

Minutes – CED Stakeholder Meeting

June 13, 2017

Location

Police Headquarters, 1245 Third Street, Room 1025, San Francisco, CA

Attendees

Julius Turman	Police Commission
Sonia Melara	Police Commission
Bill Ong Hing	Police Commission
Pete Walsh	SFPD
Carl Fabbri	SFPD
Angelica Almeida	DPH
Eric Vanderpool	Community Member
Dennis Chew	Community Member
Samara Marion	DPA
David Rizk	BASF
Michela Davis	ACLU
Mary Harris	Community Member
Rachel Kilshaw	SFPD
Rania Adwan	Police Commission
Jennifer Freidenbach	COH
Sneh Rao	HRC
Marcia Marquez	SFPD/LPOA
Marty Halloran	POA

Item # 1 Introductions:

Commissioner Melara opens the meeting introducing herself and explaining the specific agenda of the meeting which includes two, ten minute testimonies from Subject Matter Experts then discussion of the Draft CED Policy.

Commissioner Melara states if time runs out, and there are more questions from the working group, they can submit questions to the speakers via Sgt. Kilshaw to have answered by the subject matter experts.

Commissioner Hing asks if each speaker could remain present during the individual presentations so they can interchange comments and listen to each other's testimony.

Commissioner Melara agrees to the request by Commissioner Hing.

Item #2 – Testimony from Subject Matter Experts:

Michael Leonesio – Via Skype

Commissioner Melara introduces Commissioners, allows 10 minutes for remarks, 15 minutes for questions, and public comment.

Michael Leonesio – Retired Oakland Police Department, Founder of Leonesio Consulting, Use of Force Expert, has tested over 10,000 weapons, state/federal court expert, master/armorer of Taser International.

Assisted OPD with implementing their CED/training/policy, Subject Matter Expert on Use of Force Board for OPD, was on panel in 2008 for SFPD, regarding the adoption of CEDs. Also led the Taser program at San Carlos Police Department.

Leonesio stated he respects SFPD's process and believes it is "honest and objective." He stated SFPD didn't blindly follow manufacturer's recommendations.

Leonesio stated CEDs are "dangerous weapons, and there have been many deaths and injuries over the years due to CEDs".

Leonesio stated the current CEDs available have a narrower area of use, can be less effective than older versions of the CEDs, and do not work as well since they are putting out a lower voltage. Leonesio stated the failure rate for LAPD is reported at 50 percent.

Leonesio stated when the CED is deployed within 7-15 feet, this is a very dangerous place to be with a weapon with such a high rate of failure, as force escalation can possibly happen.

Leonesio stated reported officers carry CEDs because they "have to as their policy requires it", however, they do not trust in CEDs.

Leonesio suggests should SFPD adopt CEDs, we increase safety warnings, allow narrow use, state they cannot be used on high Risk subjects, allow for resources and training hours to run a safe and effective program.

Leonesio stated there is not enough research to know the impact of CEDs and there are a lot of unknowns. Two officers are recommended during the deployment as well, so one officer can handcuff.

Leonesio stated, "If I would do it today, (meaning stand behind CEDs), I would have a hard time justifying it." "Doesn't mean it can't be done safely and effectively."

Questions to Leonesio:

Marty Halloran (POA) – Have you read the draft Taser policy?

Leonesio (SME) – I did not read it, however, my understanding is, it may have similarities to policy I wrote in Oakland.

Marty Halloran (POA) – Is this policy still in place?

Leonesio (SME) – Yes to my knowledge.

Marty Halloran (POA) – Is the policy reasonable and practicable?

Leonesio (SME) – If it has been updated and revised. I retired five years ago.

Halloran (POA) – If the Commission allows, will you review SFPD's draft policy if it is forwarded to you?

Leonesio (SME) - Yes

Sneh Rao (HRC) – Based on your experience and research, is there a disproportionate impact on people of color?

Leonesio (SME) – In Oakland, same figure, would be more or the same with use of Taser.

Sneh Rao (HRC) – Would you recommend policy measures that would help with this issue?

Leonesio (SME) – Detailed policy, needs to be addressed in the use of force policy overall for the impact on people of color, not specifically in the Taser policy.

Samara Marion (DPA) – Why do Tasers fail? Weapon itself, suspect compliance, deployment itself.

Leonesio (SME) – 15 percent don't work mechanically, high percentage fail due to different angles, officer under stress, moving subject, have to hit with both probes, where you hit on body, subjects clothing, alcohol and drugs will be a factor. It is not that the officer is under trained, the probes disconnect from clothing, poor muscle mass of suspect.

Julius Turman (Pol. Commission) – Have there been any studies done in regards to officers trust issue of the CED?

Leonesio (SME) – OPD – 90 users/pilot program, been on street for a few years, no uses by OPD in over a year. I spoke to officers, no one is carrying Taser, and they keep it in the trunk of their cars. Why aren't they carrying? They don't trust it, it doesn't work. Officers have trust issues with weapons. It has taken years to rebuild that trust. Even after that, they still had 15 percent failure.

Mary Harris (Community Member) – Are there any stats in regards to compliance when Taser used, (Ie; you will be tased, compliance gained)

Leonesio (SME) – OPD Tactical Officers used a black Taser, Officers carried a yellow Taser, and officers reported increased compliance. Seven to eight years ago, however, new case law suggests the officer cannot pull out in certain situations.

David Rizk (BASF) – Is there a Rizk of escalation of further force if a Taser fails, and do you think by looking at SFPD's officer involved shootings or OPD's officer involved shootings, there is any evidence to support this?

Leonesio (SME) – I did research on secondary to Taser failures, the data was very limited, not a scientific study, high percentage did involve an escalation of force due to CED failure, which led to lethal force. In cases previously investigated, Taser did not participate in these investigations. Difficult to draw absolute conclusion, however, the short answer, "Yes, substantial correlation".

Hing (Police Commissioner) – What is your opinion whether or not to adopt Tasers for these two reasons:

- 1) Less lethal alternative to prevent shootings
- 2) Smaller officer/women officers (tool for)

Leonesio (SME) – This is not a good reason to adopt Taser. Using the example of a small solo officer against a larger suspect, this is not a good use of a Taser, not good tactics. The officer would need a perfect hit, incapacitate the suspect, no more than 15 seconds cumulatively of electrical exposure. A cover officer likely won't be able to get there to assist within 15 seconds. This is not realistic.

Melara – We are out of time, if you wish to submit questions in writing, the expert can respond at that time.

Officer Anthony Oerlemans (SME) – 2.5 years with SFPD
History: 26 years total of law enforcement experience. Has worked prior at Oakland Police Department, Brentwood Police Department, Contra Costa Training Center.
Expertise in fire arms instructing, defensive tactics, use of force, swat, and active shooter.

Always carried it on his person while in uniform, unlike the Super Sock type weapon, which you have to get from the car; Taser is readily available if needed. Liked the time/distance it allows for de-escalation. (Up to 21 feet with the current adapted cartridge)

Explained an experience where he responded to a violent domestic violence situation in Brentwood, the subject was 6 ft tall, 300 lbs, had a large knife exposed.
After a prolonged period of time of deliberation with a hostage negotiator, he used his Taser and compliance was gained. Oerlemans feels if he did not have the option of the Taser, he or the other officers would have had to use lethal force. Oerlemans stated the subject was wearing shorts and a tank top.

Jennifer Friedenbach (COH) There is a discrepancy between the two experts regarding the safe distance to deploy the Taser. (7 or 15 feet?) The officer says it is useable at 21 feet.

Melara (Pol. Comm) – Question to Leonesio, clarify your question in writing.

Leonesio (SME) – Original Tasers 15 foot leads, Taser now has 21 feet lead.

Jennifer Friedenbach (COH) – Is it more effective now that it is 20 feet?

Melara (Pol. Comm) – Leonesio can answer this question in writing, so everyone can have equal time for questions and answers.

Marty Halloran (POA) – Have you read the draft CED policy, and in your opinion, is it reasonable and practical?

Oerlemans (SME) – I have read the draft. Compared with Brentwood it is similar. It is reasonable. Minor verbiage changes. (le; field officer to know “obvious pregnant woman”. What does that mean?
Otherwise, very reasonable policy.

Halloran (POA) – Would you be available as a SME to assist with the language in the policy?

Oerlemans (SME) – I would like to be.

Samara Marion (DPA) – Are you certified as a Taser certified trainer?

Oerlemans (SME) – No

Marion (DPA) – Are you familiar with the materials Taser supplies , the statements you have to sign for, you are required to look at the power point slides required before becoming a certified instructor?

Oerlemans (SME) - I wasn't an instructor. I do not know what is required.

Marion (DPA) Have you looked at the effective range of the Taser from the Taser material?

Oerlemans (SME) – No I don't recall, I was taught from instructors.

Marion (DPA) – Were you given the effective range of deployment from the instructors? For the 15' cartridge and the 20' cartridge.

Oerlemans (SME) I do not recall.

Marion (DPA) – Taser says 7-15 feet is the effective range.

Oerlemans (SME) – I was taught 15-18 feet

Marion (DPA) – Can you speak about the trigger device on the Taser. Explain on firearm how officers are explained to trigger a firearm vs. triggering the Taser . Why officers trigger the Taser trigger longer than the 15 seconds without knowing. Many polices state to not go over the 15 seconds, so how does that occur?

Oerlemans (SME) – To trigger a weapon, you would utilize your trigger finger by pulling the trigger to the rear, collapsing to the rear, which causes the weapon to fire. For an additional shot, you would release your finger slightly than continue to pull trigger again to continue firing.

For the Taser, you would trigger the mechanism by pulling the trigger similarly to the rear, which ignites the probes, then let off of the trigger for no more probes. An additional cycle would occur by pulling the trigger and darts would come out, 5 second limit, device turns off after 5 seconds, for an additional shock, left off of trigger and pull again for another 5 seconds. (3 deployments = 15 seconds total = max)

Older device when you pulled the trigger of the Taser, it would continue to shock. I do not know the reason why officers are exceeding the 15 seconds. It is an intentional act to pull the trigger.

Melara (Pol. Commission) – Put additional questions in writing and they will be sent to both experts.

David Rizk (BASF) – You stated you don't recall reading warnings from Taser in training

Oerlemans (SME) – I didn't review the materials for the instructors.

David Rizk (BASF) Do you have any licensed medical training or are you a EMT?

Oerlemans (SME) No

David Rizk (BASF) – Are you aware Taser recommends not to use Taser with vulnerable population, especially with unrecognizable conditions such as pregnancy, orthopedic hardware, pre-existing conditions, low bone density? Do you have any way to know if someone suffers from those?

Oerlemans – No

David Rizk (BASF) - Can you draft a policy that would prohibit officers from using Tasers with people in this population?

Oerlemans (SME) I don't understand

David Rizk (BASF) How do you avoid using Tasers against someone who is pregnant if you can't tell they are pregnant.

Melara (Pol. Comm) – You are asking a question he cannot answer. When we develop a policy we can put something in there that addresses that.

Rizk (BASF) – He mentioned it.

Oerlemans (SME) – Taser recommends obvious conditions, I would not be able to say if someone was 3-5 months pregnant. I would be able to recognize if a woman was 9 months pregnant.

Hing (Pol. Comm) – In the story you told, I'm not sure where it transitioned. You stated after the suspect put the knife on the hood, there was more engagement. Then you stated the first two officers acted immediately. Why wasn't there continued negotiation?

Oerlemans (SME) – Negotiator felt negotiations not working in his favor, and fearful suspect would re-arm himself.

Sneh Rao (HRC) - What is opinion on introducing a new weapon when only ¼ of Officers have been given training on new Use of Force policy?

Oerlemans (SME) – I had to digest new equipment and policy, 2 weeks, in Brentwood Police Department, it is very possible to put them together, takes commitment, deliver policies that are understandable.

Helpful for use of force training before Tasers.

Eric Vanderpool (Community Member) - You stated you have been in 50/50 successes with CED in own experience. Have you actually been on scene where Taser was or wasn't successful and explain why

Oerlemans (SME) – I have been on both type of scenes. In my experience, if the device tested before shift, equip working properly, the mechanics were not the issue, it was the clothing issue, darts missing target, which were reasons for weapon being ineffective. The summer time was when the Taser worked best while working in Brentwood Police Department. Visible compliance also successful, much more frequent and effective than actually deploying darts. (Showing spark, not using darts)

Melara –End of this portion. You can write further questions to SME's via Sgt. Kilshaw. We only have a half hour to discuss policy. Any public comments? No public comments, public comments closed.

Public Comments-

Julie Traun (BAR) Appreciate officer , troubled by process, additional expert offered to working group that would not be permitted to testify. I hope Leonesio and Attorney Burton are able to speak more. I'm disappointed in this process

Unknown – I'm also disappointed in this process. I do not know why Commander Walsh keeps bringing these experts with a strong bias. Qualitative difference in having to submit questions to Sgt. Kilshaw instead of being able to speak about them here where the working group could speak about them.

Unknown – Quote from BAR association, May 16, 2016, regarding time and distance and task force recommendation for other weapons at a later time.

Barbara Attard - Concerned about limits set on experts and the refusal of other experts. Looked at headline for Brentwood PD. Taser used on 14 year old . Can officer who worked for Brentwood PD speak on this?

Melara – Speakers not on agenda, groups can come to Commission meeting on the 21st. No more than two on each side. Let Sgt. Kilshaw know by the 15th who the speakers will be.

Capability of person/expert calling in. Do not have to be present.

Draft Policy

Melara (Pol Comm) – We are going to go line by line for everyone’s input on policy

Break

Resumed... Melara states there will be ½ hour for discussion and then ½ to discuss draft policy

Marty (POA) – I won’t be here, but representative from POA is here.

Jennifer Friedenbach – further discussion, Use of Force policy, Taser policy, - issue with cover officer having a lethal weapon on standby should the Taser not work, etc.

Commissioner Melara – Give to Department to answer regarding procedure

Commander Walsh – If you have situation from earlier, fire arm pointed at someone , lethal cover officer, person coming at you with weapon, Taser failed, pepper spray failed, lethal officer can cover and fire firearm.

Jennifer Friedenbach –Lethal force situations, recommendation is to not use a Taser in this situation.

Commander Walsh – Taser not used if person has fire arm. Never seen in a blunt object reason.

Jennifer Friedenbach– When using Taser, just not pulling out firearm, why would you have it out on low ready, policies are not synonymous , contradictive

Commander Walsh - lethal cover officer not in the draft policy

Jennifer Friedenbach– Taser recommends it

Commander Walsh – We don’t have to follow their recommendations

Commissioner Melara – Policy and implementation, what are considerations during training, anyone who has a Taser should be trained in CED, not just use of force policy. Training is the other piece.

Samara Marion – facts data supporter, concerned w/ facts. , as group look at, Taser rules and guidelines, most effect deploy 7-15 feet regardless of cartridge,

Samara Marion– Taser has 22 warnings – officer have to sign for (Taser recommends)

Is this a safe device? Taser calls it a weapon now.

We need to be informed about 22 warnings.

Trigger question because – training/muscle memory/Tasered longer than 15 secs/ injuries/officers need to know why it is important not to use longer than 15 seconds

There is a device \$40 each, stop elect charge, prevents to much charge. SFPD needs to research this
Burton’s perspective is important.

Taser failure – Use of Force report 2015 (LAPD) , 47% failed, why?

OIS data 2010 – last one we did – 2005-2009 (15) shooting, occur w/in 5 mins, within 15 feet

Officers are being invited into danger zone.

Rizk – Evidence, database process, haven’t seen from sfpd, why this weapon is needed.

Clear factual record. We are adding great Rizk to the community. Implementation of new UOF policy isn’t even complete.

Tyler Dominguez Labor Attorney for POA –from Las Vegas Metro PD

21 feet effective reach, don’t deploy outside of, edged weapons, inside of that zone, compromised, 7-15 feet fire arm used typically. Use of fire arm by and large is used within 7-15 feet.

Taser policy is a complimentary policy to the UOF policy. (Ie, Secondary cover officer)

Not contradictory policies, they are complimentary.

Michaela Davis – ACLU – agree with other stake holders, why we need them now is not clear, Use of Force policy in place, de-escalation, racial bias training, let it run its course then we can look at Tasers. Continue talking, more experts, not just individual officers who have used.

Jennifer Friedenbach– What is the problem we are trying to address? Lower OIS?

Permanent trauma people have, psychiatric conditions, result of being tased.

Haven’t looked at cost. How much may/may not use. Lawsuits, lab in OPD, accountability, training, all of these pieces, cost benefit analysis, more effective use of money

Drive stun piece. Bar the use of it, Former Chief Suhr recommended against it. Not going to lower OISs.

Homeless population on the short end.

What is the justification for this weapon? Had open mind, but with limited information, don’t recommend it.

Commissioner Melara – Run out of time

Commissioner Hing - , I have a one minute comment – To department, I have not made a decision. I’d like an articulation of why you want this.

Submit in writing of your position so all of Commission can read it. Why you want or not. I’m only hearing negative stuff, I will meet with you privately.

Public Comments

Unknown –PRA to San Jose PD regarding their Taser expenses. – 15 years adopted Tasers – 1.5 million litigation

Unknown – homework not done, which weapon is really out there? Reduced effectiveness new model, limited circumstances, we are late to the party, Omaha study – officers being charged for use of CED. Why aren't we doing the homework? Dollar number is over 2billion in lawsuits

Barbara Attard – cost analysis, shooting deaths study, Tasers demanded, then stop using Tasers because of deaths, San Jose has 8-9 Taser deaths, numbers did not go down for OISs. SFPD needs to evaluate, hold off bringing it in.

Commissioner Melara – No more comments

POLICY DRAFT

Commissioner Melara - POLICY (page by page) we will stop at 1:00

Jennifer Friedenbach – Will we be able to have a list of questions

Commissioner Melara – You will go on record at meeting

Commissioner Melara – You were chosen for your specific groups, not for and against, I didn't think in these terms when I put this together. You will go on record of your opinion anyway.

Commissioner Melara - Read first page, asking for recommendations, what do you want to see or eliminate?

Samara Marion – nomenclature of device – previously, Taser called Taser, do not use the word device. What is the appropriate term?

Electronic controlled weapon – PERF not calling device, IACP calling it ECW. No longer called a device, it is a weapon. Use best practice language going forward.

Sneh Rao – Include statement of purpose in beginning of policy?

Commissioner Melara – Doesn't go in policies.

David Rizk – Not true, it is in the Use of Force Policy

Tyler Dominguez – It's in the first line.

Sneh Rao – Would like more language about how Taser goes achieving statement of purpose.

Commissioner Melara – Come up with it and provide it

Commander Walsh – This may be part of 5.01 , or separate general order. Pre-amble already there

David Rizk – Articulated purpose needed. This policy is not consistent with UOF policy, pilot policy this is not, in the past, pilot phase was discussed. If a policy implemented, pilot

Commissioner Melara – Commission will decide that. Recommendations are for the policy.

David Rizk – We aren't going to discuss pilot policy?

Commissioner Melara – Two procedures.... policy/procedure. Perhaps suggest testing/data collection, but it doesn't have to be in the policy. Commission can act on the outside of the policy for this type of recommendation

Commissioner Melara – Keep these notes in place, where is it most appropriate?

David Rizk – Up front should be pilot policy.

Commissioner Melara – This is up to Commission to decide, not being put in there now.

Rania (Pol. Comm.) – It is in the later part of the policy.

Commissioner Walsh – If it stays in policy or not, we do try to incorporate this point into the draft.

David Rizk – 5.01 doesn't say it is being implemented on a pilot policy

Commander Walsh – Depends on placement not pilot program

Samara Marion – Specific procedures introducing, documents in front of Commission, it includes data collection, review, has been part of other DGO's . What it says in beginning, sets stage.

Samara Marion – Preserve life is missing from pre-amble. Ethics of Police Department and belief in community policing.

Commander Walsh – I agree with Samara. Redundant if goes in 5.01 and new policy.

Tyler Dominguez – Policy D , (See DGO 5.01 , Use of Force, can we use that)

Commissioner Melara – Can we answer that?

Samara Marion – CIT Department General Order mirrored 5.01, even though it duplicates. We can do references, but why can't we include what the department's commitment is?

Commissioner Melara – I think its captured and a good suggestion.

Commander Walsh – On board with Samara, However, if this is 5.02, then yes, pre-amble.

Samara Marion – Stand alone dgo

Commissioner Melara – Stand alone, pre-amble, if put into 5.01, no pre-amble

Jennifer Friedenbach – Debate, then vote on various issues so we can see where everyone is. Can we do this to show it is being recorded instead of just recommendations?

Commissioner Melara – All recommendations to Chief, at this point, for here/now recommendations on policy only

Commander Walsh – Different departments use different names. CED, CEW

Jennifer Friedenbach– Just want to see where people weigh in.

Commander Walsh – My stand is ECD

Samara Marion– PERF, IACP , OPD, call CED a weapon, not device. Want's Chief to know this

David Rizk – I join DPA's position on that.

Tyler Dominguez – Suggestion on 2a (definitions) - activation (deployment of probes) not firing of probes

Commander Walsh – How about discharge, instead of deployment?

Tyler Dominguez – Open to discharge, Taser from holster, possibly say (presentation of holster)

Commissioner Melara – Out of time, next meeting is on the 21st at the Commission meeting. We will hear expert testimony and public presentations. We will meet again, July 17th, dedicate 2 hours to the draft policy. Finish draft, then go to community hearings next, we will decide on the 17th if we are ready to go to community meetings.

David Rizk – Who are the experts being invited to commission meeting?

Commissioner Melara – by the 14th, submit names, no more than 2. Time limit not set yet. You will be told prior to the meeting how much time the experts have. (17th 3:00-5:00)

Samara Marion – OPD training bulletin, 8 page Taser warnings, be allowed for Commissioners to review

David Rizk – Can we ask questions of experts?

Commissioner Melara – I doubt it. Only the Commission can ask questions

Jennifer Freidenbach Barbara – Submit questions to Sgt. Kilshaw?

Commissioner Melara – All questions, to Sgt Kilshaw by the end of this week, give to the experts a week to answer, then all questions and answers to stakeholders another week.

Public Comment

Unknown – Opposed to Tasers , this process, no matter what you do, gross discrepancy between policies and procedure and actual process of officer . No officer has been prosecuted. Implementation and enforcement is most important. I have great doubts no matter what you do here. This matter is for the higher courts.

Melara - 12:59 meeting adjourned

