

REPORT OF JON M. SHANE, PH.D

SUBMITTED TO: Jonathan D. Plaut, ESQ.
Cohan, Rasnick, Myerson, Plaut, LLP
One State Street
Boston, MA 02109

September 30, 2014

PERTAINING TO: Duane Alves (Plaintiff)

vs.

James Hyde, Christopher Borum, Ariel Collazo and John Daly
(Defendants)

United States District Court C.A. No. 1:12-cv-10935-MLW

I. SCOPE AND OBJECTIVES

The scope of this report in my involvement in this case is to consider and address the actions and inactions of James Hyde (“Hyde”), Christopher Borum (“Borum”), Ariel Collazo (“Collazo”) and John Daly (“Daly”), who are each defendants in the lawsuit identified above. I have come to several opinions concerning these officers as set forth below, and I also provide the bases for my opinions.

The objectives were to determine whether:

1. the actions of these officers fell below the standard of care they owed to Duane Alves (“Alves”) at the Steakhouse on May 25, 2011 and thereafter;
2. the conduct of these officers at the Steakhouse on May 25, 2011 constituted actions taken under the color of law.

I began working on this case in or about July, 2013 and have worked on it through today. My evaluation is based, in part, on my research, teaching, education, training and experience. In

addition, I have reviewed and relied upon data prepared and furnished from Attorney Plaut. In forming my opinions set forth below, I have read the Alves Memorandum dated September 24, 2014, and the documents attached thereto, which are:

(Add Ex. A – D, and F – Q)

Ex. E –Gosnold Docs

Ex. R – Valeri Dep

Ex. S – Jeff Whatola Dep

Ex. T – Alves RINTS

Ex. U – Hyde Depo trans

Ex. V – Barnstable Police Department Supplemental Narrative for Detective David L. Turner, relating to Wahtola interview

Ex. W – Transcript of Deposition of Jeffrey Wahtola (“Wahtola Trans.”), Ex. W, at 27-28

Ex. X – Barnstable Police Department; Turner’s Narrative Regarding the Interview of James Hyde.

Ex. Y – Deposition Transcript of Duane Alves (“Alves Trans.”), Vol. I, Ex. Y, at 102-104.

Ex. Z – Alves Trans, Vol. III

AA – Police report of interview of Luis Martinez

BB – Police Report of interview of Jonathan Taylor

CC – Wathola police report.

DD – Daly police report

EE – Amy Cook police report

FF – Matthew Woodman police report

GG – Meredith Daniels police report

HH – Hyde police report

II – Welch police report

JJ – Remi Rodriguez affid

KK – Report of Armando Feliciano

LL – Police report of Stephanie Taylor

MM – Sheryl Valeri police report

NN – Borum’s depo trans

OO – Collazo’s depo trans

PP – Daly’s depo trans

QQ – Hyde’s depo trans

RR – Photos of Alves

SS – Barnstable police call log

TT – Report of Feliciano

UU – Depo trans of Remi Rodriguez

VV – Add the publications, authorities and cases referenced in this report as the standards of care.

I have also reviewed the pleadings in this case and the interrogatory responses of the parties.

I have also relied upon books, industry journals, government documents, police organization

publications and peer-reviewed journals in policing, and criminal justice. These materials were not consulted solely in conjunction with this case; rather, I have reviewed these materials as part of my many years in the field of criminal justice and police conduct and misconduct. In total, these documents provide the usual and customary data necessary to document and understand the sequence of events, actions and consequences arising from this incident.

II. STATEMENT OF QUALIFICATIONS AND BASES OF OPINION

Employment Record

I am an associate professor of criminal justice at John Jay College of Criminal Justice, which is located at 524 W. 59th Street, New York, NY, 10019. I have been a member of the faculty in the Department of Law, Police Science and Criminal Justice Administration since January 2009. I teach graduate and undergraduate courses related to criminal justice with a concentration in policing. I also conduct research on policing. My expertise is police policy and practice and the theoretical underpinnings of the police, which are reflected in my teaching and research. My other teaching and research interests are situational crime prevention, social disorganization theory, routine activities theory and violent crime.

Prior to my faculty appointment I had a career in law enforcement in both civilian and sworn capacities from December 1985 to December 2005, retiring at the rank of captain from the Newark (NJ) police department. I began my law enforcement career on December 2, 1985 as a police dispatcher for the Clifton, New Jersey police department. On March 20, 1989, I became a police officer for the Newark, New Jersey police department. I held several positions throughout my career in both operational and administrative assignments. I was promoted to sergeant in June 1995; lieutenant in July 1998; captain in September 2000. On January 21, 2005, I was notified by the New Jersey Department of Personnel that I was eligible and qualified to be promoted to deputy chief according to state standards (certification # PL050068, January 14, 2005). The majority of my career was spent in both operational and administrative assignments drafting, reviewing or implementing policy for the Newark Police Department. In these roles I created, revised or reviewed policies and implementation orders governing the administration and operations of the Newark Police Department. I also provided direct advice and consultation the Police Director, Chief of Police and other command staff members regarding agency policy that was based on research, trends and best practices in U.S. law enforcement.

I began my research and teaching career in 2005 as a lecturer and an adjunct professor of criminal justice at Rutgers University and Fairleigh Dickinson University. Table 1 is a summary of my employment from 1985 to present; table 2 is a summary of my training and education, and table 3 is a summary of my related employment and experience. My curriculum vitae is attached as Appendix A.

Table 1*Summary of Employment Record*

Date	Agency	Assignment	Position
January 2009 Present	John Jay College of Criminal Justice, New York City	Department of Law and Police Science	Assistant Professor
2005/2008	Rutgers University, Newark, NJ	Newark College of Arts and Sciences	Lecturer
Spring 2005	Fairleigh Dickinson University, Teaneck, NJ	School of Administrative Science, Petrocelli College	Adjunct Professor
August 2004 December 2005	Newark (NJ) Police Department	Office of the Chief of Police, Command Operations Center	Command Staff
April 2004 August 2004		Operations Bureau, North District Station	Commanding Officer
August 2002 April 2004		Office of the Police Director, Office of Policy and Planning	Commanding Officer
June 2002 August 2002		Operations Bureau, East District Station	Commanding Officer
January June 2002		Office of the Police Director, Office of Policy and Planning	Commanding Officer
April 2000 January 2002		Office of the Police Director, Office of Policy, Planning and Technology	Commanding Officer, Management Information Systems
July 1999 April 2000		Operations Bureau, North District Station	Tour Commander
July 1998 July 1999		Office of the Police Director, Office of Policy and Planning	Executive Officer
September 1997 July 1998		Office of the Police Director	Special Assistant to the Police Director
May 1997 September 1997		Criminal Investigation Bureau, Violent Crime Division	Homicide Section Supervisor

Table 1*Summary of Employment Record*

Date	Agency	Assignment	Position
June 1995 September 1995		Field Operations Bureau, East & West District Police Stations	Field Supervisor
August 1994 September 1997		Field Operations Bureau, Emergency Response Team	Operator and Team Supervisor
March 1993 May 1997		Office of the Police Director, Research, Analysis and Planning Division	Detective
November 1992 March 1993		Special Investigation Bureau, Special Projects Section, TARGET Team	Police Officer
August 1989 November 1992		Field Operations Bureau, South District Station	Police Officer
March 1989 August 1989		Office of the Chief of Police, Police Academy	Police Recruit
December 1985 March 1989	Clifton (NJ) Police Department	Communications Division	Police Dispatcher

Education and Professional Development

I hold a baccalaureate degree (October 2002), Master of Arts degree (January 2005) and doctoral degree (October 2008) in criminal justice from Rutgers University. I also hold a certification in non-profit management (August 2004) from Rutgers Graduate School of Public Administration. During my law enforcement career I attended three senior management programs for police leadership: 1) 193rd Session of the FBI National Academy (April 5 – June 19, 1998); 2) 25th Session of the Senior Management Institute for Police (June 21, 2001); and 3) Police Foundation Visiting Police Fellowship program, Washington, D.C. (January – June 1997).

The FBI National Academy is a professional course of study for U.S. and international law enforcement leaders that serves to improve the administration of justice in police departments in the United States and abroad and to raise law enforcement standards, knowledge, and cooperation

worldwide. The Senior Management Institute for Police (SMIP) is a program of the Police Executive Research Forum that provides senior police executives intensive training in the latest management concepts and practices used in business and government. SMIP promotes general management theory, policy development, planning processes, organizational structure and behavior. The Visiting Police Fellowship program at the Police Foundation affords police leaders the opportunity to work with nationally recognized experts in policing, police policy, and research. The program allows the fellow to benefit from the specialized skills of individual relationships and exposure to state-of-the-art ideas that promote professional growth through research, training and technology.

During my tenure in the Newark Police Department I was a state certified police academy instructor (April 15, 1993 – December 31, 2004) and a member of the Newark Police Emergency Response Team (December 1994 – September 1997). In my capacity as a police academy instructor I taught various courses to recruit-level and in-service personnel including agency rules and policy, search and seizure, use of force, chemical agents and tactics. In my capacity as an ERT member and supervisor I was trained as a chemical agents instructor by the FBI and taught recruit-level and in-service personnel on the types, effects and consequences of chemical agents.

My training sessions often combined classroom and practical exercises to add dimension and depth to the classroom material. Practical exercises allow trainees to directly apply the knowledge, skills and abilities they acquired in the classroom to live sessions in a supervised manner. This gives the trainee immediate feedback and critique about the consequences and effects of their actions through a range of simulations that are designed to add as much realism and literal truth as possible to the exercise. Table 2 is a summary of my education and training.

Table 2
Summary of Education and Professional Development

Date	School	Degree or Certificate
October 1, 2008	Rutgers School of Criminal Justice, Newark, NJ	Doctorate, criminal justice
January 17, 2005	Rutgers School of Criminal Justice, Newark, NJ	Master of Arts, criminal justice
August 31, 2004	Rutgers Graduate School of Public Administration, Newark, NJ	Certificate, non-profit management
October 1, 2002	Rutgers University, University College, Newark, NJ	Bachelor of Science, criminal justice

Table 2*Summary of Education and Professional Development*

Date	School	Degree or Certificate
June 21, 2001	Police Executive Research Forum, Harvard University John F. Kennedy School of Government, Senior Management Institute for Police—Session 25, Boston, MA	Certificate of completion
November 3, 1998	Value-Centered Leadership: Ethics, Values and Integrity, International Association of Chiefs of Police, Newark, N.J.	Certificate of completion
April 5, 1998 June 19, 1998	Federal Bureau of Investigation, FBI National Academy, 193 rd session, Quantico, Va.	Certificate of completion
July 1997	Practical Homicide Investigation, Vernon J. Geberth, Newark, NJ	Certificate of completion
January 1997 June 1997	Police Foundation, Visiting Police Fellowship Program, Washington, D.C.	Certificate of completion
April 1995	Chemical Agents in Law Enforcement Instructor, Federal Bureau of Investigation, Ft. Dix, NJ	Certificate of completion
June 25, 1993	Advanced Criminal Investigations, Essex County Police Academy and Federal Bureau of Investigation, Cedar Grove, NJ	Certificate of completion
April 21, 1993	Methods of Instruction, Newark Police Academy, New Jersey Division of Criminal Justice, Newark, NJ	Certificate of completion
April 15, 1993 December 31, 2004	State Certified Police Academy Instructor, Newark Police Academy, Newark, NJ	Certificate of completion
November 18, 1992	New York-New Jersey Anti-Car Theft Committee, National Insurance Crime Bureau, Tarrytown, NY	Certificate of completion

Related Employment and Experience

In addition to my law enforcement career and my research and teaching career, I have related experience in police administration, criminal justice and research. Table 3 summarizes my related experience.

Table 3*Related Employment and Experience*

<p>March 2006 July 2006</p>	<p>Consultant to Essex County College, Newark, NJ to assist with design and implementation of a geographic information system (GIS) training program for law enforcement and homeland security initiatives</p>
<p>February 2005 September 2005</p>	<p><i>Staff Member</i>, NJ Attorney General’s Office - Camden Commission for Public Safety. Final report accessible at http://www.state.nj.us/lps/com-report-camden.pdf</p> <p><i>Research Associate, Rutgers Police Institute</i>. Conducted public safety research and a police management study in Camden, NJ as a staff member of the <i>Camden Commission for Public Safety</i>. Research included a management study on efficiency and recommendations on best practices for organizational change, deployment and sustained crime control initiatives.</p>
<p>May 2004 Present</p>	<p><i>Senior Research Associate, Police Foundation Washington, D.C.</i> Currently, serving as a senior research associate to the Police Foundation on a variety of topics related to policing.</p>
<p>October 2003 May 2004</p>	<p><i>Research Team Member, Rutgers Center for Mental Health</i>. Conducted research on police interactions and responses to persons with mental health issues. Study included conducting on site interviews with police officers as well as calls for service data analysis.</p>
<p>September 2003 September 2004</p>	<p><i>Differential Police Response: Neighborhood Social Disorganization and Police Response Time to Domestic Violence Calls</i>. Principal investigator and author of explanatory research on police response time to domestic violence calls in Newark, New Jersey. The objective was to explain the relationship between indicators of social disorganization and police response time to domestic violence calls for service.</p>

On the basis of my research, teaching, education, training and experience, I am therefore familiar with the policies, practices and customs associated with policing, including the risks, vulnerabilities and uncertainties, as well as how police officers are trained, the importance of policy and how policy is developed and implemented at the line level.

Publications

Between May 2003 and present day, I authored, co-authored or contributed to the following peer-reviewed articles, book chapters, technical reports, monographs and books on police-related topics that deal with crime, or management and administration of the law enforcement function. In 2008, I won a competitive book award and the book—What Every Chief Executive Should Know: Using Data to Measure Police Performance—was named “book of the year” by police-writers.com. My writings are typically directed at upper-level police practitioners and those responsible for

training, policy and program implementation and evaluation, as well as academics who study the police:

1. Shane, J. (forthcoming). Reducing Failure: A View of Policing Through an Organizational Accident Lens. National Institute of Justice. Washington, D.C: National Institute of Justice.
2. Haberfeld, M. & Shane, J.M. (2013). A Look at Police-Initiated Stops for Fare Evasion in the BART System: Embarcadero, Powell, 12th Street and Dublin/Pleasanton Stations. Los Angeles, CA: Consortium for Leadership Equity, University of California, Los Angeles. Unpublished Report.
3. Shane, J. M. (2013). *Learning From Error in Policing: A Case Study in Organizational Accident Theory*. NY: Springer.
4. Amendola, K., Hulcher, D. & Koval, K. with Heitman, A., & Shane, J. M. (2012). Personnel reallocation and scheduling: *Final report staff scheduling options*, Atlantic City, NJ Police Department. Washington, D.C: Police Foundation.
5. Amendola, K.A., Weisburd, D. Hamilton, E., Jones, G., Slipka, M., Shane, J.M & Ortiz, C¹. (2012). The impact of law enforcement shift practices and extra-duty employment on various health, safety, performance, and quality of life measures. Washington, D.C: Police Foundation.
6. Shane, J.M. (2012). Police employee disciplinary matrix: An emerging concept. *Police Quarterly*, 15(1):62-91.
7. Shane, J.M. (2012). Abandoned buildings and lots. Problem-Oriented Guides for Police, Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services.
8. Shane, J.M. (2011). Daily work experiences and police performance. *Police Practice & Research*. 13(3):1-19.
9. Haq, Q. & Shane, J.M. (2012). The impact of work environment on police performance. In V. Sergevnin (ed.), *Critical Issues in American Criminal Justice System*. Russian Academy of National Economy and Public Administration under the President of Russian Federation. Moscow.
10. Amendola, K.A., Weisburd, D. Hamilton, E., Jones, G., Slipka, M., Shane, J.M & Ortiz, C. (December 2011). The impact of law enforcement shift practices and extra-duty employment on various health, safety, performance, and quality of life measures. Washington, D.C: Police Foundation.
11. Jones-Brown, D. & Shane, J.M. (June 2011). An exploratory study of the use of informants in drug prosecutions in New Jersey. Newark, NJ: ACLU-NJ
12. Shane, J.M. (2011). Deterrence or system overload? The effect of imprisonment and clearance rates on auto theft in the United States. *Law Enforcement Executive Forum Journal*, 11(1), 143-172.
13. Shane, J.M. (Report contributor). (March 2011). Motivating today's workforce: The future of incentive and recognition program design. Appendix E, *Aligned Incentives for Police Officers*. St. Louis, MO: The Incentive Research Foundation.
14. Shane, J.M. (Task force advisor and contributor). (2010). Reducing inherent danger: Report of the task force on police-on-police shootings. Albany, NY: New York State Task Force on Police-on-Police Shootings.
15. Shane, J.M. (June 2010). Miranda's "clear statement" requirement. *New York City Police Department, Police Academy—Executive Development Section*, 1(2). New York, NY.
16. Shane, J.M. (2010). The limits of auto parts-marking as a situational crime prevention measure: A qualitative analysis. *Law Enforcement Executive Forum Journal*, 10(3), 109-140.

¹ This research report received the **2012 Outstanding Experimental Field Trial Award** from the **Division of Experimental Criminology/American Society of Criminology (ASC)**. The award was presented to **Dr. Karen Amendola** et al. at the 68th annual meeting of the ASC in Chicago on November 14, 2012.

17. Shane, J.M. (2010). Organizational stressors and police performance. *Journal of Criminal Justice*, 38(4), 807-818.
18. Shane, J.M. (2010). Key administrative and operational differences in the police quasi-military model. *Law Enforcement Executive Forum Journal*, 10(2), 75-106.
19. Shane, J.M. (2010). Performance management in police agencies: A conceptual framework. *Policing: An International Journal of Police Strategies & Management*, 33(1), 6-29.
20. Shane, J.M. (2009). Report of the Expert Panel on Parts-Marking, Professional Theft and Other Vehicle Security (Appendix E); Auto Body Repair Shops (Appendix F); Prosecution of Parts Cases (Appendix G). In M. Maxfield & R. Clarke, *Parts Marking and Anti-Theft Devices Technology Study*. Washington, D.C: National Highway Transportation Safety Administration (pp. 107-152).
21. Shane, J.M. & Lieberman, C.A. (2009). Criminological theories and the problem of modern piracy. In M. Haberfeld and A. von Hassell (Eds.), *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st Century*. Dubuque, IA: Kendall-Hunt Publishing. (Submitted 2nd edition in 2012).
22. Shane, J.M. (2009). September 11th terrorist attacks on the United States and the law enforcement response. In M. Haberfeld and A. von Hassell (Eds.), *A New Understanding of Terrorism—Case Studies, Analyses and Lessons Learned*. New York: Springer.
23. Shane, J.M. (2008). Go after terrorism grants. Brief 20. In G. Newman and R.V. Clarke, *Policing Terrorism: An Executive's Guide*. Washington, D.C: COPS Office.
24. Shane, J.M. (2008, September). Developing a police performance measurement system. *FBI Law Enforcement Bulletin*. Vol. 77, No. 9:8-18.
25. Shane, J.M. (2008). *Developing a Performance Management Model*. Flushing, NY: Looseleaf Law Publications.
26. Shane, J.M. (2007). *What Every Chief Executive Should Know: Using Data To Measure Police Performance*. Flushing, NY: Looseleaf Law Publications.
27. DeLorenzi, D.J, Shane, J.M. & Amendola, K.L. (2006, September). The Compstat Process: Managing Performance on the Pathway to Leadership. *Police Chief*, Vol. 73, No. 9 Alexandria, Va: IACP.
28. Sellers, C.L. Sullivan, C.J., Veysey, B.M., & Shane, J.M. (2005). Responding to persons with mental illnesses: police perspectives on specialized and traditional practices. *Behavioral Sciences and the Law*. 23:647-657.
29. Shane, J.M. (2005, June). Activity-based budgeting: creating a nexus between workload and costs. *FBI Law Enforcement Bulletin*, Vol. 74, No.6:11-23.
30. Zanin, N., Shane, J.M. & Clarke, R.V. (2004, August). Reducing drug dealing in private apartment complexes: Final Report to the U.S. Department of Justice Office of Community Oriented Police Services on a Project Undertaken in Newark, NJ to Test the Utility of the Problem-Oriented Guides for Police Project. Washington, D.C.: U.S. Department of Justice, COPS Office.
31. Shane, J.M. (2004, April, May, June.). Compstat process. *FBI Law Enforcement Bulletin*. Vol. 73. No. 4, 5 and 6.
32. Shane, J.M. (2003, May). Writing a winning grant proposal. *FBI Law Enforcement Bulletin*, Vol. 72. No. 5:12-21.

Portions of my publication on the Compstat process (originally published in 2004, April, May, June, Compstat Process, *FBI Law Enforcement Bulletin*, 73, 4, 5 & 6) have been reprinted by Kenneth J. Peak

in his book, *Justice Administration: Police, Courts and Corrections Management*, 6th ed. Upper Saddle River, NJ: Prentice Hall (2010, pp. 77-79). As of February 18, 2014, my published work continues to be cited by other authors, researchers and scholars;

Table 4 <i>Citation Indices</i>		
	All	Since 2009
Citations ²	167	144
h-index ³	7	6
i10-index ⁴	4	4
Compiled by Google Scholar Citations as of September 6, 2014		

Basis of Opinion

In preparing this report and expressing my opinion, I relied on the knowledge I have acquired through research, teaching, education and professional development that other experts in my field would consider reliable. I also relied on my experience in criminal justice, police operations and police administration on the accepted standards of care recognized by police organizations and officials throughout the United States as the custom and practice for the administration, management and supervision of police agencies and police personnel. In this regard, I am an active member of the American Society of Criminology (ASC), the Police Executive Research Forum (PERF) and the Academy of Criminal Justice Sciences (ACJS). These organizations are dedicated to improving and promoting criminal justice policies, practices, education and professional standing for criminal justice educators and practitioners through a national and international research agenda that is multidisciplinary and focused on crime, delinquency, public policy analysis and debate.

My professional opinion and police expertise are sought after through various invited lectures, training workshops, research grants and presentations at local, national and international venues on crime, police management, police performance and police policy and practice issues:

² This is the number of citations to all publications. The second column has the “recent” version of this metric which is the number of new citations in the last 5 years to all publications.

³ h-index is the largest number h such that h publications have at least h citations. The second column has the “recent” version of this metric which is the largest number h such that h publications have at least h new citations in the last 5 years.

⁴ i10-index is the number of publications with at least 10 citations. The second column has the “recent” version of this metric which is the number of publications that have received at least 10 new citations in the last 5 years.

1. Invited panel chair, Building Legitimacy Between Police and Community, John Jay College, New York City, September 5, 2014.
2. Invited training workshop, Uruguayan National Police, Basic Course in Criminal Investigations Training Workshop, Montevideo, Uruguay, June 9 to June 20, 2014.
3. Police Foundation, National Institute of Justice and US Department of Justice, COPS Office, Sentinel Events Initiative on Wrongful Convictions, Washington, D.C., February 7, 2014.
4. Inter-American Development Bank policing presentation on policing and the expectations for developing countries, Washington, D.C. , December 3, 2013.
5. Scholarship Program for Training in Advanced Criminal Investigations for Uruguay Police, (practice grant, Ministry of the Interior, Uruguay), October 18, 2013.
6. Invited training workshop, Uruguayan National Police, Advanced Course in Criminal Investigations Training Workshop, Montevideo, Uruguay, October 8-18, 2013.
7. Invited training workshop, Uruguayan National Police, Basic Course in Criminal Investigations Training Workshop, Montevideo, Uruguay, August 20 to September 5, 2013.
8. Invited training workshop, U.S. Army 89th Military Police Brigade, performance management training workshop, Ft. Hood, TX., July 29-30, 2013.
9. U.S. Department of Justice, National Institute of Justice roundtable on “sentinel events initiative” to uncover criminal justice system weaknesses that lead to organizational accidents, Washington, D.C., May 21-22, 2013.
10. Maritime Piracy: A Situational Analysis (research grant, PSC CUNY Award # 66767-00 44), May 15, 2013.
11. U.S. Army Military Police, Senior Leader Conference and Military Police 2020 Strategic Planning Session, National Conference Center, Lansdowne, VA, May 6-9, 2012.
12. Invited panel participant, providing commentary on Roger Graef’s *When Cops Kill*, to explore police shootings and what really happens to the brain and body of police officers when they pull the trigger. Moderated by President Jeremy Travis, John Jay College, April 22, 2013.
13. Panel moderator, 23rd Annual Problem-oriented Policing Conference, *Houston Police Department: Back from the Brink: Reducing Crime and Disorder in the Antoine Corridor*, Presenters: Michael Hill, Ryan Watson and Chris Schuster., October 22-23, 2012.
14. University of New Haven, Center for Advanced Policing, Innovations in Police Management Course, New Haven, CT., August 6-10, 2012.
15. Research and teaching agenda Bramshill Police College (U.K.) January 2012 – April 2012.
16. Presentation to the Chinese People’s Public Security University, Police Security Bureau, on creating a nexus between police workload and budget, police policy and practice issues, Beijing, China, November 27- December 3, 2011.
17. Deterrence or System Overload? The Effect of Imprisonment and Clearance Rates on Auto Theft in the United States, Annual Meeting American Society of Criminology, Washington, D.C., November 17, 2011.
18. Open Society’s Roundtable on Current Debates, Research Agendas and Strategies to address racial disparities in police-initiated stops in the U.K. and U.S.A., *Panel Moderator*, John Jay College of Criminal Justice, New York, August 10-11, 2011.
19. U.S. Department of State and FBI, *Panel Moderator*, Community Policing and Conflict Resolution, Federal Plaza, New York City, May 4, 2011.
20. Lexis/Nexis Government 2011 Insight Conference, *Panel Member*, moderated by Chuck Wexler, Executive Director Police Executive Research Forum (PERF), April 5, 2011.
21. New Haven (CT) Police Department, Investigative Training Course, West Haven, CT, November 9, 2010.

22. U.S. Department of Justice COPS Office National Leadership Roundtable, *Leadership For Public Safety II*, with the Community Policing Leadership Institute (CPLI) at the John Jay College of Criminal Justice Office of Continuing and Professional Studies, April 29-30, 2010;
23. The Impact of Organizational Stress on Police Performance (research grant, PSC CUNY Award # 63310-00-41), April 15, 2010.
24. Benjamin Cardoza Law School lecture on police accountability, Professor Ellen Yaroshefsky, March 10, 2010.
25. Jamaica Constabulary Police Force, Leading Police Performance and Accountability Symposium 2010, training workshop, Kingston, Jamaica, March 30–April 2, 2010.
26. The Myth of The American Police Quasi Military Model, Annual Meeting Academy of Criminal Justice Sciences, San Diego, CA, February 26, 2010.
27. Rethinking Police Use of Confidential Informants, Annual Meeting Academy of Criminal Justice Sciences, San Diego, CA, February 23, 2010.
28. Performance Management in Police Agencies: A Conceptual Framework, Annual Meeting American Society of Criminology, Philadelphia, PA, November 5, 2009.
29. Crime Track: A Statewide Crime Data Collection System, with Christopher Andreychak, Rutgers University—School of Criminal Justice, Annual Meeting American Society of Criminology, Philadelphia, PA, November 5, 2009.
30. Implementing and Institutionalizing Compstat in Maryland Police Agencies, with the University of Maryland, Institute for Governmental Service and Research, September 24-25, 2009; October 22-23, 2009; November 20, 2009.
31. Ohio Association of Chiefs of Police, 2008 in-service training conference, Deer Creek, Ohio, April 22, 2008.
32. Florida Police Chiefs Association 56th Annual Summer Training Conference, Palm Beach Gardens, FL, June 23, 2008.
33. Virginia Association of Chiefs of Police, Annual Conference, Hot Springs, Va, August 19, 2008.
34. The Houston Area Police Chief's Association, Woodlands Public Safety Training Center, Conroe, Texas, October 28, 2008.
35. Ottawa Association of Law Enforcement Planners, Algonquin College, Ottawa, Ontario, Canada, May 5, 2007.
36. Louisiana Attorney General's Command College, Baton Rouge, Louisiana, August 8, 2007;
37. IMPACT Users Technology and Performance Conference, Saratoga Springs, NY, September 17, 2007.
38. International Association of Law Enforcement Planners, Calgary, Alberta, Canada, October 16-17, 2007.

I am also a senior research associate at the Police Foundation, Washington, D.C. and I have been empanelled by the Center for Problem-Oriented Policing to conduct research on behalf of the U.S. Department of Justice, COPS Office, where I am active in police research that has national and international implications.

My research, participation in national forums and broad reading in policing and criminology have given me the theoretical and empirical grounding for examining the impact of police operations on the community. On January 24, 2011, I was named the “highly commended award winner” by

the 2010 Emerald/European Foundation for Management Development, Outstanding Doctoral Dissertation Research Award. This international competitive award is conferred upon those whose dissertation research makes a significant contribution to the field. I received the award under the *Leadership and Organizational Development* category. To broaden my perspective on crime, criminology and policing issues, I serve as an occasional peer-review member for several national and international criminal justice and policing journals, including: *Criminology* (2014); *Criminology & Public Policy* (2012); *Sociological Quarterly* (2012); *Police Quarterly* (2011); *Criminal Justice Review* (2011); *International Journal of Police Science and Management* (2011); *Criminal Justice & Behavior* (2010); *Journal of Criminal Justice* (2010); Taylor-Francis Publishing (2010); Thompson-Wadsworth Publishing; *Police Practice & Research: An International Journal* (2010); *Policing: An International Journal of Police Strategies & Management* (2009, 2012); *Environmental Criminology and Crime Analysis* abstract review (2011, 2012 conferences); and *International Journal of Comparative and Applied Criminal Justice* (2010). On August 20, 2011, I accepted appointment as an *Editorial Advisory Board Member* to the *International Journal of Emergency Services* published by Emerald.

My teaching experience has provided me first-hand knowledge of the ways police operations and policies impact the community in a pluralistic society governed by the rule of law. My teachings at the undergraduate level are: 1) *Police and the Community*; 2) *Introduction to Criminal Justice*; 3) *Introduction to Law Enforcement*; and 4) *Criminology*. My teachings at the graduate level are: 1) *Contemporary Issues in Community Policing*; 2) *Police Ethics*; 3) *Problem-Oriented Policing*; 4) *Issues in Criminal Justice—Police and Corrections*; and 5) *Using Computers in Social Science—Statistics*. On January 14, 2011, I was appointed a member of the doctoral faculty in the criminal justice program, where I am responsible for teaching and mentoring students and serving the general needs of the doctoral program. Since my appointment at John Jay College I have won various awards and been included on the Dean's List (2008-2009; 2009-2010; 2013-2014), a status conferred by the CUNY Office of Graduate Studies in recognition for faculty members who mentor or substantially influence a graduate student's academic success. On August 25, 2011, I was named "Mentor of the Year" by the American Society of Criminology, the leading organization for practitioners and academicians from the many fields of criminal justice and criminology. On December 9, 2013, I was named the "2014 Outstanding Mentor of the Year" by the Academy of Criminal Justice Sciences.

Directly related to my teaching experience is my participation on the curriculum committee in the Department of Law, Police Science and Criminal Justice (LPS) Administration at John Jay

College. The curriculum committee is responsible for: 1) creating proposals for a contemporary curriculum; 2) identifying standards for the discipline; 3) aligning the curriculum with Middle States accreditation standards; 4) developing measurable objectives for courses; 5) identifying course-appropriate resource materials and textbooks; and 6) identifying linkages with the college mission. As part of the LPS curriculum committee, I participated in revising the criminal justice bachelor of science degree (CJBS, 2013) and the police studies degree (PS, 2014). I revised the introductory course on law enforcement, a key foundational course, and created a new course on police use of force for the Police Studies degree.

My administrative experience in policing has provided me with an understanding of the manner in which police policy and practice occurs on a daily basis, from the policy level to the line level. As a command-rank officer in a major urban police department I had a unique opportunity to gain rare insight into police administration, operations and organizational culture, something that is difficult to observe in most other ways and often hidden from outsiders (Shils, 1975). In addition to the aforementioned experience, I also relied on the data presented in the documents that are listed under exhibits in this report (table 7) and the documents listed in the references section to formulate my opinion. Wherever applicable, my opinion is supported by citing historical and contemporary authorities on the topic, as well as contemporary police policy and industry standards.

In summary, I believe that I am an expert in police conduct. My *curriculum vitae* is attached.

Previous Opinions and Compensation

I previously rendered opinions in the cases presented in table 4. I am compensated at \$5,800 for my research and report writing and \$2,200 per day for depositions and courtroom testimony. Expenses associated with travel and incidentals are itemized and invoiced as costs are incurred. I have either testified as an expert at trial or by deposition within the preceding four years; on February 26, 2013, I was qualified in U.S. District Court (Camden, NJ) as a police policy and practice expert (table 5).

Table 5*Previous Opinions*

Category	Date Submitted	Case Number	Court	Type	Deposed?	Trial Testimony?	Attorney
Internal Affairs	March 14, 2013	6:10-CV-1569 (DNH/GHL)	United States District Court, Northern District of New York	Internal affairs, officer-involved domestic violence; supervision	No	No	John Dillon 44 Oxford Road New Hartford, NY 13413 (315) 735-3535
Criminal Investigation	July 12, 2013	2:08-cv-04521-WJM	United States District Court, District of New Jersey—Newark	Photo line-up procedure, sworn affidavit	No	No	Paul Nittoly, Esq. Drinker Biddle & Reath 500 Campus Drive Florham Park, NJ 07932 (973) 549-7180
	June 16, 2011	MID L-005876-09	Superior Court of New Jersey Law Division, Middlesex County	Show-up procedure, preliminary and follow-up robbery investigation	Yes (August 23,2011)	No	Lawrence Lustberg Gibbons, P.C. One Gateway Center Newark, NJ 07102 (973) 596-4731

December 9, 2011	08-1873 (NLH) (JS)	United States District Court, District of New Jersey—Camden	Narcotics investigation, handling confidential informants	No	Yes (February 26, 2013)	Jennifer Bonjean Bonjean Law Group, PLLC 142 Joralemon Street Brooklyn, NY 11201 (718) 875-1850
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Use of Force

November 14, 2010	2:09-CV-4170 (KSH-DS)	United States District Court, District of New Jersey—Newark	Use of Force (firearms)	Yes (Jan 13, 2011)	No	David A. Schwartz Gruber, Schwartz & Posnock 99 Corbett Way, Suite 203 Eatontown, NJ 07724 (732) 544-1460
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January 29, 2010	5:08-cv-599 (NPM/GHL)	United States District Court, Northern District of New York	Use of Force (chemical agents)	No	No	Frank S. Gattuso O'Hara, O'Connell & Ciotoli 7207 East Genessee Street Fayetteville, NY 13066-1262 (315) 451-3810
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December 30, 2011	MON-L- 2196010	Superior Court of New Jersey Law Division, Monmouth County	Use of Force (handcuffing)	No	No	David A. Schwartz Gruber, Schwartz & Posnock 99 Corbett Way, Suite 203 Eatontown, NJ 07724 (732) 544- 1460
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III. STANDARDS

Before any conclusions or inferences regarding practice may be drawn, and before any opinions may be rendered, it is necessary to compare observed behavior against an expected standard. Standards provide the basis for comparison; they are the reference points against which other things can be evaluated and reveal continuity or discontinuity between the items being measured and the expectation. The standards that govern police officers' actions are administrative agency policy, substantive law and procedural law. Table 6 is a summary of the national, state and local standards in this matter.

Massachusetts and federal case law provides standards that officers must meet. The cases on which I rely are referenced below. I have also reviewed the International Association of Chiefs of Police's Model Policy for Off-Duty Conduct and Standards of Conduct, Monell v. Department of Social Servs. of the City of N.Y., 436 U.S. 658 (1978), Barreto-Rivera v. Medina-Vargas, 168 F.3d 42 (1st Cir. 1999), Maimaron v. Com., 449 Mass 167 (2007), Betts v. City of Chicago, Ill., 784 F.Supp 2d 1020, 1028 (N.D. Ill. 2011), and other relevant sources governing the conduct of off-duty police officers. I have also reviewed the following publications concerning off-duty police conduct: Minimizing Risk by Defining Off-Duty Police Conduct by Thomas J. Martinelli, The Police Chief (09/27/14)

http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=print_display&article_id=1208&issue_id=62007).

IV. **OPINIONS**

Based on the available evidence and data, and within a reasonable degree of professional certainty, I have reached several opinions in this matter:

- 1) the conduct of Daly, Borum, Hyde and Collazo fell below the standard of care they owed to Alves;
- 2) Daly acted under the color of law in coercing the Steakhouse to assist him in recovering the cell phone from Alves and in threatening that he would not leave without his cell phone; and
- 3) Daly, Borum and Hyde acted under the color of law by soliciting the involvement of other police officers to surround the steakhouse to prevent Alves' escape.

V. **Bases for Opinions:**

Borum fell below the standard of care he owed to Alves: (1) by breaching the no trespass order imposed upon him by the steakhouse which was designed to protect Alves and the other patrons; (2) by attacking Alves; (3) by agreeing with his fellow officers to attack Alves; (4) by failing to stop the attack on Alves by his fellow officers; (5) by failing to contact the local police to report the attack on Alves; (6) by assisting Daly in attempting to recover his cell phone which he knew or should have known was evidence of Daly's involvement in the attack on Alves; (7) by giving false testimony at his deposition in this case; and (8) by treating Alves in a discriminatory manner on the basis of his race.

Collazo fell below the standard of care he owed to Alves: (1) by attacking Alves; (2) by agreeing with his fellow officers to attack Alves; (3) by failing to stop the attack on Alves by his fellow officers; (4) by failing to contact the local police to report the attack on Alves; (5) by failing to stop Borum from violating the no-trespass order, because he knew that that order was designed to protect Alves; (6) by assisting Daly in attempting to recover his cell phone which he knew or should have known was evidence of Daly's involvement in the attack on Alves; (7) by attacking Alves a second time at the bottom of the spiral staircase, and to the extent such an attack could be deemed to be defense of Daly it was not done in a manner designed to minimize the chance of further harm; (8) by giving false testimony at his deposition in this case; and (9) by treating Alves in a discriminatory manner on the basis of his race.

Daly fell below the standard of care he owed to Alves: (1) by attacking and kicking Alves with a shod foot; (2) by agreeing with his fellow officers to attack Alves; (3) by failing to stop the attack on Alves by his fellow officers; (4) by failing to stop Borum from violating the no-trespass order, because he knew that that order was designed to protect Alves; (5) by failing to contact the local police to report the attack on Alves; (6) by attempting to recover his cell phone which he knew was evidence of his own attack on Alves; (7) by giving false testimony at his deposition in this case; and (8) by treating Alves in a discriminatory manner on the basis of his race.

Hyde fell below the standard of care he owed to Alves: (1) by attacking Alves; (2) by agreeing with his fellow officers to attack Alves; (3) by failing to stop the attack on Alves by his fellow officers; (4) by failing to stop Borum from violating the no-trespass order, because he knew that that order was designed to protect Alves; (5) by failing to contact the local police to report the attack on Alves; (6) by attempting to recover Daly's cell phone which he knew was evidence of Daly's attack on Alves; (7) by placing Alves in fear of his imminent safety in an effort to recover the cell phone; (8) by giving false testimony at his deposition in this case; and (9) by treating Alves in a discriminatory manner on the basis of his race.

Daly acted under the color of law by identifying himself as a police officer to the Steakhouse by instructing the Steakhouse to get the cell phone back from Alves, and by threatening that he would not leave until he got what he wanted.

Daly, Borum and Hyde acted under the color of law by soliciting the involvement of other police officers to surround the steakhouse to prevent Alves' escape.

By virtue of their status as sworn law enforcement officers in Massachusetts, I understand that these officers were certified by the Commonwealth of Massachusetts (and, in the case of Daly, the Drug Enforcement Agency) to practice law enforcement, they met the applicable training standards set by the state and Federal governments and they knew or should have known the applicable laws, policies and procedures governing their conduct. I understand that they each took an oath of office to uphold the law.

Officers of the law, even when off duty, are charged with upholding the law and are obligated not to commit crimes, suffer their fellow officers to commit crimes including hate crimes, conspire with their fellow officers to commit crimes including hate crimes, take any action to cover up the crimes of their fellow officers, or use their inherent powers and training as police officers to commit torts against civilians, intimidate witnesses or obstruct justice.

Police officers, even while off duty, owe a heightened duty care to others which is greater than that of ordinary civilians. Trust is reposed in police officers by the very reason of their employment. Police Comm'r of Boston v. Civil Service Com., 22 Mass. App. Ct. 364, 371, 494 N.E.2d 27, 32 (1986). In Town of Falmouth v. Civil Serv. Comm'n, the Massachusetts Appeals Court held that police officers have a duty to behave in a manner that brings honor and respect for, rather than public distrust of, law enforcement personnel. 61 Mass. App. Ct. 796, 801, 814 N.E.2d 735, 739 (2004), citing Police Comm'r of Boston, 22 Mass. App. Ct. at 371, 494 N.E.2d at 32. In Police Comm'r of Boston, the Court held:

Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Id. (emphasis in original), citing with approval Mayor of Medford v. First Dist. Court of E. Middlesex, 249 Mass. 465, 470 (1924); Mayor of Newton v. Civil Serv. Commn., 333 Mass. 340, 343 (1955), Huntoon v. Quincy, 349 Mass. 9, 14 (1965), and Broderick v. Police Commr. Of Boston, 368 Mass. 33, 41-43 (1975).

This precise same standard applies when an officer is off duty. Town of Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. at 801, 814 N.E.2d at 739, citing Police Comm'r of Boston, 39 Mass. App. Ct. at 601. Even when off duty, a police officer must maintain, “the highest norms of decorum”. Town of Falmouth, 61 Mass. App. Ct. at 801, 814 N.E.2d at 739. Police officers enjoy a “special status” which is taken into account when determining appropriate discipline, even for off-duty conduct. Police Comm'r v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 601, 659 N.E.2d 1990, 1194 (1995). Police officers know, by virtue of their position as police officers, that public tirades even when off duty are unacceptable. Id., 61 Mass. App. Ct. at 801, 814 N.E.2d at 739, fn. 6.

A police officer is a “trustee of the public interest, bearing the burden of great and total responsibility to his public employer.” Broderick v. Police Commr. Of Boston, 368 Mass. 33, 42, 330 N.E.2d 199, 205 (1975) (group of police officers conducted themselves in a highly improper manner while staying at a local hotel after a police parade and celebration).

It is obvious that the off-duty police officers in this case acted in a manner that fell woefully short of their obligations to the public in general and to Alves in particular. Far from maintaining the highest norms of decorum, these officers demonstrated no decorum whatsoever. They brought dishonor to their profession and public distrust of law enforcement personnel. Their conduct would have fallen below the standard of care owed to Alves even by a civilian with no heightened duty. Each of these defendants, however, had a heightened duty because he is a police officer, and therefore their deviation from that standard of care was even further than it would have been without their special status. Each of these four officers had a duty to abide by the law and to not commit crimes or civil infractions, to comport their conduct to the high level of public trust and moral approbation which their oath as police officers requires, to keep the peace and stop the attacks on Alves, to report the race-based attack that had occurred against Alves, and to prevent their fellow officers from demanding return of the cell phone which was evidence of the attack and the attackers. Each officer’s conduct fell below that standard of care.

In addition, each officer at deposition suffered near complete amnesia as to the essential details of the night in question. Either these officers were so intoxicated that they were unable to recall even basic facts of that night, or they agreed among themselves not to testify as to what they knew, namely that they and their fellow defendant officers had substantially violated the law and Alves’ rights. Unfortunately, the latter is much more likely. This is because these officers appeared to remember a variety of facts regarding the day and night in question, however the most essential facts including their own involvement in the attacks and the involvement of their fellow officers were the

main topics that eluded them. It is all the more unlikely that these officers did not observe or remember these salient facts because third-party witnesses remembered them with great detail and clarity. Indeed, the night in question was very dramatic and a reasonable person would not readily forget such basic details. Further, in certain instances they had given a statement to the local police about the events of the night but somehow forgot those facts by the time of their depositions. For example, Collazo informed Barnstable Patrolman Armando Feliciano on or about May 26, 2011 that he “wanted to help get the cell phone back for his friend”. However, at his deposition Collazo completely forgot this and testified that he had no involvement that night with any lost cell phone or any knowledge of a lost cell phone. Similarly, Daly told Barnstable Police Detective Daniel Turner on May 27, 2011 that “an altercation started as Borum returned, and then described it as a ‘scrum’ as in a rugby game. Daly stated that the ‘scrum’ involved himself, Borum, Alves and several other people”. However, at deposition he testified completely differently and stated that *he never even saw a fight*.

Q. So you denies seeing an altercation?

A. No.

Q. Denies seeing a fight?

A. No.

Q. Did you ever hear anyone using the N word against Duane Alves?

A. No.

...

Q. So it wasn't part of any fight. It was just someone pushed you, you fell over and then promptly got back up with the assistance of your colleague?

A. Correct.

...

Q. Do you recognize this to be the statement that you gave on May 27th to Detective Turner?

A. Uh-huh.

...

Q. Okay. Did you – is it your testimony and position that Mr. Turner is writing something inaccurate that you're telling him?

A. Yes. A lot of this has been turned around – you know, is turned around. A lot of this is not what I personally observed but what I found out after.

...

Q. Do you know – were those – were those mistakes by you, with all respect, that you told Mr. Turner something that now you know is – was something inaccurate, or did Mr. Turner just write it down inaccurately?

A. I believe he wrote it down inaccurately.

Transcript of Deposition of John Daly, Ex. PP at 71-84.

This convenient forgetfulness constitutes a breach of the standard of care they owed to Alves, and obviously it constitutes an obstruction of justice as well. A police officer owes a duty not to lie or “fudge the truth” in investigations concerning their possible past wrongful conduct. Town of Falmouth, 61 Mass. App. Ct. at 801, 814 N.E.2d at 739. Police officers know, by virtue of their position as police officers, that untruthful responses in an investigation are unacceptable. Town of Falmouth, 61 Mass. App. Ct. at 801, 814 N.E.2d at 739, fn. 6. A willingness to “fudge the truth in exigent circumstances” is a significant problem, because police work frequently calls upon officers to speak the truth when doing so might put in question a stop or a search or might embarrass a fellow officer. Id., 61 Mass. App. Ct. at 801, 814 N.E.2d at 739; citing Cambridge v. Civil Serv. Commn., 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923 (1997). If the police officers are rendering inaccurate or intentionally misleading testimony at deposition to further obfuscate their own roles in the attacks or to cover-up for their fellow officers, such conduct would constitute a continuing conspiracy and/or an obstruction of justice, which would in turn be further evidence of their breaches of their duties to Alves. See Betts v. City of Chicago, Ill., 784 F.Supp 2d 1020, 1028 (N.D. Ill. 2011) (in §1983 action plaintiff permitted to present evidence that officers attempted to cover up the allegedly wrongful nature of plaintiff’s arrest).

The officers should have called the police to report the assault and battery against Alves and the conspiracy to violate Alves’ civil rights (and Borum’s trespass), but they failed to do so. The officers should not have demanded that Alves return Daly’s cell phone because such demands were designed to intimidate a witness to a crime, obstruct justice by depriving the Commonwealth of

evidence of a crime, and deprive Alves of his Constitutional rights to bring an action against Daly. In fact, Hyde chased Alves back into the Steakhouse in order to retrieve the phone. That chase put Alves in fear for his safety.

Daly should not have asserted his authority as a police officer and to demand that the Steakhouse require Alves to return the cell phone. There was no reason for Daly to identify himself as a police officer except in an effort to convince the steakhouse to do his bidding. By analogy, if Daly had been an accountant he would not have made that fact clear to the bar just prior to requesting the bar's assistance in obtaining direct evidence of his race-based attack on Alves. Instead, he identified himself as a law enforcement agent in order to induce the steakhouse to act on his to cover up his wrongdoing, which it did. Nothing more is required to establish color of law and misuse of power.

Daly, Borum and Hyde acted as a cohesive ad hoc police force by calling in more off-duty officers to surround the Steakhouse to prevent Alves from leaving and to falsely imprison him. A group of non-police officers would not have been able to summons and coordinate a team of police officers to stake the perimeter. They could not have done this without their police power.

Finally, Hyde should have calmed the situation because he is an officer of the law. Instead, he fully participated in it and inflamed it. He did so to cover up his own wrongdoing and that of his fellow officers, and in the process put Alves in further imminent fear for his own safety. If he had not done so, he would not have been injured.

Further evidence of the officers' negligence, wrongdoing and culpability is the fact that Alves himself was not charged with any crime. Indeed, he had been involved in a violent struggle and fight with approximately eight or nine police officers at the bar where tables were knocked over. There was a great commotion which involved and disturbed other bar patrons. Alves took into his possession the cell phone of a police officer and Drug Enforcement Agency offer and refused to

give it back despite numerous requests, and he allegedly punched a police officer squarely in the face causing him to fall. All of this was done in the presence or proximity of at least forty or fifty police officers. Under these circumstances, had Alves fundamentally been the aggressor or wrongdoer, he would be charged with a crime. He was not. This fact alone is extremely probative and informative. Rather, two of the police officers were charged with crimes against Alves. Collazo and Borum were charged criminally for assault and battery on Alves, and there was probable cause to believe that the crimes had occurred. The fact that they were found not guilty at trial does not end the inquiry, because probable cause alone is evidence that the unlawful conduct occurred.

Here, Daly acted under the color of law. For Section 1983 purposes, even when a police officer is off duty and not acting in his official capacity he nonetheless may be acting under “color of law”. A police officer acts under the color of law if his, “conduct is such that the actor could not have behaved in that way but for the authority of his office”. Martinez, 54 F.3d at 986. The traditional definition of acting under color of state law requires that the officer exercised power, “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” Martinez, 54 F.3d at 986, citing West v. Atkins, 487 U.S. 42, 49 (1988); United States v. Classic, 313 U.S. 299, 326 (1941). A person “acts under color of state law ‘when he abuses the position given to him by the State.’” Martinez, 54 F.3d at 986, citing West, 487 U.S. at 50.

An officer can abuse his authority by acting outside the scope of his employment but nonetheless be acting under color of state law. The case of Maimaron v. Commonwealth, 449 Mass. 167, 865 N.E.2d 1098 (2007) is instructive. In that case, Oxner, an off-duty police officer, got into a fight with another patron at a local bar. As the civilian combatant tried to flee, Oxner identified himself as a police officer and ordered him to stop running away. Oxner’s friend chased and caught the civilian, and Oxner punched the civilian causing harm. The Court found that it was not

necessary to find that Oxner had acted within the scope of employment in order to find that he acted under color of state law. The fact that he identified himself as a police officer and issued an official command were sufficient to constitute acting under color of law. Id., 449 Mass. at 179, 865 N.E.2d at 1107. Off-duty police officers who purport to exercise official authority will generally be found to have acted under color of state law. Barna v. City of Perth Amboy, 42 F.3d 809, 816 (3rd Cir. 1994) (manifestations of such pretended authority can include flashing a badge or identifying oneself as a police officer). Acting under color of law includes acting under pretense of law. Martinez, 54 F.3d at 987. Only where a police officer's conduct outside the line of duty is "unaided by any indicia of actual or ostensible state authority" is the conduct not occurring under color of state law. Martinez, 54 F.3d at 986-87.

An officer who is present and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance, provided that he had a realistic opportunity to prevent the other officer's actions. Martinez v. Colon, 54 F.3d 980, 985 (1st Cir.1995), citing Gaudreault v. Municipality of Salemm 923 F.2d 203, 207 n. 3 (1st Cir.1990).

The police officers at North Street Steakhouse were "police officer[s] whether on or off duty" and owed this heightened duty of care to Alves. Police Comm'r v. Civil Serv. Comm'n, 39 Mass. at 600. If he misuses or abuses the authority given to him by the State, he may be liable to parties injured by that misuse or abuse of power. Monroe v. Pape, 365 U.S. 167, 184, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

Each police officer is bound to uphold and defend the law by virtue of their respective police departments' policies, rules and regulations, by their oath of office, and inherently by their high status as officers of the law. Furthermore, each officer owed a duty to report any suspected or observed criminal activities to local on-duty authorities and to follow their own department policies

and procedures. Each officer is prohibited from engaging in any conduct or activity that discredits officers or brings disrepute to their police force.

ACKNOWLEDGEMENT

This report provides my opinions as set forth above based on the available information at this time as well as supporting documentation as identified. I presume the information provided to me is accurate and correct. If additional information becomes available at a later time, then I may submit a supplemental report. Depending on the new information, my opinion in this report may or may not change.

My opinion is based upon a reasonable degree of professional certainty. My comments on the appropriateness and standards of care are professional opinions based upon on the facts of this specific case and should not be generalized to the wider policing community. The opinion I expressed does not constitute a recommendation for any particular administrative action.

I attest, under the penalty of perjury, that the information accurately describes the information provided to me, and, unless otherwise noted in this report, I believe the information to be true. I further declare, under the penalty of perjury, that I researched and prepared this report in accordance with the federal rules of civil procedure 26(2)(B).

Jon M. Shane

Date

OPERATIONS BUREAU

April - August 2004

NORTH DISTRICT POLICE STATION
COMMANDING OFFICER

SEE EAST DISTRICT STATION FOR RESPONSIBILITIES

OFFICE OF THE POLICE DIRECTOR

August, 2002 - April 2004

OFFICE OF POLICY AND PLANNING
COMMANDING OFFICER

January - June, 2002

SEE RESEARCH, ANALYSIS AND PLANNING DIVISION FOR RESPONSIBILITIES

OPERATIONS BUREAU

June - August, 2002

EAST DISTRICT POLICE STATION
COMMANDING OFFICER

The East Police District is the largest geographical precinct in the city with a residential population of approximately 80,000 and a daytime population of more 200,000. Newark's most coveted areas are situated here, including Newark International Airport, Port Newark seaport, the New Jersey Performing Arts Center, University Heights, the campuses of Rutgers University, New Jersey Institute of Technology and Essex County College, and Restaurant Row in the Ironbound. Responsibilities include charge of district station performance, a complement of 160 police officers and detectives, fifty-vehicle fleet, crime analysis, ComStat, personnel assignments, internal affairs and integrity control, records management, and prisoner detention.

OFFICE OF THE POLICE DIRECTOR

April, 2000 - January, 2002

OFFICE OF POLICY, PLANNING AND TECHNOLOGY
COMMANDING OFFICER - MANAGEMENT INFORMATION SYSTEMS

MIS exists to ensure the Department operates efficiently through the use of technology. Responsible for managing the Department's information systems which include hardware and software from Intergraph, Oracle and Motorola. Also, GIS services (mapping), computer aided dispatching (CAD), records management system (RMS), researching new technologies, and administering a \$5 million budget for personnel and equipment. Directed the following projects:

- Construction and implementation of a state-of-the-art Computer Learning Center
- Development of a multimillion dollar Oracle® records management system (RMS)
- Implementation of a wireless (CDPD) network
- Reorganization and management of the geographic information systems (GIS) program

OPERATIONS BUREAU

July, 1999 - April, 2000

NORTH DISTRICT POLICE STATION
TOUR COMMANDER

During a tour of duty, responsible for the efficient operation of one of four geographical District police stations. Responsibilities include supervision of first line supervisors, motor patrol and foot patrol officers; conducting personnel inspections and performance evaluations; initiating disciplinary procedures and personnel investigations; monitoring and counseling subordinate personnel; conducting roll call training, recommending commendations. Also accountable for District desk operations and precinct activities, including charge determinations, reviewing, approving and classifying reports, prisoner detention, assignments, and bail.

OFFICE OF THE POLICE DIRECTOR

July, 1998 - July, 1999

POLICY AND PLANNING DIVISION
EXECUTIVE OFFICER

Responsibilities same as those listed under Research, Analysis and Planning Division.

- Developed the Police Department's position during interest arbitration between the City and the Fraternal Order of Police (FOP).

OFFICE OF THE POLICE DIRECTOR

September, 1997 - July, 1998

SPECIAL ASSISTANT TO POLICE DIRECTOR

The Police Director's Office is responsible for the policy position of the Police Department. Responsible for developing policy, implementing strategic crime control initiatives, responding to interagency correspondence and letters of complaint, acting as an intermediary among police executives, political and community leaders, representing the Police Director as directed, media relations and public information—Police Department spokesperson—and overall tasks designed to direct the mission of the Newark Police Department.

- Coordinated and appeared in an ethics training video produced for the U.S. Department of Justice—COPS Office through a grant to the Police Foundation, Washington, D.C.
- Assigned to the Criminal Investigation Bureau—Fugitive Apprehension Section to design and implement a Fugitive Apprehension Program.

CRIMINAL INVESTIGATION BUREAU - VIOLENT CRIME DIVISION May - September, 1997

HOMICIDE SECTION
DETECTIVE SUPERVISOR

The Homicide Section is responsible for all death investigations, officer-involved shootings, and kidnapping investigations. Responsible for monitoring all active investigations, reviewing "cold" cases, reviewing, classifying and approving investigations, charge determinations, crime scene management, statistical analysis, and database management.

FIELD OPERATIONS BUREAU

June - September, 1995

EAST & WEST DISTRICT POLICE STATIONS

FIELD SUPERVISOR

Responsible for the supervision of motor patrol and foot patrol officers; conducting personnel inspections and performance evaluations; initiating disciplinary procedures and personnel investigations; monitoring and counseling subordinate personnel; conducting roll call training, recommending commendations. Also accountable for desk operations and precinct activities, including charge determinations, reviewing, approving and classifying reports, prisoner detention, and bail.

OFFICE OF THE POLICE DIRECTOR

March, 1993 - May, 1997

RESEARCH, ANALYSIS AND PLANNING DIVISION

DETECTIVE

Responsible for the research and development of budgetary proposals, Department policies, tactical and strategic planning, comparative, statistical and crime analysis, State and Federal grant proposals, interagency surveys, and overall tasks designed to improve the efficiency and effectiveness of the Newark Police Department.

- Over a four-year period successfully solicited by proposal over \$40 million in Federal and State funds for community policing initiatives, equipment, personnel, and construction projects.
- Cadre member of the Emergency Operations Center (E.O.C). E.O.C is responsible for activation during all mobilization exercises, demonstrations/protests, severe weather emergencies, civil disorder conditions, airport disasters and other similar critical incidents.
- Participated in a five month police fellowship at the Police Foundation Washington, D.C. Fellowship entailed writing proposals, designing training curricula, conducting research on policing, and participating in management studies on a national level. Also assisted in the development of the Police Foundation's segment of the *Community Policing Consortium Phase V* grant proposal, submitted to the U.S. Department of Justice, COPS Office.
- Participated in the development and implementation of the Newark Police Department's Emergency Response Team (E.R.T). Team member and supervisor August, 1994 - September, 1997.

SPECIAL INVESTIGATION BUREAU

November, 1992 - March, 1993

SPECIAL PROJECTS SECTION - T.A.R.G.E.T. TEAM

POLICE OFFICER

Assigned to the Tactical Auto Recovery Group and Enforcement Team (T.A.R.G.E.T). This proactive anti-crime unit was designed to combat bank robberies, serial crimes, high-profile incidents, carjackings, and auto thefts on a citywide level. T.A.R.G.E.T. jointly participated with the F.B.I.'s Violent Crime Fugitive Task Force and the Joint Bank Robbery Task Force for combined operations.

FIELD OPERATIONS BUREAU

SOUTH DISTRICT POLICE STATION

POLICE OFFICER

August, 1989 - November, 1992

NEWARK, NEW JERSEY

Appointed to the Newark Police Department and assigned to the South Police District one of four geographical police precincts in the City. The South District encompasses a residential population of more than 80,000 residents, including several public housing tracts with a population in excess of 10,000 people. The South District also harnesses a sizeable industrial/commercial manufacturing area that raises the daytime population to more than 100,000 people.

- Responsible for service demands and response to calls for police service.
- Assigned to Special Enforcement 1990-1992; district level street-crime suppression unit designed to address local conditions. Responsible for plain clothes/anti-crime efforts, decoy, vice, robbery, prostitution and narcotics operations.
- Participated in selective enforcement operations, including saturation patrol and directed patrol operations in high crime neighborhoods.
- Participated in various community policing programs at the district level
- Field Training Officer 1990-1991

COMMUNICATIONS DIVISION

POLICE DISPATCHER

December, 1985 - March, 1989

CLIFTON, NEW JERSEY

Clifton city is one of the urban-15 communities in New Jersey serving a population of nearly 90,000. Responsible for managing police, fire and EMS field assets through a computer aided dispatch system. Also responsible for processing incoming calls for public safety and using advanced crime information systems (CJIS, NCIC).

EDUCATION & TRAINING

RUTGERS SCHOOL OF CRIMINAL JUSTICE
DOCTORAL PROGRAM — CRIMINAL JUSTICE

October, 2008
NEWARK, NEW JERSEY

RUTGERS STATE UNIVERSITY
MASTER OF ARTS DEGREE — CRIMINAL JUSTICE

January, 2005
NEWARK, NEW JERSEY

RUTGERS GRADUATE SCHOOL OF PUBLIC ADMINISTRATION
CERTIFICATION PROGRAM — NONPROFIT MANAGEMENT

August, 2004
NEWARK, NEW JERSEY

RUTGERS STATE UNIVERSITY
BACHELOR OF SCIENCE DEGREE — CRIMINAL JUSTICE

October, 2002
NEWARK, NEW JERSEY

PERF—HARVARD UNIVERSITY JOHN F. KENNEDY SCHOOL OF GOVERNMENT
SENIOR MANAGEMENT INSTITUTE FOR POLICE — SESSION 25

June, 2001
BOSTON, MA

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
VALUE-CENTERED LEADERSHIP: ETHICS, VALUES AND INTEGRITY

November, 1998
NEWARK, N.J.

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION
FBI NATIONAL ACADEMY—193rd Session

June, 1998
QUANTICO, VIRGINIA

PRACTICAL HOMICIDE INVESTIGATION
VERNON J. GEBERTH

July, 1997
NEWARK, N.J.

POLICE FOUNDATION
POLICE FELLOWSHIP PROGRAM

January - June, 1997
WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION
CHEMICAL AGENTS IN LAW ENFORCEMENT INSTRUCTOR

April, 1995
FT. DIX, N.J.

ESSEX COUNTY POLICE ACADEMY AND FEDERAL BUREAU OF INVESTIGATIONS
ADVANCED CRIMINAL INVESTIGATIONS

June, 1993
NEWARK, N.J.

STATE OF NEW JERSEY, DIVISION OF CRIMINAL JUSTICE
POLICE ACADEMY INSTRUCTOR, METHODS OF INSTRUCTION

April, 1993
NEWARK, N.J.

NATIONAL INSURANCE CRIME BUREAU
NEW YORK-NEW JERSEY ANTI-CAR THEFT COMMITTEE

November, 1992
TARRYTOWN, N.Y.

DISTINCTION

POLICE DIRECTOR'S SPECIAL RECOGNITION AWARD	1997
DEPARTMENT AWARD EXCELLENT POLICE DUTY	1997, 1996, 1992, 1991, 1990
NEW JERSEY EXEMPLARY AWARDS PROGRAM	1996
WEBBER SEAVEY AWARD FOR QUALITY IN LAW - ENFORCEMENT (FINALIST)	1994

MEMBERSHIP

ACADEMY OF CRIMINAL JUSTICE SCIENCES (ACJS)	2009
AMERICAN SOCIETY OF CRIMINOLOGY (ASC)	2004
POLICE EXECUTIVE RESEARCH FORUM (PERF)	2003

PROMOTIONS

CAPTAIN	September, 2000
LIEUTENANT	July, 1998
<i>RANK:</i> SERGEANT	June, 1995
<i>STATUS:</i> DETECTIVE	March, 1993

PUBLICATIONS

1. Shane, J. (forthcoming). Reducing Failure: A View of Policing Through an Organizational Accident Lens. National Institute of Justice. Washington, D.C: National Institute of Justice.
2. Haberfeld, M. & Shane, J.M. (2013). A Look at Police-Initiated Stops for Fare Evasion in the BART System: Embarcadero, Powell, 12th Street and Dublin/Pleasanton Stations. Los Angeles,

- CA: Consortium for Leadership Equity, University of California, Los Angeles. Unpublished Report.
3. Shane, J. (2013). *Learning from Error in Policing: A Case Study in Organizational Accident Theory*. Springer Briefs in Criminology Series. New York, NY: Springer.
 4. Shane, J.M. (2012). Police employee disciplinary matrix: An emerging concept. *Police Quarterly*, 15(1):62-91.
 5. Shane, J.M. (2012). *Abandoned buildings and lots. Problem-Oriented Guides for Police*, Washington, DC: U.S. Department of Justice, Office of Community Oriented Policing Services.
 6. Shane, J.M. (2011). Daily work experiences and police performance. *Police Practice & Research*, 13(3):1-19.
 7. Haq, Q. & Shane, J.M. (2012). The impact of work environment on police performance. In V. Sergevnin (ed.), *Critical Issues in American Criminal Justice System*. Russian Academy of National Economy and Public Administration under the President of Russian Federation. Moscow.
 8. Amendola, K.A., Weisburd, D. Hamilton, E., Jones, G., Slipka, M., Shane, J.M & Ortiz, C. (December 2011). The impact of law enforcement shift practices and extra-duty employment on various health, safety, performance, and quality of life measures. Washington, D.C: Police Foundation.
 9. Jones-Brown, D. & Shane, J.M. (2011). An exploratory study of the use of informants in drug prosecutions in New Jersey. Newark, NJ: ACLU-NJ.
 10. Shane, J.M. (2011). Deterrence or system overload? The effect of imprisonment and clearance rates on auto theft in the United States. *Law Enforcement Executive Forum Journal*, 11(1), 143-172.
 11. Shane, J.M. (Report contributor). (March 2011). Motivating today's workforce: The future of incentive and recognition program design. Appendix E, *Aligned Incentives for Police Officers*. St. Louis, MO: The Incentive Research Foundation.
 12. Shane, J.M. (Task force advisor and contributor). (2010). Reducing inherent danger: Report of the task force on police-on-police shootings. Albany, NY: New York State Task Force on Police-on-Police Shootings.
 13. Shane, J.M. (June 2010). Miranda's "clear statement" requirement. *New York City Police Department, Police Academy—Executive Development Section*, 1(2). New York, NY.
 14. Shane, J.M. (2010). The limits of auto parts-marking as a situational crime prevention measure: A qualitative analysis. *Law Enforcement Executive Forum Journal*, 10(3), 109-140.
 15. Shane, J.M. (2010). Organizational stressors and police performance. *Journal of Criminal Justice*, 38(4), 807-818.
 16. Shane, J.M. (2010). Key administrative and operational differences in the police quasi-military model. *Law Enforcement Executive Forum Journal*, 10(2), 75-106.
 17. Shane, J.M. (2010). Performance management in police agencies: A conceptual framework. *Policing: An International Journal of Police Strategies & Management*, 33(1), 6-29.
 18. Shane, J.M. (2009). Report of the Expert Panel on Parts-Marking, Professional Theft and Other Vehicle Security (Appendix E); Auto Body Repair Shops (Appendix F); Prosecution of Parts Cases (Appendix G). In M. Maxfield & R. Clarke, *Parts Marking and Anti-Theft Devices Technology Study*. Washington, D.C: National Highway Transportation Safety Administration (pp. 107-152).
 19. Shane, J.M. & Lieberman, C.A. (2009). Criminological theories and the problem of modern piracy. In M. Haberfeld and A. von Hassell (Eds.), *Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st Century*. Dubuque, IA: Kendall-Hunt Publishing.
 20. Shane, J.M. (2009). September 11th terrorist attacks on the United States and the law enforcement response. In M. Haberfeld and A. von Hassell (Eds.), *A New Understanding of Terrorism—Case Studies, Analyses and Lessons Learned*. New York: Springer.

21. Shane, J.M. (2008). Go after terrorism grants. Brief 20. In G. Newman and R.V. Clarke, *Policing Terrorism: An Executive's Guide*. Washington, D.C: COPS Office.
22. Shane, J.M. (2008, September). Developing a police performance measurement system. *FBI Law Enforcement Bulletin*. Vol. 77, No. 9:8-18.
23. Shane, J.M. (2008). *Developing a Performance Management Model*. Flushing, NY: Looseleaf Law Publications.
24. Shane, J.M. (2007). *What Every Chief Executive Should Know: Using Data To Measure Police Performance*. Flushing, NY: Looseleaf Law Publications.
25. DeLorenzi, D.J, Shane, J.M. & Amendola, K.L. (2006, September). The Compstat Process: Managing Performance on the Pathway to Leadership. *Police Chief*, Vol. 73, No. 9 Alexandria, Va: IACP.
26. Sellers, C.L. Sullivan, C.J., Veysey, B.M., & Shane, J.M. (2005). Responding to persons with mental illnesses: police perspectives on specialized and traditional practices. *Behavioral Sciences and the Law*. 23:647-657.
27. Shane, J.M. (2005, June). Activity-based budgeting: creating a nexus between workload and costs. *FBI Law Enforcement Bulletin*, Vol. 74, No.6:11-23.
28. Zanin, N., Shane, J.M. & Clarke, R.V. (2004, August). Reducing drug dealing in private apartment complexes: Final Report to the U.S. Department of Justice Office of Community Oriented Police Services on a Project Undertaken in Newark, NJ to Test the Utility of the Problem-Oriented Guides for Police Project. Washington, D.C.: U.S. Department of Justice, COPS Office.
29. Shane, J.M. (2004, April, May, June.). Compstat process. *FBI Law Enforcement Bulletin*. Vol. 73. No. 4, 5 and 6.
30. Shane, J.M. (2003, May). Writing a winning grant proposal. *FBI Law Enforcement Bulletin*, Vol. 72. No. 5:12-21.