



FDLE Case GA-27-0008  
University of Florida Police Use of Force Review  
By the Florida Department of Law Enforcement  
Reference the Arrest of [REDACTED] on September 17, 2007

**I. INVESTIGATIVE PREDICATE**

On September 18, 2007, Chief Linda Stump of the University of Florida Police Department (UPD) contacted Florida Department of Law Enforcement (FDLE) Special Agent in Charge Dominick Pape and requested FDLE conduct an investigation related to an incident which involved the use of force at the University of Florida.

The incident occurred on September 17, 2007 during an on-campus Town Hall Forum /Speech being presented by the Honorable United States Senator John Kerry of Massachusetts at the University of Florida's auditorium.

The University of Florida's auditorium is identified as Building 0001 and is at Union and Newell Drive on the university campus in the City of Gainesville, Alachua County, Florida.

FDLE was requested to conduct an in-depth and independent inquiry regarding the use of force utilized by UPD Officers in the arrest and ultimate tasing of University of Florida student [REDACTED] at the Town Hall Forum with Senator John Kerry and hosted by the University of Florida Accent Speakers Bureau. [REDACTED] was arrested on September 17, 2007 for Disturbing a School Function and for Resisting Arrest with Violence.

FDLE was requested to review this matter on two separate levels:

**Level One:** The University of Florida Police Officer's establishment of a criminal violation which would constitute a physical arrest. The UPD's initial contact with [REDACTED] and subsequent arrest was for violation of Florida State Statute;

**877.13 Educational institutions or school boards; penalty for disruption.--**

(1) It is unlawful for any person: (a) Knowingly to disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property in this state.

d) To conspire to riot or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**Level Two:** The University of Florida Police Officer's utilization of force in making the physical arrest. Was the force utilized consistent with the State of Florida's Criminal Justice Standards and Training Commission guidelines and within Florida State Statute?;

**776.05 Law enforcement officers; use of force in making an arrest.—**

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

**776.051 Use of force in resisting or making an arrest; prohibition.--**

(1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.

(2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest is unlawful and known by him or her to be unlawful.

## II. INVESTIGATIVE NARRATIVE

During the course of FDLE'S investigation, Agents learned that approximately one week prior to this incident [REDACTED] had made comments and acted out in a public place on campus. This incident, which occurred on September 11, 2007 in the Plaza of the Americas on the UF campus, was documented as investigators believed it potentially provides the State Attorney's Office a background or reference into [REDACTED] mind-set or his pre-disposition to act out in a specific manner at the John Kerry Speech.

## Open Source Information

FDLE initially received information that [REDACTED] had a history of being involved in various pranks which had been publicized in the local media. However, a review of local open sources could not establish the allegations.

[REDACTED]

The web page lists various topics, and opinions, all of which appear to be protected speech under the First Amendment.

## Plaza of the America's 9/11/2007 Incident

FDLE Investigative report number [REDACTED] documents an incident in which [REDACTED] exchanged words with supporters for Honorable Rudy Giuliani, a United States Presidential candidate. The referenced supporters [REDACTED] are a part of the UF campus group which identifies itself as the Gators for Rudy.

Giuliani Supporters had an interaction with [REDACTED] in the Plaza of the Americas which resulted in [REDACTED] allegedly kicking their candidate's signs. [REDACTED] behavior was characterized by witnesses as boisterous and provocative.

This incident is being referenced as it ties into comments overheard by witness Edward Hutson. Hutson is employed by UF Physical Plant as a grounds keeper and was present when [REDACTED] was making comments on 9/11/2007 in the Plaza of the Americas. Edward Hutson's interview is recorded in [REDACTED]. Hutson also provided a video taped statement to UF PD regarding what he observed and overheard.

Hutson told investigators that after [REDACTED] had a conflict with someone who had a contrary opinion with [REDACTED] then [REDACTED] had a heated exchange with another female student in the Plaza of the Americas. **[REDACTED] reportedly made a comment to an unidentified friend that if he liked what he had seen, referencing the verbal exchange/confrontation he had with the female student, that he should go to the Kerry Speech and he would really see a show.**

### Witnesses:

Three (3) Gators for Rudy Witnesses

[REDACTED]

UF Groundskeeper – Edward Hutson

***For details related to the above incident, reference is made in FDLE investigative reports twenty (IR 20) and twenty-one (IR 21)***

## September 17, 2007 Senator John Kerry's Town Hall Forum/UF Auditorium

The Honorable Senator John Kerry was invited to speak at the University of Florida as a guest speaker by the University's Accent Speaker's Bureau. The following paragraphs outline the event set –up by Accent Speaker's Bureau personnel:

Accent Forum – The Honorable United States Senator John Kerry

- a) Time Frame (constraint) – one and one-half hours (1.5 hours) duration
  - 1) One-half (0.5) hour Senator Kerry Speech
  - 2) One –half (0.5) hour Question and Answer (Q&A) Period with Moderator Ambassador/Dean Dennis Jett
  - 3) One-half (0.5) hour Q& A Period between Senator Kerry and Audience
  
- b) Outline was arranged by Accent Speakers Bureau and Rodney Margol, who brought Senator Kerry to the event and who was to be responsible for bringing the Senator back to the airport (return flight to Washington, D.C.)
  
- c) Accent Policy for Question and Answer Session
  - 1) Two microphones – used to alternate questions
  - 2) Accent Speakers Bureau Staff Member is posted at each microphone
  - 3) Staff Member explains the rules to audience members individually at microphone prior to the asking of a (single) question
  - 4) When the last question is identified (by Moderator) the other microphone is turned off
  - 5) Accent Staff Members are instructed not to touch anyone – if any additional intervention is required it will be handled by UF Police
  - 6) Accent Speakers Bureau makes the decision to cut-off microphone(s) and questioning as they deem appropriate
  
- d) Security Level Outlined on date of Event
  - 1) Security /UF Police check bags into special room as audience enters
  - 2) Bags searched by UPD bomb dog
  - 3) Two people initially identified as being a potential security concern
  - 4) Suspicious people (not being among them) ultimately are of no issue/concern
  - 5) Two UPD Officers are posted back stage near Senator Kerry
  - 6) Two UPD Officers are posted near the front of stage – between the Senator and the audience
  - 7) Two UPD Officers are posted in the rear of the auditorium
  - 8) Overall Campus security is heightened due to September 11, 2001 attacks
  
- e) Event
  - 1) Rodney Margol introduces Senator Kerry
  - 2) Senator Kerry advised Margol at that time he wished to extend the Q& A period with the audience
  - 3) Senator Kerry completes his speech
  - 4) Q & A Period with Ambassador/Dean Jett

- 5) Q & A Period with audience – audience members line up for questions as directed at opposite sides of the stage where each microphone is posted
- 6) As Q & A time expired Rodney Margol signals to Ambassador/Dean Jett that this will be the last question
- 7) Ambassador/Dean Jett announces to the audience that there will be only one more question (that would be taken from the left side of the auditorium, facing the stage)
- 8) At this time, the right side microphone is turned off (Accent Policy) as last question is being asked on opposite side of stage
- 9) Accent Staff Members went down each line and advised audience members that there would be no more questions and asked audience members to return to their seats

f) [REDACTED] Initial interruption

- 1) [REDACTED] third person back in line, on the right side of the auditorium, when microphone is turned off
- 2) [REDACTED] makes a comment to the staff that 'this is bullshit, I have a right to ask my question' [REDACTED] continued to demand to be heard in a loud disruptive voice
- 3) Accent staff members warned [REDACTED] to quiet down or a police officer would be summoned
- 4) Staff members request [REDACTED] to go outside or quiet down
- 5) [REDACTED] continued to resist and refuse to follow instructions of the Accent staff
- 6) Accent staff summons a police officer
- 7) As Officer Wise, a UPD Police Officer in full uniform approaches [REDACTED] rushes to the microphone and grabs the microphone (which was off) and begins yelling to Senator Kerry that he wants to be heard (Note: all of the UPD officers involved in this case were in full issued uniform)
- 8) [REDACTED] disrupts Senator Kerry who is speaking with another audience member (who is asking the final question – as previously announced)
- 9) UPD Officers approach (Officer Wise from behind [REDACTED] and Officer Mallo from the stage area [REDACTED] who has pushed his way up to the microphone and begun to disrupt event. Officer Wise touches [REDACTED] to begin to escort him away from the microphone
- 10) [REDACTED] makes statements that he is being arrested and then re-states 'they are arresting me'
- 11) The initial video footage (WUFT-TV) picks up the interaction at this point
- 12) [REDACTED] is recognized by Senator Kerry – [REDACTED] makes a comment about waiting two (2) hours for the Senator to finish
- 13) Senator Kerry jokingly replies to [REDACTED] in a question format – why would he [REDACTED] want to wait any longer and draw out the forum making it longer by asking another question ( this draws a laugh from the audience)
- 14) Senator Kerry tells [REDACTED] to wait and the police officers let [REDACTED] wait at the microphone

g) [REDACTED] second time at the microphone and second disruption

- 1) [REDACTED] then begins to speak to Kerry about a book he recommends and about the 2004 election.
- 2) Kerry and Officer Mallo tell [REDACTED] to ask his question

- 3) [REDACTED] continues on with his speech – and tells audience that he is going to tell them what he was going to do
- 4) [REDACTED] continues on, asking Kerry about conceding the 2004 election, however does not allow Kerry to answer
- 5) [REDACTED] continues with his remarks and makes statements about impeaching President Bush, and then states they tried to impeach President Clinton for a blow job
- 6) [REDACTED] last comment elicits a hand signal from [REDACTED] (Accent Chairman) to have [REDACTED] microphone cut off ([REDACTED] microphone had been turned back on when Senator Kerry advised he would answer his question)
- 7) There is a short time delay between the time the cut signal is given to the actual time the microphone is actually shut down
- 8) [REDACTED] continues on with his statements and at this time is asking Senator Kerry about the Skull and Bones Society when the microphone is actually cut off

h) [REDACTED] initial escort from microphone and subsequent UPD response/arrest

- 1) UPD Officers Wise and Mallo move toward [REDACTED] to escort him out
- 2) Officers advised they initially intend only to escort [REDACTED] out of the building
- 3) [REDACTED] breaks away from Officers' attempts to escort him out of the building
- 4) [REDACTED] is approached by Sgt. King who tries to pick up [REDACTED]
- 5) [REDACTED] breaks away from Sgt. King and moves back towards the stage
- 6) [REDACTED] is given several verbal commands, physically restrained and brought to the ground by Officer Wise and Sgt. King
- 7) Additional verbal commands are issued by on-scene Officers including warnings to comply, stop resisting or be Tased
- 8) At this time several Officers continue to struggle with [REDACTED]
- 9) [REDACTED] grabs onto an auditorium seat – refuses to comply with commands
- 10) [REDACTED] makes comments to Sgt. King – “Don’t Tase me bro” – Sgt. King’s Taser malfunctions
- 11) [REDACTED] continues to refuse to comply with orders – is Tased- and subsequently complies

***Refer to videos listed in Related Item Section of this summary for further review***

See Attached Investigative File/Reports

### III. FINDINGS & RELATED REPORTS

Officer Interviews detail their mindset when making contact with [REDACTED]. Officer Wise stated he initially approached [REDACTED] on his [REDACTED] initial disruption of the event. Wise stated it was his intent to merely escort [REDACTED] from the auditorium at that time. Officer Wise stated it was [REDACTED] who initially made statements about being under arrest. Officer Wise stated he did not remove [REDACTED] based on Senator Kerry's request /statement that he would answer [REDACTED] question. Officer Mallo first became aware of [REDACTED] when he began yelling and she saw Officer Wise approaching [REDACTED]. Officer Mallo then approached [REDACTED] from the area of the stage. Officer Mallo stated Senator Kerry requested that [REDACTED] be allowed to stay in the auditorium and that he would answer [REDACTED] question after he finished answering the question from the other individual.

Officer Mallo spoke to [REDACTED] and requested to meet with [REDACTED] outside after the forum. Officer Mallo stated her intention was to issue [REDACTED] a Judicial Affairs form and explain to [REDACTED] the UF Code of Conduct. Officer Wise stated he remained near [REDACTED] until he had an opportunity to ask his question. Officer Mallo stated she stood behind [REDACTED] as [REDACTED] stood at the microphone awaiting his turn to speak. Officer Wise and Mallo stated they were told by one of the Accent Staff Members that it was time for [REDACTED] to leave. Officer Wise and Officer Mallo then walked up to [REDACTED] and attempted to escort [REDACTED] out of the auditorium. Officer Wise and Mallo both stated it was still their intention at that time to only escort [REDACTED] out of the auditorium. Officer Wise stated that in his mind, this was like any other issue UPD has dealt with in escorting unruly patrons/students from a football game.

Officer Wise clearly articulates his mind-set and escalation in the use of force. Officer Wise told investigators that it was not his intent to arrest [REDACTED] until he pulled away from him and Officer Mallo. Officer Wise advised at that time, [REDACTED] committed at least one criminal offense. Officer Mallo also stated that she considered [REDACTED] to be under arrest when he [REDACTED] began flailing his arms and pulling away from the officers. Officer Wise stated [REDACTED] at that point, had in his mind clearly disrupted a school function. Officer Wise stated [REDACTED] had been given ample opportunity to leave, and had clearly made up his mind to the contrary. Sgt. King advised that at the point [REDACTED] actively started resisting Officers Wise and Mallo that [REDACTED] was considered to be under arrest.

Officer Wise and Officer Mallo tried to control [REDACTED] and to escort him out of the auditorium. Sgt. King stated that he saw that Officers Wise and Mallo were having a hard time controlling [REDACTED]. Sgt. King, being of a larger stature, decided to assist by taking over control and tried to physically lift [REDACTED] and push him out of the auditorium. [REDACTED] was able to break free and charged back toward the stage. Officer Wise advised investigators that in his mind, at this point in time [REDACTED] had clearly committed the offense of resisting arrest.

Sgt. King stated that he was unsure of [REDACTED] mindset and for the safety of the Senator, the audience and the Officers he took [REDACTED] to the ground. Officer Wise stated it was also clear to him that Officers needed to escalate their use of force to control [REDACTED] especially when he broke away from Sgt. King and turned toward the stage. [REDACTED] was taken to the ground by Officer Wise and Sgt. King. [REDACTED] continued to struggle with uniformed officers. Several versions of the video clearly document that

several verbal commands were given to stop resisting. [REDACTED] continued to be non-compliant.

Officers in their statements to FDLE advised that [REDACTED] not only refused to comply but he also attempted to continue to roll over and to sit up.

During the course of this encounter there were six UPD Officers present. They are identified in the witness section of this report. Officers indicated in their statements that [REDACTED] had only one handcuff on. [REDACTED] other hand was reportedly difficult to control. [REDACTED] also reportedly at one time latched onto auditorium seating and refused to let go. **(Video taken by [REDACTED] with the camera owned by [REDACTED] reference is made in FDLE investigative report number forty-eight ( IR 48)**

Officers testified that Sgt. King attempted to deploy his Taser during the engagement. Sgt. King reportedly gave the order to utilize the Taser on [REDACTED]. This order was carried out by Officer Mallo. Officer Mallo initiated a contact Tase (dry or drive stun), for a short period of time, into an open area on [REDACTED] upper back which gained his compliance allowing the Officers to get the other handcuff onto his wrist.

Investigators questioned Officers as to why an alternative control method was not used. Investigators were told by Officers that Oleoresin Capsicum (OC) aerosol could not be deployed because of the nature of the event. Officer Wise, Mallo, De Jesus and Sgt. King stated that OC spray would have not only contaminated [REDACTED] but also several other spectators in the general area along with the Officers.

Pressure Point and Joint Manipulation pain compliance techniques were also discussed. These methods were also reportedly not utilized as they have a greater potential to inflict moderate or severe injury as opposed to a Taser and are often less effective.

Officer Wise, De Jesus, Mallo and Sgt. King detailed in their statements that [REDACTED] was clearly at a level of resistance where pain compliance techniques were justified. They stated [REDACTED] was beyond being passive and that he [REDACTED] was actively and physically not allowing himself to be taken into custody. Officers stated [REDACTED] active physical resistance was his refusal to obey commands, refusal to allow the other hand to be placed into handcuffs, and his refusal to comply by grabbing onto the auditorium seating with his free hand.

***For details of Officers statements reference is made in FDLE investigative report numbers four (IR 4), eleven (IR 11) , thirty-seven (IR 37) and thirty-eight (IR 38)***

The X26E Taser that Officer Mallo used on [REDACTED] on September 17, 2007, was turned over to Lt. McDilda and downloaded by Lt. McDilda. The data showed that Office Mallo deployed her Taser on September 17, 2007 at 1:39 pm for 5 seconds. Officer Mallo had no further discharges of her Taser on that date. Sgt. Eddie King turned over his M26 Taser to Lt. McDilda and downloaded by Lt. McDilda. The data showed that Sgt. King had not deployed his Taser during the time of the [REDACTED] incident. The data showed the deployments on September 17, 2007 at 2:08 pm, 2:50 pm, 3:02 pm, and 3:32 pm in which Lt. McDilda test fired the Taser to make sure that the Taser was working properly. Sgt King, Officer Mallo, and Officer DeJesus all stated that Sgt. King had his Taser out and had placed it on [REDACTED]s chest but the Taser had malfunctioned and that was when Sgt. King gave Officer Mallo the order to use the Taser on [REDACTED]

## **Florida Criminal Justice Standards and Training Commission (CJSTC) Levels of Subject Resistance and Officer Control Defined:**

In January 1999 the CJSTC approved the Use of Force Matrix which became effective by rule in July 1999 for use in its curriculum for training in basic recruit academies throughout the state. In November 2002 the CJSTC adopted the Use of Force Matrix form. The Use of Force Matrix is a **guideline** to be used for application of responses by officers to resistance encountered from a person. Situational factors are also considered in determining the appropriate response. The following is the applicable section of the force matrix that applies to this investigation.

### **Resistance Level 3 - Passive Physical Resistance**

A subject physically refuses to comply or respond. He/she does not make any attempt to physically defeat the actions of the officer but forces the officer to employ physical maneuvers to establish control.

For example: A subject may be involved in a demonstration. The subject ignores an officer's requests to move and the officer must use physical strength to move the subject.

### **Resistance Level 4 - Active Physical Resistance**

A subject makes physically evasive movements to defeat an officer's attempt at control. This may take the form of bracing or tensing, attempts to push/pull away not allowing the officer to get close to him/her.

For example: A subject braces against a table or chair or grabs a doorway; or pushes the officer's hands away. Other examples would be if the subject runs away; or, if a subject takes a fighting stance or "bows up."

### **Officer Response Level 3- Physical Control**

There are five (5) classifications of physical control.

**1) Restraint Devices** - Mechanical tools used to restrict a subject's movement and facilitate searching, such as handcuffs, flex cuffs, leg irons, belly chains, nylon restraints.

**2) Transporters** - Techniques used to control and/or move a subject from point A to point B with minimum effort by the officer in order to gain and retain control over the subject. (Commonly referred to as Escort techniques)

**3) Takedowns** - Techniques that redirect a subject to the ground in a controlled manner in order to limit his/her physical resistance and to facilitate the application of a restraint device.

**4) Pain Compliance** - Techniques that force a subject to comply with an officer as a result of the officer inflicting controlled pain upon specific points in the subject's body, such as pressure point techniques. *Pain compliance techniques to include joint*

*manipulation and Electronic Restraint Devices - Tasers are also utilized and accepted methods used in pain compliance techniques.*

For example: Subject refuses to move, so the officer has the option of applying gradual fingertip pressure to a nerve in order to gain compliance.

**5) Counter Moves** - Techniques that impede a subject's movement toward an officer or other individual, such as blocking, striking, distracting, kicking, dodging, weaving, redirecting, avoiding, followed by appropriate controlling techniques.

For example: A subject is approaching the officer in a threatening manner, the officer uses a vertical punch to back the subject away. The subject then becomes aggressive and takes a punch at the officer, which the officer blocks effectively.

Officers depiction of the event, backed up by video footage clearly identify [REDACTED] as being in a state of mind and physical state identified by the State of Florida's CJSTC Subject Resistance Level 4.

UPD Officers report that the Taser was chosen as the tool to implement [REDACTED] compliance as it was the fastest and safest method available to them.

***For details related to CJSTC Non-Deadly Force Parameters, reference is made in FDLE investigative report number twenty – seven (IR 27)***

### **Post Tasing & Transport to the Jail**

Upon UPD'S use of the Taser, [REDACTED] immediately complied, was handcuffed and escorted out of the auditorium. [REDACTED] made no complaint of any injury related to the Tasing to the UPD Officers at the scene, while in transit to the Alachua County Jail, or to the Jail staff while incarcerated.

When [REDACTED] is brought to the exit door of the auditorium he continues to be captured on film. ***(Reference Film – WUFT-TV, documented in investigative report number fifty (IR 50)***

[REDACTED] asks why he is being arrested and is initially told he was under arrest for inciting a riot. [REDACTED] began to exclaim 'they're giving me to the government'. [REDACTED] also turned to the camera and said 'you know who I am, tell people why I'm being arrested'. [REDACTED] also stated 'anyone who was here today, ask them where's the guy that was arrested at the protest', ask them where's the guy that was arrested at the John Kerry rally' and 'ask them where I am because they are going to try and kill me'. As [REDACTED] was being escorted out of the lobby area, he asked for someone to follow and make sure they don't kill him.

[REDACTED] is transported to the Alachua County Jail by Officers Mallo and Vinson. Officer Vinson turns his in-car camera around to record the trip to the Jail. The conversation is also recorded by Officer Vinson through his microphone system.

While en route to the Jail, [REDACTED] does not realize he is being recorded. When [REDACTED] off camera he is much calmer. [REDACTED] tells Officers that they did not do anything wrong. [REDACTED] complains the handcuffs are too tight. (Note [REDACTED] handcuffs were checked and double locked prior to him being put in the vehicle for transport and again when he arrived at the jail). [REDACTED] also asks if cameras will be at the Jail.

[REDACTED] is booked into the Alachua County Jail and charged by UPD Officer Mallo with Resisting Arrest with Violence and Disrupting a School Function.

***For details of [REDACTED] transport to the Jail and audio/video tape, reference is made in FDLE investigative report number thirty - one (IR 31)***

#### Jail Phone Calls

While incarcerated in the Alachua County Jail, [REDACTED] completes two (2) telephone calls to his father [REDACTED]. FDLE obtained and reviewed the recorded telephone calls. [REDACTED] appears to sound elated that the arrest has occurred and at one point states that he is happy this has happened.

Both [REDACTED] discuss the fact that calls are recorded. Both subjects make several statements about the arrest and the manner in which this was handled by the UPD. During the second call there is a great deal of discussion about the media exposure the incident has generated. [REDACTED] that he has also been approached by NBC news and that Matt Lauer wishes to do a segment on his son on the NBC Today show.

[REDACTED] is ultimately discharged from the Alachua County Jail on September 18, 2007.

***For details of [REDACTED] jail calls and a transcript of the calls, reference is made in FDLE investigative reports number five and twenty-four (IR 5 & IR 24)***

#### FDLE Obtains video footage of incident for review

FDLE obtains subpoenas for all the identified sources of video footage. WCJB- TV20 and WUFT comply with subpoenas.

WCJB TV-20 has a news reporter identified as Anne Immanuel who was present at the event. FDLE learns that Immanuel covers the event and then turns the camera back on only when [REDACTED] begins to act out. FDLE requests a subpoena for Immanuel to obtain from her what she witnessed which prompted her to turn the camera back on. The subpoena request is denied by the State Attorney's Office. The WCJB TV-20 tape is obtained, reviewed and attached as a related item.

Investigators learn that the Gainesville Sun has aired (through various media outlets to include the You Tube Internet Site) footage of the incident. The Gainesville Sun newspaper reporter is identified as Jack Stripling and the camera man is identified as Kyle Mitchell.

FDLE serves a subpoena to Gainesville Sun and is denied a copy of the raw footage (or any video footage). FDLE is also prohibited from speaking with either the camera man

or reporter by the Gainesville Sun and the parent company the New York Times. Notification is made by FDLE to the State Attorney's Office of the non-compliance with their investigative subpoena. As of October 15, 2007, no other action is known to be taken on this request.

***For details reference WCJB TV-20's tape and related information, reference is made in FDLE investigative reports eight, fourteen and fifty-three (IR 8, IR 14 and IR 53)***

FDLE makes contact with Gainesville Police Department Detective Mitch Nixon (specializes in computer crimes and has the ability to download video footage from internet for review) and requests copies of all known videos of the incident from the internet.


FDLE also makes contact with their internal Florida Computer Crime Center (FC3) and makes a request for all known copies of the video footage from the internet.

***For details regarding the sources of the video footage used in this investigation, reference is made in FDLE investigative report number twenty – five (IR 25)***

#### IV. EVIDENTIARY EXHIBITS

All items listed in this section as having evidentiary value are maintained by FDLE as related items to this investigation.

Various versions of this incident aired via numerous media outlets. The following videos were obtained by FDLE and reviewed in this investigation. The videos utilized are identified as follows:

<u>Video</u>	<u>Originator (if known)</u>	<u>Source/LEO</u>
NBC 6 Video	Aired by NBC 6 Originated by WUFT	Det. M. Nixon (GPD)
You Tube 1	Kyle Mitchell Gainesville Sun (Subpoena issued but not complied with)	Det. M. Nixon
You Tube 2	CNN1Aired video Footage shot by	Det. M. Nixon
You Tube 3		Det. M. Nixon
You Tube 4	Unknown	Det. M. Nixon
You Tube 5	Unknown	Det. M. Nixon

Copy [redacted] video	Video shot by [redacted] on [redacted] camera, downloaded from camera and turned over to FDLE by [redacted]	SA J. P. K. Miller
WCJB TV 20	Anne Imanuel - TV20 reporter (Obtained via subpoena)	SA Vash
WUFT/PBS	Unknown	SA Beth Torres /SA Miller
UFPD Car Camera	Officer Jason Brian Vinson	SA Miller/SA Vash
Police Brutality / UF student	Kyle Mitchell obtained from internet	Sherry L. Aldinger FDLE FC3
Student Tasered at Kerry Speech long version	CNN 1 [redacted] obtained from internet	Aldinger/FDLE FC3
Student Tasered for asking for asking Senator Kerry about voter suppression	MSNBC obtained from internet	Aldinger/FDLE FC3
Tasered Student at John Kerry event	CNN 1 [redacted] obtained from internet	Aldinger FDLE/FC3
UF Police Taser Student During Kerry Forum	Unknown obtained from internet	Aldinger/FDLE FC3
UF Student Tasered at John Kerry Speech	Unknown obtained from internet	Aldinger/FDLE FC3
UF Student Tasered at Kerry Forum (New/Complete)	Kyle Mitchell Gainesville Sun obtained from internet	Aldinger/FDLE FC3
University of Florida Tasered at Kerry Forum	Kyle Mitchell Gainesville Sun obtained from internet	Aldinger/FDLE FC3
Accent Speaker's Bureau	[redacted] (obtained via subpoena)	SA Miller/SA Torres

See Attached Investigative File/Reports

## V. WITNESSES

FDLE conducted several interviews in various phases related to this investigation. FDLE has cataloged the witnesses in this case into seven categories. The witnesses are documented in their respective categories.

### UF Police Officers

- |                           |        |
|---------------------------|--------|
| 1) Officer Nicole Mallo   | IR #4  |
| 2) Sergeant Eddie King    | IR #38 |
| 3) Officer Samuel Sexton  | IR #9  |
| 4) Officer Jeffrey Lamb   | IR #17 |
| 5) Officer Pablo DeJesus  | IR #37 |
| 6) Officer Amanda Spurlin | IR #10 |
| 7) Officer Jason Vinson   | IR #18 |
| 8) Officer William Wise   | IR #11 |

### UF Accent Speaker's Bureau

- |                                |        |
|--------------------------------|--------|
| 1) Ambassador/Dean Dennis Jett | IR #35 |
| 2) [REDACTED]                  | IR #39 |
| 3) [REDACTED]                  | IR #29 |
| 4) [REDACTED]                  | IR #42 |
| 5) [REDACTED]                  | IR #46 |
| 6) Rodney Margol               | IR #55 |

### UF Center for Performing Arts – Volunteer Ushers

- |                   |        |
|-------------------|--------|
| 1) Colleen Porter | IR #15 |
| 2) Susan Stanton  | IR #26 |
| 3) John Stanton   | IR #26 |
| 4) Susan Vince    | IR #26 |
| 5) Alicia Nelson  | IR #26 |
| 6) Julie Anspach  | IR #26 |
| 7) Sandra Schank  | IR #26 |

### UF Employee

- |   |        |
|---|--------|
| 1) Edward Hutson – UF Physical Plant Grounds Keeper | IR #20 |
|---|--------|

### Media Witnesses

- |                   |       |
|-------------------|-------|
| 1) Anne Immanuel  | IR #8 |
| 2) Jack Stripling | IR #7 |
| 3) Kyle Mitchell  | IR #7 |

### UF Students

- |               |        |
|---------------|--------|
| 1) [REDACTED] | IR #3  |
| 2) [REDACTED] | IR #21 |
| 3) [REDACTED] | IR #21 |
| 4) [REDACTED] | IR #21 |

### Town Hall Forum Guest Speaker

- |   |        |
|---|--------|
| 1) Honorable United States Senator John Kerry | IR #47 |
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## VI: CONCLUSION

This investigation was limited to two (2) distinct areas of review.

**The first phase was for FDLE to review whether or not a criminal offense was committed that gave reason and authority for the UPD Officers to affect an arrest.**

The forum was being hosted, conducted and produced by the Accent Speakers Bureau of the University of Florida. The forum is designed to give a speaker time to speak, then a time for moderated questions and a time for questions from the audience. It is by design, intended to be a peaceful informative type forum with guidelines and time constraints. Accent Speakers Bureau controls the format and determines what is or is not proper actions and speech for the forum. As such they make the decision when a person should be cut off from speaking, denied to speak or participate in the forum. During the forum, four Accent staff members, including the Chairman, the Vice Chair of Productions, the Assistant Director of Security and Director of Itinerary all stated that on two occasions, [REDACTED] disrupted the forum and caused the production to temporarily stop or be interrupted. The first occasion in which [REDACTED] disrupted the forum is when he refused to comply with the instructions by staff members that the question and answer period had ended and that he was to be quiet and take his seat. It should be noted that several members of the audience had been waiting to ask questions; however they too were denied the opportunity and were requested to take their seat. All of these audience members, although disappointed, complied and took their seats. [REDACTED] forced his way to a microphone, and although it was off voiced his displeasure loud enough to be heard above Senator Kerry and disruptive enough to stop Senator Kerry from continuing with his answer.

The second occasion was after [REDACTED] was granted time to ask his question, [REDACTED] made a lot of statements without asking a question. When prompted by Senator Kerry and Officer Mallo, at the request of Accent staff, to ask a question, [REDACTED] continued on telling everyone what he was going to do. [REDACTED] eventually asked a question, however; did not allow Senator Kerry to answer. [REDACTED] continued making statements and asking multiple questions without pausing to allow Senator Kerry to answer. [REDACTED] continued without interruption and eventually made a statement using profane or vulgar language that was cause for the staff of Accent to determine [REDACTED] could no longer speak and his microphone should be cut off. Upon the audio technician cutting off [REDACTED] microphone, UPD Officers attempted to escort [REDACTED] out of the building. [REDACTED] became very vocal and actively resisted the Officers which caused the program to again be disrupted, interrupted and come to a halt.

Accent staff members were all in agreement that [REDACTED] was disruptive and should be escorted from the event although they can not make or enforce that decision. Accent advised that the decision to remove [REDACTED] was made by the police, however; they agree it was the proper response to the actions of [REDACTED]. Accent staff advised that it is customary for the University Police to remove unruly or disruptive patrons from other events including concerts, sports activities, etc.

The determination as to whether or not [REDACTED] actions rose to the level of the misdemeanor offense of disrupting a school function ultimately rests with the State Attorney's Office.

**The second phase of the investigation focused on the UPD Officers' response and force used to affect the arrest of [REDACTED]**

FDLE then reviewed the Officers' response in attempting to take [REDACTED] into custody when the determination was made in their minds (based upon Officers' statements) to make the arrest.

[REDACTED] behavior can be observed in several versions of the video footage referenced and reviewed in this matter. [REDACTED] is observed being escorted away from the microphone, and can be seen breaking away, initially, from Officers Wise and Mallo. Accent Staff members stated that the University of Florida Police Officers present at the forum and involved with [REDACTED] were easily recognizable as Police Officers by their attire, badges and insignias. There was no doubt they were Police Officers. [REDACTED] even recognized their authority by stating 'they are going to arrest me'. [REDACTED] refused to comply with verbal instructions being given by the Officers.

Sgt. King intervenes and attempts to physically push [REDACTED] up the aisle and out of the auditorium. [REDACTED] again is able to break away from Sgt. King, and again starts heading towards the direction of the stage.

[REDACTED] is taken to the ground by Sgt. King, Officer Wise and what appears to be his own momentum. [REDACTED] continually attempts to get up and refuses to comply with multiple verbal commands to stop resisting. Instead of complying with requests and providing his un-cuffed hand to Officers he utilizes that hand to grab hold of auditorium seating in an attempt to maintain his position and to continue to obstruct/resist Officers' attempts to handcuff him.

Officers quickly review the situation and decide not to utilize OC spray as it would affect not only [REDACTED] but also members of the audience. Officers decide not to escalate to hard empty hand strikes, kicks, knee strikes or baton, as according to the Officers this would have had a far greater chance of injury to [REDACTED] and would have looked like Officers were beating [REDACTED] into submission.

Officers chose to utilize a Taser and conducted a dry-stun/drive stun (physical contact) with [REDACTED] to gain his compliance. The Taser was chosen as, according to Officers statements, it would:

- 1) provide the necessary compliance with a minimal chance of injury to the suspect and Officers
- 2) would have no lasting side effects
- 3) would accomplish the goal of gaining the suspect's compliance in the least amount of time and with the least amount of effort

Upon review of the video footage and the [REDACTED] actions, it appears that [REDACTED] was at Suspect Resistance level four (4) as set forth in the State of Florida's Criminal Justice Standards and Training Commission guidelines.

Officer's response by utilization of the Taser after they attempted to:

- 1) physically escort [REDACTED] out of the auditorium

- 2) physically had to chase [REDACTED] down after he broke away from Officers on two (2) occasions; the first being from Officer Mallo and Officer Wise and the second being Sgt. King
- 3) and after issuing verbal commands and using physical force to attempt to restrain/handcuff [REDACTED] free hand

The Officers' actions appear to fall well within the guidelines of Officer Response Level Three (3) Physical control. This level allows for the use of pain compliance and restraint devices. The Taser was designed to disrupt the nervous system and cause a temporary loss of muscle control.

The utilization of the Taser in this situation was successful in its use to attain compliance of [REDACTED]

On September 18, 2007, Special Agent (SA) Randy Barnes was contacted by Resident Agent in Charge (RAC) Don Ugliano of the Gainesville Field Office and asked to provide information on current training standards provided to police officers in the State of Florida in regards to defensive tactics. SA Barnes is a Criminal Justice Standards and Training (CJST) certified defensive tactics instructor and is assigned to the Jacksonville Region Operations Center as a Special Agent. Currently the State of Florida utilizes a matrix which lists recommended responses to resistance and levels of resistance. This matrix is approved by the CJST and is taught in basic police academies throughout the State of Florida. Upon viewing the video, SA Barnes opined [REDACTED] clearly exhibited a level of force above the passive physical level minimum at which a Taser can be deployed.

According to the matrix Electronic Restraint Devices (ERD) may be utilized when the subject offers a level three (3) response or passive physical resistance.

***For details regarding Special Agent Barnes' opinion regarding the use of force, reference is made in FDLE investigative report number thirteen (IR 13)***

See attached Investigative File/Reports

*Final Investigative Summary completed by  
Special Agent Jeff Vash  
Special Agent Beth Torres  
Special Agent Jay Miller  
FDLE Gainesville Field Office  
October 15, 2007*