

# The Need for Credible Independent Review of Major Uses of Force: A Search for the Truth

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## Abstract

*“Hands up! Don’t shoot!” “I can’t breathe.” Law enforcement agencies, states, and municipal governments are under increased scrutiny from the public and the media when it comes to any police-involved death case. Cries for timeliness and transparency in these often protracted and complex investigations abound. Public and media detractors often do not understand issues of laws of arrest, search and seizure, use of force, and the complexities of forensic investigations. Law enforcement agencies themselves often use archaic and myopically investigative techniques with investigators who lack any applied science experience. Law enforcement administrators, Public Information Officers, and government administrators generally do a poor job of explaining police actions and provide uninformed statements and evidence that can compromise investigations. High-profile investigations often become “political” rather than forensic – investigations in which no real search for the truth takes place. How can this dilemma be effectively resolved? Read on to learn about the cutting-edge, multidisciplinary forensic investigations methodology referred to as “The Independent Review Team” or “IRT.”*

“Hands up! Don’t Shoot!” ultimately turned out to be a false narrative. However, before the dust had settled and the truth was ultimately revealed by a U.S. Department of Justice investigation months later, protesters had laid to waste the downtown business district of Ferguson, Missouri; several police officers and scores of protesters had been injured; two New York Police Department officers had been senselessly assassinated while sitting in their patrol car; and two Ferguson area police officers had been ambushed and seriously injured by a protester sniper.

The ever-increasing and accessible social media of Twitter, YouTube, Facebook, and Instagram; irresponsible blogs; and the unending “breaking news” of networks with too much time to fill and too little to report have frequently relegated credible investigative reporting to occasional coincidence. We refer

to the new news reporting paradigm as *#journalism*, where truth and accuracy have fallen second place in the race to garner immediate “air time.”

In its competitive Nielsen ratings mania, national and international news organizations are now populated by young and inexperienced news producers who appear bent upon getting their news stories out first rather than getting them out right – or accurately.

Inaccurate and/or biased reporting such as “Hands up! Don’t Shoot” headlines that are instantaneously passed through communities and entire regions of our country now create such turmoil that shootings involving police and any minority citizen automatically attract a cadre of self-appointed “community activists.” The cries of these activists are soon followed by showboating politicians and

pundits eager to get face time in the national spotlight by decrying the involved officers and policing agencies with allegations of racism, racial profiling, false arrest, excessive force, and wrongful death. Today, officer-involved shootings have sadly evolved into *political shootings*.

How does a police department which has become the latest focus of the political shooting frenzy react? As professionals who are involved in the daily task of investigating, analyzing, testifying in, and arguing criminal and civil rights cases predominantly involving officer-involved shootings and in-custody deaths, we are keenly aware that municipal and state entities more often than not lack the investigative, legal, and forensic experience to determine accurate fact patterns. We often see that they fail to properly identify important exculpatory and inculpatory circumstances, facts, and forensic evidence and that they experience difficulty reconciling these same components with the statements of involved officers, defendants, plaintiffs, and witnesses.

The first thing to recognize is that a political shooting is not a run of the mill officer-involved shooting. Very few police agencies are equipped to handle the barrage of media scrutiny and demands for information, interviews, and public records requests generated during a political shooting. Well-meaning police officials can be excoriated by the media merely because their officers were of a different race than the shooting victim. Politically motivated prosecutors at every level of government will threaten to prosecute the officer, convene a grand jury, or to impose their wills through intrusive "consent decrees." To the police officers and departments involved, the scrutiny will seem endless.

Police departments will quickly discern that their goals are very different from the news media or the politicians. While media and politicians may want to fill air time or please a political constituency, police departments actively seek the truth. Police departments

have to balance the officer's right to privacy, union concerns, the potential for criminal charges, and cooperation with legitimate governmental inquiry such as grand juries. Media and politicians are unconstrained by the real-world concerns of running an effective police department.

Too often, law enforcement agencies try to go it alone. Agencies that investigate their own officer-involved incidents and in-custody deaths stop their investigations once they reach a conclusion that police actions were "legally justified." Often, the local prosecutor's office falls in lock step with law enforcement in classifying a serious use of force as justified when their investigative input is minimal. But a "justified" shooting does not necessarily mean that all of the actions of the involved officers were objectively reasonable, were not in some way negligent, or were not in violation of a constitutionally protected civil right. Rote determination that a shooting was justified is never going to suffice in a political shooting.

The vast majority of officer-involved shootings are in fact justified; in other cases, a *justifiable shooting* simply means that the investigators and the local prosecutor merely determined that probable cause was lacking to charge the involved officer(s). While the majority of police in-custody deaths are ultimately forensically determined to have no direct police culpability, others that are investigated by police agencies and some medical examiner offices fall short of the experience and utilization of the types of applied sciences to render credible opinions as to the mechanism of injury and cause of death. Such shortcomings will be exploited by those seeking to make political capital.

Simply calling in a state or national investigate agency such as the state police or the U.S. Department of Justice may take months to arrange. Once these agencies commence their investigation, it may take several more months to over a year to resolve. As witnessed

in the high-profile Ferguson shooting and the New York in-custody “I can’t breathe!” death incidents, law enforcement and municipal officials generally do a horrible job at press relations. The inability to properly articulate investigative and forensic procedures to a media hungry for answers, compounded by the knowledge that an agency is investigating itself, exacerbates tensions between the community, the police, and the municipal government.

The need for independent review, conducted by privately retained, highly qualified professionals experienced in law enforcement practices, forensic sciences, law, and medicine, who are beholden to no one is the answer to this dilemma. The need for a multidisciplinary investigative and forensic approach to manner and cause of death, rather than a myopic, simple determination of criminal culpability in the death of a citizen encountered by police or while in police custody, should be obvious to all.

There are many benefits, such as the following, to utilizing an outside, private forensic investigations team, an Independent Review Team (IRT), to investigate major uses of force, officer-involved shootings, and in-custody deaths:

- *A Multidisciplinary Approach* – Experience has well proven that a multidisciplinary investigation approach in which a team of trained and highly experienced experts in criminal investigations, applied sciences, forensics, medicine, and criminal/civil law are utilized is vastly superior to the compartmentalized investigation approach currently used by law enforcement agencies in the investigation of death cases. A forensic team of privately retained experts will not be influenced by local politics, the media, or community activists. For the IRT, there is no “correct” resolution, only a truthful one. They understand and appreciate that the case “Is what it is” with all of its warts,

weaknesses, and strengths. The IRT is not afraid of giving “bad news” to one side or the other. Their mission is a fair and accurate search for the truth, no matter what that truth ultimately reveals.

- *Experience and Skill Level* – A privately retained IRT is comprised of vetted professionals who are the most learned, skilled, experienced, and battle-tested experts available in the fields of law enforcement, forensic sciences, law, and medicine. The vast majority of municipal and state governments and law enforcement agencies do not have investigators with the same level of criminal, forensic, and civil expertise because local and state agencies can rarely afford to spend the money and time it takes to build this level of experience in their investigative staffs. Municipal and state law enforcement investigators are usually working on a number of cases at the same time, whereas the caseload of an IRT is usually considerably lighter. This means that a privately retained IRT can devote more time to each case and complete it much sooner and with more accuracy than its municipal and state counterparts.
- *Understandable Documentation and Articulation of the Facts* – The use of a team of independent review experts to author forensic reports for release to the media and public is the most transparent and credible way to explain what happened in an event and why. IRT experts are generally more experienced than police investigators and prosecutors’ offices in providing a written chronology and accurately reflecting how an incident transpired and the actions of all involved parties. An independent review report documents how the incident was investigated and analyzed, and how facts, circumstances, and forensic evidence were assessed to conclude whether the incident was either objectively reasonable or was not.

Unlike reports from a law enforcement agency and prosecutors' office which only address criminal elements, an independent review report will include a detailed analysis that addresses both criminal and civil aspects. An IRT's report articulately addresses and thoroughly responds to all pertinent allegations and questions that the media and the community might present in a way that is easy to understand.

- *Transparency or the Deliberate Lack of It* – Perhaps the most compelling reason to use a privately retained IRT is for transparency and credibility. As evidenced by today's media and community's concerns, and, in some cases, outrage, regarding how law enforcement investigates its own, retaining an established IRT with a documented history of excellence and transparent performance immediately allows for an independent, transparent, and unpressured forensic review of high-profile police incidents such as officer-involved shootings and in-custody deaths.

The greatest benefit of an IRT is also a potential liability. A team that "calls it like it is" may end up discovering weaknesses in training, administrative oversight, or policies and procedures. It is part of the risk of hiring independent investigators. Their independent review report can become a roadmap to a plaintiff's lawyer seeking to impose liability on the agency for failure to train or supervise.

Police departments, particularly those in the unyielding spotlight of a political shooting, do not have to go it alone. An IRT can bring its credibility, experience, and collective wisdom to police agencies and the communities they serve. An IRT will relentlessly engage in a search for truth even while the politicians and #journalists sacrifice truth for headlines.

In today's fast-paced, media intensive political environment, it is critical that police encounters with citizens resulting in major uses of force, officer-involved shootings, and

in-custody deaths be expeditiously investigated by a credible team of highly experienced and fiercely independent professionals whose only goal will be a transparent search for the truth, no matter where the facts and forensic evidence takes them. The public deserves nothing less.

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