

2008-2009 Competition Case

The Wade Edwards High School  
Mock Trial Program



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# 2008-2009 Wade Edwards High School Mock Trial Program

## **Rodgers v. Estrada**



The North Carolina Advocates for Justice, formerly known as the North Carolina Academy of Trial Lawyers, wants to sincerely thank the North Carolina Advocates for Justice's Civil Rights Division for developing this mock trial case. We want to especially thank the Division Chair, Katy Parker, the ACLU-NCLF Legal Director, and association members Carlos Mahoney and PJ Roth for sharing their leadership and talents in crafting the case. Finally, we also are grateful to those who edited the case, especially Brett Dressler of Sellers, Hinshaw, Ayers, Dortch & Lyons, P.A. in Charlotte; and Rebecca Britton of Hutchens, Senter and Britton, P.A. in Fayetteville.

## **Rodgers v. Estrada Case Summary**

On November 16, 2007, the city of Utopia, North Carolina completed construction of a new nuclear power plant, the Utopia Energy Facility. The Utopia Energy Facility is located on the outskirts of the city – about 10 miles northwest of Utopia’s downtown area on Highway 81. The Utopia Energy Facility now provides about 75% of the city’s power supply.

Pat Rodgers is the leader of a local activist group called Citizens Against Nuclear Energy. Members of Citizens Against Nuclear Energy have actively protested the construction of Utopia Energy Facility since its inception, but have largely confined their activities to the field immediately adjoining the construction site. Their protests have taken the form of marches around the field near the construction site while carrying signs declaring anti-nuclear messages. Mr/s. Rodgers has been present at these protests, and often brought a megaphone during the construction process, shouting anti-nuclear slogans across the field at construction workers and occasional bikers or joggers on the highway. Police have been alerted in the past to the protests taking place at the site, and have arrived to investigate, but have not made any arrests or halted any of the protest activities, due to the fact that the protests remain outside the plant grounds and do not generally disrupt the operation of the plant. Police have, however, warned Mr/s. Rodgers about interfering with plant operations, and have informed him that s/he could be arrested if s/he trespasses upon the nuclear power plant’s grounds in any way.

After the completion of construction of Utopia Energy Facility, Mr/s. Rodgers felt that Citizens Against Nuclear Energy needed to be more aggressive in its efforts to hinder the plant’s operation, in spite of the warnings s/he had received from local law enforcement officers. Mr/s. Rodgers felt disillusioned, as the efforts of Citizens Against Nuclear Energy during Utopia Energy Facility’s construction process appeared to be in vain. Mr/s. Rodgers met with Jamie Silkwood, a fellow member of Citizens Against Nuclear Energy, for coffee to discuss strategies for making a larger impact on the operation of Utopia Energy Facility. Mr/s. Rodgers and Mr/s. Silkwood devised a plan in which they would sign up for one of the tours of Utopia Energy Facility open to the public. During the tour, they would slip into the facility’s restrooms, crouch on top of the toilets, and remain there until after the facility had closed in order to avoid detection by security guards. Once the facility had closed, Mr/s. Rodgers would chain himself to an internal fence, with the help of Mr/s. Silkwood. Mr/s. Rodgers and Mr/s. Silkwood hoped that their activities would disrupt operation of the plant long enough to attract the attention of the press so that they could express their views in the local newspaper.

Mr/s. Rodgers and Mr/s. Silkwood proceeded to carry out their plan on Sunday, November 25, 2007. They bought tickets to one of the tours open to the local public, brought chains to restrain Mr/s. Rodgers’ arms, and hid in the bathroom. The nighttime security guard, Terry Lemon, neglected to check the bathrooms before the closing of the plant, so, at about 10:00 P.M., Mr/s. Rodgers and Mr/s. Silkwood sneaked out of the bathroom and proceeded to an internal fence, where they chained Mr/s. Rodgers to the fence with his/her arms behind his/her back. Mr/s. Rodgers was sitting with his/her back to the fence. As Mr/s. Silkwood was completing the chaining of Mr/s. Rodgers to the fence, Mr/s. Lemon came down the hall and discovered the two protesters.

Mr/s. Lemon immediately called the police. An on-duty officer, Eric(a) Estrada, happened to be patrolling the area on the outskirts of town where Utopia Energy Facility was located, and arrived on the scene in about ten minutes. During the intervening time between the phone call to the police from Mr/s. Lemon and the arrival of the officer, Mr/s. Lemon attempted to reason with both protesters. Mr/s. Lemon had been instructed by the police dispatcher to refrain from attempting to remove the protesters, so s/he simply remained near the protesters and tried to talk them out of their plan while s/he waited for Officer Estrada to arrive. Neither individual complied with Mr/s. Lemon's request that they remove the chains.

Officer Estrada arrived and informed Mr/s. Rodgers and Mr/s. Silkwood that the protest was over and that they were under arrest for trespassing. A verbal argument occurred between Officer Estrada and Mr/s. Rodgers at that point. Officer Estrada moved to remove the chains so s/he could place Mr/s. Rodgers and Mr/s. Silkwood under arrest. According to Mr/s. Rodgers, his/her arms had been chained for some time now and were beginning to ache. When Officer Estrada began to move the chains about, s/he flinched and twitched his/her legs and struck Officer Estrada in the shins. According to Officer Estrada, Mr/s. Rodgers continued to shout disrespectfully and loudly at him/her as s/he attempted to remove the chains.

At that point, Officer Estrada pulled out her/his stun gun. When Mr/s. Rodgers continued to refuse to remove the chains himself, Officer Estrada applied the stun gun to Mr/s. Rodgers' leg. When s/he again failed to remove the chains, Officer Estrada applied the stun gun again to Mr/s. Rodgers's chest. At that point, Mr/s. Rodgers stopped moving, and Officer Estrada was able to remove the chains her/himself and place Mr/s. Rodgers in handcuffs. Mr/s. Silkwood was also placed in handcuffs at that time.

Mr/s. Rodgers had to be taken to the hospital as a result of having heart palpitations.

Mr/s. Rodgers and Mr/s. Silkwood were both tried and convicted of trespassing. They pled guilty to the charge of trespassing. Mr/s. Rodgers' was additionally charged with resisting arrest. That charge was dismissed.

Mr/s. Rodgers has filed a lawsuit against Officer Estrada for excessive force in violation of the Fourth Amendment to the United States Constitution for his/her use of the stun gun against Mr/s. Rodgers. Officer Estrada contends that the use of the stun gun was reasonable under the circumstances, and therefore, s/he did not violate Mr/s. Rodgers's Fourth Amendment rights. Mr/s. Rodgers continues to have periodic heart palpitations.

## **Stipulations**

1. The fact summary provides background information only. Witnesses may testify to information contained in the fact summary only if it is also found in their witness statement.
2. All exhibits included in the case materials are authentic and accurate in all respects and no objections to the authenticity of the exhibits will be honored. The chain of custody of the evidence may not be contested.
3. All exhibits, if offered, shall be admitted.
4. The signatures on the Witness Statements and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the contents of the document(s) and the date(s) indicated thereon. The statements are deemed to be given under oath or affirmation.
5. The stipulations cannot be contradicted or challenged.

## **Witnesses**

### **Plaintiff**

Pat Rodgers  
Jamie Silkwood  
Mel Brown

### **Defendant**

Eric/Eric(a) Estrada  
Terry Lemon  
Taylor Williams

All characters, institutions, events and other facts contained herein are fictitious and are not intended to represent any individual, living or dead.

## **Exhibits**

1. Emergency Room Report, November 25, 2007
2. Use of Force Report, filed with Internal Affairs, Utopia Police Department
3. Utopia Police Department's Use of Force Policy Directive
4. Diagram of the Utopia Energy Facility (UEF)

## **Jury Pattern Instructions**

**[Not to be read in open court]**

The Plaintiff in this case is Pat Rodgers. The Plaintiff is asserting claims against Defendant Eric(a) Estrada for excessive force in arrest under Section 1983 of Title 42 of the United States Code for violations of the Fourth Amendment to the United States Constitution.

### Substantive Law

The Defendant denies that any of his/her actions during the time in question violated the Plaintiff's constitutional rights. The Defendant claims that he was acting in good faith and used reasonable force under the circumstances. The Defendant further claims that s/he was not guilty of any fault or wrongdoing in regard to the incident sued upon.

Section 1983 of Title 42 of the United States Code provides that any citizen may seek redress in this Court by way of damages against any person who, under color of state law or custom, intentionally deprives that citizen of any rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States.

In order to prove his/her claim under this statute, the Plaintiff must establish by a preponderance of the evidence each of the following elements:

- (1) That the Defendant intentionally committed an act or acts which operated to deprive the Plaintiff of a right secured by the Constitution of the United States at any point in time before, during, or after the apprehension, surrender, or arrest;
- (2) That the Defendant acted under color of the authority of the State of North Carolina; and
- (3) That the Defendant's acts were the legal cause of the Plaintiff's damages.

The parties have agreed, or stipulated that:

- (1) The Defendant herein was acting under color of the authority of the State of North Carolina at the time of the incident herein.

A stipulation means that both sides agree that this is a fact. You must therefore treat this fact as having been proved.

The Plaintiff claims that the Defendant, while acting under color of the authority of the State of North Carolina as a member and Officer of the Utopia Police Department, intentionally violated the Plaintiff's constitutional right to be free from the use of excessive and unreasonable force at any point before, during or after his/her apprehension or arrest.

Under the Fourth Amendment to the Constitution of the United States, a citizen has the right not to be subjected to excessive or unreasonable force while being arrested by a law enforcement officer, even though the arrest is otherwise proper. In order to prove that the Defendant used

excessive and unreasonable force in violation of the Fourth Amendment, the Plaintiff must prove by a preponderance of the evidence:

- (1) Some harm, that
- (2) resulted directly and only from the use of force that was clearly excessive to the need; and the excessiveness of which was
- (3) objectively unreasonable in light of the facts and circumstances at the time.

If the Plaintiff proves all of the elements by a preponderance of the evidence, you must find for the Plaintiff. On the other hand, if the Plaintiff fails to prove any one of these elements, you must find for the Defendant.

Some of the things you may want to consider in determining whether the Defendant used excessive force are (1) the extent of the injury suffered; (2) the need for the application of force; (3) the relationship between the need and the amount of force used; (4) the threat reasonably perceived by the responsible officials; and (5) any efforts made to temper the severity of a forceful response.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The nature of the reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Factors you are to consider in determining whether or not the amount of force applied before, during, or after the apprehension used to arrest the Plaintiff was reasonable in this case are:

- (1) The severity of the crime at issue;
- (2) Whether the Plaintiff posed an immediate threat to the safety of the officers or others; and
- (3) Whether the Plaintiff was actively resisting or attempting to evade arrest by flight.

The reasonableness inquiry is an objective one: The question is whether the Defendant's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Whether the Defendant acted with subjective good faith is irrelevant, and Plaintiff need not prove that Defendant had an evil heart. You must hold the Defendant liable for a constitutional violation, even if you believe s/he had good intentions.

The Plaintiff must also prove by a preponderance of the evidence that the act or failure to act by the Defendant was a cause-in-fact of the damage the Plaintiff suffered. An act or a failure to act is a cause-in-fact of an injury or damages if it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damages.

The Plaintiff must also prove by a preponderance of the evidence that the act or failure to act by the Defendant was a proximate cause of the damage Plaintiff suffered. An act or omission is a

proximate cause of the Plaintiff's injuries or damages if it appears from the evidence that the injury or damage was a reasonably foreseeable consequence of the act or omission.

If you find that the Plaintiff has proven his/her claim, you must then consider the Defendant's defense that his/her conduct was objectively reasonable in light of the legal rules clearly established at the time of the incident at issue and that the Defendant is therefore not liable.

Police officers are presumed to know about the clearly established constitutional rights of citizens. Thus, the Plaintiff need not prove that the Defendant acted with the specific knowledge of the Plaintiff's particular constitutional right s/he violated. The right to be free from the excessive use of force was a clearly established constitutional right at the time of Plaintiff's arrest.

Preponderance of the evidence means that you must be persuaded by the evidence that it is more probably true than not true.

## **Statute**

TITLE 42 > CHAPTER 21 > SUBCHAPTER I > § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

1 **Affidavit of Pat Rodgers**

2  
3 My name is Pat Rodgers. I am 54 years old and have lived in Utopia nearly all my life,  
4 except when I went to Chapel Hill for college. I have always been a committed  
5 environmentalist, and I love my hometown. About three years ago, I became the leader of  
6 Citizens Against Nuclear Energy (CANE). At that time, the City was discussing the  
7 development of a nuclear power plant to be located northwest of town. CANE was formed in  
8 response to this plan in order to protest the poisoning of our town.  
9

10 CANE has been protesting every few months for three years near the construction site of  
11 the nuclear plant. I almost always participate in those protests. During these protests, we often  
12 interact with members of the Utopian Police Department. While I always try to be pleasant to  
13 the police officers, there are a couple of officers, including Officer Estrada, who treat the  
14 protesters with disrespect, calling us “tree huggers,” and “old hippies.” Before the incident on  
15 November 25, 2007, however, there has never been any sort of violence between the police and  
16 the members of CANE, including myself. We are a self-described non-violent protest group, and  
17 we gave the police officers no reason to think that we posed any dangers to the officers or to  
18 other citizens.  
19

20 When the plant opened on November 16, 2007, I was devastated. I felt that all of our  
21 efforts had been in vain and that CANE needed to more to generate publicity for the harm that  
22 Utopia Energy was doing to our community. I decided that it was time for a little civil  
23 disobedience in order to garner attention from the press.  
24

25 I could only convince one other member, Jamie Silkwood, to go along with my plan.  
26 Other members were afraid of getting arrested, since we had all been warned that we would be  
27 arrested if we trespassed on plant property. Jamie and I thought that an arrest was worth the  
28 publicity. We decided to sign up for a tour of the facility that was taking place on Sunday,  
29 November 25, 2007.  
30

31 Our plan was that we would slip into the facility’s restrooms, crouch on top of the toilets,  
32 and remain there until after the facility had closed in order to avoid detection by security guards.  
33 Once the facility had closed, I planned to chain myself to an internal fence, with Jamie’s help.  
34

35 We were surprised that we were even allowed to go on the tour on the 25<sup>th</sup>, as we were  
36 recognizable by many of the plant employees. It was pretty cold out that day, so I was able to  
37 wear a large parka to hide the chain and nobody thought anything about it. The thick industrial  
38 linked chain made it difficult for me to move with any grace; I was a little weighed down.  
39 However, I stayed up with the tour without any problems. We were able to hide in stalls in the  
40 women’s bathroom and we stayed there until the plant closed.  
41

42 The security guard never checked the bathroom before the plant closed. At about 10:00  
43 PM, Jamie and I snuck out of the bathroom. We looked around and decided that the best option  
44 as far as chaining myself to the facility was an internal fence. I sat down with my back to the  
45 fence and placed my arms behind my back. We were about 2 feet from the fence’s gate, which  
46 was locked. Jamie wrapped the chains tightly around my arms. After s/he was finished, I could  
47 not move my arms.

48 At that point, the security guard stumbled upon us and called the police. The security  
49 guard tried to convince us to stop what we were doing, but by then my arms were firmly chained  
50 to the internal fence and I couldn't have undone the chains if I'd wanted to. Besides, as I said  
51 before, I was willing to risk arrest if it meant drawing publicity to the dangerousness of the  
52 nuclear power plant. Jamie began to feel that we should stop our protest and go home, but I  
53 quietly persuaded him/her to persist.  
54

55 I recognized Officer Estrada as soon as s/he arrived, mainly because I remembered  
56 him/her from our interactions and his/her rudeness during previous protests outside the nuclear  
57 facility. Officer Estrada tried to convince me to remove the chains, but, as I said earlier, the  
58 chains were wrapped so tightly around my arms that I simply could not have removed them. I  
59 also calmly explained to Officer Estrada the reason for my protest, and why I refused to be  
60 moved.  
61

62 Officer Estrada then began very roughly pulling on the chains, trying to remove them so  
63 s/he could place me under arrest. I again told her/him that I would not move. I knew I would  
64 eventually be arrested, but I at least wanted the press to arrive before the protest could be  
65 thwarted. My arms also had lost much of their circulation by now and I was in some pain. As  
66 Officer Estrada pulled and yanked on the chains, I flinched in pain. One of my legs involuntarily  
67 twitched, and hit Officer Estrada in the leg.  
68

69 Officer Estrada became very angry at that point and pulled even more violently on the  
70 chains, causing me to squirm and flail about. I yelped out in pain, and Officer Estrada pulled out  
71 his/her stun gun. I'll never forget the shock that ran through my body as s/he jammed the gun  
72 into my leg. It was more painful than anything I'd ever felt in my life. I screamed, and s/he  
73 immediately jammed the gun into my chest, even though I couldn't move as a result of the first  
74 shock. My arms were still tightly chained to the fence at this time, so I couldn't fight his/her  
75 assault. I begged him/her to stop and screamed that I couldn't move.  
76

77 My heart began to pound irregularly, and I feared that I would have a heart attack. I  
78 couldn't move anymore, and I was placed under arrest. I went to the Utopia Hospital's  
79 Emergency Room that night. The doctor noted that I was suffering angina (an-JI-nuh or AN-juh-  
80 nuh), chest pain or discomfort that occurs when an area of the heart muscle doesn't get enough  
81 oxygen-rich blood. I am certain this is the result of having a stun gun used on my chest area.  
82 Since that night, I go through periods where my heart pounds and beats irregularly.  
83

84 I also have not had the heart to resume my activities with CANE. I fully expected to get  
85 arrested as a result of Mr/s. Silkwood's and my activities that night. I did not expect to be  
86 assaulted to the point of paralysis. I feel disillusioned and violated by the system. First, the  
87 plant gets opened in spite of CANE's efforts. Then, I suffer a physical assault that has resulted  
88 in permanent effects when I try to call attention to how deadly that plant is. I am retiring from  
89 my efforts as an activist. Who would have thought that activism can nearly get you killed by the  
90 police? I feel certain my heart attack was related to what happened that night.  
91

92 I also feel that Officer Estrada has a personal vendetta against me. S/he often seemed  
93 antagonized by my presence at previous CANE protests, as I described earlier. I believe s/he is  
94 annoyed by CANE's agenda and allowed her personal feelings to override her better judgment

95 when she used his/her stun gun on me. There is no other reason to use that kind of force on  
96 someone who is restrained by chains and cannot move anyway.

97

98

99 Date: January 20, 2008

Signature: *Pat Rodgers* <Pat Rodgers>

1 Affidavit of Jamie Silkwood

2  
3 My name is Jamie Silkwood. I am 35 years old and relocated to Utopia nearly five years  
4 ago after I earned my master’s degree in evolutionary biology from the University of California  
5 Los Angeles. I wanted to move to a quieter, more community-oriented environment, and I  
6 explored many options. When I first visited Utopia, I knew I had come home. I care very deeply  
7 about the community of Utopia and hope to make Utopia my home for the rest of my life.  
8

9 I joined Citizens Against Nuclear Energy (CANE) when I heard that the city planned to  
10 construct a nuclear power plant. The idea of having this nuclear power plant looming over  
11 Utopia broke my heart. One of the things that appealed to me about the community was its  
12 pristine, untouched quality. I just felt that having this nuclear power plant, even if it was ten  
13 miles outside of town, would fundamentally alter the characteristics that made Utopia so  
14 charming.  
15

16 Plus, there is the problem of nuclear waste, and this is very serious. I hope to raise  
17 children someday in Utopia, and I want Utopia to be a safe and healthy place for them to grow  
18 up. Nuclear waste is radioactive and takes hundreds of years to break down. That potentially  
19 equals hundreds of generations of children, grandchildren, and great-great grandchildren. They  
20 say that nuclear energy is more cost-effective than burning fossil fuels, but is it, really? When  
21 you think about it in the long-term, it is not nearly as cost-effective as it might seem. It will cost  
22 millions of dollars to keep all that nuclear waste safe from the community. In other words, those  
23 people who say that nuclear energy results in one-third the carbon emissions of standard gas-  
24 fired fossil fuel sources are only thinking in the short term. It is very costly, and results in more  
25 carbon emissions, to make sure nuclear waste is safe for hundreds of years. I feel such a deep  
26 commitment to the community of Utopia that I couldn’t possibly allow this to happen without at  
27 least making my voice heard.  
28

29 When I heard that several citizens of the community had formed CANE, I jumped at the  
30 chance to join. Pat Rodgers was the unofficial “leader”, of sorts, of the group. I always admired  
31 Pat a great deal. S/he was passionate and utterly committed, without ever resorting to violence  
32 or terrorist tactics, like some activists do. I always liked how s/he marched to his/her own  
33 drummer—I’ll never forget the first time I met him/her. S/he had long white hair in braids, and  
34 wore a Grateful Dead t-shirt. We became fast friends when I shared that I had followed the  
35 Grateful Dead around for a brief period in my late teens. I don’t know—maybe it was Pat’s  
36 bohemian looks that always irritated the police. I’m not really sure. But in any case, every time  
37 we held a protest in the field outside of the plant, the police were right on top of us, with both  
38 eyes on everything we did. We never had any real problems, because we were always peaceful,  
39 but I always got the feeling that a couple of the officers were just waiting for Pat to go a little too  
40 far. I can’t help but feel that the Utopian police just resented our “culture”. Sometimes people  
41 brought drums to the protests and created impromptu drum circles. Others brought incense  
42 sticks and passed them out, sort of like sparklers on the Fourth of July. But we never forgot our  
43 primary purpose, which was preventing the construction and opening of that plant.  
44

45 I shared Pat’s devastation when the plant was opened. I wasn’t out there protesting in the  
46 field every week just to feel like I “did something”—I really thought that if CANE protested long  
47 and hard enough, we might be able to make a difference. When Pat approached me and asked

48 me to do something a little more extreme, I felt it was worth an arrest. I mean, if Quakers could  
49 have risked their lives to help slaves escape in the 1800s, what's the big deal about a mere arrest  
50 for trespassing if it draws publicity to the horrors of this nuclear power plant? In addition, I had  
51 become very close friends with Pat by now and felt a certain loyalty to him/her personally. If  
52 s/he felt committed to instigating this type of protest, I wanted to be right there with him/her.  
53

54 We joined a tour open to the public, and hid in one of the bathrooms. We had actually  
55 practiced chaining Pat to his/her fence in his/her backyard before staging our protest, so that we  
56 could be sure to do it quickly and effectively. When it looked like the coast was clear, we left  
57 the bathroom after closing time and found an internal fence. I had wrapped the chains around  
58 Pat' arms in no time, and secured them firmly. I looped the linked chain through the holes in the  
59 fence various times. I regret that very much now. If I hadn't done such an efficient job of  
60 chaining Pat to that internal fence, the violence and pain s/he suffered might not have happened.  
61 Anyway, when the security guard happened upon us, Pat was thoroughly immobilized by the  
62 chains. When the security guard called the police, I felt a chill run down my spine. It was  
63 almost like a sixth sense. I just knew things were going to get ugly.  
64

65 When I felt that knot in my stomach, I tried to convince Pat that we should forget this  
66 business and go home. Pat was determined, though. As his/her friend, I felt I should step in and  
67 try to undo the chains as quickly as possible. I failed to make any headway, though, before  
68 Officer Estrada arrived. I knew then that this was the opportunity the Utopian police had been  
69 waiting for—a real chance to arrest Pat and press charges. In his/her usual, impassioned style,  
70 Pat expressed his/her refusal to budge and opposition to the nuclear power plant. S/he didn't say  
71 anything remotely threatening to Officer Estrada, though. Officer Estrada kept trying to  
72 persuade Pat to remove the chains so s/he could arrest him/her, but s/he didn't seem to  
73 understand that there was no way those chains were moving. I don't think Pat would have  
74 wanted to move anyhow—s/he is such a brave and determined activist.  
75

76 When Officer Estrada tried to remove the chains him/herself, it was obvious that Pat'  
77 arms were in a great deal of pain, probably from lack of circulation. S/he flinched, and I saw one  
78 of his/her feet reflexively strike out and hit Officer Estrada in the shins. To my horror, Officer  
79 Estrada took his/her stun gun out and zapped Pat in the leg. While Pat lay there paralyzed from  
80 the first shock, Officer Estrada rammed the stun gun right into his/her chest. After that, Pat  
81 looked as though s/he'd been completely paralyzed, and was silent. I could tell from his/her face  
82 that s/he was scared and hurt.  
83

84 Everything that happened after that is a blur. I don't know how Pat is feeling these days.  
85 I can't talk to him/her. Every time I think of him/her, I am flooded with the pain and guilt of the  
86 fact that I stood by and watched while this happened. I could have done something—I should  
87 have done something. The worst part is that I heard that Pat is no longer practicing activism with  
88 CANE. It's like his/her spirit has been broken. The police got what they wanted. When Pat left  
89 CANE, it kind of fell apart. I'd give anything to be able to go back and change the events of that  
90 night.  
91

92 Date: January 23, 2008

Signature: *Jamie Silkwood* <Jamie Silkwood>

1 **Affidavit of Mel Brown**

2  
3 My name is Mel Brown and I am a physician and epidemiologist in Chapel Hill, North  
4 Carolina. In addition to working as a part-time practitioner of family medicine, I do research in  
5 the area of epidemiology at Duke University in Chapel Hill. Epidemiology is essentially the  
6 study of factors that affect the health or illness of populations. It is considered foundational as a  
7 methodology of public health research.  
8

9 As an epidemiologist, I first became interested in the use of stun guns when I read that  
10 Amnesty International reported more than 290 deaths from stun gun incidents involving law  
11 enforcement officers since the year 2001. I applied for a grant to research the safety of stun  
12 guns, and was awarded a large sum of money to conduct my research at Duke University.  
13 Although deaths and serious complications following stun gun use on suspects are generally  
14 attributed to other factors, such as drug intoxication, many medical experts, including myself,  
15 believe that shocks from stun gun-type weapons may increase a risk of heart failure in persons  
16 who are already agitated.  
17

18 A stun gun may be fired from about 15 to 35 feet, in which it sends out two probes that  
19 carry an electrical charge. The stun gun may also be applied directly to the body. This is known  
20 as “drive mode.” The shock delivered from the stun gun facilitates what is known as “electro  
21 muscular disruption,” which causes neuromuscular incapacitation, or NMI. This essentially  
22 “freezes” the muscles, immobilizing the suspect. A number of medical examiners have found  
23 that stun gun shocks exacerbate physiological reactions caused by exertion and stress. A United  
24 Kingdom study also found that stun gun shocks could possibly have adverse effects beyond  
25 direct effects on heart rhythm, such as increasing stress levels more generally.  
26

27 I am familiar with Utopia Police Department’s guidelines regarding the use of stun guns,  
28 or conducted energy devices, as they call them. Their Use of Force Policy is a matter of public  
29 record. The reason their policy discourages use of stun guns against handcuffed persons is due,  
30 in part, to the fact that such persons are usually in high stress mode when in that vulnerable,  
31 restrained position.  
32

33 We are now beginning to understand that stun gun shocks can indeed cause cardiac  
34 arrhythmias. A normal heart rate can be defined as approximately 60 to 100 heart beats per  
35 minute. A cardiac arrhythmia constitutes any deviation from this range, and can be commonly  
36 experienced as a heart palpitation.  
37

38 A study was conducted recently at the University of Toronto in Ontario, Canada for the  
39 purpose of evaluating the cardiac consequences of stun gun discharge. Six anesthetized pigs  
40 served as subjects for the study, and each were delivered electrical shocks from a stun gun.  
41 These six pigs underwent a total of over 150 electrical discharges. The study concluded that  
42 electrical discharges from stun guns can produce cardiac stimulation at high rates in pigs, and,  
43 thus, further study on cardiac effects in humans from stun guns was warranted.  
44

45 Many who have died following electrical discharges from stun guns were shocked either  
46 multiple times, or for prolonged periods of time. It is believed that the ability of a law  
47 enforcement officer to depress the trigger and deliver either repeated or prolonged electroshocks

48 may dangerously increase stress levels. Amnesty International’s records indicate that most of  
49 those who have died were subjected to repeated or prolonged electroshocks. In addition, in most  
50 of the cases recorded thus far, the deceased is reported to have gone into cardiac or respiratory  
51 arrest at the scene of the use of a stun gun by a law enforcement officer. Many medical  
52 examiners following these deaths have noted a temporal relationship between the stun gun  
53 shocks and the time of cardiac arrest. In other words, cardiac arrest occurred within a time span  
54 of the stun gun shock, which would lead a reasonable observer to conclude that there is a  
55 relationship between the stun gun shock and the cardiac arrest. Furthermore, in at least three  
56 cases medical examiners found stun gun shocks to be a direct cause of cardiac arrhythmia.

57

58 I have read Mr/Mrs. Rodger’s medical report stemming from his visit to the ER on November  
59 25, 2007. I am of the opinion that Mr/s. Rodgers suffered heart palpitations and a brief depletion  
60 of oxygen to the organ as a direct result of multiple shocks applied directly to his/her body—in  
61 “drive mode.” After all, all the evidence I outlined previously indicates that electroshocks from  
62 stun guns do cause cardiac irregularities. Although his/her episode reflects a minor heart attack,  
63 all deterioration of the heart muscle that occurs during a heart attack of any size, increases the  
64 chances of future, more significant heart attacks or heart problems.

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67 Date: January 27, 2008

Signature: *Mel Brown* <Mel Brown>

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1 **Affidavit of Eric(a) Estrada**

2  
3 My name is Eric(a) Estrada and I am a police officer with the Utopia Police Department.  
4 I am 29 years old. I have wanted to be a police officer most of my life, and finally decided to  
5 pursue my dream a few years ago. I attended the Police Academy in Raleigh, North Carolina,  
6 and graduated two years ago. After completing the program, I relocated to Utopia, North  
7 Carolina, and have been with the Utopia Police Department for nearly two years.  
8

9 Utopia just seemed like a good “fit” for me. I was never interested in being a police  
10 officer in a large, urban area, although I realize some officers love the excitement and adrenaline  
11 that comes with policing a metropolitan area. I was more suited to a quiet environment where  
12 you can get to know the members of the community and have friendly relations with the  
13 community’s members. I excel at keeping the peace and maintaining a comfortable order, and  
14 small-town policing seemed like a good niche for me. Most of my work involves things like  
15 routine traffic stops and nuisances, like a neighbor’s dog that won’t stop barking. Things of that  
16 sort. Like any other place in the country right now, Utopia has had its problems with drug  
17 infiltration, particularly crystal meth, and I sometimes have to respond to drug-related calls, as  
18 well as domestic violence calls. That’s about as bad as it gets in Utopia, though.  
19

20 Nevertheless, the occasional drug-related call, domestic violence call, or even routine  
21 traffic stop means that I have to be well-trained to protect my safety at all times. Part of my  
22 training at the Police Academy in Raleigh involved learning how to safely use a stun gun or  
23 conducted energy device. We actually had to complete a 40-hour certification program. Once  
24 we completed our forty hours of training with the conducted energy device, we were certified to  
25 carry a stun gun. Stun guns can be shot at a suspect, where they emit two probes that carry an  
26 electric charge, or they can be put in direct contact with the body and deliver a shock. Ideally, an  
27 officer need only shock the suspect once, and then cuff that suspect while he or she is  
28 immobilized. Fortunately, outside of the incident with Mr/s. Rodgers, I have only had to use my  
29 stun gun once, in a crystal meth bust. However, my forty hours of training with the Police  
30 Academy gave me plenty of experience and expertise with stun guns.  
31

32 By the time I had relocated to Utopia two years ago, plans to construct the Utopia Energy  
33 Facility (UEF) were well underway. My coworkers at the police department had warned me  
34 about a group called Citizens Against Nuclear Energy (CANE) that was raising some concern  
35 around the vicinity of the plant. CANE frequently staged protests in the field adjacent to the  
36 plant, and I was often called to oversee CANE’s activities and make sure things didn’t get out of  
37 hand. The group’s leader, Pat Rodgers, was especially active. S/he would carry a megaphone to  
38 the protests, and shout anti-nuclear slogans at construction workers and passersby. As I said  
39 before, I am dedicated to community policing, and I hoped to become friendly with Mr/s.  
40 Rodgers and the rest of these protesters. I always tried to treat Mr/s. Rodgers and the other  
41 protesters respectfully and develop a friendly rapport with them. However, Mr/s. Rodgers was  
42 always very stand-offish with me and would often refuse to engage me in friendly conversation.  
43 Sometimes the things Mr/s. Rodgers shouted through his/her megaphone got a little abrasive, so I  
44 felt I had to warn him/her against threatening the nuclear plant or its workers in any way. For  
45 instance, Mr/s. Rodgers often shouted, “We are going to do whatever it takes to see to it that this  
46 plant is not opened!” As a police officer, that is a threat you take seriously. It wasn’t enough to  
47 arrest him/her, but it certainly merited a warning. I informed Mr/s. Rodgers that if s/he or any

48 other member of CANE ever interfered with the operation of the plant or trespassed on the plant,  
49 we would have to make an arrest and press charges.

50

51 On the night of November 25, 2007, I was patrolling the countryside near the location of  
52 UEF. I received a call at about 10:15 P.M. from a nighttime security guard, Terry Lemon, who  
53 worked at the plant. Mr/s. Lemon informed me that two protesters had infiltrated the plant and  
54 that one of these (whom I later found out was Mr/s. Rodgers) had chained him/herself to the  
55 internal fence. I advised Mr/s. Lemon to use caution and refrain from fighting the protesters. At  
56 this point, I had no idea whether these protesters had bombs, guns, knives, or anything of the  
57 sort. I feared for Mr/s. Lemon's safety and quickly sped to the plant, where I arrived about ten  
58 minutes after the dispatch call. At the scene, I found Mr/s. Lemon, one Jamie Silkwood, another  
59 member of CANE, and Mr/s. Rodgers, who was chained with his/her hands behind his/her back  
60 to the internal fence.

61

62 Mr/s. Rodgers was quite riled up when I arrived at the scene. Apparently, Mr/s. Lemon  
63 had tried to calmly talk the protesters out of their scheme, which only served to inflame Mr/s.  
64 Rodgers. Mr/s. Rodgers shouted repeatedly, "This plant is a death machine!" and "Our future  
65 generations are going to die from this plant and their blood will be on your hands!" Mr/s.  
66 Silkwood had evidently changed his/her mind about the plan and was moving toward the chains,  
67 urging Mr/s. Rodgers to "forget the whole thing" and go home. Mr/s. Rodgers kicked his/her  
68 legs in Silkwood's direction as s/he approached, and Jamie Silkwood seemed to think better of  
69 trying to convince Mr/s.. Rodgers to abandon the plan. I announced that the two of them were  
70 under arrest, and requested that Mr/s.. Rodgers remove the chains so I could cuff him/her. S/he  
71 shouted, "I will die before I'll submit!" I saw that if I were to arrest him/her, I would have to  
72 remove the chains myself.

73

74 I admit that perhaps I went against my better judgment in coming so close to a person  
75 who was clearly thinking irrationally. Mr/s. Rodgers' face was red and beads of sweat coursed  
76 down his/her forehead. Mr/s. Silkwood seemed catatonic at that point—s/he looked as though  
77 s/he were paralyzed. I asked Mr/s. Lemon to keep both eyes on him/her while I started towards  
78 the chains. As I bent over Mr/s. Rodgers, s/he screamed, "No!" and kicked his/her legs  
79 furiously, striking me in the shin. Reeling in pain, I composed myself and tried to explain to  
80 Mr/s.. Rodgers that s/he could make this easy or difficult. I reiterated that arrest was inevitable,  
81 and I would prefer that it go smoothly and efficiently for the sake of all involved. I asked  
82 him/her to calm down, and assured him/her that this process would be much easier if he/she just  
83 cooperated. My efforts were to no avail. As I tried again to remove the chains, Mr/s. Rodgers  
84 screamed, "Murderer! Pig!" and flailed wildly. Without any help on the way, I realized I'd  
85 have to take greater measures to bring this situation under control. I pulled out my stun gun, and  
86 administered a short zap to Mr/s. Rodgers' leg. I thought that at least this would prevent him/her  
87 from kicking his/her legs, endangering my physical safety.

88

89 For a moment, Mr/s. Rodgers was paralyzed by the shock, but soon enough s/he was  
90 flailing and kicking again. S/he was also even more infuriated, and s/he screamed a profane slur  
91 at me, and threatened to "knock my teeth out" with his/her feet. I hesitated, but decided another  
92 shock with the stun gun was necessary. This time I briefly touched the stun gun to Mr/s..  
93 Rodgers' chest, and s/he was at last subdued. I immediately checked his/her pulse to make sure  
94 nothing serious was wrong, and shined my flashlight into his/her pupils. Everything appeared to

95 be okay, so I proceeded to remove the chains and make the arrest. The linked chains were about  
96 2 inches thick and required great effort to untangle and detach from the fence. I also placed  
97 Mr/s. Silkwood under arrest.

98  
99 This could potentially have been a very hazardous situation. Mr/s. Rodgers had  
100 previously threatened to do whatever it took to prevent operation of the plant. For all I knew  
101 when I arrived, either one of them could have had a bomb. I had to act quickly and decisively.  
102 This is, after all, what I was trained to do. And, indeed, this was a nuclear power plant. It is  
103 extremely dangerous to have someone chained to the facility in any way. As the only officer on  
104 the scene, I had no choice but to resort to whatever measures necessary to ameliorate the  
105 immediate danger.

106  
107 When Mr/s. Rodgers complained of heart palpitations, I called our dispatcher and  
108 arranged for an ambulance immediately. As I stated before, I had noticed that his/her face was  
109 quite red and s/he was sweating profusely before I ever pulled out my stun gun. I felt s/he  
110 needed a visit to the hospital rather than a jail cell, at least for that night.

111  
112 I regret that I have never been able to establish cordial relations with Mr/s.. Rodgers. I love so  
113 many things about my job, but especially getting to know members of the community of Utopia.  
114 I loathe resorting to extreme tactics in situations I attend to, and sincerely wish that Mr/s..  
115 Rodgers had simply cooperated with his/her arrest. I encourage the free speech rights of all  
116 Americans, and support CANE's right to protest the UEF. However, I hope I never have to  
117 handle a situation like this again.

118  
119 I completed a Use of Force report for submission to Internal Affairs, as is common procedure  
120 when a conducted energy device is used. I didn't receive punishment for this incident.

121  
122  
123 Date: January 27, 2008                      Signature: *Eric(a) Estrada* <Eric(a) Estrada>

1  
2 **Affidavit of Terry Lemon**  
3

4 My name is Terry Lemon, and I am a nighttime security guard at the Utopia Energy  
5 Facility (UEF), the new nuclear power plant on the outskirts of town. I am a former FBI agent. I  
6 worked for the agency right after I received my BA from the John Jay School of Criminal  
7 Justice. I was young when I began my career with the FBI. I believe this resulted in me having  
8 some miscommunication problems with my superiors. After a late night incident involving a  
9 high drama arrest, they conducted an internal investigation of my work. That internal  
10 investigation resulted in my being charged with police brutality. The charge was dropped later  
11 when no evidence was put forward. I didn't do anything wrong but I never got a promotion after  
12 that. So, I left the FBI by age 35. I am now 59 years old, and had been unemployed for two  
13 years prior to getting the job with UEF. I used to manage a department store at the local mall,  
14 but with the downturn in the economy, the business had to lay several employees off, myself  
15 included. My two years of unemployment were miserable. There is not exactly a sizeable job  
16 market in Utopia. My spouse and I were barely making it on my unemployment checks. I grew  
17 despondent and lost my motivation to get out and find a new job.  
18

19 However, at some point, I heard about the new energy facility being built just outside of  
20 town. Rumor had it that the new nuclear plant would create well over a hundred jobs. I began to  
21 feel some hope again, and eagerly submitted my application and resume to Utopia Energy  
22 Facility. Imagine my excitement when they called me and asked me to come in for an interview!  
23 I was a little disappointed that they had filled the daytime security positions—I am a people  
24 person and would prefer lots of human contact when I'm working. However, I was more than  
25 willing to take on the nighttime security position, if it meant a steady paycheck again. I wasn't  
26 the only one thrilled to land a position at Utopia Energy Facility. The economy in Utopia has  
27 been depressed for quite a while now—you know, everyone wants to go to the bigger cities like  
28 Charlotte and Raleigh—and, believe me, the creation of Utopia Energy Facility put new life into  
29 this town.  
30

31 That's what these bleeding heart protesters don't understand—what is someone like me  
32 supposed to do? Can't they see that this plant is a good thing—that it lifts Utopia out of an  
33 economic slump? They can never see the forest for the trees. All they see is words like  
34 "radioactive" and "meltdown". They don't see the workers able to put food on the table and  
35 finally pay, what is it, almost five dollars a gallon for gas? I mean, something has got to give.  
36 Why worry about whether our great, great, great, great, great grandchildren will be exposed to  
37 microscopic doses of radiation when we can't afford to send our own kids to college right now  
38 on the wages people earn in Utopia? I'm not some kind of cold-blooded murderer because I  
39 work at a nuclear power plant. UEF has been good to me. I make a decent salary, have full  
40 medical and dental benefits for myself and my spouse, and a 401K. UEF knows how to treat its  
41 employees.  
42

43 I'm pretty lucky that UEF didn't fire me after the events of the night of November 25,  
44 2007. As I was doing my rounds before closing the plant for the evening, it didn't really occur to  
45 me to check the restrooms. We had been giving tours to the public for a while, and never had a  
46 problem. I closed everything down that night, and went to take up my position in the security  
47 office, keeping an eye on the monitors. All of a sudden, I noticed that a video camera was

48 picking up two people near the internal fence inside the plant. It scared the living daylight out  
49 of me. The plant is pretty big, so it took me about ten minutes to get down to where these people  
50 were. By then, one of the protesters was firmly chained to the internal fence. I took out my cell  
51 phone and immediately dialed 911. About two minutes later, I got a call from an Officer  
52 Estrada, instructing me to remain as calm as I could and refrain from fighting the protesters. My  
53 heart was pounding the whole time. For all I knew, these people could have had a bomb.  
54

55 It took the officer about ten or fifteen minutes to arrive. In the meantime, I just tried to  
56 reason with these two folks. The fellow chained to the fence was almost frothing at the mouth,  
57 s/he was so jacked up. S/he was bright red and his forehead was shiny with perspiration. S/he  
58 really had it out for me—I tried to talk him/her down, but s/he kept saying that a bunch of people  
59 were going to die and their blood would be on my hands. The other one got real nervous and  
60 tried to convince the one chained to the fence that they should call the whole thing off. At that  
61 moment, Officer Estrada arrived.  
62

63 I still can't believe how calm Officer Estrada appeared. His/her voice was steady and  
64 authoritative as s/he told the two protesters that the protest was over and they were under arrest.  
65 My guess is that Officer Estrada didn't want to get too close to the one chained to the fence,  
66 seeing as s/he was really inflamed. So, Officer Estrada asked him/her to remove the chains. The  
67 one chained to the fence started shouting that s/he would die first. Officer Estrada then carefully  
68 approached the chains, and as s/he pulled on them, the protester kicked out violently and struck  
69 Officer Estrada in the shins. That must have hurt like crazy, but it didn't seem to faze Officer  
70 Estrada. S/he bent over the protester again to remove the chains, and the protester started  
71 screaming, "Murderer! Pig!" S/he also kicked his/her legs like crazy. I could see that this was  
72 going to be a real tough arrest for Officer Estrada, even though s/he informed the protesters that  
73 they could either make the arrest go smoothly or make it difficult.  
74

75 Officer Estrada finally took out his/her stun gun, and if you ask me, it was none too soon.  
76 S/he zapped the protester in the leg, probably just to get him/her to stop kicking his/her legs so  
77 hard. This paralyzed the protester for a few seconds but he was moving again soon and was  
78 really infuriated, screaming and squirming harder. Officer Estrada paused a moment, and then  
79 tapped the protester on the chest with the stun gun. This evidently did the trick, and the protester  
80 sat still while Officer Estrada undid the chains and placed both of them under arrest.  
81

82 The next thing I remember is the protester complaining that his/her chest hurt. I  
83 remember thinking, "Well, what did you expect? You're sitting there with your arms cut off  
84 from all circulation behind your back, screaming like a banshee and flopping around like a fish—  
85 of course your chest is going to hurt." That just seemed like common sense to me. But Officer  
86 Estrada seemed concerned and arranged to have the protester taken to the hospital.  
87

88 Like I said before, I am an ex FBI agent – and I know a lot about policing procedures. The  
89 Utopia Police Department is an accredited law enforcement agency. As such, their Use of Force  
90 policy is likely guided by the Commission on Accreditation for Law Enforcement Agencies  
91 (CALEA)'s best practices.  
92

93 I'll tell you one thing for sure: I don't let a day go by anymore without checking the  
94 restrooms. Everyone in that situation is lucky. Someone could have been killed, or something

95 could have gone wrong at the plant. In fact, we don't give tours anymore. I find it really sad that  
96 we can't share this amazing facility with the public because of a couple of loony activists. The  
97 whole point of the tours is to educate people and let them know that this plant really is safe. I  
98 hope the day will come when we will be able to do that again.  
99

100 Date: January 27, 2008      Signature: *Terry Lemon* <Terry Lemon>

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105

1 **Affidavit of Taylor Williams**

2  
3 My name is Taylor Williams and I am what is known as a tactical physician in Raleigh,  
4 North Carolina. A tactical physician is a doctor who works with SWAT teams. I have worked  
5 with SWAT teams in Raleigh for about fifteen years, and have observed extensive use of stun  
6 guns. In addition, I helped organize a study on the safety of stun guns recently at Wake Forest  
7 University School of Medicine.  
8

9 After I completed medical school in 1990, I became an emergency room physician in  
10 Chicago. Many doctors burn out quickly on the stress of working in an emergency room, but I  
11 thrived on it. After three years in Chicago, my spouse and I decided to relocate to North  
12 Carolina, because my spouse's family is originally from this area. I continued to crave the  
13 excitement that accompanies working in an emergency room, but wondered what my options  
14 were. An old friend from medical school suggested tactical medicine. Tactical medicine  
15 involves both emergency and non-emergency care provided to victims of illness or injury related  
16 to law enforcement or military operations. Tactical medical care providers must have an  
17 understanding of and consideration for law enforcement tactics—including the use of stun  
18 guns—and mission-specific objectives when planning and providing medical support. I am more  
19 or less on call, and accompany the SWAT team in Raleigh along on dispatch calls.  
20

21 The study at Wake Forest University School of Medicine evaluated 1000 instances of  
22 stun gun use by law enforcement officers in six locations around the country. In 99.7 percent of  
23 the cases, the subjects shocked by a stun gun either had no injuries at all, or mild injuries, such as  
24 scrapes and bruises. These mostly resulted from falling after being shocked with a stun gun. Of  
25 the 1,000 cases looked at, only three subjects needed to be hospitalized after being shocked with  
26 a stun gun. Of these three, two had sustained injuries from falling after the shock. It is unclear  
27 at this time why the third individual required hospitalization. Overall, though, the results of the  
28 study indicate that stun guns are relatively safe. Most injuries occur after a fall to the ground—  
29 not from the electrical current delivered by the stun gun.  
30

31 Mr./Ms. Rodgers complains of heart palpitations. According to Mr./Ms. Rodgers, the  
32 heart palpitations occurred immediately after being stunned with Ms./Mr. Estrada's stun gun.  
33 There are essentially two types of heart palpitations—one involving a fast but regular heartbeat,  
34 and one involving an irregular heartbeat. It is my opinion that Mr./Ms. Rodgers experienced a  
35 fast but regular heartbeat. This is known as *normal sinus tachycardia*. Normal sinus tachycardia  
36 is caused by a sudden increase of adrenaline in the bloodstream. Adrenaline is released into the  
37 bloodstream when we are frightened and preparing to respond to our fear. In the vernacular, this  
38 is known as the "fight or flight" response.  
39

40 Adrenaline, also known as epinephrine, is a hormone produced in the adrenal glands.  
41 The adrenal glands release epinephrine when danger threatens or there is an emergency of some  
42 sort. When secreted into the bloodstream, it quickly prepares the body for an emergency  
43 situation. One of the most prominent effects of the release of adrenaline into the body is an  
44 increased heart rate, which would be experienced as heart palpitations.  
45

46 I am of the opinion that Mr./Ms. Rodgers' heart palpitations are the direct result of a  
47 sudden increase in adrenaline in his bloodstream. Mr./Ms. Rodgers was under severe stress at

48 the time of Officer Estrada's use of the stun gun. His/her arms were chained behind his/her back  
49 and s/he was essentially unable to engage in either "fight" or "flight," although that is what  
50 his/her body physiologically would have wanted to do. By all accounts, s/he became quite  
51 overexcited; this would have caused a secretion of adrenaline into his/her bloodstream.  
52

53 I also can tell you that after fifteen years of personal experience as a tactical physician  
54 with the SWAT team, using a stun gun is hugely preferable to apprehending suspects with loaded  
55 guns that do, in fact, have the potential to take a suspect's life. Stun guns utilize compressed  
56 nitrogen to shoot two probes at high speed for a distance of 15 to 35 feet. An electrical signal  
57 travels across the probes, and, for the duration of the electrical current, renders the suspect's  
58 neuromuscular control suspended. This immobilizes the suspect, and gives the law enforcement  
59 officer an opportunity to safely apprehend him or her. Although a stun gun is capable of packing  
60 up to 50,000 volts of electricity, typically, upon contact, the suspect gets a jolt of about 1,200 to  
61 1,300 volts of electricity. Recovery is nearly instantaneous, and long-term effects are rarely  
62 experienced.  
63

64 Speaking not only as a physician but a close observer of law enforcement operations, I can tell  
65 you that Officer Estrada did what s/he had to do to diffuse the danger of this situation. It could  
66 have been much worse, especially if it had gotten to the point where Officer Estrada had felt that  
67 s/he needed to pull out his/her actual gun.  
68

69 Date: January 28, 2008

Signature: *Taylor Williams* <Taylor Williams>

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Cardiovascular														
<b>JVD:</b>	<b>Cap. Refill:</b>	<table border="1"><thead><tr><th colspan="2">Pulse</th></tr><tr><th>Left</th><th>Right</th></tr></thead><tbody><tr><td><b>Carotid:</b></td><td></td></tr><tr><td><b>Radial:</b></td><td>80 BPM 80 BPM</td></tr><tr><td><b>Femoral:</b></td><td></td></tr><tr><td><b>Dorsalis:</b></td><td></td></tr></tbody></table>	Pulse		Left	Right	<b>Carotid:</b>		<b>Radial:</b>	80 BPM 80 BPM	<b>Femoral:</b>		<b>Dorsalis:</b>	
Pulse														
Left	Right													
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<b>Femoral:</b>														
<b>Dorsalis:</b>														
<b>Edema:</b>														
<b>Heart Tones:</b>	Complaint of heart palpitations. Angina													

Initial Physical Findings	
<b>Injuries:</b>	
<b>Abdomen:</b> Firm	
<b>Head:</b> None	
<b>Lower Extremities:</b> Bruising on left leg	
<b>Neck:</b> None	
<b>Pelvis:</b> None	
<b>External/Skin:</b> None	
<b>Spine:</b> None	
<b>Thorax:</b> Bruising on chest	
<b>Upper Extremities:</b> None	
<b>Assessment:</b>	
<b>Eyes Left:</b> 3-mm, Reactive	
<b>Eyes Right:</b> 3-mm, Reactive	
<b>Neck:</b> Normal	
<b>Left Lower Abdomen:</b> Normal	
<b>Right Lower Abdomen:</b> Normal	
<b>Pelvis:</b> Not done	
<b>Skin:</b> Warm to touch around bruising on leg and chest	
<b>Left Arm:</b> Minor scratches & bruises	
<b>Right Arm:</b> Minor legions	
<b>Left Leg:</b> Tender to palpation	
<b>Right Leg:</b> Normal	
<b>Spine:</b> Normal	
<b>Thoracic:</b> Tender to palpation on chest	
<b>Lumbar:</b> Normal	
<b>Right Upper Abdomen:</b> Normal	
<b>Left Upper Abdomen:</b> Normal	
<b>Head:</b> Normal	
<b>Chest:</b> Angina, irregular heartbeat stabilized	
<b>Diagnosis:</b> Per patient's report, recent history of being struck by a stun gun 2x. Patient was initially agitated, but has calmed down and should be fine. Recommended follow-up with primary care physician. See cardiologist if chest discomfort returns.	

**USE OF FORCE / COMPLAINT OF INJURY REPORT**

DOI 1108-1 (8.0)

<input checked="" type="checkbox"/> <b>USE OF FORCE</b> <input type="checkbox"/> <b>COMPLAINT OF INJURY</b>	<b>REPORT DATE:</b> Dec 11, 2007	<b>CASE NUMBER:</b> 1256
	<b>INCIDENT DATE:</b> Nov 25, 2007	<b>TIME:</b> 10:15 Pm
	<b>LOCATION:</b> Utogia Energy facility 135 Highway 81	
	<b>BEAT:</b>	

OFFICERS INVOLVED	CODE NUMBER	LEVEL OF FORCE	TYPE OF FORCE
1. E. Estrada <input type="checkbox"/> INJURED <input type="checkbox"/> TREATED	29	Less Lethal Weapon	Conductive Energy Device
2. Na <input type="checkbox"/> INJURED <input type="checkbox"/> TREATED			
3. Na <input type="checkbox"/> INJURED <input type="checkbox"/> TREATED			

**LEVEL OF FORCE:** Restraining Technique, Pepper Gas, Striking Technique, Less Lethal weapon, Firearm, None  
**TYPE OF FORCE:** Hands, Feet, Fist, Baton, Rip Hobble, Handcuff, Cap Stun, Specialty Impact Munitions, Conducted Energy Device (include number of activations), Handgun, Shotgun, None

SUSPECT INFORMATION:

<b>1. NAME</b> P. Rogers	<b>AGE:</b> 54
<b>ADDRESS:</b> 165 mark Lane, Utogia NC 27613	<b>PHONE:</b> —
<b>CHARGES:</b> Resisting arrest, trespassing	
<input type="checkbox"/> INJURED <input checked="" type="checkbox"/> TREATED	<input type="checkbox"/> REFUSED TREATMENT <input type="checkbox"/> RELATED TO FORCE USED

<b>2. NAME</b>	<b>AGE:</b>
<b>ADDRESS:</b>	<b>PHONE:</b>
<b>CHARGES:</b>	
<input type="checkbox"/> INJURED <input type="checkbox"/> TREATED	<input type="checkbox"/> REFUSED TREATMENT <input type="checkbox"/> RELATED TO FORCE USED

WITNESSES: ADDRESS: PHONE NUMBER:


MAJOR: Franklin Stroud DATE: Jan 3, 2008

DEPUTY CHIEF: Barbara Sisemore DATE: Jan 4, 2008

**NARRATIVE:** Narrative should contain a chronological account of all relevant events/actions including, but not limited to: 1) The circumstances which initially brought the subject(s) to the attention of the officer(s), 2) The behavior of the subject(s) when first observed/contact by the officer(s), 3) What caused the subject(s) to resist and what actions were taken by the officer(s), 4) A description of any injury to the officer(s) and an explanation of how the injury occurred, and 5) Any unusual circumstances which contributed to the incident. The supervisor's review should include a statement indicating whether the Use of Force was justified.

**CASE NUMBER:** 1256

I received a call at about 10:15 P.M. from the UEF's nighttime security guard, Terry Lemon. I learned that two protesters had infiltrated the plant and that one of them was chained to the internal fence in protest. When I arrived at the scene, I recognized the protestor who was chained with his/her hands behind his/her back to the internal fence – as Pat Rodgers. It was obvious that fellow protestor Jamie Silkwood had tied Pat Rodgers up as part of their protest.

I announced that the two of them were under arrest for trespassing, and requested that Mr/s. Rodgers remove the chains so I could cuff him/her. S/he shouted, "I will die before I'll submit!" and spat on me. As I bent over Mr/s. Rodgers, s/he screamed, "No!" and kicked his/her legs furiously, kicking me in the shin.

I asked him/her to calm down, and assured him/her that this process would be much easier if he/she just cooperated. My efforts were to no avail. As I tried again to remove the chains, Mr/s. Rodgers screamed and flailed wildly. Without any help on the way, I realized I'd have to take greater measures to bring this situation under control. I pulled out my stun gun, and administered a short zap to Mr/s. Rodgers' leg. I thought that at least this would prevent him/her from kicking his/her legs, endangering my physical safety.

I applied a second zap to the chest when Pat Rodgers' leg hit me again. I strongly felt this person would commit bodily harm to Terry or myself when unchained. S/he needed to be subdued.

# THE UTOPIA POLICE DEPARTMENT

1108-1

## USE OF FORCE AND WEAPONS

### Purpose

To provide guidelines governing the use of force and issued weapons of the Department.

### Units Affected

All Divisions / Sworn Personnel

### **GENERAL POLICIES:**

Force should be used only when all other means of resolving a situation have been exhausted or are clearly inapplicable. Force will be used only to the degree reasonably necessary to control the situation. How much force, and the level of force, which may be used will vary according to the situation. The nature of the offense, the physical make-up of the parties involved, actions of third parties who may be present, potential for injury to officers, citizens or suspects, the risk of escape, the availability of alternatives and other exigent circumstances are factors to be considered. Officers will be asked to make split second decisions in quickly evolving circumstances. Officers must continuously evaluate the need for force and be prepared to respond to changing circumstances which could include the need to escalate the force used, de-escalate the force used or to disengage from the use of force. It must be stressed that the use of force is not left to the unfettered discretion of the involved officer. This is not a subjective determination. The use of force must be objectively reasonable. The officer must only use that force which a reasonably prudent officer would use under the same or similar circumstances.

### **OBJECTIVELY REASONABLE STANDARD:**

This term means that, in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.

Nothing in this policy shall be construed as approving the unwarranted, reckless or excessive use of force. It shall be the duty of every officer of this agency to attempt to prevent any other officer from using unwarranted or excessive force and the use by any officer of such unwarranted or excessive force shall be reported to a supervisor or the Internal Affairs Unit as soon as possible by the witnessing officer.

### **USE OF FORCE CONTINUUM:**

Officers will assess the totality of the circumstances to determine the level of force that is reasonable in each case. Officers may consider the following use of force continuum as a guide

when deciding when to use force and how much force to use. A continuum of force is a tool to assist an officer in understanding force options.

#### A Linear Use of Force Continuum

The levels of force, progressing from lower to higher, are defined as follows:

- **Physical Presence:** In general, officers should strive for numerical superiority and mere presence to control low threat situations.
- **Verbal Commands:** Verbal commands must be given in a concise manner likely to be understood by the subject. The subject must be allowed an opportunity to comply with verbal commands unless violence or other circumstances are already occurring which would make total reliance on verbal commands inappropriate.
- **Restraining Techniques:** The use of restraining techniques consists of come-along holds or other grabbing techniques that do not involve an actual striking of the subject being controlled and where the risk of injury is minimal. A chokehold could be considered a use of deadly force; therefore, for the purposes of the force continuum, it is not considered a restraining technique. Officers should use restraining techniques that do not impair respiration.
- **Pepper Gas:** The use of pepper gas consists of the use of Departmental approved, handheld chemical aerosols that are not likely to cause injury. Pepper gas may be used in the officer's discretion at any point in the continuum at which the suspect begins to make aggressive actions toward or against the officer or when the suspect continues his/her refusal to comply with the officer's lawful efforts to effect an arrest.
- **Striking Techniques:** Striking techniques involve use of the police baton, riot baton, or parts of the body, such as the hands or feet. Striking techniques may be used both offensively and defensively. Striking techniques involve physical force where some risk of injury is to be expected. When possible, avoid striking the vital areas of the temples, eyes, and throat.
- **Less Lethal Weapons:** The use of specialty impact munitions or conducted energy devices by authorized and trained personnel is acceptable when force is necessary to incapacitate or control an individual. Specialty impact munitions, specifically the Exact Impact 1006, a foam projectile, may be used when it is not safe for an officer to leave cover and get close to a suspect. Examples of when specialty impact weapons may be utilized include subduing mentally ill persons who are dangerous to themselves or others, persons under the influence of drugs or alcohol who are dangerous to themselves or others, or crowd control when there is a threat to officer safety. Officers need to be prepared to utilize deadly force prior to using a less lethal weapon to incapacitate an armed suspect in the event the suspect poses a threat of death to the officer or others.

- Conducted energy devices may be used when it is necessary to incapacitate or gain compliance from a person that is actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others. (Refer to Conducted Energy Device Guidelines below.)
- Deadly force: That level of force that can cause death or serious physical injury.

### **CONDUCTED ENERGY DEVICE GUIDELINES**

Conducted energy devices are less lethal weapons that use battery energy to affect the sensory and/or motor systems. A conducted energy device will not to be used unless less forceful means of control have failed or are clearly inapplicable. It must be used according to prescribed training and procedures. No more than one officer should activate a conducted energy device against a person at a time.

When deploying conducted energy devices, officers should give warning to the suspect and other officers, if feasible. Officers should avoid firing darts at a subjects head, neck and genital areas. When activating a conducted energy device, officers should use it for one standard cycle (five seconds) and stop to evaluate the situation. If subsequent activations are necessary they should be restricted to no more than three (3) times and the duration necessary to place the subject in custody. After activation of a conducted energy device, medical assistance will be provided for anyone who is subjected to the electrical discharge. Anyone exposed to device activation will receive on-scene

medical attention by EMS. Darts that penetrate the skin should be treated as a biohazard. Law Enforcement officers who have been trained in barb removal will remove barbs unless barbs are in a vital area to include genitalia or eyes. Barb removal from the female breast area will be executed by a trained female officer if available or a trained male officer in the presence of a female officer. A Use of Force Report will be completed whenever a conducted energy device is used. Supervisors are required to respond and will ensure that pictures of the activation area, cartridges/darts, and officer/suspect injuries are taken. If an animal is subjected to the electrical discharge the owner of the animal should be notified, if known. A Use of Force Report will be completed when the laser of a

conducted energy device is directed on a person. In the event that death or serious physical injury occurs, a supervisor will secure the device and ensure the scene is secure. The AFIS tags are not to be picked up or disturbed in any manner. Departmental procedures for a death or serious physical injury will be followed. At all other times a conducted energy device is used the officer is required to bring the device to the Internal Affairs Unit by the next working day for device downloading. The used cartridge and AFIS tag will be turned in to the Evidence Control Unit. (In those cases where there is a death or serious physical injury, a supervisor will secure the device and provide it to Internal Affairs.)

Conducted energy devices should not be used:

- As punishment
- Against verbal threats alone
- Near potentially flammable, volatile, or explosive materials to include alcohol-based pepper gas

- On pregnant women, elderly persons, young children, or visibly frail persons unless exigent circumstances exist
- On handcuffed persons unless they are aggressively resisting, violent and likely to harm themselves or others
- When a subject is in physical control of a vehicle in motion/gear
- When a subject is in a location where a fall may cause serious physical injury or death
- Where the subject is only offering passive resistance
- To effect an investigative stop/detention
- Simply because a suspect is running away from an officer. Generally, an officer will not use conducted energy device against a person who is running away. An officer could use a conducted energy device against a person who is running away when the person is subject to arrest serious crime and escape from the scene presents a threat of harm to the community.

Effective Date: 01/01/2006

Prepared by Jim Black  
Chief of Police

Approved by P.J. King  
City Manager

