

Judge rules against ranger for tasing Montara man

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A National Park Service ranger overstepped her authority when she subdued a Montara man with a stun gun during an encounter over his unleashed dog, according to a federal court ruling published on Thursday.

Federal Judge Jacqueline Corley of the Northern District Court of California found that the ranger used excessive force and acted unreasonably given the situation. In part, this error was due to the federal park system's own vague enforcement policies, she stated.

Montara resident Gary Hesterberg was awarded \$50,000 in damages for his emotional and mental suffering – a fraction of the \$500,000 he originally requested. His attorney, Michael Haddad, pointed out that the case was more about the principles than winning a hefty sum.

"We ended up doing this case practically for free, but there were important principles at stake," he said. "We were trying to protect other people who would be tased under these unlawful procedures."

The court case centered on a 2012 incident at Rancho Corral de Tierra, when Ranger Sarah Cavallaro stopped Montara resident Gary Hesterberg for walking his dog off-leash. The Golden Gate National Recreation Area had just taken ownership of the parkland and rangers were beginning an educational effort to warn dog walkers that leashes were mandatory.

In her deposition for the case, Cavallaro stated that she told Hesterberg she was going to let him off with a verbal warning. She asked for his name and other information, and Hesterberg reportedly lied, saying his name was "Gary Jones." The fake name aroused Cavallaro's suspicions and she refused to let him go until his identity was verified by a dispatcher.

Hesterberg became argumentative as he continued to wait, and he attempted to walk away on two occasions, according to case records. After the second attempt, the ranger unholstered her Taser, pointed it at his chest and warned him to put his hands behind his back.

"What, you're going to tase me now?" Hesterberg said. He declined to put his hands behind his back and he warned her that he had a heart condition. He asked her what authority she had to detain him.



Frank Dean speaks at the GGNRA meeting

Frank Dean, superintendent of the Golden Gate National Recreation Area, speaks at the GGNRA meeting in 2012 at Farallone Elementary School.

"The Constitution," she answered.

After having the Taser pointed at him for about four minutes, Hesterberg announced he was going to leave. After he took two or three steps, Cavallaro fired her Taser at his back and delivered a five-second cycle of electricity. Hesterberg later described the shock as among the most painful sensations he ever felt.

Hesterberg was arrested and taken to jail, although local prosecutors declined to press charges against him.

The case generated immediate outrage on the Peninsula. Within days of the incident, U.S. Rep. Jackie Speier was calling for an independent investigation. National Park Service officials supported the ranger's actions, insisting the Taser use was justified.

Hesterberg filed a federal civil rights case over the incident last year.

In her court decision, Judge Corley compared Hesterberg's encounter with other instances of Taser use that came before the 9th U.S. Circuit Court of Appeals. Hesterberg, she found, posed no threat and hadn't committed any serious crime; however, she acknowledged that he played a smaller role in the incident by telling a lie.

During the trial, Hunter Bailey, the National Park Service deputy chief of law enforcement, gave testimony on the department's policies that formed the basis for rangers' training for using force. The judge found that Bailey had a "startling lack of awareness of the law and its application to use-of-force scenarios."

Current policies in the park system and its overarching agency, the Department of the Interior, state that Tasers can be used when "legally justified" against individuals who are "actively resisting" an officer. But Bailey later admitted in court that he wasn't sure what the legal standard was for stun gun use or how to define active resistance.

Since Hesterberg was subdued regardless of his heart condition, his attorneys pressed Bailey to answer whether a ranger could similarly use a stun gun against other "high-risk" groups, as defined by their internal policies. They asked, could a Taser be used against a 9-year-old girl or a woman who was eight months pregnant?

Bailey said yes, so long as the ranger first "evaluated other options."

That was simply unreasonable, the judge ruled. Corley took aim against the federal park system's policies on Taser use.

"On their face (the policies) provide no guidance for the court — not to mention DOI and NPS officers," she wrote. "They are, essentially, standardless policies, devoid of any rules for dealing with fleeing subjects."

Haddad, Hesterberg's attorney, said the court ruling should prod the agencies to bring their policies into compliance with the case law.

GGNRA spokeswoman Alexandra Picavet said her agency was still reviewing the lawsuit and could not comment.