EXHIBIT "D"

Mark R. Myers, MD, FACC
55 E California Boulevard, 3rd Floor
Pasadena, California, 91105

626-793-1227

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John Burton
414 South Marengo Avenue
Pasadena, CA 91101

Re: *Heston v City of Salinas*
N.D. Cal. Case No. C 05-03658 JW

Dear Mr. Burton,

Since my letter of March 11, 2007 in the matter of Heston *v City of Salinas* I have received and reviewed the following documents and conducted the following research:

Jeffrey D. Ho, MD: Court Protected Documents with dates of March 29 and March 30 2007 discussing the preliminary XREP device study data and the Moscatti study. The 40 to 45 second time frame of single XREP device application appears to impair ventilation as shown on Dr Ho's graphic. I agree with Dr. Ho that it would be "unethical" to experimentally replicate in humans the experience of Heston with multiple devices simultaneously, repeatedly and continuously delivering Taser energy over 74 seconds.

Mark W. Kroll, PhD: Second Rebuttal Addendum Opinion Report. April 6, 2007

TASER Electronic Control Devices (ECDs): Field data as of March 2007

Dataport Download – Second Taser Discharge Sequence (Table 1)

Nanthakumar, K, et al. Cardiac Electrophysiological Consequences of Neuromuscular Incapacitating Device Discharges. JACC 2006; 48:798-804 and letters: JACC 2007; 49:731-733.

Weaver, MF. Sedative and stimulant abuse in adults. UpToDate. www.uptodate.com

Huerta-Alardin, AL, et al. Bench-to-bedside review: Rhabdomyoloysis – an overview for clinicians. Critical Care 2005; 9(2):158-169.

Makino, J, et al. A quantitative analysis of the acidosis of cardiac arrest: a prospective observational study. Critical Care 2005, 9:R357-R362. Report of 28 patients in which the average pH was 6.90 +/- 0.21 (Heston was 6.83) with 54% in asystole.

DiMaio T.G. and DiMaio VJM. Excited Delirium Syndrome: Cause of Death and Prevention .CRC Press 2006

Paquette, Mary. Excited Delirium: Does it exist? www.findarticles.com/p/articles/mi_qa3804/is_200307/ai_n9301741/print

Alan W. Benner, PhD and S. Marshall Isaacs, MD. In Police Chief, June 1996. Excerpt from: http://www.zarc.com/english/other_sprays/reports/excited_delirium.html

> Excited delirium was originally a descriptive phrase coined by medical researchers to describe the extreme end of a continuum of drug effects. Unfortunately, the professional literature, departmental training bulletins and – in many cases – agencies' general orders have expanded this descriptive phrase to a symptom of "life-threatening" linkage, effectively changing the phrase from a descriptive to a prescriptive medical mandate. When disconnected from the precursive drug phrase (such as "cocaine induced excited delirium"), the term "excited delirium" takes on the connotation of a recognized medical or psychiatric condition. It must be emphasized that excited delirium is neither a medical not a psychiatric condition. It is a term used to describe the manifestations of extreme drug use.

Lawrence, Chris. In: http://www.policeone.com/writers/columnists/ChrisLawrence/

PoliceOne Exclusive: The varied faces of excited delirium
http://www.policeone.com/writers/columnists/ChrisLawrence/articles/120458/
PoliceOne Exclusive: Excited Delirium and its medical status
http://www.policeone.com/writers/columnists/ChrisLawrence/articles/121675/

PoliceOne Exclusive: Excited Delirium and its medical status, Part 2: If excited delirium isn't in the DSM, what is?
http://www.policeone.com/writers/columnists/ChrisLawrence/articles/126389/

Selected quotes from the 2nd article by Lawrence are of particular interest:

> So where does the term "excited delirium" come from?
>
> If you go to the website known as PubMed, a service provided by the National Library of Medicine and the National Institutes of Health, you can find the answer.
>
> This online service includes over 15 million entries from a number of life science and medical journals dating back to the 1950's. If you type in "excited delirium" as the search term you will find, as of December 19, 2005, 18 articles listed. The earliest entry using the term excited delirium is a publication by Wetli and Fishbain (1985), "Fatal cocaine intoxication presenting as an excited delirium is described in seven recreational cocaine users" (p.873). As you can see the first use of the term is descriptive of the behavior, not a diagnosis.
>
> The APA states that the utility and credibility of the text require that it be supported by an extensive empirical foundation (*American Psychiatric Association, 2000*). That usually means that someone

has conducted research to test a hypothesis. As mentioned by Dr. Christine Hall (*Manojlovic et al., 2005*) "there is currently no prospective scientific evaluation outlining historical features of excited delirium and retrospective reviews are fraught with selection and reporting bias..." (p.38). In other words, to date, research associated with ED is sparse.

To better understand why the DSM (Diagnostic and Statistical Manual of Mental Disorders) does not list ED, I suggest critics turn to the Introduction on page xxiii.

The limited research required into ED precludes its inclusion in the DSM. In fact, the DSM states, "New diagnosis will only be included after research has established that they should be included rather than being included to stimulate that research" (p.xxviii). It only makes sense that a malady not subject to research and clarification will not be included in the ICD (International Classification of Diseases) either.

"Excited delirium is not a clinical entity of its own, but a constellation of symptoms from a varied and severe underlying process" (*Manojlovic et al., 2005 p.38*).

Manojlovic, D., Hall, C., Laur, D., Goodkey, S., Lawrence, C., Shaw, R., et al. (2005). Review of Conducted Energy Devices (No. TR-01-2006). Ottawa, ON: Canadian Police Research Centre.

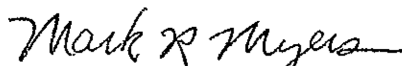
In April 2007 I requested the Huntington Hospital Library, Pasadena, CA, to perform a Pubmed search through 1980 on the term excited delirium. I too was unable to find a substantive body of literature to warrant elevating the descriptive phrase, excited delirium, to the status of a diagnosis.

On April 18, 2007 I asked Xeudong Wang, MD, PhD, of the Department of Pathology at Huntington Hospital about the use of excited delirium as a diagnosis. He stated that he and his colleagues in the department were not familiar with that term. We could not find the term excited delirium in his pathology textbook as a potential cause of death.

A search for diagnostic criteria for excited delirium yields no consistent criteria or supporting studies. Usually a list of nonspecific symptoms is given. Up To Date Online, an electronic medical textbook does not list excited delirium as a condition or diagnosis (http://www.utdol.com/utd/login.do;jsessionid=A7E7326FAFB2A1F5569B4666D9C380BC). A source in the lay-press indicated that hyperthermia is mandatory for the diagnosis to be made (Michael D. Curtis, MD, FACEP in *What EMS Providers Should Know About Tasers and In-Custody Deaths).*

Consideration of the circumstances of Mr. Heston's collapse and the known science of TASER leads me to conclude that direct stimulation of the heart by TASER was unlikely. I am persuaded however, that TASER application in the manner of Heston's case would cause metabolic acidosis, respiratory acidosis and hypoxia, a malignant vasosvagal reaction and the observed consequent asystolic cardiac arrest that led to his demise.

Sincerely yours,



Mark R. Myers, MD, FACC