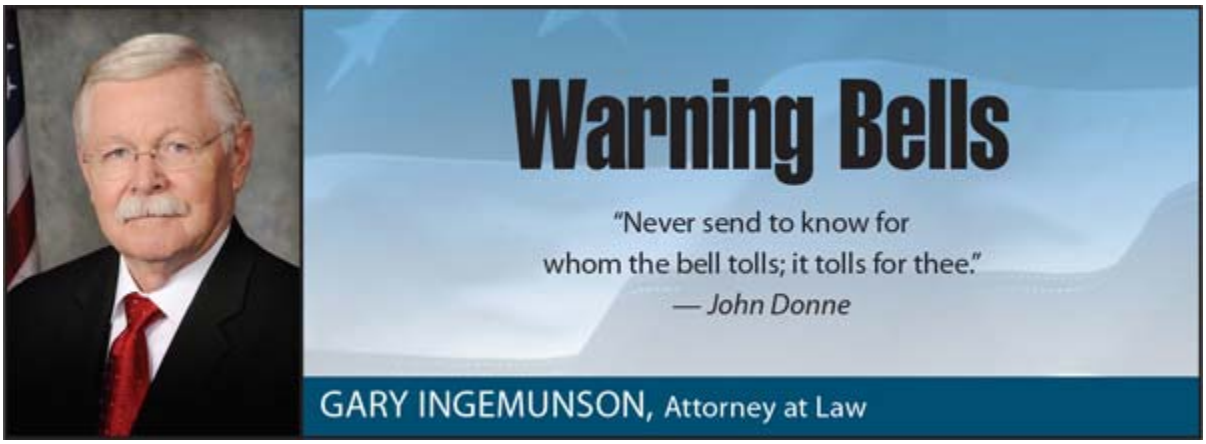

TASER tag, and you're it!

The Police Commission is becoming alarmed, and, therefore, so is the Department. TASER use is going up. No kidding, you say. Every patrol officer now must wear one on their belt. Of course, TASERs are being used more. Wasn't that the idea? Didn't Commission President Johnson mandate this in his November 2015 Vision and Goals statement? "Our training and tactics must use less than lethal options in a manner that maximizes their effectiveness and minimizes the use of deadly force," he said. A month before all patrol officers were mandated to carry TASERs on their belts. No need to request a Tom unit anymore.

It didn't take long for the TASER tag to start. Five days after the implementation of the carry order, the first officer received an Administrative Disapproval for tactics because he exited his car without the TASER and 11 seconds later got in an officer-involved shooting. Although the Chief stated that the tactics had no effect on the use of force, the Commission disagreed and Administratively Disapproved the use of force, too. Since then, the issue of the TASER has caused several to fall into the Administrative Disapproval category.

The Department is now concerned that the TASER is being used improperly all too often. Why this sudden focus on TASER use? Maybe this concern is being amplified by the increase in the number of body cameras that are now out in the field. As anyone who has used the TASER knows, it is not photogenic. The suspect is likely to scream horribly in pain, especially if several five-second bursts must be applied to gain control. It does not look good on YouTube. So now, a close review of TASER use to determine if it truly follows Department policy is happening on a regular basis.

A little history might be helpful. The Use of Force Policy was changed in 2009 and emphasized the *Graham v. Connor* standard. Shortly after that, the Department issued a directive on the TASER. This was the protocol in July of 2009.

"The TASER may be deployed on suspects who are violent or potentially violent, a potential threat to themselves or others, or are armed with weapons other than firearms when an officer believes:

- *Deadly force does not appear to be reasonable.*

- *Attempts to subdue the suspect with other tactics have been or will likely be ineffective in the situation.*
- *There is a reasonable belief that it will be unsafe for officers to approach within contact range of the suspect. Verbal threats of violence by a suspect do not alone justify the use of the TASER. Any threat must be a credible one, which the suspect has proven he or she is willing to carry out."*

A year later, on June 18, 2010, the 9th Circuit US Court of Appeals complicated the issue of TASER use. Nonlethal force, they said, is not synonymous with non-excessive use of force. "The physiological effects, the high levels of pain, and foreseeable risk of physical injury lead us to conclude that the X26 and similar devices are a greater intrusion than other nonlethal methods of force we have confronted." TASERs thus became a higher level of force than other nonlethal tools.

The case was *Bryan v. McPherson*. Officer McPherson was stationed at an intersection assigned to enforce the seat belt law. Bryan was not wearing his seat belt. Officer McPherson approached the window of Bryan's vehicle and asked him if he knew why he was being stopped. Bryan stared ahead, hit his fists on the steering wheel and yelled expletives. He was only wearing boxer shorts and tennis shoes. McPherson ordered him to turn off his radio and pull to the curb. He did so and stepped out of his car, even though McPherson testified that he told Bryan to remain in his car. Bryan stood outside the car hitting his thighs and yelling gibberish. Officer McPherson stated that Bryan took a step toward him and the officer fi red his TASER. Bryan went down, fracturing four teeth and suffering facial contusions.

The court stated that there must be a strong government interest before a TASER can be deployed. The strong government interest is that the suspect poses an immediate threat to the officer or some other person. Immediate threat was the watchword. Not the administration of pain to gain compliance when that immediate threat is not present.

Councilman and former LAPD Chief Bernard Parks immediately passed a motion from the City Council to require a City Attorney opinion to determine if the LAPD Taser protocol complied with the 9th Circuit ruling. The City Attorney analyzed the case and the policy and opined that our policy was actually more restrictive than required because it was placed at the Aggressive/Combative level of the UOF policy prior to the 2009 change in the Use of Force Policy and also required a warning.

Nevertheless, the latest TASER tactics directive (December 2015) made a *significant* change in the protocol language. It now says:

*"The TASER may be used on suspects who are violent, or who pose an **immediate threat** to themselves or others, when an officer reasonably believes:*
- *Attempts to subdue the suspect with other tactics have been, or will likely be, ineffective in the situation; or*
- *It will be unsafe for officers to approach within contact range of the suspect.*

Verbal threats of violence by a suspect do not alone justify the use of the TASER. Any threat must be a credible one." (emphasis added)

Pay specific attention to these requirements. The suspect must either be currently violent, or pose an *immediate* threat to themselves or others before the rest of the protocol can even be considered. That threshold not being met, according to the Department, is where officers are failing. Think about this. In the eyes of the law (and Department policy), a nearly naked man in boxer shorts and tennis shoes, screaming gibberish and beating his thighs with his fist, does not constitute an immediate threat to himself or others even when he takes a step toward the officer.

You can think that this is as crazy as I do, but that will not change the ruling that your use of the TASER was out of policy, constituting Administrative Disapproval if the Police Commission, or Department, believes the suspect was not violent or an immediate threat. And no court is likely to overturn that determination.

There are other aspects of the TASER protocol that must be followed. Be sure to read the December 2015 Use of Force–Tactics Directive No. 4.4, Electronic Control Device TASER. For instance, the requirement for a warning, the different modes, optimal range, medical treatment requirements, reporting requirements, data download requirements and definitions. There are many ways to be administratively bitten by not knowing this document.

As has been stated before, articulation is crucial. If you fire the TASER, have the protocol handy and detail every element that made you think that the suspect was violent or an immediate threat. After the Use of Force Board, it is too late. Prepare in advance for that FID interview or Non-Cat Use of Force interview. The career you save may be your own.

In 2015 (the last year of completed adjudications), 57 percent of non-hit shootings were determined to be Administratively Disapproved, and 34 percent of hit shootings were Administratively Disapproved on tactics. Percentages that high mean that officers are not being properly trained, or they do not know what actions can result in Administrative Disapproval findings. To help you understand how the Police Commission, and Department, think when they rule a use of force Administratively Disapproved, I will be posting an analysis of the facts used by the Commission on each use of force to constitute an AD so that you will at least know why they are upset. Whether you agree or not, you need to know the parameters of their thinking and rationales. Knowledge will help you avoid similar problems, or at least, be better at your articulation in use of force interviews. Go to www.warningbells.com.

Be legally careful out there.

Links to various things in this article are at www.warningbells.com.