



**Conclusion of the Review into the Police-Involved Shooting
Death of Danroy “DJ” Henry, Jr.**

July 26, 2023

Westchester County District Attorney Miriam E. Rocah announced in June 2021 that she was initiating an independent review into the 2010 police-involved shooting death of Danroy Henry, Jr., known as “DJ.” The 20-year-old Easton, Massachusetts native, and Pace University sophomore star of the football team, was killed on October 17, 2010, when an officer from the Village of Pleasantville Police Department shot DJ in the vehicle he was driving in the Town of Mount Pleasant. DA Rocah initiated this review at the request of the Henry family and community members to evaluate whether legal grounds existed to convene a new grand jury to investigate DJ’s death, and, if so, what charges could be considered. DA Rocah also undertook this review for a second important purpose: to identify ways in which investigations and the grand jury process could be improved in future cases to be more transparent, fair and compassionate to grieving families like the Henrys.

Conclusions of the Independent Review

The independent review was led by John Gleeson, a retired U.S. District Court judge and former federal prosecutor, and Douglas Zolkind, also a former federal prosecutor, both partners at Debevoise & Plimpton LLP, with several firm associates, who were appointed to serve pro-bono as Special Assistant District Attorneys. As a part of this effort, the Debevoise team reviewed material including the Westchester County District Attorney’s Office (WCDAO) case file, the grand jury transcripts and exhibits, and certain materials from civil proceedings related to the incident. After the completion of the review, the Debevoise team reported to DA Rocah on its findings and recommendations.

The independent review did not identify a basis to resubmit charges to a new grand jury. The bar for doing so is very high under New York law, with good reason, to protect the subjects of such investigations from prosecutorial overreach. Grand jury determinations are final and not subject to resubmission unless a court authorizes it upon a finding of good cause. Courts typically examine whether: (1) new evidence has been discovered since the previous submission; (2) the grand jury failed to give the case a complete and impartial investigation; or (3) there is a basis for believing the grand jury acted in an irregular manner. The most common basis for a finding of good cause to resubmit charges is the discovery of new evidence. New evidence means evidence that the prosecution either did not know or could not have known through the exercise of due diligence at the time of the grand jury presentation. Here, the independent review found there was no new evidence, as described above, and found no other basis to seek court authorization to resubmit charges to a new grand jury. DA Rocah agrees with this conclusion and is grateful to the Debevoise team for the countless hours and dedication they put into doing the careful review necessary to reach a conclusion on this important question.

District Attorney’s Findings

While there was no legal basis to resubmit charges to a new grand jury, that does not mean that the circumstances leading to DJ’s death and the subsequent investigation were handled without flaws as identified by DA Rocah and members of her Executive team, including Amy Finzi, Chief Assistant District Attorney, Tarek Rahman, Counsel to the District Attorney and Wade Hardy, Deputy Chief Criminal Investigator. Given the laws regarding

grand jury secrecy, there are significant limits in what can be publicly stated by the District Attorney's Office. However, based solely on our review of extensive publicly available information, we found areas where reform and change are still necessary to avoid future tragedies and to improve the process for victims and victim's families.

With the benefit of hindsight, based on publicly available materials, DA Rocah and members of her Executive team are of the opinion that DJ's death may have been avoided if better protocols had been in place and the officers involved had received more specific training, all of which could have resulted in the officer addressing the situation through techniques other than stepping in front of a moving vehicle and drawing a firearm. DA Rocah and her team believe the Henry family and the community are entitled to the benefit of that view, especially when, to our knowledge, there has been no other public assessment of the incident. The issues raised in this matter continue to be relevant today. It is often the training, protocols, and techniques leading up to the moment that lethal force is used that demand real and transparent scrutiny, analysis, and change.

Furthermore, in the aftermath of the tragedy, the Henry family and their son's memory were not accorded the respect and compassion that they unquestionably deserved from the police, the WCDAO, and others in positions of authority. For example, compounding the trauma and pain to the family, the day after DJ's death, the then-Mount Pleasant Police Chief publicly stated, incorrectly, that DJ struck one officer, was driving toward a second officer, and that both officers discharged their firearms at DJ's vehicle to stop it. Seven years later, in May 2017, the Town of Mount Pleasant issued a public statement retracting those assertions and acknowledging that the Chief's comments were made "before the events were fully investigated" and that they did not "fully or fairly represent the events of that early morning." Perhaps, most importantly, the retraction stated that the town regretted "the misimpression of...DJ Henry" which caused "additional pain to the Henry family."

Additionally, in DA Rocah and her team's view, the WCDAO should have done more to ensure that the Henry family was treated in the way that we hope and expect for parents suffering the tragic loss of a son. As a result of all of the various interactions with police and prosecutors, the Henry family did not have confidence that the investigation was being conducted fairly and impartially. A key mission of the criminal justice system is to ensure that grieving families believe that a just outcome is reached without fear or favor. That was not accomplished here. As the chief law enforcement officer in Westchester County, DA Rocah offers an official apology to the Henry family.

It is important to announce these failings because these are not purely historical issues. Especially in police use-of-force cases, police and prosecutors should be extremely cautious in issuing statements reaching conclusions on key disputed questions until after an official investigation is complete. And, prosecutors can and must ensure that families of victims in police-involved shootings are treated like families of other victims. When those in the criminal justice system acknowledge where they can do better, the increased transparency leads to more faith and trust in the system. Additionally, and even more critically, it allows for prosecutors and law enforcement alike to take steps to ensure that tragedies like this are not repeated.

District Attorney's Recommendations

Based on her findings, DA Rocah makes the following recommendations:

1. No matter the facts and circumstances, the WCDAO will treat every victim's family with respect and dignity. In matters related to police-involved shootings, as is the practice in other cases, the DA's Office should: (a) ensure that prior to empaneling a grand jury, prosecutors explain the potential charges with families of police-involved shooting victims and answer any questions the families may have about those charges; (b) do everything possible to give victims, families and the public confidence that the investigation is being conducted impartially; and (c) offer our robust victim services, such as trauma therapists, to grieving families. DA Rocah has prioritize the respectful and compassionate treatment of all victims' families during her tenure.
2. All Westchester County police departments should have consistent, updated, and enhanced training and enforcement protocols about how to maximize passenger, driver and officer safety when dealing with situations involving a moving vehicle. Training should focus on minimizing the risk of harm to both police officers and civilians. These real-life scenarios should be practiced with departments across the County. DA Rocah is calling on state and county lawmakers to propose legislation ("DJ's Law") requiring specific training for law enforcement about best practices in different moving vehicle situations.
3. In police-involved shootings, once the grand jury process is complete, an assessment should be conducted by an official entity regarding what, if anything, the police, could have done differently to possibly avoid such a use of force. These assessments should be made available to family members and to the public, to the extent permissible by law. In this case there were no public reviews or assessments.
4. All Westchester County police departments should create protocols for how the police communicate with each other in a chaotic scene involving multiple departments. Even well-trained, highly-resourced police departments are subject to confusion when they are thrown together without sufficient coordination. Westchester County must be especially attuned to this issue because it has 42 departments operating in a small geographic area. Westchester County has made great strides in facilitating law enforcement communication through improved universal technology. Building upon these improvements with specific mutual-aid drills is critical.
5. While recognizing that under current New York state law, the Office of the Attorney General is responsible for investigating any incident where there is a question about whether a death was caused by a police officer, DA Rocah and her team recommend that for all investigations into police-involved shootings, protocols be established to ensure that the police agency investigating the use of force by a police officer is truly independent and not susceptible to undue influence. For example, smaller police departments without dedicated internal affairs bureaus should refer investigations

into the unlawful use of force by one of its own officers to another department and then remain entirely uninvolved. The WCDAO's Public Integrity/Law Enforcement Integrity Bureau will be involved from the beginning of any investigation of a police-involved shooting over which the WCDAO has jurisdiction.

6. The WCDAO will strongly consider exercising prosecutorial discretion to decline to prosecute low-level charges for witnesses of a police-involved shooting incident so relevant testimony is not hindered or prevented. The simultaneous prosecution and ultimate dismissal of charges shortly after a grand jury investigation concludes, as happened in this case, contributes to an appearance that a District Attorney's office is not attempting a comprehensive investigation of all relevant facts.
7. The WCDAO will continue to reinforce a practice that DA Rocah implemented at the start of her administration to consider and submit all viable charges to the grand jury where there are competing, yet equally plausible, interpretations of events.
8. Following the conclusion of grand jury presentations in police-involved shootings over which the WCDAO maintains jurisdiction, the WCDAO should refrain from issuing broad and vague statements, which can be misleading and cause confusion. Instead, the Office should strongly consider moving to unseal the charges submitted to the grand jury, as was done by this Office in the investigation of the killing of Kamal Flowers by the New Rochelle Police Department in 2020.

The District Attorney's findings and recommendations contained herein are based on information obtained and reviewed separate and apart from materials subject to grand jury secrecy and sealing statutes.