

Thomas Olson v City of Hooper Bay, et al, Case No. S-13455

Appellant's Excerpt of Record  
Volume 1 of 2

Pages 140-207

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1           MR. BROWN: Okay.

2   Q   The -- you can still answer. Yelling and screaming, you

3   learned that yelling and screaming is a common effect of

4   the taser, is that right?

5   A   Yes.

6   Q   And Boya yelled?

7   A   Not at first though. A little bit later on, he was

8   yelling....

9   Q   Because at first....

10   A   .....really loud.

11   Q   Right. When the taser actually made contact, that's when

12   he was yelling, is that right?

13           MR. INGALDSON: Object to the form.

14   A   No, he was still resisting.

15   Q   Did he yell?

16   A   Not that I could hear him.

17   Q   You didn't hear him yell?

18   A   No. No.

19   Q   Would it surprise you that Officer Joseph says that he

20   was yelling so much at first that it woke Peter up in the

21   police report? Would that surprise you?

22   A   It wouldn't surprise me.

23   Q   It also causes involuntary muscle contractions. Did you

24   learn that?

25   A   Yes.

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1   Q   So it could have caused kicking.

2           MR. INGALDSON: Object to the form, foundation.

3   A   No, he was -- he was kicking when the taser was not going

4   off.

5   Q   What is a muscle contraction?

6   A   Muscle contraction? It's when a muscle tightens up sort

7   of.

8   Q   And then does it release?

9   A   Yes.

10   Q   And what can happen then? What did you learn?

11   A   That it can function again.

12   Q   But what did you learn about the muscle contraction?

13   What should you expect could happen to a person?

14   A   What do you mean by that?

15   Q   Well, the involuntary muscle contractions, what does that

16   mean?

17   A   What does -- does this have to do with Thomas?

18   Q   Well, it has to do with your training, see?

19   A   Oh, okay.

20   Q   Okay?

21   A   All right.

22   Q   And this is your training. I'm just going down the list.

23   I'm sorry if I wasn't clear.

24   A   Okay.

25   Q   So I'm going down, harm and effects of EMD. This is the

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1   taser training here. I'll mark this exhibit....

2   A   Okay.

3   Q   ...B. It says subject can fall immediately to the

4   ground....

5   A   Yes.

6   Q   ...yell or scream, right?

7   A   Yes.

8   Q   And it also says involuntary muscle contractions. I want

9   to know what that means to you.

10   A   Oh, that his muscles stopped working.

11   Q   Subject may freeze in place with legs locked. Right? Is

12   that what that says?

13   A   Yes.

14   Q   Subject may feel dazed and could you read the rest of

15   that?

16   A   Potential pre....

17   Q   Oh, I'm sorry, just read the rest of this one.

18   A   Oh, subject may feel dazed or several seconds -- for

19   several seconds or minutes.

20   Q   So several minutes.

21   A   Could be, yes.

22   Q   Okay. And did you wait -- did you tell the officers to

23   wait several minutes before deploying more tasers?

24   A   No.

25   Q   You just -- and you yourself said that you would have

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1   tased him too, right?

2   A   Most likely if I had -- I have a taser.

3   Q   Okay. And then so even though that you learned that he

4   may feel dazed for several minutes -- right, you learned

5   that?

6   A   Yes.

7   Q   Okay. And who taught you that?

8   A   At the training.

9   Q   Okay. Was that Chief Hoelscher?

10   A   Yes, sir.

11   Q   So Chief Hoelscher taught you this -- the things on the

12   sheet, is that right?

13   A   Yes. Yes.

14   Q   Okay. Read the next one to me.

15   A   Which one are you talking about?

16   Q   The right under that, potential

17   A   Right under potential?

18   Q   Yes.

19   A   Temporary -- temporary and sensory....

20   Q   I'm sorry, right above that. I'm sorry, I was wrong.

21   A   Potential vertigo.

22   Q   Okay. What does that mean to you?

23   A   I don't know.

24   Q   Okay. All right. So you're not sure of what that means.

25   A   Yes.

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1 Q Did Chief Hoelscher ever tell you in training what that means?

2 A He might have.

3 Q Okay. But you don't remember it?

4 A No.

5 Q Okay. Do you still carry a taser now?

6 A Yes.

7 Q Okay. Do you think you may need a refresher course?

8 A Oh, we -- we do get refreshing courses.

9 Q When was the last time you had one?

10 A Last year or I think it was last year.

11 Q Did you go over this sheer?

12 A I don't really remember.

13 Q Do you think you may need more training about what that means?

14 A Oh, I'm not very good at spelling or in that words.

15 Q And I'm not trying to make it difficult for you or hold you out here. I just want to make sure you're getting the training that you need. I'm not trying to put you on the spot but do you think that you could benefit from knowing what this word means?

16 A Most likely.

17 Q Okay. All right. And then what's the next -- read the next ones.

18 A Temporary tingling sensation.

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1 MR. INGALDSON: Same objection.

2 MR. OLSON: Yeah, that should be good.

3 Q Are you familiar with the Hooper Bay Police Department general orders affecting the use of force?

4 A Yes.

5 Q Are you as an officer responsible for knowing the information within this document?

6 A Yes, sir.

7 Q Is your belief that all officers are responsible for knowing the information within this document?

8 A Yes, sir.

9 Q And this information was taught to you by who?

10 A Instructors and Chief Hoelscher.

11 Q Okay. So you've said that you smelled alcohol in the house, is that right?

12 A Yes.

13 Q And now, some of these officers say there was slime on the floor. Have you -- did you see any slime on the floor?

14 A What you mean by slime?

15 Q I have no idea. That's what they say. I'm going to ask them what it is. I don't know what it is.

16 A Well, I know the floor was click. I didn't pay attention much to the floor.

17 Q So there could have been something flammable on the

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1 Q Okay. And the next one?

2 A May experience critical stress, amnesia, may not remember anything.

3 Q Okay. Now, are you responsible for knowing that information?

4 A Yes.

5 Q Are all of these officers responsible for knowing that information?

6 A Yes.

7 MR. INGALDSON: Object to the form, foundation.

8 Q And when I'm talking about that information, I'm talking about the information from the training manual, The Common Effects of EMD, here on exhibit B. Do you understand that?

9 A Yes.

10 Q Okay. Now, going back to exhibit A which was Silence is Golden, are all officers responsible for knowing this information?

11 MR. INGALDSON: Object to the form, foundation.

12 Q And what I'm talking about is are all officers responsible for knowing the information..

13 A Yes.

14 Q ...that's written on the Silence is Golden sheet on exhibit A?

15 A Yes. Yes

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1 floor, for all you know?

2 A Could have -- could have been.

3 Q Okay. Now, what does the use of force say about deploying the taser when there's something flammable in the area? Is there anything about that?

4 A Oh, deploy -- deploying a taser -- a taser when there's something flammable on the floor?

5 Q Mm-hmm.

6 A It could -- could start a fire...

7 Q Okay.

8 A ...I guess.

9 Q And you didn't know what was on the floor that night?

10 A No.

11 MR. BROWN: I'm going to mark the Hooper Bay Police Department Use of Force as exhibit C.

12 Q Now, all of the charges against Thomas in this case were dismissed, is that right?

13 A I have no idea. I never paid attention to it.

14 Q Do you ever get upset when charges against someone get dismissed?

15 A No.

16 Q Have you looked at the photographs of Thomas that were taken?

17 A No.

18 Q These are photographs that were produced by the police

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1 Department ...

2 A Mm-hmm.

3 Q ...and one of your attorneys along the way. All right?

4 And I am -- you have them? All right. These were the

5 photographs attached to the police report. All right?

6 Is that how Thomas looked when he was arrested?

7 A Thomas? Yes

8 Q Are these the burn marks from the taser?

9 MR. INGALDSON: Object to the form, foundation.

10 A I have no idea. I didn't look at it. I don't know if

11 this one being presented of Thomas.

12 Q Did you look -- you didn't look at him when they brought

13 him in?

14 A He -- he didn't have his shirt off at the time.

15 Q Okay. So you didn't examine him then?

16 A No.

17 Q All right. Who would have taken these photographs?

18 A I have no idea.

19 Q All right. Can you identify the person in that

20 photograph with Thomas?

21 A Sergeant Simon.

22 Q Okay.

23 MR. BROWN: All right. And we'll put this over.

24 Q Before -- talking about just before this incident

25 happened, just the time period before this incident

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1 going into their hands and it makes the hair stand up on

2 their heads. Have you ever seen that?

3 A No.

4 Q Okay. Your attorneys just talk about it in their summary

5 judgment motion and I was just wanting to ask you about

6 it.

7 A Oh, okay.

8 MR. BROWN: And I believe that's all I have, Mr

9 Widmer.

10 MR. WIDMER: I have just a few questions for you,

11 Officer Oaks.

12

13 EXAMINATION

14 BY MR. WIDMER:

15 Q You stated kind of a number of times about this but did

16 you use a taser the night when Boya was arrested?

17 A No.

18 Q Okay.

19 A I didn't know it.

20 Q You did -- you didn't carry a taser with you?

21 A No, we were -- they were just first issued in -- of --

22 and just some of the police officers had tasers at the

23 time and I didn't have one.

24 Q Okay. And one of the questions that Mr. Brown posed to

25 you were some other things you might have been able to do

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1 happened -- okay? You with me?

2 A Yes.

3 Q What can you tell me in any detail what Mr. Olson's,

4 Thomas Boya -- we call him several things here -- what

5 his criminal history is?

6 A What do you mean by that?

7 Q Do you -- are you aware of any of his criminal history?

8 Can you tell me anything about it? If you can't, that's

9 fine.

10 A No, just his -- only one that I know of, that's when I

11 had him on disorderly conduct.

12 Q Was that before or after this?

13 A Before.

14 Q Okay. Who is Ulrich Simon?

15 A He's a lieutenant on the back side.

16 Q All right. Did you handcuff Mr. Olson or did someone

17 else?

18 A No, I didn't cuff him.

19 Q Have you been tased yourself?

20 A Yes

21 Q As part of your training?

22 A Yes

23 Q Have you ever seen one of those -- they're called static

24 balls, I believe, is what your attorneys call them. It's

25 something the kids put their hands on to feel the static

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1 to subdue Mr. Olson.

2 A It was....

3 Q One of the things that he mentioned is he could have

4 tried to pin his legs to the ground. Do you remember him

5 asking those questions?

6 A Yes, we -- we made attempts but then he was -- he just

7 kept kicking.

8 Q Okay. And if you had continued to try to pin his legs to

9 the ground, do you think it might have been possible you

10 would have been kicked more?

11 A Yes.

12 Q Another question that I have -- we'll go back to what's

13 been marked as exhibit B and Mr. Brown asked you some

14 questions about some of the words into that and do you

15 remember reading this entry here where it says subject

16 may feel dazed for several seconds or minutes?

17 A Yes.

18 Q What do you understand dazed to mean?

19 A Dazed?

20 Q Mm-hmm.

21 A Is like they're motionless.

22 Q Like they're what?

23 A Is like they're motionless or not moving.

24 Q They're motionless? Is that what you said?

25 A Yeah, not moving anymore possibly, not mov -- no body

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1 function.  
 2 Q So have you ever been at a position in your life where  
 3 you felt dazed?  
 4 A When I got tased. Okay?  
 5 Q Okay.  
 6 A I couldn't function.  
 7 Q Were you able -- so you weren't able to kick when you  
 8 felt dazed?  
 9 A No.  
 10 Q Do you think that...  
 11 A I -- I was able to kick after it wore off though, you  
 12 see?  
 13 Q Okay.  
 14 A After the effect.  
 15 Q So while you were feeling the effects of being dazed, it  
 16 wasn't -- you don't believe it was possible for you to do  
 17 any kicking?  
 18 A Some -- some -- some people do kick, you know,  
 19 they're...  
 20 Q While they're dazed?  
 21 A Yes.  
 22 Q Okay.  
 23 MR. WIDMER: That's -- I don't have any questions.  
 24 MR. INGALDSON: I have just a couple questions for  
 25 you.

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1 EXAMINATION  
 2 BY MR. INGALDSON:  
 3 Q When Mr. Olson was on the floor and you said he was  
 4 grabbing the pole with his legs, remember that?  
 5 A Yes.  
 6 Q And he was kicking at you, right?  
 7 A Yes.  
 8 Q And in exhibit C, page 2-6 of that exhibit, it talks  
 9 about, first of all, reasons -- or uses of the taser. It  
 10 talks about -- and I'll let you read this but it talks  
 11 about if people are being tased, that you shouldn't tase  
 12 someone if they're restrained unless certain things  
 13 happened and, in fact, Mr. Olson had handcuffs on,  
 14 correct?  
 15 A Yes.  
 16 Q And one of the things it says is that you shouldn't  
 17 unless there's a substantial physical struggle that could  
 18 result in injury to either the person being restrained or  
 19 to any other person including the officers. Remember  
 20 that section?  
 21 A Yes. Yeah, I remember that.  
 22 Q And if the handcuffs didn't prevent, obviously, Mr. Olson  
 23 from kicking you, right?  
 24 A That's right.  
 25 Q And he kicked. How does that feel? Does it

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1 typically...  
 2 A Oh, it hurts. I got kicked on my knee several times and  
 3 below the knee and it hurts.  
 4 Q Now, there's a suggestion that well, geez, you could have  
 5 just gotten around behind him and dragged him out of  
 6 there. Do you remember that question of Mr. Brown?  
 7 A Yes.  
 8 Q When you tried to just drag Mr. Olson, how do you drag  
 9 him when he's wrapping his feet around a pole?  
 10 A He unwrapped his foot and then you say -- you say get  
 11 around him and try to detain him and, as we were trying  
 12 to detain him, he just -- he just kept -- like I told  
 13 you, he was sitting up and he kept turning, turning his  
 14 body, you know, each time we tried to get around him to  
 15 detain him.  
 16 Q And was he grabbing the pole with his legs?  
 17 A At times, he would wrap his legs -- when we tried to  
 18 stand him up, he'd wrap his legs back around the pole.  
 19 Q To keep you from pulling him away from there?  
 20 A Yes, sir.  
 21 Q Now, they also have in that same exhibit C a section on  
 22 page -- well, maybe this is section 2.6.2 that says  
 23 compliance techniques and it says the taser or OC weapons  
 24 -- OC is the pepper spray, right?  
 25 A Yes, sir.

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1 Q Taser or OC weapons are generally the first non-lethal  
 2 weapons used in the continuum. Is that what you're  
 3 taught, that when people are resisting, the first thing  
 4 you should try of a non-lethal weapon would be either the  
 5 taser or the OC?  
 6 A Yes, sir.  
 7 Q And it goes on to say you could also use certain arm  
 8 controls or restraint tactics, arm bar take-downs, wrist  
 9 locks and even impact weapons. Do you see that?  
 10 A Yes.  
 11 Q Now, I guess instead of using the taser, would it be fair  
 12 to say you could have taken your baton out and started  
 13 whacking Mr. Olson on the head?  
 14 A No, sir. No, sir.  
 15 Q I mean, that was possible to do. You had a baton, right?  
 16 A Yes, sir, but we were taught that baton is the last  
 17 resort -- oh, unless we were getting seriously injured or  
 18 somebody was getting seriously injured.  
 19 Q And a baton...  
 20 A It's the last resort.  
 21 Q A baton, if you hit someone with a baton, that's not  
 22 going to end his -- after the hit, they're going to  
 23 continue feeling that pain probably, right?  
 24 A Yes, sir.  
 25 Q And you might cause serious injury to the person

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1 A Yes, sir.  
 2 Q Crack their skull open maybe.  
 3 A Yes, sir.  
 4 Q And you were -- you also, I guess, could have -- I  
 5 suppose it'd be possible, wouldn't it have been, for you  
 6 guys to just grab Mr. Thomas's arms and just jerk them up  
 7 behind his head to kind of cause pain in his arms to get  
 8 him to -- instead of tasing him? You could have done  
 9 that, right?  
 10 A Mm-hmm. That was right.  
 11 Q That was possible.  
 12 A It's possible we could have done it, yes, sir.  
 13 Q Have you ever had your shoulder dislocated?  
 14 A Yes, sir.  
 15 Q And you've been tased you said, right?  
 16 A Yes, sir.  
 17 Q What feels -- felt worse to you, the tase or the  
 18 dislocated shoulder?  
 19 A Dislocation of the shoulder.  
 20 Q And after you're tased, how long do you continue to feel  
 21 the pain from the tase?  
 22 A Not long.  
 23 Q When it -- once the electricity stops from the taser, do  
 24 you still....  
 25 A A little while after, it wears -- it stops.

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1 reason at all to believe that there was a flammable  
 2 liquid, something that might start a fire if a spark hit?  
 3 Did you have any reason to believe that?  
 4 A No, my wife had told me my smelling my smelling wasn't  
 5 too good.  
 6 Q That's all I have. Thanks.  
 7 A Thank you.  
 8 MR. BROWN: Okay. I have a couple more here for  
 9 you.  
 10  
 11 EXAMINATION  
 12 BY MR. BROWN:  
 13 Q You said that you were tased before?  
 14 A Yes.  
 15 Q Have you ever been tased multiple times within a five-  
 16 minute period?  
 17 A When I -- when I started to get -- get back up, I guess  
 18 that -- it -- it was a tasing class and it was taught to  
 19 keep -- to stay down.  
 20 Q And how many times were you tased?  
 21 A Oh, maybe twice.  
 22 Q What if you would have been tased five times?  
 23 A No.  
 24 Q You think that may have caused a little bit more pain?  
 25 A No.

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1 Q How about your dislocated shoulder, how long were you in  
 2 pain with that?  
 3 A Days. We didn't want to cause any serious injuries  
 4 though.  
 5 Q There was some question about, you know, what -- the  
 6 slipperiness on the floor and, you know, whether it could  
 7 have been flammable. Do you remember those questions?  
 8 A Yes.  
 9 Q You know what gas smells like?  
 10 A Yes.  
 11 Q Do you know what kerosene smells like?  
 12 A Yes.  
 13 Q You know what diesel fuel smells like?  
 14 A Yes.  
 15 Q Did you smell any of those things?  
 16 A Oh, I couldn't tell, my nose was slightly plugged because  
 17 I had a slight cold at the time, chest cold. My smelling  
 18 wasn't -- wasn't all that well.  
 19 Q If you smelled gas or diesel fuel or kerosene....  
 20 A I would have smelled it if it was there....  
 21 Q ...would you have...  
 22 A ...most likely  
 23 Q So when you say you don't know what was on the floor....  
 24 A On the floor  
 25 Q ...did you have any reason to believe at all -- any

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1 MR. INGALDSON: Objection, foundation.  
 2 Q You don't think it would have?  
 3 A No.  
 4 Q How is that true?  
 5 A It -- it wears off very -- very shortly after you're  
 6 tased.  
 7 Q Several minutes is what you were trained, right?  
 8 A Yes, it wears off and you don't feel no pain anymore.  
 9 Q Now, look at these photos that -- I don't know if these  
 10 were -- have you ever had a cut on your neck?  
 11 A No.  
 12 Q Have you ever had a cut on your body?  
 13 A Oh, yes, on my leg.  
 14 Q Have you ever had a burn?  
 15 A Yes.  
 16 Q When you got burned, was it well within just a few  
 17 minutes?  
 18 A No.  
 19 Q You see all those marks on Thomas Olson?  
 20 A Yes.  
 21 Q And what part of his body is not photographed here in  
 22 front of you? These are photographs from your police  
 23 department.  
 24 A You're asking what part of the body that's not...  
 25 Q Not photographed, from the waist up.

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1 A Okay. I don't know.  
 2 Q Do you see his stomach there?  
 3 A Yes, over here?  
 4 Q Where is his stomach at?  
 5 A I think that's his stomach.  
 6 Q I think that's his shoulder.  
 7 A Oh, that's his shoulder? It's hard to tell. Looked like  
 8 his stomach.  
 9 Q You agree now that you see then that can -- this  
 10 collarbone, that that's the -- his stomach?  
 11 A Oh, yeah, that -- all right. Okay.  
 12 Q You see that? So do you see the stomach anywhere there?  
 13 A You say this is -- this looks like the stomach to me.  
 14 Q Okay. All right. It looks like the stomach to you then.  
 15 That's fine. We'll talk with some other folks about it  
 16 too. These are some photos that our office took after  
 17 Thomas came in.  
 18 A Well, like I told you, I never -- I never looked at his  
 19 body.  
 20 Q Okay. Did you see that -- the stomach there?  
 21 A Yes.  
 22 Q And those look like plastic (ph) taser marks?  
 23 A No.  
 24 MR. WIDMER: Objection, foundation.  
 25 A They don't look like taser marks.

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1 and so I just wanted to go on and Bates stamp them and give  
 2 them to you today.  
 3 MR. INGALDSON: Well, I mean, I think if you're  
 4 going to be asking these witnesses questions about them on  
 5 things that they haven't seen, we haven't had a chance to talk  
 6 to them about them.  
 7 MR. BROWN: All right.  
 8 MR. INGALDSON: I'm going to object to that.  
 9 It's...  
 10 MR. BROWN: I think it's a fair -- you know, as far  
 11 as the objection goes, we'll let the record reflect that and  
 12 the only thing I'm asking him is just if those look like taser  
 13 marks to him.  
 14 MR. WIDMER: I also -- I'm going to make an  
 15 objection because the pictures you're showing him right now  
 16 are not pictures that I'm having -- I see in this packet. I  
 17 specifically don't see any of the -- what appear to be  
 18 iridescent welts with hair. I don't know if this is going to  
 19 be produced or not but....  
 20 MR. BROWN: Well, no -- wait a minute, these have  
 21 been produced. The ones I just gave you have not been  
 22 produced.  
 23 MR. WIDMER: Those have been produced?  
 24 MR. BROWN: These have been produced.  
 25 MR. WIDMER: Do you recall when those have been

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1 Q Okay.  
 2 A That's a burn over there but they don't look like tasers,  
 3 really. Those are -- those are tasers, yes.  
 4 Q Oh, we're just looking through the photos and we'll go on  
 5 and identify these. These are photos that were produced  
 6 by Power and Brown in our office and they have been  
 7 produced to the defendant. We have one....  
 8 MR. INGALDSON: Were these just produced today?  
 9 MR. BROWN: Yes, they are just produced today, now  
 10 and....  
 11 MR. INGALDSON: It looks like they were taken....  
 12 MR. BROWN: They were taken some time ago, that's  
 13 true....  
 14 A It does look like....  
 15 MR. BROWN: ... and I believe that they...  
 16 MR. INGALDSON: I just want to make -- say an  
 17 objection for the record, these -- I don't know -- these  
 18 should have been produced to us long before. This is...  
 19 MR. BROWN: ... they may have been given to Phil Palamor  
 20 during the settlement conference, actually, and to -- we've  
 21 had a settlement conference on this case and they may have  
 22 been given to Phil and to Margo at the settlement conference  
 23 when we were talking about settling this case because this  
 24 case has been up for a settlement conference in the past but I  
 25 did not have a Bates-stamped copy that they had been produced

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1 produced?  
 2 MR. BROWN: I don't but I can find out from my  
 3 office. These have not been produced. The ones I just gave  
 4 you had not been produced. Let's leave those for a little bit  
 5 until we talk to the people that actually tasered.  
 6 MR. WIDMER: Fine.  
 7 Q But these were taken at your police station, is that  
 8 right?  
 9 MR. WIDMER: Objection, he's already stated that he  
 10 doesn't know who took those pictures.  
 11 MR. BROWN: Okay.  
 12 Q But does this look like your police station here in the  
 13 background?  
 14 A Yes.  
 15 Q Okay. And is that -- who is that?  
 16 A Sergeant Simon  
 17 Q Okay. And....  
 18 MR. BROWN: Have you ever seen that picture?  
 19 MR. INGALDSON: Is that it then?  
 20 MR. BROWN: Let me see. That is, actually -- let me  
 21 see...  
 22 Q So your nose was stopped up that night, is that what  
 23 you're saying?  
 24 A Yes  
 25 Q You said you fell over a trash bag and that's all you

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1 noticed in the floor, is that right?  
 2 A It was slippery, yes.  
 3 Q And the supplemental report that you filed, you said that  
 4 this caused you discomfort. Do you have a recollection  
 5 of that pain and discomfort?  
 6 A Oh, on my knee, yup, when he was kicking me.  
 7 Q Okay. What would your reaction be if someone came into  
 8 your house at 4:00 in the morning and your children are  
 9 there and you were asleep and they wake you up and  
 10 started to drag you out leaving your children there,  
 11 would you try to stay?  
 12 MR. INGALDSON: Objection, scope, also form,  
 13 foundation and I don't think this is relevant or likely to  
 14 lead to the discovery of relevant evidence.  
 15 Q You can still answer it.  
 16 A Do I have to answer it?  
 17 Q Yes.  
 18 MR. INGALDSON: Also, an incomplete hypothetical.  
 19 A Oh, no, I guess I wouldn't like that.  
 20 Q Okay. And would you try to stay to make sure your  
 21 children are okay?  
 22 A Yes.  
 23 MR. BROWN: I have nothing further.  
 24 MR. WIDMER: I don't have any follow-up questions.  
 25 MR. INGALDSON: I just have one follow-up question.

Page 75

1 EXAMINATION  
 2 BY MR. INGALDSON:  
 3 Q Let's give the same example you were just asked, that  
 4 also that you were intoxicated and maybe you're not  
 5 asking -- acting rationally wanting to stay but would you  
 6 be thankful that police officers came in and protected  
 7 your children?  
 8 A Yes, sir.  
 9 MR. INGALDSON: That's all I have.  
 10 MR. BROWN: Thank you. You are done. Have a good  
 11 afternoon.  
 12 A All right.  
 13 MR. BROWN: It was nice to meet you, sir.  
 14 A All right.  
 15 MR. BROWN: Okay  
 16 (Off record)

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1 TRANSCRIBER'S CERTIFICATE  
 2 I, Linda S. Foley, hereby certify that the foregoing  
 3 pages numbered 2 through 75 are a true, accurate, and complete  
 4 transcript of deposition of Dimitri Oaks in Case No. 4BE-07-  
 5 00026 CI, Thomas J. Olson v. City of Hooper Bay, Officer  
 6 Dimitri Oaks, Officer Charles Simon, Officer Nathan Joseph,  
 7 transcribed by me from a copy of the electronic sound  
 8 recording to the best of my knowledge and ability.  
 9  
 10 April 29, 2008  
 11 \_\_\_\_\_  
 12 Linda S. Foley, Transcriber  
 13  
 14  
 15  
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 24  
 25

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1



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 4BE-07-26 CI

**PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

# Exhibit 5

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS L. OLSON, )

Plaintiff, )

v. )

CITY OF HOOPER BAY, )

OFFICER CLIMBERT OAKS, )

OFFICER CHARLES SIMON and )

OFFICER NATHAN JOSEPH, )

Defendants. )

No. 4BE-07-00026 CI

VIDEOTAPED DEPOSITION OF CHARLES SIMON

Pages 2 through 62, inclusive

April 23, 2008

Hooper Bay, Alaska



Page 6

1 Officer Oaks and Sergeant Joseph who are also parties in this  
 2 case  
 3 MR. INGALDSON: Bill Ingaldson representing the City  
 4 of Hooper Bay and Chief Hoelscher is also here.  
 5 MR. BROWN: And I guess I should also note for the  
 6 record that Sergeant Joseph is also present at this  
 7 deposition.  
 8 MR. SIMON: And Donna Fullerton.  
 9  
 10 CHARLES SIMON  
 11 called as a witness herein on behalf of the  
 12 Plaintiff, having been duly sworn upon oath  
 13 by Mr. Brown, Notary Public, was examined  
 14 and testified as follows:  
 15  
 16 EXAMINATION  
 17 BY MR. BROWN:  
 18 Q Could you please give your address, please?  
 19 A P. O. Box , Hooper Bay, Alaska, 99614.  
 20 Q All right. And how long have you lived here in Hooper  
 21 Bay?  
 22 A Since 1980.  
 23 Q All right. And what's your job or occupation here?  
 24 A Police officer.  
 25 Q How many hours a week do you work?

Page 7

1 -- one of the things was wrong -- wrong -- wrongful use  
 2 of force.  
 3 Q But -- and they were accusing you of using wrongful use  
 4 of force?  
 5 A Yes.  
 6 Q Okay. And who was that against?  
 7 A James Smith.  
 8 Q And was James Smith handcuffed at the time the wrongful  
 9 use of force was used?  
 10 MR. WIDMER: Objection, it's foundation and it's a  
 11 crucial statement, assumes that force was actually applied  
 12 wrongfully and all those other little things. You can answer  
 13 the question.  
 14 A Yes.  
 15 Q Okay. And how long have you been on the police force?  
 16 A Little over eight years.  
 17 Q And do you recall the date of that in -- of the incident  
 18 regarding Mr. Smith? When did that occur?  
 19 A That'd be a few years ago.  
 20 Q Okay. So before this occurred?  
 21 A Yeah.  
 22 Q And when I'm talking about this, I'm talking about before  
 23 Mr. Olson was tasered.  
 24 A Yes.  
 25 Q Okay. So -- and that plaintiff's name was James Smith.

Page 7

1 A At least 40.  
 2 Q Okay. Sometimes more?  
 3 A Yeah.  
 4 Q All right. Okay. So I just want to go over a few things  
 5 with you. Have you ever given a deposition before?  
 6 A Yeah.  
 7 Q And what kind of case was that?  
 8 A As in civil, criminal?  
 9 Q Let's start -- well, yeah, have you ever given a  
 10 deposition in a criminal case before?  
 11 A I'm not quite sure if it was called a deposition or not.  
 12 Q It was a criminal case?  
 13 A No.  
 14 Q Okay. So in a criminal case, you don't think you've  
 15 given a deposition before?  
 16 A No.  
 17 Q Okay. Then let's go on to a civil case. Have you given  
 18 a deposition in a civil case before?  
 19 A Yes.  
 20 Q And what type of case was that?  
 21 A The only way I can think of to answer it is civil.  
 22 Q Okay. And were you a party or a defendant in that case?  
 23 A Defendant.  
 24 Q Okay. And what were you accused of in that case?  
 25 A Oh, I don't remember the exact way it was put but it was

Page 8

1 is that right?  
 2 A Yes.  
 3 Q And you may not recall this but you may, case number 4BE-  
 4 06-364 Civil, does that sound correct? Pretty much so?  
 5 You may not have any memory. Is that right?  
 6 A I don't know. I don't remember the case number.  
 7 Q Oh, okay. So this is the second lawsuit that you've had  
 8 against you?  
 9 A I don't know. I'm not quite sure of the number.  
 10 Q So at least two?  
 11 A That one and this one, yeah.  
 12 Q Okay. And after that case -- did you review the standard  
 13 for tasering after that case? I'm sorry, after you were  
 14 -- let's start that question -- I'll start that question.  
 15 After you were sued in that case, did you go back and  
 16 review the tasering policy?  
 17 A Yeah.  
 18 Q And when you reviewed that tasering policy, what did it  
 19 say about administering the tasers when he was  
 20 handcuffed?  
 21 A Oh, I don't remember it word for word or exactly how it's  
 22 worded. Is that okay?  
 23 Q Sure, just what you remember.  
 24 A A person who is handcuffed can't be tased unless there's  
 25 a possibility of them hurting themselves or somebody

Page 10

else, causing injury, harm or even death  
 Q And what level of injury?  
 A I don't know. I don't remember the exact level of injury but if they were capable of hurting someone bad enough, then you could use a taser.  
 Q Bad enough, what does that mean?  
 A If they could cause bodily harm bad enough to cause permanent injury or prolonged injury, that's -- that's what it means.  
 Q Oh, Now, in the Smith case, he grabbed your scrotum, is that right?  
 A Yes.  
 Q Not your testicle but your scrotum, is that right?  
 A Yes.  
 Q So that's the type of injury you are talking about when you think you have authority to taser someone, is that right?  
 A That's....  
 MR. INGALDSON: Object to the form.  
 Q So when a person grabs your scrotum, you can administer a taser on them, is that correct?  
 A That would be one of the instances in which -- yeah.  
 Q Even if they were handcuffed?  
 A Yes.  
 Q And so even if a person is handcuffed and on the floor

Page 11

kicking, you can also administer a taser.  
 A Yes.  
 Q Do you think since you were sued in the Smith case that you became very aware of the policy involving what was legal to do when using a taser?  
 A Excuse me?  
 Q Do you believe as a result of being sued in the Smith case -- okay. You were sued in the Smith case, right?  
 A Okay.  
 Q Okay? And then you testified earlier after you were sued, you went back and you reviewed the policy regarding the taser administration, is that right?  
 A Yes.  
 Q Do you believe that that helped refresh your memory so that you knew better how to legally use a taser?  
 A I do -- had already known.  
 Q So on a scale of one to 10, you feel that you're -- you were already a 10 and you remained a 10 afterwards, is that right?  
 A Regarding what?  
 Q Yeah, I'm not -- that was a bad question. I'll strike that. On a scale of one to 10 regarding your knowledge of taser use, how do you rate yourself?  
 MR. INGALDSON: Object to the form.  
 A Is there a different way that you could phrase the

Page 12

question?  
 Q Would you say that -- regarding your knowledge of taser use, would you rate yourself as having a poor level of knowledge?  
 A No.  
 Q A good level of knowledge or a very good level of knowledge?  
 MR. INGALDSON: Object to the form.  
 A Very good.  
 Q So a very good level of knowledge regarding the legal use of a taser, is that correct?  
 A Yes.  
 Q And you have been an officer for how long?  
 A Eight years.  
 Q So is your position then that if a person is resisting arrest, kicking and screaming, resisting to go in somewhere, that a taser can be used?  
 A That would depend on the circumstances.  
 Q Okay. What about when -- were you an officer in 1994?  
 A No.  
 Q Oh, I thought you said you've been one for eight years. Since 2004, I'm sorry. Were you an officer in 2004?  
 A Yeah.  
 Q If you were an officer and you went to a hotel and you saw an intoxicated man rolling around in the parking lot

Page 13

and crying, what would be your first action?  
 A I'd shout (indiscernible).  
 Q And if you were -- the man was yelling and screaming (indiscernible) officers with officers, what would your response be?  
 A I'd (indiscernible).  
 Q And if you had to drag the person and put them into the patrol car, they were still screaming, what would you do at that point?  
 MR. INGALDSON: Object to the form.  
 A Throw them in the patrol car, just let them yell and scream.  
 Q And then you get to the hospital because you have to take him to the hospital because he's so drunk...  
 A Yeah.  
 Q ... and he refuses to get out of the patrol car, refuses to get out. What are you going to do?  
 A Okay. What was the purpose of taking him to the hospital again?  
 Q To have him checked to see how drunk he was  
 A I guess what I -- what I would have done is I'd try to keep him restrained as best as I could and if we could see visually that he was okay, then we'd keep him restrained  
 Q Let's say instead of going to the hospital, you would

Page 14

1 have gone over to the jail and you took him to the jail.  
 2 He's yelling and screaming, kicking when the door is  
 3 open. What are you going to do?  
 4 MR. INGALDSON: Object to the form, incomplete  
 5 hypothetical.  
 6 MR. BROWN: Okay.  
 7 Q You arrive at the jail with a prisoner in the back of the  
 8 car. Okay? You with me so far?  
 9 A Yeah  
 10 Q All right. You go to get the prisoner out of the back of  
 11 the car....  
 12 A Okay.  
 13 Q ...and the prisoner is kicking, yelling, will not  
 14 listen to the officers, you warn him that he'll be  
 15 charged with another crime if he refuses to exit the  
 16 vehicle and he continues to refuse. What are you going  
 17 to do?  
 18 A How -- how drunk is this person?  
 19 Q Drunk enough to be yelling, screaming, refusing to get  
 20 out of the car, your patrol car.  
 21 A Okay.  
 22 Q What are you going to do?  
 23 A If we -- if I could get him safely out of the patrol car,  
 24 I'd just get him out and put him in a cell.  
 25 Q If the person was kicking at you, would it be okay to

Page 15

1 tase them in the patrol car?  
 2 A If he was going to hurt somebody, yes.  
 3 Q Now, when a similar accident like this happened to you,  
 4 they did -- they just drug you out of the police car, is  
 5 that right?  
 6 A I don't know if they'd drug me out of the police car.  
 7 Q Okay. I -- I'm just looking at the affidavit here of a  
 8 Officer Haymes and it says Simon again refusing.  
 9 Officers had to drag him out of the patrol car.  
 10 A Okay.  
 11 Q Okay. Does that sound familiar or were you....  
 12 A Yeah.  
 13 Q Were you in blackout then or do you have memory?  
 14 A I don't remember that night.  
 15 Q Okay. If someone acting like that the type of person  
 16 that you would want working beside you on the police  
 17 force?  
 18 A Excuse me?  
 19 Q Is someone that acts in the manner I just described...  
 20 MR. WIDMER: Objection, relevance.  
 21 MR. INGALDSON: Object to the form.  
 22 Q ... someone that you would want working with you on the  
 23 police force?  
 24 MR. INGALDSON: Are you talking about while they're  
 25 working?

Page 16

1 MR. BROWN: Yes.  
 2 MR. INGALDSON: Someone that's drunk and obnoxious  
 3 while they were...  
 4 MR. BROWN: No, I'm just talking about this person  
 5 has this background, is this the type of person you want  
 6 working with you on the police force?  
 7 MR. INGALDSON: Object to the form.  
 8 A What type of background?  
 9 Q A background where they were arrested for that type of  
 10 action that I just described.  
 11 A Okay. Could you clarify the question a little bit more?  
 12 Q Yes, I just described to you an individual who had been  
 13 yelling, screaming, rolling around in the parking lot,  
 14 refusing to be arrested, staying in the patrol car, had  
 15 to be dragged from the patrol car screaming, highly  
 16 intoxicated it says here. I described that type of person  
 17 to you.  
 18 A Okay.  
 19 Q Okay? Now, is that type of person who refuses arrest and  
 20 police authority the type of person you would want  
 21 working with you on your police force?  
 22 MR. INGALDSON: Object to the form.  
 23 A Is this person drunk or sober?  
 24 Q When they did these things, they were highly intoxicated.  
 25 A Okay. I guess if they were sober, they knew what they

Page 17

1 were doing, they realized that they were a danger to  
 2 other people as well as themselves and they absolutely  
 3 rejected authority, no.  
 4 Q Okay. Now, you yourself have been charged with  
 5 disorderly conduct in the past, is that correct?  
 6 A Yeah.  
 7 Q And you yourself have refused officer commands and  
 8 officers have had to drag you out of patrol cars, is that  
 9 correct?  
 10 A Yes.  
 11 Q And at that time, you were still a police officer on  
 12 Hooper Bay Police Force, is that right?  
 13 A Yes.  
 14 Q And the City chose to keep you on board even after that,  
 15 is that right?  
 16 A Yes.  
 17 Q Do you believe that when you were rolling in the parking  
 18 lot and crying or when you were screaming in the police  
 19 car, when you were refusing to get out of the car, when  
 20 you had to be dragged from the police car, at any of  
 21 those times, should you have been tasered?  
 22 MR. INGALDSON: Objection, foundation and form.  
 23 Q You can still answer and, just to make it clear, what I'm  
 24 referring to is the incident which occurred on June 13th,  
 25 2004 at 0074 hours in Bethel, Alaska at the Long House.

I'm referring to that incident in case there's others, that I'm referring to that incident.

MR. INGALDSON: He's already testified he doesn't remember it.

A If I was one of the police officers arresting a person that had that demeanor but they weren't a danger to themselves or anybody else that were uncooperative but not hurting anybody, no, I wouldn't -- I wouldn't have tasered them.

Q All right. Were you tased that night?

A I don't remember.

MR. BROWN: Here's one.

Q Now, when you did your deposition on July 25th, 2007, at that time -- I don't know if you remember this or not but do you remember testifying that you can't remember the exact policy regarding the taser dry stun -- drive stun?

A No.

Q Do you remember that exact policy?

A Not word for word, no.

Q Okay.

MR. BROWN: Public record I worked hard to acquire yesterday. May have it.

MR. WIDMER: Okay.

Q Did you -- okay. So we've heard from Officer Oaks and I just want to be sure that everyone's in agreement. Were

you one of the first three officers that arrived at the scene that night or not?

A I was one of the three.

Q Okay. And just to be sure that we're clear on this, what I'm -- I'm shifting gears here now and I'm not talking about Smith. I'm not talking about the incident that occurred to you, what I'm talking about here is the incident regarding Mr. Olson. Okay? Are you with me on that?

A Okay.

Q All right. And were you one of the three that evening?

A Yes.

Q Okay. All right. And tell me what happened when you arrived at the house.

A I don't remember everything exactly but what happened was I got called because Sergeant Joseph and Oaks needed help and they needed help bringing prisoners over to the police department so I arrived there. When I got there, there was Olson and Boya and had already been handcuffed. There were kids in the house and I don't remember how many but I think the oldest may have been four or five.

Q What time was this?

A It was in the early morning hours.

Q Okay. Go on

1 A There was a whole bunch of trash on the floor and I got  
2 to the top -- top of the steps and first two steps that I  
3 took in -- into the house in -- at the top -- first two  
4 steps, I almost slipped. I had to keep my balance. Then  
5 I went to go help Officer Oaks with Boya. He started to  
6 not be comp -- he started to not cooperate and his legs  
7 were up drawing a pole. I told him to stand up, to  
8 cooperate, to just come with us. He still didn't listen  
9 and tried to help him stand up but he started biting us.

10 After that first one, I tried to help him stand again but  
11 he starts biting and kicking so when I got kicked on the  
12 chest, I slipped on a -- I don't know exactly what I  
13 slipped on but the whole rest of the floor was slippery.  
14 I slipped, fell on my back and I don't remember who --  
15 who fell -- who slipped and fell first, either me or  
16 Oaks, but we both ended up on the floor.

17 Q Okay. Now, how did you get kicked on the chest?

18 A He turned -- he let go of the pole and turned and then  
19 (indiscernible) bent over in the hold and stand.

20 Q Maybe I misunderstood Oaks earlier. I thought he was on  
21 the bed when you got there.

22 A Yeah, I started to help Oaks bring him and he started to  
23 not cooperate with us.

24 Q Okay. So he stood up on the bed? I mean, stood up by  
25 the bed or what?

1 A Yeah.

2 Q Okay. And then what happened?

3 A Okay. He stood up. We started walking. He started to  
4 not cooperate. He wraps his leg around -- and then he  
5 wraps his leg around the pole.

6 Q Okay. Now, Oaks said that he was sitting down when he  
7 did that on the ground. Is that right?

8 A Yeah.

9 Q And Oaks said that was after the fall, is that right?

10 A I don't remember that, first of all, if there was one.

11 Q Do you agree it would be difficult to wrap your legs  
12 around the pole if you were standing up?

13 A I don't know.

14 Q Could you wrap your legs around a pole if you were  
15 standing up?

16 A I don't know.

17 Q Okay. All right. So you don't remember how Thomas got  
18 on the floor?

19 A No.

20 Q So when Oaks said that you, him and Thomas, all three,  
21 fell together, that was incorrect, right?

22 MR. WIDMER: Objection, that's a mischaracterization  
23 of the previous answer.

24 Q You can still answer.

25 A What was the question?

Page 22

1 Q Oaks testified earlier today and you heard it -- you were  
 2 here also -- that you, Thomas and him, all three, fell on  
 3 the ground at the same time. Do you agree with that?  
 4 A I don't remember.  
 5 Q Okay. So you don't remember falling on the ground with  
 6 Oaks?  
 7 A (No audible response).  
 8 Q And -- okay. Is that true? I mean, that's what you  
 9 said?  
 10 A Yeah.  
 11 Q All right. Okay. But you do remember Thomas being on  
 12 the ground, is that right?  
 13 A Yeah.  
 14 Q Do you ever remember Oaks falling at all?  
 15 A Yeah.  
 16 Q Were the two of you on the ground at the same time?  
 17 A I don't know.  
 18 Q So you fell or Thomas falls, Oaks falls. Do you remember  
 19 if they fell together?  
 20 A No.  
 21 Q They did not fall together or you do not remember?  
 22 A I don't remember.  
 23 Q Okay. But you remember Thomas falling?  
 24 A I don't remember if he fell.  
 25 Q Okay. Do you remember Thomas being on the ground?

Page 23

1 A Yes.  
 2 Q Did you have snow on your shoes?  
 3 A What?  
 4 Q Did you have snow on your shoes? Was it snowing outside  
 5 that night?  
 6 A Yeah, it was snowing.  
 7 Q Okay. Now, do you believe that Thomas was just on the  
 8 ground when you came in then? Is that possible?  
 9 A No.  
 10 Q All right. So how did he get to the ground? That's what  
 11 I want to find out.  
 12 A I don't remember.  
 13 Q Okay. Do you remember him walking at all?  
 14 A Yes.  
 15 Q Okay. And how far did he walk?  
 16 A From the bed to near the phone.  
 17 Q And then what happened?  
 18 A I don't remember how he ended up on the floor.  
 19 Q Where were you when he was walking?  
 20 A On his side.  
 21 Q What do you mean on his side? Which side, left or right?  
 22 A I don't remember.  
 23 Q Are you sure you were on his side?  
 24 A I know I was near him.  
 25 Q So you may not have been on his side?

Page 24

1 A I was holding onto the arms.  
 2 Q Which one?  
 3 A I don't remember.  
 4 Q Okay. Well, you moved your right hand. I mean, maybe  
 5 you have a visual in your mind. Do -- which arm do you  
 6 think you were holding?  
 7 A I don't remember.  
 8 Q Okay. And how was he walking?  
 9 A I remember he was staggering.  
 10 Q Now, how could you tell that if you were standing beside  
 11 him?  
 12 A We had to help him walk.  
 13 Q How did you help him?  
 14 A We held his arms.  
 15 Q Which arm? You already said you don't know?  
 16 MR. INGALDSON: We have an objection. He's already  
 17 asked and answered -- that's already been asked and answered.  
 18 Q Which arm?  
 19 MR. WIDMER: Answer it again though.  
 20 A I don't remember.  
 21 Q Okay. So you have gone from being somewhere near him to  
 22 now being on his side to now holding his arm and now  
 23 helping him walk, is that right? I mean, this kind of  
 24 progression is where you're going here, right?  
 25 MR. WIDMER: Objection as to form. Counsel seems to

Page 25

1 suggest he's been changing his story and that, I don't think,  
 2 is apparent from the answers given.  
 3 Q You can still answer.  
 4 A Okay. What was that again?  
 5 Q Okay. You started off that you were somewhere near him.  
 6 Is that the first thing you told me?  
 7 MR. WIDMER: Objection, mischaracterization.  
 8 MR. INGALDSON: Join.  
 9 Q Did you tell me that you were somewhere near Thomas  
 10 Olson?  
 11 A Yes.  
 12 Q And we were trying to discover where you were. You said  
 13 you were somewhere near him, is that right?  
 14 A Yes.  
 15 Q Now you're saying that you were walking on his side, is  
 16 that right?  
 17 A Yes.  
 18 Q About how far did you walk?  
 19 A Are you asking how many steps ...  
 20 Q Yes.  
 21 A ... did I take from the door to the bed?  
 22 Q Yes.  
 23 A Or from the bed to where he ...  
 24 Q How far did you walk before he was on the floor?  
 25 A I don't remember how many steps it was but it wasn't far.



Page 26

1 Q And did you handcuff him?  
 2 A No  
 3 Q Who handcuffed him?  
 4 A He was handcuffed when I arrived.  
 5 Q All right. Did you push him to the floor?  
 6 A No.  
 7 Q Are you sure?  
 8 A Yes.  
 9 Q How can you be sure?  
 10 A The only reason I would push someone to the floor if they  
 11 were handcuffed is if they were trying to hurt me or  
 12 somebody else in the first place.  
 13 Q Okay. But regarding this specific incident, do you have  
 14 any memory about whether you pushed him to the floor?  
 15 A No.  
 16 Q You don't have any memory?  
 17 A No.  
 18 Q And you don't have any memory about which side you were  
 19 walking on, is that correct?  
 20 A That is correct.  
 21 Q And you don't have any memory about how he got on the  
 22 floor at all, is that correct?  
 23 A No.  
 24 Q That's not correct?  
 25 A I don't remember how he got on the floor.

Page 27

1 A When he was seated on the floor, I was standing on his  
 2 left.  
 3 Q Okay. And was he seated facing the door, the steps at  
 4 the time, or was he seated facing the bed or was he  
 5 seated facing the couch? Where was he seated?  
 6 A I don't remember what part of furniture he was facing but  
 7 my back was to the door.  
 8 Q Okay. All right. So your back was to the door and his  
 9 feet were around the pole.  
 10 A Yeah.  
 11 Q And was his back to you or were his feet toward you?  
 12 A He was facing.....  
 13 Q Okay.  
 14 A I'm standing to his left, on his left side and he's  
 15 facing this way.  
 16 Q Oh, this way? Toward the door or away from the door?  
 17 A The door is to his left. Yeah, I know.  
 18 Q So and Officer Joseph was behind him?  
 19 A Yes.  
 20 Q And Officer Oaks was on the other side?  
 21 A Yes.  
 22 Q So three officers were around him at that time, is that  
 23 right?  
 24 A Oaks and I were next to him.  
 25 Q Okay. So was he kicking over his head?

Page 27

1 Q Okay. You do not remember how he got on the floor even.  
 2 Okay. So after you were walking with him, tell me the  
 3 next thing you do remember.  
 4 A I'm trying to help him stand up, trying to tell him to  
 5 cooperate, not to go at us.  
 6 Q Okay. And what does he do?  
 7 A He tries to bite and kick at me.  
 8 Q Okay. Now, his legs are around a pole, is that right?  
 9 A Yes.  
 10 Q And he is seated on the floor?  
 11 A Yes.  
 12 Q Okay. And you weren't really afraid he was going to bite  
 13 you, were you?  
 14 A He tried to and almost did.  
 15 Q But were you really afraid he was going to bite you?  
 16 A Yes.  
 17 Q Okay. Now, how is that? Where were you standing that  
 18 you thought he was going to bite you?  
 19 A I was standing on his left side.  
 20 Q So now you remember  
 21 MR. WIDMER: Objection.  
 22 MR. INGALDSON: Object to the form  
 23 Q So now you remember where you were standing?  
 24 MR. INGALDSON: Object to the form  
 25 Q You can still answer.

Page 28

1 A I don't remember if he kicked over his head but I know he  
 2 turned to kick at me.  
 3 Q So he let go of the pillar and turned to kick at you?  
 4 A Yes.  
 5 Q And at that time, his back would have been toward Oaks,  
 6 is that right?  
 7 A Yes.  
 8 Q So Oaks could have grabbed him?  
 9 A He may have been able to.  
 10 Q Okay. And is that when you first taser him or do you  
 11 already taser him before this?  
 12 A I tasered him afterwards.  
 13 Q All right. So what happens after that then? He turns to  
 14 kick at you.  
 15 A He turns to kick at me. I get kicked in the chest and I  
 16 start. I get kicked on the thigh again. I don't  
 17 remember at what point he kicked Oaks but he kicked Oaks.  
 18 I guess as I'm standing, he wraps his legs around the  
 19 pole again and I drive stun him on the -- I don't  
 20 remember which shoulder it was, on the back but -- just  
 21 on his back.  
 22 Q Was that the first use of your taser?  
 23 A Yes.  
 24 Q All right. Now -- okay. You understand you're under  
 25 oath today, right, to tell the truth? You know what that

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1 means?  
 2 A Yes.  
 3 Q Okay. And you remember signing a -- do you remember  
 4 signing an affidavit in this case?  
 5 A Yes.  
 6 Q And did you prepare that affidavit?  
 7 (Pause)  
 8 A Is it the.....  
 9 Q I don't mean to confuse you. Did you write that  
 10 affidavit?  
 11 A Is it the civil affidavit or the criminal affidavit?  
 12 Q The civil. You won the civil in this case.  
 13 A Yes.  
 14 Q You did write that?  
 15 A Is this the one that was sent to the court or the one for  
 16 this civil case?  
 17 MR. INGALDSON: Why don't you show him the  
 18 affidavit?  
 19 Q Yeah, I'm glad to. I here. This is your signature?  
 20 A (No audible response).  
 21 Q Okay. All right. Do you remember -- it looks like this  
 22 was faxed to you -- let me look here -- maybe on the 11th  
 23 of April. Do you remember seeing this?  
 24 A Yes.  
 25 Q All right. And is that signature?

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1 it was his case.  
 2 Q Okay.  
 3 A And.....  
 4 Q Go on, the....  
 5 A ....I couldn't remember everything that I had typed in  
 6 that report and that was where the majority of that came  
 7 from.  
 8 Q Okay. So you did write this then?  
 9 A Yes.  
 10 Q All right. Now, you understand that when you sign  
 11 something like this, you are under oath? Do you  
 12 understand that?  
 13 A Yes.  
 14 Q Okay. So when you wrote this, you mean to tell the  
 15 truth, I'm sure, is that right?  
 16 A Yes.  
 17 Q Okay. All right. Paragraph six says I slipped on trash,  
 18 falling to the floor. Is that possible of what caused  
 19 you to fall to the floor?  
 20 A Yeah, I remember slipping.  
 21 Q Okay. But now you just testified that he kicked you and  
 22 that kick caused you to fall.  
 23 MR. WIDMER: Objection.  
 24 Q Did you say that?  
 25 MR. WIDMER: Mischaracterization.

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1 A Yes.  
 2 Q And did you write this?  
 3 A Yes.  
 4 Q So you wrote this. Okay. All right. Did you type it?  
 5 A No.  
 6 Q All right. So right after you wrote it, who did you send  
 7 it to to type it?  
 8 A It was faxed to -- it was faxed to a lawyer's office.  
 9 Q Okay. And so this is -- these are your words that you  
 10 actually wrote then?  
 11 MR. BROWN: And what he's reading right now is the  
 12 affidavit of Charles Simon that was filed in support of the  
 13 motion for summary judgment in case number 4BE-07-26 CI.  
 14 Q Did you write this? I don't mean to trick you.  
 15 A Yes.  
 16 Q Okay. So you wrote it out -- what'd, you write it out  
 17 and then you sent it to the attorney to type? Is that  
 18 what you did?  
 19 A I didn't write it out.  
 20 Q Okay. What did you do? If I'm confusing you, just tell  
 21 me. I'm not trying to trick you, I'm just trying to  
 22 figure out where this affidavit came from. It's not a  
 23 trick question. I mean, I just -- where did it come  
 24 from? It's no big deal, it's just....  
 25 A I typed up a supplementary report for Sergeant Joseph as

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1 Q Maybe you didn't say that. Did the kick cause you to  
 2 fall or not in the chest?  
 3 A That was part of the reason I fell.  
 4 Q Okay. Now, in your supplemental report to Officer  
 5 Joseph, you said the kick on the chest didn't hurt.  
 6 A No, it didn't hurt.  
 7 Q Okay. And here you wind -- you fall on the garbage.  
 8 A That was the other part of the reason.  
 9 Q What I want to get at here is every reason. I wanted to  
 10 find out everything that went on. So when you testify, I  
 11 want to know everything if you can tell me everything.  
 12 please. Okay?  
 13 A Okay.  
 14 Q All right. So when you say that he kicked you in the  
 15 chest and you fell to the floor, you need to say he  
 16 kicked me in the chest, there was something on the floor,  
 17 the kick didn't hurt but I fell.  
 18 MR. WIDMER: Objection, he does not -- he has to  
 19 answer the questions that are asked.  
 20 MR. BROWN: I want to find out, you know, if there's  
 21 something in there, if the kick didn't hurt, I would like to  
 22 know that.  
 23 Q Did the kick to the chest hurt?  
 24 A No.  
 25 Q Okay. And was the reason you fell to the floor because

of the trash?  
 A That was.....  
 MR. INGALDSON: Object to the form.  
 A That was part of the reason.  
 Q Okay. Did you put any other reason in this affidavit?  
 A Excuse me?  
 Q Did you put any other reason you fell in this affidavit besides the trash?  
 A You may have misread that. I mean, the -- his kick, that was part of the reason I fell. I mean, I got knocked -- knocked back and the trash was the other reason.  
 Q In your affidavit, it says that you and Dimitri slipped. This is the affidavit supporting the police report.  
 A Okay.  
 Q You see that?  
 A Yeah.  
 Q Okay. Then it seems a little bit later, you're talking about the chest and things of that nature. Do you see that?  
 A Yeah.  
 Q Okay. So, having refreshed your memory with the affidavit that you produce to support the police report, does this change your memory at all regarding how you and Dimitri got on the floor?  
 A I don't remember if Dimitri fell once or twice but I know

1 A What?  
 2 Q Okay. When do you fill this form out? I'll strike the  
 3 former question and ask this new question, the form --  
 4 last two questions. Start with this one now. Sorry.  
 5 A Okay.  
 6 Q When do you fill this form out? And I'm referring to the  
 7 use of force form. Why did you complete that form?  
 8 A Because I had to use force other than verbal or presence  
 9 Q And on this form, you are supposed to tell why the  
 10 tactics were used, is that correct?  
 11 A Yes.  
 12 Q Okay. Did you do that?  
 13 A Yes.  
 14 Q And these are the reasons that it was used, is that  
 15 correct? These are the reasons that force was used on  
 16 this form, is that correct?  
 17 A Yes.  
 18 Q All right. I'll mark this defendants' exhibit D. I'm  
 19 sorry, plaintiff's exhibit D.  
 20 MR. BROWN: Deposition, the plaintiff's deposition.  
 21 Q Okay. So now I'm just going to read over what you wrote  
 22 here. Okay?  
 23 A Okay.  
 24 Q All right. What techniques and tactics were used? Were  
 25 they effective? I first tried to use the handcuffs that

he fell.  
 Q Just talking about you now.....  
 A Okay.  
 Q .....does it change your memory about how you got to the floor now that you've reviewed the affidavit supporting the police report and also the affidavit supporting the action, does that change your mind about how you got to the floor?  
 A No.  
 Q And in either one of those, does it say you landed on your back?  
 A No.  
 Q What did you write first, did you write the use of force report first or the affidavit supporting the police report first?  
 A The supplement and the use of force, I -- I don't remember which I wrote first.  
 Q Okay. On the use of force, do you write in there anywhere that you or Dimitri fell to the floor?  
 MR. BROWN: And what I'm showing him now is the use of force report that is marked Defendants' exhibit I.  
 A No.  
 Q So when you're talking about the use of force, this is what you based your use of force upon, is that right, this information right here?

1 were on him to escort him out of the house. This is when  
 2 he tried to kick at me and bite my hand. I then used two  
 3 two-second drive stuns to his back from my Taser M-26.  
 4 They didn't work. I then tried drive-stunning Thomas  
 5 just above his collarbone, three two-second deployments.  
 6 Did Thomas have his shirt on?  
 7 A I don't remember.  
 8 Q He was still not compliant and was still combative. I  
 9 then tried drive-stunning him on the inner thigh, two  
 10 two-second deployments. At this point, he started  
 11 kicking at us and I got kicked once more on the leg.  
 12 Sergeant Joseph had to deploy his taser. After a few  
 13 deployments of the current, Thomas finally became  
 14 compliant. I would have used pepper spray but there was  
 15 a newborn in the house. Is that a true and accurate  
 16 representation of what you wrote in there?  
 17 A Yes.  
 18 Q Do you mention anywhere in this use of force report that  
 19 you fell to the ground?  
 20 A No.  
 21 Q Do you mention anywhere in this use of force report that  
 22 a kick to the chest caused you to fall to the ground?  
 23 A No.  
 24  
 25

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1 (Tape two)  
 2 Q When you -- that when he tried -- not your -- (pause) --  
 3 all right. You're still under oath. We changed the  
 4 tape. You understand that? And restricted use of the  
 5 advanced taser, I believe that you know those five  
 6 reasons why it cannot be used. Do you agree with that?  
 7 A Yes.  
 8 Q All right. And this has been marked exhibit B for the  
 9 purpose of the deposition today and this document reads  
 10 Common Effect of EMD.  
 11 A Okay.  
 12 Q What does EMD stand for?  
 13 A Electro-muscular disable.  
 14 Q Okay. All right. And can you tell me what the common  
 15 effects are without reading the document? You did very  
 16 well before but you needed to see this document to know  
 17 what the common effects are.  
 18 A Yes, sir.  
 19 Q Okay. You want to take a -- take a look and if you  
 20 could, read that.  
 21 A Okay  
 22 Q Oh, can you -- okay. All right. The fifth item down,  
 23 subject may feel dazed for several seconds or minutes, do  
 24 you see that?  
 25 A Yes.

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1 Q All right. What does that mean to you?  
 2 A Dazed or just -- I don't know the dictionary definition  
 3 but to me it's like in the (indiscernible) and after  
 4 that, it's like (indiscernible) and I've also been  
 5 knocked unconscious a couple times. After a short --  
 6 after a short while, I'd wake up and I don't know exactly  
 7 what's going on or what happened. That isn't exactly how  
 8 to do that but that -- I think this is one of the  
 9 definitions of dazed.  
 10 MR. BROWN: And just for purposes that -- so I won't  
 11 say (tape skips) and when you get to say these are (tape  
 12 skips), if you want to watch, what happened earlier was the  
 13 video ran out of time (tape skips) and that -- I wanted to  
 14 stipulate that what's recorded is recorded and if it's not  
 15 recorded, it's not recording, you guys will have to watch it  
 16 and just so that you guys know, what he said is not on there  
 17 and I won't say it again. Is that -- everyone stipulate to  
 18 that, what's on there is on there or you want to watch it  
 19 first?  
 20 MR. WIDMER: I think we can -- well, what's on there  
 21 is on there. There's not much we can do now but we can break  
 22 right now to review.  
 23 MR. BROWN: Okay.  
 24 MR. WIDMER: (Tape skips) made a tape.  
 25 MR. BROWN: All right. You'll do that? We can

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1 (tape skips). I just want to be forthcoming on it.  
 2 MR. WIDMER: All right.  
 3 Q What's this?  
 4 A I don't know. (Tape skips). What happened to me is I  
 5 don't exactly lose my balance but it feels like the world  
 6 was kind of maybe just a little bit maybe vibrating so  
 7 much.  
 8 Q Okay. So kind of like being dizzy, is that what -- is  
 9 that....  
 10 A Something like that.  
 11 Q I don't want to put words in your mouth but is that  
 12 similar to what you're talking about?  
 13 A Yeah.  
 14 Q Now, on your use of force report, you talk about the  
 15 seven times that you deployed the taser and -- but you do  
 16 not mention about Thomas being on the floor at any of  
 17 those times. Do you recall if he was on the floor at all  
 18 or do you recall if he was on the floor when you deployed  
 19 the first one, the second one, the third one, the fourth  
 20 one, fifth, etcetera? Do you recall?  
 21 A The first -- I know for sure on the -- on the first --  
 22 first two drive stuns and the last two, he was on the  
 23 floor.  
 24 Q Okay. What about the three in between?  
 25 A I don't remember.

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1 Q All right. Now, your attorneys in their motions say at  
 2 about five minutes past from -- I want to say what he  
 3 (tape skips) reports say. You saw five minutes aft --  
 4 during this time period of the stunning? Does that sound  
 5 about accurate to you or how much time do you think?  
 6 A I don't know.  
 7 Q Do you think more time than that or less time than that?  
 8 A I don't know.  
 9 Q And if you know that someone is going to feel dazed for  
 10 several minutes, you're supposed to give them time to  
 11 recoup between one stun and another stun or you just  
 12 don't let them do that?  
 13 A After the initial stun, if -- if they're (tape skips)  
 14 need without using force, then we use the voice.  
 15 Q Has anyone ever told you that after someone is tased,  
 16 that they (tape skips) to immediately respond to  
 17 commands?  
 18 A He wasn't -- (tape skips) respond to that.  
 19 Q Has anyone ever told you that? Was that in any part of  
 20 your training?  
 21 A I don't remember.  
 22 Q And have you ever been given any training about tasing  
 23 someone or drive stunning them on their neck?  
 24 A Don't know.  
 25 Q And vertigo, you said is being like being dizzy. Did you

remember that?  
 A (No audible response).  
 Q Okay. When -- it would be difficult to stand up if you had vertigo, isn't that correct?  
 A Yes.  
 Q So a man that's been tased seven times just by you and more by Officer Joseph, it would be reasonable -- (tape skips) reasonable?  
 A Yeah.  
 Q It would be reasonable to believe that -- I mean, it'd be hard to stand up after all that, do you (tape skips)?  
 A It may be.  
 Q It would be reasonable to believe that he may feel dazed for several seconds or minutes after maybe at least seven discharges and maybe more. Is that reasonable?  
 A Yes, that's reasonable.  
 Q The subject may feel dazed for several minutes.  
 A And should be (tape skips).  
 Q Now, you deployed the first two -- and I want to number this but until we're putting -- you deployed the first two when he tried to kick and bite at your hand, then you used two two-second drive stuns, correct?  
 A Yes.  
 Q Now, what if you were just out -- you know, what if you and I got into a fight.....

A Okay.  
 Q All right? And (tape skips) if I tried to bite and kick you, then you can sit, I deserve to be tasered?  
 A Yes.  
 Q Okay. And if I kicked you on your leg, would I deserve to be tasered?  
 A Okay. When we say deserve, can you make a stop that's a counter-punch?  
 Q Well.....  
 A Yeah.  
 Q .....do you think you would be authorized, you think it would be legal for you to use that type of force against me if I had kicked you on your leg?  
 A Yes.  
 Q Mm-hmm. So if you were investigating a crime and someone said well, Molly tried to kick me and then she tried to bite me and the husband says I just took out -- you know I took this taser out and I was -- fired it in her arm. Think Molly could be arrested in that incident?  
 A Yes.  
 Q So you don't think that the amount of force that someone used against her in that example I just gave would be excessive at all?  
 A No.

MR. WIDMER: Objection

1 Q Even if her hands were tied behind her back?  
 2 A No.  
 3 Q And even if she was on the ground?  
 4 A That (tape skips).  
 5 Q Yeah. Do you think that then he'd be authorized (tape skips) it should be legal, you respond to a call and you believe before the -- for someone to use four stuns of the taser which can cause the injuries that you photographed here.....  
 10 MR. WIDMER: Objection.  
 11 Q Did you photograph -- are these your photographs? (Tape skips) we'll stipulate (tape skips). Do you think that someone that is -- has their hands restrained behind their back down on the floor, trying to bite someone, trying to kick someone should receive those type of injuries as a result?  
 17 A I don't know. And if it was the best way to stop them compared to other means and if it was the best way they could find, yes.  
 20 Q Do you remember taking these photographs or are these photographs that you took? These were taken at the police force, the police office is my understanding and I don't know if you took them or if Officer Joseph did. Do you remember taking the 13 photographs in front of you?  
 25 A I know for sure that Sergeant Joseph took them because I

1 for sure couldn't take them. I don't remember who took all of them.  
 2  
 3 Q Do you remember taking any of them?  
 4 A No.  
 5 Q In your investigation at the time, did you find that you get the most accurate statement closer to the date of the crime or months later?  
 6  
 7  
 8 A Excuse me?  
 9 Q When you are investigating a crime, do you find that you get the most accurate statement when it's right close to the crime or months later?  
 10  
 11 A Probably close.  
 12 Q You were using the force of the gun right close, is that correct?  
 13  
 14  
 15 A Yes.  
 16 Q And the affidavit for -- in this case was done months later, is that correct?  
 17  
 18 A Yes.  
 19 Q But your memory reflected use of force is a more accurate reflection perhaps than this?  
 20  
 21 A It could be.  
 22 Q All right. Just a second. Let's just kind of (tape skips). Officer Joseph stated in his police report that it was really hot inside. Do you remember how hot it was inside?  
 25

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1 A No.  
 2 Q So your attorneys did not write this for you? Is that  
 3 who did it?  
 4 A (No audible response)  
 5 Q (Tape skips) data during this day so your attorneys  
 6 didn't write this for you?  
 7 A They got information from me and that was (tape skips).  
 8 Q Okay. So they wrote it for you? I mean, that's -- it's  
 9 fine if they did. I'm just asking you a question.  
 10 A Yes.  
 11 Q Did you ever actually deploy the taser or was it always  
 12 just a drive stun with you?  
 13 A In this case, it was the drive stun.  
 14 Q Now, you were trained that the subject may feel dazed for  
 15 several seconds or minutes, is that correct?  
 16 A Yes.  
 17 Now, in your affidavit, you said that you were trained  
 18 that it would affect them just a few seconds. That's not  
 19 what you were trained though, is it? Isn't that (tape  
 20 skips)? And we're in -- refer to paragraph 11 of the  
 21 affidavit, I was trained that the taser wouldn't cause  
 22 injury or have an effect more than a few seconds but that  
 23 wasn't what you were trained, was it?  
 24 A That wasn't the only thing I was trained.  
 25 Q But what you were trained with what?

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1 A Standard.  
 2 Q And how many seconds or minutes?  
 3 A Several.  
 4 Q You -- by now they probably all say hindsight's 20/20?  
 5 You heard that said? Well, right now, do you think that  
 6 maybe you overdid it a little bit with the force?  
 7 A No.  
 8 Q Not at all?  
 9 A No.  
 10 Q No? And you say that (tape skips) on May 2nd and I want  
 11 you to look at these -- or those. May 2nd, 2007. Just  
 12 take your time, look through those. Take as much time as  
 13 you would need. There's one, two, three, four, five,  
 14 six, seven, eight pages of them. Take as much time as  
 15 you need to look through those and when you're done, let  
 16 me know  
 17 (Pause)  
 18 A Okay. I'm done.  
 19 Q Okay. I'm going to mark these Deposition exhibit E. I  
 20 know we're trying to be (tape skips). Okay. One --  
 21 okay. I look on page E-1. Is it the type of mark that's  
 22 made by the drive stun because there's two prongs that  
 23 (tape skips) the person?  
 24 MR. INGALDSON: Objection, foundation.  
 25 Q I'm looking at the upper left-hand corner of E -- page E-

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1 1. This is a photograph of what -- Thomas Olson's neck  
 2 but, just in general, you can just say Thomas -- not  
 3 Thomas but, in general, is this the type of mark that  
 4 would be consistent with a drive stun mark or is this  
 5 more consistent with when prongs actually void?  
 6 MR. INGALDSON: Objection, foundation.  
 7 A With these I can't tell.  
 8 Q Okay. Are you familiar with the type of marks that a  
 9 drive stun on a taser make?  
 10 A Yes.  
 11 Q Okay. And I see you have your taser with you today. Are  
 12 you -- can you show us where the prongs are on that  
 13 taser? If you were going to drive stun someone, show me  
 14 your taser and let's see -- you know, just show me where  
 15 the (tape skips) on the drive stuns are. Show us what  
 16 you mean by that.  
 17 A Demonstrate?  
 18 Q I'd rather not be demonstrated on. Maybe Mr. Widmer  
 19 would like that though but if you could show -- if you  
 20 could take out your taser and just indicate to me where  
 21 the drive stun prongs are?  
 22 A Okay. Here's.....  
 23 Q Okay. So if someone is drive stunned, the current runs  
 24 between those two prongs, is that correct?  
 25 A Yes, between these two little points.

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1 Q Okay. So it would be knowledgeable or it'd be reasonable  
 2 to think that a person drive stunned would have marks  
 3 close together rather than far apart? Is that  
 4 reasonable?  
 5 A Yeah. No, close together.  
 6 Q Okay. All right. When.....  
 7 MR. INGALDSON: He can sit down if you like.  
 8 MR. BROWN: He can sit. Thanks.  
 9 Q Now, you have admitted here in the use of force report  
 10 (tape skips) that you drive stunned Thomas on the inner  
 11 thigh, is that right?  
 12 A Yes.  
 13 Q Now, there's a photo of his inner thigh which show drive  
 14 stun marks. Is that correct?  
 15 A Yes.  
 16 MR. WIDMER: Objection.  
 17 Q Do you see drive -- do you see (tape skips) if someone's  
 18 in a (tape skips)?  
 19 A Yes.  
 20 Q Okay. And do you -- that's all I have.  
 21 MR. INGALDSON: Object to the (tape skips)  
 22 Q Tell me what you see there  
 23 A Two little marks.  
 24 Q Is it reasonable to believe those had been caused by a  
 25 taser?

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MR. INGALDSON: Foundation.

1 A I don't know.

2 Q Someone -- you don't know if that could have been poss --

3 you don't know if it's reasonable to believe that could

4 have been caused by a taser?

5 A I don't know.

6 Q If someone was kicking at you on your shin or your

7 legs ...

8 A (Indiscernible).

9 Q But if they were kicking, how are you going to be able to

10 make that connection (tape skips)?

11 A I don't remember how (tape skips) legs but I (tape skips)

12 side of him.

13 Q That would have been difficult if his legs were kicking

14 back and forth, moving, do you agree?

15 A If he was doing that at the time, yes.

16 Q Now, you said that you drive stunned his back. Is that

17 what you said?

18 A Yeah.

19 Q So now, if he was kicking at you when you were behind

20 him, there was no chance you were going to be kicked

21 (tape skips)?

22 A Say it again?

23 Q Explain that.

24 A I guess how much time you (tape skips).

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Q You think maybe you could have strained him while you

2 were behind him?

3 A I may have been able to.

4 Q Okay. But you didn't try?

5 A Yes, I did.

6 Q Oh, where did you say that?

7 A It says (indiscernible) in this paragraph here. Oh, this

8 here, yeah.

9 Q Okay. Well, you don't see it down here where you said

10 you pointed it to his back. It's not down there, is it?

11 A No.

12 Q You just say that's the first thing you tried to do, is

13 that right?

14 A Yes.

15 Q And it just says you just tried it once, is that right?

16 A I'm not sure what it says there.

17 Q Okay. What's Thomas Olson's criminal history prior to

18 this Jate?

19 A (Tape skips).

20 Q Okay. Any -- anything big pop out that you want to tell

21 me about? If you don't know, you don't know. I just

22 wonder if you know

23 A I don't believe (tape skips) my own conditions of release

24 (tape skips).

25 Q What about prior to this event?

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1 A That's what I'm talking about.

2 Q Okay. All right. If you can think of anything I missed,

3 let me know. I don't have any more questions for you.

4

5

EXAMINATION

6 BY MR. WIDMER:

7 Q I want to reference here the 44-A where I (tape skips)

8 what has been marked (tape skips) exhibit D to the

9 deposition. Some questions have been asked to you,

10 Sergeant Simon, about where in that second paragraph, the

11 admission of that (tape skips) Mr. Olson was seated --

12 was sitting at. Do you remember those questions?

13 A Yeah.

14 Q And you -- your response was that (tape skips) that he

15 was sitting down, correct?

16 A Yes.

17 Q What information source to go into that box? Is there

18 anything on that form that you know that made you put it

19 there (ph)?

20 A I think it's (tape skips).

21 Q Okay. So would you consider the position of Mr. Olson to

22 be a technique or a tactic?

23 A No.

24 Q Okay. Is it a fair statement to say that there are a

25 number of things that happened that night some -- some

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1 kinds of situation does not make it into that use of

2 force report, is that an accurate statement?

3 A Yes.

4 Q Sometimes it doesn't say you had a uniform on or that you

5 were carrying certain items of equipment. Is that

6 accurate? Does anyone -- the use of force report form,

7 does it mention you were dressed in a uniform?

8 A No.

9 Q Is it fair to say that you were dressed in a uniform when

10 you responded to that?

11 A (No audible response).

12 Q So there are a number of things that may have happened

13 that you may not have made it in that use of force

14 report?

15 A Yes.

16 Q And you created this report?

17 A Yes.

18 Q Why would you decide that some things should be reported,

19 some things should not?

20 A They typed that into the report form.

21 Q Okay. One of the things that -- one of the questions

22 that were asked of you was that you couldn't have been

23 kicked while you were behind the shoulders. Do you

24 remember those questions?

25 A Yes.

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1 Q And you responded that it was possible that you could be  
 2 kicked or that response?  
 3 A Yes.  
 4 Q Okay. I wanted to ask you about the use of force you're  
 5 allowed to use. Are you only allowed to use -- to deploy  
 6 a taser if your own safety is threatened?  
 7 A Not just my own safety.  
 8 Q What are some of the other reasons why you tase -- why  
 9 you deploy a taser in a situation?  
 10 A Oh, safety of others. This does include the person (tape  
 11 skips) enforcement.  
 12 Q So while -- when you were behind Mr. Olson, who was --  
 13 was there anyone that was near Mr. Olson that could have  
 14 been kicked?  
 15 A Yes.  
 16 Q And who would those people have been, if anyone?  
 17 A Mr. Olson.  
 18 Q Okay. And you had also mentioned that he was -- or he --  
 19 at one point made a move, that he had tried to bite you,  
 20 is that correct?  
 21 A Yes.  
 22 Q You mentioned your training, that when you were tased, it  
 23 was hard for you, your response was made (ph). Remember  
 24 that?  
 25 A Yes.

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1 Q I don't have anything else right now.  
 2 MR. INGALDSON: Just two of them.  
 3  
 4 EXAMINATION  
 5 BY MR. INGALDSON:  
 6 Q Couple of questions. The -- unfortunately, when the tape  
 7 ran out and we were asking some question of Mr. Brown was  
 8 asking some question but he did -- remember, he went  
 9 through and had you tell the reasons to -- the  
 10 restrictions on use of the taser and he asked you -- sort  
 11 of tested your memory on that?  
 12 A Yeah.  
 13 Q I think that when you went back on tape, he pointed out  
 14 that you were able to answer those questions and one of  
 15 them dealt with if someone's restrained such as Mr. Olson  
 16 in handcuffs, that he shouldn't be tased there unless  
 17 they're -- I think your words were engaged in actions  
 18 that could cause injury to themselves or other persons  
 19 that would be the deploying officers. Do you remember  
 20 that?  
 21 A Yes.  
 22 Q And that doesn't mean that they'd have to -- that he has  
 23 to be causing injury that could result in your death or  
 24 serious injury, permanent injuries, any type of injuries  
 25 (tape skips)?

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1 Q Could you explain a little more of what you mean?  
 2 A As the current was being administered or even before that  
 3 (tape skips) instructions and I was to follow -- to  
 4 follow those instructions....  
 5 Q Okay.  
 6 A ....before, during and after.  
 7 Q And another line of questions that was asked to you  
 8 seemed to suggest that Mr. Olson would have been unable  
 9 to stand up while he was being tased. Do you remember  
 10 that line of questioning?  
 11 A Yes.  
 12 Q And I think, specifically, reference was made to feeling  
 13 dazed or potential (ph) earlier. Do you remember that  
 14 line of questioning as well?  
 15 A Yes.  
 16 Q Did you continue -- you tased Mr. Olson the first time,  
 17 right?  
 18 A Right.  
 19 Q You tased him once and you stand up and (tape skips) come  
 20 with you, is that correct?  
 21 A Yes.  
 22 Q Okay. Did you continue to tase him because he didn't  
 23 stand up or did you continue to tase him because he was  
 24 trying to bite and kick you and any other officers?  
 25 A Because he was biting and kicking.

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1 A Any -- any injury.  
 2 Q And in this case with Mr. Olson, I think you said he  
 3 started kicking and he was wrapping his legs around the  
 4 pole and....  
 5 MR. BROWN: Objection, leading.  
 6 Q Is that correct?  
 7 A Yes.  
 8 Q Was he -- did he ever give you -- before he was tased,  
 9 did he ever do anything or give you any indication that  
 10 he would peacefully comply with your orders to remove  
 11 himself from the house?  
 12 A Before that, I don't remember whether or not -- whether  
 13 or not he was completely cooperative.  
 14 Q From the time that you all went down to the ground or  
 15 that he grabbed onto the pole, from then, from that time  
 16 on, from the time he started kicking you, did he ever --  
 17 kicking at you, did he ever do anything to indicate that  
 18 he would just comply with you, peacefully comply with  
 19 you?  
 20 A No.  
 21 Q Have you ever been taught in your training that if  
 22 someone resists the arrest, if someone kicks at you, if  
 23 someone bites at you, someone holds on the poles to keep  
 24 from being arrested that you should just let him go?  
 25 A No.



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1 Q Did you believe -- let me, first of all, ask this  
 2 question. When Mr. Olson -- there was a question asked  
 3 about whether or not Mr. Olson might have been dazed.  
 4 When Mr. Olson said on the tape or we listened on the  
 5 tape, when he made the comment is that all you've got,  
 6 damn it, it feels like a vibrator, did you get the  
 7 impression that he was just dazed when he said that?  
 8 A No.  
 9 Q And my last question, Sergeant Simon, is when you used  
 10 the taser on Mr. Olson, did you believe what you were  
 11 doing was lawful and proper?  
 12 A Yes, sir.  
 13 Q That's all I have.  
 14 MR. BROWN: And I have a few follow-up here.  
 15  
 16 EXAMINATION  
 17 BY MR. BROWN:  
 18 Q Going back to the what's been marked as deposition D,  
 19 deposition exhibit D here, Mr. Widmer brought your  
 20 attention to this use of force form earlier and he only  
 21 mentioned one section though which was what techniques  
 22 and tactics were used and why were they effective but,  
 23 actually, right above that, a section that he (tape  
 24 skips) says describe the incident. Isn't that what it  
 25 says, for you to describe the incident?

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1 A Yes.  
 2 Q All right. And in either one of those sections, either  
 3 the tactics that were used or in describe the incident,  
 4 do you ever that you were on the ground?  
 5 A No.  
 6 Q All right. And just a moment ago, you demonstrated for  
 7 us where the prongs were located on the taser?  
 8 A Yes.  
 9 Q Okay. Now, when you were holding that, that was just  
 10 right in your hand, right?  
 11 A Yes.  
 12 Q You would have to come within very close proximity, very  
 13 close to Mr. Olson in order to do that, is that right?  
 14 A Yes.  
 15 Q One time you even had it right in between his legs and  
 16 used it on his inner thigh, is that right?  
 17 A Yes.  
 18 Q Another time used it right on his back and on his  
 19 collarbone, is that right?  
 20 A (No audible response)  
 21 Q Just above the collarbone?  
 22 A Yes.  
 23 Q Okay. So he was at least calm enough for you to get  
 24 close enough to him to administer that, is that right?  
 25 A I wouldn't say calm, no.

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1 Q You were able to administer seven (indiscernible), is  
 2 that correct?  
 3 A Yes.  
 4 Q Did you ever deploy the -- I'll call them close (tape  
 5 skips) do you recall right now, did you ever deploy with  
 6 the wires, the part of the taser?  
 7 A The probes?  
 8 Q The probes, yeah.  
 9 A No.  
 10 Q Okay. All right. Now, Mr. Oaks was saying earlier that  
 11 if two -- the two probes do not both make contact, then  
 12 they short out, is that correct? Is that what happens?  
 13 If only one probe makes contact with the person who's  
 14 being arrested, does the charge short out?  
 15 A It does make a circuit. I don't know if it's called  
 16 shorting out but....  
 17 Q Electrical charge, is that right?  
 18 A There's an electrical charge circuit -- circuiting.  
 19 Q Mr. Olson, is that right, something that would have  
 20 caused Mr. Olson, for example, yell is that all you've  
 21 got (tape skips) feels like a vibrator (tape skips)?  
 22 It's just a little charge, is that what you're saying or  
 23 (tape skips) and I will start all over. It's getting  
 24 late. (Indiscernible). When only one probe, what  
 25 happens?

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1 A It doesn't work.  
 2 Q All right. And Officer Joseph said that his first ones  
 3 did not work. Do you have any knowledge of whether that  
 4 worked or did not work? Do you yourself know? You may  
 5 not.  
 6 A I don't remember  
 7 Q Okay. Do you remember Thomas saying call ' and (tape  
 8 skips) with the kids and I'll leave?  
 9 A I don't remember.  
 10 Q If you were investigating a crime scene and there were --  
 11 you came upon (tape skips) with burn marks on them and  
 12 they said that they were (tape skips) investigating (tape  
 13 skips).  
 14 A I'd investigate further.  
 15 Q Why?  
 16 A They've spoken with one person.  
 17 Q And that one person tells you that their hands were  
 18 behind their back and they were trying to bite and kick  
 19 and they got those 11 burn marks, what would (tape  
 20 skips)?  
 21 A I still don't know the whole story.  
 22 Q You see that there could be a legal problem here?  
 23 MR. WIDMER: Objection, that calls for a legal  
 24 conclusion.  
 25 A (Tape skips).



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
)  
Plaintiff, )  
vs. )  
)  
CITY OF HOOPER BAY, )  
OFFICER DIMITRI OAKS, )  
OFFICER CHARLES SIMON, and )  
OFFICER NATHAN JOSEPH, )  
)  
Defendants. )

---

Case No. 4BE-07-26 CI

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 6

### H.P.B.P.D. Vehicular Pursuit/Use of Force Report

**INSTRUCTIONS:** This form is to be completed for every incident where a vehicular pursuit took place or where an officer threatened or used force in the line of duty. Reportable use of force is that where more force than merely handcuffing a prisoner as required. An incident is reportable if and officer had to: struggle with a person; use a pain compliance hold; strike a person; or threaten the use of Cap-stun; Electronic Device; impact weapon; or a firearm. The information gathered from this form will be used to evaluate the effectiveness of the Vehicular Pursuit and Use of Force policies, tactics, and training approved by the Department. This form is for administrative use only and is not to be included in any case file. This form reports only a brief summary of the incident reported. For complete details the official case report should be consulted.

Completed reports should be routed to the H.P.B.P.D. Planning/Research Section through the chain of command.

Reporting Officer Name Nathan Joseph	Perm ID NJJ7	Case Number (if any) HPB-06-4150	Date of Incident 12-26-2006	Other Officers Demetri Oaks, Charles Simon		
Location: Thomas "Boya" Olson and Suzanne Smith's residence						
Type of incident (Check all that apply)		Threat	Use			
<input type="checkbox"/>	Vehicular Pursuit	<input type="checkbox"/>	<input type="checkbox"/>	Unarmed		
<input type="checkbox"/>	Vehicular Pursuit - Damage	<input type="checkbox"/>	<input type="checkbox"/>	Cap-Stun, Chemical Spray		
<input type="checkbox"/>	Vehicular Pursuit - Injuries	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Electronic Device		
		<input type="checkbox"/>	<input type="checkbox"/>	Impact Weapon		
		<input type="checkbox"/>	<input type="checkbox"/>	Firearm		
		<input type="checkbox"/>	<input type="checkbox"/>	K-9 Application		
Subjects Name(s)	D.O.B.	Sex	Alcohol	Drugs	Inhalants	Med. Attn. Req'd
Thomas "Boya" Olson		Male	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Briefly Describe incident: Officers went to do a welfare check found both Thomas and [redacted] to be passed out, detained both, when Thomas was behind escorted Cpl. Simon, and Officer Oaks slipped from the trash with Thomas they got up, Thomas started kicking at Both Cpl. Simon and Officer Oaks kicking Cpl. Simon on the chest on the right thigh and the left shin and kicking Officer Oaks in the left knee twice, and continued to kick at officers when they couldn't get a control of him I deployed my tazor and drove stun him approximately five or six times, after he finally calmed down after that many drive stuns, I deployed the tazor because Thomas was a threat with the floor being slippery and the trash officers were slipping on.						
What techniques and tactics were used? Were they effective? Tazor was deployed on Thomas when he continued to be a threat, I drove stun him approximately five or six times he then finally calmed down.						
Recommendations for training, equipment, or policy changes as a result of this incident: Officers are not trained to do well in slippery conditions and trash on the floor making it risky for officers to make an arrest.						

E9  
Exc. 166

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )

Case No. 4BE-07-26 CI

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 7

## H.P.B.P.D. Vehicular Pursuit/Use of Force Report

**INSTRUCTIONS:** This form is to be completed for every incident where a vehicular pursuit took place or where an officer threatened or used force in the line of duty. Reportable use of force is that where more force than merely handcuffing a prisoner was required. An incident is reportable if and officer had to: struggle with a person; use a pain compliance hold; strike a person; use or threaten the use of Cap-stun; Electronic Device; impact weapon; or a firearm. The information gathered from this form will be used to evaluate the effectiveness of the Vehicular Pursuit and Use of Force policies, tactics, and training approved by the Department. This form is for administrative use only and is not to be included in any case file. This form reports only a brief summary of the incident reported. For complete details the official case report should be consulted.

Completed reports should be routed to the H.P.B.P.D. Planning/Research Section through the chain of command.

Reporting Officer Name Charles Simon	Perm ID CLS7	Case Number (if any) HPB-06-4150	Date of Incident 12/26/2006	Other Officers Sgt. Joseph, Ofc. Oaks			
Location Thomas "Boya" Olson residence							
Type of incident (Check all that apply):							
<input type="checkbox"/> Vehicular Pursuit		<input type="checkbox"/> Threat	<input type="checkbox"/> Use				
<input type="checkbox"/> Vehicular Pursuit - Damage		<input type="checkbox"/>	<input type="checkbox"/>	Unarmed			
<input type="checkbox"/> Vehicular Pursuit - Injuries		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cap-Stun, Chemical Spray			
		<input type="checkbox"/>	<input type="checkbox"/>	Electronic Device			
		<input type="checkbox"/>	<input type="checkbox"/>	Impact Weapon			
		<input type="checkbox"/>	<input type="checkbox"/>	Firearm			
		<input type="checkbox"/>	<input type="checkbox"/>	K-9 Application			
Subjects Name(s)		D.O.B.	Sex	Alcohol	Drugs	Inhalants	Med. Attn. Req'd
Thomas Olson			Male	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Briefly Describe incident:							
<p>responding to assist Sgt. Joseph and Ofc. Oaks at the Olson residence, I was trying to help Ofc. Oaks escort Thomas out of the house and to the Police Department. Thomas refused to stand and allow us to escort him. Thomas started kicking at us, and tried to bite my hand. I got kicked twice on the legs and once on the chest. Ofc. Oaks got kicked on the legs. Thomas was violent and would not comply with our orders. Thomas was being arrested for Endangering the Welfare of a Minor.</p>							
What techniques and tactics were used? Were they effective?							
<p>I at first tried to use the handcuffs that were on him to escort him out of the house. This is when he tried to kick at me and bite my hand. I then used <u>two</u> 2-second drive stuns to his back from my Taser M-26. They didn't work. I then tried drive stunning Thomas just above his collar bone (<u>three</u> 2-second deployments). He still was not compliant and was still combative. I then tried drive stunning him on the inner thigh (<u>two</u> 2-second deployments) at this point, he started kicking at us again, and I got kicked once more on the leg. Sgt. Joseph had to deploy his Taser. After a few deployments of the current, Thomas finally became compliant. I would have used pepper spray, but there was a newborn in the house.</p>							
Recommendations for training, equipment, or policy changes as a result of this incident:							
none							

*Disposition D*  
DI

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

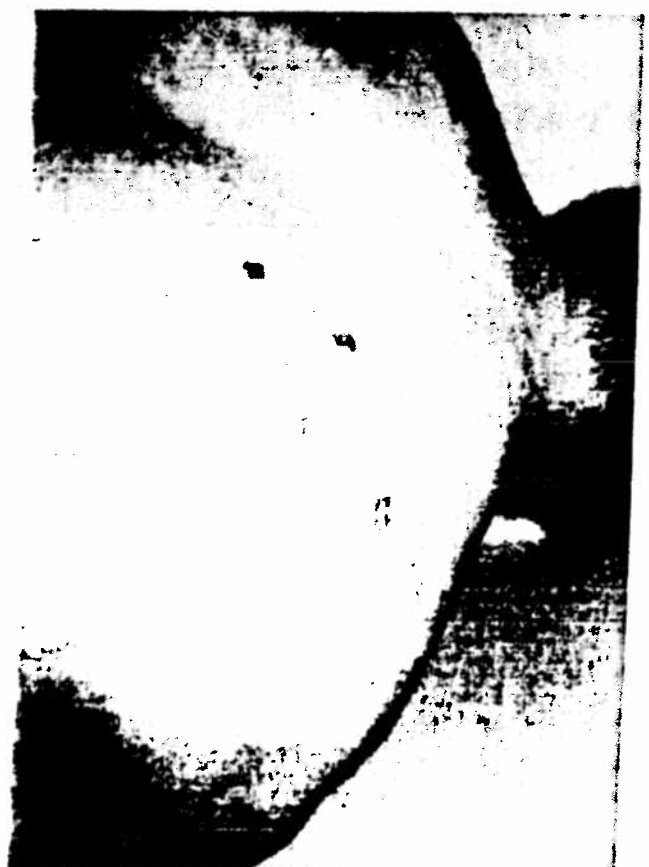
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )

Case No. 4BE-07-26 CI

**PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

# Exhibit 8



Exc. 170





Exc. 171

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )

---

Case No. 4BE-07-26 CI

**PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

# Exhibit 9

*Handwritten notes:*  
To the party challenging the use of the force  
in this matter...  
Case No. 4BE-07-26 CI  
IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL  
BOYA J. OLSON  
Plaintiff  
v.  
CITY OF HOOPER BAY, OFFICER DIMITRI,  
OAKS, OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH  
Defendants

**EXPERT REPORT OF MICHAEL D. LYMAN, PH.D.**

I, Michael D. Lyman, state the following.

I am over eighteen (18) years of age, have never been convicted of a felony and am confident in all respects to this report. The facts and opinions stated herein are within my personal knowledge and are all true and correct. I've been retained by the plaintiff as an expert witness in this case and have been asked to review the materials and reports, and to offer my expert opinion on the issue of the case.

**Resume**

1. My name is Michael D. Lyman. I am 57 years of age. I am a Professor of Criminal Justice in the Criminal Justice and Human Services Department of Columbia College of Missouri. I currently hold the rank of Full Professor and have been a faculty member at the College since August 1989. I received my Ph.D. from the University of Missouri-Columbia and my Masters of Administration of Justice and Baccalaureate Degree in Criminal Justice from Wichita State University. My teaching and research concentration is in the areas of policing, criminal investigation, and police use of force.
2. Prior to my entering the field of college teaching, I was employed as a certified police trainer for the Law Enforcement Training Institute in Columbia, Missouri. I was certified by the Missouri Department of Public Safety Peace Officers Standards and Training (POST) Commission as a "Generalist" police instructor. Areas in which I taught included criminal investigation procedures, arrest procedures and use of force. I was employed in that capacity for three years during which time I was awarded the Law Enforcement Instructor of the Year Award in 1989.
3. Before becoming a police instructor, I worked in law enforcement for 11 years. I was a sworn law enforcement officer employed as a criminal investigator for both the Kansas Bureau of Investigation (1975-1980) and the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (1981-1986). Before that, I worked for one year as a criminal investigator for the City County Investigative Squad out of Johnson County, Kansas.
4. My current professional affiliations include American College of Forensic Examiners International (ACFEI); The International Association for the Study of Organized Crime (IASOC) and the American Academy of Forensic Science (AAFS). I maintain membership in the International Association of Chiefs of Police (IACP) Academy of Criminal Justice.

Sciences (ACJS) and the American Society of Criminology (ASC). I attend national conferences on a regular basis. I have also contributed to organizations to which I belong. For example, I have served on organizational planning committees for the Academy of Criminal Justice Sciences and have written a model policy for the International Association of Chiefs of Police that serves as a national investigative guideline for crime scene and investigative photography.

5. Since 1986 I have authored seven books published by some of the nation's largest and most prestigious publishing houses. Five of these are still in print and being used by law-enforcement agencies as well as colleges and universities around the country. Titles include: *Criminal Investigation: The Art and the Science*, 5th ed. (Prentice Hall); *Practical Drug Enforcement*, 3rd ed. (CRC Press); *The Police: An Introduction*, 3rd ed. (Prentice Hall). I am also the lead author for *Organized Crime*, 4th ed. (Prentice Hall) and *Drugs in Society: Causes, Concepts and Control*, 5th ed. (Lexis Nexis/Anderson Publishing). My textbook, *Criminal Investigation: The Art and the Science*, 5th ed., is Prentice Hall's lead criminal investigation textbook, which has been adopted by some of the nation's most prestigious colleges and universities. It is also used by law enforcement agencies across the nation as a training guide and preparatory manual for detective and sergeant's promotional exams. My journal articles and books relating to police procedure have also been positively reviewed by nationally recognized professional journals, which includes the Federal Bureau of Investigation's Law-Enforcement Bulletin.
6. I have also authored a number of articles relating to police procedure that have appeared in law enforcement encyclopedias and nationally recognized journals. These include: *Drug Enforcement in the United States and Undercover Operations*, essays for The Encyclopedia of Law Enforcement (Sage Publications); *The Decision to Chase: Revisiting Police Pursuits and the Appropriateness of Action* (The Police Forum Journal); *Transnational Organized Crime and Domestic Organized Crime*, essays for the Encyclopedia of Murder & Violent Crime (Sage Publications).
7. I have taught graduate-level and honors students in the area of development of police policy and procedure and have served on a number of public and community committees dealing with the formation of public policy as it relates to police procedure.
8. Since 2001, I have worked as a litigation consultant and in that capacity reviewed over 150 cases for both plaintiff and defense in over 30 states across the nation. These involve various aspects of criminal investigation and police procedure. I have also provided expert testimony on sixty-six occasions.
9. Attached hereto and incorporated herein by reference is a true, correct and complete copy of my curriculum vitae. The statements made therein about my education, training, professional experience, societal memberships, awards, publications, teaching experience, and civic activities are true and correct.
10. Although discovery has closed, there may be other materials or information made available to me for consideration. As such, I request that this report be considered as a preliminary report and that I be given an opportunity to supplement the report as necessary with additional opinions.

#### Facts and Background

11. It should be noted that, as with many matters that come to the attention of the courts, accounts of what occurred differ between involved parties. I recognize that it is the purview of the jury to decide questions of fact and which witnesses are to be believed. Accordingly, every effort has been made in this report to represent the record as accurately as possible while acknowledging factual differences.

12. On December 26, 2006, at approximately 3:55 a.m., the Hooper Bay Police Department received a call from \_\_\_\_\_ wanting officers to go do a "welfare check" on her live-in boyfriend, Thomas "Boya" Olson, with whom she had children \_\_\_\_\_. Boya's brother \_\_\_\_\_ also reported that \_\_\_\_\_ had been drinking and she was concerned that he was alone with the children. Officers Nathan Joseph and Demetri Oaks responded.
13. Upon arrival, officers observed that the arctic entrance door and the inside door to the residence were open. Joseph knocked on the door and heard a faint voice stating "come in." As the officers entered they went upstairs and knocked again and heard the same voice say "come in."
14. As the officers were at the top of the stairs they observed a person who did not appear to be awake and lying on the couch. A second person was observed on the bed. Note that defendant officers characterized both persons as appearing to be "passed out" even though it was approximately 4:00 a.m. in the morning.
15. Joseph approached the person on the couch and saw that there were three toddlers ranging from one to four years of age and one newborn. The record shows that the children were \_\_\_\_\_ (2-3 years of age), \_\_\_\_\_ (one - 2 years of age), \_\_\_\_\_ (approximate one year of age), and a newborn.
16. Joseph asked the oldest child where everyone was and he reportedly stated that they weren't here. Joseph then asked if \_\_\_\_\_ was sober and he stated no. Joseph asked if \_\_\_\_\_ had been drinking and the child responded yes.
17. Trash was observed on the floor and the floor was slippery. Joseph stated that because the floor was slippery it was difficult to walk in some parts of the residence. Note that all three officers agreed that the floor was slippery.
18. Joseph walked to the east end of the residence and flashed his flashlight in Boya's face and asked where everyone was. He asked why the officers came into his residence. They informed him they were doing a welfare check and saw that both the doors to the residence were open. Joseph asked Boya to stand up for a quick test.
19. Boya complained that the officers were trespassing and stated that he was never told why the officers were in his residence.
20. Joseph told Boya to place his hands behind his back and that handcuffs would be placed on him for "safety reasons."<sup>1</sup> Boya complied and Joseph placed the handcuffs on him without incident. Note that Boya stated that he was handcuffed immediately before he got up from the couch.
21. Joseph attempted to wake Boya's brother, \_\_\_\_\_ by shaking him hard and calling out his name. Joseph notified dispatch to have a third officer come to the residence to assist.
22. Approximately five minutes later, Corporal Charles Simon arrived to assist.
23. Joseph asked Simon and Oaks to take a Boya to the police department. Boya then allegedly became "uncooperative" and struggled with Simon and Oaks. Simon and Oaks, along with Boya slipped on the wet floor and fell.<sup>2</sup>
24. During this same time \_\_\_\_\_ attempted to get up as Joseph instructed him to remain on the couch.

<sup>1</sup> Joseph's report dated 12-26-06, p. 5

<sup>2</sup> Joseph's report dated 12-26-06, p. 5

25. Joseph reported that he saw [redacted] getting ready to kick [redacted]. Joseph asked [redacted] several times if he was going to kick [redacted]. [redacted] stated, "Yes I'm going to."
26. Joseph grabbed [redacted] and placed him down the floor. When he stated he's not going to do anything [redacted] placed him on the couch and held him down with his legs together so he wouldn't kick.<sup>3</sup>
27. Boya then wrapped his legs around a pole and refused to let go. Simon instructed him to let go of the pole but according to defendant officers he failed to comply.
28. Instead of holding Boya's legs to prevent movement, Simon threatened to use his Taser to stun if he continued not to comply. Simon physically applied the Taser to Boya ("drive stunned") as Boya called out, "is that all you got bitch?"
29. Simon responded by drive-stunning Boya numerous additional times.<sup>4</sup>
30. After being tased an estimated four to six times, Boya began kicking.
31. Joseph saw Officer Oaks get kicked twice on the leg. Oaks fell on the slippery floor. Even though he was still handcuffed, Boya allegedly began moving toward Oaks.
32. Joseph pulled out his Taser and deployed it a total of three times.
33. Boya allegedly continued to "fight" with his hands still cuffed behind him. Boya allegedly continued to kick as Joseph made two more Taser contacts. Joseph reported that Boya stopped fighting at this point.
34. The focus of this case is the use of force (The Taser) by defendant officers and the extent to which it was objectively reasonable. To that end, the guidelines and standards governing the use of force are discussed as well as aspects of the case that relate to this concern.

#### **Standards and Investigative Guidelines: Use of Force**

35. Nationally recognized standards and procedural guidelines are clear regarding the appropriateness of action by police officers with regard to use of force. These include those identified by the United States Supreme Court and the International Association of Chiefs of Police.

#### **Constitutional standards: Use of force:**

36. The standard of care for law enforcement use of force is identified in U.S. Supreme Court case *Graham v. Connor*, 490 U.S. 396 (1989). This case established the "objectively reasonable" standard under the Fourth Amendment, which means that the reasonableness of an officer's use of force must be reasonable and judged "from the perspective of a reasonable officer at the scene."
37. This "reasonable man," or more accurately, reasonable officer standard is an objective test. That is, it is not based on the intent or motivation of the officer or other subjective factors at the time of the incident. It is based solely on the objective circumstances of the event and the conclusion that would be drawn by any "reasonable officer at the scene."

<sup>3</sup> Joseph's report dated 12-26-06, p 5

<sup>4</sup> Joseph's report dated 12-26-06, p 6

38 I make no claim to be an expert in constitutional law, but it should be noted that even the most basic police training includes instruction in case law and certain constitutional principles and how they relate to accepted police procedure. This type of instruction is consistent throughout the nation's police academies.

**Professional guidelines – Use of force (IACP):**

39 In addition to the constitutional standards discussed above, professional literature in policing and police training guides address the appropriate use of force under different circumstances.

40 The IACP is the nation's largest professional policing organization with an estimated 13,000 members across the nation. In 1987, the IACP entered into a cooperative agreement with the U.S. Justice Department's Bureau of Justice Assistance to establish a National Law Enforcement Policy Center. The purpose of the center was to assist law enforcement administrators across the country in the task of developing law enforcement policies that reflect nationally recognized professional practices.

The International Association of Chiefs of Police (IACP) Use of Force Model Policy is consistent with constitutional standards and states:

"Officers may use only that level of force that is objectively reasonable to bring an incident under control."<sup>5</sup>

Implicit in this statement is that the actions of the officer must be reasonable and that all lower level means to accomplish control of a subject must be used before resorting to a higher level.

**Professional guidelines – Electronic Control Weapons (IACP):**

41 One of the most authoritative guidelines addressing use of Tasers was published by the IACP in January 2005 (originally published in 1996) and is titled Electronic Control Weapons. This guideline identifies concerns and procedures recommended for professional and responsible use of electronic control weapons. It should also be noted that the this guideline generically refers to ECW's and does not make specific reference to the Taser because Taser is a brand name. As such, the guideline applies to all ECW's, which includes the Taser brand.

42 With regard to the effects of the [Taser], the IACP states, "According to manufacturer's reports, in excess of 40 subjects have died after being subjected to ECW deployment." While the same sources deny that the ECW was the cause of those deaths, it is prudent to question the extent the use of the ECW and the 40+ deaths are more than a simple coincidence.<sup>6</sup>

43 The IACP also cautions law enforcement in the use of ECW's such as the Taser, and identifies circumstances under which it should be deployed. In brief, their recommendation is to only deploy ECW's against violent or potentially violent persons. For example, the IACP states,

"The model policy prohibits ECW use against anyone unless the person demonstrates an overt intention to use violence or force against the officer or others or resists detention and arrest and other alternatives for controlling them are not reasonable or available under the circumstances. Normally violence, force and resistance are demonstrated by actions, deeds and/or words that signify the intent and ability to take such actions. With these cautions in mind, ECW's may be deployed consistent with a professionally

<sup>5</sup>International Association of Chiefs of Police, Use of Force Model Policy, August 2001, p. 2  
<sup>6</sup>IACP National Model Policy Center, Electronic Control Weapons, Concepts and Issues Paper, dated, January 2005, p. 3

recognized philosophy of use of force, that is, use only that level of force that reasonably appears necessary to control or subdue a violent or potentially violent person.<sup>7</sup>

- 44. The weapon used against Boya in this case was an X-26 Model Taser. It is typically characterized as an intermediate, less-lethal electronic control weapon. I have reviewed a number of cases whereby the use of the Taser was at issue and I am aware that the literature regarding its use states that it is designed to stop "focused aggressors." It is further my understanding that the Taser is designed as a weapon to protect the officer, rather than one to coerce compliance. Therefore, use of the Taser to coerce, intimidate or gain control of a person who has been handcuffed and who is basically incapacitated is improper.

**Hooper Bay Police Taser Policy**

- 45. The Hooper Bay Police Department General Order addressing the use of the Taser is another mechanism by which its use is governed. It stated for example,

"The Advanced Taser shall not be used on a restrained or controlled subject unless the actions of the subject present an immediate threat of death or great bodily harm or substantial physical struggle that could result in injury to themselves or any other person including the deploying officer."

The policy states that officers "shall not" use the Taser on restrained persons. This drastically reduces, if not eliminates the option for the Taser against handcuffed persons and requires them to resort to other means of control. This was demonstrated in the manner in which officers dealt with [redacted] by holding his legs together after he began kicking.

It is patently unreasonable to infer that Boya's actions came anywhere near life threatening or that given his physical position on the floor he could inflict "great bodily harm" Even if it is to be believed that Boya did kick the officers as described by them, there is no evidence that his actions rose to this level. As such, defendant officers violated their own policy and the use of the Taser against Boya was improper, excessive and unreasonable.

**Discussion**

- 46. What makes the use of the Taser by defendant officers this case particularly egregious is that (1) Boya was handcuffed before he was ever tased; (2) Boya remained handcuffed during all uses of the Taser against him; (3) at least two of the tasings occurred after Boya was placed on his stomach; (4) the Taser was deployed against Boya without the three officers even attempting to physically hold his legs together as they did with [redacted] (5) defendant officers in this case deployed the Taser on Boya a minimum of six times and as many as 12 times.
- 47. Defendant officers reported that after initially advising Boya that they were there to conduct a welfare check as he was awakened, there was no effort on their part to communicate why they were there and to calm the situation before it got out of hand.
- 48. Boya questioned the presence of the officers in the home and, based on the officers account, became argumentative. Boya's brother, [redacted] was awcken and also became argumentative to the point he began kicking. The response by officer to [redacted] kicking is also instructive in that they simply held his legs together to prevent the kicking. There is no evidence that [redacted] was tased
- 49. After observing [redacted] actions, Joseph requested assistance. The record shows that Corporal Simon arrived five minutes later.

<sup>7</sup> IACP National Model Policy Center, Electronic Control Weapons, Concepts and Issues Paper, dated, January 2005 p. 3



- 50 Upon Simon's arrival, Joseph directed Oaks and Simon to remove Boya from the residence. Defendant officers reported that Boya responded by wrapping his legs around a pole to prevent officers from arresting him. Assuming the arrest of Boya was lawful, the extent to which Boya was resisting at that point was passive and non-threatening. In fact, if it is to be accepted that Boya had wrapped his legs around a pole then it can be inferred that he was not standing. Rather, that he was in a seated position.
- 51 Boya's alleged kicking also raises some concerns. Specifically, defendants state that Boya was kicking and therefore the use of the Taser was justified. A subject's ability to kick, or move at all, is inconsistent with the very nature of the Taser as a control device. This is because as an electronic control weapon, the Taser is designed to immobilize the muscle groups of the person being tased to the extent that they collapse. Given the excessive number of Tasings in this case, it is questionable if not completely doubtful that Boya would be physically able to kick after being tased.
- 52 Even though defendant officers argue that Boya began kicking at them at one point, the fact remains that he was handcuffed and seated on the floor when (allegedly) doing so. As a practical matter, the extent that Boya could pose a threat to the officers under these circumstances is questionable if not totally unachievable. A subject seated and attempting to kick is notably different than one who is standing and attempting to do so. But even then, in my opinion, that if the standing subject is handcuffed, even his ability to deliver kicks that would realistically pose a threat to two officers is questionable.

It should be noted that based on materials provided to me in this case, the statement in the defense "Motion of Summary Judgment" that "Boya continued to kick furiously"<sup>8</sup> is not only an exaggeration but possibly an outright misrepresentation of the record. Nowhere in the written reports or affidavits prepared by Joseph, Oaks or Simon is Boya's kicking so represented. In fact, based on statements by Joseph and Simon Boya was merely attempting to kick.

- 53. If it is to be believed that Boya was seated on the floor while handcuffed, then factoring in that there were three officers present, and at least two of them were available to deal with the seated and handcuffed Boya makes their resorting to the use of the Taser patently unreasonable.
- 54. As such, assuming Boya did kick toward officers, there is no evidence that his efforts rose to the level of "immediate threat of death or great bodily harm" as defined in the Hooper Bay General Order. Furthermore, there is no evidence that Boya's actions were those of an "aggressor or a potentially violent person" as defined by the IACP Model Policy in Electronic Control Weapons. In fact, if it is to be believed that Boya, who was handcuffed, was also positioned on the floor at the time he was kicking toward the officers, the extent to which he could reasonably be characterized as an assailant is questionable if not completely out of the question.

"The deployment of an electronic control device such as the Taser must be justified by the actions of the subject on which it is being used. The United States Supreme Court is clear that the use of force must be "objectively reasonable" and the International Association of Chiefs of Police (IACP) state that police can only use of the "Taser" is justified only for subjects who are violent or potentially violent."

- 54 Because the Taser is an intermediate weapon, it should not have been used against Boya who was handcuffed and clearly at a distinct tactical disadvantage. Rather, a reasonable officer would have employed the additional two officers and held Boya's legs together to control him. It is patently unreasonable that an intoxicated, handcuffed subject seated on the floor could pose a threat level that would justify the use of a Taser - much less multiple

deployments of the Taser. It is clear that if Boya desired to deliver a kick to any of the officers that would result in possible injury he would have attempted to do so while standing. His wrapping of his legs around the beam are more consistent with a subject who is resisting going to jail or just being uncooperative, than that of a focused aggressor.

Moreover, if Boya was predisposed to fight officers, based on defendant officers account of what occurred, he had an opportunity to do so before he was handcuffed. This did not occur. The record shows that Boya was verbally abusing to the officers but not to the point of being threatening. In fact, he was compliant during the process of his handcuffing.

55. Defendants in this case point out that Simon stated to Boya, "Boya, if you don't comply, I'm going to drive sun you. Let go of the pole." Simon's statement is instructive in that it clearly demonstrates that the Taser was not being used as a weapon of defense, but rather as a means to gain compliance or a "come along hold." This is inconsistent with the purpose of the Taser as an intermediate weapon to protect officers from one who poses an "immediate threat of death or great bodily harm." As such, its use was excessive and unreasonable.

The use of the Taser against a restrained Boya and its repeated deployments constitute the unreasonable nature of defendant officer's actions. While it is not entirely clear exactly how many times defendant officers tased Boya, I counted a minimum of 15 and as many as 18 Taser deployments by Simon and Joseph. The record shows, for example,

- Simon deployed his Taser at least 7 times. He stated that four of these deployments (the first two and the last two) Boya was on the floor.<sup>9</sup>
- Joseph deployed his Taser at least 8 and as many as 10 times. He stated, "I did a cycle five or six times and the drive stunning was, well, three or four times."<sup>10</sup>

The photographs of burn marks on Boya that were provided in this case suggest that there could have been more than ten deployments of the Taser. At the very minimum, even based on Joseph's and Simon's statements, ten or more deployments of a Taser on a subject who is restrained, on the floor and who was positioned on his stomach for at least two of the applications is an egregious deviation from accepted professional policing standards.

Furthermore, it is a concern that nowhere in the materials provided to me in this matter does Joseph or Simon state that Boya was posing a threat. Only that he was not complying with orders to stop. Defendants argue that Joseph was kicked in the chest and Simon was kicked in the chest and leg but neither officer states outright that they believed that they were in danger. If this occurred, there is no physical evidence to support it. Specifically, there are no medical records, photographs or other evidence demonstrating the existence of injuries, bruising, cuts, lacerations or other physical manifestations that were experienced by Joseph, Oaks or Simon. It is my opinion that if the officers believed they were in danger they would have properly documented such injuries as justification for their deployments of the Taser.

56. The record is clear that Boya was tased by both Joseph and Simon at least 15 and as many as 18 times while he was restrained in handcuffs. Of particular concern is Joseph's statement that even after multiple Taserings, defendant officers turned Boya over on his "belly" and continued to deploy the Taser on his back at least two and as many as five times. This is a concern because not only is Boya incapacitated by virtue of being handcuffed and placed stomach down, but at the time of those taserings he was unable to do anything whatsoever, much less kick.

<sup>9</sup> Simon deposition p. 40

<sup>10</sup> Joseph deposition vol 1 p. 36

It is especially troubling that the Taser was deployed so many times that defendant officers themselves weren't sure how many deployments there were. Because the Taser is a self-defense weapon designed as a "less-lethal" option for police, the excessive number of deployments used by defendants in this case was patently unnecessary and unreasonable.

The use of the Taser against Boya under circumstances described by defendant officers themselves, was not only unjustified, excessive and unreasonable, but consistent with behavior that is at the very least punitive and at the worst, torturous. A reasonable officer would know that using a Taser on a handcuffed subject, especially when he is lying face down is excessive and unreasonable.

### Opinions

57. It is my opinion, stated within a reasonable degree of professional certainty, that the use of the Taser against Thomas "Boya" Olson, who was restrained in handcuffs, was excessive, unnecessary and served no objectively reasonable purpose. Defendant officers ignored their duty to protect Boya after placing him in handcuffs and disregarded other, more reasonable methods of controlling him.
58. It is my opinion, stated within a reasonable degree of professional certainty that the use of the Taser by Defendant officers against Thomas "Boya" Olson was so constant and continual that there is no way they could have not known it to be excessive. A reasonable officer would know that 15 deployments of a Taser against a handcuffed subject are extreme and excessive. This is especially so considering Boya was prone on the floor and incapacitated during at least two and as many as five of the deployments. The use of the Taser by defendant officers in this case was clearly excessive and served no objectively reasonable purpose.
59. It is my opinion, stated within a reasonable degree of professional certainty, that the use of the Taser against Thomas "Boya" Olson violated the Hooper Bay Police Department policy dealing with use of the Taser as well as nationally recognized professional guidelines addressing proper use of force and proper use of electronic control weapons. Not only did defendant officers violate their own policy but the extent of their deployments far exceeded the level of force that a reasonable officer would believe to be necessary under similar circumstances.

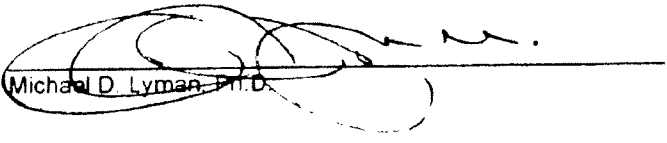
This concludes my report at this time.

### Materials Reviewed

- Complaint
- Thomas Olson's medical records
- Joseph's narrative report
- Oaks supplement report
- Simon's supplement report
- Case submission checklist
- Misdemeanor complaint
- Affidavit by a police officer in support of complaint
- Photos (53)
- Defendant's motion for summary judgment w/ attachments
- Affidavit of Nathan Joseph
- Affidavit of Charles Simon
- Affidavit of Demetri Oaks
- Affidavit of Thomas Olson
- Deposition, Joseph - vol I
- Deposition, Joseph - vol II

- Deposition: Oaks
- Deposition: Simon
- Deposition: Hoelscher
- Olson arrest transcript
- Defendant's Responses to First Discovery Request
- Miscellaneous police reports
- Hooper Bay Police Department general orders
- Miscellaneous court documents
- Misc. pages from Taser International manual
- International Association of Chiefs of Police Model Policy: Use of Force, 1996
- International Association of Chiefs of Police Concepts and Issues paper: Use of Force
- International Association of Chiefs of Police Model Policy: Electronic Control Weapons

This concludes my report at this time. This report is signed on May 28, 2008 in Boone County, Missouri.



Michael D. Lyman, Ph.D.

**MICHAEL D. LYMAN, PH.D. - CURRICULUM VITAE**

**CURRENT POSITION**

Business address      Columbia College of Missouri  
                                 1001 Rogers Street  
                                 Columbia, MO 65203  
                                 Office (573) 875-7472

Residence                4613 Villa Wood Ct.  
                                 Columbia, MO 65203  
                                 Cellular 573 268 4224

Rank:                    Professor of Criminal Justice  
                                 Service from August 1989 to Present

**Responsibilities:**

- Departmental Liaison of the Master of Science of Criminal Justice
- Program Director of Forensic Science degree program
- Former department chairman from 1989 to 2001.
- Developed the curriculum for the Master of Science in Criminal Justice (MSCJ) program and the curriculum for the Bachelor of Science in Forensic Science program.
- Undergraduate courses taught include Introduction to Criminal Justice, Policing in America, Criminal Investigation, Management of Criminal Justice Agencies. Graduate courses taught include: Development of Standard Operating Procedure; Police Development and Evaluation; Current Issues and Future Directions in Criminal Justice

**PREVIOUS EMPLOYMENT**

**General Background:**

As a law enforcement officer I have participated in over 600 felony arrests and testified in over 250 criminal trials and hearings. I also regularly sat on shooting and disciplinary boards and served as lead investigator in numerous internal affairs investigations.

I have also been the lead investigator in cases involving numerous crimes. These include but are not limited to: murder, extortion, arson, drug trafficking, corruption, rape, burglary, robbery, assault, organized crime investigations. In this capacity I have been involved with informants, witnesses, victims, newspaper reporters, federal agencies and working undercover with criminals. Duties have included surveillance operations, interviews of witnesses, interrogations of suspects, arrests, searches & seizures, etc

**Certified Generalist Instructor - The University of Missouri-Columbia**

Law Enforcement Training Institute - School of Law  
321 Hearnes Center  
Columbia, Missouri 65211  
From - 7-15-86 to 8-15-89

*Responsibilities:*      Instructed police officer recruits in police academy in the areas of criminal investigation, interviews & interrogations, informant management, use of force, felony arrests, professional ethics Police academy program coordinator keynote speaker at academy graduation ceremonies

**The Oklahoma Bureau of Narcotics and Dangerous Drugs (state police bureau)**

4545 North Lincoln Blvd  
Oklahoma City, Oklahoma 73102  
Position -Criminal Investigator

*Responsibilities:*

Originated and managed large-scale criminal investigations throughout the State of Oklahoma, testified in criminal court on both the federal and state level; made arrests, served search warrants; conducted interrogations; served on personnel hiring boards, disciplinary boards, shooting review and promotion boards; conducted background investigations of prospective recruits and conducted numerous internal affairs investigations as Sr. investigator; testified in two congressional hearings.

I also served as training and field training officer (FTO) for new recruits for over four years.

From - 10/1/81 to 7/9/86

**The Kansas Bureau of Investigation (state police investigative bureau)**

1620 Tyler  
Topeka, Kansas 66612  
Position -Criminal Investigator

*Responsibilities:*

Originated and managed large-scale criminal investigations throughout the State of Kansas, testified in criminal court on both the federal and state level; made arrests; served search warrants; conducted interviews and interrogations; conducted numerous internal affairs and pre-employment background investigations.

From - 6/75 to 10/80

**Agent - City County Investigative Squad (Johnson County, Kansas)**

Johnson County Courthouse, Olathe, Kansas (Kansas City Metro Area) Task Force concept utilizing officers on loan from 13 jurisdictions. This unit is no longer in existence as it operated on grant money which was depleted during the early 1980s.  
Position -Criminal Investigator

*Responsibilities:*

Initiated full-scale criminal investigations at the direction of the unit Manager; enforced the laws of the State of Kansas assisted in conducting arrests and serving search warrants; developed and managed informants; testified in criminal hearings and trials; conducted interviews and interrogations.

From - 6/74 to 6/75

3

**Visiting Professor – University of Oklahoma**

Norman, Oklahoma  
From 1986-1989

In this capacity I was brought to Oklahoma three times each year (December, May and August intercessions) for a period of nine years to teach courses in the law Enforcement Administration Program.

**PUBLICATIONS**

**Textbooks:**

1. Lyman, M. D. (2008). Criminal Investigation: The Art and the Science, 5<sup>th</sup> ed. Prentice Hall. Upper Saddle River, NJ.
2. Lyman, M. D. & G. W. Potter (2007). Organized Crime, 4<sup>th</sup> ed. Prentice Hall. Upper Saddle River, NJ.
3. Lyman, M. D. (2007). Practical Drug Enforcement, 3<sup>rd</sup> ed. CRC Press. Boca Raton, FL.
4. Lyman, M. D. & G. W. Potter (2007). Drugs in Society: Causes, Concepts and Control, 5<sup>th</sup> ed. Lexus Nexus/Anderson Publishing: Cincinnati, OH.
5. Lyman, M. D. (2005). The Police: An Introduction, 3<sup>rd</sup> ed. Prentice Hall. Upper Saddle River, NJ.
6. Lyman, M. D. (1989). Gangland: Drug Trafficking by Organized Criminals. Springfield, IL: Charles Thomas Publisher.
7. Lyman, M. D. (1987). Narcotics and Crime Control. Springfield, IL: Charles Thomas Publisher.

**Articles / Essays:**

Lyman, M. (2005). "Drug Enforcement in the United States." An essay for The Encyclopedia of Law Enforcement, Sage Publications: Thousand Oaks, CA.

Lyman, M. (2005). "Undercover Operations." An essay for The Encyclopedia of Law Enforcement, Sage Publications: Thousand Oaks, CA.

Lyman, M. (2004). The Decision to Chase: Revisiting Police Pursuits and the Appropriateness of Action. The Police Forum Journal.

Lyman, M. (2004). "Transnational Organized Crime." An essay for The Encyclopedia of Murder & Violent Crime, Eric Hickey Editor. Sage Publications. Thousand Oaks, CA.

Lyman, M. (2004). "Domestic Organized Crime." An essay for The Encyclopedia of Murder & Violent Crime, Sage Publications. Thousand Oaks, CA.

**AWARDS**

- 2004 Community Partner Award presented by the Columbia Missouri Police Foundation, February 2004
- Police Instructor of the Year Award presented by the Missouri Department of Public Safety, Peace Officer's Standards and Training (POST) Presented April 1989.
- Meritorious Award for Independent Study Course presented by the National University Continuing Education Association April 1989.

### **ACADEMIC BACKGROUND**

Doctor of Philosophy (1992) Higher and Adult Education and Foundations University of Missouri-Columbia, Columbia, Missouri

Master of Science in Administration of Justice – Police Agency Management (1979) Wichita State University Graduate School, Wichita, Kansas

Bachelor of Science in Administration of Justice (1977) Wichita State University, Wichita, Kansas

### **CONSULTING**

- I have been practicing as an expert witness/consultant since 2001 and as such have sat on both sides of the table evaluating cases for both plaintiff and defense. Of the cases I have accepted for review, approximately 65 percent are for the plaintiff and 35 percent for the defense. Thus far, I have reviewed over 150 cases in over thirty states and have provided expert testimony on approximately 66 occasions. I have also testified in at trial numerous 1983 civil federal actions. I have never been disqualified as an expert. For the most part, my expertise is in the area of use of force but I have provided testimony in the areas of proper investigative procedures and police supervision. I consider cases for both defense and plaintiff, and favor neither.
- I have served as consultant for the Federal Research Division of the U.S. Library of Congress and the Director of Central Intelligence Crime and Narcotics Center in Washington DC (in January 2003 )
- I have conducted police training seminars for the Public Agency Training Council located at 5101 Decatur Blvd. Ste. L., Indianapolis, IN. Topics included: criminal investigation; undercover operations and informant management (in Columbus, OH (1989-1991).
- In 2006 I, along with two police detectives, wrote a model policy and companion paper on digital crime scene photography for the International Association of Chiefs of Police (IACP), which is used as a national guideline for police policy development.

### **ORGANIZATIONAL AFFILIATIONS**

- International Association of Chiefs of Police (IACP)
- Academy of Criminal Justice Sciences (ACJS)
- American Society of Criminology (ASC)
- American Academy of Forensic Science (AAFS)
- American College of Forensic Examiners International (ACFEI)
- The International Association for the Study of Organized Crime (IASOC)



5

EXPERT TESTIMONY

Depositions given

- 1 Frenzen, et al. vs. Grady County, et al. U.S. District Court – Western District; Case No. CIV-00-1089-A  
For defense  
Investigative practice /informant management  
Deposition: 8/01
- 2 Helen Eves vs. Anaconda-Deer Lodge County U.S. District Court – District of Montana, Butte Division; Case No. CV-00-17-BU-CCL  
For defense  
Foreseeability/search and rescue  
Deposition: 3/03
3. Arels v. City of Cedar Rapids, Havlicek; and Keiler, U.S. District Court for the Northern District of Iowa Cedar Rapids Division; Case No. C01-76MJM  
For plaintiff  
Use of force  
Deposition: 3/03
4. Ernesto Acevedo Guerra vs. Montgomery County, Maryland, et al.; Circuit Court for Montgomery County, Maryland  
Case No. AW-02-CV-1995  
For plaintiff  
Use of force  
Deposition: 3/03
5. Debra Smith, et al., v. James Allen Barber, et al.; United States District Court For the District of Kansas, Case No. 01-2179-CM  
For plaintiff  
Informant management /use of force  
Deposition: 4/03
- 6 Mary Jane Blossom vs. Jeff Yarbrough et al.; Northern Oklahoma U.S. District Court Case No. 2002-CV-373  
For plaintiff  
Use of deadly force  
Deposition: 6/03
- 7 Richard Molina et al vs. County of Pima et al. CIV02-078-TUC-WDB; Case No. C20015392; State Court, Tucson  
For plaintiff  
Arrest/pat down /use of force  
Deposition: 8/03
- 8 Estate of Floyd Wayne Houston et al v. Tom Mosley, City of Wilburton Police Department and City of Wilburton Defendants (Federal Court, 10<sup>th</sup> Circuit: Tulsa)  
Case # CIV-01-323-S  
For plaintiff  
Use of deadly force  
Deposition: 6/04
- 9 Estate of Roger D. Owensby, Jr. v. City of Cincinnati, et al; Case No. 01-CV-769; S.D. Ohio  
For plaintiff

Use of force/positional asphyxia  
Deposition: 3/04

- 10. Dominic Corigliano ~~and~~ Andrew Corigliano v Polk County, Iowa, Jay Evans and Jeff Funaro;  
U.S. No. 4:02-cv-20404-2 (Federal Court: West Des Moines, IA)  
For plaintiff  
Use of force  
Deposition: 8/04
- 11. Irasema C. Gomez v. State of Arizona et al; Case No. C20025939  
For plaintiff (State Court: Tucson)  
Foreseeability / training  
Deposition: 7/04
- 12. Erick Dunn, a minor - by his adoptive parents, Linda Rivera and James Rivera v City of  
Walsenburg, et al (Colorado Springs, CO)  
Case # 01-B-1823-20  
For plaintiff  
Investigative procedures/domestic violence  
Deposition: 6/04
- 13. Hastings v. Barnes, et al; US District Court for Northern District of Oklahoma; Case No. 03-  
CV-538 EA (M)  
For plaintiff  
Use of deadly force  
Deposition: 6/04
- 14. Hester et al v. Wal-Mart Stores, Inc.; Case No. 2:03-cv-02447-JWL-JPO; US District Court for  
the District of Kansas  
For defense  
Arrest/racial profiling  
Deposition: 7/04
- 15. State of Iowa v. Jared James York; Case No. FECR05 402  
For defense (Iowa District Court in and for Washington County)  
Investigative procedures / Interview & interrogation  
Deposition: 9/04
- 16. Sigley v. City of Parma Heights (OH); Case No. 1:03CV0595  
For plaintiff  
Use of deadly force  
Deposition: 10/04
- 17. Steven Manning v. Gary Miller, et al; United States District Court Northern District of Illinois,  
Eastern Division, Case No. 02 C 0372  
For plaintiff  
Investigative procedures: Informant management/wrongful conviction  
Depositions (2): ( ): 11/04
- 18. Sallenger v. City of Springfield, et al. U.S. Dist. Ct. Central Dist. Of Ill. Springfield Division  
Case # 03-3093  
For plaintiff  
Use of force/positional asphyxia  
Deposition: 01/04
- 19. Deborah Golder et al v City of Corpus Christi. Cause No. 04-771-E (US District Court  
Corpus Christi, TX) ( )

For Plaintiff  
Use of deadly force  
Deposition: 3/05

- 20 Jack Whitaker v. Dan Bowers, United States District Court for the Central District of Illinois, Springfield, Illinois  
Case No. 03-3133, 13822  
For plaintiff  
Use of force  
Deposition: 11/04
21. Cynthia Jones v. City of Clearwater, et al. Circuit Court of the Sixth District in and for Pinellas County, State of Florida. Case No 8-03-CV 501-T-26EAJ  
For plaintiff  
Retention / supervision  
Deposition: 3/05
22. Maria Guadalupe Nevarez et al vs. the County of Finny County, Kansas et al (Federal court, Kansas City)  
For plaintiff  
Use of deadly force  
Deposition: 10/05
23. Neil Miller v. City of Boston et al. Case No. 03-10805-JLT (Federal Court, Boston, Massachusetts)  
For defense  
Identification procedures/investigative process/wrongful conviction  
Deposition: 1/06
24. Robert E. Rohrback v. Jorey Bailey et al. No. LACV064930, Iowa District Court in and for Johnson County  
For plaintiff  
Use of force  
Deposition: 3/06
25. Timothy Michael Fry, Deceased by and through his heirs at law and Tammy Lynn Fry, et al, v. City of Galena, Kansas; No. 05-2248-JWL (10th Circuit)  
For plaintiff  
Use of deadly force  
Deposition: 4/06
26. Joseph D. Amrine v. George Robert Brooks, et al Case No 04-4300-CV-C NKL U S District Court for the Western District of Missouri Central Division  
For defense  
Investigative process & procedure/wrongful conviction  
Depositions (2): 6-9-06
- 27 Hoffman v. Smithfield City et al. Case No. 1-05CV00072 DB U S District Court for the District of Utah, Northern Division  
For plaintiff  
Use of force  
Deposition: 6/06
- 28 Alicia Mendez, Administratrix v Wal-Mart Stores, Inc et al. Civil Action No 04-C-442 Circuit of Berkley County, WV  
For plaintiff

Investigative process / dealing with mentally ill  
Deposition: 7/06

29. Cheri Bruce and Robert Bruce v. City of Sunset Hills, et al; In the Circuit Court of the County of St. Louis of Missouri, Cause No. 05CC-004007  
For plaintiff  
Police pursuit  
Deposition: 11/06
30. James Saville v. Maricopa County, et al, No. CV2004-010518, Superior Court of the State of Arizona; County of Maricopa  
For plaintiff  
Investigative process / informant management / undercover operations  
Deposition: 11/06
31. Dean Rickabaugh Sr and Jackie Ashley husband and wife, Individually and As Next Friend of Dean Rickabaugh v. Wal-Mart Stores et al, In the Iowa District Court for Polk County; Law No. CL100555  
For defense  
Forseeability / Physical security  
Deposition: 12/06
32. Marion J. Ashley and Leanna Ashley v. City of Poughkeepsie et al; United States District Court Southern District of New York, 03CIV 9360 (CLB)  
For plaintiff  
Use of force  
Deposition: 12/06
33. Lawrence B. Tirreno et al v. Barbara Mott a/b/a Barbara's Bail Bonds; Case NO 3: 03 -CV-1322 (RNC). United States District Court, District of Connecticut  
For plaintiff  
Search and seizure  
Deposition: 1/07
34. James Elliott and Teresa Guiler v. City of Clarksville et al, United States District Court for the Middle District of Tennessee Nashville Division, Case No. 3:05-0138  
For defense  
Investigative practices / search and seizure / use of force  
Deposition: 1/07
35. Estate of Kyle Wasson v. Warkentin, City of North Liberty, Iowa U.S. District Court, Southern District of Iowa, Davenport Division 05-104  
For plaintiff  
Use of deadly force  
Deposition: 5/07
36. Ralph H. Cloaninger v. John T. McDeavitt, et al W D N C , Case No. 1 06-CV-00135  
For plaintiff  
Use of force  
Deposition: 6/07
37. Alicia Beckett-Crabtree v. Robert Hair & Washington County Sheriff's Department, United States District Court Case No. 06-CV-683-CVE-FHM  
For plaintiff  
Use of deadly force  
Deposition: 8/07

- 38 Louise Jones and Fred Jones v Van Deusen, et al , Case No 0616-CV16131 Division Three; In the Circuit Court of Jackson County, Missouri at Kansas City  
For plaintiff  
Use of force/Arrest  
Deposition: 8/07
- 39 Maria Causton, individually and on behalf of Giana Causton and Marina Sheppard vs City of Chandler, a municipal corporation; NO CV2004-090382; In the Superior Court of the State of Arizona  
For defense  
Use of deadly force  
Deposition: 9/07
- 40. Tonya Morrison versus Muskingum County Sheriff Robert J Stephenson, et. al Case No. C2:06-cv- 283; United States District Court for the Southern District of Ohio Eastern Division  
For plaintiff  
Use of force  
Deposition: 9/07
- 41. Re: Debra Gates et. al. v. Officer Aron Armstrong et al., Civil Action No. 06-cv-01745-MSK-MJW. In the United States District Court for the District of Colorado  
For plaintiff  
Use of force  
Deposition: 10/07
- 42. Edith Dotson v. City of Prestonsburg et. al., Case No. 7:06-CV-72-GVT; United States District Court for the Eastern District Court of Kentucky, Pikeville Division  
For plaintiff  
Use of force  
Deposition: 12/07
- 43. Victor Angeline v. The City of Hoover, Alabama, et. al. CV -07-P-0292-S; In the United States Court for the Northern District of Alabama Southern Division  
For plaintiff  
Arrest/search & seizure  
Deposition: 1/08
- 44. Jerry Lee McClarin v. Savannah, Tennessee and Kenneth Thompson, NO 06-CV-123JDT, In the United States District Court for Western District of Tennessee Eastern Division  
For plaintiff  
Use of force  
Deposition: 2/08
- 45. Sammons v Barker, et al In the United States District Court for Southern District of West Virginia. Civil Action 2: 07-0132  
For plaintiff  
Investigative process  
Deposition: 3/08
- 46. Vanessa Haldeman, et. al v Ruth Golden, et. al , Case No CV 05 00810 DAE KSC in the United States District Court for the District of Hawaii  
For plaintiff  
Investigative process  
Deposition: 4/08

- 47 Lisa Castillo and Daniel Castillo, Sr. Individually and as Representative of the Estate of Daniel Castillo, Jr., Deceased v. Don Falks, et. al, Civil Action NO 4:07-CV-00821 Jury Demanded (VDG), in the United States District Court for the Southern District of Texas Houston Division  
 For plaintiff  
 Investigative process/deadly force  
 Deposition: 5/08

Hearings:

1. State of Arizona vs. James Bryan Saville. Case # CR2002-006589 (State Court. Maricopa County, AZ)  
 For defendant  
 Informant Management / Investigative Procedures
2. Deborah Golder et al v. City of Corpus Christi Cause No. 04-771-E (US District Court: Corpus Christi, TX)  
 For plaintiff  
 Use of deadly force  
 Daubert hearing: 3/05
3. State v. Kelvin Smith (State Court: Fulton County, GA)  
 For prosecution  
 Use of force  
 Grand Jury Hearing: 3/05
4. Humphrey v. Ronnie Leatherman, et al. Case No. 04-CV-339 (C) Tenth Circuit  
 For plaintiff  
 Use of deadly force  
 9/05
5. Illinois v. Aubrey D. Tucker; Lawrence County Case 05-CF-19  
 For defense  
 Interview and Interrogation  
 Suppression hearing: 1/07
6. Estate of Kyle Wasson v. Warkentin, City of North Liberty, Iowa U.S. District Court, Southern District of Iowa, Davenport Division 05-104  
 For plaintiff  
 Use of deadly force  
 Daubert hearing: 12/07

Trial testimony:

1. Brooks v. Maury County et al  
 1983 action: Federal Court, Columbia, Tennessee  
 For plaintiff  
 Use of deadly force  
 Trial date: 9/03
2. Aiels v. City of Cedar Rapids, Havlicek, and Keiler U.S. District Court for the Northern District of Iowa Cedar Rapids Division (Case # C01-76MJM)  
 For plaintiff  
 Use of force  
 Trial date: 2/04

3. Jonathan White v. State of Mississippi NO 03-10, 129 (3) (State Court Pascagoula MS)  
For defense  
Road blocks  
Trial date: 10/04
4. Steven Manning v. Gary Miller, et al, United States District Court Northern District of Illinois, Eastern Division, Case No. 02 C 0372  
For plaintiff  
Investigative procedures /informant management  
Trial date: 01/05
5. State of Iowa v. Jared James York Case #FECR05-402 (Iowa District Court in and for Washington County)  
For defense  
Investigative procedure /interview & interrogation  
Trial date: 2/05
6. Ferryman v. United States Case No. 3:03-cv-1030-J-20TEM (US District Court Jacksonville, FL)  
For plaintiff  
Arrest tactics / investigative procedures /use of deadly force  
Trial date: 9/05
7. Hester et al v. Wal-Mart Stores, Inc. Case No. 2:03-cv-02447-JWL-JPO (US District Court for the District of Kansas)  
For defense  
False arrest / racial profiling  
Trial date: 10/05
8. Georgia Fuston-Lounds and Lula Lounds as Co-Personal Representatives of the Estate of Alford Lounds vs. Frank Torres, et al. Case No. CIV-03-1519-T (United States District Court, Western District of Oklahoma)  
For plaintiff  
Use of deadly force  
Trial date: 3/06
9. Arvin Carsell McGee, Jr. v. Randy Lawmaster, et al., Case No. 03-CV-704(H) (C), filed in United States District Court for the Northern District of Oklahoma.  
For plaintiff  
Wrongful conviction / investigative process / photo lineups  
Trial date: 3/06
10. Alicia Mendez, Administratrix v. Wal-Mart Stores, Inc. et al., Civil Action No. 04-C-442, Circuit of Berkeley County, WV  
For plaintiff  
Investigative process  
Trial date: 8/06
11. Lionel Trepanier v Cook County Forest preserve District, et al; United States District Court Northern District of Illinois Eastern Division  
For plaintiff  
Use of force  
Trial date: 9/06
12. Naluan v. City of Philadelphia et al, Civil Action NO. 05-CV-6186, In the United States District Court for the Eastern District of Pennsylvania

For plaintiff  
Use of force  
Trial date: 9/06

13. Dean Rickabaugh Sr and Jackie Ashley husband and wife, Individually and As Next Friend of Dean Rickabaugh v. Wal-Mart Stores et al, In the Iowa District Court for Polk County; Law No. CL100555  
For defense  
Forseeability /physical security  
Trial date: 12/06
14. State of Alaska vs. Shawn W. Rogers; Case NO. 3KN-S04-1762-CR  
For defense  
Investigative practices  
Trial date: 3/07
15. Daniel Saban, and Donna Saban vs. Maricopa County, et. al. In the Superior Court of the State of Arizona, Case No. CV2005-007294  
For plaintiff  
Investigative process  
Trial: 8/07
16. Sallenger v. City of Springfield, et al, U.S. Dist. Ct. Central Dist. of Ill, Springfield Division, Case # 03-3093  
For plaintiff  
Use of force  
Trial date: 9/07
17. State of Kansas v. Alphonso Brisco; Case No. 07 CR 05. Saline County District Court  
For defense  
Investigative process  
Trial date: 12/07
18. Jason Paul Annis v. City of Oelwein et. al.; in United States District Court for the Northern District of Iowa Eastern Division, No. C06-2052LRR  
For plaintiff  
Use of force  
Trial date: 2/08
19. Estate of Kyle Wasson v. Warkentin, City of North Liberty, Iowa U.S. District Court, Southern District of Iowa, Davenport Division 05-104  
For plaintiff  
Use of deadly force  
Trial: 3/08
20. Louise Jones and Fred Jones v. Van Deusen, et al., Case No. 0616-CV16131 Division Three; In the Circuit Court of Jackson County, Missouri at Kansas City  
For plaintiff  
Use of force/Arrest  
Trial: 5/08
21. Edith Dotson v. City of Prestonsburg et. al., Case No. 7:06-CV-72-GVT, United States District Court for the Eastern District Court of Kentucky, Pikeville Division  
For plaintiff  
Use of force  
Trial deposition: 5/08



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 4BE-07-26 CI

**PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

# Exhibit 10

# Common Effects of EMD

- Subject can fall immediately to the ground
- Yell or scream
- Involuntary muscle contractions
- Subject may freeze in place with legs locked
- Subject may feel dazed for several seconds/minutes
- Potential vertigo
- Temporary tingling sensation
- May experience critical stress amnesia
- May not remember any pain

Exhibit B

Exhibit F  
Page 6 of 7

Exc. 196

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 CITY OF HOOPER BAY, )  
 OFFICER DIMITRI OAKS, )  
 OFFICER CHARLES SIMON, and )  
 OFFICER NATHAN JOSEPH, )  
 )  
 Defendants. )

Case No. 4BE-07-26 CI

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 11



**YUKON-KUSKOKWIM  
HEALTH CORPORATION**

**ANMC - YKHC Referral Form**

Date: 1/27/07 FAXED BY: Shackelton

FAXED TO: 729-2082

Referred to:	Clinic	<b>FROM:</b> <input type="checkbox"/> SPECIALTY CENTER YKDRH Phone: 907-543-6445 FAX: 907-543-6487 <input checked="" type="checkbox"/> CASE MANAGEMENT YKDRH FAX: 970-543-6564 <i>Level 3</i>
ANMC	<i>Neurology</i>	
YKHC		
** OTHER		

Patient's Address: see attached demographics form Phone: \_\_\_\_\_  
 Private Insurance: (Y) \_\_\_ (N) \_\_\_ Carrier \_\_\_\_\_ Medicaid: (Y) \_\_\_ (N) \_\_\_ Medicare: (Y) \_\_\_ (N) \_\_\_  
 Medical Records FAX to ANMC: \_\_\_ # Pgs: \_\_\_ Hand Carried \_\_\_ Xrays Goldstreaked: \_\_\_ Express Mail: \_\_\_ Hand Carried: \_\_\_

Reason for referral, diagnosis, pertinent clinical and laboratory information:  
*30400 s/p arrest / multiple tarzan burns 12/26/06 = complaint of (L) median N. numbness (tender prominence) with intermittent weakness. Pournel neurologic exam to detail testing*  
 Sig cant Past Medical History:  
*Note: (L) distal radial mass 3/06, llw pseudoaneurysm(?), non resolved, please coordinate with surgery clinic evaluation (pending)*

Requested Procedures:  
*EMG (L) wrist / median N.*

Accepting Provider Name: Dr Mumble Date: 1/26/07

Referring Provider: Print Name: D. J. F. ... Signature: [Signature] Date: 1/26/07

Dates desired for appointments: _____		Mammogram: Baseline: _____ Screen: _____ Date Prior: _____ Where: _____ Date Films Sent: _____		Travel: Airlines: _____ Flight #: _____ Arrival Time: _____ Arrival Date: _____ Need Pick Up: _____ Travel Auth.: _____	
Lodging: _____ Quarters: _____ Escort Name: _____ Wheelchair: _____ ANMC #: _____ YKHC #: _____ CIB: <input type="checkbox"/> Yes <input type="checkbox"/> No	X-rays: LMP: _____ Films Sent: _____ Hand Carried: _____	Women's Health: Pap Results: _____ CBE: _____	Prenatal Patient: EDC: _____ # of Weeks: _____ Care Cottage: _____		
Interpreter: _____ Language: _____	CT SCAN/IVP: _____ BUN: _____ CR: _____ Iodine Allergy: _____				

PAI... INFORMATION  
 Acct. # 45499  
 HR# \_\_\_\_\_ DOB: \_\_\_\_\_  
 Name: Olson, Thomas

Please have the patient call to pre-register or update their chart or their child's chart at ANMC before coming by calling 1-800-478-8811.  
 \*\*Contract health requires ANMC pre-authorization **Exc. 198**  
**File original in chart under Specialty Tab** 0000



12.29

R

# YUKON-KUSKOKWIM HEALTH CORPORATION

## PCC Ambulatory Encounter Record

APL	DIS	Initials/Code
9	0	USJ
Primary Provider: <u>880 000</u>		

Problem List Update (Enter problem numbers from Health Summary)

Remove	Move to Inactive	Move to Active
--------	------------------	----------------

### Pain Assessment

Arrival Time: 2:30 Clinic: Delta

Do you feel safe at home?  Yes  No

DV Referral to: \_\_\_\_\_

FLACC for non-verbal patients. See reverse side of form

Score: \_\_\_\_\_

Temp. <u>97.0</u>	Pulse <u>30</u>
Resp. <u>18</u>	O <sub>2</sub> Sat. <u>93</u> %
BP <u>144/93</u>	Wt. <u>73.6</u> kg
Ht. <u>163</u> cm	Head Circ. _____ cm

Chief Complaint: 30 y/o ♂ Bilateral wrist pain x 3 days  
burns (taser) on sim side - 6/5

Vision: Uncorrected/Corrected  
 R \_\_\_\_\_ L \_\_\_\_\_

Allergies: codeine  
 Reaction: rash  
 Medications: \_\_\_\_\_

Subjective / Objective

30 y/o ♂ 1/0 @ wrist pain x 3 days, slip hand cuffs  
and taser 12/26/06 during alleged arrest.  
cl @ wrist pain and ↓ sensation at thumb (B), no ↓ in  
fine motor (gross motor function, multiple unconf  
8/06 scalp laceration → well healed  
3/06 ulnar @ rad art pseudoaneurysm  
DATA Referral (medical lapsed per pt)

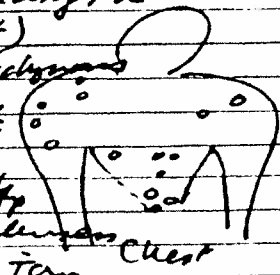
Injury?  Yes  No

Cause: injury

Community: Emergency

Date: 12/29/06

Heart: OK, apical mark, @ faint pericardial  
PI - CR  
RA - NTND Obs  
ET - B wrist (distal radial non @ snuff box the  
Not def. Flexion (ag, ul flexion, sport for 10 min chest



Other: distal radial artery & art compromise

Problem List: slight cellulitis @ thumb  
slight cellulitis @ thumb  
slight cellulitis @ thumb

A-A-C # \_\_\_\_\_

(B) slight median N. palsy  
multiple taser burns, healing  
Question early cellulitic A vs.  
granulation tissue rim d

ETOH Related  Employment Related

Tobacco: None 2n Both  
 Chew Smoke Both

Thinking about quitting  N

Already Quit  Never Used

Referral  N

ETOH: None Rarely  
 Monthly  Weekly  Daily

Last Drink \_\_\_\_\_

Referral Y N

Immunizations	Order	Initials
<input checked="" type="checkbox"/> Hep B #		
<input type="checkbox"/> Hep A #		
<input type="checkbox"/> IPV #		
<input type="checkbox"/> Prevnar #		
<input type="checkbox"/> DT aP #		
<input type="checkbox"/> Td		
<input type="checkbox"/> MMR #		
<input type="checkbox"/> Varicella		
<input type="checkbox"/> Influenza		
<input type="checkbox"/> Hib TITER		
<input type="checkbox"/> Pedvax Hib #		

Treatment Plan: distal rad pseudoaneurysm - repair  
to artist - Surgeon referral case discuss

Store plan to problem # \_\_\_\_\_

Medications: Septin II tabs PO BID x 10 days  
tylenol 325mg 3 tabs PO q6hr (for pain)  
motrin 400mg po TID

Treatments/Procedures: \_\_\_\_\_

Patient Education: Anticipate recovery of sensation  
of thumb (B)  
no disability anticipated  
Monitor sensation  
of thumb (B)

Readiness to Learn: 1 2 3 4 5 6 7 8 9 10

PA: **IT INFORMATION**

USON, THOMAS 2000  
 12/29/06 HARMAN 045499  
 01005914526

Revisi/Referral to: \_\_\_\_\_ Purpose: healing of wrist

Revisi/Referral to: \_\_\_\_\_ Purpose: no inpatient separation

Provider Signature: [Signature] date: 12/29/06

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

CITY OF HOOPER BAY,  
OFFICER DIMITRI OAKS,  
OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

Defendants.

Case No. 4BE-07-26 CI

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Exhibit 12



Exc. 202



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON,

Plaintiff,

vs.

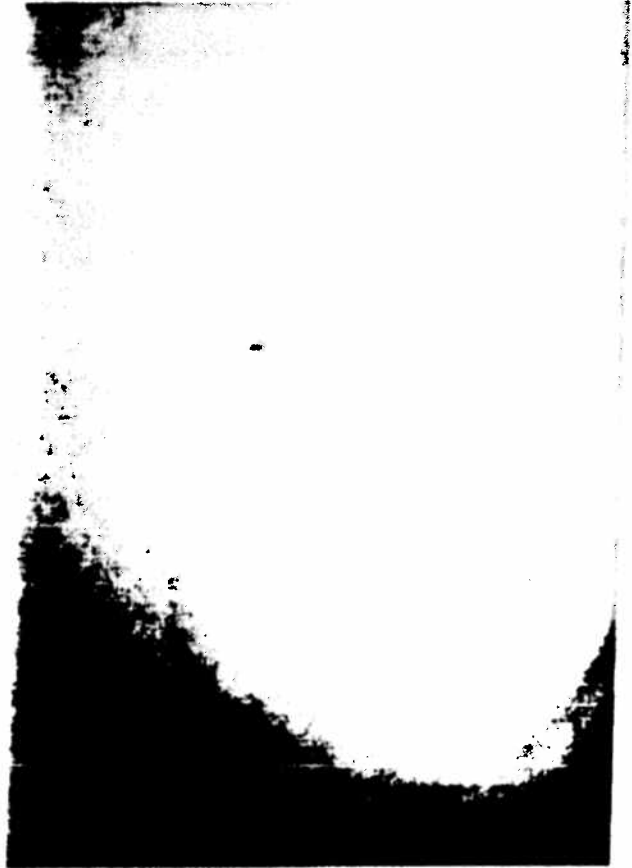
CITY OF HOOPER BAY,  
OFFICER DIMITRI OAKS,  
OFFICER CHARLES SIMON, and  
OFFICER NATHAN JOSEPH,

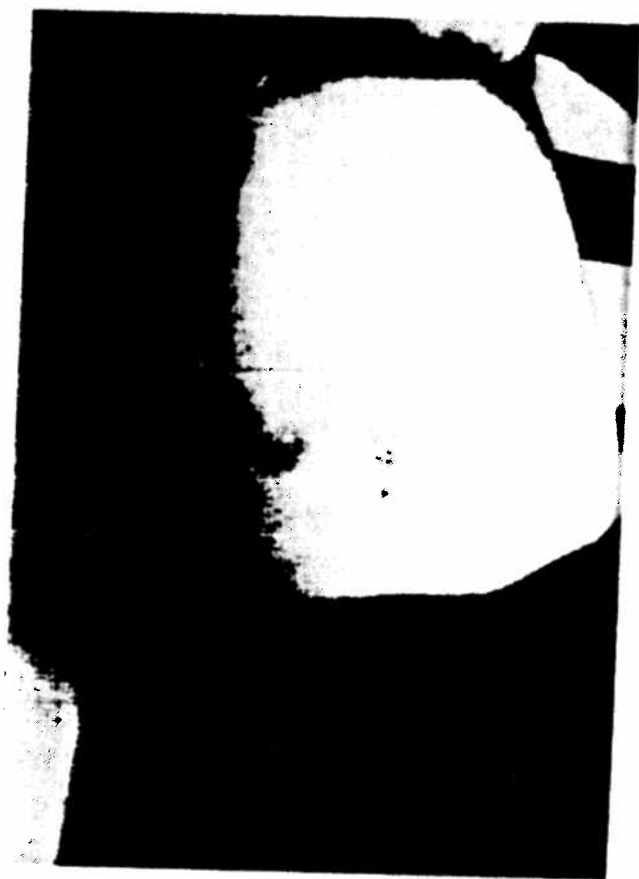
Defendants.

Case No. 4BE-07-76-CJ

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Exhibit 13





IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

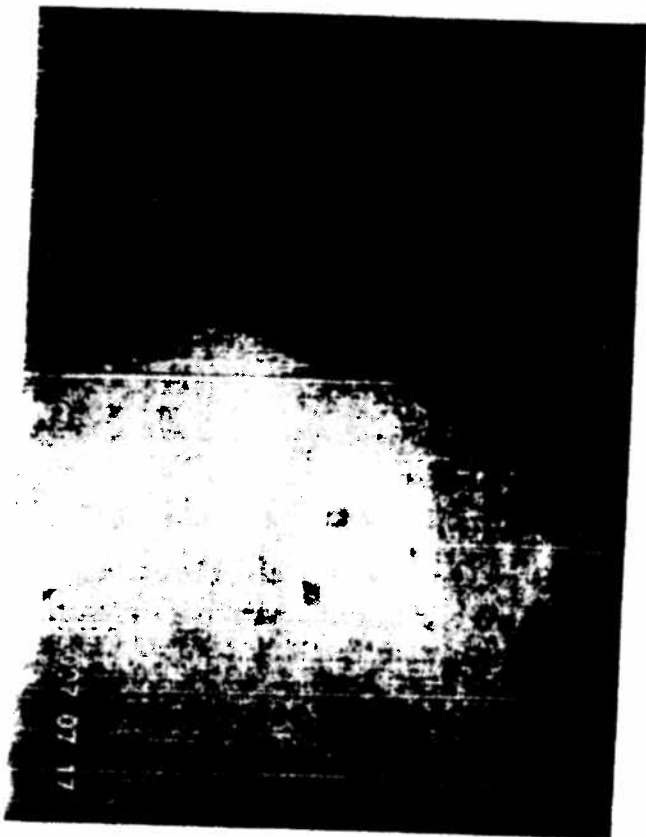
FOURTH JUDICIAL DISTRICT AT BETHEL

THOMAS J. OLSON, )  
)  
Plaintiff, )  
vs. )  
)  
CITY OF HOOPER BAY, )  
OFFICER DIMITRI OAKS, )  
OFFICER CHARLES SIMON, and )  
OFFICER NATHAN JOSEPH, )  
)  
Defendants. )

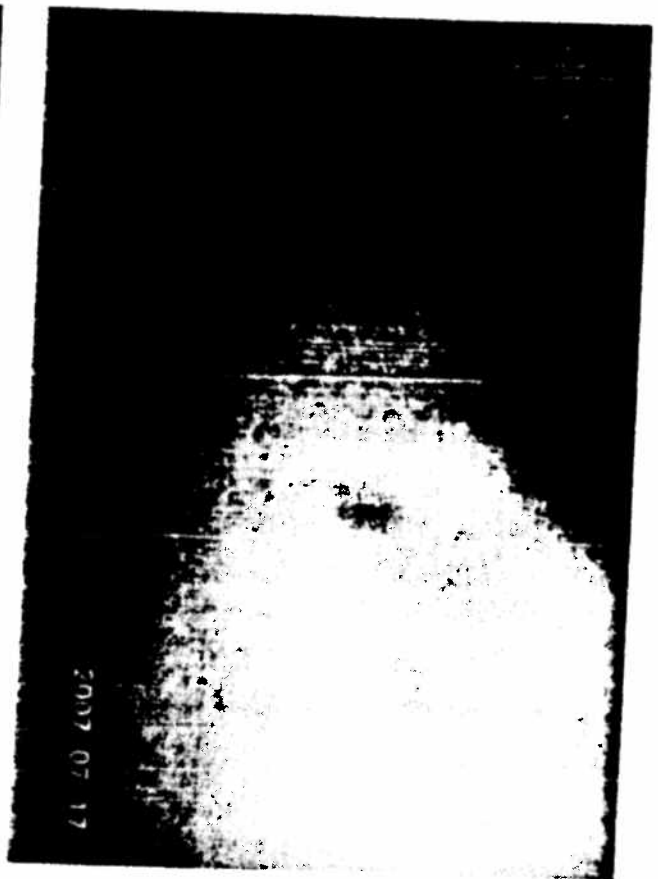
Case No. 4BE-07-26 CI

PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

# Exhibit 14



0094



Exc. 207