

**Taser Use by
Ashland Police Officers
and
Recommendations
for Reform**

A Report of the
American Civil Liberties Union of Oregon
and its Southern Oregon Chapter

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INTRODUCTION¹

Ever since the January 22, 2006, death of Nicholas Ryan Hanson, a 24-year old Southern Oregon University student, following Taser use by Ashland police officers, SOU students and many others in the Ashland community have been concerned about the use of this electrical weapon. The Jackson County Medical Examiner reported that Mr. Hanson died as a result of a suicidal overdose of a medication, not the trauma of being jolted with the 50,000-volt shock delivered to his system by the Taser. There was never an independent, non-governmental medical review to confirm the counterintuitive conclusion that a 50,000-volt electric shock made no contribution whatever to the death of someone whose system was in crisis. Moreover, the Ashland Police Department has never announced an investigation of this incident, nor accounted for the use of the Taser in any of several other questionable instances disclosed by our study.

This report:

- (1) Sets out the known problems related to the use of Tasers;
- (2) Reviews the use of Tasers by Ashland police officers over the past three years; and
- (3) Presents recommendations on when Tasers may be used, the procedures needed to prevent misuse, and measures of public accountability.

Ashland Police Chief Terry Holderness has just published a strong directive restricting the Ashland Police Department's use of Tasers. The directive is a critical

¹ This report was written by Adam Clanton of the Portland, Oregon, law firm Williams, Kastner & Gibbs, a volunteer cooperating attorney of the ACLU of Oregon; Ralph Temple, an ACLU of Oregon volunteer attorney and member of the boards of the ACLU of Oregon and its Southern Oregon Chapter; and David Fidanque, Executive Director of the ACLU of Oregon.

first step in restoring community confidence in the use of this potentially lethal weapon.

I. THE PROBLEMS POSED BY “CONDUCTED ENERGY DEVICES”²

“Stun guns,” or conducted energy devices (CEDs), are weapons used to fire an electrical charge to subdue a subject. Taser International markets the most commonly used CEDs. There are now more than 100,000 CEDs in use by more than 8,000 law enforcement agencies in the United States, promoted by a multimillion-dollar industry.³

Tasers designed for law enforcement agencies can be discharged in two modes. The first fires two darts into the subject and then delivers a charge of up to 50,000 volts.⁴ The second – known as “stun” mode or “touch stun” mode – can be used to apply a similar charge by direct contact of the device with the skin.

Most dart-fired CEDs have a range of approximately 20 feet, but Taser International is now advertising a model with a range of 35 feet and is reportedly developing a model with a range of 100 feet. It seems likely that longer-range CEDs may lead to a greater risk of injuries to both target subjects and innocent bystanders.

It is self-evident that an instrument that would enable police to subdue violent persons without injuring them is highly desirable. However, two problems have accompanied the rapid, profit-driven proliferation of CEDs: First, they have not been established through independent testing to be safe; and second, they have been

² This section of the report is in substantial part excerpted from the Oregon ACLU’s Position on Controlled Electronic Devices, approved by the ACLU of Oregon Board of Directors on July 18, 2007.

³ See, e.g., Eric Lipton, Security Nominee got Rich on Tasers: Kerik’s Relationship With Stun-Gun Firm Earned Him Millions, S.F. Chronicle, Dec. 10, 2004, at A-8.

⁴ Police Executive Research Forum (PERF), Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force, Ch. 5, Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration, at p. 99 (April 2007).

misused by police in many jurisdictions to coerce compliance rather than being reserved for situations where an officer's or another person's safety is at risk.

While manufacturers and police contend that CEDs are generally "less lethal" weapons, there have been many examples of subjects dying after being subjected to the use of such devices. The manufacturers maintain there have been no examples of deaths that were the direct result of proper use of the devices.⁵ However, few independent studies have been performed, and there is no medical consensus regarding either the short-term or long-term medical effects of CEDs.⁶

It is particularly troublesome that many of the reports of death and serious physical injuries appear to involve individuals in crisis – those who are mentally disturbed or under the influence of drugs⁷ – the very groups on which the police seem most inclined to use Tasers.

Nor is there any federal agency that has the authority to regulate or evaluate the safety of so-called "less lethal" weapons or their use. For these reasons, the National ACLU and Amnesty International both oppose the use of CEDs.⁸

⁵ Many of the reported deaths involved subjects who were intoxicated by cocaine or other substances. Many have been attributed by medical examiners to "excited delirium." According to a February 27, 2007, National Public Radio report, "Taser International spokesman Steve Tuttle acknowledges that each year his company sends hundreds of pamphlets to medical examiners explaining how to detect 'excited delirium.'"

Yet an article in *Police Chief* magazine (June 1996), "'Excited Delirium': A Two-Fold Problem," by Lt. Alan W. Benner, Ph.D., Department Psychologist of the San Francisco Police Department, and S. Marshall Isaacs, M.D., of the San Francisco Department of Health, Paramedic Division, states flatly, "'Excited delirium' is not a recognized medical or psychiatric condition."

⁶ For one example of a medical study which we deem to be inconclusive, see Ho, Dawes, Bultman, et al.; "Respiratory effect of prolonged electrical weapon application on human volunteers," *Academic Emergency Medicine*, 14(3), pp. 197-201, March 2007. Also available at: http://www.ncbi.nlm.nih.gov/sites/entrez?cmd=Retrieve&db=PubMed&dopt=Citation&list_uids=17284465&db=PubMed&dopt=Citation&list_uids=17284465

⁷ See PERF Conducted Energy Device Policy and Training Guidelines For Consideration, Guideline 50: http://www.policeforum.org/upload/PERF-CED-Guidelines-Updated-10-25-05%5B1%5D_715866088_1230200514040.pdf

⁸ ACLU Policy 208a provides in part that unless and until "non-lethal" weapons are certified as safe and effective following rigorous independent testing, "they must not be used." The Amnesty International policy is available at: http://www.amnestyusa.org/countries/usa/Taser_report.pdf

A recent study by the Police Executive Research Forum (PERF) reported that, in a survey of law enforcement agencies, only 6% reported restricting Tasers to situations where the officer faced “deadly aggression.” 59% permitted use against “severe” aggression (usually, a weapon). But one-third of the agencies surveyed were unreasonably permissive: 22% permitted use of a Taser if the officer was dealing with any “active aggression,” defined to include bracing, tensing, or verbally resisting; 14% allowed Taser use for non-compliance with an officer’s orders, including verbal “resistance.”⁹

Given the available evidence – and lack of it – regarding the safety of CEDs, the ACLU of Oregon urges that if law enforcement agencies are going to use CEDs, their use should be subject to strict limitations appropriate for a weapon that may result in unintended fatalities. In addition, law enforcement agencies should emphasize training in non-violent techniques to de-escalate potentially violent situations, and thus minimize the circumstances in which they might otherwise regard it necessary to use CEDs.

Numerous factors must be included in police department policies regulating CEDs, such as when medical assistance should be provided to a Tasered subject and factors that go into assessing the level of threat posed by a subject (including the number of police officers on hand, and the relative size of a police officer and a subject, etc.). We will not attempt here to set out all such factors. Instead, we incorporate by reference the detailed recommendations of the ACLU of Northern

⁹ PERF Report, note 4, above, at p. 114.

California.¹⁰ In this report, we set forth the main issues related to the use of CEDs and our recommended best practices on those issues.

II. REVIEW OF TASER USE BY ASHLAND POLICE, 2004 – 2006

A. Preface

We note three matters concerning this review of Taser uses.

First, except where noted otherwise, all the information in the following review is derived from police reports. To conduct this review, the ACLU worked with a member of the City Council to obtain, from the Ashland Police Department, all police reports on uses of Tasers from January 1, 2004, through December 31, 2006. In response, the police department furnished reports of six uses of the Taser over the three-year period.

Second, although that is a small number, we have no reason to believe that the reports furnished were incomplete. There is rarely occasion for Ashland police officers to resort to force of any kind. Ashland is, for the most part, free of serious crime and of crimes of violence. It is therefore not surprising that the police would use Tasers only six times in a three-year period. However, if there were other instances, we have not reviewed them because they were not furnished to us.

Third, Ashland police officers have been operating under a deficient guideline on Tasers, General Order 5.109, issued by former Chief Scott Fleuter on December 8, 2000. Among the deficiencies in the Fleuter directive is the vagueness of the standards it provides as to when a Taser may be used. The directive provides that:

“The Taser may be used when deadly force does not appear to be justified; or attempts to subdue the subject by other tactics have been, or will likely be, ineffective; or there is a reasonable expectation that it will be unsafe for

¹⁰ See ACLU of Northern California report, “Stun Gun Fallacy: How The Lack of Taser Regulation Endangers Lives” (September 2005), at: http://www.aclunc.org/issues/criminal_justice/police_practices/special_report_stun_gun_fallacy.shtml

officers to approach within contact range of the subject.” (Section II)(emphases added)

It also states:

“The Taser may be used to control or arrest a violent or potentially violent suspect when lethal force does not appear to be necessary or justified or when it appears unsafe for officers to approach to within OC Spray or contact range of the threat.” (Section III.A).

These standards intend to confine Taser use to situations where the subject poses a threat to safety. However, the phrases, “attempts to subdue the subject by other tactics will likely be ineffective,” and “a potentially violent subject,” do not expressly rest on a threat to officer or public safety, and therefore are unnecessarily vague and create too low of a threshold for use of a technology that can lead to unintentional deaths. Even so, our review of Taser use by Ashland police officers over the past three years indicates that only one of the six uses of a Taser was justified, even under the overly vague standards of Order 5.109.

B. The Six Episodes of Taser Use By Ashland Police, 2004 - 2006

1. Officer Flynn – January 1, 2004

According to Officer Michael Vanderlip, officers were attempting to handcuff James Halstead, who had “a body shape similar to a professional body builder,” outside of a bar after an apparent bar fight. The officers “were unable to pull his arm behind his back as he kept his arms stiff at his sides.” Halstead apparently “was able to walk toward the street as we held onto him.” In an effort to gain control over Halstead, Officer Vanderlip states that:

I pull [sic] out my pepper spray canister and reached around to the front of his face to spray him. Since all of the officers were so close, I placed the nozzle right up again [sic] his nose to avoid spraying the officers. I yelled that I was going to spray, then sprayed him with about a 1-second burst. I could not see the spray and Halstead did not appear to be affected. I sprayed a couple more 1-second bursts but still

did not see any signs that it was affecting him. I placed the canister back on my belt again.

We were still not able to get control of Halstead. Officer Flynn announced that he was going to use the Taser. I saw Officer Flynn shoot Halstead in the leg with the Taser prongs and shock him. Halstead immediately fell to the ground. As soon as the Taser stopped, Halstead was twisting and trying to free himself from our hold. Officer DeSilva placed a handcuff on Halstead's left wrist. I held onto the left wrist and handcuff while Officer DeSilva and Officer Stewart pulled his right arm behind his back. Halstead was still resisting and would not cooperate. Officer Flynn touched the Taser on Halstead's legs several more times to get him to comply. Officer DeSilva and I were able to handcuff placed [sic] on his right arm. . . . Ashland Fire Rescue was called to the scene to assist Halstead . . . Halstead was transported to jail.

Officer Bon Stewart observes that officers threatened to take Halstead "to detox." Stewart comments that he was "concerned" that Halstead "was going to hit one of us because when he was swinging his arms, his fists were clenched and his elbows were bent." Officer Stewart states that:

Officer Flynn warned Halstead if he did not get down on the ground, he would be tased. Officer Flynn made sure Halstead could see the Taser, and he warned him at least one more time to get down on the ground or he would be tased. Halstead continued to fight against us. Officer Flynn yelled for us to clear because he was going to apply the Taser to Halstead. Officer Flynn tased Halstead using the prong mode of the Taser. I released Halstead. Halstead fell to the ground. Officer Flynn ordered Halstead to roll onto his stomach several times. Halstead did not comply. Officer Flynn delivered another charge from the Taser to Halstead.

Officer Stewart reports that Halstead was "given medical care for the Taser and pepper spray, and then, transported to Jackson County Jail."

Officer Flynn's report of the incident is the most detailed and indicates that he used the Taser multiple times. He states that "I became very concerned for our safety and Halstead's safety." He states he stood in front of Halstead and "directed the red light sighting of my Taser at Halstead" and gave a verbal warning that "he would be Tased" if he did not comply. Officer Flynn states that he "administered the

Taser impacting Halstead in his right upper thigh” and that “his legs buckled and the effects of the Taser immediately brought him to the ground.” Officer Flynn then notes that “Halstead rolled and was able to knock one of the Taser prongs loose from his leg making it ineffective.” Officer Flynn continues that:

Halstead pulled both his hand [sic] underneath him reaching under his body and waist. I was fearful of this since he had not been searched. I approached Halstead and having removed the cartridge from the Taser I was able to administer it at close quarters (touch-stun) to his lower right leg. I administered it at least twice more and was able to gain compliance from Halstead as he finally placed his hands behind his back.

It appears that Halstead was attended to by Ashland Fire Rescue on the scene and transferred to jail.

ACLU Commentary: The use of the Taser in this episode was justified by the unusual strength of the subject and the violence of his resistance.

2. Sgt. Teresa Selby – June 19, 2004

According to Officer Potter, Ms. Novickis was asked, and repeatedly refused, to leave the scene of a police investigation. Officer Potter apparently told Ms. Novickis that if she would not leave she would be arrested for criminal trespass. When she again refused to leave, Officer Potter attempted to arrest her. He states, “I told Novickis to put her hand behind her back and she refused. I grabbed Novickis’ right arm with my right hand. Novickis bent her head down and bit the back of my right hand, puncturing the skin. I radioed for backup.”

According to Officer Potter, Ms. Novickis “began screaming that she was being raped” and a large crowd started to gather. Officer Baines next arrived on the scene. Ms. Novickis is reported to have been kicking and biting officers, and resisting being handcuffed. Officer Potter next observes:

Officer Baines came to our position with the taser. Officer Baines told Novickis several times that if she continued to resist she would be tased. Novickis continued to kick and bite. Officer Baines tased Novickis on her left side. . . . Novickis was placed in handcuffs and placed into a patrol vehicle. Novickis was transported to the Ashland Community Hospital. While at the hospital I could here [sic] Novickis screaming. Novickis was yelling that she wanted someone to kill her.

An unnamed undercover officer's report notes that "a strong odor" of alcohol came from Novickis' breath and that her speech was "slurred." He stated that "Potter and I set Novickis on the ground" in a seated position but that she struggled and bit, "grazing my skin causing a blood blister. I heard someone say they were going to use a taser at which point I backed away. Ashland police officers were able to get Novickis in custody."

Sgt. Teresa Selby indicates that the officers attempted to apply the Taser twice:

Officer Baines ordered Novickis to comply or he would TAZ¹¹ her. Novickis continued to struggle, biting at officers, kicking and thrashing. I yelled at Baines to Taz her. Baines applied the Taser in the touch stun mode just above Novickis' right hip on her right side. I could hear the crackle of the TASAR and Novickis briefly arched her back and then went limp before starting to thrash around again. Officer Baines lost contact with the TASAR and continued to reapply it. Officer Baines was unable to make good contact because of Novickis' violent movement.

Officer Baines' account differs in that he does not state that Ms. Novickis "went limp" after Taser application, but instead that "Novickis initially arched upward, then kicked and fought even harder to get away." According to Baines' account:

Novickis pulled away from the Taser several times during the five-second cycle of the Taser, causing me to break contact with her several times. Each time I broke contact, I re-applied it to her right side, hip or upper leg area several times. When the cycle ended, I told everyone to roll her over onto her stomach. I grabbed Novickis' right hip and rolled her over, pushing my knee into her back to hold her

¹¹ "Taser" is spelled a variety of ways in the police reports, which we have neither corrected nor noted.

down. Novickis continued to struggle and yell while officer [sic] placed her in handcuffs.

Sgt. Selby notes that Novickis was transported to the Jackson County Jail.

ACLU Commentary: The use of the Taser was not justified. Nothing in the police reports indicates that this woman posed a serious threat to the safety of the three officers trying to subdue her. Three officers should have been able to subdue the subject without using the Taser, and without a substantial risk of consequential injuries to the subject or themselves.

3. Sgt. Teresa Selby - September 4, 2004

According to Officer Damian Amarillas, officers responded at a residence to find an intoxicated subject being restrained by three adult males, but that “no one really had any real control over him.” Amarillas stated that the subject was “soaked in sweat” and that his “actions and demeanor were not consistent with alcoholic intoxication alone.” Amarillas called for additional units and a supervisor “due to the subject’s volatile state of mind.” Amarillas further notes that:

Sgt. Selby and Officer Vanderlip arrived on scene and assisted. _____ began to break free of the subjects and hit his head back into the mouth of a subject holding him. I turned on the Taser and was prepared to administer a touch stun to _____ for an arrest . . . _____ lunged forward as Sgt. Selby said to deploy the Taser. I administered a touch stun to _____’s chest area. _____ continued to disregard my commands to comply and I cycled the Taser at least one more time. . . . The family began yelling at officers for “shocking” _____. _____ was checked out by Ashland Fire and Rescue paramedics. _____. . . . I transported _____ to the Ashland Community Hospital for evaluation.¹²

Officer Selby corroborates Amarillas’ account, but provides more Taser details:

I instructed Officer Amarillas to “TAZ” _____. I grabbed _____’s right arm as Officer Amarillas asked _____ to move. He then applied the TASAR in the touch stun mode to _____’s chest area approximately sternum high. As Officer Amarillas activated the TASAR _____’s body tensed and he arched upward toward the TASAR. The TASAR slid

¹² The subject’s name was deleted by Ashland Police in this report furnished to the ACLU.

upward slightly and cycled through. . . . Officer Amarillas reactivated the TASAR and _____ yelled and went limp.

Sgt. Selby notes that they warned the subject to calm down or he “would be shocked again” for a third time. This apparently was not necessary. Paramedics on scene determined the subject was “not in immediate need of medical care.” Sgt. Selby notes that after the subject was in custody, she returned to the apartment and spoke with an unidentified female and “explained why we used the TASAR, demonstrated it and gave a brief explanation as to how it worked.” At the hospital the subject was “hallucinating and confused hospital personnel and his parents,” and “made several comments about wanting to die.”

ACLU Commentary: The use of the Taser was not justified. The subject was undergoing a mental crisis in his own bedroom. It is true that he was physically resisting arrest. But, there is nothing in the police reports that indicates that he posed a threat of death or real physical injury, or even that he was trying to attack the officers. The Taser should not be used, unless unavoidably necessary, against someone who is mentally disturbed or under the influence of drugs. The contemplated third use of the Taser was certainly out of bounds. Three police officers should have been able to subdue this subject. The Taser should not be used as a labor-saving device.

4. Officer Art LeCours – December 12, 2005

Officer Theron Hull reported that he viewed Mr. Lydon leaving a bar and attempted to stop Lydon for riding a bicycle without a headlight but believed that “Lydon had a detainer at the jail for his apprehension” by his parole officer. Mr. Lydon got off his bicycle, fled on foot, and was pursued by Hull and Officer Michael Vanderlip, with the two officers “eventually catching him and bringing him to the

ground.” The officers commanded “Lydon to bring his hands out from underneath him” but Mr. Lydon “continued to ignore all commands.” Next, Officer Hull explains:

I could see Officer Le Cours’ vehicle approaching at this time. I continued to attempt to grab Lydon’s arms/hands. Officer Vanderlip applied a mandibular pressure point to Lydon’s left mandibular nerve. Lydon began to yell that it hurt, but refused to comply with demands to bring his hands out from underneath him. During this struggle, Lydon continued to try to get out from underneath Officers and continued to tuck his elbows against his ribs, making it extremely difficult to grab his arms/hands.

I got off from on top of Lydon and was able to get hold of his left wrist. I applied a handcuff to his left wrist; however I still did not have complete control of his left arm. His arm was still slightly tucked and Lydon actively attempted to pull his left arm away. I pulled up on the handcuff bringing Lydon’s left hand out from underneath him where I could see it.

Officer LeCours arrived to assist and placed a Taser against the small of Lydon’s back. I yelled for Lydon to stop resisting . . . or he would be tazed. . . . Lydon made no attempts to remove his arm out from underneath him and was still actively trying to pull away from officers. Officer LeCours activated the Taser, initiating a standard 5 second burst to the small of Lydon’s back. Lydon began to yell and immediately removed his hand out from underneath him. I placed the handcuff onto Lydon’s right wrist.

Officer Hull’s report continues, “[o]n Lydon’s back were small white skin wounds from the contact points of the tazer. Ashland Fire and Rescue responded to the scene. Lydon requested transport to the Ashland Community Hospital to be checked out. He began to complain of chest pains and pain to his right ear.” Lydon was apparently subsequently transferred to the hospital.

Officers Vanderlip and LeCours had similar accounts of the incident – that the Taser was applied to gain compliance from Mr. Lydon with officer requests to make his right arm available for handcuffs. Officer Vanderlip notes that he photographed the Taser marks on Mr. Lydon’s back, and both officers observed areas of red and white marks where the Taser was applied.

ACLU commentary: The use of the Taser was not justified. Nothing in these police reports suggests a threat to the officers or violence directed at them. Again, three officers holding a subject stomach down on the floor had him under control. In these circumstances, the risk of death associated with use of Tasers outweighs the difficulties of pulling the subject's arms into position.

5. Officer Erik Baines – November 11, 2006

Officers responded to a domestic dispute. According to the report of Officer Erik Baines, "enroute dispatch advised that the suspect, Bill Patterson, was becoming violent and attempting to break into a window to get into the residence." Two females ran out of the residence, and "Bill pursued them." The women pushed Mr. Patterson away and went back into the residence. When the officers arrived, Mr. Patterson was in a neighboring residence "sitting on the couch in the living room" with a bleeding right hand, "staring into space." The door was not locked, and the officers entered, and:

tried to talk to him, asking him what was going on, etc., when Bill stood up, then extended his hands out in front of him. Sgt. Alderman grabbed his right arm, I grabbed his left hand and we pulled them down behind his back. Bill began to resist efforts to control his arms by stiffening them to pull them back to his sides. I told officer DeSilva to take his left arm, which she did. Ofc. DeSilva and Sgt. Alderman attempted to control Bill's arms to handcuff him. He continued to resist their efforts and ignored verbal commands to comply. During their struggle, all three started going to the ground. Officer DeSilva and Sgt. Alderman were not able to pull Bill's hands behind his back, so I used the Taser in a drive-stun to the lower left side of his back. Bill received about a three second shock before complying when I removed the Taser from his back and shut it off.

After Taser use, the officers placed Mr. Patterson in handcuffs. According to Officer Baines, Patterson continued to struggle and "called out to Jesus, saying he wanted to die." Patterson was sedated by paramedics and transferred to RVMC,

and Officer Teri DeSilva subsequently photographed a “small Taser burn” on Mr. Patterson’s lower back.

Sgt. Jim Alderman’s account is similar, although it states that Officer Baines warned Mr. Patterson prior to Taser use:

Officer Baines took hold of Patterson’s left wrist and I took hold of Patterson’s right wrist. We pulled Patterson’s arms behind his back while we continued to tell him that we were there to help him . . . Patterson began to tense and started to pull his arms back around to the front of his body. Officer Baines, armed with a Taser, had Officer DeSilva take hold of Patterson’s left wrist so he could deploy the Taser if necessary. Patterson continued to power through our holds and was taken to the floor on his stomach. Patterson was exhibiting extreme strength and we were having a difficult time controlling his movements. Officer Baines deployed the Taser and ordered Patterson to comply and place his hands behind his back. After Officer Baines ordered Patterson the second time he told Patterson that if he did not comply he would be “tased.” Patterson started to roll counter clockwise and Officer Baines, using a drive-stun deployment, tased Patterson in the lower left side of his back. Officer Baines applied the Taser for approximately 3 seconds.

ACLU commentary: The use of the Taser was not justified. Nothing in these police reports suggests a threat to the officers or violence directed at them. The three officers holding a subject stomach down on the floor had him under control.

Beyond that, this incident provides a textbook example of how a situation can escalate when a physical approach is taken too soon by officers responding to a person in crisis. As noted earlier, officers need better training to deal with people who are experiencing a mental health or other emotional crisis. In this case, the officers attempted to physically control the subject when the subject had not threatened the officers in any way--and that triggered the physical resistance by the subject.

Despite the subject's reported earlier actions, there was no indication that he presented any threat to the officers when they arrived. Apparently, all the subject did to provoke the physical response by the officers was to "stand up" and extend his hands. Even after the incident escalated, three officers should have been able to control the subject without using the Taser. In any event, the situation never should have reached that point.

6. Sgt. Teresa Selby – the Nicholas Hanson case - January 22, 2006

This incident ended in the death of the subject, Nicholas Hanson, a student at Southern Oregon University. According to Officer Wesel, officers responded to a report of a suicidal male, Hanson, at a residence. Upon arrival, Hanson refused to answer the door. Officer Wesel peered through the front windows and saw:

a male, later identified as Hanson, walk out of the bedroom into the living room . . . He entered into the kitchen . . . and grabbed a black mug like cup with his right hand. Hanson began to drink from the cup forcefully and purposefully over the kitchen sink. Several times he tipped his head and cup back taking long swallows. I felt that if the fluid in the cup had been the consistency of water . . . he would not have the cup tipped back for so long . . .

The substance ingested by Hanson, according to the subsequent medical reports, was an overdose of Unisom, a sleep medication.

Officer Wesel notes that officers "commanded Hanson to come to the door," but Hanson refused. Then, "[a]bout a minute after knocking the second time I watched Hanson instantly drop to the floor . . . He fell as though he fainted." Wesel announced to the officers that "He's down." Wesel states that the officers then forced their way into the residence.

As the door opened "Officer Schuster went through with the Taser . ." After the officers entered, Wesel notes that:

I realized he was conscious and breathing. Officer Schuster quickly changed from saying "Show me your hands" to "Stay down, get on the ground." . . . I saw Hanson's arms approaching the officers. I couldn't see his hands but I was able to see his red sweatshirt within arms length of the officers. I heard both officers yelling "Get Back." I then heard Sgt. Selby yell, "Tase him, Tase him." Officer Schuster administered one projectile Taser shot to Hanson. . . . One probe attached to Hanson's chest and the other only attached to his sweatshirt, also in the upper chest area. This was a successful shot as both probes attached to allow an electrical current to be administered to Hanson. Hanson dropped to the floor and immediately started yelling. He began kicking his feet, Officer Schuster advised him to stay down and that the Taser was still attached to him. . . . Hanson continued to resist when officers tried to handcuff him and Officer Schuster states we would Tase him again if he didn't comply. Hanson said, "Don't Tase me." Officer Schuster and Sgt. Selby were then able to place handcuffs on Hanson.

Officer Wesel then observed that Hanson was "unable to hold himself up."

Paramedics arrived to take Hanson, and Wesel stated that "I then removed the Taser cartridge from the Taser, which eliminated the ability to administer another shot. The probes were still attached to Hanson awaiting AFR to remove them. Officer Wesel observed what she concluded was a suicide note and found that the cup contained some kind of "blue thick substance."

According to Officer Scott Schuster's account, after the officers entered into the apartment:

I located Hanson lying in a utility closet adjacent to the kitchen. I yelled at Hanson to show me his hands. Hanson did not immediately respond. I again yelled at Hanson to show me his hands. Hanson showed me his hands and slowly started to get up. Hanson yelled something similar to "fuck you" and got up and started advancing aggressively towards Sgt. Selby, Officer Wesel and myself. While Hanson was advancing I yelled at him to get on the ground. When Hanson got approximately 6 feet from me I deployed the Taser M26 stun device on Hanson. I saw Hanson tense up and fall towards the ground and lay on his side. After approximately 3-4 seconds of the Taser being deployed, I disengaged the power on the Taser. Hanson became compliant at this point.

Hanson was “occasionally regurgitating” a substance, and Sgt. Teresa Selby learned one hour later that “Hanson had passed away at the hospital.”

Sgt. Selby observes that “as we approached the kitchen where Hanson had collapsed he regained consciousness and charged us,” that “Hanson yelled at us to shoot him,” and that Hanson “also yelled, ‘I’m going to shoot you.’” Sgt. Selby states that she shouldered her weapon and that Officer Schuster fired the Taser when Hanson was approximately 2 feet from him and that “the Taser cycled through a 5 second burst.” Sgt. Selby states that “[d]uring the handcuffing process I warned Hanson several times that if he did not comply with my requests and allow himself to be handcuffed he would be tased again.” Selby observes that once Hanson was handcuffed and paramedics were called:

Schuster was still in possession of the Taser and the expended cartridge was still attached. Maintaining the Taser in this position allowed Ofc. Schuster to pull the trigger and shock Hanson again if necessary. Ofc. Schuster asked me if he should leave the cartridge attached to the Taser and I stated that he should.

Sgt. Selby notes that en route to the hospital, “[h]e appeared to suffer several seizures and his breathing was loud and he made a snoring sound.”

An anonymous witness to the incident stated that “Nick had told me that he had had seizures in the past” and that “I think it may have been harmful to taizer Nick considering his preexisting condition from the pills.”

Dr. James Olson, the Jackson County Medical Examiner, reported that “the deceased had a probe from a taser that was still imbedded in his right chest near the right nipple area. Also located on the abdomen area on the right side of the body was what appeared to be a small burn, consistent with a taser probe. The taser was seized as evidence.” Nicholas Hanson’s death was ruled a suicide by Dr. Olson, who “determined the taser had not played a part in Mr. Hanson’s death.”

ACLU Commentary: This is an extreme case of misuse of a Taser.

First, the situation escalated because officers responded inappropriately to a person experiencing a severe mental health crisis. Basic mental health and crisis-intervention techniques emphasize doing everything possible to calm a person in crisis, rather than shouting at the person and issuing military-style orders to “show your hands,” or to force compliance in other ways.

Second, regardless of the earlier noted deficiencies in the Ashland Police Department Taser directive, sound judgment should have alerted the police sergeant on the scene that a suicidal person who has just ingested a substance that causes him to faint should not be subjected to the Taser’s 50,000-watt electrical jolt unless there is an absolute necessity to protect the officers’ lives. It is difficult to understand the certainty with which the County Medical Examiner determined that the Taser “had not played a part” in the death.

Given Hanson’s weakened state, it is clear that he could have been subdued without the Taser. That this sergeant was prepared to order him Tasered again, even after he was handcuffed, is a further reflection of a lack of restraint and sound judgment.

C. Conclusion of Review of Taser Use

The extreme misuse of a Taser that ended in the death of SOU student Nicholas Hanson was the result of the inclination of Ashland police officers to use this potentially lethal weapon excessively. In only one of the six episodes here reviewed does the use of the Taser appear to have been justified. Along with an inadequate directive regarding Taser use, and apparent inadequate training in dealing with people who are mentally disturbed or under the influence of drugs or alcohol, the misuse of Tasers by the Ashland police illustrates the problems of a

police force not properly attuned to working with the community, as detailed in the 55-page report of the Police Executive Research Forum (PERF) on the Ashland Police Department issued on June 15, 2006.¹³

III. RECOMMENDED RESTRICTIONS ON THE USE OF CEDs (TASERS) BY THE ASHLAND POLICE DEPARTMENT¹⁴

A. General Restrictions

CEDs should be used only by authorized trained personnel to subdue or control a person whom the officer reasonably believes:

- i) Creates an immediate, credible threat to the physical safety of the officer, another person, or the individual himself/herself; and
- ii) Unless prompt action is taken to immobilize the person, there is a substantial likelihood the situation could lead to the death or physical injury¹⁵ of the officer, another person, or the individual himself/herself.

We note several key factors in this standard:

First, the standard applies as the officer sees the situation. At the same time, the officer's perceptions must be objectively reasonable.

Second, both parts of the standard [(i) and (ii)] must be met. That is, there must be an immediate, credible threat, AND there must be a "substantial likelihood" that the situation could lead to death or injury. (The use of the term "substantial likelihood" means that the outcome cannot merely be speculative; it must be based on articulable facts and prior experience.)

¹³ To download the full report, see <http://www.ashland.or.us/Page.asp?NavID=9289>

¹⁴ This section of the report, like Section I, is in substantial part excerpted from the Oregon ACLU's Position on Controlled Electronic Devices, approved by the Oregon ACLU Board of Directors on July 18, 2007.

¹⁵ ORS 161.015(7) provides that "'Physical injury' means impairment of physical condition or substantial pain."

Third, the phrase “the situation could lead to” means that the officer does not have to wait until lethal force would be justified. We recognize that CEDs are not always effective in subduing subjects who are intoxicated or for other reasons non-responsive to verbal de-escalation techniques and that the option of using deadly force must always remain as a last resort if the CED is not effective.

At the same time, it is important that law enforcement agencies monitor this part of the standard closely to ensure that it is not allowed to be so elastic as to undermine the purpose of restricting the use of CEDs.

Fourth, the consequences that would warrant the use of the CED are potential “death or physical injury.” The potential “physical injury” must be serious, as suggested by the standard linking it with “death” – it cannot be something as minor as, say, a small person slapping, pushing, or scratching a much larger officer or another person. This part of the standard must be monitored most closely of all, because if this standard is misused, here is where it is most likely to occur.

B. Special Restrictions

i) Vulnerable Populations and Circumstances

The Portland Police Bureau manual provides (Section 1051.00):

The Taser shall not be used on the following persons or circumstances, unless one of the exceptions following this list is met:

- a. Children who are known to be, or are obviously under the age of 12.
- b. Persons who are known to be, or are obviously older than 60 years of age.
- c. A woman who is known to be, or is obviously pregnant.
- d. A person known to be, or is obviously medically fragile.¹⁶

¹⁶ This category should be specified to include, among others, those who are mentally disturbed or under the influence of drugs.

The Portland provision then lists, as exceptions that would permit Taser use, even on the above list of persons, a subject armed with a dangerous weapon, someone suicidal, and someone who cannot safely be controlled without a Taser.

Portland also has other special restrictions against the use of Tasers: on the face or head, on subjects who are handcuffed, at demonstrations, and on persons near flammable substances.

We also recommend those as minimum special restrictions.

ii) Duration of Discharge

Most dart-fired CEDs can be set for a standard discharge of five seconds. Longer duration discharges have been more commonly associated with fatalities. Policies must therefore provide for a discharge of no more than five seconds — and require the officer to assess the effectiveness of the discharge prior to initiating a second charge.

In no instance should the CED be discharged more than three five-second bursts against the same subject. However, as soon as it is clear the CED will not be effective against a particular subject, the officer must use alternative methods of force.

C. TRAINING TO MINIMIZE THE NEED TO USE CEDs

CEDs should be issued only to officers specially trained and certified in their use AND those officers must also have completed training in practical techniques to put people at ease and de-escalate potentially violent situations. The necessity for resorting to the use of CEDs can be reduced by effective training of police officers in such subjects as verbally inducing compliance, and how to recognize and deal with

persons who are mentally distressed or disabled, or who are under the influence of drugs or alcohol.

A recent step in the right direction was the enactment in Oregon of HB 2765, a law requiring all new police officers to receive at least 24 hours of training in the recognition of “mental illnesses utilizing a crisis intervention model.”¹⁷ Such training also should be mandatory for any officer authorized to use a CED.

In addition, CED training should inform officers that CEDs may lead to unintended fatalities and that there currently is little independent medical research on the short-term or long-term health effects of CEDs. If not already part of the mental health training, officers also should be instructed in the most effective methods for de-escalating potentially violent situations as well as other methods to overcome resistance without the use of CEDs.

D. MONITORING

Detailed reporting of each actual or threatened use of a CED should be required, and such reports should be subject to the same type of review as those applicable to the use of deadly force. In addition, CEDs should be employed which are equipped with built-in audio and video recording devices that are automatically activated upon any use of the device. All such records and reports should be publicly available, with no redactions.

¹⁷ See The Oregonian:
http://blog.oregonlive.com/politics/2007/06/governor_endorses_training_pol.html

CONCLUSION

1. The ACLU of Oregon and the Southern Oregon Chapter of the Oregon ACLU recommend that the standards, restrictions and guidelines set out in Section III of this report be adopted by the Ashland Police Department.

2. In light of unresolved doubts about the safety of CEDs, the death of Nicholas Hanson, and the Ashland Police Department's history of misuse of Tasers, the ACLU of Oregon and the Southern Oregon Chapter of the Oregon ACLU recommend that Tasers initially be issued to members of the Ashland Police Department only for a trial period of three years. It is critical during the trial period that the consciousness and the culture of the use of Tasers by members of the police force be transformed.

3. During the three-year trial period, all uses of the Taser by the officers trained, certified, and authorized to use them should be closely supervised, monitored and studied. The reports concerning such uses, and the Department's review and evaluation of each such use, should be made publicly available. The ACLU will pay particular attention to Taser use involving the officers identified in episodes 2 through 6 of this report.¹⁸ It is also urged that neither of the two sergeants involved in those episodes should have any role in reviewing or evaluating Taser use by other officers.

4. The episodes reviewed in this report reveal a pattern. Ashland police officers appear to be inadequately trained or attuned to the art of de-escalating potentially volatile situations involving persons in crisis. The importance of such

¹⁸ We refer to Sgt. Selby, Sgt. Alderman, and Officers Amarillas, Baines, DeSilva, LeCours, Schuster and Vanderlip. Officers Hull, Potter and Wesel are no longer with the Ashland Police Department.

training and acculturation cannot be overemphasized. Dispensing with the need to use force is the most effective way to prevent the misuse of Tasers or other unnecessary or excessive force.

5. At the end of the three-year trial period, the Ashland City Council should review the records, and public commentary, and decide whether to permit the continued use of Tasers by the Ashland Police Department.

6. Finally, a case that results in death is momentous, and should not be left in the files with unresolved doubts remaining at large in the community. We request that an independent investigation, including an independent medical review, be initiated concerning police and medical support actions in the Nicholas Hanson case.