

CITY OF FOND DU LAC - Memorandum

Department of Police

Date: July 12, 2002

To: Chief Tom Winscher

From: Capt. Bill Makowski *Bill Makowski*

Re: Final report

On May 3rd, 2002 Off. Mueller and I arrived at the Waupun City Police Department to discuss with several officers their roles and observations regarding the allegations of the complainant one [REDACTED] [REDACTED]. Several interviews were conducted on that date including the two main officers involved in this complaint, that being [REDACTED] and Off. Mark Colker. Both officers indicated to me through their testimony that Mr. [REDACTED] had requested to go to the bathroom. He was placed in their charge by Off. O'Donovan to go to the bathroom. They proceeded to take him down the hallway. He apparently fought and tried to break away from Off. Colker during this transport. Off. Colker apparently tried to put what is known as an escort hold on Mr. [REDACTED]. Off. Colker is familiar with this escort hold tactic because he is in fact a DAAT instructor. He was unable to do so but instead elected to take Mr. [REDACTED] to the bathroom just by grabbing the back of his shirt. As they went down the hallway and approached the doorway leading to the front lobby Off. Colker indicates that [REDACTED] opened the door so they could pass through and into the lobby toward the bathroom. Off. Colker also indicated that Mr. [REDACTED] was let or allowed to go into the bathroom of his own accord but for whatever reason could not complete his urinary function. He was then removed from the bathroom and taken back to the interview room and again tried to break away from Off. Colker in the hallway and had to be restrained via his shirt. Both officers indicated at that time that no abuse to Mr. [REDACTED] was completed. Mr. [REDACTED] allegations were totally false. On 06/13/02 I had occasion to interview [REDACTED] again. At this point [REDACTED] did change his story in the fact that now he did have contact with Mr. [REDACTED] in the lobby and as he exited the bathroom and also had left his post at the door leading to the lobby where he originally stated he had remained and could not observe Off. Colker so it would seem that [REDACTED] did in fact have more to tell me than what he would let on. The interview went on for some 45 minutes and at times became quite intense in the fact that it appeared that [REDACTED] was holding back vital information, that being three key items. 1 - the opening of the doorway from the hallway to the lobby, who actually did it and how was it done. 2 - how was Mr. [REDACTED] placed in the bathroom, of his own accord or was he shoved in and thrown against the wall, and 3 - did [REDACTED] actually punch Mr. [REDACTED] in the chest upon him exiting the bathroom. [REDACTED] was advised at this

point that his story, although changing was still not believable and that I would be back to interview him as many times as necessary to get the entire story. Apparently the week and a half that passed from that interview to today's date which is 6/26/02 jogged [REDACTED] memory in that he requested to speak to me again reference this incident. I did have occasion to be in the Waupun Police Department on this a.m. interviewing Off. Colker. Off. Colker's story remained steadfast, he did not change his story, he would not deviate from the original story and his supplement more than a couple of words in either direction. He was given various opportunities to advise me what happened at those three key points, the door, in the bathroom, and as the suspect exited the bathroom. He refused to do so, by refusal I mean when asked he would not advise me anything different verbally than what was in his previous statements. Off. Colker was asked if he had been truthful with me and answered my questions fully. He indicated to me with union representation that he had, but could not come up with any valid reasons why he would wrestle somebody all of the way down the hallway to go to the bathroom when he could have just placed them back in the room and turn them back over to the arresting officer. A short time later I had occasion to interview [REDACTED] indicated to me that he had in fact been deceptive and wanted to advise me of the entire story. At this point [REDACTED] was given the garrity warning again as were all interviewees in this case. During this time there were no union representatives present. [REDACTED] elected to talk to me on his own. When [REDACTED] filled in the blanks and gave me the entire story it appeared to play out in this direction. Mr. [REDACTED] was taken from the interview room, walked down the hallway. It appeared as though he attempted to break away from Off. Colker and was grabbed by the shirt. As the two, that being [REDACTED] and Colker walked down the hallway, [REDACTED] followed behind. [REDACTED] stated in his narrative that he wanted to make sure nothing went wrong. As Colker and [REDACTED] approached the doorway leading to the lobby it appeared to [REDACTED] that [REDACTED] was run into the door and then pinned up against the door by Colker. [REDACTED] was then ordered to open the door himself. This differs from the original testimony of Colker, stating that [REDACTED] got ahead of them and opened the door. [REDACTED] and Colker then proceeded through the lobby approximately four to five feet to an open bathroom door. During this time [REDACTED] secured open the lobby door leading back to the hallway. [REDACTED] did observe Colker take Mr. [REDACTED] into the bathroom and run him into the wall. He then observed him pin Mr. [REDACTED] up against the wall and mumble something to Mr. [REDACTED] he could not determine what that was. According to [REDACTED] Off. Colker then backed away from Mr. [REDACTED] and it appeared as though Mr. [REDACTED] was attempting to leave the bathroom area at that time. At this time [REDACTED] by his own admission, reached out, grabbed Mr. [REDACTED] shirt, and in doing so gave what he refers to as a small blow to the sternum area. [REDACTED] also identifies this small blow as a wake up call for Mr. [REDACTED]. By the wakeup call [REDACTED] indicated to me that this was to tell Mr. [REDACTED] to stop screwing around with the officers, get it done, and get back in the room. [REDACTED] then left the bathroom area and awaited in the lobby next to Off. Colker. When it was determined that Mr. [REDACTED] could not complete his urinary act he was asked to come out of the bathroom. [REDACTED] then put hands on to make sure Mr. [REDACTED] did

in fact bypass him to the awaiting Off. Colker. Off. Colker then proceeded to go through the door and down the hallway as [REDACTED] checked the bathroom to make sure nothing had been dropped. He then proceeded behind Off. Colker and [REDACTED] down the hallway indicating to me that Mr. [REDACTED] did try and break away from Colker and was again grabbed by the shirt and held as they walked down the hallway. [REDACTED] then indicates that Colker placed Mr. [REDACTED] in the interview room by flinging him into the room. The door was then closed and the arresting officer O'Donovan then came from the garage and took over thereby hearing what Mr. [REDACTED] had to tell him in the way of a complaint. When asked [REDACTED] indicated to me that Off. Colker did in fact talk to him reference their testimony but that was the only conversation that took place between the two of them. That conversation was as follows but not verbatim. Colker said to [REDACTED] that we have to keep our stories straight and say nothing more than what we had indicated in our supplements, no matter who the investigator was. Through a review of these written testimonies or written interviews it is very apparent to this investigator that at first both officers attempted to deceive the investigator as to their roles and what actually had occurred it appears as though [REDACTED] did come clean so to speak and ultimately give a true and accurate testimony. It does also appear to this investigator that it would be futile to engage in further interviews with Off. Colker due to the fact that his deception was unwavering during both interviews I do not feel that Off. Colker would volunteer even though the threat of garrity loomed during these interviews, any different testimony than he has already given regarding the three key elements in this investigation. It is therefore my opinion that Off. Colker did in fact lie and did not comply fully with the requirements of garrity during this investigation. [REDACTED] latest and most believable version of the incident parallels the complainants version of the incident and coupled with the statement that Off Colker wanted both officers to stick to their original supplement version s of the report I believe that off. Colker did in fact lie during both interviews.

Any and all reports generated by the Fond du Lac City Police Department and this investigator will be turned over to Chief Tom Winscher at the earliest possible date upon completion of transcription. At this point the Fond du Lac City Police Departments role in this investigation is completed Capt. Bill Makowski Fond du Lac City Police Department