

A Bad Night at Powell Library: The Events of November 14, 2006

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Introduction

At the behest of acting UCLA Chancellor Norman Abrams, the Police Assessment Resource Center (PARC) conducted a seven-month, independent investigation of a November 14, 2006 incident at UCLA's Powell Library in which the UCLA Police Department (UCLAPD) arrested UCLA student Mostafa Tabatabaiejad. This report sets forth our factual findings and conclusions.

This story has no heroes. The event triggering the repeated electrical shocking of Tabatabaiejad was a declination by the UCLA student to produce a BruinCard identification in the Powell Library computer lab after hours. While the student should have simply obeyed the order to produce the card, and by not doing so brought trouble upon himself, the police response was substantially out of proportion to the provocation. There were many ways in which the UCLAPD officers involved could have handled this incident competently, professionally, and with minimal force. We find that one UCLAPD officer violated UCLA use of force policies in the incident. We further conclude that UCLAPD's current policies are, in any event, unduly permissive, giving the police unnecessary latitude, and are inconsistent with the policies of other universities and leading police departments across the country, including other University of California campuses, the LAPD, and the Los Angeles County Sheriff's Department (LASD). The UCLAPD policy stands alone in its legitimization of the Taser as a pain compliance device against passive resisters. The current UCLA policy is more permissive than the Sacramento Police Department policy on which it was based and the Taser policy recommended by its chosen outside expert on the question.

We recommend that the UCLAPD policy on Tasers be redrafted to forbid their use against passively or mildly resistant individuals except in extraordinary circumstances not presented by the Tabatabaiejad matter. We recommend a far tighter definition of what constitutes the different levels of resistance. We recommend that Mr. Tabatabaiejad be counseled that his failure to comply with orders nonetheless provided a good reason for

force to be legitimately used by police officers, even if the force employed in the particular instance was unnecessary, avoidable, and excessive.

PARC developed an extensive factual record from all legally available documents and materials with the cooperation of the Chancellor, the Vice Chancellor for Legal Affairs, other UCLA officials, and Chief Karl Ross of the UCLAPD. The Regents of the University of California facilitated our investigation through the good offices of the Regent's principal lawyer in this matter, Norman Hamill. We similarly received cooperation from Paul Hoffman, counsel to Mostafa Tabatabaiejad. As independent investigators without subpoena power, we could not compel individuals to speak with us or provide sworn testimony and, indeed, we did not receive voluntary cooperation from such witnesses. While those interviews may have provided additional nuance and allowed for cross examination, this incident was unique in that there were multiple cameras recording the incident from several different angles. Accordingly, the basic facts of the incident are not in dispute.

In addition, we had access to the entire of UCLAPD's criminal investigation of the incident and to the detective who conducted it. We accordingly had the involved officers' incident reports and the detective's account of interviews with all the main players. Apart from documents and reports provided by UCLA and Mr. Tabatabaiejad, we received cooperation, documentation, and information from sources other than the interested parties themselves, including accounts from student witnesses provided to journalists and other third parties. In sum, we have confidence in the facts as we have found them. Where the record is incomplete or ambiguous, we point that out.

Our investigation is not the only one that has taken place. UCLAPD performed a thorough criminal investigation of the incident and proffered the matter to the City Attorney who, after investigation by his staff, declined to prosecute Tabatabaiejad for resisting arrest due to lack of evidence to convict the student beyond a reasonable doubt.

The UCLAPD is conducting its own internal administrative investigation of the incident to determine if discipline is warranted against any of its employees, including the officer who repeatedly fired the Taser at Tabatabaiejad. Under current California law, those internal investigatory files and statements cannot be disclosed, even to independent investigators.¹

Additionally, Mr. Tabatabaiejad has filed a lawsuit in federal court. We have reviewed pleadings from that lawsuit, including the complaint and the mutual disclosures of the parties regarding documents, witnesses, and certain factual contentions. We are confident that we have in our possession all documents referred to in those filings and were aware of all witnesses and contentions disclosed by the parties in those filings.

PARC's investigation included exhaustive research on the Taser itself, on the policies and practices of other universities and police departments regarding use of the Taser, and on the best and recommended practices regarding the Taser formulated by the leading authorities and experts on the question, including model policies drafted by police organizations such as the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF).

This Report will first lay out the facts. Next, the Report will test the application of current UCLA policy and those of other universities and police departments to the facts. The Report will inform the reader with general background about how the UCLA Police developed its current use of force policy regarding the Taser and then set out recommendations for revision of the current Taser policy at UCLA.

¹ As a matter of transparency and public accountability, we believe current law is unduly restrictive and that the public interest in disclosure outweighs any competing considerations.

1

Factual Findings

This chapter presents our factual findings and conclusions. After describing our independent investigation, we present the factual record as we have determined it, offering conclusions where the evidence allows us to do so and identifying disputed factual issues when we could not reach definitive conclusions.

SCOPE AND LIMITATIONS OF THE INVESTIGATION

Our factual investigation into the events occurring at UCLA's Powell Library on November 14, 2006 relies primarily on the following sources or evidence:

- initial police reports by responding officers, including:
 - Officer 1, the first UCLA police officer to arrive at the Library and to confront the involved student, Mostafa Tabatabaiejad, and who was present for the application of the Taser. Officer 1 was reportedly not carrying a Taser on the night of the incident.¹
 - Officer 2, the second officer to arrive at the Library, who applied the Taser.
 - Officer 3, an officer who arrived later to provide additional assistance at the Library and took the statements of at least two student witnesses.

¹ Whether California law precludes us from giving the full names of the UCLA police officers is subject to debate. The identity of the police officer firing the Taser has been in the press many times. Out of abundance of caution and pursuant to agreements with UCLA, we will not identify any UCLA police officers or community service officers by name.

- incident reports from Community Service Officers (CSOs) who were at the Library on the evening of the incident, including:
 - CSO 1, who initiated a check of BruinCard identification in the CLICC (College Library Instructional Computing Commons) lab in Powell Library on the evening of the incident and who radioed UCLAPD for assistance with Tabatabaiejad.
 - another CSO who also interacted with Tabatabaiejad prior to the arrival of UCLAPD on the night in question.
 - six additional CSOs working on the evening of November 14 who witnessed the event or assisted in crowd control during and after the incident.
- UCLAPD's criminal investigation of the incident prepared by Detective 4, including all updates and supplements supplied by UCLAPD (including of summaries of additional interviews with involved CSOs and with two additional student witnesses).
- Powell Library surveillance footage, which comprises ongoing video captures at regularized intervals but no sound. Three camera angles were helpful in analyzing the incident:
 - (1) a camera situated above the primary entrance and exit of the CLICC lab where the incident began;
 - (2) a camera positioned in the CLICC lab near a Library staff area (or the lower left hand corner of the lab from the entrance and southwest corner);

(3) a camera at the entrance to the main lobby of the Library.

- the video footage captured by a student witness on a portable digital device, which we understand to likely be a digital camera, and subsequently made public on the YouTube video sharing website
- transcripts of the YouTube video commissioned by UCLAPD
- transcripts of recorded interactions between officers and Tabatabainejad after his arrest
- transcripts of available audio from Officer 1's personal audio recording device, which functioned properly only intermittently on the night of the incident
- a usage log for the Taser device deployed by Officer 2 on the night of the incident, which is an electronic record of when and for how long a Taser was deployed
- the civil complaint filed in federal court by Tabatabainejad against UCLA, the UCLAPD, and the officers who responded to the incident

UCLA provided the whole of its criminal investigatory file on the incident. In addition to the evidence listed above, it included, but is not limited to: copies of Library policies, university policies, diagrams and floor plans of the CLICC lab and first floor of the Library, photographs of the Library and CLICC lab, a Taser equipment sign-out log, CSO training materials and program guidelines, and information UCLAPD investigators unearthed about Tabatabainejad and his family.

During our inquiry, we made multiple attempts to contact students who, because they were recorded as having been logged into the UCLA computer system in the CLICC lab around

the time of the incident, or because they provided accounts of the incident to the university via email or to media outlets, likely witnessed the incident. In some instances, we emailed and called students directly. In others, UCLAPD or university counsel, on our behalf, contacted students seeking permission to release to us their contact information. We received no response from many students, and several others explicitly declined to speak with us or to allow the university to release their contact information to us. Lawyers for Officers 1 and 2 declined to permit us to interview their clients, as did counsel for Tabatabaiejad.

According to the investigatory file, the first comprehensive attempt by the UCLA Police to contact student witnesses only occurred approximately two months after the incident, on January 18, 2007. The investigation contains statements from two student witnesses given to a responding officer on the night of the incident at the Library and from two others who spoke in January 2007 with Detective 4. Our factual determinations, then, incorporate the impressions and accounts of those four student witnesses.

Finally, we note that firm determinations of the actual time at which particular events occurred are largely impossible. The Library surveillance video system's internal timestamp was running consistently fast (by about 26 minutes) on the night of the incident, and no determination can be made as to the precise time at which the YouTube footage began. Similarly, the Taser log's internal timing mechanism differs from the internal time of the Library timestamp and may run a few minutes fast or slow. The times cited, then, are predominantly relational. For example, we could determine, based on the YouTube footage, that one Taser application occurred a certain time after or before or another and that an officer had been present in the Library for a determined time before interacting with the student.

FACTUAL DETERMINATIONS

TABATABAINEJAD ENTERS THE LIBRARY

At approximately 10:47 P.M. on the evening of Tuesday, November 14, 2006, UCLA student Mostafa Tabatabainejad entered the Powell Library through its northern entrance.² Shortly thereafter, at approximately 10:48 P.M., Tabatabainejad entered the Library's CLICC (College Library Instructional Computing Commons) computer lab, located on the ground floor of the Library and adjacent to the Library's main lobby. Tabatabainejad entered the lab through its main entrance and exit, accessible via a short flight of stairs from the Library's main lobby, and proceeded to a desk in a corner opposite the lab's primary entrance.³

During the next 50 minutes, Tabatabainejad exited and re-entered the CLICC lab twice—once while talking on his cell phone and another while “fidgeting with his cell phone.”⁴ No evidence suggests that his behavior was out of the ordinary.

ANNOUNCEMENT OF IDENTIFICATION CHECK

At approximately 11:15 pm, a Community Service Officer, CSO 1, can be seen on surveillance footage entering the CLICC Library and appearing to address the students. According to CSO 1, he announced, “I will be checking BruinCards, so please have them ready.”⁵ According to a student working as a Library Consultant in Training in the CLICC lab on the night of November 14, “the CSO told everyone in the lab to have their UCLA BruinCards out so that they could continue using the lab” and that “if they did not present

² This time is based on UCLAPD's determination that the clock associated with the Powell Library's security camera situated above the entrance to the CLICC lab ran approximately 26 minutes faster than actual time on the night in question.

³ Tabatabainejad's location was in the northeast corner of the CLICC lab according to the library's architectural floor plan provided by the university. If standing at the entrance and looking into the CLICC lab, Tabatabainejad situated himself in the far northwest corner.

⁴ Detective 4 Supplemental Report, 9 (TABATA-01380)

⁵ CSO 1 Incident Report, 1 (TABATA-01183)

their BruinCards, they would have to leave the lab.”⁶ Another student, in the Library during the time of the incident and who approached a responding officer after the incident to make a statement, appears to confirm that “the CSO informed everyone that they needed to have their UCLA BruinCard out in order to use the CLICC lab” and that “anyone who did not have a BruinCard would be asked to leave.”⁷

Library policies, as well as guidelines issued to CSOs by the UCLAPD, state that students utilizing the Powell Library after hours (Night Powell) must have their BruinCard identification and that it should be checked for all students at Night Powell, whether they are already working in the Library when the switch from regular hours to Night Powell hours occurs or arrive at the Library when Night Powell is already in progress. Information on “Night Powell,” which refers to “times when the Library and its services (circulation, reference, etc.) are closed but the reading room and the CLICC lab are open,” available on the Library’s website, notes that “Night Powell is open only to UCLA students, staff and faculty with a valid UCLA BruinCard ID.”⁸ A sign routinely posted in the Library, and purported by UCLAPD to be posted on the night of the incident, indicates that “All Night Powell Patrons must display their UCLA ID at all times.”⁹

According to published guidelines for CSOs on “Powell Library Procedures,” “patrons already within Night Powell and the CLICC lab need to be checked to ensure that they are authorized to be there” once the Night Powell hours commence. The manual urges CSOs to “enter the reading room and the CLICC lab and check everyone’s BruinCard,” maintaining “an eye on convenient ‘bathroom breaks’ during the sweep, where people try to avoid getting caught.”¹⁰

⁶ Officer 3 Supplemental Report, 1. Some initial materials provided to us by UCLAPD were not assigned Bates numbers; we cite them according to page numbers.

⁷ Officer 3 Supplemental Report, 1.

⁸ CSO Training Manual (TABATA-02102), UCLA Library Website [<http://www.library.ucla.edu>].

⁹ UCLAPD Photographic Evidence (TABATA-01319).

¹⁰ “CSO Programs: Powell Library Procedures,” University of California, Los Angeles Police Department (TABATA-02102-02103).

UCLA policy does, then, dictate that students should retain identification while in the Library and present it, especially when utilizing the Night Powell service, when asked.

We cannot, however, determine whether these policies were routinely enforced. Tabatabaiejad’s civil complaint suggests that, during previous visits to the Library, he “had never been asked to show his Bruin ID after having already entered the Library and being inside.”¹¹ Two witnesses interviewed by UCLAPD also dispute whether such identification checks are, in practice, routine. One student witness, who studied at the lab two or three times per week every week since the beginning of the academic year and was present in the CLICC lab at the time of the incident, “questioned what she called ‘random checks’ since she had never been checked.”¹² Another student, who also indicated that he worked in the computer lab 2-3 times per week for a couple of hours at a time, told police that he “has been ID’d (sic) when entering the [CLICC] lab but not while inside the lab.”¹³ He indicated that he had “seen CSOs check for ID inside the lab but called it ‘seldom’” and “something that does not ‘happen everyday.’”¹⁴

The Library surveillance footage showing CSO 1 address the students in the CLICC lab, the statement of the CSO, and the statements of two other witnesses indicate that a comprehensive check of student identification was announced on the night of November 14.

CSO INTERACTION WITH TABATABAINEJAD

After the CSO completed his announcement, Community Service Officer 1 walked to the “far left” (or northwest) corner of the CLICC lab from the entrance.¹⁵ A student witness “said that the CSO started the ID check in the back of the lab,” which, she offered, “was a

¹¹ *Tabatabaiejad v. University of California at Los Angeles*, et al, 4.

¹² Detective 4 Supplemental Report, 1 (TABATA-01390).

¹³ Detective 4 Supplemental Report, 2 (TABATA-01391).

¹⁴ Detective 4 Supplemental Report, 2 (TABATA-01391).

¹⁵ CSO 1 Incident Report, 1 (TABATA-01183).

smart idea...[since] anyone who was asked to leave the lab would not be able to re-enter the lab without the CSO seeing it.”¹⁶

The CSO appears to have begun checking for identification with Tabatabaiejad. CSO 1 recalled in his incident report that Tabatabaiejad “asked me why I was singling him out.”¹⁷ CSO 1 “informed him that I was not singling him out and that I have already checked the BruinCards of everyone in the entry way.”¹⁸ According to the CSO’s account, Tabatabaiejad then “continued to ask, more annoyed this time, why I had to check his card first,” and CSO 1 “told him again that I checked the cards of the people in the entry way and that I am going to check the cards of everyone in the Library, including the CLICC lab and the main reading room.”¹⁹ He asked Tabatabaiejad “if he had his BruinCard,” and Tabatabaiejad replied that he did. However, when the CSO “asked to see it,” Tabatabaiejad “replied no.” CSO 1 then “informed him that if he did not show me his card then he would have to leave.” The CSO claims that Tabatabaiejad subsequently “scoffed and turned away from me, back to his work.”²⁰ He “then told [Tabatabaiejad] that if he does not comply then I would have to call UCPD,” to which Tabatabaiejad replied, “Go ahead. Go off on your little power trip.”²¹

According to an audiotaped discussion with one of the involved officers after the incident concluded, Tabatabaiejad “felt like he was being singled out” by the CSO when asked for his identification.²² Tabatabaiejad indicated that he “asked [the CSO] to start with another person to show that he was actually doing it, that he was doing what he said. He

¹⁶ Officer 3 Supplemental Report, 1

¹⁷ CSO 1 Incident Report, 1 (TABATA-01183).

¹⁸ CSO 1 Incident Report, 1 (TABATA-01183).

¹⁹ CSO 1 Incident Report, 1 (TABATA-01183).

²⁰ CSO 1 Incident Report, 1 (TABATA-01183).

²¹ CSO 1 Incident Report, 2 (TABATA-01184).

²² UCLAPD Audio Recordings Transcription (TABATA-01875).

then said, ‘No,’ and he went and brought his supervisor.’²³ In his civil filing against the university, Tabatabaiejad expresses similar concern “that he was being singled out,” and indicates that he “request[ed] that the student guard ask one other student for his identification card first to alleviate this concern.”²⁴

Tabatabaiejad believed, whether justifiably or not, that the CSO was unfairly singling him out by checking his identification first and before others in the computer lab, and the accounts of Tabatabaiejad and the CSO are in agreement that Tabatabaiejad indeed raised this concern to the CSO. We make no conclusions as to whether Tabatabaiejad’s concerns were or were not reasonable under the circumstances of his interaction with the CSO.

We encountered no evidence to suggest that the CSO’s behavior was racially motivated or that the CSO’s decision to begin checking identification with Tabatabaiejad was based on Tabatabaiejad’s being of Iranian descent. Indeed, Tabatabaiejad suggests in his civil complaint that he believed that he was being “singled out” over other students but does not contend that he believed such targeting to be racially motivated. We find it highly unlikely that the CSOs checking Tabatabaiejad’s ID was motivated by the student’s perceived race or ethnicity.

Once the CSO concluded his interaction with Tabatabaiejad, he exited the CLICC lab, radioed dispatch about an individual refusing to show his BruinCard (at approximately 11:17 PM), and informed another CSO of the situation. While waiting for the UCLAPD to respond, that CSO “went with [1] back to the subject and asked him to show his BruinCard (sic). He again refused. The CSO then told him that we are going to have to call UCPD. And the subject said, ‘go ahead.’”²⁵ The Library surveillance footage captures the two

²³ UCLAPD Audio Recordings Transcription (TABATA-01875).

²⁴ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 4.

²⁵ CSO 1 Incident Report, 2 (TABATA-01184).

CSOs entering the CLICC lab to speak with Tabatabaiejad and exiting together less than one minute later.²⁶

The Library surveillance video and the statements of the CSOs who interacted with Tabatabaiejad in asking for his identification seem to support the conclusion that, after Tabatabaiejad refused to show his BruinCard, the CSOs did not continue checking the identification cards of any of the other students assembled in the CLICC lab. Rather, their focus appears to have switched exclusively to dealing with Tabatabaiejad.

ARRIVAL OF UCLAPD

Meanwhile, Officers 1 and 2 were dispatched to a call of an unauthorized person refusing to leave the Powell Library computer lab.²⁷ Approximately 10 minutes after CSO 1 radioed dispatch, Officer 1 was the first officer to arrive (at approximately 11:27 PM).²⁸ According to surveillance footage, Officer 1 was met in the main lobby of the Powell Library by CSO 1, and the two discussed the situation in the lobby for approximately one minute and four seconds.²⁹

The officers proceeded to the entrance of the CLICC lab, where the CSO pointed out Tabatabaiejad for the officer.³⁰ The surveillance camera positioned in the CLICC lab above the primary entrance and exit shows CSO 1 then accompanying Officer 1 into the lab.³¹

²⁶ Library Surveillance Footage, Camera 5, 12:46:02

²⁷ Officer 1 Narrative, 2.

²⁸ Detective 4's timeline of events based on library surveillance footage notes Officer 2 as arriving in the foyer of the Powell Library at 11:27 PM. Officer 2's report indicates that he arrived at 11:26 PM. Officer 1 is silent as to when he arrived. The library surveillance video's internal timestamp reads 12:53:40 upon Officer 2's arrival to the library lobby.

²⁹ Library Surveillance Video, Lobby Camera 3, 12:53:48 AM.

³⁰ Library Surveillance Video, Lobby Camera 3, 12:54:52 AM.

³¹ Library Surveillance Video, Camera 5, 12:55:05AM; Library Surveillance Video, Camera 3, 12:55:08 AM.

According to his report, Officer 2 arrived at the Library approximately eight minutes after Officer 1. Library surveillance shows him entering the main lobby of the Library approximately one minute and twenty eight seconds after Officer 1 entered and sixteen seconds after Officer 1 proceeded with CSO 1 from the main lobby to the CLICC lab.³² Officer 2 can be seen pointing in the direction of the CLICC lab; we assume that he received information on where Officer 1 had gone from two CSOs and front desk personnel who remained stationed by the lobby's front desk.³³ Officer 2 proceeded directly to the CLICC lab, where he saw CSO 1 "point out Tabatabaiejad to [Officer 1]" from "approximately 25-30 feet behind [Officer 1] and [CSO 1]" as he proceeded up the stairs and approached the entrance to the CLICC lab.³⁴

The sum of the existing investigative record strongly suggests that Tabatabaiejad stood up around the time that Officer 1 entered the CLICC lab, put on his backpack, and made some movement away from the area in which he had been studying and toward the main entrance to the CLICC lab before Officer 1 could approach him. According to Officer 1, when "Tabatabaiejad saw me," the student "stood up..., put his backpack on," and "began walking towards me."³⁵ A student witness from the CLICC lab, interviewed more than two months after the incident, indicated that she "saw a subject with his backpack like he was going to leave."³⁶ In his civil complaint, Tabatabaiejad's lawyers assert that Tabatabaiejad had "finished up his work..., packed up his bag, and started to leave the Library" before Officer 1 reached Tabatabaiejad.³⁷ It is our understanding that Tabatabaiejad continues to maintain that he "was in the process of leaving" when officers arrived.

³² Library Surveillance Video, Lobby Camera 3, 12:55:08 AM.

³³ Library Surveillance Video, Lobby Camera 3, 12:55:10 AM.

³⁴ Officer 2 Supplemental Report, 1.

³⁵ Officer 2 Supplemental Report, 3.

³⁶ Detective 4 Supplemental Report, 1, (TABATA-01390).

³⁷ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 5.

The Library’s surveillance system, via the camera situated above primary entrance to the CLICC lab but far removed from where Tabatabaiejad was situated in the lab, does appear to capture an individual, dressed in a white shirt—as Tabatabaiejad was on the night of the incident—standing up before Officer 1 proceeds from the entrance to the back of the lab, though the image is blurry and the subject is partially obscured from view by a post.³⁸ Although the matter is not entirely free from doubt, we conclude that it is more likely than not that Tabatabaiejad was in the process of leaving the Library by the time Officer 1 entered the CLICC lab.

It is quite clear, however, that Tabatabaiejad was in the process of leaving by the time Officer 1 encountered him. The Library surveillance video shows Tabatabaiejad emerge from behind a pillar, and walk away from the location at which he was studying just as Officer 1 and the CSO reach the end of the CLICC lab’s central aisle.³⁹ Officer 1 stops at the end of the aisle, and Tabatabaiejad continues to walk toward him.⁴⁰ Tabatabaiejad stops walking upon encountering Officer 1.⁴¹

TABATABAIEJAD ENCOUNTERS OFFICER 1

When Officer 1 encountered Tabatabaiejad, he “told Tabatabaiejad that he was going to have to leave.”⁴² According to Officer 1, Tabatabaiejad then “stopped and defiantly replied, ‘Why?’” Officer 2, who had by now entered into the CLICC lab and was proceeding to the far side of the lab to join Officer 1 and Tabatabaiejad, heard Tabatabaiejad yell “why?” as he approached them.⁴³ Tabatabaiejad suggests that Officer 1 “blocked his path to the exit, preventing him from leaving the Library, and stated in a

³⁸ Library Surveillance Video, Camera 5, 12:55:08AM.

³⁹ Library Surveillance Video, Camera 5, 12:55:16 AM.

⁴⁰ Library Surveillance Video, Camera 5, 12:55:16 AM through 12:55:20 AM.

⁴¹ Library Surveillance Video, Camera 5, 12:55:20 AM.

⁴² Officer 1 Narrative, 2.

⁴³ Officer 2 Supplemental Report, 1.

hostile tone, ‘You need to leave.’”⁴⁴ The Library surveillance footage appears to show Officer 1 gesturing to the primary entrance and exit of the CLICC lab shortly after he meets Tabatabaiejad at the end of the central walkway.⁴⁵

The evidence confirms Tabatabaiejad’s contention that Officer 1 “made no attempt to speak to [Tabatabaiejad] or inquire about what previously transpired in the computer lab,” offering the student “no opportunity to clarify the situation or express his concerns about being singled out by the student guard.”⁴⁶ According to Officer 1’s report, immediately after Tabatabaiejad asked “why,” Officer 1 “began to reach for Tabatabaiejad’s left arm in order to escort him out in a come-along as I began to explain why he would have to leave.”⁴⁷ Officer 2’s report, similarly, does not set forth any substantial conversation between Tabatabaiejad and the officers before Officer 1 reached for Tabatabaiejad’s left arm. The Library surveillance video demonstrates that Officer 1 reached for Tabatabaiejad’s arm just four seconds after encountering the student in the CLICC lab (or one minute and forty four seconds after entering the Library).⁴⁸

Tabatabaiejad’s contention that Officer 1 “made no attempt to defuse the situation” before initiating physical contact with the student is, therefore, likely correct. Officer 1 does not contend that he solicited an explanation of the situation from Tabatabaiejad. Officer 1’s understanding of the events surrounding Tabatabaiejad’s refusal to show identification seem to be based exclusively on his brief discussion with the involved CSO.

We note that two student witnesses, in contrast, do seem to suggest that some sort of interchange may have occurred prior to officers making physical contact. One student

⁴⁴ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 5.

⁴⁵ Library Surveillance Video, Camera 5, 12:55:18 AM.

⁴⁶ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 5.

⁴⁷ Officer 1 Narrative, 3.

⁴⁸ The library surveillance footage reflects a timestamp of 12:55:20 AM when Tabatabaiejad and the officer reach the same position in the library. Officer 1 can be clearly seen reaching making contact with Tabatabaiejad with his right arm at 12:55:24 AM.

witness stated on the night of the incident to the UCLA police that “the officers gave Tabatabaiejad numerous chances to cooperate but he refused to leave on his own.”⁴⁹ In response, “Tabatabaiejad told the officers he would leave but he actually refused to leave by staying where he was.”⁵⁰ According to the student, this conversation occurred before “the two officers put their hands on Tabatabaiejad to walk him out.”⁵¹ Another witness similarly indicated “that Tabatabaiejad told the police officers that he was leaving,” though she “did not get any impression that Tabatabaiejad was making any effort to leave.” We give more weight to the statements of Officers 1 and 2, who do not recount any conversation upon initially encountering Tabatabaiejad, and the relatively short duration of time between when Officer 1 initially approached the student and when he reached for his arm.

OFFICERS MAKE PHYSICAL CONTACT WITH TABATABAIEJAD

Officer 1, Officer 2, and Tabatabaiejad’s accounts of what happened after Officer 1 reached for Tabatabaiejad’s arm differ significantly. According to Officer 1, after he began to reach for Tabatabaiejad but “before I could make contact with him, Tabatabaiejad screamed ‘Don’t fucking touch me’ and then aggressively put up his arms.”⁵² Officer 1, “now wary that he might throw a punch,” told him “Don’t” and “immediately took hold of Tabatabaiejad’s left arm as it was the one closest to me.”⁵³ Officer 2, who can be seen on the Library surveillance footage entering the CLICC lab through its primary entrance from the Powell Library lobby at the precise moment that Officer 1 initiates physical contact with Tabatabaiejad, reported that he “saw Tabatabaiejad lunge toward Officer 1,” screaming “Don’t fucking touch me!” as he lunged, prompting Officer 1 “immediately [to] take hold of Tabatabaiejad’s left arm.”⁵⁴

⁴⁹ Officer 3 Supplemental Report, 1.

⁵⁰ Officer 3 Supplemental Report, 1.

⁵¹ Officer 3 Supplemental Report, 2.

⁵² Officer 1 Narrative, 3.

⁵³ Officer 1 Narrative, 3.

⁵⁴ Officer 2 Supplemental Report, 1; Library Surveillance Video, Camera 5, 12:55:24 AM.

In his civil complaint, Tabatabaiejad recounts that “without any further discussion, [Officer 1] unnecessarily and forcefully grabbed [his] shoulder.”⁵⁵

Statements by witnesses do not support any of these specific accounts. In her statement to police on the night of the incident, student witness 1, the only student witness who mentions the initial physical contact between the officers and Tabatabaiejad, noted only that “the two officers put their hands on Tabatabaiejad’s arms to walk him out.”⁵⁶ The Library surveillance footage shows Officer 1 making and maintaining contact with the student with his right arm and leaning in toward the student. For three seconds, however, the officer and the student are obscured by a student bystander.⁵⁷

Officer 1 contends that he began to reach for Tabatabaiejad’s left arm shortly after Tabatabaiejad asked him why he had to leave the Library, that Tabatabaiejad then “aggressively put up his arms,” and that he subsequently took hold of Tabatabaiejad’s left arm. Officer 2 saw Tabatabaiejad lunge toward Officer 1 while screaming, which set the occasion for Officer 1 to take hold of Tabatabaiejad’s left arm. Tabatabaiejad states that Officer 1 simply made physical contact without reason. Given the refusals of Officer 1, Officer 2, and Tabatabaiejad to submit to interviews; the failure of UCLAPD investigators to identify and interview student witnesses in a timely fashion; and the lack of revealing detail from the Library surveillance footage, we cannot determine conclusively whether Tabatabaiejad responded with a lunge or raised his arms in response to Officer 1’s reaching for him.

To some extent, we must be skeptical of the statements of Officers 1 and 2 and Tabatabaiejad as self-serving. We have no testimony on the issue from anyone else except student witness 1, who does not speak of any aggressive or threatening conduct on

⁵⁵ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 5.

⁵⁶ Officer 3 Supplemental Report, 2.

⁵⁷ Library Surveillance Video, Camera 5, 12:55:24 AM through 12:55:27 AM.

Tabatabaiejad's part, but it is clear, by Officer 1's own statement, that Officer 1 began to reach for Tabatabaiejad before the student could have made any aggressive movement. We therefore find it more likely than not that Tabatabaiejad did not engage in such aggressive conduct. But even if he had, Officers 1 and 2 grabbing Tabatabaiejad's right and left arm would have quickly stopped such conduct. After the approximately three seconds during which they are obscured on the Library surveillance footage, Officer 1 can be seen maintaining physical contact with Tabatabaiejad's left arm. By this time, Officer 2 had progressed to just a few feet away from where Tabatabaiejad and Officer 1 were positioned, at the end of the CLICC lab's central aisle. The Library footage shows that "Officer 2 ran over and took hold of Tabatabaiejad's right arm."⁵⁸

OFFICERS BEGIN TO ESCORT TABATABAIEJAD OUT OF THE CLICC LAB

Once the officers had taken hold of both of Tabatabaiejad's arms, the officers and Tabatabaiejad proceeded toward the primary entrance and exit of the CLICC lab.⁵⁹ Review of the surveillance camera situated above this primary entrance to the lab shows clearly Officer 1, to the student's left, and Officer 2, to the student's right, holding Tabatabaiejad's left and right arms, respectively, as they walk together toward the entrance.⁶⁰ Neither Officer 1 nor Officer 2, nor any of the student witnesses, suggest that Tabatabaiejad was noncompliant with the officers as he walked with the officers from the back of the CLICC lab toward its main entrance.

As they moved toward the entrance, the surveillance footage shows Officer 2, who is grasping Tabatabaiejad's right arm with his left hand, pressing, with his right hand, a bright yellow object against Tabatabaiejad's upper abdomen.⁶¹ This object appears clearly to be the yellow version of the X26 Taser model manufactured by Taser International, Inc. This version of the X26 was among the Tasers that UCLAPD

⁵⁸ See Officer 2 Narrative, 3.

⁵⁹ Library Surveillance Video, Camera 5, 12:55:30 AM.

⁶⁰ See Library Surveillance Video, Camera 5, after 12:55:30 AM.

⁶¹ Library Surveillance Video, Camera 5, 12:55:34 AM.

maintained in its inventory on the night of the incident. Further, Officer 2 told Detective 4 in an interview that “he took out his Taser as he” and Officer 1 “[were] walking Tabatabaiejad out of the CLICC lab.”⁶² It is our further understanding that Tabatabaiejad asserts that Officer 2 was in fact pressing something up against him as they escorted him toward the CLICC lab’s main entrance.

We conclude that Officer 2 had at some point taken out his Taser and placed the Taser against Tabatabaiejad’s right side as the student walked with the officers toward the entrance of the CLICC lab. Through comparison of Library surveillance video timestamps, we determine that Officer 2 had his Taser pressed against Tabatabaiejad approximately 26 seconds after arriving at the Library, ten seconds after entering the CLICC lab, and around four seconds after having made initial physical contact with Tabatabaiejad.

TABATABAIEJAD FALLS TO THE GROUND

When Tabatabaiejad and the officers came to within several feet of the CLICC lab entrance, the video surveillance shows Tabatabaiejad falling to the ground.⁶³ According to Officer 1, Tabatabaiejad had “tightened up his body, using his body weight to pull downwards.”⁶⁴ Officer 2 indicated that Tabatabaiejad “braced his feet onto the floor,” which, as the Library surveillance footage shows, had the effect of forcing the officers down, as well, as they were still holding Tabatabaiejad’s arms.⁶⁵ Student witness 1 described “Tabatabaiejad immediately lay[ing] down on the floor.”⁶⁶ With nothing captured by Library surveillance indicating that Tabatabaiejad stumbled or fell

⁶² Detective 4 Supplemental Report, 3.

⁶³ Library Surveillance Video, Camera 5, 12:55:34 AM through 12:55:35 AM; Library Surveillance Video, Camera 3, 12:55:35 AM.

⁶⁴ Officer 1 Narrative, 3.

⁶⁵ Officer 2 Supplemental Report, 1.

⁶⁶ Officer 3 Supplemental Report, 2.

accidentally to the floor, we can conclude that the officers' characterization of Tabatabaiejad "using his body weight to pull downwards" to the ground is accurate.⁶⁷

Officer 2 told Detective 4 that "he put [the Taser] in his back pocket when Tabatabaiejad started to resist him."⁶⁸ His statement to that effect is contradicted by the video evidence. Officer 2 can be seen pressing his Taser against Tabatabaiejad's side after the student has dropped to the ground, and he keeps the Taser out as the officers begin to struggle with Tabatabaiejad and Officer 1 attempts to slide Tabatabaiejad toward the CLICC lab exit by pulling on his right arm.⁶⁹ The surveillance footage shows Officer 2 maintaining contact with Tabatabaiejad's right arm with his left arm and assisting Officer 1 in dragging Tabatabaiejad toward the main entrance of the CLICC lab.⁷⁰ After they have moved Tabatabaiejad to a position nearly out of range of the CLICC lab surveillance camera, Officer 2's Taser is clearly shown to be pointed at Tabatabaiejad.⁷¹

It is clear, then, that Officer 2 did not, in fact, immediately holster or put the Taser in his pocket upon Tabatabaiejad's dropping to the ground. Further, the Library surveillance footage never clearly shows the officer holstering the weapon or putting it in his back pocket. The officer does reach with his right hand toward his right side or pocket, yet the Taser remains in his right hand in the following frame of the surveillance footage.⁷² Whether Officer 2 ever put the Taser in his pocket or reholstered it cannot be determined. We do know, however, that it remained out of its holster and was pointed at or pressed against Tabatabaiejad for at least several seconds after the student had dropped to the ground.

⁶⁷ Officer 1 Narrative, 3.

⁶⁸ Detective 4 Supplemental Report, 3.

⁶⁹ Library Surveillance Video, Camera 5, 12:55:36 AM; Library Surveillance Video, Camera 5, 12:55:38 AM.

⁷⁰ Library Surveillance Video, Camera 5, 12:55:39 AM.

⁷¹ Library Surveillance Video, Camera 5, 12:55:41 AM.

⁷² Library Surveillance Video, Camera 5, 12:55:47 AM and 12:55:48 AM.

Officer 1 states that, after using his body weight to fall to the ground, Tabatabaiejad essentially was “attempting to use his body weight to drag us down and keep us from escorting him out of the building.”⁷³ At this point, Tabatabaiejad began screaming “Don’t touch me” repeatedly, according to both officers’ accounts and to a video recording of the incident —captured via a digital camera device and posted, subsequent to the incident, on the YouTube video sharing website—that begins at this point in the sequence of events.⁷⁴

According to Officer 1, Tabatabaiejad “then started screaming and trying to agitate the crowd” by saying ‘Who’s going to help me resist,’ ‘Don’t let me be the only martyr,’ and ‘This is an abuse of power.’⁷⁵ Officer 2 wrote in his report that Tabatabaiejad was screaming “Fuck you” and “Fuck your fucking patriot act,” as well as “yell[ing] out a statement about ‘Ghandi (sic)’ and ‘passive resistance.’”⁷⁶ Officer 1 also mentions Tabatabaiejad saying something about “passive resistance” and “what Ghandi (sic) taught us.”⁷⁷ According to Officer 1, at some point Tabatabaiejad also asked, “Why am I going to leave? I was leaving till you stopped my path.”⁷⁸ From the YouTube video, and the transcript of the YouTube footage that the UCLAPD commissioned, we can identify Tabatabaiejad’s comments about the “patriot act” and “abuse of power” as occurring later in the sequence of events, or after the first Taser application occurred. On a brief portion of audio captured from one of the officers’ personal audio recorder, Tabatabaiejad repeats

⁷³ Officer 1 Narrative, 3.

⁷⁴ It does not appear from the investigatory record that the UCLAPD made substantive efforts to identify the individual, or individuals, who captured the incident and posted it on the YouTube site. Indeed, it is our understanding that attorneys for Tabatabaiejad were able to get in touch with the individual who captured the footage only by happening to be in the Powell Library conducting a “walkthrough” with their client when the individual who captured the footage was present, as well, and introduced himself to them.

⁷⁵ Officer 1 Narrative, 3.

⁷⁶ Officer 2 Narrative, 1.

⁷⁷ Officer 1 Narrative, 3.

⁷⁸ Officer 1 Narrative, 3.

“what Ghandi taught us (sic)” twice, and mentions something about “passive resistance.”⁷⁹ These comments about resistance and Gandhi, although not audible on the YouTube footage, must have occurred either prior to the start of the YouTube video or at a volume too low for the YouTube video to capture.⁸⁰

Both Officer 1 and Officer 2, in their respective reports, suggest that, by this point, an increasingly hostile crowd had formed around them. Officer 1 reported that he “could see people begin to get up and start approaching us” as Tabatabaiejad was using his body weight to pull down on the officers.⁸¹ Officer 2 recounted that “the crowd was now hostile,” calling him and Officer 1 “ass holes (sic)” and “demanding our badge numbers.”⁸² Officer 1 further suggests that “the crowd, which was now numbering in the 20’s and had surrounded us in a half circle, was now beginning to shout ‘Get off him!’ and ‘let him go,’” with “several of them...close enough to us to begin posing a safety hazard.”⁸³ Officer 2 noted that “it sounded as if everyone of [the crowd of ‘approximately 15-20 subjects’] were shouting statements towards us.”⁸⁴

Our review of both the YouTube video and Library surveillance video casts strong doubt on assertions that the students grew hostile or posed a threat to the officers or Tabatabaiejad, especially prior to the first application of the Taser. In the YouTube video, some students can be seen moving in the direction of the incident, but many others are standing up and watching the incident from the areas where they had been studying

⁷⁹ UCLAPD Audio Recordings Transcription (TABATA-01885).

⁸⁰ UCLAPD believes, and our independent review of all sources of video and audio of the incident (the YouTube video, the library surveillance videos from multiple cameras, and intermittent recordings from Officer 2’s personal digital audio recorder), that the YouTube video begins quite shortly after Tabatabaiejad fell to the ground—most likely a matter of seconds.

⁸¹ Officer 1 Narrative, 3.

⁸² Officer 2 Supplemental Report, 1.

⁸³ Officer 1 Narrative, 3.

⁸⁴ Officer 2 Supplemental Report, 1.

previously.⁸⁵ Other than a female student noting that “he’s getting up,” no voices can be discerned on the YouTube video prior to the first application of the Taser other than the officers and Tabatabaiejad. In contrast to Officer 2’s assertions, all video and audio evidence fails to support 2’s claim that fifteen to twenty students (or indeed any students) were at this point shouting at the officers.

The Library surveillance footage does show a few students beginning to gather behind a CSO as the officers slide Tabatabaiejad immediately below the CLICC surveillance camera and immediately inside the lab’s primary entrance.⁸⁶ While the officers and Tabatabaiejad soon move completely out of the view of the camera, the footage captures more students approaching the front of the CLICC lab near the entrance and exit, with one female student in a UCLA sweatshirt walking past a CSO.⁸⁷ As another male student in a blue shirt also approaches the entryway of the CLICC lab, a CSO quickly approaches both to hold them back.⁸⁸

While a growing crowd of approximately ten to fifteen individuals does momentarily surge forward toward the CLICC lab entryway, Library surveillance videos confirm that the CSO effectively created and maintained a barrier between the assembling students in approximately nine seconds.⁸⁹ Several seconds later, the CSO can be seen motioning to the crowd to step away from the officers, and, while the male student in the blue shirt continues to point to the incident and appears to argue with the CSO, he and the crowd comply and maintain distance from the officers.⁹⁰ This distance is maintained until after the third Taser application, when the students follow the officers and Tabatabaiejad into

⁸⁵ YouTube Video, 0:18.

⁸⁶ See, for example, Library Surveillance Video, Camera 5, 12:55:47 AM.

⁸⁷ Library Surveillance Video, Camera 5, 12:56:05 AM.

⁸⁸ Library Surveillance Video, Camera 5, 12:56:08 AM.

⁸⁹ Library Surveillance Video, Camera 5, 12:56:17 AM. For crowd size, see 12:57:36 AM.

⁹⁰ Library Surveillance Video, Camera 5, 12:56:23 AM.

the main lobby of the Powell Library, as detailed below.⁹¹ The YouTube video, considered with the surveillance footage, shows a concerned yet controlled and obedient group of students that maintains a distance from the incident and is, for much of the incident, relatively quiet.

OFFICERS THREATEN USE OF TASER

Nonetheless, Officer 1 suggests that, because “several of them [the students] were close enough to us to begin posing a safety hazard, we needed to get Tabatabaiejad out of the room to stop the situation from escalating and getting the crowd involved.”⁹² With Tabatabaiejad “increasing his resistance by bracing himself to the ground,” Officer 2 states he “took out his Taser, removed the cartridge and told Tabatabaiejad to get up or he would be tazed (sic).”⁹³ On the Library surveillance video, Officer 2 is shown reaching toward his back pocket with his left hand; four seconds later, he reaches with his right hand toward his right side.⁹⁴ It cannot be determined if Officer 2 took out the cartridge. If he did, then it would appear he had formed an intention to use the weapon in drive stun mode. The YouTube video confirms that Officer 2, on at least two occasions, told Tabatabaiejad to “get up or get tased.”⁹⁵ From the start of the YouTube video to the first application of the Taser, Officers 1 and 2 instruct Tabatabaiejad to “get up” or “stand up” at least sixteen times.⁹⁶ Over this time, Tabatabaiejad “increased his resistance even more,” according to Officer 1.⁹⁷

⁹¹ Library Surveillance Video, 12:58:44 AM.

⁹² Officer 1 Narrative, 3.

⁹³ Officer 1 Narrative, 3.

⁹⁴ Library Surveillance Footage, Camera 5, 12:55:43 AM; Library Surveillance Footage, Camera 5, 12:55:47AM through 12:55:48 AM.

⁹⁵ UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891).

⁹⁶ UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891).

⁹⁷ Officer 1 Narrative, 3; Officer 2 Supplemental Report, 1.

FIRST TASER APPLICATION

The first application of the Taser, according to the Taser's internal log, occurred at 23:29:46, which coincides roughly with 0:30 on the YouTube video.⁹⁸ We cannot determine when the first Taser application occurred during the Library footage, as Tabatabaiejad and the officers move out of view of the camera above the CLICC lab entrance relatively soon after Tabatabaiejad falls to the ground.

Officer 1 recalled that Officer 2 “applied a drive stun to the right side of Tabatabaiejad’s upper body for approximately 2-3 seconds.”⁹⁹ Officer 2’s account is similar, indicating that he “applied a drive stun to the right side of Tabatabaiejad’s upper torso for approximately 2-3 seconds.”¹⁰⁰ The Taser log shows that the duration of the Taser firing was five seconds.¹⁰¹ During the application of the Taser, Tabatabaiejad can be heard screaming on the YouTube video.

Officer 2 applied the Taser, in the first application and in each subsequent application, in “drive stun” mode, which is sometimes referred to “contact mode” and which contrasts with “cartridge” (or “dart” or “probe”) mode. “Cartridge” mode shoots two fishhook-like darts into the body, which complete an electrical current to deliver a standardized, 5-second series of electrical charges. This electrical charge causes a subject’s muscles to contract involuntarily and generally briefly incapacitates a subject. In “drive stun” mode, the Taser is pressed directly to a subject’s body, and the Taser’s electrical charge is released. Because the electrodes are close together and the charge is applied directly to skin in “drive stun” mode, the Taser does not affect the motor nervous system. It does, however, affect the sensory nervous system and, in doing so, causes pain. (We review the technology and use of Tasers in Appendix A).

⁹⁸ The taser’s internal log records the time at which a taser firing concludes. The taser was assumedly activated, then, at 23:29:41.

⁹⁹ Officer 1 Narrative, 3.

¹⁰⁰ Officer 2 Supplemental Report, 1.

¹⁰¹ Internal Correspondence to Detective 4, 19 November 2006 (TABATA-01211).

A Taser delivers an automatic, five-second electrical charge. This five-second period can be interrupted by applying the safety mechanism, or extended by holding down the trigger. In “drive stun” mode, the officer applying the Taser can discontinue contact with the subject’s skin at any point; the Taser would continue to discharge into the air until the five-second interval was complete. Knowledge that the Taser was fired for a duration of five seconds, then, does not necessarily mean that the Taser was applied to Tabatabaiejad for all five seconds.

Approximately 12 seconds after the first application of the Taser, Tabatabaiejad yelled “I have a medical condition,” which can be heard clearly on the YouTube video.¹⁰² In his report, Officer 1 confirms that Tabatabaiejad yelled this but indicates that “he later said” that the medical condition “was actually a mental condition, he said he was ‘bipolar’ (which did not affect his physical capability to get up or walking with us).”¹⁰³

Tabatabaiejad maintains that he told the officers “that he suffered from bipolar disorder” “after the first time he was ‘tased,’” to which Officer 2 responded, sarcastically, “that he ‘didn’t know what bi-polar has to do with standing up.’”¹⁰⁴ A snippet of audio recorded on Officer 1’s malfunctioning personal audio recorder captures Officer 2 saying, “He’s bipolar, he says...That’s no excuse.”¹⁰⁵ There is no dispute, then, that Tabatabaiejad told the officers that he had a medical condition and that the officers heard him.

After yelling that “I have a medical condition,” the officers urged Tabatabaiejad to “get up” and “stand up.”¹⁰⁶ Tabatabaiejad responded by screaming “here’s your fucking patriot act. Here’s your fucking abuse of power.”¹⁰⁷ The officers again urged Tabatabaiejad to “stand up” and “stop fighting us,” to which Tabatabaiejad replied, “I’m

¹⁰² UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891); YouTube Video 0:42.

¹⁰³ Officer 1 Narrative, 3.

¹⁰⁴ Tabatabaiejad v. University of California at Los Angeles, et al, 6.

¹⁰⁵ UCLAPD Audio Recordings Transcription (TABATA-01876).

¹⁰⁶ UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891).

¹⁰⁷ UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891); YouTube Video 0:49.

not fighting you.”¹⁰⁸ According to Officer 1, he and Officer 2 were at this point “trying to bring his arms around to his back so that we could handcuff him, but Tabatabainejad kept his arms pinned to his sides, with his wrists tucked underneath his body.”¹⁰⁹ Officer 2 urged Tabatabainejad to “comply with the order,” with the student repeating emphatically, “I said I would leave. I said I would leave.”¹¹⁰

The evidence available to us negates any suggestion that Tabatabainejad was physically fighting with the officers. A student witness in fact reported that Tabatabainejad “was not fighting [the officers] but was verbally screaming.”¹¹¹ Neither Officer 1 nor Officer 2 mention Tabatabainejad either inflicting or attempting to inflict physical harm on the officers. The officers’ command to “stop fighting us” likely refers to Tabatabainejad continuing to bear his weight to the ground. In a small portion of audio of the incident captured by Officer 1’s audio equipment, Tabatabainejad says, “I’m passively resisting...I’m exercising my...civil rights.”¹¹²

After Tabatabainejad indicated that “I said I would leave,” an unidentified individual is heard on the YouTube video saying “take a step back,” presumably to the gathered group of students.¹¹³ In his incident report, CSO 1 states that he had positioned himself between the students and Tabatabainejad and the officers. He reports that he told members of the crowd that “right now you need to step back.”¹¹⁴ From his statements, and from the accounts of the other CSOs who were assisting with crowd control in other areas of the Library, it can reasonably be concluded that CSO 1 was present and responsible for crowd

¹⁰⁸ UCLAPD Video (YouTube) Transcription, 2 (TABATA-01891); YouTube Video 0:53.

¹⁰⁹ Officer 1 Narrative, 3.

¹¹⁰ UCLAPD Video (YouTube) Transcription, 3 (TABATA-01892); YouTube Video 0:53.

¹¹¹ Detective 4 Supplemental Report, 2.

¹¹² UCLAPD Audio Recordings Transcription (TABATA-01876).

¹¹³ The UCLAPD transcript of the YouTube video reflects this statement as “Take him to the back there,” which we believe to be incorrect (YouTube Video 1:05).

¹¹⁴ UCLAPD Audio Recordings Transcription (TABATA-01185).

control in the CLICC lab during the incident.¹¹⁵ Two seconds after the CSO urges the crowd to step back, a member of the crowd says, “I want your badge numbers...I’d like your badge numbers,” prompting another student, according to the transcript of the YouTube video, to ask, “yeah, can we get your badge number?”¹¹⁶

Tabatabaiejad subsequently, and at lower volume than his previous statements, states, “I got tased for no reason. I was leaving this godforsaken place. You stopped me. You’re abusing your power. Here’s your...your justice at work, university students.”¹¹⁷ As Tabatabaiejad says this, Officer 2’s Taser is, on the YouTube footage, clearly visible on the floor, near the entry and several feet away from him.¹¹⁸ Because of the angles of the built-in desk and counters near the entrance of the CLICC lab, as well as the movement of the individual capturing the video, the YouTube video does not show Officer 2 regaining possession of the Taser, though it is obvious that Officer 2 recovered the Taser during the approximately 23 seconds between when the Taser is last visible on the YouTube tape and when the Taser is applied a second time.

The officers tell Tabatabaiejad to “stand up” at least three times, to which Tabatabaiejad replies, “fuck off.”¹¹⁹ Officer 2, in his report, indicates that, during this time, he “attempted to perform a wristlock in an attempt to apply pain compliance, but I was unsuccessful,” as Tabatabaiejad kept “his arms tucked to the side of his body, with his wrists tucked under his body.”¹²⁰

¹¹⁵ Several other CSOs were engaged in crowd control elsewhere on the first floor of the library, so as to prevent individuals in the lobby and reading room from potentially getting too close to the officers and subject.

¹¹⁶ YouTube Video 1:07; UCLAPD Video (YouTube) Transcription, 3 (TABATA-01892).

¹¹⁷ YouTube Video 1:13.

¹¹⁸ This footage begins at 1:04 and continues to approximately 1:23.

¹¹⁹ YouTube video 1:28; UCLAPD Video (YouTube) Transcription, 3 (TABATA-01892).

¹²⁰ Officer 2 Supplemental Report 1.

Between the first and eventual second applications of the Taser, a duration of approximately one minute and 16 seconds, Officers 1 and 2 tell Tabatabaiejad to “stand up” at least 16 times and to “get up” at least eight times. Officer 2 instructs Tabatabaiejad to “comply with the order” twice, and he warns Tabatabaiejad at least four times that he will “get tased again” if he does not get up or stand up.

Officer 1 states in his report that, between the first and second applications of the Taser, “the crowd was now yelling at us ‘don’t do that’ and ‘you motherfuckers.’”¹²¹ Again, the YouTube video and transcript do not support this assertion, with the crowd relatively quiet, with the aforementioned exception of students’ asking for the officers’ badge numbers and a female voice saying “don’t do that” and “so wrong.”

Approximately 13 seconds before the application of the second Taser, Tabatabaiejad told the officers again that “I have a medical condition.”¹²² At nine seconds before the application of the second Taser, the officers appear to have lifted Tabatabaiejad off the ground, but he subsequently pulls down once more.¹²³

SECOND TASER APPLICATION

The second Taser application occurred, according to both the Taser mechanism’s internal log and the YouTube videos, approximately one minute and sixteen seconds after the first application.¹²⁴ Officer 2 reported that he “applied the second drive stun to the right side of Tabatabaiejad’s torso for approximately 2-3 seconds.”¹²⁵ The Taser log indicates that the duration of the Taser firing was five seconds and the “clicking” sound associated with a Taser firing on the YouTube video continues for approximately five seconds, though, as

¹²¹ Officer 1 Narrative, 3.

¹²² YouTube Video 1:33; UCLAPD Video (YouTube) Transcription, 3 (TABATA-01892).

¹²³ YouTube Video 1:38.

¹²⁴ According to the taser log, the time was 23:31:03, and the YouTube video timer reads 1:46 at the start of the second application.

¹²⁵ Officer 2 Supplemental Report, 1.

with the first application, we cannot tell if the Taser was held against the student for the full five seconds.¹²⁶

During the second application of the Taser, Tabatabaiejad screams and yells, “You mother fucker.”¹²⁷ Officer 1 continues telling Tabatabaiejad to “get up. Told you to stand up. Are you going to stand up?”¹²⁸

According to Officer 1, Officer 2’s application of the drive stun “allowed us to temporarily get control of his hands to place them in handcuffs behind his back.”¹²⁹ Neither Officer 2 nor any witnesses verify this account, as we discuss in greater detail below.

Tabatabaiejad goes on to say “I’ll leave. I’ll leave,” and, a short time later, “I said I would leave.”¹³⁰ Meanwhile, the officers repeatedly tell Tabatabaiejad to “stand up,” warning him to “stop dragging us down” or “you’ll get tased again.”¹³¹ By this time, about two minutes into the YouTube footage, the officers and Tabatabaiejad have moved outside the entrance to the CLICC lab to the top of the steps leading up to the lab from the Library’s main lobby.

Officers 1 and 2 both suggest in their reports that a “hostile” crowd was not under control until after this second Taser application; as noted previously, the evidence demonstrates this to be inaccurate. Officer 1 notes after his account of the second Taser application that “by now the CSOs had come to our aid and were trying to keep the hostile crowd away

¹²⁶ Internal Correspondence to Detective 4, 19 November 2006 (TABATA-01211); YouTube Video 1:46-1:51.

¹²⁷ UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893); YouTube Video 1:46.

¹²⁸ UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893); YouTube Video 1:52.

¹²⁹ Officer 1 Narrative, 4.

¹³⁰ YouTube Video 1:56, 1:58; UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893).

¹³¹ UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893).

from us while we were trying to gain control over Tabatabaiejad.”¹³² Officer 2 describes the situation similarly, indicating that “by this time, CSO’s (sic) had come to our location and were keeping the hostile crowd away from us as we were trying to gain control over Tabatabaiejad.”¹³³

One student witness noted that “a group of CSO’s (sic) formed up a barrier between the police officers and the hostile crowd,” and it appears from the YouTube video and the Library surveillance footage that CSOs had been assisting officers by controlling the crowd since well before the second Taser application.¹³⁴ The crowd, managed by CSOs, maintained a distance from the officers and subject throughout the portion of the incident that took place in the CLICC lab. At no time does the CLICC Library surveillance footage or the YouTube footage show students actively interfering, or threatening to actively interfere, with the officers.

As the incident progressed, student witnesses did indeed become more vocal with officers about the incident. Upon the conclusion of the second Taser application, an unidentified male speaker in the crowd says, “That’s an abuse of your powers.”¹³⁵ A short time later, another male speaker says, “Officers, we want your information.”¹³⁶ A male speaker, who may be the same speaker who demanded the officers’ information, soon thereafter declares, “This is about abuse of your authority.”¹³⁷ Although such comments challenged the officers’ actions, they originated with a few students and do not appear to constitute the sort of “hostile” comments that a reasonable individual in such circumstances might determine to be an imminent threat of aggressive group action.

¹³² Officer 1 Narrative, 4.

¹³³ Officer 2 Supplemental Report, 1.

¹³⁴ See YouTube video, 2:17.

¹³⁵ YouTube Video, 1:54; UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893).

¹³⁶ YouTube Video, 2:08; UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893).

¹³⁷ YouTube Video 2:16; UCLAPD Video (YouTube) Transcription, 4 (TABATA-01893).

THIRD TASER APPLICATION

The ensuing thirty seconds of YouTube video, after the student suggests the officer's behavior to be an abuse of power, proves more difficult to interpret, as a bystander to the incident can be heard talking to someone about the incident, compromising the extent to which the officers and subject can be heard. The officers and subject, as noted above, have also moved into the transitional stairwell from the lobby leading to the CLICC lab, making them more difficult to understand on the YouTube footage and rendering them completely out of range of the CLICC lab surveillance camera, which continues to capture the crowd assembled in the lab. During this time, the officers can nonetheless be heard continuing to instruct Tabatabaiejad to "stand up" and "get up."¹³⁸

When the individual commenting on the incident stops speaking, the YouTube video captures an unidentified male speaker saying, "Stop, you jerks. Stop it."¹³⁹ The officers continue to tell Tabatabaiejad to "stand up" or "you'll get tased. You're going to get tased again."¹⁴⁰ The warning that Tabatabaiejad will get tased again prompts a male student, who may be one of the students who has already been heard commenting on the incident, to yell, "Stop."¹⁴¹ The officers tell Tabatabaiejad to "stand up" twice more.¹⁴² We observe that the comments and reactions of a few crowd members become more urgent and challenging to the officers; nonetheless, the YouTube video continues to cast doubt on the idea that the crowd as a whole was growing progressively more "hostile."

The third application of the Taser occurred approximately one minute and 17 seconds after the second application.¹⁴³ According to Officer 2, the officers had "attempt[ed] to

¹³⁸ UCLAPD Video (YouTube) Transcription, 5 (TABATA-01894).

¹³⁹ UCLAPD Video (YouTube) Transcription, 5 (TABATA-01894); YouTube Video 3:02.

¹⁴⁰ UCLAPD Video (YouTube) Transcription, 5 (TABATA-01894).

¹⁴¹ YouTube Video 3:10; UCLAPD Video (YouTube) Transcription, 5 (TABATA-01894).

¹⁴² UCLAPD Video (YouTube) Transcription, 5 (TABATA-01894).

¹⁴³ YouTube 3:13, Taser Log 23:32:29. The taser's internal log documents one minute and 26 seconds between the applications. We attribute this ostensible discrepancy in the size of the interval between the second and third taser applications to the difficulty of knowing precisely when, based on the YouTube video

handcuff Tabatabaiejad without success due to his refusal to give us his hands. I warned him several times that I was going to tase him again if he didn't comply. Because of his refusal to cooperate, I applied the final (3rd) drive stun to the right side of his torso for 2-3 seconds.”¹⁴⁴ Officer 1 similarly notes that “[Officer 2] applied one final drive stun for another 2-3 seconds to the right side of his body in an effort to get him to stand and leave with us, to get out of the scene of the crowd.”¹⁴⁵ The Taser log again documents the Taser firing as lasting five seconds, but, as with the previous two Taser applications, we cannot determine for what portion of those five seconds the Taser was applied to Tabatabaiejad.¹⁴⁶

We note substantial discrepancy between Officer 1 and Officer 2's accounts of precisely when Tabatabaiejad was handcuffed. Officer 1, as previously noted, indicates in his report that the second Taser application “allowed us to temporarily get control of his hands to place them in handcuffs.”¹⁴⁷ On the other hand, Officer 2 recounts that “because of his refusal to cooperate, I applied the final (3rd) drive stun...After this drive stun, we were finally able to place him into handcuffs.”¹⁴⁸ Tabatabaiejad, in his civil complaint, states that 2 tased him “more than once after he was handcuffed,” and it is our understanding that he maintains that he was handcuffed relatively early in the sequence of events.¹⁴⁹

A police diagram of the CLICC lab, signed by both officers after the incident, suggests that the officers handcuffed Tabatabaiejad immediately before or after Officer 2 applied the Taser for the second time. Precisely whether it was before or after the second Taser cannot

alone, the taser began or ended firing. The differential is not enough to alter in any way our understanding of the sequence of events or of the point in that sequence that Tabatabaiejad was tased for a third time.

¹⁴⁴ Officer 2 Supplemental Report, 1-2.

¹⁴⁵ Officer 1 Narrative, 4.

¹⁴⁶ Internal Correspondence to Detective 4, 19 November 2006 (TABATA-01211).

¹⁴⁷ Officer 1 Narrative, 4.

¹⁴⁸ Officer 2 Supplemental Report, 2.

¹⁴⁹ *Tabatabaiejad vs. University of California at Los Angeles, et al*, 6.

be determined, although one UCLA student who said that he witnessed the incident told *The Daily Bruin* that Tabatabaïnejad “was getting shocked and Tasered as he was handcuffed.”¹⁵⁰

During the third application of the Taser, the YouTube video shows Tabatabaïnejad arching his body and jumping up, with his legs flailing in front of him. His hands nonetheless remain firmly behind his back, making it highly likely that he was handcuffed prior to the third Taser application.

OFFICERS, TABATABAÏNEJAD, AND THE STUDENTS MOVE TO MAIN LOBBY

After the third application of the Taser, events move quickly. At this point, the officers were able to drag Tabatabaïnejad, who according to all accounts was by now handcuffed, away from the transitional area between the Library lobby and CLICC lab and into the main lobby of Powell Library. The YouTube footage and Library surveillance footage both capture students immediately leaving the controlled perimeter that had been established around Tabatabaïnejad and the officers in the CLICC lab and following them out of the CLICC lab into the central lobby of the Library. As the students followed the officers as they dragged Tabatabaïnejad into the lobby, one woman yells “Hey, this is a bad idea!”¹⁵¹ Another voice yells, “Stop!”¹⁵² A woman asks, “What is wrong with you people?”¹⁵³ A male voice shouts, “Fuck you.”¹⁵⁴

Despite a momentary lapse in the YouTube video, it is clear that the students were met immediately by what appear to be three CSOs who maintained a distance of a few feet between the students and the officers and Tabatabaïnejad.¹⁵⁵ Four or five male students

¹⁵⁰ Sara Taylor, “Community responds to Taser use in Powell,” *UCLA Daily Bruin*, 17 November 2006.

¹⁵¹ YouTube Video, 3:21.

¹⁵² YouTube Video, approximately 3:27.

¹⁵³ YouTube Video, 3:32.

¹⁵⁴ YouTube Video, 3:21.

¹⁵⁵ YouTube Video, 3:38.

approach the CSOs. One student, in an angry tone, says, “I’m going to report you, you, you.”¹⁵⁶

Shortly thereafter, the YouTube footage captures the sound of loud screaming that sounds like Tabatabaiejad’s screaming heard earlier in the YouTube footage.¹⁵⁷ This screaming seizes the attention of the students and appears to agitate the students closest to the CSOs.¹⁵⁸ Tabatabaiejad’s screaming continues for approximately 27 seconds, during which one female voice yells, “stop it,” many voices can be heard yelling, and several male students can be seen gesturing intensely at the assembled CSOs.¹⁵⁹

The quality of the YouTube footage renders us unable to discern what the students are saying, but it is only when the students reached the lobby that they become vocal and argumentative. We note, however, that even the most vocal students did not endeavor to disrupt the UCLAPD officers or challenge the line that the CSOs had established between the crowd and the officers and student.

We cannot state for certain why Tabatabaiejad was screaming at this point. Neither Officer 1’s nor Officer 2’s statement shed light on what occurred in the Library foyer. Officer 1 notes only that the officers “managed to get Tabatabaiejad out of the Library.”¹⁶⁰ Officer 2 proceeds in his report directly from Tabatabaiejad being placed in handcuffs to Tabatabaiejad being “escorted to a police vehicle.”¹⁶¹ No CSO or witness statement in the investigative materials we reviewed describes what occurred specifically among the officers and Tabatabaiejad once they were in the primary lobby of the Powell Library.

¹⁵⁶ YouTube Video, 3:47; UCLAPD Video (YouTube) Transcription, 6 (TABATA-01895).

¹⁵⁷ YouTube Video 3:51.

¹⁵⁸ YouTube Video, 3:56.

¹⁵⁹ YouTube Video, 3:54.

¹⁶⁰ Officer 1 Narrative, 4.

¹⁶¹ Officer 2 Supplemental Report, 2.

It is our understanding that Tabatabaiejad remembers being tased on at least four or five occasions. Officer 2 notes at the conclusion of his initial report that “it’s possible that I may have tased Tabatabaiejad a 4th time, but I am unsure at which time this may have occurred.”¹⁶² Various media accounts following the incident reported the common assumption from several students that Tabatabaiejad “was hit with a Taser five times when he did not leave.”¹⁶³ Accordingly, we cannot rule out the possibility that Tabatabaiejad was tased more than the three discrete times that we have identified and confirmed. Still, we note that the internal recording system in the X26 Taser is considered by most law enforcement personnel to be reliable, and we have no reason to believe that its record of three Taser firings is inaccurate.

After the students quiet down, the officers are heard once more instructing Tabatabaiejad to “stand up,” with one saying, “Just stand up, that’s all we want.”¹⁶⁴ A student subsequently yells “stop.”¹⁶⁵ Tabatabaiejad suddenly begins shrieking again, eliciting a response of “stop” from one student and “no” from a male student.¹⁶⁶ Just as Tabatabaiejad begins to scream, Tabatabaiejad’s legs appear to move suddenly and abruptly as officers struggle once again with Tabatabaiejad.¹⁶⁷ His screaming lasts for approximately seven seconds, stops, and then resumes again for a few more seconds. We are unable to determine why Tabatabaiejad was screaming.

Tabatabaiejad’s screams continue to elicit a strong response from the students, as they are heard yelling and several are seen motioning vigorously. Tabatabaiejad’s screaming begins to fade away and, as it does so, the individual capturing the YouTube footage begins to walk around a pillar to an area approximate to where the officers and

¹⁶² Officer 2 Supplemental Report, 2.

¹⁶³ Sara Taylor, “Student to file suit in Taser incident,” *The Daily Bruin*, 20 November 2006.

¹⁶⁴ YouTube Video, 4:29.

¹⁶⁵ YouTube Video, 4:31.

¹⁶⁶ YouTube Video, approximately 4:31.

¹⁶⁷ YouTube Video, 4:32.

Tabatabaiejad had been previously situated in the lobby.¹⁶⁸ By this point, the officers had apparently managed to get Tabatabaiejad close to the Library's main doors, as the YouTube video footage subsequently shows officers and Tabatabaiejad, who is kneeling down on the floor of the Library lobby, situated near the Library entrance.¹⁶⁹ A significant amount of yelling continues, and several students continue to talk, with agitated manner and angry tone, to the CSOs.¹⁷⁰

As the students interact with the CSOs, an additional responding officer arrives on the scene, and two male students, one in a white t-shirt, with the other in a light blue t-shirt, and both of whom appear earlier in the tape using intense body language, can be seen talking heatedly and with raised voices to the responding officer.¹⁷¹ Due to the number of individuals talking, we cannot identify what specifically the students, the officer, or the CSOs said.

Beginning at approximately 6:07 within the YouTube footage, or approximately five minutes and 37 seconds after the first Taser application, Officers 1 and 2, without the assistance of additional officers, drag Tabatabaiejad, who remains on his knees, out of the Library via the main Library entrance.¹⁷² The student in the white t-shirt, as well as several other students in the crowd, continue to talk heatedly to the responding officer as Tabatabaiejad is taken out of the Library and after he has left the Library.¹⁷³

A fourth UCLAPD officer enters the Library after Tabatabaiejad and Officers 1 and 2 have exited the building.¹⁷⁴ The student in the white shirt turns away from the officer to

¹⁶⁸ YouTube Video, 4:47.

¹⁶⁹ YouTube Video, 5:43.

¹⁷⁰ See, for example, YouTube Video, 5:54.

¹⁷¹ YouTube Video, 5:46.

¹⁷² YouTube Video, 6:07.

¹⁷³ YouTube Video, 6:25.

¹⁷⁴ YouTube Video, 6:28.

whom he was speaking, and the newly arrived officer tells the student to “back up.” A few seconds later, he says “because I said so, that’s why” in response to something unintelligible that the student said.¹⁷⁵ The officer subsequently and more emphatically tells the student, “Get back over there or you’re going to get tased, too.”¹⁷⁶ Media accounts of the incident report that at least one other student also indicated that “officers threatened to zap her ‘when she asked an officer for his name and his badge number.’”¹⁷⁷

Outside the Library, Officers 1 and 2 received assistance from two other responding officers. The four officers together “lifted Tabatabaiejad into the air, and began to walk towards the police vehicle.”¹⁷⁸ At some point shortly thereafter, however, Tabatabaiejad said, “OK, OK, I’ll walk on my own, you can put me down.”¹⁷⁹ Tabatabaiejad then walked to and was placed in the back of the waiting patrol car.

“While [Tabatabaiejad] was in the back of the police car, Officer 2 asked Tabatabaiejad if he thought this incident was worth the trouble of refusing to show his card or leave,” according to Officer 1’s statement.¹⁸⁰ Tabatabaiejad apparently replied that he felt like he “was being singled out, it was an abuse of power, so I abused (sic) my rights as a citizen.”¹⁸¹ Officer 2’s statement confirms that he “talked with Tabatabaiejad (out side [sic] of Miranda) and he explained that the reason why he refused to cooperate with the CSO who asked to see his ID card was because he felt he was being ‘singled out’ for no reason.”¹⁸²

¹⁷⁵ YouTube Video, 6:36.

¹⁷⁶ YouTube Video, 6:39.

¹⁷⁷ Lester Haines, “UCLA cops taser ID-less student,” *The Register*, 16 November 2006.

¹⁷⁸ Officer 1 Narrative, 4.

¹⁷⁹ Officer 1 Narrative, 4.

¹⁸⁰ Officer 1 Narrative, 4.

¹⁸¹ Officer 1 Narrative, 4.

¹⁸² Officer 2 Supplemental Report, 2.

Officer 2, in another portion of recorded conversation, tells Tabatabainejad that “all this could have been avoided had you just showed your ID.”¹⁸³ Tabatabainejad agrees, saying, “of course it could have been avoided...It’s the principle of the thing. It’s the god damn principle.”¹⁸⁴

Tabatabainejad was placed under arrest for resisting/obstructing a peace officer and brought to the UCLAPD police station for booking. He was discovered to be in possession of his UCLA BruinCard, which was in his wallet, upon being searched by officers before he was placed in the patrol car. Tabatabainejad maintains that Officer 1 took possession of his identification and “humiliated [him] further by joking about [his] weight gain, after viewing the weight shown on his driver’s license.”¹⁸⁵ However, his “IDs never made it to the UCLA PD station,” with officers believing that “they were lost at the scene of the [initial] search [of Mostafa] outside the Powell Library.”¹⁸⁶

Upon being released from the station later that night, Tabatabainejad returned to the station, and Tabatabainejad told the dispatcher at the front desk that “the officers kept his BruinCard and that he wanted it back.”¹⁸⁷ The dispatcher, and possibly one of the involved officers, “directed Tabatabainejad to check the area of Powell Library for the IDs.”¹⁸⁸ According to his civil complaint, Tabatabainejad “later received his driver’s license in the mail from an unidentified person.”¹⁸⁹

¹⁸³ UCLAPD Audio Recordings Transcription (TABATA-01875).

¹⁸⁴ UCLAPD Audio Recordings Transcription (TABATA-01875).

¹⁸⁵ *Tabatabainejad v. University of California at Los Angeles, et al*, 6.

¹⁸⁶ Detective 4 Supplemental Report, 2.

¹⁸⁷ Detective 4 Supplemental Report, 3.

¹⁸⁸ Detective 4 Supplemental Report, 2.

¹⁸⁹ *Tabatabainejad v. University of California, Los Angeles, et al*, 7.

2

Analysis of the Incident

This chapter focuses on the major actions and decisions of the officers described in the previous chapter. We consider, first and foremost, whether the actions of officers at various decision points were justifiable or reasonable according to the UCLAPD policies in effect on November 14, 2006. Such policies are described as they become relevant to the analysis. We also consider those same decision points in light of the standards that other police departments commonly use and constitute good practice. The analysis further considers actions and decisions that may not be specifically guided by explicit policies but nonetheless conform to good law enforcement practice. We keep in mind throughout that officers in fast-developing situations do not have the benefit of hindsight. We accordingly give latitude if a police officer's conduct was reasonable even if it was not our preferred option.

We conclude that Officer 2's multiple and ineffective uses of the Taser were not reasonable or justified according to UCLAPD's policies on the night of the incident—policies that, in various and important ways, deviate from common and best law enforcement practice. We note instances at which the involved CSOs and officers might have reasonably prevented or de-escalated the situation. We identify numerous junctures at which Officer 2, as well as Officer 1, might have reasonably, and perhaps effectively, used means other than the Taser to induce Tabatabaiejad's compliance during the incident.

CSO INTERACTION WITH TABATABAINEJAD

While we cannot conclusively determine whether a check of BruinCards was a routine occurrence, the Community Service Officers who interacted with Tabatabaiejad on November 14, 2006 could have used better and more tactical communication skills. The CSOs are not sworn police officers confronting dangerous criminal suspects on the streets. They are UCLA students interacting with other UCLA students on campus. As such, they need to be flexible and accommodating in ways police officers dealing with dangerous suspects do not.

The instant case was not the first interaction between a student and Community Service Officers that inspired complaint and discussion. In 2005, for example, a fourth-year UCLA student sent library personnel an email that complained about “extremely rude and mean spirited (sic)” treatment by a “security guard.”¹ The security employee, who library staff assumed to have been a CSO, “asked to see” the student’s ID, but the student “politely told him that I had forgotten it at my apartment.”² According to the student, the CSO “sternly looked at me as if I was a criminal using...intimidation tactics [and] telling me to leave.”³ The student offered to log into the UCLA computer system to establish status as a student, but the CSO “refused to reason with me,” “got right in my face trying to intimidate me,” and “escorted me out as if I was a common criminal there to vandalize or steal something.”⁴ The student, expressing “hope [that] this incident will result in change that will improve UCLA,” complained that the CSO was “disrespectful, callous and seemed to enjoy humiliating students.”⁵ According to internal email correspondence among library staff, the student’s email complaint “sparked some discussion about the

¹ UCLA Library and UCLAPD Internal Email Correspondence, 20 October 2005 and 17 November 2006 (TABATA-01209).

² Ibid.

³ Ibid.

⁴ Ibid. (TABATA-01209-01210).

⁵ Ibid. (TABATA-01210).

access procedures,” though we cannot determine whether the student’s concerns were directly addressed via policy changes at that time.⁶

Community Service Officers function as an arm of the UCLAPD, and the department guides the development of policies and procedures for CSOs and oversees administration of the CSO program. The “Powell Library Procedures” outlined as part of the “Community Service Officer Programs” guide send CSOs mixed messages about how to interact with students not in possession of their BruinCard during Night Powell hours. The outlined procedures indicate that CSOs should “escort unauthorized patrons out of the building” and should “keep an eye on convenient ‘bathroom breaks’ during the sweep, where people try to avoid getting caught.”⁷ These instructions appear potentially incompatible with advice later in the guide, given under the heading of “PR Expectations,” that “due to the sheer number of people who will argue with you over library policy, you may find it difficult to remain courteous when dealing with violations” and that CSOs in such positions should “take a deep breath, don’t take it personally, and notify library staff.”⁸ The guide further notes that “the Powell shift is highly visible to our clients and the UCLA community,” which makes important “remain[ing] professional and courteous at all times.”⁹ Taken together, these sets of guidelines fail to provide CSOs with a clear sense of what they should do upon encountering a student without valid identification; whether they should either “escort” them out of the building themselves, contact library staff, or, as always is an option, contact UCLAPD. Further, urging CSOs essentially to track down and confront “people trying to avoid getting caught” and referring to identification checks as a “sweep” may not promote the “courteous” interactions that

⁶ Ibid. (TABATA-01209).

⁷ “CSO Programs: Powell Library Procedures,” University of California, Los Angeles Police Department (TABATA-02102-02103).

⁸ “CSO Programs: Powell Library Procedures,” University of California, Los Angeles Police Department (TABATA-02105-02106).

⁹ “CSO Programs: Powell Library Procedures,” University of California, Los Angeles Police Department (TABATA-02105).

UCLAPD acknowledges to be important in fostering good relations with the UCLA community.

The behavior of CSO 1 on the night of the incident is generally consistent with CSO policies and procedures as they existed in November 2006. CSO 1 properly checked Night Powell patrons for identification, and when a student, Tabatabaiejad, did not produce any, he left the student, radioed for UCLAPD, and later confronted the student again with a fellow CSO.

Better practice, however, would have encouraged the CSOs to use courteous and strategic communication techniques to defuse the situation. Especially given that the Tabatabaiejad incident was not the first in which identification checks in the library led an individual to feel “singled out” or “humiliated,” we advocate that the UCLAPD expand CSO training to include a standard course in “tactical communications” that provide verbal techniques for obtaining compliance from an initially uncooperative subject. In the Tabatabaiejad case, the CSOs who interacted with the student might have mitigated the extent to which Tabatabaiejad saw their behavior as a “power trip” by indicating to him that they were simply “doing their jobs” by “following standard procedures” and, even more importantly, that they were following such procedures in the same manner as always—by beginning identification checks in the far left corner of the CLICC lab. CSOs should be instructed to encourage compliance by establishing a courteous rapport, which will make CSOs more effective in their positions and strengthen the relationship of the program and the UCLAPD with the community.

Tabatabaiejad’s concern was that he was being “singled out” for an identification check. Because the CSOs checked no other students in the CLICC lab before they asked him for his identification, a reasonable person in such a circumstance might have at least some grounds to believe that he or she was being targeted. While law enforcement and security personnel should not habitually capitulate to noncompliant individuals, and while the CSO

was not obligated by policy to do so, it would have been better for the CSO to demonstrate to Tabatabaiejad that he was intending to check everyone for the identification by asking others around Tabatabaiejad for their BruinCards.

Doing so would have made Tabatabaiejad's subsequent refusal to present his identification card unreasonable and would have negated any charges of unfair targeting. A change in CSO training and guidelines that emphasizes such creative techniques to solve problems, rather than a policy that promotes confrontation, would strengthen the relationship between CSOs and the university community, improve relations between the UCLAPD and students, and create an even more potent force of student officers. The Community Service Officers should be disabused of any notion that they are sworn peace officers or have any right to act discourteously or haughtily with their student peers.

INITIAL OFFICER INTERACTION AND CONTACT WITH TABATABAINEJAD

OFFICER 1'S INITIAL INTERACTION WITH TABATABAINEJAD

When Officer 1 met Tabatabaiejad at the end of the central aisle of the CLICC lab, there is no dispute that Officer 1's first action was to inform Tabatabaiejad that he "was going to have to leave" or that he "need[ed] to leave." Given that Tabatabaiejad had already put on his backpack and was moving toward the exit, Officer 1 might better have said nothing to the student yet remained vigilant and ready should the student stop walking toward the exit. Rather than inquiring about what the problem was, or simply telling Tabatabaiejad that the CSO indicated to him that the student refused to show his identification, Officer 1's initial statement to Tabatabaiejad consisted of a direct imperative—leave the library. Tabatabaiejad was already in the process of doing so.

Officer 1 provided no opportunity for Tabatabaiejad to explain or, in Tabatabaiejad's words, "clarify the situation." The officer could have, and should have, asked for Tabatabaiejad's side of the story.

This failure to interact positively and constructively with Tabatabaiejad before telling him that he would need to leave does not constitute an explicit violation of UCLAPD policy. Instead, it suggests a lack of objectivity, sensitivity, and fact gathering before formulating conclusions. While we cannot analyze or know Officer 1's state of mind, his actions at least appear consistent with someone who had already "made up his mind" about the situation, based on a quick conversation with a student employee.

This does not in any way suggest that Officer 1 should not have formed impressions based upon the information obtained from CSO 1. Indeed, the accounts and perceptions of a trained student officer should be treated by UCLAPD officers as important and generally reliable. Nonetheless, we would expect any officer to use his or her well-honed abilities to assess situations and individuals independently rather than immediately acting. Officer 1's initial interaction with Tabatabaiejad was neither strategic nor tactical.

OFFICER 1'S INITIATION OF PHYSICAL CONTACT

Officer 1 began to reach for Tabatabaiejad's arm four seconds after first encountering the student in the library. Currently available statements and evidence indicate that Officer 1 did so prior to the student's having made any resistive movement. Officer 1 soon thereafter touched Tabatabaiejad's arm.

However low level or minor, Officer 1's touching of Tabatabaiejad's arm constitutes a use of force. Officer 1's right to use force against Tabatabaiejad flows from the UCLAPD's general Use of Force Policy, which itself encapsulates the California Penal Code, and permits police officers to "use reasonable force to affect (sic) the arrest, to prevent escape, or to overcome resistance."¹⁰

¹⁰ "Universitywide Police Policies and Administrative Procedures," §301: Use of Force, University of California, Los Angeles Police Department, April 2003 (TABATA-01523).

The UCLA policy expands on this standard by listing several factors “used to determine the reasonableness of the use of force,” including:

- “the conduct of the individual being confronted (as reasonably perceived by the officer at the time)”;
- the relative age, size, strength or abilities of the subject as compared to the officer;
- “influence of drugs/alcohol”;
- “proximity of weapons”;
- “availability of other options (what resources are reasonably available to the officer under the circumstances)”;
- “seriousness of the suspected offense...”;
- “training or experience of the officer”;
- “potential for injury to citizens, officers and suspects”;
- “risk of escape”; and
- “other exigent circumstance[s].”

These factors are generally consistent with those of other law enforcement agencies and are consistent with best practice.

When Officer 1 reached to touch Tabatabainejad’s arm, the student had made no resistive or aggressive movements. Tabatabainejad had done nothing more than to refuse to produce his BruinCard, put on his backpack, and start to leave the library. There is no suggestion in the record that a refusal to produce a BruinCard, without more, could serve as a basis for an arrest or taking the student into custody. The sanction for refusing to show such identification is that the student must leave the Library. Tabatabainejad was already doing so. Officer 1 had no reason to use force, however minor, and should have

simply remained vigilant to satisfy himself that Tabatabaiejad was indeed leaving Powell Library.

TABATABAINEJAD’S RESPONSE TO THE USE OF FORCE

In the previous chapter, we described differences in the officers’ and Tabatabaiejad’s accounts of what occurred after Officer 1 touched the student’s arm. Officer 1 states that Tabatabaiejad “aggressively put up his arms.” Officer 2 described Tabatabaiejad as “lunging” at Officer 1. Tabatabaiejad does not describe making any physical movement, maintaining that Officer 1’s physical contact was without cause. The available evidence, as previously noted, is not sufficient to establish which of these accounts, if any, is accurate.

If Tabatabaiejad did raise his hands aggressively or lunge at Officer 1, Officer 1’s then placing his hand on Tabatabaiejad’s arm would have been consistent with UCLAPD’s general use of force policy as it existed on the night of the incident and with best practice.¹¹ It would have constituted a low level use of force in response to a possible provocation. If, on the other hand, Tabatabaiejad did not make a physical movement that could be perceived by a reasonable officer as resistive or threatening, Officer 1’s contact with Tabatabaiejad’s arm would not have been justified according to UCLAPD policy.

OFFICER 2 BRANDISHES HIS TASER AND PRESSES IT TO TABATABAINEJAD’S SIDE

Officer 2 brandished his Taser as he and Officer 1 began to escort Tabatabaiejad out of the CLICC lab. As noted previously, Officer 2 acknowledged to a UCLAPD detective in an interview several days after the incident that he “took out his Taser” as the officers were “walking Tabatabaiejad out of the CLICC lab.”

¹¹ We do, nonetheless, note that, according to all available evidence, Officer 1 began to reach for Tabatabaiejad prior to the student making any potentially resistive or threatening movements.

Current UCLAPD policy does not explicitly address circumstances under which the display of a Taser is appropriate, although it does state that the officer may choose to—but is not required to—display an electrical arc with the Taser when an “individual continues to express an unwillingness to voluntarily comply with an officer’s lawful orders and it appears both reasonable and practical...”¹²

Brandishing a Taser is a subject of comment by the International Association of Chiefs of Police, which recommends that the device only be “pointed at a person when the officer reasonably believes that discharge, if it proves necessary, will be justified under the circumstances, and the officer reasonably believes that the existing circumstances will require discharge of the device unless those circumstances change prior to actual discharge (such as by voluntary compliance of the subject, or by intervention of another means of restraint).”¹³

Officer 2’s brandishing of the Taser was not specifically outlawed by UCLA policies, assuming that Tabatabaiejad raised his hands to deflect Officer 1 or lunged towards him. On the other hand, if it is true that Tabatabaiejad did not raise his hands or lunge, there was no provocation or reason for Officer 2 to brandish the weapon.

The record does not show that Officer 2 made any effort to wait to see Tabatabaiejad’s response to the brandishing before pressing the Taser to the student’s side. Pressing the Taser against Tabatabaiejad’s side was an independent and more serious use of force than simply brandishing it. If Officer 2 perceived in good faith that Tabatabaiejad had raised his hands aggressively or lunged at Officer 1, he may have had justification to brandish. Yet, absent further provocation from the student, which no one contends occurred, there appears to be no independent reason for pressing the Taser to the student’s side.

¹² “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, 23 March 2005 (TABATA-00354-00357).

¹³ “Electronic Control Weapons: Concepts and Issues Paper,” IACP National Law Enforcement Policy Center, 1996, Revised January 2005, 4.

Tabatabaiejad, at that point, was not actively resisting, passively resisting, or failing to comply.

OFFICERS INSTRUCT TABATABAINEJAD TO GET UP AND WARN HIM ABOUT TASER USE

For reasons that are unclear, Tabatabaiejad then dropped to the ground. The action constituted a further provocation. Tabatabaiejad was clearly and repeatedly instructed to “get up” or “stand up” prior to the first application of the Taser—at least sixteen times on the YouTube video alone, which commenced after Tabatabaiejad had already fallen to the ground and the officers had assumedly already begun instructing the student to cooperate. Further, Tabatabaiejad was specifically warned, at least twice, that he would “get tased” if he did not get up or comply with the officers’ orders.

The officers complied with existing UCLAPD policy on the deployment of Tasers by, “prior to firing the Taser,” repeatedly “provid[ing] the suspect with a reasonable opportunity to voluntarily comply,” which serves to “give warning to the suspect.”¹⁴ Officer 2 essentially “announced” to Tabatabaiejad that his “Taser [was] being deployed” and warned him that he would use it if the student did not comply with the officers.¹⁵ The officers provided clear instructions, announced that the Taser was being deployed and ready for application, and properly gave Tabatabaiejad ample opportunity to comply with their instructions. At that point, it was within UCLA policy and good police practice to brandish the Taser and threaten to use it.

TABATABAINEJAD’S ROLE

Tabatabaiejad could have reduced the urgency of the situation and prevented the sequence of events that subsequently occurred by complying with the officers’ demands to “stand up.” Such commands were clear, repeated, and simple. We cannot determine, based on

¹⁴ “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, §7Ci.

¹⁵ “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, §7C.

available evidence, precisely why Tabatabaiejad “went limp” or fell to the ground. Nor can we determine why he did not stand up as ordered. While we understand that Tabatabaiejad currently suggests that he chose to fall to the ground out of fear over the officers’ singling him out, their prior physical contact with him, or a fear of how the officers might potentially treat him, there is no denying that, had Tabatabaiejad complied fully and quickly with the officers by getting up and leaving the Library, he could have avoided being tased. Tabatabaiejad’s decision not to get up and walk out, however, does not justify automatically the whole of the officers’ subsequent uses of force to induce compliance. As we discuss in greater detail below, UCLAPD policy and best practices compel an officer to consider the totality of the circumstances in determining whether the use of force against an individual failing to comply is reasonable, not just the nature or duration of particular subject’s noncompliance.

Nonetheless, Tabatabaiejad did show poor judgment in dropping to the ground, staying there, and continuing to be as vocal as he was. Tabatabaiejad called on students to respond to his plight. Although these efforts were unavailing, they contributed to the tense atmosphere. The student crowd reacted directly to the perceived abuses of authority by the police officers. Yet Tabatabaiejad’s conduct, however dramatic or even operatic, never amounted to much more than relatively mild resistance and did not constitute cause for three deployments of the Taser.

FIRST TASER APPLICATION

UCLAPD policy on the use of Tasers authorizes cartridge or probe deployment in order to “subdue or control”:

- “a violent or physically resisting subject”;
- a potentially violent or potentially resistive subject “who has verbally or physically demonstrated an intention to resist”; or

- a dangerous animal.¹⁶

Accordingly, if Tabatabaiejad was somehow physically resistive within the meaning of the quoted UCLA policy, the Taser could only have been used in the cartridge or probe mode, not in drive stun mode, given that he was not under arrest or being searched, as stipulated in the section on drive stun use.

Regardless of whether Officer 2 might have been within policy in using the Taser via a cartridge deployment, the quoted UCLAPD policy, as it reads now and did on the night of the incident, did not speak to or authorize deployment of a Taser in drive stun mode. Taser deployment in a *drive stun* capacity is explicitly authorized by another section of the UCLAPD policy:

- in order “to eliminate physical resistance” during an arrest or search;
- “for pain compliance against a passive resistor” as governed by UCLAPD policy on pain compliance techniques; or
- to stop a dangerous animal.¹⁷

UCLAPD’s general use of force policy includes specific considerations for the use of pain compliance techniques reiterating that “officers... should consider the totality of the circumstance” and offering several factors for consideration, including:

- “potential for injury to the officer(s) or others if the technique is not used”;
- the risk of injury to the suspect;
- “the degree to which the pain compliance technique may be controlled in application according to the level of resistance”;

¹⁶ “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, §5.

¹⁷ “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, §6.

- the “nature of the offense involved”;
- “the level of resistance...”;
- “the need for prompt resolution of the situation”;
- and “if time permits (e.g. passive demonstrators), other reasonable alternatives.”¹⁸

We now consider Officer 2’s first application of the Taser in light of these policies and find it to be problematic. Regardless of whether Officer 2 can legitimately claim he was entitled by UCLAPD policy to use the drive stun mode for pain compliance against a passive resister, it is clear that Officer 2 failed to utilize or exhaust lesser force options. In their respective incident reports and as described previously, the involved officers strongly suggest that the emergence of a threatening or “hostile” crowd prior to the first Taser application made them believe that they needed to remove Tabatabainejad as quickly as possible from the Library to ensure his safety and the safety of the officers. This contention, as we have noted, is not supported by the library surveillance or YouTube video footage. Even if a hostile crowd had begun to gather, any risk posed thereby could be obviated or are lessened by alternative, less injurious, and less painful strategies than repeatedly tasing Tabatabainajad. In the instant case, Officer 2 and Officer 1 had many other options other than the Taser—some requiring use of force and others not requiring such force—to move Tabatabainejad out of the CLICC lab and Library.

Officer 2 and Officer 1 did not employ any strategic or tactical communication skills after Tabatabainejad dropped to the ground. The officers could have inquired as to why Tabatabainejad was being noncompliant, what his problem was, or what he intended to prove by remaining on the ground. They could have, alternatively, noted that the CSOs had the crowd well under control and simply left Tabatabainejad on the floor for the situation to cool down—or “wait out” the self-appointed passive resister for a short while until backup officers arrived. As Tabatabainejad was, by all available accounts, not

¹⁸ “Universitywide Police Policies and Administrative Procedures,” § 301.24: “Pain Compliance,” University of California, Los Angeles Police Department, April 2003.

kicking, flailing, or fighting, it is unclear as to why the two officers did not simply drag the student out of the library after he fell to the ground, especially since they eventually did just that after the repeated Taser shocks proved ineffective in getting Tabatabaiejad to comply.

Sometime after the first firing of the Taser, Officer 2 employed what is generally considered to be a low-level pain compliance technique, a wristlock, on Tabatabaiejad. Officer 2 could have employed this technique, and, if necessary, done so multiple times, before firing the Taser. The officers, then, had reasonable alternatives to the Taser that could have defused the situation or ended the incident more quickly.

We would expect that officers charged with the duty of ensuring the safety and security of UCLA would be familiar with and, indeed, well-skilled in interacting with students failing to comply with their orders. Indeed, three days after the incident at Powell Library, nine student protestors were arrested at a UC Board of Regents meeting held at UCLA. According to student media accounts, UCLAPD officers arrested them after they “refus[ed] to exit the room when police officers tried to remove them.”¹⁹ Photographs of the incident show a kneeling student, who appears to have gone limp, with two UCLA officers grabbing the protestor’s arms. It is our understanding from talking to the members of the department that most UCLAPD officers are accustomed to being called upon to end disturbances or protests and that most often do so without deployment of the Taser.

We would expect such familiarity with dealing with impassioned student protestors or other resisters to have led Officer 2 to consider and act upon the other options available to him to induce Tabatabaiejad’s compliance. That Officer 2 failed to use or exhaust these options, with the exception of the wristlock, suggests that Officer 2 lacked the good judgment and self-control expected of any peace officer, even if UCLAPD policy allowed him to use pain compliance techniques against a passive resister.

¹⁹ Constance Dillon, “Nine arrested at regents meeting,” *Daily Bruin*, 17 November 2006.

Reasonable persons may disagree as to whether Tabatabaiejad was or was not passive. There is no uniform definition of passive resistance.^{20 21 22 23}

Current UCLAPD Taser policies do not define passive resistance or distinguish it from other kinds of resistance, noting only that officers should “consider” the “level of resistance of the individual(s) involved.”²⁴ In the next chapter, we recommend that UCLAPD policy explicitly separate and define violent or active aggression, active physical resistance, and mild or passive resistance. We advocate that UCLA prohibit the use of Tasers against mild or passive resistance.

²⁰The Michigan Municipal Risk Management Authority policy states that the Taser “may be used in situations where a subject is threatening himself, an officer, or another person and other means of controlling the subject are not reasonable or could cause injury...,” noting that a situation involving “[a]n unarmed person that is uncooperative but does not display violent aggression” does not call for the use of a Taser. “It is recommended that agencies consider deploying the EMD only when the subject’s actions constitute active aggression or when the Officer believes that lower forms of empty hand controls will be inadequate or unsafe...” “Less Lethal Weapons: Model Policy and Procedure for Public Safety Officers.” (“Less Lethal Weapons: Model Policy and Procedure for Public Safety Officers.” Michigan Municipal Risk Management Authority. Summer 2006, 7).

²¹The Chicago Police Department defines it as “[n]on-movement in response to verbal and other direction” and does not allow Taser use in response. (It does allow other pain compliance techniques but makes no mention of the drive-stun capability.) A person must be actively resisting (displaying “movement to avoid physical control”) in order to justify use of a Taser. (“General Order 02-08: The Use of Force Model , August 2003” and “General Order 92-3: Taser Devices.” Chicago Police Department , June 2004).

²² The Miami-Dade Police Department allows Tasers to counter “energy-enhanced passive resistance,” which “occurs when the subject is exhibiting threatening body language associated with verbal threats, or threatening body language associated with the subject refusing to comply with the officer's instructions.” (“Procedures for the Use of the Taser” (Memorandum) Miami-Dade Police Department, June 18, 2004).

²³ The Denver Police Department differentiates among passive resistance (“physical actions that do not prevent the officer’s attempt to control”), defensive resistance (“physical actions that attempt to prevent the officer’s control including flight or attempt to flee, but not... attempts to harm the officer”), and active aggression (“a threat of overt act of an assault, coupled with the present ability to carry out the threat.”) It allows Taser use only for behavior involving active aggression (“105.00: Use of Force Policy,” Section 4B, Denver Police Department, August 2004).

²⁴“Universitywide Police Policies and Administrative Procedures,” § 301.24: “Pain Compliance,” University of California, Los Angeles Police Department, April 2003.

Tabatabaiejad's precise level of resistance is difficult to determine conclusively. Tabatabaiejad was indeed making comments about "passive resistance" and "Gandhi," as well as making other comments that Gandhi would likely not have approved. At worst, if the officers are to be believed, Tabatabaiejad attempted to brace himself and used his body weight to remain stationary, and thus, either purposely or consequently, pulled the officers downward. He may even have squirmed and slid around. He refused to move and to comply with the officers' demand that he stand up on his own. He was not utterly limp. Regardless, the level of resistance, even if not strictly or absolutely passive, was not actively or violently aggressive, and use of the Taser was not justified.

We note here that, generally, the policies on the use of Tasers in effect at other departments, and those adopted as model policies by leading law enforcement organizations, are more explicitly restrictive than current UCLAPD Taser policy. Of the University of California campuses, only UCLA explicitly permits the use of taser on both passive and active resisters.²⁵ The Sacramento Police Department policy, upon whose Taser policy UCLAPD modeled their policy, states that "the Taser shall not be used to gain compliance over subjects who the officer reasonably believes are not presenting an immediate, credible threat to the safety of the officer(s) or the public."²⁶ If that policy had been in effect at UCLA, Officer 2 would have an uphill battle in justifying use of the Taser.

Although Officer 2 can point to the pain compliance policy and its authorization of the Taser against a passive resister, and although Officer 2's actions should be afforded due latitude, the UCLA general use of force policy was breached by Officer 2's selection of a force option substantially disproportionate to Tabatabaiejad's provocation. We conclude, therefore, that the first deployment of the Taser was out of policy.

²⁵ Rong-Gong Lin II, "Taser use limited at most UC campuses," *Los Angeles Times*, November 22, 2006.

²⁶"Special Order 01-11, General Order 580.10: Use of the Taser," Sacramento Police Department, 11 December 2001 (TABATA00497-005).

SECOND TASER APPLICATION

Between the first and second applications of the Taser, the nature of the situation changed in important ways. First and foremost, the Taser had been ineffective. It had not induced compliance even though it had caused Tabatabaiejad substantial pain. Its failure to produce the desired result should have led Officer 2 to think twice before deploying the Taser again. If the Taser had to be deployed the second time at all, Officer 2 should have considered standing back and using the Taser in the cartridge or probe mode. It might have thus momentarily incapacitated the student, thereby permitting Officer 1 to handcuff the student.

Officer 2, as mentioned previously, appeared to explore at least one alternative less painful option between the first and second Taser applications—a wristlock. In doing so, Officer 2 used good judgment, even if the wristlock did not induce Tabatabaiejad to comply.

Approximately 12 seconds following the first application of the Taser, Tabatabaiejad yelled that he “had a medical condition.” Audio transcripts indicate that Tabatabaiejad also told the officers that he was bipolar. UCLAPD Taser policy on the night of the incident cautioned against using the Taser on pregnant women, the elderly, juveniles, handcuffed or restrained subjects, subjects who had been sprayed with pepper spray, subjects close to combustible material, and individuals whose position (such as being at great height or operating a vehicle) might result in “collateral injury.”²⁷ The policy does not caution against or note that special care or consideration should be taken in using the Taser on individuals known to have specific medical or mental issues or problems. Accordingly, Officer 2 did not act out of policy merely because he had reason to believe that Tabatabaiejad had a medical or mental condition. Whether Officer 2 displayed good judgment is another question.

²⁷ “General Order 05-01: Tasers,” University of California, Los Angeles Police Department, §4.

Officer 2 could have delayed using the Taser a second time despite the repeated orders for the student to get up or be tased again. Unless or until Tabatabainejad's behavior changed to aggressive resistance, there was no additional provocation to justify the second use of the Taser.

The potential for injury to the involved officers or to others if the second Taser application had not occurred was minimal. In the minute and sixteen seconds between the first and second Taser applications, Tabatabainejad remained stationary and noncompliant, but he did not become violently or even actively resistive or begin fighting with officers.

On the other hand, Tabatabainejad became more talkative between the first and second Taser applications and began, at least momentarily, to address the assembled student bystanders, indicating that he had "got[ten] tased for no reason...Here's...your justice at work, university students." Yet a characterization of the crowd as "hostile" between the first and second Taser applications is not supported by evidence. Thus, even if Tabatabainejad's comments were intended to incite some sort of hostile crowd response, it did not have the intended effect. It cannot be discounted that it strongly appears to have been Officer 2's conduct, rather than anything Tabatabainejad said, that made the student group more concerned and vocal, as well as caused more students to join the onlookers. In any event, the CSOs successfully kept a barrier between the crowd and the officers. We note the possibility that the officers may subjectively have perceived greater threat from the crowd than the objective evidence discloses. The standard is what a reasonably objective officer would perceive. Under these circumstances, we think the better argument is that in context of a university library with the caliber of students at UCLA, it was not reasonable for the officers to feel threatened. But even if they did, all they had to do was pick up Tabatabainajad and carry him out.

The absence of meaningful provocation by Tabatabainajad between the first and second deployment of the Taser leads us to conclude that the second deployment was out of

policy. To be sure, UCLA's pain compliance rules do not say the Taser can only be used only once against a passive resister. We contend, however, that the UCLA general use of force policy continues to govern. Under that policy, considering the totality of the circumstances, the use of the Taser the second time was objectively unreasonable, particularly as there was time to employ reasonable alternatives and the level of resistance did not justify so disproportionate an application of force.

USE OF THE TASER AGAINST A HANDCUFFED SUSPECT

In Chapter 1, we listed the substantial discrepancies among the accounts of Officer 1, Officer 2, and Tabatabaiejad as to when the student was handcuffed. Based on the aggregate available evidence, it appears more likely than not that Tabatabaiejad was tased at least once while in handcuffs.

The UCLAPD's guidelines for Taser deployment indicate that, "although not absolutely prohibited, officers should give additional consideration to the unique circumstances involved prior to applying the Taser to any of the following individuals," which include, among others, "individuals who are handcuffed or otherwise restrained."²⁸ There is no evidence that Tabatabaiejad became more actively or violently resistive after he was handcuffed. Accordingly, it violated UCLA's policies for Officer 2 to deploy the Taser against a handcuffed suspect. In any event, it did not comport with good police practice, as evidenced by the following policies from other law enforcement agencies:

- "Except in emergent circumstances, the Taser shall not be applied to the following without notification or the Field Sergeant of the intention to use the Taser, and the approval of the Watch Commander: ...Handcuffed persons." (Los Angeles Sheriff's Department).²⁹

²⁸ "General Order 05-01: Tasers," University of California, Los Angeles Police Department, §4C.

²⁹ "Section 5-09175.05, Electronic Immobilization Device (TASER) Procedures," Los Angeles County Sheriff's Department Manual of Policies and Procedures, August 10, 2005.

- "[The Taser] will not be used for... escorting or prodding individuals... [or] handcuffed prisoners resisting/refusing to enter a police vehicle, holding room, or hanging onto a rail or other item, etc." Phoenix Police Department.³⁰
- "The Taser shall not be used to gain compliance over subjects who the officer reasonably believes are not presenting an immediate, credible threat to the safety of the officer(s) or the public. The Taser shall not be used against: ...handcuffed subjects." (Sacramento Police Department).³¹
- The Taser "will not be used...[on] restrained or otherwise incapacitated persons." (San Jose Police Department).³²
- "[The Taser] shall not be use (sic) on a restrained subject unless the actions of the subject present a threat of serious bodily injury to officers or other persons." (UC San Diego Police Department).³³

THIRD TASER APPLICATION

The circumstances changed very little in the one minute and seventeen seconds between the second and third applications of the Taser. None of these circumstances constituted additional provocation to legitimize the third deployment of the Taser.

³⁰ "Operations Order 1.5: Use of Force", Phoenix Police Department, September 2003.

³¹ "Special Order 01-11, General Order 580.10: Use of the Taser," Sacramento Police Department, 11 December 2001 (TABATA-00497-00501).

³² "Policy L2614, Use of the Taser," San Jose Police Department, 2000.

³³ "Department General Order: Use of the Taser," University of California, San Diego Police Rules and Regulations, November 3, 2005.

One might argue that the need for a prompt resolution of the situation may have increased in the time between the second and third Taser applications in that various members of the student group told the officers, “that’s an abuse of your powers,” “this is about abuse of your authority,” and “officers, we want your information.” Although these comments from students were more direct and confrontational in tone subsequent to the second Taser application, the student group continued to respect a barrier, established and enforced by CSOs, between the assembled students and the officers and Tabatabaiejad.

In the time between the second and third applications, the officers were able to drag Tabatabaiejad to the transitional stairwell between the CLICC lab and the Powell Library’s main lobby, even as Tabatabaiejad continued to use his body weight in an effort to remain stationary. Since the officers had dragged Tabatabaiejad that far, it is puzzling why they could not continue moving the student all the way out of the Library.

Repeated use of the Taser, absent additional provocation, is strongly discouraged. PERF’s guidelines on Taser use note that “training protocols should emphasize that multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.”³⁴ Taser International’s own safety materials also concede that the Taser device is not entirely risk-free and recommends that officers “begin control and restraint procedures as soon as it is reasonably safe... to minimize the total duration of exertion and stress experienced by the subject... In some circumstances, in susceptible people, it is conceivable that the stress and exertion of extensive, repeated, prolonged, or continuous application(s) of the TASER device may contribute to cumulative exhaustion, stress, and associated medical risk(s).”³⁵

³⁴ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

³⁵ “Product Warnings – Law Enforcement,” TASER International, 01 March 2007.

LAPD training materials note that officers should “[o]nly apply the number of cycles reasonable to accomplish the objective, typically that of subduing a suspect until alternative means such as handcuffing can be used to ensure compliance.”³⁶ They also state that “If the TASER is not having the desired effect..., officers are advised to move on.” Similarly, the Phoenix Police Department states that “Additional cycles may be used... when the subject is still armed... [or] still combative to the point that the arrest team is unable to take into custody.”³⁷ Model use of force policies that follow suit include:

- “When activating a CED [Taser], law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody... Training should include recognizing the limitations of CED activation and bring prepared to transition to other force options as needed.” (PERF CED Guidelines).³⁸

- “The model policy recommends cycling the weapon no more than reasonably necessary to accomplish legitimate operational objectives, typically that of subduing a suspect until alternative means can be used to ensure compliance, generally handcuffing.” (IACP Concepts and Issues Paper).³⁹

³⁶ “Training Bulletin: Use of Force, Taser M-26,” Los Angeles Police Department, January 2002.

³⁷ “Operations Order 1.5: Use of Force, Phoenix Police Department, September 2003.

³⁸ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

³⁹ “Electronic Control Weapons: Concepts and Issues Paper,” IACP National Law Enforcement Policy Center, 1996, Revised January 2005.

Accordingly, given the evidence and considering the totality of the circumstances, Officer 2's decision to use the Taser a third time violated UCLA's policies as they existed on the night of the incident and did not comport with good police practice.

CONCLUSION

In light of UCLAPD's general use of force policy and its specific policies on pain compliance techniques, Officer 2's three applications of the Taser, taken together, were out of policy. Officer 2 did not take advantage of other options and opportunities reasonably available to de-escalate the situation without the use of the Taser. Reasonable campus police officers, upon assessing the circumstances, likely would have embraced different choices and options that appear likely to have been more consistent both with UCLAPD policy and general best law enforcement practices.

3

Policy Recommendations

In this chapter, we make specific recommendations on changes to UCLA's use of force and Taser policies. Our recommendations are calculated to bring these policies in line with best practice so that officers can more easily and confidently make prudent and reasonable decisions in high-stress situations, the University can best reduce the risk of liability, and the UCLA community can rest assured that UCLAPD officers are trained and following well-reasoned policies. The Tabatabaiejad incident provided the occasion for raising important issues concerning the use of the Taser on a college campus. We nonetheless would have made these recommendations independent of Tabatabaiejad.

It is important to note what we do not recommend. We do not advocate the Taser be dropped from the UCLA police arsenal. Mindful of the risk of injury or death, we nonetheless conclude that the Taser's benefits outweigh those risks as long as policies for use of this instrumentality are narrowly tailored and properly restrictive.

POLICY REVIEW PROCESS

The development of UCLAPD's policy on Tasers was a thoughtful, collaborative process. Yet despite the effort that went into its development, the current policy diverges in significant ways from common and recommended practices. The divergence became patent when the prior policy was revised in 2005. Although these revisions were made with the worthwhile goals of streamlining policy, improving consistency, and reducing liability, the new policy is deliberately less restrictive than the prior policy.

The Tasers were first deployed by the UCLA police in April 2005 against a mentally ill patient threatening staff at the Neuropsychiatric Institute. The Taser assisted officers to incapacitate and disarm the subject and resolve the situation. Within the next few months, UCLAPD officers used the Taser five more times, including three incidents in which suspects were drive-stunned while being taken into custody. All three subjects appear to have been “violently” resisting.¹

On June 20, 2005, the use of Tasers was suspended for 30 days by Captain John Adams. The accompanying memo states that the decision was taken “after consultation with the Universities (sic) civil liability attorneys.”² Adams notes, “I reviewed the Use of Force Reports for the Department in 2003, 2004, and the first 6 months of 2005. The Department has had 39 instances of Use of Force. In ‘05 we have had 15 reportable force reports with 6 coming from the Taser. The Taser has only been in use for the last three months. On average the Taser is used more frequently than any other type of force.”³ To ensure that the device was being used appropriately, the UCLAPD elected to remove them from the field—although they were still available to Watch Commanders—pending a policy review and re-training of staff.

Although it appears that Tasers were returned to the field in July 2005, the policy on their use was revised over the next two to three months, culminating in a retraining of all officers. This updated and most recent version of the policy, which became effective on September 27, 2005 and was in effect at the time of the Tabatabainejad incident, reworked a model policy provided by Lexipol, a law enforcement consulting firm used by the UCLA police as it developed a new policy, to allow the Taser to be used for pain compliance in drive stun mode against passive resisters. The revised policy also removed from the criteria for use of the Taser requirements that subjects be warned and given a reasonable opportunity to comply and that less injurious force options “reasonably appear ineffective

¹ Incident Reports, April 2005-June 2005 (TABATA-00387-00413).

² Memo from Captain John Adams to all sworn staff, 20 June 2005 (TABATA-00353).

³ Ibid.

or would present a great danger to the officer or subject.⁴ Additionally, the revised version excised a section that directed officers not to display the device unless “the officer has specific information about the call or incident that reasonably indicates there is a potential for the Taser’s use.”⁵

Internal email exchanges between July and September 2005 reflect an ongoing debate within the UCLAPD whether the Lexipol model policy should be used as written or modified to make it less restrictive. Those who advocated modification won the day, a puzzling result in light of Captain Adams’ argument for the more restrictive language: “Based on recommendations from our attorney... I felt that this [restrictive language] was essential in order to limit our liability as an agency and for the individual members of the Department... I believe there are sound reasons for the additions as they are consistent with the trend in law enforcement towards more restrictive policies and training.”⁶ We found no discussion of the decision to allow the drive stun on passive resisters; we note, however, that had they used the Lexipol model policy as written, use of the drive stun would generally not have been allowed for passive resisters.

All officers were retrained on the new UCLA policy on October 6, 2005, and all officers at UCLA were permitted, from that point forward, to carry a Taser.⁷ Documentation is sparse, but the curriculum for this retraining appears to have included a presentation on the new policy, information about a planned usage study, and guidance for writing reports. The curriculum noted that the policy had been “clarified by management” to explain that “non-responsive and/or unresponsive [behavior is] to be considered as physically

⁴ While not a condition for use, a section on field deployment tactics requires that officers make the warning “when practical.”

⁵ “General Order 05-01: Tasers,” University of California, Los Angeles, 27 September 2005.

⁶ Internal email from Captain John Adams, 27 July 2005 (TABATA-00551).

⁷ Notes and Agenda for Taser Refresher Course, 06 October 2005 (TABATA-00514-00519).

demonstrating an intention to resist.”⁸ The training culminated with several role-playing scenarios, none of which appear analogous to the Tabatabaiejad case in that they involved violent or aggressive conduct or active physical resistance.

We collected policies from 23 law enforcement agencies which use Tasers. Encompassing a diverse group that ranges from small to very large, the sample includes policies from urban police departments, sheriff’s departments, and university public safety departments. A table listing each such agency and describing their policies can be found in Appendix 1. We also consulted model policies and guidelines developed by influential law enforcement policy groups such as Lexipol, the Police Executive Research Forum (PERF), and the International Association of Chiefs of Police (IACP).⁹ Our assessment of recommended practices is thus supported by the existing policies of a diverse array of police departments across the country and leading organizations of law enforcement professionals and experts.

RECOMMENDATIONS

RECOMMENDATION 1: UCLAPD should distinguish use of the Taser in drive stun mode from cartridge, or “probe,” mode. The device should primarily be used in cartridge mode, with the drive stun mode restricted to being a backup or when there is no alternative to using the device at close range.

The UCLAPD’s Taser policy should include criteria for the use of Taser in both settings or modes, which would bring the policy in line with common and best practices. This structure will make it easier for UCLA police officers to make reasonable and prudent decisions in fast-moving situations about how best to use the Taser.

⁸ Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration,” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 103.

⁹ See especially: “308.53, Use of the Taser,” Lexipol Model Policy (TABATA-00364-00472); “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PER Center on Force and Accountability, October 2005; “Electronic Control Weapons: Concepts and Issues Paper,” IACP National Law Enforcement Policy Center, 1996, Revised January 2005, (TABATA-00843); and “Electronic Restraint Device: The Taser®: Model Policy,” IACP National Law Enforcement Policy Center, April 1996.

The policy should state that the Taser should primarily be used in cartridge mode, with the drive stun used as a backup or where there is no alternative. Because Tasers in cartridge mode incapacitate by overriding the motor nervous system, the Taser is much more effective in gaining control of a suspect than it is in drive stun mode, where its only use is to cause pain. Using the cartridge—which is effective up to 21 feet away—also allows officers to maintain a safe distance from the subject.

The policies of many police departments address the concern that drive stun mode is painful to subjects and puts them at higher risk for burns and secondary injury. The fact that drive stun mode can only be used at close range has prompted concerns both about officer safety to the extent that an officer must be within inches of a subject to employ the Taser in that mode. Using the Taser in drive stun mode raises the risk that it will be used punitively or inappropriately against persons who are already under police control. PERF, Amnesty International, and Taser International recommend that the drive stun be used primarily as a back-up when the cartridge has proven ineffective or circumstances preclude its use.¹⁰ A recent study found that forty percent of agencies explicitly state the drive stun mode is to be used only as a backup or secondary mode.¹¹

RECOMMENDATION 2: UCLA should prohibit the use of Tasers against passive or mildly resistant persons, thereby restricting its use to violent, actively aggressive or imminently violent subjects, currently engaged in physical or active resistance, where the suspect has been given a warning and a reasonable opportunity to comply, and where milder uses of force could be reasonably judged as likely ineffective.

The UCLAPD is responsible for the safety and security of a university campus where concerned students often stage protests and engage in minor acts of civil disobedience or

¹⁰ “Excessive and Lethal Force? Amnesty International’s concerns about deaths and ill-treatment involving police use of tasers,” Amnesty International, November 2005 (TABATA-00749).

¹¹ Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration.” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 106.

other passive resistance to bring attention to a perceived wrong or advocate a position. Especially at a large, public university with a diverse student population, the officers charged with policing the campus must be prepared to respond to such incidents in a manner that minimizes the use of force and the potential for escalation. Mr. Tabatabaiejad was not the first and will certainly not be the last student who declines to comply with officers, whether to prove a political or social point or for whatever other reason. UCLAPD policy must better reflect the unique needs of policing a university campus.

A recent study found that fewer than one-third of all surveyed police departments permit the use of the Taser against a passive subject or resister.¹² Policy organizations such as PERF and IACP, as well as human rights organizations, including the ACLU of Northern California, recommend that Taser only be used against a person who is actively resisting police control or who presents a danger to self or the public.¹³

UCLA's current Taser policy, as outlined and discussed in the previous chapters, sanctions the use of the Taser in drive stun mode "against passive resisters as allowed in UCLA Police Policy (SS) 301.24 (Pain Compliance Techniques)."¹⁴ We recommend that this clause in specifically allowing use against passive resisters be removed.

RECOMMENDATION 3: The department should define the terms "violent," "active aggression," "active physical resistance," and "passive resistance."

UCLA should explicitly distinguish between levels of resistance. Accordingly, we suggest that the department adopt the definitions set forth below based in substantial part upon

¹² Johnson, Will et al., "Conducted Energy Devices: PERF's National Studies and Guidelines for Consideration." *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 103.

¹³ "Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives," *American Civil Liberties Union of Northern California*, September 2005, 18.

¹⁴ "General Order 05-01: Tasers," §6B, University of California, Los Angeles, 27 September 2005.

those used by PERF, which formulated its Taser guidelines as a result of a lengthy collaborative process involving law enforcement agencies and other experts.¹⁵

- *Active Aggression or Violent Behavior:* An overt or threatened act of serious bodily injury or death, coupled with the present ability to carry out the threat or the act, which reasonably indicates that an assault causing serious bodily injury or death to any person is imminent.
- *Active Physical Resistance:* Physically evasive movements, not constituting active aggression or violent behavior, calculated and capable of defeating or significantly impeding an officer's attempt to take an individual into custody.
- *Passive or Mild Resistance:* Physical actions that do not prevent or significantly interfere with an officer's taking a person into custody, including but not limited to a person who remains in a limp, prone position.¹⁶

RECOMMENDATION 4: UCLAPD should develop and implement a “force options” or “force continuum” system that provides an explicit range of appropriate responses for each level of subject resistance or threat.

The central component of any constitutional use force policy is that officers only use the level of force that is reasonably necessary to safely resolve any given situation, taking into consideration the totality of the circumstances, including the suspect's actions, the risk of death or injury to officers and others, and the availability and efficacy of lesser force options. Many police departments include a “force continuum,” “force matrix,” or “force options chart” in their use of force policies. These tables or charts match each available

¹⁵ PERF uses slightly different terminology from that used by UCLAPD.

¹⁶ “Conducted Energy Device (CED) Glossary of Terms,” PERF Center on Force and Accountability, October 2005.

force option with the level of threat or resistance for which it is most often appropriate, allowing officers to escalate or de-escalate their response as the situation requires.

UCLAPD's current general use of force policy does not include a chart of force options or force continuum. We recommend that UCLAPD develop a comprehensive force options chart or matrix that lists available force options corresponding to defined levels of subject resistance. We note that the Department of Justice, "recommends the force continuum as a best practice."¹⁷ IACP has similarly noted the following:

"Written departmental policies taken by themselves can be vague and difficult for officers to apply in the field. As a result, many departments have used a use-of-force continuum—a tool that helps officers visualize variations in levels of force—as a means of clarifying written policies. Indeed, most departments use a use-of-force continuum in training, and many departments now explicitly incorporate a use-of-force continuum into their departmental policy."¹⁸

RECOMMENDATION 5: The UCLA Taser policy should discourage repeated use of the Taser. Following each five-second application of the Taser, officers should reevaluate the totality of the circumstances. Each additional Taser firing cycle should be subject to the same criteria for use as the first. The number of Taser applications should be restricted to the minimum number necessary to place the subject in custody.

¹⁷ Walker, Samuel, "The New World of Police Accountability," Sage Publications: Thousand Oaks, 2005, 54; "Promoting Police Integrity: Examples of Promising Police Practices and Policies," US Department of Justice, January 2001, 4.

¹⁸ "Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement," International Association of Chiefs of Police, September 2006, 11.

Reviews of deaths following the use of the Taser have found that a disproportionate percentage of the deaths occurred after the individual had been shocked multiple times.¹⁹ This correlation has not been rigorously researched, but it nonetheless has led PERF to observe that, “multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.”²⁰ Taser International, the manufacturer and marketer of the Taser, notes that “in some circumstances, in susceptible people, it is conceivable that the stress and exertion of extensive, repeated, prolonged, or continuous application(s) of the Taser device may contribute to cumulative exhaustion, stress, and associated medical risk(s).”²¹

Multiple applications of the Taser without reevaluation of the situation may ignore important changes in the circumstances which might render subsequent use of the device unreasonable. In a study of 74 police department policies, PERF found that 28 percent included language providing “a specified threshold for abandoning the CED in favor of another weapon.”²² Both PERF and IACP recommend restricting the repeated use of the Taser to the number of times that is “reasonably necessary.” PERF also recommends that officers stop to reevaluate before each additional application of the device.

UCLAPD’s current policy on pain compliance techniques states that the “application of any pain compliance technique shall be discontinued once the Officer determines that full

¹⁹ See especially: “Excessive and Lethal Force? Amnesty International’s concerns about deaths and ill-treatment involving police use of tasers,” Amnesty International, November 2005 (TABATA-00749); Anglen, Robert, “167 cases of death following stun-gun use,” *Arizona Republic*, 05 January 2006; and Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration,” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 120.

²⁰ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

²¹ “Product Warnings—Law Enforcement,” TASER International, 01 March 2007.

²² Johnson, Will et al., “Conducted Energy Devices: PERF’s National Studies and Guidelines for Consideration.” *Critical Issues in Policing Series: Strategies for Resolving Conflict and Minimizing Use of Force*, Police Executive Research Forum, April 2007, 106.

compliance has been achieved.”²³ Allowing use of the Taser until “full compliance” has been reached has been interpreted by some law enforcement agencies to correspond to utter and complete passivity. Given an individual’s often unavoidable physical reaction to pain, it is overreaching to require that level of passivity. We recommend that such language be struck and replaced with language reflecting the idea that any pain compliance technique shall be discontinued as soon as violent or aggressive behavior or active resistance has ended.

We further recommend that UCLA, in a revised policy on Taser use, adopt fully the following language taken from PERF’s CED guidelines: “When activating a Taser, officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds).”²⁴ We further suggest that the policy indicate that “each additional cycle is subject to the same criteria for use as the first and should be restricted to the minimum number necessary to place the subject in custody.”

RECOMMENDATION 6: The UCLA Taser policy should prohibit the brandishing of the Taser by officers unless there is an objective reason to believe that the use of the Taser is imminent.

The display of a Taser is, in itself, a use of force. IACP recommends, and several police department policies stipulate, that the display of the Taser be prohibited unless the officer has an objectively reasonable belief that the discharge of the Taser is imminent.²⁵ UCLA’s current policy is silent on the display of the weapon and should be amended.

²³ “UCLA Police Policy 301.24: Pain Compliance,” University of California, Los Angeles Police Department, April 2003.

²⁴ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

²⁵ “Electronic Control Weapons: Concepts and Issues Paper,” IACP National Law Enforcement Policy Center, 1996, Revised January 2005 (TABATA-00843).

RECOMMENDATION 7: The criteria for use of a Taser should include a requirement that the officer give the subject a verbal warning of the intended use of the Taser followed, if it is safe to do so, by a reasonable opportunity to voluntarily comply.

Because the shock from a Taser constitutes a significant and painful use of force, officers should give suspects —unless they present an imminent danger to themselves, the officers, or others—an opportunity to comply with Officer 3nstructions before deploying the device. In many cases, simply the threat of a shock from the Taser will preclude the necessity of deploying the device, providing that the subject has been given the opportunity to comply. Although there may be situations in which giving a warning is ill-advised or impractical, such as those in which an involved person is in imminent danger, many police department policies, as well as the Lexipol model policy, require the use of a warning in most situations.²⁶ PERF recommends that a warning be given “unless to do so would place any other person at risk.”²⁷

Although UCLA’s policy does suggest that a warning be given prior to deployment of a Taser, it indicates only that officers “should” do so, and only “when practical.” In contrast, the model policy provided by Lexipol requires that the Taser be used against a “potentially violent or physically resistive subject” *only* if the officer has “given the subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to comply” unless doing so would subject any person to the risk of serious bodily injury or death.²⁸ We recommend that UCLA adopt this language.

RECOMMENDATION 8: UCLAPD should prohibit the use of the Taser against persons who are handcuffed or otherwise restrained absent a continuing threat and present capacity by the suspect to carry out violent or actively aggressive actions.

²⁶ “308.53, Use of the Taser,” Lexipol Model Policy (TABATA-00364-00472).

²⁷ “PERF Conducted Energy Device Policy and Training Guidelines for Consideration,” PERF Center on Force and Accountability, October 2005.

²⁸ The policy also requires that the subject “verbally or physically” demonstrate “an intention to resist” and that “other available options reasonably appear ineffective or would present a greater danger to the officer or subject.” (See “308.53, Use of the Taser,” Lexipol Model Policy (TABATA-00364-00472)).

A suspect who has been handcuffed or otherwise restrained poses much less of a danger to others than one who has not yet been brought under control. Even when an individual continues to struggle, officers taking him or her into custody generally have substantially less to fear, in terms of an escape or violent response, from a person who has been handcuffed. Guidelines issued by PERF and IACP, as well the policies of many departments that we reviewed, impose strict restrictions on the use of the Taser against subjects who have been restrained or handcuffed.

The UCLA policy presently suggests only that officers “give additional consideration to the unique circumstances involved” before application of the Taser to someone who has been handcuffed or restrained.²⁹ This language is significantly weaker than most of the other policies we looked at, including an earlier version of UCLAPD’s own policy. We recommend that the department redraft their policy in a manner consistent with our recommendation.

RECOMMENDATION 9: UCLAPD should prohibit the use of the Taser against vulnerable persons absent a continuing credible threat and present capacity by the suspect to carry out violent or actively aggressive actions.

As several studies have noted, there may be some persons whose conditions cause them to be particularly vulnerable to risks, particularly those due to secondary injury, posed by the Taser. For example, the effect of a fall on a pregnant woman or an elderly man may be more severe than for the average person. For people who have heart conditions or respiratory ailments, the stress caused by application of the device may also cause more extensive injury. A person at a great height or on a ladder could be killed or seriously injured as a result of a fall after being tased, someone tased while in water could drown, and a person exposed to flammable material or OC spray could catch fire upon application of a Taser. For these reasons, most policies, including the model policies that we

²⁹ “General Order 05-01: Tasers,” University of California, Los Angeles, 27 September 2005.

evaluated, list classes of people against whom the use of the Taser should be prohibited or avoided.³⁰

UCLA's current guidelines acknowledges the special vulnerability of "pregnant females," "elderly individuals or obvious juveniles," "individuals who have been recently sprayed with alcohol based Pepper Spray or who are otherwise in close proximity to any combustible material," and "individuals whose position or activity may result in collateral injury."³¹ The policy nonetheless does not prohibit or substantially restrict the use of a Taser on such persons, and the policy should be revised to do so.

Additionally, the list of vulnerable persons should be expanded to include, among others, the disabled, people with known or suspected heart problems or neuromuscular disorders such as muscular sclerosis, muscular dystrophy, or epilepsy.³² Likewise, absent a continuing credible threat and capacity by the suspect to carry out violent or actively aggressive actions, use of a Taser should be avoided against persons under the influence of drugs, impervious to pain, in a supercharged physical or emotional state, or susceptible to positional asphyxia.

³⁰ See Appendix 1.

³¹ "General Order 05-01: Tasers," University of California, Los Angeles, 27 September 2005.

³² "Electronic Control Weapons: Concepts and Issues Paper," IACP National Law Enforcement Policy Center, 1996, Revised January 2005 (TABATA-00843).

Appendices



Taser Technology

The term “Taser” stands for Thomas A. Swift Electric Rifle. As readers of this Report may recall, Tom Swift, the protagonist in a series of pre-World War II action novels, was the genius inventor of “whizbang” technology. Taser refers specifically to a product manufactured and marketed by Taser International, the dominant manufacturer; nonetheless, “Taser” has become a generic term for similar weapons made by other companies. As a group, these are known as Conducted Electricity Devices (CEDs), Electronic Control Devices (ECDs), or Electronic Control Weapons (ECWs). The UCLA Police Department equips its officers with the X26 model of Taser, Taser International’s most recent model as of this writing, which manages, according to the company, to be five percent more effective and painful than its predecessor, the M26, while delivering less electricity.

Tasers work by releasing a high-voltage, low-amperage electrical charge into the body. The X26 carries a charge of about 50,000 volts and .0021 amperes, which is intense but generally does not deliver enough electricity to substantially affect heart rate or to kill.¹ An officer can employ a Taser in one of two modes: cartridge, or “probe,” mode and drive stun, or “contact,” mode. Both modes deliver the same amount of electricity for the same duration. Each pull of the trigger of a Taser mechanism initiates a 5-second cycle of electrical charge, which an officer can interrupt by applying the safety mechanism or extend by holding down the trigger.

In cartridge mode, the Taser is generally activated from 15-35 feet away. A disposable nitrogen cartridge shoots two fishhook-like darts or probes into the body of a subject,

¹ Volts measure the force or pressure of the current (similar to water pressure), while amperes (amps) measure the actual amount of electricity being delivered.

which completes an electrical circuit and delivers a 5-second series of electrical charges. Both darts must attach to the subject in order for the current to be completed; the further that these darts are from each other, the more powerful the charge. The electrical “noise” that the Taser introduces overrides the body’s own electrical signals, causing involuntary muscle contraction that causes temporary incapacitation and, usually, collapse. This process, commonly known as Electro-Muscular Disruption Technology (or Neuro-Muscular Incapacitation), constitutes the most effective use of a Taser.

In drive stun mode, the Taser is pressed directly to the body. Unlike an application of the Taser in cartridge mode, a drive stun does not affect the motor nervous system, or muscle control, because the electrodes are too close together. It does, however, affect the sensory nervous system, causing extreme pain, and is thus considered a “pain compliance” technique, similar to OC spray. Drive stun mode can be effective when the cartridge has been removed or fired; however, if there is a cartridge inserted into the mechanism, that cartridge will not fire when the device is pressed against the subject, with the unit defaulting to drive stun mode.

Because it is used at close range and is exclusively used to cause pain, groups like Amnesty International are particularly concerned about the drive stun’s potential for abuse of persons who are already in custody. In training materials, Taser International promotes drive stun primarily as a back-up technique for when darts fired in cartridge mode have missed their target or when probe mode has otherwise not proven to be effective in a particular situation. It is also promoted as a way to subdue a person who is resisting arrest.

The duration of incapacitation for persons subjected to a Taser application, in either mode, varies. Taser International says that all subjects return to functioning normally within 20 minutes; the company’s training videos show several volunteers standing up and walking immediately after being tased. However, these law enforcement volunteers generally receive a half-second burst, which is about one-tenth of the length—five seconds—of the standard Taser cycle applied in the field.

Law enforcement agencies have increasingly equipped sworn officers with Tasers to provide them with a potent less-lethal force alternative, prompting several studies to examine the health risks of Tasers. Since it has the most powerful impact on the body by causing involuntary muscle contraction, all of the studies focused on the use of Tasers in cartridge mode. Most of these studies concluded Tasers to be safe to the extent that they did not have lasting effects and the electrical current employed was far below the level required to induce heart problems, or ventricular fibrillation.²

Many researchers have noted that little research has focused on risks to vulnerable populations such as pregnant women, children, and the elderly, as well as the interaction of the Taser with stimulants, and its effects on persons with a heart condition. A statement by the UK's Defence Scientific Advisory Council's subcommittee on the Medical Implications of Less-lethal Weapons (DoMILL) notes that "the risk of life-threatening or serious injuries from the M26 Taser is very low" but that "the possibility that other factors such as illicit drug intoxication, alcohol abuse, pre-existing heart disease and cardioactive therapeutic drugs may modify the threshold for generation of cardiac arrhythmias cannot be excluded."³ Similarly, a study by the US Department of Defense concluded that "although likely to be uncommon, severe unintended effects might occur," particularly in "very small children, the elderly, and individuals possessing potentially mitigating factors such as underlying heart disease or drug intoxication, for example."⁴ Consequently, although Tasers are considered to be generally safe, the use of Tasers on vulnerable subjects is often discouraged.

² See, for example: McBride, Dennis K. and Tedder, Natalie, "Efficacy and Safety of Electrical Stun Devices," Potomac Institute for Policy Studies Report: No. 05-04, 29 March 2005; "Human Effectiveness and Risk Characterization of Electromuscular Incapacitation Devices," United States Department of Defense, Human Effects Center of Excellence, 18 October 2004; "DoMILL Statement on the Comparative Medical Implications of the Use of the X26 and M26 Taser," UK Defence Scientific Advisory Council's subcommittee on the Medical Implications of Less-lethal Weapons, 07 March 2005; "Taser Technology Review and Interim Recommendations," Office of the Police Commissioner, British Columbia, September 2004.

³ "DOMILL Statement on the Comparative Medical Implications of the Use of the X26 and M26 Taser," UK Defence Scientific Advisory Council's subcommittee on the Medical Implications of Less-lethal Weapons, 07 March 2005.

⁴ "Human Effectiveness and Risk Characterization of Electromuscular Incapacitation Devices," United States Department of Defense, Human Effects Center of Excellence, 28 October 2004.

Groups such as Amnesty International have expressed concern about the lack of rigorous, independent research on Taser safety. Because of the difficulties of conducting clinical trials, researchers have commonly relied on tests conducted on healthy animals, such as pigs and dogs, in clinical conditions or reviewed available Taser usage data. Many major studies have been sponsored by Taser International or have relied on field use information provided by the company, which may or may not be incomplete.

In 2005, the *Arizona Republic* published an article—updated in 2006—that reviewed several deaths following the use of a Taser.⁵ Between 1999 and January 2006, there were 167 people who died after being shocked with a Taser, for which the newspaper had received autopsy reports for 50 of these individuals at the time of publication. The majority of the 50 deaths for which the paper received autopsies were attributed to cardiac arrest as a result of “excited delirium” and drug toxicity, while a few others were due to positional asphyxia.⁶ In 27 of the cases, the coroner could not rule out Taser as a contributing factor in the death—for most of these, there were several other factors listed in addition to the Taser such as drug toxicity or a heart condition. In four cases, the Taser was listed as a primary cause of cardiac arrest or asphyxia. Advocacy groups such as Amnesty International, which has maintained its own database of deaths following Taser use, and the ACLU of Northern California have both issued reports that build on this research, claiming mounting evidence about the health risks of Tasers and promoting the need for additional research and regulation.⁷

⁵ Anglen, Robert, “167 cases of death following stun-gun use,” *Arizona Republic*, 05 January 2006.

⁶ The diagnosis of excited delirium, characterized by “extreme agitation, aggressive, violent behavior and incoherence,” remains controversial and is not recognized by professional associations such as the AMA, but is increasingly used by coroners to explain sudden organ failure or cardiac arrest of subjects resisting police. Positional asphyxia refers to asphyxia caused by a person’s inability to breathe due to positioning, often as the result of restraint techniques such as hog-tying or being laid on the stomach with hands behind the back. This phenomenon, like excited delirium, is not well understood and is somewhat controversial, but has led many departments to re-evaluate their policies regarding restraint. See Sullivan, Laura, “Death by Excited Delirium: Diagnosis or Coverup?,” “All Things Considered,” *National Public Radio*, 26 February 2007 and Reay, Donald, “Suspect Restraint and Sudden Death,” *Law Enforcement Bulletin*, Federal Bureau of Investigation, May 1996.

⁷ A press release in January 2007 listed the number of deaths at 220 since 2001. (“As Taser International Unveils Newest Civilian Stun Device, Amnesty International USA Renews Call for an Independent Safety Review: Human Rights Organization Cites Two Recent TASER-Related Deaths as Cause for Continuing Concern,” *Amnesty International*, 08 January 2007); “Stun Gun Fallacy: How the Lack of Taser Regulation Endangers Lives,” *American Civil Liberties Union of Northern California*, September 2005 and “Amnesty International’s continuing concerns about Taser use,” Amnesty International, March 2006.

Taser International has aggressively countered these and other claims by specifically addressing concerns about product safety and the independence of studies with which the manufacturer was involved.⁸ The company insists that Tasers do not cause cardiac arrest and that stimulants like cocaine do not increase the risk of ventricular fibrillation after Taser application. However, while the company maintains that Taser use carries little or no direct health risk, it does note that related injury can occur. Its product warning sheet discusses risks of Taser application that include falling, the ignition of flammable materials, injury to sensitive areas such as the eyes or groin, and burns or scars (especially in the drive stun mode in which the Taser mechanism makes direct contact with the subject).⁹ The warning sheet also recommends that users “begin control and restraint procedures as soon as it is reasonably safe ... to minimize the total duration of exertion and stress experienced by the subject.”¹⁰ It continues: “In some circumstances, in susceptible people, it is conceivable that the stress and exertion of extensive, repeated, prolonged, or continuous application(s) of the TASER device may contribute to cumulative exhaustion, stress, and associated medical risk(s).”¹¹ It notes that is also “conceivable that the muscle contractions may impair a subject’s ability to breathe.” Accordingly, Taser International recommends that use of the device be minimized when practical.¹²

In sum, cumulative research and the experience of law enforcement agencies that equip their officers with Tasers tends to suggest that the use of the Taser generally carries few health risks to subjects. Indeed, many departments have found that it actually increases overall safety to subjects by reducing or making the use of injurious or deadly force less likely. Nonetheless, Tasers are not considered—by research, most law enforcement agencies or departments, and even Taser International—entirely risk-free. As such,

⁸ “Deadly Rhetoric: How the ACLU of Northern California is Endangering Communities,” *TASER International, Inc.*, 20 January 2006.

⁹ “Product Warnings—Law Enforcement,” *TASER International*, March 1, 2007.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

departments should take care to monitor usage and to ensure that its use is restricted to those situations when it is the most appropriate force option.

B

Comparative Summary of Taser Policies

Department	Use	Passive	Handcuffed	Drive Stun	Warning	Repeated	Medical	Level	Avoid
UCLA									
UCLA PD	"To incapacitate subjects" "May be effective in controlling a passive or actively resisting individual"	Conditionally approved	Consider	Conditionally approved	When practical	Discontinue when subject complies fully	Conditionally required	N/A	Pregnant, elderly, juveniles ("Consider")
Models									
IACP	"Designed to restrain violent individuals, where alternative restraint tactics are reasonably likely to fail and/or where it would be unsafe for officers to approach a subject to apply	Not approved	Not approved	N/A	N/A	Discontinue when subject is controlled	Required	At or below OC spray	Pregnant, Disabled, Known heart problems, Pacemakers, elderly, Children
Lexipol	" to control... [a] violent or physically resisting subject, or [a] potentially violent or physically resistive subject if [the subject has demonstrated an intention to resist, a verbal warning has been given, and other options are ineffective or more dangerous]."	Discouraged ("give additional consideration")	Discouraged ("give additional consideration")	N/A	Conditionally required	N/A	Required	N/A	Pregnant, elderly, juveniles ("give additional consideration"
Michigan Municipal Risk Management Authority	Only used "after other reasonable efforts to control a violent individual have failed." "When a subject is threatening himself, an officer, or another person and other means of controlling the person are not	Prohibited	N/A	N/A	When feasible	Discontinue when subject is controlled	If necessary	Reportable	None, but age should be considered
Minneapolis Civilian Police Review Authority	"only... on persons who are exhibiting active aggression and are deemed likely to harm themselves or others"	Prohibited	Conditionally prohibited	N/A	N/A	Restrict	Required	At or above closed-hand strike	Children, elderly, frail or injured, mentally ill, and pregnant

PERF	"Against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others."	Prohibited	Conditionally prohibited	Secondary	Unless safety risk	Discouraged	Required	Reportable	Pregnant, elderly, children, frail
Other UCs									
UC Davis PD	"To control violent or potentially violent subjects"	Not approved	N/A	N/A	N/A	N/A	N/A	N/A	N/A
UC Irvine PD	"When circumstances available to the individual officer indicate that it would be reasonable to use the Taser to control violent or potentially violent	Not approved	N/A	N/A	N/A	N/A	Required	N/A (Reportable)	None
UC Merced PD	"Include, but are not limited to:.. Self-destructive, dangerous, and/or highly combative subject(s)" "against a person, previously under control, who suddenly reacts violently and requires immediate attention..."	N/A	Conditionally prohibited	"may assist in taking a subject into custody"	"If the situation allows"	"cease once compliance is obtained"	Required	Less-lethal weapon	pregnant, extremes of age or physical condition, cardio-vascular problems
UC Riverside	"to control violent or potentially violent suspects"	Not approved	N/A	N/A	N/A	N/A	Required (probe use)	Control Device (w/ OC Spray, Baton)	N/A
UC San Diego PD	"Situations where aggression and or resistance need to be stopped."	Prohibited ("passive person")	Conditionally prohibited	N/A	N/A	N/A	To remove barbs	Reportable	None
Other Departments									
Chandler PD	"may be used... when officer has reason to believe that person has committed a criminal offense and is displaying active resistance, active aggression, or aggravated active aggression."	Not approved	N/A	N/A	"Whenever possible"		Conditionally required	Intermediate (above physical restraint and OC spray)	
Chicago PD	"to control and subdue a subject" when "A Department member is confronted by an offender classified as an assailant or active resister as defined in the Department directive entitled 'Use of Force Guidelines'"	Not approved	N/A	N/A	N/A	N/A	Required	Above OC Spray (reportable)	None
Cincinnati PD	"To control violent or potentially violent suspects under the following conditions:.. Attempts to subdue the subject by conventional tactics are inappropriate or ineffective... [and t]here is reasonable expectation it will be unsafe for officers to approach	Not approved	Not approved	N/A	N/A	N/A	If necessary	Unclear	None

Department	Use	Passive	Handcuffed	Drive Stun	Warning	Repeated	Medical	Level	Avoid
Denver PD	"To incapacitate a combative or physically resistive person whose conduct rises at least to the level of Active Aggression... OR in situations where its use is likely to prevent ... serious injury, OR.. [against a suicidal	Not approved	N/A	N/A	Unless urgent circumstances prevent	N/A	Required	Less-Lethal	Pregnant
Glendale PD (AZ)	"When physical force is necessary and justified to prevent the possibility of injury to the officer or another person"	Conditionally prohibited	Conditionally prohibited	N/A	N/A	N/A	If necessary	Above OC spray and Soft Empty Hand Techniques	None
Irvine PD	To "subdue resisting subjects."	N/A	N/A	N/A	If situation permits when practical	N/A	Required	Less-lethal	Children, disabled
Las Vegas Metropolitan Police	"when a subject is displaying active, aggressive, or aggravated aggressive resistance"	Not approved	Prohibited	Secondary, discouraged		Discouraged, reassess situation	Required	Level Three: Non-	Pregnant, at extremes of age or physically disabled
Los Angeles PD	"Can be used to control aggressive/combative suspects" and "attempts to subdue the suspect with other less-lethal tactics have been or will likely be ineffective...or there is a reasonable expectation that it will be unsafe for officers to approach within	Not approved	Conditionally prohibited	Last resort - assaultive/violent subjects	When feasible	Discontinue when subject is restrained	Required	Less-lethal control weapon (reportable)	Pregnant, pacemaker
Los Angeles Sheriff's Dept.	"Controlling assaultive/high risk persons"	Not approved	Conditionally prohibited	N/A	N/A	Discontinue when subject is controlled	Required	Significant, above OC spray and control holds (reportable)	Pregnant, pacemaker
Madison PD	"To overcome Violent or Assaultive Resistance or its threat" or "to control persons in order to prevent them from harming themselves or others"	Prohibited	Conditionally prohibited	N/A	N/A	N/A	If necessary	Intermediate Weapon (between OC spray and Straight Baton)	None
Miami-Dade PD	In "an arrest or custodial situation wherein the subjects is escalating their resistance from passive toward an energized, enhanced, passive physical resistance." "Also used to neutralize an attack by an animal."	Conditionally approved ("Energy-enhanced passive resistance")	N/A	N/A	when reasonable	N/A	If necessary	Reportable	Pregnant

Department	Use	Passive	Handcuffed	Drive Stun	Warning	Repeated	Medical	Level	Avoid
Phoenix PD	"On subjects who are using defensive resistance, active aggression, aggravated active aggression, or who are a threat to themselves.	Conditionally approved	Prohibited	As backup - with warning	Required	When still combative	Required	Above OC Spray (reportable)	N/A
Portland PB	When a person "displays the intent to engage in violent, aggressive actions; displays the intent to engage in suicidal behavior; or displays the intent to engage in physical resistance to lawful police action"	Not approved	N/.	N/A	When feasible	Minimize	Required	Less-lethal weapon (reportable)	None
Sacramento PD	"To incapacitate subjects" "should not be to gain compliance against subjects... who are not presenting an immediate, credible threat."	Prohibited	Prohibited	N/A	When practical	N/A	If necessary	Unclear	Pregnant, elderly
San Jose PD	"To incapacitate assaultive or physically resisting persons to the point where they can be safely taken into custody and controlled without the necessity to use force likely to cause injury." "As a defensive weapon"	Prohibited	Prohibited	N/A	N/A	N/A	Required		
University of Tennessee PD	"to be used as a way of averting a potentially injurious or dangerous situation." "may also be utilized on a subject, previously under control, who suddenly reacts violently and requires immediate attention."	Not approved	Conditionally approved	N/A	If the situation allows	N/A	Required	Same as OC spray	Pregnant
University of Texas at Austin PD	"to control a dangerous or violent subject... attempts to subdue the subject by other conventional tactics have been or will likely be, ineffective in the situation at hand,...or there is a reasonable expectation that it will be unsafe for officers to approach	Not approved	N/A	N/A	N/A	N/A		Reportable	
University of Washington PD	Unavailable	Prohibited	Prohibited	N/A		N/A		Above OC spray (Level Four)	

C

Current UCLAPD Taser and Use of Force Policies

Use of Force

301.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this Department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and safe manner.

This manual is designed to operate in concert with the University-wide Police Policies and Administrative Procedures. If a conflict exists between this manual and the University-wide Police Policies and Administrative Procedures, the manual that is most current with respect to law, procedures or any other topic, shall prevail.

301.11 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and, when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

This Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

301.2 POLICY

It is the policy of this Department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of "reasonableness" must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation.

301.21 PENAL CODE § 835(A)

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of

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Use of Force

the person being arrested; nor shall such officer be deemed the aggressor or bse his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

301.22 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) Availability of other options (What resources are reasonably available to the officer under the circumstances).
- (f) Seriousness of the suspected offense or reason for contact with the individual.
- (g) Training and experience of the officer.
- (h) Potential for injury to citizens, officers and suspects.
- (i) Risk of escape.
- (j) Other exigent circumstance.

It is recognized that officers are expected to make spilt-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

301.23 NON-DEADLY FORCE APPLICATIONS

Any application of force which is not reasonably anticipated to result in death shall be considered non-deadly force. Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to Leg Restraints and Control devices described in Policy Manual §§ 308 and 309 respectively.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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301.24 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received Departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used,
- (b) The potential risk of serious injury to the individual being controlled,
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance,
- (d) The nature of the offense involved,
- (e) The level of resistance of the individual(s) involved,
- (f) The need for prompt resolution of the situation,
- (g) If time permits (e.g. passive demonstrators), other reasonable alternatives.

The application of any pain compliance technique shall be discontinued once the officer determines that full compliance has been achieved.

301.25 CAROTID RESTRAINT

The proper application of the carotid restraint hold by a trained officer may be effective in quickly restraining a violent individual. However, due to the potential for serious injury, the carotid restraint hold may only be applied under the following conditions:

- (a) The officer shall have received Departmentally approved training in the use and application of the carotid restraint,
- (b) The carotid restraint may only be used when the officer reasonably believes that such a hold appears necessary to prevent serious injury or death to an officer or other person(s),
- (c) Any individual who has been rendered unconscious by the use of the carotid restraint shall be promptly examined by paramedics or other qualified medical personnel,
- (d) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold,
- (e) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in any related reports.

301.3 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him or herself or others from what they reasonably believe would be an immediate threat of death or serious bodily injury.
- (b) An officer may use deadly force to affect the arrest or prevent the escape of a suspected felon where the officer has probable cause to believe that the suspect

GENERAL ORDER

05-01

(Amended 09-27-05)

Subject: TASERS

PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the deployment and use of the Taser.

POLICY

To deploy and use the Taser to maximize the safety of all individuals involved in an incident.

PROCEDURE

1) DEFINITION

The Taser is a less lethal device used to incapacitate subjects by discharging an electronic current into the subject via two wired probes. The Taser may also be used in a drive-stun capacity with a fired cartridge in the device or when the Taser is not loaded with a cartridge.

2) TRAINING

Personnel who have successfully completed a Departmentally approved training course shall be authorized to use the Taser. Officers shall qualify regularly as dictated by Training Staff.

3) EQUIPMENT

Officers assigned a Taser are responsible for maintaining the device's operational readiness. As such, officers shall:

- A) Store the Taser and extra cartridges in the issued holster or case when not in use.
- S) Ensure that the Taser is accessible by keeping it concealed in a secured vehicle during the course of a shift or carrying the device on the officer's person. Taser holsters shall be worn only on the opposite side of the officer's handgun.
 - i) Officers issued a Taser shall keep at least two extra cartridges with the device.
 - ii) Extra cartridges should not be carried in pockets due to the risk that static electricity could cause an unintentional discharge of the cartridge.
- C) Check the Taser's battery strength to ensure adequate battery charge.
 - i) Officers shall remove the cartridge, keeping the safety on, prior to checking battery strength or changing the batteries in the unit.
 - ii) Officers shall test battery strength by sparking an unloaded Taser before going in service. In the event that the unit's battery strength is not adequate (20% or less), officers shall exchange the unit for another with adequate battery strength. Spark tests should be conducted in a safe direction with no apparent targets down range.
- D) Check the expiration date and condition of the Taser cartridges. Expired

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05-01

(Amended 09-27-05)

and/or damaged cartridges shall be turned into the range staff or a supervisor for replacement.

4) GENERAL

Although not absolutely prohibited, officers should give additional consideration to the unique circumstances involved prior to applying the Taser to any of the following individuals:

- A) Pregnant females;
- B) Elderly individuals or obvious juveniles;
- C) Individuals who are handcuffed or otherwise restrained;
- D) Individuals who have been recently sprayed with alcohol based Pepper Spray or who are otherwise in close proximity to any combustible material;
- E) Individuals whose position or activity may result in collateral injury (e.g. falls from significant heights, operating vehicles, etc.)

5) CRITERIA FOR USE - CARTRIDGE DEPLOYMENT

Authorized personnel may use a Taser when circumstances known and perceived to the individual officer at the time indicate that the application of the Taser is reasonable to subdue or control:

- A) A violent or physically resisting subject, or
- B) A potentially violent or potentially physically resistive subject who has verbally or physically demonstrated an intention to resist, or
- C) A dangerous animal.

6) CRITERIA FOR USE - DRIVE STUN

Authorized personnel may use a Taser in a drive stun capacity, as a pain compliance technique, in the following situations.

- A) To eliminate physical resistance from an arrestee in accomplishing an arrest or physical search.
- B) When a skirmish line is deployed and/or for pain compliance against passive resistors as allowed in UCLA Police Policy § 301.24 (Pain Compliance Techniques).
- C) To stop a dangerous animal.

7) FIELD DEPLOYMENT TACTICS

- A) When an officer determines that the Taser should be utilized, the officer deploying the Taser should, if possible, consider assembling a sufficient number of officers to assist with taking the suspect into custody. The number of additional officers and their responsibilities is dictated by the dynamics of each incident.
- B) If there is sufficient time to plan a deployment and sufficient resources available, consideration should be given to designating responsibilities as follows:
 - i) One officer to fire the Taser.
 - ii) One additional officer armed with a second Taser. If a second officer is not available, or it is not practical to have an officer act in this capacity,

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the primary officer deploying the Taser should be prepared to fire a second cartridge in the event that the initial cartridge misses the target or fails to function properly.

- iii) Protection officer(s) prepared to deliver appropriate force cover option(s).
- iv) Custody officer(s) who are given the responsibility to handcuff and restrain the suspect.

NOTE: Under exigent circumstances, nothing in this policy prohibits an officer from deploying and firing a Taser without requesting or having the presence of additional officers.

C) When practical, prior to firing the Taser, the officer discharging the Taser should:

- i) Announce that the Taser is being deployed and provide the suspect with a reasonable opportunity to voluntarily comply. This may prevent unintentional shootings and give warning to the suspect.
- ii) If, after a verbal warning, an individual continues to express an unwillingness to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, an officer may, but is not required to, display the electrical arc (provided there is not a cartridge loaded into the Taser) or laser in a further attempt to gain compliance prior to the application of the Taser. The laser should not be intentionally directed into the eyes of another as it may permanently impair their vision.
- iii) If practical, instruct Communications to broadcast a Taser is going to be deployed.

8) POST DEPLOYMENT RESPONSIBILITIES

A) Any use, or attempted use of a Taser against a subject shall be immediately reported to the Watch Commander. Officers and/or supervisors who have discharged a Taser on a suspect shall:

- i) Restrain and secure the subject, as soon as possible.
- ii) Officers should remove the probes as trained and inspect the probes to ensure the entire probe has been removed. Removal of broken probes should be done by medical personnel.
- iii) Ensure the suspect's injuries or complaints of injury (if any) are appropriately treated by medical personnel. Monitor the suspect for signs of "excited delirium."
- iv) Medical treatment and clearance to book shall be sought for any suspect that has received a Taser cartridge discharge and:
 - (1) The suspect exhibits signs of excited delirium.
 - (2) The suspect has a pre-existing heart condition or pre-existing respiratory condition.
 - (3) The suspect is obviously intoxicated or obviously under the influence of drugs.
 - (4) The suspect has received a total of two or more effective and complete Taser cycles.

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(Amended 09-27-05)

- v) Comply with the reporting procedures/supervisor's responsibilities specified in the UCLA Police Policy § 301 .3 (Reporting Use of Force).
 - vi) Ensure any discharged cartridges, probes and a sampling of AFID (Anti-Felon Identification) microdots that are discharged with the probes are collected and booked as evidence.
 - vii) Ensure probes are handled and booked as bio-hazardous "sharps".
 - viii) Ensure the serial number of the Taser and cartridge(s) used are included in the appropriate report(s).
 - ix) Ensure photographs are taken of probe impact sites and any other injuries.
- B) Any discharge of a Taser off-duty shall be immediately reported to the Watch Commander. The circumstances surrounding the discharge of a Taser shall be documented in a Miscellaneous Incident Report

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Selected Model Policies on Taser Use

SACRAMENTO POLICE DEPARTMENT TASER POLICY

SACRAMENTO POLICE DEPARTMENT SPECIAL ORDER 01-11

General Order 580.10
December 11, 2001

580.10 USE OF THE TASER

PURPOSE

To establish guidelines for the deployment and use of the Taser.

POLICY

To deploy and use the taser to maximize the safety of all individuals involved in an incident.

PROCEDURE

A. DEFINITION

TASER - The Taser is a less than deadly device used to incapacitate subjects by discharging an electronic current into the subject via two wired probes. The Taser may also be used in a touch-stun capacity with a fired cartridge in the device or when the Taser is not loaded with a cartridge.

B. CRITERIA FOR USE

1. The Taser shall only be used by officers and supervisors trained in its deployment and use. Officers shall use the Taser in a manner that is consistent with Departmental orders and training guidelines.
2. The Taser is not a substitute for deadly force.
3. The Taser shall not be carried or displayed on calls or incidents unless the officer has specific information about the call or incident that reasonably indicates there is a potential for the Taser's use. The circumstances of each call or incident shall dictate the reasonableness for the deployment of the Taser.
4. No individual officer shall simultaneously draw and hold a Taser and any firearm.
5. The Taser shall not be used to gain compliance over subjects who the officer reasonably believes are not presenting an immediate, credible threat to the safety of the officer(s) or the public. The Taser shall not be used against:
 - a. passive demonstrators.
 - b. handcuffed subjects.
 - c. subjects detained in a police vehicle.

C. PRE-DEPLOYMENT RESPONSIBILITIES

- Officers assigned a Taser are responsible for maintaining the device's operational readiness. As such, officers shall:
1. Store the device and extra cartridges in the issued holster or case when not in use.
 2. ensure that the Taser is accessible by keeping it concealed in a secured vehicle during the course of a shift or, if appropriate, carrying the device on the officer's person. Taser holsters shall be worn only on the opposite side of the officer's handgun.
 - a. Officers issued a Taser shall keep at least two extra cartridges with the device.
 - b. Extra cartridges should not be carried in pockets due to the risk that static electricity could cause an unintentional discharge of the cartridge.
 3. check the Taser's battery strength to ensure adequate battery charge.
 - a. **Officer's shall remove the cartridge from the Taser prior to checking battery strength**

or changing the batteries in the unit.

- b. Officer's may test battery strength by firing an unloaded Taser during their shift, but before going in service or after going out of service. In the event that the unit's battery strength is not adequate, officers shall replace the Taser's batteries with batteries specifically approved for use in the Taser. These batteries are supplied by the Armorer and can be obtained from a supervisor.
 4. check the expiration date and condition of the Taser cartridges. Expired an/or damaged cartridges shall be turned in to the Armorer or a supervisor for replacement.
 5. ensure the rubber stopper is in the data port when the device is stored or deployed.
- D. TACTICAL USE
1. Officers shall not use a Taser if they have reason to believe that:
 - a. The suspect has been exposed to flammable liquids.
 - b. The use would occur in a flammable or explosive environment (such as a clandestine lab).
 - c. The suspect could fall from significant heights or into a pool, river, or other body of water.
 2. The Taser should not normally be used against obviously pregnant females or elderly person.
 3. When an officer determines that the Taser should be utilized, the officer deploying the Taser should, if possible, consider assembling a sufficient number of officers to assist with taking the suspect into custody. The number of additional officers and their responsibilities is dictated by the dynamics of each incident.
 4. Unless extraordinary circumstances exist, consideration should be given to designating responsibilities as follows:
 - a. one officer to fire the Taser.
 - b. one additional officer armed with a second Taser. If a second officer is not available or it is not practical to have an officer act in this capacity, the primary officer deploying the Taser should be prepared to fire a second cartridge in the event that the initial cartridge misses the target or fails to function properly.
 - c. protection officer(s) prepared to deliver appropriate force cover option(s).
 - d. custody officer(s) who are given the responsibility to handcuff and restrain the suspect.

NOTE: Under exigent circumstances, nothing in this policy prohibits an officer from deploying and firing a Taser without requesting or having the presence of additional officers.
 5. When practical, prior to firing the Taser, the officer discharging the Taser shall:
 - a. loudly announce the Taser is going to be discharged.
 - b. instruct dispatch to broadcast a Taser is going to be discharged.
- E. RESPONSIBILITIES AFTER TASER DISCHARGE
1. Any use or attempted use of a Taser against a subject shall be immediately reported to the sergeant supervising the sector where the incident occurred, or to the on duty watch commander if the discharge occurred when the officer was off-duty.
 2. After the Taser has been discharged and the suspect has been taken into custody, officers who discharge the Taser and supervisors shall:
 - a. ensure the suspect's injuries (if any) are appropriately treated (only medical personnel may remove probes that are embedded in a suspect's skin).
 - b. comply with the reporting procedures/supervisor's responsibilities specified in GO 580.02.
 - c. ensure any discharged cartridges, probes, and a sampling of AFID (Anti-Felon Identification) "microdots" that are discharged with the probes are collected and booked as evidence.
 - d. ensure probes are handled and booked as bio-hazardous "sharps".
 - e. ensure the serial number of the Taser and cartridge(s) used are included in the appropriate report(s).
 - f. ensure photographs are taken of probe impact sites and any other injuries.
 3. Any accidental discharge of a Taser cartridge shall be immediately reported to the sergeant supervising the sector where the incident occurred, or the on duty watch commander if the discharge occurred when the officer was off duty. Additionally,
 - a. the circumstances surrounding the accidental discharge of a Taser cartridge shall be documented in either a Crime/Casualty Report (SPD 100) or Incident Report (SPD107), as circumstances require.
 - b. the Taser and any involved cartridge(s) shall be booked for inspection.
 - c. a City of Sacramento Incident/Loss Report Form (RM-3/red border) shall be completed when property damage or injury to a citizen has occurred as a result of the accidental discharge.
 - d. the on duty watch commander (or designee) shall initiate an administrative investigation into the accidental discharge of the cartridge and send a copy of the findings in memorandum format through the chain of command to the involved employee's office chief.

**INTERNATIONAL ASSOCIATIONS OF CHIEFS OF POLICE
MODEL TASER POLICY**

ELECTRONIC CONTROL
WEAPONS

Model Policy

<i>Effective Date</i> January 2005		<i>Number</i>
<i>Subject</i> Electronic Control Weapons		
<i>Reference</i>		<i>Special Instructions</i>
<i>Distribution</i>	<i>Reevaluation Date</i>	<i>No. Pages</i> 2

I. PURPOSE

The purpose of this policy is to provide officers with guidance and direction on the use of electronic control weapons.

II. POLICY

It is the policy of this agency to use only that level of force that reasonably appears necessary to control or otherwise subdue violent or potentially violent individuals. Electronic control weapons may be used by authorized and trained personnel in accordance with this use of force policy and additional guidelines established herein.

III. DEFINITIONS

Electronic Control Weapon (ECW): Weapons designed to disrupt a subject's central nervous system by means of deploying battery powered electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses.

Aphids: Confetti-like pieces of paper that are expelled from the cartridge when fired. Each "aphid" contains an alpha-numeric identifier unique to the specific cartridge used.

IV. PROCEDURES

A. Authorized Users

Only officers who have satisfactorily completed this agency's approved training course shall be authorized to carry ECWs.

B. Weapon Readiness

1. The device will be carried in an approved holster on the support side of the body. Officers not assigned to uniformed patrol may utilize

other department-approved holsters and carry the weapon consistent with department training.

2. The device shall be carried fully armed with the safety on in preparation for immediate use when authorized.
3. Officers authorized to use the device shall be issued a minimum of one spare cartridge as a back up in case of cartridge failure, the need for redeployment, or in case the first cartridge's leads break during engagement. The spare cartridges shall be stored and carried in a manner consistent with training and the cartridges replaced consistent with the manufacturer's expiration requirements.
4. Only agency approved battery power sources shall be used in the ECW.

C. Deployment

1. The ECW is generally analogous to Oleoresin Capsicum (OC) spray on the use of force continuum, and decisions to use an ECW involve the same basic justification. As such, the device is prohibited from being used:
 - a. In a punitive or coercive manner.
 - b. On a handcuffed/secured prisoner, absent overtly assaultive behavior that cannot be reasonably dealt with in any other less intrusive fashion.
 - c. On any suspect who does not demonstrate their overt intention (1) to use violence or force against the officer or another person or (2) to flee in order to resist/avoid detention or arrest (in cases where officers would pursue on foot).
 - d. In any environment where an officer knows that a potentially flammable, volatile, or explosive material is present (including but

not limited to OC spray with volatile propellant, gasoline, natural gas, or propane).

- e. In any environment where the subject's fall could reasonably result in death (such as in a swimming pool or on an elevated structure).
 2. In preparation for firing, the ECW shall be pointed in a safe direction, taken off safe, and then aimed. Center mass of the subject's back should be the primary target where reasonably possible; center mass of the chest or the legs is the secondary targets.
 3. Fixed sights should be used as the primary aiming device and the laser dot as the secondary aiming device.
 4. Upon firing the device, the officer shall energize the subject the least number of times and no longer than necessary to accomplish the legitimate operational objective. The subject may be secured as soon as practical while disabled by ECW power to minimize the number of deployment cycles.
 5. The device may also be used in certain circumstances in a "touch stun" mode. This involves removing the cartridge and pressing the unit against an appropriate area of the body based on training. It is important to note that when the device is used in this manner it is:
 - a. Primarily a pain compliance tool due to a lack of probe spread.
 - b. Minimally effective when compared to conventional cartridge type deployments.
 - c. More likely to leave marks on the subject's skin.
 - d. Subject to the same deployment (use) guidelines and restrictions as that of the ECW in cartridge deployments.
 6. The ECW shall be pointed at the ground in a safe direction with the safety on during loading, unloading, or when handled in other than an operational deployment.
- D. Aftercare
1. The ECW darts shall be removed from the subject after being restrained following the procedures outlined in training.
 2. Photographs of the affected area should be taken after the darts are removed.
 3. Medical evaluations and clearance shall follow the procedures outlined in training.
 4. When the device has been used operationally, the officer will collect the cartridge, wire leads, darts, and APHIDS as evidence.
- E. Reporting

The deploying officer shall notify his/her supervisor as soon as practical after using the device, and complete the appropriate use of force report.

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Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.

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PERF Conducted Energy Device Policy and Training Guidelines for Consideration

The following conducted energy device (CED)¹ policy and training guidelines were developed by the Police Executive Research Forum (PERF). They are based on information gathered from police chiefs and other subject-matter experts, two PERF national surveys involving more than 130 law enforcement agencies, reports on CED research findings and agency policies collected for this effort. In addition, a cross section of 80 people—police practitioners of various ranks, authorities on use of force, medical doctors and researchers—vetted these guidelines during a two-day national summit held on October 18–19, 2005, in Houston, Texas, that was supported by the U.S. Department of Justice Office of Community Oriented Policing Services and the Bureau of Justice Assistance.

While every effort was made to consider the majority views of all contributors and the best thinking on the vast amount of information received, the resulting PERF guidelines do not necessarily reflect the individual views of each participating law enforcement agency, nor the views of the U.S. Department of Justice.

1. CEDs should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others. CEDs should not be used against a passive suspect.
2. No more than one officer should activate a CED against a person at a time.
3. When activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). If subsequent cycles are necessary, agency policy should restrict the number and duration of those cycles to the minimum activations necessary to place the subject in custody.
4. Training protocols should emphasize that multiple activations and continuous cycling of a CED appear to increase the risk of death or serious injury and should be avoided where practical.
5. Training should include recognizing the limitations of CED activation and being prepared to transition to other force options as needed.
6. That a subject is fleeing should not be the sole justification for police use of a CED. Severity of offense and other circumstances should be considered before officers' use of a CED on the fleeing subject.
7. CEDs should not generally be used against pregnant women, elderly persons, young children, and visibly frail persons unless exigent circumstances exist.

¹ CED brand names include Taser,™ Stinger™ and Law Enforcement Associates.™

8. CEDs should not be used on handcuffed persons unless they are actively resisting or exhibiting active aggression, and/or to prevent individuals from harming themselves or others.
9. CEDs should not generally be used when a subject is in a location where a fall may cause substantial injury or death.
10. When a subject is armed with a CED and attacks or threatens to attack a police officer, the officer may defend him- or herself to avoid becoming incapacitated and risking the possibility that the subject could gain control of the officer's firearm. When possible, officers should attempt to move outside the device's range (approximately 21 feet) and seek cover, as well as request back-up officers to mitigate the danger.
11. When possible, emergency medical personnel should be notified when officers respond to calls for service in which it is anticipated that a CED may be activated against a person.
12. Officers should avoid firing darts at a subject's head, neck and genitalia.
13. All persons who have been exposed to a CED activation should receive a medical evaluation. Agencies shall consult with local medical personnel to develop appropriate police-medical protocols.
14. All persons who have been subjected to a CED activation should be monitored regularly while in police custody even if they received medical care.
15. CED darts should be treated as a biohazard. Officers should not generally remove CED darts from a subject that have penetrated the skin unless they have been trained to do so. Agencies should coordinate with medical personnel to develop training for such removal. Only medical personnel should remove darts that have penetrated a person's sensitive areas.
16. Following a CED activation, officers should use a restraint technique that does not impair respiration.
17. CEDs should not be used in the known presence of combustible vapors and liquids or other flammable substances including but not limited to alcohol-based Oleoresin Capsicum (O.C.) Spray carriers. Agencies utilizing both CEDs and O.C. Spray should use a water-based spray.
18. Agencies should create stand-alone policies and training curriculum for CEDs and all less-lethal weapons, and ensure that they are integrated with the department's overall use-of-force policy.
19. Agencies should partner with adjacent jurisdictions and enter into a Memorandum of Understanding to develop joint CED policies and protocols. This should include addressing non-alcoholic O.C. Spray carriers. Agencies should also establish multijurisdictional CED training, collaboration and policy.
20. If officers' privately owned CEDs are permitted to be used on duty, policy should dictate specifications, regulations, qualifications, etc. The devices should be registered with the department.

21. The CED "Probe Mode" should be the primary setting option, with "Drive Stun Mode" generally used as a secondary option.
22. CEDs should be regulated while officers are off duty under rules similar to service firearms (including storage, transportation, use, etc.).
23. CEDs should not be used against suspects in physical control of a vehicle in motion to include automobiles, trucks, motorcycles, ATVs, bicycles and scooters unless exigent circumstances exist.
24. The use of brightly colored CEDs (e.g., yellow) reduces the risk of escalating a force situation because they are plainly visible and thus decrease the possibility that a secondary unit mistakes the CED for a firearm (sympathetic fire). Note that specialized units (e.g., SWAT Units) may want dark-colored CEDs for tactical concealment purposes.
25. CEDs should be maintained in a holster on an officer's weak (support) side to avoid the accidental drawing and/or firing of an officer's sidearm.
26. Officers should be trained that the TASER™ CED's optimum range is 15 feet.²
27. Auxiliary/Reserve officers can be armed with CEDs provided they receive all mandated training and maintain all requalification requirements. Training and local statutes may dictate policy.
28. A warning should be given to a person prior to activating the CED unless to do so would place any other person at risk.
29. When applicable, an announcement should be made to other officers on the scene that a CED is going to be activated.
30. A supervisor should respond to all incident scenes where a CED was activated.
31. A supervisor should conduct an initial review of a CED activation.
32. Every instance of CED use, including an accidental discharge, should be accounted for in a use-of-force report.
33. Agencies should consider initiating force investigations outside the chain of command when any of the following factors are involved:
 - a. A subject experiences death or serious injury;
 - b. A person experiences prolonged CED activation;
 - c. The CED appears to have been used in a punitive or abusive manner;
 - d. There appears to be a substantial deviation from training; and
 - e. A person in an at-risk category has been subjected to activation (e.g., young children; persons who are elderly/frail, pregnant women, and any other activation as determined by a supervisor).
34. When possible, supervisors and back-up officers should anticipate on-scene officers' use of CEDs by responding to calls for service that have a high propensity for arrest and/or use of a CED.

² Association of Chief Police Officers, 2004. Independent Evaluation of the Operational Trial of TASER.™

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PERF CED Policy and Training Considerations

October 25, 2005

35. Every substantial investigation (and when possible every preliminary investigation) should include:
- a. Location and interview of witnesses (including other officers);
 - b. Photographs of subject and officer injuries;
 - c. Photographs of cartridges/darts;
 - d. Collection of CED cartridges, darts/prongs, data downloads, car video, confetti ID tags; and
 - e. Copies of the device data download.
 - f. Other information as indicated in guideline #45.
36. Police leaders should be aware that CED download data may be unreliable. Police leaders and investigators should be able to articulate the difference between the actual duration of a CED activation on a person and the total time of discharge registered on a CED device.
37. CED activations should be tracked in the department's early intervention system (EIS).
38. The department should periodically conduct random audits of CED data downloads and reconcile use-of-force reports with recorded activations. Departments should take necessary action as appropriate when inconsistencies are detected.
39. Audits should be conducted to ensure that all officers who carry CEDs have attended initial and recertification training.
40. Departments should not solely rely on training curriculum provided by a CED manufacturer. Agencies should ensure that manufacturers' training does not contradict their use-of-force policies and values. Agencies should ensure that their CED curriculum is integrated into their overall use-of-force systems.
41. CED recertification should occur at least annually and consist of physical competency and device retention, changes in agency policy, technology changes, and reviews of local and national trends in CED use.
42. Exposure to CED activation in training should be voluntary; all officers agreeing to be subjected to a CED activation should be apprised of risks associated with exposure to a CED activation.
43. Supervisors and command staff should receive CED awareness training so they can make educated decisions about the administrative investigations they review.
44. Statistics should be maintained to identify CED trends and deployment concerns. Agencies may include display and arcing of weapons to measure prevention/deterrence effectiveness. CED statistics should be constantly analyzed and made publicly available.
45. The following statistical information should be included when collecting information about CED use:
- a. Date, time, location of incident;
 - b. The use of the laser dot or display of the CED that deterred a subject and gained compliance;

- c. Identifying and descriptive information of the suspect (including membership in an at-risk population), all officers firing CEDs, all officer witnesses, and all other witnesses;
 - d. The type and brand of CED used;
 - e. The number of CED cycles, the duration of each cycle, the duration between cycles and the duration that the subject was actually activated;
 - f. Level of aggression encountered;
 - g. Any weapons possessed by the suspect;
 - h. The type of crime/incident the subject was involved in;
 - i. Determination of whether deadly force would have been justified;
 - j. The type of clothing worn by the subject;
 - k. The range at which the CED was used;
 - l. The type of mode used (probe or drive stun);
 - m. The point of impact of probes on a subject in probe mode;
 - n. The point of impact on a subject in drive stun mode;
 - o. Location of missed probe(s);
 - p. Terrain and weather conditions during CED use;
 - q. Lighting conditions;
 - r. The type of cartridge used;
 - s. Officer suspicion that subject was under the influence of drugs (specify if available);
 - t. Medical care provided to the subject; and
 - u. Any injuries incurred by an officer or subject.
46. Law enforcement agencies should conduct neighborhood programs that focus on CED awareness training. CED training should be part of any citizen's training academy program.
47. The agency's Public Information Officer should receive extensive training on CEDs in order to better inform the media and the public about the devices. Members of the media should be briefed on the department's policies and use of CEDs.
48. CED awareness should extend to law enforcement partners such as local medical personnel, citizen review boards, medical examiners, mental health professionals, judges and local prosecutors.
49. CEDs can be effective against aggressive animals. Policies should indicate whether use against animals is permitted.
50. Officers should be aware that there is a higher risk of sudden death in people under the influence of drugs and/or symptoms associated with excited delirium.
51. CED cartridges with longer barbs may be more effective in extremely cold climates.
52. Agencies should be aware that CED cartridges have experienced firing problems in extremely cold weather.

These guidelines are presented with the understanding that many force situations evolve rapidly and sometimes require law enforcement officers to make quick decisions about force options. It is impossible to anticipate every possible force situation or circumstance that may occur, and in all cases officers need to rely on their training, judgment and instincts. However, it is anticipated that these considerations will help the law enforcement profession to better manage conducted energy devices and police use-of-force situations.

LEXIPOL MODEL POLICY

308.5 TASER GUIDELINES

When properly applied in accordance with this policy, the TASER is considered a non-deadly control device which is intended to temporarily incapacitate a violent or potentially violent individual without causing serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

308.51 CARRYING THE TASER

Personnel who have completed department approved training may be issued a Taser for use during their current assignment. Personnel leaving a particular assignment may be expected to return their issued Taser to the department's inventory.

Officers shall only use Taser and cartridges that have been issued by the department. The Taser may be carried out either as a part of a uniformed officer's equipment in an approved holster or secured in the driver's compartment of the officer's vehicle so that it is readily accessible at all times.

- (a) If the Taser is carried as part of a uniformed officer's equipment, the Taser shall not be carried on the same side as the officer's duty weapon.
- (b) All Taser devices shall be clearly and distinctly marked to differentiate them from the officer's duty weapon and any other device.
- (c) Whenever possible, officers shall carry a total of two or more Taser cartridges on their person at all times while carrying a Taser.
- (d) Officers shall be responsible for insuring that their issued Taser is properly maintained and in good working order at all times.
- (e) Officers should never hold both a firearm and a Taser at the same time unless lethal force is justified.

308.52 VERBAL AND VISUAL WARNINGS

Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal announcement of the intended use of the Taser shall precede the application of a Taser device in order to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a Taser device may be deployed.

If, after a verbal warning, an individual continues to express an unwillingness to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, an officer may, but is not required to display the electrical arc (provided there is not a cartridge loaded into the Taser) or laser in a further

attempt to gain compliance prior to the application of the Taser device. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair their vision. Officers should not remove a Taser cartridge in order to display an electrical arc.

The fact that a verbal and/or other warning was given or reasons it was not given shall be documented in any related reports.

308.53 USE OF THE TASER

As with any law enforcement equipment, the Taser has limitations and restrictions requiring consideration before its use. The Taser should only be used when its operator can safely approach the subject within the operational range of the Taser. Although the Taser device rarely fails and is generally effective in subduing most individuals, officers should be aware of this potential and be prepared with other options in the unlikely event of such a failure.

Authorized personnel may use a Taser device when circumstances known to the individual officer at the time indicate that the application of the Taser is reasonable to subdue or control:

- (a) A violent or physically resisting subject, or
- (b) A potentially violent or physically resisting subject if:
 - 1. The subject has verbally or physically demonstrated an intention to resist; and
 - 2. The officer has given the subject a verbal warning of the intended use of the Taser followed by a reasonable opportunity to voluntarily comply; and
 - 3. Other available options reasonably appear ineffective or would present a greater danger to the officer or subject.
- (c) Although not absolutely prohibited, officers should give additional consideration to the unique circumstances involved prior to applying the Taser to any of the following individuals:
 - 1. Pregnant females;
 - 2. Elderly individuals or obvious juveniles;
 - 3. Individuals who are handcuffed or otherwise restrained;
 - 4. Individuals who have been recently sprayed with alcohol based Pepper Spray or who are otherwise in close proximity to any combustible material;
 - 5. Passively resisting subjects;
 - 6. Individuals whose position or activity may result in collateral injury (e.g. falls from height, operating vehicles, etc).

The Taser device shall not be used to torture, psychologically torment or inflict undue pain on any individual.

308.54 REPORT OF USE

All Taser discharges shall be documented in the related arrest/crime report and on the Taser report form. Accidental discharges of a Taser cartridge will also be documented on the Taser report form. Any report documenting the discharge of a Taser cartridge will include the cartridge's serial number and an explanation of the circumstances surrounding the discharge.

The on-board Taser memory will be downloaded through the dataport, and saved with the related arrest/crime report.

308.55 MEDICAL TREATMENT

Any person who has been subjected to the electric discharge of a Taser and/or struck by Taser darts shall be medically cleared prior to being booked. Individuals to have been subjected to the electric discharge of a Taser and/or struck by Taser darts and who are also suspected of being under the influence of controlled substances and/or alcohol should also be examined by paramedics or other qualified medical personnel as soon as practicable.

Further, any person struck with Taser darts or injured by a probe shall be treated by medical personnel as soon as practical after the incident with only qualified medical personnel removing the Taser darts from a person's body. Used Taser darts shall be considered a sharp biohazard, similar to as used hypodermic needle, and disposed of accordingly.

308.56 TRAINING

In addition to the initial department approved training required to carry and use a Taser device, any personnel who have not carried a Taser as part of their assignment for a period of six months or more shall be recertified by a department approved Taser instructor prior to again carrying or using the device. A reassessment of an officer's knowledge and/or practical skill may be required at any time if deemed appropriate by the department's Training Manager.

