

**The Bill Blackwood
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TASERs: Taking a Second Look

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ABSTRACT

TASERs have proven to be an effective tool for many law enforcement agencies, but their popularity has come at a cost. Officers are becoming more dependent on the use of tools and in the process are losing their communication abilities. The incidents in which officers use the TASER as a compliance weapon is increasing. Law enforcement officers should use weaponless tactics such as verbal judo and soft and hard hand controls prior to deploying the TASER. Additionally, law enforcement agencies need to better train officers in tactical communications in an effort to reduce the number of TASER deployments. The research used in support of this thesis includes a review of internet articles, periodicals, journals, and research documents.

The recommendations drawn from this paper are due to the changing atmosphere of public opinion, the costly outcomes of civil litigation, and recent judicial rulings. Based on these factors law enforcement agencies should review their respective TASER policies and consider placing the TASER in a higher level on the Use of Force Continuum or revise the current standards all together. This paper also supports a recommendation for an emphasis in training on verbal tactical communication skills.

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INTRODUCTION

The use of electro-muscular control devices (ECDs), commonly referred to as TASERS, have been at the center of controversy for several years. Although widely used by numerous law enforcement agencies, the TASER has not been widely accepted by the general public. The media is rife with news and opinion articles bedeviling the TASERs and the officers who find it necessary to implement their use. It is no longer acceptable to issue press releases stating that TASER use was within a department's statutory guidelines or limits. Department administrators and individual officers are being sued and villianized in the media and in the court of public opinion.

The most common ECD device is produced by TASER International Incorporated. The TASER uses a replaceable cartridge of compressed nitrogen to deploy two small metallic probes that are attached by wires to the TASER unit. The TASER sends 50,000 volts into the subject. The pulses render the subject incapacitated by affecting the sensory and motor function of the peripheral nervous system. Although the TASER transmits 50,000 volts, it is rated at less than one ampere, which is less amperage than a standard Christmas tree bulb. The TASER may also be deployed in the "drive stun" mode. The weapon is applied directly to the subject where it attacks the central nervous system. The TASER is used as a pain compliance technique in this mode.

According to the TASER International press release package, the TASER has been safely deployed more than 1.6 million times. They further stated that more than 406,000 TASERs have been sold to more than 14,200 law enforcement agencies in over 40 countries since February of 1998. TASER International claims their devices

have reduced officer and suspect injuries by 30 to 80%, percent and nearly all law enforcement agencies see a decrease in injuries (Taser International, 2009)



Figure 1
TASER X-26



Figure 2
TASER M-26

TASER International lists several warnings on the use of their product. They warn that the weapon can cause strong muscle contractions, which can result in hernias, ruptures, or other injuries to soft tissue. These contractions normally cause a loss of control of movements, and a subject may experience other injuries. They further warn against its use on subjects who may be pregnant or physically infirm and those in a position that may result in further injury, such as on an elevated platform, operating a vehicle or machinery, or in or near water. TASER warns the consumer that the probes can cause significant injury if the probes are deployed in sensitive area, such as the eyes, throat, or genitals. They warn against extended or prolonged discharge on a subject. This overuse may cause cumulative exhaustion when coupled with over exertion, drug use, or use of restraining devices, any of which could result in serious injury or death. When used in the “drive stun” mode, the TASER can cause marks, abrasions, and/or scarring. These marks may be permanent, depending on the individual person and scenario of use (Taser International, 2009).

There is little or no information available to refute that the TASER does the job for which it was designed: incapacitating subjects. The controversy emerges as to how,

when, and on whom the TASER should be deployed. A survey of media print articles revealed an alarming trend in the use of the TASER. The Merced Police Department in Alabama were taken to task for using the TASER on an unarmed, legless man in a wheelchair (Patton, 2009). In Miami, Florida, police acknowledged that they used a TASER on a 12-year-old girl just weeks after another incident in which an officer tased a 6-year-old boy in an elementary school principal's office (Associated Press, 2004). Police in Loraine, Ohio used a TASER in a school bus to subdue a 12-year-old boy who had cussed at and threatened the officer (NewsNet5, 2005). Residents in Texas were shocked to see a video in which a 72-year-old grandmother was tased after refusing to comply with a deputy constable's order to place her hands behind her back (Van Horn, 2009). An officer in Seattle, Washington used his TASER on a woman who was 8 months pregnant after she refused to sign a speeding citation (Castro, 2005). This is a small sampling of the hundreds of news stories that adversely portray officers and their use of the TASER devices.

It is a natural progression for law enforcement agencies to search for alternative methods of restraining subjects. However, many agencies have abandoned the use of hand controls in favor of a reliance on tools (Holshouser, 2008). It seems many agencies have either abandoned their use of force continuums or altered them to reflect that it is entirely up the individual officer to determine when and what level force should be applied. Use of force continuums have been used by law enforcement agencies for many years (Honings, 1996), and they are used to determine the amount of force the officer should exert in relation to the amount of resistance by a subject (Godoy, 2006).

The force continuum is designed to be flexible, and an officer may escalate to a level two or three and then de-escalate as the situation lessens in intensity of resistance.

As noted in the below chart, the TASER is included in the same level of force, level 4, as the baton and pepper spray.

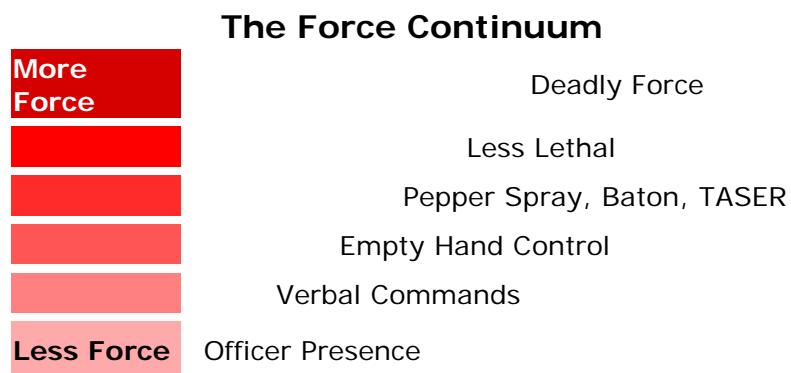
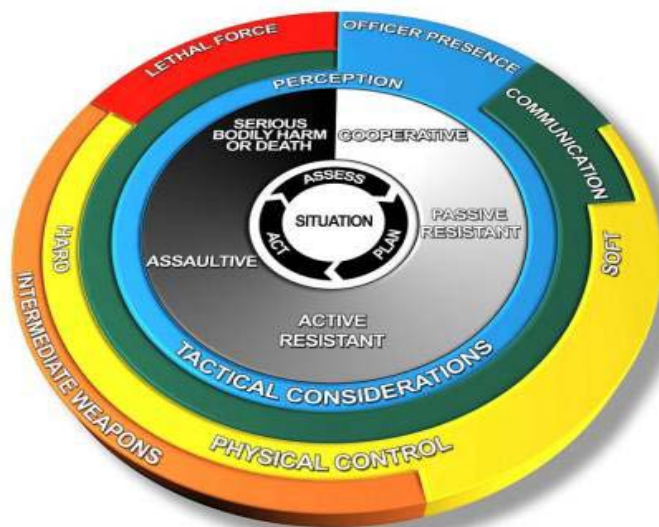


Figure 3. The Ladder Use of Force Continuum Model

There often is incongruence between the force continuum and officers actions when the TASER is deployed. To combat this some agencies have adopted the model below:



The officer continuously assesses the situation and selects the most reasonable option relative to those circumstances as perceived at that point in time.

Figure 4. The Circular Use of Force Continuum Model

In the circular force continuum, the officer relies on their perceptions of threat and training to determine the level of force applied. The problem with the circular model is that no clear guidelines exist to determine at what point an officer should use a higher, more severe method of force. Law enforcement leaders should be reminded and insist in training which emphasizes a use of force continuum that calls for an specific or adequate response to a specific level of resistance (Holshouser, 2008). Law enforcement policies should mandate that officers use verbal, soft hands, and/or hard hands control methods prior to deploying TASER on subjects.

POSITION

Officers have lost verbal judo skills in dealing with unruly and resistant subjects. Officers' dependence on technology and mechanical tools has increased dramatically over the past several years. As a result, the ability to use verbal communications skills has declined. Many feel that communications have become a "lost art," and law enforcement leaders should take the responsibility to ensure that today's officers are better trained in the use of verbal skills in conflict resolution (Ruecker, 2007).

Dr. George Thompson, the President and Founder of the Verbal Judo Institute, stated on his website that graduates learn to "use presence and words to calm difficult people who may be under severe emotional or other influences, redirect the behavior of hostile people, diffuse potentially dangerous situations, perform professionally under all conditions and achieve the desired outcome" (Thompson, "Overview," n.d., para. 2). Verbal judo, also referred to as tactical communication, contains "a set of communication principles and tactics that enable the user to generate cooperation and gain voluntary compliance" (Thompson, "What is verbal judo," n.d., para. 2). Although

used in training scenarios in police academies, very little advanced training is offered beyond the basics. Dr. Thompson further stated that “the cost of neglecting such training will be measured in blood, money and public opinion” (Thompson, “Why your department,” n.d., para. 5). He extolled officers to become as competent with words as they are with firearms.

Glennon (2010) wrote that in the area of law enforcement “communication skills are the, most important skill necessary to succeed in your profession” (p. 1). Although learning how to effectively communicate is not difficult, Glennon (2010) believes that mastering this skill is a low priority among officers and department alike. Glennon (2010) further asserted that the failure to communicate effectively can prove to be “the difference between success and failure- life and death,” and the law enforcement community should train with that in mind (p. 3).

Davis (2009) wrote that “conveying reason to suspect(s), via tactical communications, is crucial to officer safety and survival” (p. 1). This is not only an officer and suspect injury issue, but it can play a role in public perceptions as well as court cases. If officers use any and all available non-violent means, then the suspect had an out (Davis, 2009). If the suspect continues to resist, then the escalated use of force would be seen as more reasonable and appropriate.

The ability to communicate is the most effective skill a law enforcement officer can possess. Officers continually rely on their verbal skills in most every aspect of their job. Officers, however, can fail to exhaust other options prior to TASER deployment. The use of force continuum dictates that officer respond to differing levels of resistance on a graduated scale of force. In most force continuums, TASERs are placed in the

level 4 phase of force use. They are listed as more extreme but are non-deadly in nature. It assumes that other verbal and less physical measures have been attempted prior the TASERs deployment (Godoy, 2006). The TASER is placed at the same level as pepper spray by 87% of the 216 U.S. law enforcement agencies surveyed by TASER International in 2004 (Kester, 2006). As a result, research suggested that the TASER, baton, and OC spray should be placed after open-hand compliance techniques (Kester, 2006). The Stanford Criminal Justice Center (2008) advised that "TASERs should be used only on dangerous individuals and never on individual who are passively resisting arrest" (p. 14) A Solano, California grand jury issued a written report in response to an inquiry on TASER use. In the report, they recommended that police follow the International Chiefs of Police Association recommendations (Solano County, 2005). The IACP recommended that policies state not only when and where the TASER should be used, but also when it should not be used (International Association of Chiefs of Police, 1999). Based on the use of TASERs in low-level encounters, it appears the resistance level in which they are deployed has been lowered, which correlates to an escalation of force continuum levels (Amnesty International, 2008).

Suspects are put at greater risks due to TASER use. TASERs have shown to increase the rate of sudden death in custodial situations by six times. Although many agencies rely on industry supported research for support, a University of California at San Francisco study suggested that TASERs pose a greater medical risk (Tseng et al., 2009). The TASER is touted as a tool that will reduce officer's injury, but research has shown no change on officer injuries (Tseng et al., 2009) With TASER use, law enforcement's image and reputation are adversely affected as well as increasing the

risk of liability for agencies. It stands to reason that if the TASER causes a greater risk of injury to suspects, without reducing the risk to officers, then TASER use is, at best, a nonviable option and possibly be illegal. This could result in a greater risk of civil liability for agencies (Means, 2005). It is evident that the “price in public opinion may have begun to outweigh the good they bring” (Vancouver Province, 2008, p. 1). Law enforcement agencies are often forced to pay out large sums to settle civil litigations. Although TASER International warned against the use of the TASER on pregnant women, officers still deploy it against the warning. The City of Chula Vista, California paid out \$675,000 to settle a claim when a woman who was six months pregnant miscarried after she was shot with the TASER. The case was settled even though the autopsy failed to conclude the cause of death (Stanford University, 2008). Another case involving TASER use and agency liability is when a 71-year-old Portland, Oregon woman was paid \$145,000 by the city after being tased for failure to obey an officer’s orders. She was then tased more 3 more times while she lay on the ground as a result of the first shot (Stanford University, 2008).

COUNTER POSITION

Supporters point out that the TASER receives quicker compliance from suspects. In a five-year analysis funded by the National Institute of Justice, it was determined that the TASER was the fastest weapon in seeking a resolution to a physical conflict (Mesloh, Henych & Wolf, 2005). The study focused on results that occurred during multiple iterations during the same incidents. TASERS are in the same category in most use of force continuums as pepper spray and batons, and some experts believe TASERS are the best choice of the level four options (Godoy, 2006). This point is

difficult to counter primarily because little or no research is available to dispute the claim. The focus of the problems with TASERs actually lies in their effectiveness. The quick resolution to resistance encounters has made the use of the TASER the “go to” weapon from thousands of officers. The use of other, less invasive methods go by the wayside when an officer knows he can reach on his duty belt and tase a subject into compliance and submission. Most research suggested that the possibility of the TASER causing death or serious injury is less than .03% (Wake Forest University Baptist Medical Center, 2007). However, it should be noted that the chance of someone sustaining a serious injury or death from a TASER is zero if the TASER was not deployed at all.

The deployment of a TASER keeps officer injuries down during conflicts. The same NIJ study suggested that the risk to officers and suspects rises during the second and third iterations. The actual injuries decreased due to the conflict ending on the first iteration (Mesloh, Henych & Wolf, 2005). The results of a September 2009 study by the Police Executive Research Forum (PERF) suggested that the TASER does reduce the risk of injury to officers and suspects. They recommend that agencies that do not currently employ the TASER consider their use. The report documented that most injuries are caused by up-close, physical encounters, and the TASER is one tool that can limit these situations. However, PERF stated, “there is little support in our data to consider authorizing the use of CEDs in cases of passive resistance from a suspect,” which is the primary point of concern for most opponents of the TASER (Taylor, 2009). This is indeed the primary objection, and the main point of this paper is to examine the use of CEDs in cases where less force within the continuum would have been sufficient

to end the conflict. To say the TASER prevents injury is a direct contradiction to the warnings of the primary manufacturer, TASER International.

Opposition also claims that use of the TASER prevents injuries to suspects. In a 2007 study, a review of nearly 1,000 cases revealed that 99.7% of suspects received only minor injuries and 0.3% suffered injuries requiring hospitalization (Wake Forest University Baptist Medical Center, 2007). TASERs are not injury free, but the alternative of broken limbs from batons and severe pain and irritation from pepper spray make them attractive to law enforcement officers (Mesloh, Henych & Wolf, 2005). Reno, Nevada police Lieutenant Bruce Kirby stated that in the first two and a half years of use, there have been “six incidents where deadly force would have been used if the TASER had not been an option” (O’Malley, 2009, para. 3). Washoe County, Nevada Deputy Phil Jones, a master TASER instructor, believes the TASER is a life-saving tool. Deputy Jones stated, “The TASER has enabled law enforcement the ability to preserve human life,” and added that there have been cases where deadly force would have been the only option if not for the availability of the TASER (O’Malley, 2009).

In spite of these claims, the Council on Science and Public Health reported that there have been more than 330 in-custody deaths involving TASERs across the country between June 2001 and August 2008. The report added that half of these had pre-existing heart conditions, while others were attributed to substances the subjects had consumed, increased blood pressure, and heart activity (O’Malley, 2009). Although some agencies prohibit the deployment of the TASER in hazardous circumstances, there continues to be instances where this occurs (Amnesty International, 2008). A secondary autopsy of a Michigan man, who died after being tased while in a swampy

area, found the use of the TASER, while immersed, contributed to the drowning process. A Florida man drowned after being tased while standing in knee-deep water. In an Amnesty International (2008) report, six cases were documented in which suspects died as a result of the fall after being tased by officers. The same report cited two deaths of suspects who caught fire after being tased while standing near flammable substances (Amnesty International, 2008). Therefore, while data is available to support the opposition in the effectiveness of the TASER, there also exists documentation of excessive and improper use and abuse to counter their arguments.

RECOMMENDATION

Evidence strongly confirmed that the use of TASERs by law enforcement officers has risen dramatically in the last several years (Amnesty International, 2008; Means, 2005; Mesloh, 2005). The increase in the issuance of TASERs and its use by law enforcement has brought to the forefront many issues. The public believes, and news articles seem to support, that officers are too quick to deploy the TASER (Associated Press, 2004; Castro, 2009; Patton, 2009). Officers use it without exhausting other, less injurious methods, such as verbal judo and soft and hard hand control methods. Paramount in the concerns of the public and humans rights groups is the overuse and lack of discretion by individual officers in the deployment of the TASER.

The primary argument in support of the TASER is that it brings a quick resolution to resistant encounters. As previously stated, there is very little evidence to refute that claim. However, law enforcement professionals must consider if the expedience of the TASER is worth the price that the agencies and individual officers are paying in adverse publicity. The trend of negative publicity will surely harm the public perception of law

enforcement and damage the image that the law enforcement profession has attempted to build over the years. Aside from the negative publicity, law enforcement agencies must consider the legal liability of the use of the TASER. The erosion of public support only increases the likelihood of adverse settlements against agencies.

Proponents submit that the TASER lessens the likelihood of injuries to the officer and suspect. Studies, such as the ones conducted by Police Executive Research Foundation and the National Institute of Justice suggested that the number and severity of injuries do decrease in situations where the TASER is deployed (as cited in Taylor, 2009). However, this should not be construed to suggest that the TASER is less injurious. No known study is available that would determine what the extent of injuries would have been if the TASER was not deployed at all. Some could surmise that no injuries may have occurred if alternate methods of resolving these encounters were employed by officers. If officers are better trained and required, by policy, to use verbal skills and soft hand or hard hands prior to using the TASER, then perhaps injuries could have been completely avoided.

This paper is not intended to imply that there is not a need for TASERs in the use of force methods employed by law enforcement officers. The TASER has proven to be a fast, effective, and reasonably safe weapon when used properly. However, any reasonable person could certainly call into question cases where officers are going to the TASER without using other, less severe options first. A recent case in Pensacola, Florida emphasized the need of a clearer policy on when the use of the TASER is permitted. As an example, the predawn hours of October 03, 2009, a police officer was pursuing a bicyclist in his police cruiser. The suspect was not wanted, but the officer

wanted to interview the suspect; however, the suspect refused to stop, and the officer fired his TASER at the cyclist. The suspect lost control of the bicycle and fell in front of the cruiser, and the cruiser ran over and killed the 17-year-old suspect (Amnesty International, 2008).

There are areas of concern related to the use of TASERs by the public and human rights organizations. The objections are not so much the use of the TASER, but the lack of policies, oversight, and training related to TASER issuance and deployment. There are numerous cases in public print articles concerning the apparent unregulated use of TASERs by law officers (Castro, 2005; NewsNet5, 2005; Patton, 2009). Such incidents include the tasing of individuals for merely not complying with an officer's order; some even while the individuals already in restraints. There is a belief that TASERs are not being used proportionate to the amount of resistance. In a survey conducted by Amnesty International (2008), it was discovered that 19% of the 500 agencies responding allowed the use of the TASER in instances where seated subjects are failing to comply. An agency would be hard pressed to show a risk of escape or injury if the subject was seated and simply non-compliant. The use of Tasers at such low thresholds of resistance by subjects is a concern.

Another area of concern is the rate or duration in which suspects are shocked after the initial deployment of the TASER. Policies from The International Chiefs of Police Association and the Police Executive Research Foundation suggested that departments incorporate guidelines in departmental policies that restrict the repeated use on suspects (IACP, 2009; Police Executive Research Forum, 2005). The IACP advised that officers use the TASER the least number of times and be aware that

subjects may not be able to respond to commands due to the incapacitating nature of the electrical charge (IACP, 1999). PERF recommendations are similar, but seem to go a step further (PERF, 2005). The guidelines warned that repeated or prolonged shock cycles should be avoided due to the increased risk of death or serious injury (PERF, 2005). Amnesty International also urged caution in the use of multiple activations on subjects due to the increase in risk (Amnesty International, 2008).

Despite these warnings, multiple and extended applications of the TASER continue, often with serious results. An autopsy performed on a 19-year-old Asotin County, Washington teen noted that TASERs were used over a four-minute period. The deputies deployed back to back and continuous cycles from four devices of 32 seconds, 22 seconds, 45 seconds and 10 seconds (Amnesty International, 2008). As previously noted, the cycle rate for the TASER is 5 seconds (Taser International, 2009). In January 2008, a Winnfield City, Louisiana man was shocked nine times by police (Amnesty International, 2008). Six of the shock cycles were a result of his failure to get off the ground after being tased by officers. In a CNN interview, coroner Randolph Williams stated it was “questionable” if the suspect was alive when the final two shock cycles were delivered (Amnesty International, 2008). These concerns demand that law enforcement agencies adopt clear and concise policies and training for when it is appropriate to use the TASER to resolve conflicts. It is just as important to establish clear guidelines on when the TASER should not be deployed.

Law enforcement agencies need a shift in training officers on how to confront resistance in a more thoughtful manner. Departments should emphasize training in verbal skills. These skills could be implemented in many cases to neutralize situations

before they escalate to higher levels of resistance. Additionally, law enforcement agencies should make a concentrated effort to teach the use of soft and hard hand control techniques. In many of the examples considered as overzealous, use of the TASER could possibly have been avoided if officers had implemented options in the lower levels of the force continuum. Sanow (2010) wrote that police departments should review their policies on TASER use in light of a 2009 9th Circuit Court ruling in *Bryan v. McPherson*. Sanow (2010) stated, "If the suspect is passively resistant, any use of a TASER whatsoever is becoming seen as unreasonable" (p. 6).

Law enforcement agencies should partner with news media and local citizen groups in planning and implementing the guidelines relative to the TASER and the use of force continuums. These methods have proven successful in other areas of program and policy creation by giving the public a voice in the process and coming to an agreement that will benefit the department and the community at large. This will benefit the department's image by making an effort to show the public that law enforcement cares.

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