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## POLICING IS A CONTACT SPORT (PART I)

### *How did the Taser's reputation reach such a low point?*

*By Julius (Jay) Wachtel.* Ten million dollars. That's what a Federal civil jury [recently ordered Taser International](#) to pay the family of a North Carolina grocery clerk who died after being struck in the chest with darts from a police Taser.

On March 20, 2008 Darryl Turner, 17 got into a heated argument with his boss. Police were called. A store surveillance video depicts the youth (white undershirt) menacing the manager. A police officer soon enters, extends his arm and fires a Taser. Turner strolls by the cop and goes off camera with the darts still embedded in his chest. He then collapsed. It was later determined that the officer, a 15-year veteran, held down the weapon's trigger for 37 seconds. Due to his Taser model that generated a prolonged shock, in this instance more than seven times longer than the normal 5-second pulse.

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Three years earlier a confrontation in Salinas, California played out to a similar conclusion. On February 19, 2005 [a 40-year old man high on meth went berserk](#), attacked his parents and thrashed their home. Police arrived. Five officers fired Tasers, shocking Robert Heston as many as twenty-five times. His heart stopped beating for 13 minutes and he died the next day.

[According to the coroner](#) Heston died from "multiple organ failure due to cardiac arrest due to agitated state due to methamphetamine intoxication (with the contributory conditions of left ventricular hypertrophy and dilation. Taser application and struggle with police.)" A consulting physician remarked that experiments on pigs suggested that CEDs were unlikely to endanger a normal human heart. However, he thought that in this case the Taser might have contributed to Heston's death because he ceased breathing moments after officers delivered the final shock.

Heston's family sued police and Taser International. In June, 2008 a Federal jury exonerated the officers. Taser, though, was held culpable, mostly because it had failed to warn users that it was dangerous to administer repetitive shocks. [Jurors awarded \\$5 million in punitive damages.](#) They also awarded \$1 million in compensatory damages, then slashed it by 85 percent to reflect their estimate of Heston's blame for his own demise.

Taser petitioned the trial judge for a reversal both as to law and fact. Four months later the judge set aside the punitive damages due to legal errors in jury instructions. But he agreed with the jury's factual conclusion that Tasers could under certain circumstances prove lethal. For bringing that to light he rewarded the plaintiff's lawyers with nearly \$1.5 million in attorney's fees.

Taser appealed. On May 5, 2011 [the Ninth Circuit delivered a split verdict.](#) On the one hand it ruled that the plaintiff's experts correctly applied the findings of prior research:

The studies demonstrated a relationship between Taser deployments and blood acid levels that could be aggravated by additional factors at play in this case, such as the numerosity and duration of Taser deployments and the victim's already-enhanced oxygen needs and blood-acid levels.

On the other hand it ruled that the award of legal fees was not permissible under California law. It reasoned that plaintiff lawyers, who took the case on contingency, didn't do it as a public service but in hopes of earning a big payoff, which for various reasons didn't materialize.

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Until recently lawyers who took on the Taser had only the Heston case in their corner. Given the qualified nature of the coroner's report and a non-precedental Ninth Circuit opinion, they must have been overjoyed by the multi-million dollar verdict in Turner. Although it hasn't been tested in appeals – after all, there is a chance it could be reversed – its autopsy findings seem compelling. According to the medical examiner [the youth had no relevant pre-existing condition](#), so the “acute ventricular dysrhythmia and ventricular fibrillation” that led to his death must have been caused at least in part by the Taser:

This lethal disturbance in the heart rhythm was precipitated by the agitated state and associated stress as well as the use of the conducted energy weapon (Taser) designed for incapacitation through electro-muscular disruption.

As one might expect, [Taser International vehemently disagrees](#). Its lawyers offered evidence that Turner had a preexisting heart condition. They also insisted that the National Institute of Justice had absolved the Taser from culpability for deaths following its use.

NIJ has issued two reports on the Taser. In June 2008 it released a brief summary entitled “[Study of Deaths Following Electro Muscular Disruption: Interim Report](#).” It's loaded with qualifications. For example, after reviewing coroner reports and relevant medical studies, the authors found no “*conclusive* medical evidence” that CEDs present a “*high risk*” of death or serious injury:

There is *currently* no medical evidence that CEDs pose a significant risk for induced cardiac dysrhythmia *when deployed reasonably*. Research suggests that factors such as thin stature and dart placement in the chest *may lower the safety margin* for cardiac dysrhythmia. There is no medical evidence to suggest that exposure to a CED produces sufficient metabolic or physiologic effects to produce abnormal cardiac rhythms *in normal, healthy adults*. [Emphasis added]

Tasers were neither endorsed nor ruled out. Law enforcement agencies were simply advised that, in the best tradition of double negatives, they “need not refrain from deploying” CEDs as long as they are used in compliance with nationally accepted standards.

NIJ didn't offer any. But the [Police Executive Research Forum](#) (PERF) did. Its 2005 guidelines for Taser use endorse a single, five-second cycle, then a pause and re-evaluation before applying additional cycles, their number and duration to be determined by agency policy. ([PERF's revised guidelines](#), issued this year, recommends no more than 15 seconds total exposure, whether in one cycle or three. That's far less than what Turner and Heston got.)

In July 2010 NIJ released “[A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report.](#)” Its main conclusion was that CEDs were safe when properly used. Data was collected on 25,000 uses of force by twelve law enforcement agencies. Incidents were categorized by type of force (physical, OC/pepper spray, CED) and injuries (suspects, cops.) In brief, the results indicate that injuries to suspects were much less likely when the force used was OC spray or CED. Injuries to officers were not associated with CEDs, and were *more* likely when OC was deployed.

The authors also examined experimental evidence of the effects of CEDs on pigs and humans. Standard five-second bursts harmed neither animals or people. Some pigs experienced ventricular fibrillation (VF) when exposed to shocks of unusually high output or long duration (two 40-second applications). No significant effects were detected when humans were shocked for 15 seconds, either in one burst or in three 5-second bursts. Twenty-second exposures produced higher heart rates in humans but there was no evidence of VF or changes in blood chemistry. For ethical reasons humans have not been tested at exposures such as what Turner and Heston experienced.

Still, CED-related deaths are infrequent, and when they occur other factors such as heart disease, dangerous drugs and positional asphyxia are nearly always present. Given what little is known, the report’s authors surmised that the physiologic and metabolic effects of CEDs, while innocuous for the healthy, could prove fatal, say, for an obese drug user or heart patient who struggles with police, particularly when prolonged or repeat shocks are administered. For this reason they recommend the same as PERF, a single, five-second cycle, followed by a pause, and no more than 15 seconds total exposure.

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Darryl Turner’s \$10 million award was announced on July 19, 2011. On the same day [Charlotte city fathers closed ranks in support of CEDs.](#) “It is still a very effective, non-lethal force to control a situation,” said City Attorney Mac Mc Carley. As far as he was concerned, it would be business as usual.

His position didn’t last long. On the very next day, July 20, a Charlotte cop zapped a man who was beating and choking a woman at a transit terminal. The suspect collapsed. He was pronounced dead an hour later. Charlotte promptly took all Tasers out of service, to test them for safety and give the city time to review policies on their use.

And, one supposes, to ponder whether it can risk another eight-figure verdict.

Next week we’ll examine a few more examples, consider how and why cops use CEDs, and make suggestions to help assure that this vital tool is properly used. And rest assured, we’ll clarify what the title of this post really means. Stay tuned!