

Barbara Kenny submitted written testimony 7-15-20

Thank you co-Chair Bynum, co-Chair Manning and members of the committee for the opportunity to submit this written testimony to you. This is such an important topic and obviously very important to me. My name is Barbara Kenny, I live in Springfield Oregon and my son Stacy (aka Patrick) William Kenny was shot and killed by Springfield police on March 31, 2019.

Patrick was shot and killed by the Springfield Police following a traffic stop. Prior to shooting him, Springfield police officers shattered the driver and passenger side windows of my son's parked car, pulled him by his hair, punched him in the face repeatedly while holding his head by the hair, yanked the shirt off of his body, shot him with Tasers in his abdomen, groin, and back, then subjected him to five cycles of Taser shocks – all while he was unarmed, on the phone with a 911 operator and restrained in the seat of his car by his seatbelt.

There are so many aspects of what we have experienced over the last 16 months that could be discussed, but I would like to focus my written remarks on where our experiences are relevant to policy choices you are considering. In that sense, there are three themes I would like to bring to your attention. The first is the critical need for transparent, independent investigation of any incident where a citizen is severely injured or dies due to police action, the second is the need to reconsider and revise the Oregon statute that defines when the use of deadly force is lawful, and the third is to acknowledge that, although persons of color and members of marginalized groups suffer proportionally more violence than others, police misconduct affects all members of society.

First, a little background. We filed a wrongful death lawsuit against the City of Springfield, the four officers involved, and the Springfield Police Chief in late September, 2019. Based on information from the Discovery and Deposition process, we filed an amended complaint in May, 2020. I have submitted the amended complaint for the record and it can be found here: <https://kenny-family.com/2019/10/21/complaint/> Of particular relevance to my testimony is section 4, which describes in detail the events in the less than five minutes of police contact leading up to my son's death, and section 6, which describes some problematic issues with the internal administrative review process within the Springfield police department itself. The information contained in our amended complaint is based upon many months of work by our legal team and their experts who have reviewed the Lane County Interagency Deadly Force Investigation Team (IDFIT) report, listened to the tape of the 911 call that Patrick made that became an audio record of the event, listened to dozens of hours of deposition testimony, reviewed thousands of pages of discovery documents, and studied the physical evidence at the scene, in the car, and on our son's body. In addition, I would like to note that we reached a settlement agreement with the City of Springfield just last week. I believe that our settlement agreement makes a strong statement about the veracity of our claims.

Now to my first theme, about the need for an independent and transparent investigation. My husband and I are fortunate to be in a position to have access to excellent legal counsel, have

the means to pay for it, and have a fortunate set of life circumstances that allows us the emotional stamina and bandwidth to see a lawsuit through to its conclusion, whatever that may be and however long that may take. I suspect that this is not the case for many families. If a family suffers a loss such as we did and does not have this good fortune, they may never know the truth about their loved one's death, and the public will never know the truth either without an independent and transparent investigation. If there wasn't a video of the George Floyd murder, would the first version of the event, as told by the police officers, be the only record? If the facts are not out there, how can they be analyzed or reviewed to see if policies, procedures or personnel need to change? How can there be improvement without this knowledge? How can the public decide if they condone this behavior or need to demand change?

In our case, two police officers came to our house to tell us Patrick had died. They said there was a chase, he crashed the car, and he died at the scene. Initially there was no mention of a shooting, and we didn't learn of the brutal beating he had sustained prior to the shooting until much later. We were told that there was going to be an investigation; that an investigation team would be formed, with members from at least three law enforcement agencies, not including the shooting agency, to determine the facts of what happened that night. They would then present a report to the Lane County District Attorney so she could determine if the homicide was legal.

Two weeks later we were told that the DA had reached a decision about whether the use of force was lawful or not, based on the IDFIT findings, and that she would be willing to meet with us to tell us what happened before she gave her public press conference the next day. This was a gracious offer and we appreciated the opportunity to meet with the DA, along with three officers associated with the IDFIT investigation who she invited, and we thought this would be a candid meeting of what happened to our son. It added significantly to my emotional pain to learn later that this was not the case. I felt duped, and more painfully, I felt I had betrayed my son's memory by actually believing the cherry-picked version of events that we, and the public at the subsequent press conference, were presented.

The press conference was held jointly between the DA and the Springfield Police Chief. This gives the impression, true or not, of close coordination between them in presenting the IDFIT findings, and not independence. I believe the information presented at the press conference was carefully and strategically chosen from the entire set of facts to create the best impression possible for the officers involved and the worst impression possible for my son. This approach was similar to how we were told initially about how our son died; e.g. although "chase, car crash, died at scene" was not factually false, it left out an enormity of fact and context. (<https://www.dropbox.com/s/5mmjp4g0ecqdt1i/KVAL-TV%20Hearing.mp4?dl=0>)

The most egregious (and painful to me) omission and misrepresentation had to do with the physical violence Patrick sustained prior to driving away in his car. Neither we, nor the public, were told that the officer who made first contact with Patrick broke down Patrick's driver window without warning and *while he was talking on his cellphone to 911*, grabbed him by the

hair, and punched him in the face and head between 7 and 13 times, to the point of the officer fracturing his hand. One would think this would be relevant to the story of what happened, yet the DA never mentioned it. This officer stated that his goal was to extract Patrick, who was seat-belted in, by pulling him out of the car through the broken window. Meanwhile, the second officer broke into the passenger side and began striking Patrick in the head and face from the passenger side. Additionally, this officer struck Patrick with the butt end of the knife that he had used to break down the window and that blow fractured Patrick's skull. A third officer arrived and also began punching Patrick. This is three officers simultaneously on an individual who is seat-belted in their car and who had called 911 to ask for help. The line to 911 was open this entire time. The fourth officer to arrive unleashed his taser. This horrible violence was summarized in the public presentation and to us privately as a "fight" where it was implied that Patrick was doing something to fight back. There is no physical evidence that Patrick did anything but assume a defensive, protective posture as he was sustaining all of these blows. The tasers were described as "ineffective." Two tasers were used simultaneously and without pause for a combined five cycles of electric shock. This was a brutal assault on a passively restrained subject and yet this violence unleashed on Patrick was not even mentioned in passing in the briefing.

What was mentioned prominently at the briefing was that the officer who had entered into the passenger side of the car was a smaller individual than Patrick and thus somehow was at a disadvantage, even though Patrick was restrained in a sitting position by his seatbelt and sustaining multiple blows from all sides. Additionally, if one were going to talk about size of the participants, it might be worth mentioning that the officer striking Patrick through the broken driver's side window was a muscular 275 pound man in his late twenties. Just a few years prior to using his strength against my son, he was a starting lineman playing college football.

The fact that Patrick had called 911 and that there was an entire audio record of the sequence of events was only mentioned once in passing at the beginning of the public briefing. We were also told about the 911 call at our private meeting, but not given any information about its contents. The 911 recording was not released to the public, nor to us, until two days after the press conference. Thus the press conference attendees had no opportunity to ask questions about what they heard on the 911 tape.

The fact that Patrick had said "What did I do wrong?" as recorded on the 911 tape and that none of the officers ever responded to that question was not mentioned in the public or private briefing. In fact, at our private meeting, we were told that Patrick said, "What the f*** are you stopping me for?" but the recording reveals that he did not use those words.

Finally, the public presentation included information that was true but irrelevant, such as that he had toilet paper and old food in his car. It probably served to paint Patrick as some sort of derelict character.

So without our lawsuit, the misleading public press conference and our private meeting would be our sum total knowledge of what happened to our son. Additionally, the public press

conference served as the go-to point for information in the press so the public did not know the totality of what had actually happened, and without that missing context, why would anyone think there was anything wrong? Would the public have been OK with the beating that my son sustained if they had known about it? The public needs information so they can make an informed choice about whether the society in which they are living is the one they want to have. Was this behavior ok by community standards? But if the community doesn't know what happened, how can they make that determination?

Beyond the public transparency of an external investigation of what happened, there also needs to be a thorough internal administrative review of the officers' conduct, not just the shooting itself but the entirety of the event, to understand the decision making of the involved officers, to see if policies and procedures were followed and to see if any lessons could be learned. A human being lost their life that day, my son, and if there wasn't a good reason for it, it seems like the department should find out why and try to correct behavior to save lives in the future.

My second theme has to do with the fact that our son went from lawful behavior in his own personal property, without weapons, drugs, alcohol or even tobacco, to shot five times and dead in less than five minutes while still seat-belted in his own car. Apparently this is lawful under Oregon law because in the microsecond that the officer decided to hold the trigger down there was a "reasonable belief" that his life was in danger. The officer had broken down the window and entered the vehicle by his own choice and was unrestrained in the front seat of the speeding car of an individual who he and his colleagues had just severely beaten and tased. And, by the way, there is some evidence from an independent witness that Patrick's car was not headed for an imminent crash with the trees prior to being shot, (another tidbit omitted from the press conference) rather he was in his lane and headed home, eastbound on Olympic, although admittedly at a high rate of speed. So yes, in this scenario, there may be an argument that the officer had a reasonable fear for his life. But I submit he also had other choices rather than to shoot the driver multiple times, even given all that had transpired previously. And what caused the officer to be in that position? Did the violent behavior of he and his colleagues lead to Patrick's self-preservation need (and right) to escape? Did the officer need to be in the car? Was his behavior in line with policies, procedures and tactics of his own department? Although the DA ruled the homicide itself to be legal under Oregon law, to this day I don't understand why she didn't investigate whether or not there was excessive use of force by the officers prior to the actual shooting. It would appear that nobody cared whether any crimes were committed by the officers when they began beating Patrick, even though he presented no threat to the them or anyone else.

California recently passed a law which changed the conditions under which deadly force can be used. It is now required to be "necessary" not just "reasonable." Their new standard also includes consideration of the behavior of the officers prior to the use of deadly force, in other words, did they unnecessarily escalate the situation, and requires that other solutions be considered prior to resorting to deadly force. I would urge you to invite someone from

California, similar to your invitation to the individual from Colorado, to testify about their law and how that is working out.

Finally, my third theme has to do with the fact that I would like people to know that police violence can happen to anyone. We are all at risk. My son happened to have a mental illness, a high risk factor for police brutality, but the circumstances of his death could have occurred under many other scenarios. What if the driver was impaired due to just having had a seizure? What if the driver was impaired due to hearing impairment? What if the driver didn't speak English well and was intimidated by the aggressive posture of the police? My niece is white and has a college friend who is black. When she told her college friend that her cousin Patrick had been shot and killed by police, her black friend said, "Wait, what? Isn't he white? Why did the police kill him?"

Thank you for the opportunity to tell our story.