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Criminal Law Bulletin**“Don't tase me, bro”: Civil Liabilities for Use of ECDs by Jail and Prison Officers****Vidisha Barua Worley[*]****Abstract**

This article explores jail and prison officers' civil liability under [Title 42 U.S. Code Section 1983](#) with respect to the use of electronic control devices (ECDs) or conducted energy devices (CEDs). After articulating the U.S. Supreme Court's precedents on prison officers' liabilities, this paper examines lower federal court opinions decided by the U.S. District Courts and the U.S. Courts of Appeals involving taser and stun gun use. The article concludes that there should be increased policy development and training to limit civil liability against individual prison and jail officers, their supervisors, correctional facilities, and municipalities.

Introduction

Electronic control devices (ECDs) or conducted energy devices (CEDs) like tasers and stun guns are used by the prison personnel as non-lethal weapons to control inmates. These weapons discharge an electric shock of 50,000 volts and are designed to freeze and immobilize the target. However, according to Williams,^[1] although both the M26 and the X26 tasers have 50,000 peak open circuit voltage at the main capacitor that makes it possible for a spark to go through a gap between clothing and a person's body, the weapons do not actually deliver 50,000 volts into a person's body. In any case, the object of tasers and stun guns is not to cause permanent injury or death.^[2] They have been found to be a contributory factor in the death of persons “when employed improperly or under certain instances”^[3] or with persons with existing health problems.^[4] Taser, an acronym for Thomas A. Swift Electric Rifle, originally appeared as a science fiction hero in 1911.^[5] It was developed by Jack Cover, an aerospace engineer, in the 1960s, as an alternative to the handgun.^[6]

This article explores jail and prison officers' civil liability under [Title 42 U.S. Code Section 1983](#) with respect to the use of tasers and stun guns. After articulating the U.S. Supreme Court's precedent, this paper examines lower federal court opinions decided by the U.S. District Courts and the U.S. Courts of Appeals. The article concludes that there should be increased policy development and training to limit civil liability against individual prison and jail officers, their supervisors, correctional facilities, and municipalities.

Literature Review

Civil liabilities of correctional officers under [Section 1983](#) for excessive use of force are governed by the Eighth Amendment's Cruel and Unusual Punishment Clause. The Eighth Amendment states that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments imposed. The Warren Court decision in *Trop v. Dulles*[\[7\]](#) provided the touchstone for the Cruel and Unusual Punishment Clause of the Eighth Amendment. The *Trop* decision required that the Eighth Amendment must draw its meaning from the “evolving standards of decency that mark the progress of a maturing society.”[\[8\]](#)

According to Smith, a majority of justices during the Rehnquist Court era followed this test, “as evidenced by the reasoning presented to justify the 2005 prohibition on the application of the death penalty to offenders who commit their capital crimes while younger than 18.”[\[9\]](#) The Burger Court in *Estelle v. Gamble*[\[10\]](#) recognized the Eighth Amendment right of prisoners to be protected against correctional officers' “deliberate indifference” to their serious medical needs. In *Wilson v. Seiter*,[\[11\]](#) Justice Scalia applied the *Estelle* standard of “deliberate indifference” to all conditions of confinement cases. Feeley and Rubin observed, “It is conceivable that the case could preclude most conditions of confinement suits”[\[12\]](#) Smith reiterated, “Ultimately, the new standard appeared to make it significantly more difficult to prove Eighth Amendment violations in conditions of confinement cases.”[\[13\]](#) Drawing from the Second Circuit decision in *Johnson v. Glick*,[\[14\]](#) the Burger Court also laid the subjective “malicious and sadistic intent” test for excessive use of force cases against prison officials.[\[15\]](#) The Rehnquist Court extended this standard in *Hudson v. McMillian*[\[16\]](#) to include non-serious injuries suffered.

In *Whitley v. Albers*,[\[17\]](#) the U.S. Supreme Court held that for an Eighth Amendment violation, pain must be inflicted wantonly and unnecessarily. Any infliction of pain that results from a good-faith effort at maintaining prison security does not result in a constitutional violation under [Section 1983](#) unless the force was used maliciously and sadistically to cause harm. This case relates to the use of deadly force in prisons. As such, shooting a prisoner while quelling a riot, without a prior verbal warning, did not violate the prisoner's right to be free from cruel and unusual punishment. The Court observed that in a situation that causes significant risks to the safety of inmates, the question whether security measures taken by officials is wanton and unnecessary infliction of pain will depend on “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.”[\[18\]](#)

The Court further noted that for an ultimate determination for the need of force several factors are to be taken into account: (a) “the need for the application of force, (b) the relationship between the need and the amount of force that was used, [and] (c) the extent of injury inflicted,”[\[19\]](#) (d) “the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them, and (e) any efforts made to temper the severity of a forceful response.”[\[20\]](#) The Court also observed that the Eighth Amendment serves as the primary source of substantive protection to convicted prisoners where the deliberate use of force is challenged as excessive and unjustified.

In *Hudson v. McMillian*,[\[21\]](#) the U.S. Supreme Court held that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even though the prisoner does not suffer serious injury. This case related to the use of non-deadly force in prisons, but the Court applied the rule laid down in *Whitley*. In this case,

a prisoner brought a [Section 1983](#) action for cruel and unusual punishment because of a beating he received from state correctional officers. *Hudson*, a Louisiana prison inmate, testified that he suffered from minor bruises, facial swelling, loosened teeth, and a cracked dental plate when he was beaten up by two guards while he was handcuffed and shackled following an argument. The supervisor on duty watched the beating and merely told the officers “not to have too much fun.”[[22](#)] The issue before the Court was whether excessive use of force against prisoners can constitute cruel and unusual punishment if the prisoner does not suffer serious injury. One of the factors for an Eighth Amendment violation under *Whitley* is the extent of the injury. Addressing the extent of injury factor, the Court observed:

In the excessive force context, society's expectations are different. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated This is true whether or not significant injury is evident. Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury. Such a result would have been as unacceptable to the drafters of the Eighth Amendment as it is today.[[23](#)]

However, “not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights.”[[24](#)] The Court clarified that the Eighth Amendment's prohibition of cruel and unusual punishments excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort “repugnant to the conscience of mankind.”[[25](#)] The Court found that Hudson's injuries were in no way *de minimis* and as such, were entitled to a [Section 1983](#) claim.

Another Eighth Amendment case relating to serious medical needs of inmates is *Estelle v. Gamble*. [[26](#)] This case is often applied in taser and stun gun related cases for prison authorities' not attending to burns caused by these electronic devices. In the original case, Gamble, an inmate of the Texas Department of Corrections was injured during a work assignment. He filed a [Section 1983](#) action complaining about the treatment he received after the injury, alleging that he was subjected to cruel and unusual punishment under the Eighth Amendment made applicable to the states by the Fourteenth Amendment.[[27](#)] The U.S. Supreme Court concluded that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” as proscribed by the Eighth Amendment.[[28](#)] The Court further stated that this standard is applicable whether the indifference is shown by prison doctors in their response to the prisoner's needs[[29](#)] or by prison guards in deliberately denying or delaying access to medical care[[30](#)] or intentionally interfering with the treatment.[[31](#)] The Court pointed out that only such treatment that offends the “evolving standards of decency” will be considered as a violation of constitutional rights and not medical malpractice cases just because the patient is a prisoner.[[32](#)]

This decision was followed by *Wilson v. Seiter*, [[33](#)] in which the U.S. Supreme Court held that prisoners claiming that conditions of confinement constituted cruel and unusual punishment under the Eighth Amendment were required to show deliberate indifference on the part of prison officials. In this case, *Wilson*, a felon, alleged that overcrowding, excessive noise, insufficient locker storage space, inadequate heating and cooling, improper ventilation, unclean and inadequate restrooms, unsanitary dining facilities and food preparation, and housing with mentally and physically ill inmates constituted cruel and unusual punishment. The Court held that the “deliberate indifference” standard established in *Estelle v. Gamble* [[34](#)] for failure to attend to medical needs will also apply to conditions of confinement cases of prisoners whether they are in combination with medical needs cases or stand alone.

In summary, excessive force claims of prisoners are governed by two major cases, *Whitley v. Albers*[35] and *Hudson v. McMillian*.[36] The basic principle established by these cases is that there should be no wanton and unnecessary infliction of pain. This is judged by whether there is a good-faith effort to maintain and restore order by the prison officials or whether force was used maliciously and sadistically to cause harm. There are five factors that are to be taken into account to determine whether the force used was unnecessary or wanton: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of injury inflicted; the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them; and any efforts made to temper the severity of a forceful response. Expanding on the extent of the injury for an Eighth Amendment violation, the Court held that the injury could be non serious but must be more than *de minimis*, unless it is of a sort that is “repugnant to the conscience of mankind.”[37]

Methodology

Advanced searches were conducted using the terms “prison!” “jail!” “[Section 1983](#),” “tasers,” “stun guns!” and “tazers” among all federal cases in the electronic databases of Westlaw Campus(tm) and LexisNexis®. Each case obtained in this manner was carefully examined to check for overlapping among the searches. A search using all the terms among U.S. Supreme Court cases returned zero cases. Overall 30 cases met the requirements for this study. All cases analyzed were decided either by the U.S. District Courts or U.S. Circuit Courts of Appeals. The correctional cases dealing with excessive force claims followed the “wanton,” “malicious and sadistic” and “related to legitimate penological interests” standards established by the U.S. Supreme Court. The lower courts mostly cited the U.S. Supreme Court cases of *Whitley v. Albers*[38] and *Hudson v. McMillian*[39] to decide prison and jail officer liability for the use of tasers and stun guns.

Cases obtained from the computerized research for prison/jail personnel were broadly divided into two categories of “prison/jail officers did not prevail at this stage of the proceedings” and “prison/jail officers prevailed at this stage of the proceedings.”

Federal Court Cases on Use of Tasers and Stun Guns Pursuant to [Section 1983](#)

Cases where prison and jail officials did not prevail at this stage of the proceedings

Courts have found prison officials to be liable where the force used by them amounted to wanton and unnecessary infliction of pain. Where the force was used in a good-faith effort to restore order in the prison and not used maliciously and sadistically to cause harm, the courts found the force reasonable. Also, where the injury suffered was only *de minimis*, the courts were reluctant to find the prison and jail officials liable.

Excessive use of force, the “malicious and sadistic,” and the “de minimis injury” standards

A plaintiff's right to be free from excessive use of force under the Eighth Amendment is clearly established law. In *Jesudaughter v. Colorado Mental Health Institute at Pueblo*,[40] the plaintiff, a mentally ill person, filed a [Section 1983](#) action for excessive use of force and denial of appropriate medical care in violation of the Eighth Amendment against Colorado Department of Corrections employees. While in the facility, Officer Scoleri and other male guards, for no good reason, applied a stun gun to her face. On another occasion Officer Scoleri applied a stun gun to her thigh. On both occasions she was not treated for the burns caused by the stun gun. The plaintiff alleged that on both occasions the force used was neither necessary nor objectively reasonable.

The U.S. District Court for the District of Colorado cited *Whitley v. Albers*^[41] and *Hudson v. McMillian*,^[42] noting that the language of the Eighth Amendment indicates “an intention to limit the power of those entrusted with the criminal law function of government.”^[43] The court further pointed out that the Eighth Amendment prohibits the use of force to maliciously and sadistically cause harm. The district court found the plaintiff's allegations sufficient to state a claim for excessive force in violation of the Eighth Amendment. Further, the court observed that the plaintiff's right to be free from excessive force was clearly established at the time of the alleged attacks by the defendants. Accordingly, the defendants' motion to dismiss the complaint was denied by the court.

Compelling an inmate to sweep his cell by using a stun gun is yet another instance of cruel and unusual punishment. In *Hickey v. Reeder*,^[44] Hickey was in a jail awaiting his transfer to a state penitentiary. One of the jail officers ordered him to sweep his cell but he refused, saying he did not need to listen to him as he had been sentenced to the Arkansas Department of Corrections. Several officers tried to persuade Hickey to sweep his cell but to no avail. Later, one of the officers threatened to use a stun gun on him. But Hickey was undeterred. Thereafter, an officer applied the stun gun to Hickey. After recovering from the shock, Hickey swept the floor of his cell. Hickey filed a [Section 1983](#) action for excessive use of force against the prison officers for using the stun gun on him to compel him to sweep his cell. The district court found that the jailers used force in a good-faith effort to maintain discipline.

Hickey appealed, arguing that the use of stun gun was a grossly disproportionate response to his misconduct, was not used to maintain discipline, but to punish him for being troublesome and to set an example. The U.S. Court of Appeals for the Eighth Circuit held that injury by stun guns that left no marks was precisely the kind of torment that the Supreme Court was concerned with in *Hudson v. McMillian*,^[45] which if inflicted without legitimate reason supports an Eighth Amendment violation. Drawing from the facts of the case, the Eighth Circuit concluded that the stun gun was used on Hickey to cause him enough pain so that he complied with the order to sweep the cell and to make an example out of him. The court observed that the defendants' contention that the stun gun was used on Hickey for fear that he might get violent was simply not sustainable. Even though sweeping the cell is a legitimate prison regulation, and physical force can be applied for non-compliance with legitimate rules, the court observed that this does not necessarily mean that summary physical force should be applied for non-compliance with all legitimate rules. Accordingly, the court found as a matter of law that “the use of a stun gun to enforce the order to sweep was both an exaggerated response to Hickey's misconduct and a summary corporal punishment that violated Hickey's Eighth Amendment right to be free of cruel and unusual punishment.”^[46]

In a case similar to *Hickey*, prison officers used a taser on an inmate four times to make him comply with their orders when he refused to pick up his food tray and clean up the mess. In *Preston v. Pavlushkin*,^[47] Preston was housed in a special housing unit of the jail and was on a disciplinary diet. One afternoon, when officers delivered his food tray, he threw it in the common area of the jail and went back to his individual cell. The officers ordered him to pick up the tray and clean up the mess. When Preston refused to comply, one of the officers tasered him. After falling to the ground, Preston continued to refuse the orders. The officer then fired three more taser shots at Preston. After recovering from the fourth taser shot, Preston picked up the tray, put it on the table and went back to his cell. Preston filed a [Section 1983](#) action, claiming that his constitutional rights under the Eighth Amendment were violated.

The U.S. District Court for the District of Colorado compared this case to *Hickey v. Reeder*.^[48] The court ob-

served that the only conduct of the plaintiff was his adamant refusal to comply with the order. Along with the officers, he was the only occupant of the common area while the other inmates were in their cells. Preston did not pose any threat of physical violence. He was shocked three times by the taser while he was on the ground and already incapacitated. The court held that qualified immunity does not attach when officers use force maliciously to inflict pain, especially when an inmate presents no threat to officers. The court further observed that Preston's action may be seen as an irritation to the disciplinary diet rather than an attempt to be disruptive of the jail's discipline. Accordingly, the court denied defendants' motion for summary judgment.

Permanent injury is not required to show malicious use of stun guns by prison officers. In *Velasco v. Head*,^[49] Velasco brought a [Section 1983](#) suit against prison officers for excessive use of force during intake. Velasco alleged that one of the officers stepped on the chain between the shackles around his ankles causing the shackles to cut into his legs, while another officer shocked him with a stun gun until he lost control of his body and had to be lowered to the ground to recover. The defendants deny having stepped on the shackles, saying that the stun gun was used only after Velasco refused to comply with orders to bend and cough. The U.S. District Court for the Western District of Virginia applied the *Hudson v. McMillian*,^[50] holding that the defendants are not immune from suit as a matter of law when using force without any justification; force cannot be used maliciously and sadistically to cause harm. Quoting *Whitley v. Albers*,^[51] the court observed that if the plaintiff's allegations were true, such conduct would be "repugnant to the conscience of mankind."^[52] The court also cited *Hickey v. Reeder*,^[53] which held that the use of stun gun to compel compliance with correction officers' orders to sweep a cell is a violation of an inmate's Eighth Amendment right to be free from cruel and unusual punishment. In addition, no showing of permanent injury was required to prove malicious use of force. Accordingly, the court denied the defendants' motion for summary judgment.

The use of stun guns could amount to cruel and unusual punishment even though it is not per se unconstitutional. In *Shelton v. Angelone*,^[54] prisoner, Shelton was repeatedly shocked with a stun gun during intake. Shelton contends that this assault occurred without any justification when he was in leg irons and handcuffs attached to a waist chain. Citing *Whitley v. Albers*^[55] and *Hudson v. McMillian*,^[56] the U.S. District Court for Western District of Virginia noted that to meet the subjective component in an excessive force claim, the plaintiff must show that the prison official applied force maliciously and sadistically for the purpose of causing harm. Further, the court cited *Velasco v. Head*,^[57] which held that the use of a stun gun may amount to cruel and unusual punishment without proof of permanent and serious injury. Accordingly, the court found the evidence sufficient to deny the defendants' motion for summary judgment.

Retaliation by prison officers for inmates' exercise of constitutionally protected rights is itself a violation of constitutional rights under [Section 1983](#). In *Bronson v. Stanish*,^[58] prison officers used excessive force in taking Bronson out of his cell and placing him in a Psychiatric Observation Room because Bronson had filed lawsuits against prison officers. Bronson alleged that the prison officers sprayed him with mace, kicked him, and attacked him with an electric shield and a stun gun. Citing *Hudson v. McMillian*,^[59] the U.S. District Court for the Middle District of Pennsylvania observed that the "wanton and unnecessary" use of force on a prisoner violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.^[60] Further, discussing *Hudson v. McMillian*, the court observed that the plaintiff is not required to prove that he sustained significant injury to show excessive use of force. Examining the facts and circumstances of this case, the court found that Bronson had properly stated an excessive force claim, and so, the defendants' motion to dismiss was denied.

Excessive force claims with regard to the injury to plaintiffs cannot be considered in a class action as these cases are analyzed on a case-by-case basis to see whether the force used was commensurate with the force needed under the circumstances. However, plaintiffs' excessive force claim with regard to defendants' use of stun guns is suitable for class action. In *Jones 'El v. Berge*,^[61] the plaintiffs, confined at a supermax correctional institution in Wisconsin, filed a class action against the prison officers for using stun guns and stun shields on mentally ill inmates. The plaintiffs provided instances of several occasions when mentally ill inmates had been shocked with stun guns and stun shields. On one occasion, a guard used the stun gun on a mentally ill inmate 10 to 15 times for not complying with orders. Later, a nurse refused to provide treatment for the injuries suffered from the shocks. The U.S. District Court for the Western District of Wisconsin accepted the case as a class action because the defendants' use of stun guns affected the class as a whole. Accordingly, the [Section 1983](#) action against the defendants to examine whether the use of stun guns constituted excessive force under any circumstances was examined. The court held that the plaintiffs alleged that the guards regularly controlled the inmates by using electroshock devices rather than utilizing less harmful ways. The court found that the plaintiffs had alleged sufficient facts regarding the use of Ultron II and the stun shield, both electroshock devices, to state a claim against the prison officers. Accordingly, the court granted the plaintiffs' motion for class certification for excessive force by use of stun guns and stun shields.

All post-conviction excessive use of force claims are examined under the Eighth Amendment's Cruel and Unusual Punishment Clause. In *Higgs v. Sanford*,^[62] the plaintiff, Higgs, narrated that while he was in Christian County Jail, he was escorted down a hallway where he tripped and fell. After this, he alleged that four to five jailers dragged him down the hallway and repeatedly tasered him. Citing *Hudson v. McMillian*,^[63] the U.S. District Court for the Western District of Kentucky observed that the standard to be used in analyzing excessive force claims under the Eighth Amendment is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. Accordingly, the court allowed Higgs' complaint to proceed for further development.

In yet another case of disputed facts, *Bourgeois v. Maxwell*,^[64] an inmate claimed that he was repeatedly subjected to abuse and tasers by prison officials for the sake of fun. Initially, he went along with the games, but later they became too abrasive, and it was no longer consensual. He was tasered on several occasions on different parts of his body and once with the maximum voltage. The defendants submitted affidavits denying all charges. Since there are genuine issues of material fact in dispute, the U.S. District Court for the Western District of Louisiana refused to grant summary judgment to the defendants.

In a potential prison riot situation, prison officials are justified in using force. Yet, each case has to be examined based on its unique facts and circumstances. In *Elerson v. Jones*,^[65] inmates were not served food for 19 hours on Martin Luther King's birthday. When they were finally given sandwiches and a small bag of chips, they returned the food and one of the inmates set the trash on fire. The smoke from the fire caused breathing problems to the plaintiff, Elerson. He was also supposed to take medication with food. Feeling sick, Elerson asked for some food and medical assistance. However, the officers told him to shut up and shot him with a taser. Elerson claimed that he was tasered when he was walking away after requesting medical assistance. The defendants, however, characterized Elerson as being combative, aggressive, and verbally abusive. Prison officials said that there was potential for a possible prison riot, but Elerson maintained that he never cursed or yelled, and he followed orders. The U.S. District Court for the Western District of Arkansas observed that there was a genuine issue of material fact as to whether the defendants used

excessive force. As such, viewing the facts in the light most favorable to the plaintiff, the court denied summary judgment to the defendants.

In a suit filed under [Section 1983](#) for excessive use of force, a prisoner must show that the force was applied maliciously and sadistically, and not in a good-faith effort to restore order in the facility.^[66] In *Patterson v. Kaufman County Detention Center*,^[67] Patterson filed a [Section 1983](#) suit against two officers for excessive use of force when they in two incidents used a taser to restore order in the detention center. Seeking monetary damages, he alleged that these two incidents violated his constitutional rights. Applying *Hudson v. McMillian*,^[68] the U.S. District Court for the Northern District of Texas concluded that Patterson raised two claims for excessive use of force in violation of the Eighth Amendment.

Whitley v. Albers^[69] established that the injury suffered in the hands of prison officials must be more than *de minimis* unless it is of a sort that is repugnant to the conscience of mankind. In *Hill v. Arpaio*,^[70] Hill, a prisoner became combative when detention officers came to take him from his holding cell to court. One of the officers administered a taser shock to Hill to subdue him. Hill filed a [Section 1983](#) action against the officers based on a violation of his Fourteenth Amendment rights. The officers claimed that Hill suffered only *de minimis* injury. However, they failed to move for summary judgment on the Fourteenth Amendment claims. As such, the U.S. District Court for the District of Arizona allowed the complaint.

Cases where prison and jail officials prevailed at this stage of the proceedings

As demonstrated by U.S. Supreme Court precedents, prison and jail officials can be liable under [Section 1983](#) for excessive use of force for unnecessarily and wantonly inflicting pain or using force in an objectively unreasonable manner. Courts have found prison and jail officials not liable where force was used in a good-faith effort to maintain and restore order and discipline in prison.

Excessive use of force, the “malicious and sadistic” and the “de minimis injury” standards

As long as a prison officer's use of weapons is necessary for the security of the prison and is not a result of “obduracy and wantonness,”^[71] the officer is not liable under [Section 1983](#). In *Hunter v. Young*,^[72] Hunter was in a county detention center, had an altercation with some deputies, and was slightly injured. Soon after, Officer Young came to Hunter's cell to retrieve some dropped keys with the awareness that there has been an altercation. He instructed Hunter to sit on his bunk but he ignored the officer. Thereupon, Officer Young fired two taser shots at Hunter. Hunter filed a [Section 1983](#) suit for excessive use of force. Officer Young moved for summary judgment on qualified immunity grounds. The district court granted the motion.

Hunter appealed to the U.S. Court of Appeals for the Tenth Circuit. Applying *Whitley v. Albers*,^[73] the court observed, “whether force is constitutionally excessive depends upon the circumstances confronting the officer and the nature and amount of force applied by the officer.”^[74] In *Whitley v. Albers*,^[75] the U.S. Supreme Court held that infliction of pain in the course of prison security measures is not a violation of the Eighth Amendment. Liability arises only when deadly force is used with “obduracy and wantonness.” Further, applying *Graham v. Connor*,^[76] the court opined that “Hunter has not demonstrated that use of the taser was objectively unreasonable and therefore violated his constitutional right under the Eighth Amendment.”^[77] As such, Officer Young was found to be shielded by qualified immunity.

If prison officers are not malicious and sadistic, they are not liable for trying to maintain discipline and order in

prison. In *Valdez v. Ayers*,^[78] Valdez filed a [Section 1983](#) action against Ayers, a correctional officer, for firing taser shots at her when she refused to submit to a mandatory strip search. Later, Valdez suffered a miscarriage. Despite the defendant's request, the district court refused to apply the wanton-and-obdurate standard of *Whitley v. Albers*.^[79] Ayers appealed to the Ninth Circuit. In light of *Whitley* and *Hudson v. McMillan's*^[80] "malicious and sadistic" standard, the court of appeals found the district court's decision erroneous and reversed and remanded it.

In *Grimes v. Robinson*,^[81] the U.S. District Court for the Northern District Court of California dismissed the complaint of a prisoner for failure to state sufficient allegations of excessive force against officers of the San Francisco County Jail. Grimes alleged that he was tasered by the deputies and hurt simultaneously in the eye with a sharp homemade paper clip ring so that his cornea could be removed and smuggled to a covert hospital emergency room. He also alleged that one of the officers sneaked in to his cell at night, put acid drops in his mouth and tasered him while he slept. The court found that even when construed liberally, the complaint failed to contain allegations sufficient to state claims of excessive use of force.

Once the fact-finder has determined the facts, higher courts usually do not revisit the facts of the cases. In *Walker v. Meligan*,^[82] Walker, a prisoner, filed a [Section 1983](#) suit alleging that he was tasered on three separate occasions without justification by Officer Meligan. Meligan contended that he used the taser on Walker only once; the taser was only used after the prisoner repeatedly ignored instructions to return to his cell. The jury returned a verdict for Officer Meligan. Since there was sufficient evidence for the jury's factual determination, the Ninth Circuit refused to reverse the lower court.

In *Boone v. Hannah*,^[83] the plaintiff alleged that two Ben Hill County Jail officials fired taser shots at him and did not remove the barbs for 22 hours despite being requested three times to do so. The defendants contended that Boone had refused three separate orders to return to his cell, was yelling and cursing at the defendants, and was disrupting other inmates. The defendant decided to use the taser on Boone to diffuse the situation quickly. The evidence showed that the injury to Boone by the taser was *de minimis*. The U.S. District Court for the Middle District of Georgia cited *Whitley v. Albers*,^[84] *Hudson v. McMillian*,^[85] and *Bell v. Wolfish*.^[86] Quoting *Hudson*, the court noted, "whenever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishment Clause, the core judicial inquiry is that set out in *Whitley*: whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm."^[87] Addressing the medical care issue, the court cited *Estelle v. Gamble*,^[88] which held that prison personnel may not subject inmates to acts or omissions that are sufficiently harmful to show a deliberate indifference to serious medical needs. In *Rhodes v. Chapman*,^[89] the U.S. Supreme Court had ruled that a prison's internal security is a matter to be left to the discretion of prison administrators. In the light of these U.S. Supreme Court standards, the *Boone* court granted summary judgment to the defendant.

It is reasonable to use force if prison officials perceive a threat to prison security and an inmate fails to follow direct orders. In *Mannings v. Hightower*,^[90] Mannings started saying racial slurs because he was upset about his belongings not being returned to him. A prison official swung his baton at Mannings goading him to repeat what he said. Later Mannings was tasered in the hallway and then tasered and pepper-sprayed while lying face down on the ground in his cell. Although the stories are inconsistent, the incident report showed that Mannings was tasered in his cell for not following direct orders. Pepper spray was used when Mannings attempted to touch the taser. Although

Mannings filed a [Section 1983](#) suit for excessive use of force, the U.S. District Court for the Middle District of Alabama found inconsistencies in Mannings' account of the taser use in the hallway. As for the tasing in the cell for refusing to comply with the officers' direct orders, the court recognized the need to have inmates comply with reasonable orders of officers or else there would be havoc in the prisons. Applying *Whitley v. Albers*^[91] and *Hudson v. McMillian*,^[92] the court held that the evidence did not support an inference of wantonness in the infliction of pain to rise to a constitutional violation in light of the security risk posed and the need to restore order in the facility.

Courts rule that in a prison disturbance situation, it is reasonable for prison officials to use force. In *Jarboe v. Maxwell*,^[93] Jarboe, an inmate was attacked by a fellow inmate. While the scuffle ensued, a prison official shot Jarboe with a taser which caused his blood pressure to rise. Jarboe filed a [Section 1983](#) suit against the prison official for excessive use of force. Applying the *Whitley* standard, the U.S. District Court for the Western District of Louisiana held that prison officials must take into account the threats presented to inmates and themselves by the unrest. As such, the use of force in such situations is justified. Accordingly, the court granted summary judgment to the prison officials.

In *Allmon v. Butler*,^[94] a prisoner alleged that his constitutional rights were violated when he was threatened with the possibility of being shot by a taser. Although Allmon alleged that Sergeant John Nabors threatened to use a taser on him as a retaliatory move, he failed to name him as a defendant in the [Section 1983](#) action he filed. As such, the court dismissed the complaint for failure to state an action.

The use of a stun gun, mace, tear gas, or chemical spray to subdue a recalcitrant inmate even when he is handcuffed does not constitute cruel and unusual punishment.^[95] In *Camp v. Brennan*,^[96] Camp filed a [Section 1983](#) suit claiming that he was subjected to excessive use of force during a cell extraction. A team of five or six guards extracted Camp from his cell where he was showing erratic and threatening behavior. He was handcuffed and led toward an observation cell. On the way, Camp created confusion, causing the whole group to fall down. At this point, a stun gun was applied to Camp to subdue him. Applying *Whitley*, the Third Circuit concluded that “the force applied was not so excessive as to present a cognizable Eighth Amendment claim. Camp's refusal to walk through the doorway created the confrontation; force was applied for approximately twenty seconds, a reasonably short period necessary to subdue a struggling prisoner.”^[97] Further, applying *Soto*, the court held that the use of a stun gun does not prove that the amount of force used was excessive and a violation of the Eighth Amendment. Accordingly, the Third Circuit affirmed the decision of the district court in favor of the defendants.

Prison officers can use stun guns on inmates to subdue them as long as the intention is not merely to inflict pain. In *Dye v. Lomen*,^[98] Dye was behaving strangely when placed in an observation cell. When a cell extraction team came to ascertain the situation, Dye was uncooperative. He disobeyed the team's orders to put his hands behind his back for handcuffing. At that point, a stun gun was applied to his thigh for two to three seconds to get him to comply. Dye was then restrained. Dye filed a [Section 1983](#) suit for excessive use of force against various employees of the Wisconsin Department of Corrections for using a stun gun to restrain him during the cell entry.

The Seventh Circuit applied *Whitley v. Albers*^[99] and *Hudson v. McMillian*,^[100] which laid the standard for determining excessive use of force in prisons. The standard applied is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. The court noted, “In order to survive a motion for summary judgment, a prisoner alleging that he was subjected to cruel and unusual punishment must bring

forth evidence that ‘will support a reliable inference of wantonness in the infliction of pain.’”[101] The court observed that Dye failed to present any evidence showing that the defendants used the stun gun on him merely to inflict pain upon him. As such, Dye failed to establish that the defendants used excessive force against him. Accordingly, the Seventh Circuit affirmed the decision of the district court in favor of the defendants.

Officers' use of stun guns on a disruptive inmate is not *per se* a violation of the Eighth Amendment. In *Caldwell v. Moore*,[102] Caldwell, while housed in an isolation cell of the Woodford County Jail, kept shouting and kicking at his cell door to be let out for some fresh air. After about seven hours, the jailer sought help from the police to control Caldwell's behavior. One of the police officers took the jailer's stun gun with him as they went to Caldwell's cell. None of the officers had received any training on the use of the stun gun, nor in the handling of highly agitated inmates. Nevertheless, they went to Caldwell's cell and the officer applied the stun gun to Caldwell several times. Finally, he was subdued and put in a straightjacket. Caldwell alleged that he suffered chest pains and burns from the stun gun. Based on these facts, Caldwell filed a [Section 1983](#) suit, alleging that excessive force was used against him, especially the stun gun, in violation of the Eighth Amendment. The district court concluded that the action of the officers was to restore discipline in the jail, and not solely for punishment; nor was the stun gun used maliciously and sadistically, with intent to cause harm to Caldwell.

The U.S. Court of Appeals for the Sixth Circuit applied *Whitley v. Albers*[103] and *Hudson v. McMillian*,[104] pointing out that the inquiry in excessive force cases is whether the force was used maliciously or sadistically for the purpose of causing harm. Caldwell contended that the manner in which the stun gun was used was a *per se* violation of the Eighth Amendment. The court cited another Sixth Circuit decision, *Russo v. City of Cincinnati*,[105] where qualified immunity was granted to police officers, noting that the use of a taser to avoid a dangerous situation or avoid using greater force did not violate clearly established law. Looking at the facts and circumstances of this case, the court concluded that it was not unreasonable for the officers to use a stun gun against Caldwell to avoid using even greater force.

A stun gun use on an inmate who is threatening a guard is not a violation of his constitutional rights. In *Jasper v. Thalacker*,[106] Jasper filed a [Section 1983](#) suit alleging that an officer's use of a stun gun against him violated his constitutional rights under the Eighth Amendment. Inmate Jasper was in an examining room of the solitary confinement unit when a guard told him to put his clothes on a chair. Jasper threatened the guard and charged at him with clenched fists. Three guards grabbed him and a fourth applied a stun gun to him for a few seconds to subdue him. The district court held that the facts of the case did not amount to an Eighth Amendment violation because Jasper failed to prove that the stun gun was used by the guards sadistically or maliciously, the standard laid down in *Whitley*. Citing *Whitley v. Albers*,[107] *Hudson v. McMillian*,[108] *Caldwell v. Moore*,[109] and *Michenfelder v. Sumner*,[110] the Eighth Circuit observed that other courts have found stun gun use not to be a violation of the Eighth Amendment.

Where a prisoner poses a threat to the prison officers, officers are justified in using tasers as long as the force is necessary to subdue the prisoner. In *Honorable v. Osborne*,[111] the plaintiff, a prisoner, filed a [Section 1983](#) suit claiming that excessive force was used during a cell transfer when he was shot twice by a taser. The defendants filed for summary judgment because they said the plaintiff was a disciplinary threat to security. The deputy jailer stated that during the entire time that the plaintiff was in the detention center, he posed disciplinary problems and was moved at least five times for his disruptive behavior. The plaintiff often threatened to murder the defendants later in the streets.

During the cell transfer on the day of the incident, the defendants ordered the plaintiff to put his hands behind his back but he refused. After a warning the first taser shot was fired. The plaintiff continued to disobey orders and clench his fists in a threatening manner. That was when the second taser shot was fired after which the plaintiff became compliant.

Citing *Whitley v. Albers*^[112] and *Hudson v. McMillian*,^[113] the U.S. District Court for the Western District of Kentucky noted that the Eighth Amendment protects inmates from the wanton infliction of pain by correctional officers. Further, the use of force is reasonable when used in a good-faith effort to maintain or restore discipline and not maliciously or sadistically to cause harm. Applying these standards, the court observed that the plaintiff had posed a disciplinary problem during the entire time that he was in the detention center. Moreover, it was only after repeated refusals by the plaintiff to obey order combined with his threatening manner that the defendants used the taser on him. Once the plaintiff was secured, no further force was used on him. Examining the facts of the case, the court concluded that the force was used in a good-faith effort to maintain and restore discipline and not maliciously or sadistically to cause harm. Accordingly, the court granted the defendants' motion for summary judgment.

There is no excessive force when an analysis of the facts of the case fails to show that the use of a taser amounted to punishment. In *Gilchrist v. Reid*,^[114] the plaintiff, an inmate, filed a [Section 1983](#) action alleging that excessive force was used against him when he was shot with a taser. The defendants argued that the force was reasonably necessary. According to the defendants, on the day of the incident, the plaintiff began complaining about dirty towels being given to him. When the defendant told that all the towels were dirty, he began screaming and cursing. The officer observed the plaintiff's behavior on her monitor. Soon two inmates began marching behind the plaintiff. The officer then asked the plaintiff to come out of one cell and move into another single cell, but he refused. Officers had to apply a taser on the plaintiff after a warning in order to physically remove him from one cell into another cell. The defendants claimed that the plaintiff's behavior was a clear threat to the safety and well-being of the other officers and inmates.

The U.S. District Court for the District of South Carolina noted that the plaintiff failed to show that his Fourteenth Amendment rights were violated as the injuries suffered were *de minimis*. Moreover, the plaintiff failed to show that the use of the taser amounted to punishment in violation of the Fourteenth Amendment. The court quoted from the ruling in *Johnson v. Glick*:^[115]

In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm.^[116]

Analyzing the facts of the present case based on the factors mentioned in *Johnson v. Glick*, the court ruled that the plaintiff failed to show that the force used amounted to punishment. The defendants' use of the taser appeared to the court to be a good-faith effort to restore order. Accordingly, the court granted summary judgment to the defendants.

Where the use of force is justified and necessary, there is no violation of constitutional rights. In determining the subjective prong of the excessive use of force, the U.S. Supreme Court laid down four factors:

(a) the need for the application of force, (b) the relationship between the need and the amount of force that was used, (c) the threat reasonably perceived by the responsible officials, (d) any efforts made to temper the severity of a forceful response.^[117]

In *Mackey v. Anderson County Detention Center*,^[118] plaintiff Mackey alleged that as he was being escorted to another cell, one of the officers threatened to harm him. When they entered the cell, Mackey hit the officer several times. In response, the officer tasered Mackey several times. Mackey filed a [Section 1983](#) action for excessive use of force. The U.S. District Court for the District of South Carolina applied the four *Whitley* factors. The court observed that there was no question that the force was necessitated by Mackey's actions. The amount of force used by the officers was necessary to put Mackey in the cell. Once this was accomplished, the officers did not continue the use of force. Next, there was clearly a threat perceived by the officers as Mackey struck the officer. Attempts were made to temper the severity of the forceful response as Mackey was given several direct orders to proceed to the cell but he did not comply. Accordingly, the court granted the defendants' motion for summary judgment.

To file an excessive force claim under [Section 1983](#), the plaintiff must name the defendant and demonstrate a causal connection between the named defendant and the constitutional violation alleged. In *Thomas v. McCracken County*,^[119] Thomas, a prisoner, alleged that excessive force was used against him by the arresting officer. He alleged that an unidentified arresting officer tasered him five times till he became unconscious. He further alleged that his hands were numb for a month after the incident. The U.S. District Court for the Western District of Kentucky cited *Deaton v. Montgomery County*,^[120] noting that a complaint filed under [Section 1983](#) must show a causal connection between the named defendants and the alleged constitutional deprivation. Since Thomas failed to name the defendants, the court dismissed his complaint for failure to state a claim upon which relief could be granted.

A plaintiff must set forth specific facts showing how the use of a taser by prison officers deprived him of a federally protected or constitutional right. In *Hernandez v. Terhume*,^[121] the plaintiff alleged that he was sprayed by a pepper mace three-to six times by Officer Upton and that an unnamed officer struck him at least 10 times with a night stick and shocked him with a taser. Citing *Spain v. Proconier*^[122] and *Michenfelder v. Sumner*,^[123] the U.S. District Court for the Northern District of California observed that mace and tasers can be reasonably used to quell disorders and compel obedience, they cannot be used to punish prisoners. Citing *Leer v. Murphy*,^[124] the court observed that a plaintiff must allege specific facts that show how each defendant proximately caused the deprivation of his federally-protected right. The court added that sweeping allegations do not suffice. Accordingly, the court ordered the plaintiff to amend his complaint within 30 days, stating with particularity the circumstances of the incident and how the use of the taser violated his constitutional rights.

A sheriff's policy to put a remote stun belt on criminal defendants in the courtroom does not *per se* violate the Sixth Amendment right to a fair trial. In *Hawkins v. Comparet-Cassani*,^[125] Hawkins, a convicted prisoner, brought a [Section 1983](#) action against the county, court, and sheriff for a preliminary injunction against the Sheriff's policy to have a remote electric stun belt placed on criminal defendants. The belt was activated because of Hawkins' disruptive behavior in court. The district court granted the preliminary injunction based on Fourth, Eighth, and Sixth Amendment rights of the plaintiffs. The sheriff appealed. The Ninth Circuit allowed the preliminary injunction only on the Sixth Amendment ground of right to a fair defense and narrowed it down not to include cases where the belt was necessary

to protect courtroom security. The Ninth Circuit concluded that the use of a stun belt did not *per se* violate the Sixth Amendment. Accordingly, the court remanded the preliminary injunction for modification consistent with the opinion of the Ninth Circuit.

Discussion and Conclusion

This article examined federal court cases where prison and jail officials were sued by prisoners under [Section 1983](#) for excessive use of force by tasers and stun guns. The primary precedents followed by the lower courts in excessive use of force claims involving tasers and stun guns were the U.S. Supreme Court decisions, *Whitley v. Albers*[\[126\]](#) and *Hudson v. McMillian*,[\[127\]](#) which laid the foundation for prison officer liability under [Section 1983](#). There were 30 cases in this study that used these precedents. Of these, in 12 cases, the prison officers did not prevail at the current stage of the proceedings, while in 18 cases they prevailed.

There are 12 cases in this section that show that the Eighth Amendment protection against excessive force is clearly established law and that prison officials are liable for violating it. As such, taserings a mentally ill inmate on the face and thigh when she was posing no threat is malicious and sadistic.[\[128\]](#) Taserings an inmate for refusing to sweep his cell when he was not a danger to anybody was an exaggerated response to his misconduct and was cruel and unusual punishment.[\[129\]](#) Similarly, taserings an inmate for refusing to pick up his food tray and clean up the mess when he was not posing a threat to any officer is cruel and unusual punishment.[\[130\]](#) If a plaintiff's allegation is proved to be true, showing of permanent injury by a taser is not required.[\[131\]](#) It is also cruel and unusual punishment when a plaintiff is repeatedly shocked during intake, while he is still in leg irons and handcuffs attached to a waist chain.[\[132\]](#)

Taserings an inmate in a retaliatory action for his exercising his constitutional rights is cruel and unusual.[\[133\]](#) A class action can be filed for excessive force with regard to prison officials' inappropriate use of stun guns.[\[134\]](#) Taserings an inmate four to five times after he tripped and fell in the hallway, is a malicious and sadistic action on the part of prison officials.[\[135\]](#) Taserings an inmate repeatedly for the sake of fun is cruel and unusual.[\[136\]](#) Taserings an inmate after he asked for medical assistance, even though the defendants alleged there was a potential riot situation, is malicious and sadistic.[\[137\]](#)

Where an officer fired two taser shots at an inmate for not following instructions soon after there was an altercation, the court found the use of force to be a good-faith effort to restore order.[\[138\]](#) Taserings the plaintiff when she was refusing to submit to mandatory strip search even though she later suffered a miscarriage is not malicious and sadistic.[\[139\]](#) Taserings of an inmate who was disrupting the prison environment where he suffered only *de minimis* injury was reasonable.[\[140\]](#) Taserings an inmate for not following reasonable orders of officers is not a violation of his constitutional right.[\[141\]](#) The use of taser to stop a scuffle among inmates and diffuse the situation is reasonable.[\[142\]](#)

The use of a stun gun to subdue a recalcitrant inmate during cell extraction even though he was handcuffed is not excessive force, where he behaved in a threatening manner and caused the whole group of officers to fall down.[\[143\]](#) Where an inmate placed in an observation cell was behaving strangely and refused to follow orders, the use of a stun gun is not excessive force.[\[144\]](#) The court found that the use of stun gun to subdue an inmate who has shouting and kicking on his cell door for seven hours was reasonable.[\[145\]](#) The use of a stun gun against an inmate who was

threatening a guard and charging at him with clenched fists is reasonable.^[146] The use of a taser on an inmate who had been a trouble maker during his entire stay in the detention center, had to be moved five times, and who was refusing to follow orders was found to be reasonable use of force.^[147] Applying a taser on an inmate who was posing a security threat to both officers and inmates by trying to create disruption in the prison and refusing to go to a single cell, was reasonably necessary.^[148] Where an inmate hit an officer several times, it was reasonable to use a taser on him several times.^[149]

For an excessive force claim, a plaintiff must show a causal link between the named defendants and the constitutional violation. Even though the plaintiff was tasered five times and his hand remained numb for a month, his [Section 1983](#) action could not stand for failure to name the defendants responsible for the injury.^[150] Moreover, a plaintiff must allege specific facts that show how each defendant proximately caused the deprivation of his federally-protected right.^[151] The use of a remote electric stun belt on criminal defendants in court rooms is not per se a violation of their Sixth Amendment rights.^[152]

Limitations

Stun gun and taser cases were found using the computerized electronic databases, Westlaw Campus(tm) and LexisNexis®. These databases disseminate legal information, but like all research projects, this study also has its limitations. A brief analysis of cases is perhaps an inadequate reflection of the legal process that affects liability issues for taser and stun gun use by public officials. There has been no analysis of policies on tasers nor is there any taser-specific standard established by the U.S. Supreme Court. This study is also limited to analyzing only U.S. District Court and Circuit Courts of Appeals cases, a vast majority of which have not been disposed of or decided on their merits. In most of the cases, prison or jail officers have either been granted or denied summary judgment. Summary judgment is granted when there is no genuine dispute about the material facts of the case. So, the cases are mostly at the stage of factual presentation rather than decisions based on legal issues or on the merits of the case. Besides, the cases analyzed cannot be construed to be representative of the real population, even though an attempt is made to study all available cases on Westlaw Campus(tm) and LexisNexis®.

Despite the limitations, this study fills a void in the criminal justice literature as the first comprehensive review of taser and stun gun cases related to prison officials based on the U.S. Supreme Court standards laid down in *Whitley v. Albers*^[153] and *Hudson v. McMillan*.^[154] These legal standards utilized by the lower federal courts have served as a basic guide in studying these cases. Policy makers should follow court precedent to keep abreast of the legal landscape with respect to conducted energy devices.

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[FN19] [Whitley, 475 U.S. at 321](#).

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[FN52] [Velasco, 166 F. Supp. 2d at 1104](#) (quoting [Whitley, 475 U.S. at 327](#)).

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