

# The UCLA Library TASER Incident – Revisited

by Greg Meyer

Many readers will recall the “TASER in the library” case at the University of California, Los Angeles (UCLA) on November 14, 2006. No, this was not the more infamous “Don’t Tase Me, Bro’!” case, which occurred a few months later in Florida. But the UCLA incident had its U-Tube moments and lots of controversy.

Officers used a TASER in drive-stun mode on a student who physically resisted being ejected from the library when he violated the campus rule that only students who produced identification could be in the library at night after a certain hour. Such ejections were generally routinely handled without incident, but this particular student decided to put on a show for the other students.

I’ve waited a long time to write this article, because the matter has been tied up in litigation, and I could not publicly speak about it. I was one of the use-of-force experts retained to assist UCLA and its officers in their defense of the civil lawsuit brought by student Mostafa Tabatabaiejad, who actively and occasionally aggressively physically resisted the campus officers ejecting him from the library. “Now it can be told,” as we say in Hollywood.

One of the reasons the UCLA case was so controversial was because, in response to public outcry about the incident, the campus administration brought in some folks to conduct an “outside, independent investigation.” They hired the Police Assessment Resource Center (PARC), an organization that has dedicated itself to higher accountability by law enforcement.

Whatever PARC’s strengths and past successes may have been, its August 2007 report on the UCLA incident, “A Bad Night at Powell Library,” was not one of them.

The PARC report on the UCLA incident reached numerous unsupportable conclusions, informed by much conjecture and ignorance of key facts of the incident. Without interviewing the involved officers or interviewing the “victim” of all this supposed police brutality, PARC managed to condemn the officers at virtually every turn. You can read the entire PARC report **[[HERE: insert attached report]]**.

A lot of detail is presented here. Hopefully you will find some of it helpful as you analyze your own TASER incidents.

What follows is a point-by-point rebuttal of various aspects of the PARC report. By no means is this an all-inconclusive list of the issues that could be rebutted. (In the quoted material, footnote superscript numbers from the PARC report are omitted below.)

PARC, p.1: The event triggering the repeated electrical shocking of Tabatabaiejad was a declination by the UCLA student to produce a BruinCard identification in the Powell Library computer lab after hours.

REBUTTAL: The triggering event to the plaintiff receiving electrical shock from the TASER was the plaintiff's active resistance to the lawful intervention of the UCLA Police Department officers who were enforcing campus rules.

PARC, p.1: We find that one UCLAPD officer violated UCLA use of force policies in the incident.

REBUTTAL: No UCLAPD officer violated UCLA use of force policies in this incident. Given Tabatabaiejad's continuing active resistance to being handcuffed, it was reasonable for the officers to attempt to put an immediate end to the situation after other attempts to do so had failed because of Tabatabaiejad's resistance.

PARC, p. 1: The UCLAPD policy stands alone in its legitimization of the Taser as a pain compliance device against passive resisters.

REBUTTAL: The plaintiff was not a "passive resister," he was an "active resister." Inserting the "passive resister" issue into this case is pejorative, if not disingenuous.

PARC, p. 23-26: [In these pages the PARC report attempts to deal with the assertions of the officers that there was an increasingly hostile crowd in the vicinity, and the PARC report concludes that the officers were wrong about this at several points in the incident.]

REBUTTAL: As the United States Supreme Court recognized in *Graham v. Connor*, police use of force incidents tend to happen in circumstances that are tense, uncertain, and rapidly evolving. It is unreasonable to expect the officers' memory to be perfect when they try to reconstruct a moment-by-moment chronology of such an incident. The fact is, there was a crowd. The fact is, the size of the crowd was growing. The fact is, the officers reported heightened concern about the level of the crowd's hostility. And the fact is that the PARC report itself documented at least one point where the crowd was surging forward toward the officers: "While a growing crowd of approximately ten to fifteen individuals does momentarily surge forward toward the CLICC lab entryway [where the plaintiff and the officers were situated at that time], Library surveillance videos confirm that the CSO effectively created and maintained a barrier between the assembling students in approximately nine seconds." (See PARC report, p. 25.) The officers' increasing fear of the crowd's increasing hostility was wholly justified.

PARC, p. 26: “The YouTube video, considered with the surveillance footage, shows a concerned yet controlled and obedient group of students that maintains a distance from the incident and is, for much of the incident, relatively quiet.”

REBUTTAL: The YouTube video clearly documents that some of these supposedly “controlled and obedient group of students” made loud, profane anti-police comments during the incident. Also, the PARC report, on page 38, states, “Tabatabaïnejad’s screams continue to elicit a strong response from the students, as they are heard yelling and several are seen motioning vigorously.” The PARC report author(s) has/have clearly chosen to minimize the officers’ reasonable perception that the crowd was increasingly becoming a safety problem. By doing so they are ignoring the mandate of the United States Supreme Court in *Graham v. Connor* that requires one to stand in the shoes of a reasonable officer involved in the incident, and not engage in 20/20 hindsight.

PARC p. 29: “The officers’ command to “stop fighting us” likely refers to Tabatabaïnejad continuing to bear his weight to the ground.”

REBUTTAL: This is an incorrect assertion by the author(s) of the PARC report. In the PARC report paragraph immediately preceding their incorrect assertion, the author(s) wrote:

According to Officer 1, he and Officer 2 were at this point “trying to bring his arms around to his back so that we could handcuff him, but Tabatabaïnejad kept his arms pinned to his sides, with his wrists tucked underneath his body.”

The officers’ command to “stop fighting us” clearly refers to the officers’ attempts to overcome the continuing resistance of the plaintiff, whose arms and wrists were pinned and tucked in a manner clearly designed to prevent the officers from handcuffing him.

PARC, p. 38: “Just as Tabatabaïnejad begins to scream, Tabatabaïnejad’s legs appear to move suddenly and abruptly as officers struggle once again with Tabatabaïnejad. His screaming lasts for approximately seven seconds, stops, and then resumes again for a few more seconds. We are unable to determine why Tabatabaïnejad was screaming. “

REBUTTAL: Obviously it did not occur to the PARC report author(s) to acknowledge that the plaintiff’s sudden movements of his legs could constitute active resistance (if not aggressive resistance). Throughout of the PARC report, the author(s) readily engage in speculation about what may be going on in the incident when it serves their purpose to cast the officers in a bad light, but not when it may put the officers, their actions, and their reports in a favorable light of reasonableness.

PARC, p. 46 : “Given that Tabatabaiejad had already put on his backpack and was moving toward the exit, Officer 1 might better have said nothing to the student yet remained vigilant and ready should the student stop walking toward the exit. Rather than inquiring about what the problem was, or simply telling Tabatabaiejad that the CSO indicated to him that the student refused to show his identification, Officer 1’s initial statement to Tabatabaiejad consisted of a direct imperative—leave the library. Tabatabaiejad was already in the process of doing so.”

REBUTTAL: The PARC author(s)’s conclusion here that “Tabatabaiejad was already in the process of doing so” (i.e., leaving the library) is in direct conflict with the evidence from the Library video, cited on page 16 of the PARC report, that Tabatabaiejad walked toward the officer and stopped (see PARC report, page 16). The same error is repeated on PARC p. 48. This is yet another example of the PARC author(s)’s mindset that the officers acted inappropriately in this incident, when the evidence is otherwise.

PARC, p. 51: “For reasons that are unclear, Tabatabaiejad then dropped to the ground.”

REBUTTAL: There is nothing unclear here! It is very clear that Tabatabaiejad dropped to the ground at this point because he made a personal decision to actively resist the police officers. The PARC author(s) is/are apparently unable or unwilling to recognize the plaintiff’s significant overt act of active resistance. It is significant because it was the first act of resistance in a long series of continuing acts of resistance by the plaintiff. The PARC author(s)’s assertion on this point is all the more perplexing by the author(s)’s statement later in the PARC report, “Nonetheless, Tabatabaiejad did show poor judgment in dropping to the ground, staying there, and continuing to be as vocal as he was.” (See PARC report, p. 52.)

PARC, p. 55: “Sometime after the first firing of the Taser, Officer 2 employed what is generally considered to be a low-level pain compliance technique, a wristlock, on Tabatabaiejad. Officer 2 could have employed this technique, and, if necessary, done so multiple times, before firing the Taser. The officers, then, had reasonable alternatives to the Taser that could have defused the situation or ended the incident more quickly.”

REBUTTAL: The PARC author(s) is/are further apparently unaware that the federal courts have repeatedly held that no particular use of force tool or tactic need be employed; rather, the question is whether the officer acted reasonably under the facts and circumstances in the case at hand. Also, the PARC author(s) is/are apparently unaware of the fact that wristlock techniques can and have been far more injurious than applications of the TASER, thus in many situations are a less reasonable alternative than using the TASER. Wristlock techniques are notorious for resulting in strained, sprained and even broken wrists.

PARC, p. 57: “Although Officer 2 can point to the pain compliance policy and its authorization of the Taser against a passive resister, and although Officer 2’s actions

should be afforded due latitude, the UCLA general use of force policy was breached by Officer 2's selection of a force option substantially disproportionate to Tabatabaiejad's provocation. We conclude, therefore, that the first deployment of the Taser was out of policy."

REBUTTAL: The premise of this paragraph in the PARC report is false. Neither "Officer 2" (Duren) nor any other officer or witness except the plaintiff himself refers to plaintiff as a "passive resister" in this case. The PARC author(s)'s assertion that "... the UCLA general use of force policy was breached by Officer 2's selection of a force option substantially disproportionate to Tabatabaiejad's provocation" is undermined by the PARC author(s)'s own words, "... although Officer 2's actions should be afforded due latitude," which is reflective of the UCLA use of force policy. I strongly doubt that the PARC author(s) can point to a section of the UCLA use of force policy that supports their assertion that the officer's selection of the force option was disproportionate to the provocation. And if the PARC author(s) cannot support that assertion with the UCLA use of force policy, then the conclusion that "... the first deployment of the Taser was out of policy" is simply wrong.

PARC, p. 58: If the Taser had to be deployed the second time at all, Officer 2 should have considered standing back and using the Taser in the cartridge or probe mode. It might have thus momentarily incapacitated the student, thereby permitting Officer 1 to handcuff the student.

REBUTTAL: This suggestion by the PARC author(s) is shocking!

First, it reflects a lack of knowledge of the TASER device, how it operates, and what are the differences in impact on the person receiving the TASER application in the "cartridge or probe mode" versus the drive-stun mode. Probably without intending to, the PARC author(s) suggest that the plaintiff should have been subjected to a full-body neuromuscular incapacitation (which is the result of a successful TASER deployment in what the authors call "cartridge or probe mode"), instead of the less intrusive pain-compliance effort that is part and parcel of the drive-stun mode that was applied to the plaintiff.

In the "cartridge or probe mode," the officer stands back and fires two electrically charged darts into upper body of the subject, at a distance designed to ensure maximum spread between the two darts, so that the incapacitating electricity involves as much of the body as possible, in order to cause seizures of the large muscle groups, temporarily but completely disabling the subject for as long as the electricity is applied.

In the drive-stun mode that was applied to the plaintiff in this case, the electricity is typically not incapacitating, but rather results in highly localized (within an inch or two of the device) pain designed and intended (and sanctioned by UCLA's use of force policy) to achieve compliance through the application of pain.

Second, to have deployed the TASER on the plaintiff in the “cartridge or probe mode” would have required disengaging from him, stepping back several steps, and firing the darts through the air. It is tactically undesirable to disengage from a resisting suspect unless the suspect engages in active aggression (assault on the officer) and is about to overpower the officer or obtain the officer’s firearm.

There is also the chance that one or both TASER darts would miss the subject, and this happens somewhat frequently with TASER use in the “cartridge or probe mode.” There is the chance that one or more darts would have struck an innocent student in the crowd or one of the officers, either directly in the line of fire.

In addition, firing the TASER in “cartridge or probe mode” that the PARC author(s) suggest, to some people sounds like a gunshot. The perceived sound of a gunshot in a crowded library would likely cause panic among the bystanders and the unrestrained plaintiff himself. The implications are ominous. The suggestion by the PARC author(s) is ludicrous.

PARC, p. 59-60: “Officer 2 could have delayed using the Taser a second time despite the repeated orders for the student to get up or be tased again. Unless or until Tabatabaiejad’s behavior changed to aggressive resistance, there was no additional provocation to justify the second use of the Taser.” PARC goes on to conclude that the second TASER application was objectively unreasonable.

REBUTTAL: The PARC author(s) apparently believe that 16 verbal warnings by the officers were not enough for them to apply a level of force that is sanctioned by UCLA use of force policy. I disagree. Many police tactics experts, myself included, would opine that 16 warnings is far too many before taking action. Further, the PARC author(s) opinion that the plaintiff’s behavior must increase to the aggressive-resistance level before the TASER is used a second time, is not supported by UCLA use of force policy, nor any other policy that I have ever heard of in 30 years of dealing with TASER policy and deployment issues throughout the United States and internationally.

PARC, p. 60: “The UCLAPD’s guidelines for Taser deployment indicate that, “although not absolutely prohibited, officers should give additional consideration to the unique circumstances involved prior to applying the Taser to any of the following individuals,” which include, among others, “individuals who are handcuffed or otherwise restrained.” There is no evidence that Tabatabaiejad became more actively or violently resistive after he was handcuffed. Accordingly, it violated UCLA’s policies for Officer 2 to deploy the Taser against a handcuffed suspect.”

REBUTTAL: The PARC author(s) again miss the point that the increasingly hostile crowd caused the officers to reasonably determine the need to get the plaintiff controlled and out of the Powell Library as soon as possible. Using the TASER in the drive-stun mode was within policy and was intended to do just that,

although it had limited success. Regardless, the officer's actions were objectively reasonable, as already stated.

PARC, p. 62: "In the time between the second and third applications, the officers were able to drag Tabatabaiejad to the transitional stairwell between the CLICC lab and the Powell Library's main lobby, even as Tabatabaiejad continued to use his body weight in an effort to remain stationary. Since the officers had dragged Tabatabaiejad that far, it is puzzling why they could not continue moving the student all the way out of the Library." In this context, on page 63, the PARC author(s) pronounced the third application of the TASER to be violate UCLA use of force policy.

REBUTTAL: I do not support in any way PARC's suggestion that the officers should drag the plaintiff's body out of the library, which would cause the plaintiff's body to literally bounce down a series of concrete stairs, possibly causing serious injury to the plaintiff. The plaintiff was not injured in any significant way by the TASER, and its use was within UCLA policy.

PARC, ppg. 51-52: "Tabatabaiejad could have reduced the urgency of the situation and prevented the sequence of events that subsequently occurred by complying with the officers' demands to "stand up." Such commands were clear, repeated, and simple. We cannot determine, based on available evidence, precisely why Tabatabaiejad "went limp" or fell to the ground. Nor can we determine why he did not stand up as ordered. While we understand that Tabatabaiejad currently suggests that he chose to fall to the ground out of fear over the officers' singling him out, their prior physical contact with him, or a fear of how the officers might potentially treat him, there is no denying that, had Tabatabaiejad complied fully and quickly with the officers by getting up and leaving the Library, he could have avoided being tased. *[emphasis added]*

REBUTTAL: There is no rebuttal. It is the essence of the case. None of PARC's strenuous efforts to cast aspersions on the lawful efforts by the police officers who were attempting to control the plaintiff, who chose not to allow himself to be controlled, can obscure this fact.

PARC, p. 57: "Tabatabaiejad's precise level of resistance is difficult to determine conclusively. Tabatabaiejad was indeed making comments about "passive resistance" and "Gandhi," as well as making other comments that Gandhi would likely not have approved. At worst, if the officers are to be believed, Tabatabaiejad attempted to brace himself and used his body weight to remain stationary, and thus, either purposely or consequently, pulled the officers downward. He may even have squirmed and slid around. He refused to move and to comply with the officers' demand that he stand up on his own. He was not utterly limp."

REBUTTAL: No rebuttal. The PARC report in this instance makes the case for TASER usage on the plaintiff because of the plaintiff's continuous active and defensive resistance!

In May 2009, the University of California settled with the plaintiff for \$220,000, far less than the costs of taking this matter to trial.