The BART Shooting 1-1-09

Captain Greg Meyer

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San Francisco Chronicle

[article, one week after shooting]

After viewing the shooting from multiple angles, police use-of-force expert [name deleted] commented:

"I hate to say this, it looks like an execution to me" and "It really looks bad for the officer."

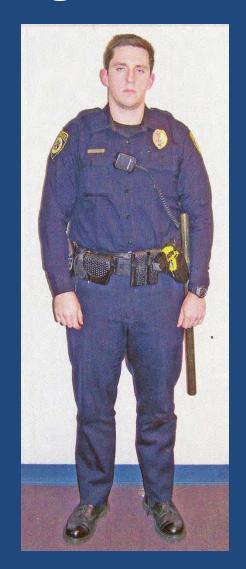
DA Charges Mehserle with MURDER



The Defense Team is Created

- In late January 2009 . . .
- Attorney Mike Rains calls . . .
- Attorney Mike Stone, who recommends . . .
- Greg Meyer, who recommends . . .
- Dr. Bill Lewinski
- PORAC pays defense costs

How did we get from here . . . ?



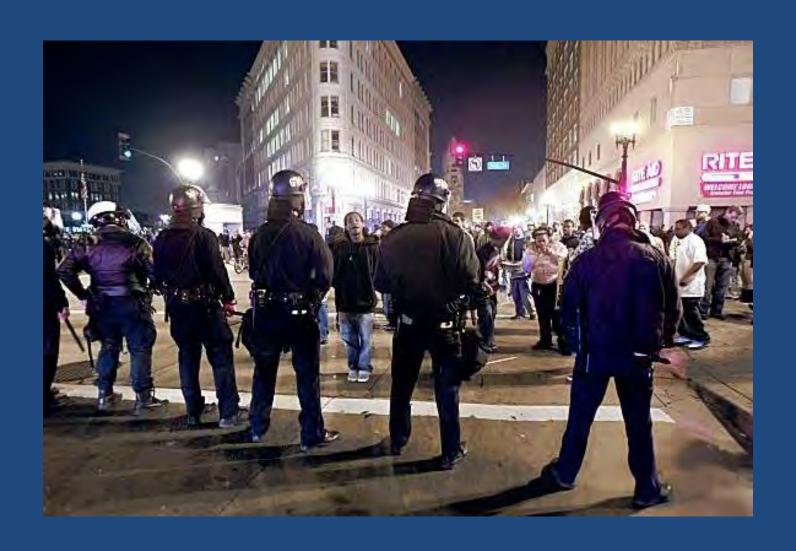
. . . to here . . . ?



... to here ...?



... to here ...?



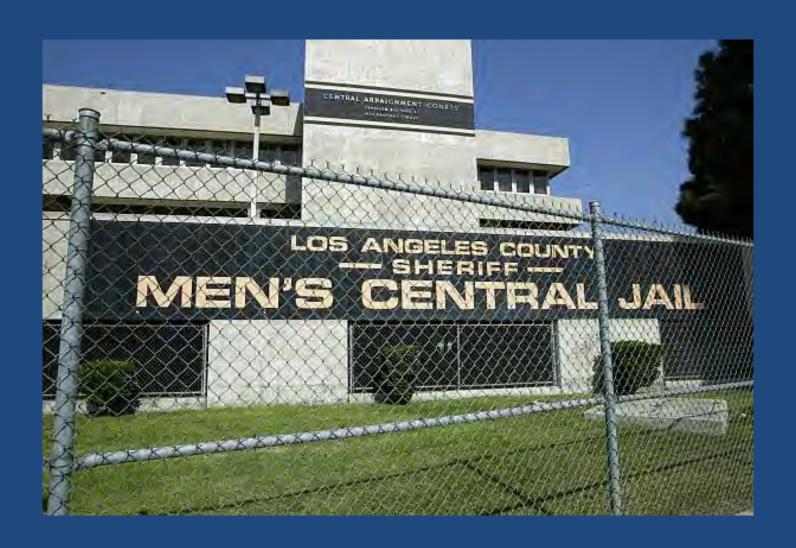
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... to here . . . ?



. . . to here . . . ?



... and finally to here?

LATIMES.COM

Cos Angeles Times

TUESDAY, JUNE 14, 2011 AA3

CALIFORNIA

BART officer who killed man is freed

Johannes Mehserle is released from the L.A. County Jail after serving Il months of a two-vear sentence.

GALE HOLLAND

Several dozen demonstrators gathered in downtown Los Angeles on Monday to protest the early release of Johannes Mehserle. the former Bay Area Rapid Transit officer convicted in the fatal shooting of an unarmed man at an Oakland

Mehserle, 29, left Los Angeles County Jail early Monday after serving II months of a two-year sentence for involuntary manslaughter in the death of Oscar Grant III.

Grant, 22, an African American grocery store tral Neighborhood Council, later moved down the street shot. butcher, was lying facedown on the platform at the BART Fruitvale station when the white officer shot

Standing in front of the than a year.



DEMONSTRATION: Protesters carry a sign with the image of Oscar Grant III, who was shot and killed New Year's Day 2009 at a BART station in Oakland.

was unduly lenient.

The protesters, some carday, Julia Wallace, 29, a rying signs reading "Let in- on video uttering a racial member of the South Cennocent people live in peace," slur at Grant before he was nocent people live in peace," slur at Grant before he was division did not return a sentencing hearing.

said Mehserle's punishment to the federal court building, where they demanded that "He served less time than the Department of Justice Michael Vick did for beating file federal civil rights him once in the back on New a dog," she said. "Oscar charges against Mehserle Johnson, said the Depart-Grant's life is worth more and other officers who were at the scene. One of the BART officers was captured vestigating the case.

"This was a hate crime plain and simple," Wallace

Grant's uncle, Cephus ment of Justice's civil rights division in Washington is in-

phone call. Mehserle's law-

originally charged as a mur- consider release," Garvin der, drew comparisons to said. the police beating of motorist Rodney King in 1991 and was transferred to Los Angeles because of the anger it stoked in Oakland.

Protests and rioting in day revelers. Oakland followed the Los November to convict Mehserle on a lesser charge.

perior Court Judge Robert Perry on Friday ordered Mehserle's release with good behavior.

Johnson, the victim's uncle, said authorities misled officer. him about the release hearing date, denying the family an opportunity to speak, as stungun and said the death required by the California Victims Bill of Rights.

"They snuck him out," said Johnson, 53, a systems Peace Officers Research engineer. "We would have liked to have been heard."

Meg Garvin, executive director of the National Crime Victim Law Institute in Portland, Ore., said if the court erred, family members could A spokeswoman for the request a "do-over" of the

"The law is broad and the yer could not be reached for intent is that victims are notified, present and heard at The racially tinged case, any hearing that is going to

> Grant, 22, was shot in the predawn hours of New Year's Day 2009 as transit police responded to reports of a fight on a train packed with holi-

Several passengers on Angeles jury's decision in the train began recording the events on video as a police officer appeared to man-Los Angeles County Su- handle Grant and his

Alameda County prosecutors alleged that Mehsercredit for time served and le, then 26, fired deliberately after an ugly confrontation between Grant and another

> Mehserle testified he mistook his weapon for a was a tragic but honest mis-

The president of the Assn. of California, which funded Mehserle's defense said last week that Mehserle received no special treatment from the court system. Mehserle is appealing his

Today we'll look at ...

- The BART shooting incident
- Prior similar weapons confusion incidents
- TASER tactics and training issues
- The trial and sentencing
- The media (and things they did not tell you)
- Lessons learned . . . how to prevent another

1976 TASER



1993 TASER



1999 TASER (M-26)



Why make a TASER that structurally resembles a handgun?

Because training experts advised that it would be easier to teach a familiar weapons configuration. Court ruled this a reasonable business decision.

(See Torres V. Madera)

2003 TASER (X-26)



PRIOR SIMILAR WEAPONS CONFUSION CASES

March 2001 - Sacramento, CA

 Officer intends to fire a TASER at a resisting handcuffed suspect in backseat of police car. He instead draws and fires his handgun, shooting the suspect.

- nonfatal
- M26
- strong-side leg holster
- strong-hand draw

Sept. 2002 - Rochester, MN

 Officer intends to fire a TASER at a resisting suspect. He instead draws and fires his handgun, shooting the suspect.

- Nonfatal
- -M26
- strong-side cargo pocket
- strong-hand draw

October 2002 - Madera, CA

 Officer intends to fire a TASER at a resisting handcuffed suspect in the back seat who was attempting to kick out the window of the police car. She instead draws and fires her handgun, shooting the suspect.

- Fatal
- Strong-side leg holster
- -M26
- strong-hand draw

Oct. 2003 - Somerset Cty, MD

 Deputy intends to fire a TASER at a fleeing warrant suspect. He instead draws and fires his handgun and shoots the suspect.

- Nonfatal
- M26
- strong-side leg holster
- strong-hand draw

May 2004 - Mesa, AZ

(not learned until after BART trial)

- Officer intends to fire a TASER at a resisting suspect. He instead draws and fires his handgun, shooting the suspect.
- nonfatal
- -M26
- strong-hand cross-draw

Sept. 2005 - Victoria (BC)

 Constable intends to fire a TASER at a resisting suspect. He instead draws and fires his handgun, shooting the suspect.

- Nonfatal
- -X26
- strong-side cargo pocket
- strong-hand draw

Jun 2006 - Kitsap County, WA

 Deputy intends to fire a TASER at a suspect. She instead draws and fires her handgun, shooting the suspect.

- Nonfatal
- -M26
- strong-side holster
- strong-hand draw

April 2008 - Nicholasville, KY

(not learned until after BART trial)

 Officer intends to fire a TASER at a suspect. He instead draws and fires his handgun, shooting the suspect.

- Nonfatal
- -X26
- strong-hand cross-draw

January 2009 - BART

 Officer intends to fire a TASER at a resisting suspect who is prone and refusing to give up his arm for handcuffing. He instead draws and fires his handgun, shooting the suspect.

- Fatal
- -X26
- strong-hand cross-draw

In those 9 wpns confusion cases . . .

WHAT IS THE COMMON FACTOR ???

The Common Factor

- Strong-hand draw
- Strong-hand draw
- Strong-hand draw
- Strong-hand draw
- Strong-hand cross-draw
 - Strong-hand draw
 - Strong-hand draw
- Strong-hand cross-draw
- Strong-hand cross draw

Post-shooting behavior

- Some said immediately, "I thought it was my TASER."
- Some apologized to suspect.
- Some emotionally broke down
- Some immediately got on radio and asked for EMT

Big Issue in the BART Case (and the eight other cases!)

How could an officer mistake a Sig Sauer pistol for a TASER X26?





Weapons Confusion

Eight prior known cases in US and Canada involving officers intending to draw a TASER, but drew a firearm instead.

The Oakland BART shooting on 1-1-2009 was number nine. CAN IT BE THE LAST?

"IT CAN'T HAPPEN TO ME!"

"It can't happen to me . . ."

- Rental car key insertion confusion
- Drive into the bank . . . step on gas, not brake
- Commuter jet crash, Buffalo NY (Feb. 2009)



Plane Crash, All Lives Lost

Pilot literally "zigged" when he should have "zagged"

When "stall" alarm sounded, he took it off autopilot (contrary to training)

He pulled <u>back</u> on stick to alleviate stall (instead of pushing <u>forward</u> as trained).

Nonlethal Weapons . . .

Do you train your officers

as seriously with your

nonlethal weapons
as you do with your firearms?

Guns in Pockets

- Mehserle had twice before taken guns from suspects' pants pockets
- Shortly before the BART incident, Mehserle watched another officer take a gun from a suspect's pants pocket
- Shortly after the BART shooting, Mehserle told Pirone, "Tony, I thought he was going for a gun."
- The district attorney alleged that Mehserle was lying about fearing a gun in Grant's pocket.
- Oscar Grant himself had a gun in his pocket when chased by San Leandro police, who TASERed him.

RUMORS

Oh My Goodness!!!!!

- "Mehserle shot Grant while Grant was handcuffed!"
- "He didn't give medical treatment to Grant!"
- "He refused to give a statement!"
- "He signed a form stating the shooting was an intentional act!"
- "He fled the state to avoid prosecution!"

"Mehserle shot Grant while Grant was handcuffed!"

FACT: Grant was not yet handcuffed when he was shot.

"He refused to give medical treatment to Grant!"

 FACT: Mehserle had Grant's blood on his hands from giving direct pressure, before he was pulled out of the scene. "He refused to give a statement!"

• MEYER'S RULE NO. 1:

If you want me to give a statement, ASK FOR ONE!

"He signed a form stating the shooting was an intentional act!"

- BART used a form for <u>train accidents</u> that train engineers would have to sign after a <u>train</u> accident.
- For some reason that form was used in this case.
- Mehserle's FIRST lawyer crossed out the word "accident" and handwrote "intentional occurrence" and had Mehserle sign the form.

"He fled the state to avoid prosecution!"

As soon as the arrest warrant was issued in California and served in Nevada, he immediately waived extradition, was returned to California, and booked into Alameda County Jail.

"He fled the state to avoid prosecution!"

He "fled the state" to Lake Tahoe, NV, with his entire family, after they all received death threats at their homes.

Why would he choose TASER?

The preliminary hearing judge said that no police officer would use a TASER if he thought he was dealing with a deadly threat.

WHAT DO YOU THINK?

Big Issue in the BART Case

Would an officer ever use a TASER if he or she thought the suspect might use deadly force against the officer?

Yes? No? Maybe?

Big Issue in the BART Case

For better or worse, that happens quite a bit!

In 2007 in the US and Canada, 45 suspects were shot to death, after officers first attempted subduing them with a TASER, but it didn't work.

TASER in lieu of Deadly Force

July 18, 2011 – Monroe County, NY

"The man crossed Route 104, ran up an embankment, and allegedly pulled out a sawed-off shotgun. The officer used a Taser on the man, who was then examined at an area hospital."

How do you judge an incident?

The public is rightly concerned about police tools and tactics, arrest-related deaths, and use of force incidents that provoke strong emotions when viewed on television. Historically, some of these incidents have led to rioting in the streets. Clearly it is in the public interest to attempt to reduce or prevent such outcomes.

John Q. Public

Use of force by police naturally upsets onlookers across the street as well as viewers of the six o'clock news. Conditioned by fictional media depictions of sanitized violence on one hand and fantastic "megaviolence" on the other, most people have no frame of reference other than personal emotions to evaluate an incident.

Why are people surprised???

People tend not to understand even legitimate use-of-force incident dynamics; people are repulsed when they see force applied to a fellow human being. But force is used in relatively small percentages of police confrontations, and people should not be surprised or offended that police must occasionally use force.

Whose perspective counts?

For example, the Rodney King incident was a complex event open to many interpretations.

Depending upon one's life experiences and point-of-view, the King incident was an example of uncontrolled brutality, or it was a controlled use of force that was the logical (but ugly and inept) outcome of years of indefensible policy and training.

Whose perspective counts?

King was an African-American motorist who was gratuitously brutalized by rogue, racist cops; or he was a drunken ex-con who led police on a high-speed chase, then resisted arrest because, as King himself admitted, he did not want to go back to prison.

Whose perspective counts?

Responsibility for the incident lay with the involved officers and the supervisor of this single incident, or it lay with the police chief, his political bosses, and their misbegotten policies that resulted during the previous decade in thousands of other baton-based use-of-force incidents that did not come to public attention.

Trusting Video Evidence

In the BART shooting case, the preliminary hearing judge would not allow expert testimony:

"I don't need some expert to tell me what I can see with my own eyes on the videos."

WHAT DO YOU THINK?

What about those videos???

- Video cameras record only a portion of an incident
- Videos are a two-dimensional representation of an incident
- Videos usually do not capture the perspective of the officer at the time of the incident
- Typical video recordings have low light levels
- Some video cameras record at less than 10 frames per second (distorting reality)

Mehserle's hands to head



Where's his thumb?



Why is holster canted outward?



Brain versus Body

Mehserle's hand had trouble removing his gun from its holster . . . his BRAIN was trying to draw a TASER!

TRAINING

- DYNAMIC
- Interactive
- Performance based
- Confidence building
- Realistic
- Refreshed
- Recorded



Dr. Bill Lewinski says . . .

"You need rapid decision-making under stress with time pressure. You need to build the decision-making process under stress in order to condition the officer for the realities on the street."

Best Protection Against Suits

- Good policy
- Good TRAINING
- Good equipment
- Good tactics
- Good supervision
- Good documentation
- Good investigations
- Good review processes

TASER Training Slide

Holster: Pro's & Cons

Support Side Carry	Dominant Side Carry
+ Lower Risk of Drawing Wrong Weapon Under Stress	+ Weapon Retention
+ Hip crossdraw = Faster Engagement on Target	
+ Easier ID as an ECD Weapon By Other Officers	- Higher risk of weapon confusion
- Weapon retention issues, depending on DT training	Three known incidents of shootings by mistaken weapon

Refer to your department's tactical experts to make your own policy on how to carry, holster, and deploy the TASER X26 or M26

"These are mistakes that are made when you think you are doing one thing but you actually are doing another and the result often is directly opposite of what you intended."

(Dr. Bill Lewinski, Force Science News #154)

"Your intended behavior 'slips off' the path you wanted it to go because it is 'captured' by a stronger response and sent in a different direction."

"In Mehserle's case, a variety of compelling elements—including urgency, time compression, narrowed focus of attention, and automatic response—conspired to create a fateful slip-and-capture."

- Little experience drawing a TASER
- Lots of experience and practice drawing a firearm
- "He'd practiced drawing very fast and had built a strong automatic motor program. Upon recognition of a threat, you want to be able to draw without having to consciously think about each mechanical step . . ."

 He interpreted Grant's hand movement as potentially life-threatening . . . With his emotional intensity now ratcheted up, he announced the decision to Tase him.

"All his actions from that point forward except one—are consistent with a Tasing intention."

- Hand canting and tugging at holster
- Persists to the point that he defeats the restraints on the gun holster
- Thumb moves as if to arm the TASER
- Raises up so as to create a better dart spread
- Only fires once (instead of double-tap, etc.)

TASER Training Slide

Probe Placement Techniques

- Deploy per department SOP
- Greater probe spread increases effectiveness
 - If possible, minimum 4 inch spread
- Hold vertical unless subject is laying down or at an angle
- If practicable, deploy X26 at suspect's back:
 - Clothing fits tighter
 - Surprise factor
 - Stronger muscles -- even more overwhelming
- Avoid head, face, throat, and genitals

This is a murder ???

- Grant's nearby buddy testified that he heard Mehserle announce "I'm going to Tase him."
- Witnesses stated (video confirmed) that a moment after the shot, Mehserle looked stunned, returned his handgun to its holster, immediately placed his hands on his forehead, exhibited a bewildered look on his face, and uttered panicked expletives.

Nonlethal Weapons . . .

- reduce injuries to suspects.
- reduce injuries to officers
- reduce Work Comp costs
- sometimes preclude shootings

The Injury-Reduction Philosophy

Officers must use only that force which is reasonable. The most reasonable force is the type that gets the job done and results in the least injury to officers and suspects.

The Injury-Reduction Philosophy

Nonlethal weapons have been proven to be effective knockdown tools which result in fewer and less severe injuries to suspects and officers than conventional police tactics.

The Injury-Reduction Philosophy

Therefore nonlethal weapons should be used before conventional tactics whenever the dynamics of the situation allow the officer to have a choice.

Nonlethal Weapons v. Conventional Police Tactics: The LAPD Experience

Greg Meyer, Master's Thesis, 1991

The Study

502 use of force incidents involving:

Baton Kick Punch Flashlight

Taser Spray "Misc." Swarm

Suspect Injuries

Effective Force Type	No Injury	Taser/Gas Effects Only	Minor Injury	Moderate Injury	Major Injury	TOTA L
Baton	24	0	24	06		121
Kick	20	0	9	12	0	41
Punch	6	0	5	15	1	27
Misc. Bodily Force	51	0	20	58	6	135
Flashlight	4	0	0	14	6	24
Swarm	33	0	3	10	1	47
Chemical Spray (CS/CN)	0	18	1	0	0	19
Taser	0	88	0	0	0	88
TOTAL	138	106	62	175	21	502

Officer
Injuries

Effective Force Type	No Injury	Taser/Gas Effects Only	Minor Injury	Moderate Injury	Major Injury	TOTAL
Baton	99	0	4	10	8	121
Kick	36	0	0	3	2	41
Punch	19	0	0	5	3	27
Misc. Bodily Force	109	0	5	13	8	135
Flashlight	20	0	3	1	0	24
Swarm	39	0	1	6	1	47
Chemical	14	5	0	0	0	19
Taser	88	0	0	0	0	88
TOTAL	424	5	13	38	22	502

"Compliance" v. "Control"

Failure to comply, verbal resistance "Show your driver's license or I will Tase you" VS.

Resistive, violent or potentially violent Knife, active resistance combative, excited delirium

Shooting-avoidance tools

Verbalization usually works, but not always.

Stand-offs degenerate into shootings

 Continued verbal vs. aggressive takedown

Empty-Hand Tactics

- When to go hands on ?
- When to keep your distance ?

Scenario-based training!

IACP GUIDELINES

Upon activating the device against a person, the officer shall energize the subject no longer than objectively reasonable to overcome resistance and bring the subject under control.

Where does Taser fit ???

LAPD = Aggressive, Combative

LASD = High Risk/Assaultive

Miami = Active Physical Resistance, Aggressive Physical Resistance, Aggravated Physical Resistance

IACP

 Electronic Control Weapons are generally analogous to OC spray on the force continuum

 Don't use on handcuffed prisoners absent overtly assaultive behavior

"TASER Overdependence"

- Used too early
- Used in lieu of soft-hands-on
- Used as a first resort absent need to

WHY ???

Dr. Bozeman – Wake Forest

962 TASER incidents

• 99.7% = no serious injury

 "Injury Profile of TASER® Electrical Conducted Energy Weapons (CEWs)", Dr. William P. Bozeman, et al, Wake Forest University (NIJ-funded study, 2007)

To Warn or Not to Warn . . .

Warn before TASER use "when practical."

But when is it "not practical?"

Suicide Stand-Off

- Knife to own throat
- "One step closer and I'm gonna . . ."
- Continued verbalization?
- Pepper spray? Beanbag?
- TASER takedown?
- Deadly force back-up

Shooting-avoidance

- Knife, machete, bottle, club
- Early, aggressive use
- . TIME V. DISTANCE
- · Stand-off situations vs. sudden attacks
- Don't "talk them to death"
- Deadly-force back-up

DARTS vs. DRIVE-STUN

Well-placed, properly spread TASER darts incapacitate the subject.

Drive-stuns generally do not.

Cuffing Under Power

Try it, you might like it!

Officers fear getting zapped.

Dynamic training is a must!

Nonlethal vs. Knives

- 21-foot rule? (30 feet?)
- Know what it means
- Nonlethal successes against knives
- BUT . . . have a deadly force back-up!
- Don't talk them to death!

Fleeing Subjects

"That a subject is fleeing should not be the sole justification for police use of a CED. Severity of offense and other circumstances should be considered before officers' use of a CED on the fleeing subject."

- PERF (2005)

Scott Greenwood, ACLU

"Putting the TASER relatively low on the use-of-force continuum stops the fight and precludes the use of the higher-level force."

NOTHING ALWAYS WORKS!

- No 100% fail-safe tools or tactics
- All can fail
- All might lead to injury or death
- "Stuff Happens"
- Have a back-up plan
- Do dynamic, stressful failure drills

RAISE YOUR HANDS!

- How many of you were pepper-sprayed?
- How many of you were TASERed?
- How many had <u>both</u>?
- If you had both, which would you rather have again (if given the choice)?

Pepper Spray? or TASER?

You're about to be Tased . . .

July 16, 2011 – The Arizona Republic

- Suspect took control of the TASER and began to beat the officer in the face.
- Suspect pointed TASER at officer.
- Officer shot and killed the suspect.

WHAT DO YOU THINK?

TASER vs. Officer

Officer alone. . . may be deadly force

• Multiple officers . . . ??????????????

TASER vs. Officer

Officer alone. . . may be deadly force

Multiple officers . . . take the hit!

DYNAMIC TRAINING NEEDED!

Mehserle Sentenced

- Two years in state prison
- Served one year (exactly)
 (half-time is normal in California with good behavior)
- Time was served at Los Angeles
 County Jail (except for first 26 days at Alameda County Jail before making bail)

For more info . . .

Force Science Research Center



www.forcescience.org

For more info . . .

See my articles (and others' articles) at . . .



LESSONS LEARNED

 POLICY – too many carry options, strong-hand draw

TRAINING – not dynamic (no stress)

EQUIPMENT – not enough to go around

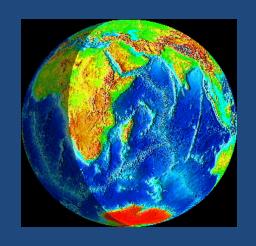
GET GOOD LEGAL REPRESENTATION!

Suggestion on how to prevent TASER weapons confusion

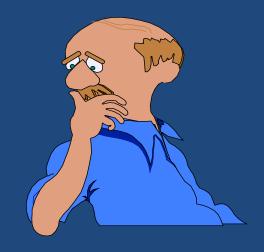
- Weak-hand TASER draw
- Okay to transition to strong hand AFTER draw
- BUT: If you have to quick-draw your TASER, are you choosing the right weapon?

Yes? No? Maybe?

Questions???



QUESTION:



If we can put a man on the moon and return him safely to Earth, why can't we put a man on the ground and take him safely to jail???

The BART Shooting 1-1-09

Captain Greg Meyer

Los Angeles Police Department (ret.)

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