



OMBUDSMAN'S REPORT
Complaint Investigation & Findings

OMB03/0230 – December 31, 2003

THE SITUATION

On November 1, 2003, at approximately 3:10 a.m., Officer #1 observed a vehicle make an unsafe turn from Fairview onto Curtis. Officer #1 made a traffic stop on the vehicle near the intersection of Curtis and Irving. Both the car being stopped and the police car pulled into the parking lot of the Roadway Inn at 1115 N. Curtis.

The vehicle pulled over by Officer #1 was occupied by four young adult males. As Officer #1 made contact with the driver, Witness #1, he was told that the Complainant, who was seated in the front passenger seat, was injured and needed to go to the hospital. Officer #1 removed the Complainant from the vehicle and had him sit on a curb some distance from the vehicle. At the same time, Officer #1 radioed for paramedics and additional officers to respond "code 3" (emergency response) to assist him.

Officer #1 returned his attention to Witness #1, the driver of the vehicle. At the same time, two assist officers, Officer #2, and Officer #3, interacted with the Complainant. The Complainant got up from the curb and began to walk towards Officer #2 and in the general direction of where Officer #1 was interacting with Witness #1.

Officer #2 took hold of the Complainant and eventually Officer #2 placed the Complainant against the front of a police car with the Complainant's upper body lying face down against the hood. At this time, Officer #1 joined Officer #2 and attempted to help subdue the Complainant. Officer #3 announced his intention to use the taser on the Complainant. Officer #3 performed a "touch stun" of the Complainant with the taser.

Officers #1 and #2 took the Complainant to the ground just to the right (passenger side) of the police car. The Complainant was eventually handcuffed and left on the ground until paramedics arrived to treat him. The Complainant was transported by paramedics to the Emergency Department at St. Alphonsus Regional Medical Center, which was about 300 yards away from where the original traffic stop was made.

The Complainant was treated at St. Al's for facial lacerations that he received when he put his face through a window earlier that same morning and prior to the traffic stop by Officer #1. Before being released from St. Al's, Officer #3 served the Complainant with a summons for violation of Idaho Code § 18-705 – Resisting and Obstructing an Officer and Idaho Code § 23-949 – Illegal Consumption of Alcohol by a Minor.

THE COMPLAINT

The Complainant's father contacted the Office of the Community Ombudsman on Saturday, November 1, 2003. He briefly explained what his son had told him about the incident early that day with Boise Police Department (BPD) officers. He explained that his son was badly injured and could not speak with me at that time.

I interviewed the Complainant on November 4, 2003. In this interview, the Complainant alleged the following:

1. That a BPD officer failed to provide him with necessary aid and secure needed medical attention for the Complainant who was bleeding heavily from several severe facial cuts.
2. That he was tackled and slammed onto the hood of a police car by an officer.
3. That he was held on the hood of the car by two or more officers who then picked

him off the hood of the car and slammed him down onto the pavement.

4. That an officer shocked him with a taser while he (the Complainant) was being pinned on the ground by two officers.

Officer #1

5. It is alleged that Officer #1 used **unnecessary force** against the complainant in violation of § **1.0101** of the Boise Police Department's Policy and Procedures Manual.
6. It is alleged that Officer #1 **failed to render necessary aid and secure medical attention** in a timely manner for the complainant in violation of § **21.0309** of the Boise Police Department's Policy and Procedures Manual.

Officer #2

7. It is alleged that Officer #2 used **unnecessary force** against the complainant in violation of § **1.0101** of the Boise Police Department's Policy and Procedures Manual.

Officer #3

8. It is alleged that Officer #3 **unnecessarily used a conducted energy weapon (taser)** against the complainant in violation of § **2.0401** of the Boise Police Department's Policy and Procedures Manual.

THE COMPLAINT INVESTIGATION

November 1, 2003

While working in my office on a Saturday, I picked up a message on the ombudsman message line from the Complainant's father (the Dad). The message indicated that a serious incident had occurred earlier that same day, November 1, 2003, involving the Complainant and officers from the Boise Police Department. I returned the call and spoke with the Dad. He briefly explained what his son had told him about the incident early that day with Boise Police Department (BPD) officers. He explained that his son was badly injured and could not speak with me at that time.

The Dad said that he had already taken photographs of the interior and exterior of the vehicle in which the Complainant had been traveling. The Dad said that this would show how badly the Complainant was bleeding when the car was pulled over. The Dad said that he had also preserved the clothing of all four occupants of the car, including the Complainant's and the driver's clothing. The Dad said that he had gone to the parking lot of the Roadway Inn where the incident had taken place. He said that he saw and photographed two large patches of a white, granular substance that was covering over what appeared to be large quantities of blood. Finally, the Dad said that he thought that there might be video footage from security cameras at the Jackson's and Texaco store whose parking lot is adjacent to the hotel parking lot where the incident took place. He expressed a desire that some immediate steps be taken to secure any videos so that they would not be destroyed or recorded over.

The Dad expressed great concern that the officers had used unnecessary and unreasonable force on his son, the Complainant. The Dad also felt that the officers failed to attend to the Complainant's obvious and serious wounds. The Dad expressed his desire that the Office of the Community Ombudsman investigate this incident. The Dad also voiced his

concern that crucial evidence connected with the incident might be lost if the uniforms of the involved officers were not immediately seized. Specifically, the Dad felt it would be important to know how much of the Complainant's blood, if any, got on the officers' uniforms, since this might indicate the extent to which the Complainant may or may not have resisted and struggled with the officers. The Dad insisted that some immediate action be taken before the uniforms could be laundered. To that end, the Dad had already left a message for the on-duty BPD watch commander to call him, but had not yet received a call back.

I told the Dad that I would like to interview the Complainant, who is twenty years-old, in order to obtain a first-hand account of the incident and to see if he desired to file a complaint. The Dad told me that the Complainant was not in any shape at that time to speak with me, but it could certainly be arranged in the next few days. I told the Dad that, in the meantime, I would contact the commander of BPD's Office Of Internal Affairs (OIA) and see what could be done to preserve any evidence that might be on the uniforms.

I contacted the OIA commander at home and spoke with him about the uniforms. He indicated that he would make some calls and get back to me. Within an hour or two, he called back and told me that the watch commander had contacted two of the three officers involved in the incident. One officer had stated that there was no blood on his uniform and the other (Officer #2) had said that there was a significant amount of blood and that the uniform was in the washing machine at that moment. The watch commander had been unable to contact the third involved officer. I phoned the Dad back and relayed this information to him.

I then went to the scene of the incident, the parking lot of the Roadway Inn. I observed two patches of a granular, white substance, one larger than the other, in the parking lot of the hotel. These patches appeared to be similar to the ones that the Dad had mentioned to

me on the phone. I also noted that there was a red substance under the granular material that was similar in appearance to coagulated blood. I took six digital pictures of the parking lot and the patches.

I then made contact with an employee in the Roadway Inn. I asked if the hotel had any security cameras mounted on the outside that might have captured images of an incident that had taken place in the parking lot earlier that morning. I was told that the hotel had no such cameras anywhere on the property that would show activities in the parking lot. I also inquired about the names of hotel employees that were on duty that morning after midnight and before 6:00 a.m. I was given the name of a manager to contact who would be back in the office Monday morning.

I then made contact with the clerk on duty at the Jackson's. She told me that another clerk had been on duty at the time of the incident and she did not know anything about it. The clerk also told me that Jackson's had no exterior security cameras. The only security camera they had was an internal one that only captured images of the front entrance and the sidewalk immediately outside of the door (about three or four feet past the door).

November 4, 2003

10:30 a.m.

I interviewed the Complainant. He said that he was in the front, passenger seat of a four-door sedan. Also in the car with him were the driver, Witness #1, Witness #2 seated in the right rear seat, and Witness #3 seated in the left rear seat. The Complainant said that Witness #1 was driving him to St. Al's for treatment of several serious facial wounds that he (the Complainant) had received when he put his face through a window of a residence. The Complainant said that he was bleeding heavily, more heavily than he had ever seen before. The Complainant described his mental state at that time as "hazy", as if he were

in shock.

The Complainant said that the car turned right from Fairview to Curtis. He said that, as the car was going over the Connector (I-184), he saw flashing lights from a police car behind them. The Complainant said that Witness #1 pulled the car into the parking lot of the Texaco/Jackson's on Curtis right before the driveway to St. Al's emergency room. The Complainant said that the police car pulled in directly behind the car.

The Complainant said that a police officer approached the car on the driver's side and began speaking with Witness #1. The Complainant said that the officer was standing to the rear of the driver's door and shining his flashlight in at where Witness #1 was seated behind the steering wheel. The Complainant said the both Witness #1 and Witness #3 told the officer the their friend (the Complainant) was hurt badly and needed medical attention immediately. The Complainant said that it seemed to him that the officer "blew off" these comments so he (the Complainant) leaned over and yelled at the officer, "I need some f—ing help!" The Complainant said the officer then leaned forward and looked in at him (the Complainant). The Complainant said that he was covered in blood. He said that there was blood all over the inside of the car, and on his friends.

The Complainant said that it seemed to him that the officer began to walk back towards the police car. The Complainant said that he began to get out of the car so that the officer could get a good look at him and help him. The Complainant said that he thought that the officer needed to pay more attention to the medical situation than to the reason he had pulled the car over. The Complainant said that the officer then walked around to the passenger side of the car and escorted the Complainant away from the car. The Complainant said that the officer took him around the back of the car and sat him down on a curb in the parking lot that was about 30 feet away from the car. The Complainant said that the officer told him to wait there and then walked away. The Complainant said that the officer never told him that the paramedics had been called.

The Complainant told me that, up to this point, he had not seen any additional police cars or officers other than the one who had pulled over the car he was riding in. The Complainant said that he sat on the curb for a while and then looked up and noticed that there were three police cars on the scene. The Complainant said that he did not know how long it was between when the first officer sat him on the curb and when he looked up and saw the three police cars. The Complainant said that it was “weird” and that he may have blacked out for a while. The Complainant said that he looked over to the car he had been riding in and saw two police officers escorting Witness #1 away from his car and over to a police car.

The Complainant said that he became angry that, despite the fact that there were “multiple” officer on scene, he was sitting alone on a curb in freezing weather and no one was attending to his severe facial wounds. The Complainant said that he was being “totally ignored” by all the officers on the scene. The Complainant said that he was worried that he was bleeding to death while the officers were dealing with a DUI arrest. The Complainant said that, at that point, he figured that the paramedics had not been called and that nothing was being done about his life-threatening medical condition. The Complainant said that he was frightened.

The Complainant said that, in order to get help and attention, he stood up and said, “Hey, are you guys going to help me, or what?” The Complainant said that, as he said this, he held his hands out in front of him in with the palms up and began to walk towards the two officers who were dealing with Witness #1. The Complainant said that he did not say anything or make any gestures that were threatening. The Complainant said that he was angry that the police officers were not helping him, but seemed more interested in dealing with Witness #1.

The Complainant said that he walked at a normal walking speed for about five steps

towards the two officers who were interacting with Witness #1. The Complainant said that he got within ten or fifteen feet of the two officers and then was “tackled” from the side (he could not recall which side) by an officer. The Complainant said that the officer grabbed him by both biceps, picked him up, spun him to his (the Complainant’s) right, and “slammed” him face-down on the front hood of a police car. The Complainant said that he looked to his right and saw that the person grabbing him was a tall, muscular, young, male, Caucasian officer with a shaved head. The Complainant said that this same officer was one of the officers in the emergency room later when he (the Complainant) was issued a summons. The Complainant said that he did not know this officer’s name.

The Complainant said that he did not hear anyone yell at him before he was grabbed. He said that, once he was grabbed, he heard a lot of yelling by officers. The Complainant said that, once he was grabbed, he (the Complainant) “went limp” and offered no resistance. The Complainant said that he did not struggle or attempt to pull away, but was limp and was forcefully slammed “like a rag doll” onto the hood of the police car.

The Complainant said that he was laid out face-down on the hood of the police car with his head pointing to the windshield and his legs in between the headlights of the car. He said that he was on the hood from his belt, up to his face. The Complainant said that, while he was lying on the hood of the police car, he went “totally limp,” and did not resist or struggle in any way. The Complainant told me that he did not say anything while he was lying on the hood of the police car. The Complainant also said that he did not hear any of the officers say anything to him like “stop resisting.” The Complainant said that everything happened very quickly and it all seemed like a loud commotion to him.

The Complainant said that two other male officers joined the one who had tackled him and that all three of the officers held him down on the hood and picked him up by his arms, spun him in a pivot-like movement to his left, and slammed him (the Complainant) “head-first” onto the pavement. The Complainant said that the left side of his face hit the

ground “extremely hard.” The Complainant said that he was not aware of any additional injury he suffered as a result of being “slammed” onto the hood and/or onto the ground. The Complainant said that, as he hit the ground, he heard one of the officers say something like, “Get out the taser,” or, “Tase him.” The Complainant said that he was then shocked with a taser in his back while officers pinned his upper body down on the ground. The Complainant said that he was tased about two seconds after he heard an officer say something about the taser. The Complainant said that it felt like he was tased for about five seconds. The Complainant said that it felt like the taser made contact with him in the lower back on the right side.

The Complainant said that he was handcuffed as he was being tased, or immediately after that. The Complainant said that, right after he was tased and handcuffed, all of the officers got off him, backed up a few feet, and stood around him. The Complainant said that he remained lying face-down on the ground in a pool of his own blood. The Complainant said that, after a few moments, an officer instructed him to get up, which he did. The Complainant said that, once he stood up, he saw that there were paramedics there.

The Complainant said that the first time he heard any mention about paramedics having been called or on their way was after he was tased and handcuffed. At that time he heard an officer say that the paramedics were on their way. The Complainant said that he was then treated by the paramedics and taken to the emergency room at St. Al’s.

The Complainant said that his perception of time was pretty distorted. He said that the events following the traffic stop seemed to be in a blur. The Complainant said that he had been drinking and he also felt that he was going into shock from the facial wounds, loss of blood, and extreme cold. The Complainant said that he was dressed in two light-weight shirts, underwear, a pair of pants, socks and shoes. He said that he had no jacket, sweater, gloves or hat on.

The Complainant said that he does not think he said or did anything that was threatening to the police. He did say that he could understand if the police were concerned when he stood up from the curb and held his arms out, but that he did not mean this to be threatening. It was the Complainant's opinion that this action on his part did not warrant being grabbed, slammed onto the hood of a car, thrown to the ground, and tased. The Complainant said that he did not try to get away from the police.

The Complainant reiterated that he was not resistant in any way once he was grabbed by the officer. The Complainant said that he might have "shied away" when he was first grabbed or tried to move his body to avoid being slammed onto the hood of the car, but he was not trying to fight the officer in any way.

The Complainant said that, once he was in the emergency room, he saw three or four officers watching him. One officer, with grey hair and older, gave him a citation and put it in the Complainant's wallet. The Complainant said that he was incensed because, given the fact that he had been slammed onto a car, thrown to the ground, and tased, this older officer did not, in his (the Complainant's) opinion, have the guts to hand the citation to him or explain what it was about.

In summary, the Complainant told me that he wanted to complain about the following actions of the involved officers:

1. That the officer who pulled them over did nothing to give him (the Complainant) first aid for his injuries.
2. That the force used on him was unnecessary, i.e., being "slammed" on the car hood, being "slammed" onto the pavement, and being tased.

3. That the officer who gave him the citation in the hospital did not even explain the charges to him, but just put the ticket in his (the Complainant's) wallet.

2:00 p.m. - 4:30 p.m.

I made several calls to set up interviews with employees at the Jackson's and the Roadway Inn.

5:30 p.m.

I conducted a telephone interview of Witness #4, a security guard employed with a guard company that provides security services for the Roadway Inn.

Witness #4 said that he is employed by a guard company that has a security contract with the Roadway Inn. Part of his duties is to show up at the hotel at regular intervals, check on its security, and report in to the front desk where he signs a log.

Witness #4 said that, on the morning of November 1, 2003, he drove to the Roadway Inn on Curtis to make a regularly scheduled security check of the property. Witness #4 estimated that he arrived in the hotel parking lot just a few minutes past 3:00 a.m. He said that, as he was driving on Curtis from Chinden, he was right behind a fire truck that pulled into the Texaco (Jackson's) parking lot and blocked the driveway between the Jackson's lot and the Roadway Inn's parking lot. Witness #4 said that he had to park in the Jackson's lot and then walk to the front door of the hotel. On his way to the hotel, Witness #4 saw four police cars, a number of officers, and an ambulance.

Witness #4 said that he walked to the hotel, went inside, and asked the hotel clerk what was going on. He said that the clerk answered that he had no idea. Witness #4 said that he was inside the hotel for about five minutes. As Witness #4 walked through the parking

lot on his way back to his car, he said that he saw one man who was being handcuffed and appeared to be in police custody. Witness #4 also said that he saw an officer putting a second man through the standard tests that the police administer when they suspect someone of drunk driving. Witness #4 said that he saw a total of three men who were not officers. He said that he saw more than four police officers. Witness #4 said that he got back in his security patrol car and left.

Witness #4 said that he came back to the Roadway Inn about an hour or more later when he returned for his last round at about 4:30 a.m. He drove through the hotel parking lot and shined his car spotlight on what looked like two patches of white granular material on the pavement. Witness #4 said that he could see in the light that there was a red shiny substance under the granular material. He said that it looked like blood to him.

5:50 p.m.

I interviewed Witness #5 by telephone. Witness #5 is the night manager at the Roadway Inn. Witness #5 told me that she was working at the hotel the night of October 31, 2003, and into the early morning hours of November 1, 2003.

Witness #5 said that, about 3:00 a.m. on November 1, 2003, she was doing inventory in the hotel bar and she told the bartender that she (the bartender) could go home. Witness #5 said that the bartender left the hotel right away at 3:00 a.m. Witness #5 said that she had a phone conversation with the bartender later in the day on November 1, 2003, and the bartender said that there were no police cars in the hotel parking lot at 3:00 a.m. when she left to go home.

Witness #5 said that she walked from the bar to the hotel front desk at about 3:15 a.m. and noticed that there were police lights outside in the parking lot. She said that she looked out the glass front doors of the hotel and saw about three or four police cars. She

said that she also saw a man lying on the ground and “spread-eagle” with two or three officers standing around him. Witness #5 said that there were no officers on top of or touching the man lying on the ground. She said that she also saw several police cars around in the parking lot. Witness #5 told me that she did not go outside to investigate because there appeared to be plenty of police officers there who had things under control. She said that she then went into the hotel office to do her paperwork.

Witness #5 said that, about five minutes later, the hotel security guard, Witness #4, came in the front door of the hotel. He said that he could not get through and had to park in the Jackson’s parking lot because there was an ambulance and a fire truck blocking the way. Witness #5 told me that she had not seen a fire truck and an ambulance when she had looked out in the parking lot five minutes earlier.

Witness #5 said that she left the hotel at about 3:40 a.m. and walked out into the parking lot to go home. She said that there were about five police cars there at that time, but no ambulance and no fire truck. Witness #5 said that she thinks she saw a man with no shirt on, standing near a police car.

Witness #5 said that she has not heard from anyone, other than Witness #4, who claims to have seen anything related to the incident.

6:05 p.m.

I had a telephone interview with Witness #6, the night auditor at the Roadway Inn. Witness #6 said that he was working at the Roadway Inn at 3:00 a.m. on November 1, 2003. He said that the only thing he saw related to the incident was at about 4:00 a.m. when he looked outside and saw the police putting one person into a police car.

Witness #6 said that he worked at the hotel until about 7:30 a.m. He said that the only

people who mentioned that they saw something related to the incident were Witness #4 and Witness #5.

November 5, 2003

I conducted internet research to determine the ambient temperature in Boise at 3:10 a.m. on November 1, 2003. The research indicated that it was 21.2° F at 2:53 a.m. and 19.4° F at 3:53 a.m. I printed out the temperature information that I found on the internet.

3:30 p.m.

I went to the scene of the incident, the Roadway Inn parking lot. There I met the Complainant and his father. I asked the Complainant to point out to me in the parking lot where Witness #1 had parked the car when they were pulled over and where the various police cars had parked.

The Complainant pointed out to me a curb around a planter that lies immediately west of a driveway that connects the hotel parking lot with the Jackson's parking lot. The Complainant stated that it was this curb that the officer, the one who pulled over the car he was riding in, told the Complainant to sit on. I noted that there was a patch of white granular substance just north of the "point" of the curb where the Complainant said he had been seated. This is the smaller of the two patches I had noted and photographed on November 1, 2003, when I made my first inspection of the scene.

The Complainant thought that Witness #1's car had been parked in a parking space facing the Jackson's and west of the driveway between the hotel parking lot and the Jackson's parking lot. The Complainant could not be certain which parking space the car was parked in, but he thought it was probably the sixth spot west of the driveway between the hotel and the Jackson's parking lots. Using a wheel measuring device, I measured the distance between this sixth parking spot and the curb that the Complainant said he was

seated on. The distance between the two points was approximately 56 feet, five inches.

The Complainant seemed disoriented and confused by looking at the scene and told me that his memory was hazy concerning the precise locations of the officers and the police cars at the time of the incident on November 1, 2003.

While at the scene of the incident with the Complainant, I took eight (8) digital pictures of the parking area where the Complainant thought Witness #1 had parked the car when it was pulled over.

November 6, 2003

I reviewed copies of the police reports written in connection with the arrest of Witness #1 for violation of Idaho Code § 18-8004 – Driving Under the Influence (DUI), and the issuance of a summons to the Complainant for violation of Idaho Code § 18-705 – Resisting and Obstructing an Officer (R&O) and Idaho Code § 23-949 – Consumption of Alcohol by a Minor. I also reviewed a copy of a printout downloaded from Officer #3's taser following Officer #3's deployment of the taser against the Complainant. In addition, I listened to a copy of the audio recordings made of the police radio transmissions relating to this incident and reviewed related dispatch records. I learned the following information:

1. On November 1, 2003, at approximately 2:50 a.m., a BPD patrol officer (Officer #4) and other BPD officers were dispatched to a residence on Cassia on a report of a male attempting to gain access to a residence by crashing through the front door. This call was dispatched as an emergency call requiring a “code three” response by officers.
2. Once he arrived at the call, Officer #4 learned that there had been an underage

alcohol party at the residence and a dispute between several males had broken out.

Officer #4 learned that a young male with the first name of [the Complainant's first name] had become angry when he was refused entry to the house and had put his head through the glass in the front door and cut his face. It was reported to Officer #4 that the injured person had left in a white Chevrolet Caprice. Officer #4 observed a trail of blood leading from the broken front door of the residence to the street in front of the house. The residents of the house did not want to press charges or file a report. Officer #4 searched the area for the white Chevrolet without success and cleared the call at about 3:15 a.m.

3. At approximately 3:10 a.m., on November 1, 2003, Officer #1 was westbound on Fairview approaching Curtis when he observed a white Chevrolet Caprice make an unsafe lane change in front of him and then turn onto southbound Curtis. Officer #1 was a "Night STEP Unit" officer focused on DUI enforcement and was not aware of the details and vehicle description from the Cassia call.
4. Officer #3 attempted to stop the Chevrolet on Curtis just south of Fairview and it finally pulled into the parking lot of the Roadway Inn at the intersection of Curtis and Irving.
5. Officer #3 made contact with the driver of the Chevrolet, Witness #1, and began his investigation of the unsafe lane change. The vehicle was occupied by four males.
6. As Officer #1 explained his reason for stopping the car to Witness #1, the Complainant cursed at Officer #1 and said he (the Complainant) was bleeding to death while Officer #1 bothered about an unsafe lane change. Officer #1 looked closely at the Complainant and saw that he (the Complainant) was bleeding and had a large amount of blood on his face and his shirt.

7. Officer #1 reported that he immediately radioed for paramedics to respond to his location on an emergency (code 3) basis to treat the Complainant.
8. Officer also radioed for other officers to respond and assist him on an emergency (code 3) basis.
9. Dispatch records indicate that Officer #5 was the first officer to arrive on scene after Officer #1's call for code three assistance.
10. Once Officer #5 arrived to assist him, Officer #1 asked the Complainant to get out of the car. Officer #1 escorted the Complainant to a curb east of the car and sat him down.
11. Officer #2 arrived on the scene in response to Officer #1's call for assistance. Officer #2 reported that he arrived as Officer #1 was escorting the Complainant from the car to the curb. Officer #2 reported that Officer #1 asked him to watch the Complainant as Officer #1 went back to deal with Witness #1.
12. Officer #3 arrived on the scene to assist Officer #1. Officer #3 reported that he arrived after the Complainant was already seated on the curb and was being watched by Officer #2. Officer #3 joined Officer #2 in standing near the Complainant.
13. Officer's #2 reported that told the Complainant that the paramedics had been called and were on their way to help him. Officer #2 reported that the Complainant appeared to be intoxicated. Officer #2 reported attempting to engage in conversation with the Complainant about the source of his (the Complainant's) injuries. Officer #2 reported that the Complainant would not

answer his questions and responded with vulgarities. Officer #2 reported that the Complainant would only say that he received his injuries “somewhere downtown.” Officer #2 reported that the Complainant said, “F—ing, why don’t you just shoot me right now, Boise Police?” Officer #2 also reported that the Complainant seemed agitated and acted in a belligerent manner.

14. Officer #3 reported that the Complainant said that he had been hit with a bottle downtown.
15. Officers #2 and #3 both reported that the Complainant yelled at them and made an obscene gesture at Officer #2. They also reported that the Complainant waived his arms and caused blood to fly outward from the Complainant and towards the officers.
16. Both Officer #2 and Officer #3 reported that the Complainant stood up suddenly and “charged” towards Officer #2.
17. Officer #2 reported that he told the Complainant to sit down and that the Complainant did not and yelled, “Can I stand up?”
18. Officer #2 and Officer #3 both reported that Officer #2 grabbed the Complainant and that the Complainant grabbed back and tried to pull away from Officer #2.
19. Officer #2 pulled the Complainant to the front of Officer #5's patrol car that was nearby. Officer #1 came over to assist Officer #2 and they both forced the Complainant face down onto the hood of the patrol car.
20. Officers #1, #2, and #3 all reported that the Complainant was trying to pull away from the officers and that he would not pull his hands out from under his stomach

so that they could be handcuffed behind his back. All three officers reported that it was difficult to hang on to the Complainant due to the amount of blood that was covering all of them.

21. Officer #1 reported that he struck the Complainant three times in the thigh (common peroneal nerve area) in an effort to gain the Complainant's compliance with efforts to handcuff him as he (the Complainant) was lying face-down across the hood of the police car.
22. Officer #3 reported that he readied his taser for "touch stun" deployment, placed it against the Complainant's back, and verbally warned the Complainant twice that he (the Complainant) would be tased if he did not cooperate. Both Officer #1 and Officer #2 reported hearing Officer #3 issue these warnings.
23. All three officers reported that the Complainant continued to struggle and did not bring his hands out from under his body.
24. Officer #3 activated the taser while it was against the Complainant's back. All three officers reported that Officer #3 activated the taser for two to three seconds and that the Complainant clearly received the shock.
25. The Complainant was then taken to the ground near the front of the patrol car and one hand was handcuffed. All three officers reported that the Complainant began to resist again and would not produce his second hand for handcuffing. All three officers reported that Officer #3 placed the taser against the Complainant's back again and verbally warned him that he would be tased again if he did not cooperate. The officers reported that the Complainant immediately produced his other hand and that the handcuffing procedure was completed.

26. Officer #3 reported that the Complainant continued to yell obscenities at the officers and to spit blood in their direction as he lay on the ground and the officers waited for the paramedics to arrive.
27. The paramedics arrived and the Complainant was treated by them and transported to the St. Al's emergency room.
28. At the hospital, the Complainant was issued a citation by Officer #3 for "Resisting and Obstructing" (I.C. § 18-705) and "Consumption of Alcohol by a Minor" (I.C. § 23-949) and released.
29. The electronic record for Officer #3's taser registered only one activation for November 1, 2003, at 3:13:59 a.m.

November 7, 2003

I received, from the BPD archivist, four CD-ROM disks containing digital audio recordings and one video tape containing video recordings.

I listened to the digital recordings and heard the following:

1. Officer #1's recordings – three tracks:
 - a. Track #1 – unrelated to this incident.
 - b. Track #2 – conversation with Witness #1 about the DUI. From the context, it appears that this conversation took place after the taser was deployed against the Complainant.
 - c. Track #3 – conversations with Witness #1 at the jail regarding the administration of the Breathalyzer test.

2. Officer #2's recordings – three tracks:
 - a. Track #1 – this contains recordings of Officer #2's contact with a male in an unrelated incident and then goes directly into Officer #2's contact with the Complainant, immediately before, during, and after the deployment of the taser.

The recording of the incident begins with the sound of the Complainant's voice in the background and Officer #2 saying, "Well, we got an ambulance coming." The Complainant points out that the hospital is "right there." Officer #2 asks, "What happened?" four times. The Complainant does not answer the question and instead says that he is freezing and expresses surprise that an ambulance was called when the hospital is so close. The Complainant uses the word "f—" and his speech is thick and slurred. The Complainant shouts, "Why the f— are you f—ing frisking him man? I'm f—ing over here f—ing out of it and you guys are f—ing sitting over there frisking him?" Officer #2 again asks the Complainant what happened, "so we can tell paramedics for you?" The Complainant loudly says, "No." A second officer can be heard in the background asking the Complainant what happened. The Complainant says, "this is absurd." Officer #2 asks, "Who cut you, dude?" The Complainant replies, "someone downtown." The Complainant then says that his friend was just trying to help him and now the police are arresting him. The Complainant adds, "F—ing, why don't you just shoot me right now, Boise Police?"

The Complainant then says, "You see this?" Officer #2 responds, "Yea, I see you flipping me off." The Complainant repeats his question three times, "Do you see this?" Officer #2 says, "Sit down." The Complainant says, "Can I stand up?" Officer #2 says, "Sit down," a second time and the Complainant repeats his question, "Can I stand up?" As this verbal exchange is going on the sound of scuffling can be heard. The

Complainant says, “Why did you f—ing, why did you f—ing push me, Boise Police? You f—ing pig. Why did you f—ing attack me?” Officer #2 says “Sit down,” a third time during this exchange. The Complainant’s voice becomes muffled. Another officer says, “Hey, you want to cooperate, cooperate or you’re going to get tased.” A third officer says, “Cooperate or you’re going to get tased.” An officer tells the Complainant two times to bring his hands up.”

The Complainant screams, “I’m bleeding,” and “Ow,” as the sound of a taser being activated is heard in the background. I timed the sound of the taser and the elevated screams of the Complainant to last just less than five (5) seconds. When the sound of the taser stops, the Complainant continues to shout, “Ow!” several times, but not with the same heightened pitch as when the taser was being activated.

The Complainant asks, “Why are you guys tasing me? I’m bleeding and you guys are tasing me?” An officer tells him to start cooperating and that he (the Complainant) was fighting with the police. The Complainant denies fighting and says that he is bleeding to death.

An officer asks the Complainant what happened. The Complainant says that he got attacked by a bottle downtown, that his friends were giving him a ride home, and now he is getting attacked. The Complainant continues to scream, insisting that no one is trying to help him, and protesting his treatment at the hands of the police. The Complainant repeatedly tells the officers that they and the Boise Police are “f—ing worthless.” One or more officers can be heard telling him that they are trying to help him and that the paramedics are on the way. The Complainant replies that all the police want to do is tackle him to the ground and taser him.

After a minute or two, additional voices can be heard and it is clear that they are the voices of paramedics and/or firefighters. They begin talking to the Complainant and

treating his facial wounds.

The Complainant yells, "So why did you taser me?" Officer #3 says, "Because you weren't listening to us." The Complainant responds, "I was listening to you." After a short pause the Complainant continues, "You call yourselves real men?" Officer #3 replies, "Would you?" The Complainant says, "I'm not calling myself a real man right now. That's just messed up, man. You want to taser a guy whose f—ing, whose hurting right now?" An officer says, "You know why you got tased? Because you weren't listening to me. You got up and attacked him." The Complainant replied, "I didn't attack him. I got out of the car." Another officer interrupts, "You spit blood everywhere, man. You get up in my face and I tell you to sit down. And you get up covered in, you get up in my face, that's what happens." The Complainant says, "I am f—ing freezing my ass of, man. I am freezing. I am freezing my butt off right now."

There is a noticeable change in the background noise and it immediately sounds like the recording is being made inside. An officer (I assumed it was Officer #2) is heard talking on the radio with another male officer. Officer #2 indicates that he is at St. Al's with the Complainant. The officer on the radio asks Officer #2 to cite the Complainant for R&O (resisting and obstructing). Also, an officer can be heard on the radio indicating that there is no need for a CSI (crime scene investigator) and that the Complainant was the subject involved in the incident on Cassia. Officer #2 says that he does not know about the Cassia incident, but will cite the Complainant. More general background noise is heard. It sounds like the Complainant is answering someone's questions. The medical personnel ask Officer #2 where the Complainant got tased and he tells them.

Officer #2 asks the Complainant for his last name. The Complainant says he would be happy to give the information to others, but not to Officer #2, who he calls a name that is not intelligible. The recording then ends.

- b. Track #2 – Officer #2 gives the date, time, and other information about his previous contact with the Complainant.
 - c. Track #3 – This is a very brief recording that does not sound like it has any connection to the incident or the Complainant.
3. Officer #3's recordings – three tracks:
 - a. This recording is of a traffic stop unrelated to the incident.
 - b. On this recording, Officer #3 can be heard serving a citation for R&O and Consumption of Alcohol by a Minor on the Complainant. Officer #3 lets the Complainant read the ticket and he explains the charges and the court appearance dates to the Complainant.
 - c. This recording is not related to the incident.
4. Officer #4's recordings – three tracks:
 - a. This recording is of Officer #4's contacts in connection with the call on Cassia.
 - b. On this recording, Officer #4 can be heard talking with the occupants of Witness #1's car about what happened on Cassia.
 - c. This recording is not related to the incident.
5. Officer #5's recordings – four tracks:

- a. Track #1 is not related to the incident.
- b. Track #2 is not related to the incident.
- c. Track #3 contains recordings made by Officer #5 at the scene of the incident. In the background, the Complainant can be heard saying, "I'm freezing. I'm freezing my butt off." Officer #5 is engaged in conversation with one of the back seat passengers from Witness #1's car.
- d. Track #4 contains recordings of Officer #5 continuing his conversation with the passenger.

I viewed the videotape and noted that it contained recordings made by three BPD Officers: Supervisor #1, Officer #1, and Officer #3.

1. I observed and heard the following on Supervisor #1's video:
 - a. Two traffic stops unrelated to the incident under investigation.
2. I observed the following on Officer #1's video:
 - a. Officer #1's police car parked behind another police car on 6th Street south of Main. This appeared to be unrelated to the incident under investigation.
 - b. Officer #1's police car is traveling west on Fairview approaching Curtis. A white sedan is observed to make a left turn from westbound Fairview onto southbound Curtis. Shortly after the turn, the overhead lights of the police car can be seen.

- c. The sedan and police car pull into the parking lot of the Roadway Inn on Curtis. The sedan pulls left into the second parking spot after the driveway between the hotel and the Jackson's. The police car pulls behind the sedan, partially at an angle.
- d. Officer #1 approaches the driver's side of the sedan and the audio portion of the video comes on. Officer #1 asks the driver to roll down his window, waits a few moments for the window to be rolled down, and then engages in conversation with the driver. Officer #1 asks the driver if he knows why he has been pulled over and the driver indicates that he does not know why. Officer #1 begins to explain about the unsafe lane change, when he is interrupted by shouting coming from inside the car.
- e. The person shouting is heard to say that he needs help and that he was being taken to the hospital. Officer #1 immediately steps forward, leans forward, and looks inside the car. Officer #1 asks for the person to clarify and then tells the person to hang tight.
- f. The sound goes off and Officer #1 can be seen moving his head as if he is speaking into an external microphone for his portable police radio. Officer #1 then leans forward a second time and looks into the car again through the driver's window.
- g. The sound comes back on and Officer #1 indicates to the driver that he still needs to deal with the driving issue. A male screams that he does not care about the driving because he is bleeding. Officer #1 says, "Relax, relax." A voice from inside the car says, "Relax, relax."

- h. The sounds goes back off and Officer #1 backs away from the driver's window, walks behind the white sedan, and goes off-camera to the right, passenger side of his police car.
- i. Using the time indicator on the videotape, approximately one minute and nine seconds elapse. Then, Officer #1 can be heard telling someone to watch the occupants of the car while he takes the front passenger out. Officer #5 can be seen entering the video from the left side. He takes up a position just to the rear of the left, rear passenger door of the sedan.
- j. Officer #1 walks up to the right side of the sedan and tells the Complainant, "Step out of the car so we can get the paramedics to you. Okay. They're on their way. What happened to you?"
- k. Officer #1 walks with the Complainant from the right side of the sedan, behind it, and then out of view on the videotape to the left. While they are walking, Officer #1 says, "Come on over here, man. I'm bringing you out of the car because I don't know what the heck's going on, okay?" Officer #1 tells the Complainant to sit down and assures him that the paramedics are on their way and will be there shortly.
- l. Officer #1 then walks back in front of his own patrol car and into view of the camera. He crosses from left to right and goes off camera to the right side of his car. Officer #5 and Officer #1 then interact with the driver of the sedan by getting him out of the car and having him walk back to the right side of Officer #1's patrol car.
- m. While this is going on, the Complainant's voice can be heard in the background as can at least one other male voice.

- n. Approximately one minute and 45 seconds after the Complainant is removed from the car and walked over to the location off camera to the left, the Complainant's voice can be heard screaming. Officer #5 turns in and begins to move to the left of the picture. Officer #1 tells Officer #5 to stay there. Officer #5 goes back to his position near the left, rear fender of the white car.
 - o. About 15 seconds after the screaming begins, the sound of a taser activating for a few seconds can be heard over the sounds of screaming and shouting.
 - p. The rest of the video contains the taking out of the two passengers from the back of the sedan, a field sobriety test (audio only), the arrival of other officers (including Supervisors #1 and #2), and the change of location to the jail.
3. I observed the following on Officer #3's video:
- a. The video begins with a view of an intersection at night. The patrol car begins to move and turn. The picture suddenly changes to show a different scene.
 - b. Officer #3 can be seen walking away from the front of his car towards a person who is seated on a curb in a parking lot. Also visible is the front of a BPD patrol car to the right of the screen. The car is roughly parallel to the video car, but slightly ahead of it. A third BPD police car can be seen beyond the second car. This third car is somewhat perpendicular to the first and second cars. It appears to be pulled behind the back of a

white sedan that is parked in the second parking spot beyond the curb that the person is sitting on.

- c. Other than Officer #3, three other officers can be seen. Two of them appear to be engaged in some activity having to do with the third police car and the white sedan it is behind. The other officer appears to be engaged in conversation with the person sitting on the curb. This officer appears to be Officer #2 and the person sitting on the curb is the Complainant.
- d. Officer #2 walks back and forth a few times in front of and to the side of the Complainant. Officer #2 has a flashlight in his left hand and he shines it at the Complainant and the ground around the complainant.
- e. The sound with this video image is scratchy and cuts off and on, most of the time staying off. As Officer #3 walks up to where the Complainant is sitting, he asks the Complainant what happened to him and the Complainant is evasive at first and then says that he was hurt by someone downtown. The Complainant goes on to say that his friends were driving him to the hospital to get help. The Complainant gestures widely with his hands and arms and appears agitated, saying, "This is absurd." The sound then cuts off.
- f. Officer #3 stays still, standing between his car and the Complainant; somewhat blocking the camera's view of the Complainant. Officer #2 continues to walk back and forth and shine his flashlight.
- g. Officer #2 moves to his right, around to the Complainant's left. Officer #2 appears to be approximately six to eight feet from the Complainant.

The sounds cuts on and then off quickly. The Complainant can be heard to say, "Do you see this?" The Complainant stands up quickly and takes a step in the general direction of Officer #2. Officer #2 moves rapidly towards the Complainant.

- h. Officer #2 reaches out to the Complainant and grabs the Complainant on the upper left arm with his right hand. The Complainant appears to try and pull back from Officer #2's grasp. Officer #2 then drops his flashlight and grabs the Complainant's left shoulder with his (Officer #2) left hand. Officer #2 then pulls the Complainant around about 270 degrees to Officer #2's right by his (the Complainant's) left arm. Officer #2 seems to have hold of the Complainant's shirt. The Complainant appears to be pulled off-balance and leaning forward. The Complainant appears to be pulling backwards against the forward momentum of being swung around by Officer #2.
- i. As Officer #2 swings the Complainant around, he pushes the complaint up against the front of a police car and then down onto its hood. The Complainant's left side strikes the hood first and then Officer #2 pushes the Complainant onto his stomach. Approximately five seconds elapses from when Officer #2 first grabs the Complainant to when the Complainant is face-down on the hood.
- j. As Officer #2 pushes the Complainant face-down onto the hood of the police car, the Complainant pulls his arms up under his (the Complainant's) body. It also looks like the Complainant is struggling and moving.
- k. As Officer #2 is swinging the Complainant around and onto the hood of

the police car, an officer (probably Officer #5) can be seen moving rapidly from the white sedan and towards Officer #2. Officer #5 gets part way to Officer #2 and then goes back to the white sedan. Another officer (probably Officer #1) can be seen moving from the farthest patrol car and to Officer #2's left side. As Officer #2 struggles with the Complainant, it appears that Officer #1 moves somewhat behind the Complainant and looks to be bending over or crouching in some way.

- l. When Officer #2 begins swinging the Complainant around towards the police car, Officer #3 reaches with his left hand and removes his taser from its holster. Officer #3 then moves in to the right side of Officer #2.
- m. It appears that the Complainant, Officer #2, and Officer #1 are struggling and the Complainant seems to be sliding around on the hood of the car. The video is dark and it is difficult to see who is grabbing who or doing what.
- n. After about eight seconds of struggle, the Complainant's feet can be seen jerking up off the ground and behind him. The feet stay up in the air for about two or three seconds.
- o. The Complainant then slides off the hood to his left (right side of car and far side from the video camera) and appears to be taken to the ground. The camera loses sight of the Complainant, but the three officers (or part of each of them) can be seen. It appears that a struggle, or activity of some kind, continues on the ground for several more seconds. The three officers appear to be leaning over, crouching, or kneeling during this period after the Complainant is moved from the hood and disappears behind the car.

- p. All three officers stand up at about the same time. Officer #3 walks away from the area where the Complainant went from view. Officer #2 walks around and shakes his hands in an open hand gesture, as if he is trying to shake something off them.

- q. During the whole struggle there is no sound on the video. The sound comes back on after the officers stand up. The Complainant can be heard crying or screaming. Officer #3 says, “Okay, we know you’re bleeding. We’ve got paramedics coming here to help you.” Officer #3 attempts to learn more about how the Complainant sustained his injuries, but the Complainant says that he does not know. Officer #3 asks Officer #2 if he, “got it all over you?” Officer #2 shakes his hands and looks at the front of his uniform and indicates “yes.” Officer #3 tells the Complainant a second time that the paramedics are on their way to help him. The Complainant says, “You guys are so worthless. I’m going to tell you from the bottom of my heart, the Boise Police are f—ing worthless.” Officer #3 responds that the police have been doing everything they can to try and help him.

- r. A paramedic appears and gets some information from Officer #3. The paramedic then begins to treat the Complainant. A total of about four minutes elapsed between when Officer #3's video recording began and when the paramedic shows up. Shortly after this, a second paramedic is seen and firefighters as well.

- s. Two firefighters are seen scooping a white substance out of buckets and spreading it on the pavement in front of the curb where the Complainant had been seated and in the area where the Complainant was taken after he

was removed from the hood of the police car.

- t. Officer #3 is seen walking back to his police car and then the police car turns left towards the Texaco/Jackson's and left again out onto Curtis Road. The video then ends.

11:30 p.m.

I interviewed Witness #7, an employee at Jackson's on Curtis Road.

Witness #7 said that he was working as a clerk in the Jackson's Food Mart during the early morning hours of November 1, 2003. He said that he recalled an incident involving the police and a car they pulled over at around 3:00 a.m. Witness #7 said that this incident took place in the parking lot of the Roadway Inn, just north of the Jackson's.

Witness #7 told me that he was not able to see exactly what happened between the police officers and any of the subjects that had been in the car that was pulled over. He only saw that there were lots of police cars, a fire truck, and an ambulance. Witness #7 said that he never went outside of the store while the incident was taking place. Witness #7 said that he has a set of binoculars but forgot to use them.

Witness #7 said that one of the passengers came into the store after the incident. Witness #7 said that this man had blood all over him.

November 8, 2003

I had made arrangements to interview Witness #1 at his home at 11:45 a.m. on this day. When I arrived at his house, I was greeted by his mother. Both she and Witness #1 told me that he had decided that he did not want to talk to me before he had an opportunity to

consult with an attorney.

I then drove to the scene of the incident in the parking lot of the Roadway Inn off Curtis. Based on what I had seen on the videotapes made by the involved officers, I took some additional measurements to determine the distance between the sedan driven by Witness #1 and the curb where the Complainant had been told to sit down by Officer #1. I noted that the distance was between 20 and 25 feet.

November 12, 2003

I interviewed Witness #2. He said that Witness #1 was driving the car; the Complainant was seated in the front passenger seat; Witness #3 was in the left, rear passenger seat; and he (Witness #2) was sitting in the right, rear passenger seat.

Witness #2 said that Witness #1 was driving to St. Al's to get treatment for the Complainant. Witness #2 said that the Complainant was bleeding a lot.

Witness #2 said that a police car pulled them over after they turned onto Curtis from Fairview and that Witness #1 pulled into the parking lot of a hotel near the Jackson's Mart on Curtis. Witness #2 said that the officer approached the driver's side of the car and Witness #1 rolled down his window. Witness #2 said that the Complainant said that he needed to go to the hospital because his face was cut. Witness #2 said that he could not recall what, if anything, the officer said in response to the Complainant's statement that he needed to get to the hospital.

Witness #2 said that he recalled that the Complainant got out of the car somehow, but he (Witness #2) could not remember how or exactly when.

Witness #2 said that he could not see anything of what happened to the Complainant after

the Complainant got out of the car. Witness #2 said that he did not see any of the contact between the police and the Complainant.

November 13, 2003

I interviewed Witness #3. He said that, on November 1, 2003, in the early morning hours, he was a passenger in a car being driven by Witness #1. Witness #3 said that he was seated in the back seat, on the left side directly behind the driver, Witness #1. Witness #3 said that the Complainant was seated in the front side on the right, passenger side. Witness #3 said that Witness #2 was seated in the rear seat, on the right side of the car. No other persons were in the car.

Witness #3 said that Witness #1 was driving the car to St. Al's in order to obtain medical attention for the Complainant who had sustained severe facial cuts. Witness #3 said that the car turned left from westbound Fairview onto southbound Curtis. Shortly after this, a police car pulled in behind the car and turned on its overhead emergency lights. Witness #3 said that Witness #1 turned right into the hotel parking lot just before the Jackson's Mart on Curtis and parked in a parking space.

Witness #3 said that the police officer approached the driver's side of the car and spoke to Witness #1. Witness #3 said that the officer asked the driver if he knew why he had been pulled over. Witness #3 said that Witness #1 indicated that he did not know why he had been stopped. The officer said that he had stopped the vehicle for an illegal lane change.

Witness #3 said that both he and Witness #1 immediately told the officer that the Complainant was injured and needed to go to the hospital. Witness #3 said that the officer did not respond to their statements and that there was a pause. After that, according to Witness #3, the Complainant said loudly, "What the hell's wrong with you? I need to get to the hospital."

Witness #3 said that the officer then backed away from the car and, a few minutes later, there were a lot of officers surrounding the car. Witness #3 said that, at some point, the Complainant got out of the car. Witness #3 said that he could not remember how long it took before the Complainant got out of the car, but thought it was a few minutes. Witness #3 said that he did not know where the Complainant went.

Witness #3 said that he stayed seated in the back of the car while officers watched him and spoke with him. He said that he heard the Complainant, who was somewhere outside of the car, screaming, shouting, and groaning.

Witness #3 said that this was the last that he saw or heard from the Complainant. He said that one officer told him that the Complainant had been taken to the hospital.

November 14, 2003

I spoke with a supervisor at Ada County Dispatch. I explained to him that, on the audio recordings of the police radio transmissions associated with this incident, I had heard Officer #1 talking with two different dispatchers during the incident. I suspected that Officer #1 had used two different channels for his radio traffic. I asked the supervisor to look into this and provide me with separate copies of the radio transmissions from any BPD channels used by any of the officers involved in this incident. I also requested the exact time of each transmission.

November 18, 2003

I received a CD-ROM disk containing 6 digital photographs of BPD marked patrol car #93. The photographs show blood stains on the hood and left, front fender of the police car.

November 21, 2003

I received two audio tape cassettes and a written analysis from the Ada County Dispatch supervisor. The analysis told me that, at the time that Officer #1 made the traffic stop at Curtis and Irving, BPD was operating on two primary radio channels. Channel A was the primary radio channel for the Valley Division and Channel C was primary for the Bench Division.

Officer #1 used both Channel A and Channel C for his radio transmissions connected with the traffic stop and related incident. The following is the sequence of radio transmissions related to this incident, beginning with the initial traffic stop and ending when Officer #1 indicated that the situation was “code four” or under control. The following information is based on the recordings and analysis I received from the dispatch supervisor.

<u>Time</u>	<u>Channel</u>	<u>Content of Radio Transmission</u>
03:10:31	C	Officer #1 calls in stop at Fairview and Curtis and asks for “code one” assist.
03:10:51	C	Officer #5 indicates that he will clear his current call and assist.
03:11:21	C	Officer #1 updates his location to the Texaco at Curtis and Irving.
03:12:48	A	Officer #1 requests paramedics “code three”.
03:13:11	A	Officer #1 requests that his assist unit be upgraded to

“code three”.

03:13:15	A	Dispatcher advises Officer #1 that she will notify the Bench primary dispatcher.
03:13:31	A	Officer #2 advises that he has upgraded to “code three” and is about one minute away.
03:13:49	C	Bench primary dispatcher attempts to contact Officer #5.
03:13:49	C	Officer #5 advises that he is almost at the scene.
03:14:06	C	Officer #1 says that he will need at least two more officers to respond “code three”.
03:14:23	C	Officer #1 advises that he does not know what he has and he needs the paramedics “code three”.
03:14:34	A	Officer #3 says that he will arrive at the incident to assist Officer #1 in about one minute.

November 24, 2003

I received three signed releases for medical records from the Complainant. Copies of the releases were sent to St. Alphonsus Regional Medical Center (St. Al’s), Ada County Paramedics, and Boise Fire Department.

I received a copy of the requested records from Boise Fire. The records indicated that North Ada County Fire and Rescue District Unit C02 was dispatched at 03:15:39 on November 1, 2003. The fire unit responded to the intersection of Irving and North Curtis

on the report of a “battered victim” requiring assistance. The report indicates that the fire responders were told that the victim was battered in downtown Boise. It was noted that the victim was treated at the scene and then transported to the hospital by EMS.

November 25, 2003

I received and reviewed a copy of the Complainant’s medical records for the treatment he received in the Emergency Department (ER) at St. Al’s on November 1, 2003.

I also received from the Ada County Records Division, a copy of the Fire/EMS incident history for this incident. The records indicate that Fire/EMS dispatch entered the call on November 1, 2003, at 03:14:12 hours. At 03:14:26 hours, North Ada Fire unit #N202 was dispatched, as was Ada County Paramedics unit #M54. Paramedic unit #M54 arrived on scene at 03:18:54 hours. North Ada Fire unit #N202 arrived on scene at 03:19:39 hours and cleared the scene at 03:25:20 hours. Paramedic unit #M54 began its transport of the Complainant at 03:25:25 hours and arrived at St. Al’s at 03:26:48 hours.

November 26, 2003

I received a copy of the requested medical treatment records from the Ada County Paramedics. The records indicate that paramedics were dispatched on November 1, 2003, at 03:14 hours. They went en route at 03:15 and arrived at 03:18. The paramedics left the scene at 03:25 and arrived at St. Al’s at 03:26 hours.

December 3, 2003

I arranged for Custom Sound and Recording to analyze the original video made from the dash of Officer #3's patrol vehicle during the incident. It was their conclusion that no edits or alterations had been made to the original video. One question that arose as the

video was analyzed was why the video footage begins after Officer #3 is clearly out of his vehicle and can be seen walking away from his car and towards the Complainant.

Custom Sound then created a digital copy from the original in order to create slow motion and enlarged versions of the video. I also requested frame-by-frame digital pictures of the portion of the incident that begins when the Complainant rises from the curb and ends when he is face-down on the hood of the police car. I was told that video records approximately 30 frames per second in normal mode.

December 5, 2003

11:45 a.m.

I spoke with the supervisor of BPD's Neighborhood Traffic Unit. He and the officers in his unit all have vehicles that are equipped with the same in-car video cameras used by the Night STEP officers.

I asked the supervisor to explain to me how the video recording function is turned on. He explained that, assuming that the video system in the patrol car is in the "power on" position, it can begin recording a video image in any one of three ways:

1. By activation of the overhead light bar of the patrol car, or
2. By pushing the "record" button on the unit, or
3. By activating a switch on the remote microphone/transmitter unit that the officer driving the police car wears on his or her duty belt.

The supervisor told me that it is completely possible for an officer to activate the recording function of a video unit from outside of the patrol car, providing that the video unit is already on.

December 9, 2003

I received, from Custom Sound and Recording, a CD-ROM disk containing a slow motion version of Officer #3's in-car video as well as an enlarged version of the same. In addition, the disk contained 205 digital images from Officer #3's video. The images went from immediately before the Complainant began to rise up from the curb until the time Officer #2 has the Complainant rolled onto his stomach and flat against the hood of the police car. Image #1 is marked with the video system time of 03:15:40 and image #205 shows the time of 03:15:47. No more than seven seconds of elapsed time are represented in the 205 images.

I carefully analyzed each image and made the following observations:

1. Officer #2 appears to be close to the Complainant. I estimated that he was no more than five feet away.
2. It takes approximately 25 frames (just under one second) for the Complainant to lean forward and rise up. As the Complainant rises, his hands can be briefly seen in front of him. They do not appear to be in an aggressive posture.
3. Officer #2 reacts to the Complainant's movement by moving his right hand towards the Complainant. Officer #2 simultaneously steps towards the Complainant.
4. At frame #40, a little more than one second after the Complainant began to get up, Officer #2 has completed his step with his right foot and appears to be less than a foot away from the Complainant. At the same time, Officer #2 is letting go of his flashlight and beginning to bring his left hand up and towards the Complainant.

Officer #2's weight is beginning to shift towards the Complainant and his left foot begins to pick up as he moves in closer to the Complainant.

5. About two seconds into this action, at frame #60, Officer #2 can be seen stepping back with his right foot, pulling the Complainant towards him, and pivoting to his right.
6. Frame #70 shows that the Complainant is beginning to be pulled off balance forward. At least one of the Complainant's hands can be seen with its palm towards the officer and the elbows bent in what appears to be a defensive posture.
7. At frame #80 it is clear that the Complainant is completely off-balance as he is being swung in a clockwise motion by Officer #2. The Complainant is bent forward and his feet are far apart as he is propelled forward and around. This swinging of the Complainant continues and by frame #106, the Complainant has been swung more than 180 degrees around so that he is now facing the camera. The Complainant's left arm is free and swinging out parallel to the ground from the force of the movement. Officer #2 has hold of the Complainant by the Complainant's right arm and shoulder. About three seconds have elapsed since the Complainant began his movement to rise from the curb.
8. As the Complainant is swung around by Officer #2, he is also pushed towards the front grill area of the police car parked to the right of the video car. At frame #123 the Complainant's left side makes contact with the front of the police car. Officer #2 moves in close to the Complainant and by frame #139 Officer #2 is pressed against the Complainant who now has the left side of his back up against the police car.
9. Beginning at frame #142 and continuing through frame #167, Officer #2 can be

seen pushing the Complainant so as to bend him at the waist and press his (the Complainant's) upper body against the hood of the car. Simultaneously, Officer #2 rolls the Complainant over onto his stomach.

10. By frame #168 Officer #2 has successfully pushed the Complainant face-down onto the hood of the police car. This is approximately five and one-half seconds after the Complainant began to get up from the curb.
11. As Officer #2 begins his pivot to swing the Complainant around and onto the hood of the police car, Officer #3 can be seen removing his taser from its holster on his right side. This is at frame #70. Officer #3 has the taser out by frame #80 and turns to follow the movement of Officer #2 and the Complainant. As the Complainant is propelled against the police car and Officer #2 acts to get him down against the hood, Officer #3 steps toward the car and takes up a position to the right of Officer #2. By the end of the series, frame #205, Officer #3 can be seen placing his left hand against the Complainant's right side and reaching in with the taser he is holding in his right hand.
12. The entire section of frames from when the Complainant begins his movement to get up to the point where the Complainant is face down on the hood of the patrol car, lasts between six and seven seconds.

December 17, 2003

I interviewed Supervisor #2. Supervisor #2 confirmed that he was on the scene of the incident before and during the time that other officers used force on the Complainant. Supervisor #2's recollection of what he saw in connection with the use of force was consistent with what was reported in the police reports and contained in the associated audio and video recordings.

December 18, 2003

5:00 p.m.

I interviewed Officer #1. Officer #1 confirmed his involvement in the incident and his use of force (grabbing and knee strikes) on the Complainant. Officer #1's recollection of what he did and saw in connection with the incident was consistent with what had been reported in the police reports and contained in the associated audio and video recordings.

6:00 p.m.

I interviewed Officer #3. Officer #3 confirmed his involvement in the incident and his use of force (taser) on the Complainant. Officer #3's recollection of what he did and saw in connection with the incident was consistent with what had been reported in the police reports and contained in the associated audio and video recordings.

December 19, 2003

6:30 a.m.

I interviewed Officer #5. Officer #5 confirmed that he was on the scene of the incident before and during the time that other officers used force on the Complainant. Officer #5's recollection of what he saw in connection with the use of force was consistent with what had been reported in the police reports and contained in the associated audio and video recordings.

6:00 p.m.

I interviewed Officer #2. Officer #2 confirmed his involvement in the incident and his

use of force (soft, empty-hand control) on the Complainant. Officer #2's recollection of what he did and saw in connection with the incident was consistent with what had been reported in the police reports and contained in the associated audio and video recordings.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence, the following factual findings are made:

1. On November 1, 2003, at approximately 3:10 a.m., Officer #1, in uniform and driving a marked police car, conducted a traffic stop on a vehicle occupied but not driven by the Complainant. The driver of the vehicle pulled the car into a parking space in the parking lot of the Roadway Inn at Curtis and Irving.
2. Officer #1 contacted the driver (Witness #1) of the vehicle and began an investigation into a possible DUI violation.
3. Witness #1, the Complainant, and at least one other passenger alerted Officer #1 to the fact that the Complainant was injured and in need of medical attention.
4. The Complainant had two or more facial lacerations that had bled extensively and were still bleeding at the time of the traffic stop.
5. Officer #1 observed that the Complainant was injured and bleeding and immediately used his police radio to request an emergency response by paramedics. This radio request was made at approximately 3:12 a.m. In his radio broadcast, Officer #1 indicated that he had a subject who was bleeding from the face and neck.
6. Officer #1 told the Complainant that the paramedics were on their way.

7. The Complainant screamed and uttered a profanity at Officer #1.
8. Officer #1 backed away from the vehicle, requested emergency assistance from other officers (at approximately 3:13 a.m.), and waited by his police car until Officer #5 arrived.
9. Officer #5 arrived on scene at approximately 3:14 a.m.
10. Officer #1 made a second request at 03:14 hours for paramedics and assist officers to respond "code 3".
11. Officers #2 and #3 arrived on scene at about the same time, approximately 3:15 a.m.
12. After the arrival on scene of Officer #5, Officer #1 escorted the Complainant from the vehicle he (the Complainant) had been traveling in to a curb in the hotel parking lot, approximately 20 to 25 feet east of the vehicle.
13. Officer #1 directed the Complainant to sit on the curb and then walked back west to where the vehicle that had been stopped was parked. Officer #1 told the Complainant that the paramedics were on their way to help him. When Officer #1 left the Complainant sitting on the curb, Officer #2 was standing next to the Complainant and stayed with him.
14. Officer #3 parked his police car near where the Complainant was sitting, walked over to the Complainant, and stayed with the Complainant and Officer #2.
15. Officer #2 told the Complainant that an ambulance was on its way to help him.

The Complainant acknowledged that he heard this and expressed surprise that an ambulance would be called when the hospital was in sight.

16. The Complainant complained of being cold.
17. The Complainant was dressed in a shirt and pants, no jacket or other cold-weather clothing.
18. The Complainant's shirt, face, and hands were covered with a large amount of blood. When the Complainant spoke and/or gestured, blood was sprayed or flung outwards from his body.
19. The ambient air temperature in Boise on November 1, 2003, at 2:53 a.m. was 21.2° F and was 19.4° F at 03:53 a.m.
20. The Complainant shouted at Officer #2, used profanity, and made an obscene gesture at Officer #2.
21. The Complainant stood up.
22. Officer #2 twice told the Complainant to sit down.
23. The Complainant did not sit down and, instead, took a step in the general direction of Officer #2.
24. Officer #2 grabbed the Complainant by his upper body and swung him around to the front of a nearby police car.
25. The Complainant struggled with Officer #2 and Officer #1 as they attempted to

get him on his stomach on the hood of the police car and to bring his (the Complainant's) hands behind him for handcuffing.

26. Officer #2 used his knee to strike the Complainant two or three times in the thigh.
27. Officer #3 warned the Complainant twice that he would be "tased" if he did not "cooperate".
28. After the second warning, Officer #3 activated his taser and deliver less than five seconds of current to the Complainant's mid-back on the right side.
29. The Complainant, Officer #1, and Officer #2 all slid off the hood of the police car and onto the ground.
30. Once on the ground, the Complainant continued to struggle and Officer #3 warned him again that he would be tased if he did not cooperate.
31. After the last warning, the Complainant allowed Officers #1 and #2 to bring his hands behind his back and handcuff them.
32. The Complainant was left lying on the ground, handcuffed, until the arrival of paramedics.
33. Ada County Paramedics arrived on scene at approximately 3:19 a.m. A fire truck arrived on scene less than a minute later.
34. At approximately 3:25 a.m., the Complainant was transported by the paramedics from the scene to St. Al's.

35. Neither Officer #1, Officer #2, Officer #3, nor Officer #5 directly and personally gave any first aid or other medical treatment to the Complainant.

36. Neither Officer #1, Officer #2, Officer #3, nor Officer #5 took any personal and direct action to respond to the Complainant's assertion that he was cold.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Complainant made two accusations against the involved officers. He alleged that they failed to take reasonable and prudent action to treat his injuries prior to the arrival of the paramedics as well as causing him to sit outside in below-freezing conditions with inadequate clothing for warmth. The Complainant also alleged that he was tackled, slammed onto the hood of a police car, shocked with a taser, and then slammed onto the ground for no reason and without necessity.

Provision of "Necessary Humane Action"

With regard to the care, or lack thereof, shown to the Complainant by the various police officers on the scene of the incident, § 21.0309 of the Policy and Procedures Manual of the Boise Police Department in effect on November 1, 2003, says (in part):

No employee shall at any time or for any reason . . . willfully neglect the necessary humane action which the circumstances may require.

In order to evaluate the officers' actions in light of the requirements imposed on them by this policy, four questions must be answered:

1. What were the circumstances?

The Complainant had suffered two or more serious lacerations to his face prior to coming in contact with the police. The Complainant had bled extensively in the car and continued to bleed after he came into contact with the police. He was in a vehicle being driven by an individual who appeared to be under the influence of alcohol. This vehicle was stopped by Officer #1 after the driver was observed making an unsafe lane change. In addition to the Complainant and the driver of the vehicle, two other males were seated in the car when it was pulled over. At the time that Officer #1 made contact with the driver of the vehicle, Officer #1 was the only police officer at the scene. The Complainant shouted at Officer #1 and used profanity in addressing him. The Complainant appeared to be in an agitated state. The outside temperature was 20° F and the Complainant was dressed lightly in a pair of pants and a shirt. The shirt was soaked with the Complainant's own blood.

2. What, if any, "necessary humane action" was required in light of these circumstances?

Given the obvious injuries to the Complainant and his loss of blood, it was necessary that he receive prompt medical attention. However, there was no indication at the time that the injuries were life threatening. Clearly the injuries were serious and the amount of blood loss to the Complainant was significant, but there were no signs of arterial bleeding or other injuries that posed an imminent danger to the Complainant's life, should medical help not be secured within the next several minutes.

It was definitely cold outside at the time of the incident and the Complainant was dressed poorly for the weather. At some point, had the Complainant been forced to sit outside for an extended period of time, the officers at the scene would have had an obligation to give the Complainant a blanket or something else to keep him warm. The Complainant sat outside on the curb for less than five minutes before he stood up and the altercation began

between him and Officer #2. The paramedics arrived within five minutes of when Officer #1 requested them. Six minutes after the paramedics arrived, the Complainant was on his way to the hospital.

3. Who (which officer or officers) was in a position to take any such required action?

Officer #1 was the primary officer on the scene, since he is the one who initiated the traffic stop. As the primary officer, he had ultimate responsibility for seeing to it that required police actions were taken. In addition, both Officer #2 and Officer #3 had direct contact with the Complainant. In fact, it would be accurate to say that Officer #1 handed the Complainant over to the care of Officer #2 immediately after the Complainant was placed on the curb. In summary, both Officer #1 and Officer #2 were responsible for the Complainant's well being as he was being detained in their care.

4. Did the officer or officers take the necessary humane action(s) required by the circumstances.

Officer #1 used his police radio to request that paramedics be sent "code three" to his location. Officer #1's in-car video clearly shows him using the external microphone of his portable radio right after he leaned forward to see what was wrong with the Complainant. While the audio from his in-car video is not intelligible at this point, the audio recording from the Ada County Dispatch Center and CAD incident history both verify that Officer #1 immediately requested an emergency response from paramedics the moment Officer #1 saw the Complainant's injuries.

Officer #1 waited for one assist officer to arrive before he went back to the vehicle he had stopped and made contact with the Complainant. This minimal wait of no more than one or two minutes was necessary, given Officer #1's legitimate safety concerns and his

inability to watch the other three occupants of the car while he attended to the Complainant.

Once Officer #5 arrived to watch the driver and the two men in the back seat of the car, Officer #1 walked up to the passenger side of the car and asked the Complainant to get out. Officer #1 then had the Complainant walk around the back of the car and to a curb situated approximately 25 feet from the car. Officer #1 said that he did this in order to get the Complainant to a place where the paramedics could easily access him without interfering with the DUI investigation and the containment of the two males in the back seat. Officer #1 left the Complainant in the care of Officer #2 as they waited for the arrival of the paramedics.

Given what Officer #1 knew at the time and his observations of the Complainant's condition, Officer #1 took necessary and adequate action to see to the medical needs of the Complainant. It was reasonable for Officer #1 to conclude that the paramedics would arrive on scene soon enough to care for the Complainant's injuries and provide him with a warm covering without compromise to the Complainant's well being. Officer #1 was not obligated to take any additional action.

Officer #2 took custody of the Complainant from Officer #1. Officer #2 knew that the paramedics had already been called and were responding "code three". Officer #2 reassured the Complainant that help was on the way. Officer #2 observed that the Complainant was covered in blood, appeared agitated, and was spraying blood when he spoke and gestured. Officer #2 also observed that the Complainant had been able to walk unassisted, was talking and lucid, and did not appear to be in any life-threatening medical distress. Officer #2 was aware that the air was cold and knew that the Complainant was uncomfortable from the cold. Officer #2 also knew that paramedics were on the way and expected them to arrive any minute.

Officer #2 took no direct action to provide medical assistance to the Complainant. He also did not take any action to alleviate the Complainant's discomfort from the cold. It was reasonable for Officer #2 to not take either action. He could see that the Complainant was injured but reasonably concluded that the injuries were not life-threatening. Officer #2 knew that the paramedics were on their way and reasonably expected them to arrive momentarily to provide necessary care and see to the Complainant's need for warmth. In addition, Officer #2 was concerned about being sprayed by the Complainant's blood and about the Complainant's erratic and agitated behavior. Officer #2 reasonably concluded that, since the Complainant was not in imminent danger, he (Officer #2) should not put himself at risk by getting close to the Complainant's face.

Therefore, it is my finding that both Officer #1 and Officer #2 met the standard of care expected of them by the Boise Police Department and did not violate § 21.0309 of the Policy and Procedures Manual.

Use of Force

The Complainant also objected to the use of force against him by Officers #1, #2, and #3. The Complainant alleged that he was tackled by Officer #2 without reason or provocation, and then "slammed" onto the hood of a police car and "slammed" onto the ground. The Complainant also alleged that Officer #3's use of the taser on the Complainant's back was unnecessary and did not follow any resistance and/or aggression by the Complainant. While the Complainant did not specifically mention the two knee strikes to his leg made by Officer #1, the Complainant's statement that he offered no resistance or aggression to the officers is an allegation by inference that the knee strikes were unnecessary.

The use of force began immediately after the Complainant began to stand up. Prior to this

event, none of the officers had laid a hand on the Complainant, except, perhaps, a guiding hand from Officer #1 as he assisted the Complainant from the car to the curb.

§ 1.0101 of the BPD Policy and Procedures Manual governs the overall use of force by officers. This policy says:

Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when necessary to effect the capture or prevent the escape of a suspect, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. Officers may also use any other reasonable force to gain control of the situation provided authorized techniques are not available or practical.

The first question to be asked is whether the officers had a lawful purpose in detaining the Complainant. The Complainant thought that he was free to leave. In fact, he said that he got up from the curb in order to walk over to where Officer #1 was conducting a field sobriety test on Witness #1 (the driver of the car) and tell the officer that he (the Complainant) was going to walk to the hospital. However, none of the police officers thought the Complainant was free to go. Officer #2 stated specifically that it was his understanding that the Complainant was being detained while the police investigated the circumstances surrounding the Complainant's injuries and the DUI. It is clear that the Complainant was being detained, although there is no evidence to suggest that, prior to him standing up, he had been told this explicitly. Nonetheless, given the nature of his injuries, the bloody mess inside the car, the Complainant's own belligerent and

uncooperative behavior, and his apparent intoxication, it was reasonable for the police to detain the Complainant for a reasonable length of time while they investigated the situation and attempted to determine what had happened. At the time that the Complainant stood up, he had been detained for no more than two or three minutes; certainly a reasonable length of time under the circumstances.

Given the lawful nature of the Complainant's detention, any of the police officers at the scene had the authority to use a reasonable amount of force to prevent the Complainant from leaving. In addition, the officers on scene had the authority to control the Complainant's movements for their own safety and to prevent the Complainant from interfering with their investigation into the DUI and the nature and cause of his injuries. Finally, the involved officers had the authority to use reasonable force to overcome any resistance by the Complainant to their lawful commands and/or to protect themselves from any aggressive acts by the Complainant. The video and audio recordings both show the Complainant resisting Officer #2's efforts to get him to sit back down and bring him under control with handcuffs. However, there is no evidence to suggest that the Complainant displayed any physical aggression towards any of the involved officers. Therefore, the operative question in evaluating the use of force in this case is whether each officer used a reasonable amount of force given the totality of the circumstances. I will evaluate each officer's use of force separately.

1. Officer #1's use of force:

Officer #1 grappled with the Complainant as he (Officer #1) and Officer #2 attempted to get the Complainant handcuffed and under control. Officer #1 saw the Complainant struggling with Officer #2 and came to the aid of Officer #2. Following his training and experience, Officer #1 used his hands in an attempt to get the Complainant's hands out from underneath the Complainant's body and behind the Complainant's back for handcuffing. I find that this minimal amount of force (soft, empty-hand control) was

reasonable and necessary force to detain and control the Complainant.

Officer #1 realized that he and Officer #2 were having a difficult time getting a grip on the Complainant due to the Complainant's physical resistance and slipperiness from blood saturation on his skin and clothing. Following his training and experience, Officer #1 used his knee to strike the nerve bundle known as the "common peroneal" on the Complainant's thigh. Officer #1 stated that he was hoping that the pain from the knee strikes would cause the Complainant to bring his hands out from underneath his body and submit them for handcuffing. I find that, given the totality of the circumstances, including the need to bring the Complainant under immediate control and the failure of "soft, empty-hand control" techniques, Officer #1's use of knee strikes to the Complainant's leg was a reasonable and necessary use of force.

2. Officer #2's use of force:

Officer #2 limited his use of force to "soft, empty-hand control" techniques. He used his hands to grab the Complainant and swing him around to the front of a nearby police car. It has already been established that Officer #2 had the authority to limited the Complainant's movements. The evidence (audio recording) clearly shows that the Complainant disregarded Officer #2's verbal commands to sit back down. The video recording made by Officer #3 appears to show that Officer #2 reached out for the Complainant's shoulder as the Complainant was rising to his feet. This is consistent with Officer #2's memory of having instinctively reached out to push the Complainant down. The same video shows that Officer #2 then grabbed the Complainant, who tried to pull away and resist Officer #2's attempts to get him subdued and handcuffed on the hood of the police car. The video evidence does not support the Complainant's allegation that he was "slammed" onto either the hood of the car or the ground. It is more accurate to describe the movement as being pushed down onto the hood and falling to the ground. I find that Officer #2's use of his hands to control and subdue the Complainant was both

reasonable and necessary to control the Complainant's movements and to limited his own (Officer #2) exposure to the Complainant's blood.

3. Officer #3's use of force:

Officer #3 applied the taser to the Complainant's back and activated its charge for less than five seconds. Officer #3 watched as the Complainant stood up suddenly and then struggled with Officer #2. Officer #3 saw that both Officer #1 and Officer #2 were failing in their attempts to get a grip on the Complainant and put handcuffs on him. Officer #3 was concerned about his and other officers' exposure to the Complainant's blood and had a reasonable desire to end the Complainant's active resistance.

§ 2.4101 of the BPD Policy and Procedures Manual governs the use of the taser by officers and states as follows:

*Officers are authorized to carry and use the Taser M26 to gain control when faced with **actual or threatened physical resistance** and the use of Taser M26 is **reasonably necessary** based on officer-to-subject disparity, reaction times, environmental conditions and the totality of the circumstances. **Note:** Physical resistance includes all physical resistance except passive physical resistance. (Emphasis in the original.)*

The Taser M26 will never be used punitively, or used for coercion or threat in the absence of actual or threatened physical resistance. The Taser M26 is to be used as a way of averting a potentially injurious or dangerous situation. The Taser M26 is not meant to be used in deadly force situations. The Taser M26 should not be used without a firearm backup in those situations where there is substantial threat towards the officer(s) or others present.

Just as Officer #1 and Officer #2 were authorized to use reasonable force to overcome the Complainant's active resistance to their lawful attempts to control and detain him, Officer #3 was authorized to use reasonable force in the situation (§ 1.0100). Officer #3's use of the taser was in response to actual physical resistance by the Complainant. Following his training and experience, Officer #3 warned the Complainant that he would be "tased" if he did not immediately stop resisting. Officer #3 then activated the taser for a very brief period (less than five seconds) until the Complainant began to show signs of compliance. Therefore, it is my finding that Officer #3's use of force, specifically the use of the taser, complied with the requirements of both § 1.0101 and § 2.4101 of the BPD Policy and Procedures Manual, in that it was reasonable and necessary to overcome the Complainant's active resistance to the lawful actions of the police.

Officer #1

PM 21.0309 Alleged failure to provide necessary humane action. **UNFOUNDED**

PM 1.0101 Alleged unnecessary use of force. **EXONERATED**

Officer #2

PM 21.0309 Alleged failure to provide necessary humane action. **UNFOUNDED**

PM 1.0101 Alleged unnecessary use of force. **EXONERATED**

OMB03/0230
December 31, 2003

Officer #3

PM 2.4101 Alleged unnecessary use of taser.

EXONERATED

A handwritten signature in black ink, appearing to read "Pierce Murphy". The signature is written in a cursive style with a large initial "P" and "M".

Pierce Murphy
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