

Officer-Involved Shooting Investigation

{ Things to think about ahead of time



Prepare and Train

- ⌘ **No OIS should take an agency or its members by surprise.**
- ⌘ **Establish sound policy and guidance for agency members**
- ⌘ **Train officers on what to expect in an investigation if they are the focus or a witness.**
- ⌘ **Train supervisors about their responsibilities at the scene.**
- ⌘ **Emphasize the distinction between the civil and criminal aspects to agency members.**
- ⌘ **Train investigators in proper interview techniques and agency policy regarding OIS incidents.**
- ⌘ **Provide refresher training and have reminder cards available at the scene.**



Tucson P.D. Example—

Reminder card distributed to
Focus Officers at the scene



Officer(s) Involved in a Shooting or Other Serious Incident

If you have been directly involved in a shooting by firing your weapon, if you are present at a shooting and have a deficiently loaded magazine, or if you are the focus of any other potentially criminal serious incident, you can expect the following things to occur:

If you wish to speak to your attorney prior to being interviewed, you will be given the opportunity to do so. In addition your attorney may be present at your interview, if you so desire.

A cover officer will be assigned to stay with you. The cover officer's job is to look after your welfare and to protect the integrity of the investigation. The cover officer will not let you out of their sight, even if you need to use the rest room. The cover officer must maintain custody of any evidence you may have on your person (weapon, magazines, soiled hands, face, clothing, etc.). The cover officer will also help find a comfortable place for you to wait, and will attend to your needs (water, etc.).

If you have been involved in a shooting, the Homicide supervisor may direct that you be removed from the scene and taken to a substation. This decision will typically result from a phone conversation between the Incident Commander and the Homicide supervisor and will depend on what evidence needs to be collected.

Whether you are kept at the scene or taken to a substation, you may have preliminary contact with a union representative and your attorney if you choose to. If at the scene, this will occur at the perimeter of the scene (for instance at the tape) and in the presence of a cover officer. This may also occur at a substation, in the presence of a cover officer. Keep in mind that this is not a private conversation.

You may initiate or receive a telephone call prior to the collection of evidence by the investigative detail only in the presence of your cover officer.

Soon after the investigative detail (typically the Homicide unit) arrives, the assigned detectives will collect evidence from you (gun, magazines, clothing, photos, etc.). The detective's interest is in collecting evidence at this time.

After the detectives have collected evidence from you, arrangements will be made for you to speak privately with your attorney if you wish.

Depending on the investigation, you may be advised of your *Miranda* rights, and you will be asked if you want to submit to an interview with a Homicide detective and if you are willing to assist with a walk through of the scene. OIA may also interview you, however, that interview will be administrative in nature and will occur after your interview with Homicide Detectives

If you provide an interview and a walk-through, you may remain to hear the preliminary findings of the Pima County Attorney and the Chairperson of the Board of Inquiry, if any preliminary findings are made, or you may go home.

These are guidelines intended to give you an overview of what to do and expect. These guidelines may be altered due to the specific circumstances of any incident.

Why are these procedures necessary?

These procedures are necessary to protect the integrity of the involved officers and of the agency. As an agency, we must not only conduct these investigations correctly, but we must ensure that others perceive that these investigations are done correctly.

Best Practices—DOJ

DOJ investigations, specifically findings letters and consent decree language can provide insight into potential problems with policy or practice deficiencies.

- ✧ Miami 2013
- ✧ Seattle 2011
- ✧ Portland, OR 2012

Common themes from these investigations:

- ✧ Not separating the compelled administrative interview from the criminal investigation.
- ✧ Over-application of *Garrity* in situations where it is inapplicable and inappropriate.
- ✧ Using leading questions in officer interviews to suggest legal theories justifying the use of force in question.
- ✧ Undue delay of administrative investigations.



The Chief's Role—

- ⌘ Maintain neutrality and objectivity
- ⌘ Provide support (e.g. hospital visit, spouse/partner visit) and ensure your agency provide appropriate psychological and peer support.
- ⌘ Remember you will likely be called as a witness in any civil litigation to address your policies, training and the overall actions of your department.
- ⌘ Make sure the “face” of your department for an incident conducts appropriate media and community relations, providing accurate, timely information.



Criminal and Administrative Investigations

In the **CRIMINAL** case the “?” is—

WAS THE USE OF FORCE LEGALLY JUSTIFIED?

- ⌘ Standards set by state law, Constitution and relevant case law (*Graham v. Connor, TN v. Garner*).
- ⌘ Focus officer has 5th Amendment protection and may decline to provide a statement.
- ⌘ **NO INFORMATION FROM THE ADMIN INVESTIGATION MAY BE SHARED.**

In the **ADMINISTRATIVE** case the “?” is—

WAS THE USE OF FORCE WITHIN POLICY?

- ⌘ Statements may be compelled
- ⌘ Employee is not entitled to 5th Amendment protection
- ⌘ Statement is covered by *Garrity*.
- ⌘ Information from this investigation must be walled off from the criminal side to avoid taint and possible loss of criminal charges.

Public Safety Statements



An OIS presents an immediate, overriding need to take action to secure the scene and ensure safety

- Officers involved in an on-duty shooting may be asked certain questions without waiting for a representative. The information sought immediately after an OIS is intended to aid in locating injured persons, securing weapons and evidence to prevent tampering or destruction, and apprehending suspects who pose a continuing danger to the community.



Safety and Scene Security

Any questions posed to involved officers should be tailored to:

- **presence of any weapons or evidence**
- **shots fired that may have harmed anyone, and**
- **dangerous persons who may still be at large.**



Obtaining Critical Information

The following slides contain sample questions that are appropriate and necessary for the initial incident commander or a first responder to ask. They are designed to elicit the critical information necessary for scene management and public safety. This list of questions is not exhaustive, and they do not have to all be asked verbatim, but it is expected that incident commanders will attempt to obtain the underlying basic information.



Obtaining Critical Information

- ⌘ Are you, or is anyone else, injured?
- ⌘ What happened? (Seems intuitive, but it's appropriate to ask)
- ⌘ Did you fire your weapon?
- ⌘ Where were you when you fired?
- ⌘ How many rounds did you fire?
- ⌘ In what direction did you fire?
- ⌘ Did anyone else, either officers or suspects, fire a weapon?
- ⌘ Do you remember how many shots were fired by others?
- ⌘ In what direction did others, including any suspects, fire?
- ⌘ Who or what was struck by any rounds?
- ⌘ Are you aware of any evidence that should be preserved?



Obtaining Critical Information

- ⌘ How many suspects did you observe?
- ⌘ Did any suspects flee?
- ⌘ If so, describe what direction, and provide any descriptive information you remember about the suspects.
- ⌘ Were they armed?
- ⌘ Do you know where any other involved parties may be?
- ⌘ Were any weapons tossed or discarded by anyone?
- ⌘ If so, do you know where they are?



Video—To View or Not To View

- ⌘ Not enough “science” to definitively answer what viewing may do to memory.
- ⌘ Circumstances may dictate an approach (evidence of misconduct) making a “one-size-fits-all” answer untenable.
- ⌘ Defense of an officer is based upon application of *Graham* and a matching story is not necessary (and perhaps not desirable).
- ⌘ Community standards and unions may necessarily inform a Chief’s approach.
- ⌘ Factors such as camera angles/viewpoint are relevant and should be considered.
- ⌘ Community expectations.
- ⌘ Training to understand the psychological and physiological effects on officers and the limitations of video (i.e. neither is probably complete or definitive and may sometimes reflect differing but valid information. Never employ a “Gotcha” strategy!



Worth Mention—*Graham v. Connor*, 490 U.S. 386 (1989)

- A law enforcement officer's actions when using force are analyzed under a standard of whether it was “objectively reasonable, in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”
- Court cautions against applying 20-20 hindsight to the analysis of whether a use of force was reasonable from the officer's perspective.

OFFICER PERCEPTION AT THE TIME THE FORCE WAS USED IS THE KEY ISSUE IN WHETHER THE FORCE WAS REASONABLE.

Defending your officers and agency—

- ⌘ Implement use of force and OIS policies consistent with best practices (IACP, PERF, DOJ, CALEA)
- ⌘ Conduct regular training on policies, and practical use of force and firearms exercises
- ⌘ Keep good training and weapons qualification records
- ⌘ Conduct thorough, unbiased investigations
- ⌘ PRESERVE EVIDENCE! Use a checklist to ensure you preserve and maintain what you need for trial



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THANK YOU!

