

Deadly Force Review: Auditor's Analysis and Recommendations

Civilian Review Board
October 27, 2015



Deadly Force Review Board General Recommendation #1

- Fingerprint weapon(s) possessed by the deceased person.
- Clear and thorough reports and documentation by IDFIT.
- Audio record all interviews.
- Agency liaison detective should remain on scene and be partnered with the IDFIT primary detective.



Auditor Response: Additional Investigative Improvements

1. The involved officer's interview was considered voluntary. He was never Mirandized or given a *Garrity* warning. (Note: The IDFIT team has proposed new protocols clearly stating that the IDFIT investigation is a criminal investigation and thus subject to *Miranda*).
 - Auditor Recommendation: Delineate criminal and administrative investigations. Permit concurrent investigation so long as the administrative investigation does not interfere with the criminal investigation.



Auditor Response:

Additional Investigative Improvements

2. EPD secured the scene, but no investigative activity occurred until the IDFIT team leadership arrived, almost 3 hours later. This prevented a number of potentially beneficial investigative steps from being taken (i.e., no overhead or drone pictures of the scene due to falling darkness). The resulting lack of thorough documentation of the scene did not allow for validating a witness statement from an employee who stated that he had a partial view of Mr. Babb immediately prior to the shooting. In addition:
 - Incident command was not well established
 - Inventory of involved employees was not well coordinated
 - There was no walk-through with the involved shooting officer immediately following the shooting, as is considered best practice in officer-involved shootings



Auditor Response: Additional Investigative Improvements

- Auditor's Recommendations:
 - EPD should immediately assume incident command at the scene and immediately notify the Auditor's office.
 - The Auditor's Office will monitor the investigation until the arrival of IDFIT.
 - EPD should conduct a walk through with the involved officer and begin forensic investigation while awaiting the arrival of IDFIT.
 - EPD incident command should direct the relocation of the directly involved officers to a secure location and replace them on scene with uninvolved officers.
 - Once IDFIT arrives, EPD should maintain incident command jointly with IDFIT until the scene is cleared.



Auditor Response:

Additional Investigative Improvements

3. A number of investigators from several different agencies were assigned to the case.
 - Auditor's Recommendation: There should only be two or three lead investigators to manage and investigate any officer involved shooting unless it involves multiple shooters and or multiple victims. Otherwise, the investigative steps overlap or become disjointed, particularly when you do not have an "in-house" supervisor. This also makes briefings more difficult.



Auditor Response:

Additional Investigative Improvements

4. The IDFIT investigation did not include evaluation or testing of the 9mm gun found in Mr. Babb's truck. He told his therapist he had fired a 9mm gun.
 - Auditor's Recommendation: EPD should maintain incident command until the scene is cleared. The EPD Range master should be responsible for managing EPD firearms with IDFIT oversight, and any other weapons should be managed by IDFIT with EPD Range master oversight. There should be fingerprint, DNA testing and ballistics testing of any involved weapons by IDFIT with EPD Range master oversight.



Auditor Response:

Additional Investigative Improvements

5. IDFIT did not adequately establish the supervising sergeant's justification for remaining on the scene and his consideration that the roommate might have been in the house. These were key components that led to the shooting. Tapping fresh memory rather than aged memory that could have been impacted by outside stimuli would have improved evaluation of the employees' decision-making processes.
 - Auditor's Recommendation: EPD should begin their administrative investigation of employees involved in the decision-making related to uses of deadly force earlier – prior to completion of the IDFIT investigation.



Auditor Response:

Additional Investigative Improvements

6. The involved officer fired one round from his rifle, which entered Mr. Babb's cheek. The bullet passed through Mr. Babb. The IDFIT investigation failed to recognize that there was an exit wound, verify the location of the bullet and failed to recover the bullet before clearing the scene.
 - Auditor's Recommendation:
 - EPD should immediately assume incident command at the scene and immediately notify the Auditor's office.
 - The Auditor's Office will monitor the investigation until the arrival of IDFIT.
 - EPD should conduct a walk through with the involved officer and begin forensic investigation while awaiting the arrival of IDFIT.
 - Once IDFIT arrives, EPD should maintain incident command jointly with IDFIT until the scene is cleared.



Deadly Force Review Board

General Recommendation #2

Mr. Brian Babb fell under EPD's Mental Health Crisis Response policy. The supervising sergeant's use of the CNT officer was appropriate to attempt to de-escalate the situation. The use of CAHOOTS would not have been feasible given the knowledge of weapons in the home.

Board Recommendations:

1. Policy 418 needs to be updated and merged with POM 1200, Crisis Intervention Team (CIT).
2. Review current ORS/Case law and update 418.7, Firearms Seizure.



Auditor Response: Additional Recommendations

These are rare situations for EPD. While an agency can train extensively, nothing duplicates real life experience.

In my opinion, the police presence did not de-escalate Mr. Babb. Whether it was the hailing by someone at the ARV while Mr. Babb was still on the phone with his therapist and perhaps felt under siege or betrayed, or whether he just saw them either on the roof or the ARV or in surrounding ground areas, de-escalation did not occur. Continuing to hail him seems more command-oriented than negotiation-oriented.

One cannot underestimate the value of the initial hailing as it alerted the roommate and allowed him the opportunity to leave a volatile situation. The on-scene supervisor had reasonable concern that the roommate was in the house and needed to extricate him from the situation. Under prevailing Supreme Court precedent and Oregon community caretaking laws, police officers acted reasonably and with restraint at initial arrival.



Auditor Response:

Additional Recommendations (cont'd)

The investigation showed that shortly after arrival, the supervising sergeant understood that (1) Mr. Babb was suffering from PTSD and had a previous brain injury; (2) he was in possession of firearms and fired a round while inside his house; (3) the police radio dispatch described him as suicidal; (4) a roommate could be present; and (5) that numerous houses were in close proximity. Taken together, these facts led the supervising sergeant to believe not only that Mr. Babb was in danger of committing suicide, but also that another person or persons could be in danger, thus necessitating the need for the ARV and perimeter officers. I am not aware of a single court case mandating withdrawal in the face of multiple exigent circumstances such as those at issue in this incident.

To find that the supervising sergeant violated EPD policies by arriving and positioning officers as he did, we would have to show that exigent circumstances did not exist. Clearly exigent circumstances existed.



Auditor Response:

Additional Recommendations (cont'd)

Lessons can be learned from the negotiation process. The negotiator had facts that should have caused him to recognize that getting a rational response to police commands would be at best difficult. Unfortunately, audio recording in the ARV malfunctioned; evaluation of the negotiation process would have been substantially improved by such recordings.

Should an attempt have been made to get the therapist to the scene after she offered it? The fact that the therapist offered this option to the 911 operator was never conveyed to the supervisor. This was not a policy violation, but it was key. And even if she was able to get to the scene, we do not know whether the outcome would have changed. However, it does no harm to consider this as a possible solution since she appeared to be making progress with him until police arrived.

Auditor's Recommendation:

- Upgrade the ARV audio and video to state of the art technology so that after an event occurs, it can be evaluated.
- Consider opportunities to transport therapists to the scene when safe for someone in mental health crisis.
- Consider negotiation tactics that are less command based and more negotiation based.



Deadly Force Review Board

General Recommendation #3

- A post-incident after-action report by involved employees is recommended after the Deadly Force Investigation is completed.
- Every action on scene should be intended to move the incident toward the desired outcome of a peaceful resolution. Responses should be adapted to the fact set presented at the time rather than using a “one response fits all procedure.” The on-scene supervisor should explicitly state the objective and inform responding personnel of who is in-charge of the incident.
- In this case, the initial response of isolate, contain and contact was appropriate and per policy. While the tactical response was being managed, the supervising sergeant continued to have the therapist communicate with Mr. Babb in hopes of a peaceful resolution. Both the communication and tactical responses worked toward a similar resolution.
- Also within best practice was the attempt to determine the location of Mr. Babb’s roommate. It was incumbent upon officers to confirm his whereabouts. His location had direct bearing on the tactical plan.



Deadly Force Review Board

General Recommendation #3

Once the roommate exited, the supervising sergeants discussed pulling back the police presence. This would have been an appropriate plan with the information they had. However, due to Mr. Babb's altered mental state and his possession of high-powered rifles, they would not be able to leave entirely due to the continued risk to the public. The roommate expressed considerable alarm at the thought that the officers might leave (although there is no audio from the ARV). The roommate and the supervising sergeants were consistent in understanding the alarm expressed by the roommate. Mr. Babb exited before any additional plan could be put in place. In police practice, standard priority of life is as follows: 1. Victims/Innocents, 2. Community, 3. Police, and 4. Suspects. The use of the armored vehicle was appropriate due to the location of the residence and the need to protect responding officers. It provided a safe platform for officers to use the loud hailer. When the roommate exited the residence, it allowed for a safe location for him to be debriefed by the on-scene commander.



Deadly Force Review Board

General Recommendation #3

The policy of Hostage/Barricaded Subjects melds the two together, though the response and tactical considerations are very different. Law enforcement is trained to take more risks and exert higher levels of force to secure the rescue of a hostage. Conversely, barricaded subject calls, while still high risk, occur more frequently. The approach to a barricaded subject call can be handled in a manner where there is less risk and more flexibility.

Board Recommendations:

1. Educate officers on the use and capabilities of the armored vehicles.
2. Bifurcate policy 810, creating a separate policy for hostage response and barricaded subject response. Consider the IACP policies on barricaded subjects.
3. Educate and train supervisors on responding to Barricaded subject and Hostage calls for service. Allow for scenario-based training.
4. Train supervisors to be adaptable to each situation and base actions upon whether it furthers the overall mission.
5. Explicitly state over the radio who is in-charge of the incident.



Auditor Response: Additional Recommendations

Once the roommate left the house, an opportunity to switch to a “barricaded subject” mode presented itself. Because of the ARV’s lack of audio and video equipment, it is difficult to determine what was said over the loud hailer for the nine minutes after the roommate left and Mr. Babb was shot.

- Auditor’s Recommendation: Once the urgency of a hostage situation has abated (in this case, the roommate leaving the house), EPD should consider using negotiating tactics other than the loud hailer. The facts show that the continued loud hailing did not de-escalate Mr. Babb in the nine minutes after the roommate exited and Mr. Babb was shot.



Deadly Force Review Board

General Recommendation #4

Well over 90% of Eugene Police sworn employees are trained in Crisis Intervention (Memphis model). This is the gold-standard in responding to persons in mental crisis or in dealing with persons who have cognitive disabilities. CIT provides education in de-escalation techniques, basic knowledge of mental disorders, dealing with persons in crisis and dealing with veterans and PTSD.

Eugene Police Department's CIT program was developed in partnership with Lane County Behavioral Health, NAMI, police officers, family members of persons living with mental illness, and consumers of local mental health services.

Board Recommendations:

1. Continue training sworn officers in CIT.
2. Provide 40 hours CIT to telecommunications (911).
3. Update the policy to reflect current practices.



Auditor Response: Additional Recommendations

Concur with the Board. Only one EPD-CIT negotiator was engaged in the crisis negotiation process in this incident. Dispatchers and 911 operators were also in a CIT-type mode but did not have CIT training. The investigation indicated they did the best they could under the circumstances, and I concur with the Review Board that they should also receive CIT training.

According to the federal Substance Abuse and Mental Health Services Administration, more than 43 million Americans experience a diagnosable mental illness each year. In addition, EPD should consider additional personnel, or specializing more officers and dispatchers in mental health crisis issues, beyond the 40 hours of CIT training.



Deadly Force Review Board

General Recommendation #5

The request for the negotiator's specialized skill was an appropriate use of CNT under our current policy and practices. The policy also discusses notification of the CNT supervisor when CNT is used. In this instance it did not occur. In practice, it would be difficult for a negotiator or a supervisor immersed in a developing incident to divert their attention and make notifications.

The policy also speaks to calling out more than one negotiator, "a minimum of three," when CNT is utilized. Again, only one officer was used and no other CNT call-outs were made. The board also discussed at length the use of a third party negotiator, Mr. Babb's therapist, to assist with the call. During the incident, the therapist offered to come to the scene to speak with Mr. Babb. This request was not relayed to on-scene command, and likely would not have been used as it is not a common practice. In this incident, the supervising sergeant asked to keep the therapist on the phone with Mr. Babb if she had rapport with him. Once Mr. Babb was no longer speaking with her, she was asked to disconnect so that CNT could take over the call.



Deadly Force Review Board

General Recommendation #5

As crisis negotiation has evolved, so has the use of third party negotiators. Standard procedure is for the negotiator to make contact or take over the conversation so that CNT police have direct communication with the subject. It mitigates the damage which can occur from a third-party who may make the situation worse. It also provides more direct information to the on-scene commander by removing the layers of the communication center and the third-party.

The supervising sergeant's request to keep the therapist on the phone was unusual yet appropriate. She had the best rapport with Mr. Babb. He continued to permit this until she had lost contact with him, at which point it was appropriate to take over direct communications.



Deadly Force Review Board

General Recommendation #5

Board Recommendations:

1. On-scene commanders should consider embedding a negotiator with the mental health practitioner if they have an already established rapport with the subject. Or, if feasible and safety can be ensured, permit the therapist to come to the scene. In either case, directly partnering a negotiator with the therapist will facilitate getting intelligence and sharing information among all partners.
2. Utilize dispatch to contact the CNT supervisor and other negotiators in the event of an on-going high risk suicidal/barricaded subject incident. The policy should be revised to reflect enhanced call-out procedures.
3. Have Crisis Negotiators train on hot-lines to increase their experience in dealing with persons in crisis.
4. Require three (3) negotiators to respond.

Auditor Response:

I concur with the recommendations. Having the therapist at the scene may not have changed the outcome, though. This was a thoughtful analysis of the issues that impacted Police Communications and on scene supervisors.



Deadly Force Review Board

General Recommendation #6

Other Considerations

Radio Procedures/Communications Center: Radio communications throughout the deadly force encounter were calm and measured. On-scene officers and supervisors maintained calmness, even during the confusion of who had fired the weapon.

During the initial call to the 911 Communication Center, the therapist [on a cell phone] was disconnected. When she called back, it was answered by a different call-taker. Also, the therapist tells the call-taker Mr. Babb shot a round in the house, but when the message is typed in, it is put as he “shot out a window.” It is later clarified, but the difference can impact officer response and other tactics.

Board Recommendation:

1. Best practice would be to maintain one call-taker with the therapist. 911 is already considering this change.



Deadly Force Review Board

Other Considerations

Technology: The Armored Rescue Vehicle has an in-car video system but lacks audio. It also lacks a pole camera and a means for persons inside the vehicle to get a view of a location or suspect from the safety of inside the armor. The vehicle is used in situations where ballistic protection is needed. It is also used regularly by SWAT and CNT during tactical operations. Given public interest in these high risk police encounters, it is important that agencies be as transparent as possible. While cameras only provide one vantage of the incident, they can aid in the investigation and after-action review.

Board Recommendations:

1. Install Audio and video recording for the ARV.
2. Install a pole-camera and hands-free viewing capability for the ARV.
3. Equip officers with body-worn cameras.
4. Provide smart phones to CNT so that cell phone calls can be recorded using certain aps.
5. Provide supervisors with smart phones so that the incident can be viewed in real time from a position of safety.



Deadly Force Review Board

Other Considerations

Mental Health/Veteran Response:

The Eugene/Springfield area has a large number of veterans who have recent combat related experience. The majority of returning veterans have little police contact. However, some of those who have suffered trauma can be volatile and unpredictable. The agency should continue to outreach to various organizations to help prepare officers to better respond to veterans in crisis.

Board Recommendation:

1. Create a Veteran's Response Team to examine how best to work with the veteran's community, especially veterans in immediate crisis.

Auditor Response:

I concur with all of the recommendations in the **Other Considerations Section.**

