

**ATTORNEY GENERAL'S REVIEW
OF THE
MARCH 2, 2010 INCIDENT
AT THE STRANGE BREW TAVERN IN
MANCHESTER, NEW HAMPSHIRE**

FINAL REPORT

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Attorney General's Review Of The March 2, 2010 Incident
At The Strange Brew Tavern in Manchester, New Hampshire -
Final Report

On July 15, 2010, the Attorney General announced that the Department of Justice would undertake a comprehensive review of all the facts and circumstances surrounding the March 3, 2010 incident at the Strange Brew Tavern in Manchester, New Hampshire to determine if any crimes were committed. The incident involved four off-duty Manchester police officers and a tavern patron, Christopher Micklovich. This office reviewed the entire criminal file involving charges brought against Micklovich by the Manchester Police Department, as well as all of the interviews contained in the Manchester Police Department's internal affairs investigation file that dealt with potential disciplinary action against the four off-duty officers. All four off-duty police officers cooperated with the Attorney General's investigation by voluntarily providing copies of their otherwise confidential internal affairs interviews. In addition, this office interviewed witnesses who had not previously been contacted as part of the police investigation. Initially, Micklovich declined to meet with investigators from this office. However, after this office completed its initial review of numerous witness statements, this office made the determination not to reinstate criminal charges against Christopher Micklovich which had been *nol prossed* by the Manchester City Solicitor. Following that determination, this office renewed the request to interview Micklovich. He agreed and was subsequently interviewed on February 23, 2011. Lastly, this office reviewed the files that were in the possession of the Hillsborough County Attorney's Office and the Manchester City Solicitor's Office relating to this incident.

SUMMARY OF FINDINGS

On March 2, 2010, Micklovich had dinner at a Manchester restaurant with a friend. During dinner Micklovich drank a glass of wine. They later went to another establishment with two additional friends and consumed a few more drinks. Micklovich and his three friends then went to the Strange Brew Tavern. At some point, Micklovich walked away from his friends and went into the men's room. While there, Micklovich made an offensive comment to another patron. One of the doormen, employed by the tavern, entered the men's room and instructed Micklovich to leave the premises. Micklovich refused to leave and was forcibly escorted from the men's room to the entrance of the tavern, struggling the entire way, whereupon he was pushed outside.

Once in the alley, Micklovich argued with the doorman, and continued that argument with the tavern owner and four off-duty police officers, some of whom attempted to persuade Micklovich to leave. When Micklovich took an aggressive step toward the tavern owner, one of the off-duty officers grabbed Micklovich and pushed him against a parked car. Micklovich, in turn, came back at that officer. The officer then took Micklovich to the pavement, with the help of two of the other off-duty officers. At some point, the off-duty officers identified themselves as police officers and gave repeated instructions to Micklovich to stop resisting. Micklovich struggled and resisted efforts to be placed under arrest. During that struggle, in an attempt to get Micklovich to submit to the arrest, one of the off-duty officers struck Micklovich one or two times in the face, another off-duty officer struck Micklovich multiple times in his midsection and a third off-duty officer administered a pressure point technique to Micklovich's jaw. Micklovich was restrained, handcuffed and brought to an ambulance. A number of individuals witnessed the off-duty officers punching Micklovich. One witness reported that he saw the off-duty officers

repeatedly kick Micklovich. The off-duty police officers denied that they kicked Micklovich and other witnesses did not observe kicking. In his own statement, Micklovich described how he was brought to the pavement and received repeated blows to his head and body even after both of his arms were secured behind his back. Because he mostly covered his head and face with his hands he did not see who struck him. While some of the blows felt like kicks, he never saw anyone kick him and he could not state with any degree of certainty that he was, in fact, kicked during the incident.

When analyzing facts to determine whether criminal charges should be brought, a prosecutor has an ethical duty to consider whether there is probable cause to believe that a crime has occurred, and if so, whether there is a reasonable basis to believe that each element of the crime can be proven beyond a reasonable doubt. If not, a criminal prosecution should not be initiated. In this situation, where the off-duty officers were clearly responding to Micklovich's aggressive action, it is necessary to evaluate whether the State could prove beyond a reasonable doubt that their acts were not justified acts of self-defense, defense of another or the use of physical force in law enforcement under RSA 627:4 or RSA 627:5.

The legal analysis of a case must take into account all of the various witness statements and the degree of corroboration or discrepancies between those statements. While it is not uncommon for witnesses to an event to provide differing accounts, the degree of variance can be critical in determining whether there is a likelihood that the State can sustain its burden of proof beyond a reasonable doubt. With respect to the events at issue, the witnesses were relatively consistent in their description of the off-duty officers' conduct toward Micklovich, with the exception of the taxi driver and Micklovich. The taxi driver was the only person who reported that the off-duty officers were kicking Micklovich. No one else made that observation. The lack

of corroboration for the taxi driver's statement carried significant weight in our analysis.

Although Micklovich stated some of the strikes felt like kicks, he never saw anyone kick him and cannot say with certainty that he was kicked. Further, Micklovich's assertions of what transpired inside the tavern, the reason for his removal from the tavern, his conduct in the alley, his verbal exchanges with the tavern owner and the off-duty officers, his conduct toward the tavern owner, the events that initiated physical contact by the off-duty officers, and his conduct once he was on the ground were contradicted by nearly every witness. The lack of corroboration for Micklovich's assertions, likewise, carried significant weight in our analysis.

It is our determination, based on the totality of the facts derived from the investigation, that the off-duty officers' conduct was justified under New Hampshire law. For purposes of this analysis, the contact between the off-duty officers and Micklovich can be segregated into three distinct categories of use of force by the off-duty officers during a relatively quick sequence of events. First, when the off-duty officer initially grabbed and pushed Micklovich, that officer believed that there was a need to defend the tavern owner against what the officer believed to be the imminent use of unlawful, non-deadly force. That belief was fully supported by the circumstances. Thus, that contact was justified under RSA 627:4. Second, when that officer, assisted by two other off-duty officers, put Micklovich on the ground, the circumstances warranted the officers' belief that Micklovich was about to physically assault the first officer or another person by coming back at that officer in an aggressive manner. That contact was also justified under RSA 627:4. Third, once on the ground, Micklovich continued to resist, despite the fact that the officers had identified themselves as police officers. At that point, there was probable cause to arrest Micklovich for resisting arrest, which the officers attempted to effect. However Micklovich continued to flail his arms and legs, so in an attempt to subdue him two of

the off-duty officers delivered one or two punches to Micklovich's face and a number of punches to his side. Another off-duty officer used a pressure point technique to secure Micklovich's arm from underneath him and place him in handcuffs. Those uses of non-deadly force to effect an arrest were justified under RSA 627:5.

Micklovich sustained serious facial injuries after having been taken to the ground. The off-duty officers used a considerable degree of force in taking Micklovich to the ground. In some circumstances, this could be the basis for an assault charge. But, under all of the circumstances here, the officers had a reasonable belief that their actions were necessary in response to Micklovich's conduct. Once Micklovich was on the ground, there was a report from one witness of Micklovich being kicked during the altercation. While disturbing, that account, which is contradicted by all other eyewitnesses, is not sufficient to sustain the State's burden of presenting proof of an assault beyond a reasonable doubt. Because Micklovich repeatedly resisted arrest while on the ground, those three off-duty officers were justified in using non-deadly force, that being punches and a pressure point technique, to effect Micklovich's arrest. In this situation, no criminal charges are warranted where the officers' physical contacts with Micklovich were justified as acts of self defense or defense of another.

Regarding any criminal charges against Micklovich, prosecutors are given broad discretion with respect to charging decisions, including the *nol prosequing* of charges. When this office reviews a prosecutor's decision to *nol prosequi* a charge, the standard it applies is whether the prosecutor's decision was unreasonable in light of all the circumstances of the case. The Manchester City Solicitor's office acted well within its discretion. The prosecutor carefully evaluated the criminal cases against him. He reviewed the evidence and witness statements. There is no evidence of undue influence on the prosecutor by anyone. The decision to *nol prosequi*

all of the charges was not unreasonable, even when considered in light of the results of the more a comprehensive review undertaken by this office. Thus, the Manchester City Solicitor engaged in an appropriate exercise of prosecutorial discretion. We find no support for earlier allegations suggesting that the decision to *nol pros* the charges against Micklovich evidenced a cover-up by the Manchester Police Department. The City Solicitor's office confirmed that this prosecutorial decision was made independent of any contact with the police department, and our review supports the same finding.

The following are summaries of statements by the witnesses interviewed by the Manchester Police Department and/or the Attorney General's Office.

I. STRANGE BREW TAVERN EMPLOYEES

Mitchell Sawaya

Mitchell Sawaya was interviewed on March 11, 2010, as part of the criminal investigation, on March 24, 2010, as part of the internal affairs investigation and on February 25, 2011, by the Attorney General's Office. During his March 11, 2010, interview, he noted the following: He is the owner of the Strange Brew Tavern. He first became aware that there was an issue when he saw his doorman, Kenneth Kiman, grab a man, later identified as Micklovich, and pull him across the tavern toward the front entrance. Micklovich was resisting the entire way. When Micklovich got to the front door, he turned around and backed himself against the wall. Micklovich said, "I am not leaving, no matter what. There is nothing you can do to make me leave." Kiman pushed Micklovich out the door and into an alley.

Sawaya observed this interaction between Kiman and Micklovich as he stood at the front door of the tavern with off-duty Manchester Police Department Lieutenant Ernest Goodno. Also standing near the front door were off-duty Manchester Police Department officers Matthew

Jajuga, Richard Valenti, Jr., Michael Buckely, Frederick Gillis, and Joseph Cespedes. Sawaya was standing at the front door and Kiman and Micklovich came from across the bar.

Once outside, Micklovich refused to leave the alley. He stated that he was going back into the tavern. At that point, Goodno and a couple of the other officers started to quietly talk to Micklovich in an attempt to persuade him to leave. As they were speaking with Micklovich, he repeatedly stated that he was going back into the tavern to meet his friends and to continue to drink. He also repeatedly stated that he was just a white guy trying to have a good time. While Goodno was telling Micklovich that he needed to go home and that he was not going to be allowed back inside the tavern, Micklovich kept asking Goodno, "What are you going to do, hit me?" At that point none of the men had identified themselves as police officers.

Sawaya then told Micklovich that he needed to leave. Sawaya stated, "I think you'd be doing yourself a favor if you left because the last thing you want is to be arrested." Micklovich responded by asking who was going to arrest him and by continuing to insist that he was not leaving and that he was going back inside the tavern. According to Sawaya, Micklovich, then, took, "a really aggressive step toward [him]." He stepped so close that his feet were between Sawaya's legs. Micklovich's face was up against Sawaya's face. Sawaya thought that Micklovich was going to attack or hit him. At that point, off-duty Officer Jonathan Duchesne grabbed Micklovich and pushed him up against a car. Duchesne did not identify himself as a police officer. After Micklovich was against the car, the other off-duty officers, Goodno, Buckley, and Jajuga, tried to take Micklovich to the ground to handcuff him. At that point, Sawaya overheard someone say that the police should be called and he observed a couple of off-duty police officers on their cell phones. As the officers grabbed Micklovich, he swung and flailed his arms. He also attempted to spin out of their grasp. As the officers tried to pull

Micklovich to the ground, he continued to flail. One of the officers told Micklovich that they were police officers and that he was under arrest.

As Micklovich was brought to the ground, it appeared that he was lifted off his feet by his arm and was pulled to the ground, face first. No one threw a punch at Micklovich, but his face hit the ground hard. While on the ground, Micklovich continued to scream and to fight with the officers. The officers told him to stay still and that he was under arrest. Goodno asked for handcuffs, which Valenti then went to his car to retrieve.

Sawaya did not see anyone punch or kick Micklovich. He did observe Micklovich on the ground, lying on his stomach, and bleeding. He was kicking, flailing his arm, and attempting to roll over. The officers attempted to restrain Micklovich by pulling his arms behind his back so that he could be handcuffed. Shortly after Micklovich was handcuffed, on-duty officers arrived.

During his March 24, 2010, interview, Sawaya provided the following additional information: When Micklovich stepped toward Sawaya in an aggressive manner, Sawaya "could hear people saying, you know, 'Manchester Police. You're under arrest.'" Sawaya thought the person who said that was Duschesne. Sawaya stated that a couple of men grabbed onto each one of Micklovich's arms and, as Micklovich wrestled, threw his arms, squirmed, and yelled, the whole group went to the ground. As he was on the ground, Micklovich had his hands above his head and he rolled, squirmed, and rubbed his face on the ground. The officers, meanwhile, tried to get him to settle down.

Sawaya saw one officer grab Micklovich's legs, another grab one arm, and another officer grab the other arm. Valenti bent down to hold Micklovich's head because he continued to grind his head into the ground. Goodno bent down and put Micklovich's arm behind his back and asked for handcuffs. The officers continued to tell Micklovich to stop resisting and that he

was under arrest. Micklovich screamed, "Let me up. I'm getting up," while he continued to struggle. The officers tried to hold him in place. Sawaya saw Valenti run to get handcuffs. Although one of Micklovich's arms was restrained behind his back, the other arm was not restrained. The unrestrained arm was over his head. Micklovich swung the unrestrained arm while he continued to roll back and forth. Sawaya described this scene as a "[m]ishmash of bodies." Sawaya also indicated that he could not tell who Micklovich hit with his free arm.

When asked his opinion of Micklovich's sobriety that evening, Sawaya stated that Micklovich did not stagger or have slurred speech, but Micklovich's belligerence indicated that he had too much to drink or that he was "maybe on something."

During his February 25, 2011, interview by the Attorney General's Office, Sawaya was asked if he approached Micklovich inside the tavern, asked him to leave or had any physical contact with Micklovich, as alleged by Micklovich. Sawaya denied that any of those events happened. He also denied wearing a leather jacket that evening. He stated, again, that he witnessed what he characterized as an unusual struggle as his doorman, Kenneth Kiman, attempted to remove a resistant Micklovich from the tavern. He saw the two of them face to face. He saw them hit a partition inside the tavern and crash through the front door. He described the atmosphere inside the tavern that night as noisy, due to a live band performing, and that it was a very busy night. Sawaya denied ever pushing Micklovich out the door, as Micklovich alleged. He indicated that he walked outside soon after Micklovich was removed, tapped Kiman on the shoulder and told Kiman, whom he thought was "heated up," to return inside and that, "I'll get him to leave." He then heard Micklovich ask for his shoe and saw the shoe come out the door. Sawaya said he was surprised that this situation escalated because he thought he could talk Micklovich into leaving. He "never expected (Micklovich) to come at

(him) because (Micklovich) wasn't addressing me when he came at me. So it, it seemed very odd the way it played out."

Sawaya did not think Micklovich knew he was the tavern owner, and, contrary to Micklovich's statement, did not hear Micklovich make any comments about the tavern and denied staring at Micklovich and turning away from him. Sawaya asserted that he faced Micklovich the entire time and stated to him, repeatedly, "Why don't you just go away and come back another day. This isn't worth getting arrested over." Sawaya remembered seeing cars parked across from the front entrance to the tavern, seeing Dushesne grab Micklovich, push him back into a parked car and then hearing that car alarm.

Sawaya was asked about the following evening when he went to the Wild Rover Pub with Goodno and his doorman, Justin Henderson. He indicated that he had been a friend of Goodno's for twelve years and that he and Henderson went out, "about once a month." He stated that the plan to go the Wild Rover was made before this incident involving Micklovich. He remembered them having a very brief conversation about the incident, but not a detailed discussion. He also remembered that Sergeant Jamie Gallant and Rachel Goldstein, who entered together but separately from Sawaya, Goodno and Henderson, walked over to talk with them, but did not think they had any discussion with them about the incident.

Justin Henderson

Justin Henderson was interviewed on March 12, 2010, as part of the criminal investigation, on March 31, 2010, as part of the internal affairs investigation and on February 24, 2011 by the Attorney General's Office. Henderson was a doorman at the Strange Brew Tavern. Henderson was on duty on March 2, 2010. While at the front door, Henderson saw the other doorman, Kenneth Kiman, struggling with a patron later identified as Micklovich. Kiman

pushed Micklovich toward the entry while Micklovich pushed Kiman back. As the men pushed each other, they moved quickly across the bar, toward the door, and into a wall. Kiman readjusted his grip on Micklovich and, as they headed toward the door, they went past it and into a partition. Both men fell to the ground. Kiman picked up Micklovich, but they fell again. Kiman and Henderson then picked up Micklovich together. Henderson and Micklovich fell as they went through the door. Micklovich lost a shoe in the scuffle, so Kiman picked it up and tossed it to him. Henderson thought Micklovich had been drinking and "was on something" because he had never seen someone fight like Micklovich as they attempted to remove him from the tavern. He noted how many times the doormen had bounced off the walls and fallen to the floor while trying to remove Micklovich. Although his shirt was ripped and he had lost his shoe, Micklovich did not appear injured.

Once Micklovich had been taken out of the tavern, the owner, Mitch Sawaya, called Micklovich away from the area of the front door. Kiman then went back inside. Those people outside with Micklovich included Sawaya and Goodno. Three off-duty officers whose names Henderson did not know also went outside at some point. About a minute later, another off-duty officer, Rick, also went outside. There were also nine or ten tavern patrons outside.

Sawaya told Micklovich to leave but Micklovich refused and instead kept saying that Sawaya could not make him leave. Henderson described Micklovich as belligerent. When Goodno told Micklovich to leave, he repeatedly asked Goodno, "Are you going to hit me?" Goodno responded that he was not going to hit Micklovich. When Sawaya continued to tell Micklovich to leave and that if he did not leave he would be arrested, Micklovich stepped toward Sawaya, "and he got right in [Sawaya's] face and said, 'Are you going to arrest me?'" As Micklovich repeated this question, he kept getting closer to Sawaya. According to Henderson,

Micklovich looked like he was going to take a swing at or grab Sawaya. The three off-duty officers grabbed Micklovich and told him he was under arrest and that they were police officers. Two officers each grabbed an arm and another grabbed the front of Micklovich's shirt. A struggle ensued and Micklovich and the officers ended up against a parked car.

Micklovich then started flailing around and, after about ten seconds, the whole group fell to the pavement. Once on the pavement, Micklovich started bleeding. He was on his stomach with his head to the side. One officer held Micklovich's right arm behind his back, while another officer tried to get Micklovich's left arm behind his back. A third officer held Micklovich's leg. "Rick" held Micklovich's head between his knees. Micklovich continued to struggle and he flailed his head around. The officers repeatedly told Micklovich to stop resisting and that they were police officers. "Rick" called the police department and then ran to his car to get handcuffs.

As Henderson controlled the crowd, two off-duty officers came out of the tavern to assist him. Henderson saw the officer on the left side of Micklovich strike Micklovich once in the rib cage area as he tried to get Micklovich's left arm behind his back. Micklovich yelled for the officers to get off him as he was on the ground.

The following evening, Henderson went out for a drink with Sawaya. Goodno was with Sawaya. The three did not discuss the incident in detail but they did speak in general terms about how Micklovich had acted. Henderson recalled hearing that Micklovich may have had a broken nose and a deep cut.

During his February 24, 2011, interview with the Attorney General's Office, Henderson stated that he was wearing a Strange Brew t-shirt the night of the altercation, and not a leather jacket, and that neither Kiman nor Sawaya were wearing a leather jacket. He stated, again, that

he witnessed Kiman forcefully remove Micklovich from the tavern. He first saw them at the kitchen doors and then saw them move through the tavern toward the front door. Micklovich struggled the entire distance. Henderson described the atmosphere inside the tavern as loud. Henderson was standing near the entrance and went over to assist Kiman after being relieved of his front door duty by Sawaya. Kiman had Micklovich by the shirt and was escorting Micklovich to the door as Micklovich pushed him the other way. Near the entrance, both Kiman and Micklovich fell to the floor. Henderson assisted Kiman in removing Micklovich from the establishment. Henderson stated, "I've been doing this for a long time and I've never seen a kid that just wouldn't stop." Henderson described as inaccurate accounts of Micklovich standing in the bar and Sawaya tapping him and saying that he needed to leave the bar.

Once outside, Henderson heard Micklovich ask for his shoe. According to Henderson, "We kind of opened the door and said here's your f--king shoe." Henderson saw Micklovich approach Sawaya in an aggressive manner, saw off-duty officers push Micklovich against a parked car and then saw Micklovich "kind of struggling back." The off-duty officers then pulled Micklovich forward to put him on the ground. When they did that, Micklovich's feet came off the ground and it appeared to Henderson that Micklovich landed on his face and was lying facedown on the pavement. Just as the off-duty officers took Micklovich to the pavement, he heard them say to Micklovich, "We're police officers." Once they had him on the ground, Henderson heard them repeatedly tell Micklovich, "Stop resisting. Put your hands behind your back."

Henderson tried to control the crowd that was gathering outside, but also kept looking back at the altercation on the ground. He saw four off-duty officers kneeling down by Micklovich. All of the officers were dressed similarly. He saw that one off-duty officer had

Micklovich's right arm behind his back and was attempting to secure the left arm. He saw another off-duty officer sitting on Micklovich's legs. He saw a third officer, who was kneeling to the left side of Micklovich, strike him one or two times with his forearm to Micklovich's upper back area below the shoulder blade. Henderson observed that Micklovich, "never stopped resisting." He also heard Micklovich state, "I'm sorry," and he indicated that he wanted to get up.

Henderson continued to deal with the people assembled outside. He estimated that the crowd grew to approximately thirty and described the scene as chaotic. Some of those people began yelling and cheering. Some were yelling that the fight should be stopped and to leave the person alone. Others yelled that the men involved in the altercation were police officers. Henderson remembered yelling to get on-lookers to back away and most likely yelled, "They are the f--king police."

Henderson remembered seeing a taxicab arrive and saw people get out of the cab. He remembered someone from the cab ran over to the altercation. Henderson thought that person might attempt to get past him and involve himself in the altercation. Henderson grabbed that person, pushed him back and told him the people involved were police officers trying to arrest someone.

Henderson stated that he and Sawaya regularly met socially on Wednesday evenings. The two of them made plans to go to the Wild Rover before the altercation involving Micklovich. Henderson did not know that Goodno was joining them until he arrived at the Rover but was not surprised when he learned that, given the friendship between Sawaya and Goodno. The three of them talked, briefly, about what happened the night before, but at the time it appeared to Henderson to be a typical situation with a patron who had to be removed from the

tavern. They discussed that Micklovich had blood all over his face, which Henderson attributed to Micklovich hitting his head on the pavement. Henderson remembered other people talking with them inside the Wild Rover. He assumed one of them was an off-duty officer because of references to Micklovich not being compliant at the police station and refusing medical treatment. He denied any conversation between them about coordinating a single version of the facts. Sawaya stated, "This is going to be a huge pain in my ass," and mentioned the bad publicity for the tavern. After that evening, Henderson stated he did not discuss the incident in any detail because, "We're not supposed to talk about it so we just don't."

Kenneth Kiman

Kenneth Kiman was interviewed on March 16, 2010, in a joint interview as part of the criminal and internal affairs investigations. Kiman was employed as a doorman at the Strange Brew Tavern. On the night at issue here, he was told that there was an argument going on in the men's room. When he entered, a patron, later identified as Micklovich, and two Hispanic men were in the men's room. Kiman was told that Micklovich made an ethnic slur toward the men. While Micklovich denied making the slur, two other men in the men's room told Kiman that Micklovich had made the remark and that he had been running his mouth the whole time he was in the men's room. Kiman then took Micklovich by the arm and escorted him from the men's room. When they reached the hallway, Micklovich pulled his arm from Kiman's grasp. Micklovich told Kiman not to touch him. Kiman responded by telling Micklovich to keep walking and to call it a night.

Once they reached the area of the bar, Micklovich stopped and stated he did not have to leave because he had not done anything wrong. Kiman again told Micklovich that he had to leave and grabbed his arm. Micklovich then grabbed Kiman's jacket. Kiman, in turn, grabbed

Micklovich's jacket. Holding on to each other, the two men headed toward the door. They hit a partition on the way out and fell to the floor. Kiman got up, grabbed Micklovich by the shirt and pulled him out the door.

When they got outside, Micklovich swore at Kiman. Kiman told Micklovich to go home. Micklovich stated he was not going anywhere without his friends or the shoe that he had lost in the scuffle. Kiman was then handed Micklovich's shoe, which he, in turn, handed to Micklovich. Micklovich "was totally belligerent" and continued to yell at Kiman. At that point, Sawaya told Kiman to return inside the tavern. Kiman had no further contact with Micklovich and did not observe any of the events that subsequently took place in the alley.

Emily Spaulding

Emily Spaulding was interviewed for the first time on September 30, 2010, by an investigator for the Attorney General's Office. On the night of the incident, she was employed as a bartender at the Strange Brew Tavern. She stated that sometime after midnight, she observed Kenneth Kiman, the doorman, remove a patron, later identified as Micklovich, from the tavern. Kiman had a hold of Micklovich and was pushing him toward the door. The two of them were exchanging words, but Spaulding could not hear what they were saying. As the two men reached the door, Spaulding saw Micklovich fall into, and cause damage to, a glass partition. Kiman then picked up Micklovich and led him outside. Spaulding then saw the bar owner, Mitch Sawaya, and off-duty officers Jonathan Dushesne, Michael Buckley, and Matthew Jajuga walk outside. She saw off-duty Lieutenant Ernest Goodno in the tavern, but did not see him go outside.

Spaulding moved to the window and saw Micklovich, who appeared intoxicated, arguing with Sawaya. Micklovich was waiving his arms and moving closer to Sawaya, as though he

might strike Sawaya. Spaulding saw Duschesne, Buckley, and Jajuga, who were standing behind Sawaya, tackle Micklovich and bring him to the ground. Micklovich kept trying to roll over as the officers attempted to subdue him. Spaulding stated that she never saw any officer punch or kick Micklovich. She did see that one of the officers had his knee close to Micklovich's head, but she believed that the officer was trying to stop Micklovich from fighting. After cruisers arrived, she observed the off-duty officers pick up Micklovich, who had been handcuffed. She noticed that he had blood on his face.

Later that evening, she spoke with Kiman, who told her that Micklovich had been in the bathroom and had made a racial comment to another patron.

James Duggan

James Duggan was interviewed for the first time on September 30, 2010, by an investigator for the Attorney General's Office. On the evening of the incident, he was working as the manager of the Strange Brew Tavern. He stated that he remembered seeing a patron, later identified as Micklovich, enter the tavern that evening around 11:30 p.m. with three other people. Duggan recognized Micklovich from prior occasions. He described Micklovich as "arrogant." When Micklovich entered that night, he joined his friends, who were already inside the tavern, and ordered a drink. According to Duggan, Micklovich did not appear intoxicated.

Twenty minutes after Micklovich arrived, Duggan saw one of the doormen, Kenneth Kiman, struggling with Micklovich near the front entrance. He did not see what happened between the two men before that point. Duggan saw Kiman and Micklovich crash into a partition near the entrance and then saw the other doorman, Justin Henderson, assist in getting Micklovich outside. Micklovich continued to yell at the doormen when he was outside. Duggan remembered that Micklovich lost one of his shoes in the struggle.

Duggan went back to work but looked outside when he saw a crowd moving toward the window. He saw cruisers out front. Duggan did not witness any of the events that took place in the alley before the cruisers arrived.

Later, Kiman told Duggan that Micklovich had been removed from the tavern because he made a racial slur to another patron in the men's room and because he made the comment, "I am just a white boy trying to have some fun."

Carrie McNiss

Carrie McNiss was interviewed on March 31, 2010, as part of the internal affairs investigation. McNiss was a waitress at the Strange Brew Tavern on March 2, 2010. She recalled seeing off-duty Lieutenant Ernest Goodno and serving him two beers. Later in the evening, off-duty officers Michael Buckley, Mathew Jajuga, Richard Valenti, Jr., and Jonathan Duchesne came into the tavern. Each of the men had one or two beers before the incident.

McNiss observed a patron, later identified as Micklovich, fighting with a doorman, Kenneth Kiman, as he was being escorted out. Once Micklovich was outside, the tavern owner, Mitch Sawaya, and Goodno went outside. When the doorman came back into the tavern, Duchesne, Buckley, Valenti, and Jajuga went outside and stood in front of the tavern. As McNiss looked out the door, she saw that Micklovich, Sawaya, and Goodno were across the alley. She saw Sawaya talking to Micklovich. Goodno stood by Sawaya's side. Sawaya's hands were in the pocket of his hoodie. When the door to the tavern opened, she heard Sawaya telling Micklovich to leave. She did not see anyone being aggressive at that point. However, she noted that Micklovich was agitated as he moved. McNiss then went back into the tavern and did not observe any of the events subsequent to that point.

II. STRANGE BREW TAVERN PATRONS AND BY-STANDER

Rachel Goldstein

Rachel Goldstein was interviewed on March 16, 2010, as part of the internal affairs investigation. She was interviewed again on March 25, 2010, as part of the criminal investigation.

On the night at issue, Goldstein was at the Strange Brew Tavern with her friend, Sarah Dupuis. When they arrived they saw Lieutenant Ernest Goodno, who was not on duty. Later, she saw off-duty officers Jonathan Duchesne, Matthew Jajuga, Michael Buckley, Joseph Cespedes, Frederick Gillis, Derek Feather, and Richard Valenti, Jr. come into the tavern.

As she stood near the door area to the tavern, she saw a man, later identified as Micklovich, and one of the doormen, Kenneth Kiman, in a struggle. Based upon Micklovich's body language, Goldstein believed that he was drunk. Kiman was able to push Micklovich through the door and outside the tavern. A few minutes later, Goldstein and Dupuis went outside for a cigarette. They sat on a bench that was to the left of the door. There were a number of people in the alleyway outside the tavern, including six or seven people that were in front of Goldstein and Dupuis. Goldstein saw Micklovich standing near a car, facing the tavern. She heard Micklovich yelling but was unable to hear what he said. He was yelling at the tavern owner, Mitch Sawaya, and at Kiman. The other doorman, Justin Henderson, and Goodno were standing nearby. Micklovich made hand gestures as though he was questioning "why?" Micklovich appeared belligerent and he swayed back and forth. Duchesne and Sawaya were speaking with Micklovich but Goldstein could not hear what was being said.

Goldstein did not keep a constant watch over the events involving Micklovich because people stood in front of her and because she kept looking up and down. At one point, she was talking with Dupuis when she heard a loud noise. She looked up and saw Micklovich on the

ground, lying on his stomach. She did not see who brought Micklovich to the ground. Duchesne, Buckley, and Jajuga were on top of Micklovich. Goodno knelt in front of Micklovich. Micklovich shifted his head from left to right and tried to lift it off the ground. Although she saw Micklovich's mouth moving, she could not hear what he said except for when he said, "[G]et off me." She described Micklovich as screaming and belligerent.

Goldstein saw Duchesne by the left side of Micklovich's head, Jajuga was behind Duchesne, and Buckley was by Micklovich's right leg. All three appeared to be restraining Micklovich. She heard someone yelling, "Stop resisting, stop resisting." She also heard someone say, "Call the cops." Kiman then said that the men were off-duty police officers. She noticed a man standing to the left who was yelling. She saw a driver exit his taxicab and start "screaming." She did not hear what he yelled.

Although Goldstein could not see very much from her position, she did see Buckley making a punching motion toward the lower, right side of Micklovich's back. She saw between two and five strikes. When he was being struck, Micklovich's head was moving back and forth and he kept talking. Goldstein, however, could not hear what he was saying. She did hear someone saying that he should stop resisting. She did not see anyone besides Buckley strike Micklovich and she did not see anyone kick Micklovich. When the uniformed officers arrived, Goldstein went back into the tavern. She noticed blood on the ground where Micklovich had been.

The following night, she bumped into Sawaya and Goodno when she was out with Jamie Gallant, an off-duty sergeant. She told Goodno that she did not want to be involved in the matter and that she had seen things that she wished she had not seen.

Sarah Dupuis

Sarah Dupuis was interviewed initially by internal affairs investigators on March 16, 2010. She was interviewed a second time as part of the criminal investigation on March 19, 2010. She stated that she had gone to the Strange Brew Tavern on March 2, 2010, with her friend, Rachel Goldstein. At some point in the evening, while the two women were sitting in the tavern near the entrance, Dupuis saw a bouncer in a scuffle with a patron, later identified as Micklovich. After the two men went outside, Dupuis saw the tavern owner, Mitch Sawaya, go outside, along with off-duty Lieutenant Ernest Goodno and off-duty officers Jonathan Duchesne, Michael Buckley, and Mathew Jajuga.

She and Goldstein then went out to smoke a cigarette. Joseph Cespedes, an off-duty officer, was also outside. The two women sat on a bench that was to the north of the entrance to the tavern. Dupuis saw Micklovich pacing back and forth and yelling. He was across from the tavern and was standing in front of a car. Sawaya faced Micklovich and repeatedly told him to leave. Micklovich positioned himself closer to Sawaya while moving his arms, prompting Dupuis to think that it “[l]ooked like he was going to go after Mitch.” She described Micklovich as “[a]ggressive and angry.” Dupuis believed that the off-duty officers then got involved “just because it looked - I would have assumed he would try to harm somebody.”

Because other people were walking in the alley, Dupuis was able to see only a portion of what happened when the officers took Micklovich to the ground. She heard people saying that the men were police officers, but she did not know who said that. She saw arms around Micklovich but she did not know which officers brought him to the ground. In her second interview, she said that she saw Micklovich land hard on his face. However, in her first interview she said that it did not seem like Micklovich went to the ground hard.

Once Micklovich was on the ground, Dupuis saw Buckley by his feet. In her second interview she recalled that Duchesne and the other two officers were near the upper part of his body attempting to hold him down because he kept struggling and trying to get up. In her first interview, she recalled that Jajuga and Goodno were closer to the upper part of Micklovich's body and that Duchesne was positioned closer to Micklovich's torso. One of the officers was squatting down by Micklovich's head. Dupuis remembered that Micklovich was told numerous times to stop resisting, but he continued to move his head from side to side. At one point when he moved his head, she saw blood on his face. She assumed that the blood came from scratches that were caused by Micklovich's moving his head across the pavement. As she watched the officers dealing with Micklovich, she did not see anyone punch or kick him. She "just saw them trying to keep him down." Dupuis said that she was distracted because a taxicab stopped on Market Street and a person yelled at the officers to leave Micklovich alone and get off him.

Alex Marin

Alex Marin was interviewed on March 23, 2010, by internal affairs investigators, and on March 25, 2010, as part of the criminal investigation. On both occasions, Marin chose not to have his interview recorded. Marin stated that he was in the men's room at the Strange Brew Tavern when Micklovich twice uttered an ethnic slur directed at him. Marin was not offended by Micklovich's comments because Micklovich appeared to be drunk. Shortly after Micklovich uttered the slurs, a bouncer entered the men's room and told Micklovich to leave. Micklovich responded that he had done nothing wrong and did not want to leave. The bouncer eventually grabbed Micklovich by the arm but Micklovich pulled away. Subsequently, the bouncer walked Micklovich out through the bar. It appeared to Marin that Micklovich was struggling with the bouncer, but the bouncer successfully brought him outside. Marin then went back to socializing

with his friends and occasionally looked out the window. He saw that Micklovich was outside and struggling with a number of people. During the struggle, the people dealing with Micklovich were "wiggling" while trying to hold Micklovich's body and arms. Micklovich fell to the ground, as did a couple of the people who were struggling with him. Marin did not see anyone punch or kick Micklovich.

Lance Paquette

Lance Paquette was interviewed on March 20, 2010, by internal affairs investigators and on March 25, 2010, as part of the criminal investigation. Paquette stated that on March 3, 2010, he was at the Strange Brew Tavern with friends, including Alex Marin. He saw a bouncer and Micklovich struggling as the bouncer was trying to remove Micklovich from the tavern. Micklovich appeared drunk because he did not walk straight and had slurred speech. Paquette heard Micklovich repeatedly say that he did nothing wrong. Approximately one minute after the bouncer brought Micklovich outside, four or five men also went outside. Paquette believed a few of the men were Manchester Police officers.

Two or three minutes later, Paquette went outside to see what was happening. Paquette saw between five and fifteen people in the alley smoking cigarettes, including people he believed were a couple of Micklovich's friends. He saw the bouncer release Micklovich. The off-duty officers tried to calm Micklovich but he kept saying that he did nothing wrong. It appeared as though the officers then held Micklovich back to ensure that nothing was going to happen. Paquette saw Micklovich's arms being held by two officers while another officer stood in front of him. The officers were holding him against a vehicle that was parked in the alley. The officers tried to calm Micklovich because he was making aggressive movements and was trying to free his arms.

Paquette then went back inside the tavern. A few minutes later, he looked out the window of the front door and heard Micklovich yelling. He observed Micklovich becoming more aggressive. Paquette went outside again. Micklovich was still standing, yelling, and being more aggressive. Micklovich was trying to get his arms free from the two off-duty officers who were holding them. Another officer stood in front of Micklovich. Paquette observed that Micklovich almost got his right arm free before the officers who were holding his arms and another who was standing behind him brought him to the ground. The officers who had been in front of Micklovich stepped away and did not participate in bringing him to the ground. Micklovich's face hit the ground hard. Paquette observed that Micklovich went down face first and that the officers were doing what they could to get him down quickly because Micklovich was struggling. Once on the ground, Micklovich continued to be non-compliant. He tried to free his arms, he threw his elbow up, and he swung his head. Paquette saw that Micklovich's nose was bleeding and his face sustained what looked like road rash.

While Micklovich was on the ground, two of the officers held his arm while another one held his leg. A fourth officer tried to use his leg to prevent Micklovich from swinging his head from side to side. Paquette did not see anyone punch or kick Micklovich. From his position of approximately fifteen feet away, he did not hear the men identify themselves as officers. Approximately two minutes later, the uniformed officers arrived and secured Micklovich.

Kristen Marabella

Kristen Marabella was interviewed on March 31, 2010, as part of the criminal investigation. She stated that on March 2, 2010, she was at the Strange Brew Tavern with co-workers, including Alex Marin and Lance Paquette. Her attention was drawn to a bouncer struggling to remove a man, later identified as Micklovich, from the tavern. Marabella thought

that Micklovich looked very intoxicated. She also described him as very angry and belligerent. Once Micklovich was out of the tavern, she walked out to make sure he was not her friend. When she exited the bar, Micklovich was face down on the ground and was being handcuffed. She did not see any punching or kicking. Once Micklovich was on the ground and the situation was under control, she went back inside the tavern.

Erin Moul

Erin Moul was interviewed on March 23, 2010, by internal affairs investigators, on April 21, 2010, as part of the criminal investigations and on October 18, 2010, by the Attorney General's Office. Moul was at the Strange Brew Tavern on March 2, 2010, with four friends. At approximately 11:30 p.m., Moul went outside to smoke a cigarette. As she stood outside, to the left of the door, the door flew open and the bouncer threw out a patron, later identified as Micklovich. As the bouncer escorted him out, Micklovich fell to the ground on his hands and knees. Four men were behind the bouncer.

The bouncer told Micklovich to leave the area but Micklovich responded that his shoe was inside. The bouncer threw Micklovich his shoe. Micklovich then walked to the other side of the alley. The bouncer continued to tell Micklovich that he needed to leave. Micklovich said that he would leave but that he was waiting for his friends to come out of the tavern. This dialogue went back and forth a few times. Moul said that Micklovich was not being belligerent. She also noted that his speech was not slurred.

The four men who came out with the bouncer then walked over to Micklovich and corralled him in an effort to get him to leave. The men told Micklovich that he had to leave. Moul was not able to identify which of the men spoke to Micklovich. Moul indicated that her

view of the altercation was partially obstructed. Micklovich again stated he would leave but that he was waiting for his friends.

At that point, two of the men grabbed Micklovich by the arms, brought his arms behind him, and put him on the ground knees first. She described one man as wearing a baby-blue shirt and the other man as wearing a green shirt. In her initial interview, she stated that she did not see Micklovich swing at anyone as he was being brought to the ground. In her October interview, however, she was uncertain whether Micklovich had swung at anyone and also was not positive whether Micklovich made any move toward the men prior to being brought to the ground.

Moul did not hear anything that was being said between Micklovich and the men at that time. However, as Micklovich was going down to the ground, he told the men to get off him and to leave him alone. The men guided Micklovich to his knees. Moul described the takedown as not "a terrible takedown" and one that "seemed pretty smooth." She did not see Micklovich fighting as he went to the pavement and did not see his face hit the pavement. The two men who took Micklovich down then placed their knees on either side of Micklovich. The other two men grabbed Micklovich's legs as if he was in a "hog tie." The man in the baby-blue shirt who was kneeling by Micklovich's right shoulder hit Micklovich with his fist. According to Moul, the man punched Micklovich on the right side of the face and on the rib area. He hit Micklovich an estimated ten to twenty-five times. The majority of those punches were to the face. Moul believed that the punches to the ribs were being delivered to prevent Micklovich from getting up. The man in the green shirt looked like he was hitting Micklovich; however, she could not tell if Micklovich was, in fact, hit by him. She did not see the two men holding Micklovich's legs strike or hit him. Moul did not see anyone kick Micklovich. After Micklovich was punched,

Moul saw blood, "pouring out of his face" and went back into the tavern. The men were still on Micklovich and he was not handcuffed when Moul returned inside the tavern.

While Micklovich was on the ground, he kept yelling that he did not do anything wrong and that he wanted to be left alone. According to Moul, Micklovich was not fighting while he was on the ground. The men told Micklovich to shut-up. When Moul said that someone needed to call the police, one of the men yelled to her, "We are the f--king police." At some point, Moul noticed a cab pull up and the driver get out. The cab driver told the men to get off Micklovich and he also requested that someone call the police. One of the men told the cab driver to mind his own business.

While Moul was outside, she asked the bouncer what Micklovich did to deserve what was happening to him. According to Moul, the bouncer stated, "He was peeking over in the men's bathroom." Later when Moul was back in the tavern, she saw the man in the baby-blue shirt. As she walked behind that man, she saw him looking into the women's restroom through the opened door. Moul stated to him, "Real professional for a police officer to be looking into the women's bathroom." The man asked her what she was talking about and then he walked back toward the bar.

After the incident on March 2 and 3, 2010, Micklovich obtained Moul's phone number through mutual acquaintances, who were not at the tavern during the altercation, called her a couple of times, left her a voicemail message, and sent her the following text message:

Hi, Erin. You don't know me but I'm Chris Micklovich. I know that you're in a weird position and I don't envy anything you're going through. I'm sorry that you had to witness what they did to me. It's a shame that they would do that to anyone let alone make you watch. Well, tomorrow I go down to Boston to have surgery on my face. Is there another one? "\$18,000.00 worth." Please keep me in your thoughts that they can bolt everything back together and that I recover okay. If you think you feel like sharing what you saw, let me know. I would like to set it up. Please think about it for me. Okay? Thank you and God bless.

Moul indicated that she did not respond to Micklovich's text message but contacted the police department and gave her statement to them. After giving her initial statement to the police, Moul gave a tape-recorded statement to an investigator working for Micklovich.

Christopher Wade

Christopher Wade was a taxicab driver who was a by-stander during the altercation at the Strange Brew Tavern on March 3, 2010. He was interviewed by the police department's internal affairs investigator on March 20, 2010, but declined a similar interview by the investigator involved with the criminal case against Micklovich. Wade was interviewed by the Attorney General's Office on March 18, 2011.

During his initial interview, Wade stated that on March 2, 2010, he was driving a taxi for a local cab company and had parked near the Strange Brew Tavern, approximately twenty or thirty feet from the main entrance. He was on duty and looking for work. He knew that on Tuesday nights the tavern ran a drink special that usually drew a large crowd. He had been parked for twenty minutes, seated in his car with his window rolled down, when he heard a loud crash and saw the main door to the tavern fly open. Someone, recognizable to him as one of the bouncers, pushed another person, later identified as Micklovich, through the door. The two landed on the pavement just outside the door. Wade saw approximately six other people standing outside the entrance, including three or four females, and at least one male who was smoking on a bench just outside the main entrance. Wade did not see Micklovich arguing with any of those people. In Wade's opinion, Micklovich "looked like he had a couple of drinks in him but he did not look like he was fully intoxicated."

Once outside, the bouncer asked Micklovich, "Now, did you learn your f--king lesson, a--hole?" According to Wade, Micklovich responded, "You're a f--king retard," to which the bouncer responded, in turn, "No. You're a f--king retard." The bouncer then released Micklovich, who stood up and stated, "You're being f--king retarded about this. You got the wrong guy." The bouncer responded, "No, I'm not being retarded about this. I asked you to leave the bar. You refused to leave the bar and then you had to give me a hard time the whole way to the door. So, I'll ask you again. Did you learn your lesson now?" Micklovich responded, "I don't know what lesson I'm supposed to learn. You don't have the right guy." The bouncer then told him, "Get the f--k out of here. You're all done. It's time to leave. Get out of the alley and leave." Micklovich replied, "Well, you f--king retard, when you give me my shoes, I'll leave." The bouncer said, "F--k you," and Micklovich responded, "No, f--k you." Wade noticed that Micklovich was without both of his shoes and was standing outside in his socks. Wade then saw the bouncer pick up a pair of shoes and threw them with force at Micklovich. The bouncer said, "There's your shoes. Now, get the f--k out of here," to which Micklovich responded, "F--k you." At that point, according to Wade, the bouncer gave Micklovich a dirty look and walked back into the tavern. Wade did not notice any injuries to Micklovich at that point.

Wade then saw Micklovich pick up his shoes, walk to the other side of the alley, and begin to put on his shoes. About a minute or two later, Wade saw four men walk out of the tavern and stand in front of Micklovich. Wade gave descriptions of these men. He did not know if the tavern owner, Mitch Sawaya, was among them. He never heard any of the men identify themselves as police officers. They told Micklovich that "[h]e need[ed] to f--king leave." Micklovich responded, "Look, I don't know who you guys are. I don't care who you guys are.

This has got nothing to do with you. Get out of my face. When I'm done putting my shoes on, I'll leave." Wade indicated that the men told Micklovich, "No, you don't have time to put your shoes on. You need to grab your shoes and f--king take them with you and leave now."

Micklovich said again, "No. You guys are being f--king retarded now. I don't know what the f--k this is all about. I don't know who you guys are. I got nothing to do with you. Get the f--k out of my face. When I'm done putting my shoes on, like I told you, I'll leave." The men told him, "No. You're supposed to leave now. We told you to leave. You're going to leave now."

Micklovich said again, "I'll leave when I'm done putting my shoes on. Go f--k yourselves."

Wade stated it was at that point that all four men lunged at Micklovich with a quick motion and brought him, facedown, to the pavement. Wade asserted that Micklovich was not put against a car before going to the ground, but went straight to the pavement. Wade maintained that Micklovich made no aggressive moves before the men lunged at him. Immediately after Micklovich was thrown to the ground, Wade saw one of the men bring Micklovich's arms behind his back and another man hold his legs.

Wade stated that the other two men, and only those two men, kicked and punched Micklovich repeatedly. One of them delivered a couple of quick blows with his feet to the back of Micklovich's head and then stomped one time on the right side of Micklovich's head. That man then bent over and delivered a few punches with his arm to the right side of Micklovich's head. Wade stated that the man temporarily stopped punching Micklovich, delivered a few more kicks, and then resumed punching him. At the same time, the second man delivered four to five kicks to Micklovich's face, then bent over and delivered a couple of blows straight to his face. According to Wade, Micklovich was not struggling, not trying to get up, and not pushing up against those men. Instead, he was, "totally immobile," with his arms restrained behind his back

the entire time and his legs held down. Wade saw that Micklovich's face had become bloodied. Wade heard Micklovich pleading and crying, "Please, stop. Please, stop. Anything you want. Anything you want. Just stop. Please, don't kill me." Wade did not hear the four men say anything. Wade stated that most of the time, the four men had their backs to him.

Wade indicated that he was afraid the kicking and punching would not stop, so he got out of his taxicab and started walking toward the altercation, yelling at the four men, "Can you please stop? Please stop before you kill him." In response, one of those men yelled back, "We're police officers. This has nothing to do with you. Stay out of it." Wade then walked back to his taxicab and used his cell phone to call the police station. Approximately thirty seconds later, Wade saw the first of a number of cruisers arrive. Before the cruisers arrived, Wade moved his cab to make it easier for the police to get to the scene. He asserted that he was able to watch everything that was happening with Micklovich while he repositioned his vehicle. Wade thought that the kicking stopped just before the first cruiser arrived, but that the punching continued right up to the point when the first cruiser arrived. In Wade's opinion, Micklovich maintained consciousness throughout the altercation.

After the cruisers arrived, the uniformed officers broke up the altercation and picked up Micklovich. Wade stated that because so many people had exited the tavern at that point, he could not see what happened after Micklovich was picked up off the pavement. He said that he stayed there for between five and ten minutes, but then left to return to work. He also stated that his dispatcher had been calling him repeatedly and that he made the decision not to answer those calls until just before he left to pick up a customer at another location.

Wade admitted that he read the media accounts in the days after the altercation, but denied that those accounts had any influence on his memory. He stated that he had talked with

his family about what happened that night, as well as with few of his co-workers. In addition, he had a brief conversation with Micklovich's attorney prior to his police interview.

During his interview with the Attorney General's Office, Wade stated that he arrived in his taxicab at the Strange Brew Tavern on March 3, 2010, between 12:30 and 1:00 a.m. He parked near the entrance of the tavern on the corner of Market Street, "trying to conjure up some business." He sat inside his cab for approximately twenty to thirty minutes when he heard a loud noise, saw the front door of the tavern swing open and one of the doormen holding a man by the back of his shirt, pushing him face first through the door and into the alley. The man being pushed, Micklovich, landed on the pavement on his stomach. Wade noticed that Micklovich was missing both of his shoes.

Wade heard the bouncer state, "Did you learn your lesson now? Are you going to learn your lesson? I'm tired of this shit from people like you. Did you learn your lesson? Wade heard Micklovich respond, "I don't know what lesson I was supposed to learn. I didn't do anything. You guys have the wrong guy. I don't understand what this is all about but I didn't do nothing." The bouncer kept stating, "Hopefully this will make you learn your lesson now. Not get the f--k out of here."

Wade was asked if he heard the doorman tell Micklovich that he had refused to leave the tavern. Initially, Wade indicated he did not hear that statement. Later in the interview, Wade was asked about a statement he made during his initial interview when he told investigators that the doorman told Micklovich, "You refused to leave the bar and then you had to give me a hard time the whole way to the door." In response, Wade stated that he, "remembered that very clearly."

Wade observed Micklovich take a few steps away from the entrance to the tavern while the doorman continued to tell him to, "move on." Wade heard Micklovich state again, "I don't understand what this is all about but I'll move on when you give me my shoes. Please give me my shoes so I can put them on and then I'll leave." According to Wade, the doorman was wearing a t-shirt and jeans. Wade then saw the doorman pick up Micklovich's shoes and, "actually whipped them at the guy. He said, 'Here's your shoes now get the f--k out of here'" Wade saw the shoes, "kind of bounced off (Micklovich)," who then bent over, picked them up, walked across the alley, leaned against the building and began to put on his shoes. Wade was not certain if there were cars parked across from the entrance to the tavern. In addition to Micklovich, Wade saw ten to fifteen people outside smoking.

As Micklovich was attempting to put on his shoes, Wade observed approximately eight people suddenly exit the tavern. He then saw approximately six of those men face Micklovich and he heard them state, "Why don't you get your shit and get out of here? Why are you still standing here? Get your shit and leave." Micklovich responded, "I'm putting my shoes on. This has nothing to do with you. You guys are a bunch of f--king retards. Mind your business and let me do my thing. This isn't anything to do with you at all. Leave me alone." That conversation was repeated a number of times. Wade could not offer an opinion on Micklovich's level of sobriety, except to say, "He didn't appear to be heavily intoxicated."

As this conversation was happening, Wade stated that he moved his cab to another spot nearby. He maintained that from his new position he was able to observe what was happening in the alley. When asked about his initial statement to investigators that he moved his taxicab at a later point after he called the police station, Wade stated, "See, I can't be a hundred percent on that right now."

Wade then stated that it was four men who confronted Micklovich in the alley, not six. When asked about his call that night to the police station during which he stated there were, "about ten guys on one guy in the alleyway," Wade state he was in a panic when he made that phone call and that he only saw four men in that altercation. According to Wade, those men, suddenly, went at Micklovich as a group. When they did that, Wade stated that Micklovich was, "standing there at that point facing them, holding his shoe." All four moved simultaneously toward Micklovich. Wade could not distinguish the activities of the four men as they brought Micklovich to the ground on his stomach. He could not say with any certainty which part of Micklovich's body first hit the pavement but it appeared to him that Micklovich, "was brought almost straight down to the ground," and landed face down on the ground on his stomach. Wade offered the opinion that Micklovich's face, "didn't hit the ground because he had his head out to the side as he was coming down." Wade characterized as inaccurate reports that Micklovich went up against a car, which set of a car alarm.

Once they had Micklovich on the ground, Wade saw that one man straddled Micklovich's back and brought Micklovich's arms behind his back, "in like a handcuff position." That happened almost immediately without any struggle. Wade said that Micklovich was never able to break free from that position. Wade did not see Micklovich being handcuffed. In fact, he never saw handcuffs at any point during the altercation, nor did he see someone run away from the scene and return with a set of handcuffs. Another man held Micklovich's legs, "so he can't kick." The other two men starting hitting, kicking and stomping on Micklovich. He described those blows as "repeated and violent," being delivered to the face and back of the head. Wade also saw the two men restraining Micklovich's arms and legs deliver blows to Micklovich's body. When asked about his initial statement to investigators that only two of the four men

punched and kicked Micklovich, Wade insisted that all four men struck Micklovich and stated, "I want to go by today's memory and I want to say that I saw them deliver a few blows as well." When asked to explain the discrepancy, Wade stated, "Unless in my head today I'm seeing it a little different than I did then I don't know, to be honest with you." Wade did not see any strikes to the left side of Micklovich's face.

Wade stated that he stepped out of his taxicab and, "was begging them to please stop, please stop, because I don't know at this point that they're police officers or what the deal is." He heard Micklovich scream, "Please stop, please stop, anything you want, please stop. Stop beating me. I'll give you anything you want. Just please stop." Wade then heard the men involved in the altercation state that they were police officers. According to Wade, that was the first time he learned that these men were off-duty officers. Wade then called the police station. When he attempted to approach the altercation, he was told by one of the men to stay back, not to get involved and that they were police officers.

Wade stated that the men continued to hit Micklovich, "right up until the first police cruiser arrived on the scene." He identified that vehicle as a SUV, with supervisor markings. Wade stated that he left the scene before Micklovich was stood up. When asked about his initial statement that he observed Micklovich being picked up off the ground, he stated that he no longer remembered events that way.

Wade stated that he waited at the scene for a few minutes, "contemplating whether or not the police were going to want a statement or something." However, he did not leave his taxicab and offer to give a statement to the uniformed officers. He did not see the ambulance arrive.

III. PARAMEDICS

Amanda St. Martin

Amanda St. Martin was interviewed on March 19, 2010, as part of the internal affairs investigation and on March 22, 2010, as part of the criminal investigation.

St. Martin worked for Rockingham Ambulance Company as a paramedic. On March 3, 2010, she responded to a call at the Strange Brew Tavern. When she arrived, Micklovich was standing and was in handcuffs. Micklovich had blood on his face. When he was asked what had happened he said that he had been hit. The officer with Micklovich stated that Micklovich's injuries were a result of efforts to control him. Micklovich was asked if he wanted to be transported to the hospital and he said no.

St. Martin observed that Micklovich's nose was deformed and that he had a cut under his left eye. The EMTs cleaned his face and provided him with an ice pack. While they tended to him, Micklovich kept telling the EMTs to hurry up so that he could deal with the situation. Micklovich was asked if he had been drinking and he said yes. He was not asked how much he had to drink, but he slurred his words and smelled of alcohol. He was asked if he lost consciousness and he said no. His only complaint of pain was that his eye and nose hurt.

Susan Deyo

Susan Deyo was interviewed on March 19, 2010, as part of the internal affairs investigation and on March 23, 2010, as part of the criminal investigation.

Deyo worked at Rockingham Ambulance Company as an EMT Intermediate. She responded to the Strange Brew Tavern with Amanda St. Martin. When she first saw Micklovich he was handcuffed, had a swollen left eye, had a cut below his left eye, and had what appeared to be a broken nose that was bleeding. She noted he appeared to have been hit hard. Micklovich

appeared intoxicated because he was weaving and slurring his words. He also smelled of alcohol. He was very upset and stated that he did not have to talk to her to tell her what happened. As she examined his injuries, she asked him how he was injured and he said he was hit with fists. Micklovich did not state that he had been kicked. Deyo asked the on-duty officers if Micklovich had lost consciousness and they stated that they did not think so. Micklovich was aware of the date and time and did not appear to have sustained a head injury that impacted his thought process. Deyo also noted that Micklovich declined to be treated at the hospital.

IV. FRIENDS OF CHRISTOPHER MICKLOVICH

Christopher Clark

In the course of the investigation, the Attorney General's Office determined that Micklovich was with three individuals on the night of the incident at the Strange Brew Tavern. Those individuals included Christopher Clark, Kenneth Clark, and Louis Milonas. Christopher Clark was interviewed in connection with this case for the first time by the Attorney General's Office on September 27, 2010.

Clark stated that the four men had made plans to get together on the evening of March 2, 2010, so that Micklovich could tell them about his recent trip out of the country. He and Micklovich had been friends for ten years. Prior to the meeting, the Clark brothers had dinner together. Milonas and Micklovich had dinner separately at another restaurant. Sometime between 10:00 p.m. and 11:00 p.m., all four men met at a bar in Manchester. They played a few games of pool and had a couple of drinks. Clark indicated that at approximately midnight they all left and drove in two cars to the Strange Brew Tavern. As they were about to enter the tavern, Micklovich stopped to talk with some people he recognized. Clark and Milonas went inside the tavern. After about ten minutes, Kenneth Clark came inside, followed by Micklovich a few

minutes later. They ordered drinks and were standing at the bar on the left side of the establishment. At some point after the drinks arrived, Micklovich walked away from the Clarks and Milonas to talk with someone he knew. He left his drink with them.

Clark offered the opinion that although Micklovich had a few drinks that evening, he was not impaired to any significant degree and Clark would have felt comfortable driving in a car with Micklovich behind the wheel.

Clark did not witness any disturbance inside the bar. Nor did he witness Micklovich being escorted outside by one of the bouncers. At some point approximately twenty minutes after Micklovich had left them, Clark's attention was drawn to the alleyway in front of the tavern when he noticed flashing lights and uniformed police officers interacting with a man. The man's face was bloodied. Clark identified the man as Micklovich because he recognized his tie. Micklovich was standing in handcuffs. The officers had him bent over the rear of a cruiser.

At that point, the Clarks and Milonas rushed outside and began asking by-standers for information. They were told that their friend started fights. Clark saw a large pool of blood on the sidewalk and observed an officer pouring water on it. He saw an ambulance parked nearby. Clark approached Micklovich and told him not to say anything to the officers who had him in custody. He saw the officers walk Micklovich to the ambulance, where they cleaned up some of the blood.

After Micklovich was taken to the police station, Clark and the other two left the scene without going back inside the tavern. The two Clarks went to Kenneth's apartment and waited for Micklovich to call. At approximately 3:30 a.m., Clark and his brother drove to the police station to retrieve Micklovich. They met him in the main lobby. Clark noticed that Micklovich still had blood dripping down his face. They left the station and drove him to Elliott Hospital.

On the ride there, Micklovich was upset and stated that he could not believe what had happened to him and that it was "BS." Micklovich indicated that no one was telling him why the events that led to his injuries had occurred. When Clark, who described Micklovich as "kind of a smartass," asked Micklovich whether he had started a fight at the tavern, Micklovich insisted he did not. He said that while he was inside the tavern someone said something to him and he, "said something smart back." Micklovich said that he was then told it was time for him to leave and he was escorted out. Micklovich repeatedly asked for a reason why he had to leave.

Once outside, Micklovich continued to ask why he was being told to leave. At some point, Micklovich said that he put his hands up in a questioning gesture. He also said something like, "I don't really give a shit about this place anyhow." Then, as he lowered his arms, he was grabbed and thrown to the ground face first, where he was repeatedly kicked and punched. Micklovich specifically stated that he was kicked in the face. Prior to being put on the ground, Micklovich stated that his shoe had fallen off, so someone threw it at him.

Micklovich claimed not to know that some of the people were off-duty police officers. Micklovich told Clark that while he was on the ground, he was unconscious for a short period and that he became incontinent. Afterwards, he said the officers made fun of his incontinence. Clark could not confirm that Micklovich had been incontinent. Micklovich told Clark that as the officers were putting handcuffs on him, someone had his knee, hand, or foot on his face, pressing it into the cement.

Kenneth Clark

Kenneth Clark was interviewed in connection with this case for the first time by members the Attorney General's Office on October 12, 2010. He and Micklovich have been long-time friends and he was with Micklovich on the night of the incident.

Clark and his brother, Christopher, met Micklovich and another friend, Louis Milonas, at a Manchester bar around 11:00 p.m. on March 2, 2010. They each ordered a couple of drinks. Around midnight, they all left and drove in two cars to the Strange Brew Tavern. As soon as they arrived, Micklovich spotted an acquaintance and went to talk with him for some time. Clark, his brother, and Milonas went inside and ordered a drink at the bar. They kept an eye out for Micklovich, who they thought was still talking with his friend. Clark never observed any type of disturbance inside the tavern. Clark described Micklovich as sober.

About ten minutes later, around closing time, Clark noticed police officers and cruisers outside near the main entrance. The Clarks and Milonas went toward the window to get a better look. They saw a man in handcuffs with a bloodied face. They recognized the injured man as Micklovich based upon the tie he was wearing. Immediately, all three of them went outside to make inquiries about what had happened. They spoke with the owner of the tavern, who told them to mind their own business and that they did not know what really happened because they did not see it. Clark stated that he observed Micklovich with a swollen and shut left eye, open cuts on his face, and a broken and bloodied nose. He also observed the officer who had custody of Micklovich spread Micklovich's legs and force his face onto a cruiser. Clark saw an ambulance nearby and learned that paramedics had evaluated Micklovich before the officers transported him to the police station. Micklovich made no mention of refusing to go the hospital for further care. Micklovich did state that he did not do anything and that what had happened was a mistake. Clark heard a man seated on a bench just outside the entrance say that Micklovich did not do anything and that Micklovich was jumped for no reason. Clark and his brother returned home.

Approximately one hour later, the Clarks drove to the police station to pick up Micklovich. They drove him home so that he could clean up and then they took him to the hospital. During the ride, Micklovich described the incident by stating that he was talking about his recent trip with a friend inside the tavern when someone asked Micklovich to calm down and quiet down. Micklovich stated that someone reached out to push him and he pushed that person's hands away, saying, "Hey, get your hands off me." The next thing he knew, five men were forcing him outside and up against a wall. Micklovich did not mention being put against a parked car and Clark never heard a car alarm going off. Micklovich said that he told them that he was not there to cause trouble and that he was there with friends. Micklovich then told Clark that he was blindsided and punched in the side of the face. At that point, he fell to the ground and was kicked repeatedly. During the altercation, Micklovich said he became incontinent and was screaming, "Please stop. No more. I can't take any more." The people who were kicking him did not stop. Micklovich indicated that he passed out at some point and regained consciousness as he was being handcuffed. Micklovich indicated that he was unaware that the people who had punched and kicked him were off-duty police officers, and that he learned their identities a number of days after the incident.

Clark next saw Micklovich a couple of days later. Micklovich stated again that he had not done anything to deserve what had happened to him, that he was attacked and kicked in the stomach and face repeatedly by five men, and that he did not make any type of racial remark. Clark observed what looked like road rash on the side of Micklovich's body. Micklovich said that he had tried to use his hands to cover his head but that someone held his hands. Clark stated that Micklovich never mentioned any incident in the bathroom.

Louis Milonas

Louis Milonas was interviewed in connection with this case for the first time by members of the Attorney General's Office on October 5, 2010. He and Micklovich have been long-time friends and he was with Micklovich on the night of the incident.

He stated that he met Micklovich between 9:30 p.m. and 10:00 p.m. at a Manchester restaurant and they had dinner together. While at dinner, they had a couple of glasses of wine. At around 11:00 p.m., they left the restaurant and walked next door to a bar to meet two other friends, Christopher and Kenneth Clark. There, they ordered a couple of rounds of drinks and played pool. At some point, they left and drove in two cars to the Strange Brew Tavern. Inside the tavern, which was crowded and loud, they ordered a round of drinks. Micklovich walked away from them soon after they arrived and went to talk with a friend. In Milonas's opinion, Micklovich was not intoxicated even though he had consumed an estimated four to five drinks over the course of the evening. Milonas stated that he had never known Micklovich to instigate fights or to start problems.

According to Milonas, he became aware of a disturbance outside the tavern approximately fifteen minutes after Micklovich left them. Milonas did not observe a disturbance inside the tavern. Outside, he observed a police cruiser and uniformed officers interacting with a man whose face was very bloodied. Milonas recognized the man as Micklovich based upon the tie he was wearing. Milonas and his friends then went outside.

Once outside, they saw that Micklovich was standing, was handcuffed, and was being escorted to a cruiser. He described Micklovich as being dazed and confused. Before Micklovich was put in the cruiser, he stated to his friends that he did not deserve what had happened. While standing outside, Milonas spoke with a person he thought was the owner of the tavern, and was

told that Micklovich had a "big mouth" and that he "deserved what he got." After Micklovich left in the cruiser, Milonas and his friends walked to their cars. Milonas went home and understood that the Clarks would pick up Micklovich at the police station.

The following evening, Milonas went to see Micklovich, who told him that the incident started when he accidentally bumped into the owner of the tavern. Micklovich did not mention an incident in the men's room or anything about a racial slur. The owner told Micklovich that he needed to leave the tavern and that he had consumed enough alcohol. Micklovich responded that he had not had a drink yet and that he had just arrived. Micklovich then stated that the bouncers and the owner took him outside. Micklovich expressed a willingness to leave if he first could inform his friends about his departure. Micklovich told Milonas that he was not allowed to return inside the tavern. Micklovich stated that he told the owner, "I don't care about your place. I don't care about it. I just want my friends," to which the owner responded, "You don't like my place?" Micklovich told Milonas that the owner then turned around and Micklovich felt three people grab him and drag him away from the entrance to the tavern around the corner to the alleyway.

Once in the alley, Micklovich was thrown to the ground and two men started kicking him. Micklovich indicated that he asked why they were hitting him and tried to cover his head as they kicked him in that area of his body. A third man was trying to pull Micklovich's hands away from his head. Micklovich told Milonas that he was screaming, "I got your point, I got your point. Just stop doing this. Please stop." Micklovich also told Milonas that as an officer was handcuffing him, he forcefully pressed his knee into Micklovich's back, while letting the other men kick him. The kicking did not stop until other officers arrived and picked Micklovich up from the pavement.

Micklovich never told Milonas that he lost consciousness during the incident, and in fact, gave him the opposite impression. Micklovich did state that he became incontinent. It was Milonas's understanding that Micklovich did not know that the men who brought him to the ground and kicked him were off-duty police officers until a few days after the incident.

Milonas indicated that he was contacted and interviewed by a private investigator working for Micklovich. The investigator told him that a taxi driver called 911 to ask the police to send officers to the scene. Milonas also said that Micklovich had shown him bruises on the front of his chest and on the sides of his body.

Jesse Twarjan

Jesse Twarjan was interviewed for the first time on November 5, 2010, by members of the Attorney General's Office. He had been a long-time friend of Micklovich. They ran into each other on the night of the incident at the Strange Brew Tavern. Twarjan had gone to the Strange Brew that night with a date to listen to a favorite musician who was performing. He had a vague memory of meeting Micklovich as he was entering the tavern with two friends. Later, while Twarjan was inside listening to the music, Micklovich approached him and his date. Twarjan described the tavern as very noisy and crowded. Twarjan thought Micklovich had a drink in his hand but would not have described him as "hammered drunk." They had a brief conversation. Approximately an hour after Micklovich walked away, Twarjan remembered being aware of a disturbance or scuffle within the tavern, but did not pay any attention to who was involved.

At the end of the evening, as Twarjan and his date walked out the main entrance, he saw Micklovich. Micklovich was outside the entrance, face down on the ground, and was being detained by police officers. The officers had Micklovich's hands behind his back and one plain-

clothed officer had his knee in Micklovich's back. Twarjan said that there were a number of people outside at that time, including uniformed officers, tavern employees and bouncers, and Mitch Sawaya, the bar owner. Twarjan did not get a good look at Micklovich's face, but he did remember seeing a little redness and blood. Twarjan did not hear either Micklovich or the officers say or yell anything. Twarjan walked past Micklovich and went home.

A few months after the incident, Twarjan was contacted and interviewed by someone working for Micklovich.

V. CHRISTOPHER MICKLOVICH

Christopher Micklovich was not interviewed by the police the night of his arrest. He did provide the Attorney General's Office with copies of his medical records. According to those records, Micklovich told his doctors in the course of their treatment of him that he was assaulted by five men at the Strange Brew Tavern and that he was kicked in the face. He reported a loss of consciousness and bowel incontinence. His doctors found fractures to the left side of his face and eye socket, but no right orbital or other facial bone fractures were noted.

Initially, Micklovich, through his attorney, declined to meet with investigators from the Attorney General's office. He did provide the names of four friends he was with the night of the incident at the Strange Brew Tavern. (See Section IV) Investigators learned that Micklovich sent a private investigator to interview witnesses. Micklovich, again through his attorney, declined to provide copies of those investigative reports to the Attorney General's Office.

After an initial review of this case was completed, this office made the determination that no criminal charges would be reinstated against Micklovich. Following that determination, Micklovich was again approached and he agreed to be interviewed. That interview occurred on February 23, 2011. Regarding the March 2, 2010 incident, Micklovich stated that he had

recently returned from a trip to the Dominican Republic and made plans to meet three friends on the evening of March 2, 2010. Initially, he had dinner and a glass of wine in Manchester with Louis Milonas. After dinner, he and Milonas walked to a nearby establishment to meet with Kenneth and Christopher Clark. There they had a few drinks and played pool. Micklovich remembered consuming three rum and cokes.

Around 12:20 p.m., all four of them left the bar and drove in two cars to the Strange Brew Tavern. Soon after arriving, Micklovich met and talked with an acquaintance, Jesse Twarjan, although he did not remember Jesse being with a woman. At some point, Micklovich went to the men's room. He was adamant that he did not speak with anyone inside the men's room, denied making any type of racial slur to anyone in the men's room and also denied that a doorman entered the men's room and told him he had to leave the tavern. He characterized Kiman's assertions that he entered the men's room and forcibly removed Micklovich from the tavern as a "flat out lie." According to Micklovich, he left the men's room without incident, was handed a drink from Christopher Clark and then stood by himself for a few minutes. He felt someone tap his arm and saw an older gentleman in a leather jacket standing next to him telling him he must leave. Micklovich held a strong belief that man was the bar owner, Mitch Sawaya, based on information Micklovich received after the incident by an acquaintance who was not in the tavern that evening but who claimed to be familiar with Sawaya's appearance. Micklovich admitted that he had never met Sawaya or the doorman, Kenneth Kiman. Micklovich discounted as false the reports from other witnesses and from the doorman, Kenneth Kiman, that Kiman was the person who removed Micklovich from the tavern. Micklovich stated that he protested Sawaya's request for him to leave and asserted that he was not doing anything but was just standing there. According to Micklovich, Sawaya gave him a serious look. Micklovich claimed

that he put down his drink and walked to the front entrance. Micklovich denied struggling with anyone as he moved to the entrance and specifically denied hitting anything or falling to the floor on his way to the door. Micklovich stated that he did not tell his friends that he was leaving. When confronted with conflicting statements from other witnesses about an incident in the men's room, him uttering a racial slur, and struggling with the doorman inside the tavern, Micklovich characterized those statements as "a complete lie. I never struggled." He further suggested the recipient of the alleged racial slur was, "a friend of the establishment," who was "asked to take one for the team."

As he exited the tavern, Micklovich stated that he opened the door and Sawaya shoved him into the alley. Micklovich questioned Sawaya, stating, "What's the matter. What is your problem?" and asked why he had to leave. Micklovich said he never got an answer to those questions but was just told again to leave. Micklovich responded that he was not leaving without his friends and continued to probe for the reason he was being asked to leave. In response, Sawaya kept saying, "I told you you're out of here," to which Micklovich said, "Forget about it. I didn't even want to come to this stupid place anyways." Micklovich indicated that he likely raised his arms as he was having this discussion with Sawaya. At that point, Micklovich saw the front door open. Four individuals walked out and stood close to Sawaya. Although Micklovich admitted to being "slightly annoyed" he maintained that he did not use the "F" word. Micklovich stated that none of those four men said anything to him at any point during the altercation. According to Micklovich, Sawaya appeared insulted by Micklovich's comments, stared at him, nodded his head, and walked away without saying anything further.

Within seconds, the man dressed in a light blue shirt who was standing closest to Sawaya grabbed Micklovich's right arm and pulled him down to the pavement on his knees. Micklovich

did not recall seeing any cars parked in the alley across from the entrance to the tavern, nor did he recall hearing a car alarm. Micklovich said that he immediately felt blows to the right side of his head and body. Micklovich indicated that he was brought down to the pavement onto his knees and then pushed down to the ground onto his stomach. He denied that when he fell to the pavement, his face hit the ground or that any injuries to his face were caused in that manner. Micklovich stated that he received repeated blows to his head and body, even after both of his arms were secured behind his back, which happened quickly after being put on his stomach. He denied attempting to free his arms. Because he mostly covered his head and face with his hands and was "tightly wrapped up," he did not see who struck him. Although some of the strikes felt like kicks, he never saw someone kick him and cannot state with a degree of certainty that he was kicked. He remembered screaming for the blows to stop but did not hear any statements from any of the off-duty officers involved in the altercation. He did not hear them say they were police officers, that he was under arrest or any instructions for him to stop resisting. He thought that he faded out of consciousness for a time. He also remembered becoming incontinent and someone laughing at him for that. He recounted feeling a knee on the back of his head and that person was moving and grinding him into the pavement. He did not remember anyone applying a pressure point technique underneath his jaw area. He felt his hands in handcuffs as he remained facedown on the pavement. He was picked up off the ground and when he stood up he noticed that he was missing a shoe. Micklovich denied losing a shoe as he was escorted from the tavern and denied that anyone threw his shoe at him prior to the physical altercation. Once on his feet, Micklovich said that he was walked to a cruiser and then an officer grabbed him and slammed him onto the cruiser, yelling at him to, "Stop bleeding on my f--king car." Micklovich said he was then brought to an EMT who offered medical services, but that he refused. He was

transported to the police station for the booking process. According to Micklovich, he first learned the men involved in the altercation were off-duty officers from reading an article in the newspaper a few days later.

Micklovich was asked about statements attributed to him by his companions that night, Louis Milonas, Kenneth and Christopher Clark. Micklovich denied telling anyone that he was dragged around the corner of the tavern before being assaulted. He denied telling anyone that Sawaya had stated that Micklovich needed to leave the tavern and that he had consumed enough alcohol. Micklovich denied stating that while inside the tavern, he was asked to calm down and quiet down. He denied that while inside the tavern, someone reached out to push him and that he pushed the person's hand away. He also did not remember lifting his shirt to show Milonas bruising on his torso. He stated that he did, in fact, have "some light, light bruising" on his torso.

Micklovich admitted to sending a text message while he was at a Boston hospital to Erin Moul asking her to report what she saw that night at the tavern. Micklovich also admitted to a conversation with Office Andrew Delorey in September 2010, at Murphy's Tap Room during which Micklovich brought up the incident at the Strange Brew Tavern. Micklovich admitted to telling Delorey that "you guys lost four guys over that," but denied saying that the off-duty officers never laid a hand on him or that he was trying to "make you guys look good." Micklovich said he might have told Delorey that he would never, "say anything bad about the rest of the, you know anybody on the force," but did not remember stating "something like I have to make these guys look good."

In an interview with New Hampshire Public Radio, dated March 29, 2010, an attorney for Micklovich relayed her client's version of what happened during that altercation. According to Micklovich's attorney, Micklovich alleged at the time of the interview that he was physically

removed from the tavern and was standing outside alone attempting to put on his shoes, which had been thrown at Micklovich by the person who removed him from the tavern. Suddenly, according to Micklovich's attorney, four men came outside and started yelling at Micklovich to leave. Micklovich indicated that he was putting his shoes on and would leave when he finished doing that. At that point, the four men surrounded Micklovich, pushed him to the ground and started kicking him in the head and "beating him to a pulp."

VI. POLICE OFFICERS

Officer Beau Bernard

Officer Beau Bernard was interviewed on April 2, 2010, as part of the internal affairs investigation. He was interviewed a second time by the Attorney General's Office on March 3, 2011. Bernard was one of the on-duty officers who responded to the Strange Brew Tavern the night of the incident. In addition, he wrote the arrest affidavit for Micklovich.

During his initial interview, Bernard stated that he went to the tavern after what he believed was a call to the station by Officer Richard Valenti, Jr. He arrived just after Sergeant Jamie Gallant and Officer Casey Seigle. As he arrived, he saw Seigle escorting Micklovich to the back of his cruiser. He saw between fifteen and twenty people outside. Bernard spoke with three of civilian witnesses: Mitch Sawaya, the bar owner; Kenneth Kiman, the doorman; and Alex Marin, a patron. He also saw off-duty Lieutenant Ernest Goodno, and off-duty officers Michael Buckley, Jonathan Dushesne, Matthew Jajuga, Richard Valenti, Jr., Frederick Gillis, and Joseph Cespedes. Bernard noticed that Goodno had some blood spots on his pant leg.

Kiman told Bernard that Micklovich had made racial comments in the bathroom of the tavern. He referred to two Hispanic men as "pandijos," a term Bernard was told meant f--king assholes. Kiman stated that he approached Micklovich and said, "Hey, you got to go." Kiman

then indicated that he grabbed onto Micklovich and they started struggling. Kiman stated that Micklovich told him, "F--k you. Get your hands off me." Kiman then escorted Micklovich to the entrance as the two continued to struggle. Near the entrance, Micklovich hit his head on a partition, after which Kiman was able to get Micklovich out the door.

Sawaya told Bernard that he followed Micklovich outside and told him, "Hey, just leave. Nobody wants you here." Sawaya then indicated that Micklovich charged at him. Sawaya told Bernard, "I kept my hands down on my side. I waited for him to come at me," and then added, "I'm a fourth-degree black belt. I'll wait for him to come at me." Sawaya indicated that Micklovich came within six inches of him, at which point Dushesne tackled Micklovich and put him on the ground.

Marin told Bernard that Micklovich called him a "pandijos" and the bouncer threw him out of the tavern. He did not witness what happened outside.

Bernard was the officer who booked Micklovich at the station. He observed that Micklovich was bleeding from his left eye, which was very puffy, and from his nose. The top of his head looked like "he skidded on something." During the booking process, Micklovich was "very calm" and stated, "I got beat up. You guys did this to me. I'm getting my lawyer. I didn't deserve this." Bernard thought Micklovich was "pretty intoxicated," although he was able to talk coherently. Micklovich talked to Bernard about recently volunteering in Haiti with refugees.

After the booking process was complete, Bernard spoke with Dushesne, who told him that Micklovich had been disorderly inside the bar, that Micklovich fought with a bouncer, and that Dushesne intervened when Micklovich went at the bar owner. Dushesne said that he tackled Micklovich. As he was taking Micklovich down, Dushesne identified himself as police officer. Once on the ground, Dushesne punched Micklovich with a closed fist a couple of times

“to gain compliance, to get his hand from behind his back ... so he could put handcuffs on him.”

Duschesne did not mention anything to Bernard about other off-duty officers involved in the struggle with Micklovich. Duschesne told Bernard that he placed handcuffs on Micklovich.

Bernard stated that he reviewed Duschesne's report around the time he wrote the affidavit. Bernard admitted, during his interview, that there is a discrepancy between Duschesne's report, in which he claimed that he identified himself as an officer once he had Micklovich on the ground, and what Duschesne told him, specifically, that he identified himself as a police officer just as he was about to grab Micklovich and put him on the ground.

During his March 3, 2011, interview with the Attorney General's Office, Bernard stated he arrived at the tavern after Siegel and Gallant. When he arrived, Micklovich was with Siegel standing against a cruiser in handcuffs. Bernard observed that there were four or five off-duty officers standing outside the tavern, as well as approximately twenty patrons. Although he was instructed by Gallant to attempt to interview witnesses, he admitted he did not get the names of any of those patrons, besides Alex Marin, he did not inquire of any of the off-duty officers at the scene, and once inside the tavern, he did not approach anyone to see if they were witnesses to the incident. He spoke only to Marin, Sawaya and Kiman. He also did not hear Gallant make an announcement for witnesses to approach them to give a statement.

Once back at the station, Bernard began the booking procedure with Micklovich. He described Micklovich as intoxicated, rocking in his seat, bloody, and pretty banged up. Bernard also noticed that Micklovich had been incontinent, although did not address that with him. Micklovich told him, “Your boys did this to me.” Bernard understood that to mean off-duty police officers had been involved in the altercation.

Once he finished in the booking area, Bernard began typing his report, including the arrest affidavit. While preparing his reports, Bernard spoke with Duschesne, who told Bernard that he struggled with Micklovich on the ground and “had to give him a couple of shots in the head to make it so he could, the guy wouldn’t put his hands behind his back.” Bernard was asked about the section of his affidavit that dealt with Duschesne identifying himself as police officer and the discrepancy between what Bernard wrote in the affidavit and what Duschesne said happened. Bernard admitted to being unsure of those facts and stated, “I mean I put it in there because I wasn’t sure if it happened when he grabbed him or when he was on the ground, but he definitely said it.” Bernard stated that despite Micklovich’s comment in the booking room, and despite seeing drops of blood on Goodno’s pants, he did not ask Duschesne about the involvement of other off-duty officers and made no inquiries of any of the officers present that evening at the tavern. Bernard also stated that he did not include in the affidavit information given to him by Duschesne that Duschesne struck Micklovich a few times. He offered no explanation for that omission. Bernard indicated that he presented the affidavit to Lieutenant Peter Favreau for review.

Sergeant Jamie Gallant

Sergeant Jaime Gallant was interviewed on March 30, 2010, as part of the internal investigation and on March 22, 2011, as part of the Attorney General’s investigation. During his interview on March 30, 2010, Gallant stated that he was the midnight shift patrol supervisor on March 3, 2010. At approximately 12:54 a.m., he responded to the Strange Brew Tavern for an off-duty officer making an arrest. At the time, he drove a Manchester Police Department cruiser. Gallant arrived at the scene within ten seconds of the dispatch call. He approached the scene from Middle Street, driving in a northerly direction. As he drove, he saw a male, later identified

as Micklovich, on the ground, face down on his stomach. Micklovich was handcuffed and Officer Jonathan Duchesne was in a squatting position holding Micklovich's right arm. Because Micklovich's head was raised he noticed that Micklovich had blood on his forehead. In accordance with police protocol, he called immediately for an ambulance. Gallant remembered that Micklovich was swearing. When he got closer to Micklovich he detected a strong odor of alcohol and noticed that Micklovich's speech was slurred. He also noticed off-duty Lieutenant Ernest Goodno and Mitch Sawaya standing behind Duchesne. Gallant did not recall seeing any blood on Duchesne but he did see a "couple drops of blood" on the right leg of Goodno's jeans. He also recalled Goodno saying, "I don't know how I got blood on my jeans." An ambulance arrived within moments after he called. Officer Casey Seigle escorted Micklovich to the ambulance. Gallant noted that Micklovich was off-balance as he was escorted to the ambulance.

When he spoke with Duchesne at the scene, he was told that Micklovich was removed from the bar, that Micklovich fought with the bouncers, that once outside Micklovich was told to leave and that Duchesne had to take action because Micklovich made an aggressive move toward Sawaya as if he was going to strike him. Duchesne told Gallant he grabbed Micklovich and transitioned him to the ground. Duchesne also told Gallant that when he took Micklovich to the ground, Micklovich did not get his hands out and this is how he sustained his injuries. At the scene, Duchesne did not tell Gallant that Micklovich struck him.

When he spoke with Goodno at the scene, Goodno told him that Micklovich was removed from the bar, that Micklovich was told to leave, as he did not want to be arrested, that Micklovich became aggressive toward Sawaya, and that when Micklovich went at Sawaya, Duchesne grabbed Micklovich and brought him to the ground. Goodno also told him that Micklovich must have hit his head when he went to the ground. Gallant thought, but was not

certain, that Goodno also noted that Micklovich did not get his hands out to break his fall. Goodno stated they had to arrest Micklovich for disorderly conduct.

Gallant directed Officer Beau Bernard to interview the bouncer, Sawaya and any other witnesses. He also decided that Bernard would complete the police report and that Duchesne would complete a supplemental report and a use of force report. Because Goodno wanted Duchesne to complete the police reports, Gallant called Lieutenant Peter Favreau, the officer-in-charge at the police station. Favreau told Gallant that he concurred with Gallant's decision to have Bernard complete the initial report and affidavit. Gallant then ordered Duchesne to report to the station to complete a use of force Report. Gallant was asked if Goodno told him to clear or leave the scene. Gallant did not recall that, rather what he recalled was Goodno stating that Duchesne should do all of the police reports. Gallant assumed that Goodno was going to do a police report as well. At that point, the only off-duty officers that Gallant knew to be involved in the incident were Goodno and Duchesne.

Gallant and Bernard then attempted to locate additional witnesses. Gallant made an announcement to the people standing outside of the tavern and asked if anyone saw anything to come forward, but no one did. He then went inside the tavern and saw off-duty officers along with other people he recognized. Gallant made the same announcement. Again, no one responded. Gallant did note that it was loud in the tavern with music playing, so he could not say that the off-duty officers present inside the tavern heard his announcement. He did not approach the off-duty officers to ask them specifically if they witnessed any of the incident with Micklovich because none of them came to him to say they saw anything. He also saw a female he recognized, Rachel Goldstein, but he did not speak with her. Gallant recalled that Officer Richard Valenti, Jr. informed him that he had retrieved handcuffs from his truck. Those were the

handcuffs used on Micklovich. Gallant also recalled asking Valenti if he saw anything, and while not definite on Valenti's reply, Gallant believed Valenti's answer was "no."

As Gallant was leaving the tavern, Bernard told him that he had learned that Micklovich was escorted from the tavern for derogatory racial slurs toward Alex Marin. Bernard indicated that Marin would not speak with him. Gallant and Bernard made another attempt to interview Marin. Marin stated that he did not want to get involved because he was applying to become a Manchester Police officer. Despite their attempts to speak with Marin, he refused to provide the officers with any information. Once Gallant was outside, Marin exited the tavern and indicated he did not want to talk in the tavern because there were too many people around. Marin then told Gallant and Bernard that he and a friend were in the bathroom when Micklovich entered and started calling them "pendejos" as well as using other derogatory words. Marin stated that the bouncer heard Micklovich's comments and told Micklovich to leave. Marin told Gallant that Micklovich would not leave and the bouncer escorted him out. Marin noted he did not see anything after that point. Gallant did not speak with any other tavern patrons.

Because Micklovich refused treatment, he was brought to the police station to be booked. Gallant went to the station to supervise the booking process. Once at the station Gallant informed Favreau of the information he possessed. When Gallant went into the booking area he noticed a lot of blood and asked Micklovich to go to the hospital to be examined. Micklovich told Gallant to f--k off. Gallant gave Micklovich wipes to clean off the blood. Gallant described Micklovich as "a little disorderly" throughout the booking process. On three or four occasions, Gallant asked Micklovich to go to the hospital for treatment but Micklovich stated he did not need treatment and that he was fine. Gallant spoke with the bail commissioner about Micklovich being released on personal recognizance bail.

When Gallant spoke with Duchesne at the station, he learned that there were additional charges related to Micklovich striking Duchesne and resisting arrest. Duchesne also told Gallant that when Micklovich was on the ground, he struck Micklovich once in the head area after Micklovich started punching him. Gallant told Duchesne, “[m]ake sure that is in your report.” Gallant also asked Duchesne if he identified himself as an off-duty police officer during the incident. Duchesne stated that he did and Gallant told him to make sure that was in his report as well. After speaking with Favreau, Gallant returned to street patrol.

At some point Gallant learned that off-duty officers Michael Buckley and Matthew Jajuga were also involved in the incident. He could not recall if Duchesne told him that or if it was in Duchesne’s report. Duchesne did not tell him that anybody assisted him in taking Micklovich to the ground.

Gallant stated that he sent Goldstein a few texts later on during his shift that evening, but it did not pertain to the incident at the Strange Brew.

The following night, Gallant went to a Celtic’s game in Boston. On his way home, he contacted Goldstein to meet him at the Wild Rover Pub for drinks. When they walked in, Goodno was there with Sawaya and another man that he did not recognize. Gallant stated he did not know that they were going to be there. Gallant noted he did not know the man with Goodno and Sawaya was Kenneth Kiman, the bouncer from the tavern. Gallant shook Goodno and Sawaya’s hands. Gallant asked the three men how was it going and they rolled their eyes. Sawaya noted that he did not like problems at his tavern because he gets sued. Goodno made some comment about being aggravated about doing a report so quickly. According to Gallant, there was no specific conversation about the incident. Gallant determined he was not going to participate in any discussion about the matter once he learned other officers were involved.

Gallant and his friends sat at a separate table from Goodno, Sawaya and Kiman. Gallant noted that he did not discuss the incident with Goldstein, although she mentioned the subject and wanted to discuss how she was angry with Buckley for personal reasons. Gallant told her he did not want to discuss the matter further. Gallant stated Goldstein did not say that she witnessed the incident involving Micklovich. Gallant stated that he had no personal knowledge that Goldstein was a witness and denied seeing her outside of the tavern when he arrived at the scene. He first saw her was when she was inside with off-duty Officer Joseph Cespedes. Gallant never spoke with Goldstein.

During Gallant's March 22, 2011, interview Gallant again noted that when he arrived at the Strange Brew Tavern on March 2, 2011, he was in a marked Manchester Police Department cruiser. The rear panel of the cruiser was marked "Supervisor." When asked if a sport utility vehicle (SUV) was utilized that night, Gallant noted no one drove the SUV that night. He also indicated that the Manchester Police cruisers are not equipped with video cameras.

Gallant did not see anyone striking, kicking or punching Micklovich as he arrived at the scene and approached Micklovich restrained on the ground. He recalled seeing only a few people outside the tavern. Specifically, he did not recall seeing off-duty officers Buckley, Jajuga, Valenti, Cespedes, or Derek Feather when he arrived on scene. Gallant likewise did not recall seeing a taxi in the area, talking with a taxi driver or any mention of a taxi driver at any point that evening. He remembered making an announcement outside seeking witnesses, and no one responded to his inquiry. When asked why he did not make note of the names of the people outside the tavern as potential witnesses, he stated, "It is probably a fault on my part I didn't. We usually don't."

He first learned that Buckley and Jajuga were involved in the incident when he returned to the station and Dushesne told him that while typing his report. When Gallant learned that others were involved, he told Favreau, the officer-in-charge.

When Gallant was asked if he ever saw an officer put Micklovich down hard on the back of a cruiser, Gallant answered that he never saw that.

Lieutenant Peter Favreau

Lieutenant Peter Favreau was interviewed on March 26, 2010, as part of the internal affairs investigation. He was interviewed a second time by the Attorney General's Office on March 28, 2011. During his initial interview, Favreau stated that on the evening of March 2, 2010, he was the officer in charge at the police station. He was made aware of a call into the station regarding what he understood to have been a fight at the Strange Brew Tavern involving off-duty officers and that someone had been arrested. He gave orders for a supervisor to go to the tavern and Sergeant Jamie Gallant responded. After Gallant arrived, he called Favreau to report that off-duty Lieutenant Ernest Goodno told him that the on-duty officers at the scene can "clear" and that the off-duty officers who made the arrest would handle the paperwork. Gallant called to express his discomfort with Goodno's comment. Favreau stated that he ordered Gallant to remain at the scene and to oversee the investigation. Favreau then spoke by telephone to Goodno who indicated, "Okay. No that's fine. I thought we could handle it, but that makes sense. If you want to do it that way, that's fine." Gallant then indicated to Favreau that he had assigned Officer Beau Bernard to do the investigation. Favreau further stated that his instructions to Gallant were to, "Make sure you talk to the owner. Make sure you talk to the bouncer, and make sure you walk around and find out if there's any witnesses that want to talk about this and can give us any information."

Goodno told him that Micklovich had given the bouncer a hard time after the bouncer had tried to throw him out. Favreau also understood from his conversation with Goodno that Micklovich, "kind of struggled with the bouncer and these guys jumped in, were able to subdue him and place him under arrest, and he was coming in. It sounded pretty cut and dry. I didn't expect any real major issues out of this." Goodno also told Favreau that Micklovich "went after Mitch and that they needed to latch onto him and take him into custody."

Favreau went to the booking area while Micklovich was being processed and observed that he was, "really, obviously intoxicated." He noticed what he described as "road rash" on Micklovich's forehead, meaning that, "he was missing a good chunk from his forehead" and that Micklovich's nose was scraped. Micklovich refused medical treatment. Micklovich kept asking why this happened to him and stated, "These people did this to me. They beat me up." He did not mention that any off-duty officers had been involved in the altercation.

Favreau discussed this incident with Duchesne, who stated that Micklovich had been asked to leave the tavern, the bouncer tried to throw him out and that Micklovich was not cooperative. Duchesne added that Micklovich fell and damage property within the tavern and that he stepped toward the bar owner. According Duchesne, that was when "we stepped in, you know, we took him down." Duchesne went on to tell Favreau, "We took him down, and then he was flailing, and we were, eventually, able to get him handcuffed."

Favreau remembered asking Duchesne when he and the other off-duty officers identified themselves as police officers. According to Favreau, Duchesne stated, "It was at some point while we were on the ground. There was a struggle, and then, at some point during the struggle I told him, 'Stop resisting. Manchester Police officers,' or something to that effect." Duchesne also told Favreau that he punched Micklovich a couple of times as they were attempting to

subdue Micklovich and place him under arrest. Favreau was left with the impression that Dushesne and Goodno were the officers who had physical contact with Micklovich during the altercation.

During his March 28, 2011, interview, Favreau was asked about his phone call from Gallant from the scene, and specifically whether Goodno had told Gallant to "clear" the scene. Favreau stated that he had a "very quick conversation" with Gallant and may have wrongly assumed that Goodno was ordering Gallant out of the area. Rather, Goodno indicated to Gallant that the off-duty officers involved with Micklovich could handle the paperwork associated with the arrest and processing of Micklovich. When Favreau spoke with Goodno and indicated the on-duty officers would conduct the investigation, Goodno was very agreeable to that suggestion.

Favreau stated that, initially, he was under the impression that only Dushesne and Goodno were involved in an altercation with Micklovich. He learned after the event that the other two officers were also involved but could not remember when he learned that fact.

Favreau was asked about the inconsistencies contained in the arrest affidavit prepared by Bernard, and specifically the difference between what Bernard wrote and what Dushesne stated about when Dushesne identified himself as a police officer. Favreau admitted the affidavit, which he reviewed and signed contained inaccuracies and that he, "missed it and should have probably looked at that more closely."

Officer Richard Valenti, Jr.

Officer Richard Valenti, Jr. was interviewed by investigators for internal affairs on March 29, 2010. He told investigators that at approximately midnight he arrived at the Strange Brew Tavern. Off-duty Lieutenant Ernest Goodno was already there when he arrived. He stood near the entrance with off-duty Officer Frederick Gillis. He did not notice any altercation between the

bouncer and Micklovich inside the tavern. After he and Gillis were approached by a tavern employee named Carrie, who told them, "Hey, somebody is fighting outside with your off-duty guys," the two of them walked outside. Valenti saw Micklovich lying facedown on the ground with his head facing the tavern. Officer Matt Jajuga was at Micklovich's head, Officer Jonathan Duchesne was on Micklovich's left side holding his left arm, Officer Michael Buckley was holding Micklovich's feet, and Goodno was on Micklovich's right side holding his right arm. All four officers were squatting or kneeling down. None of them was standing beside Micklovich. Valenti did not see any of the officers strike Micklovich.

Valenti remembered asking if anyone had called the police station. When he was told that no one had done so, he called the station. After making the call, he ran to his truck, which was parked nearby, and retrieved a pair of handcuffs. He placed the handcuffs on Micklovich and then stood up and stepped back. He remembered Micklovich yelling, but did not remember what, if anything, he was saying. Valenti went back inside the tavern just after the on-duty officers arrived and before Micklovich was picked up off the ground in handcuffs.

Valenti read incident reports, including the transcript of the bar owner's interview. He disagreed with the owner's statement that he was outside during the incident and that he held Micklovich's head. He stated that his only physical involvement was placing the handcuffs on Micklovich.

Subsequent to the incident, Valenti spoke with Jajuga, who told Valenti that he held Micklovich's head. Jajuga specifically denied punching Micklovich.

Officer Frederick Gillis

Internal affairs investigators interviewed Officer Frederick Gillis on March 29, 2010. He stated that he went to the Strange Brew Tavern after working the second shift. He arrived at the

tavern around midnight with Officer Matthew Jajuga. Off-duty Lieutenant Ernest Goodno and off-duty officers Michael Buckley and Jonathan Duschesne were already there.

Gillis had been at the tavern for approximately fifteen minutes when he saw Ken Kiman, the bouncer, forcefully remove a patron, later identified as Micklovich, from the tavern. He saw two men fall into a partition and knock over the hostess table before Kiman was able to get Micklovich outside. At the time, Gillis was inside drinking a beer with another off-duty officer, Richard Valenti, Jr.

Thereafter, a waitress, named Carrie, came over to the two officers and told them, “[Y]our friends are fighting outside.” Gillis and Valenti then walked outside and saw Micklovich lying on his stomach on the ground. Micklovich was lying just outside the tavern entrance with his head toward the tavern. Micklovich’s hands were behind his back, he was lying on the ground, and four off-duty officers were holding him and keeping him under control. Those officers were Goodno, Buckley, Jajuga and Duschesne. Gillis remembered seeing Goodno kneeling on one knee by Micklovich’s right arm. Gillis did not hear Micklovich or the officers say anything during the brief time he was outside. The tavern owner, Mitch Sawaya, told Gillis that everything was all set.

Gillis then overheard Valenti make a call to the station to request a police wagon. After Valenti made that call, Gillis saw Valenti run to get a set of handcuffs and Gillis returned inside the tavern. He indicated that he went back inside because he made the determination that the situation with Micklovich was under control. When Goodno also returned inside, Gillis noticed blood that he described as “spattered, kind of,” near the shin on Goodno’s pant leg.

Gillis reviewed the transcript of Sawaya’s interview prior to his own interview. He also had discussions with Jajuga, Buckley, Duschesne, and Valenti about what had happened that

night. Jajuga told him that he grabbed Micklovich, assisted in taking him down and getting him under control. He wrestled with Micklovich to pry one of his arms from underneath him so that it could be placed behind his back. Jajuga told Gillis that Micklovich was "fighting like crazy" and punching. Jajuga denied ever hitting or kicking Micklovich during that struggle. He indicated that Micklovich never punched him, but did punch Dushesne.

Dushesne told Gillis that he got between Sawaya and Micklovich. A struggle ensued, and they took Micklovich down. Micklovich landed headfirst and they had to wrestle with him once they got him on the ground. Dushesne said that he hit Micklovich one time in the facial area. He also indicated that he did identify himself as a police officer.

Buckley told Gillis that he helped to take Micklovich to the ground and tried to control him. He indicated that he positioned himself by the lower half of Micklovich's body. Buckley made no mention of ever hitting Micklovich.

Gillis said Valenti only discussed his limited role in the incident.

Officer Joseph Cespedes

Officer Joseph Cespedes was at the Strange Brew Tavern on the night of the incident in an off-duty capacity. He was not interviewed as part of the police department's investigation and was interviewed for the first time by members of the Attorney General's Office on September 22, 2010. He stated that he was not on duty on the night at issue. He received a couple of phone calls from co-workers who invited him to join them at the tavern after their shifts. He arrived between 11:00 p.m. and 11:30 p.m. and met off-duty Lieutenant Ernest Goodno and off-duty officers Matthew Jajuga, Frederick Gillis, Michael Buckley, Derek Feather, Jonathan Dushesne, and Richard Valenti, Jr. He ordered a beer. The others were drinking beer too.

Cespedes observed the bouncer, Kenneth Kiman, escort a disorderly person from the bathroom area of the tavern to the front door. At the time, he did not know why the bouncer was removing the person, later identified as Micklovich. He later learned from Kiman that Micklovich had made some derogatory statements while inside the tavern and, as a result, Kiman confronted Micklovich. Micklovich then became confrontational toward Kiman and did not want to leave, causing Kiman to physically remove him. It appeared to Cespedes that Micklovich did not want to be taken out of the tavern. Cespedes did not observe Kiman and Micklovich crash into a partition near the front entrance. Cespedes indicated that Kiman was able to escort Micklovich outside into the alley. He saw Kiman come back inside and then saw Micklovich trying to return inside the tavern, only to be forced out again by Kiman. Cespedes stated that he did not observe any injuries to Micklovich as he was being removed from the bar.

Cespedes next saw both Kiman and the bar owner, Mitch Sawaya, step outside. Cespedes did not pay attention to what was happening outside at that point and thought he stepped away for a few moments. He did not see anyone toss Micklovich a shoe. When Cespedes returned to the front area near the entrance, he observed that something was happening outside in the alley. He then went outside. He stated that he observed off-duty officers Dushesne, Buckley, Gillis, Valenti, and Goodno "trying to restrain [Micklovich] on the ground." Micklovich was face down on the pavement in front of the main entrance to the tavern. Cespedes heard officers instructing Micklovich to "stop moving around, stop resisting." The officers were attempting to restrain his arms and legs. Cespedes noticed that the officers had succeeded in restraining Micklovich's left arm and were making efforts to gain control of his right arm. He remembered seeing Micklovich trying to get up and throwing elbows at the officers. Cespedes said that he looked away, looked back, and saw that the off-duty officers had

control of Micklovich's right arm. Cespedes stated that he tried to call the station when he saw what was occurring outside, but was not able to get through to complete the call. Cespedes stated that he never saw any officers kick, punch, strike, or deliver any type of blow to Micklovich.

During the altercation, Cespedes's attention was drawn to a man who was trying to approach the officers who were dealing with Micklovich. In Cespedes's opinion, this man was "trying to get too close to the guys, as if he wanted to get aggressive with the guys." Jajuga asked him to watch this man and to do crowd control. He remembered the man said something about calling the police. Cespedes stated that he may have responded, "We are the police." When he told the man to back away, the man complied. He remembered seeing a cab parked in the area.

He saw Buckley and Goodno on the right side of Micklovich and Jajuga on the left side. He also saw Gillis kneeling by Micklovich. He heard Micklovich utter profanities, such as, "Get the f--k off me" and, "What the f--k." He did not hear any of the officers identify themselves as Manchester police officers. He heard the officers, and he believed Duchesne in particular, telling Micklovich to stop resisting and advising him that he was under arrest.

Cespedes heard Valenti say that he was going to his truck to get handcuffs, saw Valenti run off, and saw Valenti return with them. He thought that Valenti was one of the officers who placed the handcuffs on Micklovich. After Micklovich was handcuffed, Cespedes stood Micklovich up, walked him over to a cruiser, and turned him over to Officer Beau Bernard. He noticed a pool of blood on the pavement. He also noticed that Micklovich was missing one shoe. Cespedes was handed the shoe by someone and, in turn, gave it to Micklovich. Cespedes believed that Micklovich was intoxicated because of his slurred speech, the way he walked

sideways to the cruiser, and the odor of alcohol coming from his body. Cespedes observed that Micklovich's face was covered in blood.

After Micklovich was taken into custody, Cespedes returned inside the tavern. He saw that Goodno had a few drops of blood on his pants. Cespedes had blood on his hands.

At some point after the night of the incident, Cespedes reviewed the transcript of Sawaya's interview. He wrote a report on March 25, 2010, at the request of Captain Gerald Lessard. He indicated that he did not want to write a report because he had been drinking that night and only wrote it when ordered to do so.

Officer Derek Feather

Officer Derek Feather was interviewed for the first time on November 3, 2010, by members of the Attorney General's Office. Feather stated that he arrived at the Strange Brew Tavern around 11:45 p.m. on March 2, 2010. He went there after his regular shift. Also at the tavern that night were of-duty officers Matthew Jajuga, Michael Buckley, Jonathan Duschesne, Frederick Gillis, Joseph Cespedes, and Richard Valenti, Jr., and off-duty Lieutenant Ernest Goodno. Feather ordered a couple of beers and became aware of a bouncer who was forcibly removing a patron, later identified as Micklovich, from inside the tavern. He saw the bouncer, Kenneth Kiman, struggling with Micklovich as they moved toward the main entrance. He heard them knock over a stand near the door and also heard something else break. He then saw the bouncer remove Micklovich. He also saw a shoe being tossed to Micklovich.

A few minutes later, after a crowd started gathering near the door, Feather looked outside and saw Micklovich, who appeared to be angry and "puffed up," pointing and yelling at the bar owner, Mitch Sawaya. Feather walked away and continued his conversation inside the tavern, only to see a crowd gathering again. This time Feather walked outside and saw Micklovich on

his stomach on the ground, along with Jajuga, Dusesne, and Buckley. Feather did not remember hearing a car alarm.

Jajuga was by Micklovich's head. At one point, Feather saw Jajuga use a pressure point technique by pressing his thumb against Micklovich's neck. Dusesne was positioned near the middle of Micklovich's body and was trying to get Micklovich's arm out from underneath him. Buckley was positioned near Micklovich's legs. The only thing Feather remembered Micklovich saying was, "I didn't do anything," which he yelled a few times. Feather did not remember seeing Goodno have physical contact with Micklovich.

Jajuga asked Feather to perform crowd control, which he did with Cespedes. Feather mostly turned away from the altercation on the ground but did look back on occasion. He observed Jajuga, Dusesne, and Buckley kneeling down by Micklovich, but he never saw any of the officers punch, hit, or kick Micklovich.

Feather remembered dealing with a man who came out of the crowd and seemed intent on advancing toward the altercation. That man was asking what they were doing and might have mentioned something about calling the police, to which either Feather or Cespedes might have responded, "We are the f--king police." Feather saw Valenti run over with handcuffs and hand them to another officer. After the altercation on the ground, Feather returned inside the tavern for a brief period.

Feather was never asked to write a report about what he observed, and did not do so.

Lieutenant Ernest Goodno

On April 5, 2010, internal affairs investigators interviewed Lieutenant Ernest Goodno. Goodno stated that he went to the Strange Brew Tavern on the evening of March 2, 2010, to pick up some items that had been donated for a raffle for the New Hampshire Police Association

Pipes and Drums fundraiser. He arrived between 10:30 p.m. and 11:00 p.m. and was with the tavern owner, Mitch Sawaya. He remembered that he was wearing jeans and either a brown or black sweater. Off-duty officers Matthew Jajuga and Michael Buckley arrived, followed later by off-duty officers Jonathan Dushesne, Derek Feather, and Frederick Gillis. As they were standing around having a casual conversation, Goodno became aware of a commotion and saw the bouncer, Ken Kiman, struggling with a man, later identified as Micklovich. Kiman and Micklovich came from the area of the bathroom and were struggling with each other, pushing, and shoving as they went toward the door. At the entrance area, the two of them hit a partition by the front door. Kiman was then able to push Micklovich out the door and into the alley.

Goodno then saw the other bouncer, Justin Henderson, go outside, along with Sawaya and Kiman. Goodno put down his drink and went outside behind Sawaya. Dushesne, Buckley, and Jajuga followed closely behind him. Micklovich was standing in front of a parked car across from the entrance to the tavern. His back was to the car and he was looking in the direction of the tavern. Goodno heard Kiman telling Micklovich to leave. In response, Micklovich was calling Sawaya a bitch and was refusing to leave the area. Micklovich also said that he wanted his shoe, which he lost in the struggle leaving the tavern. Kiman went back inside to retrieve the shoe and tossed it out to Micklovich. Sawaya again told Micklovich to leave but Micklovich continued to yell, insisting that he did not do anything wrong. Goodno, with his hands in his pockets, and standing six to eight feet from Micklovich, addressed him and stated, "Hey, this is ridiculous. Just go. You're making a big deal out of nothing." Goodno also told Micklovich that his behavior was not acceptable and that he should just leave. Micklovich asked Goodno if he wanted to hit him. Goodno stated that he did not want to hit Micklovich and that no one was going to hit him. Goodno thought that Micklovich was obnoxious, belligerent, and loud. He

could tell that Micklovich had “a few drinks in him” but did not think that Micklovich was to the point of being significantly impaired.

At that point, Sawaya took a few steps toward Micklovich and told him that if he did not leave he was going to have him arrested. Micklovich stated, “Who the f--k are you?” Sawaya stated again, “Look, just leave or I’m going to have you arrested.” According to Goodno, Micklovich suddenly took a step toward Sawaya as if he was going to grab Sawaya and hit him. Goodno described Micklovich’s arms as “starting to come in an upward motion as he’s stepping forward.” Goodno thought Micklovich was about to reach up to grab Sawaya and hit him. Dushesne, who was standing to the right of Goodno, immediately grabbed onto Micklovich’s shirt in his chest area. A struggle ensued and they ended up against a car parked nearby. Goodno did not remember hearing a car alarm going off. Buckley and Jajuga also grabbed a hold of Micklovich, who was flailing his arms. Goodno remembered hearing Dushesne state that he was a police officer and that Micklovich should stop resisting. Goodno stated that throughout the incident, he never identified himself to Micklovich as a police officer. He explained that he made a quick decision not to disclose they were off-duty officers because of his assessment, at that time, that although Micklovich was acting like a “loudmouth,” Goodno thought that the situation would be diffused rapidly when Micklovich left the area with his friends. Goodno also thought that disclosing they were police officers “would infuriate him more” and might have escalated the situation.

During the altercation, Goodno looked around to make sure no one was approaching the men. When he turned back, he saw Micklovich face down on the ground, moving his head from side to side, with his arms tucked underneath him. Goodno did not see the manner in which Micklovich went to the ground. Dushesne was on top of Micklovich, who continued to struggle

by flailing his arms and kicking his legs. Goodno knelt down on the ground next to Micklovich and reached down to grab his right arm, which Micklovich had tucked underneath his body. Goodno remembered that one of the officers secured Micklovich's head and possibly used a pressure point technique. He stated that he never hit or kicked Micklovich and that he never saw any other officer strike him. He also never saw Micklovich strike anyone. Off-duty officer Richard Valenti, Jr. was present at that time and he ran to his car to retrieve a set of handcuffs. Goodno was able to pull out Micklovich's right arm, which was then secured, most likely by Dusesne. Once handcuffed, Micklovich was picked up off the pavement and escorted to a cruiser. Goodno noticed that he had blood around the knee area of his own pants and on his hands. He returned inside the tavern to wash up. He remembered speaking with three of Micklovich's friends who asked what had happened.

Prior to being interviewed, Goodno reviewed all of the other officers' reports, as well as Sawaya's transcript. He disputed that portion of Sawaya's statement that indicated that he (Goodno) grabbed Micklovich before he went to the pavement. He also spoke with Dusesne, who admitted that he had punched Micklovich. Goodno insisted that he never saw Dusesne punch Micklovich.

The night after this incident, Goodno met with Sawaya and Henderson at an establishment called the Wild Rover and they discussed what had happened the night before. According to Goodno, their plans to spend a social evening together were made well in advance of the incident and they did not make those plans in response to that incident. He stated that they discussed how Micklovich's attitude and aggressiveness changed quickly. They also discussed how Micklovich "snapped" and stepped toward Sawaya, causing Dusesne to grab him. According to Goodno, Sawaya stated that Micklovich "was asking if [Goodno was] going to

punch him, and [Goodno's] hands were in [his] pockets." Micklovich then came at Sawaya but the officers "grabbed him before he could get [Sawaya]." They also discussed how Dushesne admitted to punching Micklovich and Goodno said that he never saw the punch. Goodno stated that Jamie Gallant and Rachel Goldstein also came to the Wild Rover that evening and he had a conversation with Gallant about Micklovich's booking photo. Gallant mentioned how they could not get Micklovich to stop bleeding when they took the picture.

Officer Jonathan Dushesne

Officer Jonathan Dushesne was interviewed by internal affairs investigators on April 8, 2010. He stated that on March 2, 2010, he had worked the evening shift and arrived at the Strange Brew Tavern around midnight. He was wearing, "a dark long-sleeved shirt. I think it was green." When he arrived, Lieutenant Ernest Goodno and Officer Michael Buckley were already there. Officer Matthew Jajuga arrived after he did. He was there for approximately one-half hour when he saw a struggle between one of the bouncers, Kenneth Kiman, and Micklovich. Kiman was attempting to get Micklovich out of the tavern. He had grabbed a hold of Micklovich by his jacket. Micklovich was pushing back against Kiman and appeared to be refusing to leave. When they got to the entrance area, the two of them went into a partition before they went outside into the alley.

After they went out, Dushesne saw Goodno walk outside and he followed Goodno. Buckley and Jajuga also walked outside at around the same time. Once outside, Dushesne saw Micklovich. Micklovich was standing in the middle of the alleyway, facing the tavern, just outside its entrance. He was very agitated and began arguing and swearing at another patron who was outside smoking a cigarette. The patron was laughing at Micklovich and Micklovich became verbally confrontational with him, saying, "What the f--k are you laughing at?" The two

of them exchanged profanities. Duchesne also heard an exchange of profanities between Micklovich and Kiman. He heard Micklovich say, "I'm not going anywhere. I'm not leaving." In addition, he heard Micklovich say something about missing a shoe. Duchesne noticed he was without one shoe. Kiman went back inside the tavern and threw Micklovich his shoe.

Duchesne said that Goodno then stepped toward Micklovich and told him to leave and go home. Duchesne said the same thing to Micklovich. He then heard Micklovich say to Goodno, "What? Do you want to hit me? Are you going to hit me? Come on, hit me." Goodno responded, "I'm not going to hit you." Goodno, who Duchesne remembered had his hands in his pockets, responded by saying something like, "I'm not going to hit you. My hands are in my pockets."

Duchesne remembered that Mitch Sawaya, the bar owner, told Micklovich, "Either leave or I'm going to have you arrested." At around that time, Jajuga stated that they should get someone from the station to respond and he made a hand motion as if to make a call. Goodno told him not to do that. None of them called the station.

Duchesne described Micklovich as confrontational. He seemed like a person who did not want to leave the tavern and go home. He appeared to be looking for a fight. He also appeared intoxicated, as Duchesne could detect the odor of alcohol coming from him and he slurred his words when he spoke.

Duchesne observed that Micklovich had his fist clenched at his waist and that he responded to Sawaya by saying something like, "Who the f--k are you?" Sawaya told him, "Either get out of here or I'm going to have you arrested." Duchesne saw Micklovich take a step toward Sawaya and he came within half an arm's length to Sawaya. Duchesne stated that he thought Micklovich was about to strike Sawaya on the face so he grabbed Micklovich and

pushed him back against a parked car. The car alarm went off. Dusesne stated that Micklovich came back at him and grabbed him, at which point Dusesne forced him back into the car. Dusesne stated that Micklovich pushed back against him, and started flailing his arms and swinging at him. Dusesne said, "Take him down." Jajuga and Buckley, who were standing near Dusesne, assisted him in putting Micklovich on the ground.

According to Dusesne, Micklovich went down very fast and face first, landing on the left side of his face. Dusesne went down with him, landing on his knees. It was at that point that Dusesne identified himself for the first time as a police officer. He instructed Micklovich to stop resisting. Dusesne stated that Micklovich was flailing his arms and throwing punches in every direction and he struck Dusesne on the chest. Dusesne then hit Micklovich on the left side of the face. He did not think his first punch landed and he threw a second punch. He said he threw those punches because Micklovich had been combative and confrontational and he had already hit Dusesne once. Dusesne claimed that he "wanted to end that confrontation as quickly as possible."

After Dusesne struck him, Micklovich rolled over and tucked his hands underneath him. Dusesne claimed that he continued to tell Micklovich to stop resisting. Dusesne concentrated on getting a hold of Micklovich's left arm, which he was successful in doing. Goodno was attempting to restrain the right arm. Jajuga was in a kneeling position toward Micklovich's head. Dusesne saw Jajuga apply a pressure point technique. He remembered seeing Buckley positioned toward Micklovich's lower body and saw that he had Micklovich's legs pinned. Dusesne did not remember hearing Micklovich say anything during the altercation. He did remember seeing a cab nearby. He also remembered someone approaching them and heard someone say something like, "Get off him." Dusesne believed that Officer

Frederick Gillis told that person to back off. Duseschne told Officer Richard Valenti, Jr. to get handcuffs, which he then retrieved from his car. Duseschne applied the cuffs. He believed that Goodno assisted him. Duseschne believed that he helped Micklovich off the ground. Duseschne stated that he never kicked Micklovich and did not see anyone else kick him at any point during the altercation.

Investigators questioned Duseschne about what was in Officer Beau Bernard's police report and arrest affidavit. Specifically, Bernard wrote that Duseschne told him that he told Micklovich he was a police officer and was under arrest before the two of them hit the ground. Duseschne stated that Bernard's report was inaccurate in that regard and that he did not tell Micklovich that he was a police officer until after they were on the ground.

Duseschne stated that he had reviewed police reports written by Bernard, Jajuga, and Valenti and that he had read the transcript of Sawaya's interview. Duseschne wrote a use of force report¹ that disclosed one "closed fist strike to the subject's facial area that allowed him to be placed into custody."

Officer Michael Buckley

On April 8, 2010, internal affairs investigators interviewed Officer Michael Buckley. He stated that he arrived at the Strange Brew Tavern around midnight on March 3, 2010, and, once there, was with off-duty officers Matthew Jajuga and Jonathan Duseschne. He also saw off-duty

¹ That report read as follows: While off duty at the Strange Brew Tavern subject refused to leave after being forced out by the bouncer. Once outside the subject again refused to leave and became confrontational with other patrons and employees. The subject then made an aggressive move toward the owner of the Tavern at which time I grabbed hold of him and transitioned him to the pavement. Once on the pavement I identified myself as a Manchester Police Officer and for him to stop resisting. The subject continued to resist and truck (sic) me in the chest with a closed fist. I then delivered a closed fist strike to the subjects (sic) facial area which allowed him to be placed into custody. Subject sustained cuts and swelling on the left side of his face from landing face first on the pavement. Subject refused medical treatment at HQ. Transitioning the subject to the pavement was sufficient in protecting the owner of the tavern from being assaulted by the subject. The closed fist strike to his face was also sufficient in subduing a non compliant/combatative subject.

Lieutenant Ernest Goodno, and Officers Richard Valenti, Jr., and Frederick Gillis. He did not remember what he was wearing that evening. After being at the tavern for approximately forty-five minutes, Buckley saw a person, later identified as Micklovich, engaged in a physical altercation with Kenneth Kiman, one of the bouncers. They were grabbing hold of each other and Kiman was attempting to push Micklovich out the door. Micklovich was combative and was trying to pull away from Kiman. At the front entrance, Buckley saw them both go up against a Plexiglas partition, after which Kiman was able to "toss [Micklovich] outside." Mitch Sawaya, the bar owner, and Goodno then went outside too. Buckley, Jajuga, and Duschesne followed closely behind Goodno. Buckley heard Micklovich yelling, arguing, and swearing at someone who was smoking a cigarette just outside the entrance to the tavern. Buckley heard both Sawaya and Kiman tell Micklovich, "You're not welcome here. Just get out of here. You need to take off." Buckley and Goodno also told Micklovich to leave, to which he responded, "I'm not going anywhere." Sawaya told Micklovich, "If you don't leave, we're going to call the police." Micklovich responded, "Well, who's going to arrest me? I'm not leaving anyway. I'm going back in the bar. You can't tell me what to do."

At some point during this exchange, Jajuga told Buckley to call the station for a unit to respond. Buckley stated that he took out his phone to call but Goodno told him, "Don't worry about it. You don't need to call." Buckley did not make the call.

Buckley stated that he again spoke to Micklovich and said, "Look, just take a walk. This could be all over right now if you just leave." Micklovich responded, "F--k you guys. I'm not going anywhere." Sawaya once more told him, "You need to leave. You're not welcome at the property. You need to go." According to Buckley, at that point Micklovich stepped very close to Sawaya and put himself between Sawaya's feet. He had his fist in a ball by his waist.

Micklovich stated, "What the f--k are you going to do." Buckley described Micklovich as "fairly intoxicated."

Buckley stated that at that moment, Dushesne grabbed Micklovich and pushed him against a car right behind where Micklovich was standing. Buckley remembered Dushesne saying something like, "I've had enough of this." Buckley heard the car alarm go off. Micklovich began flailing his arms and his closed hand came in contact with Dushesne's chest. The strike to Dushesne's chest was the only point at which Buckley saw Micklovich have contact with an officer. As soon as Micklovich hit the car, Buckley and Jajuga grabbed him. They picked him up in the air and "dumped him on the ground." Goodno, who was standing near Sawaya, had his hands in his pockets but removed them when the altercation turned physical. Buckley did not see either Goodno or Sawaya become involved in the physical altercation.

Micklovich hit the ground with the top half of his body, face-first. He ended up on his stomach. Buckley did not see any injuries to Micklovich's face prior to his hitting the ground. Once Micklovich was on the ground, Buckley and the other two officers attempted to get control of his hands by trying to secure them behind his back. Buckley's memory was that the officers identified themselves as police officers for the first time when they were struggling with Micklovich on the ground. Micklovich was moving his body and trying to fight off the officers. Buckley admitted to striking Micklovich approximately five times between his ribs and his hipbone in an effort to secure his right arm. He also witnessed Jajuga use a pressure point technique and saw Dushesne punch Micklovich twice on the left side of his face. Buckley stated that he did not kick Micklovich and did not see anyone else kick him. After striking Micklovich, Buckley and Jajuga were able to secure his right arm. Buckley then sat on

Micklovich's legs and waited for uniformed officers to arrive. Valenti brought handcuffs to secure Micklovich. Buckley saw Goodno kneel down by Micklovich and help to pick him off the ground.

During the altercation, Jajuga asked Officer Joseph Cespedes to perform crowd control to keep on-lookers from getting involved. Buckley remembered hearing a couple of people say, "Stop," but does not know who said that. Buckley later noticed blood on Goodno's pants.

After the night of the incident, Buckley reviewed police reports written by Jajuga and Dusesne as well as the transcript of Sawaya's interview. He admitted that the report he wrote did not include his approximate five strikes to Micklovich's mid-section. He also did not submit a use of force report. Buckley explained that he did not do so because he considered the shots he delivered to be very minor. He spoke with Dusesne who indicated that he only punched Micklovich one time, and not the two times that Buckley witnessed. He disputed other accounts of the incident that indicated Goodno helped secure Micklovich's right arm.

Officer Matthew Jajuga

Officer Matthew Jajuga was interviewed as part of the internal affairs investigation on April 8, 2010. He told investigators that he arrived at the Strange Brew Tavern on March 3, 2010, shortly after midnight. He remembered wearing a blue t-shirt with a sailboat on the front and jeans. He arrived there with off-duty Officer Frederick Gillis. Lieutenant Ernest Goodno and off-duty officers Michael Buckley and Jonathan Dusesne were already there. Also present was off-duty Officer Joseph Cespedes. Jajuga ordered a drink. Shortly thereafter, Jajuga saw Kenneth Kiman, one of the bouncers, involved in what he described as a violent situation with a patron, later identified as Micklovich, inside the tavern. He described the atmosphere inside the tavern as loud. He saw Kiman push Micklovich toward the entrance and into a partition nearby.

Jajuga then saw the two of them stumble out the door. He heard Micklovich state that he was going to come back inside the tavern and that he wanted his shoe. Kiman told him he could not come back inside and tossed Micklovich his shoe. Jajuga then saw Micklovich arguing with another man who was standing just outside the tavern. That man was also telling Micklovich to leave.

At that point, Goodno went outside with the bar owner, Mitch Sawaya. Jajuga also went outside to "back [Goodno] up," accompanied by Buckley and Duschesne. He heard Goodno tell Micklovich to leave but Micklovich insisted that he was not leaving, saying that his friends were inside. Jajuga also heard Duchesne tell Micklovich to leave, and then saw Micklovich point to Goodno and state that he was talking to him. Jajuga heard Goodno tell Micklovich to leave a number of times and then heard Sawaya tell him that he was going to end up getting arrested. As Sawaya made the comment about Micklovich being arrested, he made a facial expression that looked like a wink. Jajuga described Micklovich as agitated and not listening to what people were saying to him. Indeed, Micklovich continued to insist that he was not leaving and then he took a step forward toward Sawaya stating, "Who are you? What are you going to do?" Jajuga described Micklovich as very close to Sawaya, "nearly face-to-face," and he heard Micklovich say something like, "Who the F are you?" and "What are you going to do?" Jajuga did not notice Micklovich's hands at that point. According to Jajuga, none of the officers had yet identified themselves to Micklovich. Jajuga indicated that he told Buckley to call the police station and that Buckley took out his phone. Jajuga asked Goodno if he wanted them to call the station. Goodno told them, "We should be all set." Jajuga then told Buckley to "[j]ust hang it up."

Duschesne moved toward Micklovich, grabbed him by the shirt, and pushed him back into a car that was parked behind him in the alley, setting off the car alarm. When Micklovich hit the car, Jajuga saw him come back at Duschesne pushing, swinging, and grabbing at him. It seemed to Jajuga as though Micklovich was attempting to hit Duschesne. Jajuga and Buckley immediately grabbed Micklovich and, with Duschesne, they put Micklovich on the ground. He went to the ground fast and hard, on his left-side with his face hitting the ground. It was at this point that Duschesne identified them as police officers. Once on the ground, Micklovich rolled onto his stomach and, according to Jajuga, continued to swing and throw punches. Jajuga tried to get Micklovich's right arm behind his back. Jajuga saw Duschesne hit Micklovich two times on the left side of his face. He never saw anyone else hit or punch Micklovich. After he was punched, Micklovich curled up and put his hands underneath his body. Jajuga used a pressure point technique underneath Micklovich's jaw area to get his hands out. Micklovich was then brought under control and handcuffed. Off-duty officer Richard Valenti, Jr. provided the handcuffs. Jajuga stated that he never kicked Micklovich and did not see any of the other officers kick him. At one point, Jajuga held Micklovich's head because he kept moving his head from side to side on the ground. Toward the end of struggle, Goodno knelt down beside Micklovich, but Jajuga did not remember what Goodno did. Jajuga never saw Micklovich hit any of the officers.

Within seconds of Micklovich being handcuffed, police cruisers arrived. Jajuga assisted in getting Micklovich on his feet. Buckley and Goodno brought him to the ambulance. Jajuga remembered seeing a taxi parked in the alley off Market Street. He also remembered that a man approached them yelling, "Stop. What are you doing?" That man was intercepted, probably by Cespedes, before he could get too close to them. Jajuga heard someone tell that man, "We're the

police.” Jajuga remembered seeing Micklovich’s friends come out of the tavern after the incident and approach on-duty officers.

After the incident, Jajuga spoke with Buckley, who indicated that he was trying to get Micklovich’s hand behind his back and admitted delivering a few strikes to Micklovich’s torso. Jajuga also spoke with Dushesne, who initially admitted to punching Micklovich once, but in a subsequent conversation said he threw two punches. He did not know if he landed the first punch.

Jajuga wrote a police report about this incident, but did not include his use of the pressure point technique on Micklovich and he did not submit a use of force report. Prior to his interview, Jajuga reviewed the initial reports filed in this case, including those filed by Officer Beau Bernard and Dushesne. He also reviewed the transcript of Sawaya’s interview.

Officer Andrew Delorey

Officer Andrew Delorey was interviewed by members of the Attorney General’s Office on October 7, 2010, because there was a report that Delorey had contact with Micklovich on Friday, September 24, 2010. Delorey stated that he was in full uniform working a detail on that night, at Murphy’s Tap Room in Manchester. He was standing outside the exit door at approximately 1:30 a.m. as the bar was closing for the night. He saw a man stumble out of the crowd and come within very close proximity to where Delorey was standing. The man made direct eye contact with Delorey and stood and stared at Delorey for a few seconds. In Delorey’s opinion, the man was visibly intoxicated. The man stated, “You lost some good guys.” Delorey did not know the meaning or context of that comment. The man repeated, “You lost four good guys.” Delorey asked him what he was talking about and the man stated something like, “They never laid a hand on me. They never touched me.” The man identified himself as Micklovich.

Delorey then recognized him from photographs. Micklovich extended his hand and Delorey shook it. Micklovich then stated that he did not have ill will toward the men and that his job was to make things right. He said, "All I have to do is to make you guys look good." Micklovich shook Delorey's hand again and walked off. According to Delorey, Micklovich appeared to catch up with a couple of friends and left the area.

VII. MANCHESTER CITY SOLICITOR'S OFFICE

Attorney Gregory Muller

Attorney Gregory Muller works as a prosecutor in the Manchester City Solicitor's Office and was the prosecutor assigned to the criminal charges brought against Christopher Micklovich. It was Attorney Muller's decision to enter a nolle prosequi (nol pros) or dismissal on each of the charges brought against Micklovich. Attorney Muller was interviewed by members of the Attorney General's Office on November 19, 2010.

Muller stated that he reviewed the criminal file sent to him by the Manchester Police Department. He did not review any of the reports contained in the police department's internal affairs file. He did not interview any of the witnesses or speak with any of the off-duty officers involved in the altercation. He did not consult with anyone at the police department or the county attorney's office about these charges. He stated that the decision to nol pros these charges was his, and his alone, after a thorough review of the criminal file and after consultation with two other prosecutors in his office. He stated that there were no efforts by anyone to influence his decision to nol pros the charges, including his superiors at the city solicitor's office, anyone from the county attorney's office, or anyone at the police department.

Muller shared the thought processes that led him to nol pros the charges, as well as his legal analysis for dismissing each charge. Micklovich was initially charged with four misdemeanor level offenses: criminal mischief for damaging property inside the Strange Brew Tavern; disorderly conduct for making loud and unreasonable noises inside the tavern and shouting obscenities; simple assault of Officer John Dushesne; and resisting arrest.

Muller explained that the facts, as he understood them, did not indicate that Micklovich had either a purposeful or reckless mental state when he went up against a partition and damaged it while inside the tavern. According to Muller, there was credible evidence that Micklovich was pushed against the partition and that the damage was an accidental consequence of his being removed from the tavern. Because Muller concluded that he could not prove that charge beyond a reasonable doubt, he nol prossed it.

Muller then explained that the disorderly conduct charge was problematic because the evidence indicated that the noise level inside the tavern was very loud and because there were no witnesses who could testify that they were disturbed by any loud or unreasonable noises attributed to Micklovich. Even the witness in the bathroom, Alex Marin, who alleged that he was the target of Micklovich's racial comment, indicated that he did not care and was not upset by it. Because Muller concluded that he could not prove that charge beyond a reasonable doubt, he nol prossed it.

The simple assault charge involving Officer Dushesne was problematic because of conflicting statements between Dushesne and Officer Beau Bernard, and because Officers Buckley and Jajuga made no mention of that assault in their police reports. Muller also expressed concern with being able to prove the requisite mental state for the crime of simple assault, given the facts, as he understood them. He concluded that there was insufficient

evidence to prove beyond a reasonable doubt that Micklovich knowingly caused physical contact with Dushesne. He further concluded that even if the evidence demonstrated a reckless mental state, there was no evidence of personal injury as required by the simple assault statute. Because Muller concluded that he could not prove that charge beyond a reasonable doubt, he nol prossed it.

Finally, Muller made the decision to nol pros the resisting arrest charge based on the lack of evidence that Micklovich knew the men he was dealing with were police officers.

Muller stated that he first considered the original charges as drafted by the police department but also considered if there were amended or additional charges that could be sustained by the evidence. He concluded that there were not. Muller stated that a possible civil suit against the city had no influence on his decision to nol pros each of the charges. He did consider witness credibility issues, especially the credibility of those officers involved in the altercation, and the outcome of internal discipline proceedings, as those findings would be turned over to Micklovich's defense lawyer and could weaken the State's case.

VIII. ANALYSIS AND CONCLUSIONS

Based on the comprehensive review of the incident that occurred at the Strange Brew Tavern, the evidence was overwhelming that Christopher Micklovich initiated a disturbance inside the tavern on the evening of March 2, 2010, that he refused to leave when directed to do so by the doorman, Kenneth Kiman, and that he struggled against Kiman, who had to use force to remove him from the premises. The evidence also clearly established that, once outside the tavern, Micklovich was argumentative and resisted repeated requests for him to leave. He was confrontational and belligerent, despite efforts from a number of people to convince him to stop being argumentative and to leave peacefully. There was compelling evidence that Micklovich

approached the bar owner, Mitch Sawaya, in such a way that a reasonable person would be justified to conclude that he was on the verge of using physical force against Sawaya.

Immediately upon concluding that there was a high likelihood of imminent physical contact to Sawaya, off-duty Officer Dusesne interceded by grabbing Micklovich and pushing him against a parked car.

Instead of subduing himself, Micklovich escalated his conduct and came back at Dusesne in an aggressive manner, at which point Dusesne asked Jajuga and Buckley to assist him in taking Micklovich down to the pavement. Micklovich was quickly and forcefully put on the ground, landing on his face and the left side of his body, thereby causing injuries to the left side of his face. Statements from multiple witnesses established that, as Micklovich continued to struggle on the ground, he likely caused additional injury to his facial area. Multiple witnesses attested to Dusesne telling Micklovich, as he was resisting, that they were police officers and that he should stop resisting. Because Micklovich continued to flail his arms and legs, both Dusesne and Buckley delivered a number of punches to Micklovich's face and side in an attempt to subdue him; Jajuga used a pressure point technique to secure Micklovich's arm from underneath him and place him in handcuffs. While there was a statement from one witness that Micklovich was kicked during this altercation, that statement was directly contradicted by numerous witnesses. Although Micklovich, himself, thought he was kicked, he could not say with any degree of certainty that he was kicked. Micklovich's assertions of what transpired inside the tavern, the reason for his removal from the tavern, his conduct in the alley, his verbal exchanges with the tavern owner and the off-duty officers, his conduct toward the tavern owner, the events that initiated physical contact by the off-duty officers, and his conduct once he was on the ground were contradicted by nearly every witness.

New Hampshire RSA 627:4, Physical Force in Defense of a Person, provides:

I. A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

(a) With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or

(b) He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or

(c) The force involved was the product of a combat by agreement not authorized by law.

New Hampshire RSA 627:5, Physical Force in Law Enforcement, provides:

I. A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person, unless he knows that the arrest or detention is illegal, or to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or detention or while seeking to prevent such an escape.

VI. A reasonable belief that another has committed an offense means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

VII. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

When analyzing facts to determine whether criminal charges should be brought, a prosecutor has an ethical duty to consider whether there is probable cause to believe that a crime has occurred, and if so, whether there is a reasonable basis to believe that each element of the crime can be proven beyond a reasonable doubt. If not, a criminal prosecution should not be

initiated. It is our determination, based on the totality of the facts derived from the investigation, that the officers' conduct was justified under New Hampshire law and no criminal charges are warranted. At the point that Dushesne initially grabbed and pushed Micklovich, he believed that there was a need to defend Sawaya against what he believed to be the imminent use of unlawful, non-deadly force. Those beliefs were fully supported by the circumstances and were justified as the defense of another under RSA 627:4. Similarly, when Dushesne, Buckley, and Jajuga put Micklovich on the ground, the circumstances warranted a belief that Micklovich was about to physically assault Dushesne or another. Clearly, Micklovich's contact had escalated from what appeared to be an imminent assault on Sawaya to a physical response by Micklovich after being pulled away from Sawaya. That physical contact was likewise justified under RSA 627:4. After being put on the pavement, Micklovich was told that he was dealing with police officers and ordered to stop resisting them. Micklovich continued to resist, despite the officers' attempts to subdue him. At that point, there was probable cause to arrest Micklovich for resisting arrest, which Buckley and Jajuga attempted to effect. Their contact with Micklovich was justified under RSA 627:5.

Micklovich sustained serious facial injuries after having been taken to the ground. The off-duty officers used a considerable degree of force in taking Micklovich to the ground. In some circumstances, that could be the basis for a charge of assault.² However, in this situation, no criminal charges are warranted where the officers' physical contacts with Micklovich were justified as acts of self defense or defense of another. *See* RSA 627:4. Under any variation of an assault charge, the State would have the burden of proving beyond a reasonable doubt that the conduct was not justified as self-defense or defense of another. The evidence in this case would

² RSA 625:8 provides prosecution for a misdemeanor is subject to a one-year period of limitation. A prosecution may nonetheless be commenced for any offense based on misconduct in office by a public servant, as defined in RSA 640:2 II(a), at any time when the defendant is in public office or within two years thereafter.

be insufficient for the State to meet its burden of proof. Furthermore, because Micklovich repeatedly resisted arrest while on the ground, Duschesne, Buckley, and Jajuga were justified in using non-deadly force to effect Micklovich's arrest. *See* RSA 627:5. The testimony of one witness who claimed to see the off-duty officers repeatedly kick Micklovich, even after on-duty officers arrived, coupled with Micklovich's uncertain belief that some of the strikes felt like kicks, would be insufficient in light of all other evidence and statements to support criminal charges whose elements must be proven beyond a reasonable doubt, including that the officers were not justified under RSA 627:5.

Regarding any criminal charges against Micklovich, prosecutors are given broad discretion with respect to charging decisions, including the *nol prossing* of charges. When this office reviews a prosecutor's decision to *nol pros* a charge, the standard it applies is whether the prosecutor's decision was unreasonable in light of all the circumstances of the case. The Manchester City Solicitor's office acted well within its discretion. The prosecutor carefully evaluated the criminal cases against him. He reviewed the evidence and witness statements. There is no evidence of undue influence on the prosecutor by anyone. The decision to *nol pros* all of the charges was not unreasonable, even when considered in light of the results of the more a comprehensive review undertaken by this office. Thus, the Manchester City Solicitor engaged in an appropriate exercise of prosecutorial discretion. We find no support for earlier allegations suggesting that the decision to *nol pros* the charges against Micklovich evidenced a cover-up by the Manchester Police Department. The City Solicitor's office confirmed that this prosecutorial decision was made independent of any contact with the police department, and our review supports the same finding.

Based on the comprehensive review, there is no basis for any further action by this office.

The matter is closed.