TASERS: LIABILITY ISSUES

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State Bar of Texas
18TH ANNUAL SUING AND DEFENDING GOVERNMENTAL ENTITIES COURSE
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CHAPTER 7.1

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EDUCATION

B.B.A. in Finance, Texas Tech University, 1979
J.D., Texas Tech University School of Law, 1982

PROFESSIONAL ACTIVITIES AND AWARDS

Shareholder in Sprouse Shrader Smith P.C.
Board Certified, Civil Trial Law – Texas Board of Legal Specialization
Texas Commission for Lawyer Discipline, 2002-2006; Chair, 2003-2006
Supreme Court Task Force on The Texas Disciplinary Rules of Professional Conduct, 2003-2005
Board of Directors, State Bar of Texas, 1999-2002
(Committee Chair, Facilities & Equipment, 2001-2002; Committee Chair, Disciplinary/Disability Systems Oversight, 2001-2002)
Amarillo Area Bar Association, Executive Committee, 1997-1999; President-Elect, 2005
Sustaining Life Fellow, Texas Bar Foundation; Fellow, American Bar Foundation
State Bar of Texas Presidential Citation, June 2004
Member: International Association of Defense Counsel, American Board of Trial Advocates, Texas Association of Defense Counsel, Inc., Defense Research Institute, and American Bar Association

LAW-RELATED PUBLICATIONS AND PRESENTATIONS

How to Avoid an Encounter with the Texas Commission for Lawyer Discipline
West Texas General Practices Course, Texas Tech School of Law, March 2006
Conflicts and Fee Problems in Tort Litigation
The Car Crash Seminar, University of Texas School of Law, December 2005
How the New State Bar Act Changes the Attorney Disciplinary System in Texas
Dallas Bar Association, September 2004
Condition or Use of Real Property
Suing & Defending Governmental Entities Course, State Bar of Texas, July 2004
Volunteers and Liability Under the Texas Tort Claims Act
Suing & Defending Governmental Entities Course, State Bar of Texas, July 2002
Course Director
Suing & Defending Governmental Entities Course, State Bar of Texas, July 2001
Premises Liability for Governmental Entities
Suing & Defending Governmental Entities Course, State Bar of Texas, July 2000 and July 2004
Attorneys Fees - Charging, Collecting & Forfeiting Them
Amarillo Area Young Lawyers Half-Day Seminar, February 2000
Defending a Dram Shop Case
Texas Association of Defense Counsel Summer Meeting, July 1999
Punitive Damages & Additional Damages
Handling Insurance & Tort Claims, University of Houston, July 1995
Punitive, Treble & Additional Damages: Moriel & Other Developments
Advanced Insurance Seminar, University of Houston, March 1995

CIVIC ACTIVITIES

Board of Directors, Amarillo Symphony, Inc. 2001-present
Board of Directors, Southern Region, Boy Scouts of America 2000-present
Board of Directors, Golden Spread Council, Boy Scouts of America, 1990-present
(President, 1994-1996)

A Westlaw search on June 19, 2006 revealed the following reported federal decisions concerning the use of excessive force involving "Tasers." This paper is meant only as a quick reference to those cases and does not analyze any single decision in depth. There are a number of other cases not included in this list that involve products liability and the duty of police departments to equip their personnel with non-lethal weapons such as "Tasers."

Batiste v. City of Beaumont, 426 F. Supp.2d 395 (E.D. Tex. 2006).

Individual with a bipolar disorder sued municipal police officers of the City of Beaumont under § 1983 and the Tort Claims Act. The officers responded to a call from an individual seeking medical attention. The officers then decided to transport the individual to a hospital. While being transported to three different hospitals, police officers allegedly used a "Taser" gun multiple times on the individual's back, buttocks and chest in efforts to restrain her. The District Court denied defendant's motion for summary judgment on both claims and allowed the individual to proceed with her claim.

Cummings v. City of Akron, 418 F.3d 676 (6th Cir. 2005).

Suspect brought a § 1983 claim against the City of Akron and municipal police officers. The police officers subdued the suspect with pepper spray, batons, and a "Taser" gun after he fled the scene of a crime. The Court of Appeals affirmed the District Court's dismissal of the suspect's excessive force claim.

Manier v. Cook, 394 F.Supp.2d 1282 (E.D. Wash. 2005).

Inmate brought a § 1983 claim against jail officers alleging cruel and unusual punishment based on the use of excessive force. The inmate refused to enter his jail cell, and the officers used the "Taser" on his upper left buttock and the middle of his back. The District Court held that the use of force was within the scope of the jail's policy for maintaining and restoring order.

Draper v. Reynolds, 369 F.3d 1270 (11th Cir. 2004).

Suspect was stopped for a traffic violation by a police officer. After asking the suspect five times for his insurance and log book, the officer promptly discharged his "Taser" gun into the suspect's chest. The suspect then brought a § 1983 claim against the officer for a civil rights violation arising out of a traffic stop and arrest. The Court of Appeals held that the officer's use of the "Taser" gun to effectuate the arrest did not constitute excessive force.

Martinez v. Stanford, 323 F.3d 1178 (9th Cir. 2003).

Inmate brought a § 1983 claim against correctional officers for excessive force and cruel and unusual punishment under the Eighth and Fourteenth Amendments. The officers used pepper spray, two plastic bullets and a "Taser" cartridge to subdue the inmate. The Court of Appeals remanded the case to the District Court with the instructions that the inmate's failure to timely file an opposition to officers motion for summary judgment in violation of a local rule did not warrant a grant of final judgment to the officers. In addition, fact issues precluded summary judgment for the officers on the basis of qualified immunity.

Koon v. U.S., 518 U.S. 81 (1996).

An individual suspected of driving while intoxicated was beaten with police batons and "Tasered" several times by four police officers. The police officers were charged under 18 U.S.C. § 242 for violating the suspect's constitutional rights under color of law. Three officers were charged with willful use of unreasonable force in arresting the suspect. The fourth officer, a supervisor, was charged with willfully permitting the other officers to use unreasonable force during the arrest. After a trial in the District Court, the jury convicted the supervisor and another officer, but acquitted the final two police officers. The Supreme Court granted certiorari solely on the issue of downward departure in sentencing guidelines, and not the convictions of the use of force by the officers.

Martel v. County of Los Angeles, 56 F.3d 993 (9th Cir. 1995).

Police officers responded to a 911 call that complained of a paranoid schizophrenic discharging a shotgun. The officers subdued the suspect by beating him with flashlights and batons, kicking him, and shocking him with a "Taser." The suspect brought a § 1983 claim against the officers. A jury found the officers not liable in District Court, and the Court of Appeals affirmed the decision.

Madrid v. Gomez, 889 F.Supp. 1146 (N.D. Cal. 1995).

Inmates brought a § 1983 claim against the California prison system alleging an excessive use of force. The court evaluated the policy of the prison system as it pertained to the use of "Taser" gun, and held that the general use of "Taser" guns was not a display of excessive use of force.

Elliott v. City of Union City, 25 F.3d 800 (9th Cir. 1994).

After a domestic dispute, police officers subdued a suspect with a "Taser" gun. The suspect brought a § 1983 claim against the city, the Union City Police Chief, and members of the Union City Police Department. The District Court entered a summary judgment in favor of all defendants; the Court of Appeals reversed based on a faulty calculation of the statute of limitations.

Thomas v. Los Angeles, 978 F.2d 504 (9th Cir. 1993).

Predominately black and Hispanic residents of the City of Lynwood, California, brought a § 1983 claim alleging that sheriffs at the Lynwood station of the Los Angeles County Sheriff's Department were mistreating minority citizens by using guns, flashlights, fists, clubs, boots, a brick wall, and an electric "Taser." The District Court granted an injunction against the sheriff's office to follow its policies more strictly and to submit to the court a copy of all reports involving the arrests. The Court of Appeals reversed the injunction due to its broad geographic and substantive scope.

Russo v. Cincinnati, 953 F.2d 1036 (6th Cir. 1992).

A 36 year-old paranoid schizophrenic was shot twenty-two times and "Tasered" four times while being subdued by Cincinnati police officers. Decedent's sister brought a § 1983 claim against the police officers as individuals. The court held that a police officer was entitled to qualified immunity on claims under the federal civil rights statute for excessive force in firing a "Taser" at a potentially homicidal and suicidal person.

Valdez v. Farmon, 766 F.Supp. 1529 (E.D. Cal. 1991).

Inmate brought a § 1983 claim against correctional officers for excessive force against her while she was incarcerated. The inmate refused to comply with a strip search, and the officers shot her with a "Taser" gun due to the noncompliance. The officers filed a motion for summary judgment, and the court held that this privacy claim was best analyzed under the Eighth Amendment cruel and unusual punishment standard rather than the Fourth and Fourteenth Amendments. The judge denied the motion for summary judgment.

Mateyko v. Felix, 913 F.2d 744 (9th Cir. 1990).

Suspect brought a § 1983 claim alleging that police officers violated her federally protected rights by using unnecessary force. The officers used a "Taser" gun to subdue the suspect during a traffic stop. The Court of Appeals affirmed the decision of the District Court for a directed verdict in favor of defendants.

McKenzie v. City of Milpitas, 738 F.Supp. 1293 (N.D. Cal. 1990).

Suspects brought a § 1983 claim against the City of Milpitas and municipal police officers. The suspects claimed the officers violated their Fourth Amendment rights due to excessive force in subduing the suspects in an arrest. Responding to a call of possible domestic violence, police officers shot the

suspects with "Taser" guns to subdue them. The court denied the summary judgment motion by the officers due to a material issue of fact on the amount of force used to apprehend the suspects.

Michenfelder v. Sumner, 860 F.2d 328 (9th Cir. 1988).

Inmate brought a § 1983 claim against correctional officers and warden, alleging violation of his constitutional rights against cruel and unusual punishment. Prison officials used "Taser" guns in efforts to maintain compliance of prison policies. The Court of Appeals affirmed the District Court's opinion that the prison's "Taser" gun policy did not violate the Eighth Amendment.