

Independent Critical Incident Review and Analysis of the Officer-Involved Shooting Death of Stacy W. Kenny

Addendum Relating to the Interagency Deadly Force Investigation Team Protocols

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It's not how we make mistakes, but how we correct them that defines us.

Rachel Wolchin

Introduction

On March 31, 2019, Stacy W. Kenny was shot and killed by Springfield Police Sergeant R.A. Lewis following a traffic stop. On September 18, 2020, a lawsuit filed by Kenny’s parents was settled for \$4.55 million dollars, believed to be the largest dollar settlement in Oregon history for a police shooting case. One of the terms of the settlement agreement was that the surviving family members could commission a critical incident and analysis of the incident with which the relevant authorities would cooperate. Subsequently and through the family’s attorney, Michael Gennaco of OIR Group¹ was contracted to conduct the analysis and prepare a written report setting out findings and recommendations.

In March 2021, OIR issued a report focused on the investigation conducted by the Interagency Deadly Force Investigation Team (“IDFIT”)² investigation and the Springfield Police Department’s (“SPD”) subsequent administrative review mechanisms.³ The goal was to assess the objectivity and thoroughness of fact collection and the rigor of the subsequent internal review of involved officers’ actions.

In furtherance of that goal, Mr. Gennaco reviewed the investigative materials to determine whether IDFIT’s investigative policies and practices allowed for the development of a body of evidence that was adequate to the task of appropriately scrutinizing the involved officers’ actions and decision-making. He further reviewed those materials to learn whether current IDFIT protocols provided for effective and timely collection of evidence.

Mr. Gennaco also examined SPD’s incident review materials and protocols in order to learn whether those systems properly facilitated the ability of the Department to learn from critical events and adjust its practices to strengthen future performance. Finally, and based on an evaluation of the attributes and limitations in the current model, he devised

¹ Since 2001, Michael Gennaco of OIR Group has worked exclusively with government entities in a variety of contexts related to independent outside review of law enforcement, from investigation to monitoring to systems evaluation. As part of OIR Group’s oversight responsibilities for numerous jurisdictions, Mr. Gennaco has reviewed scores of officer-involved shootings and devised recommendations to improve attendant investigative and review practices.

² Under Oregon state law, the initial investigation of an officer-involved shooting is to be turned over to an interagency investigative team.

³ A copy of the initial report can be found on OIR Group’s website: https://a45ae0bd-a86b-4264-bab6-651d19eb0842.filesusr.com/ugd/d85a96_7ed6a497dee8487c980fa7efdfc1bd9f.pdf.

recommendations to improve relevant SPD policies, practices, and protocols – thereby promoting not only appropriate accountability but also the identification and dissemination of beneficial “lessons learned.”

Based on this review, Mr. Gennaco found that there were significant gaps in the IDFIT investigation into the officer-involved shooting of Stacy W. Kenny. The report accordingly includes responsive recommendations. Additionally, and in light of the fact that no single entity controls the quality of IDFIT’s work product, OIR Group suggests that SPD (as a member of the interagency team) communicate these observations to partner agencies so that potential improvements can be adopted for the future.

Moreover, because the focus of the IDFIT investigation is limited to the use of deadly force, other issues critical to SPD – such as the use of force by officers preceding the shooting, their tactics and decision-making during the event, and crime scene maintenance – fall to the Department to consider and address when such incidents occur. IDFIT’s structurally narrow focus means that it is even more imperative that SPD collect the facts necessary to perform the wide-ranging analysis that is warranted by these incidents.

To SPD’s credit, during its internal review of the incident, it did identify a handful of “training issues.” However, the Use of Force Review Board did not provide a detailed summary of its proceedings that explained the context for its identified issues. Moreover, even though SPD’s Chief of Police expressly asked it to do so, the Review Board did not consider the approach, tactics, and decision-making by the three other officers (besides Sergeant Lewis) involved in the incident. Nor did the Review Board, contrary to its charge, assess the appropriateness of the force that the three additional officers used on Kenny. The Review Board also failed to opine on the appropriateness of the uses of force inflicted on Kenny by Sergeant Lewis prior to his deployment of deadly force. And when the Chief received the report from the Review Board that failed to consider his specific instructions, he did not return it to the Board to address these gaps.

Finally, with regard to the performance issues that were identified by the Review Board, there was no apparent plan to use the identification of performance issues in any systemic or meaningful way. The evidence is virtually nonexistent that SPD incorporated these issues into future training or learning or to even debrief the involved officers on the issues identified.

These shortcomings in SPD’s review process cast doubt on both the substantive legitimacy and the lasting value of the Department’s internal outcomes. In short, they create skepticism as whether any accountability, learning or remediation actually resulted from the agency’s review of the Kenny shooting. The initial report was intended to delineate those gaps and identify significant issues that could and should have been the focus for the Use of Force Review Board. The report also recommended remedial actions that *should*

have sprung from SPD's internal review process and devised recommendations to improve both the investigative and review process.

We noted in our initial report that the current investigative and review structures have the capability to accomplish both a thorough and objective factual record and a robust, constructive review. However, our review of this incident found that the initial investigation by the multi-agency team had significant investigative deficiencies. And SPD fell far short of reaching this potential and producing the sort of accountability, learning and remediation that an agency should demand of those entrusted with these critical functions.

The initial report contained both substantive and procedural observations about the underlying incident and SPD's ultimate responses to it. The report was intent on further developing a framework within which SPD could achieve each of these vital objectives.

Since the issuance of our report, we have had an opportunity to present our report to Springfield's City Council. Moreover, we were contacted by the Lane County District Attorney regarding the IDFIT discussion and recommendations and were provided additional information regarding IDFIT protocols, namely IDFIT's Standard Operating Procedures ("SOPs"). At the District Attorney's request, we also virtually attended an IDFIT meeting to discuss our recommendations with IDFIT members. We were then asked by the District Attorney to issue an addendum to the Report based on the additional information provided. With no objection from the initial parties, we prepared this addendum to our initial report.

As detailed below, we learned that the current SOPs provides guidance on a few of the issues discussed in our initial report. Unfortunately, in the Kenny matter that guidance was not followed, presenting a different – and in some ways – more concerning problem. The additional information contained in the SOPs and discussion at the meeting caused us to reframe some of our concerns and recommendations but the underlying issues relating to investigative lapses and shortcomings remain. We are heartened to hear that the District Attorney intends to commission further study intended to improve the guidance that is currently provided by the IDFIT protocols. As detailed in this Addendum, we also recommend that each IDFIT investigation be reviewed to assess compliance with the SOPs and other IDFIT protocols. We are hopeful that the discussion in our initial report and further observations set out here are instructive and helpful to that subsequent effort.

IDFIT Investigative Issues

The investigations of officer-involved shootings in Lane County are conducted by the County's Interagency Deadly Force Investigation Team ("IDFIT"), comprised of contributing law enforcement investigators from within the County. The lead IDFIT investigator for the Kenny shooting was a detective from the Eugene Police Department. The IDFIT protocols allow for participation of an investigator from the agency of the involved officers; accordingly, a detective from SPD participated in the investigation.

Our review of the investigative file revealed significant gaps in the IDFIT investigation, a lack of investigative protocols and resulting lack of uniformity in fact collection, and existing protocols that are inconsistent with best practices. As discussed below, after the issuance of our report and after we received the SOPs, we learned that IDFIT did in fact, have protocols in place relating to a few of the gaps we identified in the investigation, but the procedures were not followed in the Kenny investigation, indicating a different and more substantial problem. And for most of the investigative gaps identified, as set out below, the IDFIT protocols did not address the concerns raised in the initial report.

No Crime Scene Log Prepared

It is standard investigative practice to seal off and preserve a crime scene while photographs and collection of evidence are undertaken. As part of that practice, a crime scene log is prepared in which individuals within the crime scene perimeter are identified, and any additional entries or departures of individuals into the crime scene are noted. In this case, there were apparently no attempts to establish a crime scene log. Accordingly, there are no precise records on who was at the initial crime scene, what individuals subsequently entered the scene, and when individuals departed from the scene.

We wrote in our initial report that the protocols initially provided to us did not indicate any IDFIT direction on the need to develop a crime scene log. However, the SOPs do instruct the IDFIT team to create such a log:

A written log (Crime Scene Log) will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.

However, despite the protocols, the IDFIT team did not create a crime scene log. During the IDFIT meeting, the uniqueness of the extended crime scene in the Kenny matter was discussed but not advanced as a reason for why the log was not prepared. It was also noted that one of the IDFIT team members was not available to respond because he was called

out of state on a homicide investigation, increasing the burden on the team that did respond.

SOPs are only useful when individuals follow them. IDFIT currently has no apparent systemic mechanisms to review completed investigations to ensure compliance with its protocols. One approach that would assess compliance would be to conduct an after-action review of the investigation, perhaps by the District Attorney, and convene a subsequent meeting of IDFIT team members designed to examine and discuss the strengths and weaknesses of the IDFIT investigation. The review and meeting should determine and discuss the degree to which the investigation complied with the IDFIT SOPs. Exemplary work should be identified, and shortcomings should be remediated through those processes.

In order to ensure that there are sufficient personnel to respond to an IDFIT matter, there should also be consideration of identifying a “back-up” member to respond to the incident should one of the primary members be unavailable such as what apparently occurred in this case. IDFIT cases are too important to allow insufficient resources to hamper a timely and effective investigation.

As a result of receiving the additional information and subsequent discussion, OIR Group withdraws its initial recommendation and replaces it with the following two additional recommendations:

RECOMMENDATION ONE: IDFIT should modify its protocols to ensure that each investigation is reviewed to determine compliance with its protocols and meet to discuss the results of that review with the objectives of any needed remediation and improvement.

RECOMMENDATION TWO: IDFIT should ensure that there is an alternative detective on-call to respond to matters should one of the primary handling detectives be unavailable.

Inadequate Scope of IDFIT Investigation

The IDFIT investigation focused almost exclusively on the use of deadly force by Sergeant Lewis. However, Sergeant Lewis’ uses of force earlier in the incident as well as the uses of force by the other three responding officers were necessarily relevant to a full understanding and assessment of the eventual decision to use deadly force. Each preceding instance of tactical decision-making and force by the officers set in motion the sequence of events that eventually resulted in the tragic outcome of this incident. It is incumbent upon any effective investigation of an incident such as this to explore the rationale for the various and interrelated decisions and force deployments by each participating officer.

The IDFIT interviews had each of the officers narrate their story but did not delve into the critical decision-making and tactics each deployed. As a result, the investigation does not provide the facts necessary to better understand the origins of the incident and allow full evaluation of Sergeant Lewis' decision to use deadly force.

During the meeting that OIR Group attended, some IDFIT members were concerned that this recommendation would cause the investigation to venture into tactics, use of force prior to the deadly, and other decision-making by officers that was asserted as outside the scope of the District Attorney's review. However, learning the state of mind of any officer who uses deadly force is critical to any determination on the propriety of deadly force. Tactical decisions and prior uses of force by the officer and fellow responding officers all contribute to that state of mind and should be considered as part of that inquiry. The IDFIT inquiry should not be cabined and limited to the deadly force event, both the investigation and prosecutorial analysis should consider all prior uses of force and tactical decisions by the involved and partner officers as it impacts the calculus of the reasonableness of the use of deadly force. We reiterate our initial recommendation here.

RECOMMENDATION THREE: IDFIT protocols should be modified to ensure a broad scope of initial fact collection, including a full exploration of any tactical decision-making and related force options preceding the use of deadly force.

Failure to Segregate Involved Officer and Witness Officers

The investigative reports reveal that after the shooting, Sergeant Lewis and Officer Akins were transported to the hospital for treatment of their injuries. Officer Rosales rode with Sergeant Lewis to the hospital and remained with him while he was being treated for his injuries. As a result, when the IDFIT team arrived at the hospital to interview witnesses and obtain a public safety statement⁴ from Sergeant Lewis, the witness officers and the involved officer had the opportunity to share accounts of the event before being formally interviewed.

Basic investigative practices require segregation of witnesses and involved officers prior to formal interviews so that recollection of events is not contaminated by exposure to others' accounts. The need for such a practice is acute in the officer-involved shooting context

⁴ A public safety statement is a rudimentary account of the event from the involved officer in order to ensure all potential exigencies have been or are being addressed. Sample issues include accounting for all rounds in both number and direction, and determining whether additional suspects might be at large.

because of concern that involved police personnel will either intentionally or inadvertently collude by sharing accounts of the event with each other. For that reason, all progressive police agencies have policies requiring that involved and witness officers are immediately segregated and chaperoned by an uninvolved officer until a “pure” statement can be obtained from the officers.

The IDFIT SOP that we were provided does set out the need for segregation of officers so that there is no discussion of the incident among witness or involved officers:

Involved officers or participant witnesses shall be separated as soon as practical after the incident and should refrain from discussing the incident prior to interviews.

However as we indicated in our initial report, in the Kenny case, neither SPD nor IDFIT ensured that this critical principle was followed and witness and involved officers were together prior to being interviewed. A post-IDFIT investigation review would have identified this serious lapse in protocols and hopefully ensure remedial measures.

One particular intricacy worthy of discussion is that there may be occasions IDFIT may not be able to respond in a sufficiently timely manner to ensure compliance with its own SOPs. In the Kenny matter, for example, the decision to have a witness and involved officer to ride to the hospital together was not made by an IDFIT team member but by SPD. As a result, it is imperative that supervisors of all participating agencies be well-versed and trained on the IDFIT SOPs. IDFIT should also set out its expectations that its protocols will be followed by all agencies even prior to the team’s arrival on scene. As a result of being provided the new information in the SOPs, the initial recommendation is withdrawn and replaced by the following two new recommendations:

RECOMMENDATION FOUR: IDFIT should ensure that all law enforcement agency supervisors are aware and trained on IDFIT SOPs.

RECOMMENDATION FIVE: IDFIT should adjust its protocols to note its expectation that agencies will comply with the SOPs, even prior to the IDFIT team’s arrival on scene.

Inordinate Delay in Interviewing the Officer Who Used Deadly Force

Current IDFIT written protocols do not allow an interview of involved officers until at least 48 hours after the incident, unless the involved officer waives the requisite waiting period. In this case, Sergeant Lewis was not formally interviewed about his use of deadly force until five days after the incident. While there are indicia in the file of IDFIT's interest in interviewing him three days after the incident, the attorney representing him asked for a greater delay because he was out of town. This extension magnified the issue, but the current IDFIT protocol and Lane County practice is itself inconsistent with basic investigative principles of effective and objective fact collection.

It is critical for detectives conducting an officer-involved shooting investigation to learn immediately about the officers' actions, decision-making, and observations. Accordingly, obtaining a "same shift" statement is essential to any effective officer-involved shooting investigation. This is true because of the value of a "pure" statement that is contemporaneous and untainted by subsequent input. Obviously, the five-day passage of time before Sergeant Lewis was interviewed prevented the IDFIT team from obtaining a pure and contemporaneous statement. Moreover, such delays are so contrary to normal investigative protocols, these special procedures for officers involved in shootings fuel the perception among many segments of the community that police investigating police provide their colleagues with advantageous treatment not extended to members of the public.

Special rules such as these only serve to reinforce skepticism about the rigor and objectivity of such investigations. The investigative process in Lane County must provide for more timely interviews of officers involved in a shooting. Until it does so, much of the public that County law enforcement serves will quite reasonably not have confidence in its approach or outcomes.

Agencies that have imposed a 48-hour rule and have routinely delayed interviews of involved personnel have reportedly done so under the supposition that recollection is improved over time. However, objective research has debunked this notion. See, for example, "What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures," *Journal of Applied Research in Memory and Cognition*, 5 (2016) 246–251, Rebecca Hofstein Grady, Brendon J. Butler, and Elizabeth F. Loftus. The proponents of the delayed approach are largely limited to either police associations or those who regularly defend police in officer-involved shootings. And importantly, none of them contend that a five-day delay, as occurred here, provides the best time frame for conducting such interviews to maximum effect.

During the IDFIT meeting, there was considerable “push back” regarding this recommendation. Having considered those arguments and for the reasons set out above, we renew our recommendation that IDFIT modify its protocols to require interviews of involved officers prior to the officer’s end of shift.⁵

RECOMMENDATION SIX: IDFIT should modify its protocols to require officers involved in deadly force incidents be interviewed prior to end of shift.

Inconsistency in Collection of Witness Officer Accounts

The IDFIT protocols do not provide for consistency in how accounts of witness officers are collected. As a result, there is a wide variation on how those accounts are obtained, which is not consistent with best investigative practices. For example, a tape-recorded interview was conducted of Officer Akins and that interview was transcribed. Yet the interview of Officer Rosales was not tape recorded, and only a summary of this interview was prepared. As for Officer Conrad, his interview was not tape recorded, but an initial summary was prepared and provided to Officer Conrad several days later – at which time he was able to review and provide “additions,” which he did. Moreover, as noted above, there was no consistency in where the witness interviews were obtained: Officer Conrad’s interview was conducted at the scene, while the interviews of Officers Akins and Rosales were conducted at the hospital.

The significance of officer-involved shooting investigations demand consistency in how and where officer witness information is collected. Witness officer statements should be obtained at a law enforcement facility with video-taping capability. And those interviews should take advantage of those capabilities so that witness officers’ demonstrations of movements and positioning can be captured. Finally, all witness officer recorded statements should be transcribed and both the recording and transcription included in the investigative file.

As shown below, the current SOPs do not provide sufficient guidance on this issue:

- 1) The interviewees will be considered witnesses unless circumstances dictate otherwise.
 - A. Interviews will be conducted separately.
 - B. Interviews will normally be tape-recorded.

⁵ We recognize that exceptions to the “same shift” timeline may be necessary in the (rare) case of an officer having been hospitalized and seriously injured. That was not the case here.

- 1) Eliminate all background noise.
- 2) Ensure that only one person speaks at a time.
- 3) Police employees have the same rights and privileges regarding interviews that any other citizen would have, including the right to representation.

Accordingly, the initial recommendation for IDFIT interviews stands.

RECOMMENDATION SEVEN: IDFIT should adopt consistent witness officer interview protocols as follows:

- a. Statements should be video recorded.
- b. Statements should be transcribed and both recordings and transcriptions included in the investigative file.

No Follow Up Interview of Witness Officer

The investigative file reflects that, after Officer Akins was interviewed, he reached out to the SPD member of the IDFIT team and advised that he had forgotten to tell the initial interviewer about significant parts of the event: specifically, that Kenny had repeatedly struck him as he tried to pull her from the car. While the SPD officer documented this encounter in a supplemental report, there was no subsequent interview of Officer Akins by the IDFIT team.

Standard investigative practices instruct that whenever a witness wishes to provide additional information, the investigative team should oblige and formally capture it. The IDFIT investigative team did not do so in this investigation. Training and protocols need to be devised so that such information is collected for future investigations.

IDFIT's current SOPs provide no guidance on this issue. The original recommendation stands.

RECOMMENDATION EIGHT: IDFIT should provide training and develop protocols for its members to ensure that all information volunteered about an officer-involved shooting is formally and systematically collected.

Interview of Involved Officer Not Tape Recorded

When the officer who used deadly force was eventually interviewed, his interview was contemporaneously transcribed, but no recording of the interview was made. This technique is inconsistent with best investigative practices; virtually all law enforcement

investigative interviews are tape-recorded. While a transcription of an interview is vastly preferable to a summary, an actual recording captures non-verbal cues that provide important context to any interview. For that very reason, in our twenty years of reviewing officer-involved shooting investigations, we have found value in listening to the tape recording of key interviews rather than simply relying on the transcript. In short, there is no investigative justification for not making the recording, and significant argument in favor of it.

Additionally, body movements are often critical to an understanding of an officer-involved shooting incident, and such movements are often demonstrated by interview subjects when describing what occurred. Neither a transcript nor an audio recording captures such information. But video recording does and is routinely used in civil depositions for that reason. Similarly, witnesses in court hearings appear in person so that the finders of fact can evaluate those non-verbal cues.

Adopting these best practices to the officer-involved shooting investigation context ensures a more effective and complete collection of information from witnesses.

The current IDFIT SOPs do not address the possibility of video interviews of involved officers. The initial recommendation stands.

RECOMMENDATION NINE: IDFIT should refine its protocols to require video interviews of involved officers to deadly force events.

Delayed Capture of Officer Response and Involvement

When an officer-involved shooting investigation is commenced, one of the fundamental responsibilities of investigators is to identify the involved officers as well as witness officers to the incident. Another expectation is that officers who are not directly involved in the incident but responded to the scene are asked to document their involvement in a written report. However, in this case, records indicate that responding officers did not contemporaneously document such involvement and observations. In fact, it appears that several days passed before the IDFIT team requested the preparation of such reports. And, as noted above, because no crime scene log was maintained, it was impossible for IDFIT investigators to ensure that all responding officers did provide the requested reports.

This delayed preparation of reports is another indication of the need to modify the IDFIT protocols to ensure that all law enforcement members that respond to an officer-involved shooting scene or have any involvement in the incident prepare a contemporaneous report documenting observations and tasks. And SPD should similarly create written protocols ensuring that any personnel who respond to an officer-involved shooting prepare written reports of their activity.

IDFIT's current SOPs provide insufficient guidance to ensure that all officers who responded to the incident prepare reports. The initial recommendation stands.

RECOMMENDATION TEN: IDFIT should revise their officer-involved investigative protocols to ensure contemporaneous preparation of reports by law enforcement personnel that respond to an officer-involved shooting or are otherwise involved in collateral responsibilities relating to the investigation.

Missed Analysis of Taser Deployment

The investigative files reveal that after the incident, the two Tasers deployed in this incident were downloaded for some basic informational data. The downloaded information revealed that one Taser was deployed four times for 5, 6, 4 and 22 seconds respectively; the other Taser was deployed three times for 5, 5, and 29 seconds respectively.⁶ The extended deployments identified by the data show that the last deployment by both Tasers were for an unusually long period and not in accord with the recommended five second deployment by the manufacturer.

Besides downloading this data and including it in the investigative file, there was no further analysis of the information by either the IDFIT investigators or SPD. As part of its contractual services, the manufacturer will provide a detailed analysis of Taser uses that provides helpful information about efficacy and other aspects of the deployment. Neither IDFIT nor SPD took advantage of this service; as a result, neither the criminal nor the administrative investigation benefited from the insight that such an analysis could reveal. Both entities should have ensured that a full Taser analysis was obtained from the manufacturer.

IDFIT's current SOPs are silent regarding collecting this information. The original recommendation stands.

RECOMMENDATION ELEVEN: IDFIT protocols should instruct that whenever a Taser is deployed in relation to an officer-involved shooting incident, investigative authorities should request a full analysis from the manufacturer.

Conclusion

We appreciated the opportunity to review the additional materials relating to IDFIT's protocols. It caused us to recognize that a few of the principles initially identified in our report were covered by the team's SOPs. However, the fact that the investigative steps

⁶Significantly and unfortunately, the investigation did not match the deployment patterns to the respective officers (though it easily could have).

were not performed, despite the SOPs instructions, raised different questions and suggested a need for an after-action review process to assess compliance with protocols and devise remediation for investigative steps not taken.

We also appreciated the opportunity to attend the IDFIT meeting and discuss the recommendations advanced in our report. Finally, we are hopeful that the additional work and assessment proposed by the District Attorney will result in improved protocols and improved investigations of officer-involved shootings in Lane County. We are also hopeful that the recommendations advanced in this report are considered in the spirit with which they are offered.

