UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BETTY LOU HESTON, individually and ROBERT H. HESTON, individually as the personal representatives of ROBERT C. HESTON, deceased, Plaintiffs, vs. CITY OF SALINAS and SALINAS POLICE DEPARTMENT, SALINAS POLICE CHIEF DANIEL ORTEGA, TASER INTERNATIONAL, INC., and DOES 1 to 10, Defendants.	Case No.: C05-03658JW [James Ward, United States District Judge] **Expert Report**

John G. Peters, Jr., M.B.A., Ph.D., CLS
John G. Peters, Jr. & Associates
1550 West Horizon Ridge Parkway
Suite A, #337
Henderson, Nevada 89012

Pursuant to Fed. R.Civ.P. 26(a)(2), I, John G. Peters, Jr., hereby submit my report that contains a complete statement of all opinions to be expressed and the bases and reasons therefore; the data and other information I considered in forming the opinions; the exhibits or list of references I used as a summary of or support for the opinions; my qualifications, including a list of all publications authored within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which I have testified as an expert at trial or by deposition within the preceding four years.

Signed: John G. Peters JR., Ph.D.
John G. Peters, Jr., Ph.D., M.B.A., CLS
Date: December 1, 2006

ABSTRACT

At approximately 1:39 p.m. on Saturday, February 19, 2005, Salinas (CA) Police Department (SPD) police officers were dispatched to 139 Rodeo Drive, Salinas, CA regarding a domestic dispute involving Robert C. Heston, age 40, and his father, Robert H. Heston, age 66. The elder Mr. Heston wanted his son to leave the residence, but told the six responding officers that his son lived there. The officers observed the younger Mr. Heston acting strangely, but he was not making any threatening statements or committing crimes. Mr. Robert H. Heston told the officers that his son had thrown some furniture, but did not break anything, had not struck anyone, and that he felt safe. The officers also learned his son was on parole, but attempts to contact his son's parole officer failed. The scene sergeant advised the elder Mr. Heston there was nothing the police could do, and the officers left the property.

At approximately 2:20 p.m. the officers were again dispatched to 139 Rodeo Drive for crimes in progress. Upon arrival at the address, officers observed the younger Mr. Heston throwing items through the front door of the residence. Mr. Robert C. Heston violently resisted the officers taking him into custody after he was placed under lawful arrest, and at one point in time, threw a piece of wood at an officer, striking him in the chest area. Fearing for their safety and the safety of others, the officers deployed their departmentally-issued TASER® electronic control devices (ECDs or devices) in efforts to capture Mr. Robert C. Heston, so he could then be controlled and restrained. The initial deployments of the TASER ECDs appeared to not affect Mr. Robert C. Heston. Officers observed him pulling the ECD probes from his chest area, neutralizing the effects of the TASER ECDs.

Eventually, the officers were able to get Mr. Robert C. Heston onto the floor of the residence, even though he continued to forcefully and violently struggle. Shortly after getting him handcuffed, the officers noticed that he had stopped breathing. Cardiopulmonary resuscitation (CPR) was immediately begun by the officers, until paramedics arrived and transported him to Natividad Medical Center for emergency medical care.

At 7:46 p.m. on Sunday, February 20, 2005, he was pronounced dead. A subsequent autopsy and two post-mortem case reviews were conducted, resulting in the following findings as causes of death: multiple organ failure due to cardiac arrest, due to agitated state, due to methamphetamine intoxication, plus left ventricular hypertrophy and dilation, TASER application and struggle with police. This legal action is an outgrowth from the death of Mr. Robert C. Heston.

EXHIBITS

The exhibits or list of references used as a summary of or support for the opinions in this report specifically include each illustration, graphic, chart, video in this report, referenced in this report, or included in any of the references to this report, as well as any documents, or portions thereof, referenced or cited, or any compilation of documents, are to be considered exhibits to this report and may be utilized as exhibits at deposition and/or trial. These exhibits specifically include, but are not limited to: any document, information, illustration, PowerPoint, lesson plan, drawing, graphic, video, compilation, etc., that is on, or included in, any of the TASER International, Inc. (TASER) training CDs/DVDs (versions 1 through the current release – which is presently version 13), as well as the TASER Research Compendium, the Sudden In-Custody Death Research Compendium, TASER ECD Field Data and Risk Benefit PowerPoints and Analyses, the TASER website (including updates and additions), etc. Exhibits also include an ADVANCED TASER M26, TASER Cartridges, TASER probes, a Van de Graff generator, eight (8) AA cells, TASER Cartridge wire, a stack of 25,000 and 100,000 sheets of paper, vehicle battery jumper cables, and 110 V AC electrical cords/cables. Exhibits also include any information on the Institute for the Prevention of In-Custody Death website (www.ipicd.com), sudden and in-custody death videos, statistical comparisons and analogies, etc.

DOCUMENTS REVIEWED

1. **Summons** and **Complaint For Damages**, September 2, 2005;

2. **Declaration of Robert Henry Heston RE Commencement of Action by Successor in Interest** (Cal. Civ. Proc. Code § 337.32), August 5, 2005;

3. **Plaintiffs' Certification of Interested Entities or Persons**, September 9, 2005;

4. **Answer of Defendant TASER International, Inc. to Plaintiffs' First Amended Complaint; Demand for Jury Trial**, July 7, 2006;

5. **Answer of City of Salinas, Salinas Police Department, Salinas Police Chief Daniel Ortega, Michael Dominici, Craig Fairbanks, James Goodwin, Lek Livingston, Valentin Paredez, Juan Ruiz, and Tim Simpson to Plaintiffs' First Amended Complaint**, July 21, 2006;

6. **Defendant TASER International, Inc.'s First Set of Interrogatories Propounded to Plaintiffs (Set No. One) [Betty Lou Heston]**, August 16, 2006;

7. **Defendant TASER International, Inc.'s First Set of Interrogatories Propounded to Plaintiffs' (Set No. One) [Robert H. Heston]**, August 16, 2006;

8. **Defendant TASER International, Inc.'s Request for Production of Documents and Things to Plaintiff (Set No. One) [Betty Lou Heston]**, August 16, 2006;

9. **Defendant TASER International, Inc.'s Request for Production of Documents and Things to Plaintiff (Set No. One) [Robert H. Heston]**, August 16, 2006;

10. **First Set of Interrogatories By Plaintiff Robert Heston to Defendant TASER International, Inc.** August 21, 2006;

11. **First Set of Requests for Production of Documents by Plaintiff Robert Heston to Defendant TASER International, Inc.** August 21, 2006;

12. Radio Traffic 911 Calls: 1st Call, **Audio Tracks**, 1-79;

13. Radio Traffic 911 Calls: 2nd Call: **Audio Tracks**, 1-76;

14. City of Salinas Police Department, **Police Report: Chris Swinscoe**, February 20, 2005;

15. City of Salinas Police Department, **Police Report: Masahiro Yoneda**, February 20, 2005;

16. City of Salinas Police Department, **Police Report: Todd Swiscoe**, February 20, 2005;

17. City of Salinas Police Department, **Police Report: Neil Herrier**, February 20, 2005;

18. City of Salinas Police Department, **Police Report: Chris Rodolfo Roman**, February 20, 2005;

19. City of Salinas Police Department, **Police Report: Michael Cupak**, February 20, 2005;

20. City of Salinas Police Department, **Police Report: Tim Simpson**, February 20, 2005;

21. City of Salinas Police Department, **Police Report: Jeffrey Alford**, February 20, 2005;

22. City of Salinas Police Department, **Police Report: Michael Rivera**, February 21, 2005;

23. City of Salinas Police Department, **Police Report: Neil Herrier**, February 21, 2005;

24. City of Salinas Police Department, **Police Report: Kenneth Schwener**, February 22, 2005;

25. City of Salinas Police Department, **Police Report: Chris Stark**, February 22, 2005;

26. City of Salinas Police Department, **Police Report: Henry Gomez**, February 23, 2005;

27. City of Salinas Police Department, **Police Report: Henry Gomez**, February 24, 2005;

28. City of Salinas Police Department, **Police Report: Todd Swincoe**, February 26, 2005;

29. City of Salinas Police Department, **Police Report: C. Cornelison**, March 2, 2005;

30. City of Salinas Police Department, **Police Report: Chris Lane**, March 3, 2005;

31. City of Salinas Police Department, **Police Report: Neil Herrier**, March 3, 2005;

32. City of Salinas Police Department, **Police Report: C. Cornelison**, March 4, 2005;

33. City of Salinas Police Department, **Police Report: Michael Groves**, April 9, 2005;

34. City of Salinas Police Department, **Police Report: Dana C. Cornelison**, April 26, 2005;

35. **Robert C. Heston Criminal History**, April 28, 2005;

36. **D. Flippo's Investigation Report**, November 21, 2005;

37. **MCT Message Traffic** (12 documents), February 19, 2005;

38. Memo to Wayne Schapper from Diana Kelley, **Request for MCT Message Traffic**, February 23, 2005;

39. **391 Photos: Autopsy & Damage to Heston Home**;

40. American Medical Response Service, **Report: Robert C. Heston**, February 19, 2005;

41. Monterey Emergency Medical Services, **Form**, February 19, 2005;

42. Department of Justice, Bureau of Forensic Services, **Toxicology Report: Robert Heston**, May 13, 2005;

43. John R. Hain, M.D., **Monterey County Sheriff-Coroner Case Review and Opinion: Robert Heston, Jr.**, July 27, 2005;

44. Monterey County Sheriff' Coroner, Office of the Coroner, **Coroner's Report: Robert Clark Heston, Jr.**, August 12, 2005;

45. EMT Kevin Crane, **Care Record: Robert Heston**, February 19, 2005;

46. Central Valley Toxicology, Inc., **Toxicology Results: Robert Heston, Jr.**, February 28, 2005;

47. Terri L. Haddix, M.D., **Monterey County Sheriff-Coroner Postmorten Examination: Robert Heston, Jr.**, July 12, 2005;

48. Steven B. Karch, M.D., **Post-Mortem Review Letter to Cmdr. Greg Clark: Robert Heston, Jr.**, August 8, 2005;

49. TASER downloads for Officers Ruiz, Fiarbanks, Dominici, Livingston, and Godwin;

50. Letter to Sgt. Mike Groves from Mark Johnson of TASER International, Inc., **Analysis of TASER M26 Data Download**;

51. Officer T. Swinscoe, **Diagram of Inside of 139 Rodeo Drive, Salinas, CA**, February 19, 2005;

52. Dispatch record, **139 Rodeo Drive @13:33:38 hours**, February 19, 2005;

53. Dispatch record, **139 Rodeo Drive @14:19:53 hours**, February 19, 2005;

54. Salinas Police Department, **Crime Scene Investigation Log: N. Herrier**, February 19, 2005;

55. Officer Rivera, Salinas Police Department, **Property Record: Urine Samples of Sgt. Dominici, Officers Livingston, Fairbanks, Ruiz, Paredez,** and **Godwin**, February 19, 2005;

56. Officer Rivera, Salinas Police Department, **Property Record: TASERS, Sgt. Dominici, Livingston, Fairbanks, Ruiz,** and **Godwin**, February 19, 2005;

57. Officer Schwe, Salinas Police Department Property Record, **Crime Scene log**, February 19, 2006;

58. **Crime Scene Measurements** by N. Herrier, February 19, 2005;

59. Salinas Police Department, **Crime Scene Investigator's Log: N. Herrier**, February 22, 2005;

60. Michael Groves, **E-mail to TASER and others, In-custody Death in Salinas**, March 15, 2005;

61. Salinas Police Department policy, **3.10 M26 Advanced TASER Deployment**, June 30, 2003;

62. Salinas Police Department policy, **3.01 Use of Force**, July 17, 2001;

63. Dispatch call printouts, February 19, 2005;

64. Salinas Police Department Property Record, **Printout of two calls to CHP Communications Center**, February 23, 2005;

65. Officer Gomez, Salinas Police Department Property Record, **CD containing MCT talk traffic for Monterey County users (2/19/05)**, February 23, 2005;

66. Officer Criswe, Salinas Police Department Property Record, **Cassette Tape Interview with Kastner**;

67. Officer T. Swinscoe, Salinas Police Department Property Record, **Brass colored Grandfather clock; TASER probe; Long piece of wood; TASER blast doors/TASER AFIDS; TASER wire; TASER cartridge and wire; TASER probe; TASER probe; Protective mask; Blood sample from suspect; Clothing from suspect; blue jeans; pair blue/grey tennis shoes; TASER cartridges/probes/wires removed from suspect**;

68. D. Cornelison, Salinas Police Department Property Record, February 20, 2005;

69. Officer Herrier, Salinas Police Department Property Records, February 22, 2005;

70. M. Groves, Salinas Police Department Property Record, April 9, 2005;

71. **Certificate of No Records re: Betty Heston**, July 17, 2006;

72. K. Schwerer, Salinas Police Department, **Crime Scene Log Entry**;

73. Monterey County Sheriff-Coroner, **Office of the Coroner Autopsy Report: Robert Clark Heston, Jr.**, August 8, 2005;

74. Deposition transcript of **Kurt Kastner**, June 1, 2006;

75. Deposition transcript of **Robert Heston**, June 2, 2006;

76. Deposition transcript of **Robert Heston**, July 24, 2006;

77. Deposition transcript of **Juan Alberto Ruiz**, August 30, 2006;

78. Deposition transcript of **Clifford Satree**, June 1, 2006;

79. Deposition transcript of **Misty Kastner**, July 24, 2006;

80. Deposition transcript of **James Goodwin**, August 30, 2006;

81. Deposition transcript of **Michael Groves**, August 30, 2006;

82. DVD, **Interview of Clifford Satree**;

83. CD, **Individual Salinas Police Officer Interviews**;

84. Natividad Medical Center, **Interdisciplinary Patient Admission Assessment: Robert Heston**, February 19, 2005;

85. Sasson, **Physician's Orders: Robert Heston**, February 20, 2005; and,

86. Sasson, **Physician's Orders—Seclusion or Restraint: Robert Heston**, February 19, 2005.

SUMMARY OF FACTS

Evidence-based Personal History of Robert C. Heston

Historical evidence and information are critical ingredients to understanding the behavior and physical collapse of Robert C. Heston on the afternoon of Saturday, February 19, 2005 and his ultimate death on Sunday, February 20, 2005.

Mr. Heston's Prior Criminal Record

Mr. Heston's criminal record is extensive dating back to 1986 (City of Salinas Police Department, **Person Summary: Robert Clark Heston**, 4.28.05). The following table depicts his arrest and/or citation record.

Table 1 Robert Clark Heston Arrest and/or Citation History

Arrest and/or Citation	Date(s)
Under the influence of a controlled substance	2.7.93; 4.18.94; 6.27.96; 7.1.99; 4.1.00; 2.25.01
Driving under the influence	4.13.86; 4.1.00
Battery Vs custodial officer	7.1.99
Obstruct/resist Executive officer	7.1.99; 6.8.02
Drunk and disorderly	5.5.96; 1.25.98; 9.22.98
Resist/delay officer	8.30.03
Battery	9.9.95
Adw on peace officer	6.8.02
Harm peace officer dog/horse w/likely injury	6.8.02

Source: City of Salinas Police Department, **Personal History: Robert Clark Heston**, 4.28.05, pp. 1-3.

Table 1 does not include Mr. Heston's aggravated battery of a police officer, great bodily harm/dependent adult, resist or delay an officer, parole violations, and being under the influence of a controlled substance on February 19, 2005, nor does it include his prior field and other contacts with law enforcement officers. Overall, there were 18 crime reports involving Mr. Heston, 37 arrest/citations, 6 field interviews, and 2 crime vehicle listings (pp. 1-3). According to Monterey County District Attorney, Dean Flippo, Mr. Heston was arrested at least 19 times since 1985 (Letter to Chief Dan Ortega, November 21, 2005, p. 14).

Mr. Heston's Prior Violent Incidents Involving Controlled Substances

April 18, 1994 Confrontation and Arrest

Mr. Robert C. Heston had an extensive history of being physically violent with those around him, including family members, first responders, and others. Examples include the April 18, 1994 confrontation with police officers and first responders, when being under the influence of drugs, he irrationally thought first responders were going to shoot him, and became physically violent. "Police had to physically restrain

and handcuff Mr. Heston to get him on a gurney and to the hospital," where he tested positive for amphetamines (Letter to Chief Dan Ortega, November 21, 2005, p. 14).

June 27, 1996 Mr. Heston Arrest

On June 27, 1996, officers were called to a motel where Mr. Heston was irrationally yelling and pounding on vehicles. When officers attempted to frisk him for weapons, Mr. Heston became violent, wrestling with the officers, and becoming combative. "Mr. Heston later admitted to snorting crank and drinking heavily"(Letter to Chief Dan Ortega, November 21, 2005, p. 14).

July 1, 1999 Violent and Combative Behavior and Arrest

In yet another example of his violent and combative behavior, on July 1, 1999, Mr. Heston tried to grab an officer's pepper spray from his duty belt, and bit an officer on the hand and on the bicep. It took four people to place Mr. Heston into restraints. According to his father, Robert H. Heston, his son was "loaded on drugs" (Letter to Chief Dan Ortega, November 21, 2005, p. 15; Robert H. Heston deposition, 30:6, 9, 22, 25; 31: 14, 21,;).

Monterey District Attorney Flippo discussed 10 separate incidents involving Mr. Heston where he was on drugs and/or alcohol. These incident summaries describe the deviant and violent behaviors of Mr. Heston, whether it be breaking furniture or fighting with first responders. Many of these incidents also describe one or more behavioral cues demonstrated by Mr. Heston that are common in individuals who are in an "excited delirium" state such as sweating profusely, engaging in physical activity for long periods of time, running wildly, paranoia, superhuman strength, insensitivity to pain, etc. (Peters, 2006).

Mr. Heston's Prior Illegal Substance Use/Abuse – Starting 1993

As previously discussed, Mr. Robert C. Heston had prior arrests beginning in 1993 for being under the influence of controlled substances (Davidson, **Coroner's Report: Robert Clark Heston, Jr.**, 8/12/05, p. 14).

Mr. Heston's father testified that he recalled several incidents where his son was acting bizarre and did damage to furniture, etc. while under the influence of drugs (Robert H. Heston deposition, 30:9, 22: 33:14; 34:10; 39:5). In one instance, Robert C. Heston struck his mother (39:5), giving her two black eyes (40:3) while being on drugs. According to Mr. Robert H. Heston, he did not notice his son had a drug problem while he was in his middle to late 20s (24:4, 7).

It is clear from reading the incident reports about Robert C. Heston's bizarre and violent behavior that he was engaged in chronic drug abuse from at least 1993 to the time of his death. The medical literature surfaces that chronic drug abuse often alters the human brain, which can lead to a state of excited delirium. Such chronic drug

abuse can also cause one or more potentially fatal medical conditions (Peters, 2006; DiMaio & DiMaio, 2006; Chan, 2006; Karch, 2002).

Mr. Heston's Pre-existing Medical Condition

Mr. Heston's autopsy revealed that he had an enlarged heart (left ventricular hypertrophy with dilation) which in the absence of hypertension (high blood pressure) probably represents the effect of chronic abuse of methamphetamine or similar drug (Hain, **Monterey County Sheriff-Coroner Case Review and Opinion**, July 27, 2005, p.2). The medical literature also confirms that an enlarged heart can be the result of chronic stimulant abuse, absent other factors, which can lead to sudden death (DiMaio & DiMaio, 2006; Chan, 2006; Karch, 2002).

Another pre-existing condition of Mr. Heston is his having methamphetamine onboard. Again, the medical and sudden death literature surfaces that methamphetamine can cause cardiac arrest, leading to sudden death (Peters, 2006; DiMaio, 2006; Chan, 2006; Karch, 2002). According to the toxicology report regarding Mr. Heston, he had 0.64 mg/L of d-Methamphetamine and 0.06 mg/L of d-Amphetamine, which levels are potentially toxic (Barbour and Posey, **Central Valley Toxicology, Inc.: Robert Heston, Jr.**, February 28, 2005, p. 1). The results show Mr. Heston was over the "Potentially Toxic" area for the Blood Methamphetamine Range (p.1).

A portion of Mr. Heston's brain was subjected to a neurochemical analysis. The analysis found "abnormal elevation of synaptic dopamine levels and a defect in the uptake of dopamine (Haddix, July 12, 2005, p. 14). These findings are similar to those in "victims of fatal agitated cocaine delirium" (p. 14).

911 Call for Officer Assistance: 13:33:38 Hours: February 19, 2005

At approximately 1:34 p.m. on Saturday, February 19, 2005, Salinas police officers were dispatched to 134 Rodeo Drive, Salinas, CA for a father-son domestic incident (Dispatch log, p.1; Masahiro, **Police Report**, p. 1). The two individuals were Robert H. Heston (the father), age 66, and his son, Robert C. Heston, age 40. According to dispatch records, this residence was "flagged", requiring a minimum 3 police officer response (Radio log, p. 1). Officer Masahiro responded to the Heston residence, and upon arrival met fellow Salinas Officer Paredez, and later Officer Godwin (Masahiro, **Police Report,** p. 1). Officer Paredez stood in the doorway of the Heston residence and engaged the son to exit the residence (p. 1). The son refused to exit the residence, even though his father pleaded with him to leave (p. 1). Each time an officer would attempt to convince the younger Mr. Heston to leave, he would change the topic and not leave the residence (p. 1).

Approximately 20 minutes later, Salinas police Sergeant Dominici arrived at the scene and spoke to the senior Mr. Heston about what had and was taking place at the residence (Masahiro, **Police Report,** p. 2). The father told Sergeant Dominici that he

wanted his son to leave the property (p. 2). Sergeant Dominici asked the father if his son had broken anything, and the father replied that he had not broken anything, but had removed a furnace filter (p. 2). Because the son had not broken anything, Sergeant Dominici told the father the police could not force the son to leave the premises (p. 2). The sergeant also advised the father regarding the process for eviction, and also how to obtain a restraining order (Flippo, 2005, p. 2).

Prior to leaving, Salinas Officer Livingston ran a check on the son, and found he was on CDC parole (p. 2). Although the officers tried to locate the son's parole officer, they could not make contact with him (p. 2). The officers left the residence and the area (p. 2).

Officers Left 139 Rodeo Drive

A short time after advising the father that the police could not force his son to leave the premises, another person who was now at the residence asked the police to leave, as they were, in his opinion, causing the son to become more agitated (Masahiro, **Police Report,** p.2). The person explained that he and the father thought they could talk the son into leaving the residence, if the police would leave the area (p. 3). The Salinas police officers then left the area (p. 3).

911 Call for Officer Assistance at 139 Rodeo Drive: 14:19:53 Hours: February 19, 2005

Approximately 2:19 p.m., a very short time after the officers had left the residence they were again dispatched to the residence and told that an assault had taken place (Masahiro, **Police Report,** p.3). Salinas Sergeant Dominici and Officer Fairbanks were the first two officers to return to 139 Rodeo Drive (Flippo, 2005, p. 2). County Communications advised officers that the father, Robert H. Heston, had been assaulted by his son, and that his son was throwing items from the home (Masahiro, **Police Report,** p.3; Heston photographs, #001-003). Sergeant Dominici requested additional units respond to the premises "Code 3", and that units with TASER ECDs also respond (p. 3).

Mr. Heston's Confrontation with Officers

Sergeant Dominici and Officer Fairbanks saw a different scene than the one they had left a few minutes earlier, "with debris strewn all over the front yard, on the sidewalk, and even across the street (Heston photographs, # 001-003; 032-037; 044-050; 078-159; 172-189). Debris included a smashed grandfather clock on the front lawn, picture frames, pictures, a cane, clothing, and pieces of shattered wood" (Flippo, 2005, p. 2). It appeared to the officers that Robert C. Heston was completely out of control, as he hurled items through the front door of the residence (p. 2). It appeared that he had punched holes in the ceiling of the house (Heston photographs, # 067-076).

Mr. Heston Battered Sergeant Dominici

To get a closer look at what was going on inside the residence, Sergeant Dominici approached the front door. He could hear items being broken inside, and saw the senior Mr. Heston on the living room floor, being dragged by the arm across the room by his son (Flippo, 2005, p. 2). Fearing that the son might harm or kill the father, Sergeant Dominici moved closer to the residence so he could deploy his TASER ECD (p. 2). As he was positioning himself, the younger Mr. Heton threw a rod, javelin-style, toward Sergeant Dominici, striking him in the chest area (p. 2; Heston photographs, # 190-195). The bullet resistant vest stopped the rod from injuring the officer, but the impact left a mark on Sergeant Dominici's uniform shirt (p. 2; Heston photographs, # 190-195).

ADVANCED TASER M26 ECD Deployment

Sergeant Dominici deployed his TASER ECD at Robert C. Heston from a distance of 12 to 15 feet (Flippo, 2005, p. 2). Even though Sergeant Dominici believed the TASER ECD probes made contact with Mr. Heston and administered a shock to him, the rampaging son failed to go to the ground (p. 2). This surprised both Sergeant Dominici and Officer Fairbanks (p. 2).

Officer Fairbanks deployed his TASER ECD and it appeared to have some effect on Mr. Heston as he became somewhat rigid (Flippo, 2005, p. 3), but again he did not go to the ground, and then it appeared that one of the two probes dislodged, no longer making contact with the son's body (p 3).

Sergeant Ruiz and Officer Livingston Arrived

Sergeant Ruiz and Officer Livingston arrived at the scene, and attempted to engage the younger Mr. Heston (Flippo, 2005, p. 3). Attempting to engage Mr. Heston in conversation, the younger Mr. Heston was initially non-responsive, but then using a Frisbee motion, threw a heavy cylindrical weight from the grandfather clock at Sergeant Ruiz, forcing him to evade the oncoming object or be struck with it (p. 2). Sergeant Ruiz and Officer Livingston both fired their departmentally-issued TASER ECDs at Mr. Heston, but again with very little, if any, effect (p. 3).

Officer Goodwin had arrived on the scene, and had drawn his TASER ECD (Flippo, 2005, p. 3). Watching as Sergeant Ruiz attempted a second 5-second TASER ECD application with no result (p. 3). Sergeant Ruiz's TASER ECD crackled, which is indicative that it had not made a good connection with the target, or that a wire may have been broken. Seeing and hearing these events, Officer Goodwin deployed his TASER ECD striking Mr. Heston (p. 3). Officer Livingston also began a second 5-second TASER ECD application (p. 3).

The two TASER ECD applications finally had affected Mr. Heston, who reacted by falling to the ground (p. 4). As he fell, Mr. Heston struck his head on an end table,

and then rolled onto his stomach with both hands placed underneath his body (Flippo, 2005, p. 4). Ignoring the officers' commands to show his hands, Mr. Heston continued to keep his arms and hands clenched underneath his body (p. 4). Although officers were trying to remove Mr. Heston's hands from under his body, they were unsuccessful (p. 4).

Efficacy of the TASER ECD Applications

When Officers Livingston and Godwin saw Mr. Heston attempt to get off the floor, Officer Livingston administered a total of three TASER ECD cycles to him, but without effect (Flippo, 2005, p. 4). Officer Godwin also administered two TASER ECD cycles to Mr. Heston, before disconnecting his cartridge and replacing it (p. 4). All the officers were surprised at the non-effect of the TASER ECD deployments on Mr. Heston, as it appeared he was immune to the TASER devices (p. 5).

Controlled and Restrained

Having replaced his TASER ECD cartridge, Officer Godwin told the other officers to clear, as he was going to deploy his TASER ECD again (Flippo, 2005, p. 5). Shooting the TASER ECD probes into Mr. Heston's back area, Mr. Heston's arms came free (p. 5). According to witnesses, there were no other TASER ECD applications other than Officer Godwin's (p. 5).

With his arms free, the officers immediately controlled and restrained Mr. Heston with metallic handcuffs (Flippo, 2005 p. 5). During the control and restraint process, Mr. Heston continued to resist the officers' efforts (p. 5).

Paramedic Intervention

After handcuffing Mr. Heston, the officers noticed that he was not breathing (Flippo, 2005, p. 5). Until emergency medical technicians arrived a few minutes later, officers began cardiopulmonary resuscitation (p. 5). Mr. Heston did regain a pulse, prior to being transported to the hospital (p. 5).

Arrival at Hospital

According to American Medical Response (AMR), paramedics arrived at 139 Rodeo Drive at 2:34 p.m. and began rescue efforts on Mr. Heston, including but not limited to, administering fluids, medications, plus continuing CPR and rescue breathing. They were successful in retrieving a pulse on Mr. Heston for approximately 10 minutes (Davidson, 2005, p. 6). Paramedics departed this location at 2:45 p.m. with Mr. Heston, arriving at Natividad Medical Center Emergency Room at 2:49 p.m. (**Service Report**, February 19, 2005, p. 1). Upon arrival at the hospital, medical personnel administered medical care. Mr. Heston's admission assessment data indicate that his temperature was 101º (taken rectally), with attending physician orders to use a "cooling blanket to keep [Mr. Heston's] temperature at 97.5º

(Natividad Medical Center, **Interdisciplinary Patient Admission Assessment: Robert** Heston, February 19, 2005, p. 1; Sasson, **Physician's Orders—Seclusion or Restraints: Robert** Heston, **February 19, 2005, p. 9).** Laboratory studies showed the "presence of a severe acidosis and elevated sodium, potassium, creatine, and creatine phosphokinase levels (Davidson, 2005, p. 6). "A preliminary urine toxicology test detected amphetamines and ethanol in the decedent's system," but a Computerized Axial Tomography (CAT) scan failed to show signs of trauma, skull fracture, hemorrhage, or injuries to the head and/or neck areas (p. 6). On Sunday, February 20, 2006, Dr. Nick Sassoon pronounced Mr. Heston dead at 7:46 p.m.

Terri Haddix, M.D. Autopsy

Terri Haddix, M.D. conducted an autopsy on Mr. Heston, and made the following diagnoses:

- Agitated state associated with methamphetamine intoxication;
- Applications of TASER devices with multiple sites of contact on trunk and extremities;
- Cardiopulmonary arrest: diffuse hypoxic/ischemic encephalopathy, rhabdomyolysis, renal and hepatic insufficiency, and acute bronchopneumonia;
- Mild four chamber cardiac dilation and hypertrophy;
- Cutaneous contusions and abrasions on arms and legs;
- Cutaneous contusions, abrasions and incised wounds on both hands; and,
- Medical therapeutic intervention including oral endotracheal intubation, orogastric tube, EKG pad, pulse oximetry probe, Foley catheter, indwelling vascular catheters, needle puncture marks and rectal tube.

Dr. Haddix determined Mr. Heston's cause of death to be as follows:

- CAUSE OF DEATH: Multiple Organ System Failure
- DUE TO: Cardiopulmonary Arrest
- Agitated State Associated with Methamphetamine intoxication and
- Applications of TASER (Davidson, 2005, p. 10).

John Hain, M.D. Post-Mortem Review

A post-mortem examination was conducted by Dr John Hain, M.D. at the request of Salinas Police Department Chief Daniel Ortega. Dr. Hain determined Mr. Heston's cause of death to be as follows:

- Multiple organ failure due to cardiac arrest due to agitated state due to methamphetamine intoxication;
- CONTRIBUTING CONDITIONS: Left ventricular hypertrophy and dilation; TASER application; and, struggle with police (p. 10)

Steven Karch, M.D. Post-Mortem Review

A second post-mortem examination was conducted by Dr. Steven Karch, M.D. after it was ordered by Monterey County Sheriff Mike Kanalakis. Dr. Karch determined Mr. Heston's cause of death to be as follows:

- CAUSE OF DEATH: Multiple organ system failure
- DUE TO: Cardiopulmonary arrest
- DUE TO: Chronic methamphetamine toxicity; excited delirium; left ventricular enlargement and fibrosis
- CONTRIBUTORY CAUSES: Rhabdomyolysis, second to multiple TASER application (p. 11)

OPINION METHODOLOGY

The following opinions were developed using one or more of the following qualitative and quantitative research methodologies, in addition to my education, training, experience, and literature review. These research methodologies include Historiography, Content Analysis, Phenomenology, Ethnography, Discourse Analysis, and Case Study.

The documents reviewed are classified in the social sciences as *archival records*. According to Graziano and Raulin (1997), archival records are "records that already exist" (p. 135). Archival records are one type of unobtrusive measure available to researchers and/or experts. The review and analysis of archival records is an accepted research methodology in the social sciences, and applies to law enforcement research. While not as exacting as *experimental research* where there are control and experimental groups, conducting interviews and examining archival records, plus conducting observations are methodologies that are generally accepted and used in the social sciences.

PRE-INCIDENT OPINIONS

Pre-Incident Opinions are those professional opinions that focus on Mr. Heston's personal history and behaviors, product warnings, and training services of TASER International, Inc. (TASER) prior to the instant matter. I reserve the right to amend these opinions based upon additional testimony and/or discovery documents.

1. Robert Clark Heston had a history of deviant, threatening, and/or illegal behavior for at about two decades prior to his death in 2005.

Mr. Heston's criminal record is extensive dating back to 1986 (City of Salinas Police Department, **Person Summary: Robert Clark Heston**, 4.28.05). The following table depicts his arrest and/or citation record.

Table 1 Robert Clark Heston Arrest and/or Citation History

Arrest and/or Citation	Date(s)
Under the influence of a controlled substance	2.7.93; 4.18.94; 6.27.96; 7.1.99; 4.1.00; 2.25.01
Driving under the influence	4.13.86; 4.1.00
Battery Vs custodial officer	7.1.99
Obstruct/resist Executive officer	7.1.99; 6.8.02
Drunk and disorderly	5.5.96; 1.25.98; 9.22.98
Resist/delay officer	8.30.03
Battery	9.9.95
Adw on peace officer	6.8.02
Harm peace officer dog/horse w/likely injury	6.8.02

Source: City of Salinas Police Department, **Personal History: Robert Clark Heston**, 4.28.05, pp. 1-3.

Table 1 does not include Mr. Heston's aggravated battery of a police officer, great bodily harm/dependent adult, resist or delay an officer, parole violations, and being under

the influence of a controlled substance on February 19, 2005, nor does it include his prior field and other contacts with law enforcement officers. Overall, there were 18 crime reports involving Mr. Heston, 37 arrest/citations, 6 field interviews, and 2 crime vehicle listings (pp. 1-3). According to Monterey County District Attorney, Dean Flippo, Mr. Heston was arrested at least 19 times since 1985 (Letter to Chief Dan Ortega, November 21, 2005, p. 14).

2. Mr. Robert C. Heston had an extensive illegal substance abuse history prior to his death in 2005.

Mr. Robert C. Heston had prior arrests beginning in 1993 for being under the influence of controlled substances (Davidson, **Coroner's Report: Robert Clark Heston, Jr.**, 8/12/05, p. 14). Mr. Heston's father testified that he recalled several incidents where his son was acting bizarre and did damage to furniture, etc. while under the influence of drugs (Robert H. Heston deposition, 30:9, 22: 33:14; 34:10; 39:5). In one instance, Robert C. Heston struck his mother (39:5), giving her two black eyes (40:3) while being on drugs. According to Mr. Robert H. Heston, he did not notice his son had a drug problem while he was in his middle to late 20s (24:4, 7). It is clear from reading the incident reports about Robert C. Heston's bizarre and violent behavior that he was engaged in chronic drug abuse from at least 1993 to the time of his death.

3. The training resources offered by TASER in 2005 were not deficient or defective, and were not a product that was sold to Mr. Heston.

A review of TASER instructional lesson plans, specifically Versions 11 (January 2004) and 12 (January 2005) fails to identify TASER as having a deficient or defective training or training service. As a law enforcement program instructional designer, certified online instructor, certified online instructional designer, and former professor who has taught instructional design at the college level, in my professional opinion, the TASER instructor training, Versions 11 and 12 meet and/or exceed the criteria of reasonable training content, product warnings, and outcome-based training. Versions 8.0 (August 2002), 9.0 (May 2003), 10 (July 2003), and 10.1 (November 2003) of the TASER instructional lesson plans were also reviewed with the same findings. As a general matter, I am familiar with all TASER instructional lesson plans and training materials for the TASER M26 and X26 ECDs.

According to Dick, Carey, and Carey (2001), there are three domains of learning that are to be included in the instructional design of a reasonable training program, such as TASER's: intellectual skills (p. 39), attitudes (pp. 40-41), and psychomotor skills (p. 40). Intellectual skills include the "forming of concepts, applying rules, and solving problems" (p. 39). The authors' note that "with these skills the learner can classify things according to labels and characteristics, can apply a rule, and can select and apply a variety of rules in order to solve problems" (p. 39). Versions 11 and 12 of the TASER instructor training program include the development of intellectual skills through the teaching of the historical development of TASER devices, electronic control device (ECD) technologies, stun versus neuro-muscular incapacitation (NMI), basic concepts of

electricity, including, but not limited to TASER waveforms, coulombs, voltage, amperes, watts, power, joules, etc., common effects of NMI, TASER M26 and TASER X26 operation, dataport downloads, probe and drive stun deployments, probe placement techniques, probe trajectory, weapon management, use-of-force, tactical considerations, causes of limited effectiveness, medical studies, policy considerations, controlling and/or cuffing under power, drive stun, animal use, "excited delirium," sudden death, emotionally disturbed persons, suicidal persons, wet environments, pacemakers, probe removal, potential injuries, etc. (Instructor Certification Course, *Lesson Plan v.11.0*, 2004; safety rules, pp. vi, 35, 36,37, 38, 39, 40, 57, 59, 60, 66, 70, 117, 155; puncture wounds, skin irritation, pp. 29, 32, 36,37, 38, 153, 154, 155; head/face shots, pp. 32, 36, 70, 141, 153; throat, groin, pp. 36, 70, 153; common effects of EMD, pp. vi, vii, 30, 32, 35, 36, 37; embedded probes…groin, pp. 37, 38, 153, 154, 155; excited delirium, in-custody death, pp. 127, 128, 129, 130; deployment cycles, pp. 116, 138 147; follow-up commands, pp. 139, 147; *Instructor Certification Lesson Plan and Support Material*,*v. 12.0* [January 2005]; safety rules, pp. viii, ix, x, xii, 12, 42, 44, 47, 50, 53, 54, 61, 62, 85, 87, 159, 208, 209, 210; puncture wounds, skin irritation, pp. 38, 39, 42, 50, 87, 104, 190, 196; head/face shots, pp. 42, 90, 91, 190; throat, groin, pp. 42, 90 91; common effects of EMD, pp. 38, 39, 42, 47, 196; embedded probes…groin, pp. 44, 50, 87, 209, 211; excited delirium, in-custody death, pp. 175,176, 177, 178; deployment cycles, pp. 157, 187, 199; follow-up commands, pp. 187, 188, 198, 199).

The TASER instructor-candidate must also take a written examination, which is another form of testing of the learner's intellectual skills (see M26 and X26 written assessment instruments). The learner is also required to be able to *explain* information about the TASER ECDs (Instructor Certification Course, *Lesson Plan v. 11.0*, 2004; see also *Lesson Plan v. 12.0*, January 2005).

Attitude, or affective domain, is contained throughout the TASER 2004 and 2005 *Lesson Plans* in a variety of locations and formats. In short, affective domain focuses upon the learner's attitude regarding classroom rules, safety, respect, etc.

Psychomotor skill characteristics generally require the learner to execute muscular actions, with or without equipment, to achieve special results (Dick, Carey, and Carey, 2001, p. 40). The 2004 and 2005 Instructor Certification Course, *Lesson Plans v. 11.0 and 12.0*, have several psychomotor skills requirements, including, but not limited to: an aiming drill, a first firing drill, a live fire drill, live simulation training, and a reloading drill. The *Lesson Plans* also requires the learner to demonstrate these psychomotor skills through the use of objectives.

The instructor and other training offered by TASER is a service that it provides to law enforcement rather than a product. It is well known by trainers and training providers that training is a service and not a product, and thus not subject to strict products liability.

As additional background, TASER has several layers of TASER ECD instructor: Lead Instructor, Director of Training, Training Board, Senior Master Instructors, Master Instructors, Advanced Instructors, and Instructors. TASER has published 16 versions of

its training program (currently up to Version 13), with Version 13.1 being developed for release in early 2007. TASER also publishes Training Bulletins on an as-needed basis. The substance of these Training Bulletins is published on TASER's website (www.taser.com), and is incorporated into the succeeding training program version. TASER provides a current training CD(s) or DVD(s) with every TASER ECD shipped (as well as a Product Manual), and every TASER ECD instructor receives a CD or DVD and a manual as part of the training program. With each Training Bulletin or training version release, TASER either emails, faxes, or mails Training Bulletins and training CDs or DVDs to all currently certified instructors in its database (over 30,000). Instructors are required to go to TASER's Website and ensure latest version training and updates prior to presenting a training program. TASER also requires its instructors to repeat its instructor programs every two years for updates and refreshers.

Additionally, TASER sponsors other TASER device training opportunities, including, but not limited to: annual conferences, armorers programs, risk management and executive programs, etc.

4. Salinas, California is a sophisticated use-of-force user and a learned intermediary.

Government entities that purchase law enforcement equipment investigate such equipment, conducting research and evaluation on it prior to investing public monies on such products. As a former law enforcement administrator, town finance committee member, former president of a municipal Civil Service Commission, and seminar presenter on public budgeting, few, if any, government entities spend large amounts of public monies without first conducting product reviews, comparing similar products, obtaining information, studies, and data from sources other than the manufacturer, etc. prior to putting a product bid out for response. This extensive process educates the government entity about the product, including its primary and secondary features, benefits, limitations, utilities, risks, warnings, etc.

Law enforcement agencies have many research resources available to them, including, but not limited to: law enforcement publications (there are many), numerous specifically devoted to law enforcement products (*e.g.*, Police, Law and Order, The Police Chief, Law Enforcement Technology); law enforcement organizations, including international, national, state, and local organizations (*e.g.*, International Association of Chiefs of Police, Fraternal Order of Police, National Sheriff's Association); law enforcement advisory groups (*e.g*, International Association of Chiefs of Police, Americans for Effective Law Enforcement); law enforcement training organizations and groups (*e.g.*, American Society for Law Enforcement Training, International Law Enforcement Educators and Trainers Association, International Association of Law Enforcement Firearms Instructors, and many others); groups critical of law enforcement, especially critical of law enforcement use of force; state standards and training organizations, boards, or groups; the Internet and Websites specifically devoted to law enforcement (*e.g.*, www.police.com, www.officer.com, www.policeone.com); legal research databases (*e.g.*, Westlaw, Lexis, Findlaw); and many other resources.

Since many of the products, services, and training programs purchased by government entities focus on use-of-force equipment and techniques (*e.g.*, handguns, rifles, machineguns, shotguns, ammunition, impact projectiles and launchers, batons, chemical irritants, chemical weapons, special team weapons systems, defense and arrest tactics, lateral vascular neck restraints, pressure point control tactics, specialty restraint systems and/or equipment, etc.), these government entities have extensive knowledge about use-of-force equipment and techniques, their operations, tactics, benefits, limitations, and risks, because they have a duty to conduct such research and analyses, and know that no use-of-force product, technique, or option always works, is free from limitations, or is risk free. Therefore, the extensive available literature strongly supports my professional opinion that government entities are sophisticated use-of-force users and thus learned intermediaries. Government entities know far more about use-of-force equipment, its operations, etc., than the general public and even more than other departments operating within the government entity, for which the equipment was not purchased. This knowledge enables government entities to know that any use-of-force has the capability of causing, resulting in, or contributing to, or being temporal to death or serious bodily injury.

5. Salinas, California Peace Officers are sophisticated use-of-force users.

I am familiar with law enforcement training that is conducted within the State of California, and the types of training California peace officers receive regarding use-of-force, techniques, weapons, tactics, options, incident realities, etc. based upon literature review, interviews, and having taught many law enforcement officers both inside the State of California and outside of it. California peace officers receive specialized training in use-of-force, use-of-force equipment, such as handguns, rifles, pepper spray, TASER ECDs, etc., and use-of-force tactics and techniques, and therefore, in my professional opinion, are sophisticated use-of-force users when it comes to the application of force. California peace officers know that any use-of-force has the risk of causing or contributing (in some way to) death or serious bodily injury, such as spraying a person with pepper spray who then walks in front of a passing motor vehicle and is struck and killed or seriously injured. These law enforcement officers also know that any use-of-force event is multifactorial, unpredictable, usually rapidly evolving, and often filled with numerous unknown, or unverified, factors and conditions. These officers also understand that everyone they deal with is different, with a different set of factors, and may have varying degrees of special susceptibilities and/or conditions.

6. TASER provided reasonable and sufficient warnings about its products to the purchasers and users of its products.

TASER has provided reasonable and sufficient warnings about its products to the people who and governmental entities that purchase and use them. This opinion is partially based upon my knowledge about and experience in writing product warnings for law enforcement equipment and techniques, an extensive review of like law enforcement use-of-force equipment and techniques warnings, and finally based upon a content

analysis of TASER's product warnings. TASER has provided written, audio-visual, demonstrative, and experiential warnings about its products in the TASER device Product Manual, on TASER's Website, and extensively in the TASER training programs, and has also provided verbal, visual (including video and audio examples), demonstration, and other warnings, which supplement and reinforce the written warnings, during instructor training classes (see X26 and M26 written warnings; training CDs/DVDs; Product Manuals; TASER's Website – www.taser.com; and Instructor Certification Course). Also, TASER training materials and Website include extensive research and other information, *Lesson Plans 11 and 12* (January 2004 and January 2005, respectively] as previously listed and discussed.

I have conducted a content analysis of the very limited warnings provided by the manufacturer of the following use-of-force products supporting the conclusion that TASER's myriad of warnings are far more thorough, focused, and complete than those reviewed.

NOVA XR-5000 Series Stun Gun, NOVA Spirit L.E.S. II, and NOVA Electronic Riot Shield

NOVA National Training, Inc. and NOVA Law Enforcement Division have produced a training manual about the reasonable uses of the NOVA stun gun products. While the 1987 training manual contains a history of stun gun technology, including safety data and medical research, it is far below the information provided by TASER about its electronic pulse technology products. The 1987 NOVA manual only contains four pages on these three topics (*NOVA Law Enforcement Training Manual & Operational Guide in the Use of Electronic Non-lethal Control Devices*, 1987, pp. 18-21).

Regarding "location of application", the 1987 NOVA manual identifies the areas where the NOVA products can be applied, but fails to separate out the NOVA hand-held devices from the NOVA electronic shields (*NOVA Law Enforcement Training Manual & Operational Guide in the Use of Electronic Non-lethal Control Devices*, 1987, p. 41), and also fails to explain why the rationale and medical implications of those areas of the body are designated "unacceptable".

DO-RITE Sticks

Manufactured by the DO-RITE® Corporation, the DO-RITE sticks are designed as a non-lethal, temporary restraining device, resembling martial art nunchakus. The undated (late 1980s) training brochure only depicts how the sticks can be used, without any written warning(s) about its misuse, or ability to seriously injure or kill a person.

Flex-Baton Police Nunchaku

The 1990 training manual on the Flex-Baton Police Nunchaku provides limited warnings on page 6. Specifically, the warning advised the reader to "avoid head contact"

with the Flex-Baton. Although the manual is chocked-full of pictures that demonstrate how to use the Flex-Baton, the warning(s) are very limited, and fail to provide the reader with reasonable warnings about this product that can cause serious bodily injury or death.

The BodyGuard Restraining Systems Owner's Manual and Instructions for Use

This undated, five-page, typed *Owner's Manual and Instructions* (approx. mid 1990s) fails to identify potential injuries to the person on whom the device is placed. Although there is a mention on page 3 about positional asphyxiation, the manual fails to explain it, etc.

Manufactured by BioGuardian Systems, Inc., the undated four-page *Training Outline* fails to provide any warnings about the inherent or potential dangers and/or risks to the use of this product on "violent subjects" (p. 2).

SABRE H2O Series and Dual Propellant System (pepper spray)

While this 2005, eight-page product brochure discusses company history, formulations, advantages, consistency, other products, and electronic immobilization device compatibility, it fails to provide any warnings about its product to the potential purchaser.

ASP Tactical Handcuffs

The 2004 brochure about this product does contain information about avoiding handcuff neuropathy by double-locking the handcuffs, which should prohibit the handcuffs from being over tightened. The product brochure also warns against striking the edge of the targeted wrist with a double-locked handcuff, because the wrist might fracture. Finally, the brochure warns against over tightening handcuffs because they can cause soft tissue or nerve damage. There is also mention of how an uncontrolled subject can use the handcuffs as a weapon against the officer.

ASP Baton Basic Certification Course Syllabus

Approximately one-half page of this 1996 44-page book (excluding appendices), discusses "target areas" with the metal baton (*ASP Basic Certification (ABC) Course Syllabus*, 1996, p. 36). The book is only specific about its warning not to strike the head, neck, spine, sternum, or groin (p. 36).

Tuff Tie Restraint

The undated (approx. 1990), one-page "Directions for Use" only says that "it is almost impossible to cut off circulation at the wrists" regarding the use of this handcuff-like device. No other warnings are provided regarding the device's potential injury.

The Immobilizer Restraint Device

The 1981, 25-page training manual fails to warn of potential injury to the user or others. Even though this device is used to wrap around a person's legs and then forcefully throw the person to the ground, there are no warnings of any kind in the training manual, which was produced by the manufacturer.

FLEX-CUF Restraining Tie Instruction Manual

This undated (approx. 1970s), eight-page instruction manual fails to provide warnings about the potential injury to those people who have the plastic "handcuffs" applied to them. There is no mention of potential wrist injury, arm, back, etc. injury.

The WRAP

This undated (approx. 1995), five-page *Basic Application Manual* contains limited warning on its first page. Only one specific warning focuses on the shoulder harness system: "The shoulder harness system should never be over tightened to the point that it interferes with the subject's ability to breathe freely" (p. 1).

RIPP Restraint for the Law Enforcement, Corrections & Medical Fields

This undated (approx. 1980s), 11-page booklet identifies several pieces of restraint equipment, while also providing instruction on how they can be applied. The only so-called "warning" is a disclaimer that tells the buyer that (s)he assumes all liability about the use of the various products. No other warnings are provided about these restraint products.

The Source

The instructor's manual provides very limited warnings to the user about the use of this device. One of the first electronic "stun" technology devices, there are very few warnings about the use of the "stun" section of the flashlight, which is advertised as a "non-lethal weapon." The only "warning" found in Universal Safety Corporation's *Instructions for maintenance and use*, is the following: "**Do not** touch lamp with fingers for several minutes until cool." The lesson plan only warns users against using *The Source* as follows: "Source should not be used against neck for choking." "Do not use Source to strike at the head or throat." (Smith, undated, no page).

Electronic Batons

Similar to cattle prods, these devices were manufactured in the United States in the 1980s, and failed to have any warnings associated with them. There was no medical testing of these devices, and the devices were used solely at the risk of the buyer and his or her agents.

TALON Glove

Another electronic device enclosed in a glove, it failed to provide reasonable warnings about its use. The device is no longer manufactured.

Metallic Restraints

Most handcuff and metallic restraint directions that come with the product fail to warn against the over tightening of the handcuffs and/or metallic restraints, and the potential injuries that can be caused. This is true for most handcuffs and leg irons. Few, if any, mention of potential injury warnings are found in product literature or directions.

Kel-Lite

The first heavy-duty flashlight manufactured primarily for law enforcement use, there were no warnings that came with the product regarding how it should be used. When the *Kel Lite Manual of Defensive Tactics* (cir. 1970) was published, the only warning given to the reader was "Head blows should definetly [sic] be avoided" (p. 21).

Lamb Baton

The *Lamb Method of Baton* was developed by former Boston Police Officer, Arthur Lamb. It essentially involved two basic movements, so it was a very popular baton method in the 1970s. In *A Handbook for Use of the Baton: The Lamb Method* published by Harper & Row Publishers, Inc. (1977), the only pseudo-warning is found on page 12: "From the kneecap, the baton is swung with a wide circular motion backhand, striking the opponent's collarbone. It should be stressed here that the collarbone is a secondary target. Though in this instance a blow to the collarbone would probably not result in permanent injury, the risk of injury is greater than a blow to the knee. Therefore, it should be resorted to only when necessary" (Smith, 1977, p. 12).

The SX-24 Police Baton Owner's Manual

Published by Monadnock Lifetime Products, Inc., the *Owner's Manual* fails to tell the user the areas of the body to avoid when using the baton. However, there is one warning to the user: "The SX-24 police baton was not designed for use against such things as trees, telephone poles, concrete structures or other extremely rigid objects. Such intentional abuse could result in an immediate or latent component failure of the baton. Use against such extremely rigid and hard objects constitutes intentional abuse since it goes far beyond the normal and reasonable conditions relating to training and/or practices or activity associated with law enforcement, security or correction. If the SX-24 police baton is subjected to such abuse a failure in its function is possible and could result in an injury to the user or bystander. Such abusive usage of the SX-24 police baton is strongly discouraged by Monadnock Lifetime Products, Inc." (Monadnock Lifetime Products, Inc., November 1988, inside front cover).

The PR-24X Police Baton Owner's Manual

Published by Monadnock Lifetime Products, Inc., this manual offers the same basic "warning" to the user as contained in the previous entry. Again, there are no warnings to the user about what target areas of the body are to be avoided, etc.

Clubs

Published by Monadnock Lifetime Products, Inc. the training manual offers very limited warnings, and advocates the use of the baton for air chokes and other potentially lethal techniques. While the training manual does note the "temple" as a very susceptible vital spot which if struck with sufficient force may cause unconsciousness or death" (Monadnock Lifetime Products, Inc., 1968, p. 4), it fails to instruct the user not to strike a person in this area. It does teach to use a short baton, known as a yawara, to strike the head or neck (p. 8), when the opponent attempt to punch.

In *Section V. Techniques with the Baton*, the training manual teaches how to apply a "Japanese strangle" (baton placed alongside the neck) and the "American strangle" (baton placed across the throat) (Monadnock Lifetime Products, Inc., 1968, p. 18). In the latter technique, there is no warning to the user that it this technique, even when applied correctly, can cause serious bodily injury or death.

After conducting primary content analysis research on the above-referenced product literature and/or training documents, it surfaces that TASER has extensive warnings about the potential effects and injuries its products may cause through reasonable use. No other manufacturer's product literature, research, or supporting documentation, about electronic use-of-force products has the extensive international safety documentation, studies, warnings, etc. as that of the TASER-brand products. This also is true, in most every case, for non-electronic use-of-force products. Therefore, based upon the foregoing content analysis research, in my professional opinion, the warnings provided by TASER are not only reasonable, but also some of the most complete warnings and support documentation and information provided by any manufacturer of use-of-force products, techniques, or systems.

7. TASER does not set policy for agencies regarding TASER ECD training and/or policies or procedures.

Each law enforcement agency is expert in and responsible for its own use-of -force deployment and post-deployment policies and procedures (Instructor Certification Course, *Lesson Plans* versions 11 and 12 (see p. 216, v. 12). Each law enforcement agency that adopts TASER products has a duty to establish its own policy, procedure, training, etc. regarding the electronic device(s). This is not only reasonable, but also responsible for the manufacturer, as it does not have any ministerial authority over the government entity or the law enforcement agency or the user of the product. A reasonable government entity administrator or board member knows that the entity, or employer, has a duty to train its employees in core tasks, and also to regulate employee

discretion about a product through the use of written policies, procedures, and/or other guidelines. A reasonable administrator or board member also knows that guidance in the format of sample policies and other documents can be obtained from such organizations as the United States Department of Justice (DOJ), including the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), and the Civil Rights Division), the International Association of Chiefs of Police (IACP), the National Sheriffs' Association (NSA), Americans for Effective Law Enforcement (AELE), FBI National Academy (FBI NA), Police Executive Research Forum (PERF), National Organization of Black Law Enforcement Executives (NOBLE), state Peace Officer Standards and Training Boards (including the Ohio Peace Officer Standards and Training), professional consultants, and similar organizations, and institutions of education and training. In my professional opinion, TASER has no duty to set policies for agencies that purchase its products. Further, government entities and law enforcement agencies have a duty to develop such policies and directives to reasonably guide user discretion and to also provide reasonable guidance about the electronic device.

INCIDENT OPINIONS

Incident Opinions are those opinions that focus on the actions of the parties during the incident under review. I reserve the right to amend or supplement these opinions.

8. Mr. Robert Clark Heston had a responsibility to not break the law by knowingly and intentionally consuming illicit substances, specifically methamphetamine.

"A preliminary urine toxicology test detected amphetamines and ethanol in the decedent's system," (Davidson, 2005, p. 6). Drs. Haddix, Hain, and Karch independently ascertained that Mr. Heston had toxic and potentially lethal amounts of methamphetamine in his system at the time of his death, which in my professional opinion, is *prima facie* proof that he had consumed illicit substances, specifically methamphetamine. Additionally, Mr Heston's chronic abuse of stimulants contributed to the effects on his body and the excited delirium episodes.

9. Mr. Robert Clark Heston had a responsibility to not break the law by intentionally battering Sgt. Dominici, by battering his father, and by not resisting officers when being taken into custody.

Sergeant Dominici saw the senior Mr. Heston on the living room floor, being dragged by the arm across the room by his son (Flippo, 2005, p. 2). Fearing that the son might harm or kill the father, Sergeant Dominici moved closer to the residence so he could deploy his TASER ECD (p. 2). As he was positioning himself, the younger Mr. Heston threw a rod, javelin-style, toward Sergeant Dominici, striking him in the chest area (p. 2; Heston photographs, # 190-195). The bullet resistant vest stopped the rod from injuring the officer, but the impact left a mark on Sergeant Dominici's uniform shirt (p. 2; Heston photographs, # 190-195).

To attempt to capture and control Mr. Heston, Sergeant Dominici deployed his TASER ECD at him from a distance of 12 to 15 feet (Flippo, 2005, p. 2). Even though Sergeant Dominici believed the TASER ECD probes made contact with Mr. Heston and administered a shock to him, the rampaging son failed to go to the ground (p. 2). This surprised both Sergeant Dominici and Officer Fairbanks (p. 2).

Officer Fairbanks deployed his TASER ECD and it appeared to have some effect on Mr. Heston as he became somewhat rigid (Flippo, 2005, p. 3), but again he did not go to the ground, and then it appeared that one of the two probes dislodged, no longer making contact with the son's body (p 3).

Sergeant Ruiz and Officer Livingston arrived at the scene, and attempted to engage the younger Mr. Heston (Flippo, 2005, p. 3). Attempting to engage Mr. Heston in conversation, the younger Mr. Heston was initially non-responsive, but then using a Frisbee motion, threw a heavy cylindrical weight from the grandfather clock at Sergeant

Ruiz, forcing him to evade the oncoming object or be struck with it (p. 2). Sergeant Ruiz and Officer Livingston both fired their departmentally-issued TASER ECDs at Mr. Heston, but again with very little, if any, effect (p. 3).

Officer Goodwin had arrived on the scene, and had drawn his TASER ECD (Flippo, 2005, p. 3). Watching as Sergeant Ruiz attempted a second 5-second TASER ECD application with no result (p. 3). Sergeant Ruiz's TASER ECD crackled, which is indicative that it had not made a good connection with the target, or that a wire may have been broken. Seeing and hearing these events, Officer Goodwin deployed his TASER ECD striking Mr. Heston (p. 3). Officer Livingston also began a second 5-second TASER ECD application (p. 3).

The two TASER ECD applications finally had affected Mr. Heston, who reacted by falling to the ground (p. 4). As he fell, Mr. Heston struck his head on an end table, and then rolled onto his stomach with both hands placed underneath his body (Flippo, 2005, p. 4). Ignoring the officers' commands to show his hands, Mr. Heston continued to keep his arms and hands clenched underneath his body (p. 4). Although officers were trying to remove Mr. Heston's hands from under his body, they were unsuccessful (p. 4).

In my professional opinion the rampaging confrontation caused by Mr. Heston would have ended, had he complied with the officers' requests and had cooperated with them.

10. TASER did not have a relationship with Mr. Robert Clark Heston.

Mr. Heston was not the buyer or the end user of the TASER product. Neither Mr. Heston nor anything in the Complaint suggests that the TASER ECD was sold to him. The Complaint does allege that the product was sold to defendant, Salinas, California. There is no indication that any alleged sales transaction between TASER and Salinas, California intended to benefit persons such as Mr. Heston. In contrast, TASER's electronic control products are designed specifically to protect the safety of law enforcement officers performing their official duties in arresting or otherwise taking into custody, capturing, or controlling unpredictable, resisting, assaultive, and/or potentially violent criminal suspects or those in need of being controlled. In my professional opinion, TASER did not have a relationship with Mr. Heston.

11. TASER had no control over the actions taken by Salinas Police Department Officers toward Mr. Heston.

As aforementioned, each law enforcement agency is expert in and responsible for its own use-of-force deployment and post-deployment policies and procedures (Instructor Certification Course, *Lesson Plan v. 11.0*, 2004];*v. 12.0* [2005]. Each law enforcement agency that adopts TASER products, or any use-of-force tool, technique, or system, has a duty to establish its own policy, procedure, training, etc. regarding the electronic device(s). This is not only reasonable, but also responsible for the manufacturer, as it

does not have any ministerial authority over the governmental entity or the user of the product.

In my professional opinion, Mr. Heston's alleged injuries and death came from independent conduct that was not controlled by TASER, specifically, Mr. Heston's long-term life's choices and conditions, his consumption of illegal drugs and substances, the resistive, violent, and assaultive conduct engaged in by Mr. Heston, causing reactive actions to be initially taken by Sergeant Dominici, and subsequently by the other responding officers who were dealing with him. No representative of TASER was at the scene, and there is no indication that that the TASER electronic control device did anything other than what it was designed to do with proper use. In fact, there is ample discussion and evidence that the TASER electronic control device did work on Mr. Heston as intended, because he continued to resist, which forced officers to cycle the ECDs. Because of his continued violent and assaultive conduct, officers cycled the ECDs multiple times.

Scientific and other research indicates that TASER electronic control device products have been used to save lives, rescue hostages, and reduce injures to law enforcement officers, suspects, and others (Instructor Certification Course, *Lesson Plans* versions 11 and 12, respectively; medical studies and other research studies and results disclosed by TASER). Aside from the scientific findings, from a moral and philosophical perspective, when a comparison is made between Mr. Heston who was engaging in criminal conduct, resisting, and acting violently, and TASER that develops electronic capture devices that enhance the safety of law enforcement officers, suspects, and the public, any alleged harm to a person acting as Mr. Heston is far outweighed by the benefit to law enforcement and the public. (See TASER's collection of risk reduction, risk utility surveys, research, and documentation.)

Public policy is also important to this discussion. Scientific and other surveys conducted by TASER and others indicate that the public supports the use of the TASER ECDs at the discretion of law enforcement officers (see TASER research and survey results). TASER's electronic control devices are designed to assist law enforcement in capturing criminal suspects when necessary without the use of a firearm. Without such an effective and non-lethal tool (as defined by the United States Department of Defense), officers would be faced with the choice of firing bullets at a potentially dangerous offender or allowing for his escape. If forced to choose between the risk to a criminal suspect and the safety of law enforcement officers and the public, public policy strongly supports the use of TASER electronic control devices.

In my professional opinion, based upon scientific and other research, public policy strongly and unequivocally supports TASER electronic control devices when used in a lawful manner. Mr. Heston's long-term life's choices, and his decisions to ingest illegal substances, to assault Sergeant Dominici, and to resist lawful efforts to take him into custody are what precipitated the use of a TASER electronic control devices, and Mr. Heston should not recover on a cause of action for alleged injuries based upon his own illegal and resistive acts.

12. Mr. Heston's behavior and medical issues are consistent with being in a state of "excited delirium".

As the author of several articles about excited delirium and sudden death, the author of several training aids including instructor- and user-level workbooks and presentations about excited delirium and sudden death, and the author of an internationally-recognized training program on these topics, in my professional opinion, Mr. Heston exhibited the behavioral cues that are consistent with an individual being in an excited delirium state.

Excited delirium is a *descriptive phrase* that historically has not been a recognized medical or psychiatric condition or diagnosis (Peters, 2005, p. 12). The term "excited delirium" was coined by Dr. Fishbain, and popularized in the early 1980s by doctors Fishbain and Wetli. Excited delirium usually involves, but is not limited to, the use of illicit drugs such as cocaine, methamphetamine Ecstasy, PCP, and/or LSD (p. 13).

Behavioral cues include, but are not limited to: extreme agitation, violent or bizarre behavior, running wildly, screaming, incoherent speech, naked or stripping off clothing, disorientation about place, time, purpose, and even him-herself, superhuman strength, diminished sense of pain, violent resistance during control and restraint, delusions of grandeur, easily distracted, lack of focus, scattered ideas about things, acute onset, and/or makes people feel uncomfortable (Peters, 2006; Peters, 2005, pp. 25-27; Larson, 2006).

The following chart compares Mr. Heston's manifested behaviors to the behavioral cues that are contained in peer-reviewed literature and texts about people who have been later identified as having been in an excited delirium state.

Behavioral Cue*	**Mr. Heston's Behavior**
Acute onset	Yes
Psychotic in appearance	Yes
Stripping off clothing	No
Hyperthermic	Yes
Violent/Bizarre behavior	Yes
Paranoid	Yes
Breaks glass, mirrors, shiny objects	Yes
Running wildly/Extreme agitation	No/Yes
Incoherent speech	Yes
Screaming	Yes
Disorientation about place, time, purpose, himself	Yes
Unstoppable	Yes
Superhuman strength	Yes
Diminished sense of pain	Yes
Delusions of grandeur	No
Easily distracted, lack of focus	Yes
Makes people feel uncomfortable	Yes

Violent resistance during control and restraint	Yes

* (Peters, 2006c; Peters, 2005, pp. 24-27)

In my professional opinion, Mr. Heston exhibited several behavioral signs evidencing he was in an excited delirium state. His rapid physical decline after violently struggling with and then being handcuffed by police officers is consistent with what the literature surfaces regarding a sudden death following behaviors associated with a person being in a state of excited delirium. Specifically, the literature reports four excited delirium phases. They are:

Phase	Clinical	Behavioral Cue
I	Hyperthermia (not always present)	Strips off clothing
II	Delirium	Aggression; yelling; violent; bizarre behavior; yelling and screaming; unfocused; etc.
III	Respiratory arrest	Goes limp; stops breathing; strength loss
IV	Death	Heart stops

(Henry, 2005, p. 140; Peters, 2005, p. 32; Karch, 2002, p. 120)

In my professional opinion, Mr. Heston appears to have gone through each phase of excited delirium, resulting in his death. Phase 1, hyperthermia, was present, as the hospital admission record for Mr. Heston contains an order to use a "cooling blanket" to keep his temperature at 97.5º F, if his temperature remains greater than 101º F (Sasson, **Physician's Orders—Seclusion or Restraint: Robert Heston,** February 19, 2005, pp. 1, 9). "Hyperthermia is an increase in body temperature above 99º F, but most often the term is used to refer to a dangerously high body temperature" (Beers and Jones, 2004, Section 3, Chapter 19). Because many of the people who are in this state die, it is difficult to scientifically study. However, the literature surfaces that the individual builds up lactate during the fight or flight mode, and from continued resistance, which can prohibit the person from ridding himself of CO_2, resulting in a gas exchange respiratory problem.

Further, the literature identifies many researchers and medical doctors that hypothesize that profound metabolic acidosis leads to cardiac arrest, particularly in those individuals who have used and/or abused stimulants such as methamphetamine or ecstasy (Peters, 2005; Ho, Miner, Lakireddy, Bultman, & Heegard, 2006, p. 5; Jeffrey D. Ho, M.D., personal communication).

13. It was reasonable and consistent with suggested protocols that at least four Salinas peace officers attempted to manage Mr. Heston's violent and bizarre behavior.

Limmer, O'Keefe, Grant, Murray, and Bergeron (2001) direct emergency medical technicians to "approach [the aggressive and violent person] with four persons…" (p. 456). They also note that "your first concern must be your own safety" (p. 455). Bledsoe,

Porter, and Shade (1994) support Limmer, et al. by directing emergency responders as follows: "There should be at least four persons available to restrain the patient" (p. 1024). The authors' note in their 2001 text: "Many argue that physical restraint is clearly a police responsibility and EMS should not be involved" (p. 627).

Violent patient management literature surfaces that most hospitals and psychiatric facilities recommend or have policies that when physical restraint of an individual is necessary, that approximately six staff be used to perform the restraint (DiMaio & DiMaio, 2006, p. 125).

In my professional opinion, the management of Mr. Heston's aggressive, hostile, violent, and combative struggle by using at least five law enforcement officers is not only reasonable, but also consistent with the medical and psychiatric literature regarding the management of violent individuals.

POST-INCIDENT OPINIONS

The next category of opinions discuss scientific research, cause and effect research, human subject research limitations, and future research issues are in response to innuendo, claims, etc. made by the Plaintiff in the Complaint. I am prepared to speak about various scientific research methodologies that have been used to study the safety of the TASER electronic control devices. In addition to being academically trained in qualitative and quantitative research methodologies, descriptive and inferential statistics, I have experience teaching these subjects to graduate level learners, including doctoral students. Often an untrained person will attempt to substitute common sense or correlation for cause and effect, and/or as a substitute for the scientific method. Often times, these substitutions are the bases for generalizations, misinterpretation of data, activity, and so forth. These unscientific observations often result in the creation of simple, but erroneous "cause and effect" associations and conclusions of the TASER device being the direct cause of some seemingly unexplainable event.

14. Scientific research has been used in the majority of research studies regarding TASER electronic control devices.

Graziano and Raulin (2000) say "science uses systematic, disciplined thinking to gain **knowledge** about nature. It placed heavy demands on the adequacy of its information and on the processes applied to that information" (p. 7). "In short, science is concerned with things that can be publicly observed and tested. If propositions or questions do not contain implications for such public observation and testing, they are not scientific questions" (Kerlinger, 1964, p. 5). "Research is systematic inquiry that uses disciplined methods to answer questions or solve problems" (Polit & Beck, 2004, p. 3).

Most individuals have limited knowledge, and often phobias (irrational fears), about electricity. Many individuals remember being shocked when inserting a piece of metal or coin into an electrical outlet, or touched the spark plug of a car or lawn mower. These unpleasant experiences are usually recalled when discussing electricity, but applying such experiences to the use of TASER electronic control devices is not the use of scientific research, but is merely examples of one way of generalizing or attempting knowing about things.

The literature surfaces six "ways of knowing". They are:

- *Tenacity*: a willingness to accept ideas as valid because they have been accepted for so long or repeated so often that they seem true.
- *Intuition*: accepting ideas as valid because they 'feel' intuitively true.
- *Authority:* accepting ideas as valid because some respected authority asserts that the ideas are true.
- *Rationalism:* developing valid ideas using existing ideas and principles of logic.

- *Empiricism:* gaining knowledge through observation.

- *Science:* a process that combines the principles of rationalism with the process of empiricism, using rationalism to develop theories and empiricism to test the theories. (Graziano & Raulin, 2000, p. 9)

Many individuals naively attempt to argue (without scientific bases) that because a scientific study was funded by a particular company, individual, or by the government, that it is somehow inherently non-scientific, and the knowledge gained is somehow unreliable. While unethical researchers may attempt to skew research findings toward a particular pre-determined outcome, when the steps of the scientific method are rigorously followed, such unethical findings are more easily identified and such practices are greatly minimized. Also, many product manufacturers (including drug manufacturers) fund most, if not all, of their own research. When compared with the vast array of independent studies conducted on TASER ECDs, it is easily seen that TASER has only conducted a fraction of the studies. And, many of the most detailed and exhaustive studies were completed by government entities in the United States and other countries, including the United Kingdom and Canada.

Scientific research, according to Kerlinger (1964) "is systematic, controlled, empirical, and critical investigation of hypothetical propositions about the presumed relations among natural phenomena" (p. 11). Accordingly, there are specific steps to the scientific research model. They are:

- Initial idea

- Problem definition

- Procedures design

- Observation

- Data analysis

- Interpretation, and

- Communication (Graziano & Raulin, 2000, p. 44).

These seven steps outline the phases of a research project. "The essence of the scientific method is the insistence that all propositions be subjected to an empirical test. Only after this has been done does the scientist decide to accept or reject a proposition" (Cozby, 1981, p. 5). These phases generally apply to both quantitative and qualitative research designs, although Cresswell (1994) notes that "the format is much less standardized in **qualitative** designs than quantitative designs" (p. 13).

Peters (2002) notes "the quantitative design permits the investigator to view reality as being objective, and something that can be objectively measured" (Week 2, p. 1). A **quantitative** study ". . .is an inquiry into a social or human problem, based on testing a theory composed of variables, measured with numbers, and analyzed with statistical procedures, in order to determine whether the predictive generalizations of the theory hold true" (Cresswell, 1984, p. 2). In contrast, a **qualitative** study "is defined as an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting" (pp. 1-2). "Unlike the quantitative approach where the investigator remains distant from the study and eliminates his or her values, the investigator in the qualitative approach interacts with those studied, and admits his or her values and biases" (Peters, 2002, Week 2, p. 1). Quantitative studies have been used in the majority of TASER device research.

Regardless of the type of research study, qualitative or quantitative, **theories** play an important role. Graziano and Raulin (2000) define theory as "a formalized set of concepts that organizes observations and inferences and predicts and explains phenomena" (p. 37). "In a theory, concepts are knitted together into a coherent system to describe or explain some aspect of the world" (Polit & Beck, 2004, p. 29). TASER device studies generally include theories about electricity, the heart, injury, and so forth. **Variables** are also used in quantitative studies.

"Concepts are generally referred to as variables" (Polit & Beck, 2004, p. 29). Nachmias and Nachmias (1981) note ". . . to move from the conceptual to the empirical level, concepts are converted into *variables*" (p. 58). There are several classifications of variables. Graziano and Raulin (2000) identify six classes of variables: behavioral, stimulus, organismic, independent, dependent, and constant (p. 59). For purposes of this opinion, only **independent variables**, **dependant variables,** and **constant variables** will be discussed.

Independent variables are those variables that are "actively manipulated by the researcher to see what [their] impact will be on other variables" (Graziano & Raulin, 2000, p. 59). *Dependent variables* are those variables that the investigator hypothesizes "will be affected by the independent-variable manipulation" (p. 59). A *constant* is "any variable that is prevented from varying (i.e., held constant)" (p. 59). Polit and Beck (2004) provide the following example of a constant: "If it rained continuously and the temperature was always 70° F, weather would not be a variable, it would be a **constant**" (p. 29).

"The investigator's concepts first appear as variables, and ultimately as hypotheses" (Peters, 2002, Week 2 pp. 1-2). "A **hypothesis** is a statement of the researcher's expectations about relationships between the variables under investigation: Polit & Beck, 2004, p. 49). An example of an hypothesis is: A human being who is standing in water when shocked by the M26 TASER (independent variable) will be electrocuted (dependent variable). Most quantitative research studies would then be

conducted to confirm or disprove this hypothesis using statistical analysis and procedures.

Although there are other important aspects to the conducting of scientific research (e.g., data analysis, validity, reliability, sampling, research design, etc.), purpose, time, and space prohibit them from being discussed. I am prepared to speak about various scientific research methodologies that have been used to study the safety of the TASER electronic control devices either at deposition or trial, if so requested.

The foregoing discussion about scientific research serves as part of the bases for my professional opinion that the majority of TASER-brand weapon research has been done according to the rigorous standards of the scientific method.

15. Correlation of TASER-brand electronic control device application to a part of the human body followed by the person's dying from alleged heart or respiratory arrest does not scientifically establish causality.

Does a rooster crowing (cause) make the sun to come up (effect) in the morning? The answer is "no". While a rooster's crowing prior to a sunrise has a temporal dimension to it, the crowing does not cause the sun to rise. While this clearly demonstrates what "cause and effect" is not, it also demonstrates the concept of **correlation**.

"*Correlation* is a statistical technique that is used to measure and describe a relationship between two variables" (Gravetter & Wallnau, 1999, p. 389), and "simply describes a relationship between two variables" (p. 398). "One of the most common errors in interpreting correlations is to assume that a correlation necessarily implies a cause-and-effect relationship between the two variables" (p. 399). Miniun, King, and Bear (1993) are to the point: "correlation does not establish causation" (p. 158). Researchers and others are warned, "do not draw causal inferences from correlational data" (Graziano & Raulin, 2000, p. 171; Graziano & Raulin, 1997, p. 175).

Plaintiff appears to have fallen into the common error of confusing correlation (TASER electronic control device application followed by death at a different point in time) as cause-and-effect. This error and confusion are often solely or partially based upon the reading and reliance of published media or special interest group comments such as: "[c]oroners have indeed found tasers to have directly contributed to the deaths of individuals"; "[w]hen targets have been restrained, bound at the wrists or ankles, the use of taser devices has proved particularly dangerous and life threatening"; and/or, "[a]pproximately 103 people are reported to have died in the USA and Canada after being struck by M26 or X26 stun guns". The instant matter is a classic example of this incorrect and inappropriate confusion.

Recalling that a scientific researcher manipulates an *independent variable* to observe the effect, if any, on the *dependent variable*, the examples used by Plaintiffs' make it all but impossible to ascertain "cause-and-effect". The reason: too many

independent variables being included in their claims. Specifically, when referring to the restrained targets, they identify several independent variables: (1) person bound at the wrists; (2) person bound at the ankles; and, (3) use of a TASER electronic control device. Plaintiff's fail to provide a complete description of the person restrained, as the medical literature and restraint literature often includes other independent variables such as, cocaine, methamphetamine, PCP, neuroleptic medications, enlarged heart, heart disease, high blood pressure, and so forth, all which confound the situation, and make it impossible to conduct a scientific study.

Dr. Jeffrey D. Ho and his colleagues found in a 12 month surveillance study of 162 people who died in police custody that in 22 such events, the police used no force and that the TASER device "was never associated with instantaneous death (0/50, p = 0.001) (Ho, Miner, Heegaard, & Reardon,). Admittedly there were limitations to this study, but it finds the TASER electronic control device was not associated with any person's instantaneous death. This study is an important example to keep in mind as cause-and-effect research is discussed.

The fact that "A" precedes "B" does not mean that "A" caused "B" (Peters, 2006, forthcoming). The researcher must examine causality to determine if there is any "cause and effect" that can be ruled out when comparing and interpreting the causal inference. Cook and Campbell (1979) note that causal inference depends upon three factors: First, "the cause has to precede the effect in time; second, the cause and effect have to be related; and third," (p. 18). The United Nations Inter-Agency Standing Committee (IASC) has issued *field guidelines* regarding causality and inferring cause using criteria of causation.

The IASC identifies several criteria of causation, which include:

- **Temporality**—the cause must always occur before the outcome.
- **Strength of association**—How much does the causative variable and the outcome move together?
- **Consistency**—Is the relationship between cause and outcome found over and over, among different groups or countries?
- **Specificity**—Does the cause lead to the same particular outcome over and over, or does it instead lead to different outcomes?
- **Plausibility**—Is there a reasonable explanation available as to how the variable is linked to the outcome? Is it a plausible linkage? (United Nations, n.d., p. 2)

The United Nations' criteria is supported by the research literature. Rubin (1983) defines a causal theory as "one that attempts to explain why certain propositions are true and how the variables within the propositions are interconnected. Three criteria must be met to establish a causal theory:

1. There must be a set of interdependent propositions. This is often a set of laws. . .

2. There must be an indication of the ordering and the linkages between the variables in the separate propositions.

3. A mechanism—why something happens—must exist that explains how such linkages operate. (p. 71)

The "law" that Rubin (1983) makes reference to is scientific law. "A set of laws is a collection of propositions that seems to be true within a single policy area" (p. 70). Put another way, the law does not change, and remains constant, such as Newton's law of gravity. Supporting Rubin is Polit and Beck (2004). They define a law as "a theory that has accrued such persuasive empirical support that it is accepted as true" (p. 722).

There have been several rigorous scientific studies where one or more TASER electronic control devices have been used on subjects without injury and/or death. Therefore, any suggestion that a TASER electronic control device application to a human "causes" death (effect) has, at this time, no scientific basis. If there were truly a scientific cause and effect (TASER electronic control device application, then death) then this would happen every time according to a "law", and/or the "cause" leads to the "effect" when the independent variable (TASER electronic control device) is manipulated to observe its affect and/or effect on the dependent variable (death of human subject).

There have been tens of thousands of TASER electronic control device applications on human subjects during training and no deaths have been reported. Currently there is statistical analysis of thousands of field use and voluntary exposures to, in part, examine outcome and efficacy of the TASER-brand devices. Also, numerous entities, including some law enforcement agencies, have extensively studied and analyzed TASER device deployments, risk-utility analyses, etc.

Based upon the foregoing bases, in my professional opinion, there is no scientific cause-and-effect research study that has statistically found TASER electronic control devices to be the direct or proximate cause of death in human subjects. Rather, the scientific studies that have been conducted have shown the relative safety of the devices, given the ethical and legal constraints that are imposed on such studies. As one example, the extensive study by the Canadian Police Research Centre concluded that ""[d]efinitive research or evidence does not exist that implicates a causal relationship between the use of CEDs and death." (Review of Conducted Energy Devices, Canadian Police Research Center, Technical Report TR-01-2006, August 22, 2005.)

Based upon her autopsy report, Dr. Haddix appears to have confused "temporality" with "cause" when she noted that the TASER ECD contributed to Mr. Heston's death based solely on the temporal proximity of its use to his collapse.

In my professional opinion, Dr. Haddix appears to have misapplied the underlying definition of causation with respect to the TASER ECD. She appears to be confusing "causation" with association, and temporality; in short, confusing causation with "risk". The National Institute of Child Health and Human Development (NICHHD) notes, risk, as defined by epidemiologists, "refers to the probability that an outcome will occur given the presence of a particular facts or set of factors. . .Scientifically identified associations between risk factors and outcomes do not necessarily denote causality." (NICHHD, undated, p. 8).

According to the National Safety Council's analysis of national death statistical data for 2003 from the National Center for Health Statistics and U.S. Census Bureau , the following are examples of the odds of dying over a lifetime:

- Total odds of dying any cause 1 in 1
- Heart attack 1 in 5
- Cancer 1 in 7
- Stroke 1 in 24
- Motor vehicle accident 1 in 84
- Suicide 1 in 119
- Falling 1 in 218
- Firearm assault 1 in 314
- Drowning 1 in 1008
- Air/space accident 1 in 5051
- Hot weather 1 in 13729
- Hornet, wasp, or bee sting 1 in 56789
- Legal execution 1 in 62468
- Lightning 1 in 79746
- Earthquake 1 in 117127
- Flood 1 in 144156
- Fireworks discharge 1 in 340733 (www.nsc.org)

There is no mention in any of the three medical reports regarding the death of Mr. Heston the probability of dying from a TASER ECD application when on illicit drugs, etc. The calculation of probabilistic causation contains an element of "chance" that is predicated upon scientific research methodology and findings. In contrast, a "belief," especially one founded in bias or ignorance (a lack of knowledge), is not a scientific basis for developing an opinion to a reasonable degree of medical certainty and/or scientific certainty. In my professional opinion, often medical examiners appear to be relying, in part, upon a *post hoc ergo propter hoc* fallacy that only demonstrates a non-scientific temporal relationship (i.e., timing), which is insufficient, and by itself provides no scientific basis or evidence of causation.

16. Newspaper, magazine, tabloid, and/or electronic articles, radio, television, and electronic news reports, editorials, memos, and other non-scientific reports, and opinions about medicine, health issues, causes of death, electricity, TASER ECDs, TASER, and law enforcement tactics and procedures are not bases for, or proof of, causation.

The fallacy that "if it's in print, it must be true," is an old axiom that research studies confirm most people believe (Better Business Bureau, 1993, December, p. 1). Most recently, this "belief" has been extended to "[i]f it is in the paper it must be true," (Card, 2006, March 24), and "[i]f it's on the Internet, it must be true" (Napoli, 2005). Unless a literature review is conducted to scientifically confirm or refute the information contained in articles that people read or sound bites that they hear, the information gets passed along or retained and often times is wrongly accepted as "true". This is also true for textbooks.

Most people are aware of the poem, "[t]he Midnight Ride of Paul Revere", which tells of his ride through the Boston countryside to warn people that the British were coming. The poem's story has been accepted by many people as true, but in reality, Revere was stopped and detained by British soldiers outside Boston and never completed his alleged infamous ride. Mr. William Dawes completed the journey that is wrongly attributed to Paul Revere.

In earlier times, most people believed the world to be flat, or that the sun revolved around the earth. Science has shown the fallacy of these two beliefs, but during their time, those who were advocating a different belief were often called heretics and in some cases even put to death for challenging these "truths" that were eventually scientifically shown to be fallacies.

In today's environment, vitamins serve as one example of how many people believe in what a store clerk, newspaper article, or other publication tells them about the efficacy of the vitamin they are considering taking or are taking. In many cases, there is no rigorous scientific study conducted on the vitamin using statistical analysis and rigorous research methodology to determine whether or not the claims about a particular vitamin(s) are valid.

When a literary device that attempts to convince an audience by using words that conceal a dubious claim, this is known as a *slanter* (Epstein, 2002, p. 195). Epstein (2002) argues "slanters are bad because they try to get us to assume a dubious claim is true without reflecting on it" (p. 195). Examples include, but are not limited to such sensational headlines such as "Another Taser death," "Another pepper spray death," etc. Often the story that follows is comprised of witness interviews and other non-scientific information that is used for what is known as *proof substitute*.

According to Epstein (2002), "a *proof substitute* is a word or phrase that suggests the speaker has a proof, but no proof is actually offered" (p. 199). When *slanters* or

proof substitutes are used, it shifts the burden of proof to the other party. The other party, say, the first person to claim that the world is round, is now faced with the monumental task of "disproving" the opposition's claim. As scientific researchers know, it takes more evidence to disprove a claim, than to prove it. As Epstein notes, "It's easier to ask for a disproof of your claims than to prove them yourself" (p. 219).

For example, if someone made the claim, "There are purple mice on the dark side of the moon eating black cheese," most people would say the claim is false. However, when the claimant demands the non-believers to "prove him wrong", the burden of proof has now shifted to the people who are sure he is wrong, but cannot scientifically prove it. This is analogous to electricity, TASER, and TASER electronic control devices, plus other tactics, techniques, and equipment used by law enforcement officers throughout the world.

Many times people will generalize from their personal experiences (Epstein, 2002, p. 277). "For science, especially the health sciences, generalization along with analogy dominates reasoning from experiments" (p. 277). If people who read a newspaper or hear a sound bite about a death attributed to a TASER ECD, even though there are other intervening variables, they may conclude a claim about the electronic control device, TASER, law enforcement, or the tactics used by law enforcement officers and then generalize to make their argument. Generalizations are arguments, such as "electricity kills", where people make an analogy to other forms of electricity, which are different than the electricity output of TASER ECDs.

Reasoning by analogy is quite common because "we have a desire to be consistent in our lives, to see and apply general principles" (Epstein, 2002, p. 251). When people reason by analogy, they are beginning with a comparison. In the aforementioned example, the analogy may be comparing household current or lawn mower or automobile engine coil wire current to TASER ECD current. While analogies have their place, usually they are not made explicit enough to serve as good arguments. While comparisons are very suggestive, they are often incomplete arguments lacking scientific evidence to support the claim(s).

Since many people, including lawyers, medical professionals, and members of the judiciary, only know about TASER products based on what they read in a newspaper, magazine, Internet, or from what they hear on the radio or television, in my professional opinion, it is very easy for them to develop non-scientific conclusions based upon analogies and generalizations about electricity, the efficacy of TASER ECDs, and causation issues, which are not based upon scientific research or scientific findings.

17. Human subject research guidelines prevent researchers from conducting unethical research.

Over time, human subjects were the target of "scientific" research that harmed them, in some cases fatally. Examples include, but are not limited to: German research in World War II; Japanese research in World War II; and syphilis research conducted on

Black American subjects by the United States government in the middle of the 20th Century. These relatively recent research atrocities, in the name of furthering scientific research, have given rise to human subject research guidelines that govern researchers and protect human rights.

The American Psychological Association (APA) was one of the earliest groups to establish human subject guidelines, and ethical standards for the reporting and publishing of scientific information (American Psychological Association, 2001, pp. 387-396). Additionally, "most hospitals, universities, and other institutions where research is conducted have established formal committees and protocols for reviewing proposed research plans before they are implemented" (Polit & Beck, 2004, p. 156). The name for such committees is "Institutional Review Board" (IRB). As a former faculty member in a school of psychology and supervisor of doctoral dissertation and master thesis research, I am familiar with human subject guidelines on the protection of human rights.

If the institution or researcher is the recipient of federally funded or sponsored research, the researcher and/or IRB is/are subject to the strict guidelines for the evaluation of research on human subjects according to the Code of Federal Regulations, 1991, § 46.111. The following is a summarization of the main requirements:

- Risks to participants are minimized.
- Risks to participants are reasonable in relation to anticipated benefits, if any, and the importance of the knowledge that may reasonably be expected to result.
- Selection of participants is equitable.
- Informed consent will be sought, as required.
- Informed consent will be appropriately documented.
- Adequate provisions are made to protect participants' privacy and confidentiality of the data.
- When vulnerable subjects are involved, appropriate additional safeguards are included to protect their rights and welfare. (Polit & Beck, 2004, p. 156)

Rather than provide medical, scientific, or electrical engineering evidence that supports their unfounded opinion, Plaintiff inappropriately implies that TASER and/or other independent and qualified researchers have failed to conduct scientific research on non-healthy individuals. While no generic definition has been suggested for the term "non-healthy", limited research is being conducted by Jeffrey D. Ho, M.D. on the effects of the TASER electronic control devices on the heart, respiratory process, and blood chemistry. Although the human subjects are law enforcement officers, the initial screening of the human subject volunteers found that many were not in perfect health or youthful in age.

Forcing a human subject who is paranoid schizophrenic (independent variable 1) to ingest cocaine (independent variable 2), drink alcohol (independent variable 3), vigorously exercise to simulate fighting with law enforcement officers (independent variable 4), and then being thrown down on the floor by another during the "exercise" (independent variable 5), next being restrained by handcuffing the hands behind the back (independent variable 6) while the human subject is told to forcefully resist (independent variable 7), even though the human subject has extreme heart disease (independent variable 8) to see whether or not the human subject dies or is seriously injured (dependent variable), would not be permitted under the current ethical guidelines for human subject research as aforementioned. Therefore, those opposed to electronic control devices, such as the TASER-brand of weapons, are asking researchers to disprove a "negative" that TASER electronic control devices are unsafe and will cause death.

Although scientific research and field usage of the electronic control devices finds that it is rare when a person dies after having an electronic control device applied to him or her, and no research has found that death has been instantaneous as one would expect to find given the large amount of research on electrocution, opponents ignore, dismiss, or are ignorant of these studies. Admittedly, it takes more scientific research to disprove a hypothesis such as TASER electronic control devices are unsafe, but extant scientific studies have clearly shown these devices are not unsafe when used in a reasonable manner. In my professional opinion, the basis or bases for scientific opinion is not on what research has not yet been conducted, but on what research has been conducted and published.

Based upon the foregoing, in my professional opinion, many individuals want scientific research conducted on human subjects that would violate existing ethical and legal guidelines. Often ignoring or downplaying extant scientific research, opponents often claim that such research always calls for additional research and in some way this implies that existing scientific research studies are flawed and unreliable. They often rely upon wording from opposition analysts such as "may increase the risk", "could have contributed", "future research. . .is needed, "possible", and "there is not enough proof either way. . ." to undermine the validity and reliability of extant scientific research studies.

18. Statements such as "further research is needed" appearing in peer-reviewed journal articles or research reports are consistent with scientific research article and report format and do not imply that the research findings are flawed and/or unreliable.

The following sentence from an article about electronic control device scientific research in the medical journal *Lancet*: "the authors found that 'future research on what other cardiac effects tasers and related devices would have in people with pacemakers is needed'" is an example of what often times opponents cite to imply that because "future research" is stated as needed, this questions the validity and reliability of the reported scientific research study. In my professional opinion, language and phrases such as

"future research is needed" is consistent with scientific research methodology, training, and scientific research article writing, and can even be found in high school science fair reports.

The bases for this opinion are several. First, research texts that are commonly used in the education and training of scientific researchers instruct such learners to identify areas for future research based upon the limitations of their research study. Silverman (2000) advised readers to identify "future research that might follow from your findings, methods, or concepts used" (p. 254). Francis (1988) advises scientific writers to include "[w]hat new research will have been made possible by your having done the study" and "what further research may be suggested" (p. 73). Graziano and Raulin (2000) write: "Suggesting directions for future research is a natural part of any well designed, well-executed research project" (p. 370). Educational institutions also publish standard scientific research paper components.

Massachusetts Institute of Technology (MIT) (n.d.) identifies a standard component of a scientific research paper as "recommend areas for future study and explain your choices" (p. 6). Columbia University in its publication *Writing A Scientific Research Article*, advised writers to include in their discussion section of the article "What further research would be necessary. . ." (p. 2). It is recommended this phrase be included in high school research projects (http://corporate/britannca.com/library).

In my professional opinion, authors who include "future research" issues are not implying that the validity or reliability of their research findings are inferior; rather, they are including a standard component of a scientific research paper. To infer anything else is contra to what is written by the researchers.

19. The TASER ECD is a safe device for the capturing of an individual such as Mr. Heston.

TASER-brand ECDs have been independently tested by medical research groups and professionals, and to date, all scientific data indicate they will not cause the heart to go into dysrhythmia, thereby causing death (Peters, 2006). The TASER M26 has 50,000 (peak open circuit arcing voltage, with 5,000 peak loaded voltage) volts (V), 3.6 milliamperes (mA) (or .0036 amperes [A]), with an energy pulse of 1.76 joules (J) (nominal at peak capacitor, and 0.5 J delivered into load). The TASER X26 has 50,000 (peak open circuit arcing voltage with 1,200 peak loaded voltage) V, 2.1 mA (or .0021 A), with an energy per pulse of 0.36 J (nominal or peak capacitor, and 0.07 J delivered into load.

In contrast, external cardiac defibrillators typically generate approximately 400 J, which further illustrates the safety of TASER-brand devices with regard to the human heart (Gibault, 2006, p. 2). To see one's hair stand up, many people have placed a hand on a Van de Graaff generator, which can generate up to 25 million V.

Other scientific studies that support the safety of TASER-brand ECDs include, but are not limited to: Maier, Nance, Price, Sherry, Reilly, Klauenberg, and Drummond, 2005; Orange County (FL) Sheriff's Office, 2004; British Columbia Office of the Police Complaint Commissioner, 2004; Bleetman and Steyn, 2003; United Kingdom Defence Scientific Advisory Council, 2002; Stratbucker, Roeder, and Nerheim, 2005; Biomedical Engineering, 2004 (TASER X26); Biomedical Engineering, 2003 (TASER M26); Ho, Miner, Heegaard, & Reardon, (2006)[1]. These studies are in addition to the numerous medical and electrical engineering publications on similar electrical outputs and products or much higher output systems, products, and/or injuries.

According to Dr. Mark Kroll, when an individual is exposed to a TASER ECD, (s)he receives a very small amount of energy delivered into the body. A TASER X26 is powered by two, thee-volt photo cells. The 50,000 volts is the peak open-circuit arcing voltage to get electricity through the clothing. The voltage delivered into the person from, say, a TASER X26 is 1,200 V. It gives 19 (very short duration) pulses per second. Dr. Kroll notes that the current is ZERO 99.8% of the time. Or, to put it another way, one TASER X26 pulse is "on" for only 1/10,000ths of a second, times 19 PPS equals 19/10,000ths of a second. Given the average current is about .0021 A, the average voltage is about **2/3 of one volt**, less than a AA penlight cell (Kroll, 2006, pp. 5-6). An ADVANCED TASER M26 is only on for 1/25.000th of a second per pulse, and more importantly only 1/100,000th of the primary phase of each pulse (each M26 pulse is 40 µs with the primary phase of each pulse being only 10 µs in duration).

When a TASER ECD is used in drive stun (or touch stun) mode (without the barbs), it usually will cause *friction abrasions*, or low grade burns. These are usually harmless, unless the individual picks at any scab that may form, which can cause an infection (Peters, 2006).

In my professional opinion, the TASER ECD applications to Mr. Heston were eventually efficacious in capturing him.

20. TASER International, Inc. did not have a responsibility to provide training or warnings on what did not occur, and/or on what it did not cause.

First, medical, scientific, or electrical research did not exist in February 2005 that would have created a causal link of the application of a TASER ECD with a person's death. To the contrary, in disproving the negative allegations, the contemporary scientific and medical literature surfaces that TASER ECDs do not cause ventricular fibrillation (VF) (which was not found in Mr. Heston), respiratory arrest, or significantly cause rhabdomyolosis in humans. In addition to the contemporary scientific and medical literature, Drs. Panescu, Evans, Kroll, Ideker, and DiMaio, opinions parallel the scientific and medical findings. Nothing in the medical reports suggested that Mr. Robert Heston was in VF, consistent with the medical and scientific literature that repeatedly demonstrated that TASER ECDs do not cause VF.

It is also clear from reading the documents in this matter that Mr. Heston was a chronic stimulant abuser and had also ingested an illicit substance, methamphetamine, and that TASER did not produce it, or provide it to him. Based upon my knowledge of extant medical studies and research, the levels of methamphetamine in Mr. Heston's body were above lesser lethal amounts that were found in others who died from methamphetamine overdose. In my professional opinion, and in addition to Opinion #6, TASER did not have a responsibility to conduct training, produce training materials, or provide warnings about something it did not cause (e.g., intentional ingesting an illicit substance in lethal doses). There are social agencies that have repeatedly warned individuals about the dangers of ingesting illicit substances, such as methamphetamine, cocaine, etc. It would be ludicrous for companies that harvest lumber, such as Weyerhaeuser, to produce training materials and/or warning to end users, such as churches and schools regarding the threat of dying from arsonists who may intentionally set fire to the building while it is inhabited. Similarly, TASER was not required, in my professional opinion, to conduct training or produce training materials or provide warnings on issues that are clearly outside of what it could reasonably and/or scientifically control.

21. TASER did not produce a defective ECD, did not cause Mr. Heston's excited delirium, respiratory arrest, rhabdomyolosis, and/or fatal cardiac arrhythmia.

Based upon my knowledge of extant medical studies and existing scientific research regarding TASER ECDs, there is no scientific or medical evidence that confirm TASER ECDs to cause VF or rhabdomyolosis. In my professional opinion, the TASER ECD was not defective, and worked as designed. However, because Mr. Heston had intentionally ingested methamphetamine or numerous occasions and was a chronic substance abuser, the TASER ECD was not as efficacious as when used on a person who was not as psychologically and physically impaired as Mr. Heston. Mr. Heston's violent and bizarre behavior is consistent with what the extant literature surfaces regarding individuals who are in an excited delirium state (Peters, 2006). Further, TASER ECDs did not cause Mr. Heston's respiratory arrest or VF based upon extant medical studies. As aforementioned, there is noting in the medical reports to suggest that Mr. Heston was in VF. Finally, Dr Evans' review of the most recent medical literature clearly shows that the ECDs did not cause Mr. Heston's rhabdomyolosis, which is consistent with my review and understanding of such literature.

Curriculum Vitae

Pursuant to Fed. R.Civ.P. 26(a)(2) my current Curriculum Vitae containing a list of my relevant formal education, training, experience, publications authored, and a listing of any cases in which testimony (deposition and/or trial) as an expert has been taken is attached hereto and made an integral part hereof.

Compensation

I have been paid my published and customary flat fee of $5000.00 that includes initial retainer, materials review, report generation, etc. Deposition testimony is invoiced at a flat daily rate of $2000.00 per day, if the deposition is taken at my location, or $2750.00 if taken other than at my location, plus direct expenses. On-site visits are invoiced at $2750.00 per day, plus direct expenses. Time for trial testimony is invoiced at $2000.00 per day at my location, or $2750.00 per day other than at my location, plus direct expenses.

Respectfully submitted,

John G. Peters, JR, Ph.D.

John G. Peters, Jr., M.B.A., Ph.D., CLS
December 1, 2006

References

American Psychological Association. (2001). *Publication manual of the American psychological association* (5th ed.). Washington, D.C.: Author.

Armament Systems and Procedures, Inc. (1996). *ASP basic certification (abc) course syllabus*. Appleton, WI: Author.

A.S.P. (2004). *Tactical handcuffs*. Appleton, WI: Author.

Beers, M. H., & Jones, T. V. (2004). *The merck manual of health & aging*. Whitehouse Station, NJ: Merck Research Laboratories.

Better Business Bureau. (1993, December). If It's In Print, It Must Be True. Retrieved from www.bbbsilicon.org/topic002p.htm.

BioGuardian Systems, Inc. (n.d. a). *The bodyguard restraining systems owner's manual and instructions for use*. Mesa, AZ: Author.

BioGuardian Systems, Inc. (n.d..b). *Bodyguard restraint system training outline*. Mesa, AZ: Author.

Bledsoe, B. E., Porter, R. S., & Cherry, R. A. (2001). *Paramedic care: Principles & practices*. Upper Saddle River, NJ: Prentice Hall Health.

Bledsoe, B. E., Porter, R. S., & Shade, B. R. (1994). *Paramedic emergency care* (2nd ed.). Upper Saddle River, NJ: Prentice Hall.

Canadian Police Research Center. (2005, August).*Review of conducted energy devices: Technical Report TR-01-2006*.

Card, H. (2006, March 24). If It Is In The Paper It Must Be True. Retrieved from www.nysut.org/html.

Columbia University. (n.d.). *Writing a scientific research article*. Retrieved from http://www.columbia.edu/cu/biology/ug/research/paper.html

Cook, T. D., & Campbell, D. T. (1979). *Quasi-experimentation: design & analysis issues for field settings*. Boston: Houghton Mifflin Company.

Cozby, P. C. (1981). *Methods in behavioral research* (2nd ed.). Palo Alto, CA: Mayfield Publishing Company.

Cresswell, J. W. (1994). *Research design: Qualitative & quantitative approaches*. Thousand Oaks, CA: Sage Publications.

Dick, W., Carey, L., & Carey, J. O. (2001). *The systematic design of instruction* (5th ed.). New York: Longman.

DiMaio, T. G., & DiMaio, V. J. M. (2006). *Excited delirium syndrome*. Boca Raton, FL: Taylor & Francis.

Do-Rite Corporation. (n.d.). *Law enforcement techniques*. Idaho Falls, ID: Author.

Epstein, R. L. (2002). *Critical thinking*. Belmont, CA: Wadsworth/Thompson Learning.

Francis, F. B. (1988). *The proposal cookbook: A step by step guide to proposal design and writing* (5th ed.). Bloomington, MN: MicroFutures, Inc.

Gravetter, F. J., & Wallnau, L. B. (1999). *Essentials of statistics for the behavioral sciences* (3rd ed.). Pacific Grove, CA: Books/Cole Publishing Company.

Graziano, A. M., & Raulin, M. L. (2000). *Research methods: A process of inquiry* (4th ed.). Boston: Allyn and Bacon.

Graziano, A. M., & Raulin, M. L. (1997). *Research methods: A process of inquiry* (3rd ed.). New York: Longman.

Hess, J. (1990). *Flex-baton police nunchaku: Alternatives to deadly force training manual*. Upland, PA: Diane Publishing Company.

Ho, J.D., Miner, J. R., Lakireddy, D.R., Bultma, L.L., & Heegard, W.G. (2006). Cardiovascular and physiologic effects of conducted electrical weapon discharge in resting adults. *Acad. Emergency Medicine*.

Ho, J. D., Miner, J. R., Heegaard, W. G., & Reardon, R. F. ( ). Deaths in American Police Custody: A 12 Month Surveillance Study.

Karch, S.B. (2002). *Karch's pathology of drug abuse* (3rd ed.). Boca Raton: CRC Press.

Keller, D. A. (n.d.). *Kel-lite manual of defensive tactics*. Los Angeles: Author.

Kerlinger, F. N. (1964). *Foundations of behavioral research* (2nd ed.). New York: Holt, Rinehart and Winston, Inc.

Kroll, M. (2006). *Scientific basis for the TASER weapon cardiac safety*. In *TASER use of force, risk management, and legal strategies.* Scottsdale, AZ:TASER International, Inc.

Larson, M. (2006, March 30). Amphetamine-Related Psychiatric Disorders. Retrieved from http://www.emedicine.com

Limmer, D., O'Keefe, M. F., Grant, H. D., Murray, Jr., R. H., & Bergeron, J.D. (2001). *Emergency care* (9th ed.). Upper Saddle River, NJ: Prentice Hall.

Maier, A., Nance, P., Price, P, Sherry, C. J., Reilly, J. P., Klauenberg, B. J., & Drummond, J. T. (2005). *Human effectiveness and risk characterization of the electro muscular incapacitation device--A limited analysis of the TASER Part I--technical report*. Human Effects Center of Excellence

Massachusetts Institute of Technology. (n.d.) *Writing a scientific research paper*. Retrieved from http://www.umech.mit.edu

Minium, E. W., King, B. M., & Bear, G. (1993). *Statistical reasoning in psychology and education* (3rd ed.). New York: John Wiley & Sons, Inc.

Monadnock Lifetime Products, Inc. (1981). *The immobilizer restraint device*. Fitzwilliam, NH: Author.

Monadnock Lifetime Products, Inc. (1988). *Owner's manual: The pr-24 police baton*. Fitzwilliam, NH: Author.

Monadnock Lifetime Products, Inc. (1988). *Owner's manual: The sx-24 police baton.*. Fitzwilliam, NH: Author.

Monadnock Lifetime Products, Inc. (1968). *Clubs.*. Fitzwilliam, NH: Author.

Nachmias, D., & Nachmias, C. (1981). *Research methods in the social sciences*. New York: St. Martin's Press.

Napoli, L. (2005, March 2005). If it's on the Internet, it must be true. Retrieved from www.globetechnology.com/servlet/story/RTGAM.20050310.gtgulliblemar10/BN story/technology

National Institute of Child Health and Human Development. (n.d.). *Targeting sudden infant death syndrome (sids): A strategic plan*. Rockville, MD: Author.

NOVA National Training, Inc. (1987). *NOVA law enforcement training manual & operational guide in the use of electronic non-lethal control devices*. *Warrenville Heights, OH: Author.*

Peerless Handcuffs. (n.d.). *Handcuff operations insert*. Springfield, MA: Author.

Peters, Jr., J. G. (2006a, March-April). Sudden Death, "Excited" Delirium, and Issues of Force: Part I—. *Police & Security News*.

Peters, Jr., J. G. (2006b, May-June). Sudden Death, "Excited" Delirium, and Issues of Force: Part II—Electronic Control Devices. *Police & Security News*.

Peters, Jr., J. G. (2006c, July-August). Sudden Death, "Excited" Delirium, and Issues of Force: Part III—. *Police & Security News*.

Peters, Jr., J.G. (2005). **Identification, prevention, management, and investigation of sudden and in-custody deaths: Instructor workbook v.2.0**. Henderson, NV: Institute for the Prevention of In-custody Deaths, Inc.

Peters, Jr., J. G. (2002). Week 2: Research designs and data collection. In Regent University, *Methods of social science research*. Virginia Beach, VA: Regent University.

Polit, D. F., & Beck, C. T. (2004). *Nursing research: Principles and practices* (7th ed.). Philadelphia: Lippencott Williams & Wilkins.

Ripp Restraints, Inc. (n.d.). *Restraints for the law enforcement, corrections, & medical fields*. Orange City, FL: Author.

Rubin, H. J. (1983). *Applied social research*. Columbus, OH: Charles E. Merrill Publishing Company.

Safe Restraints, Inc. (n.d.). *The wrap basic application manual*. California: Author.

Security Equipment Corporation. (2005). *SABRE h20 series and dual propellant system*. Fenton, MO: Author.

Silverman, D. (2000). *Doing qualitative research: A practical handbook*. (London: Sage Publications.

Smith, E. N. (1977). *A handbook for use of the baton: The lamb method*. New York: Harper & Row Media.

Smith, J. A. (n.d.). *The source instructor's manual*. Largo, FL: Universal Safety Corporation.

TASER International, Inc.'s Website – www.taser.com.

TASER International, Inc.'s Research Compendium.

TASER International, Inc.'s TASER M26 and TASER X26 Product Manuals.

TASER International Inc.'s Training Bulletins.

TASER International Inc.'s Products Specification Sheets.

TASER International, Inc. (2004). *TASER Training Video and Information Disk Version 11* (January 2004). Scottsdale, AZ: Author.

TASER International, Inc. (2005). *TASER Training Video and Information Disk Version 12* (November 2004) Scottsdale, AZ: Author.

TASER International, Inc. (2006). *TASER Training Video and Information Disk Version 13* (May 2006) Scottsdale, AZ: Author.

Tuff Tie, Inc. (n.d.). *Tuff tie: Directions for use*. Sherrill, NY: Author.

Valon Company. (n.d.). *Flex-cuf restraining tie: Instructional manual*. Elizabeth, NJ: Author.

APPENDIX A

CURRICULUM VITAE

JOHN G. PETERS, JR., Ph.D., CLS
(rev. 12.03.06)

EDUCATION:

Post-Graduate Courses: TASER® Master Instructor Course (non-instructor, 2006) ■ *Non-disciplinary Employment and Labor Law* (AELE, 2006)■ *Jail and Prisoner Legal* Issues (AELE, 2006)■Discipline *and Internal* Investigations (AELE, 2005■Criminal *Justice Agency Compliance & Auditing,* (AELE, 2005 ■ *Police Civil Liability and the Defense of Citizen Misconduct Complaints* (AELE, 2005 ■ *Current Issues in Less Lethal* Technology (IACP), 2005 ■ *Legal Developments in Use of Force, with Special Emphasis on* TASERS (IACP), 2005 ■ *Open Discussion on Police* Suicide, 2005 ■ *TASER Use and Law Enforcement: Medical and Legal* Issues (IACP), 2005 ■ *TASER Master Instructor* Course (non-instructor), 2005 ■ *Sudden & In-Custody Death, Restraint Asphyxia Medical Update* (E.R. physician seminar), 2005 ■ Fundamentals *of Effective Online Teaching,* 2003, Walden University ■ *Employment and Labor Law in Pennsylvania*, 2002, Lorman Educational Services ■ Competency-*Based Curriculum Development in Professional* Psychology, Capella University, 2001■ Practicum *in On-line Graduate Teaching in Professional* Psychology, Capella University, 2001 ■ Mentoring *Graduate Students in Professional* Psychology, Capella University, 2001 ■ On-*line Teaching and Training in Professional* Psychology, Capella University, 2001 ■ Intellectual *Property in Cyberspace 2000*, Berkman Center for Internet & Society, Harvard Law School ■ *Violence Against Women 2000*, Center for Internet & Society, Harvard Law School ■ *Certified On-Line Instructor*, Walden Institute, 2000 ■ *Governmental Accounting and Finance*, Suffolk University, Boston, MA, 1979 ■ *Research Methodology*, *Criminal Justice Management*, University of Baltimore, Baltimore, MD, 1975.

Doctor of Philosophy (Applied Management & Decision Sciences), Walden University, Minneapolis, MN, 1999. Dissertation: The Patterns, Practices, and Managerial Impact of Sexual Harassment in a Southern Sheriff's Department with a Comparative Analysis to the United States Merit Systems Protection Board Findings. (Accredited by North Central Association of Colleges)

Master of Business Administration (Marketing/Management), *With Distinction*, Graduate School of Management, Babson College, Wellesley, MA, 1978. (Accredited by New England Association of Colleges)

Master of Science (Public Relations), School of Public Communication, Boston University, Boston, MA, 1976. (Accredited by New England Assoc. of Colleges)

Bachelor of Science (Criminal Justice), *Summa Cum Laude*, University of Baltimore, Baltimore, MD, 1975. (Accredited by Middle States Assoc. of Colleges)

Associate in Applied Science (Police Science), *Cum Laude*; **Certificate in Corrections**, *Cum Laude*, Northern Virginia Community College, Annandale, VA, 1972. (Accredited by Southern States Assoc. of Colleges)

PROFESSIONAL EXPERIENCE:

2005 – Present. **Institute for the Prevention of In-Custody Deaths, Inc.** Henderson, NV. President, Chief Learning Officer. Administrative, teaching, plus curricula design, operational guidance, and implementation of in-custody death identification, prevention, and investigative programs (including jail suicide) for criminal justice, emergency responders, correctional, and medical agencies across the globe. Developer of informational video, text, instructor and basic training materials, etc. for training classes, in addition to identifying and synthesizing the literature on sudden and in-custody deaths (e.g., metabolic acidosis, agitated delirium, "excited delirium", asphyxia issues, etc.). Sponsored first international sudden death, excited delirium Conference in November 2006.

1982 - Present: **Defensive Tactics Institute, Inc.** Henderson, NV. Founder, Vice Chairman, Chief Operating Officer, and senior instructor. President, 1982 - 1995. Administrative, marketing, public relations, financial, curricula design, teaching, plus the design, implementation and evaluation of less-than-lethal and non-lethal instructor and basic training programs for criminal justice agencies across the globe. Develop policies, procedures, rules and regulations for agencies on use-of-force training and equipment. Programs include, but are not limited to: prisoner restraint and transport; in-custody death; cultural diversity; sexual harassment; tactical handcuffing; TACTICAL OC®, defensive tactics, expandable & straight baton, firearm disarming and retention, tactical flashlight™, instructor development, Kubotan®, Kubotai®, edged weapons, and others.

1982 - Present: **John G. Peters, Jr. & Associates**, Las Vegas, NV. International Consultant and project manager. Consulting areas include police, correctional, security, and municipal practices; criminal justice products; civilian use-of-force; management studies; organizational diagnosis of criminal justice agencies; and, sexual harassment surveys and studies. Sexual harassment database is the largest identified that focuses upon criminal justice agencies. Statistical data analysis of TASER® voluntary self-exposures and field uses. Consulted in over 200 legal cases as an expert witness.

1982: **United States Secret Service Defensive Tactics Advisory Panel**, Washington, D.C. Member. One of four defensive tactics instructors in the United States appointed to this pioneering panel. The Panel's purpose was to design and update existing self-defense tactics for the U.S. Secret Service (including the Presidential Protection Detail, and the Uniformed Division).

1982 - 1995: **Reliapon Police Products, Inc.**, Albuquerque, NM. Founder. President. Former Chairman of the Board, and Vice President of Marketing and Communications (1983 - 1994). Responsibilities included the overseeing of administrative, marketing,

public relations, financial, and senior management matters of this specialized mail order, wholesale, video production, and publishing firm. Recruited and managed nationwide sales representatives. Products sold in the United States and abroad. Sold the company in 1994. Supervised six people.

1992 - 1994: **Institute for Liability Management**, Gallagher-Bassett Services, Inc., Itasca, IL. Senior Associate. Responsible for the conducting of police department Liability Assessment Profile Surveys (LAPS), the review of LAPS, plus the consultation/ implementation of LAPS; the development and review of high-risk policies; the teaching of courses including: Use-of-Force Instructor, Supervisory Responsibility and Liability Management, Pursuit Liability and Management, etc.; and, criminal justice practices consultation.

1989 - 1991: **Impact Productions, Inc. and Impact Duplications**. Albuquerque, NM. Co-founder. Served in the capacity of Writer-Producer for video productions and scripts. Wrote and produced two criminal justice informational videos: ASP Tactical Baton and Defensive Tactics With Electronic Restraints.

1982 - 1985: **Tri-Sector Professional Development Institute, Inc.** Albuquerque, NM. Founder. Administrative, marketing, public relations, and other duties, including curricula design and teaching, consulting, plus the design, implementation, and evaluation of management and related training programs for governmental, corporate, and non-profit agencies. Programs included: public budgeting, criminal investigation management, management by objectives, first-line supervision, discipline, civil liability, and the writing of policies, procedures, and rules and regulations.

1979 - 1982: **PR-24 International Institute, Inc.**, Braintree, MA. President and founder. Administrative duties, training, plus the design, implementation, and evaluation of the PR-24 baton, Kubotan®, and other defensive tactics programs for criminal justice agencies. Instructed the *Los Angles Police Department, the California Highway Patrol, the North Carolina Highway Patrol, the Las Vegas Metro Police, plus others*. Edited and published an international newsletter for instructors. Hosted the first PR-24 International instructor seminar.

1978 - 1979: **Public Systems Evaluation, Inc.**, Cambridge, MA. Senior Research Associate. Responsibilities included the conducting of literature reviews, attitudinal surveys, and topic area leadership in a project designed to assess and extend research findings in the area of police field services. Became one of the nation's leading authorities in the *management of criminal investigations*. Visited major California police departments in 1979 to obtain research and management reports on criminal investigation management.

1977 - 1978: **Braintree Police Department**, Braintree, MA. Staff Executive. In this *new* position, reported to, and assisted the Police Chief. Director of both the Administrative Bureau (7 divisions), the Planning and Research Unit, and liaison to the Auxiliary Police. Functionally reorganized the police department within the first three

months. Responsible for the department budget (excess of $1 million). Tasks included writing, editing, and implementing policies, procedures, rules and regulations, Special Orders, General Orders, special investigations, interviewing applicants, discipline, etc.

6/77 - 12/77: **Waltham Police Academy**, Waltham, MA. Consultant. In this new position, assisted the Academy Director with planning, organizing, coordinating, scheduling, and teaching.

1973 - 1977: **York County Sheriff's Department**, York, PA. Deputy Sheriff. Assignments included all areas of the criminal justice system: courts, corrections, and police. Assigned to the District Attorney's Fugitive Squad in 1974. Extensive experience in investigations and security techniques and applications.

1972 - 1973: **Northern York County Regional Police Department**, Dover, PA. Police officer (self-defense specialist). Pennsylvania's *first* regional police department. Conviction rate: criminal arrests--100%; traffic arrests--95%. Designed and instructed self-defense programs, including the PR-24 baton.

3/72 - 7/71; 6/69 - 6/70: **Federal Bureau of Investigation**, Washington, D.C. Clerk. Assigned to the Files and Communications Division. Received extensive training in public speaking. Instructed FBIRA Judo Club. Received a *Letter of Commendation* from then FBI Director, J. Edgar Hoover.

ACADEMIC EXPERIENCE:

2005-2006: **Neumann College**, Aston, PA. Adjunct faculty. Responsible for teaching in the Master of Leadership degree program. Designed and taught online facilitator course for undergrad and graduate faculty.

8/00- 12/04: **Millersville University**, Millersville, PA. Adjunct faculty. Responsible for the teaching of public *speaking*. Nominated for *Faculty of the Year, 2001* by Student Senate.

5/03 – 8/04: **Walden University**, Minneapolis, MN. Adjunct Faculty, School of Management/Public Administration. Supervise doctoral students in public administration areas, including but not limited to criminal justice, public safety, etc.

6/02 – 8/03: **Regent University**, Alexandria, VA. Assistant Professor. Responsible for the teaching of management, leadership, research, statistics, human resource management, independent study, and other business management courses; also, On-line course development. Serve on Admissions Committee and Curriculum Committee, in addition to advising students. Integral part of the SACS review for program accreditation.

3/00 – 9/01: **Walden Institute**, Bonita Springs, FL. Faculty. Responsible for teaching the Institute's on-line *Certified Online Instructor Course*.

9/00 – 6/02: **Regent University**, Alexandria, VA. Adjunct faculty, Degree Completion Program. Responsible for teaching orientation, management, and statistics courses in Regent's *new* Degree Completion Program (DCP). Lead instructor for Groups #1A, 5A and 9A. On-line course developer for the Regent DCP.

1/01 – 3/02: **Capella University**, Minneapolis, MN. Core Faculty. First, full-time core faculty in organizational psychology. Responsible for teaching doctoral- and master-level courses in *organizational psychology, statistics, research methods, personnel, and psychology of leadership* in the School of Psychology. Served on doctoral- and master-level dissertation/thesis and comprehensive examination committees. Coauthored, rewrote, and updated *organizational psychology* on-line course. Primary designer of *Police Psychology* certificate program, including *police organizational culture* course.

1/01 – 5/01: **Elizabethtown College**, Elizabethtown, PA. Adjunct faculty. Responsible for teaching *Organizational Training & Design*, and *Advanced Public Relations*.

2000 – 1/01: **Capella University**, Minneapolis, MN. Adjunct Faculty. Responsible for teaching doctoral- and master-level courses in *organizational psychology, statistics, research methods, personnel, and psychology of leadership* in the School of Psychology. Serve on doctoral and comprehensive committees.

1998 –1/01: **Eastern College**, St. Davids, PA. Affiliate faculty. Responsible for teaching MBA courses (*statistics foundations, business research methods, issues in management, strategic thinking I & II*) and undergraduate courses (*research methodology & statistics; leadership; human resources, ethics, marketing; etc*.) in the School of Professional Studies. Designed, *Information and Business Process Systems*, as an on-ground and on-line course in the Management of Information Systems program and the Adult Intensive Track. Primary instructor for DCP Group # 208.

8/99-5/00: **Millersville University**, Millersville, PA. One-year, full-time, temporary faculty appointment. Responsible for teaching three undergraduate courses: *introduction to public relations, public relations writing (writing lab)*, and *public speaking*.

1996 - 1998: **University of Alabama--Tuscaloosa**. Adjunct faculty. Responsible for teaching criminal justice courses in the Advanced Police Academy.

1978 - 1980: **Northern Essex Community College**, Haverhill, MA. Lecturer. Responsible for teaching four courses: *Senior Seminar* (Police/Security Management); *Security Administration; Principles of Loss Prevention;* and *Introduction to Security*. Subject areas included the analysis, the design, the management, and the implementation of police-security programs via a systems approach. Received the highest faculty evaluation of both full-time and part-time faculty.

PROFESSIONAL COMMUNITY EXPERIENCE:

2000 - 2005: **Civil Service Commission**, Millersville, PA. Appointed January 2000 to serve a six-year term by the Millersville Borough Council. Elected president in April 2000.

1989 - 1994: **Academy Estates Residents' Association, Inc.**, Albuquerque, NM. Elected President in 1989, 1990, 1991, and 1994 and Vice President, 1992 by members of the Association.

1988 - 1991: **Sunport Optimist Club**, Albuquerque, NM. Chairperson, Finance Committee, 1988 - 1989. Within six months, guided the Club from a negative to a positive cash flow. Also served as co-editor of the Club's weekly newsletter.

1979 - 1982: **Town of Braintree (MA) Finance Committee**. Member, General Government Sub-Committee. Responsible for the review and analysis of general town government budgets. Voted on all town budgets, including schools, police, fire, and highways. Served during pre- and post-Proposition 2 ½ (similar to California's Proposition 13).

1979 - 1982: **Town Meeting Member**, Braintree, MA. Elected position. Voted on all financial, administrative, and other matters that affected the Town of Braintree. Town Meeting members approved all budgets, etc.

OTHER PROFESSIONAL:

Training Advisor: AMTRAK® Police Department (1996 - present). Instruct and consult on various police management and training issues (e.g., sexual harassment and instructor development).

El Paso County (CO) Sheriff's Department.

Routt County (CO) Sheriff's Department (1991 - 1994). Draft, review, and recommend policies, rules, regulations, plus conduct training.

Fairbanks (AK) Police Department.

Pulaski County (AR) Sheriff's Department.

Member: International Association of Chiefs of Police; Justice Research & Statistics Association; Faculty, Americans for Effective Law Enforcement; Academy of Criminal Justice Sciences; Malignant Hyperthermia Association of the United States; American Correctional Association (professional member); International

Police Association (professional member); Who's Who in the East; Beta Gamma; Wilson Honor Society; Phi Theta Kappa; Lambda Alpha Epsilon; United States Combat Judo Association; United States Judo Association; and, United States Judo Federation.

Consultant: Various federal, state, city, county, local, and international criminal justice agencies including, but not limited to: Department of Energy Central Training Academy, Winnebago County Sheriff's Police (IL), Seattle Police Department, Oregon State Police, Tuscaloosa Police Department, plus corrections, security, and military agencies. Consulted with agencies in Canada, United Kingdom, and Australia. Former Advisory Board member to the Northern Essex Community College Criminal Justice Program.

Academic Awards: Dissertation nominated for academic award (1999).

M.B.A., *With Distinction*, Babson College. Second highest grade point average certificate, College of Liberal Arts, University of Baltimore; B. S. awarded, *Summa Cum Laude*; A. A. S. and Certificate in Corrections awarded, *Cum Laude*, Northern Virginia Community College.

Elected into Beta Gamma, Wilson, and Phi Theta Kappa National Honor Societies.

Professional Awards: Certified Litigation Specialist: police liability, correction liability; public employment liability; Certificates of Appreciation: U. S. Secret Service; Fairbanks (AK)Police Department; University of Alabama; U. S. Coast Guard; Escambia County (FL) Sheriff's Department; MSG, U. S. Marine Corps; plus more.

Letters of Commendation: Albuquerque (NM) Police Department; Bureau of Indian Affairs; Federal Bureau of Investigation; Washington State Criminal Justice Training Commission; California Highway Patrol; University of Alabama--Tuscaloosa; plus many more.

Honorary Citizen: Louisville, KY; Fairbanks, AK
Captain, Belle of Louisville; Kentucky Colonel

Professional Skills: Certified On-Line Instructor; Software programs: Word, WordPerfect, Excel, PowerPoint, SPSS, BlackBoard, WebCT; Hypnotist (clinical and investigative); WordPerfect; typing; Jiu-

Jitsu (holder of a third degree black belt); Judo (holder of a first degree black belt); International Instructor-Trainer in several less-than-lethal and non-lethal impact tools, defensive tactics, and tactics.

Presentations:

PATC, Western Training Conference—Las Vegas, NV (November 2006)
TASER® Use of Force, Risk Management, and Legal Strategies Conference—Oakland, CA (November 2006)
TASER® Use of Force, Risk Management, and Legal Strategies Conference—Colorado Springs, CO (August 2006)
TASER® Use of Force, Risk Management, and Legal Strategies Conference—Portland, OR (July 2006)
PRIMA Conference—Las Vegas (June 2006)
FBI National Academy Graduates—Utah (May 2006)
TASER® Annual Conference (May 2006)
TASER® Master Instructor Program (May 2006)
Harrah's Entertainment, Inc. (April 2006)
AELE Lethal and Less-Lethal Force (February 2006)
TASER® Use of Force, Risk Management, and Legal Strategies Conference—Scottsdale, AZ (January, 2006)
TASER® Use of Force, Risk Management, and Legal Strategies Conference—Scottsdale, AZ (December, 2005)
Michigan Sheriff's Conference (October, 2005)
Intercourse (PA) Merchants Association (February, 2004)
PRIMA Conference—Reno (May 2003)
Academy of Criminal Justice Sciences, Boston, MA (Feb., 2003)
Civil Air Patrol, Leola (PA) Elementary School (November, 2002)
PRIMA Conference—San Antonio (May 2002)
Wisconsin Sheriff's Conference (January 2001)
Walden University (December 1998)
Pennsylvania Sheriff's Conference (July 1998)
Walden University (March 1997)
Walden University (July 1997)
Milwaukee (WI) County Chief's Association (1995)
Texas Narcotics Officers Association Conference (1988, 1989)
Waltham (MA) Police Academy (March 1982)
Boston University (October 1979)
Waltham Police Department (October 1979)
PR-24 International Instructor Conferences (1979, 1980, 1981)
Boston University (February 1979)
Westwood (MA) Police Department (February 1979)

Panelist:

"Sexual Harassment Research Findings in Local Government." PRIMA's 26th Annual Conference, Las Vegas, NV, June 12, 2006.

"Legal, Psychological and Biomechanical Aspects of Officer-Involved Lethal and Less Lethal Force." Americans for Effective Law Enforcement, Las Vegas, NV, February 2006.

"Interactive Mock Trial" (municipal government employment practices). PRIMA's 24th Annual Conference, Reno, NV, May 22, 2003.

"Officer-Assisted Suicide: Liability, Training, and Municipal Concerns." Milwaukee, WI: Lorman Educational Services, December 5, 2002.

"Interactive Mock Trial" (employment practices). PRIMA's 23rd Annual Conference, San Antonio, TX, May 16, 2002.

"Sexual Harassment: Research Findings In The Law Enforcement Workplace", Milwaukee, WI. Lorman Educational Services, December 4, 2001.

"Police Liability in Wisconsin", Milwaukee, WI. Lorman Educational Services, December 14, 2000.

"To Protect and Serve." KNME Channel 5, Albuquerque, NM: July 10, 1991. Invited panelist: police "use-of-force"program.

PUBLICATIONS:

Texts:

1. **Official Kubotan® Techniques** (with Takayuki Kubota). (1981). Ventura, CA: Reliapon Police Products, Inc.

2. **Realistic Defensive Tactics**. (1981). Ventura, CA: Reliapon Police Products, Inc.

3. **Official Kubotan Techniques--Civilian** (with Takayuki Kubota). (1982). Braintree, MA: Defensive Tactics Institute, Inc.

4. **Defensive Tactics With Flashlights**. (1983). Ventura, CA: Reliapon Police Products, Inc.

5. **Afraid of the Dark? Lite Your Way To Safety** (with Laurie A. Peters). (1984). Ventura, CA: Reliapon Police Products, Inc.

6. Tactical Handcuffing for Chain- and Hinged-Style Handcuffs. (1989). Ventura, CA: Reliapon Police Products, Inc.

7. **Prevention and Management of In-Custody Deaths** (with A. David Berman). (1997).Millersville, PA: Defensive Tactics Institute, Inc.

8. **Tactical OC®**. Ventura, CA: Reliapon Police Products, Inc. (forthcoming 2006).

9. **Identification, Prevention, Management, and Investigation of Sudden and In -Custody Deaths**. Las Vegas, NV: 702 Visual Communications, Inc. (forthcoming 2006).

ARTICLES, NEWSLETTER, and HANDBOOKS

1. *BLURB*. Lancaster: Lancaster (PA) Judo Club, January 1976.

2. "Search: the Elevated Lying Position." *The Sentinel*, Spring 1976, pp. 44-45.

3. "Massachusetts Prison Furlough System. A Failure?**"** (with George Sacco) *The Advocate*, Spring 1976, pp. 2-9.

4. *BLURB*. Lancaster: Lancaster (PA) Judo Club, February-March, 1976.

5. "Massachusetts Prison Furlough System. A Failure?" (with George Sacco) *The Sentinel*, Summer 1976, pp. 61-64.

6. Warren Hall Handbook. Boston: Boston University Press, 1976.

7. *BLURB*. Lancaster: Lancaster (PA) Judo Club, April-May, 1976.

8. "Massachusetts Police Association's Position On Firearms." (with George Sacco) *The Sentinel*, Fall 1976, pp. 41-44.

9. "Management vs Media." *The Sentinel*, Fall 1976, pp. 63-64.

10. "Escape From A Full Nelson." *The Sentinel*, Fall 1976, pp. 63-64.

11. *BLURB*. Lancaster: Lancaster (PA) Judo Club, September-October, 1976.

12. *Massachusetts Police Association's 1976 Convention Report* (with Bill Brooks, et al.) Peabody: Massachusetts Police Association, 1976.

13. "Dealing With Recidivism." *The Sentinel*, Winter 1976, pp. 57-62.

14. "This Way Please." *The Sentinel*, Winter 1976, pp. 49-50.

15. "Breaking A Front Choke Hold." *The Sentinel*, Winter 1976, pp. 48-49.

16. *BLURB*. Lancaster: Lancaster (PA) Judo Club, November-December, 1976.

17. "Pinned On Your Back: Now What?" *The Sentinel*, Spring 1977, pp. 55-56.

18. "Bartley-Fox: Is It Working?" (Part I with W. Brooks) ***The Sentinel***, Spring 1977, pp. 51-54.

19. *A Descriptive Study To Determine The Salutation Preference of Massachusetts' Drivers*. Wellesley: Babson College Press, 1977.

20. "Self-Defense Tips For Women." *The Sentinel*, Summer 1977, pp. 51-53.

21. "Bartley-Fox: Is It Working?" (Part II with W. Brooks) *The Sentinel*, Summer, 1977, pp. 47-50.

22. "First Names: Should They Be Used During Traffic Stops?" (with R. Goulet) *The Sentinel*, Summer 1977, pp. 15-20.

23. "You Want Me Out, Take Me Out." *The Sentinel*, Fall 1977, pp. 33-34.

24. *Northern Essex Hospital*. Haverhill: Northern Essex Community College, 1977.

25. "Escape From A Crushing Bearhug." *The Sentinel*, Winter 1977, p. 27.
26. "Shoplifting: Its Impact On You." (with D. Slifka). *The Sentinel*, Winter 1977, pp. 31-32.

27. "The PR-24: An Answer To The Grey Area." *The Sentinel*, Spring 1978, pp. 19-21.

28. *Hypnosis: An Evaluation of its Impact on Learning In A Police Recruit Class*. Boston: Massachusetts Criminal Justice Training Council, 1978.

29. *The Connection*. Braintree: PR-24 International Institute, Inc., August-September 1979.

30. "Defensive and Offensive Blocking: How A New Type of Baton Can Work For You." Law Enforcement Communications, August 1979, pp. 47-51.

31. "Police Field Studies: A Review of Evaluation Research." (with Michael Cahn, and Edward Kaplan). *How Well Does It Work? Review of Criminal Justice Evaluation, 1978.* Washington National Institute of Law Enforcement and Criminal Justice, 1979, pp. 205-236.

32. *The Connection*. Braintree: PR-24 International Institute, Inc., October-November, 1979.

33. *The Connection*. Braintree: PR-24 International Institute, Inc., December-January, 1980.

34. *The Connection*. Braintree: PR-24 International Institute, Inc., February-March, 1980.

35. *The Connection*. Braintree: PR-24 International Institute, Inc., April-May, 1980.

36. *The Connection*. Braintree: PR-24 International Institute, Inc., June-July, 1980.

37. *The Connection*. Braintree: PR-24 International Institute, Inc., August-September, 1980.

38. *The Connection*. Braintree: PR-24 International Institute, Inc., October-November, 1980.

39. *The Connection*. Braintree: PR-24 International Institute, Inc., December-January, 1981.

40. "Kubotan: New Police Impact Tool." *The Sentinel*, Winter 1981, pp. 23-26.

41. *DTI Training Review*. Albuquerque: Tri-Sector Professional Development Institute, Volume 84 No 1, 1984.

42. *DTI Training Review*. Albuquerque: Tri-Sector Professional Development Institute, Volume 84 No 2, 1984.

43. *DTI Training Review*. Albuquerque: Tri-Sector Professional Development Institute, Volume 84 No 3, 1984.

44. *DTI Training Review*. Albuquerque: Tri-Sector Professional Development Institute, Volume 84 No 4, 1984.

45. *DTI Training Review*. Albuquerque: Tri-Sector Professional Development Institute, Volume 85 No 1, 1985.

46. **Instructor Handbook: Use of Force**. Albuquerque: Reliapon Police Products, Inc., 1985.

47. "Tactical Handcuffing Part I." *Police and Security News*, January-February 1988, pp. 6-23.

48. "Tactical Handcuffing Part II." *Police and Security News*, March-April 1988, pp. 2-19.

49. "Mini-Flashlights: More Than An Illumination Device." *Police and Security News*, July-August 1988, pp. 3-14.

50. **Tactical Handcuffing: Instructor Handbook.** Albuquerque: Reliapon Police Products, Inc., 1988.

51. **Tactical Handcuffing: Test Administrator Manual**. Albuquerque: Reliapon Police Products, Inc., 1988.

52. "Officer Survival Tip When Using the Beretta 92-F and the H & K 9mm Auto Pistols." *Police and Security News*, September-October 1988, pp. 3-14.

53. "The Truth About Electronic Restraints." *Police and Security News*, November-December 1988, pp. 3-14.

54. "The Expandable Baton: Your Less-Than-Lethal Sidekick." *Police and Security News*, January-February, 1989, pp. 5-16.

55. "Use of Force: Making the Intangible, Tangible." *Police and Security News*, March-April 1989, pp. 5-23.

56. **Electronic Restraint Lesson Guide**. Albuquerque: Reliapon Police Products, Inc., 1989.

57. **Electronic Restraint Test Administrator Manual**. Albuquerque: Reliapon Police Products, Inc., 1989.

58. "Reduce Your Training Liability With Performance- and Situational-Based Testing. "*Police and Security News*, May-June 1989, pp. 5 - 25.

59. "Eight Areas Of Potential Negligence For Criminal Justice Trainers, Supervisors, and Administrators." *Police and Security News*, July-August 1989, pp. 7 - 30.

60. "Restraining Prisoners: An Historical View." *Police and Security News*, September-October 1989, pp. 6-9.

61. **Firearm Disarming Instructor Guide**. Albuquerque: Reliapon Police Products, Inc., 1989.

62. **Firearm Disarming Test Administrator Manual**. Albuquerque: Reliapon Police Products, Inc., 1989.

63. **Tactical Flashlight Instructor Guide**. Albuquerque: Reliapon Police Products, Inc., 1989.

64. **Tactical Flashlight Test Administrator Manual.** Albuquerque: Reliapon Police Products, Inc., 1989.

65. "Corrective Discipline for the 1990s." *Police and Security News*, March-April 1990, pp. 14-31.

66. "Mini-Flashlights Revisited." *Police and Security News*, July-August 1990, pp. 5-27.

67. "Kubotai: New Restraint Tool." *Police and Security News*, July-August 1990, p. 40.

68. "New Restraints For The 1990s." *Police and Security News*, September-October 1990, pp. 12-35.

69. "Your Whistle: An Important, But Often Overlooked Officer Survival Tool." *Police and Security News*, November-December 1990, pp. 3-27.

70. *DTI Training Review*. Albuquerque: Defensive Tactics Institute, Inc., Volume 91 No. 1, 1991.

71. "The Expandable Baton: More Than A Defensive Striking Tool." *Police and Security News*, January-February 1991, pp. 5-39.

72. Tactical Handcuffing Review: Standing Face To Face No. 1 Poster. Albuquerque: Reliapon Police Products, Inc., January 1991.

73. Tactical Glove Review. Poster. Vermont: Dakota Corp., March 1991.

74. "Flashlights: The Ersatz Baton: Part I." *Police and Security News*, March-April 1991, pp. 10 - 25.

75. "Rechargeable Flashlights: The Most Cost-Effective Tools You Can Use On The Job." *Police and Security News*, May-June 1991, pp. 10-33.

76. *DTI Training Review*. Albuquerque: Defensive Tactics Institute, Inc., Volume 91 No. 2, 1991.

77. "Tactical Gloves: A Must For The Street-Wise Officer." *Police and Security News*, September-October 1991, pp. 18-31.

78. **Chemical Aerosol Spray Instructor Guide.** Albuquerque: Reliapon Police Products, Inc., 1991.

79. "Heroes Behind The Badge: National Law Enforcement Officers Memorial." *Police and Security News*, November-December 1991, pp. 43-45.

80. **Chemical Aerosol Spray Workbook**. Albuquerque: Defensive Tactics Institute, Inc., 1991.

81. **Defensive Tactics Instructor Workbook**. Albuquerque: Defensive Tactics Institute, Inc., 1991.

82. "Selected Medical Implications of Handcuffing." *Police and Security News*, January-February 1992, pp. 24-27.

83. **Tactical Flashlight Instructor Workbook.** Albuquerque: Defensive Tactics Institute, Inc., 1992.

84. **Kubotan Instructor Workbook**. Albuquerque: Defensive Tactics Institute, Inc., 1992.

85. **Side-Handle Baton Instructor Workbook** (with Steven Shockley). Albuquerque: Defensive Tactics Institute, Inc., 1992.

86. "Americans With Disabilities Act: Its Affect On Criminal Justice and Security Agencies." (with Michael Brave, J.D.) *Police and Security News*, May-June 1992, pp. 3-63.

87. *DTI Training Review*. Albuquerque: Defensive Tactics Institute, Inc., Volume 92 No. 1, 1992.

88. "OSHA's Occupational Exposure to Bloodborne Pathogens Standard: How it Can Cave Your Life! Part I of 2." (with Michael Brave, J.D.) *Police and Security News*, July-August 1992, pp. 28-41.

89. "Americans With disabilities Act: An End to Disability discrimination by Law Enforcement." (with Michael Brave, J.D.) *CVMC Risk Management Case Study VII*, July 1992.

90. "Why OC? (Oleoresin Capsicum)." (with Michael Brave, J.D.) *CVMC Risk Management Study V*, July, 1992.

91. "Managing The Use of force Through Policies and Procedures." (with Michael Brave, J.D.) *Legal Defense Manual*, Brief 92-3, pp. 12-19.

92. "New Technology--Oleoresin Capsicum Spray; Policy and Procedure." (with Michael Brave, J.D.). *Legal Defense Manual*, Brief 9203, pp. 12-19.

93. "Electronic Restraint Devices--Policy and Procedures." (with Michael Brave, J.D.). *Legal Defense Manual*, Brief 9203, pp. 19-23.

94. "OSHA's Occupational Exposure to Bloodborne Pathogens Standard: How It Can Save Your Life--Part II." (with Michael Brave, J.D.). *Police and Security News*, September-October 1992, 20-56.

95. **Edged Weapons Instructor Workbook** (with Steven Shockley). Albuquerque: Defensive Tactics Institute, Inc., 1992.

96. **Crowd Control Instructor Workbook** (with Steven Shockley). Albuquerque: Defensive Tactics Institute, inc., 1992.

97. *DTI Training Review*. Albuquerque: Defensive Tactics Institute, Inc., Volume 92 No 2, 1992.

98. "Stop Exposing Yourself." *Hatch Gloves Newsletter*. Ventura: Hatch Gloves, Volume 92 No 4, 1992.

99. *Electronic Restraints*. Sample Policy (with Michael Brave). Albuquerque: Reliapon Police Products, Inc., 1992.

100. *Aerosol Sprays*. Sample Policy (with Michael Brave). Albuquerque: Reliapon Police Products, Inc., 1992.

101. "OSHA's Occupational Exposure to Bloodborne pathogens Standard: How it Can Save Your Life! (with Michael a. Brave), *CVMC Risk Management Case Study IX*, December, 1992.

102. "New Information On Aids That Can Save Your Life!" (with Michael A. Brave) *Police and Security News*, January-February 1993, pp. 13-39.

103. "Legal Constraints On Human Restraints." *The Police Chief*, March 1993, pp. 28-35.

104. "What's Your Use Of Deadly Force Standard?" (with Michael A. Brave) *Police and Security News*, May-June 1993, pp. 9-51.

105. "The Problem With Off-Duty Employment." (with Michael A. Brave) *Legal Defense Manual*, Brief 93-2, pp. 3-8.

106. "Secondary Employment: Sample Policy and Procedure." (with Michael A. Brave) *Legal Defense Manual*, Brief 93-2, pp. 8-12.

107. "General Use-of-Force Considerations: Sample Policy and Procedure." (with Michael A. Brave) *Legal Defense Manual*, Brief 93-2, pp. 25-29.

108. "Deadly Force: More Than Just Firearms." (with Michael A. Brave) *Police and Security News*, September-October 1993, pp. 16-28.

109. "OC Aerosol Spray Update." (with Michael A. Brave) *Police and Security News*, January-February 1994, pp. 13-28.

110. "Flashlights and Police Liability." (with Michael A. Brave) *The Police Chief*, May 1994, pp. 46-49.

111. "New Study Says OC Sprays Safe." (with Michael A. Brave) *Police and Security News*, May-June 1994, pp. 55-58.

112. "Written Policy: Foundation for Officer Accountability." (with Michael A. Brave) *Legal Defense Manual*, Brief 94-2, pp. 3-8.

113. "Street-Proven, Life-Saving Equipment." *The European Government Journal*, Volume 2 No. 4 [1994], pp. 107-111.

114. "OC Training: Are Facial Sprays Necessary?" *Police and Security News*, September-October 1996, pp. 57-61.

115. **Prevention and Remediation of Sexual Harassment in the Workplace**. Millersville, PA: Defensive Tactics Institute, Inc., 1996.

116. "Prevention and Remediation of Sexual Harassment In The Criminal Justice Workplace—Part I." *Police and Security News*, January - February, 1997, pp. 15 - 50.

117. "Prevention and Remediation of Sexual Harassment In The Criminal Justice Workplace—Part II." *Police and Security News*, March - April, 1997, pp. 3 - 7.

118. "Hogtying: Take It Off Your Restraint Menu." *Police and Security News*, May - June 1998, pp. 52 - 57.

119. "Hogtying: Take It Off Your Restraint Menu." *CVMC Risk Management Case Study #83*, July 1998.

120. "Sexual Harassment: What Can Your Agency Do To Minimize Liability?" (with G. Gunta). (1998, November) *The Police Chief*, p. 10.

121. The Patterns, Practices, and Managerial Impact of Sexual Harassment in a Southern Sheriff's Department with a Comparative Analysis to the United States Merit Systems Protection Board Findings. (1999). Ann Arbor, MI: UMI, Inc.

122. "Sexual Misconduct: The No Win Lawsuit." (with G. Gunta). (2001, July). *CVMIC Update*, Vol. 11 No.3, pp. 2-3.

123. "National Law Enforcement Officers Memorial: 10th Anniversary." *Police and Security News*, November-December 2001, p. 78.

124. "Sexual Harassment: Research Findings in the Law Enforcement Workplace." (2001). *Police Liability in Wisconsin*. Eau Claire: Lorman Education Services, pp. 129-148.

125. "Great Cause, Great Night." *American Police Beat,* December 2000, p. 38.

126. "Officer-Assisted Suicide: Liability, Training, and Municipal Liability." (2002). *Police Liability in Wisconsin*. Eau Claire: Lorman Education Services, pp. 143-169.

127. "Suicide-by-Cop: Liability, Training, and Municipal Concerns. *Police and Security News*, January-February, 2003.

128. "1754-2004 Hall of Fame: Village of Intercourse, PA." (2004). *Amish Country News*, Volume 15, Issue 2, 17-19.

129. **Identification, Prevention, Management, and Investigation of Sudden and In-Custody Deaths**, Instructor Workbook v.1.0. (2005, July). Henderson, NV: Institute for the Prevention of In-Custody Deaths, Inc..

130. **Identification, Prevention, Management, and Investigation of Sudden and In-Custody Deaths**, Instructor Workbook v.2.0. (2005, October). Henderson, NV: Institute for the Prevention of In-Custody Deaths.

131. "Operationalizing Theory Into Practice: Sudden and In-Custody Deaths." (2005, December). *TASER® Use of Force, Risk Management and Legal Strategies for Chiefs, Sheriff's Risk Managers, and Legal Advisors*. Scottsdale, AZ: TASER® International, Inc.

132. "Force Continuums: Three Questions." (2006, January). *The Police Chief*, 8-9.

133. "Force Continuums: Are They Still Needed?" (2006, January). *Police and Security News*.

134. "Operationalizing Theory Into Practice: Sudden and In-Custody Deaths." (2006, January). *TASER® Use of Force, Risk Management and Legal Strategies for Chiefs, Sheriff's Risk Managers, and Legal Advisors*. Scottsdale, AZ: TASER® International, Inc.

135. "Sudden and In-Custody Deaths." (2006, February). *AELE legal, psychological and biomechanical aspects of officer-involved lethal and less lethal force workshop workbook*. Park Ridge, IL. Americans for Effective Law Enforcement.

136. "Sudden death, 'excited' delirium, and issues of force: Part I." (2006, March-April). *Police & Security News*, 104-107.

137. "Sudden death, 'excited delirium, and issues of force: Part II--TASER® and EMDs." (2006, May-June). *Police & Security News*.

138. "Sudden death, 'excited delirium,' and issues of force: Part III: Behavioral Cues and Response Plan for Sudden and In-Custody Deaths." (2006, July-August). *Police & Security News*, 44-49.

139. "Highlights From the 2006 TASER Conference." (2006, July-August). *Police & Security News*, 56-59.

140. "Sudden Death, 'Excited Delirium,' and Issues of Force: Part IV: A Blueprint for Forensic Investigators." (2006, September-October). *Police & Security News*.

141. "Management Issues in law Enforcement Litigation." (2006, October). *AELE Police Civil Liability*. Park Ridge, IL: Americans for Effective Law Enforcement.

142. "In-Custody Death and Injuries." (2006, October). *AELE Police Civil Liability*. Park Ridge, IL: Americans for Effective Law Enforcement.

143. "The Aftermath of an Event." (2006, October). *AELE Police Civil Liability*. Park Ridge, IL: Americans for Effective Law Enforcement.

144. "Sudden Death, 'Excited Delirium,' and Issues of Force: Part V: Preventing Jail Suicide." (2006, November-December). *Police & Security News.*

SCRIPTS:

1. Defensive Tactics With Flashlights. Produced by Alan Popkin. Directed by Drew Michaels. 45 min. Wild Wing Productions, 1986. Videocassette.

2. Tactical Handcuffing: Part I. Produced by Marc Knutson. Directed by Rick Eisleben. 60 min. M & C Productions, 1986. Videocassette.

3. Tactical Handcuffing: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1986. Videocassette.

4. Basic Defense With Flashlights. Produced by Alan Popkin. Directed by Drew Michaels. 20 min. Wild Wing Productions, 1987. Videocassette.

5. Basic Tactical Handcuffing: Part I Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

6. Basic Tactical Handcuffing: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

7. LaChoy: Menu of Fortune. Produced by Marc Knutson. Directed by Rick Eisleben. 45 min. M & C Productions, 1987. Videocassette.

8. Realistic Firearm Disarming: Part I. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

9. Realistic Firearm Retention: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

10. Defensive Tactics With Mini-Flashlights. Produced by Marc Knutson. Directed by Rick Eisleben. 90 min. M & C Productions, 1987. Videocassette.

11. Realistic Side-Handle Baton Techniques: Part I. Produced by Marc Knutson. Directed by Rick Eisleben. 60 min. M & C Productions, 1987. Videocassette.

12. Realistic Side-Handle Baton Techniques: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987.

13. Mission Possible. Produced by Marc Knutson. Directed by Rick Eisleben. M & C Productions, 1987.

14. Basic Firearm Disarming. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

15. Basic Firearm Retention. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

16. Basic Mini-Flashlight (Kubotan) Techniques: Part I. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

17. Basic Mini-flashlight (Kubotan) Techniques: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

18. Basic Side-Handle Baton: Part I. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

19. Basic Side-Handle Baton: Part II. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

20. Basic Side-Handle Baton: Part III. Produced by Marc Knutson. Directed by Rick Eisleben. 30 min. M & C Productions, 1987. Videocassette.

21. REFAST Dynamic Tactical Firearms Training System: Promotional Video Tape. Produced by John G. Peters, Jr. Directed by Rick Eisleben. 30 min. Impact Productions, Inc., 1989. Videocassette.

22. REFAST Dynamic Tactical Firearms Training System: Operational Video Training Manual. Produced by John G. Peters, Jr. Directed by Rick Eisleben.45 min. Impact Productions, Inc., 1989. Videocassette.

23. ASP Tactical Baton. Produced by John G. Peters, Jr. Directed by Susan Sherman. 60 min. Impact Productions, Inc., 1989. Videocassette.

24. Defensive Tactics With Electronic Restraints. Produced by John G. Peters, Jr. Directed by Susan Sherman. 45 min. Impact Productions, Inc., 1989. Videocassette.

25. Kubotai. Produced by Takayuki Kubota. Directed by Val Malochevic. 30 min. International Karate Association, 1990. Videocassette.

26. Tactical Flashlight: An Introduction. Produced by John G. Peters, Jr. Directed by Susan Sherman. 90 min. Impact Productions, division of Reliapon Police Products, Inc. 1991. Videocassette.

27. Defensive Tactics With Chemical Aerosol Sprays. Produced by John G. Peters, Jr. Directed by Susan Sherman. 50 min. Reliapon Police Products, Inc., 1992. Videocassette.

28. BodyGuard: Personal Protection with Chemical Aerosol Sprays. Produced by John G. Peters, Jr. Directed by Susan Sherman. 30 min. Reliapon Police Products, Inc., 1992. Videocassette.

29. Stop Exposing Yourself: Reducing Personal Risk Through Leather Gloves.

Produced by John G. Peters, Jr. Directed by Susan Sherman. 30 min. Reliapon Police Products, Inc., 1992. Videocassette.

30. Pneu-Gun, Ballistic Baton: An Introduction. Produced by John G. Peters, Jr. Directed by Susan Sherman. 10 min. Reliapon Police Products, Inc., 1992. Videocassette.

31. Prevention and Management of In-Custody Death. Produced by John G. Peters, Jr. Directed by John G. Peters, Jr. and Mark Myers. 45 min. American Handcuff Co, Inc., 1998. Videocassette.

32. Response to Sexual Harassment: Organizational Victory or Checkmate? Produced by John G. Peters, Jr. Directed by David A. Donovan and John G. Peters, Jr. 42 min. Millersville University, 2002. Videocassette.

33. The Old Woodshed. Produced by John G. Peters, Jr. Directed by David A. Donovan and John G. Peters, Jr. Commemorative Intercourse, 2004. Videocassette & DVD.

34. Commemorative Intercourse (PA):1754-2004. Produced and written by John G. Peters, Jr. Directed by David A. Donovan and John G. Peters, Jr. Commemorative Intercourse, 2004. Videocassette & DVD.

35. Intercourse (PA) 250th Celebration & Heritage Parade. Produced by John G. Peters, Jr. Directed by John G. Peters, Jr. Commemorative Intercourse, 2004. Videocassette & DVD.

36. Intercourse (PA) 200th Celebration: 1954. Produced by John G. Peters, Jr. Directed by Alvin Smoker and John G. Peters, Jr. (forthcoming, Winter 2005). Videocassette & DVD.

37. Tactical OC®. Produced by John G. Peters, Jr. Directed by David A. Donovan and John G. Peters, Jr. (forthcoming, 2006). DVD.

38. Identification, Prevention, Management, and Investigation of Sudden and In-Custody Deaths. Produced by John G. Peters, Jr. Directed by John G. Peters, Jr. (forthcoming, 2006). DVD.

Cassette Recordings:

1. Berman, A. David, & Peters, Jr., John G. (Speakers). (1995). Officer safety update. Millersville, PA: Defensive Tactics Institute, Inc.

2. Berman, A. David, & Peters, Jr., John G. (Speakers). (1995). Lesson guides

and performance-based testing. Millersville, PA: Defensive Tactics Institute, Inc.

3. Adams, J. T., & Peters, Jr., John G. (Speakers). (1998). Prevention and Management of Sudden In-Custody Death. Millersville, PA: Defensive Tactics Institute, Inc.

On-line Course Development:

1. "Certified Online Facilitator ." *Neumann College*, 2006.

2. "Developing Online Courses." *Neumann College*, 2006.

3. "Master Syllabus: Emergency Management." *Walden University*, 2004.

4. "Critical Thinking." (Course Developer.) Regent University, 2003.

5. "Police Organizational Culture." (Course Developer with Dr. Julian Timothy Adams). *Capella University*, 2002.

6. "Vocational Psychology." (Course Developer with Dr. Wayland Secrest). *Capella University*, 2002.

7. "Organizational Psychology." (Course Collaborator with Dr. Karen Yasgoor). *Capella University*, 2001.

APPENDIX B

John G. Peters, Jr. & Associates

1550 West Horizon Ridge Parkway
Suite A, #337
Henderson, Nevada 89012

John G. Peters, Jr., M.B.A., Ph.D., CLS has testified in the following cases during the last four years (2003, 2004, 2005, 2006):

2003	**Deposition**	**Trial**
Hong Kong, SAR v. Lawrence		X
Dasher, et al. v. Reidy, et al.		Daubert Hearing
Dasher, et al. v. Reidy, et al.		X
Debebe v. Prince Georges County, et al.	X	
2004		
2005		
Stiebling v. Sheriff Harry Lee, et al.	X	X
Shah v. District of Columbia	X	
2006		
Workman v. Tangue Verde Unified School District, et al.		X
Nunez v. San Joaquin County, et al.	X	X
Adams v. West Coast Protection and Patrol, et al	X	X
Quinette v. Henry Lee, et al	X	
Calhoun v. City of Chicago, et al.	X	

Zivonivich v. Leon County Sheriff's Dept. X