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Yolanda Jackson

June 20, 2016

To: San Francisco Police Commission
Acting Chief Toney Chaplin, San Francisco Police Department

From: The Bar Association of San Francisco (BASF)

Re: Recommendation against allowing Tasers to be used in San Francisco as this time

The Bar Association of San Francisco (BASF) and its membership of nearly 8,000 individuals urge members of the San Francisco Police Commission not to approve the use of Tasers in the City of San Francisco for the reasons set forth below and in the attached Memorandum dated May 26, 2016 submitted to the Police Commission on May 30, 2016.

PREAMBLE

We would like to thank the Commission and acting Police Chief Toney Chaplin for their considerable contributions to the new Use-of-Force general orders and for the opportunity to research and consider the safety and impact of Tasers® (Controlled Energy Devices) as outlined in the proposed Bureau Order. As you know, BASF's Criminal Justice Task Force (CJTF) has previously presented the detailed findings of its study and only a preliminary perspective regarding the use of Tasers/Controlled Energy Devices (CEDs) as outlined in the proposed Bureau Order. The BASF study/detailed findings report is attached hereto.

After reviewing the findings and deliberating, BASF's position regarding the use of Tasers®/CEDs is that insufficient independent studies have been conducted to determine whether Tasers®/CEDs are safe or effective in reducing police shootings. In fact, the independent studies conducted to date suggest that Tasers®/CEDs have caused serious bodily injury and death, and that they have not resulted in a decrease in officer shootings. The data also suggests that Tasers®/CEDs are used disproportionately on people of color. Until such time as there is reliable data regarding the efficacy of Tasers®/CEDs in reducing police shootings, there is a meaningful effort to improve the safety features of Tasers®/CEDs, police can be properly trained in their use, and concerns regarding the use of Tasers®/CEDs in a racially disparate manner are addressed, Tasers®/CEDs should not be used in the City of San Francisco.

FINDINGS AND OVERVIEW OF KEY ISSUES

Tasers® are life threatening weapons which should not be used in San Francisco at this time. They are incompatible with the "De-Escalation" approach to 21st century policing as set forth by leading law enforcement executives across the U.S. who emphasize that officers should be trained to use distance and cover to slow the situation down and create more time for them to continue communicating and developing options. Like the use of guns by officers, Tasers®/CEDs have been shown to have a disproportionate impact on people of color. They pose a particular danger to vulnerable populations which in San Francisco at least, until demonstrated otherwise, are better served by C.I.T's (Crises Intervention Teams).

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If Tasers® are eventually to be introduced in San Francisco, a number of additional protections will first have to be built into proposed former Chief Suhr's "Bureau Order Re CEDs" to incorporate the latest developments in medical research. For example, it is now incontrovertible that Taser® shots lasting longer than 15 seconds should not be permitted. Yet, the proposed Bureau Order contains no reference to this and only few references to other implications to be drawn from recent medical studies, such as a restriction on the maximum number of cycles the weapon is to be discharged or of the now indisputable link between risks of Taser® injury or death and high risk populations such as pregnant women, children, and people who are visibly frail. Of equal concern are risks to those with heart issues, on medication, the disabled, the mentally ill, or those who are infirm, and rarely can police officers assess the medical condition of the subject before deployment. Nor is there any mention of the PERF 2016 primary recommendation on Tasers®: "[T]o get officers to stop thinking that if/when Tasers® fail, they can escalate immediately to deadly force."[1]

What is no longer in doubt is that if Tasers® are to eventually become an effective and safe tool in policing it will necessarily be a gradual process, spanning not months, but years. At the outset are design issues involving safety features which the manufacturer will have to tackle, such as the fact that Tasers® often do not work on people in an excited mental state or on people with heavy layers of clothing. There is also a disconnect between what the manufacturer holds them out to do and what police officers can reasonably expect them to do, involving warnings and training at levels beyond which are currently contemplated. This may require that the range of situations for which the weapon is effective be narrowed before Tasers® can be considered. The San Francisco Police Department also needs to commit to the practice of collecting and publishing detailed statistical records on use of force trends. The critical importance of collecting, analyzing, and reporting data was recently underscored in *The Stanford Reports on Improving Police-Community Relations in Oakland California*, released on June 15, 2016.

RECOMMENDATION AND CONCLUSION

We appreciate that the San Francisco Police Department has taken a step back to carefully consider the very concerning research provided by our CJTF's sub-committee on Tasers® as well as that provided by the Coalition on Homelessness and other stakeholders.

BASF has concluded that until there is reliable data supporting the efficacy of Tasers®/CEDs, and the Police Commission can establish procedures to ensure that Tasers®/CEDs are not used in a racially disproportionate manner, Tasers®/CEDs should not be used in the City of San Francisco.

Respectfully Submitted,

Michael F. Tubach
President
The Bar Association of San Francisco

Attachment: May 26, 2016 BASF Criminal Justice Task Force Report on Tasers

CC: San Francisco Sheriff's Department
San Francisco Police Department
Head of the Police Officer's Association

[1] Police Executive Research Forum (PERF), May 26, 2016, page 18, footnote 57

THE BAR ASSOCIATION OF
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May 26, 2016

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TO: Toney Chaplin, Chief of Police, San Francisco Police Department, President Suzy Loftus, Vice President L. Julius M. Turman, Commissioners Thomas Mazzucco, Petra DeJesus, Joe Marshall, Victor Hwang, and Sonia E. Melara, San Francisco Police Commission

By Email: Sergeant Rachael Kilshaw (Rachael.Kilshaw@sfgov.org)

REPORT FROM TASER®/CED SUB-COMMITTEE OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) CRIMINAL JUSTICE TASK FORCE

Introduction

The Taser/CED Sub-Committee is part of The Bar Association of San Francisco (BASF) Criminal Justice Task Force (Task Force), a large group of professionals including law enforcement (SFPD, Sheriff's Department and District Attorney's Office), criminal defense and civil rights attorneys, the Mayor's office, academia, community activists and the judiciary.

As you know, one of the Task Force's representatives participated in the Use of Force Stakeholders meetings, and our designee reported that the Task Force had not yet undertaken critical research regarding CED (Controlled Energy Devices) also commonly referenced by the manufacturer name: Taser®. Immediately, the Task Force formed a Taser/CED Sub-Committee to undertake research to report to the full Task Force.

The Taser/CED Sub-Committee consists of four members: Sub-committee Chair Tom Meyer, a retired criminal defense/civil rights lawyer; Freya Horne, Chief Legal Counsel to the San Francisco Sheriff's Department; Erin Katayama, an attorney for the Justice & Diversity Center of BASF's Homeless Advocacy Project (HAP); and criminal justice researcher, Lizzy Gilbert.

The Sub-Committee has worked for months, researching the most recent scientific and other studies on the use of Taser/CEDs, understanding that the vast majority of such studies pre-date 2011. The Task Force sought a complete understanding of Taser/CEDs – the medical implications, the impact on vulnerable populations and populations of color, hoping to ground their findings/recommendations on research independent of TASER International, as much as possible.

As sources, we have relied on both medical and non-medical journal articles, governmental studies and publications, the Police Executive Research Forum's (PERF) March 2016 "Guiding Principles on Use of Force," investigative news reports, face-to-face interviews with experts (including, among others, medical examiner Dr. Judith Melinek, the former Assistant Medical Examiner for San Francisco, Use of Force stakeholders, and members of the Task Force whose ongoing work in related contexts has proved beneficial to that of the Taser/CED Sub-Committee).

FINDINGS AND RECOMMENTATONS

A synopsis of the research undertaken by the Task Force's Sub-Committee was completed and circulated to the full Task Force well in advance of May 20, 2016. (The Synopsis follows these Findings and Recommendations.) The full Task Force took up lengthy discussion at the full meeting and although The Bar Association of San Francisco has not yet taken a "pro" or "con" position on Taser/CEDs, the Task Force, given the important work of its Sub-Committee, and as fully vetted by the full Task Force, is now able to find and recommend as follows:

- Introduction and use of Taser/CEDs should be decoupled from finalization and implementation of proposed Use of Force Policies
- Incorporation/implementation, if any, of Taser/CEDs as an additional weapon for police use, should be taken up at a later date for the following reasons:
    - The Task Force concluded that the San Francisco Police Department's need for transparency and healing with the community over recent deaths is best addressed by de-escalation, implementation of CIT (Crisis Intervention Teams), rapport-building communication and time and distance– the heart of the proposed General Orders on Use of Force. [1] As these Orders are neither finalized nor yet implemented, it is the recommendation of the Task Force to revisit implementation/use of Taser/CEDs at a later time. Training on these important components of community policing are essential prior to the introduction of other weapons. Tasers can alienate community members and undermine public confidence in a police agency; some agencies have stopped using CEDs as a result of community reaction to high-profile CED injuries or deaths. [2] Clearly, such a result at this time would exacerbate the tenuous relationship with many community members, particularly communities of color and those with mental illnesses experiencing mental health crisis.

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[1] As CED/Tasers are optimally effective at a distance of 15 feet or less, the "distance" contemplated by the new General Orders on Use of Force, is not possible.

[2] Maryland Task Force on Electronic Weapons, Report of the Maryland Attorney General's Task Force on Electronic Weapons 2, 32 (2009) available at: https://www.oag.state.md.us/Reports/ECWReport.pdf

- The Task Force concluded that the medical evidence on Taser/CEDs – particularly that undertaken by medical researchers who are independent of funding by TASER International – suggests the weapon is indeed lethal, especially when used incorrectly or on vulnerable members of the population, including but not limited to those suffering from mental health and/or drug related problems. The Task Force notes that the SFPD has not yet concluded its Crisis Intervention Team General Order and protocols, and given the success reported by a number of jurisdictions which have employed CIT protocols, and given the promise of de-escalation, crisis intervention, rapport-building communication and community policing, when any possible benefit tied to Taser/CED use is balanced against the risk of harm and death to San Francisco's most vulnerable population, it is preferable to make every effort to utilize these non-lethal methods prior to implementing use of a potentially lethal weapon. The Task Force appreciates the SFPD's efforts to recognize vulnerabilities by limiting use of CEDs, nonetheless, the most *recent* research supports CIT and de-escalation when addressing those with mental health problems or those under the influence of drugs/alcohol.[3]
- The Task Force concluded that recent studies/findings demonstrating the disproportionate use of Taser/CEDs on populations of color coupled with the Task Force's understanding that SFPD has far more work to do to successfully and fully capture and analyze data regarding pedestrian and traffic stops – particularly related to race – supports their conclusion that no lethal weapon should be introduced until such time as data collection, reporting ability and analysis are more fully developed and implemented by SFPD and available for public review. The Task Force's Sub-Committee on Data Collection and Analysis will complete its work soon and the Task Force will provide their recommendations based on best practices of other police departments.[4] SFPD has yet to institute comprehensive data collection and analysis – which (1) can be tied to risk management and early warning systems and (2) includes analysis by outside experts. Until the department is able to complete this essential work – which it is in the process of doing – implementation of Taser/CEDs should be postponed in order to take advantage of the wealth of information which will become available to the SFPD and the public on which each can better make informed decisions regarding introduction of any new weapons. Connected thereto, is the important role of training on implicit bias – this too is not yet fully implemented in the SFPD. Also connected thereto is the role of body cameras and the important training opportunities for SFPD that will be made possible through body camera footage review. Therefore, the Task Force

[3] See research infra regarding excited delirium and its relationship to CED/Taser use.
[4] Some of these recommendations are previewed later in this Memorandum.

recommends that the introduction of an additional potentially lethal weapon should await incorporation and analysis of body camera use and protocols within SFPD. [5]

- A potential final recommendation of the Task Force is to give serious consideration to inaugurating a Taser/CED program only after a genuine "pilot program" has been designed, implemented, and found satisfactory by an independent expert.

- Unless and until the SFPD fulfills the essential work outlined above, the Task Force concluded that it remains premature to consider use of Taser/CEDs.

SYNOPSIS OF SUB-COMMITTEE'S RESEARCH

INTRODUCTION

It is important to an understanding of the history of Taser/CEDs that it be viewed within the context of law enforcement in relation to persons who police consider threatening subjects. While this synopsis does not purport to be an exhaustive compilation of this history, it is intended to be a resource with up-to-date materials. It is important to note that the overwhelming percentage of materials made public about Tasers comes from TASER International, the sole company that manufactures them for US law enforcement. It is important to recall that, although much concern and criticism has come from the public, there is no national database in existence to assess the efficacy of, or potentially adverse outcomes, of Taser/CED usage.

BACKGROUND

Derivation of term Taser®

The name "Taser" is an acronym that stands for "*Thomas A. Smith's Electrical Rifle*" after a fictional character in a book admired by the NASA scientist who began work on it in 1969. By 1999, Taser® patented a handgun-shaped device which relied primarily on a 'neuromuscular incapacitation technology (NMI), though also causing pain. (This is as opposed to a "stun gun" which is discharged while it is touching the subject and causes only localized pain.) Tasers are also known as Electronic Control Devices, or ECD's, or Controlled Energy Devices (CEDs), the terminology adopted by SFPD in the proposed Bureau Order.

[5] "Body-Worn Cameras: Using the Wealth of Data Effectively," Paul Figueroa, EdD, January 2016, Police Chief Magazine, available at: http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=4008&issue_id=12016

Models

TASER International released the first high power ECD, the M26, in 1999, which was followed by its equally high power, but more compact, Model X26 in 2003. The X26 is higher voltage, shorter duration, and the arc can penetrate through 2" (of clothing and skin). In 2009, TASER International released a new type of Taser® called the "X3" which can fire 3 shots before reloading. In 2011, the company released the Taser® "X2 Defender."

How They Work

The Taser® fires two small dart-like electrodes, each of which stays connected to the main unit by a conductive wire as they are propelled by small nitrogen charges. The electrodes are pointed to penetrate clothing and barbed to prevent removal once they are in place. Earlier models like the M26 had difficulty penetrating clothing, but newer versions (like the X26) can penetrate such barriers. In order to function, both prongs need to be imbedded in the individual, so that the electrical circuit is completed. Otherwise, the necessary conductivity will not be obtained.[6] The sharp portion of the Taser dart is approximately 9mm in length.

Each time one pulls (and immediately lets go of) the trigger, it delivers a 5 second burst of stimulation. If one holds the trigger down, it will continue to fire at 5-second intervals until it has fired 3 times, at which point the nitrogen cartridges may be reloaded.[7] "Deployments from 7 to 15 feet (2-4.5 meters) are considered 'optimum range' because there is a high hit probability, good probe spread, and therefore a good amount of muscle mass affected."[8]

The Taser's voltage is 50,000 as it "arcs" through the air or clothing, before reaching the body. At the time it enters the body the peak voltage experienced by the subject is 1200 volts.[9] But voltage is not the relevant measure. Rather, peak amperage per pulse is much more important for assessing physiologic effects.

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[6] The single greatest cause of failure is heavy clothing.

[7] Emergency Physicians Monthly, "They Tased Me, Doc!" http://epmonthly.com/article/they-tased-me-doc/#comment-127302

[8] See, Braidwood Commission on Conducted Energy Weapon Use, Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia, Appendix F (June, 2009).

[9] "They Tased Me, Doc!," supra.

Training to Operate Tasers

Taser® recommends approximately six hours of training on how to use the weapon. However, it should be noted that TASER International conducts training and there is no data tracking on how law enforcement has incorporated Taser® use protocols within their departments. In a 2016 analysis of the 15 agencies with the most Taser® incidents from 2012 to 2014, there was a finding that policies of the state's largest departments tend to disregard key safety recommendations from experts and Taser's manufacturer.[10]

Do Tasers Always Work?

Why do police Taser/CEDs have no effect on certain people? Research has shown that Taser/CEDs are ineffective on some, especially those who are large in size or in an agitated or intoxicated condition – this leads officers to repeatedly deploy the Taser®, escalating force and enhancing risk of death.[11]

Very recently, a Los Angeles Times review of reports of the Los Angeles Police Department (LAPD) found that nearly a quarter of the people shot by on-duty LAPD officers last year (2015) – at least 8 of 36 – were wounded or killed during encounters in which officers said they tried to use a Taser without success. "LAPD officers fired Tasers over 1,100 times last year," according to a report published last month. The devices had the desired outcome - causing someone to submit to arrest - only 53% of the time – a fact that Captain John McMahon found "very disappointing."[12]

REPEATED TASER/CED® SHOTS

The Mechanism

For various reasons, it is unsafe to repeatedly shock an individual. TASER International has issued a training bulletin indicating, "...multiple applications "may impair breathing and respiration."[13] Research has also shown that the weapons are simply ineffective in subduing certain populations,

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[10] Baltimore Sun, "Shocking force: Police in Maryland didn't follow Taser safety recommendations in hundreds of incidents," March 19, 2016, Mark Puente & Doug Donavan, Reporters, available at: http://www.baltimoresun.com/news/maryland/investigations/bal-tasers-in-maryland-story.html

[11] National Institute of Justice, Police Use of Force, Tasers and Other Less-Lethal Weapons 15-16 (May 2011)

[12] Los Angeles Times, "One of the LAPD's preferred weapons to help officers avoid shootings often doesn't work," Apr. 1, 2016, Kate Mather, Reporter, available at: http://www.latimes.com/local/crime/la-me-lapd-tasers-20160401-story.html

including people who are large in size or in an agitated, intoxicated state, leading to repeated excessive use that escalates use of force."[14]

Company Warnings

Taser® has continuously warned of risks from repeated deployments since June 2006, according the company spokesman. And since March 2003, he said the warnings have advised that repeated use of the device on a person may contribute to cumulative exhaustion, stress, cardiac, physiologic metabolic, respiratory, and associated medical risks which could increase the risk of death or serious injury.[15] Yet officers across the country, likely frustrated when the Taser® does not produce the desired effect, repeatedly deploy the weapon. "Legal and policing experts worry that misuse is rampant across the nation as an increasing number of departments outfit more officers with stun guns; a Taser is used by law enforcement 904 times a day on average. The experts warn that too often officers are turning to Tasers before exhausting other means of dealing with disorderly people, actions that courts are beginning to brand as unconstitutional excessive force."[16]

CHEST SHOTS

Since 2009, Taser® has advised police that whenever possible they should avoid targeting sensitive areas of the body, such as the head, chest/breast, or known pre-existing injury areas. John G. Peters, president of the Nevada based Institute of In-Custody deaths, reports that Taser's safety bulletins about chest shots have evolved. "They've gone 180 degrees in the warnings," he said. In 2013, Taser® warned, "When possible, avoid targeting the frontal chest area near the heart to reduce the risks of potential serious injury or death."[17]

In 2012, Douglas Zipes, a cardiologist and professor of medicine at Indiana University, published a report looking at eight cases in which a person who had been Tasered in the chest lost consciousness during or immediately after being shocked by police.[18] He also concluded that law enforcement officers must be judicious how and when to use the weapon, and avoid chest shocks if possible.

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[13] Police Liability and Risk Management: Torts, Civil Rights, and Employment Law, By Robert J Girod, CRC Press, 2013, page 114.

[14] See, (N. Calif. ACLU letter of Dec. 4, 2012, to Mayor Lee regarding "Civil Rights Organizations' Opposition to SFPD Taser Employment," (p.11of 12.)

[15] *The Baltimore Sun*, supra

[16] *The Baltimore Sun*, supra

[17] *The Baltimore Sun*, supra.

[18] See, Zipes, Douglas Z. "Taser Electronic Control Devices Can Cause Cardiac Arrest in Humans," in Circulation Journal, 2014; (p.101-111).

RISK OF DEATH AND SERIOUS INJURY

Studies and Data Analysis

A report authored by physicians from UCSF and published in the American Heart Journal found that studies funded by TASER International and/or written by an author affiliated with the company are 75% more likely to conclude that Tasers® are safe. Thus, research reported by TASER International is significantly biased in favor of Taser® safety.[19] Below are some examples of ***independent studies*** and/or investigations conducted on Taser/CED safety and effectiveness.

- In Portland, Oregon, police found in 2007 that in only 25% to 30% of the situations in which the police used a Taser® actually met the criteria for use of "deadly force".[20]

- A UCSF study found that fatal shootings by police more than doubled in the first year after adoption. In following years, the numbers go down but remain higher than the pre-Taser® time period. **In-custody deaths skyrocketed by 500% in the first year** after the devices were introduced. That number drops down in the following year, but again remains higher than before Tasers were introduced.[21]

- A 2011 U.S. Department of Justice study, which looked at a range of police departments, states unequivocally that the electricity produced by Tasers® has been associated with injury and even death. Among other things, the study warns that "caution is urged in using multiple applications," particularly "against at-risk people," that "growing use of CED's is cause for concern," and that "their ease of use and popularity among officers raise the specter of concern."[22]

- A 2016 Baltimore Sun's analysis states that "[M]ore than 400 have died nationwide since 2009 in encounters in which the police used electronic control weapons such as Tasers" and

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[19] See, Azandani PN, Tseng ZH, Ermakov S, Marcus GM, Lee BK, "Funding source and author affiliation in Taser research in Taser research are strongly associated with a conclusion off device safety." Am Heart J., 2011.

[20] http://spectrum.ieee.org/consumer-electronics/gadgets/how-a-taser-works

[21] See, Byron K. Lee, et al. Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths (Nov. 2009).

[22] Journalist's Resource, updated as of April 7, 2015, journalistsresource.org/studies/government/criminal-justice/u-s-department-of-justice-police-use-of-force-tasers-and-other-less-lethal-weapons.

that "California tops the list with more than 60 deaths."[23]

- According to Zipes, "...the Taser® X26P pulses at a ratio of 19 shocks per second, or 1,140 a minute." He believes that presents a problem. "The normal heart cannot withstand such rapid rates," he said. "When a normal heart rate stimulated by electricity exceeds 250 times a minute, the entire conduction system breaks down and the heart goes into cardiac arrest."[24]

- A three-year study (from 2002-2004), conducted by two professors at *John Jay College of Criminal Justice,* examined "all Taser® deployments by the N.Y.P.D. and found that, although these figures suggest that Tasers are becoming commonplace in law enforcement, "there are numerous unanswered questions regarding its use and effectiveness, as well as its potential to contribute to serious injury or death, particularly when used against the mentally ill, those under the influence of drugs or alcohol, and those with heat and respiratory conditions." [25]

- One recent study has shown that citizens were injured 41% of the time when Tasers® were used as the only type of force and 47% of the time Tasers® were used in conjunction with another form of force, compared to people being injured only 29% of the time when no Taser® was used.[26]

- Last year, speakers, including Dr. Zian Tseng, invited by the San Francisco Police Commission reported that another UCSF study found that, in the year after Tasers were to be deployed, aggregate data of 50 cities showed an increase in sudden deaths and officer shootings. The physicians who authored the study recommended that if Tasers were to be employed, officers must be *instructed* to shoot suspects in the back rather than the chest, and the number of shots must be limited.

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[23] *Baltimore Sun*, supra

[24] http://www.alternet.org/investigations/bolts-blue-inside-deaths-caused-police-use-tasers

[25] See, Police Quarterly, Vol.10, No.2 "The Taser as a less Lethal Force Alternative."

[26] See, Zenaida Gonzales Kotola, Study concludes: Use of Stun Guns Increases injuries. College of Health and Public Affairs Blog, University of Central Florida, May 29, 2012). This confirms findings of other studies - even those supported by Taser International - that a high risk of injury accompanies Taser use. See, e.g., WILLIAM BOZEMAN, ET. AL. Safety and Injury Profile of Conducted Used by Law Enforcement Officers against Criminal Suspects, 53 ANNALS OF EMERGENCY MED. 480 (April 2009).

Taser® - Related Death Estimates

- TASER International did not fund a peer-reviewed medical research until 2005 (over four years of Taser® use by law enforcement and over a hundred reported Taser®-associated deaths in the U.S. and Canada.)

- Also in 2005 a Northern California ACLU study reported that **at least 148 people** died in the U.S. and Canada since 1999 after being shocked with Tasers by police officers.

- In 2009, independent researches from the UCSF School of Medicine determined that in-custody deaths increased six-fold during the year following the first deployments of Taser® International products in the surveyed California law enforcement agencies.[27]

- More recently, in its 2014 report to the Committee Against Torture regarding the United States, Amnesty International listed Tasers as the cause of 550 deaths since 2001.[28]

- In the recently released documentary, "Killing Them Safely"[29] one of the individuals who died, appeared young, in good health and was tased but once.[30] As concluded in their report to the Mayor dated December 4, 2012, the ACLU and Lawyers' Committee for Civil Rights, chronicling recent deaths (over a 7 month period) tied to Taser® use, "These deaths highlight the dangerous and unpredictable nature of Tasers, both in seemingly healthy people and those in high-risk populations, such as people with health ailments and the mentally ill."[31]

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[27] Byron K. Lee, MD, Eric Vittinghoff Phd., Dean Whiteman, BS, Minna Park, Linda L. Lau, B.S., and Zian H. Tseng, M.D. Relation of Taser (Electrical Stun Gun) Deployment to Increase Sudden D, Am J. Cardiol, Volume 103, Issue 6, Pages 887-880, March, 2009.

[28] Amnesty Int'l, United States of America Submission to The United Nations Committee Against Torture , U.N. Doc. AMR 51/049/2014, at 31 (Oct. 2014) http://www.amnestyusa.org/sites/default/files/amr_510492014.pdf

[29] This documentary is available on Netflix and scheduled for showing at the Roxie Theatre on May 31, 2016.

[30] This death conflicts with a recent finding that there is a general consensus that ECW's are safe for use on healthy individuals who are not under the influence of drugs or alcohol, are not pregnant, and do not suffer from mental illness—so long as the individual receives only a standard five second shot to an approved area of the body. Report on Electronic Control Weapons (ECWs) Submitted to the City of Berkeley 2015 (A report by Jena Neuscheler and Akiva Freidlin, students), http://www.berkeleyside.com/wp-content/uploads/2015/10/2015-10-06-Item-WS-Item-01-Stanford-Study-Electronic.pdf

[31] ACLU/LCCR, Corrected Version, December 4, 2012, Letter to the Honorable Ed Lee, RE: civil Rights Organizations' Opposition to SFPD Taser Deployment.

RECENT CONCESSIONS BY TASER INTERNATIONAL

For a long time TASER International denied any causal relationship between Taser® usage and subject deaths.[32] Recent concessions are likely provided in response to a series of lawsuits brought on behalf of victims of Tasers®, and on the advice of Taser® attorneys who are called on to defend them. [33]Among these concessions are:

(1) When possible, aim for the back rather than the chest, and if the latter, aim below the diaphragm rather than the heart;

(2) Tasers can cause serious injury or death[34]; and

(3) Shots should be limited to no more than 15 seconds in length.

VULNERABLE POPULATIONS

A report produced by the ACLU of Northern California outlines the dangers that Taser®s pose to vulnerable people in the City of San Francisco, especially given the demonstrated increase in officer involved shootings when Tasers are introduced:

> "Interactions with these high-risk groups, namely those in mental health crises, accounted for the substantial part of the police work in San Francisco...San Francisco's Emergency Dispatch Center receives more than 10,000 mental health calls for service per year, or 30 per day." [35]

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[32] See, "Killing Them Safely," a 2015 documentary currently viewable on "Netflix".

[33] For example, in *Lucus v.City of Visalia* 726 F. Supp 2nd 1149, 1159 (E.D. Cal 2010), the court held that a plaintiff, who was tased by a police officer and suffered a seizure, could allege that the manufacture issued inadequate warnings and that the City was aware of the particular risks to the plaintiff because of those warnings. More recently, the Ninth Circuit held that TASER International had no duty at the time of the victim's injury to warn police departments that repeated use of its product could cause a condition likely to lead to sudden cardiac arrest and, therefore, that the manufacture was not liable to the plaintiff. *Rosa v. TASER international, Inc.* 684 F 3rd 941 (9th Cir. 2012).

[34] Taken from recent label.

[35] Ali Winston, *SFPD to Overhaul Policies for Dealing the Mentally Ill*, KAWL News, Feb. 10, 2011, http://informant,kalwnews.org/2011/02/sfpd-to-overhaul-policies-for-dealing-with-mentally-ill.

According to a recent investigative report by the San Francisco Chronicle,

> "More than 60 percent of all fatal shootings by San Francisco police since 2010 involved people with mental health problems or who were acting erratically at the time of the incident, according to past reporting by The Chronicle. The department responds to an average of 400 calls per month involving such people, according to Suhr. "That's a lot of people in a lot of crisis," he said."[36]

For this reason, among others, concern regarding deployment of Taser/CEDs resonate deeply with professionals who work with this population, such as Jennifer Friedenbach, the Executive Director of (S.F.'s) Coalition on Homelessness. The link between risks of Taser® injury and death and high-risk populations is virtually undisputed, as documented by PERF and TASER International. According to the American Medical Association studies show that stimulant use creates a "high-risk" situation for Taser-related in-custody deaths, and that Tasers may actually increase the agitation of and contribute to the sudden death of people with mental conditions often described by police officers as "excited delirium." The American Medical Association defines excited delirium as a "state of agitation, excitability, paranoia, aggression and apparent immunity to pain, often associated with stimulant use and certain psychiatric disorder." [37] Dr. Zian Tseng, a cardiologist who has previously provided expert advice to the Police Commission has reported that people in an "excited delirium" are at a higher risk for sudden death caused by a jolt to their system. ""When you bring in this extra tool [Tasers®], you need to understand not just the benefits but the risks,... "And there are very real risks." [38] These concerns have been voiced repeatedly by Ms. Friedenbach and others who advocate for CIT (Crises Intervention Training) urging CIT represents the best alternative to weapons.

The San Francisco Police Department's CIT policy and General Order regarding Crisis Intervention are not yet finalized and not yet fully implemented; similarly de-escalation or reforms calling for time and distance are yet to be finalized as matters of policy, protocol and training. Protocols must be developed and implemented on CIT and de-escalation – particularly when responding to those in mental health crisis. SFPD should also analyze whether the implementation and use of Tasers/CEDs will interfere with or be counter to effectively implementing de-escalation reforms. CIT officers need to be given authority to develop a de-escalation and communication plan and

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[36] San Francisco Chronicle, *SF's police-involved shootings: practices and patterns,* Joaquin Palomino, May 22, 2016, http://www.sfchronicle.com/crime/article/SF-s-police-involved-shootings-practices-and-7921829.php

[37] https://wilenet.org/html/taser/AMA_TASER_ECD_06-15-09.pdf

[38] San Francisco Chronicle Feb 13, 2016 "S.F. police chief seeks stun gun program" http://www.sfgate.com/news/article/S-F-police-chief-seeks-stun-gun-program-4288822.php

PERF and various police departments report remarkable success with CIT teams, particularly with populations experiencing mental illness.

The most recent PERF report summarized Seattle's use of Crisis Intervention training and de-escalation strategies - particularly when facing individuals with mental illness, drug addiction, or other conditions that cause erratic and threatening behavior. In 2015, Seattle reported 2,516 incidents involving "significant challenges...posed to officers;" these incidents included 96 individuals with knives, 16 with guns and 109 with other weapons. Yet Seattle officers used force in only 51 cases and "[none of the 51 uses of force in the 2,516 incidents were Type III, the highest level, which includes deadly force or any use of force that causes loss of consciousness or substantial bodily harm.[39]

The benefits of CIT team interventions were earlier reported by Memphis Police. Without adopting Tasers, Memphis reduced its number of officer -involved shootings of mentally ill individuals. [40] Before Memphis implemented CIT in 1988, the police department averaged one to two shootings of mentally ill individuals each year. Following adoption of CIT, the Memphis Police Department demonstrated a complete turn-around, and police were involved in only three shootings of individuals with mental illness from date of implementation to 2011 - more than twenty years.[41]

There is no reason San Francisco cannot achieve similar outcomes if similar reforms are undertaken. Taser/CEDs run directly counter to Seattle's and Memphis's model which emphasize giving suspects time to calm down. As the Braidwood Commission found, "the worst possible response is to aggravate or escalate the crisis, such as by deploying a conducted energy weapon and/or using force to physically restrain the subject." [42] In addition, the use of Taser/CEDs run counter to de-escalation and time and distance: optimal effects of Taser/CEDs are realized only if used within 15 feet of the individual tased. Effective Taser® use *requires* close proximity between officers and suspects, the opposite effect achieved through time and distance.

DISPROPORTIONATE IMPACT ON PEOPLE OF COLOR

[39] Pursuant to a 2012 Consent Decree and in May 2015 Seattle began using a three-page form called the "Crisis Template" to capture every police contact with individuals in crisis. PERF, "Guiding Principles On Use of Force," March 2016, at Page 58.
[40] *CIT in the News*, CIT Center, University of Memphis, http://cit.memphis.edu/CITInTheNew.php.
[41] Ali Winston, *SFPD to Overhaul Policies for Dealing the Mentally Ill*, KAWL News, Feb. 10, 2011, http://informant,kalwnews.org/2011/02/sfpd-to-overhaul-policies-for-dealing-with-mentally-ill.
[42] Braidwood Report, Supra, at 262.

In a press release dated April 13, 2016, the Police Accountability Task Force appointed by Mayor Rahm Emanuel, called for sweeping changes in Chicago Policing. Among other things, it found: "Of the 1,886 Taser® discharges between 2012 and 2015, 76% or 1,435 African Americans were shot with Tasers, compared to 13% for Hispanics, 8 % Whites, and .21% Asians.[43]

Nationally, police officers use Tasers on African-Americans more frequently than on white civilians.[44] Disturbing racial disparity has been reported by a number of cities, including (in addition to Chicago) Houston and the Maryland's Attorney General. [45] Most alarming were the figures reported by Amnesty International finding that African Americans are disproportionately killed by Tasers – despite Amnesty's repeated criticism of the United States for allowing continued use of the weapon by state and local law enforcement. [46]

San Francisco is no exception to this discriminatory pattern. An article investigating SFPD found that the use of force among officers was not only alarmingly high but that 40% of victims of excessive force were African-Americans who make up less than 8% of San Francisco's population.[47] Nationally, police officers use Taser/CEDs on African-Americans more frequently than on white civilians.[48]

THE POLICE EXECUTIVE RESEARCH FORUM (PERF) REPORT OF MARCH 2016 and BASF TASK FORCE RELATED WORK WITH DATA COLLEDTION, ANALYSIS, USE OF FORCE AND TRAINING

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[43] Executive Summary of "Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve."
https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf

[44] Andrea Ritchie & Joey L. Mogul, In the Shadows of the war on terror: Persistent Police Brutality and Abuse of people of color in the U.S.

[45] 70% of Taser deployments between 2004 and 2007 in Houston were used on African Americans; a 2009 study conducted by the Maryland Attorney General's Task Force found that communities of color in Maryland were also disproportionality impacted by the use of Tasers: 45% deployment against African American who make up only 21% of the population and 36% deployment on Latinos which represent 20% of the population. (Office of the City Controller, City of Houston, Report NO 2009-09, Conducted Energy Device Program Performance Audit 6, 27 (2008); Maryland Task Force on Electronic Weapons, Report of the Maryland Attorney General's Task Force on Electronic Weapons, (2009)

[46] See Amnesty Reports: http://www.amnestyusa.org/news/news-item/aftershocks; http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-stricter-limits-on-police-taser-use-as-us-death-toll-reaches-500

[47] Ritchie & Mogul, supra.

[48] Andrea J. Ritchie & Joey L. Mogul,, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States,* 1 DePaul J. Soc. Just. 175, 193-194 (2008).

The Police Executive Research Forum ("PERF") is a "research organization of law enforcement executives that hears from police chiefs and other officials every day." See, "*Why we need to Challenge Conventional Thinking on Police Use of Force*, by Chuck Wexler, its Executive Director. Many of the strategies recommended, such as (CIT) Crisis Intervention Team and de-escalation are already in place in many police agencies. The PERF report reflects the current research and best practice on the on use-of-force issues from the perspective of many of the nation's leading police executives.[49]

The Report focuses especially on two types of police encounters: (1) **with vulnerable populations;** and (2) with **"subjects who are un-armed, or are armed with a knife, a baseball bat, rocks, or other weapons, but *not a firearm.*"**(Page 5) Two news organizations – the *Washington Post* and the *Guardian* – have undertaken major projects to gather police use-of-force statistics. They reported that 990 people were shot and killed by the police in 2015. The *Guardian* reported 1,134 deaths last year.[50]

On Sept. 16-17, 2014, approximately 180 police executives and others met in Chicago for this discussion. Among the three major topics they discussed were de-escalation strategies, particularly new concepts for reviewing the moments *before* a lethal use of force to see if officers missed opportunities for de-escalating the situation, rather than focusing solely in the moment before lethal force was considered necessary and was used.[51]

Closer to home, the brass of both the Richmond and Oakland police departments have focused on the "change in culture" policies and practices of the PERF guidelines. Richmond has used the "de-escalation" theme in the oversight and training of its officers for several years now, and has developed a robust Use-of-Force data gathering reporting system directly tied to Risk Management and Early Warning Systems with impressive results, according to Captain Mark Gagan of the RPD.[52] Similarly, the Oakland Police Dept. (OPD) not only follows the "de-escalation" protocols, but has adopted an exhaustive system of record keeping for each officer/citizen encounter.[53]

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[49] PERF, March 2016 Report "Guiding Principles on Use of Force" pages. 4-5, http://www.policeforum.org/assets/guidingprinciples1.pdf

[50] https://www.washingtonpost.com/graphics/national/police-shootings/ 5. http://www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-youngblack-men, See also, PERF, March 2016, supra at page 6.

[51] PERF, March 2016 Report "Guiding Principles on Use of Force" page 9.

[52] Interview of March 29, 2016, by three of the BASF Criminal. Justice Reform Task Force members.

[53] See, "PERF" Guiding Principles on Use of Force, No. 11, pg. 49 ("To build understanding and trust, agencies should issue regular reports to the public on use of force."

By working with outside experts from Stanford University, including Dr. Jennifer Eberhardt, OPD, now completing their third year with body cameras, has developed impressive uses of BWC footage for training, all applicable to risk management and early warning systems. BASF's Task Force's Sub-Committee on Data and Analysis has spent considerable time meeting with Oakland Police Department. In a recent visit, Assistant Chief Paul Figueroa demonstrated what is described in an article authored by him in the January 2016 Police Chief Magazine. The department employs three levels of review:

> With the introduction of body-worn cameras, a wealth of information has become available. Those with access to the videos now have the ability to examine elements like facial expressions, body language, and word patterns. The richness of these data has created opportunities for deeper analysis of police-community interactions and has the potential to improve policing by identifying best practices and then using the knowledge gained to train current and future officers.
>
> Although approaches to analysis are still being developed by many agencies, three levels of review are likely to be used by law enforcement agencies in the near future.
>
> - First level: Straightforward analysis performed by agency supervisors, commanders, and internal affairs or auditing personnel.
> - Second level: A more in-depth review conducted through formal engagement with an external academic institution or evaluation group.
> - Third level: Computer-assisted analysis of large amounts of video data.[54]

The analysis can then be tied directly to training - risk management and early warning systems:

> The ability to evaluate and improve training through judicious use of all three types of reviews is of major importance.
>
> For example, video can provide invaluable information about the impact of training on communication techniques. Significant knowledge is available about verbal and non-verbal communication, and effective communication training on a regular basis is required for California law enforcement officers. In the basic academy, trainees learn communication techniques such as paraphrasing, expressing empathy, and other techniques to diffuse tense situations. Officers are trained in escalating and de-escalating force depending on changing circumstances. More recent training has also emphasized the importance of incorporating the tenets of procedural justice (voice, neutrality, respect, and trustworthiness) in all police interactions.

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[54] "Body-Worn Cameras: Using the Wealth of Data Effectively," Paul Figueroa, EdD, January 2016, Police Chief Magazine, available at: http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=4008&issue_id=12016

> Why not evaluate significant amounts of police enforcement actions to determine if the training is having a positive impact? Reviewing pre- and post-footage would go a long way toward providing a much richer analysis of training efforts and ultimately positively affect everyday enforcement interactions between police and the community. Video of real-life positive policing could be used to help trainees see the value of such interactions.[55]

As the Data Collection and Analysis Sub-Committee of the BASF Task Force will likely include in their upcoming report, SFPD can benefit greatly by implementing additional and important data collection and analysis, by modeling protocols and tools developed by neighboring departments. It is critical that data analysis include "formal engagement with an external academic institution or evaluation group" as noted by Oakland's Assistant Chief Paul Figueroa and by every department with which the Data Collection and Analysis Sub-Committee has met. SFPD has yet to undertake this important next step. Unless and until this data analysis (including external evaluation) and tied to training, risk management and early warning systems, the rollout of another potentially lethal weapon is unwise.

CED's as "De-escalation"

At first glance, Tasers appear to be an attractive alternative to police use of force, especially in the wake of high-profile killings by law enforcement across the country and in San Francisco. There is a cohort of Taser® advocates that argue, "If officers had been equipped with Tasers, the killing of (Alex Nieto, Amilcar Perez-Lopez, Mario Woods, Luis Gongora, and Jessica Williams and others) wouldn't have happened."

Unfortunately, this line of thinking is flawed. Taser® use is "use of force" - it is not an alternative to it. In a policy shift, Taser® International now states that Taser®s should not be thought of as an alternative to deadly force.

If we acknowledge that Tasers are weapons of force and potentially lethal, the question becomes: Why is the SFPD considering introducing them at a time when they (as well as the professional police community at large) have professed their commitment to de-escalation techniques, especially the mandatory "time and distance" policy?[56] Equipping police officers with a new (potentially fatal) tool with which they are authorized to use force amidst local and national movements away from force and toward de-escalation should be cause for hesitation. In practice, Taser® use and de-escalation policies are generally incompatible, not complementary.

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[55] Ibid.

[56] See, PERF, "2016 Guiding Principles, Policy 4: De-escalation policy should also include discussion of proportionality, using distance and cover, tactical repositioning, slowing down situations...; Policy 17: " De-escalation should be the core theme of an agency's training Program..."Whenever possible, officers should be trained to use *distance* and cover to slow the situation down and create more *time* for them to continue communicating and developing options."

The PERF 2016 report's **primary recommendation** on Tasers: To get officers to stop thinking that if/when Tasers fail, they can escalate immediately to deadly force.[57] What does this say about what the best thinkers in the profession think of Tasers now? They know that in most places it is going to be difficult to rid any law enforcement department of Tasers, so they are focused on controlling their misuse.

We hope that San Francisco will be sufficiently wise to delay consideration of Taser/CEDs until a later date for all the reasons set forth in this Report.

CONCLUSION

In the view of the Taser®/CED Sub-Committee, there are serious areas of concern supporting the Findings and Recommendations at pages 2-4 of this Memorandum.

Respectfully Submitted,

Criminal Justice Task Force and
The Bar Association of San Francisco

[57]PERF 2016 Report, supra, Principle 27, p.67 of Guiding Principles: "Accounts of fatal police shootings often state that "the officer tried an ECW, it had no effect, and so the officer then used a firearm." This is an inappropriate way to view force options. ECWs often do not work because the subject is wearing heavy clothing or for many other reasons. An ECW deployment that is not effective does not mean officers should automatically move to their fire-arms. Under the Critical Decision-Making Model, an ineffective ECW deployment should prompt officers to re-assess the situation and the current status of the threat, and to take appropriate, proportional actions. In some cases, that may mean tactically repositioning, getting together as a team, and assessing different options."