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**Administrative Investigations of  
Police Shootings and Other Critical Incidents:  
Officer Statements and Use of Force Reports**

**Part One: The Prologue**

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**A. Introduction**

A police chief or sheriff would like to read an internal report on an officer-involved shooting at least two hours before the TV news team arrives.

A police psychologist is likely to observe that the ideal time for the officer's statement to be taken is after one or more debriefing sessions, several days after the event. A police psychologist is familiar with auditory and visual exclusion in times of stress, and is likely to believe that an officer's memory will improve when he or she is interviewed in a group setting.

Unions have sought statutory or bargaining agreement clauses that delay taking a statement, where disciplinary action can result, for up to 72 hours. In one state, that time was increased to ten days after an interview request is made. [1]

Always wary of collusion, news commentators, civil rights activists and some internal affairs commanders are suspicious of post shooting debriefings where all of the responding officers participate in a joint session. A few have even said that officers

involved in shootings should not be allowed to view dashboard camera or other videotapes before their statements are taken.

But many psychologists are of the belief that viewing a videotape of an incident is likely to enhance an officer's memory, and a resulting statement is more likely to be factually accurate.

This article will address several contemporary issues:

1. What information needs to be obtained from an officer who has killed or wounded a suspect, before the officer is placed on paid, administrative leave?
2. How long should investigators wait, before formally interviewing an officer who has used deadly force?
3. Should officers be interviewed together or separately?
4. Should they be allowed to be accompanied at the interview by an association representative or attorney?
5. Who should complete the Use of Force Report? The involved officer(s), the field supervisor, or a member of the incident investigation team?
6. Should the involved officer(s) be allowed a walk-through before giving an interview to investigators?
7. If there are videotapes, should the officer(s) review them before or after the formal interview?

Part One of this article does not directly answer these questions. It focuses on the debate that has arisen in the criminal justice community and identifies research documents, recommendations, guidelines and criticisms. It also discusses a few cases where a gag order applied to officers that were the subject of an internal investigation.

Part Two will examine two IACP Model Policies on Post-Shooting Incident Procedures and Reporting Use of Force – along with recommendations for implementation.

Part Two will also feature an extensive list of books, scholarly and practical articles, research reports and studies.

## **B. PARC recommendation - sequestration**

Police Assessment Resource Center (PARC) is a Los Angeles based not-for-profit organization affiliated with the Vera Institute of Justice in New York. It undertook a study of police shootings in Portland, Oregon. It resulted in three reports between 2003 and 2006.

The August 2005 report contained the following:

## **II. Officer Sequestration**

### **A. Recommendation 4.6:**

The PPB should issue a policy expressly forbidding all officers who participated in or witnessed an officer-involved shooting or in-custody death from discussing the incident with any person (including other involved or witness officers) other than their immediate supervisor, unit commanding officer, union representative, attorney, a medical or psychological professional, and PPB investigators until they have completed comprehensive, taped interviews in the criminal and, if needed, administrative investigations. In discussing the incident with their immediate supervisor or unit commanding officer during this period, officers should provide only that information necessary to secure the scene and identify the location of physical evidence and witnesses.

### **D. Recommendation 4.8:**

The PPB should require that supervisors arriving at the scene of an officer-involved shooting or in-custody death incident ask each officer at the scene what, if any, discussions regarding the incident have occurred prior to the supervisor's arrival. The supervisor should then brief investigators immediately after they arrive at the scene concerning the answers to those inquiries.

### **E. Recommendation 4.9:**

The PPB should require that involved and witness officers be physically separated immediately after the scene has been secured, and that the officers remain sequestered (i.e., unable to communicate with each other) until they have submitted to a comprehensive, taped interview by investigators.

### **F. Recommendation 4.19:**

The PPB should establish policies that ensure that each officer who was involved in or witnessed an officer-involved shooting or in-custody death incident does not participate in a Critical Incident Stress Debriefing (CISD) meeting prior to submitting to a comprehensive, tape-recorded interview in the investigation of the incident.

## **B. PARC recommendation – contemporaneous interviews**

The report then added:

### **III. Interviewing Involved Officers Contemporaneously Recommendation 4.3:**

The Bureau should revise its policies to make clear that investigators should always strive to obtain a contemporaneous, tape-recorded interview of involved officers. Such a policy would not only ease doubts about officer collusion, but place officers

and civilians on the same footing. In addition, in those cases where an officer declines to provide a contemporaneous interview, investigators should be required to thoroughly document their efforts to obtain the interview, including (1) when the request was made, (2) to whom it was directed, and (3) the reason(s) for the declination.

**Recommendation 4.5:**

The PPB should study the Phoenix system of obtaining contemporaneous statements, in which all involved or witness officers are ordered to speak to Internal Affairs investigators no later than a few hours after the deadly force or in-custody death incident, regardless of whether they have already given a voluntary statement to Homicide investigators. The IA interview, which is walled off from Homicide and the District Attorney, is used solely in connection with the agency’s administrative and tactical review of the incident.

**D. IACP guidelines:**

PARC’s Portland recommendation for a **contemporaneous interview** (no later than a few hours) conflicts with the Officer-Involved Shooting Guidelines, adopted by the IACP’s Police Psychological Services Section: [2] The Guidelines state:

“Ideally, the officer should be provided with some recovery time before detailed interviewing begins. This can range from a few hours to overnight. Officers who have been afforded this opportunity are likely to provide a more coherent and accurate statements. Providing a secure setting, insulated from the press and curious officers, is desirable during the interview process.”

PARC’s recommendation for **officer sequestration** also conflicts with the IACP’s Officer-Involved Shooting Guidelines: [3]

“The option of talking to peers who have had a similar experience can be quite helpful to personnel at the scene. Peer support personnel may also be an asset participating in group interventions in conjunction with a mental health professional, and can be an asset in providing follow-up support.”

**E. Partial memory loss studies:**

Various psychiatrists, psychologists and sociologists have surveyed police officers that have been involved in a shooting.

University of Missouri Prof. David Klinger’s 2001 research was funded by the National Institute of Justice. He found, in a study of 113 officers, that 21 of them thought they had fired less rounds, 4 thought they had fired more, and 9 had no idea how many rounds they

had fired. [4]

In 2002 four psychiatrists revealed the results of their survey of 115 federal and local law enforcement officers that were attending the FBI National Academy. They found that 19% of the law enforcement officers reported varying forms of memory impairment for details of the incident. Only 47% of the sample reported having a clear memory of a traumatic incident. [5]

In 2002 police psychologist Alexis Artwohl reported on a survey of 157 officer-involved shootings. 52% suffered memory loss for part of the event, and 46% experienced memory loss for some of their own behavior. [6]

Dr. Artwohl followed up with a 2003 article chronicling instances where officers had no recall of firing their weapons. She wrote: [7]

“... incidents in which the officers do not remember discharging their weapons will continue to be a fact of life for law enforcement ... When officers have failed to remember having a weapons discharge, it is a mistake to automatically assume that the officer must be lying. There is ample psychological research which shows that memory gaps and distortions are a normal part of critical incidents.”

In 2004 police psychologists Audrey Honig and Steven Sultan published a study of 982 L.A. County Sheriff's officers involved in shootings or other life threatening incidents, including 348 surveyed in a similar survey in 1998. Most of the data was obtained within 3-5 days of the incident, just prior to the deputy participating in a mandatory post shooting/incident intervention (PSI).

They found that 20% of the officers surveyed in 2004 had a partial memory loss; the amount was 22% in the 1998 survey. [8] They noted that

“What appears to be relatively common perceptual disturbances that occur as a function of being involved in a critical incident have the potential of opening the officer up to accusations of either outright lying or withholding the truth, as well as apparent miscalculations in response (i.e., seeing a weapon when one is not really there). In the absence of a completed memory, the natural tendency is toward confabulation or ‘filling in the blanks.’ Over time, the officer may become even more convinced that his or her faulty perceptions are valid, even in the face of physical evidence to the contrary. \* \* \*

“... officers often report recalling details of the event during the PSI, that they had not previously remembered. This is likely due to issues related to memory storage and recall, and its interface with the debriefing process, wherein emotions are used as a method by which more detailed information can be accessed. Additionally, factors of

time delay allow the officer's memory an opportunity to process and organize the information which further enhances recall.”

## **F. Force Science Research Center response**

The Force Science Research Center (FSRC) of the University of Minnesota at Mankato responded to PARC's recommendations with three news bulletins: [9]

The first FSRC news bulletin (#36) asked:

“How do you think an officer should be treated after he has shot and killed an offender:

- A. “Like a suspect or a civilian witness--required to give a statement ASAP... isolated for fear he'll collude with others to concoct a self-serving fairy tale of what happened... interrogated rather than interviewed, with every discrepancy and hole in his version of events regarded suspiciously as probable evidence of deceit?”
- B. “Like a survivor of a critical incident--given time to de-escalate and mentally process the high-stress encounter before being extensively questioned...allowed to walk back through the confrontation to clarify what took place...interviewed with techniques that enhance and effectively ‘mine’ memory...regarded as truthful.”

In the second news bulletin (#41) Prof. Bill Lewinski – who has a Ph.D. in psychology, wrote:

“Involved officers should not be isolated. Each should have a peer-support person or friend of their choice who was not involved in the shooting available to them, beginning as quickly as possible after the incident.”

In the same bulletin, Police Chief Jeff Chudwin, who is President of the Illinois Tactical Officers Assn. and a former prosecutor, also warns against contemporaneous statements:

“The extreme rise and continued presence of high blood pressure is very real in OIS situations. It takes only seconds to increase blood pressure but many hours to decompress. I've assisted officers at the hospital over 90 minutes after a shooting who still registered 60 points above normal.

“No statement that an officer's life and career rests upon should be made in an impaired state, and I believe very high blood pressure along with the residual adrenaline reaction creates such a condition.”

FSRC News # 41 also added:

- In most circumstances, it is best for the officers to go home, get some quality sleep, and wait **for 24-48 hours** after the shooting to give a statement.
- An officer's memory often will be helped by revisiting the scene and doing a walk-through after evidence and evidence markers have been removed and before being interviewed. Memories will be made much richer by a walk-through...because the involved officer will recognize things in the shooting environment that will stimulate his recall.

More recently Dr. Artwohl reminded investigators that memory is not a flawless videotape. She noted that "it can change over time and the additional memories that surface during later statements may or may not be a more accurate representation of reality."

Investigators should remember that "if an officer's recollection of an event is not a totally accurate representation of reality, it does not necessarily mean the officer is lying or trying engage in a cover-up." [10]

A panel presentation addressed these issues at the 2006 IACP annual conference in Boston, MA. Management, labor, the news media heard and responded to the post-incident surveys discussed by Dr. Artwohl and Dr. Lewinski. The moderating chief, who is chair of the IACP Professional Standards Committee, called for further dialogue and the adoption of a "best practices" guide. [11]

### **G. Are gag orders lawful?**

Following a controversial shooting, a few officers have coordinated their stories to deflect criticism or even to obstruct an objective inquiry. A gag rule does not prevent improper collusion, but it does make it easier to punish it, when it is uncovered.

Florida statute §112.533(4) made it a misdemeanor for a participant in an internal investigation of a law enforcement officer to disclose any information obtained pursuant to the investigation before it becomes public record:

"Any person who is a participant in an internal investigation, including the complainant, the subject of the investigation and the subject's legal counsel or a representative of his or her choice, the investigator conducting the investigation, and any witnesses in the investigation, who willfully discloses any information obtained pursuant to the agency's investigation, including, but not limited to, the identity of the officer under investigation, the nature of the questions asked, information revealed, or documents furnished in connection with a confidential internal investigation of an agency, before such complaint, document, action, or

proceeding becomes a public record as provided in this section commits a misdemeanor of the first degree ...”

The constitutionality of the statute was questioned in a case argued before the Eleventh Circuit. Counsel for the Key West police chief argued that the statute:

- (1) maintains the integrity of the investigative process by shielding potential witnesses from information which could alter their testimony;
- (2) protects the reputations of wrongfully accused officers; and
- (3) protects the privacy interests of complainants, witnesses, and persons conducting the investigations.

The chief also argued that the statute was narrowly tailored to serve those interests because:

- (1) it limits only the speech of participants in an investigation;
- (2) it applies only to speech obtained pursuant to the investigation; and
- (3) it prohibits speech only for a limited time until the investigation becomes public record.

However, a three-judge panel of the Eleventh Circuit ruled that the law impermissibly infringed on the First Amendment. They rejected the proposition that the maintenance of the integrity of an investigative process constituted a sufficiently compelling justification for a content-based restriction on speech, such as imposed by the Florida statute.

The panel explained that while courts have recognized that secrecy and confidentiality may be constitutionally permissible as to grand jury proceedings or in some trial settings, “the context of a police internal investigation can be distinguished from such litigation-related activities which historically have been afforded greater protections for their confidentiality.”

[Cooper v. Dillon](#), #04-11150, 403 F.3d 1208, 2005 U.S. App. Lexis 4703; reh. En banc denied, 2005 U.S. App. Lexis 23493 (11th Cir.).

Earlier the Seventh Circuit also addressed the issue. Under a 1998 directive, when a Milwaukee police officer would lodge a complaint against another officer, the complaining officer was to be instructed not to discuss the matter with anyone except members of the Internal Affairs Division.

Another directive said, excluding EEOC complaints, that “Complaining members are instructed that they **cannot talk to anybody** regarding the matter under investigation; this includes their lawyer and/or union representative.”



The union brought suit in state court, which was removed to federal court by the city. The chief testified that the directive was limited to labor unions and did not apply to individuals to whom a privilege would attach, such as a priest, psychologist, health care professional, or an attorney.

The police chief also rescinded the directives but “reminded” officers of a rule requiring officers to “treat as confidential the official business of the Department.” The District Court issued a Temporary Restraining Order and the chief appealed.

Before the Seventh Circuit, the chief claimed that the controversy was moot, because he had rescinded the controversial directives. The three-judge panel then remanded the action, and instructed that “the district court will have to determine whether injunctive relief is still appropriate, or whether only declaratory relief is available.” [Milwaukee Police Assn. v. Jones](#), #98-2904, 192 F.3d 742, 1999 U.S. App. Lexis 23357, 15 IER Cases (BNA) 961 (7th Cir.).

On remand, following a settlement conference, counsel for the union reported that the parties had reached a complete compromise. The case was dismissed with prejudice. [Milwaukee Police Assn. v. Jones](#), #2:98-cv-00597, PACER Docs 43 & 44 (E.D. Wis. 2000).

In a third case, an unpublished arbitration award, an arbitrator sustained the punishment of a corrections officer who disobeyed a policy against discussing a pending internal investigation with one’s coworkers. [Minn. Dept. of Corr. and AFSCME C-6](#), RMS #96-PA-2070 (Imes, 1996), summarized at 1997 FP 132-3. The constitutionality of the policy was **not** an issue, however.

In Virginia, a police officer was fired for discussing a pending investigation with a TV news reporter. In a suit filed in federal court, the officer asserted that he was dismissed in retribution for the exercise of his First Amendment right to freedom of speech. The Chief Judge wrote:

“Clearly, a governmental employee does not surrender his constitutional right of freedom of speech simply by virtue of his employment status. However, it is equally clear that an employee cannot indiscriminately invoke his First Amendment freedom, as a bar to discharge for cause, when his utterances become disruptive of his own work and injurious to the efficiency of his employment unit.”

While case did not involve a conversation among coworkers, the issue of conversation disrupting of an ongoing investigation would also be present in the latter situation. [Ely v. Honaker](#), 451 F.Supp. 16 (W.D.Va. 1977).

This article continues in Part Two.

**Notes:**

1. Maryland Law Enforcement Officers' Bill of Rights §3-104(j).
2. IACP Psychological Services Section (2004). [Officer-Involved Shooting Guidelines](#), §5.
3. Id. §17.
4. Klinger, Prof. David (2001). [Police Responses to Officer-Involved Shootings](#) (NIJ research study, Univ. of Missouri-St. Louis).
5. Rivard, J., Dietz, P., Martell, D. & Widawski, M (Sep. 2002). Acute dissociative responses in law enforcement officers involved in critical shooting incidents: the clinical and forensic implications, 47 (5) *Journal of Forensic Sciences* 1093-1100. Presented at the 53rd Ann. Mtg., American Academy of Forensic Sciences and the 32nd Ann. Mtg., American Academy of Psychiatry & the Law.
6. Artwohl, Alexis, Ph.D. (Oct. 2002). [Perceptual and Memory Distortion During Officer-Involved Shootings](#), 71 (10) *FBI Law Enforcement Bulletin* 18-24.
7. Artwohl, Alexis (May, 2003). [No Recall of Weapon Discharge](#), 3 (2) *Law Enforcement Executive Forum* 41-49.
8. Honig, Audrey & Sultan, Steven (Dec. 2004). [Under Fire - Reactions and Resilience: What an Officer Can Expect!](#), 71 (12) *Police Chief* 54.
9. Force Science News [#36](#), Jan. 20, 2006 (Post Shooting Investigations: Are controversial recommendations about officers in shootings really valid?); Force Science News [#41](#), Mar. 31, 2006 (How to Assure Fair, Neutral & Fact-Finding [in] Officer-Involved Shooting Investigations - Part I); Force Science News [#42](#), Apr. 14, 2006 (Part II).
10. Artwohl, Alexis (Mar. 24, 2008). "[Perceptual and Memory Distortions During Officer Involved Shootings](#)," a presentation at the Fourth AELE Lethal & Less Lethal Force Workshop, San Francisco, CA.
11. Members of the IACP panel were:  
Chief Charles A. Gruber, IACP Past President, St. Charles, IL, Moderator

Alexis Artwohl, Ph.D., Survival Triangle Training, Tucson, AZ  
Jack Collins, J.D., Massachusetts Chiefs of Police Assn., Boston  
Austin M. Joyce, J.D., Worcester, MA (union attorney)  
Bill Lewinski, Ph.D., Force Science Research Center, Mankato, MN  
Donovan Slack, Reporter, City Hall Bureau/News, the Boston Globe

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