

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT  
4 INDIANAPOLIS DIVISION

5 THE ESTATE OF JAMES BORDEN BY )  
6 ITS ADMINISTRATOR, STEPHEN )  
7 BORDEN; AND DOROTHY BORDEN, )  
8 Plaintiffs, )  
9 -vs- ) CIVIL ACTION NO.  
10 TASER INTERNATIONAL, INC., ) 1:04-CV-0318RLY-WTL  
11 Defendant. )

12  
13 VIDEOTAPED  
14 DEPOSITION OF PATRICK SMITH  
15

16 The deposition upon oral examination of  
17 PATRICK SMITH, a witness produced and sworn before  
18 me, Tamara J. Brown, CSR, RMR, CRR, Notary Public in  
19 and for the County of Marion, State of Indiana,  
20 taken on behalf of the Plaintiff, at the offices of  
21 Barnes & Thornburg, 1313 Merchants Bank Bldg.,  
22 Indianapolis, Marion County, Indiana, on the 12th  
23 day of July, 2005, pursuant to the Federal Rules of  
24 Civil Procedure with written notice as to time and  
25 place thereof.

\_\_\_\_\_  
Connor + Associates, Inc.  
1650 One American Square  
Indianapolis, IN 46282  
(317)236-6022

A P P E A R A N C E S

FOR THE PLAINTIFF(S):

Mr. Richard A. Waples  
WAPLES & HANGER  
410 N. Audubon Road  
Indianapolis, IN 46219

FOR THE DEFENDANT(S):

Mr. John R. Maley  
Mr. Alejandro Valle  
BARNES & THORNBURG  
1313 Merchants Bank Bldg.  
11 S. Meridian Street  
Indianapolis, IN 46204

ALSO PRESENT:

Ms. Michelle Vaughn, Videographer  
Mr. Michael Brave, for the Defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1            I N D E X   O F   E X A M I N A T I O N  
2    DIRECT EXAMINATION . . . . . 4  
       Questions by Mr. Richard A. Waples

3  
4            I N D E X   O F   E X H I B I T S  
5  
6  
7  
8  
9            PAGE

10    Plaintiff's Deposition Exhibit No.:

11         1    Second amended complaint . . . . . 106  
12         2    Certification lesson plan, Version 8.0 117  
13         3    Consumer Product Safety Commission paper 137  
14         4    Memorandum from Consumer Product Safety 138  
15                 Commission  
16         5    Journal of Forensic Sciences excerpt . 140  
17         6    Article from Dr. Terence Allen . . . . . 142  
18         7    New York Times article . . . . . 150  
19         8    On-line owner's manual . . . . . 175  
20         9    Summary of medical studies . . . . . 182  
21        10    Autopsy report, Alvarado . . . . . 186  
22        11    Autopsy record, Craig . . . . . 188  
23        12    Autopsy report, Gray . . . . . 190  
24        13    Autopsy report, Jones . . . . . 194  
25        14    Autopsy report, Lair . . . . . 197  
26        15    Inquest record, Lomax . . . . . 198  
27        16    Autopsy report, Lazoya . . . . . 204  
28        17    Coroner's record, Rosa . . . . . 207  
29        18    Report of investigation, Salazar . . . . 208  
30        19    Postmortem record, Teasley . . . . . 210  
31        20    Coroner's report, Washington . . . . . 212  
32        21    Photo, impact comparison . . . . . 213

1           THE VIDEOGRAPHER: This is tape No. 1 of  
2           the video deposition of Mr. Patrick Smith taken  
3           Tuesday, July 12th, 2005, in Indianapolis,  
4           Indiana. The local time is approximately 7:22.  
5           You may now swear in the witness.

6                           PATRICK SMITH,  
7           having been duly sworn to tell the truth, the whole  
8           truth, and nothing but the truth relating to said  
9           matter, was examined and testified as follows:

10          DIRECT EXAMINATION,

11          QUESTIONS BY MR. RICHARD A. WAPLES:

12          Q    Could you please state your name.

13          A    My name is Patrick Waller Smith.

14          Q    And do you go by Rick?

15          A    I do, I go by Rick.

16          Q    Can you -- what do you do, Mr. Smith?

17          A    I'm the co-founder and chief executive officer  
18               of Taser International, Incorporated.

19          Q    How long have you been -- when did you found  
20               Taser International?

21          A    September 7th, 1993.

22          Q    Okay. Do you understand you're here today to do  
23               a deposition in a case of the estate of Steve --  
24               or James Borden versus Taser International?

25          A    I do.

1 Q And you have been deposed before, I take it,  
2 and -- haven't you?

3 A I have.

4 Q And you gave courtroom testimony?

5 A I have.

6 Q So you understand you are sworn to tell the  
7 truth today?

8 A I do.

9 Q And I'm going to ask you a number of questions.  
10 And all I ask is that you answer them fully,  
11 completely and honestly. Is there anything that  
12 would prevent or impair you from doing so today?

13 A No.

14 Q Give me a little bit of background about  
15 yourself, about Taser International. You  
16 founded it in, did you say September of '93?

17 A Correct.

18 Q And you say you are a co-founder; who is, who  
19 helped you start that company?

20 A Two other people, my brother Tom, and a man  
21 named Jack Cover, who was the inventor of the  
22 Taser.

23 Q And did you do this out in Scottsdale or Tucson?

24 A In Tucson, Arizona.

25 Q And there was some litigation between you and

1 Mr. Cover, wasn't there?

2 A There was.

3 Q What was that about?

4 A Mr. Cover held the patents on the Taser, and he  
5 licensed the company we jointly founded. And  
6 the license, our patent license was in conflict  
7 with a patent license he had issued to another  
8 company called Tasertron. And we ended up being  
9 in three-way litigation over the terms, over the  
10 inconsistencies between our two different patent  
11 licenses.

12 Q Has that lawsuit been resolved?

13 A Yes, it was favorably resolved to everyone's  
14 satisfaction.

15 Q When was that?

16 A I believe 1996.

17 Q When -- can you tell me what you have done to  
18 prepare for today's deposition?

19 A Very little actually. I've got a fairly intense  
20 schedule as CEO, so I figured you would probably  
21 bring the various documents you would like me to  
22 review here, so I, other than a brief meeting  
23 with my counsel over dinner last night, not a  
24 whole lot of preparation.

25 Q So you haven't looked over any documents?

1 A I did look over one document last night.

2 Q What document was that?

3 A That related to the warnings expert in this  
4 case.

5 Q And what document related to the warnings  
6 expert?

7 A I don't recall the exact title, but I believe it  
8 was her opinion and reports related to the  
9 warnings associated with the Taser device.

10 Q Is that the first time you had ever seen that  
11 document?

12 A It was.

13 Q Any other documents that you reviewed?

14 A No.

15 Q Anybody else you talked to besides your counsel  
16 about the deposition?

17 A No.

18 Q Give me a little background on the M26. When  
19 did you guys first design that; when did you  
20 roll it out; how long has it been out?

21 A The design process began in 1996. The product  
22 was introduced in the fourth quarter of 1999.

23 Q Who was involved in the design of the M26?

24 A Myself, Dr. Robert Stratbucker was a medical  
25 consultant, Max Nurheim, electrical engineer,

1           and Milan -- like the city in Italy -- Cerovic,  
2           C-E-R-O-V-I-C, the mechanical engineer.

3           Q    What was your role in designing it?

4           A    My background includes some training in neural  
5           biology and was part of what initially  
6           interested me in the Taser.  And I would say,  
7           characterize my role was sort of driving  
8           conceptually how the device would be designed to  
9           operate, and the basic tests, protocols that we  
10          would use to ascertain the design goals.  So I  
11          was the project team leader.

12          Q    Your background was in neurobiology in  
13          undergraduate school; was that your degree?

14          A    I have a degree from Harvard University in  
15          biology.  They don't do specific sub  
16          concentrations, but I was, carried course load  
17          work in neurobiology.

18          Q    But no other experience or education in biology  
19          or neurobiology beyond that?

20          A    That's correct.

21          Q    When did you first ship out the first M26s to  
22          the law enforcement?

23          A    I don't remember the exact date, but it was  
24          sometime in the fourth quarter of 1999.

25          Q    Are we in December of '99 perhaps?



1 A Likely.

2 Q What did you want to do with the M26? Why did  
3 you want to change the model you previously had?

4 A The older versions of the Taser were not very  
5 effective when dealing with people that were  
6 motivated. I had experienced several  
7 demonstrations where police volunteers were hit  
8 with the older Taser, and they were able to  
9 function right through it, pull the darts out  
10 and continue to do whatever they wanted to do,  
11 including attack the user of the Taser.

12 And based on our discussions with law  
13 enforcement, and our review of case histories,  
14 we saw that when nonlethal devices like the  
15 Taser failed to stop aggressive people, many  
16 times they end up hurt or even killed as police  
17 have to then escalate to higher levels of force,  
18 including firearms.

19 So our goal was to develop a device that  
20 could incapacitate someone yet do it as safely  
21 as possible.

22 Q And you were going to do that by increasing the  
23 power of the Taser?

24 A Well, that was not the design goal. The way we  
25 developed the device was using an anesthetized

1 pig model, the goal of the device was to be able  
2 to stimulate the motor nerves in such a fashion  
3 that we could incapacitate someone's muscular  
4 control, and the idea is to stop them from being  
5 able to perform aggressive or dangerous  
6 behaviors. And in order to do that we felt -- I  
7 think time has proven us correct in this  
8 assumption -- that electrical stimulation of the  
9 motor nervous system would be the most  
10 effective, least discomfoting means of doing  
11 that.

12 Through the course of our development  
13 testing, we did find that it required an  
14 increase in the electrical power output of the  
15 device to be able to accomplish the design goal  
16 of muscular incapacitation.

17 Q How much more power are we talking about from  
18 the previous model?

19 A We increased roughly by a factor of four times.

20 Q And what were the tests that you did in order to  
21 determine, I think you said the effectiveness of  
22 getting the motor nervous system incapacitated?

23 A Well, we started with an anesthetized pig model.  
24 Namely, the original Taser that had been  
25 developed was almost done entirely with human

1 volunteers, the inventor and friends of the  
2 company.

3 Q Was that Jack Cover?

4 A That was Jack Cover. And those types of tests  
5 were fairly unscientific in that it relied on  
6 the qualitative feedback of the user. And most  
7 normal people, when exposed to the Taser, would  
8 feel as if they had been incapacitated but they  
9 may or may not have really been, because they  
10 weren't particularly motivated.

11 So our design goal here was to use a pig  
12 because of its similarity to humans, anesthetize  
13 it so that it would, A, feel no discomfort of  
14 any type during the testing; and B, so that we  
15 could directly observe the state of the  
16 musculature, we could observe if we were  
17 directly stimulating the muscles in the absence  
18 of psychological factors. And over the course  
19 of testing we would take measurements of the  
20 strength of muscular contractions and tune the  
21 device to a level that we felt would be  
22 incapacitating.

23 We then verified this in human test  
24 subjects, including myself and others, as we  
25 prepared to go to market.

1 Q When you -- tell me a little bit more about all  
2 the tests. You said you had this anesthetized  
3 pig. Where was that test done?

4 A The initial test was done in Nebraska.

5 Q By whom, and who was there?

6 A That was performed by Dr. Robert Stratbucker.

7 Q That was in '96, did you say, or what year was  
8 that?

9 A I believe it was 1996.

10 Q Anybody assist him in that?

11 A I believe there was a veterinary assistant. I  
12 don't recall the name.

13 Q Were you there at those tests, or are we talking  
14 about one test or series of tests?

15 A That was one day of testing. I was not present  
16 at those tests.

17 Q And so I can understand it, the test was  
18 designed to increase the electrical energy until  
19 you could physically observe the motor system of  
20 the pig being, going into convulsions?

21 A The test was designed to vary the different  
22 electrical parameters that we could control,  
23 including increasing power output, while  
24 observing the status of the musculature of the  
25 animal.

1 Q What facility was that test conducted in?

2 A I do not know.

3 Q Was it done in a laboratory?

4 A I don't recall. I wasn't there.

5 Q But Dr. Stratbucker was in charge of that?

6 A Correct.

7 Q Any other testing that you did?

8 A In 1999, about the time of the launch, we  
9 commissioned a cardiac safety study at the  
10 Cardiothoracic Surgery Center at the University  
11 of Missouri, which was recommended to us because  
12 it was one of the leading centers in the  
13 development of cardiac defibrillator technology,  
14 so this was a center of excellence or expertise  
15 in how electricity interacts with the heart.

16 And that involved -- well, our instructions  
17 to the researchers were that we wanted them to  
18 test, design conservative tests under extreme  
19 conditions to see if they could determine any  
20 risk factors or what the relative risk of an  
21 adverse cardiac event from the application of  
22 the Taser would be.

23 Q And who was in charge of that study?

24 A Dr. Robert Stratbucker and Dr. Wayne McDaniel.

25 Q Who was it that suggested University of Missouri

1 as a center of excellence in this?

2 A Dr. Stratbucker.

3 Q And was he already -- was he there on the  
4 faculty, or was he associated with that  
5 university at all?

6 A I believe he has no affiliation.

7 Q And had none at that time?

8 A I believe so.

9 Q How about Wayne McDaniels?

10 A Wayne McDaniel was at the University of  
11 Missouri.

12 Q What did those -- describe those tests for me.

13 A Pardon me, there's something in my eye.

14 Okay, again, the test objective was to  
15 exacerbate risk factors to determine if they  
16 felt the Taser could cause a potentially  
17 dangerous cardiac event.

18 In electrical safety, the vast majority of  
19 standards relate to heart safety, so we felt  
20 this was a prudent type of testing to do to  
21 really try to understand if there were risks  
22 associated with the Taser and the heart.

23 They selected an animal model, canines that  
24 are significantly smaller than humans, and it's  
25 been well established that electrical safety

1 margins do vary with weight. Smaller subjects  
2 are more susceptible. And canines are known to  
3 be really significantly more susceptible to  
4 electrical stimuli than humans. So this was  
5 considered to be a very conservative model to  
6 start with.

7 Then over the course of the testing, the  
8 Tasers were applied using worst case scenarios  
9 with the electrodes placed directly across the  
10 chest and directly in closest proximity to the  
11 heart, which would increase the total current  
12 density to its maximum potential. The animal's  
13 blood pressure was monitored. I believe they  
14 delivered something like 192 Taser discharges  
15 across the chest.

16 Q To a single dog?

17 A I believe there were five canines that were used  
18 over the course of the testing. They also then  
19 began to exacerbate other risk factors, for  
20 example using surgical needles inserted through  
21 the chest wall until it was touching the surface  
22 of the heart. This again was designed to  
23 stimulate a worst case that could not possibly  
24 occur in the field, but would maximize current  
25 density by basically touching the heart.

1           No adverse cardiac events were noted. In  
2 fact, they even applied two Advanced Tasers  
3 simultaneously across the heart, and then they  
4 proceeded to do so in the presence of three  
5 different drugs, which represent three different  
6 broad classes of cardiac interactions. The  
7 three drugs, just to summarize, were  
8 epinephrine, which is a stimulant sort of  
9 similar to adrenaline or cocaine or other  
10 stimulants; ketamine, which is an anesthetic, it  
11 also is a recreational drug used under the  
12 street name Special K, and has cardiac events  
13 similar to PCP; and the third drug used was  
14 Isoproterenol. Isoproterenol, as I understand it,  
15 is a drug that is specifically designed to  
16 increase the susceptibility of the heart to  
17 electrical stimulation.

18           Isoproterenol is used when people are having  
19 heart problems, and they go to a medical  
20 facility and it is determined that they need to  
21 have a pacemaker immediately, while prior to the  
22 implantation of a pacemaker they will be  
23 externally shocked on the outside of the body  
24 which is uncomfortable. So Isoproterenol makes  
25 the heart more sensitive so it is easier to



1 pace, so that they can use smaller shocks than  
2 they otherwise would have to, to pace the heart.

3 So the theory here was that if any drug  
4 were likely to increase the susceptibility to a  
5 shock like the Taser, it would be Isoproterenol.  
6 And in none of these cases, even with two shocks  
7 across the chest delivered aggressively directly  
8 to the surface of the heart, were any adverse  
9 events noted, particularly no ventricular  
10 fibrillation.

11 And I think the conclusion of the testing  
12 was that, not that the Taser is risk free  
13 certainly, but that if two well schooled experts  
14 in the area of electrical safety in the heart  
15 using a conservative model under the most  
16 aggressive scenarios could not elicit an adverse  
17 event, the probability of it happening randomly  
18 in the field with a larger human subject was  
19 extremely low.

20 Q So there were no adverse effects on any of the  
21 animals?

22 A No.

23 Q Wasn't there one dog that experienced some kind  
24 of problems? Do you remember that at all?

25 A Not that I recall.

1 Q Have you conducted any other testing of the M26  
2 on any other animals?

3 A Yes.

4 Q And tell me all about those tests.

5 A In subsequent tests we --

6 Q When, when are we talking about?

7 A 2002, when we began to develop, further develop  
8 new wave forms, with the intention of developing  
9 a next generation device.

10 Q This is the X26?

11 A Yes. We again used anesthetized pigs, and this  
12 time we had instrumentation that could actually  
13 measure the exact amount of muscle contraction,  
14 and these pigs were subjected to the M26.  
15 Primarily because the M26 had proven to be very  
16 effective in the field, we considered it the  
17 gold standard and the baseline for any future  
18 development work that we would want to do.

19 And we also did more cardiac tests across  
20 the chest and et cetera with the M26 in some of  
21 these tests.

22 Q Was this all in 2002?

23 A I believe 2002 and early 2003.

24 Q And who was involved in these tests?

25 A Drs. McDaniel, Stratbucker, and I was present as

1 well.

2 Q Anybody else?

3 A I believe Max Nurheim was present at some of the  
4 tests.

5 Q Anybody else present at any of the other tests?

6 A Other than laboratory technician personnel, no.

7 Q Any veterinarians?

8 A Yeah, there would be generally an  
9 anesthesiologist -- I don't know if  
10 anesthesiologist is the right word -- but  
11 somebody with a veterinary background to apply  
12 the anesthetic.

13 Q Do you know who that was?

14 A No.

15 Q Where were these tests conducted?

16 A Tests were conducted primarily at the Sinclair  
17 animal facility at the University of Missouri.

18 Q And again, the only animals used were  
19 anesthetized pigs; is that true?

20 A Yes.

21 Q How many pigs were used?

22 A I don't know the exact number, more than ten.

23 Q Any adverse effects in any of those animals?

24 A From the Taser, no.

25 Q From any other basis or reason?

1 A We did have -- pigs are notoriously difficult to  
2 anesthetize and sometimes have bad reactions to  
3 anesthesia -- so one or two animals, as I  
4 recall, we had problems with the anesthetic.

5 Q Did the animals die?

6 A Yes.

7 Q And where are, where is the information about  
8 this, these studies reported, if anywhere?

9 A The report was published in "Pacing and Clinical  
10 Electrophysiology."

11 THE WITNESS: I'll turn my phone to vibrate  
12 mode.

13 Q Any other testing done at all, on the M26?

14 A Not by Taser International.

15 Q Have you been involved in any other testing?

16 A I have not.

17 Q How about the X26, have you been involved in any  
18 testing of the X26?

19 A I have.

20 Q And tell me all about the testing you have been  
21 involved in with the X26.

22 A These were the same tests that we just  
23 discussed, the anesthetized pigs at the Sinclair  
24 facility.

25 Q No other studies other than those? And those

1           were in 2003, did you say, 2002 and 2003?

2           A    Correct.

3           Q    All at the Sinclair animal facility at

4           University of Missouri?

5           A    The safety tests were all conducted there.  We  
6           had done some preliminary tests, equipment  
7           checks, et cetera, at our facility in Scottsdale  
8           in preparation for the full tests at Sinclair.

9           Q    At the Taser facility in Scottsdale?

10          A    Yes, either at our facility, or in one case, or  
11          in two cases I think we did off-site at a  
12          veterinary clinic in Scottsdale.

13          Q    What testing did you do at a veterinary clinic  
14          in Scottsdale?

15          A    It was really equipment -- I would characterize  
16          it two ways -- one was preliminary development  
17          work, not really safety testing, but testing  
18          some of the development equipment for the X26.

19          Q    Tell me about that.  What kind of preliminary  
20          development tests did you do?

21          A    Well, before going to the full university test  
22          environment where there are significant  
23          resources, many people involved, a significant  
24          cost structure, we felt it best to first test  
25          our equipment and make sure everything would

1 function properly, the strain gage measuring  
2 devices, the jigs and fixtures that would be  
3 used to hold the test subject in place, the  
4 electrical stimulating, generating equipment.

5 And so we did preliminary tests at a  
6 veterinary clinic in Scottsdale to effectively  
7 debug the equipment before moving into the more  
8 extensive testing in Missouri.

9 Q Were any of these tests performed on animals?

10 A Yes.

11 Q What kind of animals?

12 A Domestic pigs.

13 Q And tell me what you did to these animals with  
14 the equipment.

15 A Followed the same protocols that we've already  
16 discussed. They were anesthetized. We used the  
17 strain measuring devices to record muscular  
18 activity, and they were stimulated with varying  
19 types of electrical stimuli from our test  
20 equipment.

21 Q And did anything happen to those pigs?

22 A No. There was -- the results were very  
23 consistent with what was published in the Pacing  
24 and Clinical Electrophysiology Journal.

25 Q No adverse effects on any of those animals at

1 all?

2 A Well, I should clarify, there were none from the  
3 Tasers. The purpose of this round of testing  
4 was to create customized equipment that allowed  
5 us to increase the electrical outputs up to over  
6 100 times the operative of the Taser, and with  
7 that special equipment our goal was to increase  
8 it until we did see ventricular fibrillation so  
9 that we could quantify a safety margin, the  
10 difference between the effective dose and a  
11 potentially lethal dose of electricity. That  
12 was the purpose of the testing.

13 So at very high stimulations ranging from  
14 15 to even 100 times the output of the Taser,  
15 then we did at those high extreme levels start  
16 to see adverse cardiac events, but never with  
17 the standard Tasers under the most aggressive  
18 applications.

19 Q And where are the -- was that -- were those  
20 tests reported anywhere?

21 A Yes.

22 Q Where?

23 A The tests were reported in the Journal of Pacing  
24 and Clinical Electrophysiology.

25 Q The tests at the veterinary clinic were?

1 A No, those were --

2 Q Those are the tests I'm asking about. Where  
3 were those tests at the veterinary clinic where  
4 you increase power to induce ventricle  
5 fibrillation, where are those tests reported?

6 A Okay. The results were reported from the tests  
7 performed in Missouri. The tests performed in  
8 Scottsdale were preliminary equipment runs,  
9 equipment tests. Those were not reported.

10 Q Not reported anywhere?

11 A No.

12 Q Were there internal memorandums regarding those  
13 tests?

14 A No.

15 Q Any internal reports of those tests at all?

16 A No. Again, the purpose was merely to debug the  
17 equipment, not to run tests per se. So I would  
18 characterize them more as developmental  
19 preparations than actual tests. That was not  
20 the intention.

21 Q Well, you would want to preserve the results of  
22 those, wouldn't you, so that you can -- you  
23 wouldn't have to repeat them in the future, or  
24 you would know maybe what the unsafe levels were  
25 of electrical power?



1           MR. MALEY: Object to the form of the  
2           question, compound. You can answer.

3       A    No, the intention was merely to test that the  
4           equipment was working properly. The tests were  
5           all gathered in Missouri under the testing that  
6           was performed there, so you're mischaracterizing  
7           the intention of these tests.

8       Q    I don't think I characterized the intention of  
9           the tests. But anyway, I'm interested in these  
10          tests in Scottsdale at this veterinary clinic.  
11          What veterinary clinic was it?

12      A    I don't recall.

13      Q    Who all was there at these tests?

14      A    Myself and Max Nurheim, and I believe  
15          Dr. Stratbucker.

16      Q    Anybody else?

17      A    Other than the veterinary staff, no.

18      Q    Do you remember the veterinarian that was there?

19      A    I don't remember his full name, no. His name  
20          was Bruce.

21      Q    And how many -- were these pigs again, or what  
22          kind of animals did you have?

23      A    Pigs.

24      Q    Pigs. How many pigs?

25      A    I believe three or four.

1 Q How many died?

2 A Well, they all eventually died. They were  
3 euthanized at the end of the testing.

4 Q How many died as a result of the electrical  
5 energy that you were stimulating them with?

6 A Zero.

7 Q How many went into -- how many had adverse  
8 reactions from the electrical stimulation that  
9 you applied to them?

10 A From the Taser, zero.

11 Q From any basis, any source?

12 A I believe every pig eventually fibrillated.  
13 That was the test, was to increase the levels of  
14 energy until we saw fibrillation. But again, I  
15 should remind you those were extremely high  
16 levels, orders of magnitude greater than the  
17 Taser directly across the chest.

18 Q I'd like to see the results of those tests.  
19 Where could I find them?

20 A I'd have to check back at the office for that.  
21 We did not preserve any particular reports on  
22 those tests, as I've told you. Those were  
23 preliminary runs just to test the equipment.

24 Q Well, those were different tests than were done  
25 at Missouri, right?

1 A No.

2 Q They weren't?

3 A Okay, complete your question.

4 Q They were different tests than were done at  
5 Missouri, right?

6 A No.

7 Q They were the same tests?

8 A Yes.

9 Q In Missouri did they increase the electrical  
10 energy to induce ventricular fibrillation?

11 A Yes, sir.

12 Q And did they do that to the pigs?

13 A Yes.

14 Q And that's the one that's reported in Pace?

15 A Correct.

16 Q But the tests that were done at the veterinary  
17 clinic in Scottsdale were not reported in Pace?

18 A Correct.

19 Q Or referenced in the article even?

20 A Correct.

21 Q And you didn't create any memorandum or report  
22 about those tests?

23 A Correct.

24 Q Did you send any e-mails about those tests to  
25 anybody?

1 A No.

2 Q Did you write anything down in writing about  
3 those tests?

4 A I don't believe so.

5 Q Did anybody, Max Nurheim, Stratbucker, Bruce the  
6 veterinarian?

7 A I don't believe so.

8 Q What documents would there exist that related to  
9 those tests?

10 A I don't believe there was any documentation  
11 generated. As I have discussed with you, the  
12 purpose was to make sure the equipment was  
13 working properly, not to document test results.  
14 That was done at Missouri.

15 Q Did you share these tests with McDaniel?

16 A We informed him that we had done preliminary  
17 tests on the equipment.

18 Q So the answer is yes?

19 A Rephrase the question.

20 Q Did you share these tests with McDaniel?

21 A Verbally, yes.

22 Q So if I were to ask you to produce any  
23 documents, any data about those tests, the ones  
24 in Scottsdale at the veterinary clinic, how  
25 would you go about determining whether there

1           were any documentation that still -- that ever  
2           existed, one, and whether it still exists, two?

3       A    I would check with Max Nurheim and have him  
4           check his records and see if he had any notes.

5       Q    What about Dr. Stratbucker, he was there, right?

6       A    I would check with Dr. Stratbucker as well.

7       Q    And what about Bruce the veterinarian, he might  
8           have them?

9       A    No. Bruce's role was merely to anesthetize the  
10          animals.

11      Q    He wasn't involved in any of the measurements  
12          or --

13      A    No.

14      Q    Who was involved in the measurements? Who was  
15          mostly responsible for measurements?

16      A    Myself and Max Nurheim.

17      Q    And might you have some notes left over from  
18          that experiment?

19      A    I can certainly check.

20      Q    Where would you keep those if you did have them?

21      A    My files are not the best organized, so I would  
22          have to go back through old paper files, and  
23          also search on my computer and see if there are  
24          any documents there.

25      Q    What type of computer do you have?

1 A I have a Dell laptop computer.

2 Q Is that where you do most of your communicating,  
3 e-mail communication?

4 A It is.

5 Q And most of your business communication with,  
6 internally with the organization?

7 A Yes.

8 Q How long have you had that?

9 A About three months, four months.

10 Q Did you copy all the files you had on your  
11 previous computer onto this computer?

12 A No.

13 Q What happened to those files?

14 A My prior computer was a Macintosh, so there were  
15 compatibility issues. So I wouldn't copy  
16 everything straight across.

17 Q You still have that Macintosh?

18 A I do.

19 Q How long did you have that?

20 A Several years.

21 Q And would there likely be files in the Macintosh  
22 that would relate to these tests in Phoenix or  
23 in Scottsdale at the veterinary clinic?

24 A If there were files they would most likely be  
25 with Mr. Nurheim. If I were to have them, they

1 would most likely be on my Macintosh.

2 Q Any other testing that you have been involved  
3 in?

4 MR. MALEY: Rich, I don't want to interrupt  
5 your pace, but just a little more specificity,  
6 testing generally, or specific tests?

7 MR. WAPLES: I'm trying to be real general  
8 here because I want to include the universe, and  
9 then get more specific.

10 Q Any other testing with respect to the M26 or X26  
11 you have been involved in?

12 A No.

13 Q Any testing that you have been involved in or  
14 associated with what Max Nurheim has done in his  
15 garage?

16 A Yes.

17 Q Tell me about those tests.

18 A Those were the same series as were done at the  
19 veterinary clinic. I think garage is a  
20 mischaracterization.

21 When I mentioned we have done them at our  
22 facility in Scottsdale or the veterinary clinic,  
23 the facility in Scottsdale at Taser itself, we  
24 did not have the room. Mr. Nurheim has a 3500  
25 square foot workshop attached to his home, and

1           we did conduct one of the equipment test runs  
2           there. So that was the facility in Scottsdale I  
3           was referring to.

4       Q    Were there any animals involved at Mr. Nurheim's  
5           workshop?

6       A    There were.

7       Q    What animals were involved there?

8       A    I think one or two of the pigs that were part of  
9           the preparatory tests.

10      Q    And who all was there at those tests?

11      A    Myself, Max Nurheim, the veterinarian.

12      Q    Bruce?

13      A    Correct. And I believe Dr. Stratbucker may or  
14           may not have been there.

15      Q    And were these tests done before the test at the  
16           veterinary clinic or after?

17      A    I don't recall.

18      Q    What was the purpose of these tests?

19      A    To debug the equipment, make sure everything was  
20           working properly.

21      Q    And did you induce ventricular fibrillation on  
22           the pigs in Max Nurheim's workshop, garage?

23      A    I don't believe so. I believe those tests were  
24           primarily to test the muscle measurement systems  
25           versus the ones at the veterinary clinic, I



1 believe were more focused on the high current  
2 generating system, multiple pieces of equipment  
3 that had to be brought up to speed in  
4 preparation for the formal tests.

5 Q Did any of the animals suffer adverse effects in  
6 Max Nurheim's workshop?

7 A In none of the testing that we've ever done at  
8 any location at any time have we ever seen any  
9 adverse effects from the standard Tasers.

10 Q That wasn't my question.

11 A I think it answered your question.

12 Q It answered a question I didn't ask. My  
13 question I asked was did any of the animals  
14 suffer adverse effects in Max Nurheim's  
15 workshop?

16 A No, I don't believe so, and certainly not from  
17 the standard Tasers. I don't recollect fully as  
18 to whether we may have used the high current  
19 generating system in his garage, but I don't  
20 believe that was the intention of those tests.  
21 Those tests were primarily to debug the strain  
22 gage measuring systems.

23 Q You don't think so, but you don't recall whether  
24 any of those animals suffered any adverse  
25 effects in Max Nurheim's workshop?

1 A What I don't recall is whether they were  
2 subjected to the orders of magnitude higher  
3 currents that could have precipitated negative  
4 effects. I do recall that under no  
5 circumstances did they suffer negative effects  
6 from the M26 or X26 Tasers.

7 Q Any reports or documents with respect to the  
8 tests done in Max Nurheim's workshop?

9 A I don't believe so.

10 Q Were those also in 2003?

11 A It's difficult to remember the exact dates. I  
12 believe 2002 or early 2003, somewhere in that  
13 time frame.

14 Q Do you know if there were any documents  
15 associated with those tests that were generated  
16 in any form by anybody?

17 A I don't believe so.

18 Q If there were, would it still be with the same  
19 people, and you go through the same process to  
20 find them as you would tests done at the animal  
21 facility?

22 A Correct.

23 Q Any other tests that you have been involved in  
24 or associated with, with respect to the Tasers?

25 MR. MALEY: Animal tests, or tests of any

1 type?

2 MR. WAPLES: Well, animal tests.

3 A No.

4 Q Have there been any animals other than pigs and  
5 dogs subjected to the Taser in testing?

6 A Yes.

7 Q What animals, and when and by whom?

8 A One 1500 pound bull.

9 Q Who did that test?

10 A Max Nurheim and myself.

11 Q When did you do that?

12 A 2003.

13 Q Where?

14 A I believe that was at a cattle facility in  
15 Arizona.

16 Q What was the purpose of that test?

17 A To test the effect of the Taser on very large  
18 animals, many police agencies have inquired as  
19 to whether the Taser would be effective when  
20 dealing with very large animals, and so we had  
21 developed a device, a higher current output  
22 device called the MX Animal Taser. And this  
23 test was to verify whether or not it could  
24 incapacitate a very large animal, for example a  
25 bull.

1 Q What were the energy levels of the MX Animal  
2 Tasers in relation to the M26?

3 A The MX Animal Taser, the electrical current  
4 output would be about four or five times that of  
5 the M26.

6 Q And what did you do with the animal, did you  
7 shoot it with this MX Animal Taser, or how did  
8 you apply the device to the animal?

9 A Yes, we fired it at the animal.

10 Q And what happened, or how many times, and what  
11 happened to the animal?

12 A I think we fired maybe a total of three times.  
13 The animal went down, and as soon as the current  
14 was shut off, it got back up and recovered  
15 fully.

16 Q So the purpose of the test was just to see if  
17 you could knock down the bull, and you did that?

18 A Correct.

19 Q You didn't hook up any devices to the bull to  
20 measure any physiological effects it had, I take  
21 it?

22 A Correct.

23 Q Was the MX Animal Taser, was that just a  
24 modified M26?

25 A No, I would characterize it as -- it uses the

1 same technology as the X26 repackaged with more  
2 power output, in an M26 casing, but it is more  
3 similar to the X26 than the M26.

4 Q Do you sell those now, market those?

5 A We do.

6 Q You have been deposed in several cases, I take  
7 it, with respect to the Taser?

8 A Yes.

9 Q And can you tell me what cases those were and  
10 when?

11 A I was deposed in Powers versus Taser, which has  
12 been in the past six months, I don't recall the  
13 exact dates; and Alvarado versus Taser, I  
14 believe in the last month. Other than business  
15 litigation cases, I believe that's been it.

16 Q In the Powers case, were you asked about all the  
17 testing with respect to the Tasers?

18 A I was.

19 Q And about the warnings?

20 A I believe so.

21 Q And about the potential injurious effects of the  
22 Taser?

23 A I believe so.

24 Q What investigations has Taser done in response  
25 to claims that its devices have injured or

1           killed anybody?

2       A    I'm not sure I understand the question.

3       Q    Has Taser conducted any investigations into any

4           claims that its devices have injured or killed

5           anybody?

6       A    Yes.

7       Q    And what, what investigations have they

8           conducted?

9       A    Generally as part of the discovery process, we

10          have hired appropriate experts to investigate

11          those claims and evaluate their merit.  I

12          believe many of those experts were consulted as

13          regards this case.

14       Q    Anything else, any other investigations that you

15          have done?

16       A    Not that I can think of.

17       Q    Does Taser receive reports from the field from

18          officers or civilians and the public claiming

19          that they have been injured or that a death has

20          resulted from the use of a Taser?

21       A    Yes.

22       Q    And what form do those come in, and how do you

23          keep those?

24       A    Generally anything like that would be referred

25          to our legal counsel.

1 Q How do they come in? What is the database of  
2 the information?

3 A Can you be more specific? How does what come  
4 in?

5 Q Reports of injuries or deaths?

6 A It's really up to the person communicating it to  
7 us, as to how they communicate that. Generally  
8 I would say it's probably in the form of a  
9 letter.

10 Q So you have letters from members of the public  
11 claiming they have been injured, or somebody's  
12 lost a life with the Taser?

13 A Generally we would receive a letter, either from  
14 the person or from their legal counsel.

15 Q Any other form of information you receive?

16 A Yes.

17 Q Tell me about those.

18 A We have a database of field reports that are  
19 submitted when the Taser is used.

20 Q Those are based on your forms, your use of force  
21 forms?

22 A Yes.

23 Q And how do you receive those forms? Are they  
24 faxed or written?

25 A Sometimes they are faxed. We also have a web

1 based use of force report form that can be used  
2 to submit information.

3 Q And then you keep those in your database?

4 A Correct.

5 Q And you can sort by any of the categories in the  
6 use of force report?

7 A Yes.

8 Q Have you generated any reports based on sorting  
9 of the categories of whether there's been an  
10 injury to somebody who the Taser has been  
11 applied to?

12 A I believe so.

13 Q How about deaths, is it categorized by the type  
14 of injury?

15 A I'm not sure we've had any deaths submitted  
16 through that. Normally if an agency is involved  
17 in an instance where there's a death in police  
18 custody, they normally will not share that  
19 information. The use of force reporting tool is  
20 generally used more for analysis of overall  
21 effectiveness in how the Taser's being used. It  
22 probably underreports, or people do not report  
23 the more high profile types of incidents that  
24 are likely to be involved in litigation.

25 Q So your database would underreport those types



1 of things because they wouldn't be reported to  
2 you in the first place, is what you are saying.

3 A That's a possibility.

4 Q That's your testimony, isn't it?

5 A I believe my testimony is that I don't believe  
6 that the cases involving deaths in police  
7 custody are generally reported.

8 Q What about serious injuries?

9 A I should say generally reported through the web  
10 based tool.

11 Q How are they -- are they reported some other  
12 way?

13 A Generally we'll hear about those, either with a  
14 phone call or a letter, a more formal means.

15 MR. MALEY: Rich, when you get to a  
16 convenient stopping point, just for a quick  
17 break.

18 MR. WAPLES: Sure. We can stop now if you  
19 need to.

20 THE VIDEOGRAPHER: We're going off the  
21 record. The time is 8:24.

22 (A recess was taken.)

23 THE VIDEOGRAPHER: We're going back on the  
24 record. The time is 8:53.

25 Q Mr. Smith, we're back on the record. Are there

1           any responses that you made to my previous  
2           questions that you need to change at this time?

3       A    I don't believe so.

4       Q    Have you told me about all the testing that was  
5           done with respect to the M26 before it was  
6           introduced to the law enforcement community?

7       A    I believe so, in terms of all the animal  
8           testing.

9       Q    Any other testing that was done, if you would  
10          briefly describe that, that's not animal  
11          testing.

12      A    Well, there's lots of tests in terms of  
13          verifying the electronics, and there were human  
14          tests that were done as well, voluntary  
15          exposures including myself and others.

16      Q    Human tests, how many human tests were done?

17      A    Well, at this point we believe there have been  
18          over a hundred thousand police volunteer  
19          exposures since we introduced the device years  
20          ago.

21      Q    Do you count those as human tests?

22      A    I think they are valid human exposures.

23      Q    I mean is that part of the testing population  
24          that you are relying on in order to communicate  
25          to the public and to the law enforcement

1 community regarding the safety of the Taser?

2 A It's important data points, yes, that there have  
3 been that many human exposures of the device.

4 Q Is that part of the reason for those tests?

5 A No, the reason for the tests is really part of  
6 the training for the officers to be able to  
7 fully understand how the device functions and  
8 what to expect when they are deployed in the  
9 field, much like the pepper spray, many agencies  
10 recommend or require their officers be exposed  
11 to the spray to understand its functionality,  
12 similarly with the Taser, in training the user  
13 or instructors are frequently volunteered for  
14 training purposes.

15 Q You used to require it, didn't you, and then  
16 changed to volunteering?

17 A We did, early on, certainly to become an  
18 instructor we required it. Now we don't set  
19 agency policies per se for end users. So it's  
20 always been somewhat discretionary for the  
21 agencies as to whether or not they require the  
22 Taser exposure.

23 Q That certainly is a population of human tests  
24 that you relied upon in promoting the Taser as  
25 safe; is it not?

1 A Yes. We believe it's very relevant information.

2 Q Now, before the M26 was introduced or rolled out  
3 to the law enforcement community, I want to know  
4 about the human tests that you referred to, not  
5 the training exposures, we'll talk about that in  
6 a minute, but the human tests. You said you  
7 were involved in that. Anybody else?

8 A Hans Marrero.

9 Q Anybody else?

10 A Steve Tuttle.

11 Q Anybody else?

12 A There were several officers with the Chandler  
13 Arizona Police Department.

14 Q How many?

15 A I believe two.

16 Q What are their names?

17 A I don't recall.

18 Q Anybody else?

19 A Pardon me, I'll have to think for a second.

20 It's been a long time. I would say from there  
21 we moved, generally speaking, into  
22 demonstrations and training courses where we  
23 continued with human volunteer exposures on an  
24 ongoing basis.

25 Q I'm sorry, I didn't mean to interrupt you.

1           That was after they had began selling the  
2           M26s?

3       A    I believe so.

4       Q    So before --

5       A    Contemporaneous.

6       Q    So before the human tests were run, you, Hans,  
7           Steve Tuttle, and two officers from Chandler?

8       A    Yeah, I'd have to think back.  As we were  
9           bringing the Taser up into production and  
10          beginning the selling process, I don't recall  
11          how many trainings and demonstrations were done  
12          before we began shipping the product.  So it's  
13          hard to have a clear delineation as to which  
14          testings were before shipments began and which  
15          were after.

16      Q    And these tests, were they scientific tests?

17      A    The people were not instrumented during these  
18          tests.  We felt we had accomplished that with  
19          the laboratory animal testing.

20      Q    So the answer to my question is no, they were  
21          not scientific tests?

22      A    Well, I think that's -- I'm not sure I would  
23          agree with that either.  I think they were based  
24          on observations of the subject, but they were  
25          not instrumented per se during these tests.  We

1           did, of course, observe the effects of the  
2           Taser. The recovery of the subject was  
3           immediate in every case.

4       Q    And these tests, were they -- how many exposures  
5           were there? How many exposures did you have,  
6           prior to rollout?

7       A    Again, we've had --

8       Q    You.

9       A    Have I had? Okay, I need you to be a little  
10          more specific.

11      Q    I mean prior to selling the M26, how many  
12          exposures to the M26 did you have?

13      A    I believe one.

14      Q    Okay. And how long was that in duration?

15      A    I believe it was around two seconds.

16      Q    And Hans Marrero, how many exposures did he  
17          have, and for how long were they prior to the  
18          selling of the product?

19      A    I believe he had two or three exposures.

20      Q    And how long in duration were those exposures?

21      A    One was, I believe, five seconds. The others  
22          were, I think, if I remember correctly, one was  
23          a full five seconds, and the other was, he was  
24          hit for about two seconds, about a second break,  
25          and then another two seconds.

1 Q Steve Tuttle, how many exposures did he have,  
2 and how long were those exposures?

3 A I don't recall, but I would estimate about five  
4 seconds, two to five seconds.

5 Q One exposure for two to five seconds?

6 A I believe so.

7 Q What about the two officers from Chandler?

8 A The same, probably two to five seconds.

9 Q Could be two, could be five?

10 A Correct.

11 Q None of the people were instrumented, so there  
12 are no actual measurements of any physiological  
13 effect on them?

14 A I believe that's accurate.

15 Q And the exposures that are done in the, in the  
16 training program of officers who, either your  
17 instructors who are required to or the officers  
18 who volunteer who are being trained on the  
19 Taser, those are generally in a smaller exposure  
20 than five seconds, I take it.

21 A No, initially we used to do shorter exposures,  
22 back in say 2000, but I believe since around  
23 2001 we've generally moved towards the five  
24 second exposure. I know today the vast majority  
25 of exposures are the full five seconds.

1 Q And generally those people are in good health  
2 that are taking the exposures?

3 A Well, that's debateable. It's not just young  
4 cadets. These are police officers throughout  
5 varying stages of their careers, so that they  
6 are probably a fairly representative sample of  
7 the general population.

8 Q Don't you provide warnings to them not to  
9 participate in exposure if they are in poor  
10 health or have any preexisting conditions?

11 A We do provide warnings. I'll let the warnings  
12 speak for themselves rather than characterize  
13 one or two sentences. They are very specific.

14 Q But generally you have advised officers not to  
15 have an exposure if they are in poor health; is  
16 that correct?

17 A I'm not sure I would agree with that.

18 Q Did any of the people that you gave exposure to,  
19 prior to selling the product, have any heart  
20 conditions, yourself, Marrero, Tuttle, or the  
21 two officers from Chandler?

22 A I don't believe so.

23 Q None of you were on drugs when you got hit?

24 A I should hope not. We did the drug testing,  
25 drug exposures, in the animal models. I'm not



1           aware of any facility or emphasis that would  
2           suggest doing those types of tests on humans on  
3           drugs.

4       Q    And you did no computer modeling prior to the  
5           introduction of the M26; did you?

6       A    No, but I think it's important to point out that  
7           no such helpful computer models exist.  Models  
8           are only as good as the underlying data.  And  
9           without preexisting fully developed computer  
10          models upon which to rely, it would not have  
11          been a useful exercise.  That's why we focused  
12          on the animal testing to look at the systemic  
13          reactions to the Taser.

14       Q    Prior to introducing the M26, were you aware of  
15           a correction officer in Texas named Harry Landes  
16           who had died as result of a exposure to a stun  
17           shield?

18               MR. MALEY:  Object to the form of the  
19           question.  You may answer.

20       A    Yeah, I'm not sure I agree with the  
21           characterization.  I had heard -- I don't know  
22           if it was at the time or presently -- I've  
23           certainly heard the name.  I don't think that  
24           there has been any causality established of  
25           that.

1 Q When did you first hear of that -- I didn't mean  
2 to interrupt your answer. Did you have anything  
3 further?

4 A No.

5 Q When did you first hear of that, of Mr. Landes  
6 and what happened to him? Tell me what you  
7 know.

8 A I don't recall.

9 Q Prior to introduction of the M26 --

10 A That I'm not sure.

11 Q How did you learn the information about him?

12 A I don't recall exactly, I just remember at some  
13 point seeing a newspaper report or something  
14 about that incident.

15 Q A magazine article perhaps?

16 A I'm not sure.

17 Q Did you discuss it with anybody in your  
18 organization?

19 A I believe I did.

20 Q Who?

21 A I don't recall, but I would hazard a guess, I  
22 probably discussed it with Dr. Stratbucker.

23 Q What did he tell you about it?

24 A Again, I'm going on general recollections, so I  
25 don't know that I could attribute any specific

1           comments to Dr. Stratbucker.

2       Q    Did it concern you at all?

3       A    Certainly we're concerned about anything in this  
4           space as far as the health effects of these  
5           devices.

6       Q    What did you do to investigate that incident, if  
7           anything?

8       A    Again, it's been quite a while.  I remember some  
9           discussions into them.  I believe I may have  
10          even talked with a representative from Nova  
11          Technology, the manufacturer of that device, at  
12          some point over time.

13      Q    Who was it that you spoke with?

14      A    Probably John McDermott.

15      Q    What did John tell you?

16      A    That, and again I'm going on general  
17          recollections here rather than specific  
18          attributable comments, but that an officer that  
19          was involved in a training, I believe, had a  
20          heart attack or some health event later that  
21          day, but that it was not related to the training  
22          incident per se -- at least that had not been  
23          established.

24                I remember him -- again, I don't know if it  
25          was John -- but a general comment to the effect

1           that, you know, it was a very unfortunate  
2           incident, but it looked like a sort of  
3           unfortunate coincidence that happened on the  
4           same day as the training.

5       Q    Did you do anything further to investigate the  
6           facts or circumstances of that death besides  
7           talk to Mr. McDermott, the manufacturer of the  
8           device?

9       A    I believe I said I may also have talked to  
10          Dr. Stratbucker. I don't recall exactly who  
11          else I talked to.

12       Q    What did Dr. Stratbucker tell you, in general?

13       A    I think I've already answered that question. In  
14          generalities, the number of folks that I talked  
15          to seemed to indicate that that seemed to be  
16          sort of a story that was mischaracterized in the  
17          press or in whatever format, that there was no  
18          scientific basis to link the stun shield to the  
19          unfortunate demise of the subject, or of that  
20          person later that day.

21       Q    Do you have any files related to that?

22       A    I don't believe so.

23       Q    Did you talk to any medical examiners or  
24          anybody, his physicians, any independent person  
25          regarding that incident?

1 A At the time I would have characterized  
2 Dr. Stratbucker as independent. He initially  
3 was a consultant to the company. He's now a  
4 part-time employee.

5 Q Of Taser?

6 A Correct.

7 Q Had he also been a consultant to or employee of  
8 Nova at one time?

9 A I'm not sure about that.

10 Q And if he was, would that be any basis to want  
11 to maybe go a little bit further and talk to  
12 somebody who was associated with the company?

13 MR. MALEY: Object to the form of the  
14 question. You can answer.

15 A No, my experience with people like  
16 Dr. Stratbucker, who have as strong background  
17 as he does, and knowing him personally, if he  
18 had some consulting relationship with the  
19 company that would further my confidence that he  
20 had access to information and knew what he was  
21 talking about, so if anything, it would increase  
22 my confidence in his answer.

23 Good scientists are good scientists, and  
24 Dr. Stratbucker, I have the utmost respect for  
25 his qualifications and intellect. And I would

1 see no reason to discount his viewpoints or  
2 opinions.

3 Q So that you or the company didn't do any  
4 independent investigation, or in your inquiry  
5 about the Landes death with the stun shield, you  
6 didn't, you or the company did not discuss the  
7 incident with any medical examiner or any  
8 medical doctor who had been involved with  
9 Mr. Landes and his cause of death?

10 A Well, again, I can't speak for everybody at  
11 Taser International and the discussions they may  
12 or may not have had.

13 In my personal experience, I have general  
14 recollections of having discussed it lightly  
15 with Dr. Stratbucker, and again, given his level  
16 of expertise in this space, I think that would  
17 have been sufficient for me to have been  
18 comfortable with the answer.

19 Q Did you discuss it with Steve Tuttle?

20 A I may have.

21 Q Was there -- do you know about a police chief in  
22 Missouri who was hooked up to an EKG when he got  
23 hit with a Taser and experienced a cardiac  
24 event?

25 A I don't believe so.

1 Q How many joules are considered dangerous to a  
2 human?

3 A I would defer that to a medical expert.

4 Q Can the M26 kill?

5 A That's a very broad question. There are certain  
6 circumstances where any use of force poses  
7 risks. We believe the Taser and the M26 are  
8 among the safest, lowest risk force options, but  
9 I don't believe we have ever characterized them  
10 as risk free.

11 Q So is the answer to my question yes, can the M26  
12 kill?

13 A I think that requires a very specific answer,  
14 which I gave you, that no use of force is risk  
15 free, including the M26, and under unforeseen  
16 circumstances or special susceptibilities the  
17 use of force, including the Taser, may cause  
18 injuries or even death.

19 Q What circumstances or individual  
20 susceptibilities can the use of the Taser cause  
21 death?

22 A Well, the primary risks are, as I understand  
23 them, and from reading reports from independent  
24 groups, such as the Department of Defense,  
25 Potomac Policy Institute, that have reviewed

1           this area, the primary risks seem to be related  
2           to injuries from falling down, particularly if a  
3           person is in an elevated location, standing on  
4           the window sill on the fourth floor of a  
5           building and if they are hit with a Taser and  
6           they fall off, obviously that's going to be very  
7           dangerous; or if they are doused in flammable  
8           liquids such as gasoline, the electric arc from  
9           the Taser may ignite certain fuming flammable  
10          liquids.

11        Q    Any other circumstances?

12        A    Well, again, it's a very broad question.  You  
13            would have to -- there are so many different  
14            things that can happen, like someone could be  
15            standing in water, and being incapacitated if  
16            they weren't able to swim or support themselves,  
17            they might drown.

18                    Again, an injury related to falling down,  
19            if someone were to hit their head just right,  
20            the right way, that's certainly an issue.

21                    I think in the context of what the device  
22            is designed to do compared to using physical  
23            force techniques, the risks with the Taser would  
24            be characterized as quite low, but not zero.

25        Q    Any other circumstances that you can think of



1 off the top of your head? Then we'll move to  
2 individual susceptibilities.

3 A Injuries can occur if the darts strike into the  
4 eye of a subject. Obviously we train to avoid  
5 aiming for the face. But that would be a  
6 concern.

7 Q What about individual susceptibilities, what  
8 individual susceptibilities increase the risk of  
9 a Taser causing death?

10 A Well, I'm not aware of any specific individual  
11 susceptibilities that have been shown to  
12 increase the risk sufficient that the Taser  
13 would have caused a death.

14 The Potomac Policy Institute study I  
15 referenced earlier looked at the cases involving  
16 police, deaths in police custody, as has the  
17 Department of Defense, and I don't believe they  
18 identified any particular risk factors that have  
19 been shown to have been sufficient.

20 I think most of the individual  
21 susceptibilities relate to things like  
22 preexisting injuries that might be problematic,  
23 such as somebody with a preexisting shoulder  
24 injury that, you know, falls on their shoulder  
25 or has a significant contraction that might

1           inflame the preexisting injury.

2       Q    So no preexisting, no individual  
3           susceptibilities that make somebody more likely  
4           to die as a result of being hit with a Taser?

5       A    Well, again, that's been an area of great  
6           interest both to us and to the independent  
7           agencies that have reviewed the Taser, and for  
8           example in the United Kingdom in their recent  
9           report, they looked at seven different drugs  
10          much like we had looked at drugs early on to  
11          evaluate, you know, whether those risks were  
12          significant.  And while the British evaluation  
13          basically stated that drugs are dangerous, and  
14          drugs can cause severe cardiac problems and  
15          death, I believe the language in their report  
16          came to the conclusion that in their tests they  
17          did not see any of these drugs that increased  
18          the susceptibilities sufficient that interaction  
19          with the Taser -- they didn't see any evidence  
20          that that would be lethal.

21                But again, human populations are very  
22                broad, and it's hard to predict all the  
23                individual susceptibilities that can exist.

24       Q    Well, do you know of any as you are sitting here  
25           today?  I'm not talking about what a British

1 study found, or what some other study found. As  
2 you are sitting here today, with your knowledge  
3 and as CEO of Taser, do you know of any  
4 individual susceptibilities that make somebody  
5 more at risk for dying if they get hit with a  
6 Taser?

7 A Again, that's a very complex question. And I  
8 guess I would again think that that's probably  
9 best served to a medical expert.

10 Q You don't feel competent to answer that  
11 question?

12 A I would defer to someone with more medical  
13 training than myself.

14 Q So you don't have a basis to say one way or the  
15 other whether any particular individual  
16 susceptibility would increase the risk of  
17 somebody dying after being hit with a Taser?

18 MR. MALEY: Object to the form of the  
19 question. He's been asked and answered that.  
20 But you can answer.

21 A I think I would say my understanding is that the  
22 same risk factors that have been associated with  
23 people who have died in police custody after  
24 being hit with a Taser, those same risk factors  
25 cause deaths when Tasers are not present. So

1 I'm not aware of evidence that there has been a  
2 specific interaction with the Taser to a  
3 specific individual susceptibility. I guess the  
4 broader answer to that would be that -- I guess  
5 that answer is complete.

6 Q What are some of those risk factors?

7 A Risk factors associated with deaths in police  
8 custody?

9 Q Or that are individual susceptibilities. I used  
10 the term individual susceptibilities because you  
11 used that earlier. And I haven't been able to  
12 explain any individual susceptibility and use of  
13 the term risk factor. Is that the same thing?

14 A If you are asking a legal question, I'm not sure  
15 I would be able to opine.

16 Q No, I'm not asking a legal question. I'm just  
17 asking if there are risk factors that make  
18 somebody more susceptible to death after being  
19 hit by Taser.

20 A I think there are risk factors that make people  
21 more susceptible to death in any sort of  
22 confrontation that involves physical exertion or  
23 use of force.

24 Q Including a Taser?

25 A The Taser is a physical -- it is a use of force,

1           yes.

2           Q    So what are the risk factors that put somebody  
3           at greater risk of dying after being hit with a  
4           Taser?

5           A    Again, I'm not sure I agree with your  
6           characterization that this is specific to Taser.  
7           I will speak more broadly as to what I  
8           understand risk factors are associated with  
9           police deaths in custody, but I don't think  
10          those are any different than incidents involving  
11          Taser or not involving Taser.

12          Q    I don't know, maybe -- I don't know if we're  
13          speaking past each other or not.  I'm trying to  
14          ask -- you know, I don't want to ask you broad  
15          questions about risk factors for some other use  
16          of force or use of force in general, I'm asking  
17          about Taser in particular.  What risk factors  
18          are there, individual susceptibilities that make  
19          it more likely somebody is going to die after  
20          being hit by the use of force, particularly the  
21          Taser?

22                MR. MALEY:  I'll just interpose an  
23          objection, he has answered that and said there  
24          are none that he's aware of.

25                MR. WAPLES:  I think you he say that.

1 Q Is that a correct characterization of your  
2 response?

3 A What characterization?

4 Q What Mr. Maley just said, that there are no risk  
5 factors that makes somebody more susceptible to  
6 dying after being hit by a Taser?

7 A I'm not aware of any specific risk factors that,  
8 in an interaction with the Taser, would cause a  
9 death.

10 I'm aware that there are risk factors in  
11 general that place people in and of themselves  
12 at great risk of death, and whether a Taser is  
13 used or not in those situations, those people  
14 are still at risk of dying in police custody.

15 But I'm not aware of any specific risk  
16 factors that, put with the Taser, would result  
17 directly in a death, other than some of the  
18 circumstances we've talked about.

19 Q All right, those physical circumstances,  
20 somebody being on a building or being in a  
21 swimming pool or whatever. I'm not asking about  
22 those circumstances. I'm asking about risk  
23 factors. And if there are none, that's fine.

24 But it seems like you're saying two things  
25 to me. One is that there are risk factors that

1 make somebody more susceptible to death if they  
2 are going to be used, if the use of force is  
3 applied against them. Am I understanding that  
4 there are such things that you believe?

5 THE WITNESS: Can I have you read the  
6 question back? I'm not sure I'm understanding.

7 (The previous question was read back by the  
8 reporter as follows: "All right, physical  
9 circumstances, somebody being on a building or  
10 swimming pool or whatever. I'm not asking about  
11 those circumstances. I'm asking about risk  
12 factors. And if there are none that's fine.  
13 But it seems like you're saying two things to  
14 me. One is that there are risk factors that  
15 make somebody more susceptible to death if they  
16 are going to be used, if the use of force is  
17 applied against them. Am I understanding that  
18 there are such things that you believe?")

19 A I believe there are risk factors associated with  
20 the use of force, or physical exertion of the  
21 subject himself even without the use of force.

22 Q That make it more likely that somebody's going  
23 to die if there is either physical exertion or  
24 use of force against them?

25 A I believe so.

1 Q And is it your understanding that the Taser is a  
2 subcategory of a use of force that can be  
3 applied against those people?

4 A Yes.

5 Q So is it your understanding that the Taser, if  
6 the Taser is used in that particular  
7 circumstance as opposed to some other use of  
8 force, that there are risk factors that make it  
9 more likely that that person might die after  
10 being hit with the particular use of force of  
11 the Taser?

12 MR. MALEY: Object to the form of the  
13 question.

14 A Again, there's one thing I'm not certain about,  
15 is the correlation with the use of the Taser  
16 per se, that there are risk factors that, in  
17 people that police have to deal with, that place  
18 those people at significant risk of death due to  
19 these other risk factors, even regardless of the  
20 use of force, and then with the use of force  
21 certainly that is a factor in the situation.

22 Q That exacerbates their situation, does it not,  
23 perhaps makes it more likely that they might  
24 die?

25 MR. MALEY: Object to the form of the



1 question.

2 A Well, it may or may not. For example, many  
3 times one of the first things that has to happen  
4 in dealing with someone in a health crisis is  
5 that they must be restrained so that they can  
6 receive medical attention. So in fact, it's a  
7 necessary step to try and get these people help.

8 Q What are the risk factors that put somebody more  
9 at risk of dying after being used -- after  
10 having physical force applied to them, which  
11 would include physical force in the use of the  
12 Taser?

13 A Well, I think in my research on deaths in police  
14 custody, the primary risk factors seem to be  
15 related to toxic drug use, which in and of  
16 itself can certainly be lethal, and a state of  
17 excited delirium, which may or may not be  
18 associated directly with drug use where persons  
19 are overexerting themselves, exhibiting  
20 superhuman strength, for example. The normal  
21 fatigue factors within the body don't seem to be  
22 working properly, so these people continue to  
23 exert themselves to the point that their body  
24 just can't keep up, and the end point is  
25 unfortunately that they die.

1           So those people represent real issues for  
2 police to deal with. And many people I've  
3 talked to, or reports I've read, indicate that  
4 law enforcement in those situations, the first  
5 thing that they have to do is restrain that  
6 person so that paramedics or medical personnel  
7 can evaluate their condition, and perhaps we can  
8 treat it.

9       Q   I'm just asking for categories. You've got  
10 toxic drug use, excited delirium; any others?

11       A   That predispose people to death in police  
12 custody?

13       Q   That are risk factors for increasing the  
14 susceptibility of somebody to die when the use  
15 of force is applied to them, including the use  
16 of force of the Taser.

17       A   I should probably be more specific. In my last  
18 question I was really talking about the  
19 potential of dying in police custody. I don't  
20 know that the use of force, whether it be the  
21 Taser or something else, increases that  
22 probability. I'm talking about in and of  
23 themselves, those are risk factors that that  
24 person will die in police custody.

25           Now, if you are talking about now

1 incrementally adding force to that mix --

2 Q That's what I have been talking about. If you  
3 are talking about something different --

4 A Then we have been on different pages.

5 Q Let's get back on the same page. Let's talk  
6 about --

7 A Let me clarify my answer on that. Those are the  
8 risk factors that predispose somebody to die in  
9 police custody regardless of whether force is  
10 used or not.

11 Now if we talk about incrementally adding  
12 force to that matrix, does that increase the  
13 risk of death or not, including the Taser --

14 Q Yes.

15 A -- and there are, that is a complex question.  
16 Because if these people are already in health  
17 crisis that requires restraint, the use of force  
18 to facilitate restraint actually increases their  
19 chance of survival, it increases -- or it  
20 decreases the chance of death, so it actually  
21 moves in the right direction in many if not most  
22 of those cases.

23 So we may have been talking past each other  
24 a little bit here. I was talking about  
25 susceptibilities for deaths regardless of

1           whether force was used.

2       Q    I'm asking for susceptibility -- are there any  
3           risk factors that make it more likely somebody  
4           could die if the use of force is applied to  
5           them, including the use of force of the Taser?

6           MR. MALEY:  I'm going to object to the form  
7           of the question.  And I think he has addressed  
8           and answered Taser.  Then you are going to ask  
9           about other uses of force, whether they be  
10          firearms, whatever it might be, and that seems  
11          to be a separate line of questioning.  If the  
12          question is posed, he's answered it to the  
13          extent that it includes Taser already.

14          MR. WAPLES:  Well, he hasn't answered any  
15          of them yet with respect to any risk factors.  
16          He hasn't identified any risk factors.  I'm  
17          asking are there.  If there are not then say  
18          there are not.  If there are, then say that  
19          there are.

20          MR. MALEY:  I think he's been asked that  
21          and he's answered that.

22          MR. WAPLES:  No he answered a different  
23          question.  We just established that.

24          MR. MALEY:  15 minutes ago I think you  
25          asked him about individual susceptibilities, and

1 he said he was unaware of any with respect to  
2 the Taser.

3 MR. WAPLES: Then he used the term risk  
4 factors instead of individual susceptibilities,  
5 and that's when I asked him about risk factors.

6 Q Are there any risk factors that people have that  
7 make it more likely that they are going to die  
8 if the use of force is applied to them,  
9 including particularly the use of force of the  
10 Taser.

11 MR. MALEY: Again, I'm going to object to  
12 the form of the question to the extent that  
13 Taser has already been asked and answered. If  
14 you are going to ask about other uses of force,  
15 including firearms potentially, then that's the  
16 proper subject of a separate question.

17 MR. BRAVE: Do you want to break for about  
18 three minutes.

19 MR. WAPLES: No, there's a question posed  
20 to the witness.

21 MR. MALEY: Same objection.

22 MR. WAPLES: Thank you.

23 THE WITNESS: Since you have gone back and  
24 forth, could I have the specific question you  
25 would like answered?

1 Q I think it's the same question I have been  
2 asking for a while, and I don't think I have got  
3 an answer to it yet. My question is are there  
4 any risk factors people have that make it more  
5 likely they might die if there's use of force  
6 applied to them, including the use of force of  
7 the Taser?

8 MR. MALEY: Same objection to the form of  
9 the question. As to Taser, the question's been  
10 asked and answered. You can answer the question  
11 if you can.

12 A As I think I said before, I think the risk  
13 factors are the -- regardless of whether the  
14 force of the Taser is used, we tend to see the  
15 same risk factors. I'm not aware of any risk  
16 factor that has been specifically shown that in  
17 combination with the Taser would lead to death.

18 Q Well, you have parsed that down quite a bit,  
19 "that would have specifically been shown."

20 Aren't there concerns that specific risk  
21 factors make somebody more susceptible to death  
22 should a Taser be applied, and have you, the  
23 company, articulated those in any way?

24 A We've certainly provided relevant warnings, and  
25 I think the language there is very specific. I

1 don't want to characterize it here flippantly  
2 with a few statements. It's very precise  
3 language.

4 Q So are there any risk factors?

5 A I believe I have answered that.

6 Q Okay. And what are those risk factors?

7 MR. MALEY: Objection. He's answered that  
8 several times now, Rich. You apparently don't  
9 like the answer, but he's answered that. You  
10 have a limited amount of time, I would suggest  
11 that you move on.

12 Q Can you answer my last question?

13 A The risk factors for people to die in police  
14 custody primarily appear to be related to toxic  
15 drug use or excited delirium, which we have  
16 discussed, and as to whether or not the Taser or  
17 other use of force interacts with those risk  
18 factors is a very complex question, and in  
19 general needs to be taken in the context of the  
20 situation, and that these people require  
21 restraint before medical attention can be given  
22 in that context.

23 Q That's an assumption you are making, sometimes  
24 they do and sometimes they don't, right?

25 A I'm not sure.

1 Q Well, look at this case, the James Borden case.  
2 He was in handcuffs, he was in police custody,  
3 there were five officers all close by. He's got  
4 some risk factors associated with, generally  
5 associated with maybe increased risk of death if  
6 use of force is applied against him, correct?

7 A From my understanding of this case, there are  
8 certain risk factors regardless of use of force  
9 that did predispose him. He was certainly an at  
10 risk individual, based on what I have seen in  
11 general.

12 Q And if use of force is applied against him, he  
13 is at greater risk; is he not?

14 A I don't know that I would necessarily agree with  
15 that.

16 Q So you disagree with that?

17 A It would, I think that would depend on how the  
18 force was used and why the force was used and,  
19 you know, what the alternative courses of action  
20 were for the individuals involved in this case.

21 Q Well, do you think that the use of the Taser or  
22 the use of force against James Borden increased  
23 his risk factor of dying?

24 MR. MALEY: Object to the question. Rich,  
25 you keep interjecting use of force and use of



1           Taser in the same question.  If the question is  
2           about the Taser, I would suggest you ask that  
3           question.  There were other forces applied,  
4           including per your complaint, being thrown to  
5           the ground by an officer, so I think it is  
6           important that we be precise in the question.

7           MR. WAPLES:  My question can be as broad as  
8           I want it to be, and you can object to the form  
9           of it.  But let's keep it at that.

10          Can you answer that question?

11          MR. MALEY:  Same objection to the form of  
12          the question.  I think it is an improper  
13          question.

14          THE WITNESS:  May I have the question read  
15          back, please?

16          (The previous question was read back by the  
17          reporter as follows:  "Well, do you think that  
18          the use of the Taser or use of force against  
19          James Borden increased his risk factor of  
20          dying?")

21          MR. MALEY:  Same objection.  I don't know  
22          how he can answer -- that is two questions.

23          MR. WAPLES:  Your objection to the form is  
24          noted.

25          A    Based on my understanding of the case in this

1 particular instance, and my general familiarity  
2 with some of the opinions of experts, I do not  
3 believe that the Taser increased or impacted the  
4 unfortunate and tragic death of Mr. Borden.

5 Q Well, we were talking about in general risk  
6 factors that make somebody more susceptible to  
7 death in police custody or, and with the use of  
8 force being applied to them, correct?

9 MR. MALEY: Object to the form of the  
10 question. You asked him a question and he  
11 answered it.

12 MR. WAPLES: Right.

13 Q And you gave an answer that while there is many  
14 risk factors, whether use of force is applied or  
15 not, and in general use of force diminishes a  
16 pebble death even though there's preexisting  
17 risk factors there, because a person needs to be  
18 subdued and taken into custody before medical  
19 treatment can be given to them. Correct, that  
20 was your response, right?

21 A I'll just let my response stand on the record.

22 Q And I said, well, that's kind of a general,  
23 generalization. You said even in specific cases  
24 you think that's true. And I said, well, in  
25 this specific case do you think there was needed

1 to be, that Taser needed to be used against  
2 James Borden?

3 A You know, I wasn't there. So I would really  
4 leave that to the law enforcement experts in  
5 this particular case.

6 Q So you don't have an opinion one way or the  
7 other whether Taser was properly used against  
8 James Borden or not?

9 A Again, I'm not as familiar with all the details  
10 of this particular case.

11 In generalities, my understanding is that  
12 Mr. Borden was being physically resistant and  
13 combative with the officers, and that they  
14 determined that they needed to use some form of  
15 force. So in generalities, it appeared the  
16 officers determined they needed to use force. I  
17 don't know that I'm in a good position to second  
18 guess them, not having been there, and not being  
19 familiar with the situation in great detail.

20 Q What have you done to make yourself familiar  
21 with the situation of what happened to James  
22 Borden?

23 A I've certainly read some of the news reports  
24 early on. I've read some of the medical  
25 reports, such as an opinion from Dr. Wecht. And

1           that's about it.

2           Personally I have a general understanding  
3           of what happened. But it's very different from  
4           being there in the officer's shoes and seeing  
5           the chain of events and behaviors and  
6           understanding what their options were, what  
7           their mind set was at the time. That's why I  
8           would defer to them as far as the appropriate  
9           use, the appropriateness of the use of force  
10          within their own policy and in the context of  
11          that particular situation.

12        Q    Did Taser pay for Dr. Wecht to review that case?

13        A    We did not pay for Dr. Wecht. However, we have  
14          provided some degree of support, some financial  
15          support to the defense of Mr., I think it's  
16          Mr. Shaw, and I think some of those funds may  
17          have been used for legal fees, and some may have  
18          been used for expert reports.

19        Q    How much have you provided?

20        A    I don't know the number, sitting here today.

21        Q    Generally?

22        A    I'm not sure. I wouldn't want to hazard a  
23          guess.

24        Q    Would your company have records of that?

25        A    I believe we would.

1 Q But it was certainly enough to pay for  
2 Dr. Wecht's services in the case?

3 MR. MALEY: Objection. He said he doesn't  
4 know. I don't know how he can answer that.

5 A I don't know.

6 MR. WAPLES: Take a short break. I see we  
7 have got to switch off, and you wanted to take a  
8 break.

9 THE VIDEOGRAPHER: We're going off the  
10 record. The time is 9:47.

11 (A recess was taken.)

12 THE VIDEOGRAPHER: This is the beginning of  
13 tape No. 2. We're going on the record at 10:08.

14 Q We're back on the record. Mr. Smith, what  
15 physical findings if any would there be, would  
16 be present in a case where electrical energy  
17 caused or contributed to death? And I'm not  
18 talking about maybe if somebody's electrocuted  
19 and they have major heat from electricity that  
20 burned part of their body, but say if it  
21 contributed to ventricular fibrillation, would  
22 there be any physical findings of that?

23 A I don't know for sure.

24 Q What information does Taser have on the, on  
25 autopsies of people who have died after being

1 hit with a Taser?

2 A Well, any time that we hear of an in custody  
3 death in a case where a Taser was used, we have  
4 a full-time employee whose job it is to track  
5 down as much information as possible so that we  
6 can ascertain as much information as we can  
7 about these cases.

8 We make requests for the autopsy reports.  
9 We gather news clippings and news reports where  
10 we can. We contact the agencies. In some cases  
11 we get the autopsy reports, and in many cases we  
12 do not, they won't send them to us.

13 Q How many do you have, approximately?

14 A I don't know. Approximately, I think less than  
15 half, we have been able to obtain.

16 Q What would that number be, approximately?

17 A I would have to hazard a guess of 35. It's  
18 really a guess on my part. I would defer to  
19 Mark Johnson of our office.

20 Q Is he the full-time employee you mentioned?

21 A Yes.

22 Q How long has he been employed by Taser?

23 A Two years, I believe.

24 Q And it was, has that been his job since he's  
25 been there to be the gatherer of information

- 1           about these incidents?
- 2       A    Yes, his primary job is to investigate any  
3           issues related to allegations related to the  
4           Taser in cases where people die in police  
5           custody.
- 6       Q    And you say you have a clipping service or  
7           newspaper clippings?
- 8       A    I believe we have another employee that monitors  
9           on a daily basis internet news stories, monitors  
10          the internet for any news stories related to  
11          Taser in general.  And then if there are cases  
12          that allege injury or death, she'll forward  
13          those to Mark Johnson and he'll follow up on  
14          that information.
- 15      Q    So any on line newspaper article relating to a  
16          death associated with a Taser, she would pick up  
17          on her internet search and forward that on to  
18          Mark Johnson?
- 19      A    I believe so, yes.
- 20      Q    And then he contacts the agency, or how --
- 21      A    Generally he would contact the agency.
- 22      Q    And what's the purpose of him doing this,  
23          assembling this information and looking at this?
- 24      A    The primary purpose is for us to gather  
25          information about each of these incidents to see

1           if there's any lessons that can be learned, and  
2           then also, of course, to try and understand the  
3           circumstances around each of these specific  
4           cases.

5       Q    So it's a business purpose, you do this as part  
6           of your business to help gather more information  
7           to help you know what, how your product's doing  
8           and what's going on with it?

9       A    It's starting to sound like a legal definition.  
10          So I'm not sure if I would characterize it as a  
11          business purpose or not. I would say that we  
12          certainly want to be responsive when there are  
13          allegations about the use of the Taser, or it's  
14          been involved in a situation that, you know,  
15          turned out to be a tragedy. We want to  
16          understand as much about that as we can.

17       Q    Has Taser ever become aware of the need to warn  
18           law enforcement officers about using the M26 on  
19           persons experiencing stress?

20       A    I believe we have had a warning that the Taser  
21           exposure can be stressful. I don't know that  
22           we've warned about people experiencing stress.

23           If you have a specific warning you would  
24           like to put in front of me, I would be happy  
25           to --



1 Q We can look over those. But you're not aware of  
2 any specific time when Taser learned of any  
3 information that needed to warn officers about  
4 using the M26 on people experiencing stress?

5 A Not that I can recollect.

6 Q How many lawsuits have been filed against Taser  
7 with respect to injuries or deaths associated  
8 with the use of its products?

9 A I would prefer that that be a question to go to  
10 counsel for a specific answer, because I don't  
11 have a specific number, and I wouldn't want to  
12 guess on the record.

13 Q Do you have any approximation?

14 A I just said I wouldn't want to guess on the  
15 record. It's readily available.

16 Q You don't have any problem turning those over?

17 MR. MALEY: Objection.

18 Q The number of lawsuits that you have been --

19 MR. MALEY: Hold on a minute. I would  
20 interpose an objection. Any discovery requests,  
21 of course, would be served on counsel, and we  
22 can review it. And such a request has been  
23 served and has been responded to.

24 Q Do you have any idea how many lawsuits have been  
25 filed against you, with respect to injuries or

1 deaths?

2 A Again, I wouldn't want to hazard a guess.

3 Q Are we talking a couple, or are we talking a  
4 hundred?

5 A I'm pretty sure it's not a hundred.

6 Q Less than a hundred, more than two or three?

7 A Most likely.

8 Q More than ten?

9 A So when I don't want to guess, we interpolate?

10 MR. MALEY: If you have personal knowledge,  
11 you can answer. If you don't, just say that.

12 A I would bound it at somewhere between ten and  
13 forty, would be the best of my ability to guess.

14 Q Tell me a little bit about Taser's program for  
15 training police officers on the use of its  
16 devices.

17 A What do you want to know?

18 Q When did you start it, with respect to the M26,  
19 and how is it, how is that operated? Just kind  
20 of give me a broad outline of it first, then  
21 I'll get more specific with questions.

22 A Okay. We utilize a program in developing our  
23 training. We have an outside training board.  
24 These are independent officers that are active  
25 duty police trainers.

1 Q When did they come on? When did you start that  
2 board?

3 A I believe the board was formalized in 2002,  
4 approximately. But it's been an informal thing  
5 since the very beginning.

6 Our first generation training was actually  
7 developed by the Chandler, Arizona Police  
8 Department, because we relied on their  
9 expertise. We viewed ourselves -- excuse me.  
10 Pardon me. I was just about to sneeze.

11 Q I was going to tell you to turn a little bit  
12 more towards me for the camera, but if you are  
13 going to sneeze I'm not going to tell you that.

14 MR. MALEY: Fire away.

15 A We viewed our role as really technologists, and  
16 as a manufacturer our job was to develop a tool  
17 kind of like a scalpel for a doctor, but the  
18 doctors are the people with the training on how  
19 to use that in the commission of their jobs.  
20 And with the Taser similarly we look at law  
21 enforcement as the experts to deal with all the  
22 complexities or legalities of the challenges  
23 they face.

24 So our goal in developing a training  
25 program was to use outside resources, experts in

1 police training, to develop the basic tenets of  
2 our training program, although we've always been  
3 very careful never to dictate, you know,  
4 policies, use of force policies and procedures.

5 So we put on a course. We basically  
6 developed a course for instructors or master  
7 instructors, so basically the way that works is  
8 we will have this board of leading trainers that  
9 oversee our training programs.

10 Q Are those the master instructors?

11 A That's actually the master instructor board.

12 Q And who's on that?

13 A Currently?

14 Q Who has been on it, I guess.

15 A Okay. I'll do my best to recollect the names.

16 The current board includes Sergeant Kevin Sailor  
17 of Westminster, Colorado Police Department,  
18 Sergeant Paul Hopkins, Orange County, Florida,  
19 the sheriff's department there, Officer Chris  
20 Myers of the Seattle Police Department, I  
21 believe David Nichols, he's with the department  
22 in Wisconsin, Dan Savage, who is a sergeant in  
23 Michigan. There might be one other one. The  
24 name is eluding me.

25 And, of course, Hans Marrero, who is our

1 chief instructor, he is an employee who also  
2 serves on the board, he's the former chief  
3 instructor of hand-to-hand combat training for  
4 the United States Marine Corps. We are in their  
5 training programs.

6 Also our director of training, who is Rick  
7 Guilbault, that's G-U-I-L-B-A-U-L-T, Rick  
8 Guilbault is a retired sergeant from the  
9 Sacramento Police Department where he ran their  
10 training academy. The prior members of the  
11 board --

12 Q Sure, if you can rattle them off quickly, that's  
13 fine, otherwise I don't need their names.

14 A It would be Sergeant James Halstead of Chandler,  
15 Arizona, Sergeant Steven Hadley of Glendale,  
16 Arizona, Louie Marquez from the Austin Police  
17 Department, Steve Ward also from the Seattle  
18 Police Department, and I may be missing one  
19 other, we can come back to it.

20 Q And Hans Marrero and Rick Guilbault -- is that  
21 his name?

22 A Guilbault.

23 Q -- Guilbault, they are employees?

24 A Yes, correct.

25 Q And the others, are they paid for their

1 services?

2 A Yes.

3 Q And the materials that you put out, the training  
4 materials, are those -- who has written those  
5 materials?

6 A The materials have been a work in progress. We  
7 are on Version 12 of the training. The original  
8 training was developed by Jim Halstead, then at  
9 the Chandler Police Department, and since that  
10 time we have regularly taken input from training  
11 officers, from, we have a scientific and medical  
12 advisory board that advises the company, from  
13 Dr. Stratbucker, from legal counsel.

14 And over time, as we've learned, it's a  
15 continuous process of improvement. The training  
16 is updated continuously. We have training  
17 bulletins that go out as new information comes  
18 to light that are mailed out to all certified  
19 trainers, and at such time as sufficient changes  
20 are made or improvements are made to warrant a  
21 new release, we'll then do a full release of the  
22 training which is provided on a CD ROM with  
23 integrated videos.

24 We've heard from numerous sources that  
25 Taser International's training is the state of

1 the art, and that we provide the most thorough  
2 comprehensive training of any manufacturer in  
3 the industry, something we're quite proud of.

4 Q So you have a training board that you formalized  
5 in '02 or somewhere around there. Underneath  
6 that you have master instructors; is that  
7 correct?

8 A Yes. The master instructors, of which I believe  
9 there's around 150 to 200, are, they are  
10 selected, they have to meet minimum  
11 qualification standards, they must have been a  
12 police instructor for a number of years, they  
13 must have been a Taser instructor now for at  
14 least two years, there are other qualifications  
15 that they have to meet. They then come to an  
16 annual conference that takes between -- well, it  
17 takes three days, two to three days for the  
18 master instructor school, plus there's a two-day  
19 conference after the fact. And at that  
20 conference -- the instructor school takes them  
21 through a much more in-depth curriculum. The  
22 conference that follows is an open forum for  
23 information sharing. We really believe in  
24 transparency where agencies can bring forth  
25 training issues or really anything of interest

1 to the community of Taser users.

2 Those master instructors then undergo a  
3 test that includes both written and presentation  
4 skills. They are then certified as a master  
5 instructor. They are qualified to go out and  
6 certify other trainers as instructors.

7 I should also mention we also have senior  
8 master instructors who are selected, sort of the  
9 creme de la creme, the best instructors with the  
10 most solid technical understanding, and they are  
11 on a regional basis to serve as a resource to  
12 their local master instructors to facilitate  
13 information flow when we put out new training  
14 bulletins, et cetera.

15 So then below the master instructors, then,  
16 they conduct courses regionally around the  
17 country where they certify instructors within  
18 the different agencies. Those instructors then  
19 go forth within their own agency and train the  
20 end users within their own agencies. And as  
21 part of that training, we're, we train the  
22 instructors that, one of the first steps we give  
23 them is a sort of checklist when they go back to  
24 deploying the Taser weapons that includes things  
25 they should do as part of developing their own



1 programs, which includes first and foremost  
2 developing their own use of force and Taser use  
3 guidelines and policies. Because we're very  
4 clear that that needs to be developed within the  
5 local political and social context of that, of  
6 each particular agency. All the, you know, we  
7 have 50 different states and 60 different  
8 countries with different legal standards, with  
9 different community standards. And so then they  
10 integrate their own use of force policies into  
11 the technical training that we provide through  
12 the course outline and the integrated video  
13 multimedia teaching tools.

14 Q So Taser pays the master instructors and  
15 certifies them?

16 A The master instructors, there are some of those  
17 master instructors that will work on a contract  
18 basis. When we host a training class, we'll pay  
19 an instructor obviously for his time for  
20 conducting that class. There are other master  
21 instructors that only work within their own  
22 agency. Particularly large agencies will need a  
23 master instructor, because they will need to  
24 have a whole core of instructors that are  
25 trained and kept current. So those master

1           instructors we serve purely as a liaison within  
2           their own departments.

3       Q    Do, does Taser pay them to be master  
4           instructors?

5       A    No, they are not paid to be master instructors.  
6           In fact, they generally pay a course  
7           certification cost to attend the master  
8           instructors school.  If they provide services in  
9           performing trainings sponsored by Taser  
10          International, then they are paid as a  
11          consultant, but they are not paid to be a master  
12          instructor.

13      Q    They are paid to instruct the instructors, I  
14          guess.

15      A    Those master instructors that participate, which  
16          they do not all participate, those that do teach  
17          for us are paid when they teach for us.

18      Q    And Taser controls who is the master  
19          instructors?

20      A    No, that's really a function of the master  
21          instructor board.  They have complete discretion  
22          as to who is or is not qualified and certified  
23          as a master instructor.

24      Q    Taser determines who is on the master instructor  
25          board?

1 A Indirectly. The current master instructor board  
2 was selected by the outgoing master instructor  
3 board. I mean certainly there's input from  
4 Taser employees, such as Hans Marrero and Rick  
5 Guilbault, but I'm not sure I would say that we  
6 control the makeup of who is on the board.

7 Q And you pay them to be on the board?

8 A Yes. They are -- well, they are paid for events  
9 and services and their time, and when they  
10 attend meetings. I don't believe there is a  
11 payment for being on the board per se.

12 Q They are agents or employees of Taser?

13 MR. MALEY: Objection, calls for a legal  
14 conclusion.

15 A I'm not sure I would agree with that. I would  
16 defer to legal counsel as categorizing it. We  
17 view them as independent, and that's really  
18 their role.

19 In fact, that's one of the reasons there  
20 has been some turnover in the master instructor  
21 board, is we have over time, as we've gotten to  
22 know these people, some old members of the board  
23 actually applied for and were hired for  
24 positions at Taser, and at that point to  
25 maintain the independence of the board we asked

1           them to step down and to fill the slots with  
2           independent active duty police officers.

3       Q    Taser doesn't allow the master trainers to train  
4           to become master trainers unless they get a  
5           certain percentage right on their test?

6       A    That's correct.

7       Q    Does the end user have to have a certain  
8           percentage right on their test when they are  
9           trained by the instructors in order to use the  
10          Taser?

11      A    The end user certification, we make  
12          recommendations to the agencies, we provide  
13          materials that our master instructor board feels  
14          are appropriate; however, those are just aids to  
15          the agency. We do not certify end users. End  
16          users are certified by their own agency  
17          according to the standards of that agency.

18      Q    What standard do you guys recommend?

19      A    In terms of?

20      Q    Being certified as a user.

21      A    We make recommendations in terms of standards.

22      Q    And what recommendation in terms of standards do  
23          you make?

24      A    We recommend a minimum of four hours of  
25          training. We provide training materials on the

1 CD, which the instructor can tailor and modify  
2 to fit local agency policies and procedures.

3 We recommend that they perform certain  
4 exercises, and we do provide a test that can be  
5 used with the end users as well.

6 Q Do you recommend a certain percentage that they  
7 have to get right before they can become  
8 certified users?

9 A I believe there is a recommendation.

10 Q And it is what?

11 A I wouldn't know offhand.

12 Q You don't know that it's 80 percent?

13 A Again, that's, I wouldn't know offhand.

14 Q Taser provides all the technical material, all  
15 the technical information with respect to its  
16 product in its training materials; does it not?

17 A Yes, we provide technical information.

18 Q And you suggest use of force policies; do you  
19 not?

20 A No, we do not.

21 Q Do you provide with your training materials the  
22 sample use of force policies?

23 A As aids, we do provide samples that other  
24 agencies have developed.

25 Q Do you suggest where the use -- where the Taser

1 goes in the continuum of force?

2 A We show examples of where it has been placed on  
3 the continuum of force, particularly at the  
4 instructor level, and that is used as a tool to  
5 discuss the thought process that agencies have  
6 used in placing the Taser on the continuum of  
7 force. But I believe we go out of our way to be  
8 very specific that it's not, you know, a  
9 mandated placement, or telling them where to put  
10 it, it's really to stimulate the thought process  
11 and give examples of how other agencies have  
12 addressed that problem.

13 Q Do you suggest that if a death occurs with use  
14 of Taser, to contact your press office?

15 A I don't believe we recommend they contact our  
16 press office. We do recommend that they contact  
17 a technical contact at the company, either Steve  
18 Tuttle or Mark Johnson, so we can provide  
19 relevant information in a timely fashion.

20 Q And do you suggest that you will provide the  
21 services of Dr. Stratbucker to police  
22 departments if there's been a fatality  
23 associated with the use of Taser?

24 A In certain cases we'll provide technical  
25 support, and that may include discussions or

1 meetings with relevant subject matter experts.

2 Q You briefly told me in general, but can you be  
3 more specific on what assistance Taser has  
4 provided to the defense of criminal charges by  
5 David Shaw?

6 A Could I have you read the question back just to  
7 be very specific?

8 Q What assistance has Taser provided to the  
9 defense of Officer Shaw?

10 A I believe we've provided technical information,  
11 medical background information, and because of  
12 his unique situation, we felt it appropriate, we  
13 also decided to support his defense financially.

14 Q When did you make that decision?

15 A I don't recall exactly.

16 Q Shortly after charges were filed against him?

17 A I don't recall.

18 Q And do you have any approximation of the money  
19 that you have provided to his defense?

20 A I'm sure you already have that information, or  
21 if not it can be provided, I don't have it at  
22 hand.

23 Q Do you think that Taser's ever caused a death?

24 A I do not.

25 Q Do you know that medical examiners across the

1 country have ruled differently in some cases?

2 MR. MALEY: Object to the form of the  
3 question. You may answer.

4 A I disagree with your assertion.

5 Q How do you calculate the wattage of the Taser?

6 A We calculate the power of the Taser measuring  
7 the energy stored in the primary capacitor,  
8 which is, in the case of the M26, roughly 1.76  
9 joules of energy, and we then multiply that by  
10 the number of pulses per second, which comes out  
11 to approximately 26 watts.

12 Q How many pulses per second does the M26 supply?

13 A It's nominally rated at 15 pulses per second.

14 Q Does that vary?

15 A It does, with batteries and temperature it can  
16 vary. I'd have to see our latest  
17 specifications, but I believe between 15 and 22  
18 or 23 pulses per second. But again, that's an  
19 approximation, just so I'm clear, we have more  
20 precise technical specifications.

21 Q And as you increase the pulses per second, that  
22 increases the wattage; does it not?

23 A It does.

24 Q Is the, is there more energy put out by the M26  
25 in the drive stun mode than in the projectile



1 mode?

2 A No.

3 Q Is there less resistance in the drive stun mode  
4 than there is in the projectile mode?

5 A That would depend on output conditions.

6 Q Is there any testing you think needs -- that you  
7 would like to see done, any further testing that  
8 hasn't been done so far?

9 A Well, there's always more testing that can be  
10 done.

11 Q Is there anything that you think needs to be  
12 done?

13 A That needs to be done? I don't think so.

14 Q Has there been any testing on repeated five  
15 second hits in the drive stun mode?

16 A I believe so.

17 Q Where was that?

18 A I believe in the 1999 studies at the University  
19 of Missouri there were repeated drive stun  
20 applications to the chest.

21 Q To the pigs?

22 A Canines.

23 Q Dogs?

24 You said that the pigs at the animal  
25 facility in Scottsdale, that you participated in

1           that testing, that they were anesthetized -- I'm  
2           sorry -- that they were euthanized after the  
3           experiment; is that correct?

4       A    Generally speaking, yes.

5       Q    I was just wondering about how that happened.  I  
6           mean, because you increased the energy until  
7           they fibrillated, right?

8       A    Correct.

9       Q    And then did you leave them in fibrillation, or  
10          did you --

11      A    No, we would generally defibrillate them.

12      Q    Do you know that you did that?

13      A    Yes.

14      Q    How did you do that?

15      A    With a standard defibrillator.

16      Q    Okay.  And then what did you do?

17      A    Well, we would repeat the tests.  And some of  
18          these pigs, not necessarily in Scottsdale, but I  
19          know in Missouri some of the pigs were on the  
20          table for 16 hours, and had been shocked  
21          potentially hundreds of times, approximately a  
22          hundred times perhaps, and defibrillated ten or  
23          fifteen times.  The final euthanasia was  
24          normally done with an injection.

25      Q    Was there any requirements that those tests in

1           Scottsdale be reported to anybody or approved by  
2           anybody?

3           A    No.

4           Q    Even though they used animals, and even though  
5           those animals were subjected to repeated shocks  
6           and then euthanized?

7           A    Correct.  Our --

8           Q    Our what, somebody told you that?

9           A    Yes.

10          Q    Who told you that?

11          A    Our legal counsel.

12                   MR. MALEY:  Object to the extent it's  
13           protected by attorney-client privilege, and  
14           instruct you not to speak about that.

15          Q    Did you rely on any studies done by Gary Ordog  
16           to show the safety of the Taser?

17          A    I believe there was one study that we have  
18           disseminated.

19          Q    Is that the one that you referred to as the  
20           University of Southern California Medical Center  
21           study?

22          A    I believe so.  There are now 70-some different  
23           studies, so it's hard to keep them all straight.

24          Q    Is it fair to say that the Taser didn't warn the  
25           Monroe County sheriff or its employees that

1           Tasers could cause or contribute to death?

2       A    I believe there were warnings in the instruction  
3           manual and training program, as you and I have  
4           discussed earlier.

5       Q    And whatever those warnings were, that's the  
6           warnings that would have been provided?

7       A    I would believe so.

8       Q    Don't those training manuals assert that Tasers  
9           are medically safe and that no harm would result  
10          from their use?

11      A    That's your characterization.

12      Q    Do they say that?

13      A    I would prefer to be pointed to specific areas  
14          in the manual, if you want to ask questions,  
15          rather than a broad characterization.

16      Q    It's a specific quote. Do they say they are  
17          medically safe?

18      A    I believe they do.

19      Q    Do they say that no harm would result from the  
20          use of them?

21      A    There are specific warnings as to use of the  
22          Taser. I don't believe it was characterized as  
23          risk free, or that there was zero possibility of  
24          injury. I don't believe that's a fair  
25          characterization.

1 Q Don't they represent that there are no deaths  
2 reported as associated with the Taser?

3 A I would want to see the exact language.

4 Q Okay. Well, we can look those over in a little  
5 bit. But what is the -- whatever warnings were  
6 provided are in those materials, correct?

7 A I would believe so, I believe you have been  
8 provided with those.

9 Q And you would want those warnings to fully  
10 apprise the purchaser and user of whatever risks  
11 were associated with that product, correct?

12 A I believe so.

13 Q And you would want those materials to be  
14 consistent in what they, in the information they  
15 impart with respect to any dangers of the  
16 product?

17 A I believe so.

18 Q And you certainly wouldn't want them to  
19 contradict any internal contradictions in those  
20 materials, would you?

21 A I believe so.

22 Q Is it fair to say that Taser has not conducted  
23 any studies on the effect of an M26 on persons  
24 who were on promethazine?

25 A I don't believe so.

1 Q Has Taser conducted studies on effects of the  
2 M26 on people on promethazine?

3 A I believe I just answered that.

4 Q Maybe we -- so no, there haven't been any such  
5 tests?

6 A I don't believe so.

7 Q Okay. How about on Ephedrine, any tests on  
8 people with, who had Ephedrine in their system?

9 A I don't believe we've performed those tests on  
10 people on high doses of Ephedrine.

11 Q Did you ever hear of a guy named Holmes, who  
12 died after being shocked with a Taser?

13 MR. MALEY: Object to the extent it assumes  
14 facts not in evidence. You may answer.

15 A I'm not sure.

16 Q Have you heard anything about some guy dying  
17 after being shocked with a Taser by the name of  
18 Holmes or something similar to that?

19 A The name Holmes is not familiar.

20 Q Do you think David Shaw's use of the M26 on  
21 Borden was consistent with Taser approved  
22 training?

23 A The, as I mentioned before, our training  
24 mandates that the agencies develop their  
25 policies as far as how the device is employed

1 and under what circumstances within their own  
2 use of force policies and guidelines, so the key  
3 metric would be whether it was consistent with  
4 that agency's guidelines.

5 I don't believe that Taser International  
6 makes those recommendations, because that's  
7 really outside of our purview.

8 Q That part of your training, under what  
9 circumstances it would be appropriate, I take  
10 it, and how to use it in particular situations?

11 A We spend -- in the training we cover situations  
12 such as operational limitations of the device,  
13 technical limitations.

14 Q So you don't know whether Shaw's use of the  
15 Taser on Borden was consistent with your  
16 training or not?

17 A As I mentioned, I think the question there would  
18 be whether it was consistent with the use of  
19 force policy guidelines of the relevant agency.  
20 I know of nothing that is inconsistent with the  
21 technical operating parameters of the device for  
22 our training.

23 MR. WAPLES: I hate to take another break  
24 right now, but I need to.

25 THE VIDEOGRAPHER: We're going off the

1 record. The time is 10:52.

2 (A lunch recess was taken.)

3

4 A F T E R N O O N S E S S I O N

5 DIRECT EXAMINATION (CONTINUING),

6 QUESTIONS BY MR. RICHARD A. WAPLES:

7 THE VIDEOGRAPHER: We're going back on the

8 record. The time is 11:40.

9 Q Back on the record. Mr. Smith, anything you  
10 said this morning that you need to alter or  
11 change in any way?

12 A I don't think so.

13 Q Did you assist in preparing the Taser's response  
14 to the CBS evening news report about Taser  
15 death?

16 A I'm sorry, about?

17 Q About deaths associated with Tasers.

18 A I believe I did.

19 Q In that response to CBS you, it was reported  
20 that Borden had died from enlarged heart, acute  
21 pharmacological intoxication and heart attack;  
22 do you remember that?

23 A I believe so.

24 Q Why was it reported that way?

25 A The actual listing was prepared by Mark Johnson



1 in our office, and he had obtained that from a  
2 third-party source. We did not have a copy of  
3 the autopsy. So that was taken from one of the  
4 media reports.

5 And as soon as it came to my attention  
6 that, in the autopsy it listed electric shock,  
7 we immediately added that correction to our  
8 documentation, although we continue to maintain  
9 and believe that that was an error.

10 Q That reported source is the IDS, I think paper,  
11 it's a local Indiana University school  
12 newspaper. Do you remember that?

13 A I don't recall the source.

14 Q There were a lot of media accounts at the time  
15 that accurately reported what the coroner had  
16 ruled, what the autopsy report had shown. It  
17 didn't include heart attack, it said electric  
18 shock.

19 Did you ever talk to Mr. Johnson about why  
20 he selected that one instead of some other media  
21 account of the medical examiner's findings?

22 A I did talk with him about it after the fact, and  
23 he conveyed that in his discussions with the  
24 agency and his review of the literature, he felt  
25 that one was the most accurate.

1 Q I want to go over a number of documents with  
2 you.

3 (Plaintiff's Exhibit Number 1 was marked  
4 for identification.)

5 Q This is Plaintiff's Exhibit 1, which is -- I  
6 don't have an extra copy, if you could share it,  
7 I would appreciate it -- that says second  
8 amended complaint, tendered in this case.

9 Have you seen that document before?

10 A I have not.

11 Q I want you to turn to the second page, paragraph  
12 8, and I want to go through this recitation of  
13 the facts as accounted in there.

14 Would you tell me if those are, if they are  
15 true or not? Is No. 8 true?

16 A It is.

17 MR. MALEY: Hold on for a minute. For the  
18 record, I will note that we've, I believe,  
19 responded to this, and that, of course, this  
20 witness is testifying in his individual  
21 capacity. You can continue.

22 Q Is No. 9 true?

23 A Not entirely.

24 Q Okay. What is true and what is not true?

25 A "Taser International markets its products to law

1 enforcement agencies and supplies those agencies  
2 with training materials," I would say is true,  
3 and "proposed use of force policies" I would  
4 disagree with. We do supply references to other  
5 agencies' policies and discuss some of the  
6 thought processes that we have encountered as  
7 agencies developed their use of force policies.  
8 But I would not agree with the characterization  
9 that we deliver proposed use of force policies  
10 to those agencies.

11 Q You provide them with the actual use of force  
12 policies, though, of other agencies as samples?

13 A In some cases we do.

14 Q Well, with your training materials you do.

15 A I'm not certain about that.

16 Q On the CD ROM of your training materials, in  
17 your different versions, you know, have a  
18 category that they can click on for use of force  
19 policies?

20 A On which version?

21 Q 5 through 12.

22 A I'm not certain.

23 Q Generally it's been included there?

24 A At times we have included some reference  
25 policies from other agencies. I'm not sure if

1           that has been done in every version of the  
2           training.

3       Q    No. 10, is that true?

4       A    I don't know.

5       Q    You know the Monroe County Sheriff did purchase  
6           the M26, you just don't know what year?

7       A    I believe they purchased it. I wasn't  
8           personally involved in the transaction and don't  
9           have personal knowledge.

10      Q    Is No. 11 true?

11      A    Based on my own personal opinion?

12      Q    What you know, as you sit here today, as you're  
13           chief executive officer of Taser International.

14      A    Generally speaking.

15      Q    Generally speaking, true; is that your  
16           testimony?

17      A    Yes.

18      Q    Is No. 12 true?

19      A    I would say a more accurate description would be  
20           that we represented we were aware of no specific  
21           heart conditions that would pose a particular  
22           risk combined with the Taser, although subject  
23           to interpretation of medically safe, which  
24           generally according to FDA policy includes a  
25           balance of risks and benefits, and under that

1           characterization I would agree that Taser is  
2           medically safe in terms of the benefits versus  
3           the risks of using alternate force options that  
4           are more injurious, more stressful.

5       Q    So is No. 12 generally true; is that what you  
6           are saying?

7       A    In the context of my prior comments.

8       Q    Is No. 13 true?

9       A    Again, I would clarify as part of the training  
10           materials, we're very deliberate and transparent  
11           about the representations that the M26 had been  
12           tested in the presence of various drugs per the  
13           1999 canine study we had discussed, and under  
14           the most adverse cases we did not see dangerous  
15           interactions, and in that context that would be  
16           consistent with this statement.

17      Q    Is 14 true?

18               MR. MALEY: And before you answer that,  
19           Rich, I'm sorry to interrupt, the statement, the  
20           assertion speaks of all times relevant to this  
21           complaint, and so I'm objecting to the extent  
22           that you are now asking this question of this  
23           witness.

24               But with that, you can answer.

25      A    I would disagree with that statement.

1 Q Were you aware that any forensic pathologist had  
2 reported deaths caused by use of Tasers, at the  
3 time you marketed, sold, and delivered the M26  
4 to the Monroe County Sheriff?

5 A Personally I was not aware of any forensic  
6 pathologists that reported deaths caused by the  
7 use of Tasers.

8 Q You used the word caused, how about contributed  
9 to a death?

10 A I'm answering in respect to No. 14.

11 Q Well, let me clarify that the word caused in  
12 that sentence includes any contribution to the  
13 death.

14 A Okay. At what time frame are you referring?

15 Q Referring to the time frame that the devices  
16 were sold and used by the Monroe County Sheriff.

17 MR. MALEY: Hold on. I'm going to object  
18 to the question as ambiguous. Sold and used are  
19 two different time frames. I'm just not sure we  
20 have got a precise question out there.

21 MR. WAPLES: Sold in 2002 and used in 2003.

22 Q Were you aware at any time that forensic  
23 pathologists had said that a Taser had  
24 contributed to a cause of death?

25 A I'm unaware of a statement that forensic

1 pathologists had concluded that Taser  
2 contributed to a death.

3 Q Were you aware of Terence Allen's report in the  
4 Journal of Forensic Pathology, was it?

5 A I was.

6 Q Was he a forensic pathologist?

7 A I do not know his background.

8 Q Was it reported in that article that he was a  
9 forensic pathologist?

10 A I do not recall.

11 Q Was it reported in that article that he was a  
12 forensic pathologist that had conducted  
13 autopsies on people in Los Angeles as part of  
14 his duties as a deputy coroner, and had, he had  
15 concluded that some deaths were associated with  
16 the use of the Taser?

17 A Well, certainly if I didn't recall whether or  
18 not he was a pathologist, then adding more to  
19 the recollection, I wouldn't recall that either.  
20 So no, I would not recall that.

21 Q You were aware of the article though?

22 A I was aware of his dissenting viewpoint.

23 Q As expressed in that article?

24 A As I recall, the article was in response to a  
25 review article that had been peer-reviewed that

1           disputed or that did not agree with his  
2           viewpoint.

3       Q     The first article you included in the materials  
4           that you distributed to law enforcement agencies  
5           as part of your training materials; did you not?

6       A     I believe we did.

7       Q     You did not include his criticism of that  
8           article, did you?

9       A     I do not believe we did.

10      Q     Is No. 15 true?

11      A     I don't believe so.

12      Q     Is 16 true -- knocking out the preface of  
13           "despite this information," since you are not  
14           agreeing with 14 or 15?

15      A     In what time period are we referring to?

16      Q     At the time you marketed the devices to the  
17           Monroe County Sheriff in '02.

18      A     At that time we marketed the Taser as less  
19           lethal.

20      Q     Did you ever refer to it as less than lethal?

21      A     We may have, but generally we use the term "less  
22           lethal."

23      Q     Did you also refer to it as medically safe?

24      A     We may have.

25      Q     And did also refer to it as, "no reports of a



1 death caused by a Taser"?

2 A We may have.

3 Q Is 17 true?

4 A No.

5 Q Is there any part of it that's true?

6 A Yes.

7 Q Can you tell me what's true and what's not true?

8 A "Taser supplied the Monroe County Sheriff with  
9 training materials" is true, "concerning the  
10 appropriate use of the M26" is partially true.  
11 "We suggest use of force policies," as I  
12 testified before, Taser does not suggest use of  
13 force policies, so that I would say is false.

14 Q Did all the use of force policies that you  
15 supplied in your training materials place M26 on  
16 a continuum of force lower than deadly force?

17 A I believe they did.

18 Q Is 17 true -- or 18, I'm sorry.

19 A I would dispute No. 18.

20 Q In what way?

21 A That forensic pathologists and coroners had  
22 reported the use of the Taser was a contributing  
23 factor in deaths of individuals upon whom it was  
24 used.

25 Q Okay. You're saying that you don't know that?

1 A I don't necessarily agree with that particularly  
2 at that point in time.

3 Q Is 19 true?

4 A At what time period?

5 Q Well, at any time period.

6 A What time period would you like me to answer  
7 first, sitting here today, or at the point that  
8 we sold the M26?

9 Q I'm saying, up to the point you sold them to the  
10 Monroe County Sheriff first.

11 A That's generally true.

12 Q And did that change at some point?

13 A In light of this case and newer cases, we have  
14 added discussion points about the alleged  
15 contribution of a Taser in in-custody death.  
16 I'm not sure that -- I will tell you the experts  
17 we've consulted do not agree, generally  
18 speaking, that the Taser has caused or  
19 contributed in any significant way to these  
20 deaths. But we do discuss this material and  
21 disseminate it as it becomes available.

22 Q Did you do that first with Version 12?

23 A I don't recall in which version that was first  
24 discussed.

25 Q Do you know when you first discussed that?

1     A    To my recollection, I believe this case was the  
2           first one that I became aware of where the Taser  
3           was listed as a potential contributing factor,  
4           and when that came to our attention we obviously  
5           addressed that issue.  As I'm sure you can, tell  
6           we don't agree with it, nor do the experts we've  
7           consulted.  But we've very openly disseminated  
8           and shared that information as has been our  
9           policy of transparency.

10    Q    When did you first start knowing that?

11    A    I don't recall exactly.

12    Q    Was it a particular version of the training  
13           materials released?

14    A    I don't recall.

15    Q    It have been with training materials, though, or  
16           specifically with the release of a new version  
17           of the training materials?

18    A    It may have been, or in certain training  
19           bulletins or other statements.  I'm not sure  
20           where it first was discussed.

21    Q    Do you know if that was first in 2004, or was it  
22           in 2005?

23    A    I don't recall.

24    Q    Is 20 true?

25    A    No.

- 1 Q What part is not true?
- 2 A The M26 was sold and delivered with warnings  
3 that have been provided, that discuss individual  
4 susceptibilities, and that the Taser was not  
5 risk free.
- 6 Q Did it connect, did those warnings connect heart  
7 conditions or people on drugs, and specifically  
8 warn about using the M26 on individuals with  
9 heart conditions or on drugs?
- 10 A I don't believe so.
- 11 Q So 20 would be true, wouldn't it?
- 12 A I would leave my testimony that the warnings  
13 stand on their own. And I'm not comfortable  
14 with this characterization of our warnings. I  
15 think they should be read in their proper  
16 context.
- 17 Q In their proper context in their entirety,  
18 right?
- 19 A Correct.
- 20 Q They need to be, need to look over all your  
21 materials in order to see what it is that  
22 Taser's actually saying about its product,  
23 correct?
- 24 A I believe the training program is, and the  
25 owner's manual need to be looked at

- 1           holistically.
- 2       Q    And only by doing so can you get a complete
- 3           understanding or the best understanding of what
- 4           Taser is saying with respect to its product and
- 5           the safety of its product?
- 6       A    I'm not sure I would agree with that statement
- 7           entirely, but I think trying to distill our
- 8           warnings down to this one statement, I'm not
- 9           sure I agree with the statement.
- 10      Q    But you agree that the warnings didn't
- 11           specifically connect or warn against using the
- 12           M26 on somebody with a heart condition or on
- 13           somebody with drugs?
- 14      A    I don't recall a specific warning to that
- 15           effect.
- 16      Q    Is 21 true?
- 17      A    I would like to see the actual slide.
- 18                   (Plaintiff's Exhibit Number 2 was marked
- 19           for identification.)
- 20      Q    Here's Version 8, marked as Exhibit 2, and on
- 21           page 2, do you see on Exhibit 2 -- before we get
- 22           to that, is Exhibit 2, is that your
- 23           certification lesson plan, Version 8.0, of the
- 24           Advanced Taser M26?
- 25      A    It appears to be.

1 Q I will represent this was what was produced in  
2 discovery to us. And on page 2 it has slide 1,  
3 which this is quoting, under "Attention Gainer."

4 A Um-hum.

5 Q Does this accurately quote slide 1?

6 A I would have the record show the exact language  
7 rather than the characterization in 21.

8 Q Do you want to quote it?

9 A "With the new advances in technology, officers  
10 can now serve and protect people with less than  
11 lethal means. The technology to stop that  
12 individual who is combat trained, mentally  
13 deranged, or under the influence of drugs and  
14 alcohol, is now available."

15 Q And did these training materials instruct  
16 that -- well, is No. 22 true?

17 A Yes.

18 Q Is 23 true? That's on page 26, I think, of the  
19 lesson plan, Exhibit 2.

20 A I'm sorry, what page?

21 Q Page 26, I think, slide 125, entitled "What  
22 Advance Taser Won't Do," the six bullet points,  
23 fourth bullet point down?

24 A Okay.

25 Q Is 23 true?

- 1 A I believe so.
- 2 Q Is 24 true?
- 3 A Yes, although the answer is not entirely  
4 complete, you took a portion of the answer.
- 5 Q Well, there's two sentences there, right?
- 6 A Correct.
- 7 Q Question: "Should the Advanced Taser be used on  
8 a person under the influence of alcohol or  
9 drugs?"
- 10 And Taser represents that, "The Advanced  
11 Taser can be used in this circumstance without  
12 fear of permanent injury to the suspect."  
13 Correct?
- 14 A Correct, and then goes on to state, "The  
15 Advanced Taser will in most cases be more  
16 effective on an unruly or defiant suspect than  
17 more traditional chemical agents or hands-on  
18 control techniques."
- 19 So I think it is important that it places  
20 it in the relative safety context of alternate  
21 force options.
- 22 Q Well, it says it's been more effective than  
23 traditional chemical or hands-on control  
24 techniques, right?
- 25 A Correct.

1 Q And it also says that it can be used without  
2 fear of permanent injury to the suspect?

3 A It does say that, correct.

4 Q Is 25 true, back to paragraph 25 of the second  
5 amended complaint, Exhibit 1?

6 A It's generally true.

7 Q Is 26 true?

8 A Is this quoting from slide 68?

9 Q It is. It's on page 12.

10 A It's generally true.

11 Q Is 27 true? Slide 16 is on page 4.

12 A It's true.

13 Q I don't expect you to agree with 28.

14 A You're right. It's absolutely false. And I  
15 would just punctuate that --

16 Q We'll let the evidence decide that, and I'll ask  
17 you the questions and you can answer them.

18 But you don't agree with 28, is my  
19 question. And your answer is no.

20 A Not at all. Every major person at the company  
21 has been hit with these devices multiple times,  
22 if we didn't feel that way -- if we agreed with  
23 the statement, we certainly would not have done  
24 that.

25 Q 29, do you know if 29 is true or not?



1 A I can't speak on behalf of the sheriff's office.

2 Q How about 30, do you know if 30 is true?

3 A I would lodge the same disagreement on the use  
4 of force policies, that Taser did not draft nor  
5 make recommendations on use of force policies.

6 Q So other than the word "appropriate," do you  
7 agree with paragraph 30?

8 A No.

9 Q What part of paragraph 30 do you not agree with?

10 A "This implies Taser's representation of use of  
11 force policies," and as I have mentioned, we've  
12 provided references to independent third-party  
13 use of force policies from other agencies, but  
14 Taser does not make specific use of force policy  
15 recommendations.

16 Q Do you know where the Monroe County Sheriff  
17 placed the Taser in its use of force policy?

18 A Personally I do not.

19 Q Is 31 true?

20 A No.

21 Q Do you provide law enforcement agencies with  
22 press materials concerning the Taser to be used  
23 after a death occurs after a Taser is used?

24 A I'm not sure I agree with the characterization.

25 Q Well, is that true or not?

1       A    We do provide information that is helpful to the  
2            agency, knowing that unfortunately hundreds of  
3            people die in police custody every year, and  
4            anticipating that some of those people may have  
5            experienced a Taser application, and also with  
6            our experience that the media sometimes tends  
7            to -- well, not sometimes -- generally tends to  
8            immediately draw a causative relationship, we  
9            have provided information, historical data, I  
10          agree with the a priori, but historical  
11          information to agencies.

12                 Because at the time the media reports on  
13                 these, the information is not back on the issue  
14                 at hand, the investigations are generally open,  
15                 and we feel that it is important that these  
16                 agencies have historical information, which  
17                 strongly underscores that the historical pattern  
18                 is that the Taser has not been a cause of death.

19        Q    You provide some historical information that  
20            represents that, you don't provide any  
21            historical information that says anything else  
22            than that, do you?

23        A    The --

24        Q    Or that says it in the contrary, that Tasers can  
25            cause death?

1 A I'm not aware of any credible information, and  
2 the experts that we have disagreed with,  
3 Dr. Allen, he makes some rather wild assertions,  
4 so that we attempt to provide as much balanced  
5 legitimate information as possible.

6 Q If you could turn to page 8 of Exhibit 1,  
7 paragraph 46, you see paragraph 46 there, is  
8 that true?

9 A I would want to see the autopsy cover for  
10 comparison to make sure the language is precise.

11 Q I don't have it for you right now. But it looks  
12 generally true, but you would like to just  
13 compare the language, is what you are saying?

14 A Yeah, I don't recall the exact wording. I would  
15 be much more comfortable if I had the report.

16 Q You remember it included electrical shock; did  
17 it not?

18 MR. MALEY: It being what?

19 MR. WAPLES: What the Monroe County coroner  
20 wrote.

21 MR. MALEY: That's different than the  
22 medical examiner, so I object to the question on  
23 that grounds.

24 A I do recall seeing a document, I don't remember  
25 exactly from who, I believe it was authored by

- 1 Dr. Kohr, that listed electric shock.
- 2 Q Did you know that the electric shock referenced  
3 was the application of the M26?
- 4 A I believe so. Well, at what point in time are  
5 you asking about my recollection, sitting here  
6 today?
- 7 Q Yeah, right now.
- 8 A Sitting here today, I believe that's what he's  
9 referring to.
- 10 Q 48, is that true?
- 11 A I would agree that Taser International does  
12 agree to provide technical support. I'm not  
13 sure I would agree with the exact wording.
- 14 Q What about 49, is it true?
- 15 A No.
- 16 Q What is not true about it?
- 17 A I do not believe we made payment to an expert  
18 witness, we provided financial support to his  
19 legal counsel.
- 20 Q So they could pay it, so his legal counsel could  
21 pay the expert witness?
- 22 A It was intended to assist with his general  
23 defense. How they used the funds, I would refer  
24 you to his defense counsel.
- 25 Q Who got ahold of Dr. Wecht first, Taser or his

1 defense counsel?

2 A I don't recall.

3 Q You don't know that it was Taser?

4 MR. MALEY: Asked and answered.

5 A I'm not sure.

6 Q Have you ever talked to Dr. Wecht?

7 A I have talked to Dr. Wecht.

8 Q When did you talk to Dr. Wecht?

9 A I talked to him -- I don't recall the exact  
10 dates. And I don't recall the exact dates, but  
11 I do recall talking to him.

12 Q Did you ever talk to him about the Borden case?

13 A I believe so.

14 Q When did you first talk to him about the Borden  
15 case?

16 A I don't recall the date.

17 Q Was it before he prepared his report for Shaw's  
18 criminal defense?

19 A I don't recall.

20 Q Were you in any way involved in getting  
21 Dr. Wecht to review the Borden case for Shaw's  
22 defense?

23 A I know that there was some discussion as to who  
24 relevant medical experts would be, and I  
25 remember discussing Dr. Wecht.

1 Q Who did you discuss that with, who were those  
2 discussions with?

3 MR. MALEY: For the record, if any of the  
4 questions he's asking you involve discussions  
5 you've had with legal counsel or your general  
6 counsel, then I would object on attorney-client  
7 privilege and instruct you not to answer.

8 A Our general counsel would have been involved in  
9 any and all of those discussions.

10 Q Who else was involved in these discussions?

11 A Possibly Mark Johnson and Steven Tuttle.

12 Q How about Katherine Liell?

13 A I may have talked to her as well. I'm not  
14 certain.

15 Q About Dr. Wecht?

16 A About Dr. Wecht.

17 Q Before she hired Dr. Wecht?

18 A That I wouldn't recall.

19 Q Are you honestly, sitting here, you're telling  
20 me today you don't recall whether you guys got  
21 Dr. Wecht involved in this case for David Shaw  
22 or not? I'm having a hard time believing that.  
23 Maybe I'm just stupid, but that doesn't sound  
24 true to me. Is that your testimony?

25 A My testimony is I recall discussions regarding

1           this case, about who the relevant experts would  
2           be. As to how and who initiated what contacts  
3           at what point in time, I don't recall. It's  
4           been a number of years since then.

5           Q    Did Dr. Wecht tell you how much he would charge?

6           A    I don't recall if that information came to me  
7           directly, or if it would have come through  
8           another party or through Shaw's defense.

9           Q    Do you recall how much it was?

10          A    Not specifically.

11          Q    Generally?

12          A    I believe it was somewhere less than \$10,000.

13          Q    And did Taser agree to make at least that much  
14          available to Shaw's defense counsel so she could  
15          pay for that expense?

16                MR. MALEY: The question, at least that  
17          much is vague, so any answer I don't think could  
18          be responsive or a meaningful answer.

19          A    The characterization of our donation to his  
20          defense funds was not a conversation I was  
21          personally involved in. I believe Doug Klint,  
22          our legal counsel, had those discussions.

23          Q    Did you authorize payment from Taser  
24          International to Shaw's defense counsel in an  
25          amount sufficient to cover the cost of her

1 hiring Dr. Wecht?

2 A Your question implies causality where I'm not  
3 sure it exists. I did approve funds for  
4 Mr. Shaw's defense. As to the timing and nature  
5 of how those funds were used, and what they were  
6 used for, I'm not certain. But we felt Mr. Shaw  
7 has been in a very difficult position, and that  
8 it was worthy of our support.

9 Q What did you do in order to make that  
10 determination?

11 A Based upon a preliminary review of the situation  
12 as we understood it.

13 Q Who conducted that preliminary review?

14 A Doug Klint.

15 Q And how did he do that?

16 MR. MALEY: Objection, calls for  
17 attorney-client privilege and work product  
18 doctrine, instruct you not to answer that  
19 question.

20 THE WITNESS: Okay.

21 Q Anybody else involved besides Mr. Klint?

22 A He would have been the point man.

23 Q Do you know what he did?

24 MR. MALEY: Same objection, instruct you  
25 not to answer, attorney-client privilege and



1 work product doctrine.

2 MR. WAPLES: I didn't ask what he did, I  
3 asked if he knows what he did.

4 MR. MALEY: The source of that would have  
5 been from Mr. Klint himself.

6 MR. WAPLES: Well, just -- I'm not asking  
7 him for the details, I'm asking him if he knows  
8 what Mr. Klint did in order to conduct this  
9 investigation. That's a yes or no. He can  
10 answer that without invading the attorney-client  
11 privilege.

12 A I'm not entirely certain.

13 Q Have you seen any reports, any written reports  
14 of this investigation?

15 A I don't believe so.

16 Q Were there any such reports?

17 A I believe mostly verbal discussions between  
18 myself and counsel.

19 Q Mostly? Any written reports?

20 A I don't believe so.

21 Q Did you discuss what Mr. Klint told you with  
22 anybody else?

23 A Generally not without him present.

24 Q Generally not? I'm not sure what that means.

25 Did you tell anybody else --

1     A    I guess what I'm saying is that we have a lot  
2           going on at Taser International as a business,  
3           and so any time that I was focused on this issue  
4           was generally with Doug bringing me in for  
5           discussions and updates.  So I don't believe I  
6           would have been off discussing it with other  
7           people in meetings without Doug.

8     Q    You haven't discussed it in public forums, I  
9           guess?

10    A    I may have answered questions related to it, due  
11          to this case.

12    Q    Based upon what you learned from Mr. Klint?

13    A    Yes.

14    Q    What did you learn from Mr. Klint?

15           MR. MALEY:  Objection, instruct you not to  
16          answer based on attorney-client privilege.

17           MR. WAPLES:  I think he's just provided a  
18          basis for the attorney-client privilege to be  
19          waived.  He says he's discussed what Mr. Klint  
20          has told him in public forums.

21           THE WITNESS:  That's not what I said.

22           MR. MALEY:  No, you can ask him anything he  
23          said in public forums, but not what Mr. Klint  
24          has told him.

25    Q    Tell me --

1 A Well, the only public forum I can think of was  
2 the CBS evening news interview on this topic,  
3 and it generally focused on Dr. Wecht's opinion  
4 and Dr. Kohr's opinion on this case. I'm not  
5 sure that it got into any details of the actual  
6 incident itself as I would have discussed it  
7 with Doug.

8 Q Let's turn to Exhibit 2 there, which is lesson  
9 plan 8. This page 1 of this lesson plan on  
10 course outline is the learning objective,  
11 internal learning objective, correct? It's No.  
12 B.

13 A Yes.

14 Q Basically it says that the learning objective is  
15 give the persons to be trained a lesson plan,  
16 instruct persons in the proper deployment and  
17 safety of the Advanced Taser, correct?

18 A Correct.

19 Q Page 4 of this plan, can you turn to that, slide  
20 15. On the instructor's note --

21 MR. MALEY: Rich, I'm sorry, what page are  
22 you on now?

23 MR. WAPLES: Page 4, slide 15.

24 Q The instructor's note, it gives that example  
25 about the telephone lines, people screaming on

1 the lines, and that's how the Taser works.

2 Is this an example that you wrote?

3 A I believe I have used that analogy. I'm not  
4 sure if I authored that analogy.

5 Q Including the last sentence of that, "Just as  
6 important, when the screaming stopped the  
7 communications began again without damage to the  
8 phone line"?

9 A I would agree with that.

10 Q And page 6, could you turn to that, please,  
11 slide 25 regarding medical safety.

12 In that you communicate to the people who  
13 are being trained with this device that it's the  
14 volts that are dangerous, not the amps -- or  
15 it's not the volts, it is the amps that are  
16 dangerous, and that the electrical output in the  
17 Advanced Taser is well below safe limits?

18 A Correct.

19 Q And you also impart to those people being  
20 trained that the output of the M26 into the  
21 human being body is 1/100th of the dangerous  
22 level?

23 A Correct.

24 Q And just below that on slide 26, "Electrical  
25 Safety," you impart to people being trained with

1 the M26 that there are no long-term effects from  
2 being shot by the Taser?

3 A I'm sorry, what is your question?

4 Q Is that what you impart to people that are being  
5 trained on the Taser, that there are no  
6 long-term effects from being shot by the Taser?

7 A That's a correct statement.

8 Q And page 8, slide 37, you communicate to  
9 trainees that studies have shown there are no  
10 long-term effects from being shot by Taser  
11 technology?

12 A Yes.

13 Q And that a University of Southern California  
14 Medical Center concluded that seven watt Taser  
15 leaves zero percent long-term injuries?

16 A Yes.

17 Q Is that the Ordog study?

18 A I believe so.

19 Q Did he have any qualifications communicated in  
20 that study with respect to, that the Taser could  
21 be dangerous in some circumstances?

22 A I don't recall.

23 Q If it did you didn't include any such  
24 qualifications?

25 A Yeah, I don't recall.

1 Q And this Version 8 was in effect in 2002 and  
2 2003; was it not?

3 A I'm not certain as to the dates.

4 Q There was no Version 9, was there?

5 A I do not believe we ever published a Version 9.

6 Q Do you know when Version 10 came out?

7 A I believe around May 2003.

8 Q Could it have been June 2003?

9 A Could have been.

10 Q Do you instruct trainees to anticipate using a  
11 second and third discharge of the Taser in order  
12 to subdue somebody?

13 A Do you have a specific reference in the training  
14 guide?

15 Q Do you recall imparting that at all?

16 A That more than one application may be required?

17 Q Yes.

18 A I believe so.

19 Q And do you recall the training materials  
20 containing reference that almost half of the  
21 deployments required a second discharge to  
22 obtain compliance?

23 A I don't recall that figure, but I would be happy  
24 if you would refer me to a page in the lesson  
25 plan.

1 Q Page 17, slide 95, the instructor's note, first  
2 and last sentence of the instructor's note.

3 A The slide indicates that 35 percent of  
4 applications required more than one cycle.

5 Q And the instructor's note is that the students  
6 should anticipate using a second and third cycle  
7 to subdue suspects -- first sentence of the  
8 instructor's note?

9 A Yes, they should be prepared that they may not  
10 gain compliance with the first application  
11 alone.

12 Q And the last sentence, instructions that almost  
13 half the deployments required a second discharge  
14 to obtain compliance?

15 A I would believe the number above the 34.9  
16 percent is more accurate than the description  
17 below.

18 Q Those are Taser's words, though, right?

19 A Those are words from the lesson plan.

20 Q Taser's lesson plan, copyrighted by Taser,  
21 correct?

22 A Correct.

23 THE WITNESS: Would you mind if I grabbed a  
24 glass of water while you're looking at your  
25 notes?

1 MR. WAPLES: No, not at all. We'll take a  
2 short break.

3 THE VIDEOGRAPHER: We're going off the  
4 record. The time is 12:42.

5 (A discussion was held off the record.)

6 THE VIDEOGRAPHER: This is the beginning of  
7 tape No. 3. We're going on the record at 12:50.

8 Q Could you turn, please, to page 39 of Exhibit 2,  
9 the certification of the plan No. 8. And this  
10 is part of a test, is it not, to be certified as  
11 a user of the M26?

12 MR. MALEY: What page are you on, Rich?

13 MR. WAPLES: Well, it's really pages 37  
14 through 39. 37 is the first page.

15 A I believe this is used as an instructor  
16 certification test.

17 Q This is for the master instructors to certify  
18 the instructors to be instructors of end users?

19 A I believe so.

20 Q And question No. 23 on that test is, "The  
21 Advanced Taser's long-term effect on the threat  
22 is," and it lists four possible answers; does it  
23 not?

24 A It does.

25 Q And Taser supplies the correct answers; does it



1 not?

2 A We do.

3 Q And the Taser supplied correct answer is what?

4 A C.

5 Q Which is?

6 A None.

7 Q Have you dropped that question from your  
8 questions?

9 A I don't know.

10 Q Do you think you should?

11 A I'm not sure.

12 (Plaintiff's Exhibit Number 3 was marked  
13 for identification.)

14 Q Let me hand you what has been marked as  
15 Plaintiff's Exhibit No. 3, and ask you if you  
16 have seen that document before.

17 A I believe so.

18 Q Okay. And what is this?

19 A This appears to be a Consumer Product Safety  
20 Commission paper on the original Taser.

21 Q And what was the energy output of the original  
22 Taser as compared to the M26, roughly?

23 A Well, as measured at the primary capacitor, it  
24 was about 25 percent of the M26. However, the  
25 pulses from the capacitor go through an output

1 transformer that is less than a hundred percent  
2 efficient. So I believe the actual delivered  
3 energy is maybe half of what the M26 is. That's  
4 an approximation.

5 Q And on the third page of that document is some  
6 conclusions that the electrical output is not  
7 lethal, right, No. 1?

8 A Correct.

9 Q And No. 2 is, "With any electrical shocking  
10 device there may be cases of lethality because  
11 of individual susceptibility"?

12 A Correct.

13 Q And that the hazard in the output would be  
14 increased if the pulse repetition rate should  
15 increase or the amplitude of the output  
16 increase?

17 A Correct.

18 Q This is a document you were aware of prior to  
19 the introduction of the M26, correct?

20 A Yes. I believe we included this as a reference  
21 document in lesson plans and CDs including  
22 Version 8.

23 (Plaintiff's Exhibit Number 4 was marked  
24 for identification.)

25 Q Plaintiff's Exhibit 4, do you recognize this

1 document?

2 A It looks familiar.

3 Q And what is this document?

4 A I believe it's also a Consumer Product Safety  
5 Commission document.

6 Q And it looked at the safety of the original  
7 Taser?

8 A I believe so.

9 Q And the same original Taser as in Exhibit 3,  
10 same relative energy output as that to the M26?

11 A I believe so.

12 Q This document suggests that the electrical data  
13 supplied shows that it's nonlethal when the  
14 weapon is used as directed in the, quote,  
15 average healthy adult?

16 A It does state that.

17 Q Does it also say on page 2, at the end of the  
18 second box there, that "The safety margin would  
19 be diminished in a person who had existing  
20 cardiovascular disease. For example, an elderly  
21 person with arteriosclerotic heart disease would  
22 be subject to precipitation of heart failure  
23 under the stress of convulsive seizures  
24 associated with electric shock therapy. The  
25 margin of safety would also be reduced with a

1 prolonged continuation of Taser current."

2 A It says that.

3 Q Is that information you had prior to releasing  
4 your M26 to the law enforcement community?

5 A I believe so.

6 Q And on page 3 of that document, does it also  
7 continue that, "In addition, people with chronic  
8 cardiovascular disease, the elderly and  
9 children, would be increasingly susceptible to  
10 adverse effects"?

11 A I'm sorry, where is that?

12 Q Third line on the top, "In addition, people with  
13 chronic cardiovascular disease, the elderly and  
14 children, would be increasingly susceptible to  
15 adverse effects."

16 A It does say that.

17 Q And this is all information you had prior to  
18 releasing the M26 to the public, correct?

19 A I believe so.

20 (Plaintiff's Exhibit Number 5 was marked  
21 for identification.)

22 Q The Kornblum publication here, Exhibit 5, do you  
23 recognize that document?

24 A I do.

25 Q Is that the Kornblum and Reddy paper of the

1 effects of the Taser and fatalities involving  
2 police confrontation that appeared in the  
3 Journal of Forensic Sciences, one page of it,  
4 the front cover page?

5 A Is that a question?

6 Q Yes. Is that what it is?

7 A That's what it appears to be.

8 Q And is the abstract of that article as it  
9 appears on page 1, does the last sentence read  
10 that, "The conclusion reached after evaluation  
11 of these cases" -- and they are talking about 16  
12 cases -- "is that the Taser in and of itself  
13 does not cause death, although it may have  
14 contributed to death in one case"?

15 A I think that needs to be taken in context. If  
16 you look in the body, in the full description  
17 where it talks about that one case, I think it's  
18 important, "although it may have contributed,"  
19 this paper did not find the Taser contributed to  
20 that death. What they found in their discussion  
21 section was that the subject's medical condition  
22 was so precarious because of PCP intoxication,  
23 significant cardiovascular disease, the stress  
24 of the arrest and being hit with the Taser, that  
25 the author's conclusion was they could rule out

1 no factor, but I think that's very different  
2 from ruling that a Taser was a contributing  
3 factor. It was not, that was not their  
4 determination, their determination was they  
5 could rule nothing out. That's very different.  
6 And I think we have been very careful to  
7 accurately represent this paper and these  
8 results.

9 (Plaintiff's Exhibit Number 6 was marked  
10 for identification.)

11 Q Exhibit 6, is that Terence Allen's response to  
12 that paper as it appeared in the Journal of  
13 Forensic Sciences?

14 A I believe it is.

15 Q And does he assert in that paper that it was his  
16 belief that eleven out of the sixteen deaths  
17 that were written up in the previous paper could  
18 be associated with the use of the Taser, caused  
19 by the use of Taser, or nine of the sixteen?

20 I'm sorry.

21 A Where is that assertion at?

22 Q Second page, third paragraph from the bottom,  
23 "In my opinion, the Taser contributed to at  
24 least these nine deaths."

25 A I'm still not finding it.

1 Q The middle of that paragraph, third paragraph  
2 from the bottom.

3 A Yes.

4 Q And is that what he says?

5 A That's his opinion.

6 Q And did you ever talk to Dr. Allen about that  
7 opinion?

8 A I don't believe so.

9 Q Did you communicate that information to any of  
10 the people that you had trained or prepared the  
11 training materials for, on the use of the Taser?

12 A I remember at some point discussing this with  
13 Dr. Stratbucker, among others. And the very  
14 fact that he attempts to link the Taser to all  
15 nine of these cases, I remember going through  
16 the listing, and some of them were fantastic  
17 attempts to link a death that occurred days  
18 later.

19 I think that more than anything indicated  
20 Mr. Allen's bias and the nonscientific  
21 credibility of this paper as opposed to the  
22 Kornblum review of these same cases.

23 Q Why do you say he's biased? You never talked to  
24 him; how would you know that?

25 A The very fact that he attempts to link to nine

1 cases, when reviewing those cases, just going  
2 through the basics of them, many of them can be  
3 ruled out, he's clearly attempting to throw a  
4 broad net that's not backed by any description  
5 of causality, any mechanism of linkage, it just  
6 seems an unfounded opinion. And that's based on  
7 discussion with fairly technically adept people.

8 Q Allen was personally involved in those cases;  
9 was he not?

10 A He claims to have been.

11 Q Well, do you know differently?

12 A Well, I vaguely recollect discussions with -- I  
13 don't remember who it was -- folks in  
14 Los Angeles, either at the Los Angeles Police  
15 Department or the coroner's office, that there  
16 may have been some other issues between  
17 Dr. Allen and the, I forget the exact name of  
18 the agency at which he worked, that may have  
19 indicated he was somewhat disgruntled with the  
20 agency as a whole.

21 But I can't recall where I -- what source I  
22 heard that from -- but it seemed consistent with  
23 this letter.

24 Q Did you ever write Dr. Allen and ask him any  
25 questions about this, what his basis was for it?



1 A I don't believe so. It was readily apparent  
2 from his paper that he had no basis.

3 Q Who wrote the warnings that were contained in  
4 the Release 8?

5 A I'm sorry?

6 Q In Version 8 of the owner's manual and the  
7 training materials.

8 A I know I was involved in writing them.

9 Q Were you the principal author?

10 A I would have been one of the principal authors,  
11 I think together with reviewing with some of the  
12 members of the master instructor training board,  
13 and I believe I may have reviewed them with  
14 Dr. Stratbucker as well.

15 Q Did you have any training in how to write  
16 warnings?

17 A No.

18 Q Are you aware of any standards with respect to  
19 provision of warnings with products?

20 A Was that a question?

21 Q Yes.

22 A Can you rephrase it as a question again?

23 Q Are you aware of any standards with respect to  
24 the provision of warnings with products?

25 A Am I aware of any standards?

1 Q Yes, standards that you should follow in  
2 preparing warnings.

3 A Not specifically.

4 Q Did there come a time when it was apparent that  
5 the warnings that you had provided were not  
6 sufficient or consistent with the danger  
7 presented by the UCM 26?

8 A No. In fact, I must say with some pride that I  
9 noted that one of the foremost warnings experts  
10 in the country reviewed these warnings, and  
11 opined that they were effectively good warnings.  
12 I don't know the exact terminology.

13 Over time we've continued to modify our  
14 training, and we have updated these warnings as  
15 more information has come to light. But I think  
16 these warnings were well thought out and  
17 conveying the important information to the end  
18 users.

19 Q Was there any internal discussion in Taser at  
20 any point that you needed to really redo your  
21 warnings substantially?

22 MR. MALEY: And before you answer, if any  
23 such discussions occurred with legal counsel  
24 then I'll instruct you not to answer on  
25 attorney-client privilege.

1 A I would say we've -- I mean I have discussed the  
2 warnings with our legal counsel as they affect  
3 litigation, but substantially I feel our  
4 warnings have been sufficient and have been good  
5 warnings. As I said, we've continued to update  
6 them. As new information comes to light, we've  
7 added newer warnings.

8 Q Have you been involved in the rewriting of those  
9 warnings?

10 A I have.

11 Q Anybody else?

12 A Doug Klint, our legal counsel.

13 Q Anybody else?

14 A Mike Brave, also legal counsel.

15 Q Anybody else?

16 A Our scientific and medical advisory board has  
17 reviewed them and provided us their professional  
18 opinions.

19 Q When did they do that?

20 A Within the past year.

21 Q Is that the first time they did that?

22 A As an advisory board, yes.

23 Q And as, in any other capacity?

24 A As individuals, I believe Dr. Kroll and  
25 Dr. Stratbucker had previously reviewed prior

1 versions of the warnings.

2 Q And Kroll is K-R-U-L-L?

3 A K-R-O-L-L.

4 Q And are they both employees at Taser?

5 A No.

6 Q Stratbucker, is he an employee?

7 A He is today.

8 Q And how long has he been an employee?

9 A I believe since 2001 or 2002.

10 Q Prior to that was he a consultant?

11 A Prior to that he was a consultant.

12 Q Did you employ him to do the pig study and the  
13 dog study you talked about?

14 A We engaged him as a consultant to perform those  
15 studies.

16 Q Do you recall what his compensation was for  
17 those studies?

18 A I do not.

19 Q How about, was it McDaniel, was he involved in  
20 those studies?

21 A McDaniel was involved in those studies.

22 Q And did you pay him?

23 A We did pay him.

24 Q Do you recall what you paid him?

25 A I do not.

1 Q Did either one of them get stock options?

2 A Dr. Stratbucker as an employee received stock  
3 options.

4 Q Prior to that, prior to being an employee, did  
5 he receive any stock options for any work that  
6 he did?

7 A He may have received stock options as a  
8 consultant as well, I don't recall specifically.

9 Q What about McDaniel?

10 A McDaniel to date has not received stock options.

11 Q How about Kroll, has he received -- is he an  
12 employee or a consultant?

13 A Dr. Kroll is on our board of directors, and as  
14 such he does receive a stock option package.

15 Q How long has he been -- how long has he been on  
16 your board and receiving stock options?

17 A Approximately two years.

18 Q Before that was he engaged --

19 A Maybe three years. I'm sorry.

20 Q So 2002 was when he came on board maybe?

21 A 2000, I believe it was early 2003, but I'm not  
22 sure.

23 Q When they, when Stratbucker and Kroll reviewed  
24 the warnings, were they doing that as employees  
25 or on the board?

1 A They were doing it because I had asked them to  
2 take a look at that. I'm not sure how to  
3 characterize in what capacity they were  
4 reviewing them other than as technical and  
5 medical experts.

6 (Plaintiff's Exhibit Number 7 was marked  
7 for identification.)

8 Q Let me hand you what has been marked as  
9 Plaintiff's Exhibit 7. Do you recognize this?

10 A I do.

11 Q And what is that?

12 A This is a newspaper article.

13 Q It appeared in the New York Times on July 18,  
14 2004, entitled "As Police Use of Tasers Rises  
15 Questions over Safety Increase"?

16 A Correct.

17 Q Let me ask you about some assertions or some  
18 statements that are made in here.

19 The fifth paragraph down starts with,  
20 "Taser has scant evidence for that claim," the  
21 claim being that Tasers aren't lethal, and it  
22 quotes, or it doesn't quote but says, "The  
23 company's primary safety studies on the M26,  
24 which is far more powerful than other stun guns,  
25 consists of tests on a single pig in 1996 and on

1 five dogs in 1999. The company paid  
2 researchers, not independent scientists, to  
3 conduct the studies which were never published  
4 in a peer-reviewed journal."

5 Is that accurate?

6 A I don't believe so.

7 Q What is inaccurate about it?

8 A Well, first of all, the "scant evidence" for the  
9 claim, I think Mr. Berenson completely  
10 mischaracterizes things.

11 For example, the tests on five dogs prior  
12 to launch, Dr. Kroll, who I have mentioned on my  
13 board, is the chief technology officer at  
14 St. Jude Medical, and he holds more patents on  
15 pacemakers and implantable cardiac devices than  
16 any person on the planet. And in his capacity  
17 he has informed me that the standard tests  
18 before a new pacemaker or defibrillator goes to  
19 market, or before it goes into human tests,  
20 generally is a test of approximately five pigs  
21 or dogs.

22 So for a nonlethal device, we've performed  
23 similar testing as is done in certain areas of  
24 very complex medical instrumentation.

25 I also take issue that "company paid

1 researchers, not independent scientists, to  
2 conduct the studies," which is completely  
3 misleading. Dr. McDaniel was an independent  
4 scientist, but scientists don't work for free in  
5 any industry. Any time I've presented this to  
6 any doctor or any person in the medical device  
7 industry, they raise their eyebrow and say is  
8 this completely out of line? It expects a  
9 standard where researchers will work for free.  
10 And if this standard was applied to medical  
11 research, it would throw out 95 percent plus of  
12 the medical research in the world today.  
13 Because the vast majority is supported and  
14 funded by private companies, not by government  
15 agencies per se.

16 And in fact, a review of the number of  
17 independent studies of the Taser would find that  
18 the significant majority of Taser studies have  
19 been from independent agencies, from the  
20 governments of Canada, U.S. Department of  
21 Defense, in Australia, in medical reviews in  
22 Orange County Florida, et cetera.

23 So if you actually take the percentage of  
24 studies that were paid for by Taser versus the  
25 ones that actually were completely independent,



1           our ratio is much higher than in the medical  
2           device industry. So I think this completely  
3           mischaracterizes it.

4           And I would also disagree with his  
5           characterization that Taser has no full-time  
6           medical director. I think that speaks to the  
7           bias of the author. No other nonlethal weapons  
8           company I know of, or weapons company for that  
9           fact, has a medical director at all.

10           Taser International has, yes, he is a  
11           part-time medical director, but rather than  
12           acknowledging that we've gone further than the  
13           state of the art in any other predecessor in  
14           this industry by having a part-time medical  
15           director, Mr. Berenson chose to state that we  
16           have no full-time director, medical director.

17           So it's an unfounded, biased criticism.  
18           Rather than acknowledging our leadership within  
19           this industry and how seriously we take medical  
20           safety, he misleads the reader.

21        Q    He does quote from that British study in 2002,  
22           two paragraphs down from that, he says, "The few  
23           independent studies that have examined the Taser  
24           have found that the weapon's safety is unproven  
25           at best. The most comprehensive report by the

1 British government in 2002 concluded, 'The  
2 high-power Tasers cannot be classed, in the  
3 vernacular, as safe.'

4 Is that true?

5 A Well, I think you'll find that that's now  
6 outdated. The British government has completed  
7 testing. In fact, I was already, at the time of  
8 this article, aware of their test results,  
9 although they were unpublished.

10 The British government, after extensive  
11 testing, has concluded that the risk associated  
12 with the use of the M26 is very low, and they  
13 have now approved the Tasers for police use  
14 throughout the United Kingdom. So both of those  
15 statements are now obsolete.

16 Q They were true at the time?

17 A He chose from an early report that was  
18 justifying the testing in the United Kingdom,  
19 one line, I believe he took it out of context,  
20 and I think it's again proven to be incorrect.

21 Q But accurate at the time?

22 A He selectively quoted accurately, but I think it  
23 needs to be, "selectively quoted," is the right  
24 way to look at it.

25 Q The British approval, subsequent approval of the

1 M26 for police use, do they restrict that to  
2 instances where deadly force would otherwise be  
3 authorized?

4 A They have restricted it to the use by firearms  
5 trained officers, and the Tasers are taken to  
6 incidents where firearms are also taken. I  
7 don't believe that they restrict the use of the  
8 Taser only at the point in time where lethal  
9 force would be justified, but they do restrict  
10 it to use in certain instances.

11 Although in another year, I think we'll  
12 find that to be obsolete, because there is  
13 significant evidence that the British are moving  
14 towards a more full scale deployment, that they  
15 understand the Taser is also a safer option than  
16 the baton.

17 Q The next paragraph about the '89 Canadian study  
18 found that stun guns induced heart attacks in  
19 pigs with pacemakers. Is that true?

20 A There is a 1989 Canadian study. We've in fact  
21 looked at that study and found that many of  
22 their results seemed to be measurement errors  
23 from their instrumentation. We have not been  
24 able to replicate any of the results. And those  
25 studies did not include Taser devices per se.

1           We've not been able to examine the types of stun  
2           guns that they purportedly used in that study.

3       Q    You didn't communicate any of that information  
4           along with the medical information provided to  
5           people in implementation of training?

6       A    I believe we tried to contact the author at some  
7           point, unsuccessfully.  But no, that study --  
8           again, it was not on our products, so it was  
9           unclear exactly which devices they had.

10               And again, when we looked at some of the  
11           measurements, we actually were able to  
12           demonstrate that some of the conclusions in that  
13           paper were based on instrumentation errors that  
14           were fairly amateurish, according to some of our  
15           experts when they showed me the results.

16       Q    Who was that?

17       A    That would be Max Nurheim, again, actually took  
18           sort of the central premise of that paper and  
19           was able to demonstrate that what the author was  
20           seeing was not the output of a stun gun, but  
21           instrumentation error in the way he had attached  
22           his own oscilloscopes.

23       Q    Did he, Max Nurheim, have to buy a stun gun to  
24           try to induce heart attacks in pigs with  
25           pacemakers?

1 A No, he has not.

2 Q So he didn't replicate the study that the '89  
3 Canadian study did?

4 A I don't believe he replicated this portion of  
5 it. However, we have reviewed with Dr. Kroll on  
6 our board of directors, who again is the chief  
7 technology officer for St. Jude Medical, the  
8 second largest pacemaker manufacturer, his  
9 review of the Taser against the standards for  
10 pacemakers showed that the Taser was well below  
11 the thresholds that would prevent a malfunction  
12 in the pacemaker caused from a heart attack.

13 And I believe informally at least one other  
14 pacemaker company has evaluated and come to the  
15 same conclusion, but they would not go on record  
16 with that conclusion, simply because of FDA  
17 issues, they didn't want to undertake a  
18 full-blown study on the issue of Tasers and  
19 pacemakers because of the cost attendant with  
20 doing so.

21 But we have multiple sources that would  
22 disagree with that conclusion, credible sources  
23 within the pace making industry.

24 Q None of which, though, replicated the actual  
25 tests that the '89 Canadian study did?

1 A I believe there may be an unpublished study  
2 that's been prepared and submitted to a journal  
3 for publication that is currently pending, but I  
4 don't have access to that information.

5 Q It says, "A 1999 study by the Department of  
6 Justice on an electrical weapon much weaker than  
7 the Taser found that it might cause cardiac  
8 arrest in people with heart conditions." Is  
9 that accurate?

10 A I'm not familiar with what study they are  
11 referring to. I believe that may have been -- I  
12 don't believe it was an animal or electrical or  
13 device study, I think it was more a sort of  
14 general postulation. But I have not seen a  
15 study from the DOJ with any evidence that  
16 suggests that the Taser might cause cardiac  
17 arrest in people with heart conditions.

18 Q So you are not sure what study they are talking  
19 about there?

20 A I'm not sure what study he is talking about  
21 there.

22 Q When you saw this published, did you go, whoa,  
23 we ought to get that study; did you try to find  
24 it?

25 A I believe we did. And if I remember correctly,

1 I believe this DOJ study was more of a  
2 newsletter that had misquoted -- if you trace  
3 back to the source, I think the original source  
4 was the one case in Kornblum and Reddy which,  
5 when it was requoted in another source, may have  
6 said something to the effect that, instead of  
7 being accurate here, he said the Taser may have  
8 contributed, they couldn't rule it out in this  
9 one case, in the next publication I believe that  
10 was picked up that the Taser contributed to the  
11 death in the case of someone with a heart  
12 condition, and then it may have been picked up  
13 in this justice study, which was potentially  
14 more of a literature review and represented this  
15 finding as tied back to this case.

16 Q Are you sure of that?

17 A I'm not certain of it. But I am reasonably  
18 certain that we looked into this 1999 study, and  
19 we found no evidence supporting that claim. I  
20 do recall that we found -- the best we could  
21 find was the chain of sort of misrepresentation  
22 of the results of the Kornblum study into this  
23 statement.

24 Q The last sentence in that paragraph says, "In  
25 reviewing other electrical devices, the Food and

1 Drug Administration has found that a charge half  
2 as large as that of the M26 can be dangerous to  
3 the heart."

4 Is that accurate?

5 A I remember Dr. Kroll discussing this with Alex  
6 Berenson, and Dr. Kroll was explaining --  
7 Berenson had just grabbed a random FDA document,  
8 I don't remember the exact situation -- but  
9 Dr. Kroll was explaining to him that the way  
10 they were calculating the charge was very  
11 different, and that that standard did not apply.  
12 And Mr. Berenson obviously couldn't find anybody  
13 else to substantiate his viewpoint, so he -- I  
14 would say this was disputed by some pretty  
15 knowledgeable experts, so no, I would not agree  
16 with that statement.

17 Q You don't agree with the statement; do you agree  
18 that it's accurate?

19 A No.

20 Q You don't think that it's accurately written  
21 down about what the Food & Drug Administration  
22 found?

23 A Correct, I disagree with it.

24 Q The article quotes John Wikswo, Vanderbilt  
25 University, biomedical engineer, the middle part



1 of the next page, saying "Relatively small  
2 shocks can kill people whose hearts are weakened  
3 by disease or cocaine use."

4 Then he says you guys haven't done adequate  
5 testing because you have not included the  
6 possibility that there's a subset of the  
7 population that is exquisitely sensitive.

8 Did you ever talk to Dr. Wikswo?

9 A Dr. Kroll did talk to Dr. Wikswo, and challenged  
10 him on what level of testing he would suggest,  
11 and whether he was seriously suggesting that we  
12 take human beings with known heart disease,  
13 inject them with cocaine and hit them with  
14 Tasers. And, of course, Mr. Wikswo agreed that  
15 that type of testing is highly unethical and  
16 could never be done.

17 I think he, when challenged, did not  
18 support this statement. And as Dr. Kroll  
19 presented to him the testing history that we  
20 have done, I think he formed a different opinion  
21 than the superficial opinion he formed with  
22 Mr. Berenson.

23 Q Was that reported anywhere?

24 A No, I don't believe so.

25 Q It quotes Dr. Andrew Podgorski, Canadian

1           electrical engineer, who conducted the '89  
2           study, "and said he was certain Tasers were  
3           dangerous for people with pacemakers."

4           Did you ever contact Dr. Podgorski?

5       A    Dr. Podgorski had conducted the earlier test we  
6           had discussed, and juxtaposed with Dr. Kroll's  
7           comparison to the safety standards for  
8           pacemakers, and his experience in that field,  
9           which is significant. He did not agree with  
10          Mr. Podgorski, although I should point out that  
11          there are many different pacemakers, and the  
12          Taser is rarely if ever used against persons  
13          with pacemakers. And it did not seem that that  
14          was a test that made sense given the designed  
15          intent, and the probability of use of the  
16          device, to perform clinical tests on people with  
17          pacemakers didn't seem reasonable.

18          I should point out as well, Dr. Podgorski  
19          urges the U.S. government to conduct studies,  
20          and since the publication of this article the  
21          Human Effects Center of Excellence, the  
22          Department of Defense has published an extensive  
23          review.

24       Q    Which you've commented on?

25       A    Which I've commented on, as has the UK.

1 Q Has there been some controversy that you  
2 mischaracterized some of the results of that  
3 HECOE study?

4 A There has been some controversy to that effect.

5 Q Did you mischaracterize it?

6 A Not at all.

7 Q Did they tell you you did?

8 A No. In fact, the U.S. Department of Defense has  
9 stood 100 percent behind our characterization of  
10 those studies.

11 I'll give you a little background. Where  
12 that assertion came from was one Alex Berenson,  
13 the same author we see here, in November  
14 published an article claiming that Taser had  
15 misrepresented the results of the HECOE study in  
16 an October 18th press release that we had done.  
17 That press release was jointly authored between  
18 us and the Department of Defense. It was  
19 approved, it was run up the chain of command in  
20 the Pentagon. Again, it was jointly authored  
21 between our people and the press office at the  
22 Joint Non-Lethal Weapons Directorate, and we  
23 received the final approval prior to  
24 transmitting.

25 What Mr. Berenson did was he took the

1 headline of the article, which said that the  
2 HECOIE found Tasers are generally safe and  
3 effective, and then if you read the body of the  
4 press release it discussed that the Department  
5 of Defense acknowledged that there may be groups  
6 with special susceptibilities, consistent with  
7 our warnings, and that more studies would be  
8 helpful.

9 Berenson then called the Department of  
10 Defense, and they reaffirmed those same  
11 qualifying statements, which he then used to  
12 spin against the headline of our press release  
13 and manufacture controversy where indeed none  
14 existed.

15 Subsequent to his paper, we basically  
16 demanded that the New York Times look into  
17 Mr. Berenson's motivations, because we found,  
18 and we explained that we felt he was  
19 manufacturing news, not falsifying it but taking  
20 again the body against the headline. And  
21 subsequently the Wall Street Journal did an  
22 investigative report into this, and actually in  
23 January of this year put forth that the  
24 Department of Defense unequivocally 100 percent  
25 stood behind our characterization of those

1 tests.

2 Q Did Berenson quote anybody associated with the  
3 HECOE study as criticizing your characterization  
4 of the test, and results of the tests?

5 A I don't believe so, but he may have talked to  
6 somebody at the HECOE that was not authorized  
7 and was not speaking on behalf of the Pentagon  
8 or the Department of Defense nor the HECOE, and  
9 may have gotten a quote out of context there.  
10 But I can tell you the official position is  
11 supporting exactly the way we've characterized  
12 that report.

13 Q Did you guys sue the Times over that article?

14 A We did not.

15 Q You have sued -- what was it, USA Today,  
16 recently?

17 A That is correct.

18 Q Over the article comparing your, the M26 to the  
19 electric chair?

20 A Yes.

21 Q Have you sued the Arizona Republic?

22 A We have sued Gannett, the owner of USA Today and  
23 the Arizona Republic, and we intend through  
24 discovery to understand if there is a link  
25 between the innuendo and motivations of the

1 Arizona Republic stories that ties into the  
2 final act of defamation from USA Today.

3 We believe we see a pattern. But we've not  
4 yet named Arizona Republic. We reserve the  
5 right to do so.

6 Q The defamation that you are complaining about in  
7 that suit is the defamation of misrepresenting  
8 the power output of the M26?

9 A I believe what we allege in that suit is  
10 specifically that in this last article they  
11 misrepresented the electrical output of the  
12 Taser by a factor of one million, and then  
13 compounded that error with grotesque images  
14 comparing the Taser to an electric chair,  
15 showing that the Taser had more electrical  
16 output than an electric chair by a factor of 100  
17 times, when in fact it is one thousand times  
18 less.

19 That coupled with the fact that we had met  
20 with USA Today's editorial staff before the  
21 meeting and had presented the accurate  
22 information, and together with what we believe  
23 has been at a minimum a campaign of misleading  
24 innuendo and mischaracterization, carefully  
25 worded mischaracterization by the Arizona

1           Republic over the last year, we believe shows a  
2           pattern of behavior and intent that supports  
3           that the electric chair images were not  
4           accidental but were rather intentional.

5           Q   What mischaracterization has the Arizona  
6           Republic engaged in?

7           A   The Arizona Republic has talked about these  
8           unfortunate and seriously tragic incidences  
9           where people have died in police custody.  What  
10          they have done is implied a link to the Taser in  
11          these 100 cases, roughly 100 cases over the past  
12          five years, where in fact no link has been  
13          substantially established in all but a very  
14          small number of two or three cases, and even in  
15          those cases Borden is one of them, I believe  
16          there are two others, all of which are heavily  
17          disputed by the significant majority of medical  
18          experts that we've talked to.

19                 We believe that the Arizona Republic's  
20          characterization of links, especially in some  
21          cases where they take something like a comment  
22          that the role of the Taser was unknown, for  
23          example in one case involving what was clearly a  
24          toxic cocaine overdose of massively lethal  
25          levels, we believe that that is misleading, that

1 the innuendo is picked up by other newspapers  
2 who then report it as Tasers have caused a  
3 hundred deaths or been linked to a hundred  
4 deaths, and we believe that is not only  
5 misleading and defamatory to our products, but  
6 frankly it causes additional emotional  
7 difficulty and pain for families involved in  
8 these cases, because they are reading these  
9 newspapers and they are coming in with the false  
10 perception that the Taser has caused these  
11 deaths when in fact it has not.

12 And as I said, as I sit here today, I  
13 believe there has been some link in a  
14 contributing factor in two or three cases, and  
15 in those two or three cases as we've looked at  
16 them we see strong evidence as to how the Taser  
17 reasonably and realistically should be excluded  
18 from the cause of death or contributing factors  
19 in those cases.

20 Q Have you talked to any experts that have  
21 suggested otherwise, that maybe it was a  
22 contributory factor?

23 A No experts outside of those that have been  
24 engaged by opposing counsel.

25 Q What about any medical examiners?



1 A None outside of those that have been engaged by  
2 opposing counsel or in the case, you know, where  
3 they have listed it in the autopsy report.

4 Q How many autopsy reports or medical examiner  
5 reports are there that have listed the Taser as  
6 a contributing factor?

7 A I believe there are approximately three.

8 Q The reflection of police action shootings in  
9 Phoenix is something that your company has  
10 touted as showing that use of the Taser,  
11 widespread use of it reduces the use of force;  
12 has they not, has it not?

13 A That's been broadly demonstrated in a number of  
14 agencies.

15 Q And Phoenix is one that you have touted as --

16 A Phoenix is one such agency.

17 Q Is, what is going on this year with Phoenix and  
18 police action shootings, have they increased?

19 A This year specifically?

20 Q Yes.

21 A I'm not sure.

22 Q Did the British study you were talking about,  
23 did that conclude that people with preexisting  
24 heart disease would be more prone to adverse  
25 effects from the M26?

1 A I believe, and I would be paraphrasing, because  
2 I don't have the report in front of me, that it  
3 found something to the effect that people may  
4 have individual susceptibilities that may make  
5 them more prone, however, they did not find that  
6 those -- they didn't demonstrate that any of  
7 those susceptibilities would -- were sufficient  
8 to lead to a lethal outcome. Again, I'm  
9 paraphrasing my understanding of the report.

10 MR. WAPLES: Let's take about a five or  
11 ten-minute break.

12 THE VIDEOGRAPHER: We're going off the  
13 record. The time is 1:45.

14 (A recess was taken.)

15 THE VIDEOGRAPHER: We're going back on the  
16 record. The time is 1:57.

17 Q Mr. Smith, is the SEC investigating Taser in any  
18 representations its made about safety?

19 A It is not an investigation.

20 Q Informal inquiry? Or how would you characterize  
21 it?

22 A There is an informal inquiry.

23 Q And tell me the extent of that. What are they  
24 looking into?

25 A Well, I can't speak on behalf of the SEC, but

1 the inquiry was looking at counting issues  
2 around a fourth quarter 2004 order, and  
3 statements the company had made relating to the  
4 safety of our devices.

5 Q What statements are they particularly looking  
6 at?

7 MR. MALEY: Hold on for one second. Just  
8 for the record, I'm not sure, as your question  
9 goes along, whether any of it might come into  
10 areas that might need to be subject to  
11 protective order given the nature of the  
12 inquiry. So what I will do for the record now  
13 is designate these areas as confidential, and  
14 typical practice, allow us, the transcript to be  
15 received and to review and determine any formal  
16 designation. Is that agreeable?

17 MR. WAPLES: That's fine.

18 MR. MALEY: Thank you, Rich.

19 THE WITNESS: So what was the question?

20 Q My question is what statements are they looking  
21 into that Taser has made?

22 A Well, we have provided them extensive  
23 documentation on all public statements related  
24 to our products and the safety of our products  
25 in, I believe, 2003 and 2004. If we had to

1           guess what precipitated this in terms of the  
2           specific statements, we believe it was the New  
3           York Times article where Alex Berenson  
4           misrepresented the viewpoint that we had, that  
5           Taser International had not accurately  
6           represented the results of the HECOE study.

7           We believe that when that was published on  
8           the front page of the business section of New  
9           York Times, the folks at the SEC who read the  
10          New York Times did their job, which was to  
11          inquire as to whether those allegations were  
12          true. Unfortunately, we wish that the Wall  
13          Street Journal article had come out clearing us  
14          of that allegation, but by the time that Wall  
15          Street Journal came out, the SEC had already  
16          launched the process. We have been fully  
17          cooperative with the SEC, and we feel very  
18          comfortable that we have been able to  
19          substantiate and support all the statements, and  
20          we remain confident that the results of the  
21          inquiry will be affirmative for Taser.

22        Q    In what way did you give them the statements,  
23            public statements, '03 and '04?

24        A    I would have to refer to Douglas Klint, our  
25            general counsel, basically handled all the

1 document preparation.

2 Q Do you know if there was like a CD ROM or DVD  
3 that was provided?

4 A I don't believe so. I think it was stacks and  
5 stacks of paper.

6 Q Have you provided them any information?

7 A I provided information to Doug, who served as a  
8 clearinghouse, and through our counsel, Wilson  
9 Sonsini.

10 Q Have you provided any testimony?

11 A No testimony, although we proactively approached  
12 the SEC and requested a meeting, which was  
13 conducted, and we felt we had the opportunity to  
14 answer their concerns, and our impression was  
15 the meeting was very productive.

16 Q When was that meeting, and where was it?

17 A It was about a month ago at the SEC offices in  
18 San Francisco.

19 Q Was it recorded in any way?

20 A It was not.

21 Q Just some informal meeting?

22 A It was an informal meeting to help them conclude  
23 their informal inquiry.

24 Q Have they given you any kind of time line?

25 A No. They have informed us that that would be

1           against their policy to give us a time line.

2           Q   How about the Arizona Attorney General, has it  
3           conducted an investigation?

4           A   In our discussions with the Arizona Attorney  
5           General, in fact, I believe they even put out a  
6           press release that they are not conducting an  
7           investigation of Taser. We met with them at the  
8           beginning of this year, met with Attorney  
9           General Terry Goddard and his staff, again  
10          largely promulgated by the news articles, which  
11          as I've told you we believe are largely  
12          inaccurate, and when we presented our data to  
13          the Attorney General we were informed shortly  
14          thereafter that there was no investigation  
15          ongoing. They seemed satisfied with our  
16          responses. Again, I can't speak on their  
17          behalf, other than they did, I believe, put out  
18          a press release that there had been no  
19          investigation.

20          Q   Had there been an investigation?

21          A   I don't believe there was an investigation. We  
22          were called to come down for a meeting. They  
23          expressed some concerns. I think we provided  
24          valid answers. I do not believe that there has  
25          been, nor currently is ongoing, or are there

1 plans for an investigation.

2 Again, I would just be careful that I  
3 cannot speak on their behalf, those are my  
4 viewpoints.

5 Q Sure. I'll hand you what has been marked as  
6 Plaintiff's Exhibit 8, and ask you if you can  
7 identify that document.

8 (Plaintiff's Exhibit Number 8 was marked  
9 for identification.)

10 A It does look familiar.

11 Q And what is that?

12 A This looks like an on-line version of the M26  
13 owner's manual.

14 Q Produced by Taser?

15 A I believe so.

16 Q And this begins with the warning that is at the  
17 top of the page there?

18 A Correct.

19 Q Now, did you write that warning?

20 A I believe I was instrumental in writing that  
21 warning. I don't believe it was only me.

22 Q Were you the primary author of it?

23 A I believe so.

24 Q Has this particular warning changed in any  
25 subsequent versions of this owner's manual?

1     A     I believe it has.

2     Q     In what way?

3     A     I believe we have added subsequent warnings on  
4           specific susceptibilities that we have learned  
5           over time.

6     Q     Any particular susceptibilities?

7     A     Without having the warnings in front of me, I  
8           can give a few examples.  That, one example is  
9           for persons with severely weakened bones from  
10          osteoporosis, that there might be a risk of a  
11          fracture from the muscle contractions of the  
12          M26.

13    Q     Did that warning grow out of the Powers case?

14    A     Yes.

15    Q     Any other specific susceptibilities?

16    A     Some other general language that conveys that  
17          the Taser is an exertion similar to engaging in  
18          some sort of athletic activity or grappling, and  
19          as such carries some degree of risk that is not  
20          zero of athletic type exertion injuries.  And  
21          we've added some specific ones, including the  
22          potential for joint injuries, particularly  
23          people with preexisting joint injuries, that  
24          under exertion, physical exertion, might be  
25          exacerbated, risks similar to that.



1 Q Are there risks associated with cardiac issues?

2 A I don't know that we have identified specific  
3 meaningful risk factors related to cardiac risk  
4 issues, but I would have to look at the later  
5 versions of warnings to see.

6 Q It says here in this warning that, "It is  
7 important to remember that the very nature of  
8 physical confrontation involves a degree of risk  
9 that someone will get hurt or maybe even killed  
10 due to unforeseen circumstances of individual  
11 susceptibilities."

12 It doesn't say, does it, that the Taser can  
13 cause that injury or death, does it?

14 A I don't believe so.

15 Q You think a later version does?

16 A I'm not sure. I'm not sure I've seen credible  
17 evidence of a direct link.

18 Q "Warning," is at the beginning, it says it is a  
19 less lethal weapon, at least in this version,  
20 right? Now you characterize them as non-lethal?

21 A Correct.

22 Q And you say it's designed to incapacitate a  
23 target from a safe distance without causing  
24 death or permanent injury?

25 A Correct. For the record, the less lethal and

1 non-lethal are synonyms. Less lethal is used by  
2 certain agencies in the law enforcement  
3 community. Non-lethal is the more  
4 internationally accepted technology and that  
5 used by the Department of Defense. So there was  
6 no specific policy decision. We were not  
7 recharacterizing or changing the  
8 characterization of the weapon, but rather  
9 adopting the standardized Department of Defense  
10 definition in using non-lethal. We really view  
11 that as synonyms with less lethal.

12 Q The Department of Defense does not characterize  
13 the Taser as any particular type -- I mean  
14 you're characterizing it, using their  
15 terminology, correct?

16 A No, the Department of Defense, after extensive  
17 review did classify and characterize the Taser  
18 devices, both the M26 and X26, as non-lethal.

19 Q When did they do that?

20 A In HECO report that was initially released  
21 October 18th, and then the full release was  
22 sometime a few months ago, the full report.

23 Q October of '04, and then a few moments ago in  
24 '05?

25 A Correct.

1 Q On page 5 -- I'm sorry -- page 3 of this  
2 document, Exhibit 8, which is the on-line  
3 owner's manual, the first paragraph there,  
4 second full sentence, second and third, "Studies  
5 have shown there are no long-term effects from  
6 being shot by Taser technology. A study  
7 performed at the University of Southern  
8 California Medical Center concluded that, in  
9 addition to its non-lethality, the Taser leaves  
10 zero percent long-term injuries." Correct?

11 A Correct.

12 Q On page 10 under the heading "When to use the  
13 Advanced Taser," do you see that heading?

14 A Um-hum.

15 Q The second sentence says, "Although the unit is  
16 designed to be as nonviolent as possible in  
17 stopping a combatant, its use can result in  
18 serious injuries, such as getting a probe stuck  
19 in the eye, or injuries related to falling."  
20 Correct?

21 A Correct.

22 Q It doesn't suggest that there's any potential  
23 injuries related to cardiac issues, does it?

24 A It does not.

25 Q And on page 12 of 14, in the heading entitled

1 "The Safety Record," it says that "Because the  
2 Taser wave jams the communication system of the  
3 body, it does not need to cause bodily injury to  
4 be effective," correct?

5 A That's true.

6 Q And the paragraph ends with, "Notice the  
7 Advanced Taser's output is less than 1/100th of  
8 a potentially dangerous level," correct?

9 A Correct.

10 Q And it has the graph showing the UL limits for  
11 heart safety in the danger area?

12 A Correct.

13 Q Who put together that graph?

14 A That graph was developed under contract to the  
15 Department of Defense, DARPA, the Defense  
16 Advanced Research Projects Agency, by a firm  
17 called Jaycor. Jaycor is a rather  
18 significant -- I believe they are now owned by  
19 Titan -- Jaycor is a rather large government  
20 funded R&D, I guess private contractor, a very  
21 credible organization. This chart was backed up  
22 by a full technical report. They were courteous  
23 enough to provide us with the chart and the raw  
24 data, and we were able to plot the Advanced  
25 Taser against those limits.

1 Q That process didn't have anything to do with  
2 where to put a Taser, right, I mean this Jaycor  
3 and the other group?

4 A Oh, absolutely it did. Their process was, they  
5 were plotting the Air Taser and various  
6 different stun guns, so it was exactly what this  
7 chart was designed for.

8 Q Who decided where to put the EMD plot?

9 A That was based on electrical input from Max  
10 Nurheim as to the body current using the same  
11 RMS standards, and the pulse width, so it was  
12 basically using measurements of the device and  
13 plotting it on the chart.

14 Q So Max Nurheim is the one that made the decision  
15 of where to put the EMD --

16 A Yes.

17 Q -- designation.

18 Then right underneath that it says "Studies  
19 have confirmed that there are no long-term  
20 effects from being hit by Taser."

21 A Correct.

22 Q Then it repeats what you said before about the  
23 Southern California Medical Center study, that  
24 Taser, in addition to its non-lethality, leaves  
25 zero percent long-term injuries, correct?

1 A Correct, then goes on to discuss that these  
2 prior studies were conducted with seven watt  
3 systems, and the pre-release testing of the  
4 Advanced Taser on humans and animals indicates  
5 that the enhanced EMD output also leaves no  
6 effect. I'm trying to be very clear with our  
7 data.

8 (Plaintiff's Exhibit Number 9 was marked  
9 for identification.)

10 Q Let me hand you 9, Exhibit 9. And is this a  
11 summary of medical studies that was provided  
12 along with the materials -- and I'll represent  
13 that this was provided to us on Version 5, I  
14 believe --

15 A Okay.

16 Q Does this look familiar to you?

17 A It does, but I would note that each time we  
18 issue new versions of training, we consider the  
19 prior versions to then be obsolete, and the  
20 latest version should be relied upon.

21 Q With respect to this, does it introduce the  
22 Taser as non-lethal and causing no latent  
23 medical conditions in the human body?

24 A Where are you?

25 Q The beginning, the introduction and synopsis.

1 A I'm sorry, I'm not seeing it.

2 MR. MALEY: What page are you on, Rich?

3 MR. WAPLES: First page.

4 MR. MALEY: First page, cover page?

5 MR. WAPLES: Do we have the same document?

6 MR. MALEY: I don't believe we have the  
7 same document.

8 MR. WAPLES: Oh, I'm sorry, let me have  
9 those back. Maybe I got them wrong. That would  
10 make it harder, wouldn't it. This was the  
11 summary page, I think.

12 Q I've handed you back 9. Page 3 of that says  
13 "The Taser Safety Record."

14 A Correct.

15 Q It repeats the assertions that Taser wave jams  
16 of the communication systems in the body does  
17 not need to cause bodily injury to be effective.

18 A Correct.

19 Q And the last sentence says that, "The Taser's  
20 output is 1/1,000th of a potentially dangerous  
21 level."

22 A Correct.

23 Q The next page repeats the assertion about the no  
24 long-term effects from the Taser waves?

25 A Correct.

1 Q The bottom of page 5 summarizes, "The reports  
2 included in this document provide in-depth  
3 analysis of the safety of the Taser's electrical  
4 waveform. They absolve the Taser from any  
5 significant involvement in drug-related deaths  
6 of individuals shot by Tasers."

7 A Where is -- I'm sorry -- where was that?

8 Q Very last sentence of page 5.

9 MR. MALEY: "Skin and Flesh Burns," the  
10 very last sentence.

11 A Okay.

12 Q Does that accurately say what it says there?

13 A I believe so.

14 Q You said that Taser's been implicated by medical  
15 examiners in three cases as contributing to  
16 cause of death?

17 A I believe so.

18 Q What are those three cases?

19 A I believe this case, Mr. Borden. There was  
20 another case, I can't remember the name, but as  
21 I recall, the cause of death was listed as --  
22 I'll do my best to get this correct -- acute  
23 methamphetamine, or cardiac dysrhythmia  
24 following acute methamphetamine intoxication,  
25 and police restraint, including pepper spray,



1           Taser and handcuffing. It was a fairly broad  
2           net where the Taser is listed as a contributing  
3           factor along with these multiple other factors.

4           Q   Where was that case from; do you remember?

5           A   I don't recall.

6           Q   And you don't recall the name of the person?

7           A   I don't.

8           Q   What is the third case?

9           A   I don't recall the name of the third case  
10          either. I recall that the Taser was listed as a  
11          contributing factor. However, we conducted an  
12          investigation, including having one of our  
13          medical advisory board members call the medical  
14          examiner, and I don't remember the exact  
15          technical reasons why, but he was able to, in  
16          the discussion, basically rule out the Taser as  
17          a misdiagnosis. So we'll see where that one  
18          leads. I don't have the details at hand.

19          Q   What was the name of that person?

20          A   That would have been Dr. Hugh Caulkins, who is  
21          the head of the electrophysiology and cardiac  
22          rhythm section at Johns Hopkins Hospital.

23          Q   Is he the one that made the call?

24          A   I believe he was the one that called and talked  
25          with the medical examiner.

1 Q What medical examiner did he talk to?

2 A I don't remember.

3 Q Do you remember where it was or when it was?

4 A I don't. I believe it was somewhere in the  
5 midwest.

6 Q In Ohio?

7 A It may have been Ohio.

8 Q And you have assembled autopsy reports or  
9 medical examiner reports, I guess you told me  
10 earlier, 30 to 40 of them or so?

11 A Again, I don't have the exact number, but we do  
12 attempt to track these down, particularly like  
13 in this one case where we have learned that the  
14 Taser may have been listed as a contributing  
15 factor, we wanted to understand how and why and  
16 whether that was accurate or not.

17 Q And have you reviewed those documents?

18 A I have not reviewed them personally.

19 Q So you haven't seen them?

20 A What are you asking about in specific?

21 Q You have not seen any of those documents of any  
22 of the autopsy reports?

23 A I have seen some of the autopsy reports.

24 Q Okay.

25 (Plaintiff's Exhibit Number 10 was marked

1           for identification.)

2       Q    I'm handing you the autopsy report in the

3           Alvarado case, marked as Exhibit 10.  Have you

4           seen that document before?

5       A    I believe so.

6       Q    And is this one of the three that you, one of

7           the two because Borden is one that you said, is

8           this one of the other two in which the autopsies

9           listed the Taser as a contributing cause?

10      A    I don't believe so.

11      Q    You don't believe it is one you listed, but is

12           this listed as one of the -- is Taser listed as

13           a cause of death?

14      A    My understanding of this report is that they

15           list the cause of death as basically a sequence

16           of methamphetamine intoxication and cocaine use,

17           and that the status was after the restraint,

18           including Taser use, but I don't believe that is

19           listing the Taser as a cause or contributing

20           factor, that that's a descriptive term,

21           basically that the status of the individual was

22           after Taser use, but that the cause of death is

23           the sequelae of methamphetamine intoxication and

24           cocaine use.

25                    And I believe several experts have looked

1 at this case and concluded the Taser was not a  
2 contributing factor, or at least not a  
3 significant contributing factor. I don't know  
4 the exact language.

5 Q What experts are those?

6 A I don't have the names at hand, but we have been  
7 involved in litigation in this case.

8 Q Wasn't the coroner unable to rule out that Taser  
9 is contributing to the cause of death in this  
10 case?

11 A Again, I think that is, that's not a legitimate  
12 standard. It's impossible to prove a negative.  
13 And the standard isn't to be able to rule  
14 everything out, it is what do they rule is  
15 contributing factors.

16 Q But you rule it out in this case, I guess, or do  
17 you know?

18 A No. My reading of this is that it is not found  
19 to be a contributing factor. Its role is  
20 undetermined.

21 Q But as a possible factor, it's not ruled out?

22 MR. MALEY: Hold on a second.

23 A Where is the exact language?

24 Q The document will speak for itself.

25 (Plaintiff's Exhibit Number 11 was marked

1           for identification.)

2       Q    Handing you what has been marked as Plaintiff's

3           Exhibit 11, have you seen that autopsy report

4           before?

5       A    I believe so.

6       Q    It has to do with Clever Craig, Jr.?

7       A    I believe so.

8       Q    And what was the cause of death listed in that?

9       A    "Cardiac dysrhythmia during episode of excited

10           delirium and following electrical shock from

11           Taser while resisting arrest."

12       Q    Is this one of the three that you included as a

13           Taser contributing?

14       A    I don't believe so. This case actually was

15           independently reviewed also by a doctor who runs

16           the forensic pathology department at, I believe

17           University of Kansas City.

18       Q    Who is that?

19       A    Dr. Ed Friedlander.

20       Q    Did you pay him to do that?

21       A    We did not.

22       Q    How did it come that he reviewed this case, if

23           you know?

24       A    He contacted us. He was interested in this

25           topic after having read the New York Times

1 article, and wanted to get more information.  
2 And when this, when inquiry came up on this  
3 case, we sent him the information and of his own  
4 accord he reviewed it. And I believe his  
5 feedback was that this cause of death was,  
6 "cardiac dysrhythmia during the episode of  
7 excited delirium following electrical shock from  
8 Taser while resisting arrest," is descriptive in  
9 nature and not causal. And then he goes on in  
10 his write-up to describe in great detail why he  
11 felt the Taser was not a contributing factor in  
12 this case.

13 Q Do you know if he talked to Dr. Riddick?

14 A I do not know.

15 Q Did you talk to, or anybody on behalf of Taser  
16 talk to Dr. Riddick about this?

17 A I do not know.

18 (Plaintiff's Exhibit Number 12 was marked  
19 for identification.)

20 Q I'm handing you what has been marked as Exhibit  
21 12, and ask if you recognize this.

22 A I don't believe I recognize this one.

23 MR. MALEY: Do you have an extra one there,  
24 Rich?

25 MR. WAPLES: Oh, I'm sorry.

1 Q Are you familiar with this case of Gresmond  
2 Gray, is the decedent, out of Lagrange, Georgia?

3 A Not as familiar with this one.

4 Q If you could turn to page 5 of that report under  
5 "Opinion," underneath the title "Opinion" --

6 A Okay.

7 Q -- were you aware of this opinion that Gresmond  
8 Gray was classified as having been, his death  
9 been caused by the combined effects of the  
10 physiological stress of a physical altercation  
11 (including the use of Taser) and underlying  
12 heart disease; were you aware of this opinion of  
13 the medical examiner?

14 A I have not personally had a chance to review  
15 this one previously.

16 Q The doctor in this report says, it looks like  
17 the fourth and third last sentences of that  
18 first paragraph of his opinion that "The Taser  
19 is used to incapacitate an individual for a  
20 short period of time, and under normal  
21 conditions is not lethal. In individuals with  
22 significant underlying heart disease,  
23 physiological stress such as being shot by a  
24 Taser can trigger the heart disease and result  
25 in a heart attack, as occurred in this case."

1 Do you see that reported in this document?

2 A I do.

3 Q Do you agree or disagree with that?

4 A I think I would want a chance to review this  
5 case in more detail and more depth. Because the  
6 question is what, how much stress, how long was  
7 the struggle. I seem to recall that in the  
8 death in Georgia, there was a significant time  
9 lapse between the use of the Taser and the  
10 death. I don't know if that applies to this,  
11 this decedent or not. So I would want more of a  
12 chance to review this.

13 Q This is in the summary on page 2 of the  
14 document, that accounts him going into his  
15 girlfriend's house, "Police arrived at the  
16 residence and attempted to get the decedent to  
17 leave. At some point in time, it is thought  
18 that the decedent resisted arrest and began to  
19 run away. A Lagrange Police Department officer  
20 fired his Taser at the decedent striking him in  
21 the chest. Decedent immediately collapsed and  
22 went unresponsive."

23 A I'm sorry, what page are you on?

24 Q Second page, very top.

25 A Let me see your page.



1 Q (Indicating.) Do you have the same first page?

2 A My page 2 looks very different than your page 2.

3 Q Yeah, it does. Can I see your document?

4 A Sure.

5 Q Oh. You were just on the wrong page. This is

6 the second page of the document. You were

7 looking at the -- it's got three pages at the

8 beginning of the narrative, I think, and then

9 the official report, six-page document. It's

10 the second page of the exhibit, which is marked

11 as 12, accounts the line I just read.

12 Do you see where that is recorded as I read

13 it?

14 A I do.

15 Q This wasn't one of the three cases that you have

16 said where medical examiners had connected the

17 Taser to the cause of death, is it?

18 A I don't believe so, although I would note I was

19 just reading today a report from the Georgia, I

20 believe it was Georgia Bureau of Investigations

21 or Georgia Police Chiefs, that had reviewed

22 these cases, and they continued to place the

23 Taser on the same level as pepper spray.

24 So I would assume they have reviewed this

25 case. And I would assume also that Mark Johnson

1 in our office and others have looked at it,  
2 although I have not personally seen this one  
3 before.

4 Q So you would agree that this is, would be a  
5 fourth one that you would want to add to your  
6 list?

7 A I would want to review it more carefully and  
8 have some of our medical experts review it  
9 before I made that determination.

10 Because if you look on the cover page, the  
11 cause of death is physiologic stress of a  
12 physical altercation and heart enlargement and  
13 fibrosis, so I'm not sure I would want to opine,  
14 having only read a few sentences of this here,  
15 without access to the experts I would want to  
16 review and give me their opinions.

17 (Plaintiff's Exhibit Number 13 was marked  
18 for identification.)

19 Q You'll get copies of all these if you need them.

20 A Yeah, I would like a copy of it to review.

21 Q We'll have a separate bound volume of deposition  
22 exhibits for your deposition. Try to keep them  
23 in a pile.

24 Here's 13, and this is a report of an  
25 autopsy from Orlando, Florida, on Gordon Randall

1 Jones. Have you seen this document before?

2 A I have, I don't know if I have seen this exact  
3 document. I've heard of this case.

4 Q The date of death is 7-19-02? It's on the first  
5 page.

6 A Okay.

7 Q Did you have Dr. Wecht look into this case?

8 A I did not.

9 Q Did Dr. Wecht look into this case?

10 A I believe that Dr. Wecht was contracted by the  
11 medical examiner's office to provide an opinion  
12 in this case, but Taser International had  
13 nothing to do with that. In fact, that may have  
14 been one of the first cases where we heard of  
15 Dr. Wecht as a recognized expert.

16 Q In the body of that document there's a letter to  
17 Dr. Wecht from the Orange County government in  
18 Florida dated November 19th, '02, Shashi B.  
19 Gore. Did you find that letter? It's a  
20 November 19th, '02 letter.

21 A Okay.

22 Q Do you see -- are you there?

23 A I believe so.

24 Q Do you see the last paragraph relates that  
25 Dr. Anderson, who was the deputy medical

1           examiner, mentioned the use of a Taser gun on  
2           the subject in his summary report, however, he  
3           did not put that in part 2 with other  
4           contributing conditions.

5                   And then the next paragraph explains that  
6           the director of emergency medical services  
7           believes that positional asphyxia could not have  
8           occurred and should not have been listed as a  
9           cause of death. The subject could move his neck  
10          freely even in that position on the stretcher.  
11          He thinks cocaine is the main culprit, along  
12          with the effects of the use of Tasers on the  
13          subject.

14                   Do you see that?

15          A    Yes.

16          Q    Were you aware of that person's opinion in this  
17          case?

18          A    I recall that there were -- there was some  
19          discussion of opinions in this case, and I  
20          believe they went to Dr. Wecht to provide a sort  
21          of, I guess definitive opinion for lack of a  
22          better word.

23          Q    At least for his opinion, correct?

24          A    Yeah, I seem to recall there was some, there was  
25          some controversy with Dr. Anderson and the

1 county government of some type.

2 (Plaintiff's Exhibit Number 14 was marked  
3 for identification.)

4 Q Handing you Exhibit 14, have you seen this  
5 autopsy report before regarding Jacob Lair,  
6 L-A-I-R, date of death of June 9th of '04? Do  
7 you recall seeing this before?

8 A I may have seen this one before.

9 Q Do you see on the first page, at the bottom of  
10 the first page, the second sentence? The  
11 "Opinion" says that "This 26-year-old male died  
12 of sudden death attributed to probable cardiac  
13 arrhythmia associated with acute methamphetamine  
14 intoxication. Contributing to his death was a  
15 struggle with law enforcement officers,  
16 involving the use of a Taser type gun, pepper  
17 spray and restraints."

18 A Correct.

19 Q Is this the one you were talking about earlier?

20 A I believe this one was.

21 Q So this is one of your three that is on your  
22 list of causal connections?

23 A I'm aware it was listed as a contributing  
24 factor -- I should say listed as a potential  
25 contributing factor.

1 Q Well, it doesn't list it as a potential, it  
2 lists it as contributing to his death, a  
3 struggle with law enforcement officers involving  
4 use of a Taser type gun, pepper spray, and  
5 restraints.

6 A Correct.

7 (Plaintiff's Exhibit Number 15 was marked  
8 for identification.)

9 Q I hand you Exhibit 15, which is a coroner's  
10 inquest into the William Lomax death. Have you  
11 seen this document before?

12 A Not directly, but I'm somewhat familiar with  
13 this case.

14 Q Is this one of the cases that you had as listed  
15 where there was a causal connection, of the  
16 three?

17 A I don't believe so.

18 Q Did the coroner's inquest determine in this case  
19 that there was a causal connection or  
20 contributing factor of the Taser to his death?

21 A My recollections of this event are that the  
22 autopsy report did not find that the Taser was a  
23 contributing factor. However, at a coroner's  
24 inquest a jury of laypersons expressed that they  
25 believed the Taser was a contributing factor.

1           However, it should be noted that no Taser  
2           experts or medical experts were present to  
3           present at this hearing. And again, that's why  
4           I didn't include it as one of the three, because  
5           again, my understanding is the medical experts  
6           for the medical examiner did not conclude the  
7           Taser, but that was more a layperson's  
8           determination, which was not based on science so  
9           much as innuendo that the Taser had contributed  
10          to the unfortunate death of Mr. Lomax.

11        Q    Are you saying that there was no medical  
12          evidence presented at the coroner's inquest?

13        A    There may have been some evidence presented.  
14          However, at the inquest, as far as I'm aware,  
15          there were no persons with specific expert  
16          knowledge on the Taser, nor was any of that  
17          information presented to the jury per se.

18        Q    And what is the basis for that knowledge?

19        A    Because when we had heard that this inquest was  
20          occurring, we had requested to be able to  
21          present data or have an expert there to present  
22          data, and we were formed, if I remember  
23          correctly, that the inquest's purpose was not to  
24          determine the role of the Taser, but rather to  
25          look into the actions of the officers, and

1           therefore it would not be -- they wouldn't  
2           require technical data in support on the Tasers.  
3           So we were frankly dismayed to see that the end  
4           result, the jury did express opinions on the  
5           involvement of the Taser, yet without access to  
6           the right information or expertise to have made  
7           that assertion.

8           Q   Who made those representations to you?

9           A   Mark Johnson, who was interfacing with the  
10          Las Vegas Police Department on this case.

11          Q   Look on page 5 of the inquest.  The hearing  
12          officer is telling the jury what it's for.  He  
13          says, "Generally speaking, a coroner's inquest  
14          is a fact-finding proceeding, and it's used to  
15          clarify the medical causes and circumstances of  
16          the death of an individual."

17          A   I'm sorry, what page are you on?

18          Q   Page 5 of the transcript, second-to-the-last  
19          paragraph.

20          A   Page 5, so it would be on the small pages?

21          Q   Yes.

22          A   Okay, go ahead.

23          Q   Well, I'm just saying that the document will  
24          speak for itself, but essentially the hearing  
25          officer is telling the jury that it's a



1 fact-finding procedure used to clarify the  
2 medical causes and circumstances of the death of  
3 an individual.

4 A Right. That's not how this had been represented  
5 to us, and frankly that's why we viewed this  
6 with some suspicion, that our technology was  
7 sort of convicted in absentia without any  
8 ability for us to put the relevant experts  
9 before this panel so they would have the right  
10 information to make that determination.

11 Q You're relating to what Mark Johnson told you?

12 A Correct.

13 Q You weren't privy to the conversation Mark  
14 Johnson had with whoever?

15 A That is correct.

16 Q And you don't know specifically who he talked  
17 to?

18 A I do not.

19 Q Or what specifically was said?

20 A Other than what I have related to you, that we  
21 were told this was not the intention of this  
22 inquest.

23 Q Other than what you related to me, what he  
24 related to you, correct?

25 A Now that's not a question I understand.

1 Q Well, I'm just trying to get the level of  
2 hearsay that we're talking about here. Mark  
3 Johnson is your sole source of information about  
4 what somebody in Las Vegas told him about  
5 whether you could present evidence at the  
6 coroner's inquest. Am I right about that?

7 A My source of information is Mark Johnson.

8 Q So you don't know specifically what medical  
9 evidence or what people testified at this  
10 hearing, do you?

11 A I do not, other than I know that none of the  
12 relevant experts we would have put forth were  
13 presented there.

14 Q You know Taser didn't present any evidence  
15 there, is what you are saying?

16 A Correct.

17 Q You don't know anything about what other  
18 evidence was presented there?

19 A Correct.

20 Q And do you understand that the coroner's inquest  
21 determined that the means by which the deceased  
22 met his death was a combination of drugs,  
23 restraining force, and the use of the Taser?

24 A May I ask where you are referring to?

25 Q Page 229, the very back of the document -- flip

1           it over, it's on the last page -- back of the  
2           document, top left-hand corner.

3       A    Okay.  Are you on page 229?

4       Q    229, where the hearing officer is reading the  
5           coroner -- or the verdict of the jury -- and  
6           then he asks, No. 4, he says that the means by  
7           which the deceased met his death was a  
8           combination of drugs, restraining force, and the  
9           use of the Taser.

10      A    Yes.

11      Q    And he says, "Is that the verdict of the jury?"  
12           And the foreman says "Yes, it is."

13      A    I think that accurately or is consistent with my  
14           description that, as we understood it, the  
15           report from the medical examiner did not include  
16           the Taser.

17                    This panel of laypersons did reach this  
18           conclusion, but we do not feel they had access  
19           to all the relevant information to have made  
20           that determination.  Again, it would be like  
21           trying a person in court yet allowing them no  
22           defense, no appearance, and to present no  
23           information, and then to make a determination.

24                    We've considered frankly going back and  
25           trying to have this hearing overturned or be

1 redone, but I believe at this point in time for  
2 internal reasons we've elected -- we haven't  
3 done that -- but we feel very strongly that this  
4 is a suspect ruling, because they did not have  
5 information they needed or our ability to answer  
6 those concerns or questions.

7 Q And again, this isn't one that you are including  
8 in your list of cases in which there's been,  
9 Taser's been listed as a contributing factor?

10 A That's correct.

11 Q That's the Borden case, probably the Jacob Lair  
12 case that you agreed to, and some other case,  
13 Dr. Hugh Caulkins called somebody.

14 A Correct.

15 (Plaintiff's Exhibit Number 16 was marked  
16 for identification.)

17 Q No. 16, is that a document that you have seen,  
18 Johnny Lozoya case, Department of Coroner,  
19 Los Angeles, California, July of '02?

20 A I'm not sure if I have seen this one.

21 Q I think this is one where they have said they  
22 can't exclude the Taser as a direct cause. And  
23 that's on page 12 of the autopsy report, on the  
24 signature page, Louis Pena signed it. Do you  
25 see that?

1       A    I did see that.

2       Q    It says there, "Consultations with the  
3            cardiologist and the chief medical examiner  
4            indicate that one cannot exclude the Taser  
5            causing the above damage to the tissues,  
6            specifically the heart, thus the manner of death  
7            could not be determined."

8       A    Although on the first page it ascribes the death  
9            to "hypoxic encephalopathy following  
10           cardiopulmonary arrest, sequelae of cocaine  
11           intoxication needing restraint."

12      Q    And if you look internally the "needing  
13            restraint" includes the use of the Taser.

14      A    "Needing restraint," I read that as descriptive,  
15            not causal.  Again, I think that's an untenable  
16            standard to exclude, it's so hard to prove a  
17            negative especially in these complex situations.  
18            But I don't see an affirmation that they found  
19            the Taser was a contributing factor.

20            If I could ask on here, does it show where  
21            the probe locations were on these drawings?  I'm  
22            not seeing it.

23            THE VIDEOGRAPHER:  We need to change the  
24            tape.

25            MR. WAPLES:  We need to change the tape.

1 THE VIDEOGRAPHER: We're going off the  
2 record. The time is 3:01.

3 (A discussion was held off the record.)

4 THE VIDEOGRAPHER: This is the beginning of  
5 tape No. 4. We're going on the record at 3:03.

6 A If I could just make a note on the record, it  
7 says here, "An informal consultation with  
8 Dr. Raney Reiter," it describes him then,  
9 "indicate one cannot exclude the Taser caused  
10 the damage to the above tissue, specifically the  
11 heart."

12 That gives me some degree of pause. In an  
13 informal consultation, that would tell me that  
14 Dr. Reiter probably was not given access to the  
15 specifications, the output of the device, the  
16 type of electrical stimulation provided -- it  
17 sounds like exactly that, informal, and that  
18 there was speculation that you can't rule it  
19 out.

20 But as I read the description, the Taser  
21 applications were in the abdominal region, not  
22 even near the heart, so the current flow  
23 pathways could not have included the heart. So  
24 I think --

25 Q According to you. I mean these are your

1 opinions here.

2 A I'll give you that. I think that could be  
3 modeled relatively easily. And experts that  
4 we've opined with, and based on our experimental  
5 data, would show that the current didn't get to  
6 the heart.

7 So I guess my point is this: Informal, an  
8 informal consultation, I don't think should be  
9 taken as anything more than an informal  
10 consultation. The review itself does not list  
11 the Taser, and a more formal and thorough study  
12 would need to be done before making a statement  
13 implicating the Taser, in my opinion.

14 Q Your company hasn't done that with respect to  
15 that person, have they -- is it Michael Rosa?

16 A I'm not sure.

17 Q I'm sorry, Johnny Lozoya.

18 (Plaintiff's Exhibit Number 17 was marked  
19 for identification.)

20 Q Let me hand you 17, which is a coroner's  
21 register, Monterey County, California, a death  
22 of Michael Robert Rosa, R-O-S-A.

23 Have you seen this document before?

24 A I have not seen this one before.

25 Q So it is not one of the three that you would

1 list, that you know of?

2 A Correct, this is not one of the three.

3 Q Do you see on the cause of death it is listed as

4 "Ventricular arrhythmia (minutes) due to

5 methamphetamine intoxication (minutes)

6 contributing, Taser application by police"?

7 A I do see that.

8 Q Is this one your company has looked into at all?

9 A I believe so.

10 Q Have you conducted any kind of investigation,

11 that you know of, into this death?

12 A What was that?

13 Q Has your company conducted any investigation

14 into this death?

15 A I'm not sure. I would refer to Mr. Johnson.

16 Q You would agree, though, that the register does

17 list the Taser as a contributing cause of death?

18 A It does with the, along with the broad

19 encompassing "arrest by police."

20 (Plaintiff's Exhibit Number 18 was marked

21 for identification.)

22 Q Handing you Exhibit 18, Milton Salazar, are you

23 familiar with this medical examiner's report?

24 A I don't believe I have seen this one personally.

25 Q Do you think your company has a copy of this?



1 A I'm not sure.

2 Q Okay. You see where, on the second page of this  
3 document, the medical examiner has listed the  
4 cause of death as "Complications of excited  
5 delirium due to cocaine adverse effect," and  
6 listed "Other: Stress from physical struggle  
7 and Taser and stun gun injuries"?

8 A I'm sorry, I was reading further back in the  
9 report. What page are you on?

10 Q Second page, under "Cause of Death."

11 A Yes.

12 Q Has your company conducted any investigation  
13 into this death?

14 A We may have.

15 Q This isn't one of the three that you had  
16 mentioned previously, is it?

17 A No, it's not. I think it's interesting, if you  
18 go back to page 6, it is slightly more  
19 descriptive, it says "Based on the autopsy  
20 findings and investigative history, as available  
21 to me, it is my opinion that Milton Salazar, a  
22 29-year-old Caucasian male, died as a result of  
23 complications of excited delirium due to cocaine  
24 adverse effect. The stress from the physical  
25 struggle and the Taser and stun gun injuries is

1 a contributing factor to excited delirium. The  
2 manner of death is accident."

3 So I don't know how that changes from being  
4 a contributing factor to excited delirium as  
5 opposed directly to the death.

6 (Plaintiff's Exhibit Number 19 was marked  
7 for identification.)

8 Q Okay. I hand you 19, Anderson County,  
9 South Carolina report on William Malcolm  
10 Teasely, T-E-A-S-L-E-Y. Have you seen that  
11 document before?

12 A Not this specific document.

13 Q You're familiar with this case, though?

14 A Somewhat.

15 Q You see that the, on the second page under  
16 "Comment," third paragraph, it says "In my  
17 opinion, the cause of death was a cardiac  
18 arrhythmia due to the combination of pulmonary,  
19 cardiac, and vascular disease following Taser  
20 electrical shock."

21 A I see that.

22 Q And the paragraph concludes that the added, the  
23 very last sentence of that paragraph reads that,  
24 "The added stress of Taser shock with its  
25 electrical current was proximal to the cardiac

1 arrhythmia and must be considered contributory."

2 Do you see that?

3 A I do see that. I do know that many of the  
4 independent experts that have reviewed this  
5 general phenomenon would disagree with that  
6 assertion that proximity necessitates that it be  
7 considered contributory.

8 Q Is this one of the three cases that you had in  
9 your list of where they have, medical examiners  
10 have listed Taser as a contributory cause of  
11 death?

12 A This is not.

13 Q So that list would need to be expanded by the,  
14 by this one and the other ones where the medical  
15 examiners have listed the Taser as a  
16 contributory cause of death, regardless of  
17 whether you agreed with that.

18 A In some of these cases. In some of these cases  
19 I don't believe they have done that,  
20 particularly where they described things  
21 following Taser use that seems more descriptive.  
22 There are some of these where they do claim that  
23 it is a contributing factor.

24 MR. WAPLES: I seem to only have two copies  
25 of this one. I have to apologize. You guys

1 will have to read off his. This is the last one  
2 of these.

3 MR. BRAVE: Which one is it?

4 MR. WAPLES: It is Exhibit 20, and it is  
5 the coroner's report for the county of Solano  
6 for Andrew Lamar Washington.

7 (Plaintiff's Exhibit Number 20 was marked  
8 for identification.)

9 Q Have you seen that document before?

10 A I may have.

11 Q Is this a case you're familiar with, somewhat  
12 familiar?

13 A Somewhat familiar.

14 Q This doesn't have a page number on it, the page  
15 I want you to get to, which is the Gary Stanton  
16 letterhead, which is the coroner, and lists the  
17 cause of death here. It is an internal --

18 A Is that on my document as well?

19 Q Actually it is. It is about halfway through it,  
20 unnumbered pages. It has a sheriff's star up in  
21 the top left-hand corner of it.

22 A Okay.

23 Q Were you aware that he had listed the cause of  
24 death as, quote, "Cardiac arrest associated with  
25 excitement during police chase and cocaine and

1 alcohol intoxication occurring shortly after  
2 Taseriing"?

3 A I believe so.

4 Q Is this one on your list of three?

5 A No, in my opinion, this would be categorized as  
6 descriptive rather than causal.

7 Q Has your company done anything to look into this  
8 case?

9 A I believe we have.

10 Q In what way?

11 A I believe Mark Johnson has been in touch with  
12 the agency to gather as much information as we  
13 can.

14 MR. WAPLES: Let's take five minutes.

15 THE VIDEOGRAPHER: We're going off record.

16 The time is 3:16.

17 (A discussion was held off the record.)

18 THE VIDEOGRAPHER: We're going on the  
19 record. The time is 3:27.

20 (Plaintiff's Exhibit Number 21 was marked  
21 for identification.)

22 Q Mr. Smith, I'm going to hand you Exhibit 21.

23 It's the only copy I have of that.

24 That's a page out of your, I think, Version  
25 12 training materials. Do you recognize that

1 document?

2 A I do.

3 Q And it's a black and white photograph of what,  
4 the comparison of some X26 and M26 drive stun  
5 wounds on a pig; is that correct?

6 A That's correct.

7 Q I would like to get a copy of that in color. Is  
8 it possible to do that? Where would I get that?  
9 Counsel, I'm sure --

10 A Make a request to counsel, and they would  
11 respond.

12 MR. WAPLES: I would like to get that.

13 This black and white doesn't really show up very  
14 much, I would like to get a color, digital  
15 picture of that.

16 Q Do you have other, a number of pictures of the  
17 comparison of the two types of marks that were  
18 made?

19 A I don't believe so.

20 Q Well, whatever pictures you have, I would kind  
21 of like to see those, with respect to that.

22 In the Powers case, Taser had a, paid a  
23 medical consultant to go look at his medical  
24 records and determine what happened, and then  
25 did a report to Taser, correct?

1 A I believe so.

2 Q And it concluded that muscle contractions caused  
3 by the Taser caused the vertebrae fracture in  
4 Mr. Powers, or the osteoporosis that he was  
5 already suffering from, correct?

6 A I don't recall the exact language, whether it  
7 may have caused or caused, so I don't know the  
8 exact determination. I know it was a  
9 possibility.

10 Q The SEC filing that you did that reported that  
11 case, even after that medical finding, said that  
12 Mr. Powers was complaining of some shoulder  
13 injury and the case was frivolous and you guys  
14 were going to prevail in it.

15 Why was it not accurately reported that  
16 your own medical examiner had determined that  
17 there was some merit to Mr. Powers's claim?

18 A Well, I've discussed that with Doug Klint, our  
19 general counsel, who prepares those descriptions  
20 for our filings.

21 MR. MALEY: Hold on one second, Rick. I'm  
22 going to instruct you for attorney-client  
23 privilege not to relay anything that you told  
24 Doug or that Doug told you as attorney-client  
25 privileged.

1           THE WITNESS: Okay.

2       A    My understanding is that, as the claim was  
3           initially filed, it was our understanding there  
4           was some sort of shoulder injury, and through  
5           the discovery process we later learned the  
6           specific nature of the injury. At the time we  
7           learned and confirmed this, we adjusted our SEC  
8           filings appropriately. I believe the filing  
9           that was done, that described it as a shoulder  
10          injury, was prior to our receipt of the final  
11          report.

12       Q    Are you sure about that?

13       A    I can't state it with absolute certainty, but  
14          that's my belief.

15       Q    In this case, James Borden was alive before he  
16          was hit with the Taser, wasn't he?

17       A    It is my understanding that he was.

18       Q    And it was applied at least three times to him?

19       A    I believe so.

20       Q    Do you know if it was applied more?

21       A    My understanding is the number was approximately  
22          three times.

23       Q    Do you know how long it was applied those three  
24          times?

25       A    I do not.



1 Q Do you know how many times the weapon was  
2 discharged or trigger was pulled?

3 A Personally I do not.

4 Q A data port output would record that, though,  
5 would it not?

6 A It should.

7 Q And each time the trigger was pulled, was it  
8 programmed to deliver a five second burst?

9 A Possibly.

10 Q Was that how the M26s were all designed?

11 A The data port at certain points in the  
12 development of the Taser would record multiple  
13 trigger pulls, but there may not be multiple  
14 shocks: For example, if I pull the trigger at  
15 times zero, it will now run for five seconds.  
16 If I pull the trigger again at one, two and  
17 three seconds, those trigger pulls would have no  
18 effect, it would still stop at five seconds. So  
19 although the data port log may show three  
20 trigger pulls, there would not be three shocks.  
21 Only after five seconds had elapsed would a  
22 trigger pull then elicit another five-second  
23 duration.

24 Q And then if there were other trigger pulls  
25 within that five-second duration, it would not

1           initiate another five second burst, but it would  
2           record them?

3       A    It may record them.  I believe at one point we  
4           may have adjusted the software to not record  
5           trigger pulls during, while the unit was  
6           running.  So I'm not absolutely certain.  But I  
7           do know that if the trigger pulls were within  
8           the five-second window, they are largely  
9           irrelevant and did not have a functional impact.

10       Q   And then it would be after that five-second  
11           trigger pull, the first trigger pull, then  
12           another trigger pull would record, and it would  
13           burst another five seconds?

14       A    Correct.

15       Q    And every post five-second trigger pull after  
16           that would do so too?

17       A    It should.

18       Q    Is it your understanding that Mr. Borden had a  
19           number of preexisting medical conditions?

20       A    I understand he had extensive preexisting  
21           medical conditions.  I don't know exactly what  
22           they were.

23       Q    And that he had promethazine?

24       A    That's my understanding.

25       Q    And Ephedrine?

1 A Yes.

2 Q And do you believe that -- do you know what the  
3 protocol would be for drug intoxication,  
4 standard toxicology protocol?

5 A I don't understand the question.

6 Q Well, I mean if somebody's has drug  
7 intoxication, is the -- do you know if the  
8 standard protocol is to make them more agitated  
9 or put them through physical exertion, or is it  
10 to calm them down?

11 A I guess that would depend on the nature of the  
12 situation.

13 Q You don't know in general?

14 A I don't think there is an in general protocol.  
15 The response, as I understand it -- I'm not a  
16 law enforcement expert myself -- but my  
17 understanding is that the actions and force  
18 applied by officers is dictated by the behavior  
19 of the subject, rather than any particular  
20 medical condition that they have, it is a result  
21 of behavior and the threat analysis of the  
22 officer.

23 But again, I would refer you to a law  
24 enforcement expert to discuss that in more  
25 detail.

1 Q Have you reviewed the documents with respect to  
2 what the witnesses at the scene said happened to  
3 Mr. Borden?

4 A I have not reviewed the documents.

5 Q Have you reviewed the videotape that shows  
6 Mr. Borden?

7 A I have not. I have discussed it verbally, but I  
8 have not --

9 Q Who did you discuss it with?

10 A With Doug Klint, our general counsel, and I  
11 believe with Mark Johnson.

12 Q Did Mark Johnson tell you what the video showed?

13 MR. MALEY: One second. If that, if  
14 Mr. Klint was present during that conversation,  
15 I'm instructing you not to answer on  
16 attorney-client privilege. If he was not  
17 present, then you can answer.

18 A In generalities, it has been described to me  
19 that Mr. Borden was physically resisting  
20 officers, apparently was using his body weight  
21 to -- I don't know if assault is the right  
22 word -- or resist their efforts to get him to  
23 follow directions or to move according to their  
24 directions, and they determined that they needed  
25 to apply some level of force to gain compliance

1 from the physically resistant Mr. Borden.

2 Q You don't have an opinion about whether the use  
3 of their, their use of force was excessive or  
4 not, I take it?

5 A Yeah, not having been there, not really having  
6 the expertise as a law enforcement officer, I  
7 don't think it would be proper for me to form an  
8 opinion as to the appropriateness of the level  
9 of force. I would defer to the officers that  
10 were on scene or law enforcement experts  
11 familiar with these types of cases.

12 Q So you don't know whether what they did was  
13 appropriate or not?

14 A No, I don't know.

15 Q You don't know whether what David Shaw did was  
16 appropriate or not?

17 A I, yeah, I don't know.

18 Q Could be it was appropriate?

19 A Certainly.

20 Q Could be that it was inappropriate?

21 A Possibly. One would have to compare, again, the  
22 actions with the department policies and  
23 procedures and his mind set and understanding of  
24 events at the time, perceptions of the subject's  
25 behavior, available options, all the factors

1           that go into that situation.

2       Q    And you haven't done that and made any kind of  
3           conclusion one way or the other?

4       A    I have not.

5       Q    Or Taser International as a company has not done  
6           it?

7       A    No.

8           MR. WAPLES:  No further questions.

9           MR. MALEY:  No questions.  Thank you.

10          THE VIDEOGRAPHER:  That concludes this  
11       video deposition.  We're going off the record at  
12       3:38.

13

14                           AND FURTHER THE DEPONENT SAITH NOT.

15

16

---

PATRICK SMITH

17

18

19

20

21

22

23

24

25

1 STATE OF INDIANA )  
 ) SS:

2 COUNTY OF MARION )

3 I, Tamara J. Brown, CSR, RMR, CRR, a  
4 Notary Public in and for the County of Marion,  
5 State of Indiana at large, do hereby certify  
6 that PATRICK SMITH, the deponent herein, was by  
7 me first duly sworn to tell the truth, the whole  
8 truth, and nothing but the truth in the  
9 aforementioned matter;

10 That the foregoing deposition was  
11 taken on behalf of the Plaintiff, at the offices  
12 of Barnes & Thornburg, 1313 Merchants Bank  
13 Bldg., Indianapolis, Marion County, Indiana, on  
14 the 12th day of July, 2005, commencing at the  
15 hour of 7:00 a.m., pursuant to the Federal Rules  
16 of Civil Procedure;

17 That said deposition was taken down  
18 in stenograph notes and afterwards reduced to  
19 typewriting under my direction, and that the  
20 typewritten transcript is a true record of the  
21 testimony given by the said deponent; and  
22 thereafter presented to said deponent for  
23 his/her signature;

24 That the parties were represented by  
25 their counsel as aforementioned.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of either party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for either party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_

N O T A R Y P U B L I C

My Commission Expires:  
November 3, 2009  
County of Residence:  
Marion