

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

*Re: 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*

August 15, 2007

**Introduction**

The opinions set forth in this report are based on my analysis of documents and testimony provided to me in this case and as informed by my formal training, education, independent research, and experience gained over a collective 33 years as a law enforcement agent, criminal investigator, police trainer and educator.

I have been a college professor teaching and researching in the area of policing for over 20 years. I have also authored numerous articles and books dealing with different aspects of police

operations for the last 20 years. In the latter capacity, I have become nationally recognized in the areas of police procedure, criminal investigation, drug enforcement and related areas. Prior to becoming an educator, I was a certified generalist police instructor for three years, training police officers and police officer candidates in various police techniques and procedures.

Before entering the field of higher education, I was employed as a special agent/criminal investigator working in both Kansas and Oklahoma for a collective period of eleven years. In that capacity, I conducted criminal investigations, made misdemeanor and felony arrests, conducted interviews of suspects, testified in state and federal criminal courts and had considerable experience in the development of police policy and procedure.

### **Qualifications**

My formal education includes an undergraduate and master's degree from Wichita State University in the Administration of Justice. In 1992, I received a Ph.D. from the University of Missouri-Columbia in Higher and Adult Education. My previous police training includes basic police academies certified through the Council on Law Enforcement Education Training (CLEET) in Oklahoma City, Oklahoma, and the Kansas Law Enforcement Training Academy in Hutchinson, Kansas (KLETA).

During my years as a criminal investigator, I accumulated in excess of 2000 hours of formal, in-service, police training. This training was sponsored by organizations which include the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), the United States Customs Service, and numerous state and local law-enforcement organizations. Training included firearms qualification, shoot-don't shoot scenarios, practical simulations involving felony arrests, search and seizure, interview and interrogation, vehicles stops, building searches and crisis intervention.

I served for three years as a full-time, certified police instructor employed by the Law Enforcement Training Institute in Columbia, Missouri. I held generalist certification issued by the Missouri Department of Public Safety and in that capacity was awarded Police Instructor of the Year in 1989. As a police instructor I trained literally thousands of law enforcement officers serving in all levels of professional law enforcement. As a police trainer, I have taught by lecturing as well as by utilizing computer-based simulations, videos and professional writings by law enforcement officers in the field. My 20-year publishing record has also contributed greatly to my understanding of police procedures and I have brought much of that research into the police training environment.

I am currently employed as a tenured faculty member of the Columbia College Department of Criminal Justice and Social Work in Columbia, Missouri, and have been on the faculty since August 1989. My rank is that of Full Professor. I also serve as the Director for Graduate Studies for the Master of Science in Criminal Justice degree program and the advisor for the Bachelor of Science in Forensic Science degree program.

Between August 1989 and November 2000, I served as the department chairman overseeing a faculty of seven in a department representing over 250 criminal justice majors. Between 1985 and 1994 I was a Visiting Professor for the University of Oklahoma teaching on a part-time basis during the summer and winter intercessions. In 1985 and 1986 I taught graduate classes at the University of Central Oklahoma.

Since 1987, I have authored seven books dealing with various areas of policing. These have been published by both nationally and internationally recognized publishing houses which include Prentice Hall (Upper Saddle River, NJ), Anderson Publishing (Cincinnati, OH), CRC Press (Boca Raton, FL), and Charles Thomas Publishing (Springfield, IL). The research required for these books necessitates a close working relationship with law-enforcement officers on local, state, and federal levels as well as a working knowledge of the available literature on policing.

My investigative experience includes an appointment as a Special Agent assigned to the Special Services Division of the Kansas Bureau of Investigation. This unit functioned as the special

investigations unit for the State of Kansas and its members are involved in criminal investigations involving drug trafficking, organized crime and related offenses.

I have also been employed as a Senior Agent in Oklahoma, assigned to the Enforcement Division and the Intelligence Division of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBNDCC). In each of these units my responsibilities were to conduct intelligence, criminal and internal affairs investigations. In this capacity I also served on numerous hiring, shooting and disciplinary boards. While employed with the OBNDCC, I wrote the Standard Operating Procedure Manual for Conducting Wire Taps for the Bureau.

My responsibilities in both Kansas and Oklahoma required me to conduct criminal investigations, internal affairs investigations, assist in the establishment of agency policy and procedures in numerous areas, provide training, work closely with other law enforcement agencies on all levels and work closely with other public safety organizations as they related to my duties.

I currently maintain professional affiliations with The Academy of Criminal Justice Sciences (ACJS); the American Society of Criminology (ASC); the Textbook Author's Association; the Police Executive Research Forum (PERF); the International Association of Chiefs of Police (IACP); the American Academy of Forensic Science (AAFS); the International Association for the Study of Organized Crime (IASOC) and the American College of Forensic Examiners International (ACFEI).

The documents and testimony from this case, upon which my opinions are based, include police reports, depositions, court records, interrogatories, training records, professional articles, books and policy-based research in the area of police procedure.

The information that I have reviewed and considered in this case is the type of information that I, and others in my field, reasonably rely upon in examining, analyzing, and determining causation, as well as rendering opinions on proper police conduct. The body of knowledge that I have reviewed over the years includes texts, research, journals, periodicals and other publications, along with my personal research, experience, training, interaction with colleagues, discussions, interviews and training with law enforcement officers, police supervisors and command staff, as well as my academic studies, teachings and nationally-recognized, peer-reviewed research all form the foundation for my opinions. As a result, my opinions, and basis for my opinions, are provided with a reasonable degree of law enforcement and police certainty.

#### **Background**

I have been asked by the law firm of Rourke & Blumenthal to review the case of *Tonya Morrison v. Muskingum County Sheriff Robert J. Stephenson, et. al.* and render independent professional opinions. The following is my written report regarding the above referenced case as of the date of this report. My opinions are based on the documents provided to me in this case to date as well as my training, education, experience and research in the field of policing. I realize that the discovery process is ongoing in this case and reserve the right to amend or modify my opinions based on additional information that is provided to me, including additional deposition testimony and/or documents.

As with most cases in litigation, there are at least two accounts of the facts and circumstances in question. In this case, a number of allegations are made by Tonya Morrison and most of these are denied by defendant police officers. For the sake of fairness to the record and context, this expert has made efforts to identify differences between Morrison's account of the incidents and versions as told by Defendant officers. Because Defendant officers deny many allegations, the accounts of the facts and circumstances of those incidents rely to a great extent on statements made by Morrison. To the extent that any allegations, including those that are uncontested, can be supported by evidence in the record, that evidence is also identified and discussed in this report.

The sum and substance of Morrison's claims in this case relate to events that occurred or allegedly occurred after Muskingum County Sheriff deputies took her into custody in the early morning of April 3, 2005. The events and circumstances leading up to her arrest are not the focus of this report and as such will not be discussed. What is relevant, however, is that at the time Morrison was arrested, so were three other persons who were accompanying her at the time. These persons were Morrison, Angela Quinn and Morrison's business associate Trinda Walter.

Morrison, Quinn and Walter were arrested by Deputies Mathew Wilhite, Anthony Angelo and Justin Thompson. Once in custody, they were transported to the Muskingum County Jail in a van driven by Deputy Erin Inman. Also being transported was another arrestee named Pletcher who was in custody for an unrelated charge.

Inman delivered Morrison, Walter and Quinn to the Muskingum County Jail at approximately 4:00 a.m. Other employees present at the jail included Deputy Mark Hendershot, Corporal Joshua Whiteman and Corrections Officer Stacy Ford. <sup>1</sup>

The record shows that Inman brought them inside one by one.<sup>2</sup> Quinn was taken first followed by Morrison. Deputy Foster patted down Morrison, Walter and Quinn.<sup>3</sup> Morrison, who said she was not yelling or screaming at any of the deputies,<sup>4</sup> turned around and saw Wilhite standing about 4 feet away.

Morrison stated that she was escorted back to the next location in the jail. Morrison stated she didn't make any statements to Wilhite or Inman.<sup>5</sup> She stated that as she was walking to her cell, un-handcuffed and before she was booked, Wilhite came up from behind her and Tasered her underneath the left side of her rib cage, causing her to collapse to the ground.<sup>6</sup> Note that Wilhite denies this allegation.<sup>7</sup>

Morrison stated that Inman was also present and observing when she was being Tasered. Morrison stated that after she collapsed, Inman pulled her back up to her feet and continued escorting her to her holding cell. Neither Inman nor Wilhite said anything to her after the Tasing. Morrison was placed in cell 116; Quinn was placed next to Morrison in cell 115 and Walter in cell 106.<sup>8</sup>

Morrison stated that after being Tasered she couldn't get a deep breath and thought she was having a heart attack. She said her whole body was trembling and shaking and that she could not get control of herself.<sup>9</sup> Morrison, who was in the cell alone, stated that she called out for somebody to help but her request for medical assistance was ignored.<sup>10</sup> Furthermore, Inman allegedly told her repeatedly to "Shut the fuck up."<sup>11</sup> Morrison stated that she also asked for someone to call 911 and Inman responded by stating, "We are 911."<sup>12</sup> Note that Morrison's claim that she was asking for medical help is supported by Angelo who stated that he heard Morrison state that she had a heart condition and was on medication and that she wanted to make a call. Quinn also stated that she overheard Morrison's requests to make a phone call. <sup>3</sup><sub>1</sub>

Morrison, while requesting medical assistance, also called out to Quinn and Walter and told them if they had a chance to make a phone call to phone her father so that he could bring her

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<sup>1</sup> Hendershot deposition, p. 17

<sup>2</sup> Inman deposition, p. 83-84

<sup>3</sup> Hendershot deposition, p. 98-99

<sup>4</sup> Morrison deposition, p. 164

<sup>5</sup> Morrison deposition, p. 163; 166

<sup>6</sup> Morrison deposition, p. 168

<sup>7</sup> Wilhite deposition, p. 141

<sup>8</sup> Hendershot deposition, p. 125

<sup>9</sup> Morrison deposition, p. 173

<sup>10</sup> Morrison deposition, p. 174-175; 178

<sup>11</sup> Morrison deposition, 175-176

<sup>12</sup> Morrison deposition, p. 178

<sup>13</sup> Quinn deposition, p. 39

medication. Note that Morrison stated that at this time she was not using profanities nor was she banging on the walls of her cell or the door.

The record shows that after Morrison was placed in her cell, Wilhite and Angelo went down to the dispatch area. Shortly afterward, Corporal Whiteman called and requested that they come back up to assist in placing Morrison in the restraint chair.

The record shows that Inman, Wilhite and Angelo entered Morrison's cell. Morrison stated, "They both came in with Tasers."<sup>14</sup> She also said Wilhite said they were going to show her what they do to people that hit cops. Inman acknowledged that Wilhite said he was going to shock her if she did not get into the chair.<sup>15</sup> Morrison, fearing that she was going to be shocked again moved to the toilet/sink attachment in the left back corner of the cell and held onto it.

Wilhite and Inman tried to remove Morrison's grip from the sink during which time Inman allegedly struck Morrison's left hand with her Taser while Wilhite attempted to pry Morrison's finger's off of the sink.<sup>16</sup> Wilhite stated that the officers continued their attempts for "...no more than 2 minutes" and decided that they weren't making any progress.<sup>17</sup> Wilhite deployed the Taser to the lower part of Morrison's back and she fell to the floor.<sup>18</sup> He stated that the Taser was applied for a full five-second cycle.<sup>19</sup>

Inman pulled Morrison out of her cell at which time she was strapped into a restraint chair which Whiteman had placed in the open area between cells 115 and 113.<sup>20</sup> Note that, Morrison was placed in the chair at 4:43 a.m. She was in cell 116 for 44 minutes before being removed.<sup>21</sup>

After being placed in the restraint chair, Morrison stated that the officers began yelling and screaming at her. According to Morrison, without any warning, Wilhite began to Taser her repeatedly and that all three deputies, Wilhite, Inman and Angelo were laughing at her.<sup>22</sup> Specifically, on the third occasion, Wilhite Tasered in her lower left backside, above the buttocks. She stated, Wilhite "held it in and then it was moved and then he held it in again."<sup>23</sup> This allegedly occurred while Morrison was strapped to the chair and it occurred about 10 minutes after she was Tasered in her cell.<sup>24</sup> Morrison said that she continued screaming and crying out for help as her body started shaking. She went into convulsions and began foaming at the mouth. She stated that she eventually passed out.<sup>25</sup>

Morrison claims that Wilhite Tasered her at least two additional times while she was in the restraint chair. The deputies continued to laugh at her. These occurred only about 10 seconds after the third application.<sup>26</sup> Morrison stated that she was begging them to stop at that point because she thought they were going to kill her.<sup>27</sup> Morrison stated that Angela Quinn was within her eyesight during this time and she could hear Trinda screaming for them to stop.<sup>28</sup> Note that Wilhite denied using the Taser on Morrison when she was in the restraint chair, and stated that he never observed Inman or Angelo with a Taser that night.<sup>29</sup>

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<sup>14</sup> Morrison deposition, p. 181

<sup>15</sup> Inman deposition, p. 104

<sup>16</sup> Wilhite deposition, p. 145-146

<sup>17</sup> Wilhite deposition, p. 156-158

<sup>18</sup> Wilhite deposition, p. 141-143; Inman deposition, p. 127

<sup>19</sup> Wilhite deposition, p. 141

<sup>20</sup> Wilhite deposition, p. 143

<sup>21</sup> Inman deposition, p. 83-84

<sup>22</sup> Morrison deposition, p. 140; 195

<sup>23</sup> Morrison deposition, p. 191-192

<sup>24</sup> Morrison deposition, p. 193

<sup>25</sup> Morrison deposition, p. 191

<sup>26</sup> Morrison deposition, p. 195

<sup>27</sup> Morrison deposition, p. 197

<sup>28</sup> Morrison deposition, p. 196

<sup>29</sup> Wilhite deposition, p. 141-142

After remaining in the restraint chair for an estimated 26 minutes,<sup>30</sup> Morrison, who had now been moved back into cell 116, was awakened by Deputy Mark Hendershot. She was still strapped in the restraint chair. Hendershot said he was going to untie her and let her out of the chair, but as Morrison was getting out of the chair, Hendershot reportedly kicked her in her right thigh.<sup>31</sup>

She was then moved into Quinn's cell where she sat on a cot. Inman allegedly came into the cell with the Taser and backed Morrison into the corner and asked her if she wanted more of it. She then crawled up into a ball against the sink and began crying and said "No!"<sup>32</sup> Inman then asked Quinn if she wanted some. Inman did not apply the Taser to either Morrison or Quinn during this encounter.

Morrison was permitted to have her first phone call at 10:00 a.m. (Sunday). She phoned her father. Attorney Herb Baker was contacted and came in on his day off to observe the marks on Morrison's body. Morrison remained in the jail until Monday morning during which time she was taken to the dorm where the main population of females were housed. She stated that she was booked in but never informed as to her charges.<sup>33</sup>

Twelve days later, Morrison and Walter came to the Sheriff's office to file a complaint about her treatment on the day of her arrest. The investigation, headed by Captains Joe Miller and Mark Ross, was terminated by Colonel Hoover the following Monday (three days after Morrison filed the complaint).

#### **Opinions: Basis and Reasoning**

All of my opinions are stated within a reasonable degree of certainty within my field. My opinions and the basis for my opinions are based on the totality of my specialized knowledge, skill, education, research, literature, training and information I have reviewed. My opinions and basis for my opinions are based on sufficient facts and data reviewed; are the product of reliable law enforcement principles and methods; and I have applied these law enforcement principles and methods reliably to the facts and circumstances of this case.

There is a body of knowledge and literature about the practice and standards to which modern, professionally administered police agencies should adhere. These standards and accepted practices have evolved over time in the interest of fostering and maintaining police agencies that are professional, effective and whose practices and policies are observant of the law. The standards have evolved, in part, as a response of reported cases of police misconduct and as tools to limit police discretion and ensure that police behavior is within acceptable professional, legal and constitutional limits.

There is a substantial body of literature and knowledge regarding the types of causes of police misconduct. I am well familiar with and have contributed to the literature and body of knowledge regarding the types and causes of police misconduct. Within the broad range of criminal justice, my area of study and practical experience is and has been police misconduct and its relationship with police policy, procedure, training, and supervision and accountability mechanisms. I am currently an active member of the International Association of Chiefs of Police (IACP), Academy of Criminal Justice Sciences (ACJS) the American Society of Criminology (ASC) and the American College of Forensic Examiners International (ACFEI).

#### **Summary of Opinions**

**OPINION #1:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that if Morrison's account of Taserings 1, 3, 4, & 5 is to be believed, as well as the account of her being kicked by Deputy Hendershot, that the use of the force by both deputies was unnecessary, unreasonable, excessive and served no objectively reasonable purpose. Accordingly the use force*

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<sup>30</sup> Inman deposition, p. 114

<sup>31</sup> Morrison deposition, p. 205

<sup>32</sup> Morrison deposition, p. 208-209

<sup>33</sup> Morrison deposition, p. 211

by Wilhite and Hendershot failed to conform to nationally recognized standards of care and procedural guidelines.

**OPINION #2:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that Wilhite's Taser of Morrison as described by Defendant officers in Incident #2 was unnecessary, unreasonable, excessive and served no objectively reasonable purpose. Wilhite's use of the Taser, based on the account provided by Defendant officers, failed to conform to nationally recognized standards of care and procedural guidelines.*

**OPINION #3:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that Defendant officer in this case ignored their duty and responsibility to respond to Morrison's request for medical aid. Ignoring Morrison's request for medical assistance is inconsistent with nationally recognized standards of care and departmental policy. Failure to properly respond to Morrison's request for medical aid demonstrated intentional indifference to the physical and mental discomfort being experienced by Morrison.*

**OPINION #4:** *It is this expert's opinion, stated within a reasonable degree of professional certainty, that the investigation into Morrison's complaint of physical abuse was not properly or thoroughly conducted and that evidence readily available to Ross, Miller and Hoover was ignored. Failure to properly investigate Morrison's allegations, by even conducting the most basic of investigative steps is a gross departure from nationally recognized investigative protocols and caused persons responsible for excessive force against Morrison to go unaddressed.*

**OPINION #5:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that the improper, excessive and unreasonable use of the Taser by officers employed by the Muskingum County Sheriff's was widely known by the rank and file, field supervisors, command staff and top administrators within the department. Based on available evidence in the case record, administrators within the sheriff's department were aware of but ignored these abuses of use of force in general and abuses of the Taser in specific.*

**OPINION #6:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that the failure on the part of top-level administrators within the Muskingum County Sheriff's Office to properly address widespread abuses of force, served to ratify ongoing conducted and abuses of power within the rank and file. Failure to address these widespread and blatant abuses of office ratifies the misconduct of officers and validates future abuse of use of force.*

#### **Discussion and Opinions**

Of concern in this case is the level of force used by Defendant officers upon Morrison appears to be excessive considering the degree of passive resistance offered by Morrison. It is a generally accepted law enforcement practice that the level of force used against a suspect during a police encounter must be only that degree that is required to place the subject under control. Based on a careful review of materials provided in this case, the level of resistance offered by Morrison failed to justify the use of force by Defendant officers.

**Standards and guidelines addressing proper police use of force:** Nationally recognized standards and procedural guidelines are clear regarding the appropriateness of action by police officers with regard to use of force. For example:

**Constitutional standards: Use of force:** 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."

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."

This expert makes 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 policing guidelines (IACP): Use of force:** 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. Examples are the publications from the International Association of Chiefs of Police (IACP) and an authoritative article written by John Desmedt who identifies a use of force continuum that has been adopted by police departments throughout the country.

International Association of Chiefs of Police: National guidelines identifying appropriate police use of force are found in the International Association of Chiefs of Police (IACP) Use of Force Model Policy and Concepts and Issues Paper published in 1995. The IACP states for example:

"The variety of coercive options available to police officers in a confrontational setting is generally referred to as the "force continuum." From options on this continuum, ranging from so-called verbal judo and command presence to the use of a deadly weapon, officers are expected to employ only the level of force that is objectively reasonable to gain control and compliance of suspects." <sup>4</sup><sub>3</sub>

The concept of "force continuum" or "escalation of force continuum" as identified by the IACP refers to a listing of steps in the escalation of force. The use of force continua list alternatives in steps which are ordered chronologically (i.e. which should be attempted first, and if that does not work, which should be attempted next, and so forth).

It is important to note an officer's escalation of force should comport with the escalation of resistance or threat posed by the subject. Police training and professional literature are consistent in that the continuum is not a ladder to be climbed. That is, an officer may enter a situation which may escalate, de-escalate, remain unchanged, or fluctuate quickly. Escalation of force only deals with one of these conditions and officers must know when to deescalate as well as escalate their levels of force against a subject at the appropriate times.

**Muskingum County Sheriff's Office use of force continuum:**

The record shows that the use of force continuum is the departmental guide for use of force by officers within the Muskingum County Sheriff's Office. This is affirmed by Captain Ross who stated that officers "go by the use of force continuum because it sets guidelines." The continuum is identified as the, "Action-Response Use of Force Continuum."<sup>35</sup> This continuum identifies levels of individual's actions that correspond to officer responses to those actions. This document identifies the proper officer response to "Pulling away from officer / Refusing to leave – Dead weight" (level 2) as, "Striking muscle groups or muscle masses, take downs joint manipulation, PPC." The use of "electronic devices" is located a level up and the Continuum states that "Wrestling with officer / Pushing officer" is the justifiable action for its use.

Under no circumstances, based on the evidence about Morrison's actions and levels of threat or resistance, and considering the departmental use of force continuum, was the use of the Taser on her justified in this case. Even given the second Taser that occurred in Morrison's jail cell, to which Wilhite admits, all parties are in agreement that Morrison was holding onto the sink and simply refusing to let go. These actions are clearly those that fail to warrant the use of the Taser.

<sup>34</sup> IACP Use of Force, Concepts and Issues Paper (1995)

<sup>35</sup> Action-Response Use of Force Continuum: Exhibit 11



**Professional policing guidelines (IACP): Electronic Control Weapons:** 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.

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.

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 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>63</sup>

**Cautions from Taser International:**

The weapon used against Morrison in this case was an X-26 Model Taser. It is commonly characterized as an intermediate, less-lethal electronic control weapon. Taser International (TI) located in Scottsdale, Arizona manufactures the Taser. The electrical output of the Taser is 50,000 volts and it "overrides the central nervous system causing uncontrollable contractions of the muscle tissue."<sup>37</sup> Contained in their Certification Lesson Plan is a warning from TI that states:

"The Taser X26 is a less-lethal weapon. It is designed to incapacitate a target from a safe distance without causing death or permanent injury. While the extensive medical evidence strongly supports the Taser X26 will not cause lasting after effects or fatality, it is important to remember that the very nature of physical confrontation involved a degree of risk that someone will get hurt or may even get killed due unforeseen circumstances and individual capabilities. Accordingly, the Taser X26 should only be treated as a serious weapon and should only be deployed in situations where the alternative would be to use other force measures that carry similar or higher degrees of risk..."<sup>83</sup>

This warning makes it clear that the Taser can result in injury and may result in death. The warning also states that the Taser is to be used "from a safe distance." The words "safe distance" imply that the officer is to use the Taser to protect him or herself from harm. Implicit is that the Taser can also be used to protect another person from harm. If this is to be believed, then one can assume that the Taser is a defensive weapon, not one to be used for compliance or corporal punishment.

Further evidence that the Taser is designed as a weapon to protect rather than coerce is found in Taser International's own statement referring to the development of the M26, "...the advanced

<sup>36</sup> IACP National Model Policy Center; Electronic Control Weapons, Concepts and Issues Paper, dated, January 2005, p.

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<sup>37</sup> Taser International Certification Lesson Plan; bates MCO\_1018

<sup>38</sup> Taser International Certification Lesson Plan; bates MCO\_1003; MCO\_1006

Taser M26 – the first less-lethal weapon capable of stopping focused aggressors...<sup>39</sup> Again, TI makes it clear that the Taser is to be used to protect. Therefore, use of the Taser to coerce, intimidate or gain control of a non-threatening person is improper. Use of the Taser under these circumstances is punitive, subjective and brutal.

In summary, 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. The Muskingum County use of force continuum is consistent with the IACP and states that the “Taser” is justified when suspects are wrestling or pushing the officer.

These guidelines make it clear that the use of a Taser on a subject that does not pose a threat to an officer or anyone else is improper. There is no evidence in this case that Morrison ever posed a threat to officers and that the Taser was used on her because she was yelling and being uncooperative at the very worst. There is also disturbing evidence in this case that Defendant officers Tasered Morrison when she was tied to the restraint chair and therefore, incapacitated and unable to protect herself. Doing so suggests that officers were needlessly inflicting pain on Morrison without justification to do so.

**A. THE USE OF THE TASER ON MORRISON BY DEFENDANT OFFICERS WAS EXCESSIVE, UNNECESSARY AND SERVED NO OBJECTIVELY REASONABLE PURPOSE.**

A principal concern in this case is the use of force used against Morrison after her arrest. There is evidence in the record that Morrison was Tasered by officers between four and six times while in the custody of the Muskingum County Sheriff. Specifically, Morrison stated that Wilhite used a Taser on her numerous times while she was confined in her cell. Morrison further claims that Deputy Hendershot kicked her as she was getting up from the restraint chair. There is also evidence that not only was this use of force unjustified but other officers, including supervisory personnel, were present and either ignored, contributed to or failed to intervene on Morrison’s behalf after observing excessive force being used against her.

The record shows that employees working the midnight shift at the jail when the incident occurred were: Mark Hendershot, Greg Ford, Jeffery Steed, Stacy Foster, Steve Blake, Joshua Whiteman, Donald Rice and Aaron Inman.

Morrison has identified between four and five occasions in which Defendant officers Tasered or assisted in Tasering her. All of Morrison’s allegations are regarding incidents that occurred after she was arrested and while she was in custody. It is important to note that Wilhite admits using the Taser on Morrison on what is identified below as “Incident #2,” when she was in her cell (cell 116). However, he denies the other Tasering allegations made by Morrison.

The Tasering accounts (other than Incident #2) are in question in this case. For the sake of a complete record, this expert will discuss these alleged incidents but cautions the reader of this report that they should be taken in the context of the evidence identified in the record.

***Incident #1: Wilhite’s use of a Taser on Morrison while walking to her holding cell***

Morrison stated that after arriving at the Muskingum County Jail and as she was walking to her holding tank, Wilhite approached her from behind and Tasered her underneath the left side of her rib cage, causing her to collapse to the ground.<sup>40</sup> Morrison said this occurred before she had been processed or “booked,” that she was not yelling, fighting, kicking or threatening any officer or anyone else at the time she was Tasered. Wilhite denies this Tasering of Morrison (Incident #1).<sup>41</sup> Morrison stated that after being Tasered, Inman grabbed her and pulled her back up to her feet. They continued walking to her holding cell. Morrison was placed in cell 116 by herself.

<sup>39</sup> Taser International Certification Lesson Plan; bates MCO\_1020

<sup>40</sup> Morrison deposition, p. 168

<sup>41</sup> Wilhite deposition, p. 141

Discussion: Given Morrison's account of her first Taser, she was in the process of walking from Inman's van to her holding cell at the time she was Tasered by Wilhite. Nowhere is there evidence that she was posing a threat to officers or anyone else or was otherwise acting in a fashion that would justify the use of a Taser. It is instructive to note, however, that there is evidence that this Taser did occur, based on photographs of marks on Morrison's body and Captain Ross's statement that he observed marks under her ribcage. Considering the requirements, guidelines, policy and cautions regarding use of force as set forth above, assuming this incident occurred, Wilhite's use of the Taser on Morrison was objectively unreasonable.

***Incident #2: Wilhite's use of Taser on Morrison in holding cell 116***

There is no dispute in this case that Morrison was Tasered by Wilhite while she was in her cell. Therefore, this incident will include accounts provided by Morrison, Wilhite and others knowledgeable about the incident.

The record shows that after Morrison was placed in holding cell #116, Officers Mathew Wilhite and Anthony Angelo along with Sergeant Brady Hittle went down to the dispatch area and started on paperwork regarding her arrest.<sup>42</sup> Corporal Whiteman telephonically contacted Hittle who was in the dispatch area and told him that he needed help placing Morrison in the restraint chair because she was being unruly.<sup>43</sup> In response, Wilhite and Angelo returned the booking area, "to assist Cpl. Whiteman and Dep. Erin Inman."<sup>44</sup>

Wilhite stated that when coming into the booking area, "I could immediately hear Tonya Morrison subject screaming obscenities and being belligerent and banging around in the cell."<sup>45</sup> Angela Quinn, who occupied cell 115 next to Morrison's, stated that she heard Morrison calling out that she wanted her heart medication and stuff, and she wanted them to give her an alcohol and drug test..."Just test me."<sup>46</sup>

Inman was the first to enter Morrison's cell followed by Wilhite and then Angelo. Trinda Walter, who was in an adjacent cell, stated that she heard Inman say, "That's it" before she (Inman) entered Morrison's cell. Morrison stated that Inman and Wilhite came into the cell both with Tasers in hand. Angela Quinn, who was also in an adjacent cell, stated that she could see partially into Morrison's cell and that she remembered seeing a Taser in a lady's hand.<sup>47</sup>

It should be noted that implicit in statements made by Wilhite, Inman, Angelo and Whiteman that the initial reason they entered Morrison's cell was because she was yelling. It is also known that at least Wilhite was armed with a Taser upon entering her cell. This suggests a predisposition to use the Taser on Morrison because of her yelling. Lieutenant Dumolt stated, "It is inappropriate to use a Taser on someone simply because they are complaining or yelling out."<sup>8 4</sup>

Wilhite also allegedly told Morrison that they were going to show her what they do to people that hit cops.<sup>49</sup> Morrison, fearing she would be shocked a second time, moved over to the toilet/sink attachment at the back of the cell and held onto it. Quinn stated that she overheard Tonya say not to use that thing on her again.<sup>50</sup> Wilhite and Inman stated that they tried to pull her off of the sink as Angelo stood in the doorway area of the cell. Inman allegedly struck Morrison's left hand with her Taser and Wilhite attempted to pry Morrison's fingers off of the sink.<sup>51</sup>

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<sup>42</sup> Angelo (bates 1201)

<sup>43</sup> Wilhite's narrative report dated 4/3/05; p. 3

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Quinn deposition, p. 42

<sup>47</sup> Quinn deposition, p. 31-32

<sup>48</sup> Dumolt deposition, p. 40

<sup>49</sup> Morrison deposition, p. 181

<sup>50</sup> Quinn deposition, p. 32

<sup>51</sup> Wilhite deposition, p. 145-146

Wilhite stated, "at first we tried to pull on her and... tried to pull her away from the sink. We realized... or at least I realized that we weren't getting anywhere with it. At that point I drew my M-26 Taser, advised her to let go of the sink or I was going to Tase her. She didn't let go and I administered a 5-second "drive stun" to the lower left part of her back... she immediately let go." <sup>2</sup><sub>5</sub>

Wilhite stated that he cycled the Taser for the full five seconds and it was still cycling after Morrison released her grasp of the sink.<sup>53</sup> He further stated "I tried to keep my Taser on her constantly until she landed on the ground...the cycle ended when she came to rest on the ground."

Assuming the reason for Tasing Morrison initially was to force her to let go of the sink, this expert sees no legitimate operational purpose for Wilhite to continue shocking Morrison after she released her grasp of the sink. Wilhite knowingly allowed the Taser to cycle for the full cycle even though Wilson stated that it could have been discontinued before the end of the five-second cycle. Wilson stated, "A single trigger pull will cycle for five seconds but you can get a shorter cycle by discontinuing it with a thumb switch."<sup>54</sup> Conversely, a Taser can also deliver a shock longer than the 5-second cycle. For example, the Taser International Certification Lesson Plan states, "holding the trigger continuously beyond the 5-second cycle will continue the electrical cycle until the trigger is released."<sup>55</sup> While Wilhite stated, "I didn't hold the trigger in,"<sup>56</sup> there is no way to verify this. Accordingly, if it is to be believed that Wilhite did hold down the trigger, this extended application would register the same as a 5-second cycle on the Taser download.

The IACP states that officers should cycle the weapon, "no more than reasonably appears necessary to accomplish legitimate operational objectives."<sup>57</sup> This is consistent with Muskingum County Sheriff's Office Use of Force Policy that states, "It must be noted that when an officer employs any of the responses noted in the charts, that the situation and the circumstances surrounding it may change. This would require the officer to reassess the incident and adjust his responses accordingly."<sup>58</sup> Implicit in this statement is that once the situation is under control, further use of force is inappropriate.

It was not reasonable nor was it necessary for Wilhite to shock Morrison under these circumstances. This demonstrates Wilhite's intent on causing Morrison pain and discomfort absent any appropriate police objective. Based on Wilhite's statement, it is clear that his use of the Taser was to gain Morrison's compliance and not for his or anyone else's protection. In fact, when asked if officers could use a Taser against a 130-pound female who was being uncooperative about getting into a restraint chair, Lieutenant Dumolt stated, "The Action/Response Use of Force Continuum would suggest that it is not appropriate to use a Taser under those circumstances." <sup>9</sup><sub>5</sub>

After Morrison fell to the ground, Inman dragged her out of her cell; a distance of "three feet at the most," according to Inman.<sup>60</sup> She was then strapped her into a restraint chair. The chair was located in an open area between cells 115 and 113 and had been placed there by Whiteman. <sup>1</sup><sub>6</sub> The record shows that Morrison was placed in the restraint chair at approximately 4:43 a.m., about 44 minutes after first being taken to the holding cell.<sup>62</sup>

Morrison's account of Tasing Incident #2 is consistent with statements made by Wilhite, Inman and Angelo who agree that she was not harming herself or attempting to harm herself. What is

<sup>52</sup> Wilhite deposition, p. 129-130

<sup>53</sup> Wilhite deposition, p. 147-148; Wilhite narrative report dated 4/3/05; p. 4; Angelo narrative report dated 4/3/05; p. 3

<sup>54</sup> Wilson deposition, p. 25-26

<sup>55</sup> Bates 1046

<sup>56</sup> Wilhite deposition, p. 134

<sup>57</sup> IACP National Model Policy Center; Electronic Control Weapons, Concepts and Issues Paper, dated, January 2005, p.

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<sup>58</sup> Bates, MCO\_1183

<sup>59</sup> Dumolt deposition, p. 30-31

<sup>60</sup> Inman deposition, p. 120

<sup>61</sup> Wilhite deposition, p. 143

<sup>62</sup> Inman deposition, p. 83-84

disputed is that Defendant officers stated that Morrison was yelling and banging on the walls and door of her cell. Morrison denies doing so.

Another consistent point in Taser Incident #2 is that Morrison was not threatening any officers or anyone else at the time she was Tasered by Wilhite. It is clear that upon Inman's, Wilhite's and Angelo's entry into Morrison's cell she retreated to the rear of the cell and held onto the sink. Morrison's actions at the very worst could be characterized as uncooperative because she didn't want to go to the chair. Even Defendant officers failed to characterize her actions as threatening. For example,

**Wilhite:** When asked if Morrison "kicked anyone, hit anyone, bit anyone, or even tried to do any of those things toward any deputy" Wilhite replied, "No she did not."<sup>63</sup>

**Inman:** Inman stated that Morrison, "Never caused me any physical injury of any kind, she never punched me, she never kicked me, she never balled up her fist and took a swing at me, or bit me, or any sort of violence of that kind."<sup>64</sup> Inman further stated, that Morrison's "hanging on to the sink in the corner was sort of her way of staying in the room and refusing to go."<sup>65</sup>

**Angelo:** Angelo acknowledged that while the officers were in Morrison's cell she was not taking aggressive or violent actions toward them and that she was not kicking or punching him..."she was never violent, she didn't want to go in the direction of the restraint chair."<sup>66</sup>

Taser instructor, Lieutenant Dumolt agreed that the use of a Taser against a subject who is not slapping, kicking or biting is inappropriate.<sup>67</sup> Wilhite's use of a Taser on Morrison under these circumstances is a concern in this case. Tasering a non-violent subject not only violates nationally recognized standards and guidelines but is also a clear violation of the Muskingum Sheriff Office use of force continuum.

It is also a concern that three officers were unwilling to continue efforts to physically move Morrison to the restraint chair without resorting to strikes to her hand or the use of the Taser. Reasonable officers would attempt to move Morrison through grip strength and without resorting to weapons. In fact, Angelo acknowledged this very point by stating, "The three of us deputies had a great weight advantage in total over Tonya Morrison and she was never violent..."<sup>68</sup> Angelo further stated that it was possible for the deputies to have removed Morrison from the cell without using the Taser..."I don't know why Wilhite actually did it [referring to Wilhite's use of the Taser on Morrison]."<sup>69</sup> Consistent with Angelo's statement, when asked if he thought that three deputies could have moved Morrison from the cell into the restraint chair without using a Taser, Colonel Hoover stated, "I would think that would be an option, yes."<sup>70</sup>

If Angelo didn't know why Wilhite Tasered Morrison when she was not violent and was merely holding onto the sink, then one must wonder why he didn't intervene to stop Wilhite. Both Angelo and Inman had a shared responsibility in this regard but ignored it. Accordingly, Wilhite's use of the Taser on Morrison is consistent with acts that are punitive or at the very least suggest that Wilhite was taking the "path of least resistance" by not having to exert any more energy to fulfill his duties than necessary. Wilhite's use of the Taser in Incident #2 was improper, unnecessary, excessive and unreasonable. Regardless of Wilhite's motivation, he along with Inman and Angelo all played a major contributing role in the needless mistreatment and abuse of Tonya Morrison.

<sup>63</sup> Wilhite deposition, p. 161-162

<sup>64</sup> Inman deposition, p. 71

<sup>65</sup> Inman deposition, p. 67

<sup>66</sup> Angelo deposition, p. 116-117; 122

<sup>67</sup> Dumolt deposition, p. 39

<sup>68</sup> Angelo deposition, p. 121-122

<sup>69</sup> Angelo deposition, p. 130-131; 132

<sup>70</sup> Hoover deposition, p. 127

Discussion: There is agreement in the record that Whiteman made the decision to place Morrison in the restraint chair and that he dispatched Wilhite and Angelo to assist in doing so. There is also agreement that Inman, Wilhite and Angelo entered cell 116 and that Morrison moved to the back of the cell and held onto the sink and all three officers were present. There is further agreement that at the time Wilhite Tasered Morrison, at the very worst she was refusing to get into the chair.

A concern is that there is no evidence in the record that suggests that Morrison posed a threat to any of the three officers at the time she was Tasered. Absent an articulable threat, the use of the Taser is inappropriate, excessive and unreasonable. There is also no evidence that Inman or Angelo made any attempts to stop Wilhite's use of the Taser on Morrison, and if anything, assisted him.

It is also disturbing that Defendant officers would attempt to justify the Tasering of Morrison in Incident #2 as protecting her. For example, Wilhite stated that Morrison was Tased for her own good, to protect her from hurting herself. Inman acknowledged that Morrison was shocked in order to protect her from harm or pain.<sup>71</sup>

A five-second shock of 50,000 volts and then permitting her to collapse to the floor is unconvincing. Furthermore, if Defendant officers were so intent in safeguarding Morrison's physical wellbeing, the repeated striking of her fingers to remove them from the sink (as reported by Inman) is also inconsistent with that goal. Furthermore, nowhere does the record show that any of the three officers in this incident, observed or tried to document any injuries or bruising from Morrison's alleged hitting the cell walls nor did they contact medical personnel to examine Morrison to determine whether she had in fact, injured herself. Failure on the part of Wilhite, Inman and/or Angelo to document or investigate possible injuries that Morrison might have suffered as a result of hitting the walls of her cell suggest that their concern for Morrison's well-being was disingenuous.

It is this expert's opinion that Wilhite's use of the Taser on Morrison while in cell 116 was unnecessary, excessive and served no objectively reasonable purpose. In fact, there is evidence in the record that Wilhite's Tasering of her was punitive subjectively motivated. Nowhere is there evidence that she was posing a threat to officers or anyone else or was otherwise acting in a fashion that would justify the use of a Taser.

Even if one is to accept that incident #2 was the only incident in which Morrison was Tasered, given the defendant's own accounts of what occurred, doing so was unnecessary, excessive and served no objectively reasonable purpose.

***Incident #3: Use of Taser on Morrison by Wilhite while being strapped in the restraint chair***

The record shows that Morrison was placed in the restraint chair at 4:43 a.m., on April 3, 2005.<sup>72</sup> She stated that after she was strapped in the chair, Wilhite continued to shock her with the Taser. She stated that officers started yelling and screaming at her but she could not remember exactly what was being said. Then, without warning, Wilhite began to Taser her repeatedly at which time Morrison began to call him a sick bastard.<sup>73</sup> Morrison stated that Wilhite Tasered her in her lower left backside, above the buttocks. She stated that Wilhite "held it [the Taser] in and then it was moved and then he held it in again."<sup>74</sup> This allegedly occurred while she was strapped to the chair and after she was Tasered in her cell.<sup>75</sup> Morrison also said that after Wilhite's third application of the Taser, all three deputies were laughing at her.<sup>76</sup> Morrison remained in the restraint chair for a total of 26 minutes.<sup>77</sup>

<sup>71</sup> Inman deposition, p. 121-122

<sup>72</sup> Exhibit 18: Computer screen image with Whiteman identified

<sup>73</sup> Morrison deposition, p. 190; 195

<sup>74</sup> Morrison deposition, p. 191-192

<sup>75</sup> Morrison deposition, p. 193

<sup>76</sup> Morrison deposition, p. 195

<sup>77</sup> Inman deposition, p. 114

There is evidence in this case that support's Morrison's claim about Taser Incident #3. For example, Quinn stated that while she didn't observe Morrison being Tasered, after Morrison was placed in the restraint chair, she heard her call out, "Don't use that thing on me...this is unfair." Implicit in this request is that Morrison was being threatened with the Taser and fearful of being shocked with it yet again. Further evidence is that Quinn also stated that she observed Inman shake a Taser in Morrison's face and state, "If you don't shut the fuck up, I am going to use this fucking thing on you..."<sup>78</sup> The record shows that Morrison was removed from the restraint chair at 5:09 a.m.<sup>79</sup> According to Quinn, once Morrison was placed in Quinn's cell, she stated that she had been Tased while she was in the restraint chair.<sup>80</sup> This statement is contemporaneous and consistent with the events as told by Morrison.

Discussion: This expert acknowledges that Incident #3 is in dispute and that the decision as to whether it occurred is within the purview of the trier of fact in this case. Statements made by Quinn, however, are consistent with Morrison's account of this incident. If it is to be believed that Morrison was shocked while strapped in the restraint chair, one can infer that it was unlikely if not impossible for her to pose any threat to officers or anyone else at the time she was shocked. Lieutenant Dumolt agreed by stating, "Shocking someone who is fully restrained in the restraint chair does not meet the criterion for the use of the Taser or any other electrical device."<sup>81</sup> Captain Ross made a similar statement when he stated that if the allegation is true, it is an indication of improper use of force.<sup>82</sup>

As such, if it is to be believed that Morrison was Tasered while in incapacitated the restraint chair, doing so is abusive, excessive and unreasonable. Furthermore, it is consistent with actions that are punitive and subjectively motivated.

Equally egregious is the fact that Inman, Angelo and Whiteman failed to intervene to stop Wilhite's application of the Taser to Morrison, who was totally helpless and incapacitated. Their failure to intervene to help Morrison is also consistent with Morrison's accounts that the officers were laughing at her at the time. If this is true, then one can only infer that they were amused by Morrison's discomfort. In any case, failure on the part of Inman, Angelo and Whiteman to intervene and stop Wilhite's Taser of Morrison is tantamount to assisting or facilitating his use of the Taser. Considering the guidelines, recommended policy and cautions regarding use of force as set fourth earlier in this report, the use of the Taser on Morrison in Incident #3 was punitive and objectively unreasonable.

***Incident #4/5 (and possible subsequent incidents): Use of Taser on Morrison by Wilhite***

It should be noted that Morrison claims to have been in and out of consciousness while being shocked in the restraint chair. It is therefore difficult to know exactly how many times she was Tasered. For example, Morrison said that she kept screaming and crying for help and her body actually started shaking and she went into convulsions and foaming at the mouth and eventually passed out.<sup>83</sup> Morrison stated that about 10 seconds after the third Taser (Incident #3), without warning, Wilhite applied the Taser a fourth time while she was still in the restraint chair. The deputies continued to laugh.<sup>84</sup> This deployment represents the fourth time Morrison was Tasered by Wilhite. Note that there is some confusion regarding whether the fourth application was the final one remembered by Morrison as she stated that the fourth was the last one, but there was a fifth application that caused her to foam at the mouth.<sup>85</sup>

Morrison stated that the only deputies she could recall being present were Wilhite, Inman and Angelo. Morrison said that Angela Quinn was within her eyesight during this time and she could

<sup>78</sup> Quinn deposition, p. 48; 50

<sup>79</sup> Exhibit 19: Computer screen image with Whiteman identified

<sup>80</sup> Quinn deposition, p. 55

<sup>81</sup> Dumolt deposition, p. 36-37

<sup>82</sup> Ross deposition, p. 40

<sup>83</sup> Morrison deposition, p. 191

<sup>84</sup> Morrison deposition, p. 195

<sup>85</sup> Morrison deposition, p. 197

hear Trinda screaming for them to stop. Morrison stated that after the fourth application, she was begging the officers to stop because she thought they were going to kill her.<sup>86</sup> She stated that she was Tasered a total of five times with the first application up under her ribs, the second one down lower and the last three were in the back.<sup>78</sup>

Discussion: Incidents #3-4-5: Morrison stated that after being pulled from cell 116 and strapped in the restraint chair she was Tasered by Wilhite at least three times. She stated that Wilhite applied all Taserings.<sup>88</sup> Deployment of a Taser against a subject who is totally incapacitated in a restraint chair is excessive force that borders on the outrageous. Even if Morrison was verbally abusive, the fact that she was physically incapacitated reduces her threat level to near, if not absolute zero. One can therefore infer that if Morrison is to be believed, Wilhite's use of the Taser on her was punitive and subjectively motivated.

Also of concern in this case is the assertion that while Morrison was being Tasered, Deputies Inman and Angelo were present and failed to intervene by stopping or even attempting to stop Wilhite. Worst yet, the assertion that they were laughing is consistent with their indifference to Morrison's health, safety and well-being. Furthermore, this expert is concerned that supervisor Whiteman, who was present in the area (at least to summon Wilhite and Angelo and to position the restraint chair), was most likely present in the area and therefore aware of the Taserings by Wilhite. Failure on the part of Inman, Angelo and Whiteman to attempt to intervene is tantamount to their support and facilitation of Wilhite and his improper use of force against Morrison.

It is this expert's opinion that the repeated use of force against Tonya Morrison by Wilhite, while assisted or facilitated by Deputies Inman, Angelo and Whiteman, are not only inconsistent with nationally recognized guidelines and standards of care but are actions that are blatantly excessive, punitive and unreasonable.

***Incident #6: Hendershot allegedly kicking Morrison after she was Tasered***

Morrison also stated that after she passed out, she awakened back in her holding cell still in the restraint chair. Deputy Hendershot woke her up and said he was going to untie her and let her out of the chair. As Morrison was getting out, Hendershot kicked her in her right thigh.<sup>89</sup> Morrison stated, "As I was scooting out of the chair he kicked me...right in my hip area..."<sup>90</sup> Morrison stated that after being kicked, she was taken to the cell with Quinn. Even though Hendershot denies kicking Morrison<sup>91</sup> evidence exists, in addition to Morrison's assertion, to support this. For example, this expert has been provided photos depicting a large bruise on Morrison's leg.<sup>92</sup> It is difficult to say with certainty that this bruise resulted from Hendershot's kicking of Morrison, but it is consistent with and supportive of her account of the incident.

Discussion: If the trier of fact is to believe that Hendershot kicked Morrison in the leg/hip as she was stepping out of the restraint chair, then this expert sees no objectively reasonable purpose for doing so. In fact, kicking Morrison for no reason is yet another unnecessary punitive action consistent with her alleged treatment by Wilhite, Inman and Angelo. Nowhere does the record show that Morrison was aggressive or threatening toward Hendershot. In fact, Morrison stated that she was "...still very shaken..." at the time, from being in the restraint chair. Under these circumstances, the kicking of Morrison was punitive, subjective and unreasonable.

In summary, a review of the Taserings in this case show that two things are not in dispute in this case: (1) that Tonya Morrison was not being violent when the Taser deployed on her, and; (2) she

<sup>86</sup> Morrison deposition, p. 197

<sup>87</sup> Morrison deposition, p. 210; 199

<sup>88</sup> Morrison deposition, p. 194

<sup>89</sup> Morrison deposition, p. 205

<sup>90</sup> Morrison deposition, p. 205

<sup>91</sup> Hendershot deposition, p. 150

<sup>92</sup> Photo of Morrison's leg/hip (uprt.jpg)



was Tasered for the purpose of gaining compliance. Both facts make the use of the Taser against Morrison unreasonable.<sup>39</sup>

- **OPINION #1:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that if Morrison's account of Taserings 1, 3, 4 & 5 is to be believed, as well as the account of her being kicked by Deputy Hendershot, that the use of the force by both deputies was unnecessary, unreasonable, excessive and served no objectively reasonable purpose. Accordingly the use force by Wilhite and Hendershot failed to conform to nationally recognized standards of care and procedural guidelines.*
- **OPINION #2:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that Wilhite's Taserings of Morrison as described by Defendant officers in Incident #2 was unnecessary, unreasonable, excessive and served no objectively reasonable purpose. Wilhite's use of the Taser, based on the account provided by Defendant officers, failed to conform to nationally recognized standards of care and procedural guidelines.*

## **B. DEFENDANT OFFICERS IGNORED MORRISON'S REQUESTS FOR MEDICAL ATTENTION**

Morrison stated that after being Tasered and placed in her holding cell she called out for medical help but was ignored. She stated that after being Tasered she thought she was having a heart attack because she couldn't get a deep breath. Her whole body was trembling and shaking and she could not get control of herself.<sup>94</sup> After being placed in the cell alone, she yelled out for somebody to help her because she thought she was having a heart attack.<sup>95</sup> Instead of receiving medical attention, Morrison was told repeatedly by Inman to "shut the fuck up."<sup>96</sup> Specifically, Morrison asked Inman to call 911 and Inman replied "We are 911."<sup>97</sup> Morrison stated that at this time she was not using profanities nor was she banging on the walls or the doors. Morrison called out to Quinn and Walter and told them to call her father if they had an opportunity to make a phone call.

Angela Quinn, who occupied the cell next to Morrison's stated that she heard Morrison calling out "that she wanted her heart medication and stuff." This is supportive of Morrison's claim that she requested medical attention.<sup>98</sup> In fact, the record shows that both Ross and Whiteman heard Morrison's request for her medication. For example, Whiteman stated, "She stated that she had medication and that she needed her medication..."<sup>99</sup> Quinn also stated that after Morrison was placed in her cell, she continued to request her heart medication but was ignored. Quinn stated, "She was making requests for medication the whole time... she said she needed her heart medication... I need to call my husband; he will get it for me."<sup>100</sup>

Also consistent with Morrison's claim that she called out for medical attention is Deputy Hendershot who stated, "Later on she said that she needed medication for her heart, but I don't remember hearing her saying that while she was in that cell."<sup>101</sup> He further stated that it was when Morrison was in the restraint chair that she had a heart condition and that she needed her medication.<sup>102</sup> Note that Quinn stated that she heard Morrison ask for her heart medication and asked for a breathalyzer test. She also heard Morrison stated, "she was like crying not to use that thing on me. She was telling them that she had a heart condition and she was telling them that it was torture, they couldn't do this to her..."<sup>103</sup>

<sup>93</sup> Note also that the Muskingum County Sheriff Code of Ethics states, "...jail staff shall not...employ corporal punishment or unnecessary physical force...[or] subject prisoners to any form of physical or mental abuse (MCO\_0863)

<sup>94</sup> Morrison deposition, p. 173

<sup>95</sup> Morrison deposition, p. 174-175; 178

<sup>96</sup> Morrison deposition, p. 175-176

<sup>97</sup> Morrison deposition, p. 178

<sup>98</sup> Quinn deposition, p. 42

<sup>99</sup> Whiteman deposition, p. 113-114

<sup>100</sup> Quinn deposition, p. 57

<sup>101</sup> Hendershot deposition, p. 114

<sup>102</sup> Hendershot deposition, p. 144; 149-150

<sup>103</sup> Quinn deposition, p. 42; 45-46; 54-55

Angelo stated, "...I remember her yelling about making a phone call, contacting her dad, I remember her saying something about having a heart condition and medication, she sounded as if she was upset...I saw Sgt. Hittle go over to the holding cell while she was screaming...I saw him have a conversation with her..."<sup>104</sup>

The record shows that both Wilhite and Angelo stated that they thought Morrison was intoxicated by virtue of her actions and behaviors, but neither could smell the odor of alcohol on her. For example, Angelo stated, "She appeared to be under the influence to me."<sup>105</sup> Whiteman stated that he suspected that Morrison was drunk but in spite of this, he informed Morrison that because she was not arrested for a drug or alcohol offense, she couldn't be tested.<sup>106</sup> A reasonable officer would know that Morrison's intoxicated-like behavior was indicative of a medical problem. A prudent response to Morrison's request would be to contact medical personnel to determine whether she was in fact experiencing health problems. It would also have been appropriate to give her a breathalyzer test to help determine whether she was intoxicated or not. In fact, Morrison requested that a breath test be administered but her request was ignored. At the very least, ruling out intoxication would suggest a medical episode that might be in need of medical attention. These signs were ignored by Wilhite, Inman, Angelo and Whiteman.

Muskingum County Sheriff Policy: The Muskingum County Sheriff's Office Policy dealing with "Medical Services – Emergency Medical Care" addresses "serious Breathing Difficulties" as described by Morrison, and states, "The jailer confronted with a medical emergency will immediately notify the shift supervisor on duty and request assistance..."<sup>107</sup>

Failure on the part of Defendant officers to respond professionally to Morrison's request for medical assistance is not only a violation of departmental policy but violates even the most basic ethical and professional codes of conduct. It further demonstrates Defendant officers' indifference to Morrison's health and well-being.

- **OPINION #3:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that Defendant officer in this case ignored their duty and responsibility to respond to Morrison's request for medical aid. Ignoring Morrison's request for medical assistance is inconsistent with nationally recognized standards of care and departmental policy. Failure to properly respond to Morrison's request for medical aid demonstrated intentional indifference to the physical and mental discomfort being experienced by Morrison.*

### **C. MUSKINGUM COUNTY SHERIFF'S OFFICE FAILED TO CONDUCT A PROPER INTERNAL INVESTIGATION INTO MORRISON'S COMPLAINT**

On April 15, 2005, about 12 days after her initial arrest, Tonya Morrison, while accompanied by Trinda Walter, came to the Muskingum County Sheriff's Department to file a complaint. Morrison was initially referred to Captain Miller who met with her in the waiting area on the second floor. Miller interviewed Morrison at approximately 1:20 p.m. Once he determined that her complaint involved a road deputy, he asked Captain Ross to join him in an interview with her. Miller had responsibility for internal complaints against any of the jail staff and Ross had similar responsibilities for road deputies. Both stated that they had not heard of Morrison's allegations before that Friday.

A timely and thorough administrative response to a citizen complaint, especially one where physical violence by an officer or officers is alleged, is a good indicator as to a department's integrity, professionalism and willingness to learn the truth about potentially problem employees and practices.

<sup>104</sup> Angelo deposition, p. 99-100

<sup>105</sup> Angelo deposition, p. 110

<sup>106</sup> Whiteman deposition, p. 98; 102; 110 (Note that Whiteman later acknowledged that it was policy for officers to administer an alcohol test if they suspected an inmate had been drinking)

<sup>107</sup> Muskingum County Sheriff's Office Policy: Medical Services – Emergency Medical Care (MCO\_0926)

Whether an investigation is criminal or internal, certain investigative and evidentiary protocols remain constant and should be observed to ensure that integrity of the investigation and an understanding of the truth. These protocols must be undertaken on a thorough and timely basis.

For example, long-established investigative protocols for conducting a proper investigation include fundamental of steps such as, (1) obtaining physical evidence of the alleged incident. This includes documenting injuries or bruising resulting from the alleged incidents. This evidence should also be carefully and thoroughly evaluated; (2) reviewing narrative reports prepared by persons that should be knowledgeable of the incident. This step provides investigators with knowledge of officer's official account of an incident; (3) obtaining statements from all parties with any knowledge of the incident, including the complainant herself and any inmates occupying or formerly occupying cells nearby who could provide information about what was heard or seen relative to the incident;<sup>108</sup> (4) interviews of suspect officers identified by the complainant. Questions for officers suspected of wrongdoing should be based on preliminary investigative efforts as identified in this paragraph. Lastly, and depending on the seriousness of the allegations, should discrepancies be identified in interviews with complainant, inmate or officers, it would be prudent to consider the administration of polygraph exams or voice stress analysis exams to substantiate the truthfulness of their statements. A review of the record in this case shows that these steps, if performed at all, were not conducted with any degree of thoroughness expected of a reasonable investigator conducting a proper internal investigation.

The record shows that the top ranking administrators within the department were aware of Morrison's complaints but failed to conduct a thorough and proper internal investigation to determine the extent that her allegations against deputies were truthful. Disturbingly, the internal investigation resulting from Morrison's complaint lasted only three days before Colonel Hoover made a determination that her allegations were unfounded. Hoover terminated the investigation. Hoover's decision to terminate the investigation was made knowing that a number of the most fundamental investigative steps that would or should have been undertaken were never conducted.

**Miller's understanding of the internal investigative process:** Captain Joe Miller was the Assistant Jail Administrator and co-investigated Morrison's complaint along with Captain Ross. Miller stated that the normal steps in an investigation about inappropriate use of force by a jailer would be to (1) interview the complainant; (2) collect evidence from the complainant; (3) interview any other witnesses...people who were in the area where the event occurred and might have seen or heard parts of it; (4) interview officers...the deputies accused.<sup>109</sup> This expert acknowledges the steps identified by Miller are proper and form a reasonable basis for a proper internal investigation. Disturbingly, in spite of Miller's awareness of these steps, they were either ignored or performed on the most minimal level.

**Ross's understanding of the internal investigative process:** Captain Mark Ross had overall responsibility of the Road Division and, along with Miller, was assigned to investigate Morrison's complaint. He was approached by Miller on that Friday and was told of Morrison's complaint. Ross stated that a typical investigation of a citizen complaint is, (1) "getting statements from the citizen... then (2) review the reports filed by the officer... at that point (3) it is discussed with Colonel Hoover if there's any need for anything for further investigation."<sup>110</sup> He further stated, "In some situations you will go and interview witnesses. If necessary interview the deputy or deputies who are the focus of the complaint... you will sometimes gather evidence, sometimes photographs of evidence, sometimes medical records, if they exist, videos or photographs of the incident."<sup>111</sup> Again, the steps identified by Ross are consistent with those taken in a properly conducted

<sup>108</sup> Note that any interviews of incarcerated persons must be conducted in accordance with constitutional requirements and restrictions.

<sup>109</sup> Miller deposition, p. 13-14

<sup>110</sup> Ross deposition, p. 9

<sup>111</sup> Ross deposition, p. 10

investigation. As with Miller, however, most of these steps were not performed. What is known about the departmental response to Morrison's complaint is as follows:

**Tonya Morrison's interview:** Miller initially met with Morrison on the second floor of the bank building in the waiting area. Once he determined that it was an incident inside the jail involving a road officer, he asked Ross to witness the interview. It was conducted in the sheriff's conference room. The interview was not recorded, but Miller stated that was normal practice. Both Miller and Ross stated that they did, however, take notes.<sup>112</sup>

Even though Miller stated that it was his responsibility to handle these types of complaints against the staff he supervises,<sup>113</sup> he also stated that it was quitting time for him so he assigned the investigation to Ross who, along with Major Newman, interviewed Trinda Walter. Miller stated that he didn't do any work on the investigation that weekend.<sup>114</sup>

It is of particular importance to note the specific information known by Miller as a result of the interview with Morrison. Miller's Interview Summary report dated April 15, 2005 identifies the specific information provided by Morrison. Excerpts from Miller's report include:<sup>115</sup>

1. While she was strapped in the restraint chair she was Tasered six times. Morrison specified to Miller that the first Tasing was by Wilhite which took place in front of her cell. She claimed to have been Tasered "inside of her left side, near her ribcage, slightly below her breast;"
2. "...Hittle took a picture of this mark that was left by the Tasing."
3. "The second Tasing was while she was in the restraint chair. Again, it was either Wilhite or Hendershot. The officer straddled her while she was in the chair, and Tased her. Her doctor told her she was Tased six times. She remembers three while in the chair."
4. "Three that were in the chair were to the left lower back in her hip area."
5. "She was Tased until she passed out"
6. "She asked the officers to call 911 and they laughed at her and said are you ready to shut the fuck up?"
7. "Hendershot kicked her while she was in the chair, in the right hip. This was after she had passed out and came to."
8. "Her friend, Angie Quinn witnessed all of this Tasing taking place."
9. "She will fax a copy of Dr. Butterfield's exam to us...of the Tasing marks on her body."<sup>116</sup>

The information provided by Morrison to Miller and Ross on Friday, April 15, 2005 raises serious questions about behaviors of deputies whose actions, if proven true, are physically abusing inmates to the point of being torturous and life threatening. Morrison's information also provided Miller and Ross straightforward investigative leads that could and should have been followed up. The seriousness of Morrison's allegations would alert a reasonable investigator that a timely and thorough investigation into the matter is warranted. Disturbingly, no such investigation occurred in this case and valuable evidence that would or should have addressed all of Morrison's concerns and provided answers to key questions was ignored.

<sup>112</sup> Miller deposition, p. 11-13; Ross deposition, p. 24-25

<sup>113</sup> Miller deposition, p. 8-9

<sup>114</sup> Miller deposition, p. 16

<sup>115</sup> Miller's Interview Summary report dated April 15, 2005

<sup>116</sup> Note that Miller stated that Morrison did in fact fax him copies of her medical records (Miller deposition, p. 34)

**Trinda Walter's interview:** In addition to Morrison, Trinda Walter was interviewed. Miller stated that he asked Ross to conduct that interview and he also asked Major Newman to sit in. Miller said that he was gone by the time Walter was interviewed and that he never heard anything about the investigation over the course of the weekend.

Ross stated that Walter told him that she heard Morrison asking for medications. Walter also heard Inman state, "That's it" before the deputies entered Morrison's cell.<sup>117</sup> Walter also said that after she heard a crackling noise [the deployment of the Taser], the "officers started laughing about this while it was going on... Tonya was yelling for them to stop and for Trinda to come help her."<sup>118</sup>

In summation, both Miller and Ross were responsible for the investigation but they were scheduled to be off for the weekend. Miller left almost immediately after Morrison arrived. Ross was also off for the weekend but remained at the department long enough to sit in on Morrison's and Walter's interviews. Ross also had photographs taken of the Taser signature marks on Morrison's body. Both Miller and Ross stated that they did not conduct any investigation into Morrison's complaint over the weekend.<sup>119</sup>

**Failure to interview additional key persons:** Other than interviews with Morrison and Walter, no interviews were conducted as part of the internal investigation into Morrison's allegations. One of the most disturbing shortcomings of the internal investigation is the failure on the part of Miller, Ross, Hoover or anyone else to interview the very officers Morrison identified as the focus of her complaint: Wilhite, Inman and Angelo. Such interviews are critical to the investigative process and must be conducted on a timely basis. Additionally, interviews should have been conducted with any other jail employee on duty that day to learn what they might have heard or seen regarding the Morrison incident. Evidence that key persons were never interviewed as part of the internal investigation comes from the Defendant officers themselves. For example

Wilhite: When asked if Colonel Hoover ever interviewed him regarding the Morrison incident, he replied, "No." When asked if any captain ever interviewed him about what happened between him and Morrison, Wilhite replied, "No."<sup>120</sup>

Inman: When asked if she was ever interviewed by Captains Miller and/or Ross, Inman replied, "No."<sup>121</sup>

Angelo: When asked if he was ever interviewed as part of an internal investigation, Angelo stated, "No."<sup>122</sup>

Miller also acknowledged that he never spoke with Wilhite, who was the principal officer identified in Morrison's complaint. For example, he stated, "...I never spoke with Deputy Wilhite about this at all."<sup>123</sup> A proper investigation should also include interviews with inmates who might have heard or seen something relative to the Morrison incident. For example, Angela Quinn, whose cell was next to Morrison's, would have been an obvious candidate for an interview regarding what she might have heard or observed. No such interview was conducted.

Interviews with these key persons are crucial in resolving the issue of whether Morrison was abused by officers while in their custody. It is unconscionable that such a fundamental investigative step was ignored. Failure on the part of Muskingum County Sheriff administrators Miller, Ross and Hoover to interview key persons that would reasonably have information about the incidents in question suggests their unwillingness to learn the truth. If Miller and Ross have a

<sup>117</sup> Ross deposition, p. 37

<sup>118</sup> Ross deposition, p. 38

<sup>119</sup> Miller deposition, p. 16; Ross deposition, p. 45-46

<sup>120</sup> Wilhite deposition, p. 152-153

<sup>121</sup> Inman deposition, p. 113

<sup>122</sup> Angelo deposition, p. 59

<sup>123</sup> Miller deposition, p. 25

reasonable grasp of proper investigative steps, their failure to conduct these steps during the course of the weekend following Morrison's complaint demonstrates apathy and indifference toward learning the truth.

**The Taser downloads:** Hoover stated that he relied on a download of Wilhite's Taser in making his decision to terminate the investigation of Morrison's allegations. The record shows that the Muskingum County Sheriff's Office employs two Taser instructors: Lieutenants Randy Wilson and Wayne Dumolt. Not only do Wilson and Dumolt instruct officers in Taser use but Wilson stated that he conducts downloads of Tasers when they have been deployed. Wilson stated, that only he and Dumolt are trained to do downloads at the Muskingum Sheriff's Office...<sup>124</sup>

Regarding his duties, Wilson stated, "If there's been an actual deployment of the unit, then I will contact that officer and do a download on his unit...just for recordkeeping."<sup>125</sup> Wilson said information provided with downloads of the M-26 include, the day, date and time of deployment and with the X-26 you also get the length of cycle, temperatures and Celsius of the unit. Once the downloads are complete, Wilson stated that he attaches a copy of it to a copy of the Taser use report and retains the original. The report then goes to records.<sup>126</sup>

The significance of information contained in the Taser downloads is also questionable because it is difficult to decipher. Taser Instructor Dumolt even questioned the Taser download and was unsure whether it was for a model M-26. Referring to the download, Dumolt stated, "I have no idea what that means."<sup>127</sup> It is this expert's opinion that if a Taser instructor is unsure what a download means, then it could be argued that Hoover would not have an easier time doing the same. Yet Hoover stated that he relied on the download to make his decision about Morrison's investigation.

What is significant, however, is that the only download Hoover considered was from Wilhite's Taser. Disturbingly, it is also known that Angelo had a Taser and Inman had access to one. But nowhere does the record show that their Tasers were downloaded – only Wilhite's. It is this expert's opinion that it is conceivable that either Wilhite could have used a Taser that was not issued to him or Angelo or Inman also Tasered Morrison. Of course, this is not known with certainty because a thorough investigation was not conducted in this case nor was proper consideration given to all available evidence.

In summary, what is known regarding the Taser downloads is that Hoover obtained the download over the weekend following Morrison's complaint. While Hoover stated that he considered the downloads in his decision, it is unlikely that he was able to decipher them properly. This is because statements made by departmental Taser instructors who themselves were baffled by the downloads and were unable to understand them.

**Photos of Morrison's burn (signature) marks:** The record shows that photographs were taken of marks on Morrison's body after she was removed from the restraint chair. Sergeant Hittle, Captain Ross and Clerk Cindy Blakely were involved in the photographing process. Angela Quinn stated that Morrison requested that officers take photos of her. Quinn said, "and they wouldn't take more than one or two pictures because they wanted more."<sup>128</sup> Hittle stated that before Morrison was placed in Quinn's cell, he photographed while being assisted by a female deputy. He said Morrison was standing outside the cell when the photos were taken and that it was policy to photograph Taser marks after a Taser. Hittle stated that he did not recall whether anyone else photographed Morrison.

<sup>124</sup> Wilson deposition, p. 16; Dumolt deposition, p. 41

<sup>125</sup> Wilson deposition, p. 16

<sup>126</sup> Wilson deposition, p. 16; 18

<sup>127</sup> Dumolt deposition, p. 47-49

<sup>128</sup> Quinn deposition, p. 49

<sup>129</sup> Hittle deposition, p. 51-52; Hittle narrative report dated 4/11/05

Ross stated that he requested that Cindy Blaney take photos of marks close to Morrison's buttocks area.<sup>130</sup> Blaney, however, stated that she didn't recognize photos shown to her during her deposition.<sup>131</sup>

The photographing of markings on Morrison's body was an appropriate investigative step because they essentially speak for themselves. In this case, the marks photographed on Morrison's body are consistent with Morrison's claims of abuse. It is of concern, however, that little if any investigative action was done with them. For example, Ross never showed the photos to Miller, his co-investigator. Miller stated that he never saw the photographs, even though he and Ross were ostensibly assigned to Morrison's investigation.<sup>132</sup> He said, "I never did get to see four photographs of Tonya's side and back which were taken on the night of her arrest... I don't recall that I was aware that there were photographs."<sup>133</sup> Miller also stated, however, that if given the opportunity he would have looked at the photos to see if they were consistent with Morrison's story because the deputy said he only shocked her once, but the photos showed more than one Taser mark. This would raise other investigative issues.<sup>134</sup>

Furthermore, Ross never discussed or showed photos of the burn marks to Lieutenant Randy Wilson to get an opinion as to whether they were signature marks that could have resulted from a Taser. The record shows that this would have been a viable investigative step because Wilson stated that he had experience in the observation of Taser marks. For example Wilson stated, "I am familiar with those signature marks, I have seen signature marks caused by use of a Taser in the drive stun mode."<sup>135</sup>

**Failure to evaluate Morrison's burn marks:** Ross stated that he used a ruler to measure the distance between the marks to see if they matched the prongs. But he further stated, "I never spoke with anyone to determine whether those measurements were consistent with marks left from a Taser, and I still do not know one way or another whether that distance is consistent."<sup>136</sup> The concern here is that Ross evidently recognized the burn marks on Morrison's body as evidence of possible abuse and at the very least evidence that could provide an investigative lead on which to follow up. But even after identifying precisely what needed to be done, Ross ignored this evidence and never followed through to make the critical determination of whether the marks matched Taser prongs. Ignoring critical evidence in this fashion at the very least demonstrates Ross's indifference to determining the truth about Morrison's complaint and at the worst is consistent with an effort to conceal the truth about what occurred on the night of Morrison's arrest.

**Officer narrative reports:** The review of officer narrative reports is a key investigative resource in this investigation. Neither Miller nor Ross took time to review narrative reports prepared by Wilhite, Inman, Angelo or Whiteman. Ross stated that he never spoke with Wilhite... and, "I do not recall ever reviewing narrative reports of any of the deputies that were involved in this incident."<sup>137</sup>

The record is clear regarding investigative value of the narrative reports. For example, Wilhite stated that he Tasered Morrison in the lower part of her back.<sup>138</sup> If Ross would have read Wilhite's report, he would have known that the marks observed on Morrison's buttocks were consistent with her Wilhite's claim that he Tasered her on her "lower back." However, the rib cage marks are clear evidence that at least one additional Taserings occurred other than the one occurring on Morrison's cell. This discovery is a significant "red flag" that should have been an indicator to Ross that either Wilhite was being untruthful or failing to be forthcoming with his actual role in Taserings Morrison. Because of the inconsistencies between Wilhite's account of what happened and the physical

<sup>130</sup> Ross deposition, p. 28; Blaney deposition, p. 7

<sup>131</sup> Blaney deposition, p. 11-12

<sup>132</sup> Miller deposition, p. 30-32

<sup>133</sup> Miller deposition, p. 33-34

<sup>134</sup> Miller deposition, p. 32-33

<sup>135</sup> Wilson deposition, p. 23

<sup>136</sup> Ross deposition, p. 26-27

<sup>137</sup> Ross deposition, p. 50

<sup>138</sup> Wilhite deposition, p. 129-130

evidence, at the very least the investigation should have continued to resolve the issue of how many times and under what circumstances Morrison was Tasered.

The failure of Ross to notice, or his willingness to ignore the inconsistencies between Wilhite's account of where he Tasered Morrison and where the marks were on her body, accompanied by Ross's failure to follow up to see if the burn marks could have been made by a Taser is an outrageous investigative shortcoming. Given the implications that an officer (Wilhite) might be untruthful about his use of force, a reasonable officer would have completed this aspect of the investigation.

***Hoover's termination of the Morrison investigation:*** On Monday morning, April 18<sup>th</sup>, 2005, sometime between 7:00 and 8:00 a.m., Colonel Hoover advised Miller and Ross that the Morrison investigation was ended. This was only three days after Morrison filed her complaint. Documentation of Hoover's decision is contained in Miller's supplemental report dated April 18, 2005 that stated,

"On this date, I was advised by Colonel Hoover to end the investigation, as this was a false allegation by Tonya Morrison, based on her statements of the number of Tasings versus the download record of the Taser that is issued to Dep. Wilhite."<sup>139</sup>

Nowhere does the record show that Miller or Ross, in spite of their knowledge of additional evidence that might support Morrison's claims, attempted to convince Hoover that further investigation was needed. Furthermore, nowhere in the record does it show that either Miller or Ross considered that Wilhite could have used a Taser other than the one "issued" to him. Worse yet, Miller was told that Wilhite or Hendershot Tasered Morrison, but there is no evidence that Hendershot's Taser was ever downloaded. Given Morrison's detailed account of what occurred, at the very least Miller, Ross and Hoover should have known that numerous officers were possibly involved and that a Taser possessed by any one or each of them could have been used against Morrison. For example, it is known that both Wilhite and Angelo had a Taser and that Inman had access to one. The extent that other deputies working in the jail had Tasers or access to them is unclear. In spite of these uncertainties, only Wilhite's Taser information was downloaded.

Furthermore, it is unclear to this expert the extent that the Taser downloads clarify any use of a Taser on Morrison. In fact, departmental Taser instructor Dumolt stated that the download shown to him didn't appear to be an M-26 download. Yet, Hoover made it clear that he relied on this download when no one else could understand what it meant.

A reasonable investigator would question the integrity of this evidence and the propriety of Hoover's decision to end the investigation. This expert concludes that from an investigative standpoint, given the advanced ranks of Miller, Ross and Hoover, this information was or should have been known. Failure to investigate these issues is evidence of and consistent with a conscious effort to ignore Morrison's complaint and to shield officers from being held accountable for their actions.

A related concern is Hoover's statement that a "complete investigation" was conducted by Miller and Ross. Based on available materials, it was not. Hoover also stated that Miller and Ross were reporting to him regarding the progress of the investigation. His statement regarding exactly what Miller and Ross did during the course of their investigation is vague at best. This expert disagrees that a complete investigation was conducted and sees no evidence that Miller and Ross did anything of an investigative nature over the course of the weekend. For example, (1) both Miller and Ross left for the weekend almost immediately after Morrison arrived on Friday to file her report and; (2) both Miller and Ross stated that they conducted no investigation over the weekend and; (3) on Monday morning before 8:00 a.m., they both were informed by Hoover that the investigation was terminated.

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<sup>139</sup> Miller's supplemental report dated April 18, 2005; Case #IA05-38



Under these circumstances, there would have been insufficient time for them to conduct a proper and thorough investigation. For example, when asked what the captains did in their investigation Hoover stated, “they interviewed Trinda, interviewed Tonya, took the reports and Taser download...the investigation to that point could not corroborate six Taser uses on Tonya Morrison.”<sup>140</sup>

But this statement is consistent with Miller and Ross’ account. Both captains stated that Tonya and Trinda were interviewed, but also stated that they didn’t review Wilhite’s or any other officer’s narrative reports nor were they provided a Taser download to review. For example, Miller stated that Hoover never showed him a Taser printout in this case. Rather, he just said the printouts didn’t match Morrison’s accusation that she had been Tasered six times.<sup>141</sup> Ross stated, “...I do not recall ever reviewing narrative reports of any of the deputies that were involved in this incident.”<sup>142</sup>

It is also a concern that Hoover stated that Miller and Ross turned reports over to him and discussed with him the outcome of the investigation.<sup>143</sup> He also stated that he terminated the investigation after receiving information from one or both of the captains.<sup>144</sup> In fact, statements provided by Miller and Ross fail to substantiate this. For example, Miller stated, “I did not give him [Hoover] anything in writing that Monday morning.”<sup>145</sup> Based on statements by Miller and Ross, other than initial interviews with Morrison and Walter and photographs taken of marks on Morrison’s body, Miller and Ross no additional investigation into Morrison’s complaint because they were both off duty over the course of the weekend. As such, there was nothing to report to Hoover when they returned to work on Monday. Rather, Hoover notified them that the investigation was over and both Miller and Ross made it clear that they followed Hoover’s command and abandoned their investigation. For example, Miller stated, “He didn’t give me any details. I didn’t inquire.”<sup>146</sup>

There is evidence, however, that should Miller and Ross have been permitted to continue their investigation, appropriate investigative steps would have been taken. For example, Miller stated that if he had not been told to discontinue the investigation, he would have (1) obtained the printouts, (2) tried to identify additional witnesses; (3) looked at the Taser use form...to gather information (4) read through any other statements or narrative reports, and; (5) identify any other eye or hear witnesses to see what they had to say...and talk with any other deputies who were witnesses to the event...and eventually come to a conclusion about the event.<sup>147</sup> Miller stated, “That would be the normal procedure in any case”<sup>148</sup>

In summary, if one is to assume that Hoover was only aware of the one Taser by Wilhite occurring in Morrison’s cell, even it was unjustified and unreasonable, based on Wilhite’s own account. Hoover knew or should have known this. Failure on the part of sheriff administrators to conduct a proper and thorough investigation is indicative of their indifference to Tonya Morrison’s well-being and disregard for ongoing misconduct and improper practices within the department.

- **OPINION #4:** *It is this expert’s opinion, stated within a reasonable degree of professional certainty, that the investigation into Morrison’s complaint of physical abuse was not properly or thoroughly conducted and that evidence readily available to Ross, Miller and Hoover was ignored. Failure to properly investigate Morrison’s allegations, by even conducting the most basic of investigative steps is a gross departure from nationally recognized investigative*

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<sup>140</sup> Hoover deposition, p. 108

<sup>141</sup> Miller deposition, p. 24

<sup>142</sup> Ross deposition, p. 50

<sup>143</sup> Hoover deposition, p. 70

<sup>144</sup> Hoover deposition, p. 70-71

<sup>145</sup> Miller deposition, p. 19

<sup>146</sup> Miller deposition, p. 24

<sup>147</sup> Miller deposition, p. 23

<sup>148</sup> Miller deposition, p. 22-23

*protocols and caused persons responsible for excessive force against Morrison to go unaddressed.*

**D. TOP-LEVEL ADMINISTRATORS WERE AWARE OF BUT IGNORED WIDESPREAD AND SYSTEMIC ABUSES OF THE TASER THROUGHOUT THE MUSKINGUM COUNTY SHERIFF'S DEPARTMENT.**

This case involves allegations of Wilhite and possibly other deputies using or threatening the use of the Taser against Morrison. Use or threats of use occurred on multiple occasions, while absent any threat of violence by Morrison. It is therefore instructive to consider the extent to which officers of the Muskingum Sheriff's Office have a history of using the Taser against other inmates or arrestees whose behavior was not violent or potentially violent and thus failed to meet criteria identified in nationally recognized standards and guidelines.

The concern is that Wilhite's and possibly Inman's use of the Taser on Morrison is an indicator of a greater, systemic practice or custom whereby the Taser is used indiscriminately and punitively against persons who are not posing any threat to officers or anyone else. In fact, there is evidence in this case that the misuse of the Taser and use of force practices within the Muskingum County Sheriff's Office are widespread throughout the rank and file of the department. Furthermore, there is disturbing evidence that supervisory personnel, commanders and administrative policy makers within the department are aware of and even contribute to such practices.

This expert's review of the record has revealed numerous instances of Taser abuse and inappropriate use of force that supports this concern. Specifically, there is evidence that over a period of years for which records were provided, officers within the Muskingum County Sheriff's Office used the Taser against persons who were confined in holding cells and whose actions and behaviors were not posing a threat to the officers or anyone else at the time they were Tasered. In many cases, subjects were merely yelling from their cells or had simply been uncooperative by refusing to follow an officer's directives. Officers report that in some cases where persons were only yelling, and sometimes pounding on the doors and walls of their cells, their behaviors were characterized by officers as "fighting" or being "combative." This expert argues that there is a distinction between one who is being loud and uncooperative and one who is fighting or combative. A reasonable officer would consider a fighting or combative person as posing a possible physical threat to officers whereby a loud or uncooperative person does not.

The use of a Taser to "control" a person who is confined in a holding cell, away from other inmates, away from officers and who is only making noise is an unreasonable use of force. Equally as improper is the use of the Taser as a so-called "come-along hold" to coerce a subject to accompany an officer or as a response to disobeying an order when no threat or aggression is exhibited by that subject. This is especially true in cases where more than one officer is present and the collective use of soft hand control techniques is an option.

Based on a review of Taser use reports, the following cases illustrate the use of the Taser against persons who are not violent or potentially violent. The reports reviewed by this expert are mere narrative reports and may lack certain details, but I am basing my observations on the words of the deputies themselves. These incidents suggest a regular and ongoing abuse of the Taser and a greater, systemic problem. The following reports constitute excessive force on their face:

Bruce Young:                      Rambling in his cell (cell 116) then became irate and was banging on the door. Deputies Fleegle, Miller and Inman entered the cell. Inman Tasered him with darts. Occurred on 5-17-05.<sup>149</sup>

Adrian Greene:                    Mentally ill – Tasered by Deputy Lecoco deployed the Taser because Greene failed to follow orders. Occurred on 6-1-05.<sup>150</sup>

<sup>149</sup> Bates: MCO\_1407

<sup>150</sup> Bates: MCO\_1434

- Nathan Ludwig: Tasered by Deputy Winters in cell 116 for banging head and kicking door  
 – Tasered for not calming down. After being Tasered in the  
 – stomach, he was placed in restraint chair “for his protection.”  
 Occurred on 7-15-05.<sup>151</sup>
- Jeremy Hankinson: Tasered by Sgt. Hittle for being uncooperative during handcuffing. Three officers present. Occurred on 9-23-05<sup>152</sup>
- Lura Lentz: Tasered five times by Deputy Knox for being unruly while handcuffed in back of cruiser, and while Lentz was running. Occurred on 9-30-05.<sup>153</sup>
- Justin Dunkle: As five officers (Lang, Weekley, Gee, Angelo and Shull) entered Dunkle’s cell, he ran in between them and was tackled to the floor. Tasered by Lang while on the floor and a second time when he refused to get up and go to the restraint chair. Occurred on 11-7-05.<sup>154</sup>
- Kenneth Fletcher: Fletcher, who claimed he was Muslim, complained that he was being served pork and threw tray to “Center Range.” Lang, Paxton, Dummel and Rice came to the floor and ordered him to clean up the mess. He left his cell he grabbed bars on the center range and held on not letting go. Fletcher was Tasered a total of 4 times. Occurred on 4-21-05.<sup>155</sup>
- John Beatley: Beatley jumped out of a car in front of Deputy Briggs and ran. Hittle responded and gave chase threatening to Taser Beatley who continued to run. Hittle deployed his Taser that struck Beatley in the back. Occurred on 9-30-06.<sup>156</sup>
- Robert Bereria: Was yelling profanities in cell 106 and hitting his door causing a disturbance. Gee, Paxton and Lang entered the cell and was Tasered by Lang on the back just below the neck. After officers left the cell Bereria yelled again – three officers entered and Paxton and Gee held him while Lang Tasered him two more times. They left and warned him that unless his behavior changed, they would keep returning and Taser him. Occurred on 2-6-07.<sup>157</sup>

The nine Taser incidents identified above show a pattern of inappropriate behavior on the part of numerous deputies of the Muskingum County Sheriff’s Office. These incidents, taken from reports generated by deputies, suggest that officers of the Muskingum County Sheriff’s Office use the Taser against persons whose levels of threat are at the most minimal levels if existent at all. They further show that the departmental use of force continuum addressing the use of Taser is ignored department-wide. In fact several departmental employees noted in these incidents are supervisors, e.g., Sergeants Hittle and Lang, and Corporal Gee.

It is also a concern that nowhere does the record show that any of these officers were disciplined, reprimanded, re-trained, demoted or terminated for their use of the Taser under non-threatening circumstances and their ignoring of department policy. This data is consistent with an institutional

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<sup>151</sup> Bates: MCO\_1447

<sup>152</sup> Bates: MCO\_1461

<sup>153</sup> Bates: MCO\_1530

<sup>154</sup> Bates: MCO\_1588

<sup>155</sup> Bates: MCO\_1753

<sup>156</sup> Bates: MCO\_1988

<sup>157</sup> Bates: MCO\_2053

and systemic pattern of abuse, pervasive throughout the rank and file of the Muskingum County Sheriff's Office.

There is also evidence that high-ranking administrators within the department were not only aware of the inappropriate use of the Taser but condoned it. For example, Captain Miller stated that in 2005 there were times when deputies would use a Taser on someone if they refused to comply with an order.<sup>158</sup> He further stated, "If [Morrison] failed to comply with that officer's commands, yes she could be Tased...to bring her into compliance with the order." Nowhere in the professional policing literature or standards of care are officers justified in using a Taser against non-violent persons who merely disobey an order.

Miller further stated that if [Morrison] recovered but was still unwilling to comply, she could be Tased a second time.<sup>159</sup> Miller's statement makes no reference to any level of threat that would cause a reasonable officer to justify his or her use of the Taser. Rather, Miller's comment suggests that officers may take the path of least resistance and deploy a 50,000-volt weapon against passive and non-violent subjects, as opposed to using other techniques such as soft hand control; pressure point techniques; or control devices such as batons used in a non-striking fashion.

Miller's statements are also disturbing because they demonstrate either his unfamiliarity with the departmental use of force continuum or the fact that he chooses to ignore it. The department use of force continuum makes it clear that electronic weapons are authorized only for "Wrestling with officer / Pushing officer." Use of the Taser against persons who do not comply with orders and who are not posing a physical threat is improper and violates national standards and departmental policy.

- **OPINION #5:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that the improper, excessive and unreasonable use of the Taser by officers employed by the Muskingum County Sheriff's was widely known by the rank and file, field supervisors, command staff and top administrators within the department. Based on available evidence in the case record, administrators within the sheriff's department were aware of but ignored these abuses of use of force in general and abuses of the Taser in specific.*

#### **E. ADMINISTRATORS WITHIN THE MUSKINGUM COUNTY SHERIFF'S OFFICE RATIFIED THE CONDUCT OF DEFENDANT OFFICERS BY FAILING TO HOLD THEM ACCOUNTABLE FOR THEIR ACTIONS.**

Ratification of misconduct, whether the misconduct as a violation of policy, procedure, training curriculum, directives, Law, or the United States Constitution, is a strong indicator of the orientation, customs, and practices of a department. Police administrators throughout our nation acknowledge that a law enforcement agency is controlled not only by the law, written and verbal directives, and training curriculum, but also by the customs of the department.

Administrators within the Muskingum Sheriff's Office demonstrated their unwillingness to address indiscretions that were clearly made by officers on duty creates a venue for continued misconduct, but it also sends a clear message to rank and file officers that such behavior is acceptable and that punishments for violations are minimal or not entirely absent.

In this case it was or should have been apparent to administrators within the sheriff's department that a proper investigation of Morrison's complaints was proper and that if her complaints were substantiated, disciplinary action against any officers involved was appropriate.

- **OPINION #6:** *It is this expert's opinion, based on a reasonable degree of professional certainty, that the failure on the part of top-level administrators within the Muskingum County*

<sup>158</sup> Miller deposition, p. 38-39

<sup>159</sup> Miller deposition, p. 38-39

*Sheriff's Office to properly address widespread abuses of force, served to ratify ongoing conducted and abuses of power within the rank and file. Failure to address these widespread and blatant abuses of office ratifies the misconduct of officers and validates future abuse of use of force.*

This concludes my report at this time.

#### **Fees and Previous Experience**

This report contains the opinions I am prepared to express at trial in this matter. My fees in this case are at the rate of \$200 per hour and an initial retainer of \$3000. I charge \$2300 per day plus expenses for depositions and any work conducted out of town.

I have testified as an expert witness on fifty-seven occasions including hearings, depositions and trials. These are listed in Appendix #2.

Respectfully submitted,

Michael D. Lyman, Ph.D.  
August 15, 2007

**APPENDIX #1 – MATERIALS REVIEWED**

1. Complaint and Jury Demand
2. Deposition: Wilhite
3. Deposition summary: Wilhite
4. Deposition: Angelo
5. Deposition summary: Angelo
6. Deposition: Inman-Fuller
7. Deposition summary: Inman
8. Deposition: Whiteman
9. Deposition summary: Whiteman
10. Deposition: Hendershot
11. Deposition summary: Hendershot
12. Deposition: Morrison
13. Deposition: Stephenson
14. Deposition summary: Stephenson
15. Deposition: Foster
16. Deposition summary: Foster
17. Deposition: Miller
18. Deposition summary: Miller
19. Deposition: Paterson
20. Deposition: Lang
21. Deposition summary: Lang
22. Deposition: Newman
23. Deposition summary: Newman
24. Deposition: Hoover
25. Deposition summary: Hoover
26. Deposition: Wilson
27. Deposition summary: Wilson
28. Deposition: Gee
29. Deposition summary: Gee
30. Deposition: Thompson
31. Deposition summary: Thompson

32. Deposition: Patterson
33. Deposition summary: Patterson
34. Deposition: Blaney
35. Deposition of Wayne Dumolt
36. Deposition summary of Wayne Dumolt
37. Deposition of Cindy Blaney
38. Deposition summary of Cindy Blaney
39. Deposition of Doug Smith
40. Deposition summary of Doug Smith
41. Deposition of Trudy Shull
42. Deposition summary of Trudy Shull
43. Deposition of Jim Paxton
44. Deposition summary of Jim Paxton
45. Deposition of Robert Vandyne
46. Deposition summary of Robert Vandyne
47. Deposition of John Winters
48. Deposition summary of John Winters
49. Deposition of Angela Quinn
50. Deposition summary of Angela Quinn
51. Deposition of Sergeant Shane Stephenson
52. Deposition summary of Sergeant Shane Stephenson
53. Deposition of Captain Mark Ross
54. Deposition summary of Captain Mark Ross
55. Deposition of Derek Terrell
56. Deposition summary of Derek Terrell
57. Deposition of George Moses
58. Deposition of Darla Donaldson
59. Deposition of Randy Donaldson
60. Deposition of Todd Ludwig
61. Deposition summary of Todd Ludwig
62. Deposition summary of Hittle
63. Stephenson's Answers to Interrogatories
64. Responses of Defendant Stephenson to First Set of Interrogatories
65. Letter to McNamara dated March 20, 2007
66. Muskingum County Sheriff's Office Policy and Procedure Manual
67. Defendant Stephenson's Answers to Interrogatories
68. Personnel Action Notice: Hendershot, dated July 6, 2006
69. Action -- Response Use of Force Continuum
70. Muskingum County Sheriff's Office miscellaneous paperwork: Inman documents: application for employment; application release form; statement of understanding: reserve deputy
71. Muskingum County Sheriff's Office miscellaneous paperwork regarding Whiteman
72. Muskingum County Sheriff's Office miscellaneous paperwork regarding Angelo
73. Jail camera placement plan: first floor
74. Jail policies
75. Muskingum County Sheriff's Office Supplementary Report: Hittle
76. Person -- Property Supplemental Report: Morrison
77. Defendant Whiteman's Answers to Plaintiffs First Interrogatories
78. Answer of Defendants
79. Responses of Defendant Stephenson to Plaintiff's First Set of Interrogatories
80. Color photocopies of photographs (10)
81. Letter to Michael Rourke from James Reardon dated August 14, 2006
82. Responses of Defendant Angelo to Plaintiffs First Set of Interrogatories
83. Correctional Officer Basic Academy Training Manual
84. Index to Morrison documents
85. Muskingum County Sheriff's Office policies

86. Miscellaneous Morrison documents: supplementary reports; narrative reports; photograph identification records; taster international paperwork; inmate interaction reports; Intoxilyzer 5000 reports; air Taser use reports; vehicle tow reports; use of force reports; general case reports; photograph identification records
87. Photos (3) of Morrison's thigh
88. Volume I: Tonya Morrison Records Produced by Defendants, Bates: 0001 -- 0189
89. Volume II: Tonya Morrison Records Produced by Defendants Bates: 0190 -- 0662
90. Volume III: Tonya Morrison Records Produced by Defendants, Bates: 0663 -- 1192
91. Volume IV: Tonya Morrison Records Produced by Defendants, Bates: 1193 -- 1380
92. Volume V: Tonya Morrison Records Produced by Defendants, Bates: 1381 -- 2066
93. Volume VI: Tonya Morrison Records Produced by Defendants, Bates: 2067 -- 2373
94. Volume VII: Tonya Morrison Records Produced by Defendants, Bates: 2374 -- 3024
95. International Association of Chiefs of Police (IACP), National Law Enforcement Policy Center: Electronic Control Weapons Concepts and Issues Paper, dated January 2005
96. International Association of Chiefs of Police (IACP), National Law Enforcement Policy Center: Electronic Control Weapons Model Policy
97. International Association of Chief's of Police (IACP), Use of Force: Model Policy, August, 2001
98. International Association of Chief's of Police (IACP), Use of Force: Concepts and Issues Paper: Originally published: February 1989; Revised: December 1995.
99. International Association of Chief's of Police (IACP), National Model Policy Center; Lockups and Holding Facilities, Concepts and Issues Paper, dated, October, 1996
100. International Association of Chief's of Police (IACP), National Model Policy Center; Investigation of Employee Misconduct, Concepts and Issues Paper, dated, July, 2001
101. Graham v. Connor, 490 U.S. 396 (1989)
102. MS CEO policy sign up sheets, MCO\_3425 -- 4372; Jail inspection records, 2003 through 2006, MCO\_4373 -- 5283; internal affairs complaint form, MCO\_5284; White House file, MCO\_5285 -- 5367; Joshua Whiteman use of force, MCO\_5368 -- 5371; Wayne Dumolt Taser and use of force file, MCO\_5372 -- 5394; Randy Wilson's file, which includes: 2005 use of force log and reports, MCO\_5395 -- 5542; 2006 use of force log and reports, MCO\_5533 -- 5661; 2007 use of force log and reports, MCO\_5705 -- 5748; February 22, 2005 training session manual, MCO\_5823 -- 5897; March 13, 2007 training/recertification session material, MCO\_5898 -- 5996; Taser inventory, MCO\_5997 -- 6006; Taser download printouts, MCO\_6007 -- 6104
103. Morrison documents from Defendants summary (stamped 1381 -- 2066) (received 3/7/07)
104. CD: policies
105. Morrison documents from Defendants summary (stamped 0663 -- 1192) (received 1/12/07)
106. Morrison documents from Defendants summary (stamped 1194 -- 1381) (received 1/29/07)
107. Morrison Taser documents from Defendants summary
108. Use of force policies in effect on date of Morrison incident summary
109. Sheriff/Jail policies -- Bates stamped pages 699 -- 1002
110. Internal investigation memo: Miller
111. Action Response Use of Force Continuum
112. Stipulation of all parties regarding portions of the expert disclosures under rule 26
113. Supplementary report regarding Morrison: by Whiteman
114. Memorandum from JDM dated September 22, 2006 Re: Documents Served by the Defendants Upon the Plaintiff on September 21, 2006
115. Computer printouts: in the MCO\_2067; MCO\_2068
116. Morrison documents from defendants summary (stamped 1381 -- 2066) (received 3/7/07)
117. Morrison documents from defendants summary: (stamped 1194 -- 1381) (received 1/29/07)
118. Defendant Stephenson's Answers to Interrogatories
119. Responsive Defendant Sheriff Robert Stevenson to Plaintiff's First Set of Interrogatories
120. Whiteman's Responses to Interrogatories and Request for Production of Documents



121. Muskingum County Sheriff's Office policy and procedure materials
122. Defendant Stephenson's Answers to Interrogatories
123. Personnel Action Notice materials
124. MCSO policy sign up sheets, MCSO\_3425 -- 4372;
125. Jail inspection records, 2003 through 2006, MCO\_4373 – 5283
126. intern's complaint form, MCO\_5284
127. Whitehouse file, MCO\_5285 – 5367
128. Second Amended Complaint and Jury Demand
129. Plaintiff's Motion for Leave to Amend Complaint
130. Plaintiff's Second Motion to Compel
131. Plaintiff's Second Motion to Compel Ex 2
132. Plaintiff's Second Motion to Compel Ex 3
133. Plaintiff's Second Motion to Compel Ex 4
134. Plaintiff's Second Motion to Compel Discovery
135. Motion to Amend 2<sup>nd</sup> Complaint
136. Stipulation Regarding Expert Witness Disclosures
137. Joshua Whiteman use of force file, MCO\_5368 – 5371
138. Wayne Dumholt Taser and use of force file, MCO\_5372 – 5394
139. Randy Wilson's file, which includes: 2005 use of force log and reports, MCO\_5395 – 5542; 2006 use of force log and reports, MCO\_5543 -- 5661; 2007 use of force log and reports, MCO\_5662 -- 5704; Taser instructors material, MCO\_nifty 705 -- 5748; February 22, 2005 training session material, MCO\_5749 -- 5822; March 12, 2005 training session material, MCO\_5823 -- 5897; March 13, 2007 training/recertification session material, MCO\_5898 -- 5996; Taser inventory, MCO\_5997 -- 6006; Taser download printouts, MCO\_6007 – 6104
140. Muskingum County Sheriff's office policy/directive review materials and CEO\_4065 – MCO\_4571
141. Miscellaneous reports; MCO\_4572 -- MCO\_5378
142. Miscellaneous reports: MCO\_5379 -- MCO\_6103

**APPENDIX #2 – EXPERT TESTIMONY**

Depositions given:

1. Frenzen, et al. vs. Grady County, et al. U.S. District Court – Western District (Case # 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 # CV-00-17-BU-CCL)  
For defense  
Forseeability  
Deposition: 3/03
3. Aiels v. City of Cedar Rapids; Havlicek; and Keiller, U.S. District Court for the Northern District of Iowa Cedar Rapids Division (Case # C01-76MJM)  
For plaintiff  
Use of force  
Deposition: 3/03
4. Ernesto Acevedo Guerra vs. Montgomery County, Maryland, et al.  
The Circuit Court for Montgomery County, Maryland  
Case # 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 # 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 # 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 # 01-CV-769; S.D. Ohio  
For plaintiff  
Use of force  
Deposition: 3/04
10. Dominic Corigliano and Andrew Corigliano v. Polk County, Iowa, Jay Evans and Jeff Funaro;  
U.S. No. 4:02-CV-20422 (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 # C20025939  
For plaintiff (State Court: Tucson)  
Forseeability / 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-1820  
For plaintiff  
Investigative procedures  
Deposition: 6/04
13. Hastings v. Barnes, et al  
(US District Court for Northern District of Oklahoma)  
Case # 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  
Deposition: 7/04
15. State of Iowa v. Jared James York  
Case #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 # 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  
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  
Deposition: 01/05
19. Deborah Golder et al v. City of Corpus Christi. Cause No. 04-771-E (US District Court: Corpus  
Christi, TX)  
For plaintiff 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  
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  
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  
Pursuits  
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 defense

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

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  
Deposition, 3/05
3. State v. Kelvin Smith (State Court: Fulton County, GA)  
For prosecution  
Use of force  
Grand Jury, 3/05

4. Humphrey v. Ronnie Leatherman, et al. Case No. 04-CV-339 (C) Tenth Circuit  
For plaintiff  
Use of force  
9/05
5. Illinois v. Aubrey D. Tucker; Lawrence County Case 05-CF-19  
For defense  
Interview and Interrogation  
Motion hearing: 1/07

Trial testimony:

1. Brooks v. Maury County et al  
1983 action: Federal Court, Columbia, Tennessee  
For plaintiff (defense verdict)  
Use of deadly force  
Trial date: 9/03
2. Aiels v. City of Cedar Rapids; Havlicek; and Keiller. U.S. District Court for the Northern District of Iowa Cedar Rapids Division (Case # C01-76MJM)  
For plaintiff (defense verdict)  
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 (prosecution verdict)  
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 (plaintiff verdict)  
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 (prosecution verdict)  
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 (plaintiff verdict)  
Arrest tactics / Investigative procedures  
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 (defense verdict)  
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 (defense verdict)
  - 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 (plaintiff verdict)
  - 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 Berkley County, WV
  - For plaintiff (defense verdict)
  - 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 (defense verdict)
  - 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 (defense verdict)
  - Forseeability / Physical security
  - Trial date: 12/06
14. State of Alaska vs. Shawn W. Rogers; Case NO. 3KN-S04-1762-CR
  - For defense (prosecution verdict)
  - Investigative practices
  - Trial date: 3/07



**APPENDIX #3 - CURRICULUM VITAE: MICHAEL D. LYMAN, PH.D.**

**CURRENT POSITION**

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

Columbia College of Missouri  
1001 Rogers St.  
Columbia, Missouri 66216  
Office (573) 875-7472

**Responsibilities:**

Departmental Liaison of the Master of Science of Criminal Justice  
Program Director of the Forensic Science degree program  
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**

**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 office 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

**Sr. Agent - The Oklahoma Bureau of Narcotics and Dangerous Drugs (state police bureau)**

4545 North Lincoln Blvd.  
 Oklahoma City, Oklahoma 73102  
 Phone (405) 521-2885  
 Position - Sr. Agent, Intelligence Division / Sr. Agent, Training and  
 Education Division

*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

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

1620 Tyler  
 Topeka, Kansas 66612  
 Phone - (913) 232-6000  
 Position -Special Agent, Intelligence and Organized Crime  
 Division (IOCD) / Special Services Division

*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.

*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

### **PUBLICATIONS**

#### **Textbooks:**

Lyman, M. D. (2008). Criminal Investigation: The Art and the Science, 5<sup>th</sup> ed. Prentice Hall: Upper Saddle River, NJ.

Lyman, M. & G. Potter (2007). Organized Crime, 4<sup>th</sup> ed. Prentice Hall: Upper Saddle River, NJ

Lyman, M. D. (2007) Practical Drug Enforcement, 3<sup>rd</sup> ed. CRC Press: Boca Raton, FL

Lyman, M. D. (2005) The Police: An Introduction, 3<sup>rd</sup> ed. Prentice Hall: Upper Saddle River, NJ.

Lyman, M. D. (2003). Drugs in Society: Causes, Concepts and Control, 4<sup>th</sup> ed. Anderson Publishing: Cincinnati, OH.

#### **Articles / Essays:**

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

Lyman, M. (2003). "Transnational Organized Crime." An essay for The Encyclopedia of Murder & Violent Crime; Eric Hickey Editor. Sage Publications: Thousand Oaks, CA.

Lyman, M. (2003). "Domestic Organized Crime." An essay for The Encyclopedia of Murder & Violent Crime. Sage Publications: Thousand Oaks, CA.

Lyman, M. (2004). "Drug Enforcement in the United States." An essay for The Encyclopedia of Law Enforcement, Sage Publications: Thousand Oaks, CA. (will be in production in mid-2004).

Lyman, M. (2004). "Undercover Operations." An essay for The Encyclopedia of Law Enforcement, Sage Publications: Thousand Oaks, CA. (will be in production in mid-2004).

### **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**

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.)

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).

Have testified in over 250 criminal trials and hearings. Have been a litigation consultant for approximately three years involved as an expert witness reviewing cases for both defense and plaintiff.

I have 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.

I have been asked to review police policies for law enforcement and make recommendations for improvements.

### **ORGANIZATIONAL AFFILIATIONS**

The International Association for the Study of Organized Crime (IASOC)  
International Association of Chief's of Police (IACP)  
Police Executive Research Forum (PERF)  
Academy of Criminal Justice Sciences (ACJS)  
American Society of Criminology (ASC)  
American Academy of Forensic Science (AAFS)  
American College of Forensic Examiners International (ACFEI)