

# Daily Journal

www.dailyjournal.com

FRIDAY, JANUARY 12, 2018

PERSPECTIVE

## There's no excuse for Taser use in our jails

By Aram James  
and Richard Konda

Watchdogs across the country are organizing to oppose police practices that run contrary to community values and our constitutional rights. In Santa Clara County in the spring of 2017, Sheriff Laurie Smith, a longtime opponent of Tasers, in a surprising shift of policy, announced her plan to introduce Tasers into the Santa Clara County jails. Local civil rights organizations immediately began organizing to resist the sheriff's call for Tasers.

One of our first strategies was to ensure that members of the community were as fully informed as possible regarding the risks that Tasers pose to human life. We reviewed materials on Tasers and got ourselves current on the nuances of the issue. Next, we scheduled meetings over a seven-month period with key elected and non-elected officials who we felt could influence the sheriff's decision. This included members of the Santa Clara County Board of Supervisors who ultimately will vote to decide whether the sheriff will be allowed to purchase Tasers. We also met with the elected Santa Clara County district attorney, the Santa Clara County public defender and the county counsel. And most importantly, we met with the sheriff and her staff to open up a dialogue on this critical issue.

Here are some of the arguments and information we provided much of which came from a recent fivepart series by Reuters ("Shock Tactics: Inside the



New York Times News Service

Taser, the Weapon that Transformed Policing") and the Bar Association of San Francisco.

### Taser-Related Deaths and Litigation

Critically important to convincing our sheriff of the inappropriateness of bringing Tasers to the jails is Reuter's recent finding that the death toll associated with Tasers is substantially more than previously reported by mainstream civil rights organizations like Amnesty International. Using rigorous journalistic standards, Reuters documented 1,005 deaths related to Taser use by law enforcement.

In addition, Reuters completed a thorough examination of the monies paid out by cities across the country in Taser related litigation. Reuters identified and reviewed 442 wrongful death lawsuits in which Tasers were a factor that may have caused death. "In 120 of the 442 cases or 27%, the Taser was the only force alleged in the claim; in the remaining 322 cases, the stun guns were alleged to have been part of a broader array of police force. More than three-fifths of the 366 of the concluded lawsuits against governments, or

232, resulted in judgments or settlements for the plaintiffs: 220 settlements and 12 judgments. *Reuters was able to determine payouts in 193 cases, totaling \$172 million paid by cities and their insurers.* That dollar figure does not include three dozen cases in which settlements remained confidential or were unavailable." (Emphasis added.)

These findings regarding the cost of litigation should trouble any law enforcement agency, city or county contemplating the purchase of Tasers.

### Taser Warnings

Historically the manufacturer had very few warnings regarding the safety of its weapon. Increasingly and in order to shift liability to cities and police departments, Taser now has a 4,500-word, seven-page warning. The warning advises users not to deploy the Taser in the area of the face, eyes, neck, chest, heart and the genitals. And not to Taser a variety of populations including the frail, mentally ill, pregnant women and those with heart problems. *By warning police departments regarding the risk of death and serious injury when a Taser is improperly used, the manufacturer has effectively shifted liability from itself to police departments and municipalities.*

Reuters also explored in detail the progression of Taser warnings that includes a comprehensive interactive guide.

The progression of increasingly restrictive warnings issued by Taser has led some police agencies to either shelve Tasers all together or not to purchase them

at all after having reviewed the extensive warnings. Ed Davis, former Boston police chief from 2006-2013, in ultimately declining to purchase Tasers for his department said the following: The warnings "made the weapon impractical to use, and it gave a lot of us the impression that we weren't getting the full story. I didn't want to take the risk. The potential litigation costs absolutely were a factor."

The tragic death of Everette Howard, a young African-American student, is a case examined in the Reuter's series. One Taser blast by University of Cincinnati police officer Richard Haas, a certified Taser instructor, resulted in Everette Howard's death. "Haas fired his stun gun. One electrified dart hit below Howard's lower left chest, the other near his waist. The 18 year-old collapsed, unconscious, and was pronounced dead at the hospital." Haas subsequently said, "I did not in my wildest dreams expect this kid to die."

As part of his role as a certified Taser trainer, Haas acknowledged that he had studied the Taser safety warnings over a 10-year period and noted that they had become more complex over the years. Ironically, the Taser blast that killed Everette Howard was the first time Haas had deployed a Taser in the field. He ultimately concluded, "it seemed like it was getting harder and harder to use the Taser." The University of Cincinnati ultimately settled the Howard's family wrongful death lawsuit for \$2 million. Taser was not sued in the matter.

In another case explored by Reuters, Linwood Lambert was

tasered some 20 times by South Boston, Virginia, police officers. He died. There was substantial evidence that the three officers involved ignored the manufacturer's warning regarding the risk of repeatedly tasing victims. In addition, the officers ignored other warnings issued by the manufacturer. Under oath at a deposition, one of three officers involved, Corporal Tiffany Bratton, acknowledged that she was aware of the manufacturer's warnings. In a chilling statement, she said, "If I read and abided by every single warning ... I would not Taser anyone."

### Catch-22

More and more attention is being paid by commentators to the fact that the use of Tasers is a Catch-22. Failure by police departments to follow closely the ever growing restrictions on the use of Tasers issued by the manufacturer has resulted in unnecessary deaths and a huge increase in the costs of litigation borne by municipalities. On the other hand, where police departments are closely complying with the manufacturer's complex warnings, they are finding it increasingly impractical to use Tasers. The Oakland Police Department has over 700 police officers on their force, all are armed with Tasers. The Bar Association of San Francisco Criminal Justice Task Force, Committee on Tasers contacted the Oakland Police Department to determine how frequently Tasers were deployed.

"To help answer some of the questions, the BASF also reached out to the Oakland Police Department (OPD) to determine how often Tasers are used, and how often they are effective. It is well known that LAPD re-

ports 47% efficacy, but LAPD far exceeds the size of SFPD. The OPD which is closer in size to the SFPD, reported that in 2015 Tasers were deployed on just 37 occasions and 32 times in 2016. Oakland reported for each year, the efficacy was 50%." Other studies have confirmed that where warnings are complied with the use of Tasers drops dramatically. Similarly, numerous studies have confirmed that Tasers have an unacceptably high failure rate putting both the officers and intended victim at risk.

Moreover, Tasers are not effective. Michael Leonesio, a retired Oakland peace officer, provided answers to questions posed by the Bar Association of San Francisco. "Given the warnings issued by Taser International, does this diminish the weapon's efficacy and/or circumstances otherwise warranting Taser use[?] ... Answer: The latest manufacturer warnings and trainings, as well as the Courts and current case law decisions, have absolutely limited the circumstances when a TASER, can and/or, should be used. Combine this with the fact that the new generation weapons are generating only half the electrical output of the previous generations, and I question the current weapons' ability for consistent, reliable, subject incapacitation."

### Worth the Cost?

In June 2017, Taser expert Michael Leonesio, was called as an expert witness before the San Francisco Police Commission on the potential costs of outfitting all members of the SFPD with Tasers. "During his testimony, he estimated the first year in costs to San Francisco at \$8,000 to \$10,000 per officer which in-

cluded the purchase price, maintenance, training and oversight. Assuming a department size of 2,200 officers, the cost is between \$17.6 million and \$22 million." Clearly, the sheriff and the Santa Clara County Board of Supervisors need to consider the cost factors raised above before expending millions of tax payer dollars on a weapon that is increasingly seen as impractical to use.

### Final Argument

Tasers kill on the average of one person per week in the United States. According to the Reuters series, nine out of 10 who die are unarmed. Tasers are unsafe to use in jails because of the substantial risk of injury or death to both inmates and correction officers. The strongest single piece of evidence of this lack of safety is the 1,005 Taser related deaths reported in the Reuters fivepart series on Tasers. Equally powerful evidence of why Tasers should be banned is the ever growing list of restrictions/warnings issued by the manufacturer themselves regarding the serious risks of injury and death related to the use of Tasers.

The millions that would be spent in arming the correctional officers in the jails with Tasers would be better spent on hiring more and better trained correctional officers. Finally, given the recommendations of the Santa Clara County Blue Ribbon Commission on Improving Custody Operations, the purchase and use of Tasers in the jails runs counter to the community's loud and repeated calls for a more humane approach to incarceration.

### Call to Action

When your community is faced with a questionable police practice

be it the use of Tasers, inhumane jail conditions, unconstitutional surveillance tactics, racially discriminatory police enforcement; be confident that there is a way to organize your community to effectively challenge these issues. Meet early and often with the community and with your local elected officials. Provide them with the necessary information to fully educate them on the issues. Call on your local district attorney, who is the chief, law enforcement officer in every community, to support your efforts to challenge and end police practices that diminish public trust for local law enforcement. Remember police practices are not some obscure body of knowledge that we the community need sit back and passively accept. We can in fact make a difference.

*Aram James is a retired Santa Clara County deputy public defender, a member of CJA and a co-founder of the Albert Cobarrubias Justice Project (ACJP), a grassroots legal advocacy organization located in San Jose.*

*Richard Konda is an attorney and executive director of the Asian Law Alliance and the Chairperson of the Coalition for Justice and Accountability (CJA). Konda and James have challenged the use of Tasers by law enforcement for more than a decade.*

