F, and

1 I'll summarize it: Sergeant Colavolpe says that when he
2 arrived, he was told by Officer Flood where Officers
3 Gonzalez, Fraenza, and Garcia were positioned.

4 A Mm-hmm.

5 Q Does that indicate to you that Sergeant Colavolpe
6 directed Officer Fraenza and Gonzalez to their position?

7 A Again, this is a culmination of a bunch of
8 different reports.

9 Q Okay.

10 A So I think their point being that where the
11 locations of the officers were, whether it was just before
12 or after he arrived, that could have been -- that could
13 have differed from one officer to another and their
14 perception of it. I'm not sure whether one of the other
15 officers in the report said that they were directed by him
16 and he didn't direct them? There is no way of me being
17 absolutely certain who directed the officers to the back
18 of the building. The more important issue I think is the
19 fact their location is accurately depicted in the report.
20 And keep in mind this is also almost a month -- actually
21 more than a month after the occurrence, so -- and
22 sometimes people will differ in opinion.

23 Q When the officers were responding on May 16th,
24 2010, and your attention had been drawn to the radio on
25 your console in your office because of the report of a man

1 with a gun, how important was it for you to know as a
2 shift commander where exactly that man with the gun was
3 located?

4 A Well, I knew at minimum he was inside the
5 billiard hall. So I knew the incident prior to the
6 officers' arrival began inside the billiard hall. I think
7 prior to them actually getting on scene, he had moved from
8 inside to outside of the establishment. And I think the
9 radio transmission we discussed earlier I did give the
10 information to the officers on where he was located.
11 Prior to the sergeant's arrival, I think. I'm not sure
12 whether the other officers were there or not.

13 MS. BAIRD: Okay. I'm going to take a
14 break, talk with my client. We'll see if we're
15 almost to the end. Okay?

16 MS. MACCINI: Sure.

17 (A recess was taken at 11:42 a.m.)

18 (The proceedings resumed at 12:02 p.m.)

19 BY MS. BAIRD:

20 Q Looking at Exhibit G, the internal affairs
21 investigation, if I could direct your attention to page
22 four. My questions are directed at the last two
23 paragraphs on page four.

24 What is the patrol unit office? Where is that
25 located at the department?

1 A On -- well, it's a three-floor department, so it
2 would be the second floor.

3 Q Is that near the office that you described
4 earlier where you were sitting and heard the radio
5 transmission from your console?

6 A There's two offices within the patrol unit, but
7 it is next door to the shift commander's office. So
8 there's actually a patrol unit office and then there's the
9 sergeant's office within the patrol unit office, to be
10 accurate.

11 Q So your office is next to the patrol unit office?

12 A It is.

13 Q The sentence that begins the next to last
14 paragraph on page four of Exhibit G, it's in the passive
15 tense; and by that I mean it doesn't really identify who
16 escorted Mr. Burgess to the patrol unit office. Do you
17 know who escorted Mr. Burgess to the patrol unit office?

18 A I don't. That's why I didn't put a name in
19 there.

20 Q And do you know who he requested to make a
21 statement -- who he addressed in requesting to make a
22 statement against Mark Vanaman?

23 A I believe Mr. Burgess told Sergeant Colavolpe
24 that he wanted to make a statement, but he didn't want to
25 make it at that time because he was too upset. Or

1 something along those lines. And I think that's also
2 reflected in this IA report at some point.

3 Q And on page four of Exhibit G, the last paragraph
4 talks about "Sergeant Colavolpe spoke with me about the
5 matter." And "spoke with me," is that Sergeant Colavolpe
6 spoke with you, lieutenant?

7 A Correct.

8 Q And when did he speak with you about the
9 complaint that --

10 A It was --

11 Q -- lodged?

12 A It was the same night. I'm not sure about the
13 time frame on when he spoke to me about it.

14 Q And at that time did you believe there was no
15 basis to Mr. Burgess's complaint against Mr. Vanaman?

16 A Not from the information I was given.

17 Q And that information would have been given from
18 Sergeant Colavolpe?

19 A Correct.

20 Q What did you know at that time, on May 16th in
21 that conversation with Sergeant Colavolpe, about the, as
22 you termed it, verbal altercation at the Yale Billiards?

23 A What did I know about the verbal altercation?

24 Q Right.

25 A That he had -- Mr. Burgess had a verbal

1 altercation with one of the patrons, Mr. Vanaman, inside
2 the building. And I don't know whether it continued
3 outside or not. I believe they exchanged words, and at
4 one point Mr. Vanaman -- or Mr. Burgess asked Mr. Vanaman
5 if he was a police officer, or something along those
6 lines; and I believe Mr. Vanaman told him no, to which Mr.
7 Burgess replied either "go fuck yourself" or "fuck off,"
8 or something along those lines. So there was some
9 profanity exchanged between the two. And that's in the
10 statement.

11 Q Okay. And at the time where you made a
12 determination that there was no basis to Mr. Burgess's
13 complaint on May 16th, 2010, did you know -- did you have
14 information about who had approached who in the Yale
15 Billiards hall?

16 MS. MACCINI: Objection to form.

17 A I don't know who approached who first, no. I
18 didn't know at that time.

19 BY MS. BAIRD:

20 Q Handing you Plaintiff's Exhibit H from a
21 12/27/2012 deposition. Have you seen that document
22 before?

23 A No.

24 MS. BAIRD: Do you have it?

25 MS. MACCINI: I do have it somewhere.

1 MS. BAIRD: You could always look at the
2 Wethersfield one. It's basically the same.

3 MS. MACCINI: I've got it.

4 BY MS. BAIRD:

5 Q If you need to read the whole thing and take time
6 to do that, that's fine. I'm going to ask you about one
7 paragraph in this document and ask you if you agree with
8 it or not.

9 A Okay.

10 Q And so we'll see if you're comfortable with that.
11 You let me know. Okay?

12 A Sure.

13 Q And the paragraph I'm going to direct your
14 attention to is about halfway down the page, right after
15 the little sentence that says, "However, one must reason
16 that."

17 A Okay.

18 Q I'm going to read this paragraph to you and then
19 I'm going to ask you if you agree with it or not.

20 A Okay.

21 Q "If the open carry of a firearm by a valid permit
22 holder is legal, and another person or persons are
23 alarmed, annoyed or inconvenienced because they're unaware
24 that the permit holder is exercising his legal right to
25 carry his weapon unconcealed, this in itself would not

1 constitute a crime on the part of the permit holder."

2 Do you have an opinion on whether you agree or
3 disagree with that statement?

4 A Well, I have a question if I could. Who is
5 Captain Francis Balzano?

6 Q Okay. I guess no matter who he is or who wrote
7 this, I'm asking you if you agree with it. But I can
8 answer that. He's a captain with the Torrington Police
9 Department.

10 A Okay. Well, this doesn't -- no, I don't agree
11 with the statement if -- that's the short answer. No. I
12 don't.

13 Q Okay. Lieutenant, I know that your career in the
14 Wallingford Police Department only goes back to the '80s,
15 so you may not have had any experience with this, but let
16 me ask you this question.

17 As a patrol officer or in a supervisory
18 capacity, have you ever been aware of a phone call placed
19 by an individual, let's say a white individual in a
20 neighborhood that's predominantly white, concerned about
21 a black person in the neighborhood?

22 MS. MACCINI: Objection to form.

23 You can answer.

24 A Okay. I don't know with any degree -- I couldn't
25 answer with any degree of certainty whether I have or not.

1 I don't really receive calls.

2 BY MS. BAIRD:

3 Q Okay.

4 A So are you asking have I ever been dispatched to
5 calls?

6 Q Okay. I'll ask you that.

7 A Okay. I mean, I've been dispatched to suspicious
8 persons calls. I don't really know whether or not it's
9 been specifically stated what their race was.

10 Q Okay. So you've never experienced in your career
11 as a police officer a white individual in a white
12 neighborhood being concerned about a black person in that
13 neighborhood?

14 A I couldn't be specific. It could be -- certainly
15 could be possible, but I can't give you an accurate
16 account of whether it happened or not. It may have
17 happened. I mean, I've been dispatched to thousands of
18 calls over the years. So suspicious people? Yes. I
19 don't necessarily know whether it was white, black or
20 otherwise.

21 Q Okay. Is that a strange question? You've never
22 heard of anything like that?

23 A No, I just -- I want to be accurate --

24 Q Right.

25 A -- so I can't tell you with any degree of

1 certainty. I probably have. I mean, it's probably been
2 dispatched to all kinds of officers. I'm not sure. I'm
3 not sure whether I can be specific for you.

4 Q Okay. There's a Plaintiff's Exhibit J. Let me
5 ask you if you recognize that or not.

6 A Yes.

7 Q Do you recall under what circumstances you first
8 saw Exhibit J, the May 27th, 2010 memo?

9 A I think the chief sends it out to all the
10 officers on or about that date. Via e-mail, I believe.

11 Q And when you received this document on or about
12 May 27th, 2010, how did you characterize this document?

13 A I didn't.

14 Q Is it a memo?

15 A You'd have to ask the chief what this is. I
16 don't --

17 Q Okay.

18 A He sent out an e-mail with some case law
19 regarding pistol permits and possession, and that was
20 that.

21 Q How often does the chief send out documents
22 similar to this May 27th, 2010 document?

23 A The chief sends out memos from federal agencies;
24 he sends out memos from Homeland Security; he sends us --
25 he sends out memos to the work force on a regular basis.

1 So it's a regular practice that he sends out memorandums.

2 Q Okay. So you do characterize this document as a
3 memo?

4 A I mean it's not a policy, so it's an interoffice
5 memo, I guess? I don't know -- it's on letterhead, but he
6 sends it out in I believe e-mail format. So it's an
7 e-mail memo, I guess, to be fair.

8 Q And the other documents that you mentioned that
9 the chief sends out, are those drafted by him or from --

10 A No; I mean they're usually, I mean, e-mails from
11 law enforcement for like officer safety issues. Things
12 are sent out by federal agencies, so he usually forwards
13 e-mails on.

14 Q You may not be able to answer this. I'm just
15 trying to -- to me it appears to be a document that's over
16 three pages and took some effort to write. You know, I'm
17 a lawyer, and I know how much effort it takes to write,
18 you know, a document like this. My question is did you
19 receive other documents similar to this by the chief,
20 written by him that, you know, were three pages or more?

21 A Without getting myself in trouble, the chief is a
22 little wordy and he does send out lengthy memorandums, if
23 you will. So --

24 Q Okay.

25 A -- yeah, I mean we do get large documents from

1 the chief.

2 Q Okay. Fair enough.

3 A Okay.

4 Q After May 10th or -- let me see -- May 16th,
5 2010, did you attend any training in firearms laws in the
6 State of Connecticut? Or have you attended any trainings?

7 A Firearms laws?

8 Q Yes.

9 A Not specifically, no. We have a mandatory
10 certification retraining every couple of years. So
11 sometimes it's incorporated in it and sometimes it's not.
12 But nothing like a specific course for it, no.

13 Q Do you have any knowledge whether any officers in
14 the Wallingford Police Department since May 16th, 2010
15 continued to refer to the pistol permit as a concealed
16 carry permit?

17 A I don't have any information on that.

18 Q Have you heard it --

19 A No.

20 Q -- used?

21 A No. They don't -- they don't really talk to the
22 lieutenant that much.

23 Q As a supervisor, as a shift commander, what is
24 your understanding of the officers under your supervision
25 in terms of their belief or what -- let me ask it this

1 way.

2 Do you know if officers under your supervision
3 understand, as you've indicated you understand, that the
4 law for a valid permit holder allows open or concealed
5 carry?

6 MS. MACCINI: Objection to form. That's a
7 mischaracterization of his testimony.

8 MS. BAIRD: Well, okay. Let me lay a
9 foundation then.

10 BY MS. BAIRD:

11 Q Does the law, barring all other circumstances,
12 prohibit the open carry of a firearm by a permit holder?

13 A I think the law doesn't address it either way.
14 The law does not address specifically whether or not your
15 weapon must be concealed or otherwise. And as far as --

16 Q Well, do you agree that to arrest somebody for
17 something the law has to prohibit it?

18 A If Mr. Burgess was arrested for a weapons
19 violation, then I would answer it differently. However,
20 he wasn't arrested for a weapons violation, he was
21 arrested for causing a disturbance. So unless you have
22 probable cause to arrest somebody based on a state or
23 federal statute, then you wouldn't make an arrest, I guess
24 is the best way I could --

25 Q And what caused the disturbance?

1 A A totality of the circumstances from the
2 interactions both inside and outside of the establishment.

3 Q Did the totality of the circumstances include
4 that Mr. Burgess was openly carrying a firearm?

5 A I think the fact that Mr. Burgess openly carrying
6 a firearm brought people to his attention prior to the
7 police.

8 Q And that was the disturbance?

9 A No, I don't think that was the disturbance in and
10 of itself. But you asked me whether or not his open
11 firearm brought it to other people's attention, and the
12 answer to that would be yes.

13 Q Well, what I asked was did the totality of the
14 circumstances include him openly carrying a firearm?

15 A I think the precipitator for the beginning of the
16 disturbance began with the fact that somebody noticed that
17 he was carrying an open firearm, and that's where the
18 sequence of events began.

19 MS. BAIRD: Okay. That's all.

20 MS. MACCINI: I don't have any questions.

21

22 (Whereupon, the witness was excused and the
23 proceedings were concluded at 12:19 p.m.)

24

25

SIGNATURE PAGE

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I, ANTHONY MARTINO, have read the foregoing transcript of the testimony given at the deposition held on JANUARY 3, 2013, and it is true and accurate to the best of my knowledge as originally transcribed or with the changes as noted on the attached Errata Sheet.

ANTHONY MARTINO

STATE OF CONNECTICUT
COUNTY OF _____

Sworn and subscribed to before me this _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires: _____

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