

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 07-80789 CIV-HURLEY/HOPKINS

LIDIA BOLANDER, Individually as the
surviving spouse of Timothy Bolander, and
as Personal Representative of THE
ESTATE OF TIMOTHY BOLANDER, et
al.

Plaintiffs,

vs.

TASER INTERNATIONAL, INC. et al.
Defendants.

**PLAINTIFFS' NOTICE OF FILING THE
1/31/2009 SWORN STATEMENT OF
GEORGE L. KIRKHAM, D. CRIM.**

_____ /
Plaintiffs file the attached exhibit, the January 31, 2009, sworn statement of George L.
Kirkham, D. Crim.

Respectfully Submitted,

s/ William D. Tucker, Esq. (Fla. Bar #865753)

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I hereby certify that: I electronically filed the foregoing document with the Clerk of the Court using CM/ECF; and that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of

Electronic Filing, this January 31, 2009.

s/William D. Tucker, Esq. (Fla. Bar #865753)

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SERVICE LIST

Bolander v. Taser International, Inc., et al.,
United States District Court for the Southern District of Florida
Case No. 07-80789 CIV-HURLEY/HOPKINS

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C:_A\BOLANDER\LITIGATION\Summary Judgment\notice of filing\nof 1-17-2009\nof 1-31-2009 sworn statement of George L. Kirkham, D.Crim

SWORN STATEMENT OF GEORGE L. KIRKHAM, D. CRIM.

1. I am a resident of the state of Florida, over the age of eighteen, and based upon careful review of the data presented, have personal knowledge concerning the matters attested to herein.
2. This sworn statement contains my additional opinions in this matter, which supplement, and in some instances change, the opinions contained in my report and sworn statement previously filed with this court.
3. This sworn statement contains an abbreviated version of my additional opinions and is made in order to comply with a deadline imposed on plaintiffs' attorney William D. Tucker to file a response to Taser's motion for sanctions by 5:00 pm Friday, January 30, 2009, I am in the process of preparing a lengthier sworn statement for use in opposition to the defendants's motion for summary judgment, which I anticipate will be completed by Thursday, February 5, 2009.
4. The basis for my additional opinions is additional information which recently came to light, that, contrary to representations to this court by defendants Taser International, Inc., the city of Delray Beach, officer Steven Hynes, and officer Frank Casarez (the "Delray defendants"), there are more than two modes of taser deployment, and that these heretofore undisclosed additional modes of taser deployment were used on Timothy Bolander in connection with the events leading to his death, December 23, 2004.

False Statements by Taser International, Inc., and the Delray Defendants

Taser's False Statements Concerning Only Two Modes of Taser Deployment

5. Taser states in its motion for summary judgment that:

The TASER ECD is a sophisticated, patented electronic device, which can be utilized in two separate modes or applications. In the "probe deployment" mode, the device uses a replaceable cartridge containing

compressed nitrogen to deploy two small probes which are attached to the device by very thin insulated conductive wires.

[39] *Taser International, Inc.'s motion for summary judgment*, ¶5 at page 6. (Emphasis supplied)

The device can also be utilized in the "drive-stun" or "touch-stun" mode by removing the cartridge from the device, and placing the two electrodes on the front of the device against the body of the subject. When utilized in this mode, the device is purely a pain compliance tool and does not achieve neuromuscular incapacitation because the TASER electricity is simply traveling between the two electrodes, over a distance of approximately one and one-half (1 1/2) inches. When utilized in the drive-stun mode, the device can cause superficial skin burns and abrasions, but no animal or human studies have ever suggested any terminal deleterious effects from a drive-stun application. (Ex. F, Expert Report of Mark W. Kroll, Ph.D., pg. 17, para. 5).

[39] *Taser International, Inc.'s motion for summary judgment*, ¶6 at pages 6-7. (Emphasis supplied)

Taser's Expert and Director, Mark W. Kroll's False Statements about the Taser

6. Mark W. Kroll, Ph.D., is one of Taser's experts in this case. The court may note that Dr. Kroll is a member of Taser's board of directors, and, according to his report has authored numerous papers on tasers, which he described as "ECD's", or electronic control devices. In his report filed in this case Kroll clearly gives the impression that there are only two modes of taser use, and he makes a statement concerning the effect of the taser when used in drive stun mode.
7. At page 18 of his report filed in this case, Kroll describes the two modes of taser deployment. Without using the term probe mode, Kroll describes it in the context of describing taser studies on pigs. Kroll notes that the pigs were on their backs and the taser barbs were in the same plane of each pig's chest (the thorax). *Expert Report of Mark W. Kroll, Ph.D., pg. 18, Exhibit F to [41], Taser's Notice of filing exhibits A-R.*
8. With respect to the drive stun mode, Kroll writes that "the drive stun mode does not cause significant muscle contraction and thus cannot generate acid by-products from

muscle contractions.” *Expert Report of Mark W. Kroll, Ph.D., pg. 18, Exhibit F to [41], Taser’s Notice of filing exhibits A-R.*

9. As will be explained below, Kroll’s statements are false and misleading.

Taser’s Expert and Medical Researcher Jeffrey D. Ho, M.D. ’s False Statements Concerning Taser Use

10. Jeffrey D. Ho, M.D., FACEP, is one of Taser’s medical experts in this case. He is an emergency medicine physician who, according to his *curriculum vitae*, and the 11/8/2004 letter below, is a certified taser instructor, a consultant to Taser, and has performed in the past few years many Taser sponsored research studies attesting to the safety of the taser weapon.

11. Ho writes as follows in a November 8, 2004, letter addressed “To Whom It May Concern:

November 8, 2004

To Whom It May Concern:

As both, a practicing emergency physician and a TASER Instructor, I have been asked to provide information in written format that medical personnel may find useful. I have listed the information by subject heading for ease of reference.

What is a TASER device?

* Specifically, it is a conducted electrical weapon deemed non-lethal on the use of force continuum and approved for sale and use by law enforcement and private citizens. It is used to control an uncooperative subject when the use of deadly force is not a primary option.

* It can be used in 1 of 2 methods:

1. It can be "discharged" at a subject where 2 metallic darts are discharged from the weapon. The darts have a predetermined degree of separation and small barbs to aid in adherence to the subject or their clothing. The darts remain connected to the hand held TASER device by way of insulated wires of varying lengths (currently 15, 21 or 25 feet). Once discharged, the TASER system generates an electrical current that is carried through the wires to the darts. The darts and wires complete an electrical circuit (one positive, one negative) if they are embedded in the

same subject. The electrical current from the TASER device causes skeletal muscle tetany with subject incapacitation for 5 seconds. The operator has the option of generating additional 5-second bursts of current as needed for subject control and compliance.

2. The tip of the TASER device has 2 contact points very close together that can be touched to a subject and the operator can then deliver an electrical current via this method, called a "Drive Stun." This method does not deploy darts, but causes less skeletal muscle tetany because the points of contact are quite close together. This method generally induces subject control through pain compliance, not incapacitation.

November 8, 2004, letter from Jeffrey D. Ho., MD, FACEP, To Whom It May Concern, TASER International Research Compendium. No. 14. In ver. 13.0, medical Safety and Field Data, research_compendium_full_0306.pdf [70349G6-11G], Exhibit 40 (Bookmarked as exhibit 41), [67] Plaintiffs' Notice of Filing Exhibits 1 Through 43 (emphasis supplied).

12. A copy of Dr. Ho's letter is contained in the City of Delray Beach investigative file concerning the in custody death of Timothy Bolander, and a copy of Dr. Ho's letter is also contained in the Palm Beach County State Attorney's investigative file concerning the in custody death of Timothy Bolander.
13. I am not clear how Ho's letter came to be placed in these law enforcement agency in custody death investigation files.

Delray Defendant's False Statements Concerning Only Two Modes of Taser Deployment

14. The Delray defendants state in their motion for summary judgment that:
[w]hile there is one taser, it can be used in two modes—first by firing two tiny projectiles which are theoretically imbedded in the skin, causing a current to race through the gap, which current temporarily disables the subject, and second, in the “drive stun” mode, where the taser is applied directly to the person's skin. In the second mode, the current runs only between the electrodes, perhaps 2.0 inches apart, although Taser says more like 1.5 inches apart, causing pain, but no muscle disruption.
[42] Motion by Delray defendants for summary judgment at page 6. (Emphasis supplied)

In the drive stun mode of the taser, the currents run only between the electrodes roughly 2 inches apart.”)

[42] Motion by Delray defendants for summary judgment, ¶ 37 at page 4 (emphasis supplied)

15. To summarize: Taser and the Delray defendants false statements are as follows:

- a. There only two modes of taser deployment, probe mode and drive stun mode
- b. When used in probe mode the taser's electrical current only flows between the two probes, and
- c. When deployed in the drive stun mode, the taser's electrical current travels only between the two electrodes on the end of the taser barrel, and does not cause much, if any skeletal muscle tetany.

Taser International, Inc., Knows to Be False its Statements That There Are Only Two Modes of Taser Deployment, Because its Product/training Materials Dating Back to at Least 2003, and the 1981 Patent by Taser Inventor John H. Cover Demonstrate Two Additional Modes of Taser Deployment

16. It is my opinion that Taser International, Inc., knows to be false its statements that there are only two modes of taser use, because its product/training manuals dating at least as far back as 2003, and John H. Cover's February 24, 1981, patent No. 4,253,132, Power Supply for Weapon for Immobilization and Capture, demonstrate two additional modes of taser use, both of which involve a hit by a single taser barb, a "single probe" hit.
17. According to Taser's own product/training materials single probe hits are not infrequent. The reason for this, Taser explains, is that although the top probe exits the taser straight out, the lower probe exits at a downward angle in order create a spread between the two probes when they hit the target. Taser warns that if the taser is tilted when fired, the lower probe will go wide of target.
18. According to Taser, the reason for the probe spread is that the greater the spread between the probes when the hit, the greater the skeletal muscle tetany/lockup, which Taser sometimes refers to as NMI (neuro muscular incapacitation).

Taser Use Mode #3

19. The third mode of taser use, which I term mode #3, involves a hit by a single taser probe when an individual is on grass or dirt. This is illustrated by a Taser product/training video which is filed as Exhibit 3, to [76], *Plaintiffs' notice of filing Five Embedded Video Clips from Taser Training Materials*. [70344V7].

20. This is excerpt from a Taser video titled "Probes" in version 9 of Taser product/training materials issued in 2003. This video clip shows that a single probe hit to an individual standing on concrete or asphalt will have no effect, but if the individual is on grass or dirt, the full taser EMI/muscle tetany will occur because the current will travel between the point on the body where the single probe hit and the individual's point of contact with the ground or earth. In this video it is the individuals feet, as he is standing on grass/dirt.
21. Interestingly, John H. Cover's 2/24/1981 patent, which Taser licensed in 1993, had as its original embodiment a single probe weapon (he did not use the term "taser" in the patent). John H. Cover's patent states:

A first type of system employs a single wire and operates either in a conducting mode, wherein the ground or earth is used to complete the circuit between the power supply and the target or in a nonconducting mode which charges the target body to a predetermined voltage level, through the capacitive impedance of the body, thereby transmitting the requisite amount of current. An alternative system utilizes a pair of wires constituting a current delivery and return path. In the two-wire system, a plurality of projectiles may be deployed, connected by nonconducting fibers to form a mesh or net which envelops the target. In this system, it is unnecessary for either the power supply or the target to be grounded. Sufficient current can be made to flow through the target to accomplish the desired results.

U.S. Patent 004253132 - Power Supply for Weapon for Immobilization and Capture Inventor John H. Cover, issue date 2/24/1981 (emphasis supplied), attached as an exhibit to [100] Notice by Lidia Bolander of Filing Taser Inventor John H. Cover's February 24, 1981 Patent¹

22. On October 15, 1993, Defendant Taser International, Inc., then known as ICER corporation, licensed this patent from Mr. Cover. *See, Report of Patrick Smith, at page*

¹ The abstraction on the first page of Cover's patent describes the devices as: [a] weapon for subduing and restraining includes an electrical power supply. The magnitude and frequency of the electrical impulses delivered to the target provide energy in excess of 0.001 joules and ranges in effect from immobilizing to potentially "lethal" levels.

Taser Inventor John H. Cover's U.S. patent no. 004253132, at page 1, Exhibit to [100] (emphasis supplied).

numbered 22, attached as Exhibit 5 to [41] Taser's notice of filing exhibits.

Taser Use Mode #4

23. The fourth mode of taser use, which I term mode #4, involves a hit by a single taser probe combined with the application of the taser in the drive stun mode. An illustration of this may be seen in the video clip from Taser's 2003 product/training materials filed as Exhibit 12 to [72] *Plaintiffs' Notice of Filing Video Clips from Taser International, Inc.'s Product / Training Materials*.
24. In this clip, titled "Probe_Configs", Taser demonstrates that if an individual is hit by a single probe and then the taser is used in the drive stun mode, the current will travel between the single probe and point on the body where the target is drive stunned. Thus, the taser in this mode #4 uses the drive stun method to create full skeletal muscle tetany. *See also*, Excerpt from "one_probe_hit03", from version of version 13 of Taser's product/training materials. [70349V7] (Showing a hit with only one taser barb in the lower back combined with drive stun) attached as Exhibit 1 to [76] *Plaintiffs' Notice of Filing in Opposition to [39] Taser Defendants' Motion for Summary Judgment and [42] City of Delray Beach Defendants' Motion for Summary Judgment: Five Embedded Video Clips from Taser Training Materials*.
25. This contradicts the above referenced statements by Taser, Mark W. Kroll, Ph.D., Jeffrey D. Ho, M.D., and the Delray defendants. It gives lie to Taser's assertion in its motion for summary judgment that "[w]hen utilized in [the drive stun] mode, the device is purely a pain compliance tool and does not achieve neuromuscular incapacitation because the TASER electricity is simply traveling between the two electrodes, over a distance of approximately one and one-half (1 1/2) inches." (Emphasis supplied)
26. The instructors notes to slides 200 and 204 from Taser's M26 & X26 User Course,

contained in version 14 of Taser's training/product materials, state:

If only one probe strikes a subject, the drive-stun will act as a second probe by completing the cycle. In these incidents, the drive-stun should be applied at a location away from the probe to simulate a good probe spread and achieve incapacitation. This tactic works even if both probes strike the subject. If the probe spread is very minimal, due to a close shot or a drive-stun with a live cartridge, a drive-stun away from the probes will increase the spread and cause incapacitation."

Instructors notes to Slide 200. (Emphasis supplied)

It is an acceptable technique to fire the cartridge from close range or in contact with the body of the subject. If needed the officer can then apply a drive-stun back-up with the cartridge still in place away from the deployed probes and cause a "three point" contact. This can cause NMI.

Remember that a drive stun alone will usually not cause NMI.

Instructors notes to Slide 204. (Emphasis supplied)

Exhibits to [103] Plaintiffs' Notice of Filing Slides 200 and 2004 from Taser's M26 & X26 User Course in Version 14 of its Product-training Materials

27. Based on these materials alone, Taser's assertion that there are only two modes of taser use is false, and knowingly so.
28. In addition, and in light of the above, the statements of Taser's experts Jeffrey D. Ho, M.D., and Mark Kroll, Ph.D., are also false.
29. Given that Ho is a certified taser instructor, and therefore presumably familiar with Taser's product/training materials, it would be very difficult for him to provide a credible explanation for his false statements that there are only two modes of taser deployment.

The Delray Defendants Know, or Should Know, to Be False Their Statements That There Are Only Two Modes of Taser Deployment, Because Taser's Product/training Materials Clearly Demonstrate Two Additional Modes of Taser Deployment

30. Officer Hynes as a certified taser user and certified taser instructor, and officer Casarez, as a certified taser user, have been through, or have available to them, the Taser product/training materials describing the additional modes of taser use, and the city of Delray Beach police department, has actual possession of the Taser product/training materials.

31. If the Delray defendants are truly unaware of these additional modes of taser use, this is evidence that the City of Delray Police Department's taser training program is seriously deficient.

Taser's False Implications as to the Potential Paths Current from a Taser May Take Given its False Statements That There Are Only "Two" Modes of Taser Deployment

32. Taser has, by way of these false statements created the significant and false implication that taser electrodes may only be placed on the same plane, or side, of the body, thus artificially limiting the potential pathways through the body that a taser's current may travel.
33. Taser's statements that the taser can only be used in the probe and drive stun modes, lead to the logical conclusion that, whether used in the probe mode or the drive stun mode, both taser electrodes can only be applied to the same plane/side of the body, *e.g.*, both can only be applied to the chest, or they can both only be applied to the back, etc.
34. Because as Taser states, the electrical current from a taser travels between the taser's electrodes (whether they be the taser probes or the electrodes on the tip of the taser barrel), it follows that the current from a taser weapon can only be introduced into the same plane of the body.
35. The converse of Taser's implication is that the electrodes from a taser cannot be placed on opposing planes of the body, for example, anterior-posterior, one on the back, one on the chest. Thus, based on Taser's implication, current from a taser cannot travel from opposite sides of the body.
36. Thus the statement from Taser's expert Mark Kroll in his report noting that the pigs in the taser safety were on their backs and the taser barbs were in the same plane of each pig's chest (the thorax), gives the clear implication that the taser electrodes can only be

placed on the same plane of the body. *Expert Report of Mark W. Kroll, Ph.D., pg. 18, Exhibit F to [41], Taser's Notice of filing exhibits A-R.*

37. This last implication is as discussed above, false, and it is significant to this case, because as I will discuss below, it is my opinion that officers Hynes and Casarez' applied their tasers to Bolander in such a way as to cause the taser current to enter Bolander's body from opposite sides of his body.
38. According to plaintiffs' expert, electrophysiologist, Menashe B. Waxman, M.D., current introduced into the body from opposing planes poses a far greater risk of injury or death.

Officers Hynes and Casarez' Applied Their Tasers to Bolander in Mode #3 and Mode #4, So That the Current from Their Tasers Traveled Between Opposing Points on Bolander's Body

39. In his video sworn statement, Officer Casarez testifies that he ordered Bolander to step back, and as Bolander was on the street backing away from Casarez, Casarez fired his taser at Bolander.
40. Seeing no reaction from Bolander to suggest the expected muscle tetany (NMI), Casarez told Hynes that he had missed, or that his taser had malfunctioned, and Hynes fired his taser at Bolander while Bolander was on the street backing away towards his lawn.
41. When Bolander reached his front yard, he began "high stepping". In other words, he reacted as expected when hit with a single probe while on the street, *i.e.*, no current flow so no reaction, and Bolander reacted as expected when he moved onto his front lawn, he began "high stepping", clearly a reaction to the current that began flowing through his body as his feet made contact with his front lawn. Thus, as evidenced by Taser's own product/training materials, Bolander reacted as expected to Hynes' and Casarez' deployment of their tasers on Bolander in mode #3.
42. The tasers' current flowed along two pathways in Bolander. First, between his upper

right chest and his feet (taser mode #3), and second between his upper right chest and his lower back (taser mode #4).

Casarez and Hynes Deployed their Tasers on Bolander in Mode #3

43. For approximately five seconds beginning when Bolander stepped backwards onto his front yard as officer Casarez ordered him to do, current traveled between a single probe from Casarez' taser in Bolander's right upper chest and his feet, and for approximately ten seconds the current traveled between a single probe from Hynes' taser in Bolander's upper right chest and his feet.
44. This opinion is based on the following.
 - a. Medical Examiner Stuart Graham, M.D., testified at his deposition that the two wound on Bolander's upper right chest three fourths of an inch apart were caused by Taser barbs. That there are taser barb wounds on Bolander's chest is consistent with Hynes' and Casarez' testimony that they fired at Bolander as he was backing away.
 - b. Second, according to the Hynes' and Casarez' video sworn statements, and Hynes deposition testimony, they were each approximately eight to ten feet from Bolander when they fired their tasers at Bolander
 - c. Third, taking as truthful Hynes' and Casarez' statements about their distance from Bolander when they fired their tasers, the two taser barb wounds in Bolander's upper right chest, being three fourths of an inch apart, could not have come from a single taser. This is because according to Taser's published information concerning the "spread" of the taser probes as they travel away from the weapon, the taser probes from a single taser would be more than twelve inches apart when fired at a distance of eight to ten feet, and not three fourths of an inch.

- d. Fourth, according to both Hynes and Casarez, Bolander did show any reaction after they fired their tasers at him until he stepped onto his front lawn. This is consistent with Taser's product/training materials depicting taser use mode #3.
- e. Casarez taser download indicates his taser discharged once for five seconds. Hynes testified, based on his taser download, that he deployed his taser on Bolander in probe mode for the first ten seconds. In reality, both Casarez' and Hynes' tasers were deployed on Bolander in mode #3, so that the current traveled between the two taser barbs in Bolander's upper right chest and his feet.
- f. Casarez sworn statement that his taser cartridge stayed in his holster when he pulled out his taser is contradicted by the physical evidence of the two taser probe wounds three fourths of an inch apart on Bolander's upper right chest. Under the circumstances these two taser barb wounds could only have come from two tasers.
- g. Casarez sworn statement that his taser cartridge stayed in his holster when he pulled out his taser is also contradicted by the crime scene investigation. When investigators taking Casarez' sworn statement, just hours after the incident, asked Casarez if the cartridge was still in his holster, he responded no, that he had taken it out.
- h. In addition, the files of the agencies investigating Bolander's in custody death, contain no indication as to the presence or absence of any AFIDs ("Anti Felon Identification" system) at the scene. The AFID system provides accountability for each use of the ECD device via the dispersal of tiny unique coded tags every time the device is "probe deployed" – a cartridge is discharged.
- i. According to Taser these tiny plastic discs are ejected when a taser cartridge fires

its probes. These are marked with unique identifiers so as to allow investigators to identify which cartridge was fired.

- j. As an example of these AFIDs, see, for example the video clip attached as Exhibit 4 to [76] *Plaintiffs' notice of filing Five Embedded Video Clips from Taser Training Materials* . This is a Taser video clip titled "cartridge02.wmv", from version 13 of Taser's product/training materials. [70349V8]. It demonstrates how the probes are shot, and the AFIDs can clearly be seen coming out of the front of the taser cartridge as the probes exit.
 - k. Delray's taser use of force policy, G.O., 2003, requires collection of these AFIDs from a crime/evidence scene.
 - l. I find no evidence in the investigative files of the FDLE, the city of Delray Police, or the state attorney, that there was any mention of the absence or presence of AFIDs at the scene.
45. Hynes testified that he followed Bolander as Bolander moved away from him after he fired his taser at Bolander. This is consistent with Taser's training: move with the subject so as not to break the wire connecting the probe and the taser.
46. Bolander then fell to the ground face down on his chest. This, again, is consistent with Bolander having undergone full skeletal muscle tetany as a result of the deployment of Hynes' taser in Mode #3.

Taser Deployed on Bolander in Mode #4

47. While Bolander was lying face down on his chest, Hynes applied his taser in drive stun mode to Bolander's lower left back, and it is my opinion, based on Bolander's reaction as he was on the ground being drive stunned by Hynes for 38 of the next 51 seconds, the single probe from Hyne's taser was still attached to Hynes taser, and still in Bolander's

chest.

48. Evidence of this comes from Casarez, Hynes', and Lidia Bolander's description of Bolander's reaction while being drive stunned by Hynes. Hynes and Casarez describe Bolander's reaction as noncompliance.
49. In actuality, because Hynes' taser was being deployed on Bolander in mode #4, Bolander was undergoing full skeletal muscle tetany due to the current flowing between the probe in his upper right chest and the locations where Hynes applied the taser to Bolander's back in drive stun mode.
50. Taser's product/training materials bear this out that the skeletal muscle tetany caused by the taser current traveling between widely dispersed points on the body can be mistaken for a subject's non compliance.
51. As an example of a subject's skeletal muscle tetany appearing as non compliance, see the video clip from version 8 of Taser's product/training materials attached as Exhibit 2, to [76], *Plaintiffs' notice of filing Five Embedded Video Clips from Taser Training Materials*. [70343V10].
52. This video clip, titled, "Taser_calfl.mpg", clearly demonstrates the skeletal muscle tetany / "lock up" effect of a taser can appear to be a subject's non compliance.

The Events at my January 30, 2009, Deposition

53. I did not become aware that the defendants' statements set forth above were false, and therefore did not develop these new opinions until shortly before my deposition of January 19, 2009.
54. In addition, although plaintiff's counsel had placed on a hard drive for my use, Taser's product/training materials, which originated from some seventeen or so CD ROMs and DVDs, I anticipated that the technical challenge of actually accessing at my deposition

the Taser materials in support of my additional opinions would be difficult at best, given my low level of computer/technical ability.

55. As such, I requested plaintiff's counsel William Tucker to, during my deposition, bring up on his computer, the various Taser materials relating to my new opinions. Mr. Tucker had set up at the deposition, his computer, with a second monitor, and a projector, so that the material could be displayed for all to see.
56. This, apparently is what Taser describes as Mr. Tucker's "coaching". It was nothing more than his assistance accessing Taser's voluminous computerized materials, to assist me in accessing the materials which formed the basis of my new opinions; new opinions which were occasioned by misrepresentations by Taser and the Delray defendants that there are only two modes of Taser use.
57. Because these opinions were so new, having really gelled only the day before my deposition when I met with Mr. Tucker, I requested that Mr. Tucker make this clear on the record.

Michael Brave, Taser's Attorney Who Questioned Me at My January 30, 2009, Deposition, and President of Laaw International, Inc., Revealed at the Deposition That He Knows of the Additional Modes of Taser Use

58. The lawyer for Taser taking my deposition, Michael Brave, is the president of Laaw International, Inc., which developed the Sample Law Enforcement Agency Policies and Procedures for Advanced Taser® (M26 or X26) (revised 6/21/2005), attached as Exhibit 29 to [67], Plaintiffs' 9/18/2008 Notice of filing.
59. I have reviewed the materials from Laaw International, Inc., and they are relevant to my opinions in this case. I am told the the plaintiffs have listed Mr. Brave as a trial witness.
60. In addition, Taser's product/training materials contain video clips of presentations by Mr. Brave concerning taser use. *See*, Excerpt from Taser training / product informational

video clip featuring Mike Brave, president of Laaw International, Inc., attached as an exhibit to [68] *Plaintiffs Notice of Filing Video Clips from Taser Training Materials - featuring Mike Brave, President of Laaw International, Inc.*

61. Based on this I consider Mr. Brave to be somewhat knowledgeable about the taser and its modes of use.
62. At my deposition, Mr. Brave's questions seemed to imply that there were only two modes of taser use. Mr. Tucker advised Mr. Brave that we had discovered that there were in fact more than the two modes of taser use admitted by the defendants in their filings with the Court. Mr. Tucker cautioned Mr. Brave that those questions were, in fact based on a false premise, and put him on notice that further such questions would be improper.
63. Mr. Brave, somewhat to my surprise, admitted knowledge of what I call taser use mode #4, which he referred to as a "three-point drive stun", and stated as follows:

Q. Doctor, you also mentioned what basically TASER calls three-point drive stun, which as you mentioned the possibility that one probe is in Mr. Bolander's chest and then they did a drive stun to his back creating a closed circuit between those basically three points, the probe in the chest and then the two electrodes on the front of the device on his back. Do I have that correct?

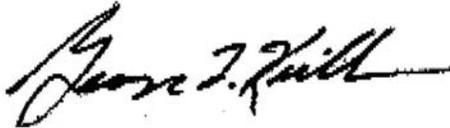
Kirkham Deposition, at 284.2+284.9 (emphasis added)

64. My opinions as set forth above, will be more fully set forth in a subsequent report.
65. All of my opinions are to a reasonable, or higher, degree of certainty and/or probability.

Verification pursuant to 28 U.S.C. § 1746:

Under penalties of perjury, I declare that I have read the foregoing Sworn Statement and that the facts stated in it are true, this January 31, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George L. Kirkham". The signature is written in a cursive style with a horizontal line extending from the end.

George L. Kirkham, D. Crim.