

SPECIAL REPORT 92-1

Investigation of the Des Moines Police Department:
Use of force in the arrest of Larry Milton,
Review of police internal affairs investigation system,
Review of police training procedures

TO: William Moulder
Chief of Police
Des Moines, Iowa

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RE: Report of Investigation in case file 92-1

DATE: April 9, 1992

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Preface

It is clearly apparent if the police do not take a vigorous stand on the matter of internal investigation, outside groups -- such as review boards consisting of persons outside the police service -- will step into the void.

-- O.W. Wilson, Police Administration, third edition

Today more than ever the public expects accountability by the police for their actions. The use of force by law enforcement officers is one of the greatest responsibilities and liabilities facing agencies. Every law enforcement administrator must recognize the public suspicion about internal review processes. A department must take whatever steps it can to be responsive to that suspicion and strengthen public confidence.

Citizens are entitled to a fair and unbiased evaluation of any complaint they may bring against an officer. They are entitled to a clear and open process. To offer anything less is unacceptable under the modern philosophy of public accountability.

The arrest of Larry Milton sparked a spirited debate in the Des Moines community. At times led by forums conducted by minority-interest radio station KUCB, some people gave a rallying cry of "No Excuse!" In opposition, a "We Support Our Cops" faction arose. A debate about police use of force followed. Segments of the community called for independent boards to review police actions. Other factions prescribed other solutions.

* * * * *

The functions of a Special Report are varied. It differs from a Critical Report in that no conclusion of illegal, arbitrary, capricious or unreasonable administrative action is made. When appropriate, a Special Report may make recommendations to strengthen procedures and practices in the interest of improved public administration. A Special Report may also be used to make known the facts of a complex or controversial matter, as well as the Ombudsman's understanding of the actions, decisions and motivations involved.

This report addresses the circumstances surrounding Larry Milton's controversial arrest and related issues. The report is divided into three sections which are:

- 1) The arrest of Larry Milton;
- 2) The Des Moines Police Department internal affairs review process;
- 3) Law enforcement training.

SECTION ONE

The arrest: Overview

On December 28, 1991 shortly after 7 p.m. Larry Milton, a 35-year-old African-American male, was questioned by three Des Moines police officers in response to a citizen calling the police to her home on Milton's behalf. After a series of events Milton was arrested and charged with public intoxication and resisting arrest.

Police officers maintained in the course of Milton's arrest, they used escalating degrees of physical force to counter his alleged resistance. Milton sustained head and facial wounds as a result of being struck with an officer's sap (a metal-filled, leather-covered striking device) and flashlight. According to published reports, his head wound required 22 surgical staples to close. The incident resulted in allegations of excessive force against the officers.

Milton said he was threatened by armed assailants earlier that evening and sought the assistance of a local area resident to call the police for help. He emphasized he offered no resistance whatsoever to the officers, saying he tried to comply with their requests and never fought against them, nor tried to reach for any officer's weapon at any time. He does not understand why the

officers beat him. He said after he was beaten the officers threatened him, saying he was going to die that night.

The officers said Milton was out of control and did not respond to various physical and chemical pain compliance measures attempted during his arrest. The officers said Milton appeared to have boundless strength and endurance and was actively resisting them. The officers said they were rapidly fatiguing as a result of a struggle.

Further, the officers said, during the struggle Milton grabbed and controlled a can of mace but it was quickly recovered by an officer. The officers alleged Milton then grabbed, accidentally or intentionally, the butt of an officer's service firearm and pulled on it in what the officer believed was an attempt to gain control of the weapon. The officer said he immediately responded by employing weapon-retention techniques which he was taught in basic police academy training. He said those techniques included capturing Milton's hand, yelling "GUN" to the officers as a warning and then trying to peel Milton's hand off of the weapon. This alleged action precipitated the response by another officer, who escalated the response to a deadly force level when he began striking Milton in the head with his flashlight. The responding officer said he perceived the alleged threat to be at a life-endangering level.

This incident was witnessed by a number of residents of the neighborhood and there were allegations of racial slurs being made by the officers against Milton as they arrested him. There were also allegations Milton was struck and kicked by the officers after he had been handcuffed and subdued and officers attempted to cover up evidence at the scene by kicking dirt and debris onto the site where the struggle had taken place.

The Citizens' Aide/Ombudsman (CA/O) began its investigation on January 2, 1992 in response to a request from state Representative Gary Sherzan. Subsequently, the CA/O received a letter requesting an investigation from Larry Carter, president of the local chapter of the National Association for Advancement of Colored People (NAACP).

The CA/O was originally requested to make a determination whether, under the circumstances, the amount of force used was appropriate. However, after an initial review, the CA/O determined the scope of the investigation would include the incident arrest, a review of the Des Moines Police Department's internal affairs process, and officer training, in terms general and specific to this incident.

The CA/O issued notice to Des Moines Police Chief William Moulder on January 2, 1992 that a formal investigation was being initiated. The department provided copies of the initial police reports concerning the incident to the CA/O at that time. As the

investigation progressed additional records were obtained from the police department.

The CA/O canvassed the neighborhood where the incident took place and developed a list of possible witnesses. The result was a number of neighborhood witnesses were identified and gave sworn testimony to the CA/O. However, several people who were identified as witnesses by the CA/O or through other sources, such as the media or the police, refused to give testimony in this matter, either by failing to keep appointments, or flatly refusing to testify when repeatedly offered the opportunity.

The CA/O became aware radio station KUCB had received or developed a list of witnesses to the incident. CA/O William Angrick spoke with Kalonji Saadiq of KUCB radio by telephone and learned Saadiq was hesitant or unwilling to share the list with CA/O investigators. Saadiq wanted CA/O investigators to meet with him and the witnesses as a group in a public forum. Saadiq was advised that was not acceptable to the CA/O. Saadiq informed Angrick he had provided a copy of the list to Alfredo Parrish, who was identified as Milton's attorney. CA/O investigators attempted to obtain a copy of the list from Parrish's office. Although Parrish's office assisted the CA/O with this investigation by coordinating Milton's testimony and providing releases of information allowing the CA/O access to Milton's various medical records, the witness list was not forthcoming.

The CA/O, however, obtained a copy of the list from an alternative source.

The CA/O on two occasions contacted radio station KUCB and requested it to ask listeners with direct knowledge of the incident to come forward and testify. The CA/O monitored the station but heard no such announcements. No witnesses told the CA/O they came forth as a result of any announcement by KUCB.

The CA/O conducted its investigation through interviews with Milton, neighborhood residents, the arresting officers, other less-involved responding officers, and command officers from the Des Moines Police Department including the chief of police and the commander of the internal affairs unit. The CA/O interviewed departmental training officers and officials from the Iowa Law Enforcement Academy and personnel from Broadlawns Medical Center where Milton was initially treated for his injuries. The CA/O consulted with local medical professionals and laboratory specialists about the nature of blunt trauma and the potential effects of alcohol and controlled substances on a person's behavior. The CA/O conducted a telephone interview with the state climatologist to ascertain weather and atmospheric conditions which existed the night of the incident. Additionally, police agency representatives nationwide were consulted to provide information and expertise pertaining to certain topics of this investigation.

The CA/O reviewed numerous records and documents including: reports by the arresting officers; police personnel files; officer training records; police academy curriculum specific to use of force, chemical agents and striking devices; police dispatch tapes of the incident; transcriptions of police communication tapes involving this incident; manufacturers' directions for use and precautions regarding the chemical mace; an audio tape recording made by one officer's pocket recorder on the scene; internal affairs documents; chain-of-command endorsements; police photographs; police scene diagrams; previous citizen complaints; published newspaper articles; television news accounts; Iowa driver's license information; and hospital admission, treatment and diagnostic test reports.

Additionally, CA/O investigators made site inspections of the incident scene and familiarized themselves with the type of equipment officers employed. CA/O investigators also visited Broadlawns Medical Center's emergency department and triage room.

CA/O investigators went to the scene of the arrest on January 29, 1992 approximately 35 minutes after the reported time of the arrest to accommodate the difference in time of sunset.

According to the Iowa state climatologist, based upon information from the National Weather Service, the conditions at about 7 p.m. on December 28, 1991 were: cloudy skies, some fog, 33 degrees F, 96 percent humidity, wind out of the northeast at five miles per hour, moon in the last quarter. The sun set at 4:52 p.m. On

January 29, 1992 the moon was in the same phase as on the evening of the arrest. The sky was clear and there was no fog. The investigators attempted to videotape a re-creation of the event but were unable to do so successfully due to darkness. It was decided no artificial light source with the exception of the existing street lights should be used since it would not give a true representation of the visibility factor.

Because the videotape was not useful, the investigators made naked-eye observations from various points in the area including those locations reported by witnesses as where they were standing the night of the incident. A CA/O investigator dressed in dark clothing, to simulate a Des Moines police uniform. This investigator made exaggerated swinging motions with his arm to replicate the alleged striking with a flashlight. The other CA/O investigator served as an observer from the various points.

What follows is a presentation of the various information sources from which the CA/O's analysis and conclusions are derived. Certain information which is confidential was relied upon in forming these conclusions; that information cannot be shared in this report.

The arrest: Narrative

Larry Milton is a resident of 1307 East 13th Street, Des Moines, Iowa. According to driver's license records Milton is 5-feet-11 inches tall and weighs 160 pounds. He told the Citizens' Aide/Ombudsman (CA/O) he is unemployed but has worked as a construction worker. Milton testified he had only one arrest prior to this incident. He testified he had never resisted arrest.

According to published reports and other sources, Milton has seven prior arrests by Des Moines police primarily for alcohol- and domestic abuse-related offenses, including one previous charge of resisting arrest.

On the morning of December 28, 1991 Milton had been arrested, without incident, at 5:10 a.m. for public intoxication. The original complaint involved Milton barging into a female's apartment claiming someone was trying to kill him. He fled when the female began screaming. He was apprehended about 35 minutes later after he called police from a local convenience store. He was released from jail at 8:30 a.m. after paying a fine and costs totaling \$70.50.

Milton testified he smoked a "little 30-cent rock" of "crack" cocaine at about 11 a.m. on the 28th of December. He maintained

it was the only time during the day he used any kind of drug. He also testified he drank "probably about five" cans of beer at 12:30 p.m. on the 28th of December.

An acquaintance of Milton, Arthur Tyrone Lee, stated to the CA/O he met Milton at about 10:30 a.m. on the 28th and rode around with him until approximately 3:30 p.m. Lee told the CA/O the two of them had smoked between a \$50 and \$100 "rock" of "crack" cocaine which had been obtained by Milton while they were together. Lee said they smoked the "rock" throughout the period of time they were together.

According to published reports, tests on Milton after his arrest showed a level of 2,000 nanograms per milliliter of cocaine or cocaine metabolite. Dr. Michael Abrams, director of emergency medicine at Broadlawns Medical Center, said 2,000 nanograms per milliliter of cocaine is the maximum level which can be detected by the particular test performed by Broadlawns. According to the same published report, a test showed an alcohol level of .10 for Milton at the time of his arrest.

Milton said he stopped at Gene Gates' residence on College Avenue sometime before 7 p.m. on the 28th. Gates lives at 219 College Avenue. Milton indicated he left the residence before 7 p.m. and went over to Oakland Avenue to see another friend. Milton testified he drove his car over to Oakland Avenue and parked it

near the middle of the block. Milton maintained he was alone at that time.

Gates testified to the CA/O Milton left his residence with Wardell "W.D." Kelson because Kelson needed a ride home. Kelson lived at an apartment at 1639 Oakland Avenue. Gates testified Milton was at his residence between 6 and 7 p.m. and drank "a few" beers while he was there. Gates said Milton had no obvious physical injuries at that time.

Milton testified he had no physical injuries prior to being arrested the night of December 28, 1991, and he had not been physically assaulted before that arrest. Milton testified he did not suffer from any chronic or incapacitating medical conditions, nor did he feel he was under the effects of the alcohol or cocaine at the time of his arrest.

In testimony, Milton said two black men approached him as he parked his car at Oakland Avenue. He did not know the men and described them as "one was kind of short; one was a little tall." Milton said the men wanted him to go behind a vacant garage but he refused. Milton said he felt threatened by them, but they did not physically harm him in any way. He testified he saw a gun in the waistband of one of the men's trousers. He said he believed he had been threatened with a gun and was going to be shot, so he ran away from them calling for help.

According to Milton, as he was fleeing, he met up with an acquaintance he identified as "Jimmy." Milton said Jimmy arrived to help him after hearing Milton yelling. Milton testified he eventually ran up to a "lady's" house and asked her to call the police. The CA/O asked Milton if he was alone at that time and he replied "Jimmy" was with him.

Milton did not know Jimmy's full name. In the CA/O's witness survey, investigators identified Jimmy as James Harvey Jr., who resides at an apartment at 1710 Oakland Avenue. According to Harvey's testimony, Milton had told him he needed help and someone was trying to kill him, trying to shoot him. Harvey said he did not see the people who allegedly threatened Milton.

Harvey told the CA/O he saw Milton walking slowly, stumbling, and falling down four to five times, before they met. Harvey characterized Milton's condition as being "high or stoned" at this time. Harvey recounted assisting Milton by holding him up. Harvey indicated he helped Milton to the building where Harvey lives with his parents. But Harvey's mother would not allow Milton inside. Mrs. Harvey and another witness corroborated this last statement.

Harvey told the CA/O he helped Milton to "a big old brown house." At this time, Harvey said, Milton did not have any injuries on his face. Harvey contended he asked the woman who answered the door to call a cab for Milton.

Sheryl Hopkins, who said she is a trained nurse, resides at 1634 Oakland, the house to which Harvey referred. She testified to the CA/O she answered a knock on the door and saw "two black gentlemen" standing on her front porch. A man in glasses asked if he could come in to use the phone. Harvey wears glasses. She declined but offered to assist if they needed help. According to Hopkins, Harvey said, "Call the police. This man's been hurt bad."

In her testimony to the CA/O, Hopkins said her porch light was on. She could see the men clearly. One man, who she later learned was Milton, had an injury to his left eye area. She said his left eye was swollen and there was blood in the area of the left eyebrow. She said Milton was leaning heavily on Harvey.

Hopkins said she went back into the house, leaving the men outside on the porch, and telephoned the police. She estimated this time shortly after 7 p.m. The CA/O learned this call was made to 911.

According to a transcript of the Des Moines Police Department dispatch conversation, a call was received at 7:06 p.m. The transcript says:

Caller: "Hi. There were two gentlemen standing on my porch saying somebody tried to kill one of them. I live at 1634 Oakland Avenue."

Dispatcher: "Okay, I'll send somebody up."

Caller: "Wonderful. Thank you."

Dispatcher radioed car 502: "I've got an unknown problem at 1634 Oakland. Lady said there were a couple of men standing on her porch yelling someone just tried to kill them."

This call went to Sergeant Joanne Pollock and Officer John LePorte. Pollock had a civilian rider with her that night, her husband's brother-in-law, Terry Meinke, of rural Princeton, Missouri. Since LePorte was at 11th and High streets when the call went out, two other officers nearer the scene volunteered to respond with Pollock. They were officers Thomas Heller and Stephen Strawser, who were assigned to work a police van. Heller and Strawser testified the police van is assigned to the downtown or loop area, but is dispatched to various locations throughout the city when needed to transport suspects arrested by other officers.

Pollock, Strawser and Heller testified they arrived at the scene at about the same time. Dispatch has the time of arrival at 7:09 p.m. for Pollock and 7:10 p.m. for Heller and Strawser. Pollock parked her squad car facing north on Oakland Avenue on the east side, and Heller and Strawser parked the police van facing north on the west side. Both vehicles were approximately in front of 1634 Oakland Avenue. Neither driver used emergency lights or sirens during the response.

Pollock testified her car is equipped with headlights that shut off automatically after a few seconds. Neither Heller nor Strawser could recall whether the lights of the van were left on.

The van was parked near a utility pole which does not have a street light on it. The arrest, and events involving Milton leading up to the arrest, took place within a few feet of this utility pole. The primary illumination is provided by street lights at the adjacent utility poles to the north and south; the street light to the north is located about 130 feet away, and the street light to the south is located at a slightly greater distance.

Pollock testified she arrived at the scene at 7:10 p.m., and the police van followed her up the street. Pollock exited her vehicle along with Meinke. She walked across the street to the west toward the police van and 1634 Oakland, but her rider did not follow her, she testified. Pollock said she joined Heller and Strawser on the sidewalk and two black males came out of the darkness toward them.

Milton testified he and Jimmy remained together until the police arrived. Milton estimated it took the police about "a half hour or twenty minutes to get there."

Police records show the call was received at 7:06 p.m. The officer's call for backup assistance was received at 7:19 p.m.,

thirteen minutes later. The first backup officer arrived at 7:20 p.m. That officer told the dispatcher to slow the other backup officers who were en route at 7:21 p.m., enough help was there. Pollock radioed in for a case number at 7:25 p.m. Backup officers indicated they would follow the van to the hospital at 7:30 p.m.

Police records show the altercation lasted a total of one minute and 28 seconds.

Milton testified he was still on the porch when he saw the "paddy wagon" arrive. He saw two males and a female officer and started to walk toward them "to tell them what was going on." Milton said he did not recognize any of the three officers. Milton stated he told the officers, "Some guys are chasing me with a gun." Milton testified the female officer ordered him to "get your ass against the van," but he then said the officer actually said, "Get against the van. Put your hands up there." Milton testified he complied.

Milton stated: "She said, 'Put your hands behind your back.' So I did. She put the cuffs on me, and then they threw me on the ground and started beating me." In response to direct questioning, Milton stated the cuffs were completely on him, on both wrists.

Milton testified he was not resisting the officers as this took place. He said after he was handcuffed he was taken to the ground face down. Milton stated he was still not resisting the officers when he was put on the ground. He said the officers, all three of them, started hitting him with their flashlights. Milton stated the female officer struck him first. He was adamant all three officers were striking him on the head. He also alleged the officers kicked him near the rib cage on his left side. He said he felt like he was hit 30 times with the flashlights on the head. He testified he pleaded with the officers to stop hitting him. Milton indicated after he was taken to the ground and the officers started beating him, the only thing he could do was move his head from side to side. Milton stated he was always in a face-down position.

In response to a direct question, Milton testified the officers lied about him trying to get a weapon and resisting them. He also denied attempting to escape from the officers. He contended he was fully cooperative.

Milton said sometime during the "beating" he lost consciousness for a period of time. When asked, Milton said he did not know when or if other officers arrived during the struggle: "They was beating the hell out of me. I couldn't see none with all that blood in my eyes." He said he recalled being "hog-tied" by the same three officers and "slammed" in to the van. He stated he laid bleeding in the van for a half hour before he was taken to

the hospital. Milton claimed after he was placed in the van someone started to burn him with something on his arm.

Milton said while he was being transported to the hospital someone, he believed it was a police officer, rode in the back of the van and said to him, "You're going to die tonight, mother fucker." Milton believed the van stopped en route to the hospital and the rear doors opened then closed. He did not know what happened at that point. Milton said he was screaming and hollering in the back of the van during transport and "they" kept saying "shut up mother fucker." Milton said he was saying, "Please don't kill me. Don't hurt me."

Upon his arrival at the hospital, Milton said he was in severe pain. He was handcuffed, face down, to a hospital gurney. They brought in a "big old silver pan" and began washing his head. He told the nurse it was burning and she said, "Shut up, you son of a bitch. Lay your head down." She banged and twisted his head and wrapped his head with a "big old towel thing."

James "Jimmy" Harvey Jr., told the CA/O he was on the porch with Milton at 1634 Oakland when he saw the police arrive. Harvey assisted Milton down toward the police officers. Harvey contended Milton fell down at least once on the way to the officers. Harvey said the police ID'd both him and Milton, and Harvey was released. Harvey also testified he was ID'd by an officer and he showed that officer an "Iowa ID" and then was

placed briefly in a police car, from which he observed the officers struggle with Milton. Harvey said, "They had him on the ground with handcuffs on, had him against the paddy wagon just standing there." Harvey also contended he was checked for outstanding warrants and was released by "Officer Wanda, badge 167." He testified he was "absolutely positive" it was a female, "Officer Wanda, badge 167."

The CA/O confirmed the Des Moines Police Department does not employ any officer named Wanda, first or last name, and badge number 167 is registered to a male who works on day shift.

Harvey said he was within five to 10 feet during the "beating." Harvey said Milton was on his back during the "beating." Harvey said he never saw Milton up against the van, nor did he ever see him face down. Harvey said he went down the street to get his friends. Harvey also testified he went and got his friends and came back and then witnessed the beating. As he returned, Harvey claimed, he saw handcuffs on Milton's hands and ankles, and Milton was down on the ground, and Harvey saw the female officer come up behind Milton and start beating him.

The arrest: Officers' testimony

Sergeant Joanne Pollock testified she is an 11-year veteran of the Des Moines Police Department, and a certified police officer having graduated from the Des Moines police academy in 1981. She said in addition to the basic academy she has received other training through in-service and special training programs. She has had training in "use of force," defensive tactics and the use of impact weapons.

Pollock testified she is an area supervisor assigned to the third watch and was working in that position on the evening of December 28, 1991. She said she was assigned a call which was dispatched as a priority one call, requiring at least two officers to respond. She testified she was told there were two male subjects on the caller's porch at 1634 Oakland, asking for assistance and stating someone was trying to kill them.

A second officer, LePorte, was also assigned but was out of position to allow an acceptable response time. Another police unit, a van used to transport prisoners, manned by officers Thomas Heller and Stephen Strawser, was close to the location and volunteered to respond in place of LePorte and did so.

Pollock said officers Strawser and Heller arrived on Oakland Avenue within a minute of her arrival. Pollock had parked her

squad car on the east side of Oakland facing north, the van was parked on the west side of Oakland facing north. Both vehicles were parked in close proximity to 1634 Oakland, the location of the call. Pollock's vehicle had an automatic switch which turns off the headlights. She did not recall whether the van headlights were on or off. Neither Pollock's vehicle or the van had any emergency lights activated.

According to Pollock, when the two black males came out of the darkness toward the three officers, she recognized the one wearing the glasses, later identified as James "Jimmy" Harvey Jr., as a resident of the neighborhood. The other, later identified as Larry Milton, she did not recognize, she said. Milton had his arm around Harvey as though he was being assisted in walking.

Pollock testified Milton was crying. According to Pollock, she and Strawser kept asking what happened and who was trying to shoot him, trying to elicit details. Milton was not providing responsive answers. He was just saying someone was trying to shoot him. The officers were told Milton had a car up the street. Pollock said Heller and Harvey went up the street to examine the car. Pollock testified she believed Milton heard the questions, but did not answer. She recalled him saying, "Please help me. Take me to jail if you have to."

Pollock testified Milton's demeanor began to change. He had been crying. "He was not crying anymore; now he was becoming more excited or active. His words were coming out faster. He was becoming more heightened, I guess, or a little bit more stimulated." Pollock touched his arm, trying to elicit more of a response, but he did not respond any more "at all."

Milton gave "just the responses of, 'Please help me. Someone is trying to shoot me. Don't let them hurt me.' Not actual responses to our questions," Pollock testified. His arms began to move more, but the actions did not seem to be pointing or have any apparent motive. Milton was having "a little difficulty" standing, and Pollock could smell alcohol on his breath.

Pollock said she told Milton to move over to the van and place his hands against it so the officers could search for weapons. She testified Strawser conducted a pat-down search and found no weapons. They asked Milton for identification and he complied. She took it and advised Milton to sit down next to the van by the utility pole. She turned on her flashlight to read the ID, intending to find out if there were any outstanding warrants for his arrest. Pollock contended Milton was kneeling and his head was down a little, and she saw by the light of the flashlight he had some blood in the area of his left eyebrow. In response to a direct question, Pollock said she could not tell whether there was any swelling around the left eye. She said she asked him about it. He did not answer, but immediately stood up. Pollock

testified she then believed the alcohol could be affecting communications with Milton.

Pollock testified she said, "'Sit down, Larry.' He went down, but came right back up. I said, 'That's it, Larry. You're under arrest. Put your hands up against the van again.'" Milton complied. Pollock said Heller came back at about this time. Strawser was on the left of Milton and she was on the right. She placed her hand on his right arm and told him to place it behind his back. She said she saw Strawser do the same thing to his left arm. She said Milton began tensing his right arm. "I started to tell him, 'Larry, it's okay. You're going to be okay. Put your hands behind your back, and we'll take care of you' in this type of tone trying to comfort him or keep him calmed down to get him handcuffed."

Pollock testified Strawser had his handcuffs out. Pollock testified, "I don't recall the exact words, but I could tell he was starting to get excited again. He had been verbalizing the same statements about, 'Don't let them shoot me. They're going to get me.'" She continued to try to calm him verbally. Pollock tried to move Milton's arm off the van, but she could not overcome his resistance. She thought Strawser was encountering the same thing.

She testified at about this time, "Mr. Milton let out what was like a scream or a very, very loud yell, and we made attempts to

try to control him next to the van. When we realized this wasn't going to work, Tom said, 'Let's take him to the ground.'" After several steps away from the van, the officers got Milton down on the ground, face down. Suddenly, Milton got on his back, but Pollock testified she wasn't sure how. Then, he got up off the ground, she said. Pollock said she was still on the ground and Milton pivoted to change direction, as though he was trying to get away. She said she grabbed his legs and after a few steps, he fell, face down.

At this point, Pollock said, Milton was directly over her; Milton's hands were off the ground, but she couldn't tell if he was standing up. She reached up and grabbed his right arm, over his coat, and Milton began slipping out of the coat. Pollock said she tried to kick Milton in the groin, but was unsuccessful. She recalled Milton's coat came completely off of him, over Milton's back. According to Pollock, both Heller and Strawser were on Milton's back area, but must have lost contact with Milton for a second. She said Milton turned from facing east toward the north and began trying to move away. Pollock stated she grabbed his legs again, tackling him.

Pollock said she went up along Milton's left side. She said Strawser was on Milton's back. She said she didn't know where Heller was at this time, but assumed he was to Milton's right. Pollock said she took out her mace can and sprayed Milton's face once. She said he turned his face to the right. She waited for

his face to turn back toward her, and when it did, she sprayed him again with the mace. She said Milton then moved his right arm up under him and grabbed her left hand, peeling the mace out of her hand. She stated he then had the mace, and she instantly grabbed for it with both hands. She stated she regained control of the mace quickly, and put it back in its holster.

Pollock testified when she reached for the mace can, she saw from the corner of her eye Heller was using some object to strike Milton in the head. She believed she saw three or four blows to the head. She stated she was unsure whether she still had contact with Milton's right hand when she noticed the blows being landed. "I don't know which blow it was, was the point when I got my mace back from him to be able to tell you. Again, I was concentrating on getting my mace back, and then out of the corner of my eye I noticed the flashlight...."

Pollock said she did not notice whether Milton had any particular reaction to being struck in the head with the flashlight, except they still had to continue to fight him. She could not recall Milton attempting to fend off the blows and could not recall any verbal reaction.

She said Milton began to come back off the ground again. Pollock said she didn't believe he regained his feet, but perhaps got on his knees. The officers managed to spin Milton and put him down on his back. Pollock said she laid across his knees and upper

legs, and Strawser was on Milton's chest. She said Heller then radioed for help, using his portable radio. Pollock said she noticed her ride-along, Meinke, standing nearby. She said he asked if he could help, and she told him to hold Milton's lower legs.

According to Pollock, officers Greg Trimble, Kelly Willis and John LePorte arrived shortly thereafter to aid in the handcuffing. Eventually, she said, Milton was "hog-tied" and placed in the back of the police van.

Stephen Strawser is a seven-year veteran of the Des Moines Police Department and is also a certified police officer. Strawser's training in defensive tactics is similar to Pollock's. Strawser is assigned to third watch patrol.

According to Strawser, when the call went out, all the officers working the area were tied up. The next closest officer, LePorte, was some distance away at 11th and High streets. Strawser said he and Heller were only two or three blocks away from the address on Oakland, so they volunteered to respond. Strawser testified Pollock pulled onto Oakland from College ahead of the "wagon" as it was stopped at a stop sign, so they arrived at the same time.

Strawser testified the officers got out of the van. He noticed the porch light was on at 1634 Oakland, but no other illumination

besides the street lights. Strawser said Milton and Harvey approached the officers, who were at the sidewalk area near the van, from out of the darkness to the south of 1634 Oakland. Strawser said Milton and Harvey had their arms interlocked, but it did not appear to him either was having trouble walking. According to Strawser, Harvey said someone was trying to kill Milton.

Strawser said he likes to split up people and get their stories separately, so he took Harvey aside about 15 feet. "In walking down there, Harvey had stated that this guy was whacked out of his head and something needs to be done with him. He also pointed down the street and stated that there was a car parked down there which he said belonged to Milton."

Strawser was with Harvey separately for about 20 seconds, he testified, then he walked back over to Pollock and Milton. Then, he said, Heller went with Harvey and Strawser stayed with Pollock and Milton. He said Pollock was trying to ask Milton what was going on, since the trip was dispatched with Milton as the victim. Strawser recalled, "Initially he was upset, kind of to the point of crying." Strawser was asked if anything else about Milton's behavior was unusual, and he said, "Yes. The crying was at the very beginning, and he was sweating, and his behavior changed. That was unusual.... I don't know what caused the change. Sergeant Pollock started to ask him routine questions.

Such as 'Do you know who's trying to kill you? Are they on foot? Are they in a car?'" Milton was not responding "at all."

According to Strawser, Milton was looking around as though he was scanning the background. Strawser said Milton repeated over and over, "Don't let them kill me." At first, Strawser said, he was on guard in case anyone should come up to them and attempt to do something even with the police there. "And then, through his not responding and his actions of almost to a paranoia state of thinking somebody was going to kill him, you realize, in my mind, there wasn't anybody out there at that point in time." Strawser was asked, "So then it was your perception at that point that Mr. Milton may not be functioning normally in terms of his mental capacity...?" "Yes," Strawser said.

He smelled alcohol on Milton's breath, Strawser said. He said he eventually came to believe Milton might have used other substances. Strawser said Milton's condition "and the fact that he -- the look that he had. He was -- I could describe it as being very hyper. He just seemed like he was high anxiety. Just very -- just the look on his face."

Strawser said he and Pollock attempted to question Milton for about a minute. Strawser said Pollock eventually said, "He's geeking," a term which Strawser took to mean he was "tripped out, high on drugs." Strawser said Pollock told Milton to sit down, and he did but stood back up "and would scan with a very excited

look." Strawser said Pollock told him to sit down again, and he did. Strawser said he asked Milton a question and he immediately stood up again. Strawser said he grabbed Milton's right arm with his left hand to get his attention, and Milton did not react. Strawser said Pollock told Milton to go up against the van to be searched for weapons, and Milton complied and spread out on the van. Strawser recalled both officers searching Milton, Pollock on the right and him on the left. No weapons were found. Strawser said Milton produced his identification, and said, "Don't let them kill me. Take me to jail if you have to."

At one point, Strawser recalled Pollock asking Milton about "dried blood" on his left eyebrow, and what happened. Strawser said he then noticed the blood on his left eye, brow and down the left side of his face, which Strawser described as dried blood. Strawser said he did not notice any swelling around the eye; it appeared open and otherwise normal.

"After that he (Milton) was back up against the van in the spread eagle position, and this is the point in time that Milton let out a yell," Strawser testified. It was a loud yell but Strawser said he couldn't attach a meaning to it. Strawser stated Pollock told Milton to calm down, everything's going to be all right; we're here to help you. Milton did not respond. Within seconds, according to Strawser, Pollock said to Strawser, "Let's take him for intox." He said she told Milton, "You're being placed under

arrest for public intoxication. Go ahead and put your arms behind your back."

Strawser said he had his hand on Milton's left wrist, and Milton moved his left arm down behind his back. Strawser said he took his handcuffs out to start to place them on when Milton pulled both arms around in front of him. Strawser said Pollock had a hold on Milton's right hand, but he pulled both arms up and crossed them in front of his chest. Strawser said he pushed Milton back up against the van to keep him from turning. He said Milton did not resist being held against the van, but resisted moving his arms. Strawser said he was trying, but could not move Milton's left arm back behind his back. Strawser said he didn't ask and didn't recall Pollock asking Milton a second time to place his arms behind his back.

According to his testimony, Strawser continued to try to move Milton's arm back, and noticed Heller stepping back into the middle and making contact with Milton. Strawser said Heller said, "Let's take him to the ground." Strawser said he attempted to sweep Milton's legs out from under him, but didn't have enough leverage, then tried to trip him over his legs and pull Milton down. After about three tries, Strawser said, they got Milton down. Strawser said Milton seemed to be trying to stay on his feet. Strawser said he believed if they got Milton to the ground, the three officers would be able to get him handcuffed with no problem.

When Milton went down, face down, Strawser said he was on Milton's back, Pollock on his left and Heller on his right. Milton flipped over, Strawser said, and Strawser was sitting up on Milton. Strawser said he still had his handcuffs and Milton grabbed one of the cuffs with one of his hands. Strawser said he braced himself and yanked the cuffs out of Milton's hand and tossed the cuffs aside.

Strawser testified Heller maced Milton's face, which seemed to have no effect on Milton. Strawser said he felt the effects of the mace. He said Milton didn't reach up to wipe his eyes or anything, but kind of spit as though he didn't like the taste. "But it looked like it angered him a little bit. He shook his head, and then he was attempting to sit up. And Heller was still on the right, and Pollock was on the left, and they had a hold of his arms, and I was basically on top of him about his waist, and he sat up. I couldn't keep him down. None of us could keep him down, and he stood up, and I have -- I don't know how to explain it. He just stood up. I've never had that happen when somebody just stood up with three people on him before."

Next, Strawser said, they ended up on the ground again, with Pollock on her back and Milton on top of her on all fours up around Pollock's chest area. Strawser said he grabbed Milton by the coat collar to pull him off Pollock and away from her weapons. Eventually, Strawser said, Milton was standing again.

Strawser said he grabbed Milton by the back of his neck and took out his sap and struck him in the face and head area five or six times. Strawser said Milton did nothing to try to cover his face or head, but continued to try to stand up. Strawser dropped his sap. He had previously dropped his flashlight.

He spun Milton around so he wouldn't be facing him, and Milton went back to the ground, Strawser testified. Strawser said Milton landed on all fours with Strawser on top of him, like wrestlers in the starting position except Strawser was directly on top, not off to one side. Strawser said he attempted to choke Milton to cut his wind supply and end the fight. He said Pollock maced Milton, and then maced him again, which was beginning to affect Strawser. Strawser said he attempted to slide back away from the head area, to get away from the mace. "Any more mace, then I would have been no good," he testified.

Strawser said: "He takes the mace (from Pollock). He reaches out and grabs for the mace can and takes it out of her hand, and she has to grab a hold of his arm and take the mace back away. That happens in just seconds also, but at one point he had control of the mace. And when she takes the mace can back out of his hand, I'm still on top of him and my hands are on his back."

"As I'm trying to get away from the mace, he reaches back with his right hand, and at this point I think Heller is to the right of me. I don't know if he has a hold of anything or not. Milton

reaches back with his right hand and grabs a hold of the grip of my weapon. He has his hand on the holster and also on the grip." Strawser said, regarding Milton's position at this moment, "He was on all fours, hands and knees."

Strawser testified: "And at that point there's a series of things that happened all at the same time, one of which I yelled 'GUN' and that's what I said, 'GUN.' And I took my right hand and attempted to secure my weapon. And the way we were trained out at the academy is whether somebody else's hand is on your gun or not, you secure your weapon and attempt not to let it come off you.

"I placed my hand on top of his, and his hand is on the gun, and I pushed down trying to keep the gun in the holster. And once that was secure to where I had at least some leverage to push against his pulling, I started with my thumb and peeled his thumb off because he would have had a reverse, upside down grip. I grabbed a hold of his thumb and peeled it off the gun.

"As I yelled 'GUN,' one of the things that happened in the sequence is Officer Heller struck Milton in the head with his flashlight, struck him several times. Once I got his hand off the gun, I wanted to maintain the right hand. I didn't want to have him go back and try to take it again. His hands went down to all fours as Officer Heller was striking him in the head, and he made no attempt to cover up. His main concern, it seemed to

me in my opinion, was that he was trying to get to his feet again."

Strawser was asked, "Did you yell it (gun) loudly?" "I yelled 'GUN' so I thought somebody could hear it," he said. Strawser said in his opinion, Heller started hitting Milton because of the gun problem, because "it started directly after I yelled...." Strawser estimated Heller hit Milton seven or eight times.

Strawser further testified when Milton grabbed his holster and weapon, Milton elevated the conflict level from use of force to use of deadly force, and the force used against Milton was justified. Strawser also said, however, he believed Heller's action of striking Milton was the fourth level of force, striking instrument. He declined to say whether he believed blows to the head could cause death, saying he was not a doctor. "At that point striking him on the head, I didn't think that was going to kill him," Strawser testified.

Heller stopped striking Milton and radioed for help, Strawser testified. Strawser said Heller had no contact with Milton at that point and Milton began to get up again. Strawser stated he used Milton's upward momentum to pull Milton over backwards and to the ground. Strawser testified he ended up on Milton's head and chest area, with Pollock around his waist. He said Heller was on Milton's right and grabbed his right arm, and Milton's left arm was pinned down by his own body. Strawser said he then

saw Pollock's ride-along, Meinke, grab a hold of Milton's lower legs. Strawser stated he had a forearm across Milton's jaw, neck and shoulder to hold him in place, and he saw Heller apply a handcuff to Milton's right arm. Strawser said Heller held onto the other handcuff to control the arm. They stayed in that position until help arrived.

Strawser recalled officers Trimble, Willis and LePorte were the first to arrive on the scene, and they helped to finish handcuffing Milton. Strawser said Milton also was cuffed on his legs and between the two cuffs, so he was "hog-tied." Strawser said Milton was placed in the van.

Strawser picked up his flashlight, which he said was still on, and began looking for his handcuffs and sap. He said he told another officer about his lost items, and two or more began kicking through leaves to find them.

Officer Thomas Heller has been a member of the Des Moines Police Department for 2 years. He is a certified police officer with defensive tactics training similar to that of Pollock and Strawser. Heller is assigned to third watch patrol.

Heller recalled he and Strawser were about four blocks away when the call went out, and they followed Pollock's vehicle up Oakland Avenue, arriving at the same time. He recalled all three officers were standing together near the sidewalk when Milton and

Harvey came walking up from a yard in front of the house just south of 1634 Oakland. Heller said Milton was being supported by Harvey as they walked. Heller said he shined his flashlight on the two, but did not notice anything unusual about Milton's face. Heller testified he felt Milton's speech was slurred a little bit and he was crying. He said Milton was unresponsive to questions, and Heller smelled alcohol on his breath. He said Milton "didn't seem to be real steady" when left to stand on his own.

Heller reiterated Pollock asked the series of questions Strawser recalled. He said Milton's response was someone was trying to kill him. Heller stated Pollock looked at him and said, "'He's geeking,' which is a street term that means he's high on something and, you know, very high on something just by the way he was reacting." Heller said even though Milton's speech was somewhat slurred, he was talking very rapidly, and moving his eyes very quickly over the whole area, scanning the area the whole time. Heller said these actions led him to believe Milton had used some drugs in addition to alcohol.

Heller said he and Harvey went to look at Milton's car, which was parked four or five car lengths to the north. Heller said he found no bullet holes in the car. Heller said Harvey told him something to the effect the officers needed to do something with Larry, take him to jail or somewhere.

As Heller approached the van again, he said, he turned on a pocket tape recorder. He said Milton was spread eagle up against the van. He said he felt the struggle was starting at this point. "As I was approaching, I could hear Joanne saying, 'We're going to take care of you, Larry. We're going to take care of you, buddy. Just relax.' And as I was approaching, Officer Strawser took his left arm down off the van and put it behind his back, and he had his handcuffs out." Heller said Milton was cooperating. Heller said Strawser had the arm pushed up high behind Milton's back, but Milton just straightened his arm out and pushed it back down. Heller said Pollock was still telling Milton to relax, and holding onto Milton's hand on the van. Then, Heller said, Milton moved that arm down by his side, and Heller observed more of an excited tone in Pollock's voice.

"And at this point, Milton lets out a strange scream," Heller testified. "It's hard to describe. It was just a really strange moaning scream. I don't know why he did it, but it was a strange scream that I knew -- it just hit me that something was wrong with this guy, that this guy is going to go -- is going to fight us just by the way he yelled."

Heller's pocket tape recorder captured the scream and Pollock's comments. Heller believed the situation was deteriorating, so he quickly moved in behind and grabbed Milton's coat and pressed his body against Milton's to keep him up against the van. At that point, the tape recording apparently ceased. Heller said he

believed a small flashlight in his pocket could have bumped the tape recorder off as Heller bumped against Milton.

The CA/O later learned and Heller later testified to the CA/O he had erased the part of the tape prior to and following the incident so the portion would be easier to find. He described those portions as unrelated to the incident.

Heller said the other officers still could not get Milton's hands behind his back. So Heller said, "Let's take him to the ground." Heller said he was trying to trip Milton over his leg, but it took two or three tries. "And all three of us were trying to restrain him on the ground, and he just turned over onto his back with no problem at all, even though all three of us were trying to restrain him on the ground face first."

When Milton went to his back, Heller said he maced him with "two good bursts in the face. I've used mace before, and usually they turn away immediately from the effect of the mace, and he just looked right at me, didn't even blink. He just sputtered as if to spit the mace out of his mouth." Heller said he decided the mace was useless and tossed it aside. Heller said he knew using mace on intoxicated or drugged persons could cause a violent reaction from them, but used it anyway because it's still a step to use in the use-of-force ladder, and it's "a percentage shot whether it's going to work or not at that point."

Milton was swinging and kicking on the ground and despite the officers' attempt to hold him, he stood up, Heller testified. "(H)e was showing so much strength that he just got up with no problem. I lost my grip when he got up, and at this point he's yelling, 'you're trying to kill me,'" Heller testified.

Heller said they took him back to the ground, with Milton falling on top of Pollock in an all-fours position. Heller said Pollock attempted to knee Milton in the groin, but Strawser ended up pulling Milton off Pollock. Heller said Strawser got Milton in somewhat of a headlock, and hit Milton in the face four or five times. He said they went to the ground again, and Milton was on all fours, and Strawser was to Milton's right side like in a wrestler's position.

At this point, Heller said, "He's still wrestling. Milton's still wrestling around with Officer Strawser trying to push him back and up, and at this point Officer Strawser looks up at me and says, 'GUN.'" Heller stated: "I wouldn't say it was a scream, but it was louder than just casual 'gun.' It was -- I don't know how to describe it. It was louder than just saying 'gun,' but it wasn't a screaming 'GUN!'" Heller said he did not see Milton contact Strawser's weapon, nor did he see Milton's arm move toward Strawser's weapon. It was dark, Heller said. Heller said he did not see anyone search Milton, so he didn't know if it was Strawser's gun or if Milton had his own gun.

"When he does this, I take my flashlight and start striking Milton in the head with my flashlight. I strike him approximately three to four times, and he's starting to come up again still pushing back Steve with his elbows and stuff, and he starts rearing up off the ground where his hands are coming off the ground and his head comes up. And when he looks up, I hit him one more time in the forehead. And when he's coming up and just when -- by the look in his face and the strength that he was exerting, I could tell that he wasn't -- still wasn't giving up even though I had hit him three times with my flashlight already.

"So I struck him again across the forehead when he looked up trying to get up off the ground, and he went back on all fours again with Steve still trying to hold him down with his body weight. And I don't know where Joanne's at. I can see her on the other side of him, but I don't know exactly what she's doing. But when he puts his head back down again, he was still exerting strength and still moving around, and it was obvious that he wasn't giving up, so I struck him three or four more times with my flashlight to where I felt like I was going to get sick because I was hitting fast and hard with my flashlight trying to get him under control.

"And at that point I stopped because I thought I was going to get sick, and I got on the radio and yelled for help on the radio." Heller said they then got Milton under control, and waited for help.

Heller testified he believed the conflict had elevated to the highest level, use of deadly force, when Strawser yelled "GUN." The only alternative Heller could think of later, during testimony, would have been to shoot Milton. Heller stated the total time involved from when he began using the flashlight to when he quit was from five to ten seconds.

He estimated the time of transfer to Broadlawns at four or five minutes. He and Strawser were talking in the front of the police van, and Milton was screaming in the back, and kind of flopping around. Heller estimated he was at the hospital for about five to 10 minutes after Milton was unloaded from the van. Officer Knox preceded the van to the hospital, Heller said.

Heller was asked: "Do you think you would have used the flashlight had you not heard Officer Strawser say 'GUN'? In other words, were you preparing to use it, or was the use of the flashlight totally in reaction to his saying 'GUN'?"

Heller stated: "I probably would have used it whether he had yelled 'GUN' or not. I don't know if I would have used it at that point, but I probably would have used it, yes.... Would I have struck him in the same area? I don't know. That would be speculation. I don't know where I would have hit him."

He was asked, "(W)ere you planning to use it before he yelled the word gun, or was your mind just not thinking of that until you heard the word gun and at that point you decided you needed to use a flashlight on his head?"

Heller said: "Well, I had taken my flashlight out right at about the same time Officer Strawser yelled, 'GUN'." He was asked exactly when he took his flashlight out, and Heller said, "It was probably right when he said it or -- I mean, it all happened so fast. Right when he yelled 'GUN' or right before he yelled 'GUN.' I'm not exactly sure. In there."

Heller was asked, "Did you remove the flashlight with the purpose to use it to strike Mr. Milton?" He said, "Yes."

The arrest: Assisting officers

At least five additional officers arrived in response to Heller's call for assistance. The CA/O interviewed the assisting officers and they said they arrived just minutes after the call. With their assistance, they said, Milton was handcuffed and had flexcuffs placed around his legs, with other cuffs tying the two together. They said he was then placed into the police van and taken to Broadlawns for medical treatment of his injuries.

All the assisting officers testified to the CA/O no blows were struck to Milton after their arrival and they did not see any officer strike Milton. All those officers indicated Milton was still struggling upon their arrival. The officers did not see Milton being mishandled in any way while he was placed into the van. According to testimony, no officers got into the back of the van to ride to the hospital. They said it is a violation of department policy to ride with a suspect in the back of the van.

The officers testified they assisted Strawser and Heller in locating their handcuffs and mace can in the leaves. The officers testified they shuffled their feet through the leaves in the area while attempting to locate the items.

The arrest: Other witness statements

Terry Meinke, of rural Princeton, Missouri, testified he was riding with Pollock that evening. Meinke recalled the call coming over the radio to 502, Pollock's car. Meinke recalled Pollock said she didn't think the call would amount to much, and he could step out of the vehicle. He said he did, following her around the police van. Meinke said Pollock had shined her spotlight on the porch first. He said he could see Hopkins in her doorway. Meinke said Hopkins had a small child in her arms.

Meinke said Milton started crying and seemed scared, hysterical and weak. He recalled Milton saying, "Just don't let them shoot me. Take me to jail if you have to." Meinke said Harvey was assisting Milton. He said Pollock was asking questions and saying she would help.

Meinke said he decided it wasn't his business, and left the group and moved back closer to Pollock's car which was parked on the opposite side of the van. He said he heard scuffling and bouncing against the far side of the van and at first thought it was a sliding door on the van, but he learned later there is no sliding door. He testified he assumed an arrest was in progress. Meinke said he saw Harvey run around the van and say, "The mother fucker's going to jail. I'm going to get his partner." Meinke said he watched Harvey go across the street to a multi-story

house and around some stairs. Meinke said he watched for Harvey to come back for a few moments, but never saw him again.

According to his testimony, Meinke went around the van and saw Pollock pulling on Milton, on his jacket, he thought. He recalled Pollock was on the ground below Milton, holding Milton's left arm by the jacket and the jacket pulled off. Meinke said he saw Heller use the flashlight two or three times.

Meinke said he then held the flashlight when Heller asked. He testified he felt Heller's voice was pretty frantic when he called on the radio and said he needed some help. Meinke said he sat on Milton's legs after asking Pollock what he could do. Meinke recalled he could feel the legs trying to rise up but he couldn't get Meinke off the ground.

He testified he saw the additional officers handcuff Milton. He said one of the officers began to cuff Meinke's leg to Milton's. Milton was still yelling and struggling, Meinke said. He said no one struck Milton after he was handcuffed, and Heller was the only one he saw strike Milton. Meinke said he saw quite a few people watching. There were about eight to 10 people watching from the lawn, Meinke estimated, 75 to 100 feet away.

The officers had Milton "hog-tied," hands behind his back and tied between his hand and leg cuffs, Meinke testified. He said

he saw them put Milton in the van and couldn't say whether anyone hit Milton's head on the van step.

In the hallway at the hospital, Meinke said he heard Pollock talking to Strawser, and Heller was there, too. The conversation about the gun came up, he said, but Meinke couldn't recall who said what. Meinke said he saw Strawser's eyes were red and watery from the mace, so he was talking first with Strawser about the mace effects. Then Strawser said something to Heller, Meinke said he thought, that Strawser felt Milton's hand go past his pants and grab his gun. Meinke said Strawser asked Heller if he felt Milton try to get his gun, because he tried for mine. This was the first time Pollock had heard about the gun, Meinke said he thought. Meinke stated he felt the conversation was genuine, not concocted.

John Collins testified he was exiting 1700 Oakland with his girl friend, Julia Sewell, when he saw Milton up against the van with three police officers, two male officers and one female. When he first came out, Collins said he heard Milton saying, "Don't shoot me, don't shoot me," to the officers. He said he heard the officers saying something back to Milton, but he couldn't understand what they were saying.

Collins said the police were beating Milton before they had the handcuffs on him. He described seeing Milton push two of the officers off of him, push the female officer away, and push

another officer away, at various times during the struggle. Collins said he believed Milton was defending himself. Collins couldn't say exactly when the handcuffs went on Milton.

Octavia Bonds, who lives in an apartment at 1700 Oakland Avenue, said she watched the events from the porch of her residence. She said she was in about the middle of the porch, which is approximately 100 feet away. From her, the fight scene was down a slight embankment sloping some three or four feet. She said she was on the porch railing so she could see down the embankment better. Bonds is adamant Milton had handcuffs on prior to being struck.

Octavia Bonds testified when she came out, there were two police cars and a division van. She said there were two males and one female officer, and they were chasing Milton across the street to where she was living. She said all three officers were pursuing him on foot, and caught him. She testified Milton made his way to the top of the embankment at 1634 Oakland and the officers caught him by his foot and dragged him back to the sidewalk area and handcuffed him.

She said she could hear Milton screaming, but could not hear the officers' statements to Milton. She said Milton was on his stomach first and the female officer was holding Milton down. The other two officers were beating Milton, she said. She said one officer was kicking and punching Milton, bending down to hit

Milton. Regarding the number of blows, she said, "I couldn't even tell you. We just stopped counting because he hit him for almost a good half-hour." She then said she wasn't actually counting the blows. She further testified officers struck Milton constantly for 10 to 15 minutes.

According to her testimony, Octavia Bonds heard the crack when the flashlight hit Milton's head. Both officers were hitting Milton at the same time, she said. One officer went back to the car, Bonds said, and she guessed he was calling for back up. That officer came back and resumed hitting Milton, Bonds said.

Octavia Bonds said once Milton went to the ground, he never got back up. At least 12 cars arrived within seconds, she said. Bonds said Milton's legs were handcuffed the whole time. She said no one got in the back of the van with Milton.

Sherry Lee, who lives in an apartment at 1700 Oakland, said the incident came to her attention when she heard a lot of sirens outside. She said she went downstairs and outside to the porch. She said she saw at least six police gathered around Milton, kneeling down, and other officers were driving up. She did not observe any of the struggle. She said she did not see Milton being hit. She said she observed officers were kicking dirt and leaves which she believed was an effort to cover evidence.

William Bonds, who lives in an apartment at 1700 Oakland and is a brother of Octavia Bonds, watched from the porch of the residence. He alleged at first Milton had handcuffs on at the time the officers' blows were struck. When pressed on the issue, however, Bonds said he was "not for sure, but I know he looked like he was handcuffed 'cause his hands was in the back of him."

Bonds said: "Well, he didn't start actually starting to fight the officers until they like, tried to put handcuffs on him, you know, 'cause he was yelling 'cause I could hear him, 'cause they was talking real loud, you know, that somebody was shooting at him, you know." Bonds said Milton was yelling, but he couldn't hear the officers because they were talking, not yelling.

He further stated: "And from there they tried to handcuff him and he refused to get handcuffed. He said, 'I called you all,' you know, 'to come and help me out, not to harass me,' you know, and then he tried to break and run. They dragged him back and you know, and I guess that's when they got into the -- started fighting each other, you know."

William Bonds said officers grabbed Milton by the foot after he tried to run and dragged him back down the embankment. Bonds said all three officers hit Milton, one after another, "steady beating him." He said, "'Cause you know the flashlight, you had to strike hard, you know, when you trying to pin somebody down

and fight like it's your life, you know. You're going to actually use all your might into anything you use, you know."

Bonds said he saw the additional officers finish handcuffing Milton after their arrival, but it was difficult to see what was happening because the officers had formed a circle, blocking the view. Bonds told the CA/O Milton's hands were "down at his side." He stated Milton "should have had the handcuffs on" and "I assumed they had the handcuffs on him" during the struggle.

He was asked whether Milton was wearing a jacket. He said, "Yes, a heavy coat." He was asked if at any time he saw the jacket come off of Milton. He said, "Yes, it happened when they (the officers) grabbed him back, tried to pull on him."

Floyd Ezell, who lives in an apartment at 1625 Oakland, said he observed the incident from his second-story window after a scream, which he described as sounding like a woman, attracted his attention. He testified when he first looked out, he saw three police cars, but they were still coming, two at a time.

Ezell testified he saw something flashing into the air which he thought might be a "chrome pistol." He said he saw a "good five" blows. He said he saw four officers pick up Milton and it looked like they rammied Milton's head into the step of the van, then put him in. Two officers got in the back of the van but Ezell said he didn't know if they stayed. Ezell said beige cars with

detectives arrived then. He said he didn't see the officers chase Milton or wrestle him to the ground. Ezell said he never saw Milton move his hands or arms or get up off the ground.

Willamenia "Menia" Fuller, who lives in an apartment at 1730 Oakland, said Jimmy Harvey came to the door and said police were "beating the shit out of Spodyoli." Spodyoli, or Spody, is a nickname for Milton.

She said she ran down the street with Harvey and there were 10 police cars there by the time she got there. She said Milton was already in the police van, and police were telling them to stay back. Jimmy had told her, prior to going out: "He (Harvey) said they wrestled him to the ground. He said the lady did something to Spody and Spody kicked her, or Larry Milton, he kicked her. That's what he told us. Then he said the police woman, she pulled out -- she got the flashlight and just started beating him. And all the rest of them started beating him, and they wrestled him to the ground and they hog-tied him and handcuffed him."

Willamenia Fuller said Pollock stood up there and said, "Look, we got us a shoe. We even got us a jacket."

Shirley "Shelley" Fuller, who lives at an apartment at 1730 Oakland, said she went to the area 15 minutes after her sister, Willamenia Fuller, and heard the female officer say, "Look, we've

got his coat and shoe." She saw a white man there talking to police. She described him as thin, middle aged, in a coat and blue jeans.

Walter Eugene Tibbs, who lives in an apartment at 1715 Oakland Avenue, testified he and his wife were walking up from the south at 7:35 p.m. He knew the time, he said, because he looked at the clock while walking past the Dairy Queen at Sixth and College, where a friend works. He saw two police cars turning from Sixth Avenue onto College, driving east on College. By the time he got up there it was about 7:40 p.m., he estimated. He saw two or three officers out in the street.

The "lady" police officer was choking Milton, Tibbs testified. He said she called him "out of his name," saying, "Shut up, nigger." Tibbs said she said that about twice. He said he couldn't understand what else she was saying because Milton was "screaming and howling."

Tibbs said he saw Milton standing and officers attempted to wrestle Milton down. Tibbs said he wasn't clear up the street yet at that point. Milton was not trying to get away, Tibbs said, and Milton was already handcuffed with his hands behind him. Tibbs could not see Milton kicking. The third officer just watched and may have joined the fray but Tibbs couldn't tell because it was too dark. Tibbs could see the light on the flashlight going up and down.

Milton was hollering don't beat me, don't kick me, don't kill me, Tibbs said. The officers said get back or you're going to jail. Tibbs couldn't say how many times they hit Milton. He could hear the licks and thought they were hitting Milton's head. Tibbs said all three officers were stooped over Milton. He said the officers told Milton to turn over and don't move while they were beating him. Tibbs testified police got a restraint belt out of the back of the police van and tied Milton up. He said he saw kicking through the crowd of officers and saw them kicking through the leaves and kicking Milton, too, about 11 officers. "You could hear the leaves and things flying around. They had to be kicking him."

It was too dark to see the handcuffs, Tibbs said. Tibbs said Milton was lying on his side. Tibbs said he went home and watched from his doorway, and saw the wagon leave at 8:20 p.m. He knows it was 8:20 because he looked at his clock. He said no one got in the back of the van with Milton.

Lewis McCray, who lives in an apartment at 1730 Oakland, said he saw Larry Milton at 6 p.m., and didn't see any injuries to his face. Milton was kind of drunk, he said.

Myrtle Jackson, who lives in an apartment at 1710 Oakland, refused to give a taped, sworn statement. She did talk at her residence with a CA/O investigator who took notes. She said she

saw Jimmy Harvey and a third black male who she did not know, helping Milton prior to the incident. The two were holding Milton up like he couldn't walk, she said. They proceeded from a white house on the east side of Oakland to the south to 1715 Oakland and to 1710 Oakland. She said she thought Jimmy was trying to help Milton. They left, walking toward the south. When she noticed the altercation outside, there were lots of police cars and officers outside, and she saw a group of feet shuffling.

After the arrest

Milton arrived at Broadlawns Medical Center at about 7:40 p.m. on December 28, 1991. Pollock was among the officers who followed Milton to the hospital. Pollock said, "He was making so much noise and creating such a disturbance that he was moved by a gurney to the triage room." This description of Milton's behavior at the hospital is not inconsistent with anything the Ombudsman has learned. Broadlawns personnel told the CA/O it is their general practice to place disruptive or violent patients in the triage room, because it's enclosed, quieter, and there are no objects there which a violent patient might use to injure himself or someone else.

Strawser said because of Milton's "incoherent yelling" at the hospital, he was moved into the triage room. Strawser stayed in the area for a while. "As the nurses tried to come in and clean him up, he was still kicking. There was maybe four or five police officers in there, and basically we were just trying to hold him on the gurney. He was still cuffed both ways, handcuffs still on, and he was still trying to roll off the gurney.

"They brought in a metal pan maybe a foot wide. In the triage room they have carpet; it's not an emergency room per se. They brought this pan in and put it under his head and poured some kind of saline into the head area to wipe it off. He started

shaking his head so the blood and saline was going all over, and he bit the metal pan and wouldn't let go of it. The nurse didn't want to yank it out and pull his teeth out. She just gave a gradual pull, 'Come on. Let go.' And he did after a while let go of the pan."

Published reports have mentioned Milton biting the pan as well as his biting a cassette used to hold x-ray film. Hospital personnel said they did not see officers mistreat Milton, or yell at him or call him names.

Pollock said it was immediately after she arrived at the hospital there that Pollock first heard Milton had put his hand on Strawser's gun. She had not heard Strawser yell "GUN" during the struggle, nor discussed the issue at the scene.

Pollock said: "I believe that we were talking in a general context about how much problems we had had getting him handcuffed," Pollock testified about the discussion outside the triage room at Broadlawns. "I had told them that he had had my mace, which I don't believe either one of them was aware of, and Steve had brought up the fact that the hand was on his gun. He may have even asked me if I had heard the statement, and I had said no. I don't recall the exact wording of the conversation, but I know at some point I was asked if I had heard it."

Pollock speculated later the reason she wasn't able to hear Strawser yell "GUN" was because "I was intent on what I was trying to do to subdue Mr. Milton. It's my understanding from that night that there were citizens yelling things at us also while this was going on, but I don't recall hearing any citizen."

Heller said he talked with the officers "briefly" about the sequence of events before writing his report. He said he did not discuss with the other officers what they would be writing in their reports. He said he read Strawser's report, but he wasn't sure whether he had read Pollock's, before he turned his report in. Strawser also read his report before he turned it in, Heller said. He wasn't sure if Pollock saw either report before turning hers in.

Before they wrote their reports, the three officers discussed the incident, Pollock testified. "We sat down and tried to piece together the incident. Any conversations that we had about the gun would have been in the context of the whole fight, trying to remember as much about the sequence of events." The three did not write their reports together, and Pollock did not read anything the other officers had prepared prior to writing her report. Pollock said she wrote her report in the third watch office, while Strawser and Heller were down in the report room in the basement of the police department.

Pollock finished her report, made a copy to go with her use of force report, and turned it in to the sergeant at the information desk, who stamps reports with receipt information. The three officers then talked over the incident with Captain Richard Sanders, the watch commander. Pollock said Sanders had heard the call for help and wanted to be briefed. Sanders heard the three officers each relate their story as a group and had the opportunity to ask questions. Pollock could not recall whether he asked any questions.

Later, on January 2, 1992, Pollock, Strawser and Heller had a discussion with Assistant Chief Kayne Robinson about the incident, which Pollock said Chief William Moulder also attended. "I believe the discussion we had with the assistant chief dealt more with the publicity, the Register's articles and what was happening now in the community as a result of that incident. My initial discussion with him -- I should say our discussion with him was related more toward that topic or area." Pollock was asked, "As opposed to discussing the specific incident?" To which she replied, "Yes."

Statements of medical experts

Dr. Michael Abrams, director of ambulatory care at Broadlawns and a board-certified addiction medicine specialist, stated the hospital sees perhaps two or three patients per week who are in a psychotic state. In a psychotic state a person may not respond to people around them. They may become aggressive and belligerent and it may take five or six people to hold them down in order to get medication in them to calm them. Dr. Abrams said 99 percent of those behaviors are drug-related. Alcohol causes that behavior most commonly, and second-most common is cocaine. Others include amphetamines like speed, and PCP (phencyclidine or angel dust) and LSD (lysergic acid diethylamide).

Abrams said a psychotic person often does not respond to pain. They may or may not feel the pain, but it does not make them withdraw from the stimulus causing the pain. Frequently, it makes them more stimulated or stronger and more aggressive. People who are schizophrenic or manic depressive may show a similar lack of reaction to pain. Broadlawns received a schizophrenic patient recently who had a ruptured ulcer. The man did not realize it. He thought he had an upset stomach, but most people would have been very sick and feeling a lot of pain. People in the psychotic state may not respond at all to pain, or indicate they are having any kind of distress.

Cocaine and alcohol both are anesthetics, Abrams said. They both dull the sense of pain. "Those are two drugs that give you an anesthetic feeling where you don't feel pain and that's from a drug perspective," Abrams said. Abrams and other medical experts said additionally, alcohol suppresses a person's inhibitions. Abrams said cocaine produces a euphoria under which a person may believe they can do anything. "Sometimes the cocaine amphetamines, it causes delusions and paranoia. It makes the person more sensitive and embellishes everything, you know. They see a lot -- I can give you a description, you know, people say they see a lot more things than are there. It's hyperinflated, maxed -- over maximized, overstated."

Cocaine used with alcohol produces a separate cocaine ethylene which lasts six to seven hours longer in the body than cocaine alone, Abrams said. Cocaine causes the release of dopamine in the brain, and cocaine ethylene causes the release of additional dopamine. Individually, either alcohol or cocaine can impair the memory. High levels of alcohol impairs the memory more than any other drug. Further, the person suffering a psychotic episode may have a complete or partial memory blackout, Abrams said. Injuries to the lining of the brain, to the brain itself or to blood vessels in the brain could cause such a psychotic episode, if there was enough pressure to the brain or trauma at the injured area.

Depending on the size of a flashlight, it would be possible to inflict enough damage to a skull to cause death, Abrams believes. A skull fracture itself is not necessarily dangerous and does not always require medical treatment, according to Abrams and other doctors consulted by the CA/O. However, any trauma suffered by the brain and blood vessels below the skull is dangerous, and such damage may occur with a skull fracture. A depressed skull fracture, or one which pushes the bone down into the brain tissue, is dangerous because of the hemorrhage it can cause in or around the brain.

A psychotic person can exhibit phenomenal strength for a period of hours, Abrams said. The reaction may be similar to the anecdotes about people who are able to lift a car if they see a person pinned underneath it. In that case, a person gets a burst of adrenaline which releases chemicals in the brain. Cocaine releases similar chemicals like dopamine in the brain, he said. In the case of cocaine or an amphetamine, "it's like having 15 of those adrenaline rushes," according to Dr. Abrams. More of the brain's receptor sites are devoted to the response, more muscles energized and the brain and muscles focused on a single goal or response.

There's a gate theory about pain response, Dr. Abrams said. When the brain's receptors are overloaded with one set of stimuli, the gate is blocked and the other stimuli cannot get through. The painful stimulus is still there, like in the case of the man with

the ruptured ulcer. But the pain is not registering in his brain. It's like burning a finger and sticking it in your mouth; the feeling of cold from the mouth may temporarily override the feeling of hot from the burn by temporarily occupying the nerve pathways.

Dr. Abrams emphasized the amount of physical risk a patient can represent to staff. If the agitated, psychotic patient is not restrained, someone may be injured trying to get him under control. If the person is restrained to some degree, he can still be dangerous. For instance, the head or mouth or any bleeding can represent significant threats.

Drugs to treat violent psychotic behavior can be very effective. One is a neuroleptic drug, or major tranquilizer. But a person in a psychotic state also may be very anxious, so a minor tranquilizer often is used in succession with the major tranquilizer. The drugs are very effective, but the problem is getting those drugs into the bloodstream of the agitated person.

Cocaine anesthetizes not only the brain but also the peripheral nerves. "So one of the main responses cocaine does, it makes you feel good and feel no pain," Abrams said. Both cocaine and alcohol lead to a "synergistic or additive effect of both drugs to feeling no pain type of reaction."

The average time for cocaine to be eliminated from the body is about 12 hours, Abrams said. From clinical experience, a person who has a level of greater than 2,000 nanograms has taken a gram or two grams of cocaine within the past 24 hours.

Dr. Larry Baker, director of emergency medicine for Lutheran Hospital, is certified as a specialist in family practice and emergency medicine.

Dr. Baker testified he is familiar with the type of flashlight used by law enforcement officers. When an officer strikes someone in the head, Dr. Baker would not be surprised if some degree of unconsciousness would result along with lacerations to the scalp. The greater injuries, such as subdural or epidural hematoma, would be less likely. A skull fracture may occur, given the amount of force applied. Skull fractures can be serious injuries, especially when they occur in certain parts of the head. But certain skull fractures can be dismissed from the emergency room. Nonetheless: "Blunt injury to the head of sufficient magnitude could cause mortal injury, sure."

Baker said people are not always susceptible to pain. Those on drugs or alcohol or a combination thereof may not be susceptible. Those who have a psychosis may not be, and anesthesia is used in controlled settings for that very effect.

PCP is the most notorious of drugs which can cause a person to display super strength, Dr. Baker said. But any stimulant including amphetamines, cocaine and their derivatives and some anesthetic agents can cause the super strength syndrome.

Lutheran Hospital has patients "commonly" which exhibit such strength. "We have people who are not very big require a lot of people to hold them down and help restrain them," Baker said.

Dr. Kenneth Schultheis, director of emergency medicine at Mercy Hospital, further confirmed people can display super strength under the influence of certain drugs or mental diseases. Dr. Schultheis is certified as a specialist in emergency medicine. He cited the stimulant drug cocaine and the psychedelic drug LSD as two which can cause a psychotic episode and a resultant display of strength. Typically, Mercy Hospital deals with fewer than six such patients yearly, he estimated. They represent a great danger and challenge to the staff and a danger to themselves. It can take four to five people just to hold one such person down. Such an episode can last several hours. The hospital typically uses leather restraints on such a patient but must maintain vigilance so the patient doesn't break free.

Alcohol and cocaine both are mood and mind-altering drugs, Dr. Schultheis told the CA/O. The effects of the two combined would be "significant." Schultheis said cocaine users develop a tolerance to the drug which grows with repeated use. The more

tolerance a cocaine user develops, the more cocaine he uses, and the more at risk he would be for a psychotic episode.

Level of proof

The level of proof applicable in investigations conducted by the Ombudsman is called "preponderance of the evidence." Under this standard, the degree of proof necessary is that evidence which, when fully and fairly considered, produces the stronger impression and is more convincing when weighed against evidence in opposition to it. *Christensen v. Iowa State Highway Commission*, 110 N.W.2d 573, 252 Iowa 1351 (Iowa 1961).

Preponderance of evidence does not necessarily depend on the number of witnesses testifying to a proposition but is determined by the weight of the probative force and value of the evidence.

Mabrier v. A.M. Servicing Corp. of Raytown, 161 N.W.2d 180 (Iowa 1968). Factors going to the weight may include opportunity for knowledge, information possessed and manner of testifying.

Direct and circumstantial evidence are equally probative. Iowa R. App. 14(f)(16).

The arrest: Summary and conclusions

Many opinions and much controversy surround the arrest of Larry Milton by the Des Moines Police Department on the night of December 28, 1991. Questions of what, how and why are difficult to resolve. Questions of who, when and where are in less dispute.

It is generally agreed Larry Milton was at Oakland Avenue around 7 p.m. the evening of December 28, 1991; he was on the porch of the Hopkins residence at 1634 Oakland; he may have been at one or more locations on the street prior to that time; at the time he was on Hopkins' porch, Milton was accompanied by Harvey; Sheryl Hopkins telephoned the Des Moines Police Department requesting assistance for Milton; police officers Pollock, Strawser and Heller responded; Pollock had with her a civilian ride-along, Terry Meinke; Milton was encountered in the sidewalk-parking area in front of 1634 Oakland; Milton was placed under arrest; Milton was injured during that arrest; Milton was placed in the Des Moines Police Department van and transported to Broadlawns Medical Center where his condition was assessed, and certain of his injuries treated, and Milton was later transferred to University of Iowa Hospitals where he received additional treatment.

There is further general agreement that Milton had consumed a certain amount of a cocaine derivative and an amount of alcohol,

probably beer; Milton was wearing a jacket at the time of his initial encounter with the police department; Milton's jacket came off during the struggle, and Milton was hit in the head more than once with a flashlight by at least one officer.

Beyond that, additional circumstances, information and testimony are in conflict. It is the intent of this report to state the conclusions of the Ombudsman based upon the facts and information as we know them to be.

The CA/O made repeated efforts to locate witnesses and obtain statements from them. There may be other witnesses who may have seen what happened. It has been a well-publicized fact the CA/O has been conducting an investigation and seeking witnesses to the arrest. Witnesses have been given multiple opportunities to step forward, not only before the CA/O but the other agencies conducting separate investigations of this matter.

The CA/O must assume if people witnessed an injustice against Larry Milton, they would have a great incentive to step forward. That no one else has stepped forward indicates to the CA/O no one else saw anything that was significant, or no one else perceived an injustice that compelled them to come forward. Accordingly, the conclusions of the CA/O are based upon the testimony of witnesses interviewed during the investigation and other information obtained during that period.

Incontrovertible evidence confirms the tone and content with which officers addressed Milton just prior to the arrest. That is Heller's audio tape recording. Heller said the tape recording ceased, he believed, when he bumped into Milton. That Heller erased the tape was not the best of judgment because of the suspicion it raises; however, the CA/O does not believe he erased the tape with ulterior motives.

Milton consumed a quantity of "crack" cocaine, according to his own testimony, at 11 a.m. He may have been consuming "crack" over a period of several hours, according to a witness who was with him between 10:30 a.m. and 3:30 p.m. on this date.

Published reports and expert medical testimony indicate the amount of cocaine derivative in his system later that evening reached the upper limit detectable by the particular test employed. Additionally, the same published reports indicated Milton had a level of alcohol of .10. Milton admits to having consumed at least five beers around mid-day. Two people interviewed separately by CA/O testified Milton was drinking in the mid-afternoon and again shortly prior to his arrest.

Milton testified to the CA/O he was not under the influence of drugs or alcohol at the time of his arrest. Witnesses, however, saw Milton being helped along by Harvey and it looked as though Milton was drunk and "high" could not walk on his own. Harvey also believed Milton was drunk and contended Milton fell down four or five times, but the latter statement is not corroborated

by any other witness. Milton testified he left the Gates residence on College Avenue alone, but Gates testified Milton left with Wardell "W.D." Kelson. Milton said he drove to the Oakland Avenue area where the incident occurred, and upon exiting his vehicle, he was accosted by two individuals, one of whom he believes had a gun. Milton testified these men tried to get him to go behind a vacant building, and Milton refused, instead fleeing to seek help.

The CA/O cannot discount the probability Milton was involved in an altercation during which he was injured prior to meeting up with Harvey. The CA/O believes Milton may have had reason to feel he was in danger when he sought assistance.

Milton and Harvey's statements that they went to the porch and front door of the Hopkins residence at 1634 Oakland is corroborated by Sheryl Hopkins. Milton contended he asked Hopkins to call police; Harvey and Hopkins both say Harvey did all the talking.

We cannot accept Milton's contention he was not injured prior to the police arrival that night. We accept Sheryl Hopkins' statement that she observed some injury and swelling to the left eye area while the two men were on her illuminated front porch prior to the police call, and that Harvey stated to her, "This man's been hurt bad." Most conclusively, Hopkins testified she came out on the porch later that evening and wiped up drops of

blood. Further, some injury to Milton's left eye area was noted by two of the three officers prior to the arrest struggle.

We cannot accept Milton's testimony he remained on the porch at 1634 Oakland until police arrived. Harvey related they were off the porch after the call was made, prior to the officers' arrival. Sheryl Hopkins' recorded 911 dispatch call to the police references two men "were" on her porch. The three officers are unanimous in describing Milton and Harvey approaching them out of the darkness south of Hopkins' residence.

The CA/O's review of the testimony of neighborhood witnesses determined few of the witnesses actually saw the initial contact between Milton and the police. Many of the witnesses stated they were attracted to the scene by the siren and lights of the police vehicles. Pollock, Heller and Strawser did not respond to the scene using their emergency equipment. The only officers who used that equipment were those who were responding to Heller's call for assistance and arrived after Milton was under some control by the three arresting officers.

Milton contends he was handcuffed, thrown to the ground face down, and summarily beaten with flashlights by all three officers as he was pleading for help. Officer Heller's audio tape recording of the moments just prior to the struggle substantiate Pollock's testimony she was seeking to calm Milton and be responsive to his pleas. The tape contains Milton's animalistic

howl. That howl, all three officers testified, occurred at the time Milton's physical resistance began.

Several neighborhood witnesses at first contended Milton was fully handcuffed at the time the struggle began. Witness testimony was inconsistent on the issue of whether Milton was handcuffed by the three arresting officers; some said the additional officers handcuffed Milton. Witnesses who stated they saw Milton handcuffed were repeatedly questioned by the CA/O about the issue. Many assumed Milton was handcuffed because they could not see his hands or arms moving. Some witnesses testified they could see struggling going on and they saw arms and legs flailing about.

Besides Meinke, whose view was blocked for a time, the closest witnesses to the struggle interviewed by the CA/O were about 100 feet from where the arrest took place. Milton and two witnesses insisted he was completely handcuffed. However, many witnesses, including the arresting officers, assisting officers and some neighborhood residents, say he was definitely not handcuffed or have indicated by their testimony they did not know for sure if Milton was handcuffed.

During the CA/O's January 29, 1992 assessment of the scene for the effect of the artificial light sources, it was the senior CA/O investigator's opinion the effect was minimal in illuminating the area of the arrest. It was determined by the

CA/O investigator that an assistant CA/O, dressed in dark clothing, could not be seen with any significant detail. Further, only limited visualization of the assistant CA/O's arm could be detected by the CA/O observer as the assistant bent over and swung his arm to mimic an officer swinging at a prone subject.

Based upon the light and weather conditions as reported by the state climatologist, witnesses and officers, and considering the CA/O's January 29, 1992 assessment of the visibility on the scene, along with the close proximity of the officers to Milton, it is not probable any witness could have seen clearly enough to tell if Milton was cuffed either completely or partially. In considering the officers' descriptions of the struggle, especially their close proximity to Milton and their attempts to control his arms behind his back, in the CA/O's opinion it could have appeared to certain witnesses as though handcuffing had been completed.

We cannot accept Milton's allegation he was handcuffed prior to the struggle because both police and some neighborhood witnesses say Milton's coat came off during the arrest; that would have been physically impossible with the wrists already cuffed together. We cannot accept Milton's explanation: "I don't know what happened to my jacket, unless they beat it off me." Additionally, Milton's allegation is not supported by any available information or evidence reviewed by the CA/O. Neither

Milton's testimony to the CA/O, nor the CA/O's observation of Milton's wrists indicated any trauma to the wrists, such as cuts or bruises, which would have been consistent with being handcuffed and then moved about violently, even if the cuffs were double locked. Further, one witness testified he saw Milton push officers away from him at least three times, which also would be impossible for Milton to do after he was handcuffed and placed face down on the ground.

After considering the testimony and information available, the allegation Milton was struck by the officers while handcuffed cannot be sustained.

Milton contended he was kicked by one or more officers, and witness testimony indicated they saw Milton being kicked. Witness perception of officer kicks do not conflict with officer testimony, in the CA/O's opinion. Pollock testified she did indeed attempt to kick Milton in the groin as a defensive measure during the struggle. Additionally, the officers tried on at least three occasions to take Milton to the ground by sweeping Milton's legs out from under him, or by tripping him with their legs.

Other witnesses saw officers kicking around the area, through leaves and dirt, after Milton was subdued. Some interpreted this action as kicking directed toward Milton; others have accused

officers of trying to cover up evidence by hiding the blood and flesh. The officers offer a reasonable explanation for such activity. They testified they were kicking through the leaves to recover the handcuffs, sap and mace officers Strawser and Heller testified they lost or tossed aside during the struggle.

Further, the CA/O believes little if any evidence could be gained from the scene other than to pinpoint the location of the struggle from blood stains on the ground or leaves. The location of the struggle has never been in dispute. The severity of injuries to Milton has never been denied; the police transported Milton to Broadlawns for treatment of those injuries. Therefore, the CA/O finds the officers' explanation much more reasonable than the alternative, that officers were covering up evidence of Milton's injuries.

On the allegation of racial slurs being used by the officers during the arrest, only two neighborhood witnesses claimed to the CA/O they heard racial remarks. One witness is discounted because his testimony contradicts itself numerous times. The other, Walter Tibbs, described times which are inconsistent with the time of the struggle and the departure of the van. From Tibbs' description of the times and further descriptions which are not corroborated by others, it is the CA/O's belief Tibbs saw very little of the end of the incident, or, perhaps, none of it at all. Witnesses who were on the scene longer and closer to the site heard more statements by Milton and officers, but heard no

racial slurs. Milton did not raise the issue of racial slurs during his testimony to the CA/O. The CA/O finds the testimony alleging racial remarks is less credible than the contradictory testimony, and this allegation cannot be sustained.

Milton's behavior just prior to his arrest is described similarly by both neighborhood witnesses and by the arresting officers. That behavior is, in the opinion of the CA/O based on information from medical professionals, consistent with that which one could expect to see in a person under the influence of alcohol or certain controlled substances such as cocaine. Some medical witnesses said alcohol and cocaine could have significant synergistic effects when combined. Further, alcohol can cause significant impairment of memory and release from inhibitions. Cocaine abuse can cause psychotic episodes during which a person can show super strength; a person can suffer a partial or total memory loss of such an episode.

Milton has admitted consuming a small amount of cocaine and alcohol earlier on the day in question, although other witness testimony indicates the amount of cocaine consumed was much greater than what Milton stated and taken over a longer period of time.

Milton exhibited apparent intoxication to the point of not being able to stand without assistance, increased agitation and a perception someone was continuing to try to injure him when no

present threat could be detected, an inability to respond in a rational fashion to the questions of the officers, an ability to withstand great pain without seeming to feel it and no reaction to chemical mace. Milton released an animal-like howl and fought with extraordinary strength and endurance.

On the allegation excessive force was used to subdue and arrest Milton, there are only four people who may know what danger, if any, actually existed that night. There is significant disagreement on many points between the police and Milton regarding what happened.

The CA/O has been asked to determine if the actions taken by the officers that evening were appropriate. There are three versions of what happened -- from Milton, police and witnesses. Each has been examined on its own strength or weakness. The CA/O cannot, nor can any other body or tribunal, determine the actual events of that night with absolute certainty. We can only determine which version is most credible based upon a vigorous consideration of a host of evidence and information.

The CA/O received sincere and passionate testimony from some of the neighborhood witnesses. Those witnesses sincerely believed they observed certain actions, but their locations and the overall visibility on the scene may not have allowed for clarity. The CA/O believes other witnesses' versions were embellished or fabricated.

It is the conclusion of the CA/O a violent struggle did take place on the evening of December 28, 1991 between Larry Milton and three officers of the Des Moines Police Department and Milton did resist the officers.

When Milton's described behavior is considered in conjunction with other information, the CA/O is convinced Milton was under the influence of alcohol and cocaine at the time of his arrest.

While there is a fair amount of disagreement in the testimony of neighborhood witnesses, it can be inferred from the testimony Milton did not readily comply with the officers, despite his testimony to the contrary.

Police officers are trained to detect and respond to threat levels with various levels of responses as discussed in the section of this report dealing with training. Ideally, the level of response will be dictated by the level of threat. Only that force which is necessary to subdue the subject and prevent escape or injury should be used against the subject.

The level of threat the officers say they perceived and the level of threat Milton says he presented can only be described as being at opposite ends of the spectrum. The officers believed throughout the incident the threat level rose and their attempts to counter it were not effective. Two of the officers further

believe Milton made contact with Strawser's firearm, which escalated the threat to its highest level, that of deadly force. Those two officers said they perceived a great threat to life and safety. Milton says he presented no threat whatsoever to the officers at any time.

The CA/O believes while there are some discrepancies in the accounts of the arresting officers concerning details in the sequence of events, overall their testimony is consistent and supported by other corroborative evidence, while Milton's is not. For instance, Milton said he was struck by all three officers using flashlights, and the female officer struck the first blow; the bulk of witness statements do not support those allegations.

After considering the testimony of Milton, the arresting officers and numerous neighborhood witnesses and weighing the various differences in those accounts, the CA/O concludes Milton did present a significant threat. Milton's apparently unceasing, tireless effort to resist and/or escape the officers was rapidly fatiguing the officers. Milton continued to fight despite being physically restrained by three officers, sprayed with chemical mace at least four times, and struck with a sap four to five times and a flashlight seven or eight times.

Several witnesses corroborate key portions of the officers' testimony. While Milton claims he at no time resisted the officers, several witnesses describe him pushing officers away,

or knocking officers aside, or attempting to run or walk away. One says he heard Milton protest his arrest and say he would just go home. Several heard the officers speak to Milton. Those who heard the officers said they asked Milton questions, and one says he heard the officer say Milton was under arrest for public intoxication. A tape recording made by Heller of the seconds before the altercation confirms the officers were talking to Milton, trying to calm and reassure him. Milton was yelling and screaming throughout the altercation, the witnesses said.

The CA/O is not convinced Milton consciously attempted to obtain Officer Strawser's weapon. In fact the CA/O believes Milton was not capable of knowing what he was doing at that point and was completely out of control.

The officers presented independent testimony and reports which said Milton attempted to take other items from the officers during the struggle: Strawser's handcuffs and Pollock's mace. This tends to support the allegation Milton did make contact with Strawser's weapon. Simply because Milton did not intend to try to take the officer's weapon does not refute the allegation he did place his hand on it. The CA/O does not believe it is reasonable to expect an officer to wait and see if the suspect will release the weapon on his or her own before reacting. To do so would place the officer and the public in needless jeopardy.

Milton's alleged contact with the weapon caused an immediate and trained response by Strawser. Strawser pinned Milton's hand and either said loudly or yelled "GUN." At this point it is clear from Strawser's and Heller's testimony they both felt the threat was now at its greatest level; Heller determined his alternatives were to strike Milton with the flashlight or shoot him to make him break contact with Strawser's weapon. Heller elected to use the flashlight, his quickest response option.

The CA/O does not attach any special significance to the testimony of Pollock she did not hear Strawser say "GUN." The CA/O finds her explanation of having her attention focused on Milton to be plausible.

On the allegation officers used excessive force to subdue and control Milton, the CA/O considered all available information and concludes much of the neighborhood witness testimony is based upon assumption as opposed to actual observation. The CA/O believes the witness testimony fails to produce a significant counter to the officers' account Milton did grab the gun.

The CA/O is persuaded Milton did make contact with Strawser's weapon and initiated an automatic response by the officers. Because the threat as perceived by the officers had risen to the level which would justify deadly force, the force used by the officers to counter the threat was appropriate. It is the

conclusion of the CA/O the allegation of excessive force is not sustained.

Summary and conclusions based on expert medical statements

Various doctors told the CA/O patients can and do exhibit extraordinary strength. It can take from four to eight people to hold down such a subject long enough to get some medication in them to treat them for psychosis. Such patients also may need a separate medication to treat them for anxiety if they are displaying that characteristic. The display of extraordinary strength can last a long time, for 24 to 36 hours in some cases.

Such psychosis can occur naturally, in patients who have schizophrenia or manic-depressive disorders. Or it can occur as a result of an ingestion of certain drugs, particularly anesthetics like alcohol or cocaine, or stimulants such as amphetamines or speed. PCP is notorious for its ability to cause such a reaction, but alcohol and cocaine are the two most common causes for those cases seen at Broadlawns.

The combination of alcohol and cocaine can produce a synergism in which the separate effects may be intensified. Further, cocaine use over a period of time may lead to increased dosages administered either intentionally or unintentionally.

Unintentional increased dosages may result from impairment of judgment because of the intoxication level, or from varying purities of the drug. Common sense holds there is no way for a user to tell the purity of the drug he is ingesting; quality

control is largely unknown in street purchases of illegal substances.

Increased dosages over time of a drug like cocaine can introduce increased occurrences of psychotic behavior. We know from the arrest of Mr. Milton earlier on December 28, 1991 he believed then, too, someone was trying to kill him. Witnesses said no one saw anyone posing a threat to Milton. Some witnesses said Milton sometimes, in their view, exhibited "paranoid" behavior.

Larry Milton told the CA/O in sworn testimony he had consumed "crack" cocaine and alcohol prior to his evening arrest. The medical testimony shows these drugs could explain his later behavior. The testimony shows Milton exhibited great strength; hospital personnel who commonly deal with psychotic patients said those patients can and do exhibit abnormally large and amazing levels of strength. Individuals may also experience loss of memory of a psychotic episode.

The CA/O believes Larry Milton was under the influence of alcohol and a cocaine derivative. The CA/O also believes Milton exhibited behavior which coincides with our general understanding of the type of behavior which medical professionals have described as a psychotic episode. We believe Milton had a perception one or more persons wanted to shoot or kill him. While the perception may have had a basis in fact, Milton was not capable of recognizing any threat, real or imagined, had ceased

by the time officers arrived. The CA/O believes Milton exhibited abnormal levels of strength as the arresting officers and some witnesses reported. The CA/O believes Milton's behavior was enabled by the narcotics and alcohol in his system.

Milton exhibited several of these behaviors before the blows to the head, according to police and witness accounts. The CA/O believes Milton's memory of the incident may have been impaired by the cocaine and alcohol if not by a psychotic episode.

SECTION TWO

Assessment of departmental review

of the Milton arrest

and

Des Moines Police Department internal affairs process

This section examines the review applied to this specific incident as well as the general departmental process used for most other citizen complaints.

On the evening of Milton's arrest, he was transported to Broadlawns Medical Center, and the three officers returned to the station, where a departmental review of the incident began.

Testimony of Captain Richard Sanders

Captain Richard Sanders is the third watch commander for the Des Moines Police Department. Sanders is a certified police officer and has served with the department for over 29 years. The arrest occurred during the third watch which runs from 2:30 p.m. to 10:30 p.m.

Sanders described his duties as being responsible for scheduling, reading officer reports and assisting officers in potential "hot trips to see how it was handled and make sure everything goes as

well as possible." Pollock is a first-line supervisor and is responsible to Sanders.

He indicated he has overall responsibility for 52 personnel assigned to his shift. He is assisted in his duties by a number of mid-level and first-line supervisors. He does not as a matter of routine conduct patrol activities himself.

Sanders stated during his testimony he does not review every report which comes in during his tour of duty. He reviews them "if there's really something wrong or with the use-of-force reports, I review them and sign them and just kind of keep abreast of what's going on with the shift." Sanders had no direct involvement in the arrest of Milton.

Sanders was asked specifically about his responsibilities in use-of-force cases where an injury has been sustained by the person arrested. He stated he will read the reports for completeness and instruct officers concerning any defect in the report. He then makes a decision whether the use of force was justified or excessive. Subsequently he will write an endorsement on the use-of-force report and submit it to the assistant chief who either endorses the captain's findings or disagrees with them. The report is then sent to the chief of police who makes the final determination to accept or reject the findings.

In the Milton incident, Sanders explained he first became aware of the situation as he was listening to his police radio and heard a call for assistance. He stated he proceeded toward the location of the call on Oakland but did not make it to the scene before he heard officers leaving en route to Broadlawns Medical Center. Sanders proceeded to the hospital.

Pollock, the senior officer on the call, met Sanders in the parking lot of the hospital where Milton had been taken for treatment of his injuries. Pollock indicated to Sanders she would speak with him at the department and left the area. Sanders also left the hospital then. He did not go in to view Milton's injuries, although he did view Polaroid photographs of the injuries later. He stated when he saw the photographs he was surprised as he had not envisioned the injuries being so dramatic judging from the officers' accounts. Sanders testified at that point his understanding of the incident was the officers had encountered a subject "they couldn't control" and they had a "real problem" making the arrest.

Upon their arrival at the police department, Pollock, Strawser and Heller met together with Sanders in his office to discuss what had taken place. According to Sander's testimony, he interviewed the officers as a group prior to them writing their use-of-force reports. Sanders was asked if this meeting was part of the normal departmental review process. He stated it was not.

When asked what was different about the case Sanders responded, "Usually I just get the report." The officers indicated to him this case "was a little more aggravated than a normal use of force, more involved." According to Sanders, Pollock said, "I think you better know about this ahead of time." Sanders stated it was then he felt it wasn't a "normal" situation.

Sanders discussed the incident with the officers and learned what they had encountered. He testified Pollock indicated Milton was with another person when she arrived. According to Sanders, Pollock said she detected the odor of alcohol on Milton and he appeared to be "hallucinating." At one point Milton apparently asked to be taken to jail because he was afraid someone was trying to kill him. Milton became nervous while the sergeant was checking him for warrants. Sanders indicated Pollock told Milton he was being taken into custody and then the problem started.

Sanders testified he specifically asked the officers about Milton's condition and how he appeared to them at the time. They responded they suspected he had been drinking and "probably" using drugs because Milton was "just wild and seemed to be out of his head." Sanders stated he had a detailed discussion with the officers about their struggle with Milton.

The officers told him Milton became resistive and combative, Sanders said. After a number of unsuccessful attempts to place him on the ground they finally tripped him down. The struggle

continued on the ground where Milton was maced without effect. Milton got Pollock's mace can from her but she was able to recover it. As the struggle continued Strawser said he felt a hand on his weapon, pinned Milton's hand and yelled "GUN" to alert the other officers. Then Heller began striking Milton on the head with his flashlight to force him to release the weapon.

Sanders asked Heller how many times he hit Milton with the flashlight. According to Sanders, Heller said "several times" and it did not appear to have an effect on Milton.

Sanders was asked what he saw as the significant issues, based on what the officers told him. He responded he felt even with the use of mace and being struck with the flashlight there was no apparent effect on Milton's behavior and that was significant to him. He added he has seen people under the influence of alcohol or drugs and they are extremely difficult to control.

The CA/O asked Sanders about the alleged attempt to get Strawser's weapon. He said he asked only Strawser about it. He testified he was not certain of the sequence of events or whether the use of the flashlight was, in fact, in response to the warning about the gun.

Sanders was asked if the use of the flashlight was appropriate. He stated it was, "because when you're on the scene like that and you have your flashlight in your hand and someone gets control

(of your weapon) and you have to act immediately, you're going to use what's in your hand." Sanders testified he believed the officers had gone through the various threat and response levels as the situation intensified and they reacted properly.

Eventually, Sanders reviewed the officers' reports. He was unaware whether the officers prepared the reports together but acknowledged the possibility. Sanders testified he approved the reports as presented by the officers that evening.

Sanders was asked to explain how he accounted for the fact Pollock's report did not mention her hearing Strawser yell "GUN" and she had been unaware of the contact with Strawser's weapon until she was given that information after she arrived at the hospital. Sanders responded he eventually did question Pollock about that issue "sometime later" and was informed of this after he had signed off on the reports.

Sanders confirmed he approved the reports and determined the use of force was justified under the circumstances. He was questioned about the criteria upon which he based his decision. He stated he relied only on the information in the officers' reports and from his discussion with them that evening. No independent information was sought by Sanders before he determined the use of force to be justified.

Before going off duty that evening Sanders placed the reports with his approval endorsement in the patrol division commander's distribution box. Sanders testified he did not discuss the matter with Assistant Chief Robinson until "the next day or a few days later." During his interview February 5, 1992 with the CA/O, Sanders said he was not aware whether the assistant chief had approved his December 28, 1991 findings. When questioned, Sanders related, "In fact, very seldom do I see his endorsement."

Sanders said when he discussed the incident with the assistant chief, it was a matter of repeating what the officers had said which the assistant chief apparently already knew from the reports. Sanders said there was not any substantive discussion about how Sanders had reviewed the incident. Sanders was unaware whether Robinson had discussed the matter with the arresting officers.

Sanders was asked if Chief Moulder had discussed the incident with him prior to Moulder's initial public response in the Des Moines Register. Sanders stated the chief had not discussed the matter with him until they attended a meeting at a local church several days later.

Sanders was asked to explain the department's internal affairs process. He stated the use-of-force reports on which he had signed off go to the assistant chief and then to internal affairs

and the chief's office for review. If requested by the chief an investigation is conducted by the internal affairs unit.

Asked to describe the departmental standard for the completion of a use of force report, Sanders contended the uniform policy is: "Any time you have to use excessive force if anybody is resisting, if you have to take them to the ground, or are in a struggle with them, or if you have to use mace, sap, baton or flashlight or striking instruments," such a report is required.

Testimony of Assistant Chief Kayne Robinson

Assistant Chief Robinson has served with the Des Moines Police Department since 1968 and presently serves as uniform division commander. He is a certified police officer and has held numerous positions with the department.

Robinson said he became aware of the Milton case the next working day when he received the use-of-force reports from Sanders. Robinson indicated such reports are reviewed by the entire chain of command along with information from the particular incident. Robinson had no direct involvement in the arrest of Milton.

Robinson stated he reviewed the use-of-force reports and signed off concurring with Sanders' endorsement of justified force. Robinson testified his decision was based upon his knowledge of the officers involved, which he noted was quite extensive, and Sanders' endorsement.

Robinson stated he discussed the incident with the officers after he had already signed off on the reports. He first became aware of Milton's injuries when he read the use-of-force reports. He testified during his February 11, 1992 interview with the CA/O he had received no subsequent information concerning Milton's injuries since he initially read the reports.

Robinson testified he had information which suggested Milton had been injured prior to the arrest. He described the information as being "not extreme detail," but Milton's left eye may have been injured.

Robinson testified he did not believe he discussed the incident with Chief Moulder prior to Moulder's January 1, 1992 statement in the Des Moines Register about the incident. After Moulder's statement appeared, Robinson said they discussed the incident in depth.

When asked to describe the department's review process, Robinson responded, "Well, it's kind of complicated because it depends on what happens. If it's a use of force where there appears to be pretty clear evidence that what happened, as it's described and there aren't any particularly unusual features about it, then a use-of-force report is made, particularly if there's a supervisor present." He explained the report is reviewed by the supervisor and is passed along the chain of command.

Robinson was asked if there was any circumstance under which the requirement to write the report would be waived. He testified he did not fully understand the question but went on to say, "The only dispute might be over whether force was used. That is in the very low end of those situations. For example, a simple handcuffing would not require a use-of-force report; but the definition of handcuffing someone, say, that is intoxicated,

there certainly can be a gray area. The person may be pulling around and be pushed against a car and he has to be handcuffed. At some point a use-of-force report would be required, and at another point it wouldn't. That would be a matter of opinion of the supervisors."

Robinson testified the department has a list of approved striking instruments which includes saps and two types of batons.

Robinson added, however, the list does not in any way limit an officer in an emergency situation. The officers are free to resort to whatever might be available to defend themselves against an attack.

During a discussion of the internal affairs process, Robinson was asked if he believed it was appropriate for him or Moulder to arrive at a conclusion before the internal affairs process is complete. He said he believed it was appropriate, explaining the system of reporting calls "for the supervisor to reach a conclusion, a review of what was done, a review of that report and any other information available, and then a conclusion."

Robinson emphasized it is not the role of internal affairs to make any conclusions. He compared the role of the IAU to that of a detective, to gather information. He said, "They would gather the information and report the facts to the commanding officers and eventually to the chief. Those commanding officers would

make recommendations all along the way. That's where the conclusions would be drawn, not by internal affairs."

Testimony of Chief William Moulder

William Moulder has served as the chief of the Des Moines Police Department since September 1984.

Moulder testified he became aware of the Milton incident on the 30th or 31st of December. He said he learned of the incident from Captain William Tigue, commanding officer of the inspection services section, because that section had been contacted by Wayne Ford of Urban Dreams Incorporated and attorney Maggi Moss, on behalf of Larry Milton.

Moulder was asked on what information he had based his January 1, 1992 Des Moines Register comment, "The force used was proper," vindicating the officers. He stated he had completed his review of the Milton case and based upon the information in the file, the supervisory review, and the written endorsements from the watch commander and division commander, he concluded the use of force seemed appropriate. Moulder was asked if it would be correct to say his review was a paper review, with no actual discussions with either the officers or supervisors involved. He said that was correct.

He believed it was appropriate to reach a conclusion before the internal investigation was completed, Moulder testified. He

justified that response with the same explanation given by Robinson.

Moulder testified he believed it was January 2, 1992 before he discussed the matter with Sanders, the watch commander on duty that night or with Robinson, the division commander. Moulder said the most vivid recollection he has of discussing the event was after the meeting at the Union Baptist Church when he and Robinson met with the officers involved. He stated any other conversation with Sanders or Robinson was of a minor nature if anything at all.

Moulder was asked if after he had the opportunity to review the extent of Milton's injuries the information caused him to reconsider the statement he had made concerning the appropriateness of the use of force. He stated it did not. Moulder explained, "The issue of the use of force in this case is not the injuries to Larry Milton. The issue of the use of force was whether it was necessary to use force to bring the arrest about." Moulder pointed out he saw several pieces of information as a consistent pattern with someone who is high on a drug. Moulder stated the fact there was a struggle which involved the possible attempt to get an officer's weapon made it a "life-threatening" situation.

Moulder was asked to whom the internal affairs unit (IAU) reports when it completes an investigation. He said it typically will

report to the commander of the element involved. "IAU files are channeled to the immediate supervisor of the employee involved, who in this case is Captain Sanders. A review of the file is completed by Captain Sanders. He will make a recommendation with respect to the finding. Assistant Chief Robinson will review that and make a recommendation and it will come to me for a final decision."

Asked to describe the function of the internal affairs unit, Moulder said, "Internal affairs is an information-gathering agency. Their job is just to bring in information. If it's necessary to listen to radio transmissions, tape recordings of transmissions, they do that, transcribe it and put it in the file. They can go out and locate witnesses and take whatever information the witness chooses to provide, collect reports wherever they can collect them. They are strictly an information-gathering entity. They are not charged with the responsibility of coming to a conclusion, nor are they expected to come to a conclusion."

Moulder stated there are several mechanisms of internal review within the department. Which is used depends on the nature of the complaint. For example, if the case goes to criminal conduct it is investigated by a detective assigned to that element.

Moulder said supervisors can initiate an investigation of an employee's conduct or it can be done as a result of a complaint

from his office. Moulder said internal affairs cannot initiate an investigation on its own, that it must come from a citizen complaint or be requested by a command officer within the department.

Moulder expressed confidence in the current system of review which must always involve the chain of command. He stated, "If an individual is not capable of performing the duties as a supervisor that requires some independent judgment, it's not a popularity contest, then they shouldn't be a supervisor."

Moulder said the department has investigated and considered use of electronic devices such as the so-called stun gun. The department is reviewing stun gun use presently. There are logistical problems in using the instruments. There is little room for a stun gun on the officer's belt. Someone could activate it while it was on the belt. And frequently, a fighting situation develops quickly and unexpectedly and the officer may not have all of his equipment at hand.

Police have investigated a type of stun gun, called a Taser, which shoots darts at the subject. A Taser allows the incapacitating electronic shock to be delivered from a distance, but it takes more preparation before use. Police could use a capture net, but it takes about four people to activate and the subject has to be contained, Moulder said.

Testimony of Captain William Tigue

Captain William Tigue appeared before the CA/O and presented testimony regarding general topics of internal affairs investigations. He is a certified police officer and has served with the Des Moines Police Department for 26 years.

He is presently the commander of the department's inspection services section and has served in that position for approximately 18 months. The section includes the vice and narcotics units and the department's internal affairs unit. Each unit is supervised by a police lieutenant who reports to Tigue. Tigue reports directly to Moulder.

The entire element consists of over 20 veteran officers. During testimony Tigue discussed the function of the inspection services section and indicated although titled "inspection services" the section does not in fact conduct inspections. Tigue explained when the section was originally created, based upon a 1979 recommendation made by the International Association of Chiefs of Police, it was charged with conducting various types of inspections and at one point operated on a 24-hour-a-day basis. Those inspections, according to Tigue, would include the section members monitoring trips (dispatched calls), reports, and inspecting equipment. The purpose of the inspections was to ensure departmental policy was being observed and enforced. Tigue indicated this function was eventually phased out and some

of those duties were assumed by the various commanding officers. Tigie noted this process was phased out before Moulder became chief.

As noted the department's internal affairs unit (IAU) is part of the inspection services section. The IAU is supervised by a lieutenant and staffed by a tort claims officer and an investigator.

Tigie testified complaints concerning the members of the department can be filed in writing, by telephone or in person with the IAU. However, not all complaints concerning department members come to the IAU. Citizens may contact the shift commander or the officer's supervisor and lodge their complaint with them. According to Tigie, a sergeant, normally the first-line supervisor, may accept and resolve complaints which, if founded, would result in a verbal reprimand to the accused officer. A lieutenant, normally a shift supervisor, may accept and resolve complaints which, if founded, would result in either a verbal or written reprimand. Incidents or allegations which, if founded, could result in suspension must be handled at higher administrative echelons.

Tigie indicated this method of complaint handling is accepted by the department's command element and is not seen as defeating the purpose of the internal affairs unit.

Tigue testified the general public and perhaps even members of the city administration may not understand the function of the internal affairs unit. "I think a lot of people have the perception we (IAU) are the entire process in this; that we take the complaint, investigate the complaint and resolve the complaint one way or another. That's not really the case. We take the complaint, investigate the complaint to a point, and then at that point it's sent down and the division commanders carry the ball from that point." Tigue testified under departmental policy, all formal investigations conducted by the internal affairs unit must include the accused officer's chain of command beginning with the officer's immediate supervisor and including the division commander who is an assistant police chief.

Tigue indicated when a citizen files a complaint with the IAU, the IAU investigator will evaluate their information. The purpose of the evaluation is determine whether the complaint is a simple misunderstanding of procedure or policy. If so, the investigator will attempt to achieve resolution by answering questions the citizen may have concerning an officer's actions. If the investigator cannot resolve the problem, then a formal investigation is initiated by having the citizen complete a standard complaint form. However, if the investigator can satisfy the citizen's concerns and adequately answer the questions they may have, no investigation is initiated and it is considered as an exoneration of the accused officer.

If a formal investigation is initiated, Tigue testified the investigator from IAU will collect as much information as possible from existing reports, interviews with witnesses and other sources. The investigator then prepares a file on the incident which is submitted to the accused officer's division commander for review.

The division commander will transmit the file to the accused officer's first-line supervisor and direct that supervisor to investigate and report findings. The first-line supervisors, normally sergeants, can do several things to accomplish this action. They may interview witnesses, review reports and question the officer involved or other officers may who have knowledge of the incident. The accused officer is usually afforded the opportunity to respond to the complaint, often in writing, which is then attached to the file.

After the first-line supervisor has completed a review, the supervisor will make recommendations, classifying the complaint as unfounded, sustained, non-sustained or the officer be exonerated.

Unfounded means the action complained of did not take place and there was no violation of policy or regulation. Non-sustained means there is not enough evidence to disprove or prove the allegation. Sustained means the action complained of occurred as

the complainant stated and there was a violation of policy or regulation. Exonerated means the action complained of happened but the officer was justified in taking such action.

The first-line supervisor will then send the file to the watch commander, usually a lieutenant or captain, who will review it. The watch commander may agree with the recommendations, conduct additional investigation, or return the file to the first-line supervisor for further review. When the watch commander has completed the review, a comment will be placed in the file either endorsing or disagreeing with the initial recommendation.

Tigue said the watch commander then returns the file to the division commander, who may accept the recommendation, refer it back for further investigation, or conduct further investigation. When the division commander has completed the review, a written endorsement is prepared agreeing or disagreeing with the recommendations and the file is returned to the IAU.

The internal affairs unit reviews the entire file to ensure completeness and then submits it to the chief without making a recommendation or endorsement. According to Tigue, the IAU is strictly for fact finding and does not become involved in any decision concerning the merits of the allegation.

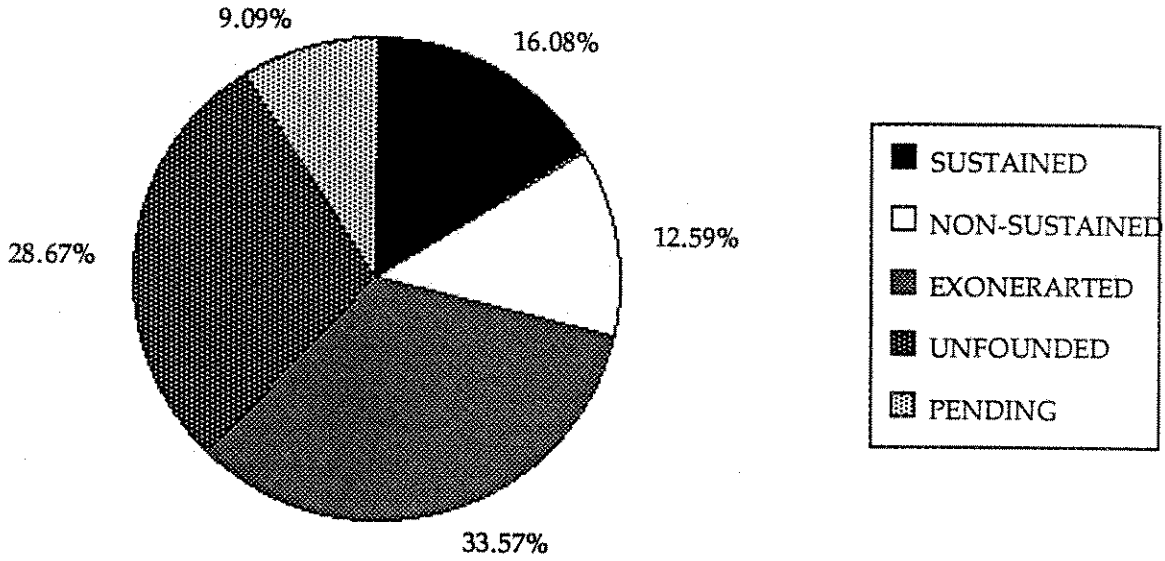
The chief will review the file and may accept the recommendations or refer it back to the chain of command for further review. The

chief will make the final decision as to the merit of the complaint and the disposition of the allegation. If the complaint is deemed to be founded, he will determine the appropriate discipline, which can range from a reprimand to termination of the officer's employment.

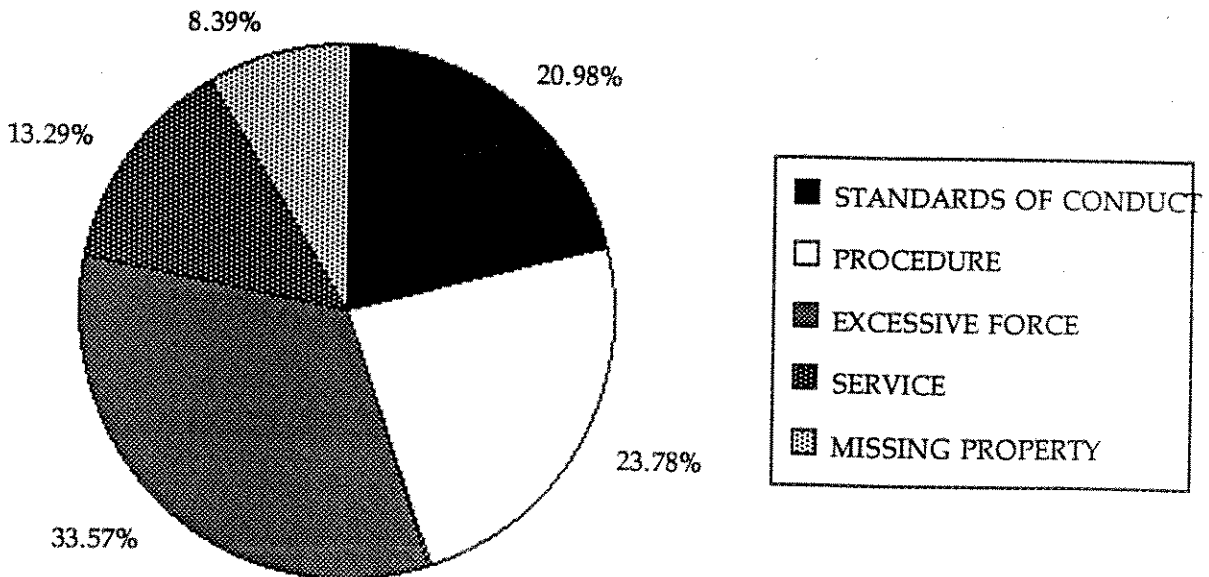
Tigue said IAU can initiate an investigation based upon information received from a variety of sources. He indicated the chief may request an investigation as well as other members of the department's chain of command. Complaints from citizens, including anonymous complaints, are also accepted. In all instances, the investigation will follow the procedure previously described with little variation.

During 1991, the internal affairs unit received a total of 143 complaints from the public. A chart depicting the nature and disposition of those complaints appears at the end of this section.

**DISPOSITION OF COMPLAINTS FILED DURING 1991 WITH DMPD
IAU**



TYPES OF COMPLAINTS FILED DURING 1991 WITH DMPD IAU



Summary and conclusions

While the departmental or agency chain of command is usually quite adequate and efficient in investigating and processing internal complaints of minor misconduct, a more formal system and more specialized mechanisms have proved necessary to process complaints of serious misconduct. Many agencies have set up internal security or intelligence units to police their police officers, others have appointed carefully selected 'integrity' officers to report or investigate offenses by police. In other areas the processing of complaints has been turned over to special prosecutors, grand juries, crime commissions and civilian review boards. No method has proved so demonstrably successful as to merit a recommendation for general acceptance. Indeed, the personality, integrity, determination and ability of the agency head, rather than the organizational structure or tactics employed seem to be key to the elimination of abuses.

--Donal E.J. MacNamara, Discipline in American Policing

Sergeant Pollock believed the incident was sufficiently serious to require she discuss it with her watch commander, as opposed to just completing the report. However, the CA/O is concerned so little attention was given to her initiative. We believe the Des Moines Police Department's preliminary understanding of the seriousness of this arrest would have been enhanced had the watch commander independently observed the subject's injuries, behavior and physical condition when he had the opportunity at Broadlawns Medical Center. During his interview with the CA/O, Captain Sanders did not seem well versed in the details of this incident.

The CA/O believes the information initially obtained from the officers the evening of the arrest could have been enhanced had the watch commander interviewed each officer separately rather than as a group. The CA/O believes more attention should have been given to the incident when the watch commander and assistant

chief first reviewed the reports. It was at this point that the department's chain-of-command review process restricted its knowledge to the written reports and the watch commander's perfunctory interview.

The written reports of the officers served as the only basis for the department's preliminary conclusions. Little if any of the information had been verified independently prior to Chief Moulder's public pronouncement. Under such circumstances, is there any probability a subsequent internal affairs investigation could have contradicted the chief?

The Des Moines Police Department's internal review process requires any formal complaint must be conducted by the accused officer's chain of command. The investigation contains a recommendation towards sustainment or non-sustainment of the complaint by every level of supervision within that chain of command. The department's internal affairs unit obtains the basic information and then passes it on to the chain of command and does not in any way become involved in the decision-making process. This was clearly pointed out by the commander of the inspection services section, under which the internal affairs unit operates, and the chief of police himself.

The CA/O believes the public expects a complaint to be investigated by an independent review authority. Instead, a complaint filed with the department is to a large extent

investigated by the accused officers' supervisors. The commander of the inspection services section believes the public and perhaps members of the city administration do not understand the current process.

A commanding officer or supervisor is certainly concerned when a subordinate is the subject of a complaint or has been the subject of several complaints. Ostensibly the concern is born out of a desire to ensure the officer is performing his or her assigned duties correctly and in accordance with the established policy.

Poor performance by a subordinate ultimately reflects poorly upon the supervisor or commanding officer. Complaints against subordinates reflect badly on the department and may be interpreted by senior commanders as a supervisor's failure to properly train and control those under their command. Such a perception may cause adverse considerations for future assignments or promotions for the supervisor.

After considering the system of internal investigation that has been described for the Des Moines Police Department it is the position of the CA/O the potential exists for a conflict of interest. A decision by supervisors or line commanders to sustain a complaint and take official action requires formal reports filed with the supervisors' superiors. This could influence a supervisor toward finding complaints invalid. We

believe such a potential undermines the public confidence in the internal review process.

The heads of all law enforcement agencies must be sensitive to the public suspicion, justified or not, which surrounds the practice of "police policing police." A department cannot function effectively without the confidence of the public it serves.

No review process can satisfy every complainant. However, every measure must be taken to ensure the complaint is given full and impartial consideration to the degree possible. If the public perceives each complaint filed is given full and impartial consideration, it will be more willing to accept the findings. If, however, the suspicion lingers that the review process has been prejudicially tainted because the officer complained of may be benefitted by his employment relationship to the investigating authority fewer findings will be fully accepted as fair and correct. The CA/O concludes:

- the system of internal review currently in use by the Des Moines Police Department is not generally understood by the public;
- the system allows for potential abuse of discretion and creates potential motivation to make decisions based on considerations other than the merits of the allegation;

- the present system does not meet the public expectation of independent review.

SECTION THREE

Training for law enforcement officers

Iowa Law Enforcement Academy

The CA/O spoke with J. Scott Moline and Gil Hansen of the Iowa Law Enforcement Academy (ILEA). ILEA certifies and controls training programs for four regional police academies, including the Des Moines Police Department Regional Police Academy, which trains Des Moines Police Department officers. ILEA presents "approximately 50-odd hours in the areas of conflict resolution or management, defensive tactics," according to Moline, who is in charge of the training program for ILEA. Defensive tactics training is 24 hours long, and an additional 12 hours of training are required for the PR-24 baton. Trainees also receive a two-hour course in community relations, a two-hour course on minorities, eight hours on crisis intervention and six hours of stress training.

Officers receive a total of about 54 hours of training that relate to arrest of unruly subjects, Moline said. There are two hours of training on Iowa Code Chapter 704, regarding use of force, and Iowa Code Chapter 804, regarding use of deadly force.

The Code of Iowa specifies only "necessary" force is justified. Therefore, recruits are taught to recognize the level of resistance being offered, and to match to a level of force designed to overcome the resistance.

Based on the interview with Hansen and a review of the ILEA training materials he uses, there are broad levels of resistance: 1) verbal or non-verbal denial, 2) passive physical 3) active physical, 4) aggravated, active physical resistance and 5) deadly force. There are corresponding levels of control the officer may exert: 1) presence of the officer and verbal directions or warnings, 2) physical, weaponless control techniques, 3) use of chemical agents, 4) use of impact or striking weapons, and 5) use of deadly force.

The recruits are trained, and officers on the streets are expected, to meet the level of resistance with the matching level of force. Officers are not expected to progress through each step of control if the level of resistance starts somewhere up the scale. Officers also are trained the levels not only can escalate, but can decline.

Officers further are trained there are three levels of priorities for target areas on the human body. These levels are coded after the familiar traffic signal pattern, green for go, yellow for caution and red, which is not stop, but rather, proceed with greater caution, Hansen said. The instruction is based the Monadnock PR-24 Police Baton Escalation of Trauma Chart. The Monadnock PR-24 Police Baton is a modern version night stick which includes a side handle which juts at a 90-degree angle from the main body of the stick. It allows several different

techniques to be employed, including spinning the baton to gain faster impact speeds.

Green areas generally are for use in non-lethal confrontations. Green areas include large areas of the body which are not considered vital areas. Techniques applied to green areas can result in pain which may be enough to gain a subject's compliance.

Blows in yellow areas may result in a moderate level of injury. Any injury in a yellow area may or may not be more severe than an injury in a green area. Many joints are included among yellow areas. Yellow areas may be used if techniques applied to green areas do not gain compliance or if the level of threat to the officer, the subject or other persons warrants.

Red areas include the head, spine, heart area, groin, kidneys, rib cage, throat and others. Injury to these areas tends to be permanent rather than temporary and may result in unconsciousness, serious bodily injury, shock or death. Red areas are indicated for use if green or yellow area techniques fail to gain compliance, or when the level of danger warrants. The academy has taught this system for the past seven or eight years, Hansen said. However, each officer who carries the PR-24 is required to complete the training.

Academy recruits are taught Section 804.8 of the Iowa Code addresses use of force, and limits it to certain circumstances. Specifically, Iowa Code Section 804.8 states:

A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force is only justified when a person cannot be captured any other way and either

1. The person has used or threatened to use deadly force in committing a felony or
2. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended....

Deadly force is defined in Iowa Code Section 704.2, which states:

The term "deadly force" means any of the following:

1. Force used for the purpose of causing serious injury.
2. Force which the actor knows or reasonably should know will create a strong probability that serious injury will result.
3. The discharge of a firearm in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown.
4. The discharge of a firearm at a vehicle in which a person is known to be.

Recruits are trained to measure both the intent and the ability of their suspects to offer resistance. For instance, a small, elderly person who is unarmed would represent significantly less ability to endanger an officer than a 200-pound, 25-year-old person who may be wearing a karate-school jacket and affecting a fighting stance. The threat levels are different even if both subjects issue the same verbal threats.

Recruits also are trained in the importance of retaining control of their weapon. According to Hansen: "One thing we do preach is that from statistics, when an officer loses his weapon, there's a 99 percent chance that he or his partner will be shot with that weapon."

Regarding the level of intent: If someone goes after the handgun, what is it they want? They probably want to shoot the officer. "(W)hen someone goes after the weapon, most officers will feel that they're in the deadly force area," Hansen said. That is consistent with training theory.

Officers are taught in these cases to cover the weapon to secure it in its place, to position the body, and to counterstrike the hand on the weapon, Hansen said. Officers should use knees, elbows or anything they can to keep the weapon away from the subject. "(S)ecure it and do whatever you have to to get them away from that weapon because we are now in a -- in a very, very precarious situation...."

Striking instruments include the sap and the night stick, and the Monadnock PR-24 Police Baton. Officers are trained other instruments may sometimes be used as striking instruments. Sometimes officers may have to use whatever they have at hand, such as a radio or a flashlight, as a striking instrument.

For the past five or six years, ILEA has stressed verbalization in order to help calm situations and effect arrests, according to Hansen. "Now, we're finding out that communication skills (is) number one. And actually, they save a lot of the physical contact if you use the communication skills and that's what we want, is, we're trying to have control without injury (CWI) either to the officer or the subject. CWI and then we preach it continually. Control without injury. Verbalize. Talk to them, you know." Language the officer uses to calm the subject also helps to calm the officer.

Des Moines Police Department Regional Police Academy

Senior Police Officer Bob Clock, an 11-year officer with the Des Moines Police Department, is an ILEA-certified instructor in use of the Monadnock PR-24, a striking instrument. He has been certified to teach the course in the PR-24 for four years, and teaches it at the Des Moines regional academy. Clock is ILEA certified as an instructor in self-defense and in physical assessment. Clock also has taught short classes in use of the sap and in the straight baton.

The Des Moines academy provides 13 hours of training for use of the PR-24, a type of night stick produced under the Monadnock brand name. The Monadnock company provides specifications for training. Monadnock requires 12 hours of training for use of its product. The training includes use-of-force instruction, techniques and striking areas.

Clock said Des Moines officers are issued the PR-24 and mace. Officers buy their own handguns and flashlights. There is no training of the flashlight as a striking weapon, except, "We tell our recruits, according to SOP (standard operating procedure), that whatever is at hand can become a striking weapon if they can justify the strikes," Clock said. Such training covers the

Monadnock-developed escalation of trauma for striking areas, which follows along the green, yellow and red areas outlined above. The entire head is a red area on the Des Moines academy chart.

A strike to the head with a PR-24 is taught as deadly force if the officer is using the side-handle, spinning technique. If a person has a PR-24 and comes at an officer, it's taught as a deadly force situation. If an officer decides to use the head as a target, he should be able to justify that use as an effort to protect a life.

Clock is certified to teach weapons retention, but he is not the weapons retention instructor for the Des Moines academy. Clock said, "Well, first of all, what we teach is the chances are if someone gets a weapon away from you, you or your partner is dead. Ninety-nine percent of those cases where an offender pulls an officer's weapon, either the officer or the officer's partner is killed. Every 21 days in the United States an officer is killed with his or his partner's weapon. Those are statistics we give these officers so they know that this is what happens.... We teach them it's a deadly force situation."

Recruits are taught some pain-compliance holds may not work on some people for various reasons, including influence of drugs or alcohol. Recruits also are taught if one level of force is not working, they should move to the next level.

Sergeant Larry Leitzke teaches the mace class at the Des Moines regional academy. He was trained by ILEA in a three-day, 24-hour course in January 1982. He describes the Des Moines academy course as a "very simple" two-hour class. After the first 40 minutes, Leitzke takes the recruits outside, where he squirts them with their own mace on the side of the cheek. They have to know how they will react to mace when they use or encounter it in the field, and they have to find out if their mace can work. The remainder of the two hours is devoted to clean-up and recovery.

Recruits are taught if physical control doesn't work, the next step to use is mace. Use of mace requires a use-of-force report. It is considered a non-lethal use of force.

The CA/O asked Leitzke if there would be situations where use of mace would be inappropriate. He said mace usually will work on intoxicated persons, but not always. "It depends on the degree of intoxication. Some people -- mace will not work on someone who is mentally deranged, that is high on drugs or alcohol." In such a case, Leitzke said, mace "will have no effect and they'll have to do something else."

Recruits are told they can get a violent reaction from somebody after the use of mace. "But you don't know it's not going to work until you use it. That's the problem. You don't know.

Myself, it's worth a shot because the next step, you're going to have to do something a little bit more forceful.... It's going to work the majority of the time and sometimes if it doesn't work, then you have to do something else and that's the bottom line," Leitzke said.

The manufacturer's warning on the mace can repeats the caution, in capital letters: "Read instructions completely before using! Use extreme care with intoxicated, drugged, demented, enraged, or other persons having reduced sensitivity to pain and who may react with violence if not incapacitated with this weapon."

Each of the three officers involved was graduated from the Des Moines Regional Police Training Academy. The recruit training course is 20 weeks long and includes 800 hours of instruction. It recently expanded to 21 weeks to include a one-week ride-along.

Pollock testified to the CA/O she attended the Des Moines Regional Police Training Academy for 20 weeks beginning in January 1981. The instruction included 70 to 80 hours of defensive tactics which was combined with physical training. She received training in basic hand-to-hand techniques, use of the sap, mace, the night stick and service firearms. Pollock said she later attended initial training and follow-up training in the use of the PR-24 baton.

Strawser took the Des Moines Regional Police Academy's 800-hour training course in 1985. Heller took the course there in 1988. Each attended annual refresher courses at the Des Moines academy.

Strawser told the CA/O weapon retention has been a topic of instruction each year during the refresher course, with new ideas or techniques introduced. He recalled mace training. "What they said is mace has no effect on certain people if they happen to be high on drugs, some alcoholics, and then just certain people in general that mace seems to have no effect." It also can "anger" intoxicated persons. Heller recalled learning the possible positive or negative effects of using mace on someone who is intoxicated.

Each officer recalled training regarding use of other objects as weapons. Heller said: "They tell you right there that if you're in a situation where you don't have your PR-24 or the sap or it has proved to not be getting the job done, you could use whatever is accessible. If there was a brick there, a stick, whatever would protect yourself and effect the arrest, you can use it."

He further recalled training on the escalation of trauma zones "if you're just trying to incapacitate or if you have the right to use deadly force where you can hit them and those types of things.... I'm not sure what the face falls into, but I do know that the head falls into -- if you're using a PR-24, that would be using deadly force or the possibility of deadly force or it

could cause paralyzation." No zones were off limits; if you were in a deadly force situation, you could strike any zone.

Comparison of police training academies

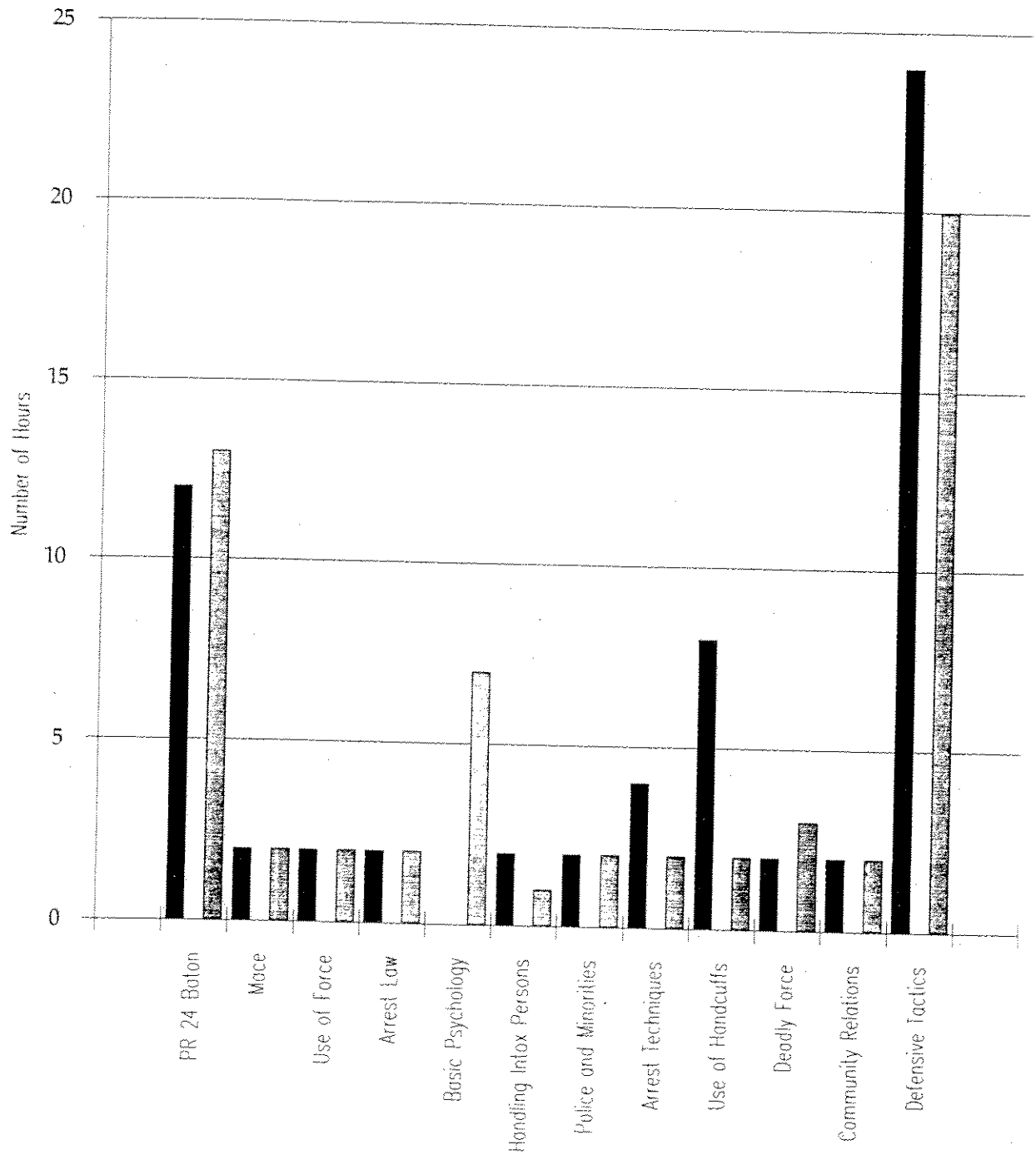
Iowa Code Chapter 80B provides for the establishment of the Iowa Law Enforcement Academy (ILEA). The chapter provides that ILEA establish the minimum standards of education for law enforcement officers, and the qualifications for law enforcement instructors. The chapter also provides that law enforcement academies may exceed the minimum standards.

ILEA's law enforcement instruction is a 10-week course. The Des Moines Police Department Regional Police Academy provides a 21-week course, recently expanded from 20 weeks to include a one-week ride-along. The Des Moines academy's curriculum is reviewed and approved by the ILEA.

A chart prepared by the CA/O compares training offered by the Des Moines academy and ILEA. The chart appears at the end of this section.

There are a number of related topics, such as field sobriety testing, operating-while-intoxicated training, and others that may have some relevance to the case. In addition, the Des Moines academy requires 100 percent scores on tests in at least two areas: PR-24 baton and deadly force.

Comparison between ILEA and DMPD Training Allocation by Topic
 [DMPD=Light ILEA=Dark]



Summary and conclusions

The more resistance a subject offers, the farther officers may go through the green, yellow and red "escalation of trauma" zones outlined above. The red zones include the head, spine and heart area, and can be used when an officer believes an imminent threat exists for harm to the officer, the subject or others unless the subject is brought under control immediately. The red zones also may be used if the green and yellow areas are tried to no avail. The Iowa Law Enforcement Academy oversees the regional police training academies such as the Des Moines academy. ILEA provides review and approval of the curriculum and trains the instructors for the other academies.

These trauma escalation levels have been taught for the past seven or eight years. Heller, the most recent Des Moines Regional Police Training Academy graduate among the three officers, would have been trained under this system. Strawser and Pollock may not have received the training as a recruit but would have received it later.

The three officers took certain actions in their arrest of Larry Milton the evening of December 28, 1991. First, they attempted to talk to him to calm him and explain he was under arrest.

When verbalization didn't work, the officers proceeded to the next level, physical control. When that didn't work, they proceeded to the next level, mace. When that didn't work, they proceeded to the next level, striking instruments. Strawser struck Milton with a sap in the face five or six times, but that didn't subdue him.

Training provides officers are justified in using potentially lethal force when they feel they are confronted with a potentially deadly threat, such as a subject grabbing their gun. Retaining the weapon is paramount. Training stipulates any object at hand may become a weapon if needed.

The CA/O concludes the training provided by the Des Moines academy meets or exceeds the requirements of the Iowa Law Enforcement Academy in the areas pertinent to the Milton arrest. The CA/O further concludes the training justified the actions the officers followed, because the officers progressed correctly using the least amount of force necessary at first, to more forceful measures as the level of resistance escalated.

The officers did not uniformly remember the admonition mace may anger some intoxicated or deranged persons and cause a violent reaction. The CA/O believes that area of mace training may need more emphasis.

The Des Moines Police Department and its training academy do not employ every available technology or piece of equipment which may help to apprehend unruly subjects. Specifically, the use of stun guns which employ an electronic charge to temporarily incapacitate people might be considered.

RECOMMENDATIONS

This report has addressed three main points of consideration. Based on the conclusions, the CA/O recommends:

1) The Des Moines Police Department continue researching and evaluating alternative methods and equipment for the capture and control of unruly persons which could decrease the potential for serious injury to the person or the officer.

2) With regard to the internal review of the arrest of Larry Milton by the Des Moines Police Department:

- When a person as a result of police actions has sustained physical injury requiring immediate medical attention, the supervisor on duty should at the first opportunity conduct a preliminary review of the incident by observing the person's injury or discussing the injury with the attending medical personnel;
- When the supervisor on duty determines it is necessary to interview officers involved in an incident, those interviews should be conducted at the earliest opportunity and separately if more than one officer is involved. A record of the content of those interviews should be made.

3) With regard to the internal review process currently used by the Des Moines Police Department to respond to citizen complaints:

- The internal affairs unit should be removed from the inspectional services section and placed within the office of the chief of police and the commander of the unit be responsible directly to the chief;
- The department should remove the requirement for the accused officers' chain of command to conduct investigations of formal complaints;
- The department should establish by general order those infractions of departmental rules which will be investigated by the supervisory chain of command and those which will be investigated solely by the internal affairs unit; and

In accordance with the standards established by the National Commission on Accreditation for Law Enforcement Agencies, the following general division is recommended: Those complaints which may include allegations of corruption, brutality, misuse of force, breach of civil rights and criminal misconduct shall be investigated solely by the internal affairs unit; those complaints which would be investigated by the chain of

command shall include rude behavior, tardiness and insubordination.

- The internal affairs unit should upon completion of its investigation provide its final report to the chief of police, and as part of the report include recommendations for the disposition of the allegation.

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