

# Mock Trial

---

## University of Minnesota, Morris

600 E. 4th Street  
Morris, MN 56267  
Benjamin Duranske, Co-President  
Wesley Meehan, Co-President

Kevin Parsons  
Chief Executive Officer  
Armament systems and Procedures  
Box 1794  
Appleton, WI 54915

January 26, 1996

Mr. Parsons:

I appreciated your taking my call yesterday regarding your Tactical Strike Baton. At the University of Minnesota, in Morris Minnesota, we are participating in a nationwide "Mock Trial" competition. There are approximately three hundred schools participating in this competition this year, and the organization has been in existence for about ten years. Each year we argue both the defense and prosecution positions (or defense and plaintiff if it is a civil case). This year the case is "The State of Midlands vs. Corky Robson." Corky is supposedly a police officer who may or may not have attacked a young Cuban male with a Tactical Strike Baton.

As I indicated on the phone, I am enclosing a complete copy of the case. Rest assured that your product does not appear in a particularly negative light, as the case is structured such that positives and negatives are built in to each witness and each bit of evidence.

This letter is to request a letter from you explaining the policy of Armament Systems and Procedures regarding sales of the Tactical Strike Baton (specifically, that we cannot get one because you only sell to peace officers and other people who have a valid reason to purchase). If you have any literature about the baton, please send that along as well. Since we are on a fairly tight deadline for regional competition, if you could send the letter out right away we'd really appreciate it.

Again, thank you so much for all of your help.

Sincerely,

A handwritten signature in black ink, appearing to read "B.T. Duranske", with a long horizontal flourish extending to the right.

Benjamin T. Duranske  
Co-President

# THE AMERICAN MOCK TRIAL ASSOCIATION

## MIDLANDS RULES OF COURT

### PREAMBLE TO THE MIDLANDS RULE OF COURT

The purpose of mock trial is to educate the youth of America about our legal system, our jurisprudence, and the work of our attorneys. To that end, the education function in all of our activities is primary, and any competitive aspect of mock trial is secondary. The ideals of fairness, civility, and justice guide our actions.

The Midlands rules of Court shall apply to all trials, civil and criminal, held in any court in the state of Midlands. The Midlands Rules of Court are the official rules of court for all mock trial tournaments sanctioned by the American Mock Trial Association (AMTA).

### Midland Rules of Procedure

**RULE 1. Scope.** These rules of procedure shall apply to all trials, civil and criminal, held in any court in the state of Midlands.

**RULE 2. Pre-trial conferences.** The court, or either of the parties, may ask for a pre-trial conference. Pretrial conferences may be used to mark exhibits, call stipulations to the attention of the court, ascertain the identity or gender of an opposing party's witnesses, assist the court upon request, or resolve any other matter which will facilitate the trial.

**RULE 3A. Time limits.** Time limits for all trials in Midlands shall be strictly adhered to, and for each side shall be as follows:

*Opening statements - 4 minutes*

*Direct examinations of all witnesses - 30 minutes*

*Cross examination of all witnesses - 20 minutes*

*Closing Argument - 8 minutes*

**RULE 3B. Untimed activities.** Time spent in arguing objections, for pre-trial or bench conferences, or for comments of judges shall not be assessed against either side.

### RULE 4. Running Clock Rule

(A) **Running clock rule defined.** The running clock rule requires that the case-in-chief of each party be completed in one hour.

(B) **Use of the running clock rule.** The running clock rule may be used, at the election

of the tournament organizers, at any AMTA sanctioned tournament, and will be used at national tournaments.

**RULE 5. Motions.** No motions are permitted before, during, or after a trial, except for the motion to strike testimony.

**RULE 6. Limitations on objections.** Objections to evidence are subject to the following limitations:

(A) **When objections are permitted and prohibited.** Objections are permitted during the examination of witnesses, but not during opening or closing statements.

(B) **Which Objections are permitted and prohibited.** The only objections which may be made are those which are consistent with the Midlands rules of Evidence; all others are not allowed.

(C) **Who may object.** Only the attorney who is examining a witness during direct or cross examination may advance objections during the questioning or testimony of the witness.

**RULE 7. Visual aids; limitations.** The use of visual aids, except electronic or light projected aids, is permitted subject to the following limitations:

(1). A visual aid must not contain material extraneous to the case, i.e. material not previously available to the opposing side.

(2). A visual aid must be consistent with the witness's affidavit, but must not be used by the witness as a substitute for notes.

(3). A visual aid must remain available to opposing counsel for the purpose of cross or redirect examination.

**Rule 8. Bench Conferences.** A bench conference may be called by either party to call the court's attention to any violation of any of the Midlands Rules of Court or any other reasonable purpose. Bench conferences should be held to a minimum to conserve time.

## **Midlands Rules of Evidence**

### **ARTICLE 1. GENERAL PROVISIONS**

**RULE 101. Scope.** These rules shall govern all trials in the courts of the state of Midlands.

**RULE 102. Preservation of error; necessity of an objection.** All evidence offered is considered admitted, and no error preserved for appeal, unless an objection, stating the specific ground therefor, is timely made.

(A) **Request to strike.** In the case of testimony made prior to objection, such testimony will stand unless a request to strike is timely made by the objecting party.

(B) **Offer of Proof.** In the case of a ruling excluding evidence, the substance of the evidence may be made known to the court by an offer of proof.

RULE 103. **Cross-examination and leading questions.** Leading questions may be used

- (1) anytime during cross-examination, or
- (2) during direct or re-direct examination only to lay a foundation for subsequent testimony, (unless the hostility of the witness is demonstrated, and a request or permission to lead the witness is granted by the court.)

RULE 104. **Scope of prior examination.** Any re-direct or re-cross examination must be within the scope of the examination immediately preceding it. The initial cross-examination is not so limited.

RULE 105. **Harassing not permitted.** Harassing of a witness is never permitted.

RULE 106. **No narrative testimony.** Testimony of witnesses must proceed by question and answer.

## ARTICLE 2. JUDICIAL NOTICE

RULE 201. **Judicial notice.** The court may take judicial notice of facts which are capable of easy determination from a source whose accuracy cannot reasonably be questioned including, but not limited to, calendar events.

## ARTICLE 3. PRESUMPTIONS

RULE 301. **Presumptions.** Presumptions regarding the burden of proof shall be:

- (A) **Civil cases.** In all civil cases the plaintiff shall have the burden of proof which shall be by a preponderance of the evidence.
- (B) **Criminal cases.** In all criminal trials the prosecution shall have the burden of proof, which shall be beyond a reasonable doubt.

## ARTICLE 4. RELEVANCY

Rule 401. **Relevancy defined.** Relevant evidence is any evidence which makes the existence or nonexistence of a fact necessary for the resolution of the case more or less probable.

Rule 402. **Relevant evidence admissible.** All relevant evidence, which has previously been made known to both sides in a trial, is admissible. However, relevant evidence, the probative value of which is outweighed by its prejudicial effect, may be excluded.

Rule 403. **Character of defendants or victims Inadmissible.** Evidence of the character or a trait of character of a defendant or a victim is not relevant unless it is an essential element of the claim, charge, or defense. Exception: However, a defendant may offer evidence of the defendant's own or a victim's character if notice of intent to do so is given prior to trial. If the defendant states an intention to offer such evidence, the plaintiff or prosecution may also offer such evidence during its case-in-chief.

Rule 404. **Methods of proving character.** Proof of character when admissible under Rule 403, may be offered in the form of direct testimony or an opinion about reputation. Only on cross, or re-direct examination, (if it is raised during cross-examinations), may inquiry be made into specific acts.

Rule 405. **Habits of a person.** The habits or routine practices of an individual, if relevant to the charge, claim, or a defense, are admissible.

## ARTICLE 5. PRIVILEGE

RULE 501. **Privileges recognized.** Only privileges granted by a statute of the state of Midlands shall be recognized.

## ARTICLE 6. WITNESSES

RULE 601. **Competence presumed; personal knowledge required.** Every witness is presumed to be competent, but no witness may testify to a matter unless evidence is first offered to show that the witness has personal knowledge of the matter testified to.

RULE 602. **Impeachment of a witness.** The credibility of a witness may be attacked by any party including the party who called the witness.

RULE 603. **Character and conduct of witnesses.** With regard to the character of witnesses (generally) the following rules apply:

(A) **Character of a witness generally.** Only character evidence, in the form of direct testimony or an opinion which attacks the witness's character for truthfulness, or the lack thereof, is admissible; and,

(B) **Prior criminal acts of a witness.** Character evidence in the form of testimony concerning prior criminal acts of a witness is admissible only if it concerns a conviction for a crime having a penalty exceeding one year of imprisonment under Midlands Law, and the crime involves dishonesty or false statement.

## ARTICLE 7. OPINION AND EXPERT TESTIMONY

RULE 701. **Lay opinions.** Opinions offered by ordinary witnesses are limited to those based on the ordinary perceptions of reasonable persons.

RULE 702. **Expert testimony.** A person whose special education, training, experience, knowledge, or skills will assist the determination of relevant fact questions may testify in the form of an opinion or otherwise concerning a relevant matter within the expert's recognized field of expertise. It is not a valid objection that such an opinion goes to an ultimate issue.

RULE 703. **Underlying facts or, data.** The opinion of an expert can be based on perceived facts or those made known to the expert if they are of the type reasonably relied on by those in the expert's field. The underlying facts can be inquired into on cross-examination regardless of relevance.

## ARTICLE 8. HEARSAY

RULE 801. **Hearsay definitions.** The following definitions apply under this article.

(A) **Hearsay defined.** Hearsay is a statement, other than one made during trial, offered to prove the truth of the matter asserted. A statement is not hearsay if it is a prior inconsistent statement by a witness who is testifying.

(B) **Declarant defined.** A declarant is a person, other than the witness offering testimony concerning it, who made the statement.

RULE 802. **Hearsay rule.** Hearsay is not admissible except as provided in these rules.

RULE 803. **Exceptions to the hearsay rule.** Evidence of a statement, even if hearsay, is admissible if the statement:

- (1) concerns the declarant's state of mind,
- (2) is an admission of a party opponent,
- (3) was made as a dying declaration,
- (4) was an excited utterance of the declarant,
- (5) was made in the regular course of business, or,

RULE 804. **Hearsay within hearsay.** The same rule of exclusion shall apply to a statement that is hearsay within hearsay. The same exceptions shall also apply.

RULE 805. **Impeachment.** Nothing in these rules shall prevent the impeachment of a witness on the basis of a previous, sworn, out of court statement.

## ARTICLE 9. AUTHENTIC EVIDENCE

RULE 901. **Necessity of authentication.** Evidence, other than testimony offered under oath, must be authentic. Foundation evidence of authentication is sufficient if it shows that the evidence is what it's supposed to be.

## ARTICLE 10. WRITINGS AND PHOTOGRAPHS

RULE 1001. **Fair and accurate copy required.** If the content of any writing, photograph, or recording is offered in evidence, the original document, photograph, or recording, or a fair and accurate copy, must be used.

## Spirit of AMTA Rules of Professional Conduct and Decorum

### ARTICLE 1. CONDUCT OF PARTICIPANTS

RULE 1.1 **Ideals of mock trial.** The ideals of fair play, sportsmanship, and friendship shall guide the conduct of all participant's throughout all mock trial activities, including but not limited to, tournament rounds, breaks between rounds, organizational meetings, and joint team practices.

**RULE 1.2 Integrity.** Participants shall at all times strive to exemplify the highest ideals of the legal profession; to maintain the highest standards of ethical conduct; and to strive for competence and integrity.

**RULE 1.3 Courtesy.** Courtesy toward opposing team members, judges, tournament officials, coaches, and one's own team members is expected of all participants at all times.

**RULE 1.4 Abiding by rules.** Participants, whether attorneys, coaches, witnesses, timekeepers, or alternates are expected to abide by these rules at all times.

**RULE 1.5 Conduct to be avoided.** Participants shall eschew any behavior designed to demean, harass, or embarrass any other participant or solely to garner notoriety or publicity for one's self or one's school.

## ARTICLE 2. DUTY OF STUDENT ATTORNEYS

**RULE 2.1 Diligent preparation.** All student attorneys shall strive to diligently undertake the study, preparation, and practice required to present their clients' cases with integrity and competence.

**RULE 2.2 Zealous representation.** Attorneys shall represent their clients zealously, but within the bounds of the law. Specifically:

*(A) If the facts of the case can lead to more than one inference, or the law can reasonably be interpreted in more than one way, the attorneys may argue the inferences and conclusions and interpretations most favorable to their clients.*

*(B) Student attorneys shall refrain from all offensive behavior; shall not attempt to circumvent any rule, nor commit any dishonesty, deceit, or misrepresentation, nor engage in any conduct that is unfair or prejudicial to the administration of justice.*

**RULE 2.3 Role of each attorney.** Each attorney shall conduct one direct and one cross-examination. Only the attorney handling the examination of a witness may interject an objection during the testimony offered by that witness. No attorney may give both the opening statement and the closing argument.

## ARTICLE 3. DUTY OF A WITNESS AND INVENTION OF FACT

**RULE 3.1 Learning and adhering to the role.** Each student witness shall endeavor, to the best of the student's ability, to faithfully learn and adhere to the role of that witness.

**RULE 3.2 Testimony of witnesses.** All witnesses shall remain faithful to their affidavits.

**RULE 3.3 Use of notes during a round prohibited.** A witness may not use notes while giving testimony. The recollection of a witness may be refreshed by the attorney for either side by allowing the witness to review a prior statement.

**RULE 3.4 Invention of fact rule.** Reasonable inferences not inconsistent with the text of a witness's statement in response to cross examination questions is permitted; however, invention of a material fact, during direct or redirect testimony, constitutes contempt of court and will result in a deduction of points by the judges.



**RULE 3.5 No excessive characterizations.** Witnesses are encouraged to develop the personality of their character. Extravagant costuming and characterizations are discouraged; however, dress and demeanor consistent with the character and role of the witness may be used.

#### ARTICLE 4. DECORUM DURING A TRIAL

**RULE 4.1 Addressing the court or witnesses.** Counsel will stand (unless physically unable to do so) at counsel table when speaking to the court, opposing counsel, or a witness, and shall maintain a respectful demeanor at all times.

**RULE 4.2 Courtesy.** Courtesy toward the court, opposing counsel, and witnesses, and respect for the law is expected throughout all trials.

**RULE 4.3 Approaching the court or witnesses.** Counsel will ask permission to approach the court, a witness, or an exhibit.

**RULE 4.4 Dress.** Appropriate dress shall be worn by all participants.

#### ARTICLE 5. CONDUCT OF COACHES

**RULE 5.1 Coaching goals.** Coaches are reminded that the purpose of mock trial is to instill respect for the legal system and its ideals of justice, equality, and truth. Coaches are asked to promote and champion these ideals above winning.

**RULE 5.2 Coaches responsibility.** Every coach, whether attorney or educator, has the responsibility to instill in every student, by word and by example, the highest ideals of the American legal system.

- (A) *Coaches shall, by word and example, instill in their team members the idea/s of fairness and professional integrity.*
- (B) *Coaches shall, by word and example, foster respect for judges and officials.*
- (C) *Coaches shall endeavor to instill the highest ideals of the American legal system and to reject all tricks, ploys, and statements that would reflect negatively on that system, or would promote an attitude of cynicism or disregard for the true ends of justice.*

**RULE 5.2 Contact with team during a round prohibited.** No coach shall contact or attempt to contact by any means, whether personally or through another, directly or indirectly, verbally or nonverbally, any member of a team once a round begins. This limitation includes whatever breaks or recesses the court permits during a round. Participants may speak with their teammates, including the timekeeper. They may also speak with relatives about non trial matters, so long as the relative does not and has not ever engaged in coaching or instructing the team.

#### ARTICLE 6. TIMEKEEPERS

**RULE 6.1 Necessity of a timekeeper.** Each party (team) must supply a timekeeper for each trial. The timekeeper shall become an officer of the court during the round.

**RULE 6.2 Duty of the timekeepers.** Each timekeeper, using a stopwatch, shall faithfully and truly keep track of the time used in every function of a trial. The timekeeper may indicate to the parties, at regular intervals, by the use of small unobtrusive cards, what part of the allotted time is still remaining. The



timekeeper shall announce aloud to the court when the time for any part of the trial, or the running clock, has expired.

**RULE 6.3 Record of time used.** Each timekeeper shall keep a written record of the time used on the forms provided for doing so, and will submit these forms to the judges at the conclusion of the trial.

## ARTICLE 7. CAPTAINS

**7.1 Necessity of one captain.** Each team must select a captain. The captain shall represent the team at captain's meetings.

**7.2 Captain's Meeting.** The captain for each team shall arrive promptly for all scheduled meetings of the team captains and perform all functions required by the tournament official presiding over the captain's meeting. Any team whose captain does not appear for a scheduled captain's meeting may be forfeited in the round following the meeting provided the captain is more than 10 minutes late, without good reason.

**7.3 Required function at the meeting.** Beginning with the captain for the plaintiff, each captain shall inform the opposing captain of the names and genders of the witnesses who will be called. When a case includes a choice of optional witnesses, the plaintiff declares witnesses first. The defense may not call a witness being called by the plaintiff.

## ARTICLE 8. ENFORCEMENT

**RULE 8.1 No protests.** It is the policy of AMTA that no protests concerning acts or comments of any participant, coach, official, judge, or observer of a tournament will be accepted or processed by tournament or AMTA officials during the course of a tournament. Written comments or complaints of any sort before or after a tournament are welcomed.

**RULE 8.2 Rule interpretations during a round.** The interpretation of any of these rules during the course of an actual round of competition at any AMTA sanctioned tournament shall be left to the sole discretion of the presiding judge.

**RULE 8.3 Complaints and rule Interpretations.** During the course of a tournament, but not during a round, complaints or requests for interpretations of a rule may be addressed to the officially designated AMTA representative or, if no representative has been designated, to the tournament organizer. Note: Ordinary tournament officials are volunteers who may be able to answer questions for you, but they are not prepared to receive complaints or interpret rules.

**RULE 8.4 Sanctions.** Coaches and team members who disregard the rules of this competition or who participate in or encourage others to participate in unsportsmanlike or unprofessional conduct may be subject to sanction including, but not limited to, forfeiture of awards and exclusion from further participation in AMTA sponsored events.

## **State of Midlands v. Corky Robson**

A criminal trial involving Police use of force  
and community relations

By Faith O'Reilly  
Hamline University

# **STATE V. ROBSON**

## **Prosecution Required Witnesses**

Investigating Police Officer - Sgt. Rollie Martinkovic  
Crime laboratory technician - O'Keefe Lewis

## **Defense Required Witnesses**

Commanding Officer - Clarion Police Chief W. Campy Hollowell  
Police Officer, partner to the defendant - Pat West

## **Optional Witnesses**

Friend of the suspect/victim - Cinco Santiago  
Emergency Room Physician's Assistant - Odell Carter  
Eye witness - Norma(n) Lubinsky  
Defendant - (may be called only by defense) Corky Robson

## **Victim - Fernando Chavez - unavailable to testify**

## **Scene**

Roadside of semi-rural area on edge of Clarion in Midlands Tuesday, June 15, 1995  
at 7:12 p.m.

## **Evidence**

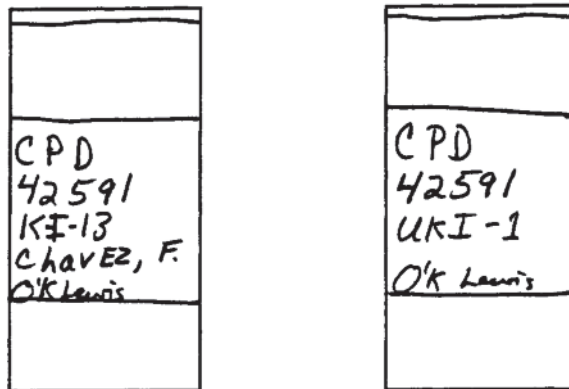
Sketch of area  
Narrative report of Officer West  
Narrative report of Officer Robson  
Narrative lab report of Police Technician Lewis  
Two evidence envelopes of Mr. Chavez's hairs  
Instruction book for ASP Baton  
Picture of Robson's ASP Baton  
Advertisement for ASP Batons  
Clarion Police Department Use of Force Policy

## **Legal Materials**

Indictment  
Stipulation  
Statutes  
Case Law Summaries

## DIRECTION FOR EVIDENCE PREPARATION

1. **ASP manual** - Put the pages of the ASP Manual in order so that when folded in the middle, the pages are numbered sequentially. Staple or sew the pages in the middle. It will be a booklet 5 1/2 by 8 inches.
2. **Hair samples** - Each of your teams will need two envelopes. Mark the envelopes exactly as illustrated. Put one hair in the envelope marked UKI-1. Put five hairs which are the same color and from the same person as the other hair in the envelope marked KI-13. No other hair samples or physical evidence can be used.



3. **Affidavits** - Prior to each tournament, regional, invitational, or national make a new copy of the second page of the affidavit for each witness and date it ten days prior to the competition.<sup>1</sup>

**NOTE:** You may not offer a real ASP tactical baton into evidence. You must use the picture. Use of one for demonstrative purposes is left to the sound discretion of each trial court judge.

**NOTE:** The judges will get a copy of this sheet and they will be told to exclude improperly prepared evidence and penalize any team offering evidence that is not prepared according to these directions. You can get extra evidence bags 4/\$1.00 by calling Susan Ewing at 515/283-0303. Allow 5 days for delivery.

---

<sup>1</sup> You may use "white-out" instead.

**IN THE CIRCUIT COURT FOR THE NINETEENTH DISTRICT  
FOR THE COUNTY OF CLINCHFIELD  
STATE OF MIDLANDS**

STATE OF MIDLANDS,  
Plaintiff

v.

CORKY ROBSON,  
Defendant

Criminal Case No. 95-721

**INDICTMENT**

---

WE THE GRAND JURORS for Clinchfield County, State of Midlands do hereby return a true bill on the charge of aggravated assault under Midlands Code 211.1(2)(a) and 211.1(2)(b) against the defendant Corky Robson in the above entitled action.

George Freeman, signed this 30<sup>th</sup> day of September 1995.  
Foreperson of the Grand Jury

**IN THE COURT FOR THE NINETEETH DISTRICT  
FOR THE COUNTY OF CLINCHFIELD  
STATE OF MIDLANDS**

STATE OF MIDLANDS,  
Plaintiff

v.

CORKY ROBSON,  
Defendant

)  
)  
)  
)  
)  
)  
)

Criminal Case No. 95-721

**STIPULATION**

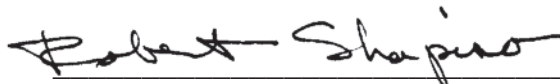
---

COME NOW the parties to this action and mutually stipulate to the following facts:

1. The injured party in this case, Fernando Chavez, is suffering from a brain injury, due to a depressed skull fracture, sustained on August 15, 1995.
2. Fernando Chavez is diagnosed as being in a persistent vegetative state and is unable to come to court or to testify.
3. The ASP Tactical Baton belonging to Corky Robson disappeared from The Clarion Police Department evidence drawer between June 15, 1995 and September 1, 1995.
4. A picture of an ASP Tactical Baton will be admissible if proper foundation is laid.

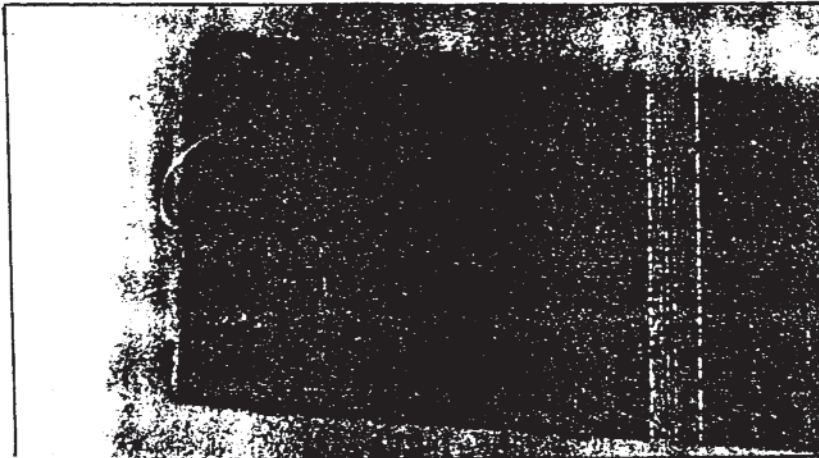


Assistant County Prosecutor

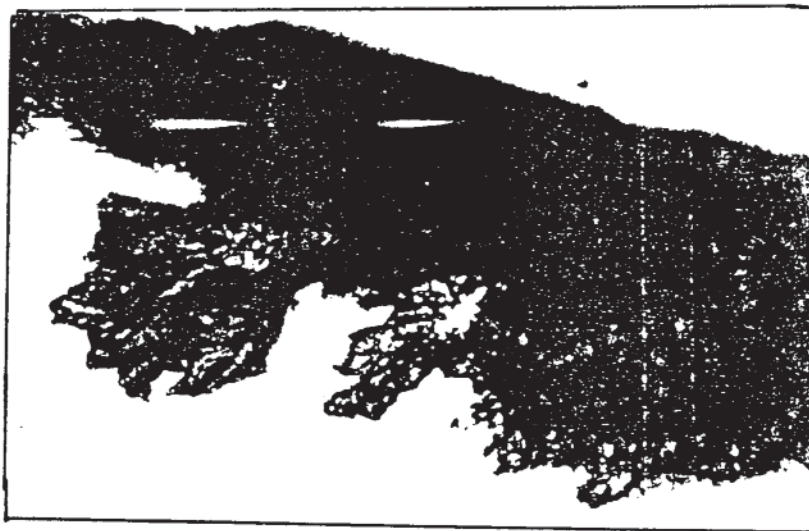


Attorney for Defendant

Clarion Police Department  
Clarion Midlands



slide 1  
UKI-1  
cut end



slide 2  
UKI-1  
blunt instrument  
flattening

Microscopic examination photographs

Case number ~~425A~~ 42591

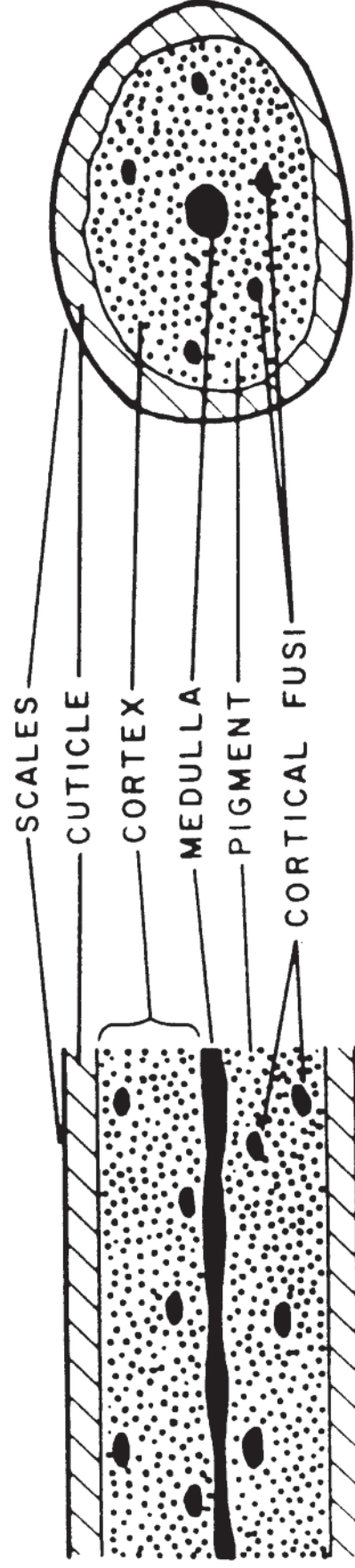
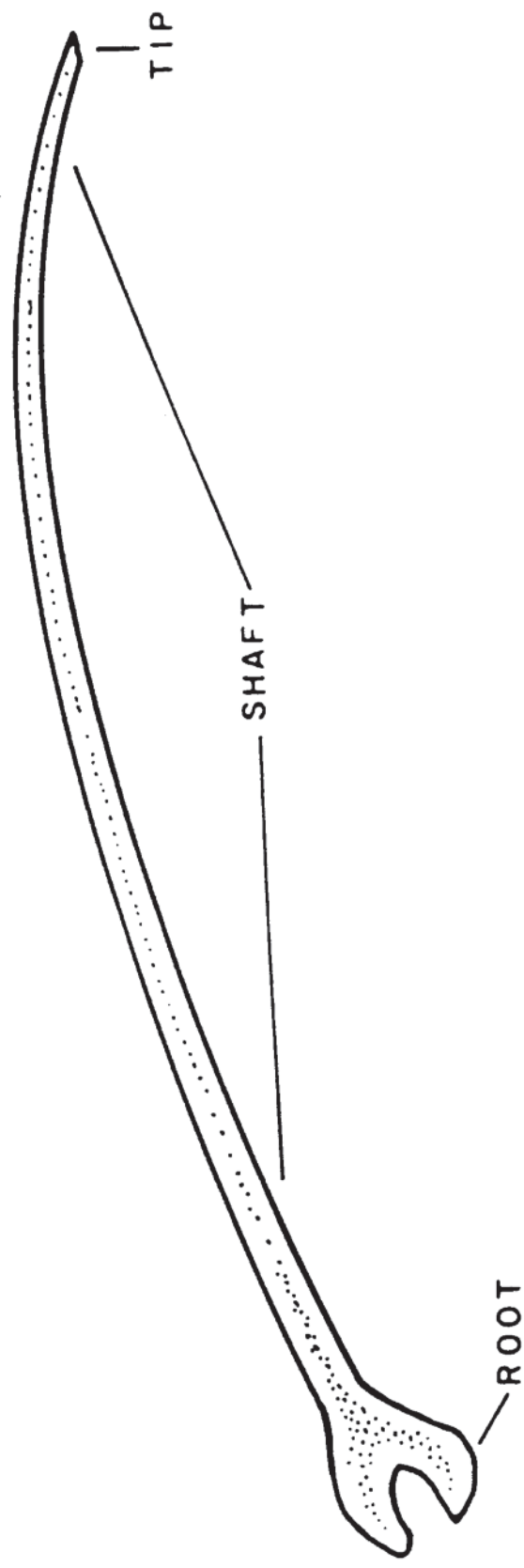
Subject of examination Hair samples - One unknown, One F. Chavez

Technician O'Keefe Lewis Date 8-12-95

Signed O'Keefe Lewis

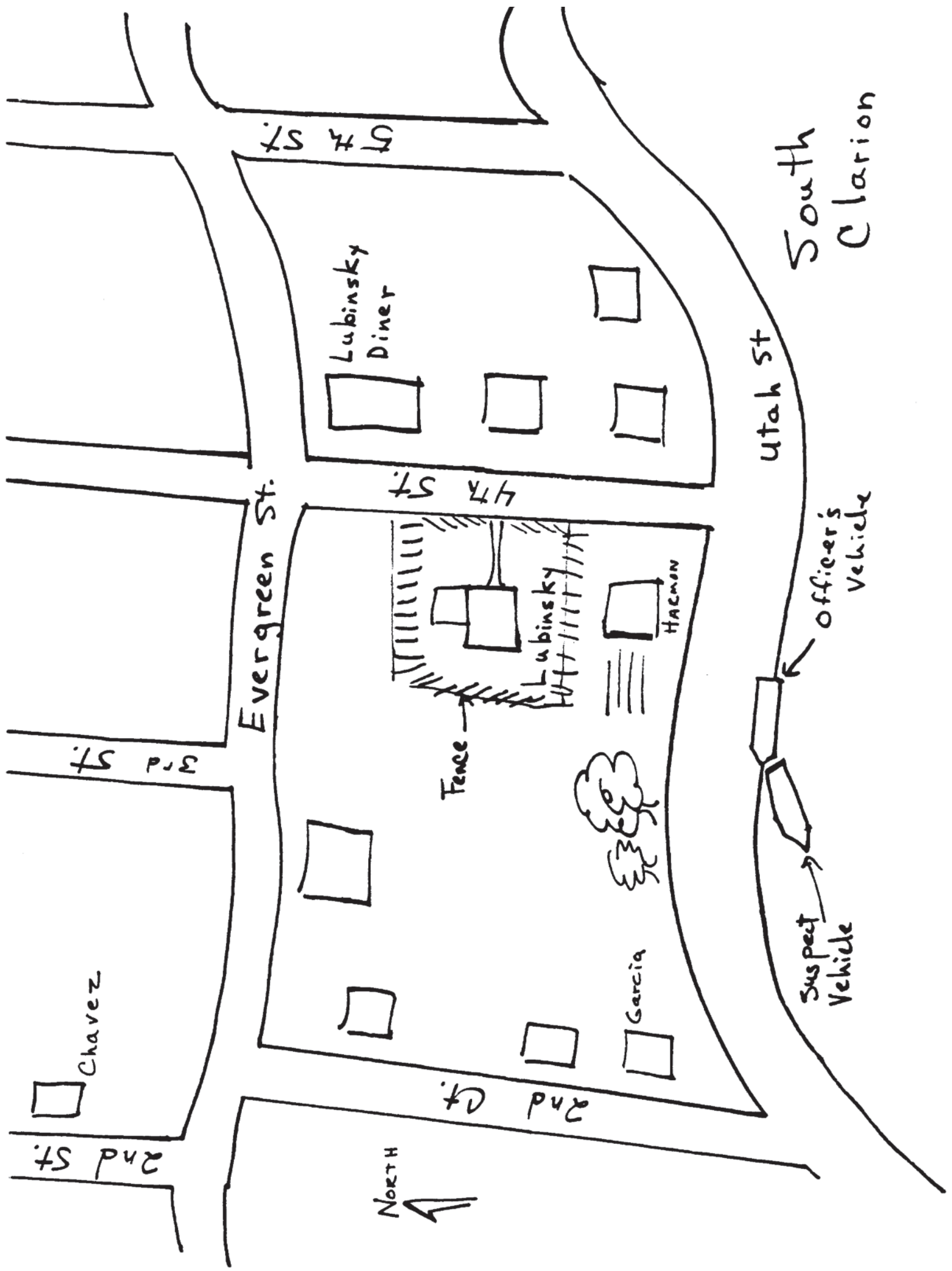


# DIAGRAM OF A HAIR



LONGITUDINAL SECTION

CROSS SECTION



South  
Claron

Utah St

Officer's  
Vehicle

Suspect  
Vehicle

North  
↑

2nd St.

Chavez

3rd St.

Evergreen St.

2nd St.

Garcia

Hansen

Lubinsky

Fence

4th St.

Lubinsky  
Diner

5th St.

To: Clarion P.D.

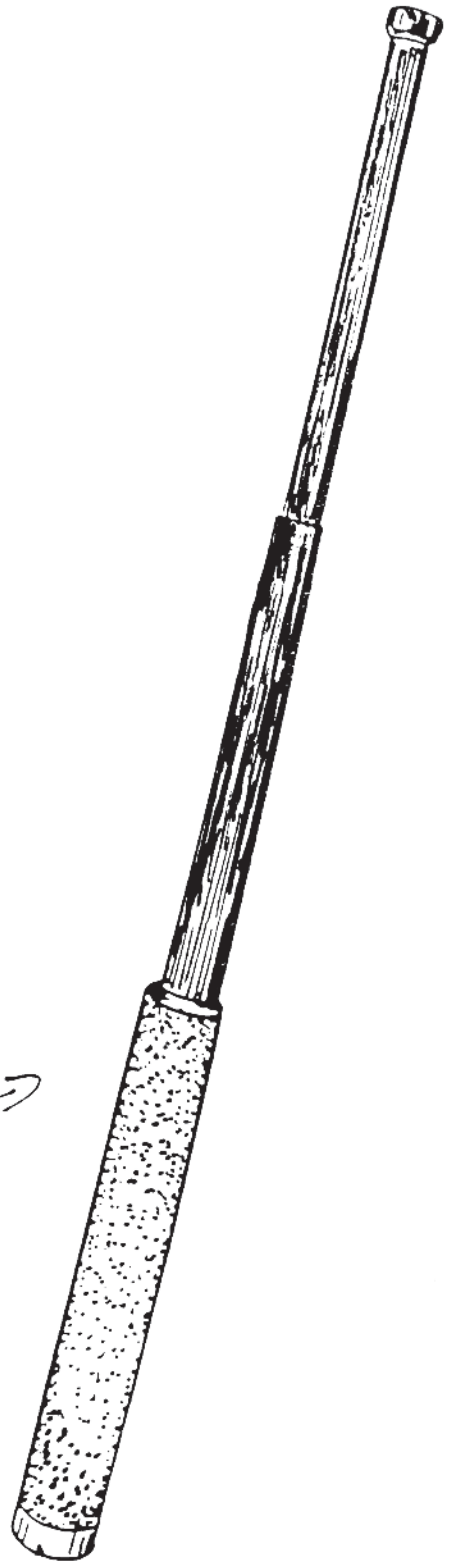
From: Corky Robson

Date: 6-10-92

If you would like an ASP  
like mine. Call me. I'll  
teach the course next month.

Very Handy! 682-4417

My ASP →



The ASP Tactical Baton

OK to post - Sgt. R. Marturkhoni



## ARMAMENT SYSTEMS and PROCEDURES, INC

### TACTICAL BATONS



The famous Tactical Batons from ASP provide both the plainclothes and uniformed professional with a compact, inconspicuous, yet devastatingly effective impact instrument. They offer the concealability, convenience and low profile image of a billy with the reach, controllability, and tactical superiority of a full size baton. ASP Tactical Batons are the only instruments of this type that are acceptable to, and issued by, most U.S. federal law enforcement agencies. They feature a precision machined steel baton with two telescoping shafts which collapse into a comfortable black matte foam cushioned grip. The baton may be instantly extended and locked securely into place with just a sharp flick of the wrist.

ASP Tactical Batons are American-made from the highest quality



aerospace alloys and ordnance synthetics.

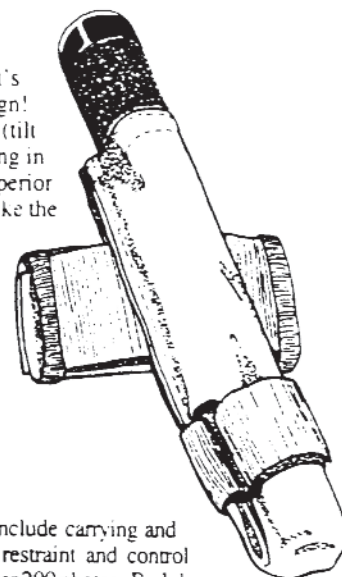
There are no sharp edges to abrade clothing or cut an assailant. Color: all black. Available in three sizes: the F16B Tactical Baton has a 6" retracted length, a 16" extended length, and weighs 13 1/2 oz. The F21B Tactical Baton has 7" retracted length, a 21" extended length, and weighs 16 1/2 oz. The F26B Tactical Baton has a 9 1/2" retracted length, a 26" extended length, and weighs 20 oz.

F16B .....	F16B Tactical Baton .....	\$42
F21B .....	F21B Tactical Baton .....	\$46
F26B .....	F26B Tactical Baton .....	\$50

### S-T TACTICAL BATON SCABBARD

Our unique new S-T Tactical Baton Scabbard is the best engineered scabbard available for the ASP Tactical Batons. It's so versatile that it will fit perfectly any of the three different length batons, even though it has a closed pouch bottom design! This scabbard features ease and versatility of draw. Unlike the other units offered, this one allows for complete canting (tilt relative to the belt) adjustability. This adjustable angle of draw is particularly useful with cross-draw techniques. Using in the canted cross-draw position ensures the most rapid deployment and most natural, efficient draw, and is particularly superior for plainclothes carry. Adjust to your exact personal preference- why be limited to a vertical draw or one preset angle like the others limit you to? The ease-of-draw adjustment strap when securely fastened will prevent undesired exiting of the baton from the pouch even under the most rigorous of field conditions. It has also been designed so it has a special holding area into which you can insert the baton while still in its extended position, so that you don't have to drop the baton to the ground when cuffing a suspect, thereby leaving a potential weapon available for a bystander to possibly pick up and use against you. Constructed of black ballistic nylon and webbing. Compatible with both left and right-handed use. With the ASP Tactical Baton, you're carrying the best; why not carry it in the best scabbard?

STTBS .....	S-T Tactical Baton Scabbard .....	\$19
-------------	-----------------------------------	------



### TRAINING MANUAL & VIDEO

This is the most comprehensive and practical text available on the ASP Tactical Baton. Topics include carrying and gripping methods, retention techniques, two-handed blocking techniques, vehicle extractions, restraint and control techniques, training aids, use of force review, and easy to learn street-proven techniques. Contains over 200 photos. By John G. Peters, Jr. (1992, 230 p.) Available January, 1993.

L-82 .....	Tactical Baton Manual .....	\$16
------------	-----------------------------	------

**VIDEO**—The video edition of the above training manual. Produced by John G. Peters, Jr. (60 minutes, VHS)

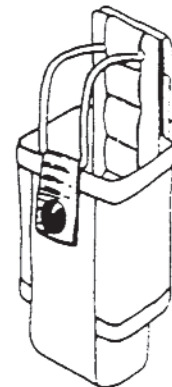
V-21 .....	Video, Tactical Baton .....	\$47
------------	-----------------------------	------



### S-T RADIO POUCH

The new S-T Radio Pouch will facilitate virtually every handheld radio in use today. Our design features an unique adjustment system which allows this pouch to securely fit most every model, from the large search & rescue types to the latest generation minis. It is completely adjustable for both circumference and height. It holds your radio firmly with no bunching of fabric (like with other "one-size-fits-all" radio pouches), yet allows for quick and easy removal and return of the radio. This robust unit is constructed from ballistic nylon and SCUBA webbing. Color: black.

STRP .....	S-T Radio Pouch .....	\$17
------------	-----------------------	------



***Tennessee v. Garner***, 485 U.S. 1 (1985)

A Tennessee trooper shot and killed Garner, who was attempting to flee over a fence at night in the back yard of a home that had been burglarized.

A balancing process needs to be applied. Notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The suspect's fundamental interest in his own life need not be elaborated. The use of deadly force frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment. Against these interest are ranged governmental interests in effective law enforcement.

Where a suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. [However] where the officer has probable cause to believe a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

***Daniels v. Terrell***, 783 F. Supp. 1211 (E.D. Mo. 1992)

A trooper's use of deadly force was justifiable under the circumstances. A passenger in a car pursued by the trooper shot at the officer who had stopped the car for a traffic violation. After another pursuit the car stopped again. The passenger ran away. The driver got out of the car, dropped his weapon and ran toward the officer. The trooper shot at him through the windshield of the police car. The driver fled. The officer ordered the driver to stop. He did not so the officer shot him. The trooper's use of force was proper: (1) while the suspect ran toward him, the trooper could reasonably believe the suspect posed a threat of serious harm to him, and (2) even if the suspect was not a direct and immediate threat to the trooper once he turned away, the trooper could reasonably assume that the suspect was a threat to society.

**NOTE:** Mock Trial participants are limited to the law provided with the case materials. You may use either the case summaries on this page or rely on the actual cases cited here.



# CODE OF MIDLANDS

## Article 3. Justification as an Affirmative Defense

### Section 3.04. Justifiable Use of Force in Self-defense

- (1) **Justifiable use of force in self-defense.** The use of force toward another is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting him- or herself against the use of unlawful force by the other person on the preset occasion.
- (2) **Limitations on the use of force.** The following limitations on the use of force apply under this section:
  - a. **Limitations generally.** The use of force is not justified under this section:
    - (i) to resist arrest whether lawful or unlawful by a police officer; or
    - (ii) to resist the use of force by another person who is acting to protect their own person or property unless
      - (1) the person is a law enforcement officer performing his or her duties or making a lawful arrest;
      - (2) the person is making a re-entry on unlawfully dispossessed property; or
      - (3) the person reasonably believes that such force is necessary to protect him- or herself against death or serious bodily harm.
  - b. **Limitations on deadly force.** The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect him or her self from death, serious bodily harm, rape or kidnapping.
  - c. **Other limitations on the use of force.** No use of force otherwise permitted as self-defense under this section is justifiable if:
    - (i) the actor provoked the use of force against him- or herself; or
    - (ii) the actor knows he or she can safely retreat, except that:
      - (1) no one is obliged to retreat from his or her own home or if retreat would expose others to harm; and
      - (2) a law enforcement officer who is justified in using force in the performance of his or her duties including making an arrest, is not obliged to retreat or to desist from efforts to perform those duties or effect an arrest because of resistance to those efforts by or on the behalf of, a person against whom those efforts are directed or who is being arrested.

\*\*\* \*\*

### Sec. 3.07 Use of Force by Police Officers

- (1) **Deadly force defined.** For the purposes of this section deadly force means which is used with the purpose of causing, or which the user should reasonably know is substantially likely to cause, death or great bodily harm.
- (2) **Justified use of force by sworn law enforcement officials.** A police officer or other sworn law enforcement official may use force against another person:
  - a. to arrest or to prevent escape of the other person, if the officer reasonably believes that force is immediately necessary to effect a lawful arrest or prevent escape of that other person; or
  - b. if the officer reasonably believes that such force is immediately necessary for the purpose of protecting himself or a third person against the unlawful use of force by the person being

arrested.

- (3) **Limitations on use of deadly force.** The use of deadly force is not justifiable under this section unless:
- a. the officer makes known the purpose of the arrest or reasonably believes it is known by the person being arrested or the arrest is pursuant to a valid warrant;
  - b. the arrest is for a felony and the officer reasonably believes that the use of force is necessary and will create no substantial risk of injury to innocent persons.

\*\*\* \*\*

## Article 211. Assault

### Sec. 211.0 Definitions

Unless a different meaning plainly is required:

- (1) **"bodily injury"** means physical pain, illness, or any impairment of physical condition;
- (2) **"serious bodily injury"** means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ;
- (3) **"deadly weapon"** means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

### Sec. 211.1 Assault

- (1) **Simple assault.** A person is guilty of assault if the person:
- a. attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another; or
  - b. negligently causes bodily injury to another with a deadly weapon; or
  - c. attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor punishable by not more than 6 months in jail.

- (2) **Aggravated Assault.** A person is guilty of aggravated assault if the person:
- a. attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; or
  - b. attempts to cause, or purposely or knowingly causes, bodily injury to another with a deadly weapon.

Aggravated assault under paragraph (a) is a felony of the first degree punishable by up to 1 year in jail; aggravated assault under paragraph (b) is a felony of the second degree punishable by up to 5 years in state prison.



# Clarion Police Department

## Use of Force Policy

### I. Purpose

The purpose of this order is to establish a policy and procedure regarding the use of force.

### II. Definitions

- A. **"Force"** is the attempt to establish control through physical means in the presence of resistance.
- B. **"Non-lethal Force"** is that amount of force that will not likely result in death or serious physical injury.
- C. **"Lethal Force"** is that amount of force that could result in death or serious physical injury.

### III. Policy

It shall be the Policy of the Clarion Midlands Police Department to employ the minimum amount of force, reasonable and necessary, to overcome the resistance offered, effect a lawful arrest, and/or accomplish the lawful performance of duty while protecting the public.

### IV. Authorization

- A. Midlands statutes deal with the legal levels of force that law enforcement officers may use in the normal performance of their duties. It should be emphasized that when consent or an emergency is not present, and there is not probable cause to make an arrest, the non-consensual roughing by a police officer may constitute a crime, as well as result in civil liability. When probable cause exists, criminal and civil liability may still occur if the limits of the law are exceeded.
- B. During an officer's tour of duty it may be necessary to use some level of control to effect an arrest or to protect others. Depending on the level of resistance offered, the officer may use techniques that may arise to a level of physical force that is intended to influence behavior. These techniques would consist of touch pressure, leg/hand strikes, impact weapons, or even the use of firearms if justified by the resistance offered.

### V. Level of Control

The use of force will be examined from two perspectives: resistance and control.

- A. **"Resistance"** is the attempt to evade the officer's control. The department recognizes six levels of subject resistance:

- Psychological resistance
- Verbal resistance
- Passive resistance
- Defensive resistance
- Active assault
- Aggravated active physical assault

- B. **"Control"** is the method an officer uses to neutralize the unlawful actions of a subject or to protect others. The department recognizes the following levels of control:

Officer presence  
Verbal direction  
Empty hand control  
Intermediate weapon control  
Lethal force

## **VI. Use of Force Procedures**

Officers should assess the incident in order to determine the level of control that would be appropriate. When possible, officers should attempt to gain control by means of verbal directives or commands.

## **VII. Lethal Force Procedures**

The use of Lethal Force is considered a measure of "Last Resort" as defined under section II.E and limited to the following situations:

- A. To protect the officer or another from what is reasonably believed to be an immediate threat of death or serious physical injury.
- B. To prevent the escape of a subject who is fleeing from an inherently violent felony crime.

## **VIII. Use of Lethal Force Prohibited**

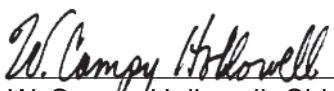
Lethal force may not be used in the following situations, except when necessary for self defense or the defense of others from an assault that is likely to result in death or serious physical injury.

- A. When it appears likely that an innocent person may be injured,
- B. To shoot at or from a moving vehicle,
- C. Solely because a subject fails to stop for a blockade or obey a command,
- D. To fire warning shots.

## **IX. Variables that affect the Force Continuum**

- A. Officer/subject: size, physical abilities,
- B. Environmental conditions: such as close or confined areas,
- C. Nature of contact,
- D. Exigent condition: number of officers, number of subjects involved, availability of back-up,
- E. Reaction time: the officer must consider that action is faster than reaction,
- F. Reactionary Gap: a safety zone between the officer and subject which affords the officer more time to react to aggression.

Every sworn officer of Clarion Police Department is instructed to know and follow this policy.

 4-20-89  
W. Campy Hollowell, Chief

**Clarion Police Department  
Clarion Midlands**

**NARRATIVE REPORT**

ORI MNO \_\_\_\_\_

Case Number <b>42591</b>	Reporting Officer <b>O'Keefe Lewis</b>	MOC Title <b>Technician</b>
<input checked="" type="checkbox"/> Form Used to Report Follow-up Investigation or Supplemental Information — Lab		Date and Time Report Made <b>8-12-95 13:30</b>

**NARRATIVE:** On Sept. 12, 1995, I obtained by pulling from specific points on the head of Fernando Chavez, a patient at Clarion Hospital 5 to 6 hair samples. I placed them in an evidence envelop and marked it KI-13. Nurse Georgiana Callo was present and observed me. Upon returning to the police lab I compared KI-13 with other samples in the case. I made detailed comparison with UKI-1 using the microscope. Observations and conclusions:

- (1) The hair in UKI-1 is substantially the same as those in KI-13 in color, size and texture. UKI-1 is not like any other sample in the case.
- (2) In cross sections the medullar in UKI-1 and KI-13 are elongated and virtually identical in size and shape.
- (3) The cuticles of UKI-1 and KI-13 are alike.
- (4) Measuring the diameters KI-13 was 98 microns. The UKI-13 hairs were 97 to 103 microns.
- (5) The composition of the cortex - keratin fibrills and corticle fusi of KI-13 and UKI-1 also compare favorably.
- (6) UKI-1 was cut on one end and flattened out on the other.
- (7) The sebaceous gland was missing so no further tests were indicated or ordered.

OVER

Date <b>8-12-95</b>	Officer's Signature <b>O'Keefe Lewis</b>	Supervisor's Approval <b>W.C. Hollowell</b>
------------------------	---	--

## Conclusions:

- (1) UKI-1 and KI-13 in all probability came from the same person. That person is Fernando Chavez.
- (2) UKI-1 came from the head of Fernando Chavez.
- (3) UKI-1 was recently cut on one end. That would be consistent with Mr. Chavez having recently having visited a hair stylist.
- (4) UKI-1 had a crushed or flattened end. That would indicate blunt force. This is consistent with a tactical baton strike hitting the hair shaft flattening and crushing it - although other causes are possible.

Blood - According to the arresting officer, Corky Robson all the blood was from the arrested person - Fernando Chavez.

There was dirt and rock mixed with all blood. All blood samples were Type O. According to the hospital records Mr. Chavez was also Type O.

It is my opinion that blood samples from the ASP and vehicle #800 were from Mr. Chavez

8-12-95  
O'Keefe Lewis

Clarion Police Department  
Clarion Midlands

NARRATIVE REPORT

ORI MNO

Case Number 42591	Reporting Officer Corky Robson	MOC Title
<input type="checkbox"/> Form Used to Report Follow-up Investigation or Supplemental Information		Date and Time Report Made 6-15-95 2130 hrs.

NARRATIVE: ON 6-15-95 at approximately 1930 hrs while on patrol my partner, Pat West, and I observed a red 1985 Buick, Midlands plate HSR 840, registered to Domingo Chavez, DOB 4-1-70, 1717 2<sup>nd</sup> St., Clarion, Midlands. We knew the car from previous contacts with the owner and believed the car to be driven by Domingo Chavez.

We stopped the car in the 400 block of Utah because we thought the driver was DUI. I ordered the occupants to place their hands out of the windows. The driver was later identified as Fernando Chavez, brother to Domingo Chavez and the passenger was later ID as Ciro Santiago, 1250 3<sup>rd</sup> St., Clarion, Midlands. I approached Chavez on the driver's side and Officer West went to the passenger side of the Buick.

Chavez got out from behind the wheel as I approached and began moving towards me in a threatening manner. I ordered him to stop at this time and simultaneously drew my Asp. Chavez did not respond to my verbal commands. He came right up to me and I thought he was going to strike me as he took an offensive stance. I ordered him again to stop and get down on the ground but he acted as if he was

Date 6-15-95	Officer's Signature Corky Robson	Supervisor's Approval W. C. Hollowell
-----------------	-------------------------------------	--

OVER



going to hit me so I struck him with my  
A.s.p., aiming the strikes to his arms and legs.  
We began fighting, moving around the Buick. I  
could not control Chavez, so I continued to  
strike his arms and legs with the A.s.p. as we  
fought. At some point near the front of the Buick  
Chavez fell against the car, shocking himself out.  
I handcuffed Chavez and noticed he was un-  
responsive so I called an ambulance and a command  
officer since I had used force to arrest Chavez. He  
was transported to Midlands General and admitted.  
Sgt Maitinkovic arrived and assisted in the investigation.  
Chavez was charged with assault, resisting, and perjury  
DUI and weapons charges. A .22 cal pistol was  
found in the Buick's trunk. For additional information.  
See Officer West's report.

6-15-95

Chilton

Clarion Police Department  
Clarion Midlands

NARRATIVE REPORT

ORI MNO

Case Number 42591	Reporting Officer Pat West	MOC Title
<input type="checkbox"/> Form Used to Report Follow-up Investigation or Supplemental Information		Date and Time Report Made 6-5-95 2145

NARRATIVE: On 6-15-95 at 1930 hrs my partner, Corky Robson, and were patrolling in the 600 blk of Evergreen when we saw a '85 red Buick, HSR-840 with two Culars in the car. The driver was going very slow and we believed he was drunk. The driver and passengers were later identified as Fernando Chavez (driver) 1717 2<sup>ND</sup> St., Clarion and Cinco Santiago, 1750 3<sup>RD</sup> St Clarion. Officer Robson was driving and initiated his stop on the 400 blk of Utah. The Buick's occupants were ordered to place their hands out of the car and we approached the veh. I took the passenger side and engaged Cinco Santiago.

Santiago was very drunk, unable to stand under her own power and vomited on my leg after she got out of the car.

Officer Robson was trying to control the driver Chavez, and fighting and striking him with an Asp. Santiago became more agitated when he observed the fight and attempted to move towards Officer Robson and Chavez. It was necessary to restrain Santiago and as we struggled Santiago's ~~foot~~ ~~hand~~ head hit the car door or fender, knocking Santiago unconscious. Officer Robson had Chavez under arrest and called for an ambulance for both Chavez and Santiago. Both suspects went to

Date 6-15-95	Officer's Signature Pat West	Supervisor's Approval W. C. Hollowell
-----------------	---------------------------------	--



Midlands Gen. Santiago was treated and released,  
Chavez was held.

At approximately 1950 hrs., Sgt Martinkovic  
arrived and took over the investigation. Santiago  
was charged with public intoxication and resisting arrest.

PW 6-15-95

1 COUNTY OF CINCHFIELD }  
2 } ss.  
3 STATE OF MIDLANDS }  
4  
5

AFFIDAVIT

6 ODELL CARTER, being duly sworn, deposes and says:

7 I am an Emergency Room technician at Clarion Hospital. I am twenty-eight years old.  
8 I was trained as a physician's assistant at Clarion College and received a B.S. degree  
9 in 1993. I was on duty on the evening of June 15, 1994. At 7:48 p.m. the  
10 ambulance arrived with two unconscious people. I recognized Fernando Chavez  
11 immediately even though Chavez was covered with blood. I'd treated this Chavez and  
12 the older brother in the ER several times. I didn't recognize the other person.

13 I had the ER nurse attend to the other person and I started on Chavez. I could  
14 tell right away that Chavez was in bad shape. The pupils of the eyes were dilated and  
15 uneven. The breathing was erratic and labored. There were bruises and small cuts  
16 all over the arms, shoulders, legs, and back. The right wrist appeared to be fractured.  
17 There was one large contusion on Chavez's head. The scalp at the point of the  
18 contusion was lacerated and blood from it had covered the face and soaked into the  
19 shirt Chavez was wearing. I talked to the doctor on call over the phone and described  
20 Chavez's condition. Doc said not to waste any time, to stabilize the patient and call  
21 life flight. I started an IV and worked on the bleeding. We immobilized Chavez's neck  
22 and back. The staff called the helicopter. I took a blood sample. I ran a quick BAC  
23 and blood type and sent the rest to the lab. I had to check for alcohol so I would know  
24 whether the patient could tolerate certain medicines. I didn't ask to check on  
25 other substances because I was only concerned with the patient's medical condition.  
26 I started a transfusion as soon as I could. Unfortunately, later we discovered that  
27 Chavez's blood sample had been lost.

28 Chavez started moaning and groaning. It was mumbled and I could make out  
29 only the following words, "No, no, no. No more, señor." Then, "Take 'em Okie!"  
30 Then Chavez began to convulse. I knew the patient's condition was grave. The lab  
31 said Chavez had no blood alcohol so, I gave him an IV to stop the convulsions and try  
32 to stabilize the patient. I didn't think Chavez was going to make it, but I gave it my  
33 best effort as I always try to do.

34 Some police officers walked into the room. One of them said they had come  
35 to arrest Chavez. I yelled to them to get out--that Chavez was critical. Usually I get  
36 along real well with the police. I like the Clarion police and I knew these two officers.  
37 They were always funny and nice, but at this point I needed to concentrate on the  
38 patient. The officer said it would only take a second. Luckily the other officer pulled  
39 the first one away and said, "Come on, Robson, that one's out of it anyway." The one  
40 called Robson answered, "Yeah, we won't have to worry about that one again." The  
41 Life Flight chopper arrived before the doctor who was on call. The helicopter landed,  
42 the officers helped me load Chavez, and the helicopter flew off.

43 After the helicopter left, the officer called Robson was laughing and talking for awhile  
44 with the night crew. I told them I doubted if Chavez could survive. The other officer  
45 got a concerned look and said, "Come on Robs, we better go to the station and cover  
46 our butts." That officer seemed worried, but Robson said, "Forget it. Nobody's going

1 to miss those hair balls. and besides, those two can't speak enough English to make  
2 a big deal anyway."

3 I knew the patient because I've treated Chavez and a brother for wounds on a  
4 couple of prior occasions. The other ER trips I remember were knife wounds. Both  
5 Chavezes were cut a couple of years ago and Domingo came in with long knife cuts  
6 across the face and chest last year about Christmas time. I decided they probably like  
7 to fight. I know the Cuban community in Clarion pretty well. A lot of them come into  
8 our Emergency room for treatment because they are poor and don't have any medical  
9 insurance. Most of them are really nice. A few of them, like the Chavez family, are  
10 real tough. I remember Chavez laughing and joking about something as I stitched up  
11 the wounds on one occasion. I remember thinking I'd probably see this patient again  
12 because Chavez didn't seem to be bothered by what had happened--like having no  
13 fear of being hurt or killed. The Chavezes spoke to me in English, but had a strong  
14 accent and had to think about the words. The Chavezes talked to the people who had  
15 driven them to the hospital in Spanish.

16  
17 I have reread my statement and thought about it carefully: I swear that it is the  
18 truth, the whole truth, and nothing but the truth to the best of my recollection. I  
19 understand that I have a duty to update my affidavit if I remember anything else.  
20  
21  
22

23 \_\_\_\_\_  
24  
25  
26 Subscribed and sworn to before me

27  
28 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

29  
30  
31 \_\_\_\_\_  
32 Notary Public  
33

1     **COUNTY OF CINCHFIELD**         }  
2   } ss.  
3     **STATE OF MIDLANDS**           }

**AFFIDAVIT**

4  
5             **O'KEEFE LEWIS**, being duly sworn, deposes and says:

6 I'm the crime lab technician for the Clarion Police Department. I've worked there  
7 for fourteen years. I have an associate degree in criminalistics from Midlands  
8 Community College. I had to work my way through school at Lubinsky's Diner at  
9 minimum wage so my GPA was only 2.1. But I graduated and I'm proud of that.  
10 Last year, after I helped solve the Cereal Murder the head of the Bureau of Criminal  
11 Apprehension told me they would like to hire me, but I need a bachelor's degree  
12 first. So now I'm taking weekend classes at State Center University with my  
13 graduation goal set for the spring of 1998. I attend a lot of seminars on  
14 criminalistics stuff. I went to one on hair and fiber analysis in 1985. I read a lot  
15 of journals too.

16             On last June 15th I got an urgent call from Chief Hollowell to come in at  
17 about eight o'clock in the evening. I was home watching baseball and enjoying a  
18 cool one, but I hurried over to the station. After I got there, I saw the chief who  
19 gave me a rough idea of what was coming down. I went looking for Sgt.  
20 Martinkovic. I got Corky's ASP from Rollie and headed immediately for the  
21 hospital where the two suspects were being treated. Luckily for me the other two  
22 officers were still there too because I had to get hair samples from everyone at the  
23 scene.

24             On the 15th I did get samples from the other kid, cinco Santiago, and  
25 officers West and Robson, but not Chavez. Those were samples #KI-1 through  
26 #KI-8. That means "item one, known source" and so on. Back at the station, I  
27 got a sample from the ASP baton. Sgt. Martinkovic put it in the evidence drawer.  
28 That one is #KI-13. Later in the lab I removed samples #UKI-1 and #UKI-2 from  
29 the ASP. As you can see from the lab report, there was also dirt and crushed rock  
30 dust matching that on the shoulder of Utah street mixed in some blood on the  
31 ASP. I ran the microscopic comparison tests I needed for this type of  
32 investigation. All the samples were human head hair. The hair in sample #UKI-13  
33 had been broken from a human head hairshaft. All the other samples were pulled.  
34 My conclusion is that sample hair #UKI-1 matches sample #KI-13. Sample #UKI-2  
35 matches sample #KI-8 from officer West. #KI-1,2,3,4,5,6, and 7, do not match  
36 #UKI-1. Only KI-13 matches UKI-1.

37             Chavez, was in terrible shape--actually I'm surprised that he made it. When  
38 I first saw him, there was a prominent swelling with slash marks in it, like the  
39 strike from a grooved ASP or a yuarra would leave on flesh, on the left side of the  
40 head. There was so much hair in the wounds that I knew a bruise match for the  
41 small groove I'd seen on Robson's ASP would be hard. I didn't get detail  
42 photographs that night. The physician's assistant who was alone working on  
43 Chavez seemed really stressed out and was ordering us all away. When I saw  
44 Chavez later at University Hospital, the doctors had drilled a pressure release hole  
45 right down through the main wound and his head was shaved, so comparison was  
46 impossible. After Chavez's head was shaved, I saw many small bruises, some  
47 with lacerations, and more on his chest, shoulders, and arms. Of course, some of  
48 those could be from the operation or the first-aid procedures. I finally got Chavez's  
49 hair samples at the nursing home here in Clarion after the hair grew back, about  
50 two months later. It is labeled sample #KI-13.

1 Microscopic examination of hair sample #UKI-1 revealed some flattening and  
2 destruction on the shaft which is consistent with the shaft being struck with a  
3 blunt instrument. The gross morphology of hair shaft #UKI-1 is the same as the  
4 sample taken from Chavez. The shape of the hair shaft for these two samples is  
5 the same, indicating they could have come from the same person. All the blood  
6 taken from the ASP was definitely that of the suspect Fernando Chavez. So was  
7 the blood from the car door. The hospital report and state lab report show the  
8 blood types.

9 Hair from the human head has characteristics that distinguish it from animal  
10 hair or hair from other parts of the body. In this case, the hair I extracted from the  
11 ASP was head hair from the suspect, Chavez's head, most likely. Under the  
12 microscope #UKI-1 showed one end fraying and ragged and the other cut off. The  
13 ragged end could be consistent with a bony part of the body having been struck  
14 with the butt or shaft of the ASP. That kind of fraying indicates the hair was  
15 struck with some blunt object or surface. Of course a car part could be blunt, too.  
16 Also the fraying could have happened at some earlier time, but ordinarily a  
17 damaged hair will break off and fall. The expanding section of the baton could  
18 even crush a hair as it was snapped off. The crushed end was probably ripped  
19 apart from the rest of the shaft after being caught in the ASP joint, but when or  
20 how that occurred I couldn't say. Now, as to how and when the samples #UKI-1  
21 and #UKI-2, from the suspect and the officer, got onto the ASP, there are a lot of  
22 possible explanations. A blow to Chavez's head with the ASP would be consistent  
23 with the hair evieence, but Chavez's hair could also have gotten there through  
24 contamination or during close physical combat. Or the weapon could have been  
25 set down at the scene. My opinion is that the hair samples #UKI-1 & 2 became  
26 stuck in the telescoping section of the ASP at the scene.

27 I have no idea where the baton went. I'm very careful with the evidence  
28 drawer. All I can think of is sometimes I shower at the P.D. and of course, my  
29 keys are in my pocket.

30 If I had known I would be called to testify I would have had the BCA do  
31 these tests. Officers West and Robson are my friends and I don't feel comfortable  
32 giving this affidavit. This will look bad for our whole department.

33  
34 I have reread my statement and thought about it carefully. I swear that it is the  
35 truth, the whole truth and nothing but the truth to the best of my recollection. I  
36 understand that I have a duty to update my affidavit if I remember anything else.

37  
38 \_\_\_\_\_  
39  
40 Subscribed and sworn to before me  
41 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

42  
43  
44 \_\_\_\_\_  
45 Notary Public  
46

1 COUNTY OF CINCHFIELD }  
2 } ss.  
3 STATE OF MIDLANDS }  
4  
5

AFFIDAVIT

6 CINCO SANTIAGO, being duly sworn, deposes and says:

7 I'm eighteen. I live 252 Utah in Clarion Midlands. I am a junior at Clarion High.  
8 My parents are from Cuba, but I grew up in America. I can understand Spanish, but  
9 most of the time I speak English.

10 Last summer on June 15th I was riding with my neighbor Fernando Chavez.  
11 Fernando is older than I am, but we like to do the same things. That night I was the  
12 passenger; Nando was driving. We were going to the roller-skating rink to meet some  
13 kid that Nando had a crush on. Nando's older brother Domingo, I know him too. He  
14 scares me because he seems like he's looking for trouble all the time. He sells drugs  
15 to everyone. I don't use any drugs because it would kill my mother. I know Nando  
16 does it sometimes, but I think it's just to please Domingo. We had just set out when  
17 a cop car pulled up behind us and flipped on the lights. Nando got scared right away.  
18 "They're after Domingo. I wonder if Dom left any stash in here?" Nando said. So,  
19 I got real scared too. I started to feel under my seat.

20 The cop on the loud speaker said to stick our hands out the window so we did.  
21 Next thing a big cop comes up and tells Nando to get out. That cop was a lot  
22 taller and heavier than Nando. But Nando says, "Why?" and the cop says, "Get  
23 out!" Just like that - real mean and no explanation. Nando got out and they went  
24 to the front of the car. Nando had to lay flat out on the hood while that big cop  
25 felt all over for a weapon or something. I was really getting scared. All the  
26 Chavezes are tough, but I like to take life easy.

27 Now I was really scared. I knew they were going to beat us up. All the  
28 time we hear about cops beating up the Cuban kids. My knees started to go weak  
29 and I started to sag. The cop yelled something at me and I started feeling sick.  
30 Then I lost my stomach. I didn't mean to; it just happened. I remember after that  
31 the cop said I was arrested and started taking me to the car. I heard Fernando call  
32 to me "Ayúdame, me están matando!" which means "Help, they're killing me!" in  
33 Spanish.

34 I felt I had to go back to help Nando so I turned. I saw Nando trying to push  
35 the cop away or back away from the cop's hand and protect his head. Nando's  
36 hands were up. Then the cop hit Nando in the face with something he held in his  
37 hand. It was the side of the cop's right hand that hit Nando's head. It was crazy!  
38 That thing in the cop's hand seemed so powerful. With every blow blood came  
39 spurting out. Then the thing popped out into a kind of long stick. Over and over  
40 the cop hit my friend. Nando's face went all bloody and he fell to the ground. I  
41 had to go help, but somehow the cop near me kicked my legs out from under me.  
42 I don't remember anything after that until I woke up in Clarion hospital. My head  
43 hurt terribly. I remember looking over at the table in the next room. There was  
44 Nando--all bloody. I heard the cops laughing. Nando looked dead. I passed out  
45 again.  
46



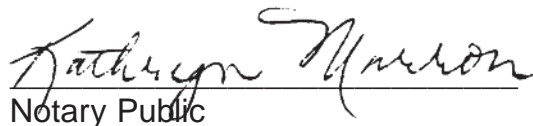
1 Later I was charged with interfering with an officer and disorderly conduct.  
2 My lawyer says I'm probably guilty since I tried to go back. But he got the judge  
3 to drop one charge and I pled guilty to disorderly conduct so I'll be on probation for  
4 a year. My mother is real sad but I'm glad to be alive. Last week I got arrested  
5 again, this time for shoplifting. The Clairion police are after me now. I'll probably  
6 have to plead guilty again. Maybe I'll have to go to jail. I guess I won't be going  
7 to Clarion College now. nando won't either because of the coma.

8 Everbody in our Cuban community is afraid of the Clarion cops. They beat  
9 up a lot of people. They are just like Castro's police. Nando's brother Domingo  
10 formed a self-protection group called Mi Amigos. They watch for cops and patrol  
11 the streets. Some of them, like Domingo, make money with drugs, but there are  
12 no jobs except meat packing here in Clarion - at least not for us.

13  
14 I have reread my statement and thought about it carefully. I swear that it is the  
15 truth, the whole truth and nothing but the truth to the best of my recollecton. I  
16 understand that I have a duty to update my affidavit if I remember anything else.  
17  
18  
19  
20  
21  
22  
23

24 Subscribed and sworn to before me

25  
26 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

27  
28   
29 \_\_\_\_\_  
30 Notary Public  
31  
32  
33  
34



1 COUNTY OF CINCHFIELD }  
2 } ss.  
3 STATE OF MIDLANDS }  
4  
5  
6

AFFIDAVIT

7 **NORMA(N) LUBINSKY**, being duly sworn, deposes and says:

8 I'm seventy-seven years old. I've lived alone since my spouse, Alvis, died four years  
9 ago. We bought our home together in the hard years and raised all our kids there.  
10 Naturally we didn't leave even when all those Cubans moved into the neighborhood  
11 a few years ago. I've lived in Clarion all my life. I couldn't afford an education for  
12 myself but me and Alvis put our four kids through Clarion College working at the  
13 Lubinsky Family Diner we started.

14 The government never should let all those foreign types move in all over our  
15 country. I suppose they want freedom from Castro, but it makes it hard on towns like  
16 Clarion. They take all the jobs and our kids have to move away. Well, honestly my  
17 kids wouldn't have stayed to work in the packing plant anyway, not after they  
18 graduated from college. That's who hires all those foreign types. But our  
19 neighborhood isn't the same anymore. There is loud music, stange smells and noisy  
20 cars all night long. Now the diner has food so hot I can't even put it in my mouth.

21 I like some of them. I like that little Cinco Santiago who lives down the block.  
22 Cinco is always fresh as a daisy and so helpful - has real good parents too. Cinco  
23 helps me with the garden in the spring and shovels my walk in winter. I was sure  
24 surprised to see Cinco getting in trouble with the police last summer- June 15th I  
25 think it was.

26 I was sitting out on my blacony trying to catch a breeze and avoid the  
27 mosquitos when the flashing light of the police car caught my eye. They were  
28 stopping a car across the street from my house. It was a big brown car I believe.  
29 The two cars pulled over and I stood up to see what was going on. One young officer  
30 got out and walked up to the brown car. I couldn't understand the words, but then  
31 the driver got out. It looked like the driver and officer were talking or arguing. The  
32 driver moved to the front of the car and kind of laid out over it. The driver was a  
33 shorter and smaller than the officer. It was just like I see on TV - the officer was  
34 barking orders and checking out the suspect for guns.

35 Then, another officer came out of the squad car and, to my surprise, Cinco  
36 Santiago got out of the brown car. Well, then I got concerned. I didn't want the  
37 officers to think Cinco was a criminal so I called out as loud as I could, "Officer don't  
38 bother about Cinco. I know the family. They're good people, they don't bother  
39 nobody." No one seemed to pay me any mind, so after that I just watched. Cinco  
40 didn't look good - kept falling and finally vomited. It worried me.

41 I don't know why, but suddenly every one started fighting. Cinco fell on the  
42 trunk of the brown car or maybe the hood. The other officer was yelling at the driver.  
43 The driver's hands were in the air. They began to move to the side of the brown car.  
44 The driver, who was the shortest person, was yelling and waiving hands and moving  
45 forward while the officer was swinging something. All I could see was a black thing  
46 that looked like wood. The driver dropped to the ground. The officer swung the thing

1 at the driver over and over hitting the driver everywhere - arms, shoulders, chest, and  
2 head. It is hard to be exact. I was getting pretty excited and my house is up the  
3 street, but I would say the officer hit the driver at least five or ten times. Poor Cinco  
4 looked dead and so did the other kid.

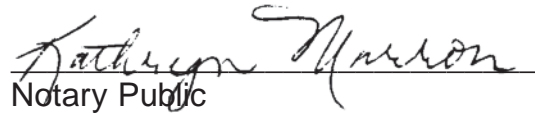
5 I went in to call Cinco's mother. I think the officers didn't have any choice  
6 because they have a job to do and the kids were not obeying the order to get down.  
7 Those kids need to learn respect for law and order, but maybe the officers could've  
8 hit them a little less hard. I heard the other kid is almost dead.

9  
10 I have reread my statement and thought about it carefully: I swear that it is the truth,  
11 the whole truth, and nothing but the truth to the best of my recollection. I understand  
12 that I have a duty to update my affidavit if I remember anything else.

13  
14  
15 \_\_\_\_\_  
16

17  
18 Subscribed and sworn to before me

19  
20 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

21  
22  
23   
24 Notary Public

1     **COUNTY OF CINCHFIELD**     }  
2     }     **ss.**  
3     **STATE OF MIDLANDS**     }

**AFFIDAVIT**

5     **ROLLIE MARTINKOVIC**, being duly sworn, deposes and says:

6     I am a sergeant on the Clarion, Midland police force. I joined the force when I was  
7     21 twelve years ago. I took the test to become a sergeant in 1991 and was  
8     promoted to sergeant last spring. I've lived in clarion all my life. I have a B.A. in  
9     criminology degree from Clarion College. I hope to serve the people of Clarion as their  
10    chief of police some day.

11    On June 15, 1995 I was sitting at my desk in the dispatch area working on the  
12    departmental fitness report when I heard a call from car #800 - that's the car that  
13    Corky Robson and Pat West were patrolling in. I recall that first I heard Pat's voice  
14    on the radio saying that they were stopping a motorist on suspicion of driving under  
15    the influence out on Utah Street near the edge of town. The next broadcast was Pat  
16    saying in an excited voice that things had gotten out of hand. I took it as a call for  
17    back up. I grabbed my hat and ran to squad car #600 parked outside. It was 7:40.  
18    I drive as quickly as I could to the scene. It was a little over a mile so I was there in  
19    less than three minutes.

20    When I arrived, I saw Corky Robson breathing very hard and standing over a  
21    person who was motionless on the ground three feet from a red 1982 Buick which  
22    I recognized as Domingo Chavez's car. I was immediately concerned because I  
23    knew that there was no love lost between the two officers, the Chavez family, and  
24    other members of Clarion's small Cuban immigrant community. I can't say that Corky  
25    and Pat were racists, but they hated it when the Cuban people spoke in Spanish and  
26    refused to answer their questions. They called it "gibberish".

27    When I got out of the squad car, Pat was on the radio calling for an ambulance.  
28    I checked Chavez for a pulse. I could see Chavez was still breathing, but was  
29    motionless and covered with blood. Cinco Santiago was hand-cuffed and was also  
30    unconscious on the ground, but closer to the squad car. I asked Corky what had  
31    happened. Corky said, "They got lippy an started that crap again. so we had to  
32    take them down." Corky's ASP was on the ground between the car and Chavez's  
33    body.

34    The ambulance arrived and took Chavez off to the Clarion hospital. Later I  
35    learned Chavez had been moved to University Hospital and was in critical condition.  
36    I picked up Corky's ASP and put it in my squad car to secure the scene. I know we  
37    don't have a departmental policy prohibiting officers from carrying those things, but  
38    in my opinion they are too potentially lethal for the kind of police work we do in  
39    Clarion.

40    I told Corky and Pat to go to the station and write up reports right away.  
41    When I got back to the station they had written citations for Chavez and Santiago for  
42    driving while intoxicated, resisting arrest, interfering with official acts, and disorderly  
43    conduct. They had talked to the chief and headed for the hospital. Later, after they  
44    heard that Santiago was accusing them of brutality, they got a lawyer and refused to  
45    talk to anyone about what happened.

46

1 I've known West and Robson since they joined the force seven years ago.  
2 They always ride as partners and everyone knows they are very close. They spend  
3 all their free time together. I think they both have bad attitudes, but Robson is the  
4 worst of the two. They seem to think that being police officers gives them the right  
5 to push people around. They really get into police SWAT tactics. They've brought  
6 in "wounded" arrestees before this incident. They always claim people are resisting  
7 arrest.

8 I've arrested Fernando Chavez myself for drunk driving and disorderly conduct.  
9 Chavez was never uncooperative with me. I took Spanish in high school so I always  
10 try to greet the Cubans in our community in their own language to make them feel  
11 comfortable. I went to see how Chavez was doing in the nursing home. He used to  
12 be a nice-looking young man about 5 feet 4 inches tall with wavy black hair. There  
13 isn't much hope for people in those persistent vegetative comas. The department got  
14 off easy two years ago when one of Robson's victims sued. He's had a lot of  
15 complaints filed against him.

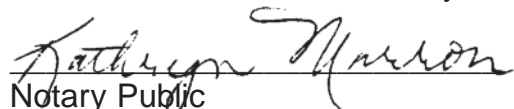
16 I have a twin. Robson moved in with my twin's ex-spouse two years ago. My  
17 nephew, Ralph, tells me Robson likes to tell Cuban jokes and laugh about how  
18 suspects are treated. Robson gets a kick out of talking tough and ordering people  
19 around in the police station. Robson and West told everyone about me falling asleep  
20 in my squad car in 1991. That's why it took me so long to make sergeant. They  
21 don't belong on the police force.

22 I saw the lab report on the hair. The sample is a definite match for the  
23 Fernando Chavez's head hair and the broken shaft means it was ripped out in a fight.  
24 I think Chief Hollowell's position is politically motivated. The Chief has applied to a  
25 bigger department so it's best for the Chief if Clarion's P.D. is a model force. The  
26 Chief favors Robson and West, that's why they get all the overtime. Robson's ASP  
27 disappeared. That's very suspicious. Our evidence drawer isn't as secure as a  
28 metropolitan or state force would have. The chief and I have keys. So does Lewis  
29 but any one on the force could get access to a key.

30  
31 I found the eyewitness Norma (N) Lubinsky. Lubinsky's version of events  
32 convinced me Robson over-reacted massively. Lubinsky said Robson hit Chavez on  
33 the head and all over the body many times.

34  
35 I reread my statement before the trial started and thought about it carefully: I swear  
36 that it is the truth, the whole truth, and nothing but the truth to the best of my  
37 recollection. I understand that I have a duty to update my affidavit if I remember  
38 anything else.

39  
40 \_\_\_\_\_  
41  
42 Subscribed and sworn to before me  
43 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

44  
45   
46 Notary Public

1     **COUNTY OF CINCHFIELD**             }  
2   }   **ss.**  
3     **STATE OF MIDLANDS**             }

**AFFIDAVIT**

4  
5             **CORKY ROBSON**, being duly sworn, deposes and says:

6     I am thirty years old. I am have been an officer on the Clarion Midlands Police  
7     Department since 1988. I love my job. I got interested in police work while I was  
8     in the Army. I was an MP. I was cited for bravery capturing an escaped prisoner.  
9     Naturally, I applied for a position with the Clarion Department when I got out of  
10    the service. It was hard getting on the force because of the hiring policies, but I  
11    made it on the second try. My partner, Pat West, and I started together.

12            I am married. We have one child and a step-child who lives with us. We  
13    live on the north side of Clarion. I've lived in Clarion all my life. I went to Clarion  
14    High School and I took a year of classes at Clarion Community College. I was  
15    trained at the Midlands State Police Academy. Besides my regular patrol duties, I  
16    am the PT instructor for the department. I have a black belt and I've won two  
17    state competitions in martial arts. I have medals for marksmanship from the army  
18    and from the police pistol matches.

19            I remember the events of last June 15th vividly. My partner Pat West and I  
20    were cruising the south neighborhoods looking for drug dealers we know. We saw  
21    a car we recognized as belonging to Domingo Chavez, a gang member in Mi  
22    Amigos who is known to use and sell drugs. We followed it for a while. It was  
23    going very slowly and weaving. The driver appeared to be impaired and it looked  
24    like the passenger was trying shuffle something around in the seat. Since we  
25    had probable cause, we turned on the light to stop the vehicle. Because the  
26    occupants were acting so suspiciously we approached the car cautiously. I  
27    ordered the driver out of the vehicle and Pat came to get the passenger after  
28    calling dispatch. The driver must have been on drugs or something.

29            I could tell it wasn't Domingo, but the driver looked a lot like him. It turned  
30    out Domingo was the driver's brother. I told him to put his hand on the roof of the  
31    vehicle, but he didn't do it. I gave the command again, but he was refusing to  
32    obey. He was turned toward me and began to advance on me as I moved forward  
33    toward him. I felt I was in danger so I decided to take him down. I pulled the ASP  
34    to defend myself and to gain control of the suspect as quickly as possible. I did  
35    not want the situation to get out of control because we were in a high crime  
36    neighborhood. It could be very dangerous for officers. In fact my partner Pat  
37    West called for backup because we could hear people yelling. It sounded like an  
38    old person to me but I could not tell what was being said.

39            I never hit the suspect on the head. I think he must have hit his head as he  
40    fell against his own vehicle. I drew my ASP because he was advancing toward me  
41    in a threatening manner. I though he wanted to fight me. I didn't even have time  
42    to get the ASP open at first. You have to sort of snap your wrist and the  
43    telescoping parts pop out. I hit him with it, but only on the arms because he was  
44    taking a swing at me. I did hit him a couple of times on the arms because he was  
45    swinging at me. He yelled at me or to his companion. I recall him saying  
46    something like, "Stand by your mother!" I don't know any Spanish; I'm sure he

1 was speaking English when he said that.

2 I know I've said, "I don't discriminate; I hate everybody equally, before."  
3 But that's just a standard police joke. I never let me personal feelings get in the  
4 way of my professionalism on the job and I try to treat everyone the same. Police  
5 work is very dangerous these days. There isn't any respect for law enforcement  
6 anymore. Everyone accuses the officer of violating their rights. They all want to  
7 be victims. It's almost always a coverup. I know because I've been accused of it  
8 several times before. I was always cleared. The Chief made a personal inquiry  
9 each time. The Chief and I see eye to eye on most things. I respect the Chief.  
10 The Chief gave me a departmental citation two years ago. Sergeant Martinkovic  
11 and I don't get along at all since I started dating Martinkovic's twin's ex-spouse.  
12 We're married now, but Martinkovic thought I broke up the first marriage.

13 I feel sorry for these Cuban people. They are brought all the way up here to  
14 Midlands to work in that packing plant. It's terrible work. I know. I did it for a  
15 few months until I was hired by the force. Most of these families don't even  
16 speak English so of course they have trouble fitting in. They treat the police like  
17 the enemy. We're just trying to do our job, but they don't see it.

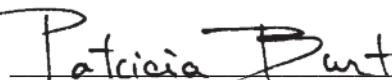
18 I am something of an expert in the use of the ASP. It is the same weapon  
19 Tanya Harding used on Nancy Kerrigan. I've had advanced training and an  
20 instructor's course in the use of the ASP because I'm the trainer for the  
21 department. Pat West and I wrote the training book for our department. It is an  
22 excellent tactical police weapon if used correctly.

23  
24 I love police work, it's my whole life. Putting the "bad guys" away is the  
25 most rewarding job I can imagine. I never saw my ASP after June 15, 1995.

26  
27 I reread my statement before the trial started and thought about it carefully. I  
28 swear that it is the truth, the whole truth, and nothing but the truth, to the best of  
29 my recollection. I understand that I have a duty to update my affidavit if I  
30 remember anything else.

31  
32 \_\_\_\_\_  
33  
34  
35  
36 Subscribed and sworn to before me

37  
38 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

39  
40  
41   
42 \_\_\_\_\_

43 Notary Public  
44  
45  
46



1     **COUNTY OF CINCHFIELD**         }  
2   }   **ss.**  
3     **STATE OF MIDLANDS**           }

**AFFIDAVIT**

6             **PAT WEST**, being duly sworn, deposes and says:

7     I have been a police officer in Clarion for seven years. I've lived in Clarion all my life.  
8     I joined the force with my friend Corky Robson. We went to Clarion College for two  
9     years, but dropped out to join the military. We had both enlisted in the Army as MPs.  
10    We joined the police force when we got out. Corky and I were attracted to police  
11    work because we were used to the disciplined atmosphere of the military and we  
12    wanted to help rid the streets of our community of criminals who prey on innocent  
13    citizens. Corky likes to talk tough, but I know better. Corky wouldn't hurt anyone  
14    without a good reason and has a heart as big as all outdoors.

15    I hate to think about what happened last June 15th. I don't like to see anyone  
16    get hurt but honestly Fernando Chavez didn't give us any other choice.

17    It started as a routine patrol on a hot summer night. It was a Tuesday so we  
18    were expecting a real boring four to midnight shift. We were cruising in squad car  
19    800 when we saw Chavez's red Buick. The car was going real slow, like the driver  
20    was drunk or something, so we decided to stop them and see what the deal was.  
21    Chavez was driving with someone who turned out to be Cinco Santiago in the  
22    passenger's seat. We flipped on the cherry and pulled them over.

23    We knew Chavez from prior arrests for disorderly conduct and we'd been  
24    staking out the Chavez home on a suspicion of drug sales and burglary. Fenando  
25    Chavez's older brother, Domingo Chavez, has been busted for sales of marijuana,  
26    amphetamines, and crack. That guy's a real loser and a hard case. He's known to  
27    beat up on rival pushers. anyway, we suspected Fernando might be high or even  
28    transporting some dope for Domingo, so we pulled them over.

29    Corky used the loud speaker to tell them to stay in the car and stick their hands  
30    out the windows. I called in the stop to dispatch while Corky went up to their car.  
31    Corky had Chavez get out and stand with both hands stretched out over the hood of  
32    the vehicle to check for weapons. I came up on the right side of the vehicle and got  
33    the passenger out. The passenger showed me an ID with the name Cinco Santiago.  
34    Santiago was obviously very high or drunk. Here's what happened: First, Santiago  
35    falls down, then throw up on my pants, then refuses to stand up. I decide to make  
36    an arrest for public intoxication.

37    I could hear Chavez arguing with Corky while I struggled to get Santiago back  
38    up. It sounded like whining, not threats, so I turned away to walk Santiago back to  
39    the squad car. I heard Corky saying, "Get down. I told you to get down, dirt ball...  
40    Get down!" Corky's voice got louder and louder and more and more urgent. Then I  
41    heard Chavez yell, "Screw you, cop." and a bunch of stuff in Spanish. I also heard  
42    someone in the neighborhood, which is largely Cuban and hostile to the police yell,  
43    " Leave those-- something, something-- I couldn't understand-- alone. They're not  
44    bothering you." I heard several voices. Now I was very worried. We might lose  
45    control of the situation entirely, like a riot. suddenly Santiago whirled, jerked away  
46    from me, and charged toward the other tow. I used a judo maneuver to trip Santiago



1 who fell head-fist into the squad car. Santiago's head struck the hood of the car.  
2 Then I jumped up to go help Corky. I saw Chavez with both arms raised to shoulder  
3 height, hands flailing the air, coming at Corky near the corner of the driver's side in  
4 front of the car. They traveled from the front of the car over to the driver's side. I  
5 pulled my gun, but Corky was between me and Chavez. There was a flurry of  
6 motion. Corky was swinging the ASP several times at shoulder level. Chavez was  
7 ducking, then swinging arms and legs at Corky. Corky kept saying "Get down! Get  
8 down!" Chavez was yelling in Spanish. Suddenly Chavez dropped to the ground next  
9 to the car. I think Chavez slipped in the loose gravel on the shoulder of the road. On  
10 the way to the ground, I saw Chavez's head hit the edge of the open car door on the  
11 driver's side. It must have cut the scalp because blood was all over. When I got up  
12 beside them, Chavez's hair was matted with blood and gravel. The sleeveless shirt  
13 Chavez was wearing was also blood soaked. But at least Chavez was no longer a  
14 danger to either of us.

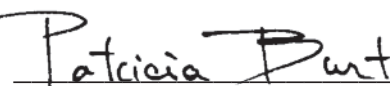
15 I saw Chavez in the hospital later. We went there to arrest him. We went  
16 there after that know-it-all Martinkovic showed up and started issuing orders. Life  
17 Flight came before we could effect the arrest. I guess Chavez was hurt pretty badly,  
18 but I believe Chavez was trying to escape and would have killed us if Corky hadn't  
19 acted. Corky should be given a commendation, not prosecuted. This trial is a witch  
20 hunt. The mayor just wanted to make those cubans happy to get their votes in  
21 November. Don't get me wrong, even though we don't have any Latin ancestors, we  
22 don't have anything against Cubans. They could at least learn our language if they're  
23 going to live in our country, but they deserve a chance like everyone else if they work  
24 and keep a clean record.

25 I charged Santiago with disorderly conduct and interfering with an arrest. I  
26 showed up for the trial, but the prosecutor let Santiago plead to disorderly conduct.  
27 I'm still on the Clarion force, but I don't think I'll stay if Corky doesn't get to come  
28 back. It really isn't fair.

29 I've known Corky Robson since high school. Corky's a great friend and partner.  
30 Corky really knows the martial arts, but I've never seen Corky use excessive force.  
31 That guy who sued us a couple of years ago was a whiner. He was drunk and started  
32 it. Corky had to use the ASP that time too. The City never should have paid a dime.  
33 That guy was resisting arrest if I ever saw it.

34  
35 I have reread my statement and thought about it carefully: I swear that it is the truth,  
36 the whole truth, and nothing but the truth to the best of my recollection. I understand  
37 that I have a duty to update my affidavit if I remember anything else.

38  
39 \_\_\_\_\_  
40  
41 Subscribed and sworn to before me  
42 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

43  
44   
45 \_\_\_\_\_  
46 Notary Public

1     **COUNTY OF CINCHFIELD**             }  
2   }   **ss.**  
3     **STATE OF MIDLANDS**               }

**AFFIDAVIT**

6             **W. CAMPY HOLLOWELL**, being fully sworn, deposes and says:

7     I am the Chief of Police for Clarion Midlands. I have held the chief's position here for  
8     nine years. Prior to coming to Clarion as chief I held a sergeant's position in  
9     Galveston, Texas. I started my police career in 1956 as a rookie on the Dallas Police  
10    Force. I was promoted to sergeant in 1967 and to lieutenant in 1975. I worked for  
11    ten years as a detective and homicide investigator. I'm proud of my record as Chief  
12    in Clarion. I run a tight ship in my department. I treat my officers right and they  
13    perform up to the top police standards. We've never had an incident of police  
14    corruption or brutality since I've been chief and I don't plan to allow any in the future.  
15    I received a bachelor's degree in Sociology from Metro College in Dallas in 1974 and  
16    in 1982 a master's degree in the administration of criminal justice from Sam Houston  
17    University. I've devoted my life to police work. Right now I'm a finalist in  
18    consideration for the post of Chief of Police Sacramento, California.

19    I know both Officer Robson and Officer West. I would say they are outstanding  
20    officers. Officer West was given a medal of commendation for his work with the  
21    school drug task force last year and Officer Robson was decorated for bravery.  
22    Officer Robson attends my church and hasn't missed a day of work in seven years on  
23    the force. I don't believe either of them would use excessive force. They are two  
24    very disciplined officers. I have personally looked into all ten of the complaints  
25    against Robson. None of them were well founded. We had to give one guy a  
26    nuisance settlement of \$45,000 because it would have cost too much to defend the  
27    suit. The guy broke his arm fighting with Robson. Every Clarion officer has been  
28    accused of violating some suspect's right's at some time, only Robson has more than  
29    two, but every cop today will get complaints. It's part of the job.

30    I was first informed of the tragic incident involving Fernando Chavez late at  
31    night on June 15, 1995. I was called by the night dispatcher at my home about 8:00  
32    p.m. and told that a routine traffic stop had resulted in serious injury. I came to the  
33    station immediately. When I learned that the suspect, Fernando Chavez, was in  
34    critical condition and might die, I decided to take charge of the investigation  
35    personally. Sgt. Martinkovic had started the investigation, but I thought it best to  
36    change that because I knew Martinkovic didn't like Robson. Also I saw this case as  
37    one that could get ugly from the public relations stand point since it involved a  
38    minority community, so I felt I personally needed to be involved.

39    The suspect's car had already been towed. I searched it at the police station  
40    garage. I didn't find any drugs, but there was an unloaded .22 caliber pistol wrapped  
41    in a greasy rag in the trunk. That didn't surprise me. The Chavezes are real punks-  
42    gang members. I would have charged Chavez with possession of an illegal weapon,  
43    but it doesn't look like Fernando will ever recover so what's the use. I asked the two  
44    officers to prepare reports of what happened, and I talked to them before I let them  
45    go home.

1 Both officers assured me that only necessary force was used. Robson said  
2 Chavez was stopped for suspected drunk driving. I know the blood alcohol test done  
3 at the hospital indicated that the suspect had not been drinking, but we had been  
4 watching Chavez's house as a suspected crack and amphetamine house for a couple  
5 of months prior to June, so they were probably high on something. Robson said  
6 Chavez got agitated while being arrested and charged for improper driving. Robson  
7 told of having to forcibly subdue Chavez and using the ASP only on Chavez's arms,  
8 back and shoulders. At no time was Chavez hit on the head according to my officers.  
9 I've run workshops on subduing suspects and we always stress the danger of head  
10 blows. Both officers said the suspect stumbled and fell onto the Chavez vehicle and  
11 could have suffered a head wound that way. I saw blood on the door of squad car  
12 #800. Somebody sent it to be washed. That was a mistake. I think the late shift  
13 guys just wanted a clean car, but we missed the chance for blood analysis.

14 We sent Robson's ASP and some hair that was clinging to it to our crime lab.  
15 The lab reports I got back indicates that hair and blood found on the ASP were from  
16 Chavez. I understand that the ASP disappeared from the evidence drawer. I ordered  
17 a search and investigation, but it never turned up. I have a key. so does Sgt.  
18 Martinkovic and Lewis, our identification and evidence technician. We don't issue  
19 ASPs, but I believe in letting my officers decide what weapons they need for personal  
20 safety in today's violent world, so there is no departmental ban on such weapons.  
21 Both Robson and West are self-defense buffs. They spend a lot of time in physical  
22 training and do tactical-force workshops for officers in my department and other  
23 departments around Midlands.

24 We have only a small Cuban immigrant community in Clarion. Most of those  
25 folks are decent, law-abiding, people but there are a few drunks and pushers too. All  
26 the Cubans live over on the south edge of town on Nevada and Utah streets. They  
27 mostly keep to themselves, probably so they can speak their own language, which I  
28 can't understand. I've never given my officers any special training in dealing with  
29 minorities. Clarion is a small, friendly town, and besides, I believe everyone should  
30 be treated the same. However, it is hard to do our investigations if people won't  
31 speak English.

32 My investigation concluded that only reasonable and necessary force was used,  
33 so I did not suspend the officers. The county attorney took the case to the grand jury  
34 to satisfy the Cuban community. We were shocked when they returned a true bill  
35 against Officer Robson. I believe the officer is innocent of any wrong doing and  
36 should be acquitted.

37  
38 I have reread my statement and thought about it carefully: I swear that it is the truth, the whole truth,  
39 and nothing but the truth to the best of my recollection. I understand that I have a duty to update my  
40 affidavit if I remember anything else.

41  
42 \_\_\_\_\_  
43  
44 Subscribed and sworn to before me  
45 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

46  
47   
48 \_\_\_\_\_  
49 Notary Public

# ASP BATON TRAINING MANUAL

## Training Terminology 6.02

In order to insure the safety of participants, both instructor and students must share a common training terminology.

### Body Terms 6.02.01

For the purpose of explanation and instruction, the following terms are used throughout the AIC Program:

- 1.] *Weapon Hand:* sometimes called the "Strong Hand." The hand used to draw and fire the firearm regardless of which and [right or left] is used. The Weapon Hand is used to execute ASP Strikes.
- 2.] *Reaction Hand:* The hand opposite the Weapon Hand. The Reaction Hand is used to maintain distance and redirect an assailant. A police officer should never be taught that any training component is weak. Therefore, refer to this hand as the Reaction Hand, not the "Weak Hand."
- 3.] *Weapon Leg:* sometimes called the "Strong Leg." The leg on the firearm side of the body. This side of the body is referred to as the Weapon Side.

- 4.] *Reaction Leg:* The leg opposite the Weapon Leg. This side of the body is referred to as the Reaction Side.

### **ASP Modes 6.02.02**

There are two Modes for the ASP Tactical Baton:

- 1.] *Closed:* The baton is fully closed within the handle of the weapon.
- 2.] *Open:* The baton is fully extended and locked in place.

### **ASP Positions 6.02.03**

There are two positions from which an ASP Strike is executed:

- 1.] *Ready Position:* The baton is held in the Weapon Hand just behind the Weapon Leg. The Reaction Hand is up, ready to redirect an assailant. The baton may be Open or Closed.
- 2.] *Loaded Position:* The baton is held in the Weapon Hand at the point of the shoulder. The Reaction Hand is up, ready to redirect an assailant. The baton may be Open or Closed.

### **Interview Stance 6.03**

The Interview Stance is necessary for proper balance and control. Balance, power and rapid response result from a correct Interview Stance. This stance is consistent with the Weaver Shooting Position.

The Interview Stance:

- 1.] Feet approximately shoulder length apart
- 2.] Knees slightly bent, not locked
- 3.] Reaction Leg forward
- 4.] Weapon Leg back with foot angled at about 45 degrees
- 5.] Reaction Hand up to protect the face and guard the upper body
- 6.] Weapon Hand slightly raised to draw the baton or firearm
- 7.] Body weight equally distributed on both feet

The Interview Stance is a natural, comfortable way to stand. Officers should stand in an Interview Stance at all times. All ASP Techniques begin from the Interview Stance.

### **Reaction Hand Defense/Safe Separation 6.04**

The Reaction Hand is the first line of defense against attack. The reflexive response

of the Reaction Hand can prevent an assailant from disabling the officer. It also creates distance and misdirects an assailant's attack.

In all ASP Techniques, the Reaction Hand is kept up to protect the face, chest and abdomen.

When blocking with the Reaction Hand, keep the arm close to the body when misdirecting punches. Avoid swinging the arm out, away from the body, to meet an assault. An outstretched Reaction Hand leaves the body open to additional assault.

Effective Reaction Hand Defense will often gain that essential time needed to draw a baton or firearm to control an assailant.

**WEAPON HAND:** draw and use baton or firearm.

**REACTION HAND:** block or redirect assaults.

#### **Check 6.04.01**

The check is a part of the Reaction Hand Defense. The Check insures that an assailant is close enough for an effective strike with the baton. The Check also stops the subject's forward momentum, maintaining an effective striking distance.

#### **Redirection 6.04.02**

Redirection is part of the Reaction Hand Defense. The technique directs an assailant's forward motion away from the officer.

#### **Step and Drag 6.04.03**

The Step and Drag Technique assures the officer will maintain balance even when moving forward or back.

Step and Drag is accomplished by stepping with one foot, then dragging the other foot back to a correct Interview Stance. Performed properly, the officer always maintains balance with body weight evenly distributed over both feet even if an attack would occur in the middle of moving forward or back.

To move forward, step ahead with the Reaction Leg, then drag the Weapon Leg forward until an Interview Stance is attained.

To move backward, step back with the Weapon Leg, then drag the Reaction Leg back until an Interview Stance is attained.

#### **Carrying the ASP [Portation] 6.05**

The ASP Tactical Baton may be carried on either the Reaction Side or Weapon Side of



the body. The baton is carried in the Closed Mode, Tip down.

#### **Reaction Side 6.05.01**

The ASP Tactical Baton may be carried on the Reaction Side of the body in an ASP Scabbard.

When carrying the baton, it is positioned so the Tip is down.

When carried in the waistband, the ASP may be positioned Tip down, near the front of the body, halfway between the hip and the navel.

#### **Weapon Side 6.05.02**

The ASP may be carried on the Weapon Side of the body in the front waistband or the rear pants pocket.

When carried in the waistband, the ASP may be positioned Tip down, near the front of the body, halfway between the hip and the navel.

The baton may also be carried in an ASP Scabbard on the Weapon Side of the body, provided the baton and scabbard do not interfere with the drawing of the firearm.

#### **Drawing the ASP [Presentation] 6.06**

The ASP Tactical Baton is drawn with the Weapon Hand, or the Reaction Hand and then transferred to the Weapon Hand. All basic strikes are delivered with the baton in the Weapon Hand.

#### **Reaction Side 6.06.01**

Draw the ASP quickly, blocking or redirecting with the Reaction Hand.

**WARNING:** Without correct use of a Reaction Hand Defense, an assailant may pin the officer's Weapon Hand to the body preventing a baton draw.

Create a safe distance to allow redirection with the Reaction Hand.

The ASP may also be drawn with the Reaction Hand, then transferred to the Weapon Hand. Like the Cross Draw, it is vital that distances first be established and maintained in order to ensure the safe drawing of the baton. Blocks and redirection of the assailant allow for the safe drawing of the ASP baton.

#### **Weapon Side 6.06.02**

When drawn from the Weapon Side, the

ASP is drawn with the Weapon Hand.

### **Baton Grip 6.06.03**

With either Reaction Side or Weapon Side presentation, the baton is held in the center of the grip with approximately the same length of the Handle extending from each side of the hand. The baton is held with a "full hand" grip. All four fingers should grasp the baton.

### **Threat Level 6.06.04**

After drawing the baton, assume Ready Position (Low Threat) or Loaded Position (High Threat), depending on the Threat Level. The baton may be opened or kept closed, depending on the Threat Level imposed by the assailant.

### **ASP Strikes 6.07**

There are three basic ASP Baton strikes:

- 1.] Weapon Strike
- 2.] Reaction Strike
- 3.] Straight Strike

All strikes are executed with the Weapon

Hand from a Ready or Loaded Position. The Reaction Hand redirects, creates distance, checks and supplies reaction power to strikes through the hip rotation.

Strikes may be executed from the Open or the Closed Mode. When executing a "Butt Strike" with the baton closed, the edge of the thumb may be positioned across the Tip to prevent the baton from opening during a strike.

The ASP Technique Sequence Chart diagrams the three basic strikes:

### **ASP TECHNIQUE SEQUENCE CHART 6.07.01**

DRAW ASP BATON

MODE (Variable Profile)  
[Open or Closed]

POSITION (Threat Level)  
[Ready or Loaded]

STRIKE  
[Weapon-Reaction-Straight]

## **ASP Targets 6.07.02**

There are three principle ASP target areas on the body. All techniques are designed to deliver one or more strikes to the following:

- 1.] Elbow [Center mass of the arm]
- 2.] Knee [Center mass of the leg]
- 3.] Abdomen [Center mass of the torso]

These three areas were selected for their physiological vulnerability combined with their less lethal potential as a baton target.

Strikes to the knees and elbows effectively disable an assailant's "delivery system."

Strikes to the abdomen generate fluid shock waves.

In addition, strikes to these areas create sensory "overload" in the assailant's brain.

Closed strikes targets are also Center Mass targets. Targets include center mass of the torso as well as those targets used for Open strikes.

Closed strikes are executed exactly as are Open strikes. The only difference is the striking area of the baton itself.

### **DO NOT TARGET STRIKES TO THE FACE, HEAD, OR NECK**

Strikes to these areas may produce injuries which are eventually fatal, while not effectively terminating assailant resistance.

Strikes to the primary target areas, [knees, abdomen and elbows] have a high potential for control and a low potential for fatal injury. These targets are also "forgiving" targets. If the assailant moves or a strike misses its target, surrounding targets also have a high potential for control and a lesser potential for damage.

## **Opening the ASP 6.07.03**

Snap the baton downward or upward to open. Avoid opening the baton horizontally as innocent by-standers may be hit with the extending Tip. "Open to the Sky" or "Open to the Ground."

A sharp flick of the wrist will open and lock the baton. It is not necessary to violently extend the Blade of the baton. Doing so will make it difficult to close the baton and may damage the Blade.

## **Weapon Strike 6.07.04**

The Weapon Strike is delivered from the Weapon Side of the body. The strike is executed at a 45-degree downward angle targeting the assailant's knee or elbow. The

Weapon Strike may be executed from the Ready or the Loaded Position.

### **Reaction Strike 6.07.05**

The Reaction Strike is delivered from the Reaction Side of the body. The strike is executed 45-degrees downward or horizontal targeting the assailant's knee or elbow. The Reaction Strike is primarily executed as a follow-through or "clearance" strike immediately after a Weapon Side Strike.

### **Straight Strike 6.07.06**

The Straight Strike is delivered to an assailant's abdomen from the Ready or Loaded Position. The striking surface of the baton is the Tip. The Straight Strike is designed to create distance and to deal with a sudden attack or to be used in close quarters.

### **Closing the baton 6.07.07**

The ASP Tactical Baton is closed by striking the Tip against a solid surface. To close the baton, drive the Tip straight down into a non-giving surface. Impact on a soft surface, such as carpeting or wood, may not release the locking mechanism. Do not violently close the baton all in one movement.

Break the deadlock and then push the baton together. This prevents damage to the Retaining Spring and the tapered ends of the Blade.

**WARNING:** Care should be taken when closing the baton to assure that the fingers gripping the Handle have not slipped down over the Blade of the baton.

### **Continuation Strikes 6.07.08**

When using the ASP Baton in a tactical situation, there is no correct number of times a specific strike is executed. Individuals trained with the ASP in the ABC Program should be instructed to continue striking an assailant until the attacker is down or the assault has stopped.

The sequence for Continuation Strikes is as follows:

- 1.] Block/Redirect
- 2.] Strike
- 3.] Check
- 4.] Separate

### **Weapon Retention 6.08**

The best defense against an assailant

grabbing the ASP Tactical Baton is to keep an awareness of *Proximics* - the proximity of the officer, potential assailant, and the environment. Potential assailants, if kept at least two arm lengths distance, will be less likely to attempt an assault than if they are allowed to get close enough to grab a baton or firearm.

#### **The G.U.N. Defense 6.08.01**

This weapon retention technique works for both the baton and firearm. It is easily remembered using the letters G.U.N. as an acronym.

G.] GRAB: Drop the Weapon Hand to the weapon securing it in place.

U.] UNDO: Strike the subject with the descending reaction elbow. Target the subject's forearm while pulling the weapon away from the assailant.

N.] NEUTRALIZE: Decentralize the subject with a forearm strike to the face. Immediately assume a Loaded Position to deal with a continued attack.

This technique may be used if the baton is grabbed while in the scabbard or grabbed

while in the officer's hand. The technique works for both situations.

#### **Weapon Disarming 6.09**

The ASP Weapon Disarming Technique is designed to effectively deal with a non-aggressive assailant.

The intention of this technique is not to encourage law enforcement officers to attempt disarming an aggressive assailant by using a baton. This technique should only be used when an officer feels the use of deadly force is not justified and the officer believes the subject may be successfully disarmed.

The Weapon Disarming Technique is executed from the Loaded Position in two movements:

- 1.] A Weapon Strike targeting the assailant's weapon arm.
- 2.] A continuing Reaction Strike to the assailant's weapon arm or center body mass.