

SFPD Responses Mr. Leonisio

1. CEDs Will Contribute to Reducing Injuries

The threshold question regarding the adoption of CEDs is why SFPD should use them. Integral to SFPD’s mission is the enforcement of state and local law. SFPD officers must use force when the circumstances warrant it in order to accomplish that mission. However, SFPD has a duty to use only that amount of force which is reasonable and—to the extent possible—must adopt policies, practices, and tools that limit injuries to civilians and officers.

Various studies suggest that law enforcement agencies who adopt CEDs reduce injury rates and severity to officers and civilians. The Department of Justice under President Barack Obama has been a proponent of CED adoption for this very reason. For example, in a survey of national studies, the National Institute of Justice found that the use of CEDs is associated nationally with a 60% decrease in civilian injury.¹ That same report found that CED-use “carries with it a risk as low as or lower than most alternatives.”² Additionally, other physical force options (e.g. baton or hand strikes) are associated with an *increased* risk of injury to civilians of 50% and to officers of 300%.³ Moreover, the *Final Report of the President’s Task Force on 21st Century Policing* noted that “[s]tudies of CEDs have shown them to be effective at reducing both officer and civilian injuries.”⁴

In a similar review of available literature, Stanford University concluded that “there is significant support for the contention that [CEDs] reduce injuries to officers to some degree.”⁵ That same report found that studies have generally concluded that CED-use decreases the severity of civilian injuries—although those findings often turn on how a particular report defined “injury.”⁶ In sum, while data collection is not complete, nor is it perfect, the breadth of current available literature suggests that CED-use comes with significant benefits for citizens and officers.

Mr. Leonisio attempts to push back against the broader empirical research demonstrating that CED-use decreases injury rates and severity. Mr. Leonisio relies solely upon a study by William Terrill and Eugene Paoline to claim that injury rates *increased* with CED deployment.⁷ It should be noted that the reason this study found that injury rates increased is because it defined injury

¹ National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption* at 30, May 2011.

² *Id.* at 24.

³ *Id.* at 30.

⁴ President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*. Washing, DC: Officer of Community Oriented Policing Services, at 38, 2015 (citing John M. MacDonald, Robert J. Kaminski, and Michael R. Smith, “The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events,” *American Journal of Public Health* 99, no. 12 (2009) 2268–2274, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775771/pdf/2268.pdf>; Bruce Taylor et al., *Comparing Safety Outcomes in Police Use-Of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted Energy Devices and A Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation* (Washington, DC: Police Executive Research Forum, 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/237965.pdf>; Bruce G. Taylor and Daniel J. Woods, “Injuries to Officers and Suspects in Police Use-of- Force Cases: A Quasi-Experimental Evaluation,” *Police Quarterly* 13, no. 3 (2010): 260–289, <http://pqx.sagepub.com/content/13/3/260.full.pdf>.)

⁵ Jena Neuscheler and Akiva Freidlin, *Report on Electronic Control Weapons Submitted to the City of Berkeley*, at 41, Stanford Criminal Justice Center at Stanford Law School, Jun. 2015 (hereafter “Stanford Study”).

⁶ *Id.* at 50-55, 61.

⁷ Leonisio, M., *Responses to Stakeholders’ Questions on CEDs* at 9, Oct. 16, 2017.

SFPD Responses Mr. Leonesio

broadly to include dart puncture wounds—which naturally would heighten the injury rate since dart punctures are essential to a CED’s successful function.⁸ As Mr. Leonesio has noted, “depending on who is doing the research and what their biases are . . . you can pretty much make the study say what you want it to say.”⁹ Hence, it is imperative to rely upon the breadth of available literature when making data-based decisions, rather than narrowly focusing on a single study.

SFPD’s independent review of the available literature has led it to believe that CED-use is responsible for a reduction of civilian and officer injuries and, therefore SFPD should adopt this technology.

2. Disproportionate Impact of Communities of Color and Vulnerable Populations

Valid concern has been raised about the potential disproportionate use of CEDs on communities of color and vulnerable populations. As Mr. Leonesio noted in his responses to stakeholders, a CED is a force option—there is no recommended force option for particular groups of people.¹⁰ SFPD, however, is committed to ensuring that CEDs—and *all* uses of force—are only deployed when reasonably necessary. SFPD is committed to monitoring its uses of force and identifying any problem areas that may arise—particularly regarding whether force is being disproportionately used on *any* group.

Fortunately, the Department of Justice’s recent review of SFPD found that there was no known correlation between the severity of force used and a citizen’s race.¹¹ Regardless, SFPD will continue to monitor its uses of force, track trends, and take action to address any identified inequities.

3. Efficacy

A. Mr. Leonesio Has Provided No Evidence that New CED Models Are Ineffective

Mr. Leonesio has expressed concern that the new CED models may not be effective because they discharge approximately half the electrical charge compared to older models.¹² However, no research has been done to support the conclusion that these newer models are less effective than older models.¹³

⁸ Stanford Study at 54.

⁹ Deposition of Michael Leonesio 88:14-22, Jun. 27, 2017.

¹⁰ Leonesio, *Responses to Stakeholders’ Questions* at 2.

¹¹ Community Oriented Policing Services, *An Assessment of the San Francisco Police Department* at 49, Oct. 2016.

¹² Leonesio, *Responses to Stakeholders’ Questions* at 7; Leonesio Statement before SF Police Commission 8:10-10-17 (hereafter “Leonesio Commission”).

¹³ Leonesio Commission 8:11-13 (“Those are the new digital weapons, and there really isn’t any substantive research on efficacy.”).

SFPD Responses Mr. Leonesio

Mr. Leonesio puts much weight into a recent review of the Los Angeles Police Department's CED-program.¹⁴ That study alleged that CED-use in LAPD failed roughly 50% of the time.¹⁵ However, that study's methodology is questionable: LAPD counted each and every activation of the device rather than whether it worked in a particular encounter. For example, if the CED were deployed two times in one incident, LAPD considered that a 50% success rate. This is akin to saying that a baton failed two-thirds of the time if an officer was required to strike a suspect three times before making an arrest.

If the Police Commission agrees to use CEDs, SFPD will closely monitor the success rate of the device and—using the data compiled through its CED program—identify the causes of any failures. At this time, however, there is no known data that suggests that new CED models are any less efficient than previous models.

B. Mr. Leonesio Has Provided No Evidence that Officers Will Not Trust CEDs

Related to the above concern, Mr. Leonesio has argued that officers do not—or may not—trust the implementation of CEDs, due to their lack of effectiveness, and therefore not use them.¹⁶ Mr. Leonesio has provided no evidence to support this claim. First, he relies upon personal discussions with OPD officers who allegedly told him that they did not use their CEDs because they did not trust them.¹⁷ Personal observations are not data-driven conclusions. Mr. Leonesio's personal conversations at a particular time for a particular law enforcement agency cannot seriously be the grounds to conclude that officers generally will not trust CEDs—or that they will not with the technology, training, and policies implemented by SFPD.

Second, Mr. Leonesio relies upon the following statement by retired Los Angeles County Sheriff's Department Commander Charles Heal: "I'm not going to risk my life for a 50% success rate."¹⁸ Commander Heal's statement relied upon the flawed LAPD study noted above—wherein "failure rate" was calculated in a flawed manner that over-estimated what constitutes a failure. Additionally, Commander Heal was *not* arguing that officers generally do not trust CEDs. Rather, Commander Heal surmised that it was possible that officers may use CEDs less if they did not believe they were reliable—however Commander Heal never stated that this was a common belief among peace officers. Indeed, Commander Heal—in the very same article—advocates for CEDs: "We know their [CEDs] shortcomings . . . but it's better than the alternative [deadly force]."¹⁹

As previously noted, SFPD will closely monitor CED-use and—with the supervision of the Police Commission—implement the best practices, policies, and training. As Mr. Leonesio has previously noted: creating and maintaining a CED program can be challenging, but "it can be done."²⁰

¹⁴ Leonesio, *Responses to Stakeholders' Questions* at 6; Leonesio Commission 11:17-21.

¹⁵ Mather, Kate, "One of the LAPD's Preferred Weapons to Help Officers Avoid Shootings Often Doesn't Work," *Los Angeles Times*, Apr. 1, 2016, accessed Oct. 25, 2017, <http://www.latimes.com/local/crime/la-me-lapd-tasers-20160401-story.html> (hereafter "Mather, *Los Angeles Times*").

¹⁶ Leonesio, *Responses to Stakeholders' Questions* at 12-13.

¹⁷ *Id.* at 13.

¹⁸ *Id.* (citing Mather, *Los Angeles Times*).

¹⁹ Mather, *Los Angeles Times*.

²⁰ Leonesio Commission 7:1-5.

SFPD Responses Mr. Leonesio

4. CED Failure Will Not Justify Making a Non-Lethal Encounter Lethal

Mr. Leonesio has raised concerns that a CED failure may turn a non-lethal encounter into a lethal one.²¹ This concern is misguided. Researchers continue to debate whether CED adoption lowers the use of deadly force among law enforcement agencies.²² However, the breadth of available literature agrees that CED-use is not associated with an increase in officer firearm usage.²³

Most importantly, a CED failure will not justify turning a non-lethal encounter into a lethal one under SFPD policy. Officers are only permitted to use deadly force under specific and narrow circumstances; most usually in order to protect the officer or another from an immediate threat of death or serious bodily injury when no other reasonable alternatives exist.²⁴ If an officer attempts to use a CED in a non-lethal force situation, that failure will not permit the officer to automatically escalate to deadly force. As Mr. Leonesio notes, CEDs are not a tactically sound alternative to lethal force and are not encouraged to be used in situations which are or foreseeably could require the use of deadly force.²⁵

Finally, we must be aware that CEDs would not be deployed in a vacuum: SFPD is proud to have adopted and become a leader in de-escalation techniques and crisis intervention teams. Evidence has shown that the proper implementation of de-escalation techniques has reduced uses of force.²⁶ Additionally, Mr. Leonesio's experience in Oakland demonstrates that CEDs and CIT can successfully—and effectively—coexist: Mr. Leonesio noted that during his tenure with OPD they “had zero [CED related] injuries, zero deaths, no lawsuits, and no IA complaints”²⁷ and CEDs were used in conjunction with CIT teams.²⁸

5. CED as a Replacement for Carotid

Mr. Leonesio has argued that CEDs are not a replacement for the carotid because they are not classified as the same category of force and are not used in similar circumstances.²⁹ Mr. Leonesio's arguments are a strawman: no one argues that CEDs are an *identical* replacement for the carotid. Rather, CEDs are another less-lethal option that can help fill the void left by the carotid.

²¹ Leonesio, *Responses to Stakeholders' Questions* at 6.

²² Compare Charlie Meshol, Mark Henych, et al., “Taser and Less Lethal Weapons: An Exploratory Analysis of Deployments and Effectiveness,” at 72-73, *Law Enforcement Executive Forum*, Vol. 5. (2005) (finding that CED use reduced deadly force use in Orange County Sheriff's Department from 2001 to 2003), with Bryon K. Lee, Eric Vittinghogg, et al., “Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths,” at 877, *American Journal of Cardiology*, Col. 103, No. 6 (March 2009) (finding that CED use not associated with a decrease in firearm-related deaths in survey of fifty California law enforcement agencies).

²³ See, e.g., Stanford Study at 36-41 (reporting that several studies found a correlation between a reduction in firearm-related incidents, whereas others found no correlation, yet none found an *increase*).

²⁴ Department General Order 5.01(G)(2)(a)(i)-(ii).

²⁵ Leonesio, *Responses to Stakeholders' Questions* at 5.

²⁶ Janet R. Oliva, Rhiannon Morgan, et al., “A Practical Overview of De-Escalation Skills in Law Enforcement: Helping Individuals in Crisis While Reducing Police Liability and Injury,” *Journal of Police Crisis Negotiations*, Vol. 10, No. 1-2. (June 2010).

²⁷ Leonesio Commission 4:1-2.

²⁸ *Id.* at 21:17-22:6.

²⁹ Leonesio, *Responses to Stakeholders' Questions* at 11.

SFPD Responses Mr. Leonesio

CEDs are a less-lethal force option that can be used in close quarters. Additionally, they have the advantage—like the carotid—of neutralizing size differences among suspects and the officer. Finally, CEDs reduces injuries to suspects when compared to other less-lethal force options such as batons or body strikes.³⁰ Certainly CEDs would not be appropriate to use in every situation that a carotid may have; however no one advocates for that position. Rather, CEDs are a force option that could be used to avoid the use of physical force—as the carotid was.

³⁰ Robert J. Kaminski, and Michael R. Smith, “The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events,” *American Journal of Public Health* 99, no. 12 (2009) 2268–2274, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775771/pdf/2268.pdf>.