



AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO

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Mr. Tate, Mr. Alvarez, and the Mayor's Task Force:

I have been asked to make a brief presentation about use-of-force issues at the Mayor's Task Force on Police on March 17, 2004. I was specifically asked to address the ACLU's concerns regarding law enforcement use of electroshock weapons. Because I am not able to attend that evening, I will provide these comments in writing.

In a letter dated February 26, which was sent to the Task Force as well as the Denver Chief of Police, the ACLU of Colorado noted a disturbing increase in the number of in-custody deaths associated with law enforcement's use of electroshock weapons. The letter urged a review of use-of-force policies that authorize these weapons in situations that do not present a true threat to life or safety. It suggested that proponents of tasers have overstated the claims for safety and have been too quick to dismiss the role that electroshock weapons may play in contributing to fatalities. The letter asked whether the claims made for the tasers' safety are sufficiently trustworthy to justify policies that authorize their use when subjects are not brandishing weapons or when there is no substantial threat to life or physical safety.

Today I want to raise a different issue: the abusive use of electroshock weapons in a manner that constitutes unnecessary and unreasonable force and that may constitute cruel, inhuman or degrading treatment. In many cases, these abuses may be forbidden by the policy of a law enforcement agency or by the training police officers receive. Nevertheless, judging by letters arriving at the ACLU of Colorado and news reports from

around the country, the abusive use of electroshock weapons is becoming more and more common.

Law enforcement agencies should have mechanisms in place that will detect officers who abuse these weapons and quickly hold them accountable. For the sake of police-community relations, those mechanisms must be sufficiently credible, effective, and transparent so that the public has confidence that abuses will be detected, corrected, and, if necessary, sanctioned.

I will provide a sampling of the kind of complaints the ACLU of Colorado has been receiving about the abuse of electroshock weapons by Colorado law enforcement agencies. In many of these cases, the ACLU has obtained police reports that corroborate the complaint.

Electroshock weapons are being used to enforce compliance with police orders and to overcome what could be called passive resistance:

- Police reports show that a prisoner in a county jail was tased four successive times for declining an order to pick up his food tray.
- A prisoner in a different facility believed he had a legal right to decline to provide a requested DNA sample. His objection was overcome by force, and the sample was extracted at taser-point.

The ACLU of Colorado has also received a number of letters detailing the use of electroshock weapons on subjects who have already been subdued and handcuffed or otherwise restrained. They include the following:

- A man was shocked in the genitals by an electroshock weapon while he was handcuffed and seated in the back of a squad car. The police report confirms that the officer carried out what he called "a drive stun to the groin area."
- A woman six-and-one-half months pregnant was tased in the abdomen while she was handcuffed and seated in the back of a squad car.
- A county jail prisoner was shocked twice with a stun gun while he was handcuffed to a wall in the booking room. The officer's report explains that the prisoner was "mouthing off."
- Police responded to a call of a possible overdose and took an apparently intoxicated and possibly suicidal subject to a hospital. Hospital personnel put him in soft restraints on a hospital bed. When the subject failed to follow police orders to shut up, the police report states that police responded by shocking him with a taser.

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- The author of a letter to the ACLU accuses police officers of laughing as they tased him repeatedly while he was handcuffed in a squad car, to extort his "consent" to take a drug test, which turned out negative. He further asserts that officers tased him again after covering his head with a pillow. In their reports, the police officers confirm that they covered the man's head with a pillow case. They also confirm that they tased the highly intoxicated suspect at least 8 times while he was handcuffed.
- A county jail prisoner was strapped into a restraint chair for 3 hours for yelling and mouthing off. Officers periodically approached the prisoner, held a stun gun to his chest, and threatened to shock him. The prisoner has an enlarged heart and may be particularly vulnerable to adverse effects from electroshock weapons.

As the ACLU's previous letter explains, there is evidence to suggest that electroshock weapons are not as safe as their proponents so confidently claim. But even if there were not unresolved questions about the safety of tasers, it is nevertheless clear that they cause immediate pain that is excruciating and overwhelming. When a subject is already handcuffed or is otherwise restrained and poses no physical threat to an officer or anyone else, a 50,000 volt shock constitutes abusive, excessive, and unreasonable force. Indeed, in some cases it amounts to deliberate torture. Law enforcement policies should ensure that such practices are prohibited and sanctioned severely.

The ACLU's earlier letter suggests that Denver's use-of-force policy should be tightened to restrict the situations in which tasers are authorized. Nevertheless, the policy is probably already strict enough to prohibit the specific kinds of abuses recounted in this letter. But if those abuses of electroshock weapons are occurring in Denver, (and the Task Force or the PSRC or the press should conduct an investigation to find out), I would submit that the public has no confidence that the officers responsible for that abuse are being quickly identified, sanctioned, or otherwise held accountable. Indeed, it has been eight months since the death of Paul Childs, and so far the Denver Police Department's mechanism for police accountability has recommended only a minor reprimand for what it recognizes is a case of excessive force that resulted in the taking of a young man's life. If that is the sanction for using excessive force that results in death, the public will have little confidence that the Department is prepared to hold officers sufficiently accountable for abuses of electroshock weapons, especially ones that do not result in permanent injuries.

Sincerely,

Mark Silverstein,
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