Ethical Use of Force

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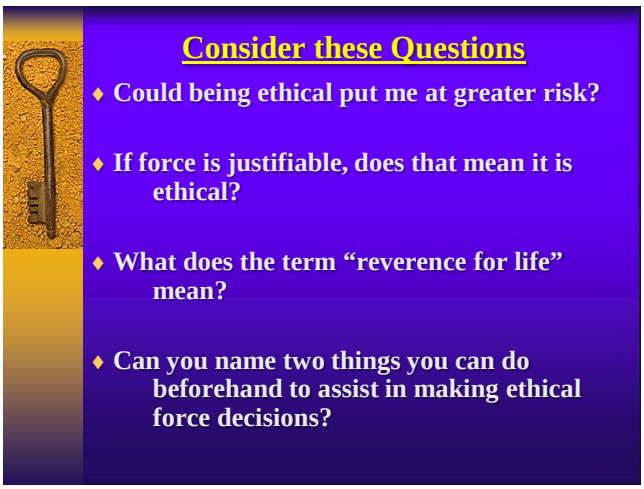
Performance Objectives

By the end of this training, students will pass a written exam at or above 70% on the following:

- Describe the difference between ethical and legal use of force
- List de-escalation techniques
- Name three of the five ethical building blocks
- List three things that interfere with doing the right thing
- List the four elements of reasonableness
- Define reasonable force
- Name the three elements that must be included when using force
- Discuss the Johnson v. Glick test
- Importance of proper documentation
- List the "Four Problem Ps" that agencies must deal with in the aftermath of the use of deadly physical force
- Explain "Totality of Circumstances"
- Discuss the Confrontational Continuum
- Discuss less lethal options
- Case law and legal ramifications
- Force versus tactics
- Legal & Judicious
- Discuss vicarious liability as it relates to use of force



Ethical Use of Force

- Legal & Judicious
- Correlating force options with resistance
- Managing Emotions
- Intervening to prevent excessive use of force
- A reverence for life & liberty
- Importance of team work in use of force incidents
- Documenting critical information

Ethics Building Blocks

1. _____
2. _____
3. _____
4. _____
5. _____(physical & organizational)

Make a Commitment to:

- ✓ Do the right thing because you truly want to do the right thing
  - Not because you might be watched, filmed, or get in trouble

What keeps officers from doing the right thing?

- _____
- _____
- _____
- _____
- _____

Individual Ethical Use of Force

- _____ to do the right thing
- _____ & _____ of the legal authority to use force
- Ability to identify _____ _____ that are consistent with legal or other restrictions
- Ability to use force in a manner that is _____ _____
- Ability to re-evaluate facts & circumstance as the incident changes & apply a reasonable force option

Evaluate force from two different options:

- Is it _____
- Is it _____

Definition of Reasonable Force

A _____ term for how much and what kind of control a peace officer may use in a given circumstance.

Four Elements of Reasonableness

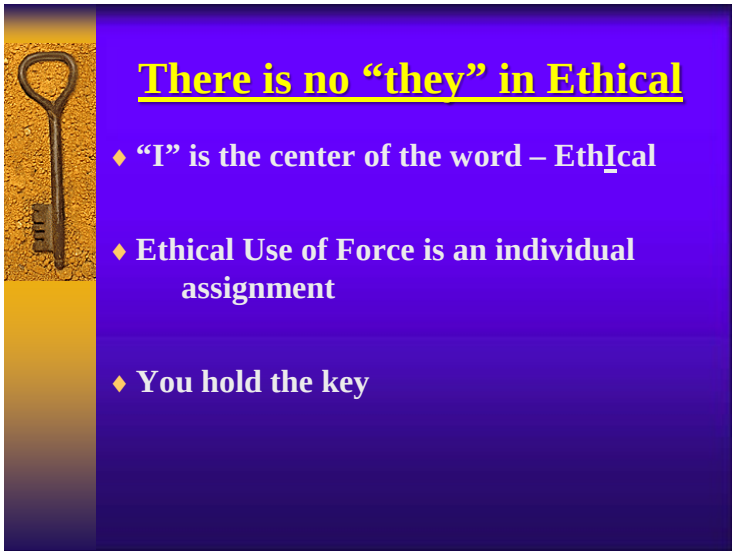
1. Judged from the perspective of a _____ officer
2. Examined through the eyes of an officer on the _____ at the time the force was applied.
3. Based on _____ & _____ confronting the officer without regards to the officers underlying intent or motivation
4. Based on the _____ that the officer acted properly under the established law at the time.

Three Elements that must be included in Use of Force:

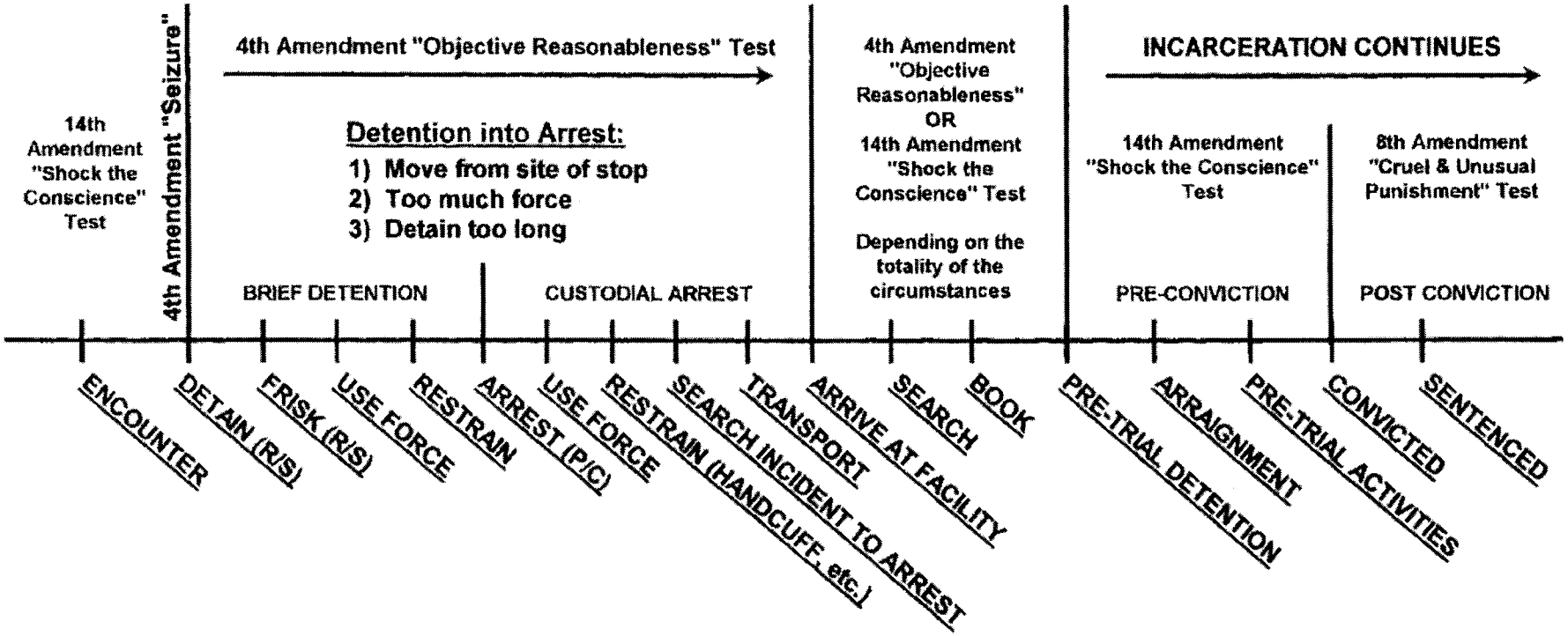
1. _____
2. _____
3. _____

Johnson v. Glick Test

- What was the _____ for the officer's use of force?
- What was the _____ between the officer's need to use force and the _____ of force that the officer used?
- What was the _____ of the injuries inflicted on the person by the officer's use of force?
- Was the officer's use of force applied in _____ _____ or maliciously and sadistically for the purpose of causing harm?



USE of FORCE CONSTITUTIONAL STANDARDS TIMELINE



Medical Care Issues -- 14th Amendment "Due Process"

Test -- "Deliberate Indifference" to person's "Serious Medical Needs"

Use-of-Force Recipient Status Matrix

Force Recipient	Free Person		Pre-Trial Detainee	Convicted and Incarcerated Person
	Seized Free Person - 4th Amendment Standard	**Not Seized Free Person Under 4th Amendment**		
Constitutional Amendment	4th Amendment - Federal Officers 14th Amendment - State/Local Officers	5th Amendment - Federal Officers 14th Amendment - State/Local Officers		8th Amendment - Fed Officers 14th Amendment - State/Locals
Use-of-Force Standard	Objective Reasonableness Standard (Objective Test)	Shock the Conscience - Deliberate Indifference Standards Due Process Clause (Subjective Tes)		Cruel & Unusual Punishment (Subjective Test)
Qualified Immunity	"***every*** reasonable official would have understood that what he" did violated the law. *Ashcroft v. al-Kidd*, 131 U.S. 2011, 131 S. Ct. 2074, 2080 (2011) (emphasis added);*Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808 (2009); and *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L.Ed.2d 272 (2001).			
Some Leading Cases	*Graham v. Connor*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989); *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); *Brower v. County of Inyo*, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007); *Chew v. Gates*, 27 F.3d 1432 (9th Cir. 1994).	*County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998); *Johnson v. Glick*, 481 F.2d 1028 (2nd Cir. 1973), *cert denied*, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973) *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952). See also *Brothers v. Klevenhagen*, 28 F.3d 452 (5th Cir. 1994); *Valencia v. Wiggins*, 981 F.2d 1440 (5th Cir.), *cert. denied*, 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993).	*Hudson v. McMillian*, 503 U.S. 1, 112 S.Ct. 995 (1992); *Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321 (1991); *Whitley v. Albers*, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986); *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Hope v. Pelzer*, 536 U.S. 730, 122 S. Ct. 2508, 153 L.Ed.2d 666 (2002).
Use-of-Force Test Parameters	- A "seizure" occurs when there is a "governmental termination of freedom of movement through means intentionally applied. *Brower*, 489 U.S. at 597. The 4th Amendment addresses "misuse of power," not the accidental effects of otherwise lawful conduct. *Brower*, 489 U.S., at 596. - Are the officers' actions "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation? - Reasonableness is determined by balancing the nature and quality of the intrusion with the countervailing governmental interests. - Reasonableness contemplates (*Graham*): 1. Is the suspect an immediate threat to officers and/or others? 2. Is the suspect actively resisting seizure? 3. Are the circumstances tense, uncertain, and/or rapidly evolving? 4. What is the severity of the crime(s) at issue? 5. Is the suspect attempting to evade seizure by flight (trying to get away)?	*County of Sacramento v. Lewis* - Police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. Holding - in such circumstances, "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." Two standards: (1) Where a state actor is afforded a reasonable opportunity to deliberate various alternatives prior to electing a course of action, the chosen action will be deemed "conscience shocking" if the action was taken with "deliberate indifference." *Lewis*, 118 S. Ct. at 1719. (2) In rapidly evolving, fluid, and dangerous situations which preclude the luxury of calm and reflective deliberation, a state actor's action will shock the conscience only if the actor intended to cause harm. See *Lewis*, 118 S.Ct. at 1720. *Johnson v. Glick* - Four-Part "Shock the Conscience Test" 1. The need for the use of force; 2. Relationship between that need and the amount of force that was used; 3. The extent of the injuries inflicted; and 4. Whether force applied was in good faith or maliciously and sadistically for the purpose of causing harm.	*Whitley* held that only an "unnecessary and wanton infliction of pain" and "actions taken in bad faith and for no legitimate purpose" are a cruel and unusual punishment. *Hudson* stated that the *Whitley* standard applies in both prison-riot and non-riot contexts. *Hudson* also held that all excessive force claims must show malice, sadism, and intent to cause harm. *Hudson* also held the 5th Circuit's "significant injury" requirement was improper under the 8th Amendment analysis. *Hope* - The policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the 8th Amendment.

UNDERSTANDING THE 4TH AMENDMENT'S OBJECTIVE REASONABLENESS STANDARD

Balancing Test (*Graham*): reasonableness inquiry requires a careful balancing of the nature and quality of the intrusion (use of force) on the individual's 4th Amendment interests against the countervailing governmental interests at stake.

Risk/Benefit Test (*Scott*): In judging whether the Law Enforcement Officer's (LEO's) actions were reasonable, we must consider the risk of bodily harm that LEO's actions posed to the subject in light of the threat to the public posed by the subject that the LEO was trying to eliminate.

Reasonableness at the Moment Force is Used (*Graham*): reasonableness test considers that LEOs are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

Reasonableness Test (*Graham*): requires careful attention to the facts and circumstances of each particular case, including:
- whether the subject poses an immediate threat to the safety of officers or others,
- whether the subject is actively resisting arrest or attempting to evade arrest by flight, and,
- the severity of the crime at issue,

Reasonable LEO's Perspective (*Graham*): The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable LEO on the scene, rather than with the 20/20 vision of hindsight.

Objective Test (*Graham*): whether LEOs actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Each Force Application Must be Justified: Each strike, OC use, force application, trigger pull, 5-second CEW cycle must be legally justified.

All Force Must be Unambiguously Justified in LEO's Reports/Statements: Any factor used to justify use of or escalation of force must be explained.

Basic Test of "Objective Reasonableness" *Graham* risk prioritized by *Chew*	**Not an *Intentional* Immediate Threat/Flight Risk Person In Need of Medical Assistance Due to Mental Health, Drugs, or Illness**	**Additional (minimum passive) Force Factors (*Mattos/Brooks*) Force To Gain Volitional Compliance** (Person not an immediate threat or flight risk)
1. Immediate threat - beware "*possible*" threat fallacy 2. Actively resisting seizure 3. Circumstances tense, uncertain rapidly evolving (pace of events) 4. Severity of crime at issue 5. Attempting to evade seizure - by flight - flight from serious event **Additional Basic Factors** 6. Availability of alternative methods of capturing, controlling, restraining, or subduing subject 7. What officers knew about subject's health, mental condition, or other relevant frailties	**Mentally ill/Drugs (*Bryan v. MacPherson*):** LEO should make greater effort to control situation through less intrusive means. Some courts believe acting out by emotionally disturbed person diminishes the level of force necessary and such persons are in need of a doctor, not a jail cell and in the usual case – where such a person is neither a threat to himself or anyone else—the government's interest in deploying force to detain him is not as substantial as its interest in deploying force to apprehend a dangerous criminal. **Pain:** If pain is used to gain compliance, (1) consideration of whether person will perceive the pain and (2) be able to comply with LEO's commands. **Distraction:** must be able to articulate that force used for distraction to assist custody is reasonable.	**Person must be given reasonable opportunity to comply with directives prior to each X26 ECD drive-stun application** LEO: 1. must not have a reasonable perception that person is not capable of volitional compliance to commands, 2. must reasonably perceive person is "actively resisting," 3. must a give warning of imminent application of force, 4. must give person a reasonable: a. time "to recover from extreme pain" experienced, b. opportunity to "gather herself," c. opportunity to "consider her refusal to comply," 5. the duration of time between each X26 ECD drive-stun application (according to *Mattos*) must be > 36 seconds, and 6. LEO needs to include in report that before each X26 ECD drive-stun used to attempt to gain the person's volitional compliance LEO followed these guidelines. **Consider Alternates:** less risk of injury ("Quantum of Force") (Some courts may require greater justification)

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How Much Force Is Acceptable?

Law enforcement officers use force upon people for numerous reasons. An officer may use force to detain, to arrest, for self-defense, for defense of others, for defense of property, to prevent the person from injuring himself, to prevent the person from destroying evidence, to quell a riot, etc. However, the essential basic purpose for an officer's use of force is to gain control of a person and to stop any threatening action by that person.

There are many standards floating around in the law enforcement and criminal justice community that allegedly dictate how much force an officer may justifiably use. Because of all of these standards, it is often confusing to determine whether the officer's use of force is in fact "justified" or "acceptable."

In order for a law enforcement officer's use of force to be acceptable it must:

1. Be within the boundaries of United States Constitutional and Statutory law.
2. Be within the boundaries of the applicable state constitutional and statutory law if that state law is more restrictive than Federal law.
3. Be within the acceptable limits of the applicable department policies, procedures, and training.
4. Be in compliance with applicable equipment manufacturers' guidelines.

United States Federal Constitutional Parameters of Law Enforcement Force

Introduction:
Over the years the Federal Constitutional limits of a law enforcement officer's use of force have varied as courts' definitions have matured and become more detailed. As the law has developed, an officer's ability to use force has come under greater scrutiny. This enhanced scrutiny was (in part) caused by individuals having greater access to attorneys, the courts, and recovery under the Federal Civil Rights Act, and by enhanced political pressures due to intense media coverage, special interest groups, and public disobedience in response to a use-of-force incident (riots).

Immediately prior to the present "objective reasonableness" (under Graham v. Conner [1]) standard, in most instances (other than in deadly force against a seized free person - Tennessee v. Garner) an officer could use that amount of force that did not "shock the conscience" of the court (the Johnson v. Glick [2] test). The Johnson v. Glick test was an analysis of the officer's use of force under the 14th Amendment's (to the United States Constitution) "due process clause." Under the Johnson v. Glick test there were four (4) questions to be answered:

1. What was the need for the officer's use of force upon the person?
2. What was the relationship between the officer's need to use force and the amount of force that the officer used?
3. What was the extent of the injuries inflicted on the person by the officer's use of force?
4. (The "subjective" element of the test) Was the officer's use of force applied in good faith or maliciously and sadistically for the purpose of causing harm?

In 1989, the United States Supreme Court decided the case of Graham v. Conner. The Graham case made clear that the standard for an officer's use of force upon a "seized" -- "free person" was whether the officer's force was "objectively reasonable" under the Fourth Amendment (to the United States Constitution). The Graham case, and its OBJECTIVE reasonableness test replaced the subjective "shock the conscience" test when the officer's use of force is directed against a "seized" -- "free person."

Today's Federal Use-of-Force Standards:

Under the United States Constitution there are essentially two basic legal standards for judging an officer's use of force. The first (and most restrictive) standard of **"objective reasonableness"** only applies to the use of force upon a "seized free person." The second (and more lenient) standard of **"shock the conscience"** (of the court) applies to "non-seized free persons," pre-trial detainees, and people who are convicted and incarcerated. In other words the second standard applies to any use of force, by an officer, that is not directed at a "seized free person." I will not bore you with all of the underlying foundations for these two standards, but let's explore exactly what these standards mean.

Prelude to Using Force:

Before we explore the various aspects of the two standards we must first examine the underlying requirements to an officer's use of force.

1. **An officer must have lawful authority.** There are usually many ways for an officer to gain authority. The foundations of authority are primarily found in state law. In the vast majority of use-of-force incidents an officer's authority does not come into question. However, there have been cases where an officer "thought" that he had authority when in reality he did not and the resulting consequences were disastrous. Even when an officer does not have "lawful authority" he will still have the same right to act as a normal person. Meaning, an officer, even without authority, will still have the right to self-defense, defense of others, defense of property, etc., just as any other person. However, in some jurisdictions an officer acting as a normal person (without actual officer authority), will have a duty to retreat and the availability of "citizen's arrest" authority may be substantially limited.
2. **An officer must have a lawful objective for taking action.** Any time an officer uses his governmental authority to bring a person under control the officer MUST have a "lawful objective" for taking the action.
   A. Lawful objectives may include: detention, frisk, arrest, involuntary mental commitment, self-defense, defense of others, defense of property, preventing escape, and others.
   B. "Contempt of Cop" or a person's disrespectful attitude toward an officer is not a "lawful" reason for using force. [3]
3. **An officer need not retreat from a known threat.** The officer may "choose" to retreat in order to de-escalate the situation or in order to gain a better tactical advantage. However, the officer need not retreat simply because he is faced with a threat that will almost certainly require the officer to use force upon the threatening person.

   "Objectively Reasonable Force" - under the Fourth Amendment to the United States Constitution. The objective reasonableness standard applies when an officer "seizes" a "free person." This test does not apply if the person the officer is interacting with is an "unseized free person," a pretrial detainee, or an incarcerated person under conviction.

   Under the objective reasonableness standard an officer may use that amount of force that is "objectively reasonable." So what are the parameters of "objective reasonableness?"

4. **"Balancing Test"** - The "objective reasonableness" test is a balancing test between the person's right to privacy and physical integrity weighed against the government's legitimate interests in taking action against the person. Put another way, the more heinous the person's activities and/or threat level, the more force that an officer may justifiably use. As an example:

Officer's Objective Reasonable Seizure	*Level of Seizure/Search Against Person*
- Reasonable suspicion of crime	Terry Detention
- Reasonable suspicion of weapon/threat	Terry Frisk (limited search)
- Probable cause of crime	Arrest

5. **"Objective" v. "Subjective"** - "Subjective" refers to what the officer "believes" (or the officer's intent). "Objective" refers to what others would logically believe, or conclude. An officer's use of force will not be judged by what "HE" believes to be acceptable, rather the question is would a reasonably prudent and well trained officer believe that what the officer did was acceptable?
   A. The Officer's INTENT is Irrelevant - Since the standard is an "objective" one, the officer's "subjective" intent is irrelevant. In other words, the officer's underlying motivation is not relevant to the analysis. The question is whether the officer's use of force is OBJECTIVELY appropriate (not subjectively).
   B. Do not confuse what an officer "believes" with what an officer "knows." What an officer "knows" is critical in determining the appropriateness of an officer's force. What an officer "believes" (or intends) is not relevant.

      Example: An officer knows that the person confronting him is 6'5" tall, has just used PCP, is a martial arts expert, may have several concealed weapons, and has just brutally attacked another officer without provocation. All of these factors are "relevant" because they comprise what the officer "knows." The officer may be very angry with this man because the man has just attacked a fellow officer. This anger is "irrelevant" to the analysis because it is the officer's "subjective" intent, and NOT "objective" facts.

   C. "Reasonably prudent and well-trained officer" means that the officer MUST know the law - whether he does or not. It is assumed that a reasonably prudent and well-trained officer will know the acceptable, and unacceptable, limits of the law. So, if an officer unknowingly violates the legal limits of his authority, this use of force will be determined to be "unreasonable."
6. **Under the "Totality of the Circumstances"** - An officer's use of force will be judged upon the "totality of the circumstances" as known by the officer at the moment the force is used.
   A. Information learned AFTER the officer uses the force is irrelevant to assessing the appropriateness of the officer's use of force.
   B. Any background information that the officer knows may be included in the totality of the circumstances.

      Example: If an officer knows that a certain individual is known to be a physical threat to officers, and this same man is a martial arts expert, the officer can take this information into account when determining how much force he may use.

7. NOT to be Judged in HINDSIGHT - Officers must often make split-second judgments in tense, uncertain, and rapidly evolving situations. Is it fair to the officer, or appropriate, to judge an officer in the quiet sanctuary of a judge's courtroom? No.

   Example of this principle: In a use-of-force incident, an officer may have only seconds to make a life or death decision on how much force to use. Those criticizing the officer's use of force may have months, or even years, to criticize the officer's force decision. Also, the critics may have access to information and evidence that the officer did not know.

   Example: An officer is walking through a park late at night. In the dark shadows, an officer sees a dark figure pointing a gun at the officer. The officer draws his gun and shoots, killing the dark attacker. In the incident aftermath, it is determined that the gun was a toy and the dark figure was 13 years old. While the incident had tragic consequences, the officer's use of force based upon the facts known to him at the moment of the shooting was appropriate.

8. **Even Use-of-Force Without Injury Can Be "Excessive" Force** - The mere fact that a force recipient does not sustain a significant injury does not, by itself, defeat an excessive force claim.[4] A jury could properly find that an officer's use of pain compliance techniques before a suspect posed any immediate threat to the arresting officers was excessive force. [5]
9. **An Officer MAY NOT Assume the Negative (If Time and Circumstances Permit)** - An officer may not assume, and react upon, the negative about a person if the officer has the time and circumstances to do otherwise.

Example: An officer is chasing a person with three (3) felony warrants. [6] If the officer does not know what the warrants are for, the officer may not use this information to justify the use of an escalated level of force. The warrants could be for felony bad checks or fraud (non-violence related crimes) - where this knowledge would not justify an escalated level of force.

Or, the felonies may be for aggravated assault of an officer - where an escalated level of force would be justified. If the officer did not know what the warrants were for and then attempted to justify an escalation in force based upon the warrants then the officer would be "assuming the negative." Thus, if the officer does NOT know what the warrants are for then the officer may not "assume the negative" (if time and circumstances permit) and the courts will not permit an officer's escalation in the use of force.

Example: Very late at night an officer is trying to awaken a man sitting on a park bench. The man bolts upward with what the officer perceives as a knife in his hand. The officer intentionally strikes the man on the head with his (the officer's) flashlight. Later, the officer learns that the knife was actually a large shiny comb. Here, the officer "assumed the negative." But, the time and circumstances did not allow the officer to assume otherwise.

10. **An Officer's Use of Force Does NOT Have to be the "Least Intrusive" Option Available** - An officer does not have to use the absolute least amount of force available. The officer need only select a level of force that is within the RANGE of the "objectively reasonable" force options. [7]
11. **An Officer's Use of Force Will Be Judged At the MOMENT The Force Is Used** - That which happens after an officer uses force is irrelevant in determining whether the officer's use of force was acceptable. [8]

    Example: An officer shoots a suspect. The officer's use of force is to be judged acceptable, or unacceptable, at the PRECISE MOMENT the officer pulls the trigger.

    A. The OUTCOME is Irrelevant - Since an officer's use of force is judged at the "moment" the force is used, the "outcome" of the use of force is irrelevant (under this analysis).

    Example: An officer is justified in putting a suspect in an arm restraint. In the process the person sustains a severe shoulder injury - actually an aggravation of a prior injury. The officer did not know of the prior injury, or that the person was more susceptible to injury then the average person. Since the officer's use of the arm restraint was appropriate at the "moment" it was applied then the injured shoulder - the "outcome" - is irrelevant.

12. **Under Graham - Whether the Officer's Use of Force is Deadly or Non-Deadly Is Irrelevant** - under the Fourth Amendment objective reasonableness analysis. [9]
13. **An Officer's Use of Force Against a Fleeing Person** - The United States Supreme Court in Tennessee v. Garner stated "[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead." [10] Thus the Garner case includes the following principles:
    A. Deadly force may NOT be used against a fleeing misdemeanant.
    B. Deadly force may NOT be used against a fleeing felon when the felony is not a violent felony.
    C. Garner requirements - in order for an officer (under Garner) to use deadly force against a fleeing felon:
        1) **Deadly Force Defense Standard** - The suspect must **threaten the officer with a weapon** OR
        2) **Fleeing Felon (3 part) Test**:
            a. The officer must have probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm;

b. The use of deadly force is NECESSARY (to bring the person to prosecution) to prevent the suspect's escape; AND
c. The officer must give some WARNING of the imminent use of deadly force - if feasible.

14. **A Person Has A Right to Use Self-Defense Against An Officer's Excessive Force** - A person has the right to use reasonable force only in self-defense against an officer who is using excessive force during a lawful arrest. [11] Striking a police officer who was using excessive force while attempting to arrest another was only justified to save the other from death or serious bodily injury. The state had abolished the right to resist an unlawful arrest, but retained a limited right of self-defense against excessive force amounting to a threat of serious injury. [12]
15. **The "Reasonableness" Inquiry** - The reasonableness of an officer's use of force is, in part, based upon the totality of the circumstances as known by the officer at the moment the force is used. The following five (5) questions are the basic reasonableness determining factors. However, keep in mind that since the standard is the "totality of the circumstances," the five (5) questions are not the ONLY questions (other aspects of the incident could be considered). Also, the following question have been placed in a specific order of priority.
    A. **Imminent Threat to Officers and/or Others** - Is the person an imminent threat of injury to the officer and/or others? The greater the level of the threat the greater the level of the force that may be used. [13]
        1) **PPCT's [14] Force Continuum** - assists the officer's decision making and after-incident report articulation with the relationship between the threat level presented by the person and the use-of-force response level performed by the officer.
        2) Remember - the Officer may NOT assume the negative - if time and circumstances permit.
    B. **Actively Resisting Seizure** - If the person is actively resisting seizure then the officer may escalate his (the officer's) justified (reasonable) level of force response.
    C. **Circumstances are Tense, Uncertain, and Rapidly Evolving** - ("Officer's legitimate anxiety factor") - Some incidents take hours to resolve, while others start and are over in seconds. The more tense, uncertain, and rapidly evolving the incident the higher level of force that will be judged to be reasonable.
    D. **Severity of the Crime at Issue** - The more severe the crime committed the more force that an officer may justify. Remember, an officer cannot assume the negative if time and circumstances permit.
    E. **Attempting to Evade Seizure by Flight** - Is the person attempting to evade seizure by flight? If yes, then this will assist the officer in justifying an escalating level of force.

These five (5) factors can be graphically depicted. By using a 0-10 scale for each of the factors, and another for the officer's use of force, the relationship between the factors and the officer's force can be illustrated.

It is important to note that the five (5) below-listed factors are ranked in a specific order of importance. The most important factor, the factor with the greatest weight, is whether the person whom the officer is confronting is an imminent threat to officers or others. The factor with the least importance, or the least weight, is whether the person the officer is confronting is attempting to escape seizure by flight, attempting to run away. Thus, if an officer is confronted by a person who is a "10" for the first three (3) factors then there would be little doubt that the officer could use force at the "10" level (deadly force). However, if the first three (3) factors were "0" or "1," and the last two (2) factors were "10" the officer would not be allowed to use a level "10" force.

Force Factors:	None High
Imminent Threat to Officers/Others	0---1---2---3---4---5---6---7---8---9---10
Resisting Seizure	0---1---2---3---4---5---6---7---8---9---10
Circum. Tense, Uncertain, Rapidly Evolv.	0---1—2---3---4---5---6---7---8---9---10
Severity of the Crime(s) at Issue	0---1---2---3---4---5---6---7---8---9---10
Attempting to Evade Seizure by Flight	0---1---2---3---4---5---6---7---8---9---10

Officer's Force Used:	
Level of Force Officer Used	0---1---2---3---4---5---6---7---8---9---10

The basic principle behind the graphical scale is to allow for thought providing discussion of use of force incidents. It is important to note that the graphical scale is not based in the law. It is merely a convention for training purposes.

Non-Seized Force Recipients:

Anytime a law enforcement officer uses force upon a person who is not a "seized" -- "free person" the federal analysis will be under the 14th Amendment's due process test. The latest U.S. Supreme Court case providing the frame work for the 14th Amendment test is Sacramento v. Lewis [15] where (in a high-speed pursuit case) the Court held that "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation."

The 14th Amendment test PRIOR to Sacramento v. Lewis was the Johnson v. Glick [16] test. This test is a "subjective" test rather than the "objective" test of the Fourth Amendment. The "subjective" test asks the following four (4) questions.

1. What was the need for the officer's use of force upon the person?
2. What was the relationship between the officer's need to use force and the amount of force that the officer used?
3. What was the extent of the injuries inflicted on the person by the officer's use of force?
4. (the "subjective" element of the test) Was the officer's use of force applied in good faith or maliciously and sadistically for the purpose of causing harm?

If the person is convicted and incarcerated the applicable standard is the "cruel and unusual punishment" standard of the Eighth Amendment to the United States Constitution. The "cruel and unusual punishment" standard primarily focuses on the officer's intent. In Whitley v. Albers [17] the United States Supreme Court held that only an "unnecessary and wanton infliction of pain" and "actions taken in bad faith and for no legitimate purpose" are a cruel and unusual punishment. In Hudson v. McMillian [18] the Supreme Court stated that the Whitley standard applies in both prison-riot and non-riot contexts. Hudson also held that all excessive force claims under the Eight Amendment must show malice, sadism, and intent to cause harm. Hudson also held that the 5th Circuit's "significant injury" requirement was improper under the Eighth Amendment's "cruel and unusual punishment" analysis.

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[1]. Graham v. Conner, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989)

[2]. Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert. denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973)

[3]. "[T]he use of any force by officers simply because a suspect is argumentative, contentions or vituperative is not to be condoned." Bauer v. Norris, 713 F.2d 408, 412 (8th Cir. 1983), quoting Agee v. Hickman, 490 F.2d 210, 212 (8th Cir.) cert. denied, 417 U.S. 972 (1974).

[4]. Gray v. Spillman, 925 F.2d 90 (4th Cir. 1991)

[5]. Barlow v. Ground, 943 F.2d 1132 (9th Cir. 1991)

[6]. Chew v. Gates, 27 F.3d 1432 (9th Cir. (Cal.) June 27, 1994)

[7]. See generally Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); Menuel v. City of Atlanta, 25 F.3d 990 (11th Cir. 1994); Scott v. Hendrich, 994 F.2d 1338 (9th Cir. 1992); Cole v. Bone, 993 F.2d 1328 (8th Cir. 1993); Krueger v. Fuhr, 991 F.2d 435 (8th Cir. 1993); Dyer v. Sheldon, 829 F.Supp. 1134 (D.Neb. 1993); Powell v. Fournet, 846 F.Supp. 1443 (D.Colo. 1994); and Bella v. Chamberlain, 24 F.3d 1251 (10 Cir. N.M. 1994).

[8]. See generally Ford v. Childers, 855 F.2d 1271 (7th Cir. 1988); Menuel v. City of Atlanta, 25 F.3d 990 (11th Cir. 1994); Sherrod v. Berry, 856 F.2d 802 (7th Cir. 1988); Drewitt v. Pratt, 999 F.2d 774 (4th Cir. 1993); Greenidge v. Ruffin, 927 F.2d 789 (4th Cir. 1991); Powell v. Fournet, 846 F.Supp. 1443 (D.Colo. 1994); and James v. Chester, 852 F.Supp. 1288 (D.So.Carol. 1994).

[9]. Graham v. Conner, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989)

[10]. Tennessee v. Garner, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694, 1701 (1985)

[11]. State v. Wright, 310 Or. 430, 799 P.2d 642 (1990), aff'g, 100 Or. App. 22, 784 P.2d 445 (1989)

[12]. Commonwealth v. French, 396 Pa. Super. 436, 578 A.2d 1292 (1990)

[13]. The decedent advanced toward the officers with a machete that had a 24-inch blade, the decedent raised the machete after ignoring warnings to drop it, and the decedent got within four to six feet of the officers before the decedent was shot. The court found as a matter of law that the use of deadly force was reasonable. Rhodes v. McDaniel, 945 F.2d 117 (6th Cir. 1991).

[14]. "PPCT" was originally an acronym for "Pressure Point Control Tactics." However, now "PPCT" is the common name for "PPCT Management Systems, Inc.," 500 South Illinois, Millstadt, Illinois 62260. PPCT is a corporation that specializes in law enforcement defensive tactics training and has over 33,000 instructors internationally.

[15]. Sacramento v. Lewis, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)

[16]. Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973), cert denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973); Fagan v. City of Vineland, 22 F.3d 1296 (2nd Cir. 1994); Temkin v. Frederick County Comm'rs., 945 F.2d 716 (4th Cir. 1991), cert denied, 112 S.Ct. 1172, 117 L.Ed.2d 417 (1992); Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); and Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952). See also Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir. 1994); Valencia v. Wiggins, 981 F.2d 1440 (5th Cir.), cert. denied, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993); and Fagan v. City of Vineland, 22 F.3d 1296 (2nd Cir. 1994).

[17]. Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.¬2d 251 (1986)

[18]. Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992)

How Much Force is Acceptable

In order for a law enforcement officer's use of force to be acceptable it must:

1. Be within the boundaries of the U. S. _____ * _____ _____
2. Be within the boundaries of the applicable state constitutional and statutory law if that state law is more restrictive than Federal law.
3. Be within the _____ _____ of the applicable department policies, procedures, and training
4. Be in compliance with applicable equipment _____ _____

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Use-of-Force Legal Analysis

1. **8th Amendment - Prohibits "Cruel and Unusual Punishment"**- "wanton and unnecessarily inflicted pain." The Eighth Amendment applies "... only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." Ingraham v. Wright, 430 U.S. 651, 671, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977).

> **Amendment VIII, United States Constitution**
> **Excessive Bail, Fines, Punishments**
> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

   a. **8th Amendment Standard**:
      1) The standard: " ... whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986)
      2) Questions to ask:
         a) What was the need for the force?
         b) How much force was used?
         c) What is the extent of the injuries inflicted?
         d) What was the perceived threat by the jail personnel?
         e) Were any efforts made to minimize the use of force?
   b. **Cruel and Unusual Punishment Standard**:
      1) **Non-Riot** - the **"cruel and unusual punishment standard"** is higher than the "deliberate indifference" standard. Cruel and unusual punishment will be present only when an "unnecessary and wanton infliction of pain," "obduracy and wantonness," and "actions taken in bad faith and for no legitimate purpose". Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986).
         a) All excessive force claims under the 8th Amendment must show malice, sadism, and intent to cause harm. Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).
         b) Shackling a quarrelsome inmate to a bed for 72 hours may be actionable. Williams v. Vidor, 17 F.3d 857 (6th Cir. 1994)(per curiam).
         c) There is no "significant injury" requirement under the 8th Amendment. Hudson v. McMillian
      2) **Riot** - In a prison-riot context (use of force not usually classified as "punishment") the 8th Amendment standard is the equivalent of the substantive due process standard. Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986). Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992).
   c. **Not "Cruel and Unusual Punishment"**:
      1) The use of handcuffs with a black box in a standard manner while transporting a prisoner was not malicious and sadistic under Hudson and Whitley. Starbeck v. Linn Co. Jail, 871 F.Supp. 1129 (N.D. Iowa 1994).
   d. **Cruel and Unusual Punishment**:
      1) **Stun Gun** - Using a stun gun on a jailee after he had contentiously refused to sweep his cell was cruel and unusual as a matter of law. (Hickey v. Reeder, 12 F.3d 754, 759 (8th Cir. 1993)
      2) **"Mental torture"** could constitute cruel and unusual punishment. (Parsons v. Board of Co. Commr's, 873 F.Supp. 542 (D.Kan. 1994)
2. **Fourteenth Amendment Standard** - the "due process clause" prohibits deprivation of "... life ..." without due process of law:

Amendment XIV, United States Constitution
Citizenship; Privileges and Immunities; Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

a. **The 14th Amendment Standard** - Whether official conduct "shocks the conscience." Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952).
   1) When decisions are "necessarily made in haste, under pressure, and frequently without the luxury of a second chance ... only a purpose to cause harm ... will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation ..." County of Sacramento v. Lewis, 523 U.S. 833, 118 S.Ct. 1708, 1711-12, 140 L.Ed.2d 1043 (1998); Medeiros v. O'Connell, 150 F.3d 164 (2nd Cir. 1998); Schaefer v. Goch, 153 F.3d 793 (7th Cir. 1998).
   2) When "deliberation" is possible, then "deliberate indifference" may "shock the conscience." Example: the failure to provide adequate medical care to jail detainees.

b. The "due process" standard controls the use of force under certain conditions where the 4th (seizure of a free person) and the 8th (convicted and incarcerated person) Amendments do not apply.
   1) Non-seizure cases:
      a) Unintended person:
         (1) Claybrook v. Birchwell, 199 F.3d 350 (6th Cir. 2000) [very important to compare this case to Fisher v. City of Memphis, 234 F.3d 312 (6th Cir. 2000)]:
            (a) During a shootout, the plaintiff, unbeknownst to the officers, was in the vehicle and was injured by a stray bullet.
            (b) The Court found that the officers "had no opportunity to ponder or debate their reaction
            (c) The Court found that the officers “had no opportunity to ponder or debate their reaction to the dangerous actions of the armed man."
         (2) Schaefer v. Goch, 153 F.3d 793 (7th Cir. 1998)
         (3) Medeiros v. O'Connell, 150 F.3d 164 (2nd Cir. 1998)
         (4) Ansley v. Heinrich, 925 F.2d 1339 (11th Cir. 1991) -held that the "unintended consequences of government action [cannot] form the basis for a Fourth Amendment violation.
         (5) Rucker v. Hartford County, 946 F.2d 278 (4th Cir. 1991), *cert. denied*, 502 U.S. 1097 (1992) - The Rucker Court held that a seizure under the Fourth Amendment occurs only when "one is the intended object of a physical restraint by an agent of the state. Relying on Brower, the Rucker Court granted summary judgment to police officers where an innocent bystander, who was shot and killed by police officers while attempting to stop a felling criminal, was not the "intended object of a physical restraint by the state." The undisputed evidence was that the police officers were firing at the vehicle being driven by the fleeing criminal, and were unaware of the innocent bystander's presence.
         (6) Landol-Rivera v. Cruz Cosme, 906 F.2d 791 (1st Cir. 1990) -
            (a) The Landol-Rivera Court held that "a police officer's deliberate decision to shoot at a car containing a robber and a hostage for the purpose of stopping the robber's flight does not result in the sort of willful detention of the hostage the Fourth Amendment was designed to govern." Since the hostage was "not the object of the bullet that struck him," the Court held that the hostage's "presence in the car arguably gave the police officers a more compelling need to stop the suspect than if there had been no hostage; the errant bullet did not in these circumstances transform the police action into a seizure."

(b) The officer's seizure was directed appropriately at the suspect, but the officer inadvertently injures an innocent person. The innocent person's injury or death is not a seizure that implicates the 4th Amendment.

(7) Hicks v. Leake, 821 F.Supp. 419 (W.D.Va. 1992) - dismissed action against officer where the driver killed in the collision was not the object of the chase.

(8) See, When an Innocent Bystander Who is Injured by a Police Office Can Recover Under § 1983, by Mark Albert Mesler II, University of Memphis Law Review,Winter 1995, cite as 25 U.Mem.L.Rev. 781.

b) Unintended means:

(1) Lewis v. Sacramento, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)

2) Pre-conviction, but post-seizure:

a) Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 417 (1979)

c. County of Sacramento v. Lewis, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998):

1) A police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender.

2) Holding - in such circumstances, only a purpose to cause harm unrelated to the legitimate object of the arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation.

d. Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973).

1) Four-part (14th Amendment) "substantive due process" ("shocks the conscience") analysis which considers:

a) The need for the use of force;

b) Relationship between that need and the amount of force that was used;

c) The extent of the injuries inflicted; and

d) Whether the force applied was in good faith or maliciously and sadistically for the purpose of causing harm.

e. Officer shot escaping pre-trial detainee. Court said that it was a due process clause claim and not a Fourth Amendment claim. Court also ruled that the shooting and killing of the pre-trial detainee did not violate due process. Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir.1994), cert. denied, 513 U.S. 1044, 115 S.Ct. 639, 130 L.Ed.2d 545 (1994).

f. A pre-trial detainee's beating in the jail was governed by the 14th Amendment. (Valencia v. Wiggins, 981 F.2d 1440 (5th Cir. 1993), cert. denied, 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993).

g. "Substantive due process" is based on the "liberty" provided in the 14th Amendment. The idea is that governmental action are so offensive and so unjustified that they violate fundamental rights of freedom. Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952) - In Rochin officers pumped the stomach of a narcotics suspect to obtain incriminating evidence - the court said that this behavior by the officers "shocked the conscience."

h. Substantive due process cannot be violated by mere negligence.

3. Fourth Amendment Standard

Amendment IV, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

a. A "seizure" occurs when there is a " ... governmental termination of freedom of movement through means intentionally applied." Brower v. County of Inyo, et al, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989).

b. The Brower Court held that a "[v]iolation of the Fourth Amendment requires an intentional acquisition of physical control. A seizure occurs even when an unintended person or thing is the object of the detention or taking, but the detention or taking itself must be willful. This is implicit in the word 'seizure,' which can hardly be applied to an unknowing act ... " Brower, 489 U.S., at 596, 109 S.Ct. 1378

c. "[T]he Fourth Amendment addresses 'misuse of power,' not the accidental effects of otherwise lawful conduct." Brower, 489 U.S., at 596, 109 S.Ct. 1378; Milstead v. Kibler, 243 F.3d 157 (4th Cir. 2001).

d. Official's use of force - "Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Graham v. Conner, 490 U.S. 386, 396, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989).

e. " ... [T]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application ..." Graham, 490 U.S., at 396, citing Bell v. Wolfish, 441 U.S. 520, at 559, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

f. Graham - the 4th Amendment analysis - **"objectively reasonable"** force:
   1) Graham established the constitutional standard for liability for unreasonable use of force (deadly and non-deadly) during a Fourth Amendment seizure.
   2) "Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application ... its proper application requires careful attention to facts and circumstances of each case ..."Graham, 490 U.S., at 396.
   3) The Graham analysis applies to all law enforcement excessive force claims -deadly or not - in the course of an arrest, investigatory stop, or other "seizure" of a free person.
   4) The question is whether the officer's actions are "objective reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
   5) The "reasonableness" test:
      a. Reasonableness is determined by balancing the nature and quality of the intrusion with the countervailing governmental interests.
      b. Reasonableness analysis contemplates careful consideration of the facts and circumstances of the incident, including:
         (1) The severity of the crime at issue,
         (2) Whether the suspect poses an immediate threat to the safety of officers and others,
         (3) Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.
      c. Reasonableness is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Graham, 490 U.S., at 396-97.
      d. Not every push or shove violates the 4th amendment.
      e. "Allowance must be made for the fact that officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving." Graham, 490 U.S., at 396.
         (1) The reasonableness standard must make an allowance for the fact that police officers are often forced to make:
            (a) Split-second judgments
            (b) In circumstances that are:
               i) tense,
               ii) uncertain, and
               iii) rapidly evolving
         (2) Every objectively reasonable law enforcement officer knows:
            (a) There are inherent dangers of the job of law enforcement.
            (b) There are inherent limitations of officers' abilities to assess and respond to perceived threats:
               i) **Limited Time** - action beats reaction

ii) **Limited Abilities** - during tense circumstances, officers have limited physical and mental capabilities

iii) **Limited Means** - officers do not have a reliable means to instantaneously cease a person's threatening actions

iv) **Limited Control** - "chance" plays a significant role in all human endeavors, and even thought an officer's preparation, training, skill, and planning can lessen the effects of chance, these effects cannot be reliably eliminated

f. The officer's underlying intent or motive is irrelevant

(1) Even though the Graham analysis does not care about the officer's motive, if the officer is found to have used "objectively unreasonable" force the door may be opened to punitive damages. The determination as to whether the officer may be liable for punitive damages lies in the officer's motive - evil intent, maliciousness, willful indifference. Racial, ethnic, gender, sexual preference slurs and derogatory statements could indicate discrimination that could lead to the officer being liable under other statutes.

(2) The U.S. S.Ct. noted that an officer's "subjective" intent or motivation could be relevant to the officer's credibility. Graham, 490 U.S., fn. 12, pg. 399.

g. Chew v. Gates, 27 F.3d 1432 (9th Cir. 1994), cert. denied, 513 U.S. 1148, 115 S.Ct. 1097, 130 L.Ed.2d 1065 (1995) :

1) Probably the most important aspect of Chew is its detailed analysis, and narrowing, of Graham. Chew restricts the Graham factors on several important issues.

a) Chew states that the MOST important of the Graham factors is "imminent threat" to officers and/or others.

(1) **Chew** (when compared with Mendoza v. Block, 27 F.3d 1357 (9th Cir.1994) pointed out the difference between a "residential neighborhood" and a "scrap yard." In that a "residential neighborhood" has a greater chance of innocent bystanders being injured than a close scrap yard.

(2) Chew pointed out the distinction between a suspect being a threat to the officer and one who picked up a pipe in a scrap yard to protect himself from a law enforcement canine. In other words, knowingly arming himself against an officer vs. picking up a pipe to attempt to stop an attacking dog.

b) Chew distinguishes between "resisting arrest" and "attempting to evade seizure by flight. The Chew Court opined that a suspect is a greater threat while resisting arrest as opposed to merely trying to escape – attempting to evade seizure by flight.

c) Chew emphasizes that when analyzing the "severity of crime at issue" an officer cannot assume the negative. Meaning, according to Chew, that if all the officers know is that the suspect has three (3) outstanding felony warrants, and the officers do not what the warrants are for, and the officers would have had time to check on the warrants, then the officers cannot escalate their force based solely on the knowledge that the suspect has the outstanding warrants. The reason for this is that if a suspect had outstanding warrants for writing (felony level) bad checks, then this knowledge would not allow the officers to escalate their force. However, if a suspect had outstanding felony warrants for violence related crimes – especially violence toward officers – then the officers, armed with "this" knowledge would be able to escalate to a higher level of force.

d) Chew (when compared to Mendoza) points out the importance of "tense, uncertain, and rapidly evolving" incident.

[This model is a graphical example - and it is NOT legal precedent.] How can these five (5) factors be graphically demonstrated? By using a 0-10 scale for each of the factors, and another for the officer's use of force, the relationship between the factors and the officer's force can be illustrated.

Force Factors:	**None**	**High**
Imminent Threat to Officers/Others	0---1---2---3---4---5---6---7---8---9---10	
Resisting Arrest	0---1---2---3---4---5---6---7---8---9---10	
Circum. Tense, Uncertain, Rapidly Evolv.	0---1---2---3---4---5---6---7---8---9---10	
Severity of the Crime(s) at Issue	0---1---2---3---4---5---6---7---8---9---10	
Attempting to Evade by Flight	0---1---2---3---4---5---6---7---8---9---10	

Officer's Force Used:	**None**	**High**
Level of Force Officer Used	0---1---2---3---4---5---6---7---8---9---10	

h. **Under the 4th Amendment's "objective reasonableness" standard - an officer does not have to be perfect - or choose the least intrusive method to apply force - officer need only be "objectively reasonable**"

1) Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)
2) United States v. Sokolow, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989)
3) Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)
4) Tauke v. Stine, 120 F.3d 1363 (8th Cir. 1997)
5) Warren v. Las Vegas, 111 F.3d 139 (9th Cir. 1997)
6) Elliott v. Leavitt, 99 F.3d 640 (4th Cir. 1996)
7) Salim v. Proulx, 93 F.3d 86 (2nd Cir. 1996)
8) Wilson v. Meeks, 52 F.3d 1547 (10th Cir. 1995)
9) Schultz v. Long, 44 F.3d 643 (8th Cir. 1995)
10) Roy v. Lewiston, 42 F.3d 691 (1st Cir. 1994)
11) Schultz v. Long, 44 F.3d 643 (8th Cir. 1995)
12) Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994)
13) Menuel v. City of Atlanta, 25 F.3d 990 (11th Cir. 1994)
14) Bella v. Chamberlain, 24 F.3d 1251 (10 Cir. N.M. 1994)
15) Plakas v. Drinski, 19 F.3d 1143 (7th Cir. 1994)
16) Scott v. Hendrich, 994 F.2d 1338 (9th Cir. 1992)
17) Cole v. Bone, 993 F.2d 1328 (8th Cir. 1993)
18) Krueger v. Fuhr, 991 F.2d 435 (8th Cir. 1993)
19) Collins v. Nagle, 892 F.2d 489 (6th Cir. 1989)
20) Dyer v. Sheldon, 829 F.Supp. 1134 (D.Neb. 1993)
21) Powell v. Fournet, 846 F.Supp. 1443 (D.Colo. 1994)

4. **Officer's Pre-Seizure Conduct - Reasonableness is to be judged at the moment of the use of force - things that occur before, or after, the moment of the use of force are irrelevant**:

a. **Officer's Pre-Seizure Conduct is Irrelevant**:

1) Napier v. Town of Windham, 187 F.3d 177 (1st Cir. 1999) - "Absent additional authority, we cannot agree that the [officer's] pre-confrontation actions should deprive their later conduct in response to Napier's action of its reasonableness."
2) Mettler v. Whitledge, 165 F.3d 1197 (8th Cir. 1999) - "... no seizure occurred before the shooting began. That being so, we need not address whether the deputies' [prior] conduct constituted an unreasonable seizure."
3) Salim v. Proulx, 93 F.3d 86 (2nd Cir. 1996) - An officer's actions "leading up to the shooting are irrelevant to the objective reasonableness of his conduct at the moment he decided to employ deadly force."

4) Roy v. Lewiston, 42 F.3d 691 (1st Cir. 1994) - Officers are not required to "keep their distance" in the face of a man armed with knives
5) Menuel v. City of Atlanta, 25 F.3d 990 (11th Cir. 1994)
6) Plakas v. Drinski, 19 F.3d 1143 (7th Cir. 1994) - "... Plakas charged [the police officer] with the poker raised. It is from this point on that we judge the reasonableness of the use of deadly force ... We do not return to the prior segments of the event and, in light of hindsight, reconsider whether the prior police decisions were correct."
7) Drewitt v. Pratt, 999 F.2d 774 (4th Cir. 1993)
8) Carter v. Buscher, 973 F.2d 1328 (7th Cir. 1992) - "... pre-seizure [law enforcement] conduct is not subject to Fourth Amendment scrutiny."
9) Fraire v. Arlington, 957 F.2d 1268 (5th Cir. 1992)
10) Greenridge v. Ruffin, 927 F.2d 789 (4th Cir. 1991) - The events that occurred before the officer opened the car door and identified herself to the vehicle's passengers are not probative of the reasonableness of the officer's decision to fire the shot - the events are not relevant
11) Sherrod v. Berry, 856 F.2d 802 (7th Cir. 1988)
12) Ford v. Childers, 855 F.2d 1271 (7th Cir. 1988)
13) James v. Chester, 852 F.Supp. 1288 (D.So.Carol. 1994)
14) Powell v. Fournet, 846 F.Supp. 1443 (D.Colo. 1994)

b. **Officer's Pre-Seizure Conduct is Relevant**:
1) Abraham v. Rasso, 183 F.3d 279 (3rd Cir. 1999)
2) Allen v. Muskogee, 119 F.3d 837 (10th Cir. 1997)

5. **The Force-Recipient's State of Mind is Irrelevant**:
a. Pena v. Leombruni, 200 F.3d 1031 (7th Cir. 1999)
b. Elliott v. Leavitt, 99 F.3d 640 (4th Cir. 1996)

6. **Facts Unknown to the Officer**:
a. Milstead v. Kibler, 243 F.3d 157 (4th Cir. 2001). [Officer intentionally shoots - but shoots the wrong person, but did so "reasonably".]
1) The Court held that the deputy's use of deadly force against person who emerged from residence, who he understandably believed under circumstances to be intruder, but who was in fact the victim, was reasonable, and did not violate the victim's 4th Amendment rights.
2) In determining whether the officer's use of force was justified under the 4th Amendment, objective facts must be filtered through the lens of the officer's perceptions at the time of the incident in question; this limits second-guessing the reasonableness of actions with the benefit of 20/20 hindsight, and limits the need for decision-makers to sort through conflicting versions of the "actual" facts, and allows them to focus instead on what the officer reasonably perceived.

b. McLenagan v. Karnes, 27 F.3d 1002 (4th Cir. 1994) - the reasonableness of an officer's conduct where the officer shot a suspect upon receiving a warning from a third person that the suspect had a gun, even though the suspect actually had no weapon.
c. Slattery v. Rizzo, 939 F.2d 213 (4th Cir. 1991) - the Court held that the officer's force was reasonable where an officer could have had probable cause to believe that a suspect posed a deadly threat even though the suspect turned out to be unarmed.
d. Reese v. Anderson, 926 F.2d 494 (5th Cir. 1991) - The fact that no weapon was later found was not relevant to the officer's reasonable belief that the subject was reaching for a weapon.

7. **Deadly Force - Deadly force may be used to effect a seizure, when necessary**:
a. To protect officers or others from immediate danger of death or serious physical injury:
1) Wood v. City of Lakeland (FL), 203 F.3d 1288 (11th Cir. 2000) - a mentally disturbed man with a sharp-edged box cutter.
2) Pena v. Leombruni, 200 F.3d 1031 (7th Cir. 1999) - a man acting strange - with a concrete slab
3) Mettler v. Whitledge, 165 F.3d 1197 (8th Cir. 1999) - a man shot a police dog
4) Sigman v. Town of Chapel Hill, 161 F.3d 782 (4th Cir. 1998) - a man with a knife

5) Colston v. Barnhart, 130 F.3d 96 (5th Cir. 1997) - during a minor traffic stop, an unarmed man (the passenger) knocked two (2) officers to the ground and moved in the direction of a police vehicle where a shotgun was located.
6) Montoute v. Carr, 114 F.3d 181 (11th Cir. 1997) - a man carrying a shotgun while running from police officer was perceived by the court as a "present threat" rather than a "fleeing person"
7) Elliott v. Leavitt, 99 F.3d 640 (4th Cir. 1996) - a handcuffed, but armed, suspect
8) Salim v. Proulx, 93 F.3d 86 (2nd Cir. 1996) - a juvenile grabbed for officer's gun
9) Reynolds v. County of San Diego, 84 F.3d 1162 (9th Cir. 1996) - a man with a knife
10) Wilson v. Meeks, 52 F.3d 1547 (10th Cir. 1995) - a man with a handgun
11) Roy v. Lewiston, 42 F.3d 691 (1st Cir. 1994) - intoxicated man with two (2) steak knives

b. To prevent the escape of a dangerous suspect - fleeing felon deadly force - U.S. Supreme Court Standard - Tennessee v. Garner, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985).
1) The Garner Court reasoned that the state's interest in law enforcement does not outweigh the unarmed, non-dangerous suspect's interest in life. Consequently, this dictate may require officers to permit some suspects to escape.
2) **"The Garner "Fleeing Felon Rule"** - "The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead." Garner,105 S.Ct., at 1701.
3) Garner requirements - in order for an officer (under Garner) to use deadly force against a fleeing felon:
   a) Deadly Force Defense Standard - The suspect must **threaten the officer with a weapon** OR
   b) Fleeing Felon Standard - all three (3) elements must be present simultaneously:
      (1) The officer must have **probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm**;
      (2) The use of deadly force is **NECESSARY** to prevent the suspect's escape; AND
      (3) The officer must give some **WARNING** of the imminent use of deadly force - if feasible.
4) Garner progeny:
   a) See generally:
      (1) Scott v. Clay County, TN, 205 F.3d 867 (6th Cir. 2000) - During a pursuit, a fleeing motorist posed a danger with the vehicle. The officer's bullet struck the passenger in fleeing motorist's vehicle.
      (2) Forrett v. Richardson, 112 F.3d 416 (9th Cir. 1997) - A burglary suspect shot a victim during the burglary. Then the burglary suspect fled - while unarmed. The court found that "... the suspect need to not be armed or pose an immediate threat to the officers or others at the time of the shooting."
      (3) Smith v. Freland, 954 F.2d 343 (6th Cir. 1992) - An officer shot a fleeing motorist who posed a danger to officers and others with his vehicle during the pursuit.
   b) Failure to give a Garner warning:
      (1) The plaintiff argued that the officer violated the Garner standards by failing to give a warning prior to using deadly force. The Court noted that the officer testified that he gave a warning and that Garner requires a warning only when feasible. The Court ruled that no additional warning was required. Hill v. Jenkins, 620F.Supp. 272 (N.D.Ill. 1985).
      (2) The officer used the words "halt police" rather than "halt or I'll shoot." In a footnote the Court stated that Garner requires only "some warning" that deadly force would be used. Pruitt v. Montgomery, 771 F.2d 1475 (11th Cir. 1985).

(3) In a shooting case - a police officer who entered a dark hallway of a private residence at 2:45 a.m., and who failed to give any indication of his identify was more than merely negligent and could be held liable in civil rights actions for use of excessive force against shooting victim. Yates v. City of Cleveland, 941 F.2d 444 (8th Cir. 1991).

c) The Court held that the city was liable to the suspect for the officer's intentional firing of shotgun at the suspect's legs in an attempt to stop suspect from fleeing from alleged burglary site, pursuant to city's deadly force policy, where officer did not have probable cause to believe the suspect posed physical threat to himself or to others, or that suspect had committed a crime involving the infliction or threatened infliction of serious physical harm. Pruitt v. Montgomery, 771 F.2d 1475 (11th Cir. 1985).

d) Garner standard also applies to self-defense (by officer). Reed v. Hoy, 909 F.2d 324, 329 (9th Cir. 1989).

e) A Fourth Amendment seizure for purposes of Garner is not affected if the officer's shot missed the suspect who was later killed when struck by a moving vehicle. Cameron v. City of Pontiac, 623 F.Supp. 1238 (D.C. Mich. 1985).

f) The killing of a burglary suspect by a trained police dog did not constitute the use of deadly force. The Court found that death by a police dog is an extreme and unusual aberration and that, in fact, the use of police dogs is more likely to result in an officer not having to use deadly force. Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988).

c. **Road Blocks can be Deadly Force** - Brower v. County of Inyo, et al, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989). Deadly force includes police pursuit tactics such as ambush road blocks.

d. State Statutes - Deadly Force:

(1) Fitzgerald v. Patrick, 927 F.2d 1037 (8th Cir. 1991). In dismissing a §1983 claim for use of deadly force, the Court held that the officers were entitled to summary judgment where the use of deadly force was objectively reasonable under a state statute authorizing the use of deadly force by peace officers.

(2) Ansley v. Heinrich, 925 F.2d 1339 (11th Cir. 1991). The Ansley Court concluded that whether deadly force is reasonably necessary under state law is an issue of fact for the jury to determine. The Court assumed that officers owed no duty to refrain from using deadly force when such force is justified under state statutes.

e. Departmental Regulations - Policy Violations:

1) Claybrook v. Birchwell, 199 F.3d 350 (6th Cir. 2000) - In a 14th Amendment accidental shooting context - "even if ... the actions of the [officer's] violated departmental policy or were otherwise negligent, no rational fact finder could conclude ... that those peace enforcement operatives acted with conscience-shocking malice or sadism towards the unintended shooting victim." Claybrook, at 360.

2) Mettler v. Whitledge, 165 F.3d 1197 (8th Cir. 1999)

3) Warren v. Las Vegas, 111 F.3d 139 (9th Cir. 1997)

4) Salim v. Proulx, 93 F.3d 86 (2nd Cir. 1996)

5) Wilson v. Meeks, 52 F.3d 1547 (10th Cir. 1995)

6) Scott v. Henrich, 39 F.3d 912 (9th Cir. 1994)

7) Drewitt v. Pratt, 999 F.2d 774 (4th Cir. 1993)

8) Carter v. Buscher, 973 F.2d 1328 (7th Cir. 1992)

9) Smith v. Freland, 954 F.2d 343 (6th Cir. 1992)

10) Greenridge v. Ruffin, 927 F.2d 789 (4th Cir. 1991)

11) Murphy v. City of Minneapolis, 292 N.W.2d 751 (Minn. 1990).

a) State laws establish statutory privilege to use deadly force as a defense to common law battery, but not to negligence.

b) Even where force is justified under a statute, however, "negligence" can be proven by showing an officer violated a departmental regulation governing the use of force.

12) Bedley v. State, 189 Ga. App. 374 S.E.2d 841 (Ga. App. 1988). In a criminal battery case, a defendant officer was convicted of simple battery for slapping a prisoner. A departmental manual defining justification for force was admissible into evidence.

f. **Officer Putting Him/Herself in Dangerous Position**:

1) Quezada v. County of Bernalillo, 944 F.2d 710 (10th Cir. 1991). An officer may be held liable, under common law negligence principles, for putting himself in a situation which requires him/her to use deadly force against an armed, suicidal citizen:

a) Facts - A deputy sheriff stood in an open area of a parking lot while trying to "talk down" a suicidal woman seated in her car with a loaded gun. When the woman raised the gun and took aim at the deputy, he shot and mortally wounded her.

b) Holding - The district court judge (in a bench trial) concluded that the deputy was negligent and that his negligence was the sole cause of the woman's death. In affirming this portion of the district court's decision, the 10th Cir. Court of Appeals reasoned that the deputy, by standing in the open and disregarding his own safety, "forced the deadly confrontation" which resulted.

8. **Officer Shooting at Motor Vehicle**:

a) Fisher v. City of Memphis, 234 F.3d 312 (6th Cir. 2000) - Officer's intentional act of firing at a vehicle that was approaching him in order stop the vehicle and its passengers constituted "seizure" of vehicle's passengers, and injured passenger's resulting § 1983 action against officer was properly analyzed under the 4th Amendment, vehicle was the intended target of the officer's intentionally applied exertion of force.

9. **Uninjured Plaintiffs**:

a. Ingram v. City of Columbus, 185 F.3d 579, 597 (6th Cir.1999). Regardless of whether the suspect's injuries left physical marks or caused extensive physical damage, he can still successfully allege that officers used excessive force against him.

b. Foster v. Metropolitan Airports Commission, 914 F.2d 1078 (8th Cir. 1990):

1) Facts - Plaintiff parked his car in a busy airport loading zone and refused to move his car after being ordered to do so by an officer. As officers attempted to arrest plaintiff, he clung to the door of his car. He was removed, handcuffed, and taken inside the airport.

2) Decision - The Court held that plaintiff's claim that he was pushed twice against a wall does not give rise to a constitutional claim of excessive force where he sustained no injury.

3) Decision - The Court after concluding the officers were justified in using force to overcome plaintiff's resistance went on to affirm the summary judgment dismissing plaintiff's additional claim that the officers "roughed him up" by pushing him against a wall after his arrest.

4) "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment." Foster, at 1982.

c. Gray v. Spillman, 925 F.2d 90 (4th Cir. 1991). The mere fact that a plaintiff did not sustain a significant injury does not, by itself, defeat an excessive force claim.

d. Johnson v. Morris, 453 N.W.2d 31 (Minn. 1990). The insignificance of an injury, however, may be relevant to a judge's pretrial summary judgment and qualified immunity determinations. Where the facts giving rise to the need for the use of force are not in dispute, the lack of any injury demonstrating that the force used was disproportionate to the need enhances the possibility a judge will find no excessive force as a matter of law.

e. Ortega v. Schramm, 922 F.2d 684 (11th Cir. 1991). A deputy sheriff received a tip from an "informant" who claimed to have seen a human arm protruding from the trunk of an automobile in plaintiff's filing station. After hours of surveillance, the deputy decided to conduct a search of the premises. The Court held that the deputy violated the Fourth Amendment's proscription against unreasonable force where he: (1) did not first identify himself as a police officer before entering the premises; (2) entered the station by shooting the lock off the door with a shotgun; (3) held plaintiff at gunpoint while searching the premises; and (4) marched the plaintiff at gunpoint from the gas station.

f. Barlow v. Ground, 943 F.2d 1132 (9th Cir. 1991). The jury could properly find that an officer's use of pain compliance techniques before a suspect posed an immediate threat to the arresting officers was excessive force.

10. **Minimal Application of Force**:
    a. Bauer v. Norris, 713 F.2d 408 (8th Cir. 1983). "[T]he use of any force by officers simply because a suspect is argumentative, contentions or vituperative is not to be condoned." Bauer at 412, quoting Agee v. Hickman, 490 F.2d 210, 212 (8th Cir.) cert. denied, 417 U.S. 972 (1974).
    b. United States v. Harrison, 671 F.2d 1159 (8th Cir. 1982). Seemingly minimal applications of force may be viewed as excessive in the absence of any need for force.
11. **Arrestee's Right of Self Defense**:
    a. An arrestee has the right to use reasonable force only in self-defense against an officer who is using excessive force during a lawful arrest. State v. Wright, 310 Or. 430, 799 P.2d 642 (1990), aff'g, 100 Or. App. 22, 784 P.2d 445 (1989).
    b. Striking a police officer who was using excessive force while attempting to arrest another was only justified to save the other from death or serious bodily injury. The state had abolished the right to resist an unlawful arrest, but retained a limited right of self-defense against excessive force amounting to a threat of serious injury. Commonwealth v. French, 396 Pa. Super. 436, 578 A.2d 1292 (1990).
12. **Specific Weapons**:
    a. **Batons**:
        1) An inebriated arrestee resisted and the officer hit him on the knee in self-defense with a "power chop" from a heavy baton. An instruction at the onset of trial that the arrest was lawful was not prejudicial and the court's refusal to admit a videotape of defendant's training in the use of the weapon was at most harmless error where there was other evidence that it was unauthorized. Fronk v. Meager, 417 N.W.2d 807 (N.D. 1987).
    b. **Brandishing of Firearms**:
        1) A state tort claim that an officer displayed a weapon during an arrest was not actionable since a display of force is legal in Texas where no immediate threat of use of the weapon occurred. Hinojosa v. City of Terrell, Texas, 834 F.2d 1223 (5th Cir. 1988), superseded by, 864 F.2d 401 (5th Cir. 1989), cert. denied, 110 S.Ct. 80 (1989).
        2) A plaintiff who was mistakenly arrested for selling stolen goods made an assault claim based on the fact that drawn guns were brandished during the arrest. The plaintiff's claim failed since "the threatened use of force" was not "clearly excessive" unless accompanied by "verbal threats" or other mistreatment. Jackson v. District of Columbia, 412 A.2d 948 (D.C. 1980).
    c. **Chemical Agents**:
        1) In a police chief's use of mace on a subject, it was found that the police chief was personally entitled to qualified immunity, but as the chief of police of the city, the chief enjoyed sufficient policy making authority to create municipal liability. There were questions under the fourth amendment as to the chief's reasonableness of the use of the mace without warning and the reasonableness of the length and manner of the use of the mace. Lester v. City of Rosedale, Mississippi, 757 F.Supp. 741 (N.D.Miss. 1991).
        2) A plaintiff who was resisting arrest, had to be removed from his position on a car trunk and was maced to facilitate handcuffing. The plaintiff was maced again when he resisted entry into a police car. The Court said "If anything, it was fortunate for plaintiff [that] the officers used mace, rather than more severe physical methods." Jackson v. City of Baton Rouge, 286 So.2d 743 (La.Ct.App. 1973).
    d. **Handcuffs**:
        1) Kostrzewa v. City of Troy, 247 F.3d 633(6th Cir. 2001) - Even though the cuffs were on the loosest possible setting, overly tight application of handcuffs on a nonviolent detainee might be an excessive use of force, in the absence of any indication that detainee would resist or attempt to flee.
        2) Martin v. Heideman, 106 F.3d 1308, 1312-13 (6th Cir.1997) - excessive force claims can be maintained for cuffing an individual's wrists too tightly.

3) Walton v. City of Southfield, 995 F.2d 1331, 1342 (6th Cir.1993) - excessive force claims can be maintained for cuffing an individual's wrists too tightly.
4) The use of handcuffs is discretionary, but unreasonable and therefore the use of the handcuffs precludes immunity. The key issues are that Ospina was not a threat under the Graham analysis. The use of the handcuffs was discretionary. The officer caused "excruciating pain" and "continuing serious medical problems" by the application of the handcuffs. Ospina v. Department of Corrections, State of Delaware, 769 F.Supp. 154 (D.Del. 1991).
5) A plaintiff's claim against an officer of reckless and negligent handcuffing was subject to the intentional torts statute of limitations since the act involved "intentional contact" and was an intentional battery - offensive touching. Love v. City of Port Clinton, 37 Ohio St.3d 98, 524 N.E.2d 166 (1988).
6) Plaintiff states that the handcuffs were put on in an abusive manner and that she was physically injured in the arrest. A witness stated that when the policemen handcuffed Mrs. Hansen he was rough and abusive to her person and I (the witness) was upset at the treatment she was receiving. The plaintiff had bruises on her wrist and under her upper arm and she complained of pain in her little finger and upper arm. The Court stated "[v]iewing the facts in the light most favorable to Hansen [the Plaintiff], the officers used excess force on Hansen by unreasonably injuring her wrist and arm as they handcuffed her. If Hansen is believed, the police officers' actions were objectively unreasonable in light of facts and circumstances confronting them. Based on the record, the district court improperly granted summary judgment for the officers." Hansen v. Black, 885 F.2d 642 (9th Cir. 1989).

e. **Knives/Edged Weapons**:
1) The decedent advanced toward the officers with a machete that had a 24-inch blade, the decedent raised the machete after ignoring warnings to drop it, and the decedent got within four to six feet of the officers before the decedent was shot. The court found as a matter of law that the use of deadly force was reasonable. Rhodes v. McDaniel, 945 F.2d 117 (6th Cir. 1991).

(Bench Opinion) OCTOBER TERM, 2006 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SCOTT *v.* HARRIS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 05 – 1631. Argued February 26, 2007 – Decided April 30, 2007

Deputy Timothy Scott, petitioner here, terminated a high-speed pursuit of respondent's car by applying his push bumper to the rear of the vehicle, causing it to leave the road and crash. Respondent was rendered quadriplegic. He filed suit under 42 U. S. C. §1983 alleging, *inter alia*, the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. The District Court denied Scott s summary judgment motion, which was based on qualified immunity. The Eleventh Circuit affirmed on interlocutory appeal, concluding, *inter alia*, that Scott s actions could constitute deadly force under *Tennessee* v. *Garner*, 471 U. S.

1; that the use of such force in this context would violate respondent s constitutional right to be free from excessive force during a seizure; and that a reasonable jury could so find.

Held: Because the car chase respondent initiated posed a substantial and immediate risk of serious physical injury to others, Scott s attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. Pp. 3 13. (a) Qualified immunity requires resolution of a threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer s conduct violated a constitutional right? *Saucier* v. *Katz*, 533 U. S. 194, 201. Pp. 3 4.

(b) The record in this case includes a videotape capturing the events in question. Where, as here, the record blatantly contradicts the plaintiff s version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion. Pp. 5 8.

(c) Viewing the facts in the light depicted by the videotape, it is clear that Deputy Scott did not violate the Fourth Amendment.

Pp. 8 – 13.

(i) *Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer s actions constitute deadly force. The Court there simply applied the Fourth Amendment s reasonableness test to the use of a particular type of force in a particular situation. That case has scant applicability to this one, which has vastly different facts. Whether or not Scott s actions constituted deadly force, what matters is whether those actions were reasonable. Pp. 8 – 10.

(ii) In determining a seizure s reasonableness, the Court balances the nature and quality of the intrusion on the individual s Fourth Amendment interests against the importance of the governmental interests allegedly justifying the intrusion. *United States* v. *Place*, 462 U. S. 696, 703. In weighing the high likelihood of serious injury or death to respondent that Scott s actions posed against the actual and imminent threat that respondent posed to the lives of others, the Court takes account of the number of lives at risk and the relative culpability of the parties involved. Respondent intentionally placed himself and the public in danger by unlawfully engaging in reckless, high-speed flight; those who might have been harmed had Scott not forced respondent off the road were entirely innocent. The Court concludes that it was reasonable for Scott to take the action he did. It rejects respondent s argument that safety could have been assured if the police simply ceased their pursuit. The Court rules that a police officer s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. Pp. 10 – 13. 433 F. 3d 807, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. GINSBURG, J., and BREYER, J., filed concurring opinions. STEVENS, J., filed a dissenting opinion.

U.S. Supreme Court

Tennessee v. Garner, 471 U.S. 1 (1985)

No. 83-1035 Argued October 30, 1984 Decided March 27, 1985*

471 U.S. 1

Syllabus

A Tennessee statute provides that, if, after a police officer has given notice of an intent to arrest a criminal suspect, the suspect flees or forcibly resists, "the officer may use all the necessary means to effect the arrest." Acting under the authority of this statute, a Memphis police officer shot and killed appellee-respondent Garner's son as, after being told to halt, the son fled over a fence at night in the backyard of a house he was suspected of burglarizing. The officer used deadly force despite being "reasonably sure" the suspect was unarmed and thinking that he was 17 or 18 years old, and of slight build. The father subsequently brought an action in Federal District Court, seeking damages under 42 U.S.C. § 1983 for asserted violations of his son's constitutional rights.

The District Court held that the statute and the officer's actions were constitutional. The Court of Appeals reversed.

Held: The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, nondangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Pp. 497 U. S. 7-22.

Page 471 U. S. 2

(a) Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interests in effective law enforcement. This balancing process demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. Pp. 471 U. S. 7-12.

(b) The Fourth Amendment, for purposes of this case, should not be construed in light of the common law rule allowing the use of whatever force is necessary to effect the arrest of a fleeing felon. Changes in the legal and technological context mean that that rule is distorted almost beyond recognition when literally applied. Whereas felonies were formerly capital crimes, few are now, or can be, and many crimes classified as misdemeanors, or nonexistent, at common law are now felonies. Also, the common law rule developed at a time when weapons were rudimentary. And, in light of the varied rules adopted in the States indicating a long-term movement away from the common law rule, particularly in the police departments themselves, that rule is a dubious indicium of the constitutionality of the Tennessee statute. There is no indication that holding a police practice such as that authorized by the statute unreasonable will severely hamper effective law enforcement. Pp. 471 U. S. 12-20.

(c) While burglary is a serious crime, the officer in this case could not reasonably have believed that the suspect -- young, slight, and unarmed -- posed any threat. Nor does the fact that an unarmed suspect has broken into a dwelling at night automatically mean he is dangerous. Pp. 471 U. S. 20-22.

710 F.2d 240, affirmed and remanded.

WHITE, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which BURGER, C.J., and REHNQUIST, J., joined, *post* p. 471 U. S. 22.

U.S. Supreme Court

Graham v. Connor, 490 U.S. 386 (1989)

No. 87-6571 Argued February 21, 1989 Decided May 15, 1989

490 U.S. 386

Syllabus

Petitioner Graham, a diabetic, asked his friend, Berry, to drive him to a convenience store to purchase orange juice to counteract the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead. Respondent Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store, followed Berry's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store. Respondent backup police officers arrived on the scene, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. During the encounter, Graham sustained multiple injuries. He was released when Conner learned that nothing had happened in the store. Graham filed suit in the District Court

under 42 U.S.C. § 1983 against respondents, alleging that they had used excessive force in making the stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983." The District Court granted respondents' motion for a directed verdict at the close of Graham's evidence, applying a four-factor test for determining when excessive use of force gives rise to a § 1983 cause of action, which inquires, *inter alia*, whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. *Johnson v. Glick*, 481 F.2d 1028. The Court of Appeals affirmed, endorsing this test as generally applicable to all claims of constitutionally excessive force brought against government officials, rejecting Graham's argument that it was error to require him to prove that the allegedly excessive force was applied maliciously and sadistically to cause harm, and holding that a reasonable jury applying the *Johnson v. Glick* test to his evidence could not find that the force applied was constitutionally excessive.

Held: All claims that law enforcement officials have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard. Pp. 490 U. S. 392-399.

(a) The notion that all excessive force claims brought under § 1983 are governed by a single generic standard is rejected. Instead, courts must identify the specific constitutional right allegedly infringed by the challenged application of force, and then judge the claim by reference to the specific constitutional standard which governs that right. Pp. 490 U. S. 393-394.

(b) Claims that law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are most properly characterized as invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable seizures," and must be judged by reference to the Fourth Amendment's "reasonableness" standard. Pp. 490 U. S. 394-395.

(c) The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Pp. 490 U. S. 396-397.

(d) The *Johnson v. Glick test* applied by the courts below is incompatible with a proper Fourth Amendment analysis. The suggestion that the test's "malicious and sadistic" inquiry is merely another way of describing conduct that is objectively unreasonable under the circumstances is rejected. Also rejected is the conclusion that, because individual officers' subjective motivations are of central importance in deciding whether force used against a convicted prisoner violates the Eighth Amendment, it cannot be reversible error to inquire into them in deciding whether force used against a suspect or arrestee violates the Fourth Amendment. The Eighth Amendment terms "cruel" and "punishment" clearly suggest some inquiry into subjective state of mind, whereas the Fourth Amendment term "unreasonable" does not. Moreover, the less protective Eighth Amendment standard applies only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. Pp. 490 U. S. 397-399.

827 F.2d 945, vacated and remanded.

REHNQUIST, C.J., delivered the opinion of the Court, in which WHITE, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and concurring in the judgment, in which BRENNAN and MARSHALL, JJ., joined, *post*, p. 490 U. S. 399.

Law Enforcement Canine Use-of-Force Research

I. **Canine - Law Enforcement Use-of-Force Cases**:

A. **Federal Circuit Cases**:

1. Fikes v. Cleghorn, 47 F.3d 1011 (9th Cir. 1995) (Decided Feb. 17, 1995) - The Court stated that the use of the dog was appropriate and was not the use of deadly force. However, the dog was not the use of deadly force because of a lack of plaintiff's evidence and the fact that the officer's had the dog under tight control.
2. Sebulsky v. City of Riverside, 46 F.3d 1145 (9th Cir. 1995) **[UNPUBLISHED DECISION]** 1995 WL 45663 (9th Cir. (Cal.) Feb. 3, 1995) (No. 93-56542) - Court granted qualified immunity in the use of law enforcement canine because the law was not clearly established at the time the canine was used.
3. Shannon v. City of Costa Mesa, 46 F.3d 1145 (9th Cir. 1995) **[UNPUBLISHED DECISION]** 1995 WL 45723 (9th Cir. (Cal.) Feb. 3, 1995)(No. 93-56542).
4. Duvall v. City of Santa Monica, 42 F.3d 1399 **[UNPUBLISHED DECISION]** 1994 wl 684501 (9th Cir. (Cal.) Dec. 7, 1994)(No. 93-56548) - In a case where officers were bringing a man into custody for mental reasons - in that the man had threatened to kill others and himself. The officers had a canine enter a darkened room where the officers knew the man was hiding with a gun. The court held that even if the use of the dog was deadly force (the court did not say that it was), that the use of the dog was Constitutionally permissible (objectively reasonable) **AS A MATTER OF LAW**.
5. Matthews v. Jones, 35 F.3d 1046 (6th Cir. (Ky.) Sept. 20, 1994) (No. 93-5249). Matthews followed the holding in Robinette in that the use of the canine was appropriate and was not the use of deadly force.
6. Chew v. Gates, 27 F.3d 1432 (9th Cir. (Cal.) June 27, 1994)
   a) Probably the most important aspect of Chew is its detailed analysis, and narrowing, of Graham. Chew restricts the Graham factors on several important issues.
   b) "Where the city equips its police officers with potentially dangerous animals, and evidence is adduced that those animals inflict injury in a significant percentage of the cases in which they are used, a failure to adopt a departmental policy governing their use, or to implement rules or regulations regarding the constitutional limits of that use, evidences a "deliberate indifference" to constitutional rights. Under such circumstances, a jury could, and should, find that Chew's injury was caused by the city's failure to engage in any oversight whatsoever of an important departmental practice involving the use of force." Chew, at 1445.
   c) [W]e continue to assume that departmental policy authorized the use against all concealed suspects of dogs trained to search for and apprehend persons by biting and seizing them." Chew, at 1446.
   d) "When the incident that led to the filing of this lawsuit occurred, the use of police dogs to search for and apprehend fleeing or concealed suspects constituted neither a new nor a unique policy. The practice was long-standing, widespread, and well-known. No decision of which we are aware intimated that a policy of using dogs to apprehend concealed suspects, even by biting and seizing them, was unlawful." Chew, at 1447.
   e) "See Robinette v. Barnes, 854 F.2d 909 (6th Cir.1988) (holding that use of police dog trained to bite a suspect's arm or other available limb to apprehend a burglary suspect hiding in a darkened building was constitutional). We are certain that Robinette is not consistent with the law of this circuit today, see supra note 10, and seriously doubt whether we would ever have reached a similar result." Chew, at 1447.
   f) "We conclude that as of the time Chew was bitten by Volker the Los Angeles Police Department's longstanding policy regarding the training and use of police dogs did not contravene clearly established law." Chew, at 1448.

g) "[W]e conclude that it was not clearly established that the use of dogs to search for, bite, and seize hiding suspects was either deadly force or unreasonable force. Thus we need proceed no further." Chew, at 1449.

h) "The public has a right to know how the Los Angeles Police Department is training and using dogs that are capable of killing or maiming human beings--to know whether the City is acting within the law. In addition, the appellant, who was seriously injured, has a right to compensation if the police department has acted in an unconstitutional manner." Chew, at 1451.

7. Mendoza v. Block, 27 F.3d 1357 (9th Cir. (Cal.) May 31, 1994). The use of a police dog to find, bite, and hold a bank robbery suspect who was believed to be armed was objectively reasonable.
8. Burrows v. City of Tulsa, (Unpublished Opinion) 25 F.3d 1055, 1994 WL 232169 (10 Cir. June 1, 1994). The question before the court was whether the biting of a suspect by a police dog after the suspect was handcuffed was a Fourth Amendment or a Fourteenth Amendment issue? The Court found that it was a Fourth Amendment issue. The dog bit a hiding suspect on the buttocks, then in the head, and then on the arm.
    a) "Plaintiff's expert, a dog trainer who had once trained police dogs for the City, testified that under the circumstances, it was improper for Officer Calhoun to put Schafer over the fence and let him go without first warning plaintiff and giving him an opportunity to surrender." Burrows.
9. Mellen v. County of Los Angeles, (Unpublished Opinion) 19 F.3d 28, 1994 WL 68251 (9th Cir. (Cal.) March 3, 1994). Reversal of a discovery sanction against plaintiff's attorneys (Robert Mann and Donald Cook) in a dog bite case.
10. Clark v. County of Los Angeles, (Unpublished Opinion) 19 F.2d 26, 1994 WL 68252 (9th Cir. (Cal.) March 3, 1994). Reversal of a discovery sanction against plaintiff's attorneys (Robert Mann and Donald Cook) in a dog bite case.
11. Grant v. City of Los Angeles, (Unpublished Opinion) 19 F.3d 27, 1994 WL 46313 (9th Cir. (Cal.) February 15, 1993).
    a) "The lower court concluded "that the dog bites did not constitute unconstitutionally excessive force in light of the circumstances, namely, the apprehension of a suspect in a violent felony involving a deadly weapon, who had just led the police on a dangerous high-speed chase and who resisted arrest by attempting to flee into a residential neighborhood."
    b) If a person has suffered no constitutional injury at the hands of the individual officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point. The Court agreed that "absent any constitutional violations there can be no Monell liability."
12. West v. Robert Raimond, (Unpublished Opinion) 8 F.3d 823, 1993 WL 415171 (4th Cir. (Md.) October 19, 1993). A jury found for the police officer in a case where a police dog was used to apprehend to fleeing motorcyclist (from a speeding violation). After the motorcycle ran into a squad car, the man tried to flee. A dog was used to apprehend the man. The Court of Appeals affirmed.
13. Kopf v. Skyrm, 993 F.2d 374 (4th Cir. May 7, 1993). The lower court excluded testimony of plaintiff's canine use of force expert in a 42 U.S.C.§1983 case. The Circuit Court said that the lower court "abused its discretion" by excluding the canine expert. The Circuit Court said "A dog is a more specialized tool that a gun or slapjack. How to train a poodle to sit or roll over is not everyday knowledge and could be explained by an expert in a case where it was relevant. How to train and use a police dog are even more obscure skills." Kopf, at 379.
14. Marley v. City of Allentown, 774 F.Supp. 343 (E.D.Pa. 1991), aff'd, 961 F.2d 1567 (3d Cir. 1992):
    a) Facts - Upon seeing improper license plate, Officer signalled Driver to pull vehicle over to side of road. Instead of stopping, Driver sped away. Eventually Driver got out of his car and fled on foot. Officer arrived at abandoned car, and ordered his police dog to pursue the Driver. The dog stopped the Driver by biting him on his right thigh and calf.
    b) The Officer "should have been aware of the constitutional constraints enunciated in Garner, and it was not objectively reasonable for him to think that unleashing a trained attack dog to apprehend a

fleeing misdemeanant comported with those constraints. Therefore, he is not entitled to qualified immunity." Marley v. City of Allentown, 774 F.Supp. 343, 345-6 (E.D.Pa. 1991).

c) Held - That it was not objectively reasonable for officer to think that using trained attack dog to apprehend fleeing misdemeanant comported with constitutional constraints on use of deadly force (Garner), and officer was not entitled to qualified immunity.

d) Headnotes:

1) Civil Rights 214(6) - Police officer did not have qualified immunity from liability for ordering police dog to pursue suspected misdemeanant who was seriously injured by the dog; it was not objectively reasonable for officer to think that unleashing trained attack dog to apprehend fleeing misdemeanant comported with constitutional constraints on use of deadly force.

2) Civil Rights 244 - In action against police officer who used trained attack dog to apprehend fleeing misdemeanant, it was proper for jury to determine whether force officer used was "deadly."

3) Civil Rights 242(5) - Evidence in action against police officer for violation of arrestee's Fourth Amendment rights by effecting seizure of arrestee's person by using trained attack dog supported finding that officer's actions were objectively unreasonable.

e) Attorneys:

1) Plaintiff - Richard J. Orloski, Orloski & Hinga, Allentown, Pa - Phone - (215) 433-2363

2) Defendant - Edward C. McCardle, Kathryn Wohlsen Mayer, City of Allentown, Solicitor's office, Allentown, Pa

15. Kopf v. Wing, 924 F.2d 265 (4th Cir. 1991). The case involved the following issues:

a) whether a warning was given

b) whether the two bitten suspects were given an opportunity to surrender

c) is the use of a dog that is allowed to bite an unresisting and unarmed suspect multiple times the use of unnecessary force

d) did the law enforcement agency condone excessive force by canines

e) did the agency fail to do a meaningful I.A. investigation

f) the agency had a policy that prevented the taking of pictures of canine bites

16. Gibson v. City of Oakland, California, 902 F.2d 39 (9th Cir. (Cal.) May 7, 1990).

a) "The complaint alleged that Oakland police officers chased Gibson, and eventually cornered him 'in a dug-out underground area ...' underneath a house. Officer Dutra allegedly directed his police dog to attack Gibson. Gibson claims that 'he was mauled by the dog, suffering severe injuries on his legs, shoulders, hands, arms, and groin area.' In addition, it is alleged that 'after attempting to apply a chokehold on plaintiff, Defendant Dutra then shot Plaintiff in the abdomen with his 357 magnum revolver, causing obvious severe injury.'" Gibson at 39.

17. Kinan v. City of Brockton, 876 F.2d 1029, 28 Fed.R.Evid.Serv. 327 (1st Cir. July 12, 1989). Plaintiff brought lawsuit (for among other things) an officer's failure to honor the plaintiff's request for medical care for police canine bite. The Court said that the failure to provide medical care was not so "extreme and outrageous" as to give rise to intentional infliction of emotional distress.

18. Kerr v. West Palm Beach, 875 F.2d 1546, 13 FR Serv 3d 1235 (11th Cir. 1989) - Appellate court upheld a jury verdict against canine officers, city, and police chief for excessive use of force, inadequate training, and inadequate supervision (under Canton)

a) Headnote - Civil Rights 13.14 - Whether city and its former police chief failed adequately to train municipality's canine unit in constitutional use of force, and whether city and former police chief failed to adequately supervise performance of members of canine unit to ensure that both misbehaving dogs and officers exhibiting bad judgment in use of canine force received corrective training, were questions for jury in action brought against police chief and city by suspects injured during course of apprehension by canine unit.

b) Case Problems:

1) Use of canines on serious misdemeanants

2) Lack of adequate training in the constitutional use of canine force

3) Failed to adequately supervise the performance of canine unit members to ensure that both misbehaving dogs and officers exhibiting bad judgment in the use of canine force received corrective training
4) Court mentioned yellow stickers on side of squad cars signifying canine apprehensions - also had bigger yellow stickers indicating 50 canine apprehensions

19. Robinette v. Barnes, 854 F.2d 909, 102 ALR Fed. 605 (6th Cir. 1988) - "The use of a properly trained police dog to seize a felony suspect does not constitute deadly force. We also hold that even if the use of a police dog could constitute deadly force, the circumstances of the suspect's apprehension justified the use of such force in this case." Robinette, at 910.
20. U.S. v. Sadosky, 732 F.2d 1388 (1984) - under Terry, stops - "investigative seizures may withstand 4th Amendment scrutiny when they are based upon reasonable articulable suspicion that a person has committed or is about to commit a crime.
21. Peraza v. Delameter, 722 F.2d 1455 (9th Cir. 1984) - the case stated that a department's canine policy is admissible at jury trial.

B. **Federal District Court Cases**:

22. Carita v. Kandianis, (NOT REPORTED) 1994 WL 583213 (E.D.Pa., Oct. 20, 1994)(No. CIV.A. 93-2850). "Aron" the canine was ordered to "tackle" a fleeing handcuffed suspect. Aron tackled the man and did not bite him. The court found that Aron acted exactly as he had been trained and that a fleeing person should expect to be tackled - even if the tackling causes severe injuries.
23. Wickliffe, v. Sharrand, (Not Reported in F.Supp.) Cite as 1994 WL 242739 (D.Kan. May 31, 1994). A canine was used to apprehend a misdemeanant. The only reason the police won (probably) was because the plaintiff did not litigate his case well.
24. White v. City of Taylor, 849 F.Supp. 1186 (E.D. Mich, S.D. April 14, 1994). Officers arrested and handcuffed a suspect. After the suspect was handcuffed and under control, a police dog bit the suspect on the elbow. The officer had received no training and had only received - to read - a few policies on police dogs.
25. Andrade v. City of Burlingame, 847 F.Supp. 760 (N.D. California March 23, 1994).
    a) Headnote "[1] Arrest 35k68(2) - Police officer did not intend to seize suspects with his police dog and, thus, dog's attack of suspects did not violate their Fourth Amendment rights; officer had already stopped suspects when dog escaped police car and bit two suspects without having been ordered to do so by police officers"
    b) Headnote "[4] Civil Rights 78k132.1 - Suspects bitten by police dog failed to establish violation of their civil rights from police officer's failure to control dog, absent proof that officer acted with deliberate indifference to their safety; officer did not intend for dog to leave police car, dog had never previously left police car without being ordered to do so, and dog had history of nonaggression.
    c) Headnote - [6] Civil Rights 78k206(3) - Fact that police dogs were trained to act on their own initiative under certain circumstances, such as danger to police officer, did not alone establish municipal policy or custom that violated suspects' Fourteenth Amendment rights for purposes of§1983 claims against city and police chief concerning police dog attack of suspects.
26. Rose v. City of Los Angeles, 814 F.Supp. 878 (C.D. California January 22, 1993). Civil excessive force case against officers. The police dog allegedly mauled Rose, severing his femoral artery. The police claimed that Rose had a 9mm pistol, which he pointed at the officer while he (Rose) was on the ground being attacked by the dog. The officer states that he had no other choice but to shoot Rose in self-defense.
27. Navratil v. Parker, 726 F.Supp. 800 (D. Colo. 1989) - mere presence of law enforcement canine, while intimidating, is not excessive force; nor does mere presence give rise to common law assault.
28. Banks v. Goines (Not Reported in F.Supp.) Cite as 1989 WL 1838 (E.D.La. 1989). 42 U.S.C. § 1983 claim of excessive force. Allegedly the man was bitten by a New Orleans police dog and suffered severe injuries. Also, the plaintiff claimed that the City was negligent and violated his Constitutional rights by

failing to have any guidelines or standards governing the use of canines during search and arrest operations and by failing to provide safeguards against the exertion of excessive force by officers.

29. Luce v. Hayden, 598 F.Supp. 1101 (D.C.Me. 1984) - An arrestee's claims that a state trooper, after arresting and handcuffing him, intentionally unleashed state police dog upon him, inflicting injury, and that other trooper stood by and permitted such action, stated 42 U.S.C.§1983 cause of action against the troopers sufficient to withstand motion to dismiss.
30. Soto v. City of Sacramento, 567 F.Supp. 662 (E.D. Cal. 1983): A canine bit a suspect during the course of an arrest. The police version of the facts and the suspect's version of the facts differ greatly.
    a) The judge concluded "that the reasonableness of the use of police dogs is to be evaluated in light of all the circumstances surrounding plaintiff's arrest." The judge refused to rule that the use of police dogs is unreasonable per se, that is that any use of a police dog in effectuating an arrest is constitutionally unsound.
    b) The case also touched on allegations of negligent training and supervision when it came to the use of police dogs - to bite.
31. Starstead v. Superior, 533 F.Supp. 1365 (W.D. Wis. 1982) - a case involving multiple dog bites on multiple persons. The questions involved motions to dismiss. The motions to dismiss were denied in regards to the reasonableness of the use of the dogs and to policy and customs claims.
32. Ruiz v. Estelle, 503 F.Supp. 1265 (S.D. Tex. 1980) - use of canine in a jail/prison setting. The case only uses a canine example to illustrate the level of brutality occurring between guards and prisoners.
    a) "Similar abuses have occurred when inmates attempted to escape. Not content with re-capture, TDC [Texas Department of Corrections] officers inflicted their own brand of punishment on these inmates. Several witnesses testified to an incident involving an inmate who was shot and slightly wounded as he attempted to break loose from the Eastham Unit. To avoid the dogs who were tracking him, the inmate climbed a tree. When the pursuing officers and dogs caught up with him, the inmate was ordered to climb down and fight the dogs. The 'fight' continued for several minutes before the dogs were restrained. Afterwards, the inmate was beaten with the dog sergeant's bullwhip. A TDC physician who subsequently treated the inmate testified that his various lacerations were characteristic of dog bites and bullwhip welts." Ruiz, at 1302.

II. **State Court Canine Use-of-Force Cases**:

A. People v. Rodrigues, 8 Cal.4th 1060, 9 Cal.4th 579A, 885 P.2d 1, 36 Cal.Rptr.2d 235 (Cal. Dec. 1, 1994)(No. S007779).
B. Butcher v. Gay, 29 Cal.App.4th 388, 34 Cal.Rptr.2d 771 (Cal.App. 5 Dist., Oct. 18, 1994)(No. F020062).
C. Mahl v. Himel, 93-856 (La.App. 5 Cir. 9/14/94), 1994 WL 498666 - While canine searching a building the canine bit the female owner of the building. The jury believed the plaintiff that she did not hear a warning and the dog bit her without provocation. The jury awarded her $170,989.97. This award was upheld on appeal.
D. State v. Powell, 336 N.C. 762, 446 S.E.2d (N.C., Jul. 29, 1994)(No. 129A93)

III. **Miscellaneous Canine Cases -Cases Where Canine Bit, But Are NOT Use-of-Force (Per Se) Cases**:

A. Weekly v. City of Mesa, Arizona, (Slip Opinion) 888 P.2d 1346, 1994 WL 412048 (Ariz.App.Div. 1 August 9, 1994). This case deals with the issue of having a state statute that makes a dog bite strict liability. Even though Arizona passed a law exempting police dogs from the strict liability statute, the new exception statute was passed AFTER the dog bit the person. The Court ruled that the NEW statute only applied to dog bites occurring AFTER the new statute took effect.
B. Chancellor v. United States, 1 F.3d 438 (6th Cir. August 2, 1993). Suit was brought on behalf of young child under Federal Tort Claims Act (FTCA) to recover for injuries suffered when the boy was bitten by serviceman's dog on military base. The Court ruled that there was not liability on the part of the federal government.
C. People v. Black, (Ordered Not Published) 28 Cal.Rptr.2d 546 (Cal.Ct.App. 2d District June 30, 1994). Man who injured police dog was found guilty (by lower court) of inflicting injury on a police dog. The dog suffered a broken left front tooth from being hit with a large stick but did not require dental

treatment. The Court of Appeals REVERSED the conviction because the jury had not been properly instructed by the judge on the term of "legal justification."

D. Murray v. Leyshock, 915 F.2d 1196 (8th Cir (Missouri) October 3, 1990). The court held that the officer's decision to fire his gun at a guard dog who lunged at him during a drug raid was a discretionary decision, and therefore, the officer was entitled to official immunity from liability under Missouri law.

E. State (of Ohio) v. Thomas, (Not Reported in N.E.2d) Cite as 1990 WL 37787 (Ohio App. Hamilton County - April 4, 1990) - Arrestee was cornered by police dog. When he attempted to run, he was bitten on his hands and face. The officers took a statement from the suspect at the hospital while he was being treated for the dog bites. The suspect wanted to suppress the statements. The Court refused to allow the suppression of the statements.

F. People v. Rivera, 10 Cal.Rptr.2d 785, 8 Cal.Rptr.4th 1000 (Cal. Court of Appeals - First District November 12, 1992). The suspect's detention by a police dog was NOT an arrest - it was a lawful Terry detention. The force applied by the dog to detain the suspect, involving dog's biting and locking his jaws across the top of the suspect's scalp and holding onto the suspect for about 15 seconds, did not transfer lawful detention into arrest requiring probable cause, in view of the officer's reasonable articulable suspicion that the suspect was armed.

G. Cowles Publishing Company v. City of Spokane (WA), 849 P.2d 1271, 21 Media L. Rep. 1539, 69 Wash.App. 678 (Wash. Court of Appeals, Division 3, Panel Four - May 4, 1993). The Court held that police dog contact reports were available to the media.

H. People v. Gittens, 196 A.D.2d 795, 602 N.Y.S.2d 595 (N.Y. Supreme Court, Appellate Division, First Department, September 30, 1993). In criminal defense case of suspect, the use of the police dog must be taken into consideration in determining the suspect's right to use self-defense.

IV. **Canines Used in Robberies and/or Assaults - Canine Construed as "deadly weapon" or "dangerous instrumentality"**:

A. **Canine Used to Commit Armed Robbery**:

1. First degree robbery (equivalent to aggravated robbery) - the defendant used a German Shepherd in the course of a robbery. The dog was found to be a "dangerous instrument", but not a "deadly weapon". The dog was not held to be a "deadly weapon" because under New York statutes a "deadly weapon" is basically defined as a firearm only. People v. Torrez, 86 Misc2d 369, 382 N.Y.2d 233 (1976).
2. Armed robbery with a canine - the appellate court ruled that there was sufficient evidence for the jury to find the dog was a "dangerous weapon" within the armed robbery statute. The court stated a four (4) part test to determine whether an instrument, which is not designed to produce death or serious bodily injury, is a dangerous weapon: (1) whether the instrument under the control of the accused had apparent ability to inflict harm, (2) whether the victim reasonably perceives it as having that capability, (3) whether the instrument reasonably appears capable of inflicting bodily harm, and (4) whether the accused intended, by using the instrument, to elicit fear to further the robbery. Commonwealth v. Tarrant, 367 Mass. 411, 326 N.E.2d 710 (Mass. 1975).

B. **Canine Used to Commit Assault/Battery**:

1. *Assault & Battery of a Police Officer*:
   a. State (of Kansas) v. Bowers, 721 P.2d 268 (Kan. 1986) - A person used two Dobermans to attack a police officer. Under Kansas statutes the use of the canines was the use of a "dangerous instrumentality."
      1) "It may be said a Doberman pinscher is not a deadly weapon per se, but an ordinary object used in a deadly manner is a deadly weapon within the meaning of K.S.A. 21-3414(c). The evidence discloses the Dobermans were used in a manner where by great bodily harm could be inflicted. This was a fact question which the trial court properly submitted to the jury." Bowers, page 274.
2. *Assault & Battery - Not of a Police Officer*:
   a. Aggravated battery with a canine - see 7 A.L.R.4th 607, 608

b. Assault with a dangerous weapon - (German Shepherd) - the appellate court ruled a dog may be a dangerous weapon within the Michigan aggravated assault statute, stating the statute defining "dangerous weapon," is broad and includes any object which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury. People v. Kay, 121 Mich.App. 438, 328 N.W.2d 424 (Mich.App. 1982).

c. Aggravated assault with a canine when the canine did NOT bite - "Whether or not the Doberman pinscher actually bit Mr. Carlisle, the evidence in this case is sufficient to authorize the trial judge to find that, as used, appellant's hands and feet and his use of the dog were deadly weapons." Michael v. State, 160 Ga. App. 48, 286 S.E.2d 314 (1981).

d. Assault with an offensive weapon - New Jersey appellate court ruled that under the facts of the case the defendant's dog was a deadly weapon. Interest of J.R., 165 N.J.Super. 346, 398 A.2d 150 (N.J.Super. 1979).

V. **Wisconsin Statutes - Canine Related**:

A. Wisconsin Statute§174.02 Owner's liability for damage caused by dog; penalties; court order to kill dog

1. **Liability for injury**.

a. *Without notice*. Subject to§895.045 [Contributory negligence], the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, livestock, or property.

b. *After notice*. Subject to§895.045 [Contributory negligence], the owner of a dog is liable for 2 times the full amount of damages caused by the dog injuring or causing injury to a person, livestock, or property if the owner was notified or knew that the dog previously injured or caused injury to a person, livestock, or property.

VI. Wisconsin P.O.S.T. Guidance:

The State of Wisconsin Department of Justice has established the following definition of "deadly force" as it pertains to a law enforcement officer. See letter to Chiefs, Sheriffs and Police Administrators dated November 24, 1992, signed by Pierce T. Purcell, Assistant Attorney General.

"... Our position is that the definition of deadly force in Wisconsin, in a police setting, is the use of any means or instrumentality intended to or likely to cause death.

Our definition of when an officer may use deadly force is that deadly force may be used when the officer reasonably believes it is necessary to prevent death or great bodily harm to himself or to others." ...

VII. **Canine - Treatises Research**:

A. **General Canine Information**:

1. Dogs," Law Enforcement Legal Defense Manual", pages 28 - 33, Brief 79-5
2. Knowledge of animal's vicious propensities, 13 Am Jur Proof of Facts 2d 473
3. Aggravated battery with a canine - see 7 A.L.R.4th 607, 608
4. Marner, Lynn, "Comment: The New Breed of Municipal Dog Control Laws: Are They Constitutional?", 53 University of Cincinnati Law Review 1067 (Westlaw 53 UCINLR 1067), 1984.
5. Sullivan, Sallyanne K., "Special Section: Vicious-Dog Legislation -- Controlling the 'Pit Bull' Banning the Pit Bull: Why Breed--Specific Legislation is Constitutional," 13 University of Dayton Law Review 279 (Westlaw 13 UDTNLR 279), Winter 1988.
6. Thorne, Julie A., "Note: If Spot Bites the Neighbor, Should Dick and Jane Go To Jail?", 39 Syracuse Law Review 1445 (Westlaw 39 SYRLR 1445), 1988.

B. **Canine - Use of Force**:

1. Dell, Louis P., Comment, "Police Attack Dogs: A Dogmatic Approach to Crime Control", 13 Whittier Law Review 515 (Westlaw 13 WTLR 515), (1992).
2. Liability, under 42 USCS section 1983, for injury inflicted by dogs under control or direction of police, 102 ALR Fed. 616.
3. Modern status of rule of absolute or strict liability for dog bite. 51 ALR4th 446.

4. Liability of owner of dog known by him to be vicious for injuries to trespasser. 64 ALR3d 1039.

C. **Canine - Narcotics Detection**:
   1. Use of trained dog to detect narcotics or drugs as unreasonable search in violation of Fourth Amendment, 31 ALR Fed. 931.

D. **Dog Scent Lineups**:
   1. Taslitz, Andrew E., "A Practitioner's Guide to Dog Scent Lineups", Criminal Law Bulletin, pages 218-255.
   2. Taslitz, Andrew E., "Does the Cold Nose Know? The Unscientific Myth of the Dog Scent Lineup," 42 Hastings Law Review 15 (Westlaw 42 HSTLJ 15), November 1990.
   3. Annot., "Dog Scent Discrimination Lineups", 63 A.L.R.4th 143 (1988 & 1990)

E. **Miscellaneous Canine Related Research**:
   1. Pozner, Larry S., "Preparing for the Narc or Try Cops ... Not Clients.

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Police Use of Force, Tasers and Other Less-Lethal Weapons

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This Research in Brief is based primarily on "A Multi-Method Evaluation of Police Use of Force Outcomes," final report to the National Institute of Justice, July 2010, NCJ 231176, available online at http://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf.

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ABOUT THIS REPORT

This study looked at injuries that occur to law enforcement officers and citizens during use-of-force events. Most applications of force are minimal, with officers using their hands, arms or bodies to push or pull against a suspect to gain control. Officers are also trained to use various other force techniques and weapons to overcome resistance. These include less-lethal weapons such as pepper spray, batons or conducted energy devices (CEDs) such as Tasers. They can also use firearms to defend themselves or others against threats of death or serious bodily injuries.

What did the researchers find?

This study found that when officers used force, injury rates to citizens ranged from 17 to 64 percent, depending on the agency, while officer injury rates ranged from 10 to 20 percent. Most injuries involve minor bruises, strains and abrasions.

The study's most significant finding is that, while results were not uniform across all agencies, the use of pepper spray and CEDs can significantly reduce injuries to suspects and the use of CEDs can decrease injuries to officers.

The researchers assert that all injuries must be taken seriously. When police in a democracy use force and injury results, concern about police abuse arises, lawsuits often follow and the reputation of the police is threatened. Injuries also cost money in medical bills for indigent suspects, workers' compensation claims for injured officers or damages paid out in legal settlements or judgments.

What were the study's limitations?

In many cases, agency-supplied injury data did not allow for a detailed analysis of the nature or seriousness of the injuries reported.

Geoffrey P. Alpert, Michael R. Smith, Robert J. Kaminski, Lorie A. Fridell, John MacDonald, and Bruce Kubu

Police Use of Force, Tasers and Other Less-Lethal Weapons

Introduction

Police weaponry has come full circle.

During the middle of the 19th century, police officers in New York and Boston relied on less-lethal weapons, mostly wooden clubs. By late in the century, police departments began issuing firearms to officers in response to better armed criminals. Although firearms are still standard issue, law enforcement agencies are again stressing the use of less-lethal weapons rather than firearms.[1]

The Fourth Amendment forbids unreasonable searches and seizures, and various other legal and policy controls govern how and when officers can use force. Most agencies tightly control the use of force and supervisors or internal affairs units routinely review serious incidents. New technologies have added to the concerns about the use of force by law enforcement.

New technologies raise questions

During the past 20 years, new technologies have emerged that offer the promise of more effective control over resistive suspects with fewer or less serious injuries. Pepper spray was among the first of these newer less-lethal weapons to achieve widespread adoption by police forces, and more recently, conducted energy devices (CEDs) such as the Taser have become popular.

Taser use has increased in recent years. More than 15,000 law enforcement and military agencies use them. Tasers have caused controversy (as did pepper spray) and have been associated with in-custody deaths and allegations of overuse and intentional abuse. Organizations such as Amnesty International and the American Civil Liberties Union have questioned whether Tasers can be used safely, and what role their use plays in injuries and in-custody deaths.

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Several studies found that when agencies adopted the use of pepper spray, they subsequently had large declines in assaults on officers and declines in officer and suspect injury rates, and associated injuries were usually minor. Pepper spray provides a way to reduce injuries.

CEDs such as Tasers produce 50,000 volts of electricity. The electricity stuns and temporarily disables people by causing involuntary muscle contractions. This makes people easier to arrest or subdue. When CEDs cause involuntary muscle contractions, the contractions cause people to fall. Some people have experienced serious head injuries or bone breaks from the falls, and at least six deaths have occurred because of head injuries suffered during falls following CED exposure. More than 200 Americans have died after being shocked by Tasers. Some were normal, healthy adults; others were chemically dependent or had heart disease or mental illness.[2]

Tasers use compressed nitrogen to fire two barbed probes (which are sometimes called darts) at suspects. Electricity travels along thin wires attached to the probes. (A new wireless Taser is also on the market.) Darts may cause puncture wounds or burns. A puncture wound to the eye could cause blindness.[3]

Despite the dangers, most CED shocks produce no serious injuries. A study by Wake Forest University researchers found that 99.7 percent of people who were shocked by CEDs suffered no injuries or minor injuries only. A small number suffered significant and potentially lethal injuries.

This NIJ-sponsored study included six police departments and evaluated the results of 962 "real world" CED uses. Skin punctures from CED probes were common, accounting for 83 percent of mild injuries.[4]

Policymakers and law enforcement officials want to know whether Tasers are safe and effective, and how (if at all) they should be used to match police use-of-force choices with levels of suspect resistance. This study indicates that CED use actually decreases the likelihood of suspect injury.

Previous research on use of force and injuries

The controversy around Taser use is not unique. Law enforcement agencies found themselves in similar circumstances with pepper spray in the 1990s. Human rights groups such as Amnesty International questioned the safety and misuse of pepper spray as its use spread rapidly in American law enforcement agencies. NIJ

funded various studies on the safety and effectiveness of pepper spray.[5]

Some studies have focused on officer injury. Several found that about 10 percent of officers were injured when force was used.[6] However, two studies of major police departments found officer injury rates of 38 and 25 percent.[7] The agencies with lower rates allowed officers to use pepper spray, while the two with higher rates did not.

A few researchers have looked at how various approaches to force affect officer injury rates.[8] Overall, the empirical evidence shows that getting close to suspects to use hands-on tactics increases the likelihood of officer injuries. Research also shows that suspects have a higher likelihood of injury when officers use canines, bodily force or impact weapons such as batons. Alternatives to bodily force and impact weapons are found in other less-lethal weapons such as pepper spray and CEDs.

Previous studies on pepper spray and CEDs

Pepper spray. Law enforcement agencies rapidly adopted pepper spray in the late 1980s and early 1990s as an alternative to traditional chemical agents such as tear gas, but its use sparked controversy. Notably, the American Civil Liberties Union of Southern California asserted that pepper spray was causing in-custody deaths. NIJ studies on the link between pepper spray and in-custody deaths found that the deaths were largely a result of positional asphyxia, pre-existing health conditions or were drug related.[9]

Several studies found that when agencies adopted the use of pepper spray, they subsequently had large declines in assaults on officers and declines in officer and suspect injury rates, and associated injuries were usually minor.[10] Pepper spray provides a way to reduce injuries.

CEDs. Many law enforcement agencies noted that injury rates for officers and suspects declined after they introduced CEDs.[11]

Medical research, including controlled animal trials and controlled human trials, has produced various insights. Some animal studies were conducted to learn if CED

use could result in ventricular fibrillation. Several studies showed that standard shocks that lasted five to 15 seconds did not induce ventricular fibrillation of the heart. Higher discharges, 15 to 20 times the standard, or those of longer duration — two 40-second exposures — induced fibrillation or increased heart rhythm in some pigs. In addition, longer exposures led to ventricular fibrillation-induced death in three pigs.[12]

Controlled studies involving healthy human subjects (often law enforcement trainees) found that subjects experienced significant increases in heart rates following exposure, but none experienced ventricular fibrillation.[13]

NIJ study and recommendations

NIJ gathered an expert panel of medical professionals to study in-custody deaths related to CEDs. In its report, the panel said that while CED use is not risk free, there is no clear medical evidence that shows a high risk of serious injury or death from the direct effects of CEDs. Field experience with CED use shows that exposure is usually safe. Therefore, law enforcement agencies need not avoid using CEDs provided they are used in line with accepted national guidelines.[14]

A preliminary review of deaths following CED exposure found that many are associated with continuous or repeated shocks. There may be circumstances in which repeated or continuous exposure is required, but law enforcement officers should be aware that the associated risks are unknown. Therefore, caution is urged in using multiple activations.[15]

The seeming safety margins of CED use on normal healthy adults may not be applicable to small children, those with diseased hearts, the elderly, those who are pregnant and other at-risk people. The use of CEDs against these populations (when recognized) should be avoided, but may be necessary if conditions exclude other reasonable choices.[16]

A suspect's underlying medical conditions may be responsible for behavior that leads law enforcement officers to subdue him or her. Sometimes this includes CED use. Abnormal mental status in a combative or resistive subject, sometimes called

"excited delirium," may be associated with a risk for sudden death. This should be treated as a medical emergency.[17]

The national survey

The Police Executive Research Forum conducted a survey of state, county and municipal law enforcement agencies to learn more about less-lethal technologies and related policies and training. More than 500 agencies participated.

Most agencies have a "use-of-force continuum" that is covered in training, where officers learn to use suitable force levels depending on circumstances. For example, an officer might start by using verbal commands when dealing with a suspect. Then an officer might move to soft empty-hand tactics (such as pushing) when faced with lack of cooperation or mild resistance. The continuum covers various circumstances up to the use of firearms.

The survey included various levels of resistance and asked agencies to describe what force they allow in each. Most agencies allow only soft tactics against a subject who refuses, without physical force, to comply with commands. Just under half allow officers to use chemical weapons at that point. However, if the subject tensed and pulled when an officer tried to handcuff him or her, most agencies would allow chemical agents and hard empty-hand tactics, such as punching. Many also allow for CED use at this point but about 40 percent do not. Almost three-fourths allow CED use if the suspect flees, and almost all allow it when the subject assumes a boxer's stance. Most agencies do not allow baton use until the subject threatens the officer by assuming the boxer's stance.

Three-fourths of the surveyed agencies that use CEDs issued them between 2004 and 2006. Most are using Tasers. In most agencies, officers receive four or six hours of training, and 63.7 percent of agencies require that officers experience activation (i.e., get shocked) during training.

Most agencies do not allow CED use against a subject who nonviolently refuses to comply with commands. However, six in 10 allow for CED use against a subject who tenses and pulls when the officer tries to handcuff him or her. Agencies usually

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place the CED with chemical agents in their force continuum, meaning that their use is typically approved in the same circumstances in which pepper spray use is allowed. CEDs are usually lower on the continuum than impact weapons.

One facet of the controversy surrounding CED use concerns vulnerable populations and circumstances that pose potentially heightened risk to the subject. For only one circumstance — when a subject is near flammable substances — do most agencies (69.6 percent) ban CED use.

Some 31 percent forbid CED use against clearly pregnant women, 25.9 percent against drivers of moving vehicles, 23.3 percent against handcuffed suspects, 23.2 percent against people in elevated areas and 10 percent against the elderly. However, many agencies, while not forbidding use in these circumstances, do restrict CED use except in necessary, special circumstances.

Analysis of information from specific law enforcement agencies

Looking at the experiences of specific agencies can yield important information that might otherwise be lost in larger analyses. The researchers used various statistical techniques to identify factors that increase or decrease the odds of injury to officers and suspects alike.

Richland County Sheriff's Department. The Richland County Sheriff's Department (RCSD) includes about 475 sworn officers who serve the unincorporated portions of Richland County, S.C. Deputies carry Glock .40 caliber pistols, collapsible metal batons and pepper spray. Increasingly, they also carry the model X-26 Taser. The agency started phasing in Taser use in late 2004. During data collection, about 60 percent of deputies carried Tasers.

Researchers coded 467 use-of-force reports covering the period from January 2005 to July 2006. Of the 49 separate injuries recorded for officers (three officers had more than one injury), 46 involved bruises, abrasions or cuts. The department recorded 92

suspect injuries; 69 of those were bruises, abrasions or cuts. Most of the remaining suspect injuries were dog bites, but three involved broken bones or internal injuries.

Further analysis of the data included identifying how various factors increased or decreased the risk of injury to officers or suspects. The use of soft empty-hand techniques by an officer, active aggression by a suspect and suspect use of deadly force all increased the risk for deputies.

Soft empty-hand control was the most frequent force level used by deputies, occurring in 59 percent of all use-of-force incidents. These techniques increased the odds of officer injury by 160 percent. Thus, deputies were at greatest risk for injury when using the least force possible.

Two variables significantly decreased the risk for suspects. Pepper spray use decreased the odds of suspect injury by almost 70 percent, and a deputy aiming a gun at a suspect reduced injury odds by more than 80 percent (because the act of pointing a gun alone often effectively ends the suspect's resistance).

However, the use of a canine posed, by far, the greatest injury risk to suspects, increasing injury odds by almost 40 fold. Suspects who displayed active aggression toward deputies were also more likely to suffer injuries. CED use had no effect on the likelihood of injury; this is inconsistent with the experiences of other agencies, suggesting that not every agency's experience with the Taser will be the same.

Miami-Dade Police Department. The department has about 3,000 officers, is the largest law enforcement agency in the Southeast and is one of the largest departments that has never issued pepper spray to its officers.[18]

The researchers examined 762 use-of-force incidents involving a lone officer and a lone suspect that occurred between January 2002 and May 2006. About 70 percent of the officers carried Tasers by May 2006. Officers were substantially less likely to be injured than suspects, with 16.6 percent (124) of officers injured and 56.3 percent (414) of suspects injured. Most injuries were minor, but 73 suspects (17 percent)

suffered serious injuries. Minor injuries included bruises, sprains and lacerations. Major injuries included bites, punctures, broken bones, internal injuries and gunshot wounds.

The department does not issue pepper spray to its line officers, and there were few incidents involving guns or batons. Analysis of the incidents found that the use of both soft-hand tactics and hard-hand tactics by officers more than doubled the odds of officer injury. Conversely, CED use was associated with a 68-percent reduction in the odds of officer injury.

As for suspects, hands-on tactics increased the odds of injury, the use of canines greatly increased the odds and CED use substantially decreased the odds.

Seattle Police Department. The Seattle Police Department has about 1,200 sworn officers. The agency started using Tasers in December 2000. Other less-lethal weapons include pepper spray, batons and shotgun beanbag rounds. The department recorded 676 use-of-force incidents between Dec. 1, 2005, and Oct. 7, 2006. Suspects suffered injuries in 64 percent of the incidents, while officers suffered injuries in 20 percent of the incidents. Officers used hands-on tactics in 76 percent of the incidents. The next most frequent type of force officers used was the Taser (36 percent), followed by pepper spray (8 percent).

Suspects were impaired by alcohol, drugs or mental illness in 76 percent of the incidents. Just over half (52 percent) of the suspects were nonwhite, and 95 percent were male. Analysis of the data revealed that Taser use was associated with a 48-percent decrease in the odds of suspect injury but did not affect officer injury.

The use of unarmed tactics by officers increased the odds of officer injury 258 percent. The odds of officer injury increased significantly when suspects resisted using physical force or the use or threat of use of a weapon.

Although results were not uniform across the agencies, the analysis shows that the use of pepper spray and CEDs can have a significant and positive injury-reduction effect.

Interestingly, nonwhite suspects were less likely to be injured than whites in both

agencies (Miami and Seattle) where suspects' race was available as a variable for analysis. Another important finding concerns the use of canines. While canines were used rarely, their use substantially increased the risk of injury to suspects in two of the agencies.

Combined agency analysis and its limitations

The researchers also conducted a combined analysis of use-of-force data from 12 large local law enforcement agencies.[19] The full report gives a detailed description of the information available and the limits of the data. Most agencies, for example, had details about demographic characteristics of suspects, but only four had officer demographic information. Moreover, the Miami-Dade Police Department did not use pepper spray while San Antonio did not use CEDs.

Despite the limitations, the study's use of a large sample, representing more than 25,000 use-of-force incidents, allowed the researchers to use statistical techniques in an effort to learn which variables are likely to affect injury rates to officers and suspects. The use of physical force (hands, feet, fists) by officers increased the odds of injury to officers and suspects alike. However, pepper spray and CED use decreased the likelihood of suspect injury by 65 and 70 percent respectively. Officer injuries were unaffected by CED use, while the odds of officer injury increased about 21 percent with pepper spray use.

The researchers noted the 12-agency analysis yielded puzzling results about the relationship between pepper spray use and officer injury rates. Those results are inconsistent with the single agency analysis. More research may explain the differences.

Longitudinal analysis

The researchers reviewed use-of-force information from police departments in Austin, Texas, and Orlando, Fla., to learn how introducing CEDs affected injury rates. This quasi-experimental approach tracked injuries before and after CED introduction.

The Orlando data include 4,222 incidents covering 1998 to 2006. CED use began in February 2003. The Austin data includes 6,596 incidents from 2002 to 2006. However, CED use was

phased in beginning in 2003 and was not completed until June 2004. A large drop in injury rates for suspects and officers alike occurred in both cities following CED introduction.

In both cities, Taser adoption was associated with a statistically significant drop in average monthly injuries to suspects. In Orlando, the suspect injury rate dropped by more than 50 percent compared to the pre-Taser injury rate. In Austin, suspect injury rates were 30 percent lower after full-scale Taser deployment.

In Orlando, the decline in officer injury rates were even greater than for suspects; the average monthly rate dropped by 60 percent after Taser adoption. In Austin, officer injuries dropped by 25 percent.

Interviews with officers and suspects

Researchers conducted interviews with 219 officers from South Carolina's Richland County Sheriff's Department, 35 from the Columbia Police Department (CPD), and 35 suspects involved in use-of-force situations to supplement and add a qualitative context to their quantitative analyses. Generally, they tried to contact officers and suspects within 48 hours of receiving a use-of-force report. Interviews were voluntary, and some officers and suspects declined to participate.

In nine out of 105 use-of-force incidents, Richland County Sheriff's Department officers reported that a Taser did not work properly or did not have the desired effect. In addition, researchers received reports of multiple Taser hits on a suspect and multiple uses of the Taser in "drive stun" mode (when the Taser is pressed against a suspect rather than firing darts) to control suspects (or, based on the suspects' reports, as punishment). These reports indicate that some officers are using Tasers multiple times during an encounter.

Nine percent of the officers reported injuries, almost all of which were scrapes, cuts or bruises suffered while struggling with resistant suspects. Officers also reported that 26 suspects (12 percent) were injured. Most suspect injuries were cuts or abrasions, but there were also two dog bites, and one suspect was shot in the arm after firing at officers.

In 22 cases, researchers interviewed both the officers and suspects involved in an incident. Most suspects said officers used excessive or unnecessary force to subdue them. Some suspects said officers used Tasers quickly, and several said the officers enjoyed watching them endure the pain. Some suspects said officers kneed them in the back and kicked or punched them after they were in handcuffs. Some also said officers used Tasers on them after they were handcuffed.

Suspects often tell a different story than the officers who arrest them. In almost all cases, suspects said officers used excessive force and that they were not resisting arrest. The officers, for their part, said they used minimal force to control suspects, and did not mention using force after a suspect was under control. Officers reported that the force used was necessary and reasonable. In a typical account, a suspect said he was unaware there was a warrant out for his arrest, and when police confronted him, he did not resist. He said the officers "pushed me to the ground and put the cuffs on … they didn't have to do that to me." He said that all the officers had to do was tell him to "quit acting up." He complained that officers should just have told him to calm down instead of pushing him to the ground. By contrast, they said the suspect ran away when confronted, so they tackled him. These kinds of contradictions were common; suspects said they did not resist, and officers provided justification for the force levels they used.

In other cases, suspects and officers offered radically different versions of events. For example, in one case, an officer said he saw several traffic violations and the suspects sped off and stopped, with one suspect running away. The officers said the driver then tried to exit the vehicle from the passenger's side holding a shotgun. One officer pointed his weapon at the suspect, who then dropped the shotgun. The suspect failed to mention the shotgun to researchers and only complained that officers put the handcuffs on too tightly and slammed him around in the back of the transport vehicle.

Unlike the Richland County Sheriff's Department, the

Columbia Police Department did not use Tasers. The officers described 35 use-of-force incidents. Three officers reported that pepper spray was ineffective. In all three cases, the suspects were either drunk or high on drugs. One case, in particular, highlighted the potential advantages of the Taser over pepper spray in some circumstances. In that case, a 6'7", 370-pound man wanted for domestic violence charged an officer with a metal object in his hand. The officer used pepper spray, but it had no effect. The suspect then retreated to the apartment kitchen and grabbed a knife. The officers pointed their guns at him and ordered him to drop the knife, but he refused. He cut and stabbed himself with the knife while the officers waited for another agency to arrive that was equipped with a Taser. The suspect cut himself more than 100 times before the South Carolina Law Enforcement Division arrived and used a Taser on him. The Taser had an instant effect, and officers were then able to handcuff the suspect.

Most injuries in both agencies occurred when officers and suspects struggled on the ground. The differences between the agencies were striking. RCSD equips most of its deputies with Tasers. The deputies collectively reported fewer injuries to themselves and suspects from ground fighting than did CPD officers. CPD did not issue Tasers, and 31 percent of its officers reported getting cuts, scrapes and bruises from wrestling with suspects on the ground. The prevalence of ground fighting injuries among RCSD officers (less than nine percent) was lower, as were injuries to suspects caused by contact with the ground. Some of the injuries could have been prevented had officers used Tasers instead of hands-on tactics.

Implications for policy, training and future research

Because of the controversial nature and widespread use of CEDs, the researchers explored their use in detail and made recommendations, based on the findings, for whether and how CEDs should fit into the range of less-lethal force alternatives available to law enforcement officers.

Factors affecting injuries

Physical force

The findings clearly show the use of physical force and hands-on control increase the risk of injury to officers and suspects. In Richland County, S.C., soft empty-hand control significantly increased the odds of injury to officers, while hard empty-hand tactics increased the risk of injury to suspects. In Miami-Dade, both types of force increased the risk of injury to both officers and suspects. In Seattle, use of force increased injury risk to officers but not to suspects, while the overall analysis (of 12 agencies) showed increased injury risk to suspects and especially to officers associated with physical force. This increased risk was large. When controlling for the use of CEDs and pepper spray in the overall analysis, using force increased the injury odds to officers by more than 300 percent and to suspects by more than 50 percent.

Suspect resistance

Increasing levels of suspect resistance were associated with an increased risk of injury to officers and suspects. The increased injury risk was especially acute for officers. In Richland County, active aggression and threats of deadly force increased the odds of officer injury by more than 100 percent. The odds of suspect injury were unchanged in Seattle with increased resistance levels. These findings suggest that officers, rather than suspects, face the most increased injury risk when suspects resist more vigorously.

Pepper spray

The findings suggest that, at least for suspects, pepper spray use reduces the likelihood of injury. In Richland County, pepper spray use reduced the odds of suspect injury by 70 percent but did not affect officer injuries. In Seattle, pepper spray use had no effect on injury rates for officers or suspects. However, the overall analysis (of 12 agencies) showed that pepper spray use reduced the likelihood of injury to suspects by 70 percent, which was even more than the decline noted with CEDs (see below). For officers, pepper spray use increased the likelihood of injury by 21 to 39 percent. This finding

was unexpected, and more research may help to explain how officers choose to use pepper spray versus CEDs.

CEDs

Except for in Richland County where its effects were insignificant, CED use substantially decreased the likelihood of suspect injury. In Miami-Dade, the odds of a suspect being injured were almost 90 percent lower when a CED was used than when it was not. Similarly, the odds of suspect injury went down by almost 50 percent when CEDs were used in Seattle. The larger analysis of 12 agencies and more than 24,000 use-of-force cases showed the odds of suspect injury decreased by almost 60 percent when a CED was used. In Richland County, Seattle, and in the larger analysis, Taser use had no effect on officer injuries, while in Miami-Dade, officer injuries were less likely when a Taser was used. Controlling for other types of force and resistance, CED use significantly reduced the likelihood of injuries. CED adoption by the Orlando and Austin police departments reduced injuries to suspects and officers over time.

Demographic characteristics

Apart from officer force and suspect resistance, few other factors influenced injury outcomes. In Miami-Dade, male suspects were twice as likely to be injured as females. The same held true for the 12-agency analysis. In that larger analysis, the presence of a male suspect slightly increased injury risk to officers. In Seattle, female officers were more than twice as likely to be injured as male officers.

Placement of pepper spray and CEDs on a linear use-of-force continuum

People rarely die after being pepper sprayed or shocked with a Taser. However, if injury reduction is the primary goal, agencies that allow use of these less-lethal weapons are clearly at an advantage. Both weapons prevent or minimize the physical struggles that are likely to injure officers and suspects alike. Although both cause pain, they reduce injuries, and according to current medical research, death or serious harm associated with their

use is rare. In that sense, both are safe and similarly effective at reducing injuries. Both should be allowed as possible responses to defensive or higher levels of suspect resistance. This recommendation is supported by the findings and is now followed by most agencies that responded to the national survey.

Policy and training issues related to CEDs

CEDs were used far more often (four to five times more often) than pepper spray among agencies that equipped officers with CEDs and were sometimes used at rates that exceeded empty-hand control. Unlike pepper spray, CEDs do not require decontamination and do not carry the risk of accidental "blow back" that often occurs with pepper spray use. However, they do entail the removal of prongs and the potential for an unintended shock to an officer. Even with these concerns, they are rapidly overtaking other force alternatives. Although the injury findings suggest that substituting CEDs for physical control tactics may be useful, their ease of use and popularity among officers raise the specter of overuse.

The possible overuse of CEDs has several dimensions. CEDs can be used inappropriately at low levels of suspect resistance. Law enforcement executives can manage this problem with policies, training, monitoring and accountability systems that provide clear guidance (and consequences) to officers regarding when and under what circumstances CEDs should be used, or when they should not be used.

Besides setting the resistance threshold appropriately, good policies and training would require that officers evaluate the age, size, gender, apparent physical capabilities and health concerns of a suspect. In addition, policies and training should prohibit CED use in the presence of flammable liquids or in circumstances where falling would pose unreasonable risks to the suspect (in elevated areas, adjacent to traffic, etc.). Policies and training should address the use of CEDs on suspects who are controlled (e.g., handcuffed or otherwise restrained) and should either prohibit such use outright or limit them to clearly defined, aggravated circumstances.

In addition to being used too often, CEDs can be used too much. Deaths associated with CED use often involve multiple Taser activations (more than one Taser at a time) or multiple five-second cycles from a single Taser. CED policies should require officers to assess continued resistance after each standard cycle and should limit use to no more than three standard cycles. Following CED deployment, the suspect should be carefully observed for signs of distress and should be medically evaluated at the earliest opportunity.

Directions for future research

CEDs can be used too much and too often. A critical research question focuses on the possibility of officers becoming too reliant on CEDs. During interviews with officers and trainers, the researchers heard comments that hinted at a "lazy cop" syndrome. Some officers may turn to a CED too early in an encounter and may relying on a CED rather than rely on the officer's conflict resolution skills or even necessary hands-on applications. Research should explore how officers who have CEDs perceive threats, compared to officers who do not have them. In addition, it is important to determine when, during an encounter, an officer deploys the CED.

Another important CED-related research project would be a case study of in-custody deaths involving CED use and a matched sample of in-custody deaths when no CED use occurred. Advocacy groups argue that CEDs can cause or contribute to suspect deaths. The subjects in CED experimental settings have all been healthy people in relatively good physical condition who are not under the influence of alcohol or drugs. There is no ethical way to expose overweight suspects who have been fighting or using drugs to the effects of CEDs, so an examination of cases where similar subjects lived and died may shed some light on the reasons for the deaths. Law enforcement officials typically argue that most if not all the subjects who died when shocked by a CED would have died if the officers had controlled and arrested them in a more traditional hands-on fight. At this point, the argument is rhetorical and research is needed to understand the differences and similarities in cases where suspects died

in police custody, including deaths where a CED may or may not have been involved.

Finally, female officers in Seattle were more than twice as likely to suffer injuries as males. Perhaps the finding in Seattle is an anomaly, but it should be investigated further.

Notes

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15. Ibid., 4.

16. Ibid.

17. Ibid., 5.

18. The MDPD provides police services to the unincorporated areas of Miami-Dade County, Fla., which together contain more than 1 million people in a 1,840 square mile area.

19. The agencies included police and sheriff's departments in Austin, Texas; Cincinnati, Ohio; Harris County, Texas; Hillsborough County, Fla.; Los Angeles (both the city and the county); Miami-Dade, Fla.; Nashville, Tenn.; Orlando, Fla.; Richland County, S.C.; San Antonio, Texas; and Seattle, Wash.

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Executive Summary

Law enforcement agencies continue to seek alternatives to lethal force and better methods to subdue individuals in order to minimize injuries and death. Less-lethal technologies have been used by law enforcement for this purpose extensively since the early 1990s. As of spring 2010, conducted energy devices (CEDs) causing electro muscular disruption have been procured by more than 12,000 law enforcement agencies in the United States. Approximately 260,000 CEDs have been issued to law enforcement officers nationwide. Police adoption has been driven by two major beliefs: first, that CEDs effectively facilitate arrests when suspects actively resist law enforcement; second, that CEDs represent a safer alternative than other use-of-force methods. Studies by law enforcement agencies deploying CEDs have shown reduced injuries to both officers and suspects in use-of-force encounters and reduced use of deadly force. More recently, independent researchers have come to similar conclusions, when appropriate deployment and training policies are in place.

Nonetheless, a number of individuals have died after exposure to a CED during law enforcement encounters. Some were normal, healthy adults; many were chemically intoxicated or had heart disease or mental illness. These deaths have given rise to questions from both law enforcement personnel and the public regarding the safety of CEDs. Because many gaps remain in the body of knowledge with respect to the effects of CEDs, the National Institute of Justice (NIJ), the research, development and evaluation agency of the U.S. Department of Justice, conducted a study, Deaths Following Electro-Muscular Disruption, to address whether CEDs can contribute to or be the primary cause of death and, if so, by what mechanisms. The study was directed by a steering group that included NIJ, the College of American Pathologists, the Centers for Disease Control and Prevention, and the National Association of Medical Examiners.

To support the study, the steering group appointed a medical panel composed of forensic pathologist/medical examiners and other relevant physicians or specialists in cardiology, emergency medicine, epidemiology and toxicology. To avoid a conflict of interest, no panelists were chosen who had worked as litigation consultants for or against CED manufacturers. This report contains the findings and recommendations of the medical panel.

In 2008, NIJ released its interim report, *Study of Deaths Following Electro Muscular Disruption: Interim Report.* Among other findings, that report stated, "Although exposure to CED is not risk free, there is no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct effects of CED exposure." The interim report described the risks associated with the use of CEDs and provided a set of accepted research findings in its summary. The report also provided recommendations for death investigation, medical response and further research. Although this final report provides additional, significant detail to many of the findings in the interim report, the study panel's interim findings still represent its consensus on the issue of risks associated with CED use.

This final report provides findings concerning death investigation, CED use, CED-related health effects, and medical response. The panel recommends a thorough review of the entire report and the associated research literature for medicolegal personnel and those making decisions concerning CED deployment and associated policies. The following findings are provided as those of most general interest to date.

There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in healthy, normal, nonstressed, nonintoxicated persons. Field experience with CED use indicates that short-term exposure is safe in the vast majority of cases. The risk of death in a CED-related use-of-force incident is less than 0.25 percent, and it is reasonable to conclude that CEDs do not cause or contribute to death in the large majority of those cases.

Law enforcement need not refrain from using CEDs to place uncooperative or combative subjects in custody, provided the devices are used in accordance with accepted national guidelines and appropriate use-of-force policy. The current literature as a whole suggests that deployment of a CED has a margin of safety as great as or greater than most alternatives. Because the physiologic effects of prolonged or repeated CED exposure are not fully understood, law enforcement officers should refrain, when possible, from continuous activations of greater than 15 seconds, as few studies have reported on longer time frames.

All deaths following deployment of a CED should be subject to a complete medicolegal investigation, including a complete autopsy by a forensic pathologist in conjunction with a medically objective investigation that is independent of law enforcement. The complete investigation should include the collection of information specific to CED-related deaths, such as the manner in which and the location where CED darts or prongs were applied. A recommended checklist is contained in chapter 11, "Considerations in Death Investigation," pages 36-37 in this report.

Unlike the risk of secondary injury due to falling or puncture, the risk of human death due directly or primarily to the electrical effects of CED application has not been conclusively demonstrated. However, there are anecdotal cases where no other significant risk factor for death is known. Additionally, current research does not support a substantially increased risk of cardiac arrhythmia in field situations, even if the CED darts strike the front of the chest. There are anecdotal cases where no other significant risk factor for death is known and where the temporal association provides weak circumstantial evidence of causation. The panel reviewed studies on ventricular fibrillation with respect to dart placement, demonstration of ventricular fibrillation, pulseless ventricular tachycardia, pulseless electrical activity in animals, and anecdotal examples of capture in humans wearing cardiac pacemakers or defibrillators. These studies suggest plausible but unproven mechanisms for unusual and rare cases of death due to a confluence of unlikely circumstances.

In general, the stress of receiving CED discharge(s) should be considered to be of a magnitude that is comparable to the stress of other components of subdual. All aspects of an altercation (including verbal altercation, physical struggle or physical restraint) constitute stress that may heighten the risk of sudden death in individuals who have pre-existing cardiac or other significant disease.

Caution is urged in using multiple or prolonged activations of CED as a means to accomplish subduing the individual. There may be circumstances where repeated or continuous exposure is required; law enforcement personnel should be aware that the associated risks are unknown and that most deaths associated with CED use involve multiple or prolonged discharges.

We offer this report to the police community, the medical community and the public as a contribution to the many considerations necessarily involved in the use of CEDs and other types of force by law enforcement. We offer this report to our colleagues involved in all aspects of medicolegal death investigation to educate them on our findings and to offer possible approaches to their individual case investigations. We know full well that every case is unique and that it is extremely difficult to generalize findings or techniques. We in no way imply that our conclusions or suggestions are the only way to proceed. We offer these for consideration as aids that might be beneficial in formulating a more complete understanding of the circumstances, mechanisms or pathophysiology in determining the cause and manner of death.

It is recommended that law enforcement maintain an ongoing dialogue with medical examiners/coroners and emergency physicians to discuss effects of all use-of-force applications (CED use and other modalities) and evaluate procedures involving life preservation, injury prevention and evidence collection.

Any expert panel brings with it certain limitations. These limitations are due not only to the limitations of our knowledge but also to the perspectives that the panel members bring to the table. This is particularly true with respect to the determination of the cause and manner of death. These differences are not capricious, but derive from varying philosophical viewpoints and traditions regarding how these deaths should be placed within specific cultural and legal contexts. The conclusions in this report represent a strong underlying consensus. In instances when there were disagreements over specific classifications or diagnostic categorizations, the discussions did not reflect differences in the understanding of basic underlying scientific principles but rather the differences inherent in specific jurisdictional-related and historic practices. In fact, there was a strong consensus regarding the principles of these conclusions even in the context of differences in how they might be phrased. In addition, the report is based upon the information available to the panel at this writing. As scientific understanding advances, the opinions of panel members may change to accommodate new findings.

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Study of Deaths Following Electro Muscular Disruption

Methodology

This study was directed by a steering group with representation from the National Institute of Justice (NIJ), the College of American Pathologists, the Centers for Disease Control and Prevention, and the National Association of Medical Examiners. To support the study, the steering group appointed a medical panel composed of forensic pathologists/medical examiners and other relevant physicians or specialists in cardiology, emergency medicine, epidemiology and toxicology. To avoid a conflict of interest, no panelists were chosen who had worked as litigation consultants for or against conducted energy device (CED) manufacturers. This report contains the findings and recommendations of the medical panel.

In formulating the findings reported here, the panel conducted mortality reviews of CED-related deaths and reviewed the current state of medical research relative to the effects of CEDs. The panel considered nearly 300 CED-related deaths. In these incidents, (a) CED(s) was (were) deployed by (a) law enforcement officer(s) on an individual who later died. In the vast majority of these cases, the original medicolegal investigation concluded that the CED played no role in the death. The panel concentrated its review on those cases in which a CED was listed on the death certificate. NIJ and the International Association of Chiefs of Police worked with several law enforcement agencies to collect information in 22 specific, documented cases involving CED deployment and death. Time and the availability of complete case documentation (from the initial 911 call through forensic autopsy) limited the number of field-based cases reviewed and discussed by the medical panel. However, the cases reviewed were varied and considered representative of all medicolegal cases of death following CED deployment. These reviews were intended to elucidate the relationships between CED use and suspect injury and death and to assist in the development of the material in this final report. The medical panel did not make conclusions that question the findings by any official certifier of death in any specific case. Mortality reviews have included analyses of complete autopsies, findings from the scene investigation, post-exposure symptoms, post-event medical care, and especially the extent, if any, of natural disease or chemical substances in a decedent. The panel reviewed theoretical case scenarios to identify important case-related and interpreted issues regarding the cause, manner and circumstances of death. The panel also examined the currently recognized causes of sudden deaths, chiefly involving physical, cardiac, pulmonary, metabolic and thermoregulatory mechanisms.

Evaluation of mortality following the use of CEDs is often challenging because of several factors: some of the necessary case-specific information can be lacking, human research studies are limited, and the findings in animal studies may not be extrapolated to humans. There are also variations among medical examiners and coroners in the stylistic methods and choices of words used to describe the causes of death and to classify the manner of death. For a broad review such as this one of the safety of CEDs, these considerations can compromise case identification and statistical reviews of mortality following deployment of CEDs.

Study of Deaths Following Electro Muscular Disruption

This report provides a consensus view of the panel members from a complete review of the available peer-reviewed research literature and extensive information concerning the use of CEDs in the field. The findings have been limited to those conclusions that can be based on current understanding of the available research and literature. A comprehensive literature search was conducted to compile and catalog peer-reviewed research articles that addressed the effects of CED on human subjects. Several resources were used to locate articles, books, news reports, websites, and other literature dealing with the use of CEDs (i.e., stun guns and other nonlethal electrical weapons), including, but not limited to: *Medline, PubMed, ScienceDirect, ProQuestJStor, Applied Science and Technology Abstracts* and *Lexis-Nexis*. More than 2,500 sources were identified, of which approximately 175 were selected for this study (i.e., peer-reviewed journal articles, which focused on the physiological effects of CED use). These selected references were divided and distributed to an external panel of forensic pathologists who reviewed and rated each article for scientific quality and relevance. These assessments were used to identify the most important research articles for consideration by the medical panel in this study. In addition, the articles are cited throughout this final report to support specific conclusions. Finally, through the National Association of Medical Examiners, the assessments are available to the medicolegal community for reference in death investigations. The panel urges continued research to improve the medical understanding of CED effects and has made specific recommendations throughout this report in that regard. Due to time constraints, some of the most recent research for this report was reviewed by panel members only.

The panel also consulted stakeholders, experts and other interested parties, such as human rights groups, law enforcement professionals, clinical physicians, research scientists and manufacturers of CEDs. The panel observed more than 30 presentations by these invited experts. It met nine times over three years to discuss these findings and debate their significance to the investigations and certifications of deaths when CEDs are involved. This report represents the panel's best efforts of collaboration and mutual respect for our many divergent points of view and perspectives.

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1. Continued Use of CEDs by Law Enforcement

Conducted energy devices (CEDs) are commonly used by law enforcement agencies. Their use is associated with overall decreases in suspect and officer injuries when deployed with appropriate agency policies.[1] However, exposure to CED is not risk-free. The safety of these weapons has been the subject of controversy. CED deployment has been associated with in-custody sudden deaths. Comprehensive, independent studies have examined the experience of police agencies with respect to the decision to deploy CEDs. These studies indicate that CED deployment by an agency decreases the likelihood of injuries to suspects and officers.[1-3] Field experience with CED use indicates that exposure is safe in the vast majority of cases.[4-6] One prospective study observed a 0.25 percent risk of serious injury (head trauma or rhabdomyolysis) with CED use, much less than that observed for other subdual options.[6] Other studies also indicate that CED-related injuries and deaths are uncommon, especially in comparison to other force options.[7] One review showed that officer and subject injury rates were much lower during CED use compared to use of empty-handed physical skills, incapacitating spray or batons, while another indicated that injury rates were substantially lower with the use of incapacitating sprays and CEDs.[1,8]

It should be noted that arrestees who are involved in use-of-force incidents are by nature at higher risk for serious complication and death relative to the overall population. These individuals are more likely to be drug-intoxicated, be mentally ill or have serious underlying medical conditions.[6] There are more than 600 arrest-related deaths in the United States each year and roughly 1 million incidents in which police use or threaten to use force.[9,10] Nonetheless, the CED is cited as a causative or contributory factor in very few arrest-related deaths each year.[9] In this context, the relative risk of CED deployments appears to be lower than other use-of-force options.

There is no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in healthy, normal, nonstressed, nonintoxicated persons.[11] Current medical research in humans and animals suggests that a single exposure of less than 15 seconds from a TASER® X-26™ or similar model CED is not a stress of a magnitude that separates it from the other stress-inducing components of restraint or subdual.[12] Based on cases reviewed by this panel, most adverse reactions and deaths associated with CED deployment appear to be associated with multiple or prolonged discharges of the weapons. There is limited research with regard to exposures of greater than 15 seconds.[13,14] Further, extended CED exposure may not be effective in the subdual of some individuals with high levels of drug intoxication or mental illness. Therefore, if the CED is ineffective in subduing an individual after a prolonged exposure, law enforcement officers should consider other options.

Conclusions and Recommendations:

From a purely medical perspective, law enforcement need not refrain from deploying CEDs to place uncooperative or combative subjects in custody, provided the devices are used in accordance with accepted national guidelines and appropriate use-of-force policy.[15,16] Ideally, use-of-force policy development and post-incident review should be done in consultation with forensic and/or medical experts.

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2. Potential for Moderate, Severe or Secondary Injury

The question often arises whether injuries result from CED exposure, and, if so, to what degree of severity. Answers to these questions are important for several reasons. First, the public and law enforcement agencies need to know the risks of injury in order to have a realistic understanding of risks to persons subjected to CED exposure. This will allow police agencies to develop protocols that minimize the risk of injury and will help the public place CED-related injury in the proper context when CEDs are used by law enforcement personnel. Medical examiners, coroners, other investigators and emergency medical personnel need to understand the types of injuries that can be expected as well as their frequency so they can adequately investigate or treat injuries resulting from CED exposure.

Information to address these questions has been derived from case reports of documented CED-related injuries in humans and from descriptive studies, both prospective and retrospective, of injuries observed in populations following CED exposure.[1-12] Also, some potential injuries have been identified through review of unpublished case reports.

A practical definition of moderate and severe CED-related injury has been published.[2] Moderate injury requires inpatient treatment and/or is expected to result in no more than a moderate long-term disability. Severe injury involves a threat to life or requires inpatient treatment and is expected to result in severe long-term disability. The potential for moderate or severe injury related to CED exposure is low.[2, 5, 7, 9, 10, 13-16] Based on published studies, significant injury has been noted in less than 0.5 percent of those experiencing a CED deployment, and has been estimated not to exceed 0.7 percent.[1] However, darts may cause puncture wounds or burns.[9] Puncture wounds to an eye from a dart could lead to loss of vision.[4,6] Pharyngeal (throat) perforation by a dart has also been reported.[11] Potentially fatal head injuries or skeletal fractures may result from falls due to muscle incapacitation or intense muscle contraction.[8,10] CED strikes to the head have resulted in dart penetration of the skull, and in unconsciousness and seizures requiring medical care.[3,10] CEDs can potentially produce other secondary or indirect effects that may result in death. Examples include:

1. Using a CED against a person on a steep slope or on a tall structure, resulting in a fall with traumatic injuries.
2. Ignition risk due to sparks from a CED used near flammable materials such as gasoline, explosives, volatile inhalants such as aerosol sprays, or the flammable propellant used in pepper spray.
3. Using a CED on a person who is in water, resulting in submersion or drowning.

Conclusions and Recommendations:
In summary, the risk of moderate or severe injury or death from a CED exposure, whether the injury is directly due to darts or indirectly due to secondary events (falls, fractures, etc.) is probably less than 1 percent. Evidence from use in the field has shown that the risk of death in a CED-related incident is ≤ 0.25 percent.[2] These studies do not conclude that all the

deaths were attributable to CED use. The panel views this as an acceptable level of risk when potential benefits of CED use are considered, such as reductions of serious injuries to suspects and law enforcement officers and the risk associated with other lethal and less-lethal options, when used in accordance with appropriate agency policies.[17,18] Further study is needed to better characterize the scope and severity of direct and indirect injuries caused by CED use.

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3. Cardiac Rhythm Issues

There is currently no medical evidence that CEDs pose a significant risk for induced cardiac dysrhythmia in humans when deployed reasonably. The heart rhythm issues most important to consider are ventricular fibrillation (VF), ventricular capture (pacing), ventricular tachycardia (VT), atrial fibrillation and pulseless electrical activity (PEA).

Based on research in swine, the risk of CEDs directly causing ventricular fibrillation is exceedingly low.[1-4] VF is more or less likely depending on the energy vector, i.e., where the darts of the CED are located relative to the heart. Different vectors appear to have lesser or greater chance of producing VF with the greatest risk in swine being sternal notch to heart apex or sternal notch to just above the umbilicus (navel).[4]

There is one case report in the medical literature documenting VF two minutes after the collapse of a teenager who was subdued with a CED.[5] The proximity of this collapse to CED use and documented VF argues in favor of an electrically induced cardiac event. A recent review of in-custody deaths associated with CED use evaluated individuals who collapsed within 15 minutes of exposure.[6] Presenting rhythms were available in 56 subjects. In 52 subjects bradycardia-asystole or PEA was seen. The rhythm was VF in four subjects (7 percent). Only one patient collapsed within one minute of exposure, as would typically be expected with VF. Two had a more delayed collapse at five to eight minutes, and one collapsed before exposure. In-custody deaths rarely occur immediately following use of the device, but occur more typically minutes to hours later.[7] Because a VF-related death would be expected to be almost immediate, VF is unlikely to be the cause in most of these in-custody deaths.

There are telemetry and echocardiographic data in swine to demonstrate rapid ventricular capture (pacing) from CED use with a transcardiac vector (when the darts are located on either side of the heart).[8-11] In some of these animals the ventricular dysrhythmia did not terminate with the end of CED discharge and at times led to the death of the animal. The risk of ventricular capture also appears to be dependent on the vector.[12] There are echocardiographic studies in humans during CED activation, one of which has dart placement in the chest area over the heart that did not show capture.[13-15] All other echo studies in humans had remote dart placement and did not show capture.[16] In human studies, the CED exposure is typically applied using alligator clips. Subcutaneous dart placement — such as often occurs during a law enforcement use-of-force incident — is rarely used. Because device output through alligator clips is typically lower in energy, human studies may not reflect the full range of cardiac CED exposures. There are recent studies of rhythm analysis just before, during and after CED discharge showing no sustained dysrhythmia.[17-19]

Rapid ventricular pacing is a method used by electrophysiologists to induce ventricular tachycardia, and this may potentially lead to ventricular fibrillation minutes later. While VT may be pulseless, patients can sometimes be hemodynamically stable for a period of minutes

to hours. In other words, a CED may induce rapid ventricular pacing or VT in an individual who appears to be in satisfactory condition, but this may lead to VF after a short delay. Currently, there are no documented cases that CEDs have caused this sequence of events in humans, but it is theoretically possible.

The risks of cardiac arrhythmias or death remain low and make CEDs more favorable than other weapons. Extended CED discharge(s) in swine where rapid ventricular pacing occurred has (have) led to death in some of these animals.[20] Therefore, it cannot be concluded that extended discharge in humans is always safe, despite the successful outcomes of extended discharges documented in the literature.

Pacemakers are implantable cardiac devices that maintain heart rhythm when it gets too slow. Defibrillators are implantable cardiac devices that can function as pacemakers, but are designed to detect life-threatening rapid rhythms and shock or stop the abnormal rhythm. There have been anecdotal, though well-documented, examples of cardiac capture by CEDs in subjects with implantable cardiac devices. In no case, however, were these events associated with bad outcomes.[21-23] There is a case report of an individual with an implanted pacemaker demonstrating ventricular capture during CED use.[21] It cannot be known if the presence of the pacemaker or its associated wires facilitated capture in the ventricle. In swine studies, capture has occurred in the absence of internal wires. An ultrasonographic study did not replicate this finding in human volunteers,[24] and data from field experience does not indicate that complications from capture by CEDs are common.[25-27]

Nonetheless, CED use on individuals with pacemakers and defibrillators can be potentially hazardous. Pacing may be inhibited or asynchronous during CED exposure.[28-29] There has not been a documented case in which a pacemaker has undergone a power-on reset or triggered an elective replacement indicator (which may be associated with pacemaker malfunction). Additionally, there has not been a documented case in which CED exposure caused a long-term change in pacemaker function, such as lead sensing or pacing threshold. Implantable cardiac defibrillators have been demonstrated to detect CED discharges as potential ventricular fibrillation and have charged but not activated.[23,28] Limiting the duration of CED discharges will minimize the chance that one of these devices will give an inappropriate shock.

Risk of ventricular dysrhythmias is exceedingly low in the drive-stun mode of CEDs because the density of the current in the tissue is much lower in this mode. However, there is a case report in the literature where a patient documented to be in atrial fibrillation became combative and was subdued with one drive stun delivered directly over the heart. He was immediately documented to be in a sinus rhythm thereafter.[30] An individual's heart rhythm can spontaneously convert from atrial fibrillation to sinus (normal) rhythm. Nonetheless, the conversion from atrial fibrillation to a sinus rhythm in this case would appear to be temporally attributable to the CED.

In approximately one-quarter of CED deployments in the field the darts strike the anterior chest.[31] With dart deployment the most likely vector to produce cardiac effect would be near the heart and in line with the long axis of the heart.[12,31] Deployments to other regions of the body are very unlikely to generate enough current in the region of the heart to cause ventricular capture or fibrillation. Additionally, when subjects are exposed to CED deployment in the field they often fall and may land in a prone position, driving darts further into the chest wall. This decrease in dart-to-heart distance may increase the likelihood of direct cardiac effects. Individuals of smaller stature may have a shallower distance between the skin and the heart, so they may be more susceptible to cardiac effects associated with dart placement near the heart. This possibility is of theoretical concern and has not been demonstrated.

There is a multitude of ECG and cardiac enzyme data in the literature supporting no significant long-term effects on the heart by CED use. Autopsies have not demonstrated evidence of myocardial infarction (heart attack). The available data do not show long-term blood chemistry changes affecting cardiac function. There are some recent data demonstrating significant increase in blood acidity (acidosis) in animal models after CED use.[21] Some research has examined the role of exertion in combination with CED effects. Extreme physical exertion causes an increase in acidosis because of the production of lactate in the muscles. Severe acidosis can cause spontaneous dysrhythmias that would not be a direct effect of CED use.[32] Additionally, severe acidosis can lead to pulseless electrical activity which may be a mechanism of sudden death seen after a prolonged struggle. CED exposure does not appear to worsen the acidosis that is present from exertion alone.[33-35] Metabolic effects of CED exposure are detailed elsewhere in this report.

There is a controversial case report of the successful resuscitation of a teenager with bipolar disorder and polysubstance abuse who was subdued with a CED. He was reportedly found not to be moving approximately 20 minutes after CED exposure. Emergency medical services personnel found him to be in asystole shortly thereafter. The individual was resuscitated and eventually discharged from the hospital with no apparent long-term deficits.[36] In one publication, bradycardia-asystole or PEA was seen in 93 percent of sudden deaths which quickly followed discharge of CEDs[6]. Either of these dysrhythmias can be precipitated by severe acidosis or could be the terminal rhythm following another life-threatening rhythm. It remains unclear if CED use contributes to the development of PEA or asystole. Rapid recognition of a possibly reversible dysrhythmia in cases like this is imperative to allow for attempted resuscitation.

Although sudden death occurs in custody with and without the use of CED, the exact mechanism of death in many cases is often not clear.[7,37,38] Sometimes, individuals who have been restrained or are in the process of being subdued will stop moving or responding. In many cases, the individual may simply be passively compliant. In some cases, the individual may be experiencing a medical emergency related to acidosis, respiratory compromise, or

cardiac arrythmia. Therefore, the restrained individual should be constantly monitored for responsiveness and general medical condition.

Conclusions and Recommendations:

Law enforcement personnel are trained to target center body mass when using CEDs. TASER® International, Inc., (a major CED manufacturer) has recently recommended a change in target zone to below the chest. TASER® Bulletin 15 states, "By simply lowering the preferred target zone by a few inches to lower center mass, the goal of achieving Neuro Muscular Incapacitation (NMI) can be achieved more effectively while also improving risk management."[39] The panel does recognize that CED use involving the area of the chest in front of the heart area is not totally risk-free; current research does not support a substantially increased risk of cardiac dysrhythmia in field situations from anterior chest CED dart penetrations.

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4. Respiratory and Metabolic Issues

The balance of acid and base in the body is maintained by the respiratory system and the kidneys. These respond to the metabolic demands of the individual. As with rigorous exercise, the CED causes muscle contractions that produce lactate in the blood. Lactate lowers the pH of blood, making it more acidic. Respiratory rates increase to counteract this effect by reducing the amount of carbon dioxide (CO_2) in the blood and thereby mitigating the effects of the increased lactate. In extreme cases, the increase in blood acidity (referred to as "acidosis") could lead to cardiac arrest. Studies of CED effects have examined respiration, blood chemistry and the effects on muscle groups. In particular, observation of persons subjected to CED exposure seems to indicate that muscle groups are affected that fall outside those in the area directly between the darts. For example, CED discharges to the thorax often result in collapse to the ground, suggesting that there may be a spinal cord reflex involved that can affect muscle groups under the control of lower spinal cord levels. If that is the case, it seems reasonable that intercostal (between the ribs) muscles used for respiration could also be impacted, with an adverse effect on ability to breathe during CED exposure.

Research to date, however, shows that human subjects seem to maintain the ability to breathe during exposure to a CED. In fact most evidence suggests hyperventilation with an increase in respiratory rate, tidal volume, and minute ventilation during CED exposure. Direct observation of diaphragmatic movement was seen in one study.[1] Despite the hyperventilation, which typically produces an increase in blood pH, a mild decrease in pH indicating metabolic acidosis is often seen with more prolonged exposures. In conjunction with this is an increase in lactate consistent with metabolic acidosis. Alcohol consumption appears to contribute only minimally to an additional decrease in pH or increase in lactate levels.[2]

Very little research has been done on the role of CED vectors (i.e., the positioning of the CED darts) and the effect on respiration. Some studies have examined variable vectors, but with a focus on cardiac effects. As noted below, it is difficult to examine respiratory effects in animal studies.

A recent study of 104 volunteers reports that 18 percent of subjects with CED exposure to the back perceived an inability to breathe during CED exposure, but such inability to breathe was not documented by direct observation or physiologic tests of breathing capacity. The researchers concluded that the results pointed mainly to a need for further study. The medical panel reviewed an unpublished follow-up study using sensors to monitor breathing directly. That study appears to indicate that CEDs could interfere with the ability to inhale, depending on dart placement. Breathing is controlled by the phrenic nerve, which originates in the cervical spinal cord and innervates the diaphragm, in conjunction with intercostal nerves, which originate in the thoracic spinal cord and innervate the intercostal muscles. Therefore, if CED exposure interferes with breathing, it may not be an all-or-none

phenomenon. For example, the intercostal muscles may be affected while the diaphragm is not, or vice versa. Further study with objective measurement of breathing is needed to draw more definitive conclusions. Such studies should involve both short term CED exposures and more prolonged or repeated exposures. Hypoventilation could contribute a respiratory component to any underlying acidosis. With prolonged exposure, if CO_2 levels rose significantly, respirations could be further suppressed from the high CO_2 levels despite termination of CED exposure.

Studies with swine have been conducted using an extended exposure of 80 seconds, producing significant acidemia as well as hypoventilation. A few of these animals have died. The animal literature is complicated by the use of sedation that may play a role in hypoventilation and a failure of respiratory compensation for a metabolic acidosis. In other words, the animals' breathing may be compromised by some combination of sedation, CED exposure and other confounding factors from the experimental design. Animal studies suggest that the metabolic acidosis is secondary to an increase in lactate produced after strenuous muscle contraction. In one study, animals were paralyzed to prevent muscle contraction during CED exposure. In this case, acidosis was much less severe but significant cardiac effects were still observed.[3]

There are recent data in the literature of human studies looking at the effect of exercise and CED exposure and their individual contributions to blood acidosis. CED exposure does not appear to add to acidosis above and beyond that seen with exercise to exhaustion. CED exposure without exertion produces only a mild acidosis. [4-6]

Conclusions and Recommendations:
Significant acidosis can lead to pulseless electrical activity and may be a mechanism of sudden death in custody. Of particular concern is the possible role that systemic acidosis may play in addition to any metabolic abnormalities or drug intoxication seen in excited delirium, as discussed elsewhere in this report. Further study is required in this area. Until the role of CEDs with respect to respiration has been researched fully, it would be appropriate for law enforcement personnel, when possible, to refrain from continuous activations of longer than 15 seconds. In any case, it is recommended that the medical condition of the individual be constantly monitored during and after CED exposure, regardless of the duration of exposure.

In addition to the concerns related to the effect of CED exposure on respiration, there is a case report in the literature of pharyngeal (throat) perforation from CED discharge.[7] This patient presented with spitting of blood and difficulty breathing.

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5. CEDs as Contributors to Stress

"Stress," as used in this discussion, describes the body's reaction to threat or physical insult, including but not limited to the adrenaline-related (adrenergic or catecholamine) "flight or fight" reaction. The literature on the acute and chronic effects of stress is large and will not be reviewed extensively here.

Whenever law enforcement officers subdue or restrain an individual, they are contributing to the person's stress level. All aspects of an altercation (including verbal altercation, flight, physical struggle, or physical restraint) constitute stress that may heighten the risk of sudden death, generally from a cardiac dysrhythmia. Whether or not a CED deployment is involved and regardless of the intent of the officer, it is possible for the actions of an officer to directly or indirectly contribute to death by inducing stress. Stress induced by the criminal action of others may be considered a contributing factor in initiating the mechanism of death in certain individuals with underlying natural disease. For example, if an individual with a heart condition dies as a result of being the victim of a robbery, the death may be ruled a homicide caused by the stress of the crime[1-3]. In a similar fashion, stress may be an important issue to consider when investigating and certifying deaths following CED use or when other forms of restraint or subdual are used. One proposed mechanism by which CED use may contribute to death is by increasing stress, which can potentiate the adrenergic responses of tachycardia (i.e., rapid heart rate) and elevated blood pressure, making it an issue related to cause and manner of death determination. There may also be additional physiologic or metabolic effects, especially when stress is severe or other factors have already put the individual into a compromised medical condition, as may occur in individuals who have pre-existing cardiac or other significant disease or who are intoxicated. An important question is whether or not stress caused by CED exposure is different enough from other forms of stress during the agitation, restraint or subdual to justify its separate consideration when certifying death.

The data used to address the stress issue have been derived largely from prospective studies conducted on human volunteers. Medical research suggests that a single exposure of less than 15 seconds deployed from a TASER® model X26™ or a similar model CED is not a stress of a magnitude which separates it from the other stress-inducing components of restraint or subdual.[4] There were no cardiac dysrhythmias among healthy volunteers exposed to one discharge of a TASER® model X26™ for less than 15 seconds following either anaerobic exercise, rigorous exercise or exercise to exhaustion.[4-6] A study using drive-stun mode on volunteers also failed to show cardiac rhythm disturbances or diaphragm disturbances.[7] However, because the numbers of subjects in these studies were small, the subjects were healthy, and the risk of ventricular fibrillation due to a single CED discharge is very low, the applicability of these studies to field conditions is questionable.

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It has been proposed that acute stress can damage the heart muscle. There are several reports that suggest that acute stress (with catecholamine release) may cause a cardiomyopathy (or disease of the heart muscle) and be induced in certain individuals during police confrontation. There are insufficient data to provide diagnostic criteria for such a syndrome, although some research and case reports exist.[8-11] Japanese cardiologists initially described "acute stress cardiomyopathy" with transient left ventricular apical ballooning and normal coronary vessels in otherwise healthy, asymptomatic individuals who died in police custody.[8] Such deaths occurred in the absence of CED exposure and are believed to involve a sudden cardiac dysrhythma induced by a surge in adrenaline. Other studies of CED exposure have examined parameters such as blood chemistry, cardiac enzymes and blood gases.[5,12,13] Although studies on human volunteers undergoing prolonged (greater than 15 second) CED exposure showed statistically significant changes in blood gases, these changes (or any respiratory impairment) appear to have limited clinical significance in these healthy individuals.[13,16]

Further study is needed to determine the quantity of stress caused by prolonged or repetitive CED exposure in normal subjects, and larger numbers of human subjects need to be tested. Similar studies in persons with significant disease or drug intoxication would provide more useful data. However, it is not ethical to conduct human studies which attempt to replicate certain "field conditions" (such as drug intoxication with agitation) encountered in CED-associated, police confrontation deaths. The fatal mechanisms of stress and catecholamine release need further clarification, and methods to measure and quantify stress effects should be investigated. Until such methods are developed or more comprehensive field data are obtained, it is reasonable to infer that the effects of acute stress can be cumulative, and that the cumulative effects of adrenaline and other factors such as acidosis may increase an individual's risk of experiencing a sudden cardiac dysrhythmia.

Conclusions and Recommendations:
Current data on stress induced by CED exposure are limited because the number of persons studied (sample size) is small and the subjects typically have been healthy volunteers. Further, interpretations are hampered because reliable markers for catecholamine-related stress and its complications are not well identified or accepted. Cases of death may exist where the CED deployment may be the only or predominant inducer of stress. Special attention to such cases is warranted when considering potential mechanisms of death.

CED exposure may contribute to "stress," and stress may be an issue related to cause-of-death determination. All aspects of an altercation (including verbal altercation, physical struggle or physical restraint) constitute stress that may heighten the risk of sudden death in individuals who are intoxicated or who have pre-existing cardiac or other significant disease. Medical research suggests that CED deployment during restraint or subdual is not a contributor to stress of a magnitude that separates it from the other stress-inducing components of restraint or subdual.[15]

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6. Excited Delirium

Excited delirium (ExD) is one of several terms that describe a syndrome that is broadly characterized by agitation, excitability, paranoia, aggression, great strength and unresponsiveness to pain, and that may be caused by several underlying conditions, frequently associated with combativeness and elevated body temperature.[1-3] ExD-associated agitated behavior often leads to law enforcement intervention and CED use. The predominant theory of the underlying etiology of ExD is an excess of catecholamines (such as adrenaline) or sympathetic nerve stimulation during the excited period. However, a syndrome, by definition, is a collection of signs and symptoms, not a specific disease. People with multiple conditions may present in this manner, including drug-induced psychosis, serotonin syndrome, diabetic ketoacidosis, paranoid schizophrenia and others. Alcohol withdrawal and head trauma have also been implicated.[4] Recent research suggests that individuals with a history of chronic illicit stimulant abuse may be particularly susceptible to excited delirium.[5]

There has been criticism of the term "excited delirium" because its use is generally limited to medical examiners and emergency medicine physicians whose patients die before a complete workup is completed that would allow for a more specific diagnosis. Whether one uses the term or not, ExD-related behavior and medical conditions are well-recognized.

In general, excited delirium may have a mortality of about 10 percent.[6] Sympathomimetic agents include substances such as cocaine, methamphetamine, epinephrine (adrenalin),and dopamine. There is a subset of ExD-affected people who have sympathomimetic poisoning with malignant hyperthermia (high body temperature), sometimes associated with elevated serotonin levels. These cases have a grim prognosis and are at high risk of death regardless of police actions or method of subdual. In one study of 12 patients who made it to the hospital, four died and five suffered severe neurologic complications. This correlates well with other published observations that mortality is about 67 percent for those with a temperature above 41.5 degrees Celsius (106.7 degrees Fahrenheit).[6,7] ExD is frequently but not always associated with the use of cocaine and other stimulants.[8] One study reported that 78 percent of excited delirium cases had serological evidence of stimulant intoxication.[9]

There are other forms of combative, agitated behavior that require subdual; often grouped together under the umbrella of emotionally disturbed persons (EDPs). EDPs may be mistaken for people with excited delirium, and a subset of these may in fact display features of ExD. However, not all EDPs that require subdual have the syndrome of ExD.

There is ongoing research in how best to manage patients with ExD. However, it is clear that at least some of these patients are medically unstable and in a rapidly declining state with a risk of mortality in the short term. This holds true even with medical intervention or in the absence of CED deployment or other types of subdual. While studies in young, healthy,

drug-free volunteers suggest that CED deployment has inconsequential metabolic and stress-related effects, no human studies have been performed in situations modeling ExD.[10]

Because of this uncertainty, the number and duration of the CED discharge(s) should be generally limited to the minimal amount needed to attain restraint. Police officers should be aware of ExD-related behavior and indications, especially hyperthermia, which is easy to recognize and associated with the worst outcomes.

Conclusions and Recommendations:

The "drive-stun" or contact mode of CED use is a pain compliance procedure, and does not cause muscular incapacitation enabling restraint. Some sources indicate that people suffering from excited delirium are relatively insensitive to pain as a result of their condition. Some reports from law enforcement reinforce this view, because there are individuals who do not appear to be affected by the pain associated with CED exposure. Thus, "drive-stun" mode and other pain compliance methods should not be repeated in these individuals if they are found to have little or no initial effect.

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7. Safety Margins of CEDs

Most fatalities involving CED use are in people who have other risk factors for sudden death. This is a concern for law enforcement, because a large number of arrestees will have unrecognized clinical states of drug intoxication or pre-existing medical conditions that put them at risk for sudden, unexpected death, regardless of the type of subdual or restraint used. The medicolegal death investigator must identify the currently recognized safety margins of CED deployment in order to evaluate competing possible causes of death. Most of the deaths reviewed by the panel for this report involved individuals with drug intoxications or complicating medical conditions or both, thus making judgments about the relative role of CED exposure in the deaths very difficult.

It is clear that physical injury secondary to dart puncture, fall and other physical effects is a real though relatively uncommon danger. These are discussed at length elsewhere in the report, as is the literature regarding the cardiac, respiratory and metabolic effects of CED use. The latter suggest small risks associated with CED use, especially for healthy individuals.

However, there are groups who may be at risk for sudden death and those who are more vulnerable to physical insult. These disparate but occasionally overlapping groups include small children, those with diseased hearts, the elderly and pregnant women. For instance, the death of a seven-month-old infant following the application of a stun gun by his foster mother has been reported.[1] The small size of this infant, coupled with the nearness of the contact electrodes to the heart, was postulated as a plausible mechanism for death. Case reports of fetal death due to exposure to electrical current exist, all involving exposure significantly more severe than that associated with CED exposure.[2] In contrast, one study of 31 pregnant women subjected to electric shock, not from CED deployment, but including 12 V (telephone line), 110 to 220 V (home appliance), and 2000 and 8000 V (electric fence) current, found no adverse effects to the pregnancies.[3] There has been no research or field study demonstrating a significantly higher or lower risk for CED use with any particular group.[4-7]

Unlike the risk of secondary injury due to falling or puncture, the risk of human death due directly or primarily to the electrical effects of CED application has not been conclusively demonstrated. However, there are anecdotal cases where no other significant risk factor for death is known and where the temporal association provides circumstantial evidence of causation, albeit weak.[8] The panel recognizes the distinction between correlation and causation and that close temporal relationships do not necessarily prove causation. Studies on ventricular fibrillation with respect to dart placement, demonstration of ventricular fibrillation, pulseless ventricular tachycardia, or pulseless electrical activity in animals, and anecdotal examples of ventricular capture in humans with cardiac pacemakers or defibrillators provide a plausible mechanism for unusual and rare cases of death due to a confluence of unlikely circumstances. Multiple plausible mechanisms have been proposed but none proven.[9]

Many subjects of CED exposure are under the influence of drugs. One study suggested that cocaine intoxication decreased the risk of arrhythmia in animals, though it was limited by the lack of controls and the complex manipulation of the animals required by the study.[10] Similarly, a study on prolonged exposure in alcohol-intoxicated adult humans revealed no significant morbidity.[11] Thus, there is currently no basis in scientific research to conclude that drug use increases or decreases the safety margin of CED exposure.[11]

The safety margin of CEDs is subject to the variability in the output of the devices. Researchers are continuing to study the most common CEDs in use today, the models X26™ and M26™ from TASER® International, Inc., to determine the variability of their output. The effect of this output variability on cardiac safety margin is unclear.

Most research has been done using devices from TASER® International, Inc. Medical and safety data regarding stun batons, CED projectiles and other devices are much more limited. Although the early data suggest similar results, the current literature is sparse.[12-16] Another manufacturer, Stinger Systems, Inc., manufactures CEDs that are being used in some agencies and that are purported to have an improved safety margin because they declare to operate at lower power levels than the TASER® models X26™ or M26™. Independent research on Stinger Systems devices is very limited, so the panel could not judge the relative safety margin of these devices.[17]

Conclusions and Recommendations:
The literature suggests a substantial safety margin with respect to the use of CEDs when they are used according to manufacturer's instructions. However, plausible mechanisms of injury do exist which make it impossible to exclude direct lethality in every case. The safety margins of CED use in normal healthy adults may not be applicable in small children, those with diseased hearts, the elderly, pregnant women and other potentially at-risk individuals. The effects of CED exposure in these populations are not clearly understood, and more data are needed. The use of a CED on these individuals when recognized during attempted subdual should be minimized or avoided unless the situation excludes other reasonable options.

The use of manual techniques, baton blows, CEDs, other less-lethal technologies and even taking no action at all will each carry its own risks. All evidence suggests that the use of CEDs carries with it a risk as low as or lower than most alternatives. While it should be remembered that unlikely events may occur, it is unreasonable to demand that any application of force be totally risk-free in all populations at all times. The decision to use a CED or other options is best left to the reasonable tactical judgment of trained law enforcement at the scene.

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8. Prolonged Exposure

There is no evidence in animals that indicates a high risk of injury from a single discharge lasting less than 15 seconds from a TASER® X26™. Unlike the TASER® X26™, which requires the user to hold the trigger to maintain discharges longer than five seconds, other CEDs will apply a longer discharge without any intervention from the user. The TASER® C2™, designed for civilian use, applies a 30-second exposure to a target. Thirty-second exposure to the output of the TASER® C2™ CED in swine resulted in significant changes in blood chemistry, although most of the blood changes returned to baseline after the CED discharge ended. This raises concern for potential detrimental effects due to use of the TASER C2™ CED.[1] However, in one study, 20- to 30-second C2™ CED application in healthy humans had no significant deleterious effects on their physiology.[2]

The most common version of the dart-mode CED is the X26™ manufactured and sold by TASER® for law enforcement. When the trigger is pulled and the darts attach to the skin or clothing, the device delivers its standard charge as an initial pulse wave of up to 50 kV, followed by a series of low-current (2.1 milliamps, 70 mJ) pulses for five seconds. The device has the ability, however, to deliver extensively prolonged and uninterrupted discharges. The standard discharge cycle may be shortened or prolonged by either maintaining pressure on the trigger *continuously* over variable periods of time or by *repeatedly* depressing and releasing the trigger over variable intervals limited only by the power in the battery (approximately five minutes).

There is no standard definition of "prolonged" CED exposure for either continuous duration or number of multiple interrupted discharges. The majority (93 percent) of CED exposures in the field involve 15 seconds or less; a significant body of the medical literature has employed 15 seconds or less of CED exposure.[3]

After a review of anecdotes that seemed to indicate that multiple exposures were more hazardous, one researcher recommended in 2005 — without supporting documentation — that law enforcement agents should "… [l]imit the number of TASER® exposures when possible (3 is probably a reasonable number)."[4] The Police Executive Research Forum produced guidelines for police concerning CED use including a recommendation that "[w]hen activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody."[5] The Canadian Police Research Centre recommended: "… continuous cycling of the TASER for periods exceeding 15-20 seconds may increase the risk … and should be avoided where practical."[6]

Recommendations by the principal manufacturer, TASER® International Inc., have changed over time. Prior to 2008, they warned against extended duration applications [greater than 5 seconds], noting in particular that darts over the chest or diaphragm may impair respiration

and cautioned that "… [u]sers should avoid prolonged, extended, uninterrupted discharges or extensive multiple discharges whenever practicable…."[7] Their 2008 training bulletin (#14) concludes that more recent tests on humans demonstrate that "… there are no adverse effects on heart function or respiration deriving from multiple or prolonged deployments.[8]

Studies examining the effects of extended exposure in humans to CEDs are limited to humans exposed to less than 45 seconds. The majority of studies are limited to exposures of 15 seconds or less. Review of deaths following CED exposure indicates that some are associated with prolonged or multiple discharges of the CED. By contrast, experiments using healthy human volunteers have found no cardiac dysrhythmias[9,10] or respiratory dysfunction[11] following exposures less than 45 seconds. There are no published studies of humans exposed in excess of 45 seconds. Continuous 15 second application of the X26™ to either the back or chest of "physically exhausted" adult humans (designed to mimic field situations), over a 12-inch anatomic spread encompassing the heart, yielded normal electrocardiograms.[13]

Bozeman et al. reported in 2008 that among 1,201 cases in which a CED was used, 18.5 percent received CED discharges three or more times.[13] In one of these 222 incidents, an individual sustained significant injury, although it is unclear whether the CED played a role in the injury. The repeated or continuous exposure of a CED to an actively resisting individual may not achieve compliance, especially when the individual may be under drug intoxication or in a state of excited delirium.

The medical risks of repeated or continuous CED exposure beyond the durations studied in humans are currently unknown, and the role of CEDs in causing death is unclear in these cases. Uncertain risks associated with the effect of CEDs on respiration should be noted, as detailed elsewhere in this report (see chapter 4). These risks reinforce the view that prolonged, continuous CED exposure should be avoided, if possible.

Despite the well recognized limitations implicit in the applicability of results of animal experiments to humans, the evidence from experiments with swine models indicates that repeated exposures of over 80 to 90 seconds total duration have been associated with increased risk of ventricular fibrillation and mortality.[14-16] Swine studies involving exposure durations of 15 seconds or less are not associated with increased risks for ventricular fibrillation.[17] Intermittent exposures appear to be tolerated better than continuous exposure.[15-19]

Conclusions and Recommendations:
There may be circumstances in the field that require repeated or continuous exposure to a CED discharge. Law enforcement personnel should be aware that the associated risks are unknown and that most deaths associated with CED use involved multiple or prolonged discharges. Therefore, multiple or prolonged activations of CED as a means to accomplish subdual should be minimized or avoided.

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9. Research Associated With the Decision to Use a CED

Law enforcement agencies have deployed CEDs under a variety of circumstances and with a range of agency policies. The determination of appropriate use-of-force in police action has an extensive literature that goes well beyond the scope of this panel. There are currently efforts at a national level to establish guidelines for use within this context.[1-3] Individual departments revise their policies on a continuing basis. In one study of more than 500 agencies, 14.9 percent of agencies surveyed indicated that they were considering changing their use-of-force policies, and 21 percent already had.[4] Some agency policies allow the use of a CED only as an alternative to deadly force. In many cases, policies permit the use of CEDs in a wider variety of incidents, including passive resistance scenarios.[5] Among other considerations, agencies must consider the safety aspects of CED deployment when making these policy decisions. In addition, medical examiners are commonly called upon to offer an opinion about the level of force that was applied in a custody-related death. The recognition of appropriate versus inappropriate use of force can have significant medicolegal consequences.

It was not the mandate of this panel to develop use-of-force policies for law enforcement agencies or to review CED-related deaths with respect to whether police acted appropriately in any specific instance or whether specific policies or force options are advisable. Nonetheless, it is clear that the relative risk associated with CED deployment must be viewed in relationship to the risks of other alternatives, and not viewed in a vacuum. Multiple departmental reviews have suggested that injury rates, death rates and complaints against police drop significantly following the deployment of CEDs. For instance, deployment of CEDs in Charlotte, N.C., was associated with a 56.4 percent reduction in officer injury and a 79 percent reduction in suspect injury.[6] An independent study has indicated an increase in in-custody deaths following the adoption of CEDs, based on survey data, but the role of CEDs in any of these deaths was not examined.[7] These results are not normalized for crime rates or other factors.

Independent studies of use-of-force outcomes involving CEDs have been completed, and they substantiate the view that CED deployment, in general, decreases the likelihood of injuries to suspects and officers.[5,8-10] Further, national statistical data indicates that, despite widespread use of CEDs in law enforcement, CED deployment is associated with only a small proportion of in-custody deaths.[11] In the largest independent study to date, involving 12 agencies and more than 24,000 use-of-force cases, the odds of suspect injury decreased by almost 60 percent when a CED was used.[8,9] Officer injuries were either unaffected or reduced when a CED was used. In contrast, using physical force increased the odds of injury to officers by more than 300 percent and to suspects by more than 50 percent.[8,9] In general, the outcome data are consistent with medical research and this panel's review of deaths following CED deployment. Deployment of CED has a margin of safety as great as or greater than most alternatives.[12-14]

Conclusions and Recommendations:

In general, CEDs are safe when used properly. Nonetheless, care should be taken when CEDs are deployed. Researchers have recommended that passive resisters should not be subjected to CED use and that CED discharges should be limited to the number needed to gain control of the suspect.[8-10] It has been suggested that CEDs should not be used unless the only other alternative is lethal force. However, if a goal is minimization of harm, it is appropriate to use the force application that is associated with the least likelihood of injury. CED use is associated with a significantly lower risk of injury than physical force, so it should be considered as an alternative in situations that would otherwise result in the application of physical force. Police officers need to be aware that, although CEDs provide an effective alternative to lethal force, it is still possible to misuse the device if it is deployed outside the bounds of departmental policies derived from national guidelines. Use-of-force policies are a function of training, cultural context, operational contingencies and scientific concerns. Beyond the recognition of the lower injury rates to officers and suspects associated with CED use, it was not the mandate of this panel to make recommendations for a national use-of-force model or precisely where CED use should be placed within it.

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10. Post-Event Medical Care

Individuals who have received CED discharges may suffer injuries during the incident and also may have pre-existing medical conditions or traumatic injuries, which should be assessed by medical personnel. Appropriate medical care should be provided if these are present or suspected, especially when falls, burns or other trauma occur, or when darts penetrate obviously sensitive areas of the body.

Medical screening. Some form of medical screening is recommended after all CED exposures starting at the scene of the incident. This may take the form of jail intake medical screening, evaluation by emergency medical service (EMS) providers in the field, or by hospital emergency department personnel.

Dart removal. In most cases, darts embedded in the skin may be removed at the scene by properly trained medical or law enforcement personnel in accordance with local protocols. When removing embedded darts, care should be taken to avoid exposure to bloodborne pathogens. Individuals handling darts should be mindful of sharp points and additional spines located around the components of the newer CED device projectiles. Medical care should be provided when darts are located in potentially vulnerable areas such as the face, eyes, neck, genitals or groin, or if there is concern for underlying injuries, regardless of body location.[1-4]

Monitoring in-custody. Ongoing monitoring of suspects while in custody is strongly recommended. Changes in physical condition or mental status/behavior may occur due to effects of drugs (which may have been ingested or undergone continued absorption), medical conditions, or as a result of head trauma or internal injuries. These subjects should be immediately referred for medical evaluation and appropriate therapy delivered by qualified specialists.

Outpatient follow-up. In the absence of injuries, no specific medical follow-up is required after most CED exposures. However, suspects who have an implanted cardiac device (pacemaker or implanted defibrillator) should be evaluated by a physician and have the device and its stored data analyzed.[5] In cases with ocular injuries or CED discharge near the eyes, outpatient ophthalmologic follow-up is recommended to exclude complications such as retinal detachment or delayed cataract formation.[2,6] Those reporting or suspected of having significant medical or psychiatric conditions following CED use should also be evaluated to determine if they may be CED-related and to provide appropriate care. Although neuropsychologic dysfunction and complaints (physical, cognitive and emotional) have been well-documented with non-CED electrical injury, it is not clear at this time if this may also occur after CED exposure.[7]

Continued abnormal behavior. A minority of suspects taken into police custody (with or without CED use) will exhibit continued or ongoing abnormal behavior. Abnormal mental status and/or increased body temperature in combative or resistive subjects may be

associated with an increased risk for sudden cardiac arrest and death. Underlying medical or drug-induced conditions (such as hypersympathomimetic states, hyperthermia, acidosis, excited delirium, rhabdomyolysis and others) may be responsible for extensive struggling and other behaviors that require subdual by law enforcement, including the use of CEDs. There could also be underlying changes in body chemistry, hypoxia and/or acidosis due to suspect behavior and activities prior to subdual and CED use.[8] Precautions should be taken during any form of restraint to allow for reasonable chest movement and airway protection.[9]

Abnormal agitation and confusion should be treated by law enforcement personnel as a medical emergency. EMS should be immediately dispatched to the scene when this is recognized (law enforcement should not wait until a subject is subdued and in custody; EMS should be called immediately). Further, it must be recognized that a nonmoving or unresponsive subject may be in a medical crisis (i.e., cardiac arrest) rather than being intentionally passive.

Emergency medical treatment. In such cases, emergency medical providers should initiate medical support as soon as it is safe to do so. If warranted, sedation, hydration and cooling should be provided as soon as possible in addition to standard assessment, resuscitation and supportive care. Emergency medical services protocols specifying these interventions in the field may be useful and are already in place in some systems.[10]

Medical personnel both in the field and in the hospital setting are encouraged to assess and document vital signs including body temperature and oxygen saturation levels, cardiac rhythm,[9,11] neurologic status, and physical findings. Spinal precautions and diagnostic evaluations for traumatic injuries may be appropriate based on the history and physical findings. Blood and urine samples should be obtained early for laboratory studies, which may include serum glucose, electrolytes, pH, lactate levels, cardiac enzymes, urine toxicology screen and urine myoglobin, among others.[12,13]

Forensic aspects of medical care, Some agencies obtain photographs of imbedded CED darts in the field prior to removal. In cases of critical illness, injuries or death, all darts and clothing removed during medical care (after photography prior to removal if feasible) should be retained for investigative purposes by the medical examiner/coroner/law enforcement agency and handled as evidence. Detailed records of medical treatment should be maintained in all cases.

Conclusions and Recommendations:
Medical personnel should provide appropriate care to individuals who have received CED discharges as these individuals may suffer injuries during the incident and may also have pre-existing medical conditions needing assessment. Medical screening at the scene of the incident, the proper removal of dart(s), and the ongoing monitoring of individuals in custody for abnormal physical and behavior changes are crucial procedures. Suspects with implanted cardiac devices should receive outpatient follow-up as necessary. Detailed records,

including photographs of the scene and body, should be obtained in all cases; these records should include documentation of medical treatment provided.

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11. Considerations in Death Investigation

If a death occurs following the use of a CED by law enforcement personnel who are subduing, restraining, or apprehending a subject, the death will be investigated by the appropriate medical examiner or coroner's office as an in-custody death. Because deaths following CED deployment involve both complex and predictable issues, the death investigation needs to include consideration of information that may not be gathered in a routine death investigation or other in-custody death investigations. It is not the intent of this report to provide a comprehensive checklist of tasks which should be performed. Rather, we are providing what we believe will be helpful suggestions for consideration in the most important aspects of CED-related death investigations.

The information needed for investigation of death following CED use will need to be collected by death investigators from multiple sources and at the direction of the medical examiner or coroner who has ultimate responsibility for determining the cause and manner of death in the case. Further, the forensic pathologist who performs the autopsy will need to review such information, perhaps request additional information, and will develop information from the autopsy examination which may trigger or require additional investigation. The forensic pathologist who performs the autopsy is an integral part of the investigative team.

The following information can be useful in establishing facts and should be considered during the death investigation:

1. A timeline of all events with attempts to verify, to the extent possible, the accuracy of the dates and times of reported events, with specific emphasis on the interval between CED use, unresponsiveness and death.
2. Clarification of CED model and mode of use (drive-stun and/or cartridge mode).
3. Access to a comparable CED for familiarization with design and functionality;
4. Recent activities of the subject prior to the incident.
5. The emotional state of the subject.
6. The subject's reaction to each deployment.
7. The subject's medical conditions as determined by medical history, medical record review and medical conditions determined at autopsy.
8. The subject's drug use history, including prescription and illicit drugs as well as alcohol.
9. Specific inquiry into the subject's cardiac history, including review of any electrocardiograms or other cardiac function or laboratory tests which have been performed in the past.
10. Specific inquiry into the subject's seizure history to rule out history of seizures or to clarify the nature of a past seizure disorder.
11. Review of witness accounts, police reports, use-of-force reports, emergency medical services records, medical and psychiatric records, and any videos, photographs or

digital images of the events.
12. Determination whether body temperature and ambient temperature were established and documentation of dates and times of such recordings.
13. If death occurred after arrival at a hospital, obtaining blood drawn upon arrival at the hospital so it may be tested for intoxicants, including medications, if needed.
14. Review of downloaded information from the CED with special attention to an assessment of the number, duration and timing of CED discharges, including correlation with other case information to determine successful delivery and the effects of the discharges on the subject.
15. Assessment of the CED to establish whether it is operating within the manufacturer's specifications.
16. Preservation of the CED with batteries (since removal of batteries may alter the time clock) along with the darts and attached wires.
17. Investigation of the subject's place of residence or last place to visit to determine if additional medical history or evidence of drug use exists.

Assuming that the investigation and autopsy are performed and documented/reported in accordance with the National Institute of Justice's *Death Investigation; A Guide for the Scene Investigator* and the National Association of Medical Examiners' *Forensic Autopsy Performance Standards,*[1,2] additional information and procedures that may be helpful, but not warranted in every case, are as follows:

1. Performance of a complete autopsy of the scope usually performed for deaths in-custody with appropriate histologic sampling of organs.
2. Comprehensive forensic toxicology of autopsy specimens and any retained antemortem samples, specifically including tests for alcohol, nervous system stimulants, common drugs of abuse, anti-seizure drugs, and therapeutic drugs often prescribed for psychiatric disorders.
3. Measurement of the thickness of the anterior chest wall from the skin to the rear of the pre-pericardial sternum at intercostal space between the left fourth and fifth ribs.
4. Measurement of the thickness of clothing and chest wall or tissue in the area(s) where CED darts or prongs penetrated.
5. Measurement of the depth of dart penetration.
6. Documentation of the CED dart's(s') length(s).
7. Documentation of dart and stun dart locations and any associated marks or burns.
8. Consideration of unusual or atypical current flow paths, such as body to ground, body to water, body to metal, etc.
9. Determination of the nature of any other forms of subdual or restraint that were employed in the case in question.
10. Removal and evaluation (interrogation) of any implanted cardiac or other electronic devices.
11. Utilization of appropriate consultants such as cardiologists, cardiac pathologists and neuropathologists as needed.

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The agency responsible for conducting the death investigation should ultimately be responsible for certifying the cause and manner of death.

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12. Considerations in Death Certification

The medical examiner/coroner is required to determine the cause and manner of death in all violent, sudden, and unexpected or unusual deaths. Consultant experts in various specialties may be involved as the case warrants. Any death related to CED deployment would fit into this category. Available publications describe basic principles regarding death certification and completion of the cause-of-death section of the death certificate (see also the definitions in the Glossary of this report).[1,2] The manner of death classification (homicide, suicide, accident, natural or undetermined) is dependent on autopsy findings in conjunction with all relevant information, including the circumstances surrounding death as determined by a medically objective investigation independent of law enforcement.[3]

In a CED-related death, the medical examiner/coroner may choose to exclude any mention of the CED from the death certificate. In some cases, the death certificate may list the CED as a causative factor in Part I or as a contributory factor (other significant condition) in Part II of the cause-of-death statement. In other cases, the CED may be listed as one of the items in the space provided on the death certificate to describe how injury occurred. Further, the medical examiner/coroner may choose to classify a CED-related death as a homicide, whether the CED itself is directly causative or contributory, because the actions of law enforcement led to the death. In the majority of these cases, a subsequent (nonmedical) investigation would classify the homicide as justifiable, but it is beyond the scope of the medical examiner/coroner to make that determination for a death certificate. In other cases, including those that might list the CED on the death certificate in some way, the death may be ruled an accident, because the judgment of the medical examiner or coroner would be that the actions of law enforcement or others involved did not cause death.

Regardless of these classifications, an independent observer should use caution when interpreting the inclusion of a CED on a death certificate or the classification of the manner of death as a homicide as an absolute indictment of the CED as the sole or primary reason for the death. First, the CED-related deaths examined in this study involved a complex set of circumstances with individuals who were not necessarily healthy and who were often highly drug-intoxicated. These circumstances make it very difficult to point to the CED as a particular cause in specific deaths. Second, the decision to list the CED on the death certificate is subject to the judgment of the individual medical examiner/coroner and includes medicolegal considerations, experience, and often aspects of local practice and history.

Among the medical examiners on the panel that produced this report, many cases resulted in divergent views concerning cause and manner of death, although these disagreements were within the normal bounds of practice among certifiers of death. It is one objective of this report to minimize these differences among medical examiners and coroners by improving the scientific understanding of CED-related injuries and deaths. This is extremely important

to medical examiners and coroners who must complete the death certificate and report the cause, manner and circumstances of death, including how injury occurred. A consensus is needed to make certification of death more consistent between cases and between jurisdictions, while always remaining aware of the need for professional judgment.

For deaths in which the subject is in law enforcement custody or is being apprehended, restrained or subdued, the medical examiner/coroner must often determine if the circumstances and findings are most consistent with a natural, accidental, homicidal or undetermined manner of death.

A major problem with the investigation of in-custody deaths and those in which a CED has been deployed is obtaining relevant and accurate information regarding the chronology of events leading up to the time when the subject underwent cardiopulmonary arrest during or following subdual or restraint. A limiting factor is that like all death investigations, in-custody death investigations occur after the fact over extended periods of time following the initial investigation of the scene and circumstances, and often rely on investigative information gathered by the same law enforcement agency involved in the subdual, restraint or deployment of a CED.

Both theoretical and real cases reviewed by the medical panel in which CED deployment was considered as a major factor in causing death were classified as homicide when there were accurate timelines, independent and objective witness accounts, and strong — almost immediate — temporal relationships between CED deployment and death. CED use in these instances could be responsible for initiating or contributing to a fatal sequence of events. It needs to be emphasized that the manner of death classification on a death certificate is not an assessment of legal responsibility for the death. From the medical examiner/coroner standpoint, homicide means that death either occurred at the hands of another person or resulted from hostile, illegal actions or inactions of another person. For example, deaths certified as homicide while in the "care" (i.e., custody) of another person have included the following types of situations:[4]

1. The caregiver has caused the death intentionally.
2. The caregiver lacks required licensure or training for the type of care being provided.
3. The caregiver consciously disregarded a known likelihood of injury and showed a wanton and gross disregard for the well-being of the patient (negligence).

In use-of-force deaths, the actions of law enforcement officers may be judged differently than those of other responders who are classified as "caregivers" even if the officers' actions are very similar to those of emergency medical personnel.

In deaths following CED deployment, a certifier of death may determine that the manner of death was homicide; nonetheless, it may be determined that the officer was acting appropriately and the homicide was justifiable. Alternatively, the prosecuting attorney may

pursue homicide charges if the law enforcement officer recklessly engaged in conduct and use of force that created a substantial risk of injury and was not compliant with policy or guidelines of the department (e.g. repetitive CED discharges when the subject has already been restrained and handcuffed, or administration of a CED to a compliant individual). In some cases, an accidental manner of death may be assigned if there is a lethal concentration of drugs or there are lethal complications of drug use, and subdual or CED use are clearly not factors contributing to death. In these cases, when the manner of death is classified as an accident, the certifier of death would be indicating that the actions of the law enforcement officer, whether appropriate or not, did not contribute to the death of the individual.

Certification of death following CED deployment can be difficult because:

- Information needed to draw conclusions may be of poor quality or not available.
- It may be impossible to determine the relative causative or contributory roles of underlying disease, drug intoxication, drug-induced agitation or delirium, restraint or subdual, or possible direct electrical or indirect stresses of CED deployment.

After thorough investigation, the certifier may be reasonably certain that CED deployment did or did not cause or contribute to death. In many cases, the role of CED deployment is much less clear.

There is debate as to whether CED deployment alone can directly cause death in humans via electrical effects on the cardiovascular or nervous system, as has been detailed elsewhere in this report. For the purpose of this discussion it is assumed that such a death may occur. For example, assume a young, thin, healthy person is not intoxicated, but is resisting arrest and receives several intentionally deployed, consecutive CED discharges to the anterior chest, then suddenly dies without other reasonable explanation and no other causative factors are identified. The death certificate could be worded as follows:

Part I	A. **Sudden cardiac death**
	Due to, or as a consequence of: B. **Conducted energy device discharges**
	Due to, or as a consequence of: C.
Part II	OTHER SIGNIFICANT CONDITIONS: Conditions contributing to death, but not resulting in the underlying cause of death in Part I

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Manner of Death **Homicide**	Describe how injury occurred **Subdual by law enforcement**

If investigation shows a specific single form of restraint or subdual did cause death, such as head trauma with brain injury from a blow to the head, then death certification may follow this general example:

Part I	A. **Skull fracture with brain contusions**
	Due to, or as a consequence of: B. **Blunt-force head injury**
	Due to, or as a consequence of: C.
Part II	OTHER SIGNIFICANT CONDITIONS: Conditions contributing to death, but not resulting in the underlying cause of death in Part I
Manner of Death **Homicide**	Describe how injury occurred **Struck during subdual by law enforcement for cocaine-induced agitation**

More typically, however, multiple factors are involved such as:

- Repeated or prolonged deployment of the CED.
- Agitated state or delirium.
- Intoxication.
- Use of multiple methods of subdual or restraint.
- Acidosis, hyperthermia or rhabdomyolysis.
- Underlying natural disease such as heart disease, sickle cell trait, etc.

In these less clear-cut cases, the certifier may conclude that subdual contributed to death because of stress, often in conjunction with a drug-induced agitated state or disease. The questions become:

- Should all contributory factors be itemized or should they simply be combined under a general category of "stress of restraint" or "stress of subdual?"
- Would death have occurred when it did without the restraint?
- Should the manner of death be classified as other than homicide?

For example, in a person with cocaine induced agitation and sickle cell trait who the certifier concludes died from subdual, one option for certifying the death is as follows:

Part I	**Cocaine induced delirium resulting in physical subdual**
	Due to, or as a consequence of: B.
	Due to, or as a consequence of: C.
Part II	OTHER SIGNIFICANT CONDITIONS: Conditions contributing to death, but not resulting in the underlying cause of death in Part I **Sickle cell trait**
Manner of Death **Homicide**	Describe how injury occurred **Cocaine-induced agitation requiring multiple methods of subdual by law enforcement**

In many cases, there are multiple forms of subdual or restraint such as carotid sleeper hold, pepper spray, handcuffing, hobbling, "hog-tying"' slaps, asp baton strikes, chest compression, CED deployment, and others. Because it is difficult to differentiate contributory methods from noncontributory ones, and because of limited space in the "how injury occurred" section of the death certificate, it may be best to be generic in these complex cases and simply state that multiple forms of subdual or restraint were used. Of course, if there is reasonable evidence that one or more specific forms of subdual or restraint did cause death, such cases can be certified as described above. In general in these cases, CED deployment should be considered to be a stress of a magnitude that is comparable to other components of subdual.

Many times, law enforcement officers respond to violent or combative subjects and subdue or restrain them in order to facilitate medical care. Often, EMS will request law enforcement officers to come to a scene. In this capacity as a first responder, the distinctions between medical assistance and law enforcement procedures can be blurred. If a fatal injury results during medical assistance, the manner of death is usually classified as an accident. If the fatal injury results during a law enforcement action (even if the motivation is to provide medical assistance), the manner of death may be classified as homicide.

If there is insufficient information to differentiate between two manners of death, the manner of death may be certified as undetermined. Some examples in which an undetermined manner of death may be considered include the following:

a) The autopsy and toxicology findings show no obvious cause of death.

b) Combinations of significant disease and toxicology results that ordinarily would not be fatal.
c) When death is delayed after lengthy hospitalization and circumstantial details are not clear.
d) No toxicology screen was done on admission to the hospital and death is delayed.
e) Circumstances of the incident cannot be accurately determined.

Cases reviewed by the panel where CED was determined to be a major factor, and classified as homicides, were cases in which there was an accurate timeline, an independent witness observation, and strong, almost immediate, temporal relationship between CED use and death or initial/sudden collapse or unresponsiveness. When death or the initial/sudden collapse immediately follows CED use, one can reasonably conclude that the CED would be responsible for initiating a lethal sequence of events.

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Epilogue

The statements, opinions, and recommendations in this report were developed by consensus of the panel members. The opinions of the members may change in the future based on new studies and as more information becomes available. Indeed, the publication of numerous papers in the time between the release of the interim report and this final report was instrumental in determining the final recommendations published here. New data continue to accrue even during the preparation of this final report.

There was a good deal of discussion among the participants regarding the determination of cause and manner of death from a medicolegal viewpoint. Part of the discussion concerned our inability to make dogmatic statements about risk in many of these cases. There were also differing philosophies among participants underlying the placement of specific factors involved in a death within the chain of causation or contribution. As noted in the disclaimer at the beginning of this report, these differences do not reflect basic conceptual differences in the pathophysiology involved, but instead reflect conceptual differences about the meaning of cause and manner of death. In some cases, of course, the determination of cause and manner of death is explicit and noncontroversial. But in cases where the "real" cause must be teased from an interconnecting web of causal factors, differences in opinion will arise. That does not, however, remove the mandate of the medical examiner in most cases to assign a specific cause of death.

In addition to these essentially philosophical issues, the fact is that our knowledge and understanding of CED effects is incomplete. Indeed, there is uncertainty about how exactly CEDs achieve their effects on the human body. Some propose that the effects of CEDs are due entirely to electrically induced tetany, while others hypothesize secondary effects due to nerve stimulation and reflex effects. We do know that CEDs are characterized by the infliction of excruciating pain. While such a thorough comprehension may not be necessary to measure the physiologic effects on cardiac function, metabolism, respiration and mortality associated with CED deployment, it means that all recommendations are subject to revision as our understanding improves.

During discussions of the use of CEDs with stakeholders, interested parties and organizations, a recurring concern arose regarding the use of CEDs as punishment or torture devices. The panel shares the concern that wide deployment of an extremely safe method of delivering extraordinary pain could also potentiate abuse. Questions about the ethical infliction of pain in law enforcement are important, and we applaud efforts to address them, but they are not within the mandate of this panel. Instead, we emphasize that issues of safety are different and should not be conflated with these other important concerns.

Study of Deaths Following Electro Muscular Disruption

The panel extends its deep gratitude to the researchers and stakeholders who shared their knowledge, experience, and extraordinarily diverse perspectives. We greatly appreciate the efforts of the National Institute of Justice in funding and providing logistical support. We thank our respective employers, institutions, universities and our families for allowing us the time and opportunity to perform this function. We extend our respect and thanks to those in law enforcement and the military who protect our lives, liberty and property. We recognize our duty to the citizens of these United States, whom we serve and who deserve our best efforts to ensure that their lives and rights are preserved.

Glossary of Terms as Used in This Report

Acidosis — An increase in the acidity (decrease in pH) of the blood; the normal pH of human blood is 7.4.

Adrenergic response — The epinephrine (adrenaline or catecholamine) response to stress such as occurs with the "fight or flight" reaction.

Alligator clip — A small metal clip, which is hinged and has teeth, so it resembles the snout, jaws and teeth of an alligator. In CED research, it is used to attach wires to a research subject's clothing.

Apex (of the heart) — The tip (bottom) of the heart closest to the diaphragm.

Cardiac dysrhythmias (arrhythmias) — Abnormal heart rhythms. These can spontaneously resolve in some instances:

- **Asystole** — Lack of electrical activity and heart function.
- **Atrial fibrillation** — An abnormal heart rhythm where the upper chambers (atria) are fibrillating (quivering in an unsynchronized fashion). The atria fail to augment heart output and often cause the heart to beat very rapidly.
- **Pulseless electrical activity (PEA)** — A state where electrical activity can be recorded from the heart but there is not enough blood flow out of the heart to maintain a pulse or blood pressure.
- **Ventricular capture (pacing)** — The ability of an external source of energy to cause the lower chambers (ventricles) of the heart to beat.
- **Ventricular fibrillation** — An abnormal rapid heart rhythm originating in the lower chambers of the heart. This rhythm does not support flow of blood out of the heart, causing lack of blood pressure or pulse. This rhythm typically leads rapidly to unconsciousness and death.
- **Ventricular tachycardia** — An abnormal rapid heart rhythm originating in the lower chambers of the heart. This rhythm may allow for adequate blood pressure to support life for a period of time, but may also rapidly lead to death.

Cardiac mechanisms — The ways the heart can fail when injured or sick.

Conducted energy device (CED) — A weapon primarily designed to disrupt a subject's central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses.

Darts — Projectiles that are fired from a CED and penetrate the skin; wires are attached to the darts leading back to the CED.

Dart removal — The act of removing a dart from a person's body or clothing.

Deployment — Making an item available for use in the field or actually using it in the field. In this report, deployment means use of the CED on a subject.

Diabetic ketoacidosis — A metabolic abnormality in diabetics which is characterized by elevated blood sugar and ketones, and may cause abnormal mental function.

Duration — The aggregate period of time that CED shocks are activated.

Dysrhythmia — Any disturbance or irregularity of the heartbeat.

Echocardiography — Ultrasound study of the heart.

Electrocardiogram — A graphic produced by an electrocardiograph, which records the electrical activity of the heart over time.

Electro muscular disruption — The effect that a CED has on the body. Overrides the brain's communication with the body and prevents voluntary control over the muscles.

Emotionally disturbed person (EDP) — A generic term often used by criminal justice and law enforcement personnel to describe a person with behavioral disturbances which may be caused by a mental disorder, disease, or a chemically induced state.

Excited delirium — State of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, euphoria, hostility, exceptional strength and endurance without fatigue.

Hypoventilation — Breathing slower or less deeply than normal, thereby increasing the amount of carbon dioxide (CO_2) in the blood to above normal.

Implantable cardiac device — An electronic device surgically implanted in a person and usually consisting of a cardiac pacemaker, defibrillator or combination pacemaker/defibrillator.

- **Implantable cardiac defibrillator** — An implanted cardiac device which has the ability to recognize and treat abnormal rhythms of the heart. This device can function as a pacemaker but is also designed to treat life-threatening rhythms such as ventricular tachycardia and ventricular fibrillation. The device treats these rhythms by either shocking the heart or rapidly pacing the heart back to a normal rhythm.

- **Pacemaker** — An implanted cardiac device which causes the heart to beat when the heart is beating too slow.

Less lethal — A concept of planning and force application that meets an operational or tactical objective,with less potential for causing death or serious injury than conventional, more lethal police tactics.

Less-lethal weapon — Any apprehension or restraint device that, when used as designed and intended, has less potential for causing death or serious injury than conventional police lethal weapons.

Metabolic mechanisms — The ways the metabolism can fail when a person is injured or sick.

Pacing threshold — The amount of energy required from a pacemaker to cause the heart to beat.

Paranoid schizophrenia — A psychotic state in which a person has paranoid delusions (false beliefs or altered perceptions of reality).

Physical nechanisms — The ways in which illness or injury can compromise heart/lung function or put body metabolism at risk.

Pulmonary mechanisms — The ways in which lung function can be compromised by injury or sickness.

Pulse rate — The frequency at which electrical pulse waves are generated.

Pulse wave — A graphic measurement of the wave produced by an impulse of electric energy.

Respiratory — Relating to the act or process of inhaling (breathing in) and exhaling (breathing out); breathing, also called ventilation.

Restrain — To control, limit,or prevent movement.

Restraint — A device that restricts movement.

Rhabdomyolysis — Potentially fatal condition resulting from the breakdown of muscle fibers resulting from metabolic, physical or chemical causes, producing substances that can damage other organs such as the kidneys.

Sensitive areas — A person's head, neck, and genital areas, and a female's breast areas.

Standard CED cycle — A five-second electrical discharge occurring when a CED trigger is pressed and released. The standard five-second cycle may be shortened by turning the CED off. (Note: If a CED trigger is pressed and held beyond five seconds, the CED will continue to deliver an electrical discharge until the trigger is released.)

Sternal notch — The depression in the skin just above the breast bone where the neck connects to the chest.

Subdual — To bring under control.

Sympathomimetic — A chemical agent or physiologic response which mimics or increases bodily responses typically caused by the sympathetic nervous system, often due to agents such as cocaine and amphetamine compounds which increase adrenaline (epinephrine), or neurotransmitters such as dopamine.

Symptomatology — The combined symptoms of a disease: the symptom complex of a disease.

Vector — The angle or course of current in this example.

Study of Deaths Following Electro Muscular Disruption

Appendix A. How a TASER® Conducted Energy Weapon Works

PART 3: CONDUCTED ENERGY WEAPONS
Braidwood Commission on Conducted Energy Weapon Use

Models commonly used by Law Enforcement **TASER M26 and TASER X26.**

a. The Advanced TASER M26
Introduced to the law enforcement community in 1999, the Advanced TASER M26 is a pistol-shaped weapon. It can be used in two modes:

• *Push-stun mode* — the end of the weapon is pressed against the target's body (with an expended cartridge attached or without a cartridge attached), and a pulsed electrical current is transferred to the adjacent muscles; or

• *Probe mode* — when a cartridge is attached to the end of the weapon, it fires two metal darts or probes (using compressed nitrogen as a propellant), which imbed in the target's skin or clothing. The probes, which have hooked tips, can penetrate up to 9 mm into the subject's skin. If the probes do not reach the skin due to bulky clothing, the high voltage creates an arc enabling the current to enter the body. The probes are connected to the weapon by wires that conduct a pulsed electrical current from the weapon into the target's body.

The trigger activates a five-second electrical current cycle, which can be stopped by placing the safety lever in the safe position, or can be repeated by re-pressing the trigger after the completion of the first cycle. Holding the trigger down continuously can extend a cycle.

Eight AA nickel metal hydride or alkaline cell batteries power the M26. Depending on the battery brand used, the electrical current has a pulse rate of 15 or 20 pulses per second, with a pulse duration of 40 microseconds (40 millionths of a second) full waveform. When the M26 is held level, the upper probe is propelled in a horizontal direction and the lower probe is propelled at an eight-degree downward angle, which means that, for every seven feet of travel, there is a one-foot spread between the probes (or, for every 2.1 metres of travel, there is a 0.3 metre spread). Four different colour-coded single-use cartridges can be installed, with different wire lengths — yellow (15 feet), silver (21 feet), green (25 feet), and orange (35 feet). For the M26 to be effective when used in its probe mode, both probes should hit the subject. To assist the officer in aiming, the M26 emits a red laser beam, which marks where the upper probe will hit the target. Every cartridge has a unique serial number. When it fires out the two probes and wires, it also disperses about 30 small discs, called Anti-Felon Identification tags, with the same serial number on it. This enables investigators to link up the user of the weapon with the person to whom the cartridge was issued. The M26 has an LED indicator showing that the laser is on and the weapon is capable of firing, but it does not indicate whether there is sufficient battery power to fire or discharge. The weapon stores

data about firings, date, and time for approximately 585 firings, which can be downloaded using an M26 dataport download kit. The manufacturer's specifications respecting the M26's electrical output, which I will discuss in more detail later, include the following:

- Voltage:
  - Peak open circuit arcing voltage — 50,000 V
  - Peak loaded voltage — 5,000 V
  - Average voltage over duration of main phase — 3,400 V
  - Average voltage over full phase — 320 V
  - Average voltage over one second — 1.3 V
- Current: 3.6 mA average (milliamps)
- Energy per pulse:
  - Nominal at main capacitor — 1.76 joules
  - Delivered into load — 0.50 joules
- Power rating:
  - Nominal at main capacitor — 26 watts at 15 pulses per second
  - Nominal delivered into load — 7.39 watts at 15 pulses per second

However, Mr. Reilly testified that an electrical shock can be delivered across several inches of air and if one probe hits the subject and the other probe falls on wet ground, the subject may still receive a shock.

b. The TASER X26

The manufacturer introduced its X26 model, for law enforcement and military use, in 2003. It was more compact, 60 percent lighter, and designed to be carried in a holster on an officer's service belt. The X26's specifications are similar to the M26, except for the following:

- Batteries — digital power magazine (two 3-volt lithium batteries, as used in digital cameras)
- Pulse rate — 19 pulses per second
- Pulse duration — 100 microseconds (100 millionths of a second)
- Peak loaded voltage — 1,200 V
- Average voltage over duration of main phase — 400 V
- Average voltage over full phase — 350 V
- Average voltage over one second — 0.76 V
- Current — 2.1 mA average
- Energy per pulse:
  - Nominal at main capacitors — 0.36 joules
  - Delivered into load — 0.07 joules
- Power rating:
  - Nominal at main capacitors — 6.84 watts
  - Delivered into load — 1.33 watts

- LED display — a two-digit display of remaining digital power magazine energy percentage, burst time, warranty expiration, unit temperature, illumination status, and current time and date.
- Data storage — stores time, date, burst duration, unit temperature, and remaining digital power magazine energy percentage for approximately 1,500 firings. The data can be downloaded using a USB data interface module.
- Video and audio — available with an optional video and audio recorder that is activated when the safety switch is armed. It is capable of recording for up to 90 minutes.

In order to understand how a conducted energy weapon works, a basic understanding of electricity is required. I am indebted to Mr. J. Patrick Reilly, from the Applied Physics Laboratory of Johns Hopkins University, for his very informative presentation during our public forums. Much of the explanation that follows is based on what he said and his PowerPoint presentation.

To begin with a question, if putting my finger into a 120-volt light socket could kill me, why could I walk away from a 50,000-volt shock from a conducted energy weapon? There are two reasons. First, the "peak open circuit arcing voltage" is rated at 50,000 volts when nothing is connected to the probes, such as when the officer is testing the weapon by creating an electrical arc between the two electrodes. When the weapon is under load (such as when imbedded in a person's skin or clothing), the voltage is much less — 7,000 volts for the M26 and 1,300 volts for the X26, according to Mr. Reilly. Second, the duration of the conducted energy weapon pulse is short. In the case of the wiring in our homes, the electrical current is continuous. However, in a conducted energy weapon, a new electrical pulse begins 19 times every second. The actual duration of each of these pulses is much briefer — 30 microseconds (30 millionths of a second) with the M26 and 80 microseconds (80 millionths of a second) with the X26. The pulse durations of 30 and 80 microseconds are taken from Mr. Reilly's presentation. According to the manufacturer's specifications, the pulse durations are 40 and 100 microseconds for the M26 and X26 respectively.

There is an important reason why a conducted energy weapon needs 50,000 volts. This voltage (analogous to pressure in a water hose) is required in order to create an electric arc that bridges an air gap. For example, if one of the probes is imbedded in clothing and does not touch the skin, the high voltage creates an arc between the probe and the skin, enabling the electrical current to enter the body. Similarly, although the outer layer of a person's skin (the corneum) is dry and normally a poor conductor, the high voltage breaks down the dryness and makes the skin a good conductor.

Turning now to current (analogous to the water flow rate in a hose, such as litres per minute), the manufacturer's specifications state that the M26 has a current of 3.6 milliamps (3.6 thousandths of an ampere) average, and the X26 has a current of 2.1 milliamps (2.1 thousandths of an ampere) average. Mr. Reilly, on the other hand, cites the M26 as having a

peak output current of 17 amperes, and the X26 as having a peak output current of 3 amperes. He explained the difference between his numbers and the manufacturer's numbers as follows. His numbers measure the actual amperage during a pulse, whereas the manufacturer's numbers are an average over the total time period, during and between pulses. In his view, average current is irrelevant to electrostimulation.

According to Mr. Reilly, "delivered charge" is the best indicator of the potential electrostimulation. It is measured in coulombs, which is analogous to the volume of water delivered by a hose during a set period of time. The significant point is that both the M26 and the X26 have an almost identical "delivered charge" for each pulse — approximately 100 micro-coulombs (or 100 millionths of a coulomb). This is so because of the differing currents and pulse durations of the two models, as shown in Table 1.

Table 1. Delivered charge of M26 and X26 models

	M26	*X26*
Current	17 amperes per pulse	3 amperes per pulse
Pulse duration	30 microseconds	80 microseconds

To give a sense of what effect 100 micro-coulombs of delivered charge would have on a person, Mr. Reilly conducted laboratory experiments with human subjects, who were subjected to brief high-voltage pulses on their forearms. Subjects reported pain on average at 0.5 micro-coulombs, and intolerable pain at 1.0 micro-coulombs. This is to be contrasted to the delivered charge of 100 micro-coulombs from each pulse of a conducted energy weapon, which delivers 95 pulses over a five-second period.

The purpose of the electrical current is different, depending on the mode used:

• *Push-stun mode* — if the trigger is pulled when the end of the conducted energy weapon is pressed against the person's skin (*e.g.,* arm). The electrodes are close together, which means that the electrical current is localized to the muscles in that area. In that case it serves a pain compliance purpose, to persuade the person to let go of something, or to otherwise comply in order to avoid further shocks.

• *Probe mode* — when the probes are deployed they are normally imbedded in the person farther apart than the electrodes are in the push-stun mode. In that case, the electrical current spreads out more and goes deeper into the body, engaging more and more excited tissue. In addition to the same pain experienced in the push-stun mode, the electrical current now interferes with the person's neuromuscular system. The person typically becomes incapacitated, and falls to the ground with no ability to put his or her hands out to break the fall.

Study of Deaths Following Electro Muscular Disruption

When the five-second cycle is over, the pain and/or incapacitation is over, and the person's normal strength returns immediately.

From the Braidwood Commission of Inquiry. *Restoring public confidence: Restricting the use of conducted energy weapons in British Columbia.* Victoria, British Columbia: Braidwood Commission on Conducted Energy Weapon Use. 2009.

Study of Deaths Following Electro Muscular Disruption

Appendix B. Definitions for Cause, Mechanism and Manner of Death

Background, The study steering group presented definitions for Cause, Mechanism and Manner of Death for review and comment by the Medical Panel in January 2008. The definitions herein were revised in April 2008 and will serve to guide mortality reviews of those cases of interest to the study.

The underlying (or proximate) cause of death is

(a) the disease or injury, or combination of the two, that initiated the pathophysiologic sequence of events leading to death
OR
(b) the circumstances of the event [accident or violence] that produced the fatal injury.

The proximate cause of death is always etiologically specific.

The **immediate cause of death** is the terminal disease, injury, medical complication or pathophysiologic condition resulting from the underlying cause or circumstance and directly preceding death.

The underlying cause of death and the immediate cause may either exist simultaneously or be separated by variable spans of time.

An **intermediate (or intervening)** cause of death is a disease or condition with fatal potential that occurs at any time between the underlying cause of death and the immediate cause of death and is a result of the underlying cause.

There may be no, one or multiple intermediate causes of death.

A **contributory cause of death** is any or all significant disease[s], injuries, or pathophysiologic condition[s] that existed at death and that may have fatal potential, but did not lead to or result in the underlying cause of death.

There may be no, one or multiple contributory causes of death.

The **mechanism of death** constitutes the fatal pathophysiologic derangement[s] resulting from the underlying cause of death.

The mechanism of death is one or more complication[s] of the underlying cause of death, and:

- Is a disturbance of physiology and/or biochemistry.
- Is the derangement by means of which the underlying cause of death effects the lethal outcome.

- May have more than one cause.
- Is never etiologically specific.

The **manner of death** is a classification of the circumstances of how death occurred. It is derived from correlation of all investigative and scientific components of the death investigation.

In most jurisdictions in the United States the subdivision of manner of death is as follows:

- **Natural** — Solely due to disease processes.
- **Unnatural (or violent)** — Due to external agencies (injury of any kind, including the toxic effects of chemicals) either exclusively or in concert with natural conditions. These may be:
    - Homicide.
    - Suicide.
    - Accident.
- **Undetermined** — When neither unnatural nor natural manner of death can be determined — OR — if the cause of death is known to be unnatural, but investigation cannot distinguish the subcategories.

Guidelines for Cause (COD) and Manner (MOD) of Death as Used in This Document:

Cause and manner of death are the medical opinions of the certifier based on information available at the time of certification.

COD — Reasonable medical and investigative probability, or a preponderance of all scientific and investigative data.

MOD — Reasonable discretion by the investigating certifier, correlating all pertinent case data.

Cause and manner of death are subject to change if new information relevant and material to the investigation emerges.

(N.B. — Certification of a death as homicide does not imply criminal culpability, which is a determination solely in the jurisdiction of the justice system.)

Appendix C. The Use-of-Force Continuum

Most law enforcement agencies have policies that guide their use of force. These policies describe an escalating series of actions an officer may take to resolve a situation. This continuum generally has many levels, and officers are instructed to respond with a level of force appropriate to the situation at hand, acknowledging that the officer may move or skip from one part of the continuum to another in a matter of seconds.

An example of one of many use-of-force continuums follows:

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
    - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
    - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**
    - Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
    - Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Empty-Hand Control — Officers use bodily force to gain control of a situation.**
    - **Soft technique.** Officers use grabs, holds and joint locks to restrain an individual.
    - **Hard technique.** Officers use punches and kicks to restrain an individual.
- **Less-Lethal Methods — Officers use less-lethal technologies to gain control of a situation.**
    - **Blunt impact.** Officers may use a baton or projectile to immobilize a combative person.
    - **Chemical.** Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
    - **Conducted energy devices (CEDs).** Officers may use CEDs to immobilize an individual. CEDs discharge a high-voltage, low-amperage jolt of electricity at a distance. (See chapter 9 on Research Associated With the Decision to Use a CED

- **Lethal Force — Officers use lethal weapons to gain control of a situation. Should only be used if a suspect poses a serious threat to the officer or another individual.**
    - Officers use deadly weapons such as firearms to stop an individual's actions.

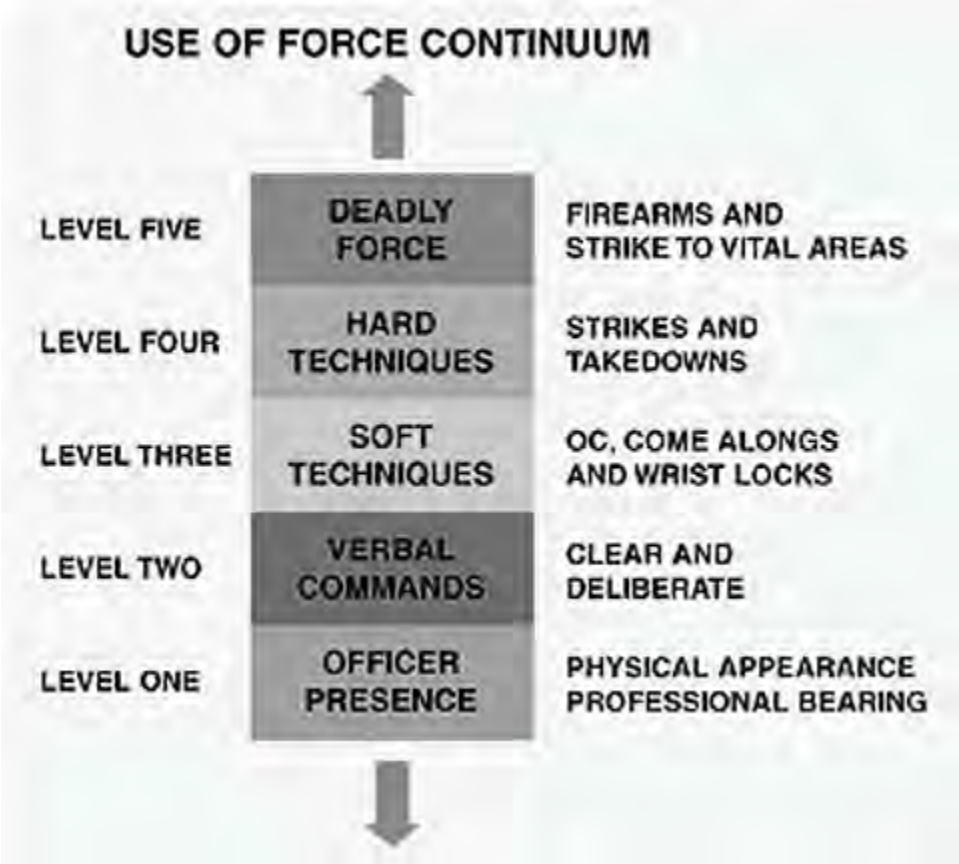

Figure 1. Descriptive diagram of one of many use-of-force continuums

Appendix D: List of Acronyms Used in this Report

List of Acronyms Used in This Report

CED: Conducted energy device
COD: Cause of death
ECG: Electrocardiograph/electrocardiographic
EDP: Emotionally disturbed person
EMD: Electro muscular disruption
EMS: Emergency medical service(s)
ExD: Excited delirium
JNLWD: Joint Non-Lethal Weapons Directorate
kJ: kilojoule
kV: kilovolt
LED: Light-emitting diode
mA: milliampere
mJ: millijoule
MOD: Manner of death
NIJ: National Institute of Justice
NMI: Neuro muscular incapacitation
PEA: Pulseless electrical activity
USB: Universal service bus
V: volt
VF: Ventricular fibrillation
VT: Ventricular tachycardia

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Our principal authorities are derived from:

- The Omnibus Crime Control and Safe Streets Act of 1968, amended (see 42 USC §§ 3721-3723)
- Title II of the Homeland Security Act of 2002
- Justice For All Act, 2004

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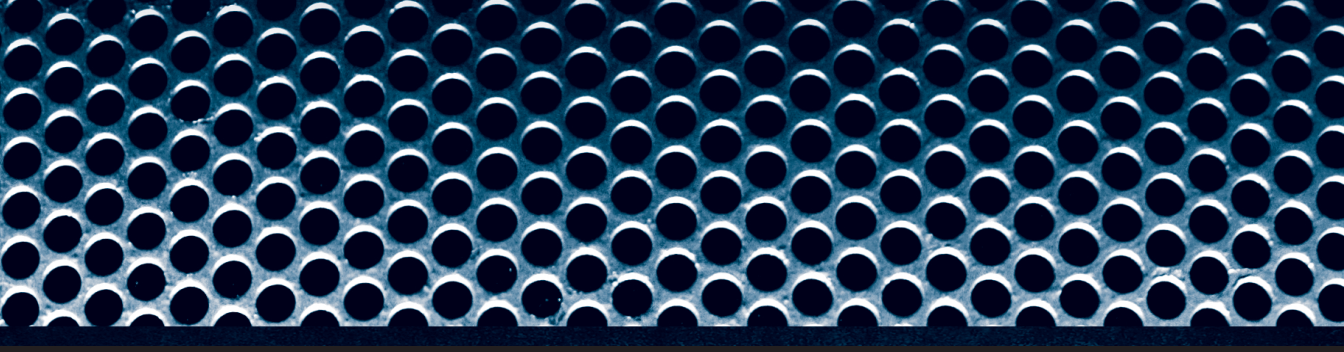

2011 ELECTRONIC CONTROL WEAPON GUIDELINES

A Joint Project of:

POLICE EXECUTIVE RESEARCH FORUM

COPS
COMMUNITY ORIENTED POLICING SERVICES
U.S. DEPARTMENT OF JUSTICE

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The Internet references cited in this publication were valid as of the date of this publication. Given that URLs and websites are in constant flux, neither the author nor the COPS Office can vouch for their current validity.

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2011 ELECTRONIC CONTROL WEAPON GUIDELINES

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Letter from the Director

Dear Colleagues,

In partnership with the Police Executive Research Forum (PERF), I am pleased to present the *2011 Electronic Control Weapon Guidelines*—the result of a national survey that examined the use of ECWs, specifically what policies, practices, and training were being employed in the field. The knowledge gained from this research helped frame the discussions that took place during a two-day meeting and workshop, organized by the COPS Office and PERF, to discuss the issues surrounding ECWs with a combination of police, doctors, attorneys, researchers, and other experts.

These guidelines embody the knowledge and consensus of the key stakeholders present at the meeting and represent the public's best interest in regards to safety. The COPS Office and PERF facilitated an honest discussion between experts of key fields by acting as an independent arbiter on a difficult issue.

I want to emphasize that no weapon is a substitute for effective police work, and no weapon should be incorporated into the range of force options available to the police at the expense of diminishing the fundamental skills of communicating with subjects and de-escalating tense encounters. Nonetheless, the information and guidelines presented here should assist in ensuring this force technology is used in the most appropriate and effective manner possible.

I hope you will find this publication helpful in your local efforts, and we encourage you to share this publication, as well as your successes, with other law enforcement practitioners.

Sincerely,

Bernard K. Melekian
Director
Office of Community Oriented Policing Services
U.S. Department of Justice

Foreword

One of the defining characteristics of police organizations is that they have been given legal authority to use physical force, and one of the most critical challenges for police departments is the constant struggle to ensure that their use of force is legitimate. Over the last few decades, there has been a growing awareness that police must strive not only to prevent unnecessary or excessive uses of force but also to ensure that communities perceive their police to be acting properly when they use force.

As a result of this greater attention to use-of-force issues, there have been substantial improvements in policies, practices, and results. These include significant reductions in officer-involved shootings, creation of early intervention systems to detect possible excesses in individual officers' use of force, greater mechanisms for accountability and transparency regarding use-of-force issues, and training of officers to de-escalate situations when possible using verbal techniques and other nonlethal methods of controlling an incident.

Another advancement has been the development of new less-lethal weapons, which give police a wider range of options to choose from in dealing with persons who resist police authority in various situations—in some cases because they have a mental illness or are under the influence of drugs. Each new less-lethal weapon brings its own set of advantages and limitations that must be managed if officers are to choose the best options in a given situation.

In 2005, the COPS Office and PERF came together to produce a set of policy guidelines regarding the use of what were then called Conducted Energy Devices and now are called Electronic Control Weapons (ECWs). Police practitioners and other experts met in Houston and were able to hammer out a strong set of guidelines on ECW use. The guidelines offered practical guidance on the situations in which ECWs are useful and those in which they are not the best option, as well as advice about best practices for training, supervision of officers' ECW activations, and other issues. The COPS/PERF guidelines of 2005 were adopted by many departments, and they helped those agencies to ensure that ECWs were used properly.

Since 2005, researchers have continued to conduct studies of ECWs, and thousands of police departments have gained real-world experience with them. As a result, the COPS Office asked PERF to update the 2005 guidelines, reflecting these developments. PERF conducted background research, including a survey of nearly 200 law enforcement agencies regarding ECW deployments, as well as interviews of police chiefs and other experts. PERF and the COPS Office then convened a conference in Philadelphia in August 2010 where 150 police executives, researchers, doctors, attorneys, and others discussed the use of ECWs in light of five years' worth of experience in the field.

This publication is the result of those efforts, providing an updated and improved version of the initial guidelines to reflect the state of the field regarding ECWs. The 2011 guidelines also reflect a general consensus in policing that ECWs play an invaluable role in providing officers with another type of less-lethal weapon that can be effective in many situations, but they should not be seen as an all-purpose weapon that takes the place of de-escalation techniques and other options. In addition, ECWs have limitations, so officers must be prepared to switch to other strategies if an ECW is not producing the desired result.

We hope that law enforcement agencies will find these new guidelines helpful as they work to continue the advances that progressive police agencies have made in the responsible and humane use of force.

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Acknowledgments

We would like to thank the COPS Office for providing us with the opportunity to re-examine this significant law enforcement issue. The use of Electronic Control Weapons (ECWs) by law enforcement agencies in this country has grown substantially. With this increased use has come more insight into when and how the weapons are most effective. At the same time, the courts have weighed in on what constitutes appropriate use. Our knowledge about the weapons has increased, and with that knowledge came the realization that the set of Conducted Energy Device (CED) guidelines developed in 2005 needed to be updated.

We would like to offer our thanks to Bernard Melekian, director of the COPS Office, for recognizing the importance of updating the ECW guidelines. Mora Fiedler, our program manager, was enthusiastic and helpful as we planned the various components of this project.

We thank those police chiefs and other professionals who were able to join us for the Guidelines for Policy and Practice Executive Session held in Philadelphia, August 2010 (see Appendix A for a list of all attendees). We want to recognize and thank Chuck Ramsey, police commissioner of Philadelphia, who hosted the meeting and worked with us to identify many of the key issues for the meeting's agenda.

We would particularly like to thank the following presenters: Dr. Alex Eastman, M.D., who shared his expertise as a trauma surgeon and a reserve tactical officer with the Dallas Police Department; Bruce Taylor, Ph.D., of the National Opinion Research Center and former PERF director of research, who discussed his research into the effects of ECW use on injuries to officers and subjects; Scott Greenwood of the American Civil Liberties Union, who provided the meeting participants with insight on policy based upon his work with several police agencies; and Doug Klint, president and general counsel of TASER International, Inc., who answered questions about his company's products.

We are especially grateful to those who participated in the working group the day after the executive session. This group spent a day working with PERF and COPS staffers to amend the 2005 guidelines and develop new ones, and then participated in several reviews of the draft guidelines. Members of the group included: Dr. Geoff Alpert, University of South Carolina; Brett Chapman, social science analyst at the National Institute of Justice; Alan Clarke, assistant commissioner of the New South Wales (Australia) Police Force; Dr. Alex Eastman, Dallas Police Department; Josh Ederheimer, then captain of the Washington, D.C., Metropolitan Police Department and now principal deputy director at the COPS Office; Mike Federico, staff superintendent of the Toronto Police Service; Mora Fiedler, senior social science analyst at the COPS Office; Mark Fisher, captain of the Philadelphia Police Department; John Gnagy, executive director of the National Tactical Officers Association; Fran Healy, lieutenant with the Philadelphia Police Department; Will Johnson, assistant chief of the Arlington (Texas) Police Department; Marc Joseph, deputy chief of the Las Vegas Metropolitan Police Department; Bill Lansdowne, chief of the San Diego Police Department; Robert Lehner, chief of the Elk Grove (California) Police Department; Marcus Martin, an officer of the Las Vegas Metropolitan Police Department; Charles McClelland, chief of the Houston Police Department; Ken Miller, deputy chief of the Charlotte-Mecklenberg Police Department; Kenton Rainey, chief of the Bay Area Rapid Transit Police Department; Tom Streicher, chief of the Cincinnati Police Department; Mark Warren, major of the Baltimore County Police Department; Jordan Watts, director of the Legal Bureau, Baltimore County Police Department; and Mick Williams, superintendent of the Victoria (Australia) Police.

Three individuals provided significant advice regarding the design of the project and the draft of this publication: Josh Ederheimer, Will Johnson, and Mark Warren. These leaders performed much of the original work on the 2005 CED guidelines when they worked at PERF and contributed their expertise to the effort to produce the new 2011 guidelines.

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Introduction

In 2005, the Police Executive Research Forum (PERF), with support from the U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office) produced a set of guidelines for the use of Conducted Energy Devices (CEDs). Many law enforcement agencies adopted the guidelines. In the years that followed, however, new information became available about how the weapons were being used, and controversy about CED safety continued. In 2010, PERF again received support from the COPS Office to revise the 2005 guidelines to reflect the most up-to-date knowledge regarding CED use and safety.

In the updated guidelines that follow, we changed the name of the weapons from CEDs to Electronic Control Weapons (ECWs) to reflect the reality that these tools are less-lethal weapons that are meant to help control persons who are actively resisting authority or acting aggressively.

ECWs are a popular tool among police and are increasingly being used in law enforcement agencies across the United States. Thousands of American police agencies have purchased ECWs for their officers, and industry representatives report that more than 15,500 law enforcement agencies in more than 40 countries are using ECWs (TASER 2010).

The rapid adoption and deployment of ECWs by law enforcement during the past five years have been accompanied by a number of benefits and controversy. Regarding the latter, a number of deaths have occurred proximate to the use of ECWs, resulting in concern about the limitations of the weapon. As a result, a significant amount of research has been conducted during the past several years by medical experts and other professionals to assess the injury risks associated with the use of ECWs. At the same time, police departments have reported that overall injury rates among suspects and officers have declined since they started using ECWs. In fact, PERF completed a study for the National Institute of Justice that found empirical support for those claims (Taylor et al. 2009).

Even among law enforcement agencies that adopted either the 2005 guidelines or similar policies that impose limits on the circumstances in which officers should use ECWs, some agencies are still considering whether they should further restrict their officers' use of these weapons in light of other developments. In 2009, TASER International, Inc., the leading manufacturer of ECWs, issued a training bulletin changing the recommended target area

for ECWs away from the subject's chest. This advisory prompted police agencies to revisit their policy and training guidelines for ECW use. Court decisions also have caused agencies to continually review their policies, training, and oversight of ECWs to stay up-to-date with developments in the field.

The Project

The 2011 ECW guidelines are based on information gathered from interviews with police chiefs and other subject-matter experts, a 2010 PERF national survey of more than 190 law enforcement agencies that included questions about their use-of-force policies, and interviews with officials from a number of agencies that had experienced two or more deaths in the past five years that were considered "proximate to the use of an ECW." Most importantly, on August 3, 2010, PERF convened an executive session in Philadelphia that focused on ECW policy and practice. At that meeting, a cross section of 150 persons—police executives and practitioners of various ranks, authorities on use of force, medical doctors, attorneys, and researchers (see Appendix A)—discussed the findings of current ECW research, shared the experiences of police departments using ECWs, and identified additional challenges and issues for police executives as they maintain or consider the deployment of ECWs in their agencies.

On August 4, a working group of 25 executive session participants (see Appendix B)—including representatives of various ranks and positions in law enforcement agencies—spent a second day reviewing and modifying the 2005 guidelines, relying on the information presented at the previous day's conference and their considerable expertise with ECWs and use of force. Every effort was made to consider the views of all contributors and to incorporate the most up-to-date information and research findings. While the working group did not reach a unanimous recommendation for each guideline, in every instance it did achieve strong consensus and produced the new set of guidelines contained in this report. The new 2011 guidelines do not necessarily reflect the individual views of each participating law enforcement agency or the U.S. Department of Justice.

This report presents the revised guidelines, which represent the cumulative knowledge, experience, and expertise of police, medical, and legal professionals who shared their ideas and concerns. The Background Information section summarizes PERF's 2010 ECW survey results and highlights medical research and legal developments related to ECWs. A revised Glossary is also included.

Guiding Principles for ECWs

PERF recognizes that a large majority of police agencies have a successful history of ECW use, and the vast majority of law enforcement officers who use ECWs do so responsibly to resolve difficult situations. Without ECWs, many officers would have had to use a higher level of force, which might have increased suspect injuries and deaths. However, the use of ECWs in some instances has been controversial.

In general, the new guidelines in this report emphasize that ECWs are valuable and useful, but, like any weapon, they are not harmless, and the potential for injury can be exacerbated by inappropriate use and deployment of the devices. These guidelines are based on an understanding that the ECW is an essential part of an officer's toolbox in many police agencies.

The 2011 guidelines retain many of the original protocols from 2005, although there are some noteworthy differences. The substance of several guidelines has been changed, and there have been deletions, additions, and consolidations. The 2011 ECW guidelines are organized into six categories:

1. Agency Policy
2. Training
3. Using the ECW
4. Medical Considerations
5. Reporting and Accountability
6. Public Information and Community Relations

This information is meant to guide agencies as they consider how ECWs will be used in use-of-force scenarios. The guidelines are not standards or mandatory rules, and agencies should develop policies and training specific to their organizational needs. Agencies are encouraged to seek as much information as possible, including manufacturers' product warnings, when considering how and when to use ECWs.

The guidelines cannot anticipate every type of incident that officers may encounter. Law enforcement personnel must consider the rapidly changing dynamics of any situation, which is why the language of the guidelines is flexible. Agency personnel must always consider the totality of the circumstances when applying the guidelines. **In certain situations, exigent circumstances may outweigh the recommendation of a specific guideline. Personnel should always be able to articulate the justification for going outside of agency policy or training.**

Although law enforcement agencies have been using some variation of ECWs for more than 30 years, they are still a relatively new weapon for most officers. The number of agencies using them, and the number of ECWs in these agencies, has increased dramatically in just five years. As police agencies across the United States and in other nations gain more experience with ECWs, new information may alter how they use these weapons. The firsthand experiences of agencies, medical research, and legal developments may necessitate that PERF and other organizations again modify guidelines and model policies at some point in the future.

The 2011 guidelines are based on a set of principles that foster the responsible and accountable use of ECWs, while recognizing that they are an appropriate tool for officers who must resort to use of force. These guiding principles are the following:

1. ECWs should be considered less-lethal weapons.
2. ECWs should be used as a weapon of need, not a tool of convenience.
3. Officers should not over-rely on ECWs in situations where more effective and less risky alternatives are available.
4. ECWs are just one of a number of tools that police have available to do their jobs, and they should be considered one part of an agency's overall use-of-force policy.
5. In agencies that deploy ECWs, officers should receive comprehensive training on when and how to use ECWs.
6. Agencies should monitor their own use of ECWs and should conduct periodic analyses of practices and trends.
7. Agencies should consider the expectations of their community when developing an overall strategy for using ECWs.

Policy and Training Considerations

PERF believes that ECWs, when used appropriately and with a full understanding of their risks, are a useful weapon that can effectively help to resolve serious situations. ECWs can reduce the need for other force options and can enable officers to subdue actively resisting or aggressive subjects while lowering the rates of injury to law enforcement officers and subjects.

At the same time, ECWs are not harmless or risk-free, and ECWs should not be used in situations where alternative options, including other types of force or verbal de-escalation techniques, are more appropriate. Furthermore, ECWs do not always work as intended, so officers must be prepared to consider and exercise other force options when the ECW is not having its intended effect or continued use will endanger the subject.

ECWs are one of the newer force options for agencies to consider, and in all likelihood other weapons will become available in coming years. No weapon is a panacea for officers, and no weapon should be used at the expense of diminishing the fundamental skills of communicating with subjects and de-escalating tense encounters. When feasible, officers should use non-force options before using an ECW or other force options.

Agencies should not consider ECWs in isolation. Because ECWs and other force techniques and weapons have their own advantages and disadvantages, agencies should adopt a use-of-force policy that integrates ECWs with all other available force options to ensure officers contemplate all possibilities when considering any use of force. The comprehensive use-of-force policy should recognize that ECWs—as "less-lethal" and not "nonlethal" weapons—have the potential to result in a fatal outcome even when used in accordance with policy and training.

Risks Associated with ECWs

Knowledge of the effects of ECWs is changing rapidly as agencies gain experience with the weapons and as researchers examine their effects on officer and subject injuries. Police executives need to be aware of several factors relating to ECW technology and how ECWs are used by officers. The 2011 guidelines have been modified to reflect these factors, and the reasons for these particular new guidelines are explained here.

ECW Technology: Discontinuation of automatic cut-off feature may be problematic

Differences in the technology of particular ECW models can have policy implications. For example, the TASER X26® is different from some versions of the previous model, the TASER M26®. In early models of the M26, the activation cycle stopped at the five-second mark, while later models of the M26 and X26 can extend the activation for more than five seconds as long as the officer continually pulls the trigger. Both police executives and officers need to be aware of these differences, so that policy and training can incorporate these distinctions. At the 2010 meeting in Philadelphia, a number of police executives, based on first-hand experiences in their agencies, expressed concern that these differences may not be apparent to all officers, especially if they rarely use ECWs or transitioned from one model to another. As such, training for officers transitioning from earlier M26 versions to the more recent M26 or X26 model should emphasize that the newer model will continue to apply an electrical charge as long as the officer continues to depress the trigger.

Medical Considerations: Repeated or multiple applications may increase risk of death

It is important to recognize that ECWs have been cited by medical authorities as a cause of, or contributing factor in, some deaths.[1] A number of factors appear to be associated with fatal and other serious outcomes. These factors include how the ECW was used and the physical or medical condition of the subject who received an ECW application. Indeed, in July 2010 the American Academy of Emergency Medicine issued a Clinical Practice Statement advising physicians that they should consider additional evaluation and treatment for individuals who experienced an ECW application longer than 15 seconds (Vilke et al. 2010).

Although causation factors are not clear, the most common factors that appear to be associated with fatal and other serious outcomes include 1) repeated and multiple applications, 2) cycling time that exceeds 15 seconds in duration, whether the time is consecutive or cumulative, and 3) simultaneous applications by more than one ECW. **Officers must be trained to understand that repeated applications and continuous cycling of ECWs may increase the risk of death or serious injury and should be avoided.**

1 See Amnesty International 2008b, which details more than 35 such cases based on autopsy reports.

Medical Considerations: High-risk populations

Some populations currently believed to be at a heightened risk for serious injury or death following an ECW application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol. Personnel should be trained about the medical complications that may occur after ECW use and should be made aware that certain individuals, such as those in a state of excited delirium, may be at a heightened risk for serious injury or death when subjected to ECW application or other uses of force to subdue them.

Medical Considerations: Positional asphyxia

Agencies also need to be cognizant of how positional asphyxia may exacerbate the condition of any individual who has received an ECW application. Positional asphyxia is a death that occurs when a subject's body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the subject's head obstructs the airway. Positional asphyxia has been mentioned as a possible contributing factor in a number of cases in which subjects died after one or more ECW applications. Police personnel should be trained to use a restraint technique that does not impair a subject's respiration following an ECW application.

Drive Stun: Avoid use as a pain-compliance tactic

The most commonly used ECWs can be used in two modes: probe and drive stun. Many police managers and officers erroneously believe that applications of drive stun are as effective as applications with probes, but that is not correct. The drive stun mode can be used to complete the circuit in the event that one of the probes is ineffective or becomes dislodged. The drive stun mode can also be used in close quarters for the purpose of protecting the officer or creating a safe distance between the officer and subject. Absent these circumstances, using the ECW in drive stun mode is of questionable value. The primary function of the drive stun mode, when not used to complete the circuit, is to gain subject compliance through the administration of pain. **Using the ECW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject.** For these reasons, agencies should carefully consider policy and training regarding when and how personnel use the drive stun mode, and should discourage its use as a pain compliance tactic. Drive stun has an applicable but limited purpose that should be taught, explained, and monitored during ECW training and field use.

Informed and Accountable Use of ECWs

Because ECWs are a relatively new weapon for most law enforcement officers, it is important for law enforcement agencies to continue to monitor and track how ECWs are used and maintain this comprehensive information to monitor agency-wide trends over time. This information should also be used to determine whether some officers are using ECWs more frequently or in a different manner than their fellow officers and if the uses are legitimate. Whenever possible, agencies should work collaboratively to collect and analyze information about ECW use to allow for comparisons across agencies. Furthermore, to evaluate ECWs as one element of a use-of-force strategy, law enforcement agencies ideally should gather such information for all force options.

When developing ECW policies, training, and deployment strategies, agencies should consult with one another to learn from each others' experiences. The U.S. Department of Justice has conducted research into ECWs, and those research reports may contain valuable information. In addition, police officials in Canada, the United Kingdom, and Australia may be able to provide guidance based on their experiences with ECWs. In the United Kingdom, for example, the Home Office and the Association of Chief Police Officers have done considerable work on ECWs. Agencies also should consider consulting with ECW manufacturers who may be able to provide technical information about their products. However, when an agency has questions about policy or training, or whether to implement or modify an ECW program, it should not rely solely on manufacturers for information.

To maintain good community engagement and support for law enforcement, agencies should involve community officials, leaders, and residents (including prosecutors, civil rights advocacy groups, medical professionals, mental health advocates, lawmakers, and interested community members) in the development of policy and accountability systems. After an ECW program is launched, these efforts should continue with community outreach programs to educate residents about ECWs, the reasons for adopting the weapons, their advantages and disadvantages when compared to other weapons, the risks posed by their use, how the agency intends to use them, and accountability systems that will be used to monitor use and collect information.

Conclusion

In a short time, ECWs have had a significant influence in American law enforcement agencies. Perhaps no other weapon has had such a dramatic impact. When used appropriately with a full understanding of their risks, ECWs are useful weapons that can effectively help officers to resolve serious situations. ECWs can reduce the need for more dangerous weapons and lower officer and subject injury rates, but they are not harmless and their usefulness has limitations. While the vast majority of police agencies have had tremendous success with the weapon, in some instances it appears that officers are using the ECW inappropriately or too frequently.

As more and more officers are armed with this weapon, police executives should ensure the responsible and accountable use of ECWs. The 2011 guidelines promote this goal, reflecting best practices and the recommendations of seasoned police officials, medical professionals, risk management authorities, and use-of-force experts. By considering the guidelines when developing agency policy and training, police agencies can promote the use of an effective law enforcement tool while minimizing the opportunity for negative outcomes.

The guidelines reflect what we learned in 2010. If the last five years are any indication, we can expect to see new research and laws that will shape policy guidelines in the future. It is vitally important that police agencies stay well informed of new developments that will help further refine use of this essential weapon.

Electronic Control Weapon Guidelines

Agency Policy

1. Agency personnel must always consider the totality of the circumstances when applying the guidelines. In certain situations, exigent circumstances may outweigh the recommendation of a specific guideline. Personnel should always be able to articulate the justification for going beyond agency policy or training.

2. Agencies should develop policies and training curricula for ECWs that are integrated with the agency's overall use-of-force policy.

3. Agencies should work to share and disseminate information regarding their respective ECW policies and training to foster better cooperation and coordination during joint law enforcement responses or operations. When possible, agencies should enter into a memorandum of understanding to develop joint ECW policies, protocols, and training.

4. Agencies should consult with local medical personnel to develop appropriate police-medical protocols for medical evaluation and removal of ECW probes following subjects' exposure to ECW application.

5. Agencies should consider adopting brightly colored ECWs (e.g., yellow), which may reduce the risk of escalating a force situation because they are plainly visible and thus decrease the possibility that a secondary unit will mistake the ECW for a firearm. (Note: Specialized units [e.g., SWAT units] may prefer dark-colored ECWs for tactical concealment purposes.)

6. Personnel should keep ECWs in a weak-side holster and should train to perform a weak-hand draw or cross-draw to reduce the possibility of accidentally drawing and/or firing a sidearm. Transitioning the ECW to the strong hand after drawing with the weak hand should be allowed.

7. If agencies permit personnel to use privately owned ECWs on duty, policy should dictate specifications, regulations, qualifications, etc. The privately owned ECWs should be registered with the agency.

Training

8. Before any agency personnel (e.g., officers, jail personnel, auxiliary/reserve officers, civilian staff) are armed with ECWs, they should receive all mandated training and achieve all qualification requirements.

9. Agencies should use scenario- and judgment-based training that recognizes the limitations of ECW application and the need for personnel to be prepared to transition to other force options as needed.

10. Agencies should not rely solely on training curriculum provided by an ECW manufacturer. When they do use the curriculum, agencies should ensure the manufacturer's training does not contradict agency use-of-force policies and values. Agencies should ensure that their ECW curricula are integrated into their overall use-of-force training curriculum.

11. Agencies should be aware that exposure to ECW application during training could result in injury to personnel and is not recommended. Any agency that does include ECW application as part of training should not make it mandatory for certification, and should ensure that safety protocols are rigorously followed.

12. ECW recertification should occur at least annually and should consist of physical competency and weapon retention, agency policy including any changes, technology changes, and reviews of local and national trends in ECW use. Recertification should also include scenario-based training.

13. Personnel should be trained to use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Training protocols should emphasize that multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided.

14. Training protocols should emphasize the risk of positional asphyxia, and thus officers should be trained to use a restraint technique that does not impair the subject's respiration following an ECW application.

15. Personnel should be trained that when a subject is armed with an ECW and attacks or threatens to attack a police officer who is alone, the officer must defend himself or herself or take actions to avoid becoming incapacitated and risking the possibility that the subject could gain control of the officer's firearm. However, if multiple officers are present, a subject's attack with an ECW against one officer should not in and of itself cause a deadly-force response by other officers.

16. Agencies' policy and training should discourage the use of the drive stun mode as a pain compliance technique. The drive stun mode should be used only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option.

17. Personnel should be trained to attempt hands-on control tactics during ECW application, including handcuffing the subject during ECW application (i.e., handcuffing under power). Training should emphasize that personnel who touch a subject during ECW application will not receive exposure to the electrical charge, so long as caution is taken not to touch the subject along the circuit (i.e., between the locations of the two probes).

18. Command staff, supervisors, and investigators should receive ECW awareness training appropriate to the investigations they conduct and review.

19. If an agency uses more than one model of ECWs, training should emphasize the differences in the various models (e.g., duration of cycle, optimal probe spread).

20. In addition to providing an overview of ECWs, agencies should provide ECW awareness training to personnel who are not certified to carry the devices and emphasize their responsibilities. The training should also cover situations such as attempting to handcuff subjects during ECW application and transitioning to other force options.

Using the ECW

21. Personnel should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Personnel should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent applications should be independently justifiable, and the risks should be weighed against other force options.

22. A warning should be given to a subject prior to activating the ECW unless doing so would place any person at risk. Warnings may be in the form of verbalization, display, laser painting, arcing, or a combination of these tactics.

23. When feasible, an announcement should be made to other personnel on the scene that an ECW is going to be activated.

24. Personnel should not intentionally activate more than one ECW at a time against a subject.

25. ECWs should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to themselves or others. ECWs should not be used against a passive subject.

26. Fleeing should not be the sole justification for using an ECW against a subject. Personnel should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject.

27. ECWs should not generally be used against pregnant women, elderly persons, young children, and visibly frail persons. Personnel should evaluate whether the use of the ECW is reasonable, based upon all circumstances, including the subject's age and physical condition. In some cases, other control techniques may be more appropriate as determined by the subject's threat level to others.

28. Personnel should not intentionally target sensitive areas (e.g., head, neck, genitalia).

29. ECWs should not be used on handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been ineffective.

30. ECWs should not be used against subjects in physical control of a vehicle in motion (e.g., automobiles, trucks, motorcycles, ATVs, bicycles, scooters).

31. ECWs should not be used when a subject is in an elevated position where a fall may cause substantial injury or death.

32. ECWs should not be used in the known presence of combustible vapors and liquids or other flammable substances including alcohol-based Oleoresin Capsicum (O.C.) spray carriers. Agencies utilizing both ECWs and O.C. spray should use a non-combustible (e.g., water-based) spray.

33. ECWs can be effective against aggressive animals. Policies should indicate whether use against animals is permitted.

Medical Considerations

34. Personnel should be aware that there is a higher risk of sudden death in subjects under the influence of drugs and/or exhibiting symptoms associated with excited delirium.

35. When possible, emergency medical personnel should be notified when officers respond to calls for service in which they anticipate an ECW application may be used against a subject.

36. All subjects who have been exposed to ECW application should receive a medical evaluation by emergency medical responders in the field or at a medical facility. Subjects who have been exposed to prolonged application (i.e., more than 15 seconds) should be transported to an emergency department for evaluation. Personnel conducting the medical evaluation should be made aware that the suspect has experienced ECW activation, so they can better evaluate the need for further medical treatment.

37. All subjects who have received an ECW application should be monitored regularly while in police custody even if they received medical care. Documentation of the ECW exposure should accompany the subject when transferred to jail personnel or until the subject is released from police custody.

38. ECW probes should be treated as a biohazard. Personnel should not remove ECW probes from a subject that have penetrated the skin unless they have been trained to do so. Only medical personnel should remove probes that have penetrated a subject's sensitive areas or are difficult to remove.

Reporting and Accountability

39. ECWs should be regulated while personnel are off duty under rules similar to those for service firearms (including storage, transportation, use, etc.).

40. A supervisor should respond to all incident scenes where an ECW was activated.

41. When possible, supervisors should anticipate on-scene officers' use of ECWs and should respond to calls for service that have a high propensity for the use of an ECW.

42. A supervisor should conduct an initial review of each ECW activation, and every instance of ECW use, including unintentional activation, should be documented.

43. Agencies should initiate force investigations when any of the following factors is involved:
    - A subject experiences a proximity death or serious injury following ECW application
    - A subject experiences prolonged ECW application (longer than 15 seconds)
    - The ECW appears to have been used in a punitive or abusive manner
    - There appears to be a substantial deviation from ECW training or policy
    - A subject in an at-risk category has been subjected to application (e.g., young children, individuals who are elderly/frail, pregnant women, and any other activation as determined by a supervisor)

44. Every ECW-related enhanced force investigation (and when possible every preliminary investigation) should include:
    - Interviews of the subject and all officers who discharged their ECWs
    - Location and interviews of witnesses (including other officers)
    - Forensic quality photographs (including a ruler to show distances) of subject and officer injuries
    - Photographs of cartridges/probes
    - Collection of ECW cartridges, probes, data downloads, car video, confetti tags
    - Copies of the ECW data download
    - Other information as indicated in Reporting and Accountability Guideline #50

45. When reviewing downloaded ECW data, supervisors and investigators should be aware that the total time of activation registered on an ECW may not reflect the actual duration of ECW application on a subject.

46. ECW activations should be tracked in the agency's early intervention system (EIS).

47. Agencies should periodically conduct random audits of ECW data downloads and reconcile use-of-force reports with recorded activations. Agencies should take necessary action as appropriate when inconsistencies are detected.

48. Audits should be conducted to verify that all personnel who carry ECWs have attended initial and recertification training.

49. Agencies should collect and analyze information to identify ECW trends. Agencies may include display, laser painting, and arcing of weapons to measure prevention/deterrence effectiveness. Agencies should periodically analyze ECW statistics and make them available to the public.

50. Agencies should collect the following information about ECW use:
    - Date, time, location of incident
    - The use of display, laser painting and/or arcing, and whether those tactics deterred a subject and gained compliance
    - Identifying and descriptive information and investigative statements of the subject (including membership in an at-risk population), all personnel firing ECWs, and all witnesses
    - The type and brand of ECW used
    - The number of ECW activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications
    - Level of aggression encountered
    - Any weapons possessed by the subject
    - The type of crime/incident the subject was involved in
    - Determination of whether deadly force would have been justified
    - The type of clothing worn by the subject

— The range at which the ECW was used

— The type of mode used (probe deployment or drive stun)

— The point of probe impact on a subject with the device in probe mode

— The point of impact on a subject with the device in drive stun mode

— Location of missed probe(s)

— Terrain and weather conditions during ECW use

— Lighting conditions

— The type of cartridge used

— Suspicion that subject was under the influence of drugs (specify if available)

— Medical care provided to the subject

— Any injuries incurred by personnel or the subject

Public Information and Community Relations

51. Law enforcement agencies should conduct neighborhood programs that focus on ECW awareness training, which should be part of any citizen's training academy program.

52. Agencies' public information officers should receive extensive training on ECWs so they can better inform the media and the public about the weapon. Members of the media should be briefed on agencies' policies and use of ECWs.

53. ECW awareness should extend to law enforcement partners such as local medical personnel, citizen review boards, medical examiners, mental health professionals, judges, and local prosecutors.

Background Information

PERF's 2010 Survey: What Is the State of the Field Regarding ECW Use?

To gather information about current policy, practice, and training on ECWs, PERF conducted a survey of its member law enforcement agencies as well as an additional 50 agencies (n=346) that were surveyed during the 2005 project to develop the original guidelines. A total of 194 (56%) agencies from the United States and Canada responded, representing cities, counties, states, and a few smaller municipalities. The survey was conducted during a four-week period in the summer of 2010. Highlights of the survey results are presented below.

The majority of the responding agencies (90%) were using ECWs and, to be more specific, one of several models developed by TASER International, Inc.[2] The number of ECWs in agencies ranged from a low of two to a high of 4,479. ECWs were being carried by patrol officers, supervisors, traffic officers, detectives, SWAT officers, school resource and crisis intervention officers, and civilian employees. In most agencies, ECWs were assigned to individual officers, while a smaller number of agencies distributed ECWs to officers at the beginning of a shift.

Activation Rate

In 2009, the number of ECW activations in responding law enforcement agencies ranged from 0 to 473.[3] The ECW activation rate (the number of activations per ECW per year) ranged from 0 to 3.18, with a median activation of 0.25 and a mean of 0.38.

As illustrated by the chart on the right, the majority of reporting agencies had relatively low activation rates, which averaged less than once a year per ECW.

Activations Per ECW (2009)

▶ 0 to 0.19 activations	63 agencies
▶ 0.2 to 0.39 activations	45 agencies
▶ 0.4 to 0.59 activations	27 agencies
▶ 0.6 to 0.79 activations	7 agencies
▶ 0.8 to 0.99 activations	2 agencies
▶ > 1 activation	10 agencies
▶ > 2 activations	2 agencies
▶ > 3 activations	1 agency

2 Of the agencies using ECWs, 90% reported using the TASER X26 model.

3 157 agencies of the 194 were able to provide the number of activations recorded in 2009.

Written Policy and Procedure

Approximately half of the agencies that responded to the PERF survey included their ECW policy as part of their use-of-force policy, while slightly fewer than half had a separate or stand-alone policy.

The placement of ECWs on the use-of-force continuum varied somewhat among agencies.[4] Most placed ECWs in the intermediate range on the continuum, either equal to or just below chemical incapacitants, chemical/kinetic hybrids, and strikes/batons. Only a few agencies had ECWs directly beneath deadly force. At the low end of the force spectrum, only a few agencies had ECWs equal to control holds. A significant majority allowed the ECW to be used when officers encountered active resistance (80%) or aggressive resistance (91%). A much lower number of agencies (7%) allowed the use of an ECW when an officer encountered passive resistance—a use that the 2005 guidelines recommended against, as do the new 2011 guidelines contained in this report.

We asked participating agencies whether their written policy provided guidance in a variety of circumstances that officers might encounter in their interactions with suspects or other persons. Overall, there was significant variation in the extent to which agencies provided guidance.

For example, in situations involving persons with a mental, physical, or developmental disability, slightly fewer than half of reporting agencies indicated that their written policy discouraged the use of ECWs against these persons. In circumstances involving an elderly person or a juvenile, a person under the influence of drugs or alcohol, or a person threatening suicide, closer to two-thirds of the agencies indicated that their written policy provided guidance that strongly discouraged the use of an ECW on these individuals except in exigent circumstances.

The circumstance that was addressed most often in written policy pertained to the use of an ECW on a handcuffed subject. Seventy-one percent of agencies strongly discouraged the use of ECWs against a handcuffed subject except in situations where the subject was acting aggressively or to prevent injury to the subject, the officer, or others.

In situations where deadly force is appropriate, most agencies indicated that the use of the less-lethal ECW is at the discretion of the officer.

4 A number of agencies indicated that they were no longer using the use-of-force continuum.

Agencies reported that they used or consulted a variety of resources in the development of their policies. The most frequently cited external resources were the ECW manufacturer and professional law enforcement organizations. Medical professionals, prosecutors, political leaders, and citizen groups were consulted less often.

Training

All agencies that responded to the survey required officers to be certified before they could use ECWs. However, the number of hours of training required for certification varied widely—from 2 to 40 hours, with 8 hours the block of time most often reported. The majority of agencies required recertification, and most of those required recertification annually.

We also asked about the practice, employed by some law enforcement agencies but not recommended by the guidelines, of requiring exposure to an ECW during training. Fewer than one-fourth of the agencies required exposure, but more than half permitted exposure on a voluntary basis. Officer injuries as a result of such ECW activations were reported by 13% of the agencies.

The majority of agencies used an ECW curriculum that was a combination of law enforcement agency and manufacturer training, and most agencies covered similar topics in their training, including excited delirium, de-escalation techniques, crisis intervention, and recognition of medical or mental illness or disability.

The survey also found that most agencies were specific about how the ECW must be carried, and the majority required officers to carry the ECW on their weak side.

Activating the ECW

Most agencies do not specify the maximum number of cycles that an officer can administer during an interaction with a subject, nor do those agencies specify the duration of each cycle. However, of those agencies that do provide such guidance in their written policy, the maximum number of cycles is three and the duration of each cycle is five seconds.

The most frequently recommended target areas when using the weapon in the probe mode are the back and lower body; in the drive stun mode, it is the lower body, extremities, and the back.

Accountability and Reporting

The survey included a number of questions to assess what occurs after an ECW is used against a subject. Medical care is generally required after an application, including response by fire service or EMS personnel to the scene and/or a physician assessment at a hospital/medical facility. After an application, most agencies require officers to complete some type of report. The survey results indicated that 91% of agencies require a use-of-force report and 31% require a specialized ECW report. Approximately 70% of reporting agencies require a supervisor to respond to the scene, and 97% routinely require a supervisor to review the application. A variety of evidence is collected after an application, including photographs of suspect injuries; downloading of data from the ECW; and collection of patrol car videos, probes/darts, and the confetti tags that eject from an ECW to facilitate identification of which cartridge was used at a specific location. Most agencies conduct annual analyses of ECW applications, and most conduct ECW inspections and data audits.

What Is the Medical Evidence Regarding the Effects of ECWs?

Initially, the ECW was introduced to law enforcement as a low-risk device that could be used as a substitute for lethal force and save lives. This less-lethal tool would allow officers to control unruly subjects and minimize injuries to offenders and officers. While there is considerable evidence that deployment of ECWs is associated with reductions in officer and offender injuries (Taylor et al. 2009), adverse effects related to the use of ECWs have also been documented, including injuries from the probes and injuries from falls.

In addition, the debate involving deaths following the use of ECWs continues to generate concern among law enforcement officials and the public. From June 2001 to August 31, 2008, 351 persons in the United States died after being subjected to ECW activations by police, according to Amnesty International USA (2008a). "In most cases coroners have attributed the deaths to other causes, such as drug intoxication or 'excited delirium,'" Amnesty International said. "However, in at least 50 cases, coroners are reported to have listed the Taser as a cause or contributory factor in the death." The human rights group said "safety research to date has not answered the question of what role Taser shocks may be playing in these deaths" but expressed concern that ECWs are being used excessively "as tools of routine force" (Amnesty International 2008b).

TASER International, the leading manufacturer of ECWs, vigorously disputed the numbers and conclusions of Amnesty International. TASER International maintains that, although a relative few medical examiners have implicated ECWs as a contributory factor in deaths following an ECW application, many other factors were present and that the true cause of many of those deaths was excited delirium (PR Newswire 2004). TASER International has frequently said that TASERS do not cause cardiac arrest and reiterated this point in a 2009 training bulletin, which stated, "While it may not be possible to say that an [ECW] could never affect the heart under any circumstances, the risk of VF (ventricular fibrillation) is extremely rare and would be rounded to near zero." TASER International also pointed to animal research suggesting that ECWs have virtually no risk for healthy human beings (Valentino et al. 2008). Moreover, TASER International claimed that its products have prevented injuries and saved many lives by providing police officers with an alternative to deadly force (Sunnucks and O'Grady 2008).

During the past five years, a substantial amount of medical research has been conducted to understand the effects of ECWs. According to remarks delivered by Dr. Alexander Eastman[5] at PERF's 2010 executive session, approximately 145 scientific papers are available in the medical literature on this topic, and nearly half of those were published fairly recently, since November 2007. These papers encompass a wide range of research methodologies, including case studies, opinion papers, and reviews and studies with both human and animal test populations. Only a few studies document actual field use of ECWs.

Recent ECW Studies and Findings

The following provides an overview of the most relevant and substantive studies and the findings that contribute to our current understanding of the effects of ECWs.

One of the most common concerns raised about the use of ECWs is the cardiac effect of the electrical charge that is transmitted by the weapon. According to Dr. Eastman's review of the existing medical literature, there has never been a documented cardiac effect on humans under actual use in laboratory research studies. However, research scientists have been able to simulate a cardiac effect in swine (Valentino et al. 2008). The correlation of those results in animals to humans is unknown.

5 Alexander Eastman is the Deputy Medical Director for the Dallas Police Department and an Assistant Professor of Surgery at the University of Texas, Southwestern Medical Center.

At least one independent study looked at the cardiac effect of the TASER X26 and its relationship to delayed or sudden cardiac arrest in normal adults. The study found that "it is highly unlikely that the TASER X26 can cause ventricular fibrillation minutes to hours after its use through direct cardiac effects of the electric field generated by the TASER" (Ideker and Dosdall 2007).

Other studies have considered other underlying medical conditions that were identified in individuals who died subsequent to the use of an ECW. In a study using methamphetamine-intoxicated sheep as the test population, there was no incidence of ventricular fibrillation after the animal was subjected to an ECW application (Dawes et al. 2010).

Other researchers have looked at the physiologic effects of the ECW on individuals after exercise and on intoxicated individuals. Using adult subjects and healthy volunteers, these studies did not report any adverse physiologic reactions in the test subjects (Vilke et al. 2009; Moscati et al. 2010).

Real-World ECW Application Studies

One of the major considerations in reviewing the medical literature is that much of the existing work is laboratory-based and not necessarily reflective of conditions in the field. The following are summaries of recent studies of "real-world" applications of ECWs during actual use-of-force incidents.

A 15-month study of police activations of ECWs was conducted in 2004 in a large U.S. city to examine police compliance with policies regarding proper ECW use and to track any associated medical events following ECW applications. Researchers documented 426 applications during the study period and recorded one death, attributed to lethal toxic hyperthermia. The study concluded that by using ECWs, officers avoided the use of lethal force in a significant number of instances (Eastman et al. 2008).

A 2008 study funded by the National Institute of Justice examined ECW use by law enforcement officers during interaction with suspects. Six law enforcement agencies participated in the study, which included a mandatory physician review of police and medical records following every ECW activation against a subject. During a 36-month period, approximately 1,200 incidents were reviewed. The study reported that "more than 99% of subjects do not experience significant injuries after conducted electrical weapon use. Two subjects died in police custody but medical examiners did not find ECW use to be causal or contributory in either case" (Bozeman et al. 2009).

In 2009, Dr. Jared Strote at the University of Washington Medical Center examined the medical records of nearly 900 persons who were subjects of an ECW activation by the Seattle Police Department over a six-year period. According to the study, "less than one percent required hospital admission for an injury related to the restraint (i.e., ECW) incident. No deaths occurred, even when patients exhibited signs of excited delirium" (Strote et al. 2010).

According to a report released by the National Institute of Justice (2008), "There is no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct effects of [ECW] exposure. Field experience with [ECW] use indicates that exposure is safe in the vast majority of cases." Those findings are based on a medical panel mortality review of ECW deaths and the panel's review of currently available medical research.

In July 2010, the American Academy of Emergency Medicine issued a Clinical Practice Statement advising physicians to consider additional evaluation and treatment for individuals who experienced an ECW application longer than 15 seconds (Vilke et al. 2010). This evidence-based medical advisory indicates that ECW applications longer than 15 seconds may have effects on the human body that could contribute to serious injury or death. The advisory also reflects the anecdotal experiences of many agencies that have had ECW proximity deaths. In many of these instances, the subject received an ECW activation, either continuously or cumulatively, of longer than 15 seconds.[6]

6 Telephone and in-person interviews with police agency representatives conducted by PERF staff, June 15–July 28, 2010.

What Are the Legal Considerations Associated with ECWs?

As with other litigation involving allegations of excessive force by law enforcement, courts consider police use of ECWs under the standards set by the U.S. Supreme Court in *Graham v. Connor*.[7] In that landmark 1989 ruling, the Court held that citizens' claims of excessive force should be reviewed using the 4th Amendment "objective reasonableness" standard and "from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight."[8] The Court said that "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."[9]

Case law specific to ECWs is currently developing, and there is little precedent in some jurisdictions. Police departments need to remain aware of pertinent cases not only in their own jurisdictions but also across the country. As case law develops, courts are looking to one another for guidance on ECW issues. As part of our research, PERF reviewed a number of U.S. Court of Appeals cases relevant to ECWs. These recent cases addressed issues such as ECW use on a restrained subject, on subjects suspected of a minor offense, and on a woman known to be pregnant.

Recent Cases in the Ninth Circuit

Two of the most closely watched and potentially far-reaching ECW cases in recent years have been in the U.S. Court of Appeals for the Ninth Circuit. The first of these cases came from the Southern District of California. In *Bryan v. MacPherson*[10], an officer stopped plaintiff Carl Bryan for driving without a seatbelt. Bryan, who had already been pulled over for speeding earlier in the day, was agitated and stepped out of the vehicle wearing only his boxer shorts and tennis shoes. It was undisputed that Bryan was "yelling gibberish and hitting his thighs" but did not verbally threaten the officer, who was standing 20 feet away. Bryan did not attempt to flee, but the officer saw him take a step toward him. Without warning, the officer activated his ECW and Bryan fell to the ground, suffering facial contusions and fracturing four teeth.

7 490 U.S.386 (1989).

8 Id. at 396.

9 Id. at 396-397.

10 608 F.3d 614 and No. 08-55622 (9th Cir. 2010).

In its opinion, the Ninth Circuit reviewed a number of other cases and studies by medical professionals and law enforcement research groups that analyzed the nature and quality of an intrusion when an ECW is used against a subject. The Court noted:

> We recognize the important role controlled electric devices like the Taser X26 can play in law enforcement. The ability to defuse a dangerous situation from a distance can obviate the need for more severe, or even deadly, force and thus can help protect police officers, bystanders, and suspects alike. We hold only that the X26 and similar devices when used in dart-mode constitute an intermediate, significant level of force that must be justified by the governmental interest involved.[11]

The panel of judges in the Ninth Circuit found that Bryan's behavior, though erratic, was nonviolent and he was unarmed. The Court also found that the officer's use of the ECW was excessive, as Bryan did not pose an immediate threat to anyone, including the officer. "An unarmed, stationary individual, facing away from an officer at a distance of fifteen to twenty-five feet, is far from an 'immediate threat' to that officer," the Court said.[12]

Although the Court found that the use of the ECW against Bryan was not reasonable, the officer was granted qualified immunity in this matter because there was little case law when the incident occurred (2005) to support the belief that the TASER X26 in probe mode would constitute an intermediate level of force. Since then, however, a number of changes in the case law support the ECW as an intermediate level of force. Though the Ninth Circuit recently refused to rehear the case *en banc* to reconsider the immunity issue, today the Ninth Circuit would likely rule differently on the question of officer immunity.

The second Ninth Circuit case of interest came from the District Court for the Western District of Washington. In *Brooks v. City of Seattle*, plaintiff Malaika Brooks was issued a notice of infraction for speeding, and she repeatedly refused the officer's demand that she sign the notice.[13] When ordered from her vehicle, even when shown the officer's ECW, Brooks refused to do so and informed officers at the scene that she was pregnant. One officer took the keys out of the ignition and another used his ECW to drive stun Brooks on the

11 No. 08-55622 at 18918 (9th Cir. 2010).

12 Id. at 18920.

13 599 F.3d 1018 (9th Cir. 2010).

arm, thigh, shoulder, and neck. After each stun, Brooks honked her horn and started to yell. Officers eventually removed Brooks from the vehicle and handcuffed her.

In its initial 2–1 decision, a three-member panel in the Ninth Circuit found that the use of the drive stun was not excessive force and that it constituted a "less-than-immediate use of force, prefaced by warnings and other attempts to obtain compliance, against a suspect accused of a minor crime, but actively resisting arrest, out of police control, and posing some slight threat to officers."[14] On September 30, 2010, the Ninth Circuit agreed to hear the case *en banc* (by all nonrecused judges on the court), noting that the three-judge panel opinion shall not be cited as precedent by, or to, any court of the Ninth Circuit.[15] Police agencies should be aware of this impending decision and its potential implications on how courts view the use of the drive stun.

Level of Offense

Several other circuits have reviewed the use of ECWs on subjects in light of the severity of their suspected crimes and the potential threat they pose to officers. In *Brown v. City of Golden Valley,* plaintiff Sandra Brown's husband was stopped when officers suspected him of driving while intoxicated and she was a passenger in the vehicle.[16] The Eighth Circuit found that "it was unreasonable to, without warning, taser a nonviolent passenger who was not fleeing or resisting arrest and was suspected of a minor, nonviolent crime, because she had disobeyed two orders to get off the telephone with a 9-1-1 operator."[17] In this 2009 decision, the Court noted that "[t]he Taser is a relatively new implement of force, and case law related to the Taser is developing."[18]

Also in 2009, the Eleventh Circuit decided the case of *Oliver v. Fiorino,* where Anthony Oliver appeared to be mentally unstable when officers observed him standing in the median of a major road, claiming that people were shooting at him.[19] Although initially compliant with the officers, Oliver began to walk into traffic. An officer discharged her ECW against

14 Id.

15 No. 08-35526 (9th Cir. 2010), available at www.ca9.uscourts.gov/datastore/opinions/2010/10/05/08-35526o.pdf

16 547 F.3d 491 (8th Cir. 2009).

17 Id.

18 Id. at 495.

19 586 F.3d 898 (11th Cir. 2009).

Oliver at that time, and she testified that she continued "pulling the trigger until he stayed on the ground," cycling it between 8 and 12 times, during which time officers did not attempt to restrain Oliver. Oliver died later at the hospital and, according to the Court, "[h]is body temperature rose to 107 degrees and he ultimately died as a result of the Taser shocks."[20]

In its decision, the Eleventh Circuit pointed out that "no decision from the United States Supreme Court, or from this Court, or from the Florida Supreme Court, has clearly established that an officer's repeated use of a Taser constituted excessive force under circumstances like these."[21] Even so, the Court considered that Oliver did not pose an immediate threat to officers or others, nor was he suspected of any crime, and concluded that "the force employed was so utterly disproportionate to the level of force reasonably necessary that any reasonable officer would have recognized that his actions were unlawful."[22]

The Tenth Circuit also ruled in 2007 that the use of an ECW on an individual who was suspected of a minor offense, and who was not threatening or fleeing, was unreasonable. In *Casey v. City of Federal Heights*[23], Edward Casey removed his own traffic court file from the courthouse while he went outside to retrieve money to pay his fine. As Casey walked back into the courthouse, the officer attempted to stop him. Casey continued to walk, and the officer tackled him, placing him in an arm-lock and jumping on Casey's back. Additional officers arrived, and without warning Casey was subjected to ECW activation and a drive stun. Officers also "repeatedly banged his face into the concrete," the Court noted. The Court refused to grant qualified immunity, and the case was remanded to the District Court for a determination on the Constitutionality of the use of force.[24]

In contrast to the above decisions, the Ninth Circuit in 2010 found it was reasonable to use an ECW on a domestic violence victim who was not suspected of a serious crime but who exacerbated a tense situation. In *Mattos v. Agarano*[25], officers responded to a domestic disturbance at the Mattos home. Jayzel Mattos put her hands up when the officer arresting her husband bumped into her. Upset that she had touched him, the officer used his ECW against

20 Id. at 906.

21 Id. at 907.

22 Id. at 908.

23 509 F.3d 1278 (10th Cir. 2007).

24 Id.

25 590 F.3d 1082 (9th Cir. 2010).

Mattos for one cycle, and she was arrested for obstructing government operations. The Court found that although Mattos's actions did not constitute a serious crime, the officer's use of the ECW was reasonable because her actions "exacerbated an already tense and rapidly escalating situation" where the officers "had an important interest in obtaining immediate control."[26]

Use of ECWs on Restrained Subjects

Other cases have looked at the use of ECWs on restrained individuals. In 2007, the Sixth Circuit found that ECW use on a restrained, but not handcuffed, subject was "unnecessary and gratuitous."[27] In that case, the plaintiff fled from officers during a domestic incident investigation; following the pursuit, he was restrained by one officer while another repeatedly used her ECW on him.[28]

However, the Eleventh Circuit found in two recent cases that ECW use on handcuffed subjects was not excessive when the subjects continued to resist. In a 2009 case, an ECW was used on a suspect who was actively resisting while she was in handcuffs and leg shackles. In *Mann v. TASER International, et al*[29], Melinda Fairbanks had been smoking methamphetamine and refused to leave a neighbor's home. Even after being placed into handcuffs and leg shackles, Fairbanks violently resisted, kicking out a patrol car window and banging her head on the car. The Court found that the ECW use against Fairbanks was not excessive, as Fairbanks was violent and aggressive "and the evidence demonstrates that she was clearly a danger to herself and others."[30] Fairbanks died later that day from malignant hyperthermia, with a body temperature of 107 degrees; the Court found insufficient evidence to hold that the ECW was the cause of her death.[31]

26 Id. at 1088-1089.

27 Roberts v. Mangold, 240 Fed. Appx. 675 (6th Cir. 2007).

28 Id.

29 No. 08-16951 (11th Cir. 2009).

30 Id.

31 Id.

In 2008, the Eleventh Circuit found that ECW use was not excessive when used against a suspect who resisted by refusing to stand and walk to a patrol car. In that case, *Buckley v. Haddock*[32], Jesse Buckley was stopped for speeding and was arrested when he refused to sign the ticket. While handcuffed, Buckley sat down and refused to walk to the officer's vehicle, and the officer applied his ECW three times in drive stun against Buckley. The Eleventh Circuit cited three key factors in making its decision:

1. The incident occurred on a dark highway with considerable traffic.
2. Buckley was resisting.
3. The officer took several steps to gain compliance prior to applying the ECW.

Although Buckley was handcuffed, the court found that he was not "fully secured" and that the officer's "gradual use of force, culminating with his repeated (but limited) use of a taser […] was not unconstitutionally excessive."[33]

TASER Training Bulletin 15.0

In October 2009, TASER International released "Training Bulletin 15.0 Regarding Medical Research Update and Revised Warnings," which offered a new preferred target zone for ECWs. It lowered the recommended target area from "center of mass" to "lower center of mass" for front shots. By avoiding the chest whenever possible, TASER International indicated that law enforcement agencies may avoid the "controversy about whether [ECWs] do or do not affect the human heart."[34]

The new recommendation created confusion in the law enforcement community and heightened concerns about police agencies' liability. Some law enforcement officials have said they do not understand why the bulletin was issued, given the manufacturer's assertion that the weapon, when used properly, is safe. TASER International contends that the change is not a new policy and that the recommendation is based on risk management principles, not medical or safety concerns (2009).

32 No. 07-10988 (11th Cir. 2008).

33 Id.

34 Id.

Many police agencies across the country changed their policies and training to follow the new instructions to aim at "lower center of mass." PERF's survey asked whether agencies were aware of the bulletin and whether they had made changes to their training or written policy in response to the new information. All of the responding agencies indicated that they were aware of the bulletin. As a result, approximately 90% indicated that changes were made to their ECW certification training, and half of the agencies made changes to their written policy.

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Glossary

activation. Pulling the trigger of an ECW, causing arcing or probe discharge.

active aggression. A threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

active resistance. A subject's physical actions to defeat an officer's attempt at control and to avoid being taken into custody. Verbal statements alone do not constitute active resistance.

Anti-Felon Identification (AFID) tags. See **confetti tags**.

application. The actual contact and delivery of electrical impulse to the subject via probe discharge or drive stun.

arcing. Pulling the trigger to activate an ECW without discharging the probes. This may be done as a warning to the subject or to test the ECW prior to deployment (sometimes referred to as a spark test).

cartridge. A replaceable vessel that generally contains compressed gas, probes, connecting wires, and confetti tags.

complete the circuit. When there is not adequate spread between probes attached to a subject, or one probe misses the subject or dislodges, the ECW may be used in drive stun mode to incapacitate the subject. This allows for the electrical pulse to travel between the attached probe(s) and the point where the front of the ECW makes contact with the subject. This tactic is sometimes referred to as a three-point contact.

Conducted Energy Device (CED). See **Electronic Control Weapon (ECW)**.

confetti tags. Small identifying cards expelled from an ECW cartridge when probes are discharged. Each confetti tag contains a serial number unique to the specific cartridge used. Confetti tags are sometimes referred to as Anti-Felon Identification (AFID) tags.

cycle. The period during which electrical impulses are emitted from the ECW following activation. In most models, a standard cycle is 5 seconds for each activation. The duration of a cycle may be shortened by turning the ECW off but may be extended in certain models by continuing to pull the trigger.

display. Drawing and exhibiting the ECW as part of a warning tactic, typically accompanied by appropriate verbalization.

drive stun. Drive stun mode is possible whether or not the cartridge has been expended or removed from the ECW. (If the cartridge is not removed, the probes will enter the body.) This action requires pulling the trigger and placing the ECW in direct contact with the subject, causing the electric energy to enter the subject directly. Drive stun is frequently used as a non-incapacitating pain compliance technique. It may also be used to incapacitate the subject where at least one probe is attached to the subject's body and the ECW contact will complete the circuit.

duration. The aggregate time that the ECW is activated. It is important to note that the duration of activation may differ from the duration of time that a subject is subjected to the electrical impulse from the ECW.

Electronic Control Weapon (ECW). A weapon designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses. Originally called Conducted Energy Device (CED).

excited delirium. State of extreme mental and physiological excitement, characterized by behaviors and symptoms such as extreme agitation, elevated body temperature (hyperthermia), watering eyes (epiphoria), hostility, exceptional strength, and endurance without fatigue.

exigent circumstances. Circumstances that would cause a reasonable person to believe that prompt and unusual action is necessary to prevent physical injury to self or others.

firing. Discharging ECW probes at an intended target.

fleeing. An active attempt by a person to avoid apprehension by a law enforcement officer through evasive actions while attempting to leave the scene.

laser painting. The act of unholstering and pointing an ECW at a subject and activating the ECW's laser dot to show that the weapon is aimed at the subject.

less-lethal weapon. Any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional police lethal weapon (e.g., firearm).

neuromuscular incapacitation. The effect of the ECW on a subject when, through the application of an electrical pulse, the ECW dominates the motor nervous system by interfering with electrical signals sent to the skeletal muscles by the central nervous system.

passive resistance. Physical actions that do not prevent the officer's attempt to control, for example, a person who remains in a limp-prone position, passive demonstrators, etc.

positional asphyxia. Death that occurs when a subject's body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the subject's head obstructs the airway.

probe discharge. Pulling the trigger to release the probes from the cartridge to make contact with the subject and achieve neuromuscular incapacitation.

probe spread. The amount of distance between probes fired from an ECW.

probes. Projectiles with wires contained in an ECW cartridge. When the ECW is discharged, probes are expelled from the ECW and penetrate the subject's clothing and/or skin, allowing application of the electric impulse.

proximity death. The death of a subject following exposure to an ECW.

sensitive areas. An area of the subject's body that may cause more serious injury to the subject if struck with an ECW probe (e.g., head, neck, genitalia)

serious bodily harm. An injury to a person that, either at the time of the actual injury or at a later time, involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of any part or organ of the body, as well as any breaks, fractures, or burns of the third degree.

three-point contact. See **complete the circuit**.

Appendix A: PERF Executive Session Participants[35]

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35 All information reflects the capacity in which attendees participated in the 2010 executive session.

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About the COPS Office

COMMUNITY ORIENTED POLICING SERVICES
U.S. DEPARTMENT OF JUSTICE

The Office of Community Oriented Policing Services (the COPS Office) is the component of the U.S. Department of Justice responsible for advancing the practice of community policing by the nation's state, local, and tribal law enforcement agencies through information and grant resources. The community policing philosophy promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. In its simplest form, community policing is about building relationships and solving problems.

The COPS Office awards grants to state, local, and tribal law enforcement agencies to hire and train community policing professionals, acquire and deploy cutting-edge crime-fighting technologies, and develop and test innovative policing strategies. The COPS Office funding also provides training and technical assistance to community members and local government leaders and all levels of law enforcement.

Since 1994, the COPS Office has invested more than $16 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing. More than 500,000 law enforcement personnel, community members, and government leaders have been trained through COPS Office-funded training organizations.

The COPS Office has produced more than 1,000 information products—and distributed more than 2 million publications—including Problem Oriented Policing Guides, Grant Owners Manuals, fact sheets, best practices, and curricula. And in 2010, the COPS Office participated in 45 law enforcement and public-safety conferences in 25 states in order to maximize the exposure and distribution of these knowledge products. More than 500 of those products, along with other products covering a wide area of community policing topics—from school and campus safety to gang violence—are currently available, at no cost, through its online Resource Information Center at www.cops.usdoj.gov. More than 2 million copies have been downloaded in FY2010 alone. The easy to navigate and up to date website is also the grant application portal, providing access to online application forms.

About PERF

Founded in 1976, the Police Executive Research Forum (PERF) is a police research organization and a provider of high-quality management services, technical assistance, and executive-level education to support law enforcement and the criminal justice system. As a private, nonprofit organization, PERF was formed to improve the delivery of police services through:

- The exercise of strong national leadership
- Public debate of police and criminal justice issues
- Research and policy development
- The provision of vital management and leadership services to police agencies

PERF's founding principles include improving police service by continuing to professionalize police executive management; fostering research, growth, and knowledge of police science and administration; and supporting the continuing development and implementation of standards to improve police performance. PERF has an extensive history of measuring all aspects of police agency performance, striving to find the best policing practices, and disseminating that knowledge to police agencies.

PERF conducts innovative police and criminal justice research and provides a wide variety of management and technical assistance programs to police agencies throughout the world. PERF's groundbreaking projects on community and problem-oriented policing, racial profiling, use-of-force issues, and crime reduction strategies have earned it a prominent position in the police community.

PERF also works toward increased professionalism and excellence in the field through its training and publications programs. PERF sponsors and conducts the Senior Management Institute for Police (SMIP), which provides comprehensive professional management and executive development training to police chiefs and law enforcement executives. Convened annually in Boston, SMIP offers instruction by professors from leading universities, including many from Harvard University's Kennedy School of Government, as well as by leading police practitioners.

PERF has also developed and published some of the leading literature in the law enforcement field, including the following:

It's More Complex Than You Think: A Chief's Guide to DNA (2010)

Guns and Crime: Breaking New Ground By Focusing on the Local Impact (2010)

Gang Violence: The Police Role in Developing Community-Wide Solutions (2010)

Violent Crime and the Economic Crisis: Police Chiefs Face a New Challenge, Parts I & II (2009)

The Stop Snitching Phenomenon: Breaking the Code of Silence (2009)

Violent Crime in America: What We Know About Hot Spots Enforcement (2008)

Police Chiefs and Sheriffs Speak Out On Local Immigration Enforcement (2008)

Promoting Effective Homicide Investigations (2007)

Violent Crime in America: "A Tale of Two Cities" (2007)

Police Planning for an Influenza Pandemic: Case Studies and Recommendations from the Field (2007)

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Strategies for Intervening with Officers through Early Intervention Systems: A Guide for Front-Line Supervisors (2006)

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Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives (2005)

Managing a Multi-Jurisdiction Case: Identifying Lessons Learned from the Sniper Investigation (2004)

Patrol Training Officer (PTO) Program (2004)

Community Policing: The Past, Present and Future (2004)

Recognizing Value in Policing: The Challenge of Measuring Police Performance (2002)

Racially Biased Policing: A Principled Response (2001)

Citizen Involvement: How Community Factors Affect Progressive Policing (2000)

Problem-Oriented Policing: Crime-Specific Problems, Critical Issues and Making POP Work (3 volumes, 1998–2000)

To learn more about PERF, visit www.policeforum.org

The **2011 Electronic Control Weapon Guidelines** publication is based on information gathered from workshops, interviews, and a national survey that examined the use of ECWs. In August 2010, an executive session comprising police, medical, and legal professionals convened in Philadelphia to focus on ECW policy and practice. Afterward, a concentrated working group spent a second day reviewing and modifying an earlier set of guidelines produced in 2005. As a result, this 2011 revised version represents the collective knowledge, experience, and expertise of participants who shared their ideas and concerns throughout this process. This publication is intended to guide law enforcement agencies as they consider how ECWs can be used in use-of-force situations, balancing responsibility and accountability as well as recognizing that ECWs are appropriate weapons when officers must resort to use of force.

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USE OF TASER RULED UNCONSTITUTIONAL BY NINTH CIRCUIT

On October 17, 2011, the Ninth Circuit U.S. Court of Appeals issued a ruling in two cases, Mattos v. Agarano and Brooks v. City of Seattle, which were combined by the court, involving the use of the Taser. The court concluded, in an en banc decision, that under the circumstances of those cases, the use of the Taser was excessive and unconstitutional.

Additionally, the court ruled that, even though the use of the Taser was excessive, the officers were entitled to qualified immunity from civil liability since, at the time of the incidents, reasonably trained officers would not have known that such use of the Taser was improper.

Qualified Immunity

The court ruled that, "in determining whether an officer is entitled to qualified immunity, we employ a two-step test: first, we decide whether the officer violated a plaintiff's constitutional right; if the answer to that inquiry is "yes," we proceed to determine whether the constitutional right was "clearly established in light of the specific context of the case" at the time of the events in question."

Use of Force Analysis

The court held that in determining whether the use of force was excessive, the factors set forth in the U.S. Supreme Court decision, Graham v. Connor, 490 U.S. 386 (1989) must be considered. "We apply Graham by first considering the nature and quality of the alleged intrusion; we then consider the governmental interests at stake by looking at (1) how severe the crime at issue is, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight."

"Ultimately, the "most important" Graham factor is whether the suspect posed an 'immediate threat to the safety of the officers or others.' (Citations.) When we consider whether there was an immediate threat, a 'simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern'."

Once it is determined that a constitutional right had been violated, the analysis then turns to whether the right was clearly established at that time.

"For the second step in the qualified immunity analysis — whether the constitutional right was clearly established at the time of the conduct — we ask whether its contours were "'sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right.'"

Facts in Brooks v. Seattle

In Brooks, said the court, "we proceed to determine whether [officer] Jones' use of the taser against Brooks in this case was reasonable, keeping in mind the magnitude of the electric shock at issue and the extreme pain that Brooks experienced."

"According to the facts as alleged by Brooks, the officers pulled her over for speeding and then detained and took her into custody because she refused to sign a traffic citation."

Brooks was driving her young son to school and he was in the car when she was stopped for driving 32 miles per hour in a 20 mile an hour zone. "(W)e have no difficulty deciding that failing to sign a traffic citation and driving 32 miles per hour in a 20–mile–per–hour zone are not serious offenses."

"We next consider whether Brooks "posed an immediate threat to the safety of the officers or others. When the encounter began, Brooks was compliant: she pulled over when signaled to do so, gave her driver's license to [officer] Ornelas when asked, and waited in her car while Ornelas checked her information."

Brooks was informed that she was going to be cited for speeding; she became upset and refused to sign the citation, but said she would accept it without signing it. A Sergeant was called to the scene and, after speaking with Brooks, told the officers to book her. When she refused to get out of the car, they showed her a Taser.

"After Jones and Ornelas discussed where to tase Brooks, Ornelas opened the driver's side door and twisted Brooks' arm up behind her back. Brooks stiffened her body and clutched the steering wheel to frustrate the officers' efforts to remove her from the car."

" . . . (W)ith Ornelas still holding her arm behind her back, Jones applied the taser to Brooks' left thigh in drive-stun mode. Brooks began to cry and started honking her car horn. Thirty-six seconds later, Jones applied the taser to Brooks' left arm. Six seconds later, Jones applied the taser to Brooks' neck as she continued to cry out and honk her car horn. After this third tase, Brooks fell over in her car and the officers dragged her out, laying her face down on the street and handcuffing her hands behind her back." She was taken to jail and, ultimately, charged with two misdemeanors.

Facts in Mattos v. Agarano

Maui police officers responded to a 911 call regarding a domestic dispute between Jayzel Mattos and her husband, Troy. "Troy is six feet three inches tall, approximately 200 pounds, and he smelled of alcohol when the officers arrived," Troy was sitting outside the house and when the officers asked to speak to his wife, Troy entered the house to get her.

"When Troy went inside to get Jayzel, Agarano stepped inside the residence behind him. Troy returned with Jayzel and became angry when he saw Agarano inside his residence." Since Troy was upset, "Agarano asked Jayzel if he could speak to her outside. Jayzel agreed to go outside, but before she could comply with Agarano's request, [officer] Aikala entered the residence and stood in the middle of the living room."

Aikala announced that Troy was under arrest. Jayzel was standing between the officers and her husband. When officer Aikala moved forward, he pushed against Jayzel, "at which point she "extended [her] arm to stop [her] breasts from being smashed against Aikala's body."

She was also talking to Agarano, trying to calm down the situation, and asking everyone to step outside the house to avoid waking her children. "Then, without warning, Aikala shot his taser at Jayzel in dart-mode."

They were then taken into custody and Troy was charged with harassment and resisting arrest. Jayzel was charged with harassment and obstructing government operations. All charges were ultimately dismissed.

Court's Decision in Brooks

First, the court of appeal discussed the use of force. In the case of Brooks, the court ruled that the use of the Taser constituted an unconstitutional and excessive use of force.

"(W)e proceed to determine whether Jones's use of the taser against Brooks in this case was reasonable, keeping in mind the magnitude of the electric shock at issue and the extreme pain that Brooks experienced." The court then evaluated the severity of the crime, which it concluded was "not serious."

As to the question of whether she posed an immediate threat, the court held that "at most, the officers may have found her uncooperative and her agitated behavior to be potentially threatening while Brooks' keys remained in the ignition of her car. In theory, she could have attempted to drive away rapidly and recklessly, threatening the safety of bystanders or the officers. But at some point after Ornelas grabbed Brooks' arm and before Jones applied the taser to her, Ornelas removed the keys from Brooks' car ignition and the keys dropped to the car's floor. Thus, at the time Jones applied the taser to Brooks, she no longer posed even a potential threat to the officers' or others' safety, much less an 'immediate threat.' We reiterate that this is the 'most important single element' of the governmental interests at stake."

The court then concluded that Brooks did, in fact, resist arrest. However, "Brooks' resistance did not involve any violent actions towards the officers. In addition, Brooks did not attempt to flee, and there were no other exigent circumstances at the time."

Finally, said the court, "we must examine the totality of the circumstances and consider 'whatever specific factors may be appropriate in a particular case, whether or not listed in Graham'." The court held that, although Brooks contributed to the situation, "(t)here are, however, two other specific factors in this case that we find overwhelmingly salient."

The fact that the officers knew that she was seven months pregnant and that "Jones tased Brooks three times over the course of less than one minute." As such, said the court, "(a) reasonable fact-finder could conclude, taking the evidence in the light most favorable to Brooks, that the officers' use of force was unreasonable and therefore constitutionally excessive."

Court's Decision in Mattos

"Determining whether the force used against Jayzel Mattos was constitutionally excessive, we begin again by considering the nature and quality of the force used. Here, the taser was employed in dart-mode, which we have held "constitute[s] an intermediate, significant level of force."

"Taking the evidence in the light most favorable to Jayzel, and resolving all conflicts in her favor, the most that can be said about her actions is that, while standing between Troy and Aikala, she attempted to prevent Aikala from pressing up against her breasts. While this may have momentarily deterred Aikala's immediate access to Troy, it did not rise to the level of obstruction. Thus, under Graham, the severity of the crime, if any, was minimal."

As to whether Jayzel posed an immediate threat to the officers, "there were no objective reasons to believe that she was armed, she did not verbally threaten the officers, and her only physical contact with Aikala resulted from her defensively raising her hands to prevent him from pressing his body against hers after he came into contact with her."

The court then held that she was not actively resisting arrest. "(W)hen Aikala stated that Troy was under arrest, Jayzel did not immediately move out of the way to facilitate the arrest. For the purposes of this Graham factor, however, we draw a distinction between a failure to facilitate an arrest and active resistance to arrest."

However, the court noted, "we must also consider the danger that the overall situation posed to the officers' safety and what effect that has on the reasonableness of the officers' actions."

"When they arrived they encountered Troy, who was sitting by himself outside the residence, hostile, seemingly intoxicated, six feet three inches tall and approximately 200 pounds. We have observed that '[t]he volatility of situations involving domestic violence' makes them particularly dangerous."

"Here, though, the alleged Fourth Amendment violation is the excessive use of force against the potential non-threatening victim of the domestic dispute whom the officers ostensibly came to protect."

"(W)e are unable to identify any reasonableness in the conclusion—whether made in a split-second or after careful deliberation—that tasing the innocent wife of a large, drunk, angry man when there is no threat that either spouse has a weapon, is a prudent way to defuse a potentially, but not yet, dangerous situation."

"Finally, the fact that Aikala gave no warning to Jayzel before tasing her pushes this use of force far beyond the pale. We have previously concluded that an officer's failure to warn, when it is plausible to do so, weights in favor of finding a constitutional violation." (Emphasis added.)

HOW THIS AFFECTS YOUR AGENCY

The court concluded that "Brooks and the Mattoses have alleged constitutional violations, but that not every reasonable officer at the time of the respective incidents would have known—beyond debate—that such conduct violates the Fourth Amendment. Accordingly, we reverse the district courts' denial of summary judgment on qualified immunity grounds on Plaintiffs' § 1983 excessive force claims."

The granting of qualified immunity was important for the officers involved, but that was based on the finding that no court decisions had clearly addressed this issue at that time. It is important to understand that, with the publication of these cases, that defense will not be available in the future in cases involving similar circumstances.

There have now been a series of decisions involving the use of Tasers and reviews of when and under what circumstances its use is appropriate.

On December 28, 2009, a unanimous Ninth Circuit W.S. Court of Appeals restricted when and under what circumstances Electronic Control Devices (ECD) can be used. In the case of Bryan v. McPherson; Coronado Police Department; City of Coronado, the court ruled that in order to deploy an ECD the "**objective facts must indicate** that the suspect poses an **immediate threat** to the officer or a member of the public."

The decisions in the cases of Brooks and Mattos also focus on the need to justify the use of the ECD, with the immediate threat to the officer or others, being a key factor to be considered.

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Pointing and Threatening to Use Electronic Control Weapons

❖ Introduction

Three previous articles in this journal have focused on the issue of the drawing and pointing of firearms by law enforcement personnel in the context of civil liability. See Excessive Force Claims Concerning Pointing Firearms--Part 1, 2010 (10) AELE Mo. L. J. 101 and Excessive Force Claims Concerning Pointing Firearms--Part 2, 2010 (11) AELE Mo. L. J. 101 and Drawing and Pointing Weapons During a Terry Investigative Stop, 2013 (7) AELE Mo. L. J. 101. A related, but slightly different topic is the pointing of and threatening to use Electronic Control Weapons (ECWs) such as Tasers.

This article discusses the small but growing number of cases in which courts have directly dealt with this topic. It examines whether the mere pointing of an ECW may be considered a use of force, as well as state law assault and battery issues arising from pointing and/or threatening to use an ECW. It closes with a discussion of some suggestions to consider along with relevant references and resources.

"Pointing" an ECW consists of either (a) intentionally pointing the device at a person, (b) sparking the device to warn or deter a person, and/or (c) illuminating a person with the device's laser beam.

❖ **Pointing: A Use of Force?**

A major reason for equipping officers with Electronic Control Weapons is to minimize the need for the actual use of force and to provide an alternative to the use of deadly force, while still giving officers the ability to inflict force from a distance, as with the use of a Taser in the dart mode. As the goal is to gain needed compliance with officers' legitimate orders and requests, facilitate effective investigations, and deter attacks on officers, the less an ECW is actually fired the better.

At the same time, if an ECW is not fairly readily accessible and at hand, its desired deterrent effect is diminished, and the greater the possibility that, in rapidly escalating encounters, yet greater amounts of force will need to be deployed for self-defense and defense of others.

As ECWs become more ubiquitous, and the number of encounters during which they are drawn, pointed, or their use is threatened grows, there will be more lawsuits by individuals objecting to their use even when they are not actually fired. In determining whether such justifications are warranted, and whether the drawing, pointing of, or threat to use an ECW constitutes a use of force (and if so, a reasonable one) courts will generally be guided by the totality of the circumstances, and by the general objective reasonableness standard applied to all force issues under the Fourth Amendment.

This is illustrated by *Chatman v. Buller*, #12-CV-182, 2013 U.S. Dist. Lexis 22901 (N.D. Okla.), in which an officer observed a pedestrian walking on a road in alleged violation of a city ordinance. When the man ignored orders to stop walking, the officer exited his vehicle and drew his Taser, threatening to use it if the man did not get down on his knees, which he did. The officer handcuffed him, and then allegedly continued to strike him after doing so.

The court found that the officer was not entitled to summary judgment, in light of the officer's "very aggressive tactics" during the encounter over the "relatively minor offense" the arrestee was accused of. The issue of whether the officer's actions were reasonable or unreasonable, including the threat to use the Taser, was a factual one for the jury to decide, the court stated, not an issue of law.

In instances where it is exceedingly clear that an officer had little alternative but to try to do something to move an encounter along in the face of either active resistance or repeated noncompliance, courts will be more prone to summarily find that pointing and threatening to use a Taser or other ECW was reasonable and necessary. In *Clark v. Rusk Police Dep't*, #6:07cv340, 2008 U.S. Dist. Lexis 69776 (E.D. Tex.), the court found that it was not

unreasonable for an officer to point a Taser at and threaten to use it on a motorist who was refusing to exit his vehicle during a traffic stop despite being ordered to do so at least 21 times. A clear warning was given.

The Taser was not actually used, although an officer did, under the circumstances, break a car window to get the Taser within range of the motorist to use it if necessary, given the motorist's persistent and stubborn refusal to cooperate. The motorist then exited his vehicle. A video of the entire incident made it clear that the officer's actions were eminently necessary and reasonable.

In *Policky v. City of Seward*, # 4:05 CV 3212, 433 F.Supp.2d 1013 (D. Neb. 2006), the court found that an officer's drawing and possible pointing of a Taser at a man possibly experiencing a diabetic reaction and believed to be not acting rationally was not a seizure and the officer and municipality are entitled to a summary judgment on the issue of excessive force.

The officer drew the Taser when the man had become combative and at a point when he believed that he might have had some object in his hands, which could have been a weapon. When it became clear to the officer that there was nothing in the man's hands and the situation started to get more under control, the Taser was put back into the holster.

The officer denied ever actually pointing the Taser at the man, but that was disputed. But the court found that, under these circumstances, even if it had been pointed, it was hardly an excessive use of force when there was not even any indication that he intended or attempted to fire it.

Some detainees or arrestees will falsely claim that a Taser has actually been fired at them when all an officer did was threaten to use it, drawing and pointing it to gain compliance. In *Garcia v. Contreras*, #C-07-359, 2008 U.S. Dist. Lexis 83438 (S.D. Tex.), for instance, a husband and wife sued claiming that police officers illegally searched their home and used excessive force. The wife claimed that she had been Tasered in the dart mode, causing her to fall. Officers denied discharging a Taser, but one officer did admittedly unholster and point his Taser.

A subsequent download confirmed that it had not been discharged. The officers were entitled to a Summary Judgment because there was no proof that force had been used. And, in fact, when an officer pointed a Taser at the husband, a second officer, advised that the husband had a heart condition, even placed his own hand in front of the Taser to ensure that it wasn't used.

State v. Williams, #A06A1514, 635 S.E.2d 807 (Ga. App. 2006) was a criminal rather than civil case. In it, a man was coerced into granting consent to emptying his pockets to search

for drugs during an investigative stop by an officer's action of pointing a stun gun at him. The consent was therefore invalid, the court found, and the marijuana found was suppressed. While the defendant's flight when the officers approached gave rise to a reasonable suspicion justifying an investigative stop, the fact that the officers admitted that the reason they asked the defendant to empty his pockets was to search for drugs rather than find out if he had weapons, meant that they exceeded the permissible stop of a permitted search under the circumstances.

❖ Threats, Pointing, and Assault

The cases discussed above involve issues of federal constitutional law. But it should not be forgotten that the state laws concerning assault and battery may also apply to officers' actions in some circumstances when pointing a weapon and threatening its possible use are arguably not justified and privileged by the circumstances the officers reasonably believes that they are confronting.

Battery requires the actual use of force, and a harmful or offensive touching of the body or something closely connected with it (such as the person's clothing, eyeglasses, purse, cane, wheelchair, etc.). Assault, on the other hand, is a civil cause of action for damages under state law in which the actual use of force is not required, rather it involves actions creating the imminent apprehension of a harmful or offensive touching, i.e., the fear that it will occur, even if it does not.

A case illustrating some of these principles concerned a detainee who became involved in a scuffle with officers while he was in the process of being booked into a county detention facility. A sergeant displayed her Taser and told the detainee that she would use it if he did not cease his resistance. After she shined the Taser's aiming light in his eye, he ceased his resistance.

The detainee sued, claiming that aiming the laser in his eye amounted to a battery and that doing so permanently impaired his left field of vision. A jury found that the use of the Taser was not an assault. The appeals court found that this did not preclude the possibility that pointing the Taser's aiming laser was a battery.

Someone can commit a battery without committing an assault because it is possible to intentionally cause a harmful or offensive touching without first putting the victim in fear or apprehension of such contact. Additionally, the county's argument that the battery claim was barred assumed that the jury decided that the sergeant lacked the intent to assault the detainee. "In fact, the verdict form did not require findings on each element of assault so

we cannot be sure which element or elements of the claim were not shown to the jury's satisfaction."

The trial court ruled on whether the sergeant intended to use the Taser on the detainee, but failed to rule on the issue of whether shining the laser in the detainee's eye constituted a battery, so the appeals court ordered further proceedings on that theory of liability. *Evans v. Multnomah County*, #10-35215, 2012 U.S. App. Lexis 17623, 492 Fed. Appx. 756 (Unpub. 9th Cir.). In a subsequent decision, *Evans v. Multnomah County*, #3:07-CV-01532, 2013 U.S. Dist. Lexis 55403 (D. Ore.), the trial court granted a motion for summary judgment by the defendant county on its argument that shining the light from the Taser in the Plaintiff's eye was not a battery. A battery requires an intent to cause harm, and there was no allegation that the officer who did this acted with the intent to cause personal injury.

In a Canadian case, a Toronto police officer pleaded guilty to threatening bodily harm. The officer was recorded by his vehicle's onboard camera pressing a Taser against a handcuffed suspect's neck and also threatening to Taser the groin of a second handcuffed suspect. The Taser was not actually discharged and neither suspect was injured. The officer's lawyers claimed that, at the time, he suffered from a diabetes-related hypoglycemic reaction.

The judge imposed a sentence of nine months of probation, a $500 victim surcharge fee and 50 hours of community service. Later, the officer was demoted from the rank of sergeant for a year. *R. v. Christopher Hominuk* (2011). View photo of the incident.

❖ Suggestions to Consider

Given the relative newness of the widespread deployment of Tasers and other ECWs, understandably policy development has largely focused on when their actual use is justified, and on various cautions on using them on particularly susceptible types of people or in particularly dangerous circumstances or manners. A number of the earlier articles on Tasers and other ECWs in this publication have discussed such issues at some length and are listed at the end of this article.

It is suggested that the question of when and under what circumstances officers should be unholstering, pointing, or threatening to use ECWs can also be a fruitful area for more detailed policy discussion, development, and officer training and education. The caselaw on the subject is still relatively limited, but there are a few things to consider.

1. Officers approaching an encounter with stopped motorists, criminal suspects, and persons to be subjected to investigative detention can legitimately unholster an ECW when they believe that it is necessary for their own protection or the

protection of others, particularly when there is a reasonable fear that the persons might be armed. Waiting to unholster an ECW until it is clearly necessary to fire it could lead to tragic results.

2. The more clear it is that the persons encountered are noncompliant with legitimate orders and requests, the more certain that it is the pointing an ECW and threatening to use it after giving a warning is reasonable.
3. Pointing an ECW at persons who are complying with orders, and against whom there appears to be no real need to use force, or threatening to fire it when doing so would not be justified under the circumstances may constitute an assault under state law, and also unnecessarily escalate encounters to a point where the use of force becomes involved.
4. The point of having ECWs is to gain compliance and cooperation. ECWs are not toys and inappropriate brandishing or horseplay should always be avoided.
5. TASER International says, in its literature, that you should always assume that a Taser is loaded and not point it at "anything you do not intend to hit."
6. Lasers attached to ECWs should not be pointed at the eyes, and no one should ever stare into the beam. ECWs should not be left where children may point the laser light at another person. This type of "play" can be very harmful.
7. Officers should be required to document instances where an ECW is sparked or the laser beam is directed at a person, even if the darts were not deployed.
8. To avoid weapon confusion during the dynamics of a confrontation, management should consider adopting a requirement that an ECW be holstered on the opposite side from an officer's firearm.

In an interesting recent use of force study covering a five year period (2008-2012) by one police department, during the timeline of the report, Tasers were pointed at a subject 23 times. Officers gained voluntary compliance from the resisting subjects in 16 instances merely by pointing their Tasers. In the remaining 7 instances where the Taser was actually deployed, it was effective 6 times. This is comparable to data released by TASER International, reporting a 94.5% effectiveness, with ideal probe deployment from the X-26 Taser. This would indicate that when properly used by trained officers, ECWs are a highly effective tool for law enforcement purposes. Mason Police Department Use of Force Five Year Study (Mason, Michigan, Jan. 18, 2013).

❖ **Resources**

The following are some useful resources related to the subject of this article.

- Electronic Control Weapons. AELE Case Summaries. [search for keyword pointing].
- Pointing Electronic Control Weapons. AELE Case Summaries.
- AELE Seminar on Legal, Psychological and Biomechanical Aspects of Officer-Involved Lethal and Less Lethal Force

❖ **Prior Relevant Monthly Law Journal Articles**

- Drawing and Pointing Weapons During a Terry Investigative Stop, 2013 (7) AELE Mo. L. J. 101.
- Excessive Force Claims Concerning Pointing Firearms--Part 1, 2010 (10) AELE Mo. L. J. 101
- Excessive Force Claims Concerning Pointing Firearms--Part 2, 2010 (11) AELE Mo. L. J. 101
- Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part I: 4th Amendment claims for excessive force, 2007 (3) AELE Mo. L.J. 101.
- Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part II: Use against juveniles, and inadequate training claims, 2007 (4) AELE Mo. L.J. 101.
- Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part III: Use Against Detainees and Disabled or Disturbed Persons, 2007 (5) AELE Mo. L.J. 101.
- Electronic Control Devices: Liability and Training Aspects, by Edmund Zigmund, 2007 (5) AELE Mo. L.J. 501.
- Taser® Electronic Control Devices (ECDs): An "Intermediate" Use of Force?, 2010 (2) AELE Mo. L. J. 101.
- Second Circuit Panel Allows Stun Mode to Gain Compliance of Chained Protestors, 2011 (5) AELE Mo. L. J. 501.
- Ninth Circuit finds that the use of a TASER® constituted excessive force: Two cases involved noncompliant subjects, 2011 (12) AELE Mo. L. J. 101
- Weapon Confusion and Civil Liability, 2012 (6) AELE Mo. L. J. 101

- The Use of Electronic Control Weapons Against Handcuffed or Restrained Persons - Part 1, 2012 (9) AELE Mo. L. J. 101
- The Use of Electronic Control Weapons Against Handcuffed or Restrained Persons - Part 2, 2012 (10) AELE Mo. L. J. 101.

❖ **References**

- Mason Police Department Use of Force Five Year Study by Sgt. Don Hanson and Officer Matt Thorne (Mason, Michigan, Jan. 18, 2013).
- TASER® is a trademark of TASER International, Inc.

AELE Monthly Law Journal

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- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as "legal advice." Lawyers often disagree as to the meaning of a case or its application to a set of facts.

Dart Mode Cases

Officers chased a man fleeing from the scene of a bar fight. When cornered, he seemed agitated, clenched his hands into fists, and started yelling erratically, cursing, and moving from side to side, making an officer believe that he was preparing to attack. When he again started to run away, a Taser was fired at him in the dart mode and he fell to the ground. Summary judgment was entered for the defendant officers. Upholding the result on appeal, the court found that the officer's use of force was reasonable, given the plaintiff's refusal to comply with the officer's repeated commands and his aggressive and menacing actions. Further, the court noted that there was no evidence to indicate whether the Taser use had caused the plaintiff's injuries and that it was possible that some or all of them stemmed from the bar fight he had just been in. The appeals court also found entirely proper the trial court's exclusion of supposed witness statements offered by the plaintiff that were not sworn to by the witnesses. Kocar v. City of Vader, 3:09-cv-05697, 2012 U.S. Dist. Lexis 102087 (W.D. Wash.), affirmed, Kocar v. City of Vader, #12-35687, 2013 WL 3815251, 2013 U.S. App. Lexis 15038 (Unpub. 9th Cir.). Keywords: flee.

RESTRICTIVE: A 17-year-old boy attempted to break up a fight between his father and brother, and then walked away from the family home after his mother called police. Officers on the way to the home encountered the boy on the street. When one of them exited the police vehicle and approached, the boy ran into a nearby parking lot. He subsequently claimed that the officer then fired a Taser in the dart mode against him with no warning, causing him to fall face first onto the pavement and suffer a broken jaw and other injuries. The trial court found no evidence to support claims against the police department for failure to properly screen or hire the officer, while finding that factual issues precluded summary judgment on an inadequate training claim and on failure to properly supervise and discipline. There was an argument that the department was on notice about the officer's propensity to use his Taser inappropriately based on four prior incidents. The court also allowed a claim for supervisory liability against the police chief to continue, as there was evidence from which a jury could find that he reasonably should have known about the officer's allegedly inappropriate prior Taser use and failed to take appropriate action. A negligence claim against the municipality was rejected. Gonzalez v. Alva, #11-CV-2846, 2013 U.S. Dist. Lexis 101489 (S.D. Cal.). Keywords: flee, juvenile.

RESTRICTIVE: A man was brought to a police station for fingerprinting after giving a fake name to an officer. At the booking counter, he was instructed to remove his "grill" or braces, and refused to do so. He allegedly shoved an officer and an altercation ensued. A Taser was fired at the man in the dart mode because he was not handcuffed and it was feared that he could possibly access weapons. The Taser was then used three times more in the stun mode. An officer involved in the fight who had not fired his own Taser was not liable for the Tasering. The initial Tasering, the court found, was reasonable since it was a response to the plaintiff's violent assault on an officer. The court stated, however, that the officer could be found to have acted unreasonably in the subsequent Taser uses if the plaintiff was, as he stated, immobilized, no longer actively resisting, and did not then appear to pose a threat to anyone. But the officer was entitled to qualified immunity, as he could not have known on November 2, 2009, the date of the incident, that the use of a Taser four times in 20 seconds under these circumstances could be unconstitutional. Harris v. Simental, #11-5306, 2013 U.S. Dist. Lexis 98640 (N.D. Cal.).

Officers approached a man who was standing at an automatic teller machine. He ran away and a Taser was fired at him in the dart mode striking him in the back, which he claimed caused him serious and permanent injuries. The court found that the use of the Taser was justified as it was undisputed that the plaintiff was committing a felony of attempted grand theft at the ATM and fled when he saw the officers in an attempt to avoid arrest. Black v. City of Vallejo, #2:12-cv-1439, 2013 U.S. Dist. Lexis 72196 (E.D. Cal.). Keywords: flee.

CAUTION: Officers went to a man's residence to investigate a complaint from a neighbor saying that the man yelled at him at him in an intoxicated state about his dog running across the street and was waving something that might be a gun. The man exited his house and appeared to be intoxicated. He said "fuck you"

when an officer told him he would have to be searched for weapons, and stepped back into his house, attempting to close the door, but an officer stuck his foot in the doorway. The officer entered the home, afraid that the man had gone inside for a weapon and might barricade himself inside. A second officer also then entered. When the man continued shouting profanities at the officers telling them to leave, a Taser was aimed at him, and the man turned away and started going down a hallway. He was shot in the back with a Taser in the dart mode, and the Taser was then reactivated, but he kept going into his bedroom. He fell onto a bed where another man was sleeping and the Taser was activated for the third time. He was handcuffed and arrested for resisting and obstructing an officer. The court found a genuine issue of fact as to whether the warrantless entry was justified by exigent circumstances and whether an officer believed that the plaintiff had threatened to kill his neighbor. Excessive force claims based on the use of the Taser were asserted but have not yet been ruled on. Sullivan v. City of San Rafael, #C 12-1922, 2013 U.S. Dist. Lexis 55896 (N.D. Cal.). Keywords: flee, intoxicated.

RESTRICTIVE: A man's girlfriend called 911 for assistance because he appeared to be having a seizure. The man himself, from his past history, knew that he was not having a life threatening situation and did not need medical attention. He was intoxicated from drinking beers. When firefighters and paramedics arrived, he refused their help. They did not leave because they thought he might need their assistance, but this angered him, and he used profanity and insisted that they leave. Two officers were sent in response to a call from the emergency personnel there saying the man was "combative." The man told the officers to leave and went up the stairs, saying he was going to bed, but continuing to curse. The officers followed him up the stairs, and he turned around at the top of the stairs, yelling at them to leave, and clenching his fist. He then lunged forward, according to the officers. He claimed that he was not aggressive towards the officers and that a Taser in the dart mode was fired at him while he was facing away from them and just starting to turn around. No warning was given before the Taser was fired. He fell to the ground and the Taser was activated a second time, to gain compliance. He was then placed on a gurney and taken to a hospital. Qualified immunity was denied for both applications of the Taser. Viewed in the light most favorable to the plaintiff, he had committed no crime, was in his own home, was not resisting arrest, and posed no threat to anyone. Under those circumstances, no use of force was justified. The court rejected the argument, on municipal liability, that the city's policy on excessive force was inadequate or failed to require a warning if practical, and found that the city made efforts to see that all officers were trained in the proper use of the Taser. A warning about seizure risks from Taser use provided by the manufacturer was part of the training. However, "There appears to be no training regarding when force may be used in a medical aid call, whether it is appropriate to use a Taser on someone who may be having medical problems, and how to deal with an individual who is refusing medical treatment. Given that City officers respond to medical aid calls, and considering that a different dynamic is likely to be involved in medical aid calls than in criminal investigation calls, a reasonable jury could find the absence of such training reflects deliberate indifference." Summary judgment therefore was denied on an inadequate training claim. Lucas v. City of Visalia, #1:09-CV-1015, 2013 U.S. Dist. Lexis 65855 (E.D. Cal.). In a subsequent order, the court also denied a motion for qualified immunity on the officer's second use of the Taser. "The evidence indicates the continued tasing of an individual in his home, without probable cause or justification for doing so." Lucas v. City of Visalia, #1:09-CV-1015, 2013 U.S. Dist. Lexis 98549 (E.D. Cal.). Keywords: intoxicated.

RESTRICTIVE: A group of people were gathered at a picnic table outside an apartment. They claimed that a deputy attached a man there without provocation, choking him using a carotid restraint. When the man's brother questioned this, he allegedly was knocked unconscious by a deputy. A third brother said that after he too questioned what was happening and came forward, a Taser was fired in the dart mode against him with no warning. The deputies asserted that one of the men hit them as they were responding to a report of a domestic disturbance and that the use of the Taser came after a warning and was needed to compel compliance and avoid further aggressive moves. Denying qualified immunity, based on the plaintiffs' version of the incident, the court noted that "utilizing a carotid restraint or Taser to subdue an individual, hitting an individual in the face with a flashlight or baton, or punching an individual to release his hands in order to handcuff him, could also be unreasonable" when used to restrain or subdue a compliant suspect. There were basic disputed material issues of

fact that had to be resolved, rendering qualified immunity inappropriate. Darraj v. County of San Diego, #11cv1657, 2013 U.S. Dist. Lexis 60942 (S.D. Cal.).

RESTRICTIVE: When deputies tried to place a motorist in handcuffs after arresting him for speeding and resisting and obstructing, he broke free and ran into his garage towards the door to his residence. A Taser was fired at him in the dart mode, but this did not stop him, according to deputies. The man later claimed that he was knocked to the ground and that the Taser was cycled at least twice. Both the plaintiff and the deputies agreed that the Taser was then used against him in stun mode at least twice. The court found that the resisting and obstructing charge was not minor as the speeding charge was and that the plaintiff's running towards his residence could justify a fear that he could get a weapon. He actively resisted efforts to handcuff him and succeeded in escaping, so that the initial Taser use was not excessive. There was, however, a disputed issue of fact as to whether the initial; Taser use ended the plaintiff's resistance and attempts to flee or not. The court still granted qualified immunity to the officers on all uses of the Taser, however, since it was not clearly established, as of October of 2009 that the subsequent uses of the Taser in a brief period of time against an unarmed suspect who fell to the ground after an initial use was objectively unreasonable. Wise v. Kootenai County, #2:11-cv-00472, 2013 U.S. Dist. Lexis 60229 (D. Idaho). Keywords: flee.

In a case involving the use of a Taser in the dart mode against a suspect by police, a magistrate judge rejected arguments that the manufacturer of the Taser acted "under color of law" for purposes of a federal civil rights claim because of its role in "keeping and securing evidence," supplying the police department with "Law Enforcement Only" equipment, and supplying the officers with training. The magistrate also rejected claims that the manufacturer was somehow responsible for the officers' actions or for "police negligence." The magistrate rejected the manufacturer's motion to dismiss the plaintiff's products liability claims because the specific model of the Taser was not identified in the complaint, stating that this fact could be developed during discovery. The magistrate also found that the plaintiff had adequately alleged the elements of a failure to warn claim based on the assertion that the manufacturer had failed to give "adequate warnings as to dangers of point blank targeting of the heart, without an adequate warning or training as to the escalatory effect." The plaintiff claimed that his reaction to the electrical shock had caused him to flee and then be shot by police, and that he suffered injuries from the shock itself. The magistrate recommended that claims against the manufacturer for punitive damages not be dismissed. Duensing v. Gilbert, #2:11-cv-01747, 2013 U.S. Dist. Lexis 47649 (D. Nev.). Subsequently, the trial judge accepted the magistrate's recommendations. Duensing v. Gilbert, #2:11-cv-01747, 2013 U.S. Dist. Lexis 45585 (D. Nev.). [Keywords: products liability].

RESTRICTIVE: A federal appeals court affirmed a $250,000 jury damage award to a man Tasered by police, along with almost $350,000 in attorneys' fees. The incident occurred when officers, summoned to a party because of a fight, told the man to put up his hands. He fit the description of a man allegedly armed and who had committed an assault. When the man's daughter started yelling at the officers that her father had done nothing wrong, an officer told her to shut up, allegedly using profanity. The father told the officer not to swear at his daughter, and the officer allegedly told him to shut up or he would be Tasered. When he continued to object, a Taser was fired in the dart mode, hitting him and resulting in injuries and his hospitalization. A trial judge threw out a general excessive force claim finding that the use of the Taser in these circumstances was not clearly established as excessive in 2008, and noted that the man had made physical contact with an officer who attempted to search him. He ruled, however, that the use of a Taser in retaliation for the man continuing to speak violated his clearly established free speech rights. The federal appeals upheld this result. Jackson v. City of Pittsburg, #10-17456, 2013 U.S. App. Lexis 4244 (Unpub. 9th Cir.).

A motorist who was high on methamphetamines was driving the wrong way down a highway. He pulled over when stopped by an officer, but ignored orders to exit a vehicle. After a scuffle with the state highway patrolman, he started to run away, climbing up on top of a tractor-trailer's sleeper cabin and refusing to obey orders to come down even after pepper spray was used on him. Officers climbed up and forced him down and he started running away again. After a warning, an X26 Taser was fired at him in the dart mode, causing him to fall down, but he kept trying to crawl away and refused to comply with orders to put his hands behind his head.

Three additional activations of the Taser in the dart mode finally allowed the officers to handcuff him. He continued to resist, although face down, handcuffed, ankle-shackled and restrained by at least four officers. He stopped breathing and died. An expert witness for the plaintiffs in an excessive force lawsuit over the incident said that the cause of death was positional asphyxia. A federal appeals court upheld a denial of qualified immunity to the defendant officers on excessive force claims. The court stated that a reasonable fact-finder could conclude that officers' use of body compression as a means of restraint was unreasonable and unjustified by any threat of harm or escape when the arrestee was handcuffed and shackled, in a prone position, and surrounded by numerous officers. At the same time, the appeals court ruled that it had not been clearly established at the time of the incident (February 2008) that the use of four, five-second Taser cycles in the dart mode within a span of about two minutes against a suspect who appeared unarmed, fell to the ground following the first use of the Taser and then presented no real threat of escape and was surrounded by three officers was objectively unreasonable. The officers were therefore entitled to qualified immunity on claims arising out of the use of the Taser. Abston v. City of Merced, #11-16500, 2013 U.S. App. Lexis 2227 (Unpub. 9th Cir.). Keywords: flee.

A front seat passenger in a car stopped by a police officer for traffic violations became belligerent and argued about whether or not he had been wearing his seat belt. Instructed to stay in the car, he exited it and made defiant statements in response to an order to reenter the vehicle. He was told that he was under arrest, ordered to turn around with his hand behind his back, and then started to reenter the vehicle. A Taser was fired in the dart mode into his back. In a lawsuit for excessive force, an intermediate Washington state intermediate appeals court held that Bryan v. MacPherson, 630 F.3d 805 (9th Cir. 2010) -- ruling that a Taser, used in the dart mode, was an "intermediate" use of force -- did not apply retroactively to the incident, which took place in 2006. A jury verdict for the defendant officer was upheld on appeal. At the time, a reasonable officer could have made a reasonable mistake of law regarding the constitutionality of the use of the Taser in these circumstances. The deputy had authority to make a warrantless arrest for the two misdemeanor offenses of obstructing an officer and resisting arrest, which were committed in his presence. Under Washington state law on the use of force, the officer was entitled to use all force necessary to carry out the arrest, and the plaintiff was not entitled to judgment as a matter of law. Strange v. Spokane County, #29812-4, 2012 Wash. App. Lexis 2528.

RESTRICTIVE: An officer's first use of a Taser in the dart mode was not unreasonable as a matter of law when used against a man fighting another man in an apartment. The officer had been informed, by a 911call, that the man was armed with a knife, and he came towards the officer, saying "shoot me motherfucker." The officer had no reason to know that the man was deaf and could not hear disobeyed orders to get on the ground. The court found that a jury could have found the second use of the Taser after the suspect dropped to the ground unreasonable since he posed less of a threat. The officer, however, was entitled to qualified immunity because, as of August, 2010, the date of the incident, the law was not clearly established on the second application of a Taser after a first use which was objectively reasonable. De Contreras v. City of Rialto, #11-01425, 2012 U.S. Dist. Lexis 138780 (C.D. Cal.). Keywords: disabled, suicidal.

RESTRICTIVE: Police came to a man's residence to arrest him because of an ongoing dispute that he had with his neighbor. They found him hiding in a field near his house. Told that he was under arrest, he said that he was "right here. I'm not going anywhere." He had his hands behind his back at the time and was on the ground. A Taser was shot at him in the dart mode. His hands, according to the plaintiff then went in front of him. The Taser was used again by the same officer, and then once again by another officer arriving on the scene. An officer then allegedly got on his back and shoved his face into the ground five times, breaking his teeth. The officers were not entitled to qualified immunity because of disputed issues of fact. The plaintiff claimed that he was not actively resisting arrest but lying on the ground surrendering with his hands behind his back. He claimed that the Taser was used with no warning, and that over twenty seconds elapsed between the first and second use of the Taser and over 30 seconds from the time the plaintiff started shouting and the third use of the Taser. The court stated that it was clearly established at the time of the arrest "that the Constitution prohibits an officer from Tasering and slamming a non-resisting person to the ground to effectuate a warrantless arrest for a misdemeanor offense." Municipal liability claims were rejected as time-barred and lacking merit, because no

pattern of constitutional violations was shown, nor was there any evidence of inadequate training. Bailey v. Chelan County, #CV-11-461, 2012 U.S. Dist. Lexis 144692 (E.D. Wash.).

RESTRICTIVE: Officers received a report that a mentally ill African-American man had threatened and battered his younger brother and might be under the influence of drugs. Officers also were advised that the man had brandished a weapon at officers, and had resisted arrest in a prior incident and that a machete might be in the home. When they arrived at the residence, the man yelled profanities at them, told them to go away, and said that he would kill them, or else they would have to kill him. The brother told the officers that the man had threatened to kill him. The officers entered the house, with one of them carrying an X26 Taser. As they enter, the man first threw a white rag in the doorway, and then disappeared from view. When he reappeared, he was aggressively raising a stick. A number of shots were fired by one officer, and the Taser was fired in the dart mode, causing the suspect to fall to the ground. When he would not obey orders to roll onto his stomach, the Taser was used in the dart mode a second time. An officer then yelled that the suspect had a knife. The officer's first use of the Taser was justified. He heard shots and did not know who was firing and could have believed that it was the suspect. At the time of the second use of the Taser, the suspect was on the ground, shot and bleeding. The Taser was fired a second time before another officer asked what was in the suspect's hand and then shouted that he had a knife. The officer did not warn the suspect that the Taser would again be used if he did not comply with orders. The court reasoned, therefore, that the officer could be found to have acted unreasonably as to the second use of the Taser because the suspect did not then appear to pose an immediate threat and was not actively resisting arrest or trying to flee. Despite this, the officer was entitled to qualified immunity on the second use of the Taser since at the time of the incident, July 24, 2005, the law on the use of the Taser was not clearly established. Pryor v. City of Clearlake, #11-0954, 2012 U.S. Dist. Lexis 93948 (N.D. Cal.). Keywords: mental, suicidal.

A police officer pulled over a motorist for having an inoperable taillight. The motorist exited his vehicle and started to walk away from the officer. He would not obey commands to stop, or to get on the ground, but ultimately did sit on the ground. Because of the man's argumentative demeanor, his lack of identification, and his reluctance to obey instructions, the officer feared that he might be armed. He called for backup and allegedly told the motorist that he would be pat frisked for identification and concealed weapons. The plaintiff denied being told that weapons were being sought. The motorist allegedly resisted the search both physically and verbally, ignoring commands to relax his arm and place his hands behind his head. Another officer who had arrived warned him that if he didn't stop resisting, he would be Tasered. A struggle ensued between the suspect and the first officer. The second officer used the Taser in the stun mode for one to two seconds on the motorist's left thigh. The motorist leapt to his feet and pulled away from the officer's control. The Taser was then used in the dart mode on him. He was then subdued, and drugs were found on him. The court rejected the plaintiff's claims of excessive force and also found that the officer was entitled to qualified immunity from liability as the law on when the use of a Taser constitutes excessive force was not clearly established in June of 2008, the date of the incident. Burns v. Barreto, #2:10-cv-01563, 2012 U.S. Dist. Lexis 83624 (E.D. Cal.).

A man with a history of mental illness was standing on a bridge's concrete railing and officers, concerned that he would fall or jump, tried to get him to step down from the railing to urinate. They planned to use Tasers in dart mode to secure him when he did so. The Taser barbs did not attach when he stepped down, and the officers were unable to grab him before he jumped back onto the railing and then made a fatal leap into the rocks 150 feet below. The court found that the officers acted reasonably with the goal of ensuring the safety of the man, but circumstances unfortunately led to his death. The court stated that the man's "mental health issues and death are tragic. However, the conduct by law enforcement was reasonable under the circumstances and did not constitute excessive force nor negligent infliction of emotional distress." Estate of Levy v. City of Spokane, #CV-10-0233, 2012 U.S. Dist. Lexis 15264 (E.D. Wash.). This result was upheld on appeal, as the defendant officers could have believed, under the circumstances that their conduct was lawful, and they were entitled to qualified immunity. Claims against the city and its officials failed as the plaintiffs had no evidence to support the theory that the officers' actions were ratified by the city. Estate of Levy v. City of Spokane, #12-35119, 2013 WL 3784165, 2013 U.S. App. Lexis 14844 (Unpub. 9th Cir.).Keywords: mental, suicidal.

RESTRICTIVE: A federal court jury has awarded $3.2 million on an excessive force claim to a bipolar woman who was shot and had a Taser used against her in the dart mode. At the time of the incident in 2009, the woman was wandering the streets at night for hours in a manic state. When someone observed her talking incoherently and wearing only a shirt, he flagged down a police vehicle. The woman ran up to the officers' car, banged on its window, and ran away. She ignored police commands to halt, climbed over an iron gate into the backyard of a house, and threw a metal cart at some people as well as threatening to kill a woman watching her from a window. She sprayed water from a garden hose at an officer as he came into the yard and then went over the gate and again ran away. At one point the woman brandished a wooden stake and knocked an officer down. Another officer shot her three times. A Taser was fired in dart mode against her when she allegedly refused to be handcuffed and continued to flail around on the ground. Allen v. City of Los Angeles, #2:10-cv-04695, U.S. Dist. Court, (C.D. Cal. Sept. 28, 2012). Complaint. Jury Verdict form. Keywords: flee, mental.

Police stopped a speeding motorist he suspected of driving under the influence. When the motorist was placed under arrest, he became argumentative and failed to comply with orders to turn around and place his hands behind his back. Two officers then unholstered their X26 Tasers and warned the arrestee to comply or be tasered. When he failed to comply, one officer used his Taser in the dart mode, striking him in his side and back. The arrestee was then eased to the ground and handcuffed, and medical personnel were summoned to the scene to check on the arrestee's condition. The officer was entitled to qualified immunity for his objectively reasonable use of the Taser. The officers could reasonably fear for their safety in light of the arrestee' high degree of intoxication, his argumentativeness, and his "imposing physical stature." Since the plaintiff was not deprived of a constitutional right, claims against the city were also rejected. The court also rejected negligence and negligent infliction of emotional distress claims, as well as an assault and battery claim. Shaffer v. City of Kennewick, #CV-11-5101, 2012 U.S. Dist. Lexis 115885 (E.D. Wash.). Keywords: intoxicated.

Police officers were not liable for the death of a combative suspect after they repeatedly used a Taser first in the dart mode and then in the stun mode. The officers broke into a small barricaded bedroom where a man, having injured a naked woman, was attempting to perform an exorcism on a three-year-old girl. They found the walls smeared with blood and the man with his hands around the child's neck in a choke hold. The suspect refused to stop what he was doing and kicked at an officer, after which the Taser was deployed. Neither the dart mode nor the stun mode appeared to have much effect on the man. The officers pulled the Taser X26's trigger a combined 22 times, but the discharges were not the uniform five-second cycle associated with the weapon. It was unclear how long the X26 was in contact with the man while discharging. They then wrestled him until he was subdued, after which he had no pulse. He never recovered. An autopsy found that the cause of the man's death was "excited delirium" with "hypertensive/arteriosclerotic cardiovascular disease" as a contributing condition. The officers' repeated use of the Taser was reasonable, given that the man was suspected of serious crimes, was a potential threat to them and a child, and was resisting arrest. Marquez v. City of Phoenix, #10-17156, 2012 U.S. App. Lexis 19048 (9th Cir.). Keywords: cardiac, delirium, products liability.

A police officer stopped a motorist at night for a traffic violation. The officer had no backup and it was dark, and the motorist was much bigger than the officer, and approached the officer in what he perceived as a threatening manner. The officer instructed the motorist 13 times to stop and get on the ground, and when he refused to cooperate, used his Taser twice in the dart mode, subsequently handcuffing him and taking him into custody. Because of the arrestee's refusal to comply with orders, the court held, the use of the Taser was reasonable, as the officer reasonably feared for his safety. There was video evidence of what occurred. Cordova v. Ely, #CV-11-3066, 2012 U.S. Dist. Lexis 114573 (E.D. Wash.) (magistrate's recommendations), adopted by Cordova v. Ely, #CV-11-3066, 2012 U.S. Dist. Lexis 114514 (E.D. Wash.).

In a wrongful death action, a Ninth Circuit panel concluded that Taser International was under no duty to warn that repeated exposure to its M26 could lead to fatal levels of metabolic acidosis. The district court properly awarded summary judgment in favor of the manufacturer "because the risk of lactic acidosis was not knowable in 2003." The deceased had been Tasered multiple times in the Dart and Stun mode. Rosa v. Taser

Int., #09-17792, 2012 U.S. App. Lexis 14025 (9th Cir.), affirming Rosa v. City of Seaside, #C05-03577, 675 F.Supp.2d 1006 (at 1013-15) 2009 U.S. Dist. Lexis 117933 (N.D. Cal.). Keywords: products liability.

A police officer encountered a man on the street who had been ousted from a bar as too drunk to be served any further. He observed the man kick over a newspaper stand in anger. The officer used a Taser in the dart mode against the man who he said would not comply with orders to take his hands out of his pockets, and instead directed profanities at him. The man claimed he then remained on the ground compliant but the officer activated the Taser a second and third time, stating that the man continued to resist. The man was then handcuffed and arrested. Claims against the officer and his supervisor were dismissed based on a stipulation by the plaintiff. On claims against the city and police department, the trial court ruled that the police department was not a proper defendant, as it was part of the city, and that the city was entitled to summary judgment as the plaintiff failed to show that a violation of his rights was caused by a policy or custom of inadequate training, screening, and supervision of police officers and their use of Tasers. State law claims were remanded to state court. Dombroski v. City of Salem, #6:09-cv-6284, 2012 U.S. Dist. Lexis 41861 (D. Ore.). Keywords: intoxicated.

RESTRICTIVE: A doctor driving a pickup truck to work suffered a seizure, resulting in several collisions. When his vehicle came to a halt, he did not comply with an officer's repeated commands to exit the vehicle as he was still dazed. The officer pulled him out of the vehicle and attempted to handcuff him, but the motorist resisted and started moving away. The officer then discharged his Taser Model X26 three times in dart mode into the man's chest from a distance of about three to four feet. He subsequently discharged it repeatedly. The data download indicated that the trigger had been depressed a total of 13 times over a three-minute period, although the number of times that a charge was actually delivered is in dispute. The man started turning blue and was later pronounced dead at a hospital. His surviving family asserted claims against the manufacturer for negligence, strict products liability, intentional misrepresentation, fraudulent concealment and deceit, and negligent misrepresentation. The trial court denied the manufacturer's motion for summary judgment on the negligence and strict products liability claims, stating that the plaintiffs had alleged facts from which a jury could conclude that the manufacturer's warnings about the specific risk of cardiac arrest and death from using the Taser against an individual's chest were not adequate "given the magnitude of the risk." The court did grant summary judgment to the manufacturer on the remaining claims, however. Taser International also challenged the conclusions of Douglas P. Zipes, M.D., an electrophysiology expert witness hired by the plaintiffs. The judge wrote: "The Court agrees with Plaintiffs that Defendant Taser's objections to the admission of Dr. Zipes' testimony relate more to the weight the jury should give those opinions than to admissibility. While a number of studies contradict Dr. Zipes' assertion the an ECD can cause cardiac arrest in humans, Dr. Zipes has provided a thorough basis for his opinion and also undermined the conclusions of those who disagree with him, mainly by distinguishing other human and animal studies from the situation that occurred in this case. For example, Dr. Zipes notes that he discounts some human tests, many of which are Taser-funded, because human studies are limited by ethical considerations: 'human testing must be designed with safety parameters to avoid VF inductions, which eliminates the sort of testing done on pigs, where fibrillation thresholds can be determined.' ... While Taser accuses Dr. Zipes of 'cherry-picking' from the vast literature the few studies that support his conclusion, the Court is satisfied that Dr. Zipes has provided a reliable basis for his opinion that ECDs can indeed cause cardiac arrest in humans and did indeed cause the death of Dr. Rich on January 4, 2008, an opinion which is clearly relevant and helpful to the jury." (View Dr. Zipe's complete expert report here). Rich v. Taser Int'l, Inc., #2:09-cv-02450, 2012 U.S. Dist. Lexis 44584 (D. Nev.). Taser International subsequently moved for sanctions against the plaintiffs for failing to dismiss the case voluntarily, arguing that they had produced no evidence that showed that Taser provided inadequate warnings or that the Taser X26 caused the decedent's death. The trial court found that Taser's motion for sanctions was without merit. "A Rule 11 motion is not a proper vehicle for arguing the merits of the case or refuting the testimony of an expert witness." Further, the plaintiffs did not "vexatiously multiply the proceedings by refusing to withdraw their complaint in the face of Taser's threat to move for sanctions." The court also denied the plaintiff's motion for sanctions against Taser, while awarding them attorneys' fees for the time spent defending against Taser's motion for sanctions. Rich v.

Taser Int'l, Inc., #2:09-cv-02450, 2012 U.S. Dist. Lexis 107927 (D. Nev.). In a subsequent decision, the trial court declined to rule, as a matter of first impression under Nevada law, that the standing of the decedent's minor child to pursue a wrongful death claim for the death of her natural father terminated when she was adopted, after his death, by her stepfather. Rich v. Taser Int'l, Inc., #2:09-cv-02450, 2012 U.S. Dist. Lexis 139021 (D. Nev.). Keywords: cardiac, disabled, experts, products liability.

RESTRICTIVE: A former Spokane, Washington police officer was sentenced to 51 months of incarceration, followed by three years of supervised release for civil rights and obstruction violations. He rushed into a convenience store, struck an unarmed man from behind with a baton twice in the head, then stood over him and fired a Taser in the dart mode down into him, then continued to deliver a series of baton blows to his head, neck and body, including a final flurry of seven baton strikes in eight seconds. The 36-year-old man was hogtied, stopped breathing, and was taken to the hospital, dying there two days later. The officer claimed that his use of force was justified because he felt threatened by a plastic bottle of soda the man was carrying. The entire incident was captured on a security camera video recording. He was convicted of both the excessive use of force and attempting to cover up what occurred. U.S. v. Thompson, #2:09-cr-00088, U.S. Dist. Court (E.D. Wash. Nov. 19, 2012). Indictment. Keywords: criminal.

A police officer used a Taser in the dart mode against a man. When he removed the darts from the plaintiff, he observed that the tip of one dart was missing. It had penetrated the man's diaphragm, and he required surgery to remove it. He filed a lawsuit asserting claims for excessive force and negligence against the officer and city, and against the manufacturer for products liability. The trial court granted a motion to dismiss the products liability claim, while granting the plaintiff leave to amend if he wished to. The complaint asserted that the Taser was defectively designed and manufactured, but the court found that it provided no factual basis for that claim. Verbally, the plaintiffs' lawyer clarified that what was intended was a failure to provide adequate warnings claim. In any subsequent amended complaint, the plaintiffs were instructed to omit any references to alleged defective design or manufacturing. The plaintiff referenced the warnings that the manufacturer placed on its website, but argued that, even if they were adequate, merely posting them on a public website was inadequate to provide the police department with notice of the warnings. The warnings do specifically state that Taser darts can detach and become embedded in bone, organ, or tissue, possibly requiring surgical removal. Manjares v. Taser Int'l, Inc., #CV-12-3086, 2012 U.S. Dist. Lexis 157755 (E.D. Wash.). Keywords: products liability.

RESTRICTIVE: Police responded to a call from a man's roommate complaining that he was behaving erratically. A federal appeals court ruled that the force used in handcuffing him during an altercation with two police officers was reasonable, given his violent resistance. A jury could, however, conclude that the officers used excessive force in using a Taser in the stun mode against him as well as body pressure to restrain him after he was handcuffed and face down on a bed. He subsequently died. A medical examiner found that he died from cardiac arrest during restraint procedures, and had drugs in his system. A coroner's inquest jury found that the death was excusable and that the use of the Taser did not cause the death. While the officers claimed that he continued to threaten their safety even after he was handcuffed, there were discrepancies and omissions in their varying accounts of the incident. The officers were not, therefore, entitled to qualified immunity on the use of force against the decedent after he was handcuffed. "[E]xisting law recognized a Fourth Amendment violation where two officers use their body pressure to restrain a delirious, prone, and handcuffed individual who poses no serious safety threat." Tucker v. Las Vegas Metro. Police Dep't, #09-17141, 470 Fed. Appx. 627, 2012 U.S. App. Lexis 4341 (Unpub. 9th Cir.). In subsequent decisions, the trial court rejected a motion to dismiss claims against the sheriff as a policymaker arising out of the use of the Taser. "In this case, in view of the state of the law regarding the use of force on a handcuffed or restrained individual, and the existence of issues of fact regarding the degree of [the decedent's] resistance, threat to the officers, and mental state, the court cannot say that, as a matter of law, the officers' use of the Taser on [him] after his handcuffing, nor [the sheriff's] liability as a policy maker with respect to that use, was reasonable." Tucker v. Las Vegas Metro. Police Dep't, #2:05-cv-01216, 2012 U.S. Dist. Lexis 155329 (D. Nev.). It also rejected an argument that the officers were entitled to qualified immunity for the use of the Taser after the decedent was handcuffed. Tucker v. Las Vegas Metro. Police Dep't, #2:05-cv-01216, 2012 U.S. Dist. Lexis 157557 (D. Nev.). Kewywords: handcuffed.

RESTRICTIVE: Police responding to a reported disturbance at a motel used a Taser Model X26 in the dart mode repeatedly against a man there, who they claimed was noncompliant, and subsequently died. The officer's visual observations justified their attempts to detain the man, whom they believed to be involved in an act of domestic violence. The plaintiffs claimed, however, that the Taser was only used against him after he was subdued and handcuffed, so there were genuine issues of fact as to whether the force used was excessive. Among other claims, the decedent's family argued that the Taser manufacturer failed to adequately warn that repeated applications of an ECW could cause serious injury or death, and that it expressly warranted that it would not do so. The trial court denied the manufacturer's motion for summary judgment based on warnings dated June 8, 2006, which it provided with the Taser used by the officer. Salinas v. City of San Jose, #5:09-cv-04410, 2011 U.S. Dist. Lexis 46773 (N.D. Cal.). The trial court subsequently denied the manufacturer's motion to stay the proceeding until appeals currently pending in the Ninth Circuit in similar cases could be resolved. The court noted that, unlike the pending cases cited, the plaintiffs here relied on the inadequacy of the manufacturer's written warnings and the training it provided, not just its written warnings. Additionally, while one of the cases on appeal mentioned by the plaintiffs, Rosa v. Taser Int., #09-17792, 2012 U.S. App. Lexis 14025 (9th Cir.), had since been decided, it involved what warnings were required in 2003 when the Taser was supplied to the police or when it was used in 2004. In the immediate case, the Taser was shipped three years later in August, 2008. "Surely, the relevant literature has progressed in that intervening time period such that new and different studies are cited by Plaintiffs here. Thus, Rosa's application and effect on the issues before this court is not readily apparent at this time." Salinas v. City of San Jose, #5:09-cv-04410, 2012 U.S. Dist. Lexis 97802 (N.D. Cal.). In a subsequent decision, the trial court granted Taser International's motion for summary judgment on all claims against it, including those based on negligence and express warranty. The court found that the warnings provided by Taser were adequate to warn that the use of a Taser may be unsafe for persons with certain physical conditions, stating that "conditions such as excited delirium, severe exhaustion, drug intoxication or chronic drug abuse, and/or exertion from physical struggle may result in serious injury or death." The warnings further stated that "[i]n some circumstances in susceptible people, it is conceivable that the stress and exertion of extensive, repeated, prolonged, or continuous application(s) of the Taser device may contribute to cumulative exhaustion, stress and associated medical risk(s)." Additionally, the court noted, entire sections of these warnings are dedicated to discussing "Sudden In-Custody Death Syndrome Awareness" and cautions officers to combine the use of a Taser device "with immediate physical restraint techniques and medical assistance" if the subject is exhibiting certain behaviors. Salinas v. City of San Jose, #5:09-cv-04410, 2013 U.S. Dist. Lexis 79260 (N.D. Cal.). In a subsequent trial of the excessive force claims against the officers, the jury found that one officer had used excessive force that had been the cause of the decedent's death. The decedent was a naked 260 pound man high on PCP. Four surviving members of the decedent's family were each awarded $250,000 in damages, for a total award of $1 million. The Taser was activated for 10 five-second cycles over a 90 second time frame, despite a city policy (since modified) that limited use to three cycles. The officer who used the Taser did not appear at trial. Salinas v. City of San Jose, #5:09-cv-04410, PACER Doc. #220 (N.D. Cal., July 12, 2013). Keywords: handcuffed, products liability.

RESTRICTIVE: A federal court jury awarded a total of $81,372.70 in compensatory damages (including $75,000 in noneconomic damages and $6,372.70 in medical expenses), and $125,000 in punitive damages on an excessive force claim brought by a man running away while suspected of having engaged in graffiti tagging of a building. An officer allegedly fired his Taser in dart mode five times at the man's back. The plaintiff claimed that his alleged crime was petty vandalism, so that the amount of force used was disproportionate. Halsted v. City of Portland, #3:10-cv-00619, verdict (D. Ore. 3/13/2012).

RESTRICTIVE: The use of a Taser in dart mode against a wife in a domestic violence case when she got between an officer and her husband may have been an excessive use of force. The insertion of her arm did not constitute active obstruction of an arrest. She did not threaten the officers and was not a threat to them. Additionally, the officer failed to give a warning before using the Taser. Qualified immunity was granted, however, as the law on the use of the Taser in such circumstances was not clearly established in August of 2006.

Mattos v. Agarano, #08-15567, 661 F.3d 433, 2011 U.S. App. Lexis 20957 (9th Cir.), cert. denied, Mattos v. Agarano, #11-1165, 2012 U.S. Lexis 3989 and Agarano v. Mattos, #11-1032, 2012 U.S. Lexis 3966.

Police officers summoned to the home of an allegedly suicidal man were accused of using Tasers in the stun mode twice against him in his bedroom, causing him to fall and be injured, solely because he did not respond "in a sufficiently timely manner." The plaintiff's excessive force claims against a city and county merely on the basis of the fact that they have either a formal or informal policy of allowing their officer to use Tasers in certain situations and "sanctioned" the use of Tasers by giving them to officers and training them in their use were dismissed. These allegations were inadequate to state municipal liability claims, as the plaintiff merely recited the elements of the claims "devoid of facts." Zamora v. City of Bonney Lake, # 11-CV-5495, 2012 U.S. Dist. Lexis 42935 (W.D. Wash.). The county was later granted summary judgment on claims against it based on its officer's action, as there was no evidence that he ever deployed his Taser, as he was only there providing backup to city police officers. Zamora v. City of Bonney Lake, # 11-CV-5495, (W.D. Wash. June 19, 2012). An earlier decision recites the facts and gave the plaintiff a chance to further refine his claims against the city and county by amending his complaint, which he failed to adequately do. Zamora v. City of Bonney Lake, #11-CV-5495, 2011 U.S. Dist. Lexis 129309 (W.D. Wash.). Keywords: suicidal.

A California man was acting abnormally, although the laboratory reports from a subsequent autopsy showed that no drugs or alcohol were in his system. He had approached his mother in the nude and had been calling himself god. His mother summoned the police to assist in admitting him to a hospital. Officers confronted the young man, who was holding a knife. He cursed, "Get the fuck out of my room, or I'm going to cut your throat and shove it down your neck." An officer applied his Taser in the dart mode, but only one dart penetrated. Other officers twice deployed their Tasers, without disabling the man. Two officers discharged their firearms. In the civil action that followed, the court said, "Officer B__ did not resort to using his handgun until it was clear that the use of the Taser had no effect on [the] decedent, and [the] decedent continued to threaten officer B__. ... Sergeant P__ did not fire his weapon until after a third Taser failed to subdue [the] decedent, and [the] decedent again stood up with the knife and approached the officers. ... Plaintiffs' own expert testified that each Taser deployment, as well as the discharge of officer B_ and Sergeant P__'s firearms, were objectively reasonable." The Plaintiffs' claim that the Defendants' use of force was unreasonable "rests on their argument that the use of force was excessive because the officers failed to take into account [the] decedent's mental condition." The judge wrote that "While the mental state of the victim is a factor to be considered in determining the reasonableness of the use of police force, it is far from dispositive." He concluded that "no reasonable juror could find that, based on the totality of the circumstances, the officers' use of force was objectively unreasonable." Han v. City of Folsom, #2:10-cv-00633, 2011 U.S. Dist. Lexis 129914, 2011 WL 5510810 (E.D. Cal.). Keywords: mental.

RESTRICTIVE: A deputy investigating a car accident saw a man 70 yards away walking along the street. He was not involved in the accident. The deputy ran after the man and ordered him to stop. The man stopped, turned to face the deputy, put his hands in the air, and asked why he was being stopped. The deputy then, allegedly without warning, used his Taser in the dart mode against the man from a distance of 15 to 20 feet, subsequently arresting him for obstructing an officer and resisting arrest. The deputy was not entitled to qualified immunity on an excessive force claim. Tasering the plaintiff to carry out a false arrest amounted to a use of force when no force was needed. No reasonable officer could have believed that the use of the Taser was justified under the circumstances alleged. Jackson v. Johnson, #10-98, 797 F. Supp. 2d 1057 (D. Mont. 2011).

RESTRICTIVE: A police officer attempted to stop an 11-year-old girl driving an ATV in a dangerous manner on city streets. She exited the vehicle and ran away. When she stopped running and the officer caught up to her, he Tasered her twice, one in dart mode and then in stun mode, even though she allegedly never was aggressive towards him. The Alaska Supreme Court overturned qualified immunity for the officer, ruling that summary judgment was improper "because if a police officer used a Taser multiple times on an 11-year-old girl who was suspected of traffic violations, was compliant, and was not posing a threat to the officer or others, that conduct could be so egregious that any reasonable officer would have known that the conduct was an excessive

use of force." The court also overturned a summary judgment dismissing improper and negligent training or supervision claims against the city. Factual disputes as to whether the girl was fully compliant or had ceased her efforts to flee must be resolved in further proceedings. Russell v. Virgin, #S-13537, 258 P.3d 795 (Alaska. 2011). Keywords: flee, juvenile.

RESTRICTIVE: A man acted belligerently towards officers when they came to his home to conduct a welfare check after receiving a report that he was intoxicated while in charge of taking care of small children. They began removing him from the home, but he allegedly resisted their efforts, kicking and attempting to bite the officers. They attempted twice to use a Taser in dart mode against him, but this was ineffective because the probes did not make a complete circuit. They then used Tasers in stun mode multiple times, shocking him approximately 15-18 times. The court held that the initial uses of force by the officers were objectively reasonable, but the need for continued force when the arrestee was handcuffed, seated on the floor, and then placed on his stomach had changed. The trial court acted erroneously in failing to consider whether the department's policy on use of the Taser put the officers on notice that they may have used excessive force after the arrestee arguably no longer posed a threat to them. Olsen vs. City of Hooper Bay, #S-13455, 251 P.3d 1024 (Alaska 2011). Keywords: handcuffed, intoxicated.

RESTRICTIVE: An officer used his Taser, first in dart mode, and then multiple times in stun mode, against an uncooperative intoxicated man who refused to get off a bus at the end of the line. The officer asserted that the man, once off the bus, tried to kick him while on the ground, and would not cooperate with efforts to handcuff him. The court noted that the plaintiff was Tasered a total of four times in rapid succession. As his offenses were relatively minor, and he was not actively resisting arrest or attempting to flee, the use of the Taser could be found to be unreasonable. The officer was entitled to qualified immunity, however, as the law on the use of the Taser in these circumstances was not clearly established at the time of the incident. Baird v. Ehlers, #C10–1540, 2011 U.S. Dist. Lexis 134307, 2011 WL 5838431 (W.D.Wash.). Keywords: flee, handcuffed, intoxicated.

RESTRICTIVE: In a lawsuit over the death of a man who died after being subjected multiple times to Taser shocks, a federal court jury returned a verdict in favor of defendant police officers and the city that employed him on all claims, including federal civil rights and negligence claims, while awarding damages, including $5.2 million in punitive damages, on a negligent failure to warn theory against Taser International, Inc., the manufacturer of the Tasers used by the officers. A federal appeals court subsequently ruled that the trial court did not err in admitting expert witness testimony on the use of the Taser, but did act erroneously in upholding the jury's award of compensatory damages to the decedent's estate, as it was not supported by the evidence. The plaintiffs should also not have been awarded attorneys' fees under California law. The appeals court upheld a trial court decision setting aside the punitive damages award against the manufacturer, since the manufacturer had, in fact made some efforts to provide warnings about the use of the Taser, even if they were arguably insufficient, so that punitive damages were inappropriate. Heston v. Taser, #09-15327, 431 Fed. Appx. 586, 2011 U.S. App. Lexis 9389 (Unpub. 9th Cir.). Keywords: experts.

Use of a Taser in dart mode to the back to stop an arrested handcuffed drunk man who posed a threat from fleeing was objectively reasonable as a matter of law. He attempted to flee as he was being placed in a patrol car for transport to jail. Considering that the arrestee admittedly was "so drunk [he] didn't know what was going on" and had been belligerent and combative for over an hour, it was reasonable for the officer to believe that he posed a threat "threat to anyone he encountered." Groves v. Croft, #CV–10–101, 2011 U.S. Dist. Lexis 130645, 2011 WL 6130791 (D. Mont. Dec. 8, 2011). Keywords: flee, handcuffed.

Officers used their Tasers, first in dart mode and then in stun mode, on a man who resisted their orders to exit the van which he had been sleeping in, instead trying to call his lawyer on a cell phone. They believed that he was under the influence of drugs, and claimed that he might have posed a threat to them because of a soda bottle that was within his reach. The officers were entitled to qualified immunity on both the use of the Taser in dart mode, despite questions about whether the plaintiff posed a risk of harm to them at that point, and on their subsequent use of their Tasers in stun mode, when he clearly was actively resisting them. Ciampi v. City of Palo Alto, #09-CV-02655, 790 F. Supp. 2d 1077, 2011 U.S. Dist. Lexis 50245 (N.D. Cal.).

RESTRICTIVE: An officer would have been entitled to qualified immunity for initially using a Taser in dart mode on a stopped motorist who resisted him. When he was joined by other officers, however, and they continued to use the Taser on him while he was on the ground, pinned down, and while they were exerting pressure on him, they should have known that this might cause his death from compression or restrain asphyxia, which it did. The officers were therefore not entitled to qualified immunity on a Fourth Amendment excessive force claim. Abston v. City of Merced, #1:09-cv-00511, 2011 WL 2118517, 2011 U.S. Dist. Lexis 55942 (E.D. Cal.). Keywords: asphyxia.

RESTRICTIVE: Officers executing a warrant to arrest a suspect for theft allegedly mistook a man for the wanted suspect, deploying a police dog against him and using a Taser in the dart mode against him. The officers were not entitled to summary judgment, since there were disputed issues of fact as to whether the plaintiff posed a threat to the officer, and whether or not he ignored police commands and struggled with them, as well as running into his cottage within an arm's reach of knives. The plaintiff claimed he stopped when he saw the officers and raised his hands in the air. Gomez v. City of Fremont, #07-00005, 730 F. Supp. 2d 1056 (N.D. Cal. 2010).

An officer used a Taser in dart mode against a man who looked like he was holding his granddaughter in a choke hold while trying to perform an exorcism on her to drive out demons. The Taser was used because the man refused to let go of the child. The man was Tasered several more times in stun mode as he was kicking the officer, although that may have been a reaction to being Tasered. An officer also used a Taser in stun mode against the man's daughter who also was present and resisted him. The man died, allegedly of "excited delirium" after being Tasered multiple times. Summary judgment was granted to Taser on failure to warn claims, and to the city, and the officers on excessive force claims. The officers' use of force was not so "plainly unnecessary and disproportionate that no reasonable officer could have thought that the force used was legal." Marquez v. City of Phoenix, #CV-08-1132 2010 U.S. Dist. Lexis 88545 (D. Ariz.). Keywords: delirium.

RESTRICTIVE: A California products liability suit, filed by man with brain damage, was reported to have been settled for $2.85 million. The plaintiff, a man with a history of mental illness, claimed that his heart stopped after a Taser deployment. Butler v. Taser Intnl., #CV-161436, Santa Cruz Co., Cal., Superior Ct. (Aug. 2010). Access docket. Keywords: mental, products liability.

RESTRICTIVE: Officers used a Taser in dart mode against a man they had detained for investigation who started running away when they asked him if he had any weapons. He was Tasered while running on a hard concrete surface, and suffered significant injuries. Because neither the plaintiff nor the defendant argued the issuer of the reasonableness of the force in their motions for summary judgment on claims regarding municipal policies on and training of officers on using Tasers against suspects running on hard surfaces, the court assumed for purposes of the motion that such use of a Taser on an unarmed, nonthreatening suspect constituted an unreasonable use of force. The court found that summary judgment on the inappropriate training issue would be inappropriate, as the officer might have chosen not to use the Taser if given more training on the risk of doing so when a fleeing suspect is on concrete. Summary judgment was also denied on claims relating to the investigation of the use of force. Azevedo v. City of Fresno, #1:09-CV-375, 2010 U.S. Dist. Lexis 57108, 2010 WL 2353526 (E.D. Cal.). In a subsequent decision at Azevedo v. City of Fresno, #1:09-CV-375, 2011 U.S. Dist. Lexis 10132 (E.D. Cal.), the court granted qualified immunity to the officer, but continued to deny summary judgment on municipal liability issues. Keywords: flee.

RESTRICTIVE: Officers responded to a call to investigate a person with a possible mental impairment. Although the man was compliant and non-threatening, the officer tried to handcuff him. Having trouble placing him in handcuffs, the officer made the decision to Taser him in the right leg. The man dropped swiftly to the floor as soon as the Taser was deployed. Paramedics were summoned, but he was beyond medical help by the time they arrived. He died shortly thereafter. In the subsequent litigation, the judge noted that the deceased appeared -- at least to the officer -- to be under the influence of a central nervous system stimulant that subjected him to increased risk of cardiac arrest upon application of a Taser. This vulnerability made the office's decision to use the Taser "even more problematic." A reasonable jury could conclude that the officer violated the

deceased's constitutional rights. "This factor weighs heavily against the entrance of summary judgment in Defendants' favor." The Court noted that although the Ninth Circuit has refused to create two tracks of excessive force analyses -- one for the mentally ill and one for serious criminals -- the appellate court has repeatedly emphasized that a suspect's evident mental illness typically diminishes the government's interest in using significant force, given that swift force employed against an emotionally distraught individual often serves only to exacerbate, rather than defuse, a potentially dangerous situation. The officer had testified that, as a result of his training, he understood that people under the influence of a nervous system stimulant face a higher risk of sudden death due to the excited delirium caused by the application of a Taser. Thus, a reasonable jury could conclude that the officer's decision to Taser the deceased, in spite of this known risk, evinced a deliberate indifference to the deceased's well-being. Quyen Dang v. City of Garden Grove, #8:10-cv-00338, 2011 U.S. Dist. Lexis 85949 (C.D. Cal.). Since that ruling, counsel for the defendants' filed a Notice with the Court that a settlement was reached. Keywords: delirium, mental.

A bystander on a bicycle observed a police officer stop a car for a traffic infraction and arrest a passenger who was wanted on an outstanding warrant. The bystander refused to respond to repeated police inquiries or to identify himself; he was warned that he would be arrested for failing to do so. The officer took hold of his wrist in order to handcuff him. He refused to be handcuffed, resisted arrest, and a physical altercation ensued. A Taser was deployed in the dart mode and resistance continued. The citizen claimed that a Taser was used upon him a total of seven times over the course of ten minutes. After a civil rights trial, a federal jury found that the officers did not use excessive force in making the arrest. The Court then dismissed the suit. Scott v. City of Coeur d'Alene, #09-cv-66, Jury Verdict (D. Idaho, 2011). Facts are recited at 2010 U.S. Dist. Lexis 96529 and 2010 U.S. Dist. Lexis 96651.

Officers responded to a convenience store where they encountered a six foot, 220 lb. man who was obviously intoxicated, angry, and belligerent. He was ordered to leave the area in the taxi that he had arrived in. When he refused and tried to enter the store shouting an obscenity, an officer said, "Okay, you want the Taser?" The man responded, "I don't mind it." The Taser was deployed in the dart mode for 5 seconds, which took him down. Another 4-second cycle was used to assist in handcuffing the man. In the suit that followed, the U.S. District Court granted a Summary Judgment for the defendant officer. In affirming, the Ninth Circuit appellate panel wrote that the plaintiff, "while heavily intoxicated, actively resisted the officers repeated verbal commands to leave the gas station, broke free from [the officer's] grasp, and barreled through five officers to confront the young female convenience store clerk." He ignored a warning that he would be Tasered. "Such conduct qualifies as more than minor resistance. In addition, a reasonable officer could have concluded that [the plaintiff] continued to actively resist arrest by attempting to get up after the first Taser shot, despite officers' commands to stay down and submit to arrest." Lindsay v. Kiernan, #09-55652, 378 Fed. Appx. 606, 2010 U.S. App. Lexis 8910 (Unpub 9th Cir.). Keywords: intoxicated.

RESTRICTIVE: An epileptic man's girlfriend called 911 when he suffered an episodic seizure. Police officers and EMS arrived. One officer noticed that the man appeared to be mentally altered and was combative when treatment was attempted, but he had not injured anyone. Two officers pursued the man up the stairs. When the man reached the second floor landing, he turned around and told the officers to leave. Without warning, one officer shot him with her Taser in the dart mode. He fell to the ground and the officer told him to turn over on his stomach and put his hands behind his back. Then, in order to gain compliance, the officer cycled her Taser a second time and again shocked him. The plaintiff alleged that he sustained significant injuries from the Taser applications. A suit was brought against the city, the officers and the manufacturer. The plaintiff claimed that the city failed to provide officers with adequate training about: (1) the dangers of using Tasers on, and administering multiple Taser shocks to, persons with a history of episodic seizures; and (2) the appropriateness of using a Taser on someone who refuses to receive medical treatment. The court noted that the absence of training regarding individuals who refuse medical treatment could indicate deliberate indifference. The court wrote that "it is foreseeable that police officers will often deal with persons who need or appear to need medical treatment. The absence of training regarding how to handle individuals who refuse apparently needed medical treatment could indicate deliberate indifference." The court concluded that the plaintiff stated a Monell claim in relation to

the absence of training about how to deal with persons who refuse to receive medical treatment." Lucas v. City of Visalia, #1:09-CV-1015, 2010 U.S. Dist. Lexis 35631 (E.D. Cal.). However, the court dismissed claims against Taser International. Lucas v. City of Visalia, #1:09-CV-1015, 726 F.Supp.2d 1149, 2010 U.S. Dist. Lexis 73649 (E.D. Cal.). Keyword: disabled, products liability.

RESTRICTIVE: Because a county had a number of allegedly Taser related deaths, and subsequently failed to change its existing policies on Taser use, a court found that there were triable issues of fact on claims for municipal liability for a disturbed man's death, based on inadequate customs and training. The stated policy allowed for Taser use whenever there was a "tactical advantage." The court found that this gave officers "wide discretion in the use of force. This makes it disputable whether the county had a "custom", either actively or by omission, of having officers employ excessive force in arrests" The Taser was used multiple times in stun mode when the man ran outside his house in his bathrobe and refused to stop running. A coroner listed the cause of death as "[s]udden cardiac arrest while being restrained prone after physical altercation with police that included [the] use of [T]asers, due to excited delirium due to acute cocaine and MDMA intoxication." Estate of Zachary v. County of Sacramento, #2:06-cv-01652, 2010 U.S. Dist. Lexis 33226, 2010 WL 1328892 (E.D. Cal.). In a subsequent decision, both plaintiff's and defendant's motions for judgment as a matter of law were denied. Estate of Zachary v. County of Sacramento, #2:06-cv-01652, 2010 U.S. Dist. Lexis 135413 (E.D. Cal.). Keywords: cardiac, delirium, intoxicated.

RESTRICTIVE: An officer used a Taser against an intoxicated hospital patient with epilepsy who was being unruly while insisting on getting up to use a restroom despite hospital personnel instructions to remain on a gurney until he could be examined by a doctor. The plaintiff claimed that the Taser was used in dart mode, while the defendants claimed that it was only used in stun mode. The officers were not entitled to qualified immunity, as the court could not find that a reasonable officer would have believed that there was a need for immediate use of the Taser without a warning if the facts were as the plaintiff claimed. Eller v. City of Santa Rosa, #C09-01094, 2010 U.S. Dist. Lexis 57373, 2010 WL 2382432 (N.D. Cal.). Keywords: intoxicated.

RESTRICTIVE: Using a Taser in dart mode against a fleeing suspect climbing over a fence constituted a use of deadly force because "the potential result of the particular use of force could cause serious bodily injury or even death." In this case, the use of the Taser caused the suspect to become temporarily paralyzed and to plunge head-first onto the other side of the fence, suffering multiple spinal fractures. The officer was not entitled to summary judgment on the basis of qualified immunity on these facts. Snauer v. City of Springfield, #09-CV-6277, 2010 U.S. Dist. Lexis 124770, 2010 WL 4875784 (D. Ore.). Keywords: flee.

An officer who user a Taser in dart mode to stop a fleeing graffiti suspect who appeared to be attempting to enter a home may have used excessive force as the suspect was not accused of a violent crime and did not then pose a threat to the officer or others justifying the use of that level of force. Additionally, an adequate warning was not given before the Taser was used. But the officer was still entitled to qualified immunity, as his conduct was not then clearly unlawful. Garcia v. City of Imperial, #08cv2357, 2010 U.S. Dist. Lexis 102306, 2010 WL 3834020 (S.D.Cal.) Keywords: flee.

An officer was entitled to qualified immunity for Tasering a suspect in dart mode in the face when he was suspected of involvement in a violent crime and of being armed, and when his clothing was such that the officer could not rule out that a weapon was concealed. Such qualified immunity was granted despite the fact that, under the plaintiff's version of the facts, that he was unarmed, had his hands up and was not resisting, the force used would have been excessive. Marella v. City of Bakersfield, #1:09-cv-00453, 2010 U.S. Dist. Lexis 88170, 2010 WL 3386465 (E.D.Cal.).

RESTRICTIVE: In Bryan v. McPherson, #08-55622, 2009 U.S. App. Lexis 28413 (9th Cir.), the court held that, if an officer, as alleged, used a Taser against an unarmed, non-fleeing motorist, stopped for a seat belt violation, who posed no immediate threat to the officer, the force used was excessive. The court characterized use of the Taser as non-lethal force, but also as an "intermediate or medium, though not insignificant" use of force, requiring justification by a "strong governmental interest" compelling the use of such force, in light of the

pain and incapacitation it causes, and the possibility of injury from resulting falls. Revisiting the case, the court has now determined, overturning its prior decision in part, that the officer was entitled to qualified immunity from liability, as the principles announced in the case were not previously "clearly established." Other than the individual grant of qualified immunity to this officer, the decision remains unaltered. Bryan v. MacPherson, #08-55622, 608 F.3d 614, (9th Cir. 2010), withdrawn and superseded by, rehearing denied, and rehearing en banc denied by Bryan v. MacPherson, #08-55622, 630 F.3d 805, 2010 U.S. App. Lexis 12511 (9th Cir.).

A man failed to pull over his car and fled on foot when officers attempted to arrest him. He claimed that the officers used the Taser in dart and stun mode multiple times, including Tasering both his legs after he was subdued with his hands behind his back. The Taser may have been used somewhere between nine and thirteen times. The plaintiff failed to allege specifically what each defendant officer was claimed to have done, so his excessive force claim was dismissed, although he could still amend it to spell out his claim with further specifics. Godinez v. Lara, #1:10-cv-303, 2010 U.S. Dist. Lexis 43117 (E.D. Cal.) (magistrate's recommendations), adopted in Godinez v. Lara, #1:10-cv-303, 2010 U.S. Dist. Lexis 62203, 2010 WL 1798009 (E.D. Cal.)

Officers did not use unreasonable force in shooting numerous Taser darts into a man's naked body when they found him disoriented and standing unclothed behind his wife. They then handcuffed him and placed him face down on a gurney, which resulted in his suffocation and death. Their use of force was to protect the wife against apparent danger. Sanders v. City of Fresno, #08-16077, 2009 U.S. App. Lexis 16051, 340 Fed.Appx. 377 (Unpub. 9th Cir.). Keywords: handcuffed, intoxicated.

RESTRICTIVE: A suit was filed in Federal court, alleging misuse of a Taser during a confrontation that ultimately led to a fatal shooting. Concerning the use of a Taser, the Judge noted that a simple statement by an officer that he fears for his safety or the safety of others is not enough, because there must be objective factors to justify such a concern. Before the officers encountered the decedent, they had reports that he might have a firearm. However, when the officers arrived at the scene they could see that the man was naked, badly injured and sitting in the street. The deceased immediately complied with the officers' orders to put his hands in the air and he kept his hands up when the officers approached him. The Judge concluded that the man posed no immediate threat when a Taser was initially deployed in the dart mode. Moreover, the initial encounter with did not constitute a rapidly evolving situation that required them to make a split-second decision. The second use of the Taser presented a closer question. Even if the suspect appeared to be getting up from the ground during the first charge, neither officer indicated that he made a move toward them at that point. Both officers knew that the man had severe burns that would make the pavement painful to him. The judge concluded that the suspect posed no immediate threat when the Taser was deployed a second time. However, the suspect did present a threat during the third and final Taser charge. At that point, the officers faced an unpredictable, dynamic situation. The suspect was on his feet, clearly agitated and unresponsive. Both officers might have reasonably concluded that the man's ability to withstand the effects of the Taser and to get to his feet presented a risk. In summary, the Judge concluded that the first and second use of the Taser constituted excessive force, but the third use of the Taser did not. Qualified immunity was not appropriate for the first two uses of the Taser because as of September 2005, police officers had reasonable notice that they may not use a Taser against a suspect who does not pose a threat and has merely failed to comply with commands. Kaady v. City of Sandy, #06-cv-1269, 2008 U.S. Dist. Lexis 96626, 2008 WL 5111101 (D. Ore.). Later, in separate settlements, the City of Sandy and Clackamas County settled the lawsuit for $1 million each, releasing its officers from liability. Presumably the use of Tasers was a minor consideration in the settlement amounts, because the incident had culminated in a fatal shooting. Keywords: delirium.

A coffee shop employee asked a police officer to assist in getting a possibly mentally disturbed man to leave. While the man complied with orders to extinguish a cigarette, he did not comply with an order to stand up. When the officer touched the man, he jumped up and grabbed a chair, holding it in the air. The officer fired Taser darts, hitting the man, but they did not disable him. He then threw the chair at the officer and a fistfight occurred. The officer shot the man three times, killing him. As there was no showing of inadequate training, the

city could not be held liable for the officer's actions. The officer was not entitled to qualified immunity on the issue of whether his use of the Taser was excessive, as there was a factual issue as to whether or not the man, when he grabbed the chair, was holding it in a defensive or aggressive posture. Estate of Bojcic v. City of San Jose, #CO5-3877, 2007 U.S. Dist. Lexis 75496 (N.D. Cal.). A jury ultimately found that the officer's use of force was reasonable. The rulings were upheld by a federal appeals court. It concluded that the trial court did not err in refusing to instruct the jury that the decedent's mental health was a factor it must consider in determining whether the officer's use of force was reasonable, as the instruction given allowed the jury to consider all circumstances known to the officer at the time. Bojcic v. City of San Jose, #07-17343, 358 Fed. Appx. 906, 2009 U.S. App. Lexis 26925 (Unpub. 9th Cir.). Keywords: mental.

An officer encountered a man walking in the travel lanes of a highway and saw a motorist swerve to avoid hitting him. His deployment of a Taser to try to control the pedestrian, who refused orders to get out of traffic was reasonable--as was his subsequent shooting twice at the pedestrian, who then threw rocks at him. The officer also fired a third shot, which killed the pedestrian. Otioti v. Arizona, #cv-07-443, 2009 U.S. Dist. Lexis 86266 (D. Ariz.). A jury found that the officer's actions in firing the third fatal shot was excessive force, awarding $25,000 in funeral expenses to the decedent's estate and a total of $100,000 in compensatory damages to the decedent's parents. Otioti v. Arizona, #CV07-443, (D. Ariz., 2009).

Responding to a 911 call that someone was trying to kill the caller, officers found the man naked, wet, agitated, and unresponsive or uncooperative. Officers deployed their Tasers. During the struggle, the man had been shot five times with Taser darts with little or no effect, and was drive stunned with up to fourteen 5-second cycles. Paramedics arrived and he was placed face down on a gurney. He stopped breathing and paramedics were unable to revive him. The coroner's report indicates that he died due to "complications of cocaine intoxication." In the suit that followed, the District Court analyzed each use of the Taser. The officers acted reasonably in using their Tasers. Moreover, the post-struggle conduct of the officers also was reasonable. Paramedics had been summoned before the struggle ended and the man was breathing and able to talk with the officers after the struggle. The Judge granted the defendants' motion for a Summary Judgment. Sanders v. City of Fresno, #Civ-F-05-0469, 551 F.Supp.2d 1149, 2008 U.S. Dist. Lexis 27432 (E.D. Cal.). In a summary order, a three-judge appellate panel affirmed the District Court. Sanders v. City of Fresno, #08-16077, 340 Fed. Appx. 377, 2009 U.S. App. Lexis 16051 (Unpub. 9th Cir.).

Following a bench trial, a federal judge entered judgment in favor of arresting officers in a lawsuit brought by a residential burglary arrestee who was Tasered five times during the course of his arrest. Each use of the Taser lasted five seconds, and all five uses of the Taser took place within an 85 second time period. The first use of the Taser was clearly justified to stop the suspect from fleeing, at a time when the first officer was alone with the fleeing suspect. The court further held that, at the time of the arrest, the law concerning excessive force claims involving the use of Tasers would not clearly indicate to a reasonable officer that multiple Taserings under these circumstances violated the arrestee's rights. Beaver v. City of Federal Way, #C05-1938, 507 F.Supp.2d 1137, 2007 U.S. Dist. Lexis 64665 (W.D. Wash.); prior decision. at 2006 U.S. Dist. Lexis 83097; affirmed, Beaver v. City of Federal Way, #07-35814, 301 Fed. Appx. 704, 2008 U.S. App. Lexis 26547 (Unpub. 9th Cir. 2008). Keywords: flee.

After an officer told a motorist he was being placed under arrest for leaving the scene of an accident, it was disputed whether he stopped walking away towards his house, but undisputed that he did not comply with orders to get on the ground. The suspect told the officer that he had previously had heart attacks before the officer fired the Taser at dart mode at him, causing him to fall to the ground. The court found that the officer's use of the Taser was reasonable under the circumstances despite the suspect's statement about his prior heart attacks. The crime involved was serious and the suspect was adamant about not submitting to arrest. The deputy did not know whether the suspect had a weapon on him or in his nearby residence. The fact that the suspect told the deputy of his prior heart attacks a "split second" before the Taser was fired did not alter the result. McMillian v. Gem County, Idaho, #CIV 07078, 2008 U.S. Dist. Lexis 96385, 2008 WL 5069094 (D. Idaho). Keyword: flee.

An officer used a Taser in stun mode against a man who was attempting to interfere with his father's arrest for being an intoxicated motorist who almost hit a pedestrian. The Taser also was used in dart mode against the father, who was advancing on and verbally threatening the officers for their treatment of his son. The officers' use of force was reasonable as the plaintiffs were not complying with instructions, and, in the case of the son, attempting to interfere with a valid arrest for a serious crime. Ramirez v. City of Ponderay, #CV07-368L, 2008 U.S. Dist. Lexis 47501, 2008 WL 2445483 (D. Idaho).

The plaintiff was entertaining a friend at his apartment, when he began to feel anxious and thought he was going to have a panic attack. The plaintiff went to the bathroom, apparently fell, and blood was coming out of his nose and mouth. Paramedics responded, but the plaintiff would not allow the medical team to touch him, and exhibited bizarre behavior. Sheriff's deputies were called and found the plaintiff screaming incoherently, profusely sweating, unresponsive, and his face was bloody. The plaintiff struggled and a deputy worried that he and the plaintiff could get hurt. The deputy fired his Taser in the dart mode, striking the plaintiff in his abdomen. The Taser had little to no effect on the plaintiff, who immediately pulled the barbs out of his abdomen. A Taser was again discharged, and the darts struck the plaintiff in the back. This time the Taser was momentarily effective, but the plaintiff quickly resumed fighting the deputies. A Taser was used a third time, in the stun mode. It had no immediate effect, but the plaintiff soon ceased struggling and it appeared he was no longer breathing. The plaintiff apparently had suffered a heart attack. The medical team intubated the plaintiff and his heart returned to beating spontaneously. He was then taken to the emergency room. A suit was filed alleging federal civil rights violations and state tort law claims for negligence, assault and battery, outrage, negligent infliction of emotional distress, failure to train, supervise or instruct, false arrest, and false imprisonment. The Judge concluded that the use of force by the deputies was objectively reasonable and therefore constitutional. "The escalating use of force was proportional to and required by the situation facing the deputies. ... He was a large man covered in blood in a small bathroom, [and] was incoherent, sweaty, and violent." The Court rejected the plaintiff's contention that instead of deploying a Taser, the officers should have waited until there were at least four or five deputies on-scene to engage and rapidly overpower the plaintiff. "However, this Court may not use perfect hindsight to second-guess what the deputies could have done differently, even when considering alternative methods." The deputies' use of force was objectively reasonable and constitutional. They were entitled to qualified immunity. The plaintiff also contended that the County was deliberately indifferent to his rights because a pattern of unconstitutional conduct towards persons suffering from excited delirium and positional asphyxia existed. However, the County did train its officers regarding positional asphyxia and excited delirium, and the deputies at the scene had knowledge of that information. Goldsmith v. Snohomish County, #C07-0203, 558 F. Supp. 2d 1140, 2008 U.S. Dist. Lexis 11630 (W.D. Wash.). Keywords: delirium.

An altercation broke out when Sparks, NV, police officers attempted to wake the deceased in his home. Sheriff's deputies also arrived. The officers allegedly Tasered him 10-15 times. Medical responders arrived and found that the deceased did not have a pulse and was not breathing. An autopsy concluded that he "died of acute methamphetamine intoxication with associated (probable) cardiac arrhythmia while engaged in physical struggle with law enforcement officers involving [a] Taser gun, pepper spray, and restraints." The court dismissed Taser International and the City of Sparks as party-defendants. Gillson v. City of Sparks, #03:06-CV-00325, 2007 U.S. Dist. Lexis 19350 (D. Nev.). Complaint and Dismissal. Keywords: cardiac.

An officer who used his Taser in the dart mode against a verbally and physically combative shoplifting suspect could reasonably have believed that the use of the Taser was the most effective force option available, as well as the safest. The suspect had already hit a loss prevention officer employed by the store and refused to comply with the police officer's orders before the Taser was used. The Taser was used for a second cycle because the arrestee continued to ignore the officer's new orders to roll onto his stomach and was still acting in a belligerent manner. McDonald v. Pon, #CO5-1832, 2007 U.S. Dist. 92356, 2007 WL 4420936 (W.D. Wash.).

Police attempting to apprehend a trespassing suspect were told that he was inside an apartment, and observed him trying to flee through a window. A Taser was fired at him in dart mode, but not all of the probes touched him and he did not receive a charge. Subsequently, an officer entered the apartment, asked the suspect to lie on

the ground and handcuffed him. On the plaintiff's excessive force claim, both defendant officers were entitled to summary judgment as there was no evidence that either of them used their Tasers against him. Ramsey v. Cortez, #CV 05-0300, 2006 U.S. Dist. Lexis 75181, 2006 WL 2947602 (D. Ariz.).

RESTRICTIVE: A security guard observed a man engage in unusual behavior on a public street -- yelling, waving his arms, and chasing cars in traffic. Believing the man was under the influence of a substance or mentally ill, the guard handcuffed his one wrist to a fence and called 911. LAPD officers encountered a delusional and sometimes incoherent man. Rejecting pepper spray, they chose to deploy a Taser in the dart mode, after first warning the man. Several officers swarmed him and also applied an additional Taser cycle. After restraints were applied, he did not appear to be breathing. The paramedics moved in and determined that he was in full cardiac arrest. After CPR, he was taken to a hospital and pronounced dead. The Coroner's report identified the cause of death as excited delirium caused by cocaine intoxication. In the civil action that followed, the court held that the officers were entitled to qualified immunity. Although a reasonable jury might find that the force used was excessive, there was no legal authority holding that the use of a Taser to restrain a resisting, unarmed person who had been immobilized was Constitutionally unreasonable. However, the court denied summary judgment on the federal claims against the city, as well as state wrongful death and negligence claims. The Judge wrote that even if the use of the Taser was not deadly," it was still unreasonable given the testimony of [the] Plaintiff's experts." Specifically, the LAPD training materials in the record provided "no guidance on how and whether Taser should be used when dealing with narcotically intoxicated individuals, even though LAPD officers probably confront such individuals on a routine basis." LeBlanc v. City of Los Angeles, #2:04-cv-8250, 2006 U.S. Dist. Lexis 96768 (C.D. Cal.). In a subsequent Order, all federal claims were dropped and the state law claims were remanded to a state court. Keywords: handcuffed, delirium.

RESTRICTIVE: Officers responded to a family dispute. By the time the first officer had arrived, the dispute had dissipated. The woman refused to give the officer any information, and the officer called for backup. Her son ran from the porch toward his mother and an officer ordered him to halt. The officer Tasered him in the back and he collapsed to the sidewalk. The mother cried out that the officers had "shot my baby" and ran toward him. An officer ordered her to halt and when she continued the officer, shot her twice in the back with the Taser. They sued the city under 42 U.S.C. §1983 and the jury awarded the mother $200,000, and her son $10,000. The Ninth Circuit affirmed. The city, unlike Los Angeles, employed a broad permissive language in their policy, and it did not require officers to holster their Tasers. This made it reasonably "likely that Milpitas officers will resort to their Tasers immediately after verbalization fails." The panel added, "Use of the Taser after a subject fails to stop on a verbal command is plainly authorized by the language of the policy." McKenzie v. City of Milpitas, #90-16166, 1992 U.S. App. Lexis 1786 (Unpub. 9th Cir.).

Stun Mode Cases

RESTRICTIVE: A man was brought to a police station for fingerprinting after giving a fake name to an officer. At the booking counter, he was instructed to remove his "grill" or braces, and refused to do so. He allegedly shoved an officer and an altercation ensued. A Taser was fired at the man in the dart mode because he was not handcuffed and it was feared that he could possibly access weapons. The Taser was then used three times more in the stun mode. An officer involved in the fight who had not fired his own Taser was not liable for the Tasering. The initial Tasering, the court found, was reasonable since it was a response to the plaintiff's violent assault on an officer. The court stated, however, that the officer could be found to have acted unreasonably in the subsequent Taser uses if the plaintiff was, as he stated, immobilized, no longer actively resisting, and did not then appear to pose a threat to anyone. But the officer was entitled to qualified immunity, as he could not have known on November 2, 2009, the date of the incident, that the use of a Taser four times in 20 seconds under these circumstances could be unconstitutional. Harris v. Simental, #11-5306, 2013 U.S. Dist. Lexis 98640 (N.D. Cal.).

RESTRICTIVE: A man was properly convicted of involuntary manslaughter for shooting and killing a police officer he was struggling with who entered his residence with others to execute a search warrant. While a Taser was applied several times in the stun mode to the man's abdomen during the struggle, expert witness

testimony showed that the use of the Taser for pain compliance in this manner caused a localized pain of electrical shock that would not affect other parts of the body or cause an involuntary muscle contraction, such as with the hands, causing the man to fire a rifle he grabbed from an officer at the officer. There was also evidence that the rifle did not accidentally fire. People v. Wiggins, #E053321, 2013 Cal. App. Unpub. Lexis 3371. Keywords: criminal.

RESTRICTIVE: An officer was summoned to an apartment in response to a 911 call requesting medical assistance for an intoxicated and injured woman. He heard scuffling from behind a closed bathroom door as he entered and drew his Taser. Upon opening the door, ordered the woman and a man who was with her in the bathroom to get down on the ground, but neither complied. The woman exited the bathroom rather than comply and the user then used the Taser in the stun mode against her without warning. She fell backwards, hit her head on the concrete floor, and was rendered unconscious. The officer was not entitled to qualified immunity on an excessive force claim. She had not committed a severe crime, did not then pose an immediate threat to anyone's safety, and was not moving towards or acting aggressively against the officer at the time. Her noncompliance with orders to get down on the ground did not rise to the level of actively resisting arrest. There was no indication that she was trying to flee the scene, and no warning was given before the Taser was used. No reasonable jury could conclude that the officer's actions were objectively reasonable under the circumstances. At the time, in 2010, it was clearly established that officers could not use a Taser against a suspect who does not pose a threat and has merely failed to comply with commands. Price v. City of Sutherlin, #6:10-CV-06181, 2013 U.S. Dist. Lexis 67494 (D. Ore.). Keywords: intoxicated.

RESTRICTIVE: When deputies tried to place a motorist in handcuffs after arresting him for speeding and resisting and obstructing, he broke free and ran into his garage towards the door to his residence. A Taser was fired at him in the dart mode, but this did not stop him, according to deputies. The man later claimed that he was knocked to the ground and that the Taser was cycled at least twice. Both the plaintiff and the deputies agreed that the Taser was then used against him in stun mode at least twice. The court found that the resisting and obstructing charge was not minor as the speeding charge was and that the plaintiff's running towards his residence could justify a fear that he could get a weapon. He actively resisted efforts to handcuff him and succeeded in escaping, so that the initial Taser use was not excessive. There was, however, a disputed issue of fact as to whether the initial; Taser use ended the plaintiff's resistance and attempts to flee or not. The court still granted qualified immunity to the officers on all uses of the Taser, however, since it was not clearly established, as of October of 2009 that the subsequent uses of the Taser in a brief period of time against an unarmed suspect who fell to the ground after an initial use was objectively unreasonable. Wise v. Kootenai County, #2:11-cv-00472, 2013 U.S. Dist. Lexis 60229 (D. Idaho). Keywords: flee.

RESTRICTIVE: Multiple officers were summoned to a bar pool hall after one officer who was already there reported a fight involving weapons. When they arrived, the officer inside pushed a man out the door, asking the other officers to "handle" him. He was forced to the ground, and two officers applied Tasers in the stun mode to him, after which he was handcuffed and arrested for interfering with an officer, charges that were later dismissed. Summary judgment on an excessive force claim was denied, as the plaintiff claimed that he had not resisted the officers and a video showed that he had his hands raised as he exited the bar and was immediately grabbed from behind and thrown to the ground. The court also denied summary judgment on a state law intentional infliction of emotional distress claim. "Inflicting substantial physical harm by throwing a person to the ground causing their head to strike the curb, hitting their ear, and applying a Taser without justification could amount to an extraordinary transgression of the bounds of socially tolerable conduct." Terhune v. City of Salem, #6:11-cv-6049, 2013 U.S. Dist. Lexis 48039 (D. Ore.).

RESTRICTIVE: A police officer went to a residence in response to a domestic violence complaint, and encountered a woman who said that her husband had punched her. The husband, a double below-the-knee amputee, was sitting in his wheelchair with his two-year-old daughter on his lap. He denied attacking his wife. The daughter was taken from his lap. A crowd gathered outside the apartment. The man allegedly refused orders to put his hands behind his back for handcuffing, and a struggle ensued. A Taser was used once in the stun

mode, according to the officers, to try to subdue the man. The plaintiff claimed that he had been Tasered twice. There was a dispute about whether the arrestee had resisted the officers. While he claimed that he had not been warned before being Tasered, an audio recording clearly indicated that a warning had been given. The severity of the suspected crime was classified as moderate by the court. The court rejected arguments that the officers were somehow threatened by the crowd that gathered outside, and the plaintiff had not acted in a threatening manner, it was clear, however, that he had not complied with police orders. "The officers were clearly aware that plaintiff's ability to ambulate and physically resist was impeded. While force may still be required to effectuate an arrest of someone with physical disabilities, it is imperative that peace officers take into account a suspect's physical condition in crafting the appropriate response. Considering the totality of these circumstances, and resolving all material factual disputes in plaintiff's favor, the Court concludes that a reasonable fact finder could conclude that defendant's use of force, as alleged, was constitutionally excessive in violation of the Fourth Amendment." Williams v. City of Merced, #1:10-cv-01999, 2013 U.S. Dist. Lexis 16929 (E.D. Cal.). Keywords: disabled.

RESTRICTIVE: Officers observed a man walking in an area known for drug trafficking. He complied with orders to halt, but kept his back to the officers and did not turn around. He claimed that two officers both grabbed his wrists, forced him down on one knee, and that one of them used a choke hold. While he was lying on his stomach, he claimed that one of the officers, without warning, used a Taser in the stun mode once against him. The officers claimed that he had brought his right hand to his mouth and refused an order to open his mouth, but the plaintiff denied it. He also claimed that he was handcuffed during the Taser use. After the use of the Taser, he was arrested for resisting or obstructing an officer. Based on his version of the incident, he did not resist or consent to being searched. In denying summary judgment and qualified immunity to the officers on an excessive force claim based on the use of the Taser, the court stated that, based on the plaintiff's version of the incident, there were no facts indicating that any crime was being committed or that he resisted the officers actively or posed any imminent threat to them, but simply moved while handcuffed without trying to get up. Under this scenario, no use of force was justified. Municipal liability claims were rejected, however, as there was no evidence of inadequate training or unconstitutional policies or customs. Slama v. City of Madera, #1:08-cv-810, 2012 U.S. Dist. Lexis 88386 (E.D. Cal.). Keywords: handcuffed.

A *pro se* plaintiff claimed that a police officer who had detained him began kicking and beating him, and that a second officer then used a Taser in the stun mode against him even though he was already on the ground. The court dismissed a claim against the mayor for approving an ordinance to use federal money to buy Tasers, on grounds of absolute legislative immunity. The court also rejected claims against various defendants, including supervisory personnel for allegedly helping to "cover up data and hide witnesses and video footage" of the incident, as the plaintiff had not produced evidence to support the claim. A federal civil rights claim against the Taser manufacturer was dismissed, since the plaintiff failed to show that it acted under color of state law. The court also denied a bizarre motion by the plaintiff to "remove" the case to federal court, reminding him that he was already suing in federal court, and a motion for a preliminary injunction as premature since he had not stated what grounds he sought it on nor yet served the defendants in the case. Wilkes v. Magnus, #C12-0090, 2012 U.S. Dist. Lexis 146813 (N.D. Cal.). Keywords: products liability.

Police officers were not liable for the death of a combative suspect after they repeatedly used a Taser first in the dart mode and then in the stun mode. The officers broke into a small barricaded bedroom where a man, having injured a naked woman, was attempting to perform an exorcism on a three-year-old girl. They found the walls smeared with blood and the man with his hands around the child's neck in a choke hold. The suspect refused to stop what he was doing and kicked at an officer, after which the Taser was deployed. Neither the dart mode nor the stun mode appeared to have much effect on the man. The officers pulled the Taser X26's trigger a combined 22 times, but the discharges were not the uniform five-second cycle associated with the weapon. It was unclear how long the X26 was in contact with the man while discharging. They then wrestled him until he was subdued, after which he had no pulse. He never recovered. An autopsy found that the cause of the man's death was "excited delirium" with "hypertensive/arteriosclerotic cardiovascular disease" as a contributing condition. The officers' repeated use of the Taser was reasonable, given that the man was suspected of serious

crimes, was a potential threat to them and a child, and was resisting arrest. Marquez v. City of Phoenix, #10-17156, 2012 U.S. App. Lexis 19048 (9th Cir.). Keywords: cardiac, delirium, products liability.

In a wrongful death action, a Ninth Circuit panel concluded that Taser International was under no duty to warn that repeated exposure to its M26 could lead to fatal levels of metabolic acidosis. The district court properly awarded summary judgment in favor of the manufacturer "because the risk of lactic acidosis was not knowable in 2003." The deceased had been Tasered multiple times in the Dart and Stun mode. Rosa v. Taser Int., #09-17792, 2012 U.S. App. Lexis 14025 (9th Cir.), affirming Rosa v. City of Seaside, #C05-03577, 675 F.Supp.2d 1006 (at 1013-15) 2009 U.S. Dist. Lexis 117933 (N.D. Cal.). Keywords: products liability.

A police officer pulled over a motorist for having an inoperable taillight. The motorist exited his vehicle and started to walk away from the officer. He would not obey commands to stop, or to get on the ground, but ultimately did sit on the ground. Because of the man's argumentative demeanor, his lack of identification, and his reluctance to obey instructions, the officer feared that he might be armed. He called for backup and allegedly told the motorist that he would be pat frisked for identification and concealed weapons. The plaintiff denied being told that weapons were being sought. The motorist allegedly resisted the search both physically and verbally, ignoring commands to relax his arm and place his hands behind his head. Another officer who had arrived warned him that if he didn't stop resisting, he would be Tasered. A struggle ensued between the suspect and the first officer. The second officer used the Taser in the stun mode for one to two seconds on the motorist's left thigh. The motorist leapt to his feet and pulled away from the officer's control. The Taser was then used in the dart mode on him. He was then subdued, and drugs were found on him. The court rejected the plaintiff's claims of excessive force and also found that the officer was entitled to qualified immunity from liability as the law on when the use of a Taser constitutes excessive force was not clearly established in June of 2008, the date of the incident. Burns v. Barreto, #2:10-cv-01563, 2012 U.S. Dist. Lexis 83624 (E.D. Cal.).

Police officers were entitled to qualified immunity for using Tasers in the stun mode three times against a man. The first application allegedly was while he was detained in the back of a patrol car on suspicion of public drinking. The officers said that the arrestee had been kicking the window of the patrol car and resisted being handcuffed. The first use of the Taser had little effect, and the arrestee continued to resist and attack the officers, so the Taser was used twice more. Wade v. Fresno Police Dep't, #1:09-CV-0599, 2012 U.S. Dist. Lexis 8712 (E.D. Cal.). Keywords: handcuffed.

The dismissal of an arrestee's excessive force claim on the basis that he could not prevail without offering expert witness testimony on what level of force would have been reasonable was erroneous. The court concluded that there was nothing about the particular use of force that required expert witness to determine what a reasonable officer would have done under the circumstances. The officers used a Taser against the plaintiff twice in the stun mode, as well as using direct physical force while they engaged in a dispute with him over the alleged violation of a child custody order and he had brandished a rake. Allgoewer v. City of Tracy, #C067636, 2012 Cal. App. Lexis 782 (3rd Dist.). Keywords: experts.

RESTRICTIVE: An officer took a suspect arrested on suspicion of burglary from a holding cell to a hospital to be medically cleared for booking, after he complained that he heard voices, had stomach pains and suffered from diabetes and high blood pressure. In the hospital, and while handcuffed to a chair, he objected to a nurse drawing his blood. Officers claimed that he rushed towards a deputy sheriff who was present, getting out of his chair in a threatening manner. Because the arrestee was not complying with orders and the officer feared he might use the chair he was handcuffed to as a weapon, the officer said he applied the Taser in the stun mode once, and a struggle followed, during which the Taser was used again three or four more times. The arrestee died of asphyxiation after being Tasered and then pinned to the ground, with several officers aiding in subduing him. The plaintiffs produced witnesses to support a different version of events, claiming that the arrestee was seated when the officer first used the Taser and was compliant. The appeals court held that the defendant officers were not entitled to qualified immunity, based on the plaintiff's version of events in which the arrestee was Tasered and punched despite his compliance, and did no more than flinch from pain when initially Tasered. The court found that the officers had waived their qualified immunity defense, but that, even on the merits, the

conduct of the officer who Tasered the arrestee was not qualifiedly immune. A jury awarded a total of $1.5 million for wrongful death compensatory damages, but also found that the decedent had been 30 percent at fault, reducing the award to $1,050,000. The court also awarded $4,500 in punitive damages against the officer who deployed the Taser. The appeals court rejected arguments that the damages awarded were excessive. Mendoza v. City of West Covina, #B227812, 206 Cal. App. 4th 702, 141 Cal. Rptr. 3d 553, 2012 Cal. App. Lexis 639 (2nd Dist.). Keywords: asphyxia, disabled, handcuffed, mental.

RESTRICTIVE: A police officer attempted to stop an 11-year-old girl driving an ATV in a dangerous manner on city streets. She exited the vehicle and ran away. When she stopped running and the officer caught up to her, he Tasered her twice, one in dart mode and then in stun mode, even though she allegedly never was aggressive towards him. The Alaska Supreme Court overturned qualified immunity for the officer, ruling that summary judgment was improper "because if a police officer used a Taser multiple times on an 11-year-old girl who was suspected of traffic violations, was compliant, and was not posing a threat to the officer or others, that conduct could be so egregious that any reasonable officer would have known that the conduct was an excessive use of force." The court also overturned a summary judgment dismissing improper and negligent training or supervision claims against the city. Factual disputes as to whether the girl was fully compliant or had ceased her efforts to flee must be resolved in further proceedings. Russell v. Virgin, #S-13537, 258 P.3d 795 (Alaska. 2011). Keywords: flee, juvenile.

RESTRICTIVE: A man acted belligerently towards officers when they came to his home to conduct a welfare check after receiving a report that he was intoxicated while in charge of taking care of small children. They began removing him from the home, but he allegedly resisted their efforts, kicking and attempting to bite the officers. They attempted twice to use a Taser in dart mode against him, but this was ineffective because the probes did not make a complete circuit. They then used Tasers in stun mode multiple times, shocking him approximately 15-18 times. The court held that the initial uses of force by the officers were objectively reasonable, but the need for continued force when the arrestee was handcuffed, seated on the floor, and then placed on his stomach had changed. The trial court acted erroneously in failing to consider whether the department's policy on use of the Taser put the officers on notice that they may have used excessive force after the arrestee arguably no longer posed a threat to them. Olsen vs. City of Hooper Bay, #S-13455, 251 P.3d 1024 (Alaska 2011). Keywords: handcuffed, intoxicated.

RESTRICTIVE: An officer used his Taser, first in dart mode, and then multiple times in stun mode, against an uncooperative intoxicated man who refused to get off a bus at the end of the line. The officer asserted that the man, once off the bus, tried to kick him while on the ground, and would not cooperate with efforts to handcuff him. The court noted that the plaintiff was Tasered a total of four times in rapid succession. As his offenses were relatively minor, and he was not actively resisting arrest or attempting to flee, the use of the Taser could be found to be unreasonable. The officer was entitled to qualified immunity, however, as the law on the use of the Taser in these circumstances was not clearly established at the time of the incident. Baird v. Ehlers, #C10–1540, 2011 U.S. Dist. Lexis 134307, 2011 WL 5838431 (W.D.Wash.). Keywords: flee, handcuffed, intoxicated.

Officers used their Tasers, first in dart mode and then in stun mode, on a man who resisted their orders to exit the van which he had been sleeping in, instead trying to call his lawyer on a cell phone. They believed that he was under the influence of drugs, and claimed that he might have posed a threat to them because of a soda bottle that was within his reach. The officers were entitled to qualified immunity on both the use of the Taser in dart mode, despite questions about whether the plaintiff posed a risk of harm to them at that point, and on their subsequent use of their Tasers in stun mode, when he clearly was actively resisting them. Ciampi v. City of Palo Alto, #09-CV-02655, 790 F. Supp. 2d 1077, 2011 U.S. Dist. Lexis 50245 (N.D. Cal.).

RESTRICTIVE: In a criminal case involving the use of a hand-held stun gun by an offender in the course of committing a sexual assault, the stun gun was a deadly or dangerous weapon for purposes of sentencing under California state law. People v. Villatoro, #B222214, 194 Cal. App. 4th 241, 124 Cal. Rptr. 3d 477 (2nd Dist. 2011). Keywords: criminal.

RESTRICTIVE: Officers' use of a Taser multiple times in stun mode against a pregnant woman who had not committed a serious violation, and who was actively resisting arrest, but did not pose a threat to the officers, was excessive. But the officers were entitled to qualified immunity, since the law on the use of Tasers was not clearly established in 2004 at the time of the incident. Brooks v. City of Seattle, #08-35526.661 F.3d 43, 2011 U.S. App. Lexis 25841 (Unpub. 9th Cir.), affirming 711 F.Supp.2d 1067 (C.D. Cal., 2010), cert denied, Daman v. Brooks, #11-898, 2012 U.S. Lexis 4104, and Brooks v. Daman, #11-1045, 2012 U.S. Lexis 4125. Keywords: pregnant.

RESTRICTIVE: After a $20,000 settlement was reached in an arrestee's lawsuit concerning the use of a Taser against him during an arrest, the trial court (after being asked to reconsider the amount of attorneys' fees initially awarded) awarded him $148,250.00 in fees or approximately half the fees requested and $51,750 less that the trial court's initial award. This award was affirmed on appeal. McCown v. City of Fontana, #10-55672, 2011 U.S. App. Lexis 25841 (Unpub. 9th Cir.).

RESTRICTIVE: Although an arrestee was handcuffed and unarmed in the back of the police car, a court declined to dismiss an excessive force claim against an officer who used a Taser against him in stun mode when the arrestee started using profanity and verbally abusing the officer. The court ruled that a jury could possibly find the use of this level of force unreasonable under the circumstances. Haflich v. McLeod, #CV 09-161, 2010 U.S. Dist. Lexis 93256, 2010 WL 3613980 (D. Mont.). In a subsequent decision, the court found that the plaintiff had adequately alleged a viable claim that the city which employed the officer had engaged in, or implemented a custom or practice of deliberate indifference to the excessive force employed by him in violation of the Fourth Amendment. The plaintiff had not, however, presented sufficient evidence to support a claim against the city on the basis of a theory of ratification. Haflich v. McLeod, #CV 09-161, 2011 U.S. Dist. Lexis 5899 (D. Mont.). Keywords: handcuffed.

Police officers attempted to arrest a parolee who was creating a disturbance at a community shelter. The man resisted yelling, "Fuck you pigs. You piece of shit pigs. I'm not going to jail." The officers handcuffed him and struggled to push him into a police vehicle. He was punched repeatedly and a Taser was used in the stun mode. A suit later filed in Federal Court was ended with a Summary Judgment for the defendants. The Judge wrote that "Under the totality of circumstances, and viewing the evidence in the light most favorable to [the plaintiff], the defendants' use of force -- pushing [him] into the police vehicle, striking him about ten times, and [Tasering] him once -- in arresting him was reasonable. Considering the various factors identified by Graham, the court concludes as a matter of law that the force used was not excessive." Johnson v. Cortes, #C-09-3946, 2011 U.S. Dist. Lexis 11269 (N.D. Cal.). Keywords: handcuffed.

Police officers, responding to a domestic disturbance, encountered a 75-year-old man with impaired hearing. He allegedly had slapped his daughter's face and pointed a 9 mm TZ75 pistol at her and her husband. An officer informed him that he was under arrest for aggravated assault and battery and ordered him to stand up. Officers attempted to handcuff him, but he may have had a mobility impairment. One officer applied the Taser in the stun mode. In the lawsuit that followed, the man alleged that he suffered two four-inch gashes on his leg when officers shoved him into a chair, permanent severe nerve damage due to the officers placing his hands behind his back, permanent and severe numbing of the hands as a result of overly tight handcuffing, permanent injury to his spinal column and that the application of the Taser affected his nervous system, causing his blood pressure to skyrocket at the time of his arrest, and that he continues to have high blood pressure as a result of the officers' use of the Taser. In a deposition the plaintiff conceded that he had not received a medical opinion that the officers' use of the Taser caused or amplified his cardiovascular condition. The Judge wrote that "although the force used during the course of plaintiff's arrest may not have been the least intrusive means available, the Court finds that the force used was constitutionally reasonable under the totality of the circumstances." He added that the use of a Taser in drive stun mode is not excessive "where the suspected crimes at issue involved a gun and the officers could have reasonably believed that the subject had access to the gun." Law v. City of Post Falls, #2:09-cv-504, 772 F. Supp. 2d 1283, 2011 U.S. Dist. Lexis 18018 (D. Ida.). Keywords: elderly, disabled.

Officers used reasonable force including a Taser in stun mode, to subdue and arrest a motorist who they suspected of being under the influence of alcohol or drugs who had driven his vehicle the wrong way on an interstate highway. It was not until he was subdued that they realized that he was having a diabetic incident. Bohnert v. Mitchell, # CV-08-2303, 2010 U.S. Dist. Lexis 114587 (D. Ariz.).

A man failed to pull over his car and fled on foot when officers attempted to arrest him. He claimed that the officers used the Taser in dart and stun mode multiple times, including Tasering both his legs after he was subdued with his hands behind his back. The Taser may have been used somewhere between nine and thirteen times. The plaintiff failed to allege specifically what each defendant officer was claimed to have done, so his excessive force claim was dismissed, although he could still amend it to spell out his claim with further specifics. Godinez v. Lara, #1:10-cv-303, 2010 U.S. Dist. Lexis 43117 (E.D. Cal.) (magistrate's recommendations), adopted in Godinez v. Lara, #1:10-cv-303, 2010 U.S. Dist. Lexis 62203, 2010 WL 1798009 (E.D. Cal.)

RESTRICTIVE: An officer used a Taser against an intoxicated hospital patient with epilepsy who was being unruly while insisting on getting up to use a restroom despite hospital personnel instructions to remain on a gurney until he could be examined by a doctor. The plaintiff claimed that the Taser was used in dart mode, while the defendants claimed that it was only used in stun mode. The officers were not entitled to qualified immunity, as the court could not find that a reasonable officer would have believed that there was a need for immediate use of the Taser without a warning if the facts were as the plaintiff claimed. Eller v. City of Santa Rosa, #C09-01094, 2010 U.S. Dist. Lexis 57373, 2010 WL 2382432 (N.D. Cal.). Keywords: intoxicated.

A suspected prowler was captured on a roof top. He resisted being handcuffed, and a Taser was used twice in the stun mode. His vital signs were checked by the fire and emergency medical personnel on the ground, and it was determined that he did not have a pulse. CPR was performed prior to transport. At the hospital, a drug screen revealed nonquantified amounts of methamphetamine and cocaine in his urine. The man died six days later. The Coroner's report listed "Taser application and struggle with police" as "contributing conditions" to his death. In the suit that followed, the Court ruled that a reasonable jury could believe the opinion stated in the Coroner's report over the opinions presented by Taser's experts. Because there was a genuine issue of material fact as to whether the death was caused by the use of a Taser in the drive-stun mode, the Court denied Taser's motion for Summary Judgment. As for the defendant officers, the Court noted that it was undisputed that the deceased resisted arrest and that the deputies lacked a less intrusive means for subduing him. "The Court finds that there is no genuine factual issue with respect to the drive-stun use of the Taser and finds on the basis of the undisputed facts that the use did not constitute excessive force." Teran v. County of Monterey, #06-cv-06947, 2009 U.S. Dist. Lexis 42639 (N.D. Cal.). Keywords: products liability.

RESTRICTIVE: UCLA paid $220,000 to settle a lawsuit filed by a student who a campus police officer repeatedly shocked with a Taser after he refused to show his identification card upon request. The student, who is Iranian-American, argued that he was treated this way because of his Middle Eastern appearance. Tabatabainejad v. Univ. of Cal. L.A., #2:07-cv-00389, U.S. Dist. Court, (C.D. Calif. 2009). Editor's Note: The Police Assessment Resource Center (PARC) conducted an outside investigation of the incident. See the PARC report here. Also view a rebuttal by Capt. Greg Meyer, LAPD (Ret.).

A driver was arrested for DUI, but the man used foul language and was noncompliant during the process of putting him in a police vehicle. After he kicked an officer, a Taser was used in the stun mode. The Court noted that the severity of the offense and the threat he posed were not overwhelming, but his failure to comply with the officer's instructions after two leg strikes, supported that the use of the Taser "was proportionate to the threat [he] posed and the response necessary to get compliance from a person resisting the officer's instructions. Police officers ... are not required to use the least intrusive degree of force possible ... [because] the inquiry is whether the force that was used to effect a particular seizure was reasonable," citing Forrester v. City of San Diego, 25 F.3d 804, at 807-08 (9th Cir. 1994). "The Court finds based on the undisputed facts and facts presented by Plaintiff that no constitutional violation of excessive force occurred. Accordingly, the qualified immunity

defense analysis ends and this count must be dismissed against the officer." Walker v. City of Post Falls, #07-cv-264, 2008 U.S. Dist. Lexis 41936 (D. Idaho). Keywords: intoxicated.

RESTRICTIVE: A woman told a 911 operator that her husband may be mentally ill, was acting paranoid, had a history of prior suicide attempts, might have taken some of her diet pills, and had been drinking. Several officers arrived and told the man that he was under arrest for being under the influence of a controlled substance and attempted to handcuff him. During a long scuffle, one officer used his Taser twice and also applied a carotid restraint. The man received 6 or 7 additional Taser applications (stun mode) plus pepper spray. He was ultimately subdued and taken to a hospital because he had difficulty breathing; he died shortly after arrival. The Coroner determined the cause of death to be excited delirium due to methamphetamine intoxication, and that the multiple applications of the Taser did not cause his death. The next of kin sued individual officers for unlawful arrest and excessive force, and the City for deliberate indifference and a failure to properly train and supervise its police officers. The parties agreed to a settlement of $205,000. Fernandez v. Taser Intnl. and City of Santa Rosa, #4:06cv04371 (N.D. Cal.). Settlement Order. The facts are recited in a prior ruling at 2008 U.S. Dist. Lexis 90718 and in Williams, Taser ECDs and Sudden Death, p. 138 (2008). Keywords: asphyxia, delirium, intoxicated, mental and suicidal.

Responding to a 911 call that someone was trying to kill the caller, officers found the man naked, wet, agitated, and unresponsive or uncooperative. Officers deployed their Tasers. During the struggle, the man had been shot five times with Taser darts with little or no effect, and was drive stunned with up to fourteen 5-second cycles. Paramedics arrived and he was placed face down on a gurney. He stopped breathing and paramedics were unable to revive him. The coroner's report indicates that he died due to "complications of cocaine intoxication." In the suit that followed, the District Court analyzed each use of the Taser. The officers acted reasonably in using their Tasers. Moreover, the post-struggle conduct of the officers also was reasonable. Paramedics had been summoned before the struggle ended and the man was breathing and able to talk with the officers after the struggle. The Judge granted the defendants' motion for a Summary Judgment. Sanders v. City of Fresno, #Civ-F-05-0469, 551 F.Supp.2d 1149, 2008 U.S. Dist. Lexis 27432 (E.D. Cal.). In a summary order, a three-judge appellate panel affirmed the District Court. Sanders v. City of Fresno, #08-16077, 340 Fed. Appx. 377, 2009 U.S. App. Lexis 16051 (Unpub. 9th Cir.).

The plaintiff was entertaining a friend at his apartment, when he began to feel anxious and thought he was going to have a panic attack. The plaintiff went to the bathroom, apparently fell, and blood was coming out of his nose and mouth. Paramedics responded, but the plaintiff would not allow the medical team to touch him, and exhibited bizarre behavior. Sheriff's deputies were called and found the plaintiff screaming incoherently, profusely sweating, unresponsive, and his face was bloody. The plaintiff struggled and a deputy worried that he and the plaintiff could get hurt. The deputy fired his Taser in the dart mode, striking the plaintiff in his abdomen. The Taser had little to no effect on the plaintiff, who immediately pulled the barbs out of his abdomen. A Taser was again discharged, and the darts struck the plaintiff in the back. This time the Taser was momentarily effective, but the plaintiff quickly resumed fighting the deputies. A Taser was used a third time, in the stun mode. It had no immediate effect, but the plaintiff soon ceased struggling and it appeared he was no longer breathing. The plaintiff apparently had suffered a heart attack. The medical team intubated the plaintiff and his heart returned to beating spontaneously. He was then taken to the emergency room. A suit was filed alleging federal civil rights violations and state tort law claims for negligence, assault and battery, outrage, negligent infliction of emotional distress, failure to train, supervise or instruct, false arrest, and false imprisonment. The Judge concluded that the use of force by the deputies was objectively reasonable and therefore constitutional. "The escalating use of force was proportional to and required by the situation facing the deputies. ... He was a large man covered in blood in a small bathroom, [and] was incoherent, sweaty, and violent." The Court rejected the plaintiff's contention that instead of deploying a Taser, the officers should have waited until there were at least four or five deputies on-scene to engage and rapidly overpower the plaintiff. "However, this Court may not use perfect hindsight to second-guess what the deputies could have done differently, even when considering alternative methods." The deputies' use of force was objectively reasonable and constitutional. They were entitled to qualified immunity. The plaintiff also contended that the County was deliberately indifferent to his

rights because a pattern of unconstitutional conduct towards persons suffering from excited delirium and positional asphyxia existed. However, the County did train its officers regarding positional asphyxia and excited delirium, and the deputies at the scene had knowledge of that information. Goldsmith v. Snohomish County, #C07-0203, 558 F. Supp. 2d 1140, 2008 U.S. Dist. Lexis 11630 (W.D. Wash.). Keywords: delirium.

An officer used a Taser in stun mode against a man who was attempting to interfere with his father's arrest for being an intoxicated motorist who almost hit a pedestrian. The Taser also was used in dart mode against the father, who was advancing on and verbally threatening the officers for their treatment of his son. The officers' use of force was reasonable as the plaintiffs were not complying with instructions, and, in the case of the son, attempting to interfere with a valid arrest for a serious crime. Ramirez v. City of Ponderay, #CV07-368L, 2008 U.S. Dist. Lexis 47501, 2008 WL 2445483 (D. Idaho).

RESTRICTIVE: Jury's award against officer on motorist's claim that the officer used excessive force in subjecting him to two Taser shots was adequately supported by the evidence. The plaintiff claimed that the Taser was used against him after the officer denied his request to get up when he was the victim of a rear-end vehicle collision, and while he was partially restrained by paramedics, unarmed, and "visibly" suffering from claustrophobia and begging the officer not to shoot him. The officer was not entitled to qualified immunity. Further proceedings were also ordered on the issue of whether an award of punitive damages was appropriate. Wakefield v. City of Escondido, #05-56769, 2007 U.S. App. Lexis 18270 (Unpub. 9th Cir.). The case was subsequently dismissed after the parties agreed to a settlement and award of attorneys' fees totaling $280,000.

RESTRICTIVE: An officer who allegedly used his Taser in stun mode against the back of a handcuffed suspect lying on the ground was not entitled to summary judgment. The court found a genuine issue of disputed material fact as to whether the force used was reasonable under the circumstances. Richards v. Janis, #06-3064, 2007 U.S. Dist. Lexis 77929, 2007 WL 3046252 (E.D. Wash.). Keywords: handcuffed.

RESTRICTIVE: In a lawsuit filed by an arrestee who claimed that officers repeatedly stunned him with a Taser after he was in custody and handcuffed, the officers were not entitled to summary judgment on an excessive force claim. Wyatt v. County of Butte, #2:06-cv-1003, 2006 U.S. Dist. Lexis 90776, 2006 WL 3388550 (E.D.Cal.). In a subsequent decision, the court found that the county was not liable for the officers' use of force, as the officers involved did not act for the county. Wyatt v. County of Butte, #2:06-cv-1003, 2007 U.S. Dist. Lexis 83468 (E.D. Cal.).

An officer who used a Taser in stun mode multiple times against a handcuffed man high on PCP who resisted the efforts of the officer, security personnel, and paramedics to put him on a gurney to take him to a hospital was entitled to qualified immunity. He subsequently died a day after arriving at the hospital. The defendant city was also entitled to summary judgment. The decedent had continued struggling after each application of the Taser except the last one. Neal-Lomax v. Las Vegas Metro, #2:05-CV-01464, 574 F. Supp. 2d 1170 (D. Nev. 2008). Subsequent decision at Neal-Lomax v. Las Vegas Metro. Police Dep't, #2:05-CV-01464, 574 F. Supp. 2d 1193, 2008 U.S. Dist. Lexis 67830, 77 Fed. R. Evid. Serv. (CBC) 466 (D. Nev.), affirmed by Neal-Lomax v. Las Vegas Metro. Police Dep't, #08-17187, 371 Fed. Appx. 752, 2010 U.S. App. Lexis 5562 (Unpub. 9th Cir.) (upholding the exclusion of certain expert witness testimony concerning the use of the Taser, and ruling that the plaintiff had not established that the use of the Taser played a role in the decedent's death). Keywords: experts.

A motorist claimed that officers who stopped his car opened his car door, grabbed him around the neck, threw him to the ground, handcuffed him, and then used a Taser in stun mode twice against him, as well as having a K9 dog bite him. The officers had received a report of the motorist allegedly threatening a woman, and he was driving recklessly, running stop lights and exceeding the speed limit, as well as refusing to stop although officers were pursuing him. He was intoxicated and under the influence of morphine and a psychiatric medication. He was also admittedly delusional, hearing voices, suffering memory lapses, and believed that he was being "pursued by space ships." The officers claimed that the motorist resisted being arrested and handcuffed. The defendant officers were granted summary judgment. While the plaintiff claimed that force, including the Taser, was used against him after he was no longer resisting, his oral evidence, conflicting with the

officers' accounts, was insufficient to support his claims under the circumstances. Zackery v. Stockton Police Dept., #CIV S-05-2315, 2008 U.S. Dist. Lexis 101, 2008 WL 53224 (E.D. Cal.) (magistrate's recommendations), adopted by Zackery v. Stockton Police Dep't, #CIV S-05-2315, 2008 U.S. Dist. Lexis 8070 (E.D. Cal.). Keywords: intoxicated, mental.

A bus driver stopped for improper lane usage exited his vehicle when requested to do so, but questioned an officer's instructions to sit down, after his driver's license was produced. An officer grabbed his left arm and tried to place it behind his back. He stiffened his arm, which was interpreted as a sign of resistance. A Taser was then used against him once in the stun mode, causing him to slam his head on the asphalt. The trial court did not rule on whether the use of the Taser was excessive under the circumstances, finding that whether the officers acted reasonably under the circumstances was an issue of fact to be decided at trial. Rios v. City of Fresno, #1:2005cv00644, 2005 WL 1829614 (E.D. Cal.). In a subsequent decision, the court wrote that "A reasonable jury, if it accepts plaintiff's version of the events, could find that the decision by [the defendant] to use any force to effect the arrest violated the excessive force clause of the Fourth Amendment." Rios v. City of Fresno, #1:2005cv00644, 2006 U.S. Dist. Lexis 85642 (E.D. Cal.).On December 14, 2006, a jury returned a verdict in favor of all defendants and against the plaintiff.

Officers responded to a domestic disturbance call and attempted to arrest a man. An altercation ensued and one officer kicked the man's right leg out from under him, causing him to fall and crushing and breaking his right leg. The officer twisted the man's right leg behind him causing further pain, and applied a Taser in the stun mode to his leg. The man later underwent surgery on his right leg. A suit alleging excessive force, infliction of emotional distress and loss of consortium was filed in Federal Court. A jury trial ended with a verdict for the defendants of all counts. Lambert v. City of Santa Rosa, #4:05-cv-02931, Jury Verdict (N.D. Cal., 12/12/2006). Prior rulings are at 2005 U.S. Dist. Lexis 30858 and 2006 U.S. Dist. Lexis 63170.

Three to four hours of training on the use and effect of stun guns was negligence at worst, appeals court finds, and could not be the basis for a civil rights claim for inadequate training, which requires "deliberate indifference" to arrestee's rights; plaintiff awarded $19,680 for state law negligence claim. Mateyko v. Felix, #88-5986, 924 F.2d 824 (9th Cir. 1991).

Unknown Mode Cases

Officers stopped an African-American couple in their car in a high crime area after initially being told incorrectly, that the license plate belonged to another vehicle. While the officers were immediately notified of the mistake, they approached the stopped vehicle anyway, demanding identification. The male motorist started recording the incident on his cell phone, while the woman started dialing 911. An officer reached into the car, grabbed the woman and told her she was under arrest, grabbing her. The male motorist said he then grabbed the woman to protect her. Pepper spray was then used against both vehicle occupants. Both vehicle occupants were taken out of the car, taken to the ground, and Tasered. Excessive force and other claims were made. The trial court imposed sanctions on the defendants for failure to comply with orders to provide the plaintiffs with timely discovery of documents needed to complete their expert report. The court extended the time for the plaintiffs to submit their expert report and the defendants would not be permitted to submit an expert report or supplemental expert report. Robinson v. City of San Diego, #11-CV-0876, 2013 U.S. Dist. Lexis 18260 (S.D. Cal.). Keywords: experts.

A jury awarded $4.5 million to the estate and surviving parents of a man who died from cardiac arrest after a Taser was used 29 times against him while deputies were restraining him during a fight. The plaintiffs had claimed that the deputies also struck the decedent with batons as well as their fists and used pepper spray on him, and that the use of force continued when he was on the ground in a fetal position. The deputies argued that the man had continued to resist them and had died because of his use of methamphetamines. Lucero v. County of Kern, Superior Court of Kern County, California, (Nov. 6, 2012). Keywords: cardiac.

Failure to Use an ECW

RESTRICTIVE: Police responded to a 911 call concerning an intoxicated man threatening to kill himself with a pocket knife. He ignored their orders to drop the knife, instead holding it to his throat. The officers used a beanbag shot gun to subdue and disarm him. When he stepped away, and moved towards his parents' house, they shot and killed him. A federal appeals court ruled that the use of the beanbag shotgun may have been excessive, noting that the officers had the option of using the less extreme force of a Taser, but did not do so. The court stated that it was not aware of any published cases holding it reasonable to use a significant amount of force to try to stop someone from attempting suicide." The subsequent gunfire may also have been excessive. Summary judgment for the defendants was reversed, and further proceedings were ordered on the excessive force claims. Glenn v. Washington County, #10-35636, 661 F.3d 460 (9th Cir. 2011). Subsequently, after a jury trial, the plaintiff was awarded $2.5 million in damages. Glenn v. Washington County, #3:08-CV-950, PACER Doc. #239, U.S. Dist. Ct (D. Ore. Sept. 8, 2012). The parties subsequently reached a settlement in which the plaintiff would receive a total of $2.575 million with no interest or additional amount for attorneys' fees. Glenn v. Washington County, #3:08-CV-950, PACER Doc. #271, U.S. Dist. Ct (D. Ore. Nov. 27, 2012). Keywords: intoxicated, suicidal.

Officers executed search warrants at the residences and clubhouse of motorcycle gang members while looking for gang indicia to support the classification of the club as a criminal street gang in order to enhance the sentence of a member charged with murder. In the course of doing so, they allegedly engaged in unnecessarily destructive behavior and shot and killed dogs at two residences. The appellate court upheld a ruling denying the defendant officers qualified immunity, finding that the shooting of the dogs was an unreasonable execution of the warrants and an unreasonable seizure as exigent circumstances for the shootings did not exist and the officers failed to prepare a "realistic" plan for incapacitating the dogs, despite taking a week to plan the searches. The court noted that the officers essentially left themselves no other option but shooting the dogs, referring in a footnote to the fact that "the officers did not bring with them any of the variety of non-lethal 'pain compliance' weapons used by police forces, such as Tasers or stunbag shotguns." San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose, #02-17132, 402 F.3d 962 (9th Cir. 2005), cert. denied, #05-37 and 05-45, 546 U.S. 1061 (2005).

Pointing or Threatening to Use an ECW

CAUTION: A detainee became involved in a scuffle with officers while he was in the process of being booked into a county detention facility. A sergeant displayed her Taser and told the detainee that she would use it if he did not cease his resistance. After she shined the Taser's aiming light in his eye, he ceased his resistance. The detainee sued, claiming that aiming the laser in his eye amounted to a battery and that doing so permanently impaired his left field of vision. A jury found that the use of the Taser was not an assault. The appeals court found that this did not preclude the possibility that pointing the Taser's aiming laser was a battery. Someone can commit a battery without committing an assault because it is possible to intentionally cause a harmful or offensive touching without first putting the victim in fear or apprehension of such contact. Additionally, the county's argument that the battery claim was barred assumed that the jury decided that the sergeant lacked the intent to assault the detainee. "In fact, the verdict form did not require findings on each element of assault so we cannot be sure which element or elements of the claim were not shown to the jury's satisfaction." The trial court ruled on whether the sergeant intended to use the Taser on the detainee, but failed to rule on the issue of whether shining the laser in the detainee's eye constituted a battery, so the appeals court ordered further proceedings on that theory of liability. Evans v. Multnomah County, #10-35215, 2012 U.S. App. Lexis 17623, 492 Fed. Appx. 756 (Unpub. 9th Cir.). In a subsequent decision, Evans v. Multnomah County, #3:07-CV-01532, 2013 U.S. Dist. Lexis 55403 (D. Ore.), the trial court granted a motion for summary judgment by the defendant county on its argument that shining the light from the Taser in the Plaintiff's eye was not a battery. A battery requires an intent to cause harm, and there was no allegation that the officer who did this action acted with the intent to cause personal injury. Keywords: pointing

Because the law on the threat of the used of a Taser to compel compliance by a detainee was not clearly established, an officer was entitled to qualified immunity on the claim that the threat was an excessive use of

force. Johnson v. Bay Area Rapid Transit, #CV-09-00901, 790 F. Supp. 2d 1034 (N.D. Cal. 2011). Keywords: pointing.

Dangerous Weapon

A Ninth Circuit panel found that a stun gun is a dangerous weapon. "[T]he potential for devastating injury that is present during even a temporary incapacitation of key personnel aboard an aircraft in flight requires courts applying the statutory prohibition against a deadly or dangerous weapon to consider both the transitory and permanent nature of the weapon's effect." U.S. v. Wallace, #85-5137, 800 F.2d 1509 (9th Cir. 1986), cert. denied, Wallace v. U.S., #86-6373, 481 U.S. 1019 (1987). Keywords: criminal.

Training Injury Cases

The Montana Supreme Court upheld the dismissal of a corrections officer's lawsuit seeking damages against his employer for injuries he claimed to have suffered when exposed to a Taser as part of a training exercise because he served as a member of a Special Response Team at the facility where he worked. The court ruled that the employee's exclusive remedy for any such injuries was filing a claim for workers' compensation, and that he had failed to show that the employer, in requiring that a Taser be used on him as part of the training, had any "intent" to injure him. Further, he had voluntarily consented to participating in the training, signing a consent form while acknowledging the potential risks. He could have resigned from the Special Response Team rather than undergo the training. Harris v. State, #12-01912, 2013 MT 16, 2013 Mont. Lexis 16.

Corrections and Confinement

CAUTION: A detainee became involved in a scuffle with officers while he was in the process of being booked into a county detention facility. A sergeant displayed her Taser and told the detainee that she would use it if he did not cease his resistance. After she shined the Taser's aiming light in his eye, he ceased his resistance. The detainee sued, claiming that aiming the laser in his eye amounted to a battery and that doing so permanently impaired his left field of vision. A jury found that the use of the Taser was not an assault. The appeals court found that this did not preclude the possibility that pointing the Taser's aiming laser was a battery. Someone can commit a battery without committing an assault because it is possible to intentionally cause a harmful or offensive touching without first putting the victim in fear or apprehension of such contact. Additionally, the county's argument that the battery claim was barred assumed that the jury decided that the sergeant lacked the intent to assault the detainee. "In fact, the verdict form did not require findings on each element of assault so we cannot be sure which element or elements of the claim were not shown to the jury's satisfaction." The trial court ruled on whether the sergeant intended to use the Taser on the detainee, but failed to rule on the issue of whether shining the laser in the detainee's eye constituted a battery, so the appeals court ordered further proceedings on that theory of liability. Evans v. Multnomah County, #10-35215, 2012 U.S. App. Lexis 17623, 492 Fed. Appx. 756 (Unpub. 9th Cir.). In a subsequent decision, Evans v. Multnomah County, #3:07-CV-01532, 2013 U.S. Dist. Lexis 55403 (D. Ore.), the trial court granted a motion for summary judgment by the defendant county on its argument that shining the light from the Taser in the Plaintiff's eye was not a battery. A battery requires an intent to cause harm, and there was no allegation that the officer who did this action acted with the intent to cause personal injury. Keywords: pointing

RESTRICTIVE: An officer took a suspect arrested on suspicion of burglary from a holding cell to a hospital to be medically cleared for booking, after he complained that he heard voices, had stomach pains and suffered from diabetes and high blood pressure. In the hospital, and while handcuffed to a chair, he objected to a nurse drawing his blood. Officers claimed that he rushed towards a deputy sheriff who was present, getting out of his chair in a threatening manner. Because the arrestee was not complying with orders and the officer feared he might use the chair he was handcuffed to as a weapon, the officer said he applied the Taser in the stun mode once, and a struggle followed, during which the Taser was used again three or four more times. The arrestee died of asphyxiation after being Tasered and then pinned to the ground, with several officers aiding in subduing him. The plaintiffs produced witnesses to support a different version of events, claiming that the arrestee was

seated when the officer first used the Taser and was compliant. The appeals court held that the defendant officers were not entitled to qualified immunity, based on the plaintiff's version of events in which the arrestee was Tasered and punched despite his compliance, and did no more than flinch from pain when initially Tasered. The court found that the officers had waived their qualified immunity defense, but that, even on the merits, the conduct of the officer who Tasered the arrestee was not qualifiedly immune. A jury awarded a total of $1.5 million for wrongful death compensatory damages, but also found that the decedent had been 30 percent at fault, reducing the award to $1,050,000. The court also awarded $4,500 in punitive damages against the officer who deployed the Taser. The appeals court rejected arguments that the damages awarded were excessive. Mendoza v. City of West Covina, #B227812, 206 Cal. App. 4th 702, 141 Cal. Rptr. 3d 553, 2012 Cal. App. Lexis 639 (2nd Dist.). Keywords: asphyxia, disabled, handcuffed, mental.

During a fight between two inmates, a Taser was used in dart mode against one of them who ignored orders to freeze. The court found that no reasonable juror could find the use of the Taser under these circumstances excessive. It ruled that the prisoner's claim that he was Tasered twice, including once after he stopped fighting, was not supported by the evidence. Cutler v. Kootenai Co. Sheriff's Dept., #V08-193, 2010 U.S. Dist. Lexis 49341, 2010 WL 2000042 (D. Idaho).

A man in custody after being arrested for probation violation and suspicion of other crimes resisted being processed at the police station. Although handcuffed, he attacked an officer without any provocation. The officer discharged his Taser four times against the arrestee, who continued to attack him. The arrestee got the Taser away from the officer, and the officer, fearing that the Taser was about to be used against him, drew his gun and shot and killed the arrestee, who was then on top of him. The trial court found that the officer's use of force was reasonable under the circumstances. Jensen v. Burnsides, #CV-06-2356, 2008 U.S. Dist. Lexis 89325, 2008 WL 4700020 (D.Ariz.). That ruling was upheld on appeal. Jensen v. Burnside, #08-17608, 356 Fed. Appx. 928, 2009 U.S. App. Lexis 27243 (Unpub. 9th Cir.).

Injunction that prohibited the use of stun belts to control unruly prisoners in court was overbroad to the extent that it prevented their use for controlling court security, such as to prevent escape or violence; appeals court orders injunction modified and rules that plaintiff prisoner, who was convicted, could not represent the interests of unconvicted detainees, so that case was improperly certified as a class action. Hawkins v. Comparet-Cassani, #99-55187, 251 F.3d 1230 (9th Cir. 2001). AELE Ref. 297:141, Jail Bulletin.

Because prison authorities established that a mandatory HIV blood test was reasonably related to a legitimate governmental objective, the threatened use of the Taser to compel compliance with the test did not violate an inmate's constitutional rights. Walker v. Sumner, #92-15297, 8 F.3d 33 (9th Cir. 1993).

RESTRICTIVE: After a man arrested for allegedly exposing himself died after a stun gun application while resisting jail strip search, a suit over his death was settled for $650,000. Leonti v. Santa Clara Co., U.S. Dist. Ct., San Jose, Cal., reported in San Jose Mercury-News, p. 1B, April 24, 1991.

The Ninth Circuit upheld the use of Tasers for extraction of obstinate inmates from their prison cells to conduct strip searches. Michenfelder v. Sumner, #86-1549, 860 F.2d 328 (9th Cir. 1988). Keywords: extraction.

Police Use of Force: The Impact of Less-Lethal Weapons and Tactics

by Philip Bulman

A new study suggests that less-lethal weapons decrease rates of officer and offender injuries.

In the mid-19th century, police officers in New York and Boston relied on less-lethal weapons, mostly wooden clubs. By the late 1800s, police departments began issuing firearms to officers in response to better-armed criminals. Today, many law enforcement agencies are again stressing the use of less-lethal weapons, but they are using devices that are decidedly more high-tech than their 19th-century counterparts.

Use of force, including less-lethal weaponry, is nothing new to policing, and in any use-of-force incident, injury is a possibility. Researchers have estimated that between 15 and 20 percent of arrests involve use of force. A group of researchers led by Geoffrey P. Alpert, professor of criminology and criminal justice at the University of South Carolina, recently completed an NIJ-funded study of injuries to officers and civilians during use-of-force events. Injury rates to civilians ranged from 17 to 64 percent (depending on the agency reporting) in use-of-force events, while injury rates to officers ranged from 10 to 20 percent. Most injuries involved minor bruises, strains and abrasions. Major injuries included dog bites, punctures, broken bones, internal injuries and gunshot wounds.

Can New Technologies Decrease Injuries?

Advances in less-lethal technology offer the promise of more effective control over resistive suspects with

fewer serious injuries. Pepper spray was among the first of these newer, less-lethal weapons to achieve widespread adoption by police forces. More recently, conducted energy devices (CEDs), such as the Taser, have become popular.

More than 11,000 American law enforcement agencies use CEDs, but their use has not been without controversy. Organizations such as Amnesty International and the American Civil Liberties Union have questioned whether CEDs can be used safely, and whether they contribute to civilian injuries and in-custody deaths. Policymakers and law enforcement officials want to know whether CEDs and other less-lethal weaponry are safe and effective, and how police should use them.

Analysis of Information from Specific Law Enforcement Agencies

Alpert's research on use of force and less-lethal weapons, in part, focused on data gathered from three law enforcement agencies — the Richland County (S.C.) Sheriff's Department, the Miami-Dade (Fla.) Police Department and the Seattle Police Department.

Richland County Sheriff's Department

Approximately 475 sworn officers from the Richland County Sheriff's Department (RCSD) serve the unincorporated portions of Richland County, S.C. The agency started phasing in Tasers in late 2004. During data collection, about 60 percent of deputies carried Tasers.

Researchers coded 467 use-of-force reports from January 2005 to July 2006. The most frequent force level used by deputies (59 percent of incidents) was soft empty hand control (e.g., holding a suspect to restrain him), which increased the odds of officer injury by 160 percent.

> If injury reduction is the primary goal, agencies that deploy pepper spray and CEDs are clearly at an advantage. Both weapons prevent or minimize the physical struggles that are likely to injure officers and suspects alike.

Pepper spray decreased the odds of suspect injury by almost 70 percent, and a deputy aiming a gun at a suspect reduced his or her injury odds by more than 80 percent (the act of pointing a gun alone often effectively ends a suspect's resistance). The use of a canine posed, by far, the greatest injury risk to suspects, increasing injury odds almost forty-fold. Suspects who displayed active aggression toward deputies were also more likely to suffer injuries.

In contrast to the Miami-Dade and Seattle Police Departments, Taser use by the RCSD had no effect on the likelihood of suspect injury. Also in contrast to the Miami-Dade Police Department, Taser use by the RCSD had no effect on the likelihood of officer injury; Taser use by the Seattle Police Department, however, similarly showed no effect on the likelihood of officer injury. This suggests that not every agency's experience with CEDs will be the same.

Miami-Dade Police Department

With 3,000 officers, the Miami-Dade Police Department (MDPD) is the largest law enforcement agency in the southeast.

The MDPD started using Tasers in 2003. By May 2006, about 70 percent of the officers carried Tasers. The researchers examined 762 use-of-force incidents between January 2002 and May 2006. Most injuries were minor, and officers were substantially less likely to be injured than suspects, with 17 percent of officers injured and 56 percent of suspects injured.

Use of both soft hand tactics and hard hand tactics (e.g., using kicks or punches to restrain a suspect) by officers more than doubled the odds of officer injury. Hands-on tactics also increased the odds of injury to suspects, as did the use of canines. Taser use, however, was associated with a reduction in the likelihood of both officer and suspect injury.

Seattle Police Department

The Seattle Police Department (SPD) has about 1,200 sworn officers. The agency started using Tasers in December 2000. The SPD recorded 676 use-of-force incidents between December 2005 and October 2006. Suspects suffered injuries in 64 percent of the incidents, while officers suffered injuries in 20 percent of the incidents. Officers used hands-on tactics in 76 percent of the incidents. The next most frequent type of force

What Is Use of Force, and What Is a Use-of-Force Continuum?

"Use of force" refers to the "amount of effort required by police to compel compliance by an unwilling subject."[1] The Fourth Amendment forbids unreasonable searches and seizures, and various other legal and policy controls govern how and when officers can use force. Most agencies tightly control the use of force, and supervisors or internal affairs units routinely review serious incidents.

Many law enforcement agencies instruct officers in, and have policy guides for officers regarding, appropriate responses to an escalation of activities in an encounter with a civilian. "The use-of-force continuum" is a phrase to describe this kind of guide. The continuum of a particular agency may cover a full spectrum of actions from no-force, in which having officers present is enough to defuse the situation or deter crime, to lethal force, in which officers use deadly weapons. For a sample continuum, see NIJ's topic page.

▶ http://www.ojp.usdoj.gov/nij/topics/law-enforcement/officer-safety/use-of-force/continuum.htm.

When any kind of physical use of force is required, there is always a chance of injury to the officer or the suspect. When police in a democracy use force and injury results, concern about police abuse arises, lawsuits often follow and the reputation of the police is threatened. Injuries also cost money in medical bills for indigent suspects, workers' compensation claims for injured officers, or damages paid out in legal settlements or judgments.

1. Definition by the International Association of Chiefs of Police, *Police Use of Force in America, 2001,* http://www.theiacp.org/Portals/0/pdfs/Publications/2001useofforce.pdf.

When police in a democracy use force and injury results, concern about police abuse arises, lawsuits often follow and the reputation of the police is threatened.

officers used was the Taser (36 percent), followed by pepper spray (8 percent).[1]

Taser use was associated with a 48 percent decrease in the odds of suspect injury in a use-of-force incident (it was not associated with a significant change in the odds of officer injury). The use of physical force by officers increased the odds of officer injury 258 percent. Not surprisingly, the odds of officer injury also increased when suspects resisted by using physical force or when suspects used or threatened to use a weapon.

Combined Agency Analysis

The researchers conducted a combined analysis of use-of-force data from 12 large local law enforcement agencies (including Miami-Dade, Seattle and Richland County).[2] The large sample, representing more than 24,000 use-of-force incidents, allowed the researchers to use statistical techniques to determine which variables were likely to affect injury rates. The use of physical force (e.g., hands, fists, feet) by officers increased the odds of injury to officers and suspects alike. However, pepper spray and CED use decreased the likelihood of suspect injury by 65 and 70 percent, respectively. Officer injuries were unaffected by CED use, while the odds of officer injury increased about 21 percent with pepper spray use.

Longitudinal Analysis

To see if the introduction of CEDs was associated with changes in injury rates in individual police

departments, the researchers reviewed monthly reports of use-of-force incidents and of officer and suspect injuries from police departments in Austin, Texas, and Orlando, Fla., both before and after the introduction of CEDs.[3]

The Orlando data included 4,222 incidents from 1998 to 2006 (CED use began in February 2003). The Austin data included 6,596 incidents from 2002 to 2006 (CED use was phased in beginning in 2003 and was completed in June 2004). Use-of-force cases increased in Orlando after CEDs were deployed, but they dropped after full deployment of CEDs in Austin. A large drop in injury rates for suspects and officers alike occurred in both cities following CED introduction.

In Orlando, the suspect injury rate dropped by more than 50 percent compared to the pre-Taser injury rate. In Austin, suspect injury rates were 30 percent lower after full-scale Taser deployment.

In Orlando, the decline in officer injury rates was even greater than for suspects, with the average monthly rate dropping by 60 percent after Taser adoption. In Austin, officer injuries dropped by 25 percent.

Interviews with Officers and Suspects

Researchers also collected qualitative data through interviews with officers and suspects involved in use-of-force incidents. Researchers conducted interviews with 219 officers from the Richland County Sheriff's Department, 35 officers from the Columbia (S.C.) Police Department (CPD) and 35 suspects involved in use-of-force situations. Unlike the RCSD, the CPD does not use CEDs.

In nine incidents (out of 109), officers in the RCSD reported that a Taser did not work properly or did not have the desired effect. Researchers received reports of multiple Taser hits on a suspect (i.e., more than one officer using a Taser on a single suspect) and multiple uses of the Taser in drive stun mode (when the Taser is pressed against a suspect rather than firing darts).

> The use of physical force by officers increased the odds of officer injury 258 percent. Not surprisingly, the odds of officer injury also increased when suspects resisted by using physical force or when suspects used or threatened to use a weapon.

Nine percent of the officers reported injuries, almost all of which were scrapes, cuts or bruises suffered while struggling with resistant suspects. Officers also reported that 26 suspects (12 percent) were injured. Most suspect injuries were cuts or abrasions, but there were also two dog bites, and one suspect was shot in the arm after firing at officers.

Suspect Perceptions

In 22 cases, researchers interviewed both the officers and the suspects involved in an incident. Suspects often told a different story than the officer who arrested them. In almost all cases, suspects said officers used excessive force and that they were not resisting. Some suspects said officers used Tasers early in the interaction, and several said the officers seemed to enjoy watching them endure the pain. Some suspects said officers kneed them in the back and kicked or punched them after they were in handcuffs. Some also said officers used Tasers on them after they were handcuffed.

Implications for Policy, Training and Future Research

CED use is widespread and often controversial. Based on their findings, the researchers involved in this study made recommendations about whether and how CEDs should fit into the range of less-lethal force alternatives available to law enforcement officers.

If injury reduction is the primary goal, however, agencies that deploy pepper spray and CEDs are clearly at an advantage. Both weapons prevent or minimize the physical struggles that are likely to injure officers and suspects alike.

The researchers compared injuries reported by the RCSD and by the CPD. Most injuries in both agencies occurred when officers and suspects struggled on the ground, but the

differences between the agencies in terms of percentage of officers and suspects injured were striking. The RCSD deputies, most of whom carry Tasers, reported fewer injuries to themselves and suspects from ground fighting than did CPD officers, who do not carry CEDs (9 percent and 31 percent, respectively). Injuries to suspects caused by contact with the ground were also lower in RCSD incidents. Some of the injuries to CPD officers and suspects might have been prevented had officers used CEDs instead of hands-on tactics.

Although both pepper spray and CEDs cause pain, they reduce injuries; and, according to current medical research, death or serious harm associated with their use is rare.[4] In that sense, both are safe and similarly effective at reducing injuries. The researchers recommend that both should be allowed as possible responses to defensive or higher levels of suspect resistance. This recommendation is followed by most agencies that responded to a national survey conducted by the Police Executive Research Forum.[5]

Policy and Training Issues Related to CEDs

CEDs are rapidly overtaking other force alternatives. Although the injury findings suggest that substituting CEDs for physical control tactics may decrease the chance of injury, their ease of use and popularity among officers raise concerns about overuse.

CEDs can be used inappropriately. Law enforcement executives can manage this problem with policies, training, monitoring and accountability systems that provide clear guidance (and consequences) to officers regarding when and under what circumstances CEDs should and should not be used.

Although both pepper spray and CEDs cause pain, they reduce injuries; and, according to current medical research, death or serious harm associated with their use is rare.

Besides setting the resistance threshold appropriately (that is, determining the level of suspect resistance at which officers should be allowed to use CEDs), good policies and training would require that officers evaluate the age, size, sex, apparent physical capabilities and health concerns of a suspect. In addition, policies and training should prohibit CED use in the presence of flammable liquids or in circumstances where falling would pose unreasonable risks to the suspect (e.g., in elevated areas, adjacent to traffic, etc.). Policies and training should address use on suspects who are controlled (e.g., handcuffed or otherwise restrained) and should either prohibit such use outright or limit it to clearly defined, aggravated circumstances.

In addition to the possibility of CEDs being used in too many cases (i.e., inappropriately in instances of low-level resistance), there are also concerns about CEDs being used too many times in a single case. Deaths associated with CED use often involve multiple CED activations (more than one CED at a time) or multiple five-second cycles from a single CED. CED policies should require officers to assess continued resistance after each standard cycle and should limit use to no more than three standard cycles. Following CED deployment, the suspect should be carefully observed for signs of distress and should be medically evaluated at the earliest opportunity.

Directions for Future Research

A critical research question is whether officers can become too reliant on CEDs. During interviews with officers and trainers, the researchers heard comments that hinted at a "lazy cop syndrome." Some officers may turn to a CED too early in an encounter and may rely on a CED rather than on their conflict resolution skills or even on hands-on applications.

Another important CED-related research project would be a study of in-custody deaths involving CED use and a matched sample of in-custody deaths when no CED use occurred. Advocacy groups argue that CEDs can cause or contribute to suspect deaths.[6] The subjects in CED experimental settings have all been healthy people in relatively good physical condition who were not under the influence of alcohol or drugs. However, not all subjects in actual cases of CED use would meet experimental requirements of good health. Law enforcement officials typically argue that most, if not all, of the citizens who died when shocked

Study Findings: Factors Affecting Injuries

Physical Force

Physical force and hands-on control increased the risk of injury to officers and citizens. When controlling for the use of CEDs and pepper spray in the multiagency analysis, using force increased the odds of injury to officers by more than 300 percent, and by more than 50 percent to suspects.

Suspect Resistance

Increasing levels of suspect resistance were associated with an increased risk of injury to officers and suspects. The increased injury risk was especially acute for officers. These findings suggest that officers, rather than suspects, face the most increased injury risk when suspects resist more vigorously.

Pepper Spray

The overall analysis (of 12 agencies) showed that pepper spray use reduced the likelihood of injury to suspects. For officers, however, pepper spray use increased the likelihood of injury. This finding was unexpected, and further research may help to explain how officers choose to use pepper spray instead of CEDs.

CEDs

Except for Richland County, where its effects were insignificant, CED use substantially decreased the likelihood of suspect injury. The analysis of 12 agencies and more than 24,000 use-of-force cases showed that the odds of suspect injury decreased when a CED was used. CED adoption by the Orlando and Austin police departments reduced injuries to suspects and officers over time.

Demographic Characteristics

The 12-agency analysis showed that male suspects were twice as likely to be injured as female suspects. In that analysis, the presence of a male suspect slightly increased injury risk to officers. In Seattle, female officers were more than twice as likely to be injured as male officers. In Miami-Dade and Seattle, where suspect race was available as a variable for analysis, the odds of injury for non-white suspects were lower than they were for white suspects.

by a CED would have died if the officers had controlled and arrested them in a more traditional hands-on fashion. Research is needed to understand the differences and similarities in cases where suspects died in police custody, including deaths where a CED may or may not be involved.

The National Institute of Justice funded this study. The complete study is available at http://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf.

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Notes

1. Note that more than one use-of-force tactic could be recorded for each incident.
2. The other nine agencies included police and sheriff's departments in Austin, Texas; Cincinnati, Ohio; Harris County, Texas; Hillsborough County, Fla.; Los Angeles (both the city and the county); Nashville, Tenn.; Orlando, Fla.; and San Antonio, Texas.
3. For a more in-depth description of the researchers' approach to their longitudinal analysis, see section 6 of the report, "A Multi-Method Evaluation of Police Use of Force Outcomes." Available at http://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf.
4. National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption: Interim Report,* Washington, DC: National Institute of Justice, June 2008, NCJ 222981, http://www.ncjrs.gov/pdffiles1/nij/222981.pdf.
5. Details about the national survey can be found in section 3 of the report.
6. Amnesty International, *'Less Than Lethal?' The Use of Stun Weapons in US Law Enforcement,* London, England: Amnesty International Publications, 2008, http://www.amnesty.org/en/library/info/AMR51/010/2008/en.

Visit NIJ's Web topic page at http://www.ojp.usdoj.gov/nij/topics/technology/less-lethal/how-ceds-work.htm.

CED safety and effectiveness was a topic of discussion at the 2010 NIJ Conference. To listen to the panel, go to http://nij.ncjrs.gov/multimedia/audio-nijconf2010-ceds.htm.

For more information

- Smith, M.R., R.J. Kaminski, G.P. Alpert, L. Fridell, J. MacDonald, and B. Kubu, *A Multi-Method Evaluation of Police Use of Force Outcomes,* Final report submitted to the National Institute of Justice, Washington, DC: National Institute of Justice, July 2010, NCJ 231176, http://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf.
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TO PROSECUTION AND LAW ENFORCEMENT AGENCIES

USE-OF-FORCE TACTICS AND NON-LETHAL WEAPONRY

In this paper, we look at some of the major use-of-force issues and controversies facing law enforcement personnel. The debate concerning specific tactics of non-lethal weaponry is more than theoretical; the relative merits and criticisms of these have been the subject of extensive litigation, with contradictory views expressed in the classrooms by police trainers and in the courtrooms by opposing **expert witnesses.**

The Progression of Force

Law enforcement officers are permitted to use the degree of force that is reasonably necessary to accomplish their lawful objectives and to overcome any unlawful resistance. The progression of force can be depicted graphically, such as the *Confrontational Continuum* developed by Kevin Parsons, Ph.D. and similar models developed by others.[Footnote 1] These models describe what have often been vague policies on this subject. Such models are also useful in litigation; they explain to the jury why an officer responded in a particular fashion. They also give the jury a standard by which they can judge whether the use of force was correct. *Figure 1* depicts the **Parsons Continuum,** which is a linear acceleration through a progressive series of steps.

The usual first step is *verbal persuasion*; the second is *manual escort*. If unsuccessful or inappropriate, the next step is *pain compliance*. Usual methods of pain compliance include the wrist lock, arm bar or other "come-along" technique. It is only when mechanical control methods are ineffective (or not appropriate) that the force applied escalates to the use of **impact weapons.**

The principal police impact weapon is the **baton**. It is the *intermediate step* between hand-applied force and the ultimate force of firearms. It should be noted that most police trainers will consider it a poor practice or even *negligence* not to issue and train officers with a baton (except those few departments whose officers are not armed at all). The alleged negligent act is allowing officers to escalate from hand-holds and pain compliance directly to deadly force, when the application of a greater degree of non-lethal force would likely have accomplished the objective of overcoming resistance.

Certain circumstances may warrant an accelerated reaction using a higher degree of force when initiating a contact with a violent or dangerous person. Combative behavior or the influence of alcohol, drugs or controlled substances (such as PCP) could justify greater force in the initial stages.

How Control Techniques are Measured

On the one side is the likelihood of gaining control of an individual; on the other is the likelihood and extent of injury. In general, techniques which have a high propensity for causing tissue damage, hematoma or clotting and have a low potential for control should be rejected. Conversely, methods or weapons that have a low likelihood of causing injury, but a high potential for control, should be encouraged.

Parenthetically, it should be noted that some trainers have suggested that any device is suitable for use if a training program and certification accompany that weapon. Many court cases have demonstrated the fallacy of that view. While compliance and control training is an absolute necessity, injuries or death may still occur because of the human factors of misapplication, miscalculation, and excessive strength.

The 'But-For' Argument... Failure to Assess Alternatives, Too Hasty a Response?

Often a law enforcement officer is placed in a situation where he must resort to the use of a weapon in defense of himself, fellow officers, or a citizen. If litigation follows the event, an expert may testify that the officer failed, in the initial stages of the contact, to de-escalate or avoid the confrontation, and that the ensuing and predictable injury or death could have been prevented by:

(a) different or improved training in the use of psychological persuasion, or
(b) the initial avoidance of conflict with the combatant -- that is, the officer should have kept distant in a secure position until reinforcements or specialists arrived on the scene.

In this way, superior officers (such as the chief, sheriff, or director of training) may be held **personally liable** for a tragic event, even though they did not directly authorize the officer's action or conduct, and were not present at the time it occurred. Such is the nature of the tort of **administrative negligence.**

IMPACT WEAPONS

AELE does not approve or disapprove of the use of any of these *per se*. We have attempted to list some of the major *strengths* and *weaknesses* of each of these, to assist the law enforcement community in decision-making in this controversial area.

The Flashlight

STRENGTHS

1. It is usually readily available, especially at night; it is considered standard equipment.
2. It does not give the outward appearance of an offensive weapon.
3. It can be used with minimal reaction time, if held in one's hand.
4. The light can temporarily disorient or impair the sight of an opponent.
5. It is "effective" as an impact weapon, in that it will deliver a heavy blow.

WEAKNESSES

1. Manufacturers are reluctant to approve or endorse the use of their flashlights as impact weapons. One manufacturer stated that "... it would be irresponsible to use a flashlight for striking, jabbing or other offensive moves... Our company has never advocated the use of the flashlight as a weapon, nor to our knowledge has any responsible flashlight manufacturer." FOOTNOTE 3
2. Flashlights have too short a reach for effective use as a tactical weapon.
3. Flashlights provide a slower response than batons; the recovery time is not rapid enough.
4. Flashlights have sharp edges that will cut a person.
5. Multi-cell lights are very heavy; a blow to the head can be fatal or cause permanent paralysis.
6. An officer who carries a weighted flashlight and a baton will be reluctant to drop his light and pull the baton. If the officer does discard the light, it could be used as a weapon against him. He may therefore strike the offender with the light (which is already in his hand) instead of using the baton, as he was trained.

LITIGATION EXAMPLES

1. A Los Angeles man recovered a jury verdict of $1,250,000 from a flashlight blow to his head during a scuffle, following a routine traffic stop for having a loud muffler.Footnote 4
2. A Pennsylvania woman and her mother recovered $175,000 for dizzy spells resulting from a flashlight blow.Footnote 5
3. A Virginia man received a judgment of $1,500,000 to compensate him for speech impairment and paralysis, following a flashlight blow received during a DUI traffic stop.Footnote 6
4. A Minnesota man was awarded $35,000 in punitive damages against an officer who struck him with a flashlight at a tavern disturbance; his injuries were minimal (only $2,000 in compensatory damages were awarded). Footnote 7

5. A Michigan man received $200,000 for his injuries and another $250,000 in punitive damages against a police officer who broke up a bar fight. The plaintiff proved the officer struck him in the face with a flashlight, breaking his noses. Footnote 8
6. Because officers are trained not to strike a person in the head with a weighted flashlight, there is the risk of criminal prosecution of officers who, under stress, react with a blow to the head of the resisting person. In such cases, the indictment may be for a felony (assault with a deadly weapon).Footnote 9

Blackjacks, Saps, and Billies

In years past, many officers carried, in their back pockets, a blackjack made of stiff leather, a sap or similar weapons. A billy is a short stick, like a truncheon.Footnote 10 The use of these weapons has generated controversy in recent years.

STRENGTHS

1. They are readily concealable weapons, of low cost.
2. They are easily carried, and are lightweight.

WEAKNESSES

1. They are too short to be an effective weapon.
2. They have sharp edges.
3. Many saps have loops, which constrict an officer's hands.
4. Because of the flexible nature of the design, they fail to generate enough shock waves to be effective.
5. They tend to be used with facial/head blows, with the same kind of trauma associated with flashlight injuries (see above).

LITIGATION EXAMPLES

1. A federal court in Washington refused to dismiss a suit against the chief of the D.C. Police Dept. by an injured man for allowing officers to carry blackjacks without adequate training. Footnote 11
2. A Connecticut man was awarded $227,500 for head injuries caused by an officer-inflicted blow with a pocket-sized stick; $100,000 was in punitive damages against the city for the negligent failure to provide adequate training. Footnote 12

The Baton

The typical baton is a round stick of various lengths, and is made of hardwood, aluminum or plastic composite materials.

STRENGTHS

1. It is a lightweight weapon, and inexpensive.
2. The public is accustomed to seeing police officers and security guards routinely carry them.
3. It has greater reach than blackjacks, short billies or flashlights; it has greater utility and flexibility as an impact weapon.
4. A blow with a baton can immobilize a combative person; it can disarm him if he is carrying an offensive weapon.
5. Competent training is available from a multitude of public and private trainers.
6. The baton can be used as a "come-along" device in some situations.
7. A baton can be used in a non-offensive blocking fashion, to ward off blows or to push back an attacker.
8. Manufacturers recommend their products as impact weapons.

WEAKNESSES

1. They are cumbersome, and therefore, are often left in the car.
2. They are not concealable, and are not well suited for plainclothes officers.
3. They are often in the way when an officer is running.
4. They can be lost if they fall from a belt ring, and create a hazard.

5. It is difficult or impossible to avoid head strikes in all cases, particularly in combat situations. Although intensive training minimizes this risk, it cannot entirely eliminate it. Paralysis or death may result, even days later, caused by subdural or bilateral hematoma.
6. Facial strikes often cause lacerations and substantial blood loss. This impairs the department's public image, when citizens observe blood-splattered injuries on TV news programs, or at the scene of arrest, or while visiting a hospital emergency room.
7. Departments must periodically retrain officers to maintain baton proficiency.

LITIGATION EXAMPLES

1. An Illinois man accepted a $127,000 settlement for a skull fracture caused by a baton strike received during a tavern brawl , with police officers. Footnote 13
2. A Michigan man received $35,000 inpunitive damages, $5,000 for mental anguish and $5,000 for pain and suffering. Officers struck him in the groin and on his back when he assumed a "fighting stance." Footnote 14
3. Four California residents received $43,000 from officers who broke up a loud party using batons, causing a fractured vertebra and a broken wrist. Footnote 15

The 'Come-along' Hold

Although some agencies train officers in (and some manufacturers advocate) the use of the baton as a "come-along" device, substantial field experience indicates that officers rarely use their batons for that purpose. While trainers are able to demonstrate the use of batons for pain-compliance purposes in a sterile classroom setting, there are marked differences between a static demonstration and the dynamics of a hostile field confrontation. Specifically, officers frequently state they are unable to get a disobedient or resisting person to stand still long enough to properly apply a baton come-along hold.

A cautionary note is in order concerning the training of officers in the use of a baton for come-along holds. In at least one case, a police officer (who was a certified baton trainer) testified in a personal injury suit that it was negligent for an officer to use a side-handle baton as an impact weapon, without first attempting to apply come-along holds with the baton. Another expert witness, who specializes in use-of-force training, testified that it was proper for the defendant officer to initially resort to the use of his baton as an impact weapon, without first attempting compliance with baton-assisted come-along holds. Fortunately, the jury agreed with the second witness, and found no liability against the officer or his employing municipality Footnote 16

Should officers be trained in the use of a baton for come-along holds? If the department provides such training, but officers routinely avoid using the technique, this behavior will be criticized by the plaintiff's lawyer. Opposing counsel will suggest that since officers were and are presently trained in the use of batons for come-along holds, it was *negligence* not to utilize these holds before employing the baton as an impact weapon.

Thus, a good argument can be made for NOT TRAINING officers in the use of baton-assisted come-along holds, if batons are not routinely used for such purposes in field confrontations. As was previously mentioned, many officers avoid using their batons for comealong holds, because the dynamics of a hostile confrontation make it difficult, if not impossible, to successfully apply these holds to a resisting person. Moreover, many trainers believe that hand-applied pain compliance techniques are tactically superior to baton-applied come-along techniques.

The Baton Design Controversy

In 1974 the traditional straight baton was optionally modified by adding a side handle. The leading manufacturer of side-handle batons publishes training material, and also trains and certifies instructors.Footnote 17 However, many professional trainers continue to prefer the traditional "straight baton.."Footnote 18 Aside from the potential use of a baton for come-along holds, both batons are effective weapons.

Those trainers who prefer the *side-handle baton* believe it:

1. generates more power,
2. is easier to control,
3. is more versatile, and
4. is less likely to be seized by an opponent.

Those trainers and officers who prefer the *straight baton* believe that it:

1. generates greater *fluid shock waves* (which inflict more trauma but cause less damage to tissue)
2. is superior when used in confined locations,
3. is easier, quicker and more economical to train officers to a satisfactory level of competency,
4. is no more likely to result in unintended head strikes than the side-handle baton,
5. has a shorter recovery time (for additional strikes), and
6. is more effective when used by shorter and smaller officers, particularly the new small-diameter lightweight models.

An expandable model of the straight baton is available, and is particularly suitable for plainclothes and special duty officers. An all-metal *tokushu keibo* collapsible/extendable baton has been in use by some Japanese police officers since 1966, and is currently issued to members of the Secret Service and U.S. Capitol Police. Japanese experience indicates the weapon is more effective than the wooden baton and causes less bodily harm.

NECK RESTRAINTS

Many neck holds used by officers trace their origin to sport judo. The most traditional restraint is the arm bar which applies pressure with the forearm across the front of the neck. Because this technique cuts off the victim's air supply, it has been widely rejected by police trainers. As with a drowning swimmer, the procedure sometimes precipitates resistance as the person fights for air.

The *carotid restraint* is taught by many law enforcement agencies. It involves application of the forearm to one side of the neck, and the bicep area of the arm to the opposite side of the neck. The crux of the elbow is positioned at the front of the throat, with particular care so as not to apply pressure to the esophagus.

The *(Kansas City) lateral vascular neck restraint* is distinctive, in that three levels of control are present. Unlike the carotid restraint which produces unconsciousness, this method emphasizes capturing an arrestee's balance, and the application of pressure in an escalating series of steps. The procedure is also characterized by a more dynamic "pull through" application method, than the fixed compression technique of the carotid restraint.

STRENGTHS

1. Neck restraints are effective, regardless of the size of the officer relative to the person to be controlled.
2. Unlike batons, the procedure does not require a lot of room for striking distance; it is possible to employ grappling procedures and neck restraint in close contact, in narrow or cluttered premises.
3. Neck restraints are an attempt to provide "humane" means of controlling combative persons without the necessity of striking them, thus minimizing the risk of broken bones, lacerations and other impact-related trauma.

WEAKNESSES

1. Neck restraints, if applied improperly, have caused death or paralysis.
2. Due to the dynamics of a violent struggle, it is often difficult to correctly apply such methods.
3. Several instances of "unexplained" death have followed purportedly proper application of the technique, unaccompanied by any discoverable physical injuries. This phenomena, known as "custody death syndrome," is not fully understood, and research is still ongoing.
4. Perpetual and time-consuming training is needed to maintain minimum levels of proficiency.
5. During litigation, it is difficult to precisely explain to a jury the physiological effects of neck restraint procedures, due to an inadequate base of undisputed medical evidence. Even within the medical community, there are disagreements regarding the mechanism that causes unconsciousness.
6. It is difficult for an officer to monitor and control the amount of pressure applied during the procedure.

7. Once the restraint has been applied, there is a need to closely monitor the arrestee. This may be impractical when the individual is hooked into a detention facility operated by another agency.

LITIGATION EXAMPLES

1. A Chicago family accepted a $500,000 settlement for the death of a man who died from a bar-arm hold. The city offered the settlement despite the fact it did not authorize the hold and instead teaches the carotid restraint method. Footnote 19
2. Claiming a bruise and humiliation, an off-duty California sheriffs deputy received $13,360 after being choked by city police officers who did not know he was a peace officer and believed him to be armed. Footnote 20
3. A male homosexual received $250,000 for abnormal brain waves, following a choke-hold applied by officers who precipitated a confrontation. The officers observed him kissing a male friend and asked for his ID, which started a verbal confrontation, leading to his forcible arrest. Footnote 21
4. Responding to a domestic disturbance, D.C. police officers used a baton to apply pressure to the back of a man's neck, while he laid face-down on the floor -- causing death by asphyxiation. Although PCP, marijuana and hashish were found in his system, the jury awarded $950,000 to his estate, widow and daughter. Footnote 22

CHEMICAL AGENTS

Several sprays and gases have been on the market for many years, and are marketed under various trade names. In some states, aerosol tear gas is purchasable by any citizen, and may be lawfully carried. Some states restrict sales and possession to citizens who have taken a four or eight hour training course

STRENGTHS

1. Tear gas cannisters are inexpensive.
2. They are lightweight, and easily carried and concealed. They can be used by uniform and plainclothes officers.
3. Sprays do not require extensive training.
4. No physical contact is needed.

WEAKNESSES

1. Chemical agents are not effective on many individuals, especially the mentally disturbed, those who are intoxicated, and persons under the influence of certain drugs.
2. Some individuals may become more combative when they experience the discomfort associated with chemical irritants.
3. There is a time lag between application and effect; they may not stop aggressive behavior rapidly enough.
4. A person with a knife or blunt instrument who has impaired vision from the spray may lash out in an indiscriminate manner.
5. Some individuals who suffer from pre-existing respiratory problems may experience serious medical problems.
6. The sprays can seriously irritate and harm one's eyes, unless the eyes are thoroughly washed.
7. Wind direction can cause the officer to be inadvertently affected by the spray, and make him vulnerable to a potentially fatal attack.
8. Officers may object to transporting prisoners who have clothing saturated with a chemical irritant.

LITIGATION EXAMPLES

1. A farmer who was part of an organized farm protest in Washington drove his tractor on a sidewalk. D.C. Police officers threw a tear gas capsule inside, which caused permanent vision loss in one eye. The jury awarded him $400,000. Footnote 23
2. A federal court in Virginia upheld the use of tear gas on a prison inmate who was vandalizing his cell. The procedure minimized potential resistance to corrections officers who subdued him. Footnote 24

ELECTRICAL WEAPONS

Recent technology has allowed the development of small batteries and improved discharge units. Typically, such devices discharge a high voltage spark (50,000 volts) at very low amperage (0.3 joules). One such hand-held device is pressed against the combatant, who is quickly downed. Another device (the Taser®) fires small darts, connected to wires, accomplishing the same objective at a safer, non-contact distance.

STRENGTHS

1. These devices are easily carried. They are lightweight and affordable.
2. Extensive training is not required.
3. They may be more effective on persons under the influence of PCP and other drugs who do not respond to chemical irritants.
4. They are especially useful for controlling non-criminal violent behavior, such as persons who are mentally impaired, or under the influence of mind-altering substances.
5. It may be unnecessary to resort to firearms to control a person armed with a knife or blunt instrument. The Taser® is effective at distances of up to 12-15 feet.
6. The Los Angeles Police Dept. has extensive experience in using the Taser®, beginning in May of 1980. As of early 1987, the L.A.P.D. possessed 550 Taser®s and had employed the device 775 times.[Footnote 25]

WEAKNESSES

1. There are allegations the electrical spark can cause scars or burn marks.
2. Long-term medical studies are non-existent. In a California study of 218 persons stunned with the Taser®, three persons died--although these individuals may have perished from the effects of PCP. [Footnote 26]
3. The spark can cause a fire hazard if flammables are present. In Ontario, California, a man soaked with gasoline was incinerated when officers shot him with a Taser®.
4. Hand-held devices have been misused to produce discomfort, when administered by sadistic officers.
5. Media and constituent representatives have labelled the devices as "cattle prods," associated with civil rights demonstrations in the Sixties.
6. The manufacturers of electrical weapons may be unwilling to provide testimony or litigation support services.
7. They may not carry product liability insurance at the time the suit is filed, or the policy may not be effective for the period when the device was manufactured or sold.

LITIGATION EXAMPLES

1. A federal civil rights suit filed in Atlanta complains a Stun Gun "burned permanent, ugly, disfiguring scars into the flesh of the plaintiff's body." The suit alleged the "brutal attack" caused pain, suffering, mental anguish and public humiliation.[Footnote 27] The cost of defending such suits must be considered before electrical weapons are issued or authorized.
2. A Federal Court in Nevada ruled for prison officials in a suit brought by an inmate who objected to the use of the Taser® to control obstreperous prisoners. The court upheld a prison regulation that allows the use of the Taser® or stun guns when inmates refuse to vacate their cells. The court said the weapons are more suitable than batons, and would inflict less discomfort on others than tear gas. [Footnote 28]

Ability to Disengage or Escalate is Imperative

Force Options

Persuade	Compliance	Compliance	Compliance	Impede	Stop
Dialog	Escort	Pain	Mechanical	Baton	Weapon

RECOMMENDATIONS

1. Collect and preserve all brochures and other literature published by the manufacturer and distributor for each type or model of weapon purchased.
2. Create a written memorandum-style record of any conversations with sales personnel concerning the merits of their product, its suitability for specified purposes, and any statements made which are intended to alleviate your questions concerning civil liability; attach a copy of the memo to the purchase order for the product.
3. Insist on receiving a photocopy of the products liability insurance policy issued to the manufacturer and/or distributor.
4. Require vendors to provide a list of all former and pending claims and litigation against the product under consideration, including names of legal counsel and the result or status of each claim.
5. Ask your legal counsel to consider a third-party claim against the manufacturer and/or distributor of any product which is the subject of a claim or lawsuit against your agency or personnel.
6. Don't wait for a lawsuit before preparing your defense. The time to line up expert witnesses in support of a particular weapon or tactic is now. If possible, get written recommendations from any consultants used, and a commitment from each consultant that he will appear in court to defend his recommendations, if necessary.
7. Law enforcement administrators should unhesitatingly initiate disciplinary action against subordinate officers who carry or use unauthorized weapons (or who use unauthorized control techniques), even if otherwise appropriate or excusable under the particular circumstances. Disciplinary action should fit the offense and egregiousness of the conduct; in some cases, a written reprimand will be sufficient, in others, more severe action is warranted. The failure to administer cautionary discipline can itself predicate the liability of a law enforcement agency. It will be easier for plaintiffs' counsel to prove that superior officers knew (or should have known) such weapons or techniques were likely to be used in the instant case.

CONCLUSIONS

The use of force and weapons by law enforcement officers is one of the most visible and controversial aspects of policing. It is likely to remain so.

A law enforcement agency must carefully choose the various devices and techniques it will authorize for the protection of its officers and the public. In making policy decisions in this area, an agency should consider existing court decisions and litigation trends.

No matter what policies an agency adopts, the use of force by officers should be carefully monitored on a continuing basis. An agency should not hesitate to alter its policies when circumstances so indicate.

In our efforts to continually assist the law enforcement community, AELE welcomes comments, information and suggestions. We are especially interested in lawsuits, verdicts and testimony by expert witnesses.

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This document was co-authored by an experienced police defensive-tactics instructor and an attorney who specializes in law enforcement liability research. It was formally reviewed by two outside legal counsel; one is an instructor at a nationally prominent university-based police training center, and the other serves as chief legal counsel to a large police agency. It was also reviewed by a trial lawyer who has more than 20 years' experience in defending police use-of-force lawsuits.

This paper does not attempt to raise all of the strengths or weaknesses of any non-lethal weapon or control tactic. The litigation examples merely illustrate the kinds of civil actions that have been brought against law enforcement agencies and personnel; they are not intended to discourage the proper use of any accepted defense or control tactic, method or commercially marketed product. AELE has provided this summary as a starting point for the ongoing discussion and debate over the weapons, techniques and tactics described herein.

FOOTNOTES

1. The *Confrontational Continuum* model developed by Kevin Parsons and Associates was copyrighted in 1980. Dr. Parsons is a nationally prominent police training provider, and has testified as an expert witness in more than fifty lawsuits alleging excessive force by law enforcement personnel.
2. IACP 1987 Annual Law Enforcement Survey: Executive Summary, 55 (I) *The Police Chief* 38 [at 39] (January, 1988); Gaithersburg, MD.
3. Statement of George Hoffman, President of L.A. Screw Products Police Equipment Division in a letter to the editor of *Police Product News,* replying to an article in the November, 1980 issue entitled *Dueling Flashlights.*
4. *Wyche v. City of Los Angeles*, 103 L.E. Liab. Rptr. (AELE) 4, Super. Ct., Los Angeles, Co. Cal. (1980); the city dropped an appeal and paid the plaintiff.
5. *Steinnagle v. Frazer,* 124 L.E. Liab. Rptr. (AELE) 3, Cm. Pls. Ct., Bucks Co., Pa. (1/8/83).
6. *Wellington v. Daniels,* 125 L.E. Liab. Rptr. (AELE) 3, modif. 127 L.E. Liab. Rptr. (AELE)4, Civ. No. 81-208-NN (E. D. Va. 1982); the city was dismissed from the suit on a motion for judgment N.O.V. because the municipality did not provide the flashlight and there was no evidence the city allowed the officer to carry it. A single instance of excessive force does not create a "policy or practice" under *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978). See *City of Oklahoma City v. Tuttle,* 105 S. Ct. 2427 (1985).
7. *Melina v. Chaplin,* 112 L.E. Liab. Rptr. (AELE) 5, Dist. Ct., Hennepin Co. Minn. (1981).
8. *Arnold v. Pydyn,* 159 L.E. Liab. Rptr. (AELE) 5, U.S. Dist. Ct. (E.D. Mich. 11/24/85).
9. *People v. R.C S.*, Los Angeles County Superior Court No. A-781184 (1987),
10. For a legal definition of a billy or blackjack, see *Annotation,* "What constitutes a 'bludgeon, 'blackjack,' or 'billy' within meaning of criminal possession statute," 11 ALR 4th 1272 (1982).
11. *Hardeman v. Clark,* 593 F. Supp. 1285 (D.D.C. 1984). 1
12. *Ieva v. Stamford,* 110 L.E. Liab. Rptr. (AELE) 11, U.S. Dist Ct. (D. Conn. 1981).
13. *Van Ham v. City of Aurora,* 131 L.E. Liab. Rptr. (AELE) 3, U.S. Dist. Ct. (N.D. I11. 1983}.
14. *Shulick v. Floyd,* 113 L.E. Liab. Rptr. (AELE) 4, U.S. Dist. Ct. (W.D. Mich. 1981).
15. *Lopez v. Grant,* 111 L.E. Liab. Rptr. (AELE) 4, Super. Ct. Santa Clara Co. Cal. (1981).
16. *Fronk v. Meager,* No. Dak. Supreme Ct. No. 870085, -- N.W. 2d -(N.D. Dec 29, 1987).
17. See *The Monadnook PR-24 "Prosecutor",* a training manual by Richard R. Starrett, Monadhock Lifetime Products. Fitzwilliam NH. Lib. Cong. Cat. No. 76-6768 (1976).
18. See *The Koga Method: Police Baton Techniques,* by Robert K. Koga and John G. Nelson, Glencoe Press/Macmillan Co., Beverly Hills CA, Lib. Cong. Cat. No. 68-19201 (1968).
19. *Nethery v. City of Chicago,* 136 L.E. Liab. Rptr. (AELE) 3, Cir. Ct., Cook Co. Ilk No. 81-C 2911 (1983).
20. *Stevens v. City of Los Angeles,* I11 L.E. Liab. Rptr. (AELE) 12, Super. Ct., Los Angeles Co. Cal. (1981).
21. *Barlow v. City of Long Beach,* 145 L.E. Liab. Rptr. (AELE) 3, Super Ct., Los Angeles Co. Cal. (1984).
22. *Utley v. Dist. of Columbia,* D.C. Super. Ct. No. 1558-83, 29 ATLA Law Rep. 32 (1986).
23. *District of Columbia v. Colston,* 468 A. 2d 954 (D.C. App. 1983).
24. *Greear v. Loving,* 391 F. Supp. 1269 (W.D. Va. 1975).
25. "Los Angeles P.D. finds Taser® stunningly effective," *Torrance Daily Breeze,* reprinted in *PORAC News* (Feb. 1987), p. 13
26. "Study Finds Safer Than Guns: King Hospital Doctors Compare Outcomes of Victims," *Los Angeles Times,* Jan. 16, 1986), Part V, p. 22.
27. [Nancy Moore] *Smith v.* [Officer P.L.] *Wood* et al, U.S. Dist. Ct. No. C86-1152A (N.D. Ga., filed 6/19/86).
28. *Michenfelder v. Sumner,* 624 F. Supp. 457 fat 463-4] (D. Nev. 1985).

Destroying Myths & Discovering Cold Facts with Force Science Institute

New studies counter plaintiffs' CEW arguments

There is much about sudden death that simply "is not fully understood"

When allegations of excessive force involve use of a CEW (ECD), plaintiffs' attorneys or their hired experts may raise a couple of stock arguments:

1.) The suspect was not able to comply with the officer's commands because he could not recover promptly enough from the electronic "stunning"
2.) When the suspect has died and an autopsy fails to identify any other cause of death, the CEW must have been responsible because the fatality so closely followed the device's application

New studies provide evidence with which to challenge both assertions.

The Issue of Lingering Incapacitation
Researchers recently documented psychomotor recovery time from CEW exposure. This study was sponsored by the U.S. military in hopes of confirming a reliable, non-lethal option for controlling possible suicide bombers when they approach checkpoints in combat zones.

"They wanted recovery time from a CEW exposure precisely measured," researcher Dr. Mark Kroll told Force Science News Kroll, "apparently in hopes there would be enough residual effect during which soldiers could achieve some measure of control before a bomber could detonate his explosives.

"There had not previously been a scientific, peer-reviewed study of this issue done."

Kroll, an adjunct professor of biomedical engineering at the University of Minnesota and at California's Cal Poly University, wrote the study paper in collaboration with Dr. John Criscione, an associate professor of biomedical engineering at Texas A&M University, who supervised the actual testing and was the study's primary researcher.

The Button Test
The subject pool consisted of 32 volunteers (29 of them males) from a CEW training class at the Austin (TX) Police Academy. They ranged in age from 21 to 55.

Each was positioned face-down on a padded mat so that arms and hands could move easily. Current from a TASER X26 CEW was conducted to each for a standard 5-second cycle via alligator-clip electrodes attached to the shoulder and waist to simulate an ideal, exceptionally broad-spread probe placement. This was designed "to achieve maximal CEW-induced control of the upper extremities," the researchers note.

The subjects were instructed that as soon as the CEW exposure began, they should "immediately" press a button on a box that was placed on the floor in front of them, to measure their psychomotor capability and speed.

Surprising Results
Two of the subjects were able to "move their arms in a purposeful manner" even during the CEW exposure. While their movements were "slow and coarse," they were able to reach and press the button at 3.09 and 4.70 seconds after the start of the exposure.

As for the others, the response time once the CEW exposure ended ranged from 0.31 to 2.99 seconds. "The typical subject took slightly over 1 second — in essence, no recovery time — to move his dominant arm forward, place it on the button box, and push the button," Kroll says.

"These response times were equivalent to 'normal' reaction and movement times of control-group subjects who performed the test in response to hearing a buzzer signal."

In interviews after their CEW exposure:

- 75 percent of the volunteers said they remained conscious of their surroundings during the exposure
- 91 percent could hear and 81 percent could see during that time (5 closed their eyes)
- 91 percent said they'd be able to understand commands during an exposure

"For the military, the study was a bit of a disappointment because the near-zero recovery time doesn't serve their purpose," Kroll says. "But for law enforcement, this is great news because it refutes plaintiff claims of being unable to quickly comply with officer commands."

In their paper, Criscione and Kroll cite a number of court cases in which "misunderstandings of CEW effects," including recovery times, have been used unfairly against officers in court proceedings.

"I've seen many variants of misunderstanding," Kroll told Force Science News, "from claims of temporary blindness to unconsciousness for minutes to hours after an exposure. Hopefully, our findings will help in establishing a more realistic picture."

The researchers' report, "Incapacitation recovery times from a conductive electrical weapon exposure," appears in the journal Forensic Science, Medicine, Pathology. An abstract of their paper can be accessed free by clicking here. The full study is available there for a fee.

Unexplained Sudden Cardiac Deaths Not Associated Just with CEWs

As to the implication that CEW exposure is a likely cause of sudden cardiac death that, too, seems to be more an example of plaintiff mythology than a logical conclusion.

Consider two new studies passed to FSN by Atty. Michael Brave, a use-of-force instructor at this year's annual conference of the International Law Enforcement Educators and Trainers Assn. (ILEETA) and national/international litigation counsel for TASER International, Inc.

These studies investigated sudden cardiac deaths that occurred among "benign" civilians who had no exposure to confrontations with law enforcement or to CEWs. The findings are "so very important," Brave says, because they put the sudden cardiac death issue "in a meaningful perspective."

Study #1: College Athletes: A team of researchers, headed by Dr. Kimberly Harmon of the University of Washington Sports Medicine Center, reviewed autopsy reports and other documentation concerning National Collegiate Athletic Assn. (NCAA) athletes who died suddenly under nontraumatic circumstances during a recent five-year period.

More than 40 cases were analyzed by a panel that included sports medicine physicians, a cardiac pathologist, a cardiomyopathy specialist, a genetic cardiologist, and an electrophysiologist, all with sudden-death expertise.

In most cases, fatalities were attributed to one or another of various heart-related problems. But nearly one-third (31 percent) of the sudden deaths went unexplained at autopsy. Indeed, this was the single most common autopsy finding.

This result is compatible, Harmon's group reports, with similar studies of other athletes and of U.S. military personnel. Among the latter, unexplained nontraumatic sudden cardiac deaths that occurred during training over a 25-year period accounted for 35 percent of cases investigated.

Sudden death mysteries frequently arise outside of law enforcement, Brave points out, and the findings from these other populations tend to undermine speculation that CEW exposure is a probable decisive factor.

Harmon's study, published by the journal Circulation: Arrhythmia and Electrophysiology, can be accessed free by clicking here

Study #2: Subjects Aged 1-49: A dozen medical researchers in Denmark, led by Dr. Bjarke Risgaard, for the first time analyzed the deaths of all persons throughout that country aged 1-49 who succumbed to "sudden, natural unexpected deaths" during a recent three-year period.

Among the sudden-death victims who were autopsied, the team found that 67 percent died of "structural heart disease" — the most common generalized cause of fatality. However, in 31 percent of cases "death remained unexplained after autopsy," the researchers report — a finding identical to that of the Harmon group above.

Toxicology tests were positive for illegal and/or prescription drugs in 70 percent of the unexplained Danish deaths. But none of those cases had a "toxicological profile" that would explain the deaths, according to forensic pathologists.

Bottom line: There is much about sudden death that simply "is not fully understood."

A free abstract of the Danish study, also published in Circulation, is available by clicking here.

About the author

The Force Science Institute was launched in 2004 by Executive Director Bill Lewinski, PhD. - a specialist in police psychology -- to conduct unique lethal-force experiments. The non-profit Force Science Institute, based at Minnesota State University-Mankato, uses sophisticated time-and-motion measurements to document-for the first time-critical hidden truths about the physical and mental dynamics of life-threatening events, particularly officer-involved shootings. Its startling findings profoundly impact on officer training and safety and on the public's naive perceptions.

For more information, visit www.forcescience.org or e-mail info@forcescience.org. If you would benefit from receiving updates on the FSRC's findings as well as a variety of other use-of-force related articles, please visit www.forcesciencenews.com and click on the "Please sign up for our newsletter" link at the front of the site. Subscriptions are free.

Chief's Counsel

Chief's Counsel: Electronic Control Weapons: Liability Issues

By Randy Means, Attorney at Law, Thomas and Means, LLP, and Eric Edwards, Lieutenant and Legal Advisor, Phoenix Police Department, and Executive Director, Arizona Association of Chiefs of Police

Considerable public attention has been given to electronic control weapons lately. News media outlets have reported incidents in which the use of electronic control weapons were linked to the deaths of suspects, and critics have questioned the safety of the devices. Nevertheless, research supports reasonable deployment and use of these weapons. Much of what is fueling the debate today is anecdotal and not based in research.

History of Electronic Control Weapons

A quick review of the history of electronic control weapons will help the law enforcement executive to understand today's devices. Jack Cover, a National Aeronautics and Space Administration scientist, experimented with electricity as a nondeadly weapon in the 1960s. He discovered that when short-duration (milliseconds) high-energy direct-current electric pulses were applied to human beings, immediate incapacitation almost always occurred with direct, negative side effects. This discovery led to a delivery system he called the Taser.[1] Cover spent several years perfecting this futuristic device, and it was introduced to the public through the 1976 Clint Eastwood film The Enforcer.

The original electronic control weapons were 50,000-volt, seven-watt stun systems that were classified as a firearm, because they used gunpowder to fire probes into targeted subjects, and fell under provisions of the 1968 Gun Control Act. Later research and development efforts resulted in the introduction of new electronic control weapons in 1999. One of the newer devices is a 50,000-volt, 26-watt system. Unlike its predecessor, this version uses nitrogen cartridges, rather than gunpowder, to fire its probes. The device is classified as an electro-muscular disruptor that overrides the central nervous system. This version of the device increases its effectiveness.[2]

Electronic control weapons are an important additional force option, significantly because nondeadly force options such as oleoresin capsicum (OC), or pepper spray, impact projectiles, and police batons all rely on pain to overcome a suspect's resistance to officer commands, and persons who are under the influence of drugs or alcohol or who have a mental illness may have a higher tolerance of pain that correspondingly decreases the effectiveness of pain compliance weapons. Officers employing these options sometimes find that these options have little or no effect.[3] Electronic control weapons do not rely on pain and are therefore useful in situations where other weapons are not.

Risk Management

Like all force tactics and devices, use of electronic control weapons creates liability risks. The more critical question is how the amount and type of risk created compares to the risk reduced or eliminated. For example, if tasing someone, as it is sometimes known, creates substantial risk of serious injury but eliminates the need to shoot and kill that person, the risk of tasing obviously would be worth taking. If tasing creates substantial risk of serious injury but does not substantially reduce any serious risks, the tasing generally would be inappropriate, possibly illegal, and likely to increase liability exposures. Because the touchstone of use-of-force law is reasonableness, the risk-to-reward ratio is crucial.

It is important for decision makers to appreciate fully the following:

- It is usually not the tool itself that increases liability exposures but the reasonableness of when and how the tool is used, given surrounding circumstances.[4] As with any force measure, use of an electronic control weapon must be justified both generally and specifically. Whereas we might say generally that electronic control weapons may be used on persons who are actively resistive, a particular use on an actively resistive but apparently unarmed six-year-old child might nonetheless be totally unreasonable.

- In order to balance risks appropriately, one must know, at least generally, what amount and type of risk is involved in a particular tasing. The starting point, of course, is the gathering of data concerning electronic control weapon use generally. How many applications have there been? What percentage of them caused death or serious injury? What percentage did not? What other circumstances surrounded any deaths or serious injuries? Relevant circumstances can include the suspect's physical condition, drug and alcohol use, existing medical conditions, and level of physical exertion, among other potential contributors. Without this data, risk balancing is impossible because one side of the equation is unknown.
- The fact that a device or tactic occasionally but rarely causes death or serious injury does not make it deadly force.[5] Deadly force, according to federal courts, is force that creates a substantial risk of (or is likely to cause) death or serious injury.[6] It would seem that, under this definition, electronic control weapon use would be classified simply as nondeadly force along with police dogs, impact weapons, and OC, all of which can cause death or serious injury but all of which, when properly used, are unlikely to do so.[7]

The task is to regulate electronic control weapon use as any other force option-that is, to define when the use of a electronic control weapon is reasonable. Of course, these matters are necessarily and irrevocably situational. As in most other liability matters, we note that careful policy, training, supervision, and discipline (proactive and reactive) are critical to proper management of liability risks.

Data Analysis

A good place to start is with a review of what is currently known about electronic control weapon research and applications. One of the leading studies to date, the U.S. Department of Defense Human Effects Center for Excellence's "Report on Human Effectiveness and Risk Characterization for Electromuscular Incapacitation Devices," concluded that application of an electronic control device such as the Taser M26 and X26 "for temporary incapacitation does not appear to pose significant risk to the recipients."[8]

In another study, the British Home Office Defense Scientific Advisory Council Subcommittee on the Medical Implications of Less-Lethal Weapons concluded that "the risk of life-threatening or serious injuries from the

M26 Taser is very low."[9] Additional studies of electronic control weapons, including research by the Force Science Research Center, a nonprofit institution based at Minnesota State University in Mankato; the Orange County, Florida, Medical Task Force; and the Carleton University M26 Evaluation are available at (www.taser.com/facts/medical_info.htm).

In an article published in the December 24, 2004, edition of the Arizona Republic, Robert Anglen documents 84 deaths that came after the application of an electronic control weapon since September 1999.[10] Of the 84 cases, Anglen reports that medical examiners in [11] cases stated that "Tasers were a cause, a contributing factor, or could not be ruled out in someone's death." In 19 cases, "coroners and other officials reported the stun gun was not a factor." The article also provides limited information about the circumstances surrounding the deaths.

Of the 84 cases identified in the newspaper article, only in 11 cases was the electronic control weapon purportedly linked to a death or not ruled out as a contributing factor. In 19 of 84 cases where an electronic control weapon has been used and a death ultimately resulted from the incident, the weapon was not a factor in death. However, the most meaningful statistic is the total number of applications compared to the 11 deaths where the weapon was reported to be a cause or a contributing factor or could not be ruled out as a factor.

This calculation requires a judgment as to what number is the appropriate baseline for comparison. Taser International, manufacturer of the M26 and X26 devices, cites approximately 62,000 Taser applications in the field and another 100,000 Taser applications in training and on volunteers. Comparing the 11 deaths to the 62,000 estimated field uses results in a .00018 percent death rate. Even using all 65 of the cases where the electronic control weapon was not clearly ruled out (84 total deaths minus 19 deaths in which the weapon was ruled out as a factor) and only the 62,000 field uses results in a .00105 percent death rate.

The appropriate comparison may be to include the 62,000 field uses with the 100,000 training and volunteer applications or 162,000 as the baseline. While the training and volunteer applications do not duplicate real-world applications, it appears reasonable to expect some correlation if the sole factor contributing to the death is the use of a Taser. Using this number, the 11 deaths result in a .000067 percent death rate, and the 65 cases result in a .0004 percent death rate.

Certainly, these statistics suggest that the risk of death caused by electronic control weapon use is low. Some may question the number of field uses and training and volunteer applications, but these numbers appear reasonable given that more than 6,000 police departments have purchased electronic control weapons, and approximately 133,000 devices have been sold through the third quarter of 2004.

It is also worth reviewing the factors that frequently appear in cases of death when an electronic control weapon has been used. Many involve multiple applications of the device against a suspect, or a suspect who has a history of drug abuse, is suffering from extreme physical exertion, or has preexisting medical conditions. Obviously, the factors of drug abuse, preexisting medical conditions, and extreme physical exertion often contribute to deaths associated with any type of force application.

So what do we do with all this data? Until additional statistically significant data are available, we attempt to make reasonable decisions about whether the risks reduced or eliminated by a particular use of an electronic control weapon substantially outweigh the risks created by that same application. This position comports with the response of Dr. Bill Lewinski, executive director of the Force Science Research Center, to the call of Amnesty International to suspend all electronic control weapon use until additional research has been done; he said, "Nonsense."[11] Presumably, we would not use a tool or tactic at all if we didn't reasonably believe that it would prevent appreciably more injuries and deaths than it would cause.

"Less-Lethal"?

Given the data available, a major question should be addressed: if an electronic control weapon, properly deployed, is well within the existing definition of nondeadly force (extremely unlikely to cause death or serious injury), why would we describe it as "less-lethal," which implies that we view it as lethal, just less so?

Fourth Amendment law speaks of two categories of force: deadly and nondeadly. The term "less-lethal" potentially confuses the fact that electronic control weapons, appropriately used, are by definition nondeadly force devices. It also suggests that the use of electronic control weapons is questionable in anything but deadly force situations.

In fact, some of the most beneficial applications of electronic control weapons will be in nondeadly force situations. Law enforcement agencies should consider eliminating the term "less-lethal" from their vernacular because its use potentially increases liability exposure or, alternately, dramatically narrows the utility of what otherwise appears to be a widely beneficial tool. Even in cases where police canines have caused death, reviewing federal courts have emphatically stated that the deployment of the canine was nondeadly force because it was so statistically unlikely to cause death or serious injury.[12]

Recommendations

At a point, it becomes necessary to enunciate some verbiage that identifies or describes when, generally speaking, we view the use of electronic control weapons as appropriate. It seems clear that the use of such devices should not be limited to situations where a subject has already become assaultive but instead would be allowed when an officer reasonably believes that a subject is "imminently a physical threat." A requirement that electronic control weapons be used only as a last resort of nondeadly force (that is, only after other measures have been unavailing or are deemed impractical) would unnecessarily limit the beneficial use of electronic control weapons. ■

Authors' note: *The opinions expressed in this writing do not necessarily represent the views of the* Police Chief *or the IACP.*

[1]Inspired by a futuristic weapon used by Tom Swift, the hero of Victor Appleton's popular adventure stories from the early 1900s, Cover named his invention the "Taser," an acronym for "Thomas A. Swift's electric rifle." Today, Taser is a registered trademark name that has achieved in law enforcement circles what Kleenex and Xerox achieved in society at large: it has become the generic descriptor for an entire type of product. But the Taser is not the only electronic control weapon. The operational concepts for electronic control weapons are generally standard and could easily be adapted to similar devices. It is noted, however, that although devices may be similar in design, function, and appearance, the individual manufacturers' guidelines may differ and should be followed for particular devices. See the IACP National Law Enforcement Policy Center, "Electronic Control Weapons: Concepts and Issues Paper" (Alexandria, Va.: December 2004): 2.

[2] IACP National Law Enforcement Policy Center, "Electronic Control Weapons": 3.

[3] IACP National Law Enforcement Policy Center, "Electronic Control Weapons": 3.

[4] See *Graham v. Connor*, 490 U.S. 386 (1989).

[5] *Robinette v. Barnes*, 854 F.2d 909 (6th Cir. 1988) (K-9 case).

[6] See *Ryder v. City of Topeka*, 814 F.2d 1412, 1416 n.11 (10th Cir. 1987); *Pruitt v. City of Montgomery*, 771 F.2d 1475, 1479 n.10 (11th Cir. 1985); and *Robinette v. Barnes*, 854 F.2d 909, 912-913 (6th Cir. 1988).

[7] *Robinette*, 854 at 912 (K-9 case resulting in death); *Kuha v. City of Minnetonka*, 328 F.3d 427, at 434 (8th Cir. 2003) (K-9); *Vera Cruz v. City of Escondido*, 139 F.3d 659, at 663 (9th Cir. 1998) (K-9); and *Deorle v. Rutherford*, 263 F.3d 1106, 1113 (9th Cir. 2001) (bean bag).

[8] U.S. Department of Defense, Human Effects Center for Excellence, "Report on Human Effectiveness and Risk Characterization for Electromuscular Incapacitation Devices"; available at (www.taser.com/documents/HECOE_Report_Summary_101804.pdf.

[9] The British Home Office, Defense Scientific Advisory Council, Subcommittee on the Medical Implications of Less-Lethal Weapons, "Report"; available at (www.taser.com/documents/UK_DOMILL_med_statement.pdf).

[10] Robert Anglen, "84 Cases of Death Following Stun-Gun Use," *Arizona Republic*, December 24, 2004; available at (www.azcentral.com/specials/special43/articles/1224taserlist24-ON.html).

[11] *Force Science News*, no. 8; available at (www.forcescience.org).

[12] *Robinette*, 854 at 913.

October 24, 2014

Campus Safety with Matt Stiehm

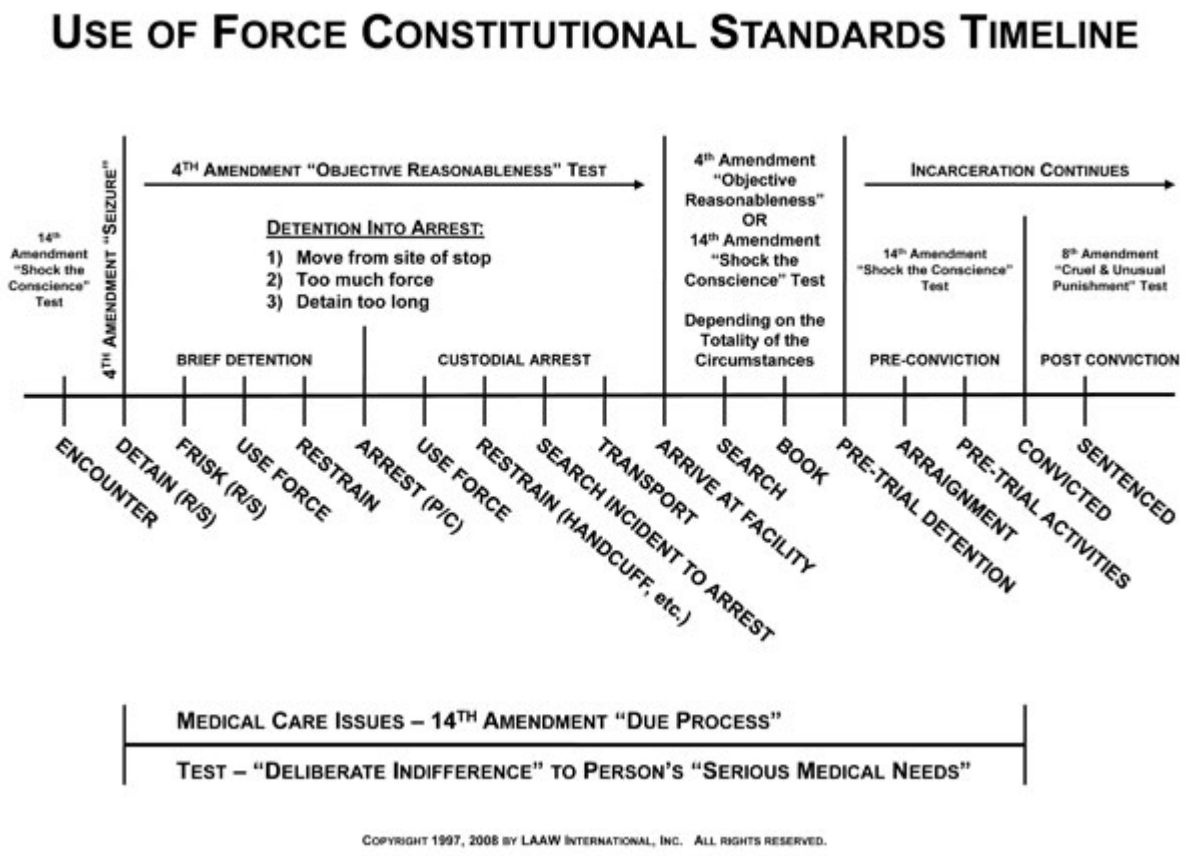
3 keys to improve public's perception of force

When used lawfully, reasonably, and within the totality of the circumstances, force is appropriate; we need to work hard to educate the press and the public that this is the case

Law enforcement officials have always had the lawful ability to use force within the context of their jobs. Yes, force has been abused at times in American history and individuals have had their rights violated.

There is a whole host of incident in recent memory that provide for a skewed application of force, from Kent State to Rodney King, Seattle's Consent Decree, the St. Paul Police skyway TASER incident, and the Brown incident in Missouri.

Force is used in a tiny fraction of police contacts with the public. Below is a chart which was created by LAAW International's Mike Brave, which provides for a visual representation for guidelines of force.



Constitutional Use of Force

Force is part of a law enforcement professional's job, and sometimes there is no other option. Sometimes the reasonable thing is for officers to use lethal or less lethal force on an individual. In looking at the Rodney King incident, the sitting federal judge hearing the case stated that about five of the baton strikes to Mr. King were excessive. Conversely that means that about 50-55 were not "excessive."

Recent research conducted by policy groups to include: Force Science, California Training Institute, and Dr. Darrel Ross on the dynamics of a human factors have created a great breadth of knowledge. This research has provided for a more robust understanding of officers, decisions, memory, and dynamics of force incidents.

There are three simple things that you can do to change the public's perception of the application and understanding of force.

1. **Positively work with the community to help them understand the job of the law enforcement professional.** This is a tough job. There should be very intense media days which puts the media in the shoes of your officers. They should be put through the paces of defense tactics training, firearms, driving, and then simulators or scenarios, then asked to describe what they did and why.
2. **Bring civic leaders and do the same.** Of course this should not be done on the heels of an incident, but well in advanced of something. The more allies or at least people that understand the dynamics of what your officer has done creates more support.
3. **Always support your officers when they do things right.** Punish them fairly when they do things wrong or incorrectly. But also provide support with training, education, and policy development. Conduct fair internal investigations, provide discipline, and corrective action when appropriate. Provide updated training after every incident that causes for a large scale incident in your community. Most importantly do not make the officer a spectacle or political fall guy.

Conclusion

Force is one of the most controversial, and misunderstood parts of today's law enforcement job description. Officers should not be afraid to "put hands" on an individual when objectively reasonable. Departments should not limit officers' ability to use force under the Fourth Amendment, and following SCOTUS case decisions. This doesn't mean officers should "freelance" force or use excessive or illegal force. In about 95 percent of contacts with the public, officers do not use force.

Using force is part of the job — it is part and parcel to lawfully fulfill of the duties of the position. When used lawfully, reasonably, and within the totality of the circumstances, force is appropriate; we need to work hard to educate the press and the public that this is the case.

About the author

Dr. Matt Stiehm has received an Educational Doctorate from Argosy University, where the focus of his research was campus safety and security. He has served as a police officer in three states (CA, MN and NE), he keeps current on law enforcement trends. He currently is a member of ILEETA, MN Infragard, FBI LEEDS, an Associate Member of the IACP, Support Member of the MN Chiefs Association, the Midwestern Criminal Justice Association, and recently Police Executive Research Forum Subscribing Member. He is currently conducting some independent research projects into police use of force, campus public safety use of force, and general leadership trends.

September 03, 2014

 **Blue Knights** with Lt. Dan Marcou

How cops can help citizens better understand police use of force

Policing — already a dangerous profession — is becoming even more so because of anti-police rhetoric and inaccurate reporting in use of force cases

Picture the following hypothetical scenario: A chief at a press conference states, "Ladies and gentlemen I have gathered you here today, because police use of force cases are routinely mishandled by journalists and

community leaders. It is my belief that journalists and community leaders may do a better job in this area if they have at least a basic understanding of what a justified use of force looks like."

There are three things the public needs to know about contacts with police.

1. Be courteous
2. Be cooperative
3. Be compliant

Criminality, Not Color
It is important for you to convey to the public that police officers pursue criminality, not color. Officers must have a reason to make contact with an individual. They must be able to explain later in court that they had either a reasonable suspicion or probable cause to believe the individual had committed or was about to commit an offense.

The fact is that more than 95 percent of police contacts are handled without rising above the level of dialog. This is because most people are cooperative and compliant. This is the way it should be, because it is unlawful to resist and or obstruct an officer, while in the performance of his/her duty.

If a person disagrees with a stop or an arrest, the place to argue the case vigorously is in a court of law, not on the street.

Force Options
When an officer meets resistance, officers are trained to use a level of force justified by the specific threat, or resistance they are presented with. For example, if a person pulls away from an officer making an arrest and snaps, "Don't you touch me," the officer can choose to apply a compliance hold to that person.

These holds are designed to convince the person to comply.

When a suspect is actively resisting, the officer can also choose to disengage and deploy a TASER or utilize pepper spray to overcome that resistance.

It might surprise some people to discover that when a suspect strikes an officer, or even acts as if he or she is about to strike an officer, that officer can legally deliver impacts with what we call personal body weapons.

Officers can punch, kick, or strike with elbows and/or knees to defend themselves and/or make an arrest.

Officers can also choose to deliver baton impacts to targeted areas on the body. Officers can even strike a suspect more than once if once does not stop the suspect's threat. If a suspect tries to hit an officer, don't be surprised when that officer hits back.

Use of Deadly Force
I've never heard an officer say at the beginning of a shift, "I hope I get to shoot someone today."

While the vast majority of officers never fire their weapons in the line of duty, some have to. When an officer is faced with the threat of death or great bodily injury — or someone they are sworn to protect is faced with that same imminent threat — an officer is justified in using deadly force.

There are three generally held misconceptions about deadly force that continually arise and need to be addressed:

1. **An officer can shoot an unarmed man under certain conditions.**
   An officer may have to use deadly force on an unarmed man who is larger, stronger, and/or attempting to disarm the officer, for example. In the case of a suspect, who is battering an officer to the point that he or she may suffer death or great bodily harm, the use of deadly force is defensible. Police officers do not have to sustain a severe beating in the line of duty.

Other factors that could justify an officer's choice to utilize deadly force are the extent of that officer's injury, exhaustion, or the number of assaultive adversaries the officer is confronted with.

2. **An officer can, in certain conditions, shoot someone in the back.**
   You see if a suspect is fleeing and their escape presents an imminent threat of death or great bodily harm to the community at large, the use of deadly force can be justified. On some occasions a round might enter through the back, because of the dynamics of the circumstance.
3. **Officers are not — and never will be — trained to shoot to wound or shoot weapons out of subjects' hands.**
   These are not realistic options. Handguns are not accurate enough to deliberately attempt such things when lives are on the line.

The Bottom Line

From 2003 to 2012, 535 officers were killed in the line of duty in this country. Another 580,000 were injured in the line of duty.

I'm afraid that policing — which is already a dangerous profession — is becoming even more so, because of anti-police rhetoric and inaccurate reporting in use of force cases.

If every person contacted by officers were to remain courteous, cooperative, and compliant, there would never be a need to employ force. The reality is, however, that although most people will cooperate, some people will resist arrest.

It is not easy for a lone police officer to get a resistive suspect into handcuffs. If it looks rough, that's because it is rough.

Police work is a contact sport, but for cops there is no second place. If someone in the public sees a cop struggling with a suspect and decides not to give him/her a hand, they should at least give them the benefit of the doubt.

Cops are not asking for citizens to get into the arena with them — they would just like the audience to stop cheering for the other team.

The only way to get these three extremely simple ideas out to our communities is for you to take this information and share it, with both your fellow officers and with your community members.

About the author

Lt. Dan Marcou retired as a highly decorated police lieutenant and SWAT Commander with 33 years of full time law enforcement experience. He is a nationally recognized police trainer in many police disciplines and is a Master Trainer in the State of Wisconsin. He has authored three novels *The Calling: The Making of a Veteran Cop* , *S.W.A.T. Blue Knights in Black Armor*, and *Nobody's Heroes* are all available at Barnes and Noble and Amazon.com. Visit his website and contact Dan Marcou

August 27, 2014

 **Survival Sciences** with Chuck Joyner

7 rules to prevent 'excessive use-of-force' accusations

How do we protect the many officers who have been falsely accused of excessive force and then libeled and slandered in the media?

As a peace officer, how many times have you thought about going to prison? Probably none. But imagine doing your job protecting the public and having to use force to arrest a resisting suspect. Imagine that you are arrested for excessive force. Months later, you're sitting at a table in a courtroom being referred to as "the defendant" and facing years in a federal prison.

Officers who have knowingly and deliberately used excessive force should be prosecuted — just as all criminal activity should be prosecuted — but what about the many officers who have been falsely accused of excessive force and then libeled and slandered in the media? How do we protect them?

In recent years, the DOJ has placed greater emphasis on identifying and prosecuting cases of alleged excessive force. I was recently involved in a trial in which, in my opinion, the DOJ's prosecution of the officer was clearly overzealous and unwarranted. Even though the officer was acquitted and another charge was dropped, it is a tragic, financially devastating, heart-breaking event. I don't want you to suffer a similar fate.

1. Know the Law — Specifically, Know *Graham v. Connor*

All officers should be intimately familiar with this landmark U.S. Supreme Court decision regarding use of force.

If you are not, your legal training has failed you. But that is not an excuse. Look it up, read it, understand it now, and apply it always.

At the very least, be aware that *Graham v. Conno*r established a three-pronged test to evaluate the reasonableness of an officer's actions. These are:

1. What's the nature of the offense (what brought the officer and suspect together)?
2. Is the person an immediate threat to the officer or another?
3. Is the person trying to flee or evade arrest?

Of these three, other court decisions have repeatedly stressed the "immediate threat" is the most critical in establishing if the force used was reasonable.

To oversimplify *Graham v. Connor*, you are not reasonable if you use a baton, pepper spray, TASER in dart mode, or personal weapon strikes on a person who is not an immediate threat to you or someone else.

You are allowed to use those tools if you can explain how that suspect was a threat.

2. Know Your Department's Use-of-Force Policy

You will be asked about your department's use of force policy. The jury will be told if you violated your policy. A violation of policy is not the same as a violation of law, but it will be used against you in an attempt to show you are either incompetent or a rogue officer.

3. Use Force Legally and to the Best of your Ability

Solve the problem quickly. I've seen a few cases in which officers used excessive force. But I've seen many more cases in which officers did not use enough force. Choosing to use less force than warranted usually leads to the situation deteriorating. It increases the likelihood of injuries to the officer and the suspect.

I've addressed this before but it seems to be a widespread problem in law enforcement. Never use unreasonable or excessive force, but don't hesitate to use reasonable, lawful force to the best of your ability.

4. Write the Best Possible Report After a Use-of-Force Incident

Every single time you use force, assume you will be sued and assume you will be charged with excessive force.

With that in mind, do your best to write a complete and accurate report.

In discussions with other use-of-force experts and PoliceOne contributors, a common concern is that officers routinely fail to write good reports after a use of force incident.

I get it. It's been a long day, you're tired, you want to get home, and it's possible nobody will ever read the report.

Please don't think like that. Your report will be scrutinized and picked apart. A decision may be made whether or not to file charges against you based upon the contents of your report.

Writing your use-of-force report is not the time to cut corners (for more on this topic, see this article).

5. Get Help Early
Talk to someone in your department you know to be an expert on use of force and report writing. Ask for their help and guidance. Contact your union and union attorney.

6. Work Well with Your Attorney
Listen carefully to your attorney and follow his/her guidance. Your attorney can only help you if you're completely honest. Let your attorney know everything that may be used against you. No attorney likes to be surprised in the courtroom.

7. Prepare
You will be asked about the law, your policy, and your actions. Make sure you can talk about these in a confident, knowledgeable manner. Don't use words you don't understand. It may sound silly, but this is a real issue.

In one case I'm familiar with, an officer used the word "articulate" in his testimony. The opposing attorney asked the officer if he knew the definition of articulate.

He didn't.

Not only is this embarrassing, it also affects your credibility with the jury. Don't try to be fancy and don't pretend to know more than you do. Study, prepare, be yourself, and be honest.

Remember: Know the law, know your policy, don't be afraid to use reasonable force to the best of your ability when necessary, write a complete and accurate report, get help early, work well with your attorney, and prepare to the point you are over-prepared.

About the author

Chuck Joyner was employed by the CIA from 1983 to 1987, and was a Special Agent with the FBI from 1987 until his retirement in October 2011. Chuck is the creator of the Dynamic Resistance Response Model (DRRM), a modern Use of Force model. He currently is the President of Survival Sciences, LLC, offering training and expert testimony to law enforcement on use of force topics.

October 20, 2014

 **Destroying Myths & Discovering Cold Facts** with Force Science Institute

Success story: Cops 2, Plaintiffs 0 in excessive force lawsuits

"These were the first major cases I've been involved in where I applied material from Force Science since attorneys began calling on me for expert witness work 13 years ago," Sgt. Thomas Ovens told Force Science News.

Sgt. Thomas Ovens, an officer in the state of Washington, had scarcely hung up his diploma from the Force Science Certification Course when, in quick succession, he was called on to help defend two major lawsuits against police.

In one case, officers with a large department in Eastern Washington shot and killed a home invader who had assaulted a woman, stabbed a family dog with a "large" knife, tried several times to stab an officer, ignored verbal commands at the end of a foot pursuit, and, still brandishing his bloody edged weapon, turned and charged toward officers after a TASER had failed to bring him down. His survivors claimed that the volley of rounds officers fired at him was excessive and fatally violated his civil rights.

In the other case, a sergeant and his city from Western Washington were named in a federal excessive force suit after the sergeant briefly deployed a TASER against a neighbor who challenged officers while they were trying to subdue an elderly suicidal subject. A district court initially dismissed the case on summary judgment, but on appeal the 9th Circuit appellate court ruled that the suit should go to trial, and Ovens became a key expert witness for the defense when the matter finally played out back at the district level.

"These were the first major cases I've been involved in where I applied material from Force Science since attorneys began calling on me for expert witness work 13 years ago," Ovens told Force Science News. In both cases, he was able to use concepts he learned in the certification course about how human beings perform under stress to explain and justify the actions of the officers involved.

And in both cases, his input was regarded as pivotal in winning victories for the police.

Duel of Experts

With more than two decades on the job and experience as a trainer since 1993, Ovens had testified in previous cases in federal and state courts on a gamut of issues, including patrol procedures, tactical operations, and use of force. In the Eastern Washington case, his principal assignment was to evaluate the pre-trial opinion of an expert for the plaintiffs, a former major crimes detective recently retired from a sheriff's office after nearly 30 years in law enforcement.

To subdue the aggressively resistant home invader, two of several officers responding to the incident fired four rounds each, striking him four times. In her analysis, the plaintiff's expert agreed that seven of the shots were justified. But, she argued, the final, eighth round was "objectively unreasonable and unnecessary force."

That round was the fatal one, striking the suspect in the neck and causing blood to "immediately" pour out of his throat and mouth. It was excessive, the expert asserted, because it struck when the assailant had dropped the knife, fallen to the ground, and was "already impaired from the previous three gunshot wounds to his body." At that point, she declared, "the serious level of threat had been removed."

Time to Stop

Drawing on his recent Force Science training in his written response, Ovens pointed out that "there are physiological and cognitive limitations to officer performance during a deadly force encounter."

Among these is the Force Science research finding that when officers are firing rapidly in a high-stress, life-threatening confrontation, "in the time it takes for an officer to perceive that the threat has been stopped, decides to stop shooting," and then is able to actually stop, "the average officer will [involuntarily] have fired two additional shots." In other words, just as it takes time for an officer to start shooting once a threat is perceived, it takes time to stop once there's recognition that circumstances have changed.

Noting how quickly officers can pull the trigger under maximum urgency, Ovens estimated that all eight shots probably were "fired in less than one second from the time of the first shot." In that drastically compressed time frame, he explained, for the officers to have perceived that the suspect had dropped the knife, was falling, and was neutralized and to then cease firing would have been "physiologically impossible."

For good measure, Ovens used information from his certification training to address other key issues that seemed likely to arise as the case progressed. Among other things, these included reasonable time-and-distance parameters for dealing with edged-weapon threats, action-reaction realities that impact officer behavior, mental "schemas" or patterns that guide decision-making under stress, and modern standards by which officer actions should be judged.

In all, his assessment of the reasonableness of the officers' use of deadly force covered nearly 20 pages.

Outcome
"The officers in this case did a great job," Ovens says. "I was able to come in after the fact and use Force Science principles to support them."

The result: Shortly after Ovens's report was submitted to defense attorneys and reviewed via the discovery process by opposing counsel, the plaintiffs voluntarily dropped their lawsuit. "The case was dismissed with no finding of any wrongdoing whatsoever on the officers' part," Ovens says.

TASER Controversy
In the Western Washington case involving the controversial TASERing of a meddlesome neighbor, Ovens' courtroom testimony focused on a subject that's explored in depth in the certification course, Recognition-primed Decision-making (RPDM).

The plaintiff was quietly watching TV at home with his wife one spring evening when they were distracted by a ruckus outside. Police had arrived next door to deal with an 80-year-old man, reportedly armed with a gun, who had run a hose from the exhaust of his car into one of the windows and was trying to commit suicide.

Efforts by four officers and a sergeant to get him out of the car and handcuffed had resulted in his being Tased twice. He was being held on the ground, "moaning in pain" with his hands under his body, when the plaintiff hurried out of his house and approached the scene, demanding to know "What are you doing to Jack?!"

Officers yelled at him to "stop" and to "get back" from them. He did stop, "frozen with fear," but didn't retreat. The sergeant started to warn him that he would be TASERed if he didn't leave, but then discharged his TASER before completing the warning. The sergeant ended the TASER exposure after just two seconds. The man fell, in "excruciating pain, paralysis, and loss of muscle control."

In remanding the case for trial, the appellate court in a split decision had ruled that Jack's "concerned" neighbor had "engaged in no behavior that could have been perceived...as threatening or resisting." Consequently, "the use of non-trivial force of any kind was unreasonable."

In a written analysis and in his testimony, Ovens explained that the volatile situation at hand had been far from benign. "A suicidal subject by definition is homicidal and may decide to kill someone else before killing themselves," he stated. As the officers attempted to control this uncertain and rapidly evolving encounter, the intruding neighbor was a potentially dangerous distraction.

"In the middle of a struggle with an armed suicidal subject is not the time or place to answer the plaintiff's inquiry," Ovens explained. "He interposed himself where he had no legal right to do so and where common sense dictates he not interfere."

Given the circumstances, his mere proximity "could reasonably be interpreted" as threatening, and his TASERing was "a reasonable force option."

Much of Ovens' trial testimony focused on RPDM, which is explained in detail during the certification course. Basically, this involves a decision-making shortcut that the brain takes in selecting responses in high-stress, time-pressured situations.

Up against an urgent, ambiguous, dynamic confrontation where critical information may be missing, an officer doesn't have the luxury of considering a range of control options and rationally analyzing the pros and cons of each. Instead, the brain is forced to quickly grasp whatever assessment cues are available and in microseconds scan through past encounters to try to match them to a familiar pattern, and then seize upon an immediately available response that has proved effective in similar circumstances.

The result may not be ideal, but under the circumstances it can be reasonable, given what the officer knew before acting.

The sergeant being sued for excessive force, Ovens explained, could not have known the plaintiff's orientation and intent. But from past experience and training, he would have recognized the violent potential of an angry, disruptive individual who was failing to retreat from a dangerous situation despite commands. For the sergeant to Tase him briefly to prevent a chance of escalation was well within the realm of reasonableness at the time this incident took place.

Victory

The plaintiff had hoped to be awarded more than $1,000,000 in compensatory and punitive damages and attorneys' fees, Ovens says. But in the end, the jury didn't see it the plaintiff's way. In a verdict decided last April, the jurors instead exonerated the sergeant and gave the plaintiff exactly...zero.

Defense attorneys told Ovens that his contributions were influential in both these cases. Ovens, in turn, shares the credit with Force Science. "The certification course gave me the ability to test the plaintiffs' theories and see what's really true scientifically and to explain how officers decide what to do in time-pressured environments," he says.

Have a success story to share with fellow officers worldwide? Drop us a note at: editor@forcescience.org.

About the author

The Force Science Institute was launched in 2004 by Executive Director Bill Lewinski, PhD. - a specialist in police psychology -- to conduct unique lethal-force experiments. The non-profit Force Science Institute, based at Minnesota State University-Mankato, uses sophisticated time-and-motion measurements to document-for the first time-critical hidden truths about the physical and mental dynamics of life-threatening events, particularly officer-involved shootings. Its startling findings profoundly impact on officer training and safety and on the public's naive perceptions.

For more information, visit www.forcescience.org or e-mail info@forcescience.org. If you would benefit from receiving updates on the FSRC's findings as well as a variety of other use-of-force related articles, please visit www.forcesciencenews.com and click on the "Please sign up for our newsletter" link at the front of the site. Subscriptions are free.

April 07, 2014

 **Destroying Myths & Discovering Cold Facts** with Force Science Institute

6 ways cops can aid their lawyers to win use-of-force litigation

How can an officer can best help a lawyer in preparing the strongest defense possible after an OIS or other major force confrontation? Here are six ideas to get the discussion going.

Are you an officer who has been involved in use-of-force hearings or litigation, or are you an attorney who represents LEOs when their force decisions are reviewed or challenged?

If so, we'd like to hear your views on how an officer can best help a lawyer in preparing the strongest defense possible after an OIS or other major force confrontation. What, in your experience, are key do's and don'ts of working with an attorney to get a justified, favorable resolution?

To stimulate responses, Force Science News put that issue recently to Heather White, a Salt Lake City police liability attorney. White is a graduate of the Force Science certification course, and a past president of the Utah chapter of the Federal Bar Assn.

Here are six tips she offers after nearly 20 years of defending officers in federal civil rights/excessive force lawsuits. Note that some suggestions have to do with your actions before a lawyer is even involved.

Agree? Disagree? Have other lessons you've learned the hard way? Send your comments to training@forcescience.org. We'll post reactions in a future transmission.

Meanwhile, remember: Your insider perspective shared now may help a brother or sister officer who survives a street threat--and then is thrown into the unfamiliar shark tank of legal judgment.

Here's Attorney White's advice, with relevant examples from her case files:

1.) Detail Your Training
"It's important to educate your lawyer, in detail, about what you were trained to do, how you were trained to do it, and why you did it in the circumstances you faced," White says. "This helps the attorney talk about the 'objective standard' behind your actions in a way that judges and jurors can understand."
Example: An officer standing with a DUI suspect outside a pickup truck suddenly performed a foot sweep that tumbled the driver to the ground. "On the dash-cam video, it looked like the officer just walked up and dumped the guy," White says.

What the camera didn't show was the offender tensing up when the officer touched his shoulder, then starting to lurch back toward the cab. The officer explained, from his training and experience, about the danger cues of certain body language and the potential risk of the suspect reaching a weapon inside the truck--concepts the average naive juror wouldn't think of.

"Being able to show that officers are trained to see and react to things differently from civilians helps jurors accept that in that situation, they would have done the same thing," White says.

2.) Drop Your Façade
"It's very important for judges and juries to see an officer who has been in a shooting as a human being and not just a robotic force," White says.

She urges clients to "take off the emotionless professional facade" and express their feelings to her honestly. "I want to know how they feel after the act and what emotion went through their mind just before they shot, when they thought they were about to be separated from their family forever or realized they were about to take a human life."

Some are "sad, even weepy," others angry about having been forced into a him-or-me choice. "Whatever their genuine emotions, a good attorney can work with it in court to humanize the officer and counter the media image of cops as people who like guns and like being aggressive. Digging through the tough mental armor can help build the picture of an officer who didn't take a necessary decision to shoot lightly."

3.) Leave Wiggle Room
"When describing your shooting, in your statement or in testimony, leave a little bit of room for error. This is critical," White says. "Rather than being too specific about times, distances, and other factors that can be measured independently and also compared to the testimony of other witnesses, it's usually best to avoid absolutes. Forensics may prove you and your certainties wrong.

"When life-threatening events happen as fast and under as much stress as most shootings, it's usually impossible to register all details with precision. So it's really more accurate to describe what you thought you saw or experienced--how things seemed to be from your unique perspective.

"When you don't lock your attorney into rigid specifics, you make it easier to introduce human limitations of perception and memory and to address or avoid potential inconsistencies."

4.) Think Ahead
Evaluate what you say and do at the scene of a confrontation in terms of "whether you'd like to see it replayed on a big screen in a federal court house," White advises.

Example: A woman who had tried to help her husband escape from police was handcuffed in the back of a patrol car. In conversation with an officer, she became highly agitated and belligerent, baiting him at one point by asking: "What are you gonna do, stomp on me?"

"No," the officer replied, "I'm gonna smash you in the face!"

"He was being sarcastic," White explains, "but what he said was captured on the audio of a back-facing camera." In court, "this didn't play well to the jury," and gave White as the officer's attorney a problem of "unprofessional conduct" to deal with that distracted from the core of the case.

"The officer could have prevented that by simply ignoring her," White says.

5.) Provide Real-Time Commentary

"If you're not recording your encounters these days, chances are that someone else is," White says. Thus, your communication style becomes indelible and not easily backpeddled in court.

When circumstances permit, White strongly favors explaining to subjects why you are instructing or asking them to do things rather than simply ordering them to comply. "In litigation, this can be helpful to have recorded," she says. "If you're able to explain as you go along why you're asking or doing something, it helps the jury understand your thinking and your actions.

"Of course, don't compromise your safety by talking when you should be acting immediately. Officer safety is paramount. But when possible, explaining creates better rapport and tends to give you more credibility with a jury."

6.) Identify Witnesses ASAP

"Never underestimate the value of getting statements from witnesses right away, before they have a chance to fabricate things to suit their biases," White says. "The sooner you get even an informal preliminary statement, the less tainted it's likely to be."

Example: When a long pursuit of a stolen truck through multiple jurisdictions finally ended in the barnyard of the suspect's own rural residence, the driver hopped from the cab and started walking toward an open field. "As officers came after him, he suddenly whirled around in a shooting stance, with an object in his hand," White recalls. Without hesitation, two officers fired at the subject and killed him.

"Turned out he was not holding a gun," White says. "He was pressing a knife against his wrist."

As the smoke cleared, a county officer immediately approached a man who'd been working on a truck in the yard and asked him what he'd seen. He wrote down the man's exact words: "I even thought he had a gun."

The witness was the suspect's brother-in-law. Later when the family filed a suit claiming that the shooters should have known the suspect was not brandishing a gun and posed no urgent threat, "the statement was critical to the jury's determination that the officers were justified in shooting," White says.

If you're a shooting officer at a scene, your involvement with witnesses will likely not be practical or desirable. "But often," she says, "there are other officers present who can readily take up this important task."

These brief tips are a just few of many that could be offered. Let us know what you'd like to share about working successfully with attorneys at training@forcescience.org.

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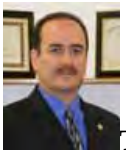 **Taking Training to the Next Level** with Ed Flosi

Use of force: Defining 'reasonable' versus 'necessary'

For police use-of-force incidents, the definitions of words like ‘reasonable’ and ‘necessary’ are often discussed but sometimes also misused or misunderstood

In the past several years I have heard many different legal “standards” being tossed about regarding how much force an officer can use when effecting an arrest, preventing escape, or overcoming the resistance of a subject. Some of the standards I have heard include:

1.) Minimal Force
2.) Necessary Force
3.) Reasonable Force

In all three examples, the word “Force” is the noun and the word preceding it is an adjective that describes the noun. Sorry for the short grammar lesson, but it will be important later on in the article. Another trainer once said, “The law is comprised of words, and those words have definitions.”

Minimal Force
We will examine the three terms above. As a glimpse into the future, I advocate for the term “reasonable force” (or more specifically “objectively reasonable force”) and stay away from the others as much as possible.

If officers only worked in the most ideal situations and under perfect conditions with an abundance of time and resources to deliberate their force option choice, an officer might be able to use only the minimal force needed to diffuse a situation. It is well understood by practitioners, and even most academics, that this perfect world does not exist. This statement is especially true during an encounter with a resisting and/or threatening subject.

Minimal force is a utopian standard that — in anything other than a perfect world – would be impossible to attain. The term in of itself implies a very specific level (quantum) of force. It is the exact minimum level that could have been used in that situation. How difficult would it be to get a quorum on the exact minimal amount of force in any given situation? In tense, uncertain and rapidly evolving situations it would require the officer to make several assessments and calculations during the force application that flies in the face of human performance limitations.

One could argue that the minimum amount of force that was required in any situation is no force. This is because an officer in any given situation could choose to simply walk away without using any force at all. Some may believe the “walk away with no force” to be a good thing

It is a slippery slope to even implement this thinking using a graduated approach. Recently in *Brooks v. Seattle*, the 9th Circuit Court of Appeals ruled on a case where an officer used an electronic weapon in drive-stun mode. Some “experts” have opined that the officers should have just let Brooks go since the severity of the crimes at the moment were minimal (although arguably minimal, there were at least two bookable offenses committed by Brooks). They advocate for a “who cares?” approach... just “walk away with no force.”

“Walk away with no force” in every case is obviously a standard under which we cannot and should not operate. If the officers in *Brooks* were to walk away from this it would set a bad precedent. Today we walk away from those that do not want to sign a citation, tomorrow we walk away from what else?

Necessary Force

Depending on your viewpoint, the term "necessary force" can take on two very different meanings. One side views the word "necessary" in this context as a two-part inquiry that begins with a question to determine if there was a legitimate law enforcement objective in the force response, such as effecting a detention or arrest. If there is a legitimate law enforcement objective, is some level of force necessary to achieve the detention or other objective? If the answer is "yes" to both parts of this inquiry, the force would be deemed "necessary."

Proponents of this viewpoint use this question to probe only the first part of the analysis. They still have to answer the larger question. If the force is deemed "necessary," was the amount, degree or nature (quantum) of the force "reasonable?"

The two questions do not always have the same answer. The answer to the first part may be "yes" there was a legitimate law enforcement objective and some level of force was necessary to accomplish it. The second answer may be "no" because the amount, degree or nature of the force was excessive.

The other side of the argument looks at the standard definition of the word "necessary." A quick check of Merriam Webster Online Dictionary shows that the word necessary (used as an adjective) has several meanings and synonyms. Included in this list are:

1.) inescapable, and,
2.) absolutely needed

A few of the listed synonyms include, compulsory, mandatory, non-elective, obligatory, and required.

Based on this definition, they ask a simple question, "How do we prove that an officer's force response is truly necessary?" Their point is actually quite sound. Consider this situation:

An officer is being threatened by a subject. The subject has a large knife and is aggressively charging the officer at a rapid pace. There are no physical barriers or obstacles in the path of the subject and the officer cannot retreat. Before the subject is able to get close enough to plunge the knife into the officer, the officer shoots and stops the subject. How is an officer supposed to know (not have "probable cause to believe" but actually know) that:

- The suspect would have continued the actions assaulting or killing the officer, or
- The suspect might have stopped and surrendered just short of stabbing the officer, now rendering the officer's actions not "necessary" as defined?

Only an officer that would be willing to wait to find out what the subject's actual intentions were would be able to answer this question — not a solution that I would accept. As crazy as this argument appears to any sane person, this "situation" comes from an actual case and the argument was made by the attorney representing the subject that was shot. Would you want your fate determined by a jury that was confused by this argument based on a false premise?

Another situation might be an officer that perceives a replica firearm as an actual firearm and, based on the totality of the circumstances known to the officer at the time, reasonably shoots the subject. Although the actions may be objectively reasonable based on the totality of circumstances, how does one prove that it is "necessary" (as defined in Merriam Webster) to shoot a person with a replica (non-functioning) firearm?

We examined the terms "minimal force" and "necessary force." Although still widely used in discussions regarding an officer's use of force it should be apparent now that these terms carry some negative baggage with them as a force standard. We will now continue the exploration of these force standards to include the standard that I advocate for: "objectively reasonable."

Speaking from a grammatical point of view, the term "objectively-reasonable force" is a much more accurate standard to describe what officers using force should be held to.

The term does not carry the unrealistically-utopian idealism of the term “minimal force.” It also does not give any implication that it describes an exact quantum of force that can be debated for weeks. It does not give the idea that a use of force should be looked at with hindsight to determine if it really was “necessary.”

Indeed, all one needs to do is to revisit our friend Merriam-Webster’s Online Dictionary. The word reasonable (used as an adjective) also has several meanings and synonyms. Included in this list are:

1.) being in accordance with reason, and
2.) not extreme or excessive.

A few of the listed synonyms include: good, rational, logical, sensible, and sound.

When comparing the definitions of the terms written about in this article, would you rather be held to a standard that:

1.) requires absolute certainty and can consider facts that were discovered with hindsight, or
2.) takes into consideration the legal standard used by the Supreme Court of the United States and human performance limitations.

I know the answer is obvious to me.

I realize that some will dismiss this thinking as “just semantics.” I caution those naysayers with the same words one of my trainers told me several years ago, “the law is comprised of words, and those words have definitions.” Please take heed to these wise words as it is for your benefit.

Objective/Subjective Decision — Objective Analysis
The word “objectively” is the adverb form of the word “objective.” In this case it is used as a modifier of the adjective “reasonable” to describe the noun “force” (sorry for the grammar lesson…again). Another quick check with Merriam-Webster’s Online Dictionary reveals the definition of “objective” to include, “involving or deriving from sense perception or experience with actual objects, conditions, or phenomena.” Listed synonyms include; empirical and observational.

An officer will make his/her force-option decision based on the actions of the suspect. If the suspect is non-resistive and compliant, the officer will have no reason to have to resort to a force response. So in essence, it is the suspect who forces an officer to choose a force response.

The force option chosen and how it is deployed and used against the suspect can have a subjective component. The officer may have a choice of reasonable options but based on personal preference may lean toward one more than the other. This is where the subjectivity comes into play. The decision made must still be made based on objective facts known to the officer at the time of the force application.

The officer’s force response will definitely be evaluated from an objective standard, as one will clearly recognize after reading and understanding the true legal standard of an officer’s use of force.

The True Legal Standard
In 1989, the Supreme Court of the United States (SCOTUS) handed down one of the landmark decisions regarding an officer’s use of force. The case was *Graham v. Connor (490 U.S. 386)*. This decision created a national standard that is still in place today. In its decision, the SCOTUS made it clear that an officer’s use of force on a free citizen is to be evaluated as a seizure of the person under the Fourth Amendment. Indeed, the SCOTUS said in its holding:

All claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

What is important to the reader for this article is the phrase "objective reasonableness." How did the SCOTUS come to this term? Perhaps a quick review of the Fourth Amendment can shed some light. The Fourth Amendment protects the people against unreasonable searches and seizures by the government and its agents. Therefore it would logically follow that officers must act reasonably when seizing people.

Graham set forth several evaluation guidelines and factors to be taken into consideration when evaluating an officer's use of force. These evaluation guidelines include one overarching direction to anybody who chooses to opine about an officer's force response:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.

Once the person that chooses to render his/her opinion understands this overarching direction, they also need to be aware of these guidelines while making their determination of the reasonableness of the officer's force response:

1.) Judged through the perspective of a reasonable officer
    a. Officer with same or similar training and experience
    b. Facing similar circumstances
    c. Act the same way or use similar judgment
2.) Based on the totality of the facts known to the officer at the time the force was applied
    a. No matter how compelling the evidence is to be found later
    b. No hindsight evaluation
3.) Based on the facts known to the officer without regard to the underlying intent or motivation
4.) Based on the knowledge the officer acted properly under established law at the time

In order for an officer's use of force to be deemed "objectively reasonable," his/her force response ("what" and "how") must be reasonably balanced with the governmental interests at stake ("why"). The officer's force response level (quantum) can be measured by evaluating:

1.) "what" force option was used, and
2.) "how" it was used.

Another way of viewing this would be to ask the question, "What was the reasonable expectation of injury?"

In Graham, the SCOTUS gave law enforcement several factors to examine when evaluating the "why" of an officer's force option including, but not limited to:

1.) the severity of crime at issue,
2.) the threat of the suspect, and
3.) the level of resistance offered by the suspect.

"Objectively reasonable" is the true — and most accurate — legal standard when both teaching use of force, and/or evaluating an officer's past use of force. Using any other standard is avoidably dangerous because it is a false legal standard and can be easily misinterpreted or misrepresented — either knowingly or not.

Use of force: Defining 'objectively-reasonable' force

The term "objectively reasonable" is the true — and most accurate — legal standard when both teaching use of force, and/or evaluating an officer's past use of force

We examined the terms "minimal force" and "necessary force." Although still widely used in discussions regarding an officer's use of force it should be apparent now that these terms carry some negative baggage with them as a force standard. We will now continue the exploration of these force standards to include the standard that I advocate for: "objectively reasonable."

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Deadly force: Thou shall not (intend to) kill

"Bond, James Bond." If this is how you introduce yourself, and you are employed by Her Majesty's Secret Service, and your badge number is 007, then you have a license to kill and you need not read this article. As for the rest of us who might use deadly force to stop or apprehend a suspect, please read on.

Absent a death warrant, an officer's desired results when using deadly force should not be specifically to kill the subject. No matter what the suspect might have done, we must rely on our training and the fact that we are not just held to a higher standard, but we are the higher standard. We need to separate the emotion and remember our tasks:

1.) immediately stop the suspect's actions, and
2.) seize the suspect.

Verbal Traps

Law enforcement officers have a unique way of communicating. Sometimes it comes in the form of morbid humor to relieve stress. Sometimes it is the officer trying to "fit in" whose macho persona just gets in the way of what the officer truly feels. Perhaps you've heard an officer in training say something like, "let's just kill them all and let God sort them out." It is not the intention of the officer in these cases to specifically kill, but as trainers we must address the language if we hear it.

Law enforcement trainers in years past had instructed officers that when they point their gun at someone to tell that person they will "kill" instead of "shoot" him. In force option simulation training it is not uncommon to hear officers yelling, "Stop or I'll kill you!"

When asked if they really would have wanted the suspect to die, their answer is overwhelmingly "no." In some cases, we'd determine that the officer had been trained to say that — the belief being that if the officer said "kill" it would scare the suspect into submission.

Law enforcement officers will do as they train, and under stress the dominant response will prevail. In a shooting, certainly a stressful event, we do not want officers to say something that may cause the officer problems later. Although misunderstood as to why it was said, it might be construed by a third party as a premeditated desire to kill, especially if death were to result. This is something an opposing attorney may try to exploit.

Center-mass Shooting

The idea of using deadly force to stop a life-endangering threat is consistent with law, ethical responsibilities, and with current police training. It is well known that by shooting center mass we are more likely to hit something that will stop the threat. This is purely a tactical issue as under stress it is impractical to believe an officer can stop the threat in an appropriate time by accurately hitting other parts of the body. It is also well known and accepted, that shooting center mass may cause death. Although death may be the result of targeting center mass, it should never be the intention of the officer using the deadly force. The intent of the officer should only be to stop or apprehend the suspect.

We once did a demonstration Force Option Simulator class for the Grand Jury. In our county, officer-involved shootings are reviewed by the Grand Jury to determine if there is any criminal culpability in use of deadly force. One of the members truly did not understand why officers shoot at center mass.

This jurist wondered why officers could not just shoot a suspect in the leg to wound or shoot the knife out of the suspect's hand. A quick trip into the simulator and an introduction to some "tense, uncertain, and rapidly-evolving circumstances" was enough to convince the jurist of the proper targeting areas.

Shooting at paper targets that do not shoot back is generally easy and definitely not life threatening. Substitute an armed suspect that might even be shooting back at the officer and most likely the officer's marksmanship will greatly diminish. In this situation, if the decision is made by the officer to use deadly force it's because the actions of the suspect were perceived by the officer to be imminently life threatening, requiring those actions to be stopped immediately.

In another illustrative example of a deadly force application, an officer responds to an in-progress armed robbery. Upon arrival, the officer sees the suspect exiting the store with a gun in one hand and a bag in the other. Upon seeing the officer, the suspect starts to run away from the officer. The responding officer reasonably believes:

1.) the fleeing subject poses a threat of death or serious physical harm, either to the officer or others (if allowed to escape), and
2.) the subject has committed a crime involving the infliction or threatened infliction of serious physical harm.

If the officer were to shoot at this suspect it would be to prevent the escape of an extremely dangerous suspect. Again, it would be unreasonable to believe an officer under these conditions could stop a suspect that is moving away by targeting anything other than center mass.

Shooting center mass is the only option available that would allow the officer to quickly hit the suspect in an area likely to stop him/her; it is all a matter of tactics. If the end result is the death of the suspect, it is a result of a tactical decision brought about by the suspect's own actions, not the intended results.

Sniper Shot

If a police sniper takes a deliberate head shot on a suspect, is the intended result now death?

It is well understood that the survivability of such a shot is extremely low, but the answer is still the same. The intentions of the sniper officer are to stop the suspect's actions.

Whether the suspect survives the incident or not does not change the reasonableness, or the purpose, of the force used. Nothing changes in this circumstance even if death were to occur — it is the end result of a tactical decision brought about by the suspect's own actions.

Conclusion

It is understood that as a law enforcement officer, one may be forced to take a life in order to save a life in certain circumstances. Law enforcement officers do not shoot to kill, nor do they shoot to wound. In a situation where an officer has made the decision to use deadly force, the suspect is doing something that is causing an imminent/significant threat to life and those actions must be immediately stopped. Officers use deadly force to stop or apprehend.

Remember our role as police officers and next time you are asked, "Are police officers trained to shoot to kill?" politely tell them the truth. NO

About the author

Ed Flosi is a retired police sergeant in San Jose, California. He has been in law enforcement for over 27 years. Ed has a unique combination of academic background and practical real world experience including patrol, special operations and investigations. Ed was the lead instructor for (1) use-of-force training, and (2) defense and arrest tactics for the San Jose Police Department. He has been retained in several cases to provide testimony in cases when an officer was alleged to have used excessive force. He has assisted the California Commission on Peace Officer Standards and Training (POST) in providing expertise on several occasions related to use-of-force training. He has a Master of Science degree from California State University – Long Beach and holds an Adult Learning Teaching Credential from the State of California. He teaches at West Valley College and serves as the Law Enforcement Training Coordinator for Martinelli and Associates: Justice & Forensic Consultants, Inc.

8 keys to a well-written police use-of-force report

A well-written force response report may take a little longer to write on the front end, but will certainly save you much more time (and trouble) later.

Considering the number of contacts officers have with citizens, police use of force is statistically a rare event. "A 1999 BJS report estimated that less than half of one percent of an estimated 44 million people who had face-to-face contact with a police officer were threatened with or actually experienced force," according to a DOJ document.

Further, when officers do use force, it's been shown that in a high percentage of these events (as high as 99.58 percent) the force was reasonable and justifiable. Even with the high percentage of reasonable and justifiable uses of force, we seem to be losing a disproportionate amount of cases in civil lawsuits.

The most likely culprit for this disparity is poor — or lack of — documentation of use-of-force incidents.

Writing a Great UOF Report

When an officer uses force in an event, the force response event should be thoroughly documented by the involved officer(s). This documentation would include, but not be limited to:

1. Written report
2. Photographs
3. Evidence collection
4. Recorded statements

For the purposes of this discussion, let's focus on written documentation. This is not an exhaustive list but it is a good starting point to remember while writing — or, for supervisors, reviewing — a force response report.

1. Pre-Event Details: Include the facts and details prior to the force response. These include:
    a. When/Where/What of the event
    b. How did the officer get there?
        i. What type of event: Call for Service/Flag down/On-view…
        ii. Officer appearance and mode of transportation
    c. What drew the officer's attention specifically to the suspect?
    d. What commands were given to the suspect?
    e. What were the responses to those commands?
2. What was the reasonable suspicion/probable cause prior to the seizure and/or force response?
    a. Describe each and every fact/element to support the seizure/ force response
3. Pre-assault indicators should be noted if present.
    a. They should be described in detail, not with canned phrases like "fighting stance"
4. The "totality of the circumstances" should include all the facts known to or perceived by the officer. Some people have reduced this phrase to just some snappy catch phrase. In reality this is one of the most critical elements of the report that some officers feel they can skimp on.
    a. Why did the officer use force? These include:
        i. Severity of the crime(s) at issue. This is the crime that was occurring when the officer decided to use the force option, not necessarily only the original crime.
        ii. Threat to officers and others
        iii. Level and duration of resistance
        iv. Other force factors relevant to the event describing "why" the officer used the force response, including but not limited to:
            1. Number of officers/suspects
            2. Proximity to weapons
            3. Size and strength differentials
            4. Injury or exhaustion of officer
    b. What force option was used and how was it used (intrusiveness of the force)?
        i. Describe the force option/technique in detail
        ii. Describe how it was used, including the intention of the officer
        iii. Describe the effect and/or non-effect of the force option
5. Suspect action drives officer response. This is a theme that is true and should be reflected in the report. The only innate tool possessed by officers to obtain compliance with the suspect is their voice. After that, it is the suspect that chooses not to comply through his/her actions. These actions are then what compel the officer to use a force option to affect the arrest, prevent the escape or overcome the resistance of the suspect.
6. Each officer should document what they did and why they did it.
    a. It is proper for an officer to describe what he/she saw another officer doing
    b. It is not proper for that officer to describe "why" the other officer was doing it. The "why" should be documented by the officer using the force option.
7. Post-custody actions should be described in detail.
    a. Was medical treatment provided?

i. When was it provided/What was it/Who provided it?

b. Were the handcuffs properly tightened and double-locked prior to transport?

8. Supervisory review. It is extremely important to have a supervisor respond to a force response event to oversee the investigation and make sure all the proper steps are taken to insure a thorough investigation is done. It is also important that the officer's report is reviewed and approved prior to submission.
   a. It is the supervisor's responsibility to make sure the report is the best it can be. Supervisors should not by shy to send a force response report back to be re-written if important facts or details are missing.

The well-written force response report should provide enough detail so that a reader of the report could make a short film about the event. When the filming is over and the involved officer views the film, the officer should be able to say, "that is how I remember the event." A well-written force response report may take a little longer to write on the front end, but will certainly save you much more time and trouble later.

May 30, 2014

 **Campus Safety** with Matt Stiehm

How to protect your career by writing better use-of-force reports

We must change our "less is more" mentality on UOF reports to a "more is more" mindset for the next generation of police officers

Law enforcement officers are trained to document every minute detail in every criminal investigation, incident, or traffic collision. But officers are too frequently failing to appropriately document the application of force — they too often fail to articulate the objective reasonableness of force they used on a subject.

As you know, law enforcement and the use of force is governed by the United States Constitution Fourth Amendment, appropriate state statutes. The reality is that the United States Supreme Court's interpretation of the Fourth Amendment in Graham v. Connor provided clarity for what is objectively reasonable for the application of force.

This case — and subsequent decisions — allows for a lot of latitude with the lawful (objectively reasonable) application of force, but officers routinely short change their efforts with the application of force in their reports. We must change our "less is more" mentality on UOF reports to a "more is more" mindset for the next generation of police officers.

Telling Your Story

Police professionals are excellent at describing interactions between a suspect and victim. We tell their story well, but we rarely share our story in full. Our story of a violent encounter —of why the suspect forced us to use force to control any situation — is important and we need to learn how to share it.

For example, a police use of force report form limits the story telling of the incident in which force was applied. This type of report allows for quick reference and but it does not allow for a full telling of your story. Details are lost, memories fade, and by the time civil litigation comes around, we're often left to wonder "what did those check marks really mean?" or "what are the chicken scratches on the paper?"

The story of an application of force needs to be as detailed as possible — detail protects everyone, even the subject. The absence of details allows for conjuncture and speculation that any civil attorney can use create problems for you during litigation and depositions.

I contend “too much detail” does not create problems — it allows for a richer picture of the incident, and allows for fuller, more rich memory recall. A good report can clearly describe the whys and hows of an application of force.

Telling the Subject’s Story

As a police officer there is also a need to demonstrate in writing, the subject’s actions, all of their actions. The subject’s actions, reactions, comments, statements, verbal utterances, and physical features are important because it sets the stage for the application of force.

The lack of details about the subject again creates a void of information, which cannot be filled once the report has been submitted, and a 1983 suit has been filed. As a police officer, you only get one chance at it. How longer after an incident can the civil suit be filed?

Storytelling Suggestions

When you write a use of force report, start with the call for service. Describe what was going on in your mind, what the traffic conditions were, whether or not any other officers were responding, whether you had prior contact with the suspect in the past. Include the location of the crime, and obviously any information related to crime — weapons or presence of other people at the scene. This sets the stage for preparing for the contact.

Reflect back on the scene. Document your observations, interactions, comments, discussions, reactions, threats, and factors generally known as “the totality of circumstances.” Continue to document your decisions and justification for selection of a specific weapon or force option.

Understanding how to document objective reasonableness is relatively easy. The practical side of doing the documentation is not that easy!

Officers, recruits and FTO’s tell people the old street philosophy that less is more, but that adage needs to change. In UOF reports the “more is more” tactic protects the officer. We need to understand that tellingour stories is how we protect ourselves!

Conclusion

Without a fully written narrative of the incident that including reasons, decisions, and actions, juries and armchair quarterbacks alike will introduce conjecture and speculation. The “experts” who weren’t there during the tense and rapidly unfolding incident will opine on the reasonableness of your actions.

So just tell a complete story. You need to put them into your shoes, your decision-making process.

About the author

Dr. Matt Stiehm has received an Educational Doctorate from Argosy University, where the focus of his research was campus safety and security. He has served as a police officer in three states (CA, MN and NE), he keeps current on law enforcement trends. He currently is a member of ILEETA, MN Infragard, FBI LEEDS, an Associate Member of the IACP, Support Member of the MN Chiefs Association, the Midwestern Criminal Justice Association, and recently Police Executive Research Forum Subscribing Member. He is currently conducting some independent research projects into police use of force, campus public safety use of force, and general leadership trends.

May 20, 2009

 **Survival Sciences** with Chuck Joyner

A proper use of force report — protection against liability

We're pleased to present the article below from PoliceOne Special Contributor Chuck Joyner. Supervisory Special Agent (SSA) Joyner is currently a program manager for a FBI international initiative. He was employed by the CIA from 1983 to 1987 and has been a Special Agent with the FBI since 1987. Chuck is the creator of the Dynamic Resistance Response Model (DRRM), a modern Use of Force model. We must emphasize that the views expressed in this article do not necessarily represent the views of the FBI.

Officers rarely have to use force when dealing with subjects. A 1996 Bureau of Justice Statistics' pretest of its Police-Public Contact Survey indicated about one percent of the people who had contacts with police reported the officers used (or threatened) force beyond presence and verbal commands. However, officers recognize they are likely to use force a number of times during their careers. Once force is used, it is not uncommon for the officer to be scrutinized, criticized, and possibly sued. It has been estimated as many as one in every 60 officers in the U.S. is currently being sued for a use of force incident. Therefore, it is prudent to take necessary precautions after a use of force incident has occurred.

To successfully combat a use of force lawsuit, an officer must do two things. First, and most importantly, the officer needs to be right (i.e., reasonable) in the use of force. Second, the officer must carefully and clearly document why he/she was right and reasonable. Any inaccuracy or omission in the report will be used to attack the officer's integrity and professionalism.

Beginning with the use of force incident itself, it is sensible to say every officer's objective when approaching a subject is to gain compliance as safely and quickly as possible – with the emphasis on safety. The report prepared after the incident must emphasize this fact. In addition to the "check the box" format used by many departments, the officer must also provide a narrative of the event. The narrative should clearly show the officer's response to the subject's resistance was reasonable and proper. Most departments refer to such a report as a "Use of Force Report." This designation can be misleading as it tends to indicate a focus on the officer's actions rather than the resistive actions of the subject. The Urbana Police Department, Urbana, Ohio, has changed the title to "Response to Resistance" report patterned after article, "The Dynamic Resistance Response Model, A Modern Approach to the Use of Force" which appeared in the September 2007 issue of The Law Enforcement Bulletin.

By doing so, Urbana P.D. has more accurately defined the encounter. The subject's level of resistance will always determine the officer's response, and every action taken by the officer is to gain compliance. Recognizing the subject/resistor controls the interaction, the report must first focus on the actions of the resistor.

The report should follow a pattern of Situation, Action (both the resistor's and the officer's), and Results. For example, in describing the situation, the officer must document the nature of the call or what caused the officer to come into contact with the resistor. The situation would also include all known and suspected characteristics of the offender and the officer. This includes age, gender, size, skills and abilities, numbers of subjects/officers, and injuries or illness. Does the subject have a criminal record and/or a propensity for violence? What are environmental conditions? If it's cold, icy, or wet, then traction and balance may become an issue. Is it a high-crime area? Is it in the subject's neighborhood where others may attempt to interfere? Also, what is the presence or availability of weapons? (Recognize a weapon is always present and available to the subject. Every year officers are killed with their own service weapon.)

After completely articulating the situation, the officer must then document the actions. What were the resistor's actions upon arrival of the officer? After providing verbal and lawful commands, what did the resistor do? It is woefully inadequate to write something such as, "I struck the subject with my baton because he resisted." A better statement would be that upon seeing the officer, the resistor dropped his right leg back, bladed his body, slightly bent his knees lowering his center of gravity, and brought his hands up to chest level in a fighting stance. The resistance must be precisely defined. At each stage of the account, the officer must clearly articulate the subject's resistance and the officer's response to the resistance in his/her effort to gain compliance.

When describing the appropriate response, it is imperative officers document their perception of the threat. Law enforcement is a macho profession, but now is not the time to deny reasonable and rational fears. Without fear, or without feeling threatened, the officer has no legal right to use higher levels of force. If the officer doesn't believe his/her safety, or the safety of another, is threatened, then only passive techniques may be used. For example, some officers, reluctant to admit during testimony they were afraid, have foolishly stated they did not fear a knife-wielding assailant. A plaintiff's attorney or prosecutor could then logically ask, "If you did not fear death or serious bodily injury to yourself or another, then why did you use deadly force?" For every action taken by the resistor, the officer must not only state the officer's physical response, but also the officer's mental and emotional response.

Finally, the result section should include any injuries or property damage. Was medical aid requested? Were photographs taken of the area, injuries, property damage, etc.?

Any time an officer uses force to arrest a resistive subject, there is a high probability it will lead to an administrative inquiry, lawsuit, or worse. Officers should recognize the gravity of the situation and take adequate time to prepare a complete and accurate report. Supervisors and reviewers of the incident report have a responsibility to their officer and to their department to ensure the report is "court-ready." Everything in the report must clearly and completely document the subject's resistance, the officer's response to the resistance in his/her attempt to gain compliance, and how the officer's response was reasonable, proper, and lawful.

Supervisory Special Agent (SSA) Chuck Joyner is currently a program manager for a FBI international initiative. He was employed by the CIA from 1983 to 1987 and has been a Special Agent with the FBI since 1987. Chuck was a SWAT entry-team member, sniper, and later a SWAT Commander. He holds FBI certifications as a Master Police Instructor, Firearms Instructor, Defensive Tactics Instructor, Chemical Agent Instructor, Tactical Instructor, and was previously the Principal Firearms Instructor for the FBI Los Angeles Field Office. He regularly provides lectures on Leadership and the Warrior Mindset. Chuck is the creator of the Dynamic Resistance Response Model (DRRM), a modern Use of Force model. He holds undergraduate degrees in Biology and Psychology and a Masters Degree in Organizational-Industrial Psychology. He can be contacted at chuck.joyner@hotmail.com. The views expressed in this article do not necessarily represent the views of the FBI.

About the author

Chuck Joyner was employed by the CIA from 1983 to 1987, and was a Special Agent with the FBI from 1987 until his retirement in October 2011. Chuck is the creator of the Dynamic Resistance Response Model (DRRM), a modern Use of Force model. He currently is the President of Survival Sciences, LLC, offering training and expert testimony to law enforcement on use of force topics.

Understanding Video Taped Police Use of Force by Kevin Davis

Officer: Your use of force is caught on tape and it doesn't "look good." What to do?

Agency: Your officer's use of force caught on tape doesn't look. What do you do?

I've recently worked on several cases as an expert witness in defense of officers whose use of force was captured on tape and who were subsequently charged with criminal offenses. The defense team was successful in both cases winning dismissals or acquittals. Central to the prosecution's case was dashboard camera or business security camera video footage. How can agencies properly interpret these videos and how can officers articulate their use of force when it looks bad?

The first question we must address is, "Can a use of force that looks brutal be within legal parameters?" The answer is that even lawful police use of force seldom looks pretty. As an example, even fingertip pressure as applied to pressure points may result in screams of pain, distorted faces of criminal suspects and not "look good" on tape, so even these minor applications of force can create visual images and audio recordings that may seem brutish or excessive. More forceful suspect control techniques can look even worse but “looks” are not the focus. Whether the force was lawful is the object of the first investigation with an internal investigation into policy compliance a secondary and separate investigation.

Agencies must:

- Train supervisors and officers in the constitutional parameters of use of force (Graham v. Conner and the Objective Reasonableness standard)
- Streamline policies so they are in compliance with the legal standards
- Develop policies that mandate post use of force incident reporting, documentation and investigation
- Follow your policies
- Mandate that supervisors and Command personnel attend the same in-service programs as line personnel so everyone is on the same page
- Train supervisors in use of force documentation
- Require solid use of force reporting by officers clearly documenting totality of the circumstances
- Train supervisors and Command personnel in how to conduct use of force investigations
- Interview all witnesses on audiotape
- Photograph all injuries of officers and suspects
- Understand that because the standard is an “objective” one, subjective issues such as an officer’s intent or motion are not part of the equation
- Don’t get hung up on issues such as whether the officer seemed “angry” or used profanity – it’s entirely possible he or she was angry but that’s a subjective emotion and profanity does not indicate unreasonableness
- Understand that officer’s memories are not like a recorded tape and there will be lapses, inconsistencies and differences between officers involved in the same incident
- Be cognizant of the human factors involved including: tunnel vision, auditory exclusion, time distortions, and in-attentional blindness
- Ask yourself “How many times did the suspect have to comply?”
- Understand that the video is a two dimensional image and does not convey distances or depth
- Understand that the video is not the incident and that events occurring prior to the tape or out of frame will not be captured
- Make sure that the video actually depicts the use of force event (one officer was indicted for felonious assault based on a tape that did not even depict the actual shooting)
- Judge the incident on the facts and don’t succumb to the political pressure if a tape is leaked or goes “viral”
- Understand the difference between a criminal investigation and an internal investigation and do not comingle the two
- The equation is reasonable use of force, based on reasonable perceptions and the totality of the circumstances
- Don’t engage in 20/20 hindsight or tactical critiques as part of the investigation. The Supreme Court stated that force should be judged at the moment it is used from the perspective of a reasonable officer on scene
- Whether the statement is volunteered or compelled under Garrity, get a statement from the officer(s) involved

Officers must:

- Know the law including the Constitutional standards
- Have a lawful objective for taking action based on Reasonable Suspicion or Probable Cause

- Follow policy
- Avoid profanity on the street which might be captured on tape
- Report all use of force incidents promptly to a supervisor
- Identify witnesses for interview by supervision
- Review the tape prior to writing your report to aid your recall
- Properly document the incident
- Ensure that each officer involved writes their own use of force report
- Don't hesitate to contact a union shift rep for guidance
- Understand that good police reports are seldom first drafts and rewriting is usually called for
- Have a senior officer or your supervisor read the draft before submission

Writing the Report

Documentation must include the following: the totality of the circumstances including but not limited to: the severity of the crime; the threat to officers or others; whether the suspect was actively resisting arrest; or attempting to evade arrest by flight; if/how the circumstances were tense, uncertain, and rapidly evolving. Other factors like environment, location, multiple suspects, size disparity, injury, exhaustion and more should be documented as well. Don't document by way of conclusions, i.e. "He resisted arrest," or "I attempted to control him." Specifically list instead the facts of what the suspect did and said as well as what you said and did. If you apply force (spray your pepper spray or deploy your electronic control device) put the details down of where they were applied, for how long and what the suspect did in response. Avoid police jargon, write clearly in a way that a layperson would be able to understand.

Wrap-Up

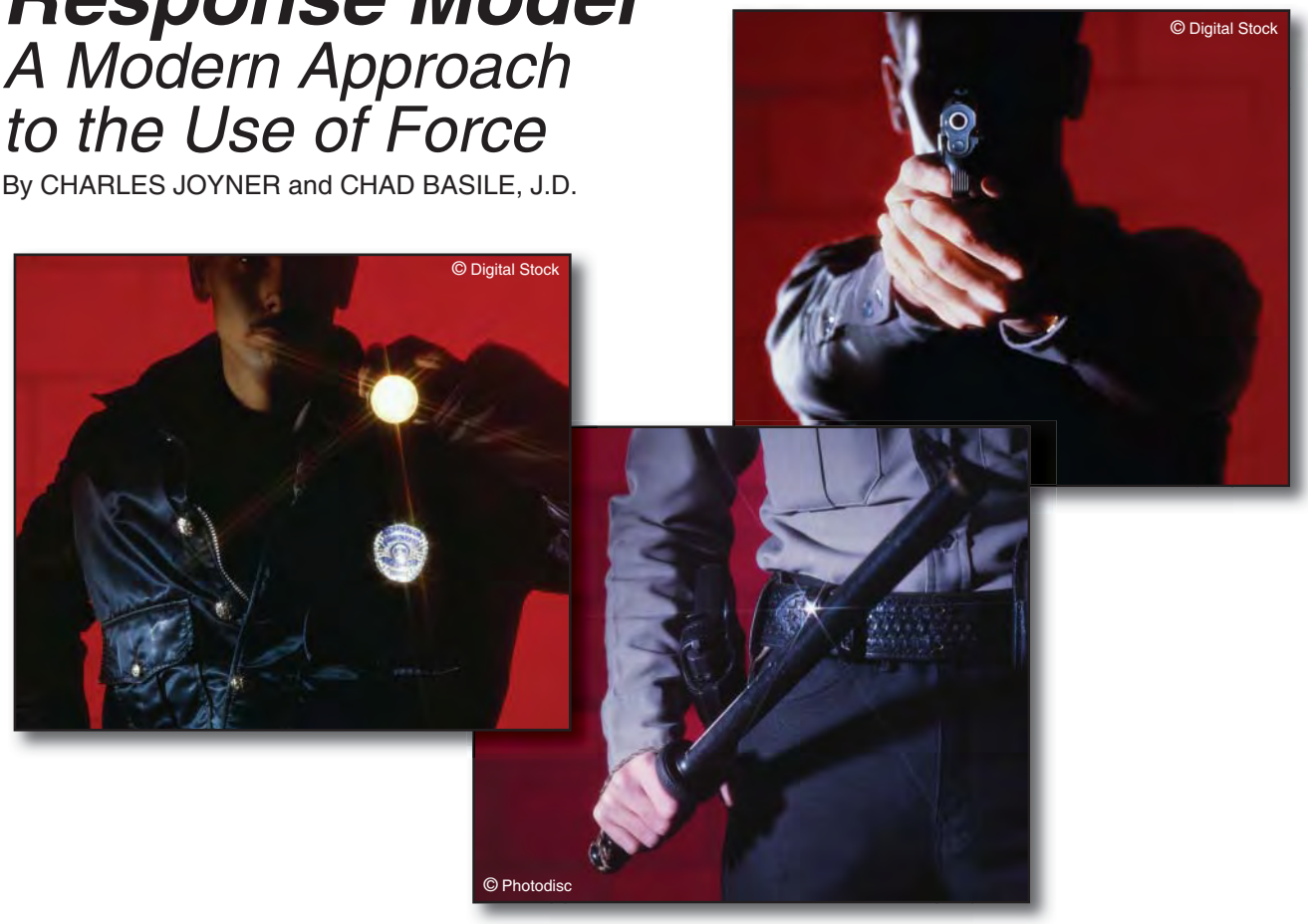
I ask my officers, "Do you really think that there is anywhere you police that your actions will not be captured on videotape?" From cell phones to business surveillance cameras to the camera system in your own patrol vehicle or those of other officers, even from other agencies, that your actions and those of your Brother officers will be captured on tape is a very real possibility. First of all, do the right thing and then properly document your actions after viewing the tape. Agencies don't assume that because it looks "bad" or violent that it is excessive. Examine the tape with the objective reasonableness standard in mind based on the totality of the circumstances at the moment the officer used force.

In most instances these tapes work for us not against us we just need to be prepared to articulate and justify our actions and properly investigate the incident.

The Dynamic Resistance Response Model

A Modern Approach to the Use of Force

By CHARLES JOYNER and CHAD BASILE, J.D.



Running late, a high school student speeds through the school zone and is pulled over by local police officers. She refuses to sign the speeding ticket and is verbally abusive. After repeated attempts to have her sign the ticket, the officers decide to arrest her for failing to obey a lawful command. When she refuses to get out of her car, the officers attempt to physically remove her. She thwarts these efforts by tightly holding onto the steering wheel. The officers warn the student that they will use a stun gun if she does not comply. When she fails to obey, the officers use the stun gun. The officers remove the student from her car, but she strikes her head against the car door. She later claims to suffer from headaches and dizziness. Using current accepted use-of-force models, the following issues likely will arise: Was the officers' selection of this force option reasonable? Why did the officers not employ other intermediate levels of force?

THE PROBLEM

Law enforcement agencies typically examine traditional

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use-of-force models for guidance in establishing their policies. Unfortunately, models employed today contain complicated language and distort the state of the law by placing the focus on the officer's actions and minimizing those of the individual initiating the resistance. Such emphasis may mislead citizens and those in the judicial system into analyzing why all possible lesser force options were not used, causing concern for officers, departments, and the public. Citizens should respect the authority and lawful commands of police officers, but, sadly, some choose to resist, forcing contacts to unnecessarily escalate into physical confrontations.

Long before the changes brought about by *Tennessee v Garner*, which crafted a new constitutional framework for the proper use of force, the U.S. Supreme Court established a history of reasonableness that guided officer conduct and offered an understanding of the difficulties and complications inherent in the profession.[1] Accordingly, the Court has provided the law enforcement community with a wide path to tread while carrying out its mission. Within the constitutional parameters established by the Court, most agencies require officers to adhere to more restrictive use-of-force policies, which, in fact, have not entirely eliminated the controversy surrounding officer-citizen encounters as evidenced by continued allegations of misuse of force. Policies often are created or expanded under intense political and public relations pressures that overwhelm the proper channels of policy formulation.

Many departments have faced civil suits for the alleged misuse of emerging less than lethal equipment, similar to the scenario at the beginning of this article. Others have responded by prohibiting the use of these tools on suspects outside specific age parameters or on those who suffer from particular medical conditions. This places an officer in an untenable position—if he misjudges a suspect's age or fails to accurately determine a medical condition, he may be placed outside of policy, focusing intense scrutiny on him and his department.[2] A common result of overly restrictive policies is an increasing reluctance to use practical law enforcement tools developed specifically to increase the safety of both citizens and officers.

Improper use of force by a few officers should not cause an automatic policy change affecting an entire agency. Before adopting a more restrictive policy, departments should consider possible ramifications of changes, such as the impact on morale, an increased need for training, the effect on future litigation, and possible confusion among officers.

TRADITIONAL MODELS

A ladder model illustrates a traditional use-of-force

continuum in which the officer has an escalating series of options available in response to a suspect's behavior. As the suspect becomes increasingly combative, the officer is permitted to climb the ladder and use a force option greater than that of the suspect.

Upon seeing the ladder analogy of use-of-force options, citizens unfamiliar with law enforcement expect an officer to climb the ladder one rung at a time until the suspect complies. It is sometimes difficult to explain to the public the need to advance to the appropriate rung based on the suspect's behavior. Further, people often mistakenly believe that an officer must attempt all other intermediate force options prior to using deadly force.

In an effort to correct these misperceptions, the law enforcement community modified the ladder model into a wheel, which typically depicts the officer in the center of a circle, or wagon wheel, of options. The wheel model allows the officer to select the most appropriate option for the situation, permitting greater flexibility. However, most officers find the wheel confusing and, instead, mentally revert to the ladder model when determining which force option to use. Additionally, jurors may question why an officer selected one force option over another. Traditional use-of-force models fail to properly represent the dynamic encounter between an officer and a resistant suspect. They also exhibit an escalation of force and fail to acknowledge the officer's overriding objective to gain compliance.

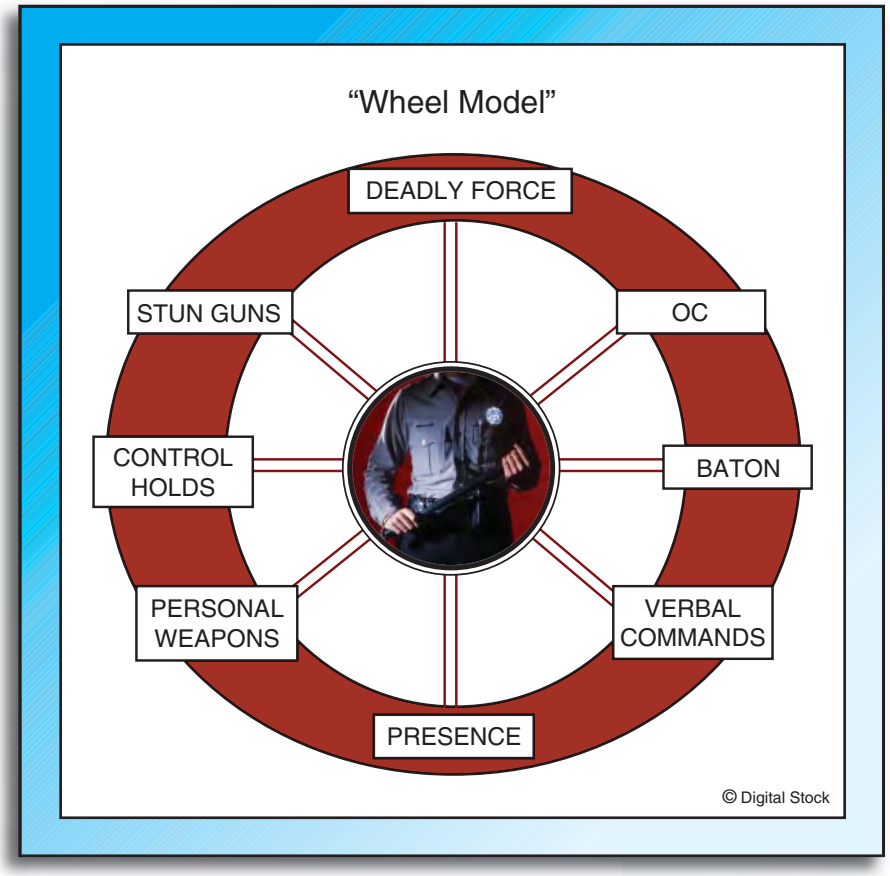
A NEW APPROACH

The solution for law enforcement agencies does not involve removing options nor adopting additional policies and restrictions. Rather, a new approach that more accurately reflects the intent of the law and the changing expectations of society can help address these issues.

When officers clearly understand a reasonable use-of-force model and receive adequate dynamic training, they are better prepared to make appropriate use-of-force decisions. Officers faced with potentially life-threatening situations need simple, clear, unambiguous, and consistent guidelines in the use of force. To this end, the dynamic resistance response model (DRRM) combines a use-of-force continuum with an application of four broad categories of suspects.

Dynamic indicates that the model is fluid. Suspects can move rapidly from one level of resistance to the next. The public must realize that situations can quickly and dangerously transition from one category to another. Officers never should assume a suspect currently complying will continue to do so. Also, they always should be prepared for an attack no matter how compliant an individual initially appears.

Resistance demonstrates that the suspect controls the interaction. A major failing among current use-of-force models is the emphasis on the officer and the amount of force used. This places officers in a weak position during accusations of excessive force as the focus is on the officer's actions, rather than on the suspect's. The DRRM emphasizes that the suspect's level of resistance



determines the officer's response and delineates suspects into one of four categories: not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant.

Not Resistant

Suspects who do not resist but follow all commands are compliant. Only a law enforcement officer's presence and verbal commands are required when dealing with these individuals; no coercive physical contact is necessary.

Passively Resistant

A passively resistant suspect fails to follow commands and may be verbally abusive. He may attempt to move away from the officer, escape from the officer's grip, or flee. The suspect's actions are neutral or defensive, and the officer does not feel threatened by his actions. Appropriate responses include using a firm grip, control holds, and pressure points to obtain compliance.

Aggressively Resistant

An aggressively resistant suspect takes offensive action by attempting to push, throw, strike, tackle, or physically harm the officer or another person. To defend himself, the officer must respond with appropriate force to stop the attack. The officer feels threatened by the suspect's actions. Justified responses include the use of personal weapons (hands, fists, feet), batons, pepper spray, and a stun gun.

Deadly Resistant

A deadly resistant suspect will seriously injure or kill the officer or another person if immediate action is not taken to stop the threat. The officer is justified in using force, including deadly force, reasonably necessary to overcome the offender and effect custody. For each of the four suspect categories, officers have all of the tools in the preceding categories available. In each instance, officers constantly should give commands to the suspect when doing so does not jeopardize safety. Further, the DRRM is flexible. Departments can apply the four categories of suspects to their current use-of-force continuum and insert the tools available to officers in that particular agency.

APPLICATION

In the DRRM diagram, no resistance (compliance) is in the center of the triangle, emphasizing that as the goal of every encounter. If a suspect's resistance level places him on one of the three corners of the triangle, the officer's response (appropriate use of force) is intended to move the suspect's behavior to

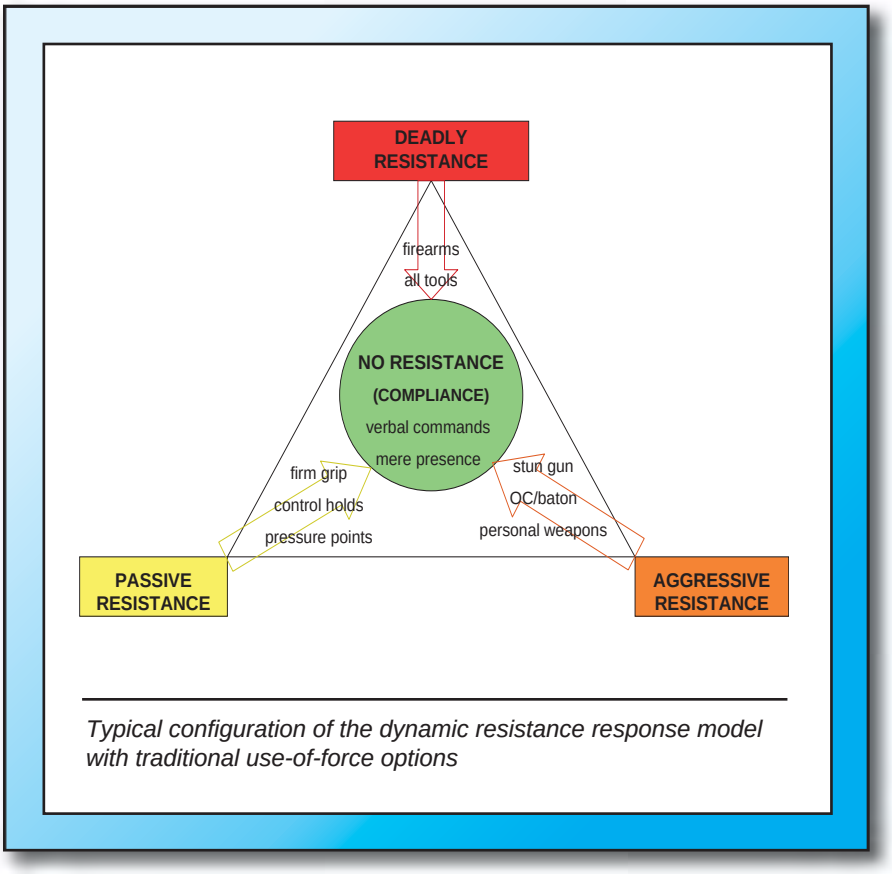
the center of the triangle and compliance. If force is used by the officer in response to the suspect's resistance level, the sole purpose of the application of force is to gain compliance.

In the scenario at the beginning of this article, the officers mentally place the driver in one of the four suspect categories. The driver resists by not obeying the instructions to sign the speeding ticket and later refuses to get out of her car. Her conduct does not rise to the level of aggressive resistance because she does not attack the officers and they do not feel threatened. In this situation, the driver is passively resistant. Therefore, based on the DRRM, the officers may use a firm grip, control holds, and pressure points to remove the resistor from her car and arrest her. Any greater use of force is not reasonable. In this example, properly trained officers can remove the resistor from her car using the appropriate force options for a passively resistant suspect.

CONCLUSION

Law enforcement officers are tasked with a difficult responsibility and must make life-or-death decisions at a moment's notice. The intense public scrutiny resulting from alleged misuse of force sometimes results in unnecessary restrictions placed on the use of viable, effective tools in restraining combative suspects. Departments would better serve their officers and citizens by establishing a single use-of-force policy directly related to suspects' behavior and easier to comprehend and apply. Law enforcement agencies will significantly benefit from instituting a legally defensible use-of-force model that protects the rights of the public without decreasing the safety of officers.

Agencies that adopt the dynamic resistance response model can gain several advantages. First, the structure of the model brings every confrontation to a compliant resolution. The DRRM is based upon the obvious presumption that law enforcement officers seek no resistance (compliance) in all cases. Traditional use-of-force models guide officers into a pattern of escalation of force. Second, a resistor's behavior is placed in one of four easily recognized categories, providing more guidance to officers in the selection of the appropriate use of force. Third, the DRRM accurately focuses the initial use-of-force analysis on the resistor and better reflects the actual



Typical configuration of the dynamic resistance response model with traditional use-of-force options

events that cause a police-citizen confrontation. Most other use-of-force models first direct attention to the acts of the officer and then belatedly explore what initiated the action. Finally, the DRRM simplifies training on use-of-force options as officers can explain any encounter in a resistance—response or action—reaction equation. With appropriate training, officers have a clearer understanding of their force options, enhancing their safety and the effectiveness of the department. ✦

Endnotes

[1] *Tennessee v. Garner*, et al, No 83-1035, U.S. Supreme Court, 471 U.S. 1; 105 S. Ct. 1694: 85 L. Ed. 2d.

[2] The authors employ masculine pronouns throughout the article for illustrative purposes.

Special Agents Chuck Joyner and Chad Basile created the dynamic resistance response model. Contact them with questions, comments, or suggestions at charles.joyner@ic.fbi.gov*, telephone number 310-629-9662, or* chad.basile@ic.fbi.gov*, telephone number 310-345-4312.*

Unusual Weapon

Throwing Cards

Offenders may attempt to use the objects depicted in these photos as unusual weapons. They are regulation-size cards but made of metal. Edged on each side, these cards are designed for slashing or to be thrown at a target. These objects pose a dangerous, unexpected threat to law enforcement officers.

Perspectives on Policing with Loraine Burger

This use-of-force model can beat attorneys and win juries

Too little force may result in the injury or death of an officer, and too much force may take you off the street and even behind bars

The Dynamic Resistance-Response Model (DRM) is a use-of-force model designed by PoliceOne Columnist and former Special Agent Chuck Joyner. One of many differences between this and the typical ladder and continuum models is that the public and juries tend to understand the thought process of police when they explain their situation using the DRM model.

The problem with continuum models is that they tend to start after the first offense has happened (much like the videos that surface of subject encounters with police). The jury needs to start the timeline with what the offender did first.

Risk assessment research by Butler and Hall (reported by Force Science Institute) has said that the order of "safest to most dangerous" tactics for both suspects and police goes as follows: OC spray, carotid type of restraint, ECD, empty-hand techniques, and impact weapons. Another study conducted by LAPD Sergeant Greg Dossey also concluded that closing with a suspect and going hands-on was one of the most dangerous options for an officer.

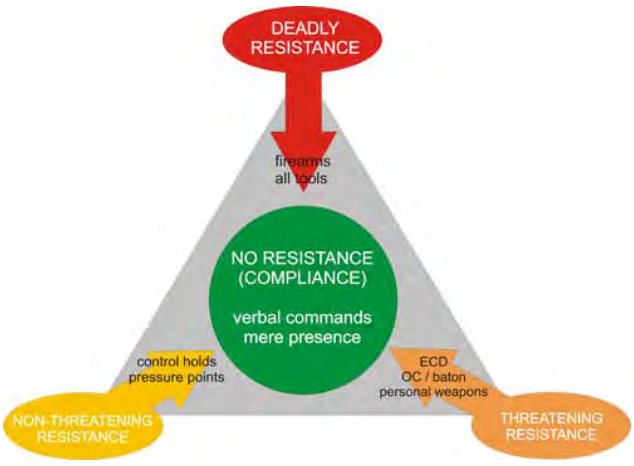
Evaluating the Threat

As Joyner put it, courts don't try to determine which option is worse — they "lump all of these uses of force in the same group as likely to cause injury and severe pain, so the courts have consistently indicated the officer needs to articulate a threat to the officer or another person prior to using" use-of-force options.

"If you pepper spray a person but you can't articulate the threat, you're going to write a big check," Joyner said.

Using the DRM model, the subject categories for threat levels are:

1.) Compliance/ no resistance
2.) Non-threatening/ passive resistance
3.) Threatening/ aggressive resistance
4.) Deadly resistance



The first thing that you need to ask yourself is, "Do I feel threatened?"

The key to deciphering non-threatening versus threatening resistance is to answer this question. This is crucial when both articulating in a report as to why you used the force you did, and to gaining the publics and/or the jury's understanding of the cause for your actions.

"Officers never control the amount of force used; it is always determined by the actions and level of resistance of the suspect," said Joyner. "The officer responds appropriately to the level of resistance."

In the DRM model, all signs point inward because the ultimate goal is always to gain compliance or control. Too little force may result in the injury or death of an officer, and too much force may take you off the street and even behind bars.

Defending Against an Attorney's Attack

Graham v. Connor set the standard for objective reasonableness in a use-of-force scenario, when it was decided that the said reasonableness standard should apply to a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person.

All use-of-force models then should reflect Graham v. Connor, which can be measured by answering the following:

1.) What is the nature of the offense?
2.) Is there an immediate threat?
3.) Is the subject attempting to flee?

Presenting an empathetic and relatable train of thought to a jury is only half the battle. Attorney's don't do empathy.

There are three easy targets the plaintiff's attorney will go after when fighting law enforcement in court:

- **Policy:** Your department's policy cannot conflict with the law, and it cannot be out-of-date

"Attorneys salivate when they see the words 'employ the least amount of force possible' [in your department's policy] because they can always prove that the amount of force could be lesser," said Joyner.

- **Training:** Attorneys will try to prove that there is a lack of training, inadequate training, poorly documented training, and a lack of refresher training
- **Documentation**: The easiest way to disprove the latter allegations is to have proper documentation proving that your training is adequate and up-to-date

Joyner said, "You may have the best training in the world, but if you didn't document it, it didn't happen."

Train, Track, and Review

The following questions are going to be asked of you by an attorney, so ask yourself each of these and be sure you can answer them:

1.) How successful are your current DT programs?
2.) How are they structured? What happens when officers lack the necessary skills?
3.) What are your instructors teaching?
4.) Does this training comply with the law?
5.) How often do you have refresher training on DTs? Impact weapons? TASER? OC? Personal weapons?
6.) Do you have lesson plans? What is in the lesson plans?
7.) How is consistency of training ensured?
8.) Is attendance recorded?
9.) How is competency tested?
10.) Do your officers know the law? How do you know?

11.) Where is all of this documented?

Does your sergeant review your use of force reports? If he or she doesn't, find someone who will and who is good at it. It's going to be read by a judge and a jury, and it is your job to educate them on the proper response to the threat you faced through your report.

You — and your fellow officers — need to be confident and knowledgeable. Teach core concepts, test your officers, and prove that they are competent in their training.

Document your training, have lesson plans, and stick to those lesson plans.

About the author

As the Associated Editor for PoliceOne, Loraine Burger writes and edits news articles, product articles, columns, and case studies about public safety, community relations, and law enforcement. Loraine has developed relationships with law enforcement officers nationwide at agencies large and small to better understand the issues affecting police, whether on the street, at the office or at home.

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 **Verbal Judo Tactics & Techniques** with Dr. George Thompson

7 things never to say to anyone, and why

By Dr. George Thompson, Founder of the Verbal Judo Institute

Safety lies in knowledge. If you deal with cagey street people, or indeed difficult people at all, anywhere, you need to watch your tongue! The "cocked tongue" can be more lethal than the 9 millimeter or the 45.

In part one of this special two-part series for PoliceOne.com, I'll share the first four of a total of seven commonly used statements that can work against you.

1. "HEY YOU! COME HERE!"

Consider, you are on patrol and you see someone suspicious you want to talk with, so you most naturally say, "Hey you! Come here!" Verbal Judo teaches that "natural language is disastrous!" and this provides a wonderful example. You have just warned the subject that he is in trouble. "Come here" means to you, "Over here, you are under my authority." But to the subject it means, "Go away-quickly!" The words are not tactical for they have provided a warning and possibly precipitated a chase that would not have been necessary had you, instead, walked casually in his direction and once close said, "Excuse me. Could I chat with momentarily?" Notice this question is polite, professional, and calm.

Also notice, you have gotten in close, in his "space" though not his "face," and now you are too close for him to back off, giving you a ration of verbal trouble, as could have easily been the case with the "Hey you! Come here!" opening.

The ancient samurai knew never to let an opponent pick the place of battle for then the sun would always be in your eyes! "Come here" is loose, lazy, and ineffective language. Easy, but wrong. Tactically, "May I chat with you" is far better, for not only have you picked the place to talk, but anything the subject says, other than yes or no-the question you asked-provides you with intelligence regarding his emotional and/or mental state. Let him start any 'dance' of resistance.

Point: Polite civility can be a weapon of immense power!

2. "CALM DOWN!"

Consider this verbal blunder. You approach some angry folks and you most naturally say, "Hey, calm down!" This command never works, so why do we always use it? Because it flows naturally from our lips!

What's wrong with it? One, the phrase is a criticism of their behavior and suggests that they have no legitimate right to be upset! Hence, rather than reassuring them that things will improve, which should be your goal, you have created a new problem! Not only is there the matter they were upset about to begin with, but now they need to defend their reaction to you! Double the trouble!

Better, put on a calming face and demeanor-in Verbal Judo we say, 'Chameleon up'-look the person in the eye and say, gently, "It's going to be all right. Talk to me. What's the matter?" The phrase "What's the matter?' softens the person up to talk and calm down; where 'Calm down' hardens the resistance. The choice is yours!

3. "I'M NOT GOING TO TELL YOU AGAIN!"

We teach in Verbal Judo that 'repetition is weakness on the streets!' and you and I both know that this phrase is almost always a lie. You will say it again, and possibly again and again!

Parents do it all the time with their kids, and street cops do it with resistant subjects, all the time! The phrase is, of course, a threat, and voicing it leaves you only one viable option-action! If you are not prepared to act, or cannot at the time, you lose credibility, and with the loss of creditability comes the loss of power and safety!

Even if you are prepared to act, you have warned the subject that you are about to do so and forewarned is forearmed! Another tactical blunder! Like the rattlesnake you have made noise, and noise can get you hurt or killed. Better to be more like the cobra and strike when least suspected!

If you want to stress the seriousness of your words, say something like, 'Listen, it's important that you get this point, so pay close attention to what I'm about to tell you.'

If you have used Verbal Judo's Five Steps of Persuasion you know that we act after asking our "nicest, most polite question,"

"Sir, is there anything I could say that would get you to do A, B and C? I'd like to think so?"

If the answer is NO, we act while the subject is still talking! We do not telegraph our actions nor threaten people, but we do act when verbal persuasion fails.

4. "BE MORE REASONABLE!"

Telling people "be more reasonable" has many of the same problems as "Calm Down!" Everyone thinks h/she is plenty reasonable given the present circumstances! I never have had anyone run up to me and say, "Hey, I know I'm stupid and wrong, but here's what I think!" although I have been confronted by stupid and wrong people! You only invite conflict when you tell people to "be more reasonable!"

Instead, make people more reasonable by the way in which you handle them, tactically! Use the language of reassurance-"Let me see if I understand your position," and then paraphrase-another VJ tactic!-back to them their meaning, as you see it, in your words! Using your words will calm them and make them more reasonable because your words will (or better be!) more professional and less emotional.

This approach absorbs the other's tension and makes him feel your support. Now you can help them think more logically and less destructively, without making the insulting charge implied in your statement, "Be more reasonable!"

Again, tactics over natural reaction!

5. "BECAUSE THOSE ARE THE RULES" (or "THAT'S THE LAW!")

If ever there was a phrase that irritates people and makes you look weak, this is it!

If you are enforcing rules/laws that exist for good reason, don't be afraid to explain that! Your audience may not agree with or like it, but at least they have been honored with an explanation. Note, a true sign of REspect is to tell people why, and telling people why generates voluntary compliance. Indeed, we know that at least 70% of resistant or difficult people will do what you want them to do if you will just tell them why!

When you tell people why, you establish a ground to stand on, and one for them as well! Your declaration of why defines the limits of the issue at hand, defines your real authority, but also gives the other good reason for complying, not just because you said so! Tactically, telling people why gets your ego out of it and put in its place a solid, professional reason for action.

Even at home, if all you can do is repeat, "those are the rules," you sound and look weak because you apparently cannot support your order/request with logic or good reason. Indeed, if you can put rules or policies into context and explain how the rules or policies are good for everyone, you not only help people understand, you help them save face. Hence, you are much more likely to generate voluntary compliance, which is your goal!

6. "WHAT'S YOUR PROBLEM?"

This snotty, useless phrase turns the problem back on the person needing assistance. It signals this is a "you-versus-me" battle rather than an "us" discussion. The typical reaction is, "It's not my problem. You're the problem!"

The problem with the word problem is that it makes people feel deficient or even helpless. It can even transport people back to grade school where they felt misunderstood and underrated. Nobody likes to admit h/she has a problem. That's a weakness! When asked, "what's your problem?" the other already feels a failure. So the immediate natural reaction is, "I don't have one, you do!" which is a reaction that now hides a real need for help.

Substitute tactical phrases designed to soften and open someone up, like "What's the matter?", "How can I help?", or "I can see you're upset, let me suggest . . . ."

Remember, as an officer of peace, it is your business to find ways to gather good intel and to help those in need, not to pass judgments

7. "WHAT DO YOU WANT ME TO DO ABOUT IT?"

A great cop-out (no pun…)! This pseudo-question, always accompanied by sarcasm, is clearly an evasion of responsibility and a clear sign of a lack of creativity! The phrase really reveals the speaker's exasperation and lack of knowledge. Often heard from untrained sales clerks and young officers tasked with figuring out how to help someone when the rules are not clear.

When you say, "What do you want me to do about it?" you can count on two problems: the one you started with and the one you just created by appearing to duck responsibility.

Instead, tactically offer to help sort out the problem and work toward a solution. If it truly is not in your area of responsibility, point the subject to the right department or persons that might be able to solve the problem.

If you are unable or unqualified to assist and you haven't a clue as to how to help the person, apologize. Such an apology almost always gains you an ally, one you may need at same later date. Beat cops need to remember it is important to "develop a pair of eyes" (contacts) every time they interact with the public. Had the officer said to the complainant, for example, "I'm sorry, I really do not know what to recommend, but I wish I did, I'd like to help you," and coupled that statement with a concerned tone of voice and a face of concern, he would have gone a long way toward making that person more malleable and compliant for the police later down the road.

Remember, insult strengthens resistance and shuts the eyes. Civility weakens resistance and opens the eyes!

It's tactical to be nice!

About the author

Dr. George J. Thompson is the President and Founder of the Verbal Judo Institute, a tactical training and management firm now based in Auburn, NY. For full details on Dr. Thompson's work and training, please visit the Verbal Judo Web Site.

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