

**Madison Police Department  
OFFICER CONDUCT REPORTING FORM**

**Supervisor Receiving**

Date/Time Received: 12-30-06 Received by: Sgt. Microw  
How Received:  Phone  In-Person  Other: \_\_\_\_\_

**Reporting Person**

Name: Elissa J. Parker  
Address: \_\_\_\_\_  
City: Madison State: Wi. Zip: \_\_\_\_\_  
Phone: H: \_\_\_\_\_ W: [REDACTED] C: [REDACTED]  
E-mail: \_\_\_\_\_  
Check:  Aggrieved Party  Witness to Incident  Other: \_\_\_\_\_

**Involved MPD Personnel and Allegation**

Officer(s) Name and/or Number: Officers Heimsness, Urso and Cate Leerek  
MPD Case Number if Available: 06-154206  
Date and Approximate Time of Incident: 12-30-06 @ 0159am  
Location: 603 State Street (State Street Brats)  
Allegation(s): Excessive use of force

**Narrative:**

On 12-30-06 @ approx. 0159am, Officers were dispatched to 603 State St., (State St. Brats) reference a disturbance. The disturbance was between two males, one male striking the other in the face with a glass, causing injury. Dispatch advised, per the employees at State St. Brats, the male suspect was being restrained by bouncers.

Upon my arrival, I was contacted by an employee at State St. Brats, bartender, Ellisa J. Parker. Parker specifically wished to speak to a sergeant stating she wanted to file a complaint against the officers on scene.

Parker advised officers were dispatched to State St. Brats because of suspect, Bauer, "smashing a pint glass into another males face." Parker stated bouncers were trying to restrain Bauer however "he was resisting them and tried running out into the garden room." Parker stated she observed 1 female officer, Cate Leerek (not directly involved w/altercation), and 2 male officers, Urso and Heimsness, dealing w/Bauer. She stated one of the male officers, (believed to be Urso), was "pulling up on the male" and the other, (believed to be Heimsness), was "kicking the guy (Bauer) to the head and neck with his foot numerous times." Parker stated while Bauer was on the floor, she observed his face covered with blood. She advised she yelled at the officers to "stop it," and proceeded to call 911.

Parker advised she felt Heimsness was "very aggressive" with Bauer. She stated Heimsness was "beating this guy" by "kicking him repeatedly to the head." Parker continued to label the incident between Bauer and the officers as another "Rodney King" case.

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I asked Parker if all the patrons were out of the establishment during the altercation and she stated yes. I asked her how many employees were dealing with Bauer prior and during MAPD contact with Bauer and she stated, "2 off duty" employees, "2 bartenders," and maybe "4" bouncers. I asked her for a total of employees dealing with Bauer and she advised "maybe 5 to 6." Along with the 5 to 6 employees there were 3 officers in the mixed making approx. 9 persons dealing with Bauer in a very small location, east side of the tavern near Garden exit/entrance, which is approximately 3' wide by 5' long.

I then spoke to Heimsness who stated Bauer was resistive, refusing to listen to any of his commands, to which he struck him approx. 3 to 4 times with his right knee along with 3 to 4 strikes with his foot in order for him to rollover from his back to his stomach, and finally successfully handcuffing him. Heimsness advised during the take down of Bauer, his coat covered his face and left arm. Heimsness advised he believed the kicks and knee strikes were making contact with Bauer's left side of the upper torso. Once Bauer was in handcuffs, Heimsness was able to remove his coat from his face at which time Heimsness observed his face to be covered with blood. Fire Rescue was immediately dispatch upon this observation.

I advised Parker you may or may not be contacting her reference this incident in the near future.

I also spoke to Manager Nathan A. Quella, m/w, 6-25-81, [REDACTED]. Quella advised prior to MAPD officers arriving on scene, bouncers had Bauer "subdued" and was "fine" until police walked into the establishment. Quella advised immediately upon seeing officers, Bauer tried running from police out the east entrance/exit door into the garden room.

Quella stated Bauer was very belligerent with police and wouldn't comply with their commands. He advised Bauer was spitting blood at police and calling them "faggots." He added Bauer was "flailing" and attempted to prevent officers to put him into handcuffs. Specifically, Quella stated Bauer wouldn't allow officers to roll him over onto his stomach from the back position.

I asked Quella if he felt the officers behavior with Bauer was appropriate in taking him into custody and he stated, "yes, he wasn't listening to the cops."

Please see officers reports. Thank you.

Sgt. Cindy Mierow

Disposition: Please check only one box. (Refer to Policy 6-500.7 for definitions.)			
<input type="checkbox"/> Exonerated	<input type="checkbox"/> Unfounded	<input type="checkbox"/> Not Sustained	<input type="checkbox"/> Sustained

**Malloy, Patrick**

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**From:** Schwartz, Amy  
**Sent:** Thursday, January 11, 2007 11:21 AM  
**To:** Malloy, Patrick  
**Subject:** Synopsis

While on duty in the OIC's office, I was briefed by Sgt Mierow about a fight that had occurred at State St Brats involving PO's Heimsness and Urso. Sgt Mierow told me simply that the officers had encountered a combative subject who had hit another male subject in the head with a glass and had refused to be taken into custody. I also learned that the combative subject, once successfully taken into custody, had sustained a facial injury which was caused by our officers during the fight. Sgt Mierow told me at the time, that there was a witness on scene who wanted to file a complaint against the officers for using excessive force against the subject. Sgt Mierow told me that she was taking care of said complaint, but she also told me that there were bouncers present who were stating they had no concerns of excessive force.

PO Heimsness later came into the OIC's office and showed me his knee, (I believe it was his right knee although I can't be 100% certain) which was noticeably red and swollen. PO Heimsness told me about the combative subject and how he and PO Urso had to take the subject to the ground and then struggled to gain control of his arms. Although PO Urso eventually gained control of one arm, the other arm was still unobtainable. PO Heimsness told me that he began to deliver several knee strikes to the body of the subject until they were able to gain control of his other arm. PO Heimsness also told me that during the fight, the subject's jacket was pulled over his head, making it impossible for PO Heimsness to know what area of the subject's body his knee was having contact with. PO Heimsness told me that after the subject was controlled and taken into custody, he observed that the subject had sustained facial injuries that were not present when he and PO Urso had initially made contact with him. PO Heimsness told me that he believed he may have inadvertently struck the subject in the face with his knee while trying to control him. PO Heimsness also told me that prior to struggling with the subject, the subject had sustained some sort of hand injury due to hitting the victim in the head with the glass. Both PO Heimsness and PO Urso both were exposed directly to the combatant's blood as they attempted to take him into custody.

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CITY OF MADISON  
**INTER-DEPARTMENTAL**  
CORRESPONDENCE

DATE: February 14, 2007

TO: Noble Wray, Chief of Police

FROM: Patrick Malloy, Lieutenant of Police

SUBJECT: Internal Investigation 2007-01

## **INTRODUCTION**

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This investigation involves the review of the amount of force that was used to arrest Jacob Bauer during the early morning hours of December 29, 2006 at State Street Brats. The incident happened at approximately bar time. Mr. Bauer was arrested under our case number 2006-154206 and charged with second degree recklessly endangering safety, as well as resisting an officer. That case was referred to the Dane County District Attorney's Office. The involved officers are Officer Steve Heimsness and Officer Corey Urso.

## **INFORMATION RECEIVED FROM DISPATCH**

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I collected the Dispatch tape of the incident and could listen to the tape and hear that one call came in, which was disconnected. A second call then came in related to a suspect having hit someone in the face or the head with a beer glass at State Street Brats. I hear the Dispatcher getting pertinent information and the units being dispatched. The units that were dispatched were David 20 and 21, who for the record are Officer Heimsness and Officer Urso. It should be noted that the tape also contains a third call that was made by Elissa Parker, who was extremely upset on the phone. She indicated that the officers were kicking the person in the head and that someone needs to respond to that. The Dispatcher in response to this told her to look for a sergeant who was at the scene and gave her the name of Sgt. Cindy Mierow.

## **POLICE REPORT OF OFFICER STEVE HEIMSNESS**

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The report details the arrest of Jacob Bauer. The victim in the case is Benjamin C. Schmaling, who is a 20-year old male. He received a laceration to the upper right side of his head near his ear and it was later learned that this required seven stitches. With regards to the arrest of Bauer, Heimsness says in his report: I did not wish Bauer to gain any advantage on us or be able to pick anything up and use it as a weapon against us. I delivered several kicks using my right leg to Bauer's back, ordering him to get on his stomach. During these kicks, Bauer did turn on his stomach and I was able to drag him slightly further out into the bar room. I continued to apply approximately two more kicks ordering Bauer to place his hands behind his back because by this time, I had lost my grip on Bauer's left hand. The report goes on to state: I then got down to my knees and I delivered several knee strikes using my right knee. I did apply approximately four to five knee strikes ordering Bauer to place his hands behind his back. After the last knee strike I delivered, I did hear Bauer state okay, okay and I did see him put his left hand out.

## **POLICE REPORT OF POLICE OFFICER COREY URSO**

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Corey Urso's report presents the details related to the State Street Brats call. With regards to the arrest, he describes his role in placing Bauer under arrest and placing handcuffs on Bauer. In regards to Officer Heimsness' actions, Urso's report states, "For more information on Bauer being taken into custody, see Officer Heimsness original report under this case number."

## **POLICE REPORT OF SERGEANT CINDY MIEROW**

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Sergeant Mierow's report details her arrival at State Street Brats. She obtains the services of an investigator to take pictures of the injuries and she did make contact with Bauer at the emergency room. She noted that Bauer was intoxicated. She also overheard Bauer advising Meriter staff that he did not wish for sutures until he had spoken to his mother or lawyer. She did not ask any further questions.

It should be noted that both Heimsness and Urso note in their report that Bauer was conveyed by Fire Rescue to Meriter, where he refused medical attention unless he could speak to his mother or his attorney. He was cleared by medical staff to go to the jail. He did not receive medical attention at Meriter to my knowledge. It appears, however, that he was cleaned up by Meriter staff prior to conveyance to the jail.

## **POLICE REPORT OF POLICE OFFICER TAYA DOLSEN**

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Dolsen's report basically describes her role which is rather minor in the incident. She interviews the bar manager with regards to the victim being struck by the suspect who was Mr. Bauer.

## **POLICE REPORT OF DETECTIVE GREG ESSER**

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Detective Esser followed up on this case with regards to the criminal charges against Jacob Bauer. He went to State Street Brats on the 29th and contacted personnel there where he obtained surveillance video that is inside the bar. Unfortunately, none of the video or camera angles show the actual arrest of Mr. Bauer. The videos do help put the timeframe in place. According to Detective Esser, at approximately 1:54 a.m. is when the incident starts. Madison Police Department arrives at approximately 1:59 a.m. and at 2:11 a.m. two officers can be seen escorting Bauer out of State Street Brats after he's been taken into custody.

## **OFFICER CONDUCT REPORTING FORM**

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I reviewed an Officer Conduct Reporting Form that Sgt. Mierow completed. That form indicates that when she was at State Street Brats on this call, she was contacted by Elissa Parker. Note that Elissa Parker is the person that was very upset and called Dispatch. Parker told Sgt. Mierow that she saw one of the male officers "pulling up the male and the other officer kicking the guy to the head and neck with his foot numerous times." Parker stated that it was Bauer on the floor and she observed his face covered with blood. She also advised that she yelled at the officers to stop it and called 911. She described to Sgt. Mierow the actions of the officer as very aggressive. She stated, "He was beating this guy and kicking him repeatedly to the head." She described the case as a Rodney King type case.

It also notes that Sgt. Mierow contacted the manager, Nathan Quella. He advised her that Bauer was very belligerent with the police and wouldn't comply with their commands. He indicated that Bauer was spitting blood at police and calling them faggots and that he was flailing around in an attempt to prevent officers from handcuffing him. Quella told Sgt. Mierow that Bauer wouldn't allow the officers to roll him on his stomach from the positioning he was in on his back. He indicated to Sgt. Mierow that he thought the action of the officers were appropriate in taking Bauer into custody. Note that I also have a copy of a buck slip that was sent from Sgt. Mierow at the scene to Lt. Brian Ackeret regarding Mr. Quella's statement indicating that "Quella felt the officers behavior dealing with the guy was appropriate."

## **PICTURES FROM THE INCIDENT**

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I have a color photograph of Mr. Bauer at the time of his arrest after the incident, after he was cleaned up and brought from Meriter Hospital. It is clear he has some type of laceration that is still fresh on the right side of his nose and his nostril area. He has some discoloration to the right side of his face and a bruise near his right eye. His eyes appear to be what is commonly described as black but I can't tell from the picture if that's just the lighting in the picture or if that is a result of the incident.

I reviewed the photos taken by the Madison Police Department at Meriter Hospital of Mr. Bauer. Mr. Bauer obviously has a laceration to the right side of his nose near his nostril. The right side of his face looks like it is somewhat discolored and swollen. There is some type of laceration or injury to the top of his head which appears to have been bleeding. His left hand looks bloody but it's hard to tell if that's from blood from his face or if it had been bleeding.

Related to the pictures that were taken at Meriter Hospital by Investigator Hessefort, I think it can be accurately described that he looks like he's been in a fight of some sort but that injuries are not shocking.

I also looked at the pictures of the victim in this case, who had the glass smashed into the side of his head. That person is Benjamin C. Schmaling. You can see a laceration around his left ear and bleeding down around his jaw line area. There also appears to be a scratch across the top of his head running down to his left cheek and jaw area. As I noted earlier, I was told that seven stitches were required to close the injury near his ear.

## **MEMO FROM DETECTIVE GREG ESSER**

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The memo is dated January 3, 2007. That memo indicates that while doing follow up on this case down at State Street Brats, Detective Esser was contacted by Max Michalski. Max told Detective Esser that he had witnessed the incident and he had witnessed the arrest of Mr. Bauer. He told Detective Esser that one of the officers began to kick Bauer at least five to six times. He also stated that after Bauer was kicked in the head, the officer began to punch him in the back of the head two to three times. Michalski then told Detective Esser that the officer put his knee to Bauer's head at least two to three times grinding Bauer's head into the ground with his knee. Bauer said something to the effect at this time, fuck you faggots. He reported that the officer said in response to this, shut up, shut the fuck up, put your hands back.

## **EMAIL CONTACT**

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I received several emails which I had requested from individuals.

The first email that I received was from the bar manager, Nathan Quella. Mr. Quella indicated "I was between two guys when this happened so I took the guy that broke the glass to the ground. Adam and I held him down and I told another bouncer to call 911. The person we were holding stopped struggling after a minute or two. We let him get up and get some paper towels for his hands. The cops showed up and as soon as he saw them he ran for the garden door. The door was locked so he couldn't get out. The cops caught up to him in the doorway. He was struggling and did not let the cops cuff him. Cops shoved him twice against the wall and I believe he cut his head on one of the signs we have on the wall. The cops then got him on the ground and he was struggling. Cops were on their knees and at this point, holding him down and telling him to roll over onto his stomach. He would not and then walked away to check on my employees and make sure no one got hurt. I was told one of the cops struck the guy in the head with his knees but I didn't see it happen. One of my employees, Elissa, then called 911 again because she thought the cops used excessive force. During the incident, thought of excessive force did not enter my mind."

I received an email from Adam Pischke reference this incident. That email states in part: "First I saw the guy break the glass over the other guy's head and then I restrained the breaker until the police arrived. At arrival, I let the police take over and when I got off of him he tried running out the back door but it was locked. Then the officers tried to get him to the ground but he resisted. They then used the appropriate amount of force to take him down where he appeared to continue to resist. At this point, the officers were telling him they were "going to break his arm" if he didn't cooperate. He continued and they proceeded to stomp on his head. At this point, I can't tell if he's still resisting but they were shouting to each other that he was and they stomped on his head about five times. At this point, the ambulance arrived and there was a decent amount of blood on the floor." He notes in his email, I was about 15 feet away while all this was going on.

I received this email from Max Michalski: "I was working at the front door when I heard a fight break out in the bar. When I got inside, the man who was arrested this night was on the floor restrained by a bouncer and our manager. After a couple of minutes holding him on the floor, the cops arrived and when the two male cops went to arrest him, he ran and tried to escape our the beer garden door but was unable to because the patio door was locked. The cops then grabbed him, threw him face first into the wall saying get to the ground and then threw him to the ground. Meanwhile, I was standing a couple of feet away watching. Once the man was on the ground, one cop was on his back attempting to restrain the man and had his right arm as the man was lying face down. Then the other cop who was standing right next to me took a step towards the man and kicked the man extremely hard with the tip of his shoe to the top of the man's head. The cop who kicked him continually stepping away and stepping to fully kick the man on the top of the head repeatedly, between five and ten times. With each kick to the head, I could hear a loud thumping sound. Meanwhile, the other cop is still on top of the man holding his right arm while he's barely squirming on the ground. The cop kicking him said give us your arm but he never, ever made an attempt to grab the arm, which was rested on the floor. After kicking the man, the same cop began taking full swings punching the man in the back of the head between three and five times but still made no attempt to actually grab the left arm. After punching the man, the same cop then got on his left knee and began swinging his other knee very hard into the man's face. This occurred two to three times and the man was gushing blood from his face. After kneeing the man in the head, he took his knee and he put it on the back of his head and put almost all his weight on it and drove his face into the floor. At this point, the same cop finally grabbed his left arm and pulled it to the right arm restrained by the other cop so they could cuff him."

I received an email from Sgt. Amy Schwartz related to this incident. Sgt. Schwartz was the OIC the night of the incident. I had spoken to her briefly prior to receiving this email. She told me that after the incident that Heimsness came into the OIC's office and "feel Heimsness told me about the combative subject and how he and Corey Urso had to take the subject to the ground and then struggled to gain control, although PO Urso eventually gained control of one arm, the other arm was still unobtainable. Heimsness told me that he began to deliver several knee strikes to the body of the subject until they were able to gain control of his other arm. Heimsness also told me during the fight, the subject's jacket was pulled up over his head making it impossible for Heimsness to know what area of the subject's body his knee was having contact with. PO Heimsness told me that after the subject was controlled and taken into custody, he observed that the subject had sustained facial injuries that were not present when he and PO Urso had initially made contact with him. PO Heimsness told me that he believed he may have inadvertently struck the subject in the face with his knee while trying to control him. PO Heimsness also told me that during the struggle with the subject, the subject sustained some sort of hand injury due to hitting in the victim in the head with a glass."

#### **INTERVIEW WITH OFFICER COREY URSO**

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On January 17, 2007, I interviewed Police Officer Corey Urso in the Conference Room of the Chief's Office. He was accompanied by MPPOA President Scott Favour and Lt. Joe Balles was also present for the second half of Officer Urso's interview. Officer Urso details the incident. Again, he indicates that he was concerned about the amount of blood that the subject had on him and was concerned that he not be exposed to the subject's blood. He remembers looking up and seeing the sweatshirt over the subject's head and that he couldn't see where his left hand was. When I asked him specifically if he knows whether Officer Heimsness kicked Jacob Bauer, he stated I didn't observe that but I guess I wasn't looking. The blood really kinda was there, a lot of it, you know. I was really focused on that. I asked him if he saw Officer Heimsness punch Jacob Bauer, his response was I didn't see that. I asked him if he saw any knee strikes. He said, "I didn't see that. I know there was definitely struggling. I mean I knew Steve was right there but no I didn't see any of that." I asked him if he heard an employee at the bar yell and he indicated he heard someone yell, "I heard stop or something like that." The rest of interview details taking Bauer into custody and Bauer's behavior at Meriter Hospital.

#### **INTERVIEW WITH OFFICER STEVE HEIMSNESS**

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Officer Steve Heimsness was interviewed in the Chief's Conference Room by myself on January 17, 2007. He was accompanied for the interview by MPPOA President Scott Favour, Lt. Joe Balles was also present for the interview. During the interview, Heimsness told me about his initial contact with Bauer and how Bauer ran from him through the short hallway that leads to the beer garden door. He indicated that he ended up catching up with Bauer and that Bauer stiff-armed him in the face. He indicated that it was hard enough that it pushed him back several inches and it did not knock him completely off balance but he was trying to push him away. Note that I noticed this was duly noted in Officer Heimsness' report of the incident and I also noted that Sgt. Mierow advised that once she arrived at the scene, she saw some blood on Heimsness' face which she believed was the result of being pushed in the face by the subject, Jacob Bauer, who was bleeding from his hand at the time.



He indicated that they were trying to struggle with him in this small hallway and they couldn't get any position of advantage there so they ended up dragging him out of the passageway towards the bar room and then he was on his side at this point. He indicated that he was actively resisting during this entire incident. He indicated that he could also feel the tension in the subject's left arm. He heard Officer Urso telling the subject to put his hands behind his back and that he wasn't complying. He also indicates that he and Officer Urso were able to get their legs and feet in front of him and they tripped him and pushed him to the floor and that is how the take down occurred. I asked Officer Heimsness if during the incident he ever kicked Bauer in the head. He indicated not that I know of, "The problem being, of course, as I'm trying to kick him as his jacket was up and from the middle of his torso up to his elbow was covered with his jacket so I wasn't kicking towards his head. My objective was to kick him in the side." He then described the kicks that he applied to Jacob Bauer. I asked him if he punched the person at any time. He indicated no "after those first three or four kicks, I then dragged him out further and I was either kicking or trying to drag him out further into the bar. I lost grip on his left hand and then I kicked him two more times I'm guessing. I think two more times because now his arm was gone and it went under him and he rolled on to his stomach but he placed his hand under his body but I did not punch him." I asked him when you kicked him the second time, you know where you landed those kicks. He stated no, I was directing them towards his side as best I could. "I think it was below his shoulder level where I was aiming." I asked him if he used any knee strikes on him and he indicated he did after he lost control of the subject's arm. "I went down to my knees and I delivered four or five knee strikes from my knees as he was laying on the floor and aiming for his side." I asked him if his head was still covered at this time and he said yup, his head was covered until he finally surrendered his arm under his body. I asked him did he at some point give up and he responded yeah after the last knee strike I delivered, he said, "Okay, okay and then he started to bring his left arm out and his left arm came out and I reached under his jacket, found his left wrist and brought it out and around and toward the small of his back." I asked him if he heard anybody yelling at the officers from the bar and he indicated he did. He told me he thought it was an employee and she was yelling something to the effect of "stop it, stop it, you're going to kill him or get off of him." Heimsness acknowledged that Bauer had blood all over his face after they pulled the jacket from his head and shoulder areas. During the rest of the interview, Heimsness describes Mr. Bauer's behavior at the hospital. He said he was unpleasant, that he was abusive, rude, calling everybody names, insulting hospital staff, demanding to know if we arrested the person that had injured him. He also indicated the subject was very intoxicated. At the end of the interview, I went through these specific questions.

QUESTION: At some point, you had your knee on him. Is that correct?

ANSWER: "Actually both but yes."

QUESTION: Okay where were the knees placed on him?

ANSWER: "On his left shoulder, more towards the mid-line of his body and down probably three or four inches from the top of his shoulder."

QUESTION: He was not kicked in the head or he was not kicked intentionally in the head?

ANSWER: "No not intentionally."

QUESTION: But he wasn't punched in the head?

ANSWER: "No I never punched him anywhere or in the head."

QUESTION: And that knee strike was not intended to go to the head?

ANSWER: "No I was trying to hit the torso."

QUESTION: And that the knee used to hold him down was on his torso not on his head?

ANSWER: "No it was on his shoulder."

QUESTION: During the point when he was resisting, was his head covered for the most of the incident?

ANSWER: "From when I dragged him out of the end of the passageway into the bar, his jacket had come off and was I don't know if this was mentioned before but he was, I dragged him out up towards the bar and he ended up near the north wall of the passageway."

QUESTION: I asked him if he spoke to Sgt. Mierow at the scene and he indicated that was correct.

#### **INTERVIEW WITH MAX MICHALSKI**

I interviewed Max Michalski at the City-County Building on January 18, 2007. Max recounted the incident to me with regards to the incident.

QUESTION: Let me ask you this, before you get there, let me ask you this did they push him into a wall in an attempt to stun him?

ANSWER: Yes it was a very hard shove into the wall.

QUESTION: At that point was he struggling with the officers?

ANSWER: "It was fairly mild or I mean it was in between. He wasn't really thrashing around trying to swing at them but he was twisting his shoulders and arms kind of flailing."

QUESTION: Do you think he was trying to get away at this point?

ANSWER: "I mean yes I guess he was trying to get away. It seemed at this point he was still trying to escape the two officers."

QUESTION: Could you hear them clearly say get down on the ground?

ANSWER: "Yes. That was clear. They did say get to the floor and he wasn't."

QUESTION: And he wasn't, he wasn't going to the floor voluntarily?

ANSWER: "No it was really difficult to say because there were in such a tight corridor. I mean he was stood up between the two guys but personally I did not think he was going to go to the floor voluntarily."

QUESTION: Did you know was he bleeding at this point?

ANSWER: "I believe he had a mild cut from when he had been detained by the bouncers. I'm not sure where the cut occurred but he was mildly bleeding. He had some blood on him."

QUESTION: Was it on his hands or don't you recall?

ANSWER: "I do not recall."

QUESTION: The officers were then able to get him to the ground?

ANSWER: "Yes."

QUESTION: Did they have trouble getting him to a position on the ground where they could put handcuffs on?

ANSWER: "It did not appear so. They had one officer directly on top of him and the other officer was standing and Bauer was lying there and his left arm was still moving mildly at most, still struggling."

QUESTION: Was Mr. Bauer's head covered at this point?

ANSWER: "No, I never witnessed Mr. Bauer's head being covered until the very end when they were trying, when he was still like a half an hour after the incident. His head was uncovered the entire time during this incident."

QUESTION: Did you see the second officer kick Mr. Bauer?

ANSWER: "Yes I saw the officer who was not restraining the arm on top of him step back and lean into a kick in a very violent way, extremely hard to the top of the head between five and ten times, very hard kicks and they were direct hits with his toe. It made a thumping sound when it hit, when he connected and he would back up and take a full step into it and kick again."

QUESTION: Was he saying anything at this point?

ANSWER: "I do not recall."

QUESTION: Do you recall if the second officer was saying anything?

ANSWER: "I don't recall anything specific. I do believe in there they did say give us your arm something along those lines, give us your arm."

QUESTION: What did he do after the initial five to ten kicks?

ANSWER: "After the kicks to head, he followed that by crouching down and taking his knuckles and taking full swing punches to the side and back of Mr. Bauer's head. Probably between four and five punches as hard as he can directly connect into the back of his head which is still uncovered at this point."

QUESTION: Were the officers saying anything at this point to one another?

ANSWER: "I do not recall."

QUESTION: The second officer who had kicked and punched the subject, what did he do next?

ANSWER: "He put his left knee down on the floor and swung his right knee extremely hard into Mr. Bauer's face and pretty much into his face which was lying, on the floor, two or three times just directly to the head, to his face."

I asked him if he saw any reaction from Mr. Bauer, his response was "he was still lying there pretty much motionless."

QUESTION: Now the knee strikes that you described, how many of those did you see?

ANSWER: "Two to three."

QUESTION: Were those powerful or mild?

ANSWER: "Powerful. That's what I believe caused most of the bleeding from Mr. Bauer's face. That I mean that spread everywhere because the kicks to the top of his head there was some bleeding but most of the bleeding came when he was getting hit in the face with his knee."

QUESTION: After the knee strikes, what did you see?

ANSWER: "I saw the officer, the same officer put his knee to the back, kind of side his face and put most of his weight on his face in kind of a little wiggling but pushed his face into the floor."

I asked him if anybody at the bar told the officers to stop and he indicated, "Yes. Elissa Parker yelled from 20 feet away to stop. I don't have it word for word but she said just stop, you're going to, I believe she might have said stop you're going to kill him."

I asked this question and again just for clarification and I make sure that I'm absolutely correct, that was never pulled over his head until after all this stopped and before the ambulance got there? "Yes."

QUESTION: Do you remember who pulled that up over his head?

ANSWER: "I did not see that. I didn't see it actually occur. I heard, when I was cleaning up, I heard, I heard him spitting and they said we have to cover his face so it will stop and I didn't see."

QUESTION: So you're assuming the police pulled that up?

ANSWER: "Yes. It would have been police."

QUESTION: But the first two guys didn't pull up his . . . ?

ANSWER: "No."

QUESTION: Shirt or jacket or anything of that nature and they had a clear view of his head the entire time of the incident?

ANSWER: "Yes."

### **INTERVIEW WITH ADAM PISCHKE**

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Mr. Pischke was a bouncer who initially took down Jacob Bauer at State Street Brats and held him until the police arrived. He did this with the assistance of the bar manager who held down Mr. Bauer's legs. I asked the following questions:

QUESTION: Tell me what you did when you made contact with him, that would be Jacob Bauer?

ANSWER: "Well at this point, I didn't know for sure this was guy that had broken the glass but all my bouncers, the other four, said this is the guy that did it and they were all trying to take him down and eventually we couldn't because he was resisting so I got him on his back and forced him to the ground. I'm on top of him. He's on his stomach and my stomach is up against his back and I have my right arm around his neck because he's trying to throw me off as hard as he can so I'm increasing the pressure around his neck until he says I quit resisting and he just doesn't decided to do anything else. He just lays there until the cops arrive."

QUESTION: Did you know the police were on their way?

ANSWER: "Right. I did."

QUESTION: At some point, either right before the police got there or right as the police got there, you decided to let him up?

ANSWER: "I let him free where the police were standing at his head on the ground and I let him free and he stood up. That's when I let him go."

QUESTION: At this point in time was he injured?

ANSWER: "I do recall I did make his nose bleed because he was fighting me at the very beginning, so there was a little blood on the ground from his nose probably from the takedown, but it wasn't a whole lot."

QUESTION: When he gets up what happens?

ANSWER: "When he gets up he gets up slowly you know, like nothing is suspicious or anything and then all of a sudden, when the cops try to apprehend him, he bolts away and tries to run out the side door. But it was locked so he runs straight into the door. Then the police try to take him down."

QUESTION: Could he have been injured when he ran into the door?

ANSWER: "He could have been but it probably wouldn't have been too bad. He could have injured himself to the point of where he could have started bleeding from. He could have cut himself because he did run into it fairly hard, but it wasn't anything that would cause any severe injury."

QUESTION: Did he grab onto the door bar or something?

ANSWER: "He grabbed onto parallel bars. He grabbed onto those bars and he wouldn't let go as the police were trying to take him down."

QUESTION: Were they trying to pry him off that?

ANSWER: "Yes, yeah, they were trying to take him to the ground and he was refusing to go down. And part of the way he kept standing up holding onto those two bars."

QUESTION: Were they saying anything?

ANSWER: "Stop resisting. That was pretty much the key phrase for five minutes and he didn't."

QUESTION: Once they got him off the bar did they stun him at all or use a move where they pushed him into the wall?

ANSWER: "Yes, that's exactly the next thing I was going to say. Once they got him off the door they got him free and they threw him into one of our, well it's a narrow passageway. They threw him up against the right wall at this point. I think he put his legs out wide to prevent from being taken down to the ground."

QUESTION: Did they manage to get him to the ground?

ANSWER: "They did eventually."

QUESTION: Was it a struggle to do that?

ANSWER: "Right. It was. It was a pretty lengthy struggle in my opinion for two minutes or so trying to get him to the ground because he just wouldn't."

QUESTION: I asked him how they got him to the ground.

ANSWER: "One of the officers had an arm around his back and they put their leg next to his knees and they basically tripped him to the ground. That's how they got him down eventually. The officers basically kept on saying stop resisting or we are going to break your arm. Stop resisting or we are going to break your arm. He kept resisting and at one point they said, alright, break his arm and I don't know if it ever got broken or whatever, but eventually they felt it was necessary because he was resisting and they couldn't get handcuffs on him for the life of them. I mean so they started kneeling him and stomping on his head."

QUESTION: One officer had to be in the standing position at this point?

ANSWER: "Right, and then one was on his back."

QUESTION: You described in your e-mail to me that one officer stomped on his head?

ANSWER: "Right."

QUESTION: And was that officer the one in the standing position?

ANSWER: "Correct. The officer in the standing position, I don't know if there was a warning given or not for stopping. I can't recall but at some point he is resisting to the point where they said stop resisting. He didn't stop resisting and the officer in the standing position started basically he lifted his leg and his heel and starting landing shots from the bottom of his heel and the top I think was coming down on the side of the guy's head, on like the top of his ear from three to seven times."

QUESTION: Was he coming straight down?

ANSWER: "Straight down."

QUESTION: Was his head exposed at all?

ANSWER: "It was. It was just his head. I mean there was nothing over it or anything."

QUESTION: There was no jacket or sweatshirt over it?

ANSWER: "There might have been for one of the stomps, maybe. But for the majority that I can remember there was nothing over his head."

QUESTION: Did it look like he was aiming for his head?

ANSWER: "Yes, it was. It was clear that he was intentionally stomping on his head with the back of his foot, with the bottom of his foot."

QUESTION: Could you hear any sound from the impact?

ANSWER: "Yes. I don't know how to describe it but I mean it sounded like a thud I guess."

QUESTION: Did either one of the officers punch this guy?

ANSWER: "Yes they did. I don't think it was when he was on the ground. I'm pretty sure it was when he was standing up and still resisting and they were trying to bring him to the ground. That's when they tried to punch him."

QUESTION: Did you see any knee strikes to his head when he was on the ground?

ANSWER: "I don't believe they were to his head directly. They were to his mid-section, his ribs, to the collarbone area, the shoulder area, but there wasn't any knee directly to the head as far as I can remember."

QUESTION: Okay, and the stomp though was directly to the head?

ANSWER: "The stomp was. The stomp was directly to the head."

QUESTION: Did someone at some point during the incident works at the bar yell stop it?

ANSWER: "Yes."

QUESTION: Do you remember exactly what was said?

ANSWER: "Something - stop it, you're going to kill him. That's pretty much what it was."

QUESTION: At some point does she go into the bathroom and use her cell phone?

ANSWER: "I don't know what she did but I do remember our manager say, and I quote 'Elissa, those are the police, you have to go behind the bar,' that's what the manager told her."

QUESTION: And was the manager Nate?

ANSWER: "Yeah, I don't know how to even say his last name, but Nate said at least twice to her and she eventually complied."

QUESTION: Was there a palm print on the door?

ANSWER: "Like from where his face was up against the door when the officers were trying to get him to the ground it looked like his nose was bleeding or part of his face was bleeding or hands, whatever. It was pretty high. It was around where the bars are. I don't know what could have caused it or where it was from because I couldn't tell where this guy was bleeding."

QUESTION: Who witnessed the incident besides Max and Elissa?



ANSWER: "I think I probably had the best vantage point, but because I, probably should mention this, I mean I asked them if they wanted my help getting him to the ground and they said no. But after a minute or two, after they kept struggling, I eventually did get involved and get a little bit of my weight on his back as they were trying to throw him to the ground and I did help take him to the ground for maybe five seconds."

QUESTION: Did they notice that?

ANSWER: "I don't know whether they noticed it or not but I did help take him to the ground because the officers, it was like two minutes, they couldn't get him to the ground and I asked them like right in the very beginning if they wanted help. They said no. And at one point I was just like this is going to go on for a while, I mean, so I just instinctively I guess, I jumped in and I didn't use a whole lot of force but it was just enough to get him to the ground for maybe five seconds tops at the very end before I guess I really don't remember why I did it. I was just getting to the point where this is nuts."

### **INTERVIEW WITH NATHAN QUELLA, BAR MANAGER**

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QUESTION: So they pushed him into the wall?

ANSWER: "Yes."

QUESTION: Can you describe it?

ANSWER: "They just took him by his back and pushed him against the wall, not softly but not real hard. Probably like a medium, a good shove."

QUESTION: Did he hit his head when this happened?

ANSWER: "I think so. I can't say for sure but there was blood on the wall there afterwards so I think he did cut his head on the wall."

QUESTION: Do you recall if there was blood on the door?

ANSWER: "No, I don't recall that."

QUESTION: Do you know what a stunning technique is? Did it look to you like they were trying to do that?

ANSWER: "Yeah."

QUESTION: Did he react after being pushed into the wall, meaning did Mr. Bauer react?

ANSWER: "Yeah, he was still kind of squirming around."

QUESTION: At some point they were able to get him to the ground?

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ANSWER: "Yes."

QUESTION: He was on his back at this point and they were trying to get him to turn over?

ANSWER: "Yes."

QUESTION: Was he still struggling?

ANSWER: "Yeah, he would not turn over."

QUESTION: How did they get him to turn over?

ANSWER: "From what I saw they physically were wrenching him over and at that point I walked away from the door because I had to make sure all my employees were not hurt or anything."

QUESTION: Did you see either of the officers physically kick or strike this subject?

ANSWER: "No, but I don't believe they could have kicked him because when I walked away they were both on their knees like one was kind of up on his back with his back towards the door and the other was right next to his head on his knees."

QUESTION: Was there a bartender that indicated that she thought there was a problem? Is that correct?

ANSWER: "Yes."

QUESTION: And who was that?

ANSWER: "Elissa."

QUESTION: And what did she say?

ANSWER: "I believe she said, stop it you're killing him, or you're hurting him, and then she went to call the cops again."

QUESTION: Did you discourage her from doing that?

ANSWER: "Well I just wanted her to let them do their job because at this point I didn't really think they were using excessive force. It didn't enter my mind really. I was kind of pumped up on adrenaline because I had to hold the guy down."

QUESTION: In your view was it reasonable, meaning was the use of force reasonable?

ANSWER: "Never entered my mind that it was excessive force. I never saw any strikes to the head. If that did happen I probably would have thought it was excessive force. I didn't really actually see that."

## **INTERVIEW WITH GARRETT ALEXANDER**

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Garrett Alexander was interviewed at State Street Brats on January 22 at approximately 4:20 p.m. Mr. Alexander indicated that he works there, although at the time of the incident he was off-duty and in the bar and he had been drinking.

QUESTION: I asked him if he had an accurate recollection of the events.

ANSWER: He indicated that he had.

QUESTION: I asked him about an officer trying to restrain the subject.

ANSWER: "It just seemed that one officer was trying to restrain him. There were a few other officers kicking and then one officer kned him in the face or the head. I don't know. I couldn't tell from the direction. It was his face or his head. All I saw was a knee to the head. I don't know how many times he was kicked in the face or the head. All I saw was he was kned to the head and I saw the kicking but I didn't know how many times he was kicked in the face or the head."

QUESTION: I asked him if those kicks landed on his head and face.

ANSWER: "A couple of them did, I mean the sound was kind of gruesome. It sounded like something being smashed like a pumpkin or something."

QUESTION: I asked him if the subject's head was visible.

ANSWER: "Yeah."

QUESTION: I asked him if anything was covered.

ANSWER: "Nothing over it."

QUESTION: I asked him if it appeared if the subject was resisting a lot.

ANSWER: "At first, yes he did, and then after a while, after a few kicks to the head, between the body and head, it just seemed like he wasn't moving anymore."

QUESTION: So was he kicked in the head and the body? Was he hit in both spots?

ANSWER: "From what I could see that's what it looked like. Now I'm not sure if any of the body hits were landed but it seemed like they were kicking mostly in the upper torso area."

QUESTION: And was a knee to the head though?

ANSWER: "Yeah."

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QUESTION: Okay, and the noise that you described, was that after he got kicked or hit in the head?

ANSWER: "Yeah."

QUESTION: Or was that in the torso?

ANSWER: "They were kicking him. That's what it sounded like. I don't know if it was in the head. There was a lot going on in that small area at the time. I could hear the sound. I just don't know where they were coming from."

QUESTION: You've got a clear recollection though of him getting kneed in the head?

ANSWER: "Yes."

QUESTION: Did you hear the officers say anything to him?

ANSWER: "When they were trying to get him down they were saying commands to him, I guess the standard commands like put your arms behind your back and stuff like that, and he was resisting a little bit."

#### **INTERVIEW WITH TYLER KNEUBUEHL**

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I interviewed Tyler in my officer on January 22. Tyler indicated he is 23 years old and he is an assistant general manager of State Street Brats. He was working the evening of December 28 into the early morning hours of the 29th. Tyler indicated he was present when this incident happened. He saw the police catch up to the suspect, that being Jacob Bauer. He indicated that while they were trying to Bauer down, they are holding him and he is thrashing about like trying to throw his arms and get up.

QUESTION: I asked him if the officers were saying anything.

ANSWER: "Don't resist."

QUESTION: I asked him was he fighting more with the officers then he had been with the bouncers at State Street Brats?

ANSWER: "A lot. When the bouncers were on top of him I mean it looked like everything was going to be fine, which was why I didn't think anything when the cops came in. But when the cops were on him he just kept thrashing and just yelling."

QUESTION: Do you recall what way his head was pointed?

ANSWER: "Oh, it was pointed towards the bar."

QUESTION: I asked him if he had a good view.

ANSWER: "Yeah, his face was towards us and I was right in between the two tables and I had a direct line of sight."

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QUESTION: I asked him was his head covered up with his jacket or sweater or anything.

ANSWER: "Didn't look like it."

QUESTION: Could you see the officer strike him with his knee?

ANSWER: "Yeah."

QUESTION: And where did he hit him when he struck him with his knee?

ANSWER: "I'm pretty sure it looked like right in the head."

QUESTION: Did it look like a forceful strike?

ANSWER: "Well, yeah, it could do some damage. It wasn't a baby tap or anything. It obviously looked like it was to do something."

QUESTION: Did it have any impact on the guy when he did?

ANSWER: "He stopped squirming around."

QUESTION: Were they still talking to him at this point?

ANSWER: "Yeah, they were just saying stop resisting."

QUESTION: Did you see the officer kick the individual at any time?

ANSWER: "No, the only thing I saw was the knees."

QUESTION: Was the officer in a kneeling position at this point?

ANSWER: "Yeah, he was kneeling."

QUESTION: Did the officer at any point put his knee on the person's head or face to put pressure on the person?

ANSWER: "I don't believe so, not that I saw."

QUESTION: Did it appear the officers were using excessive amount of force?

ANSWER: "No."

## **INTERVIEW WITH POLICE OFFICER RYAN ORVIS**

Officer Orvis indicated that when he arrived he saw Jacob Bauer lying on his stomach. He was near the door to go onto the patio at State Street Brats which is the east most door. He saw Officer Urso and Heimsness kneel beside him and they were holding him either by his arm or they had their hands on his back. He indicated that the officers acknowledged his presence and at some point he said he relieved the officers so they could go clean up their hands as there was blood on themselves. He indicated that the officers seemed under control. He didn't notice any labored breathing and said "things seemed fairly calm at that point to me." He indicated that he was telling Mr. Bauer to calm down and that everything was going to be okay and that the Fire Department was going to look at him. He also told me they could see a lot of blood in and around his mouth and nose. It was difficult for him to tell exactly what the source of the bleeding was. He said he wasn't articulating any specific injuries. He indicated at one point Mr. Bauer started spitting blood towards Officer Sheehy and Officer Emily Becker. He said he placed Mr. Bauer in a position where he wouldn't be able to spit anymore.

## **INTERVIEW WITH MIKE MATYSIK**

This interview was conducted on January 23, 2007 in the 200 block of Langdon Street in my Madison Police vehicle. Michael indicated that he works at State Street Brats. He is a student at UW-Madison and he is 21 years old. I asked him if he recalled the incident and he said he did. "There was an incident. A glass was thrown at somebody, cutting one of the patrons like across the neck. And the person hitting was thrown to the ground, bounced by one of our bouncers and then arrested by the police." I asked him if he could tell if the subject was injured and he said, "He had blood all over him. I don't know if it was his or the other person's but he had blood all over him. That's all I know." I asked him if he heard officers say anything to the subject. He said he heard him to stay still and he did hear a person on the ground yelling a lot of obscenities. I asked him if he saw the officers punch, kick or knee strike the individual and he indicated he did not.

## **REVIEW OF WISCONSIN CIRCUIT COURT ACCESS RECORDS**

For information I ran Mr. Bauer on CCAP and noted that he has at least nine entries with the correct date of birth of 5/8/83. Two of those are for felonies including the latest incident at State Street Brats. He has an open felony case from 2006. He has a misdemeanor case from 2005 and another misdemeanor from 2004. The rest are criminal traffic and traffic cases. He also has a criminal misdemeanor from 2006 and I believe the criminal misdemeanors are related to obstructing/resisting an officer. The criminal felony from 2006 is for substantial battery and 2007 case is the felony bail jumping related to the case at State Street Brats.

I reviewed reports related to Jacob Bauer in an attempt to obtain background information on him and located a report from the Village of Waunakee Police Department. Their case number is 2006-60011. In that case Jacob Bauer punched a subject by the name of Brian Anderson in the nose breaking Anderson's nose at a residence in the Village of Waunakee. The incident was sparked when Mr. Bauer took offense at Anderson grabbed his girlfriend around the waist.

I also located one of our cases from 2004. The 2004 case number is 04-118352. That case was investigated by Officer Andre Lewis. A subject by the name of Scott Koralik indicates that he was at Ian's Pizza at 319 N. Frances Street at approximately 2:51 a.m. He indicated that Bauer thought he cut in front of him in line and that made him the focus of Bauer's aggression. He stated that as a result, Bauer swung and hit him in the head three times. It caused him pain and he did not give Bauer consent to him, however he did not want to pursue a complaint against Jacob Bauer.

I located another case from 2005. This is a Madison Police Department case. The case number is 05-10812. This is a case in which Mr. Bauer had been arrested from drunk driving. He was in handcuffs in the basement of the City-County Building. Initially he had been handcuffed behind his back and managed to slip the cuffs around and then has them in front of him. When he got out of the squad car he forcefully swung his elbows at the arresting officers who happened to be Officer Dave Minnert (ph) and Officer Dao Xiong. Officer noted that Bauer was yelling such things as "fuck you," directed towards the officer and they were telling him to stop resisting and to get on the ground. He refused to do so and even though he was handcuffed, he was flailing his arms and shifting his body trying to get away. The officers were able to grab his arms and they escorted him to the ground to get control of him.

It is interesting to note that during the incident at State Street Brats with Officer Heimsness and Urso, Bauer is yelling "fuck you" and calling the officers "faggots" and again flailing his arms and upper body around.

I noted another Madison Police report from 2004. That case number is 04-38054. That case involved a subject by the name of Dave Moore who was arguing with his girlfriend at 4213 Maher Avenue. At some point during this argument Bauer who resided at that address stepped between the two and struck David Moore on the right side of his nose with a closed fist. The nose ended up swelling and bloody as a result of being hit by Bauer.

## **DA REVIEW**

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I had intended on contacting Mr. Bauer and I called the District Attorney's Office to advise them of my intention. I spoke to Mr. Blanchard. After talking about the case and without disclosing the results of the interviews with the officers, Mr. Blanchard indicated that his office would look at the case if I wanted them to review it. I indicated that I thought it would be a good idea. I had contact with Randy Burmeister of the DA's Office regarding this case. Mr. Burmeister picked up the reports in the e-mails and my interviews that were not Garity Warnings, specifically were not the officer's interviews. I note Mr. Blanchard wrote in an e-mail to me "I have now read several times the reports you have provided following up on my review of the reports from the substantial battery case against Jacob Bauer. I do not find in those reports a sufficient base to open a more formal investigation of this office into the circumstances surrounding the arrest of Bauer on 12/29/06 at State Street Brats to determine if criminal charges might be warranted against any Madison Police Officers. Relevant factors include agreement by all witnesses that Bauer was very actively resisting police after committing an act of extreme violence (glass to the head). Reports that Bauer was extremely strong and forceful that night, the difficult circumstances confronting the officers in a small confined space, and the fact that police officers are trained to use escalating force in such situations, which can include delivering blows by and, knee or foot. This last fact might surprise some citizens, a factor that must be considered in reviewing witness

statements in cases of this kind. I believe Investigator Burmeister shares my view of lack of evidence pointing towards a need for more formal investigation beyond which you have obtained."

## **CONCLUSIONS**

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I think that Mr. Blanchard correctly states the circumstances surrounding the arrest of Mr. Bauer on 12/29/06. I also note that the officers repeatedly told Mr. Bauer to stop resisting, to give us your arms or to get down on the ground and all those commands fell on deaf ears. It has to be noted that Mr. Bauer was offering an extreme amount of resistance to the officers.

This case also has to be considered in light of the nature of the underlying offense. The underlying offense was an extremely violent felony, breaking glass into the side of someone's face or head is a very serious criminal act. Even more so in this case when it appears that this action was unprovoked.

The next question, was Mr. Bauer trying to escape, and I would answer that unequivocally he was. He fought with the bouncers and had to be restrained until the police got there. Though he stopped resisting with a bouncer on top of him and a manager on his leg, it was only because the bouncer Adam Pischke had him pinned in a very forceful manner to the floor. Mr. Bauer was in no position to escape from Pischke's grasp. You also should note that Mr. Pischke is a hurdler on the UW Track team. He is approximately 6' and 185 lbs. He goes to track practice every day and lifts weights for Division 1 track. He also was a wide receiver on the football team for one year. So one would conclude that he is probably in excellent physical condition. It appears that Mr. Pischke had his hands full, at least initially, with Mr. Bauer.

Not only did Bauer attempt to escape from the bouncers, he attempted to escape when the officers arrived by fleeing out the side door that leads to the bar area. If Mr. Bauer had managed to escape, he probably would not have been identified and this case, as serious as it was, would have gone unsolved. Mr. Bauer had a lot at stake in terms of resisting the officers' attempts to take him into custody. I think it is very clear that he was resisting at a very, very high level.

I also consider this in the light of Mr. Bauer's past behavior. He has a horrific record in regards to his contacts with the police. He resists police violently and forcefully. He yells obscenities at people, flails his arms around and in the case of his drunk driving case, is engaging in assaultive behavior even though he is in handcuffs and has to be taken to the ground.

## **MADISON POLICE DEPARTMENT POLICY USE OF NON-DEADLY FORCE**

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That policy states:

Non-deadly force is only authorized when an officer reasonably believes it is necessary to control a person under any of the following circumstances:

1. Detaining a person reasonably suspected of unlawful behavior.
2. Effecting an arrest.
3. Overcoming resistance.
4. Preventing escape.



5. Protecting oneself or another.
6. Maintaining order.

All of those elements were present in the early morning hours of December 29, 2006. With regards to the degree of non-deadly force, the Madison Police Department Policy states as follows:

Officers shall only use the degree of force reasonably believed to be necessary to control a situation considering the following factors:

1. The existence of alternative methods of control.
2. Physical size, strength and weaponry of the person as compared to the officer.
3. The nature of the encounter.
4. Actions of the person.
5. Exigent conditions (i.e., availability of backup, number of persons involved, etc.).
6. The severity of the offense.
7. Whether the suspect poses a threat to the safety of officers or citizens.
8. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The policy further states:

Control of a person through verbal commands shall always be the preferred method of control. Because verbal commands are not always effective or appropriate in gaining compliance, officers may escalate the degree of force based on the actions of the person they are attempting to control.

It does not appear the officers had any other alternative methods available to them given the circumstances. They physical size and strength of Mr. Bauer, although he is 5'10" and rather thin, was awfully strong and very resistive at the time. He was strong enough that he was able to give Mr. Pischke and the bar manager a difficult time until they were able to get him on the ground. The nature of the encounter again is a very violent incident involving someone breaking a glass in the face of another person. Mr. Bauer was strongly resisting. Exigent circumstances were present. The subject was trying to flee and if the police didn't act, he wouldn't have been apprehended and taken into custody. The severity of the offense as noted above, it is a very serious offense. Mr. Bauer clearly posed a threat to both officers and citizens. There was no question that Mr. Bauer was actively resisting.

The State of Wisconsin DAT Manual authorizes kicks and knee strikes in situations in which individuals are violently resisting. I believe that was the case here.

The case is troubling from the aspect of the number of people that are indicating that Bauer was kicked directly in the head. But even those statements are somewhat contradicted by people that indicate maybe he was kicked in the torso or he was only kneed in the head and was not kicked in the head. Clearly Max Michalski has very descriptive statements with regards to the actions of Officer Heimsness. Elissa Parker's statement to Sgt. Mierow and her statement to me over the phone is very similar to that of Mr. Michalski's.

It is also in my view troubling that the officers saying the head is covered. Officer Urso in fact says on one occasion when he looked up he saw that the head was covered but that was all that Officer Urso saw. Officer Urso did not see any knee strikes, any kicks or any punches, but he was aware that there was a struggle going on. Officer Urso indicates he was so focused on handcuffing the suspect and maintaining control of the suspect's right wrist, that he was not observing what was going on. He was also very focused on not getting blood on himself or trying to limit the danger of blood exposure to himself. Officer Heimsness clearly indicates that the subject's head was covered throughout this incident and that he did not intentionally deliver any knee strikes or kicks to the person's head.

I am unable to reconcile these differences but note that this was a very tense difficult situation and that the degree of injury apparent in the pictures does not appear to be real significant. It appears Mr. Bauer was in a fight. It appears that he has some swelling and bruising and some lacerations, but he does not look like a person who has been really beat up. During my career I've seen people with both eyes swollen shut, a nose displaced and a jaw horribly swollen. That was not the case here. If the descriptions of Mr. Bauer being kicked repeatedly in the head were accurate, one would think that he would have more injuries than what is noted here. It is also significant I think that Mr. Bauer has not contacted the police department or anyone to my knowledge to indicate that he had any concern or complaint or injury related to this matter. Lastly, I don't believe there are any medical records available because it was noted in the officer reports that Mr. Bauer refused all medical attention while he was at the hospital. He was informed that he should have stitches for the lacerations on this nose or to the side of this nose and he rejected those recommendations. He was in fact cleared to go to the Dane County Jail that night. Investigator Burmeister told me that the jail records indicate that Bauer was extremely intoxicated and was monitored throughout the night related to his level of intoxication.

I am forwarding this to you for your review and consideration.

**MADISON POLICE DEPARTMENT**  
**M E M O R A N D U M**

TO: Noble Wray, Chief of Police  
John Davenport, Assistant Chief of Police  
Randy Gaber, Assistant Chief of Police  
Mary Schauf, Captain, Central District

FROM: Pat Malloy, Lieutenant of Police

DATE: February 26, 2007

RE: Internal Investigation 2007-01

This memo is a follow-up to my memo of February 14, 2007. Since February 14, 2007, I have reviewed the DAAT Disturbance Resolution Model that was approved by the Law Enforcement Training and Standards Board of the Wisconsin Department of Justice on January 16, 2002. I have also looked at this model in conjunction with our Use of Force policy. I have had the assistance of Captain Cam McLay. Captain McLay has reviewed the complete file on the matter and has provided valuable assistance and advice.

As you know, this was a somewhat unique and difficult situation for the two officers involved. The subject they were trying to arrest, Jacob Bauer, had just committed a violent felony. He attempted to flee and was restrained by bouncers, and when the officers arrived, he attempted to flee again. When Officers Heimsness and Urso tried to arrest him, he offered a great deal of violent resistance.

In reviewing this in light of the disturbance resolution model, one can see that the officers intervened and presented both a display of authority and verbal communication in an effort to arrest Mr. Bauer. In response, Mr. Bauer fled. Officer Heimsness yelled to Mr. Bauer that he wouldn't be able to get out the locked door to the beer garden area. Both officers immediately tried to restrain Mr. Bauer and were initially unable to do so. After struggling with him, they were able to get him to the ground. They were unable to overcome his active resistance. The officers continually told Mr. Bauer to stop resisting, get on the ground, and put his arms behind his back. Those commands were ignored. Officer Urso was attempting to handcuff Mr. Bauer's right hand. Officer Heimsness initially attempted to restrain the left arm and was unable to do so. It was at this time Officer Heimsness moved to the stage of active countermeasures which are designed to create dysfunction in a violently resisting suspect. Those countermeasures included kicks and knee strikes.

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It should be noted that prior to the officers' arrival, the two bar employees that were restraining Mr. Bauer had some difficulty with him. Adam Pischke, who is an athlete at the University of

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Wisconsin, was only able to restrain him by using a chokehold. He also had the bar manager holding down the subject's legs with his body weight. I mention this because it demonstrates the level of resistance that Mr. Bauer was exhibiting prior to the officers' arrival.

The concern in this case relates to the use of kicks to the head. There are 8 witnesses and 2 officers who have provided varying accounts of the incident. Officer Heimsness reported the kicks in his report filed in the matter, as well as to the sergeant on the scene and the Officer in Charge. He acknowledges kicking the subject but indicated the subject's coat or sweatshirt had come up over the subject's head making it difficult to determine exactly where the kicks landed. In his interview with me, he indicated neither the kicks nor the knee strikes were intended to strike the subject in the head. He indicated if that happened, it was inadvertent. Heimsness indicated he was attempting to strike the subject in the upper torso, shoulder, and shoulder area.

Some of the witnesses indicate that the kicks and knee strikes were directly to the head.

In reviewing the witness statements, I believe that the statement of Adam Pischke is the most helpful. Adam was the bouncer who initially restrained Mr. Bauer after the incident. Adam is also the one who pushed on Mr. Bauer thereby assisting the officers in their efforts to take him to the ground. (Note, it appears that neither officer realized this occurred.)

Adam indicated in his statement that the officer who was in the standing position kicked the subject in the head anywhere from three to seven times. In regard to whether the head was covered or not, Adam stated, "There might have been for one of the stomps, maybe, but for the majority that I can remember, there was nothing over his head."

With regard to the knee strikes, Adam said, "I don't believe they were to his head directly. They were to his midsection, his ribs or the collarbone/shoulder area but there weren't any knee strikes directly to the head, as far as I can remember."

Another witness was identified as Garrett Alexander. He is a student at UW and a part-time employee of the State Street Brat & Grill. He was not working at the time of the incident but was socializing at the bar. He indicated he had been drinking. Mr. Alexander's recollection is somewhat confused and he thought there were more than two officers involved in the arrest of Jacob Bauer. He indicated he had seen from his vantage point some kicks to the head but also stated, "I'm not sure if any of the body hits were landed but it seemed like they were kicking him in the upper torso area."

Mr. Pischke provides information that Mr. Bauer's head may have been covered at some point during this incident which corroborates the officers' reports. He also clearly provides confirmation that the knee strikes were not to the head area, which supports PO Heimsness's statements that he was attempting to strike the person in the upper body area and not the head. Again, Mr. Pischke was close enough that he could reach in and push on the resisting Mr. Bauer.

Mr. Alexander's statement, while not as clear as Mr. Pischke's, supports the officer was kicking the subject in the upper torso area. It should be noted that Mr. Alexander was at the bar observing this as

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opposed to Mr. Alexander who was standing right next to the situation. Mr. Alexander's statement indicates the officer kned the subject directly in the head. Of course, this conflicts with Mr. Pischke's statement that the knee strikes were to the body.

I have considered the statements in light of the photos taken of Mr. Bauer after the incident. Mr. Bauer's face and head do not have the amount of damage that one would expect to see from a great number of forceful kicks to the head. I believe Captain McLay shares that opinion. This could suggest that the kicks to the head were not as damaging because the head was covered, or that the kicks to the head were somewhat limited. Clearly, Mr. Bauer looks like he had been involved in a fight but he certainly does not have the amount of damage that I have observed on a number of occasions of people with severe face and injuries related to fights.

In reviewing the use of force, it appears that the officers had to escalate to using "incapacitating techniques" to cause the immediate temporary cessation of violent behavior on the part of Mr. Bauer. Kicks and knee strikes are authorized under the DAAT model as active counter measures. Normally active counter measures are one step below incapacitating techniques. In this case, the application of kicks and counter measures by Officer Heimsness appears to be reasonable under the circumstances.

Our policy requires officers to consider the existence of alternative methods of control. It appears there were no other alternative methods available to the officers in this case. They are also to consider the physical size, strength and weaponry of the person the officers are trying to arrest. Although Mr. Bauer's physical size is not unusual, he was exhibiting an extreme amount of strength. The officers knew he had just smashed a glass into the face of another person, causing serious injury, and knew he had not been searched. They are to consider the actions of the person. Mr. Bauer was exhibiting an extremely high level of violent resistance. The officers are to consider exigent circumstances involved. Exigent circumstances in my view existed because Mr. Bauer was trying to escape after he committed a violent felony and was displaying an extreme amount of violent resistance toward the officers. Officers are to consider the severity of the offense involved in the incident. As noted above, the offense was a violent felony. Officers are to consider whether the subject poses a threat to the safety of officers or citizens. I believe Mr. Bauer did pose a threat in that he had just injured a subject he did not know by smashing a glass into his face, had attempted to escape, resisted bouncers' attempts to take him into custody, and violently resisted the two officers. The last factor officers are to consider is whether the suspect is actively resisting arrest or attempting to evade arrest. Clearly, the answer to that was that Mr. Bauer was doing both.

It is also important to note that once Mr. Bauer was taken into custody and restrained, all forceful actions taken on part of the officers stopped. The officers requested an ambulance for Mr. Bauer and he was conveyed to Meriter Hospital where he continued to be obnoxious and difficult. Mr. Bauer refused medical attention. He was cleared by hospital staff for incarceration in the Dane County Jail.

#### CONCLUSION:

It is my belief this complaint should be classified as not sustained. I am making it not sustained because I cannot say for certain that each kick or knee strike to the head was inadvertent.

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As I noted earlier, this was a somewhat unique and difficult situation for the officers involved. Officer Heimsness indicated in his interview that he had never had to use as many active countermeasures as he did the night he had to arrest Jacob Bauer. It is also interesting to note that the level of force that was used to restrain Mr. Bauer prior to the police arrival was what is commonly referred to as a choke hold. This was applied by Mr. Pischke in his successful efforts to restrain and detain Mr. Bauer. A chokehold is clearly an incapacitating technique, although it is not trained for law enforcement in Wisconsin. I note this to illustrate the level of resistance Mr. Bauer was exhibiting immediately before his contact with Madison police officers.

For the most part, the officers' actions were reasonable and necessary. This action includes the kicks and knee strikes. It is my belief that without using a high level of active countermeasures, Mr. Bauer would have continued to fight and attempt to flee, thus presenting a continuing danger to both officers and the public.

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**MADISON POLICE DEPARTMENT**  
**M E M O R A N D U M**

TO: Noble Wray, Chief of Police  
John Davenport, Assistant Chief of Police  
Randy Gaber, Assistant Chief of Police  
Mary Schauf, Captain

FROM: Pat Malloy

RE: Internal Investigation 2007-01

DATE: March 2, 2007

As you know, I completed a follow-up interview regarding the State Street Brats case with PO Cory Urso on 3/1/07 at 5:30 am in the Chief's Conference Room. Officer Urso was accompanied by MPOA President Scott Favour.

Officer Urso was cooperative during the interview. His statement to me was consistent with his earlier interview. He indicated he did not see Officer Heimsness deliver any kicks, knee strikes, or punches to Jacob Bauer.

Officer Urso told me that he could tell a struggle was going on and that Jacob Bauer continued to resist as they were attempting to restrain him. He indicated to me that he was looking down at the right hand and wrist of Mr. Bauer as he was trying to control him. He told me he was especially concerned because there was a great deal of blood present, and he wasn't sure where the blood was coming from. He said he was really trying to avoid a significant exposure. He estimated that this time period in which he was attempting to control Mr. Bauer's right arm was approximately 45 seconds to a minute.

He told me that Mr. Bauer put up an awful lot of resistance at the time of his arrest. He also told me that he was unaware of anybody reaching in and pushing Mr. Bauer, causing Mr. Bauer and the officers to go to the floor. He indicated it was possible that this happened.

Officer Urso could not provide any additional information reference this investigation.

A copy of the transcript will be provided as soon as it is transcribed.

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