Comments on the Citizen Review Committee's Taser/Less Lethal Work Group Report by Dan Handelman, Portland Copwatch May 18, 2012

To the Citizen Review Committee:

Below are comments on the most recent draft of the Taser/Less Lethal Work Group Report. While our organization would like to see the Bureau stop using Tasers altogether, except as a true alternative to lethal force, the report is a step in the right direction. We made some of these comments prior to the report's being posted on line, but they have not been incorporated into the current version.

## WHAT'S IN A NAME

The word "Taser" stands for Thomas A Swift Electronic Rifle, which by invoking a child's toy underplays the severity of the 50,000 volt shock dispensed by these weapons. These weapons are used by officers inappropriately when subjects refuse orders, as opposed to being used when a serious threat of physical injury exists. As such, we have objected to CRC's use of the term "Electronic Control Weapon (ECW)" as a generic term for Tasers, as opposed to "CEW" ("Conductive Energy Weapon") which is more accurate and neutral of a term.\*

#### GREAT RECOMMENDATIONS

We strongly support recommendations 2012.1 and 2012.6--calling to remove "displays the intent to engage in aggressive physical resistance" from the Taser and Pepper Spray Directives; 2012.3, requiring police to ensure medical aid to all Taser subjects; 2012.4, to collect data when officers merely use the Taser's laser sight to intimidate subjects; 2012.5, to get "less lethal" weapons that can't fire lethal ammunition (though an easier fix would be to get rid of shotguns as firearms, since officers rarely if ever actually use them for that purpose); and 2012.7 for annual in-service trainings emphasizing de-escalation.

We also support the recommendations for IPR to get training from mental health professionals (2012.8), and document its case-handling decisions better (2012.9), as well as asking police supervisors to take more responsibility about use of force used by their officers (2012.11). We support but have comments on the other recommendations, incorporated in the comments below.

## ONCE, TWICE, THREE TIMES TOO MANY

The recommendation on limiting the number of Taser cycles to three barring "exigent circumstances" (2012.2) comes after a discussion that twice cites the idea of cycling once, re-evaluating, then not using more than a total of three cycles. Perhaps that idea should be incorporated into the recommendation, particularly because those are the recommendations both of the Police Assessment Resource Center (PARC) and the New York Police Department, and the Auditor's report, which suggested the Bureau adopt a policy that officers use the least number of cycle necessary. The Police Executive Research Forum (PERF)'s 2011 Electronic Control Weapon Guidelines #13 also calls for using a Taser once, reassessing, and not using the weapon longer than 15

seconds (3 standard cycles), as the Work Group noted during its deliberations.

#### LEGAL TRAINING FOR ALL

Recommendation 2012.10 previously suggested that IPR and others who are involved in the process of recommending findings be trained about applying the "Graham standard" of "totality of the circumstances" to force complaints. The current version asks that IPR and the City Attorney train the PPB command staff. Since the IPR, peer officers, and civilian members of the Police Review board are making these decisions (as is the CRC itself), all of those parties should also get reminded that severity of the crime, risk to the public, actual threats of harm, and other factors must be considered by an officer using force or deadly force.

## WOMB FOR IMPROVEMENT

In the discussion of the Brooks v. Seattle case, in which Seattle police used a Taser three times on Ms. Brooks for failing to sign a traffic ticket, it is mentioned that Ms. Brooks was 7 months pregnant. It's not clear whether the Court made mention of her condition as part of the "totality of the circumstances," but since women who are pregnant are part of the "restricted class" of folks who should not get tasered, it may be worth repeating the Bureau's policy in your report. (For example, "If this incident happened in Portland, it would be even more obviously out of policy because women who are pregnant are an exception to use of Tasers.")

## YOU'RE ON CANDID CAMERA

We suggested that the recommendation on videos (previous 2012.6) can be re-included, perhaps citing the AMA Coalition's recommendation on cameras in police cars,

http://albinaministerialcoalition.org/amademands2010.html (number 10.3).

The language in the previous draft recommendation encouraged police to look into feasibility of recording devices, which is open-ended enough to keep in the report so that if camera technology improves and/or becomes less costly in the future, the Bureau can adopt Taser cameras. We do not feel strongly about this either way, though we do note the difference between a Taser camera and other proposed police surveillance cameras is that they would only be turned on once the Taser was out of its holster (and, in current models, limited to only once the laser light is activated, which often does not give enough information to assess the scene).

YOU GO TO PRESS WITH THE REPORT YOU HAVE, NOT THE REPORT YOU WISH YOU HAD

It is unfortunate that CRC was relatively limited in looking at cases in which a person complained about the use of less lethal weapons. It would have been good to delve into the information that came out in the Bureau's

2007 and 2009 Use of Force Reports showing that a disproportionate number of Taser applications were against people with mental health issues, and a similar larger-than-their-representation-in-the-public

use of pepper spray on African American Portlanders. Perhaps these issues can be followed up in a new Use of Force Report.

You probably also know that since your draft was published, a report citing the potential lethal effects of Tasers on human hearts was released:

"Tasers Pose Risks to Heart, a Study Warns," NY Times, April 30, 2012, <a href="http://www.nytimes.com/2012/05/01/health/research/taser-shot-to-the-chest-can-kill-a-study-warns.html">http://www.nytimes.com/2012/05/01/health/research/taser-shot-to-the-chest-can-kill-a-study-warns.html</a>

and the Supreme Court will be asked by the officers in the Brooks case (but not the City of Seattle) to look at Taser issues sometime during the week of May 21:

"A Ticket, 3 Taser Jolts and, Perhaps, a Trip to the Supreme Court," NY Times, May 14, 2012

http://www.nytimes.com/2012/05/15/us/police-taser-use-on-pregnantwoman-goes-before-supreme-court.html

It may be worth mentioning these developments, if only in a footnote.

## TECHNICAL ISSUES/FACT CHECKING:

The section on the Risk Management figures on p. 11 (showing over \$1 million spent on Taser related lawsuit payouts) includes money paid from

2002 through June, 2011 (not from 2006 through 2008 as stated in the report draft). The incidents in question occurred between 2002 and July 2009. If you include the Halsted case (tasered 5 times in June 2008) which ended with a jury award leading to a final settlement of \$258,040 on April

25 this year, the total is \$931,165.77, significantly more than the \$673,125 listed... not to mention that James Chasse was hit with a Taser while officers punched, beat and kicked him (costing another \$1.6 million

plus).\*\*

The discussion of the Taser directive on page 12 refers to the Policy section versus two parts of the "Authorized Use of the Taser" section as "two policies and procedures." But they are both part of the same policy.

Perhaps you mean "the conflict between the two sections of the policy"?

On p. 19, the reference to the Non Disciplinary Complaint (oops, we mean Service Improvement Opportunity) Report should refer to it as the CRC's Service Improvement Opportunity Report, since it became the whole Committee's after the Recurring Audit Work Group presented it at a meeting for adoption.

#### TYPOGRAPHICAL/LAYOUT/GRAMMAR:

# p. 5:

2nd paragraph, description of ECWs (which, as noted above, are better described as "CEDs" or "CEWs"-- Conducted Energy Devices/Weapons, since "Control" implies use against failing to comply) includes the typo "devises" instead of "devices."

3rd paragraph has a long quote from the PPB directive; while it is footnoted, the body text should probably say, "The PPB's directive states:" to be clear where the block quote is from.

#### p. 6

2nd paragraph says CRC "reviewed... and a review of less-lethal force complaints." The phrase "a review of" can be removed.

2nd paragraph under "Graham Standard" has double quotes inside double quotes, instead of single quotes on the inside. (Around the words "seizure" and "reasonableness.")

3rd paragraph says "objectionably" instead of "objectively" but we do often find so-called "objective reasonableness" to be objectionable.

## p. 7

1st Bryan paragraph:

The word "of" is missing between "use" and "ECWs". Also, "the west" might be better described as "the Western United States".

#### p. 8

1st full paragraph: "the McPherson's" should be "that McPherson's".

In Brooks/Mattos, the CRC had talked about using a word other than "overturn" to describe the possible outcome of the 9th Circuit cases. Maybe "reverse" or "reconsider."

# p. 14

The 2 paragraphs of the PERF quote should be separated from the intro ("PERF recommends:") and indented.

Thank you as always for the opportunity to comment. dan handelman

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- \*Since Taser is a registered, trademarked name, it should be capitalized (it is not on page 10, four times, and once on p. 13).
- \*\*The Chasse case also bolsters your recommendation 2012.3 requiring medical response to all Taser incidents; the lack of medical attention after Chasse's beating was why Officer Humphreys and Sergeant Nice were disciplined.