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In this issue:

What's next after a shooting? Force Science-based trio share their recommendations

After an OIS:

- What 12 questions should an officer answer at the scene?
- Besides wound treatment, what critical benefits does he or she gain from prompt transport to a medical facility?
- What does an agency gain by encouraging an officer to have independent legal counsel before a detailed statement is taken?
- What question do cops most want answered when the smoke clears?

These are just a few of the procedural issues addressed late last month at the annual IACP conference in Chicago during a fast-paced, 2-hour presentation called “Chief, I’ve Been in a Shooting: What Happens Next?”

The panelists who spoke to the standing room only crowd all have Force Science credentials. John Bostain, a program specialist with the Federal Law Enforcement Training Center, and prominent police attorney Laura Scarry are certified Force Science Analysts, and Dr. Edward Geiselman, a psychology professor at UCLA, is a faculty member for the certification course.

Their goal: to illuminate from their unique perspectives how an agency can best assure a thorough, competent investigation of an officer-involved shooting.

Unfortunately, said Bostain, “Many OIS investigations tend to be adversarial from the beginning. When detectives talk to the involved officer, it’s too often like the interrogation of a suspect, focused on trying to detect deception and get a confession.”

With the wrong tone and approach, he said, “things done in the aftermath of a shooting can cause more trauma than the shooting itself.”

As an example, he cited the shattering experience of New Mexico officer Shannon Brady, whose deplorable treatment after fatally shooting a knife-wielding attacker was first detailed in Force Science News.

“We have tons of training on how to shoot a gun, but we don’t have training on what agencies should do after an OIS,” Scarry observed. “This is an area we need to spend more attention to. If we don’t, we’re going to have jury verdicts in favor of bad guys and more criminal indictments of officers.”

The panel’s recommendations for a humane and productive “best practices” protocol included these highlights:

ON-SCENE COMMENTS

Bostain maintained that an involved officer’s comments at the scene should be strictly limited to a “very brief public safety statement.” One sample he likes was drafted by the Mount Prospect (IL) PD and requires that an officer answer only these questions:

1. Are you injured?
2. If you know of anyone who was injured, what is his or her location?
3. In what direction did you fire your weapon(s)?
4. If any suspects are at large, what are their descriptions?
5. What was their direction of travel?
6. How long ago did they flee?
7. For what crimes are they wanted?
8. With what weapons are they armed?
9. Does any evidence need to be preserved?
10. Where is it located?
11. Did you observe any witness(es)?
12. Where are they?

“Questions that have nothing to do with public safety should not be asked at that time,” Bostain said. Initial information about the shooting circumstances likely can be gathered from video recordings, witness statements, dispatch exchanges, and similar sources to get the investigation started.

“Due to the immediate need to take action,” Mount Prospect requires that officers answer these questions without waiting for legal or union representation. “This is not a formal interview,” Scarry explained. “But officers need to be trained on these questions so they understand their importance and necessary limitations.”

Once the inquiries are answered, the officer should be cautioned not to discuss the incident further, except with legal counsel, before giving a formal statement. Under Mount Prospect’s policy, a thorough interview is not conducted until the officer has experienced a minimum of 2 sleep cycles, unless the officer and his attorney agree otherwise.

Rest is important, because stress and fatigue negatively impact memory, Geiselman pointed out. “You may feel like you are ready to be interviewed but your memory really isn’t,” he said.

Scarry noted, “There is no statutory requirement anywhere mandating that a statement must be given within a certain time frame. Any deadline is arbitrarily set by the agency itself.”

Bostain added that “investigators may also benefit from rest before going into an officer interview,” particularly if they have been working long hours on the investigation up to that point.

HOSPITAL TRANSPORT

After the public safety statement, Scarry favors immediate transport of the involved officer(s) to a medical facility, “even though some cops don’t think they need to go there after a shooting.” There may be injuries--even gunshot wounds--or disturbances in vitals that they’re not aware of because of “masking from the adrenalin rush.”

There are other benefits besides treatment. “This is a controlled, secure environment where an officer can get away from news and cell phone cameras” that might otherwise feed intrusive footage of him from the scene to TV and YouTube, Scarry said.

Also, she pointed out, officers on some departments may be pressured inappropriately by supervisors “to give a statement before the end of shift or write a report about the shooting before they go home.” At a hospital, she said, an officer can explain to a doctor that he’s keyed up from the stress of the incident and request a Valium. “If he’s sedated, he can’t be required to give an immediate statement,” she said.

LEGAL REPRESENTATION

An agency has a stake in whether an involved officer gets independent legal counsel after a shooting, Scarry stressed. “With good legal representation, the officer may be able to avoid civil liability in litigation resulting from the shooting,” she said. “In a vast majority of cases, if an officer is not liable, the chief and the city are not likely to be liable either. By looking out for the best interests of the officer, the agency benefits itself as well.”

For an officer to have access to an attorney experienced in shooting investigations immediately after an OIS should not be viewed as a “conspiracy to cover up bad actions,” she said. “As an officer’s attorney, I start with the premise that I am searching for the truth, which should be the same goal of administrators and investigators.

“By the same token, I’ll be looking at everything with an eye toward what will eventually be up on a big screen in a federal courtroom. A judge or jury is going to be judging every piece of information put down on paper during the investigation, and an attorney can help assure that what’s collected from the involved officer is fair and reasonable.”

Her greatest concern as a police lawyer, she said, is “an officer talking too much” about the shooting. “What’s shared with fellow officers, supervisors, administrators, investigators, and most others is legally discoverable,” she explained. “An officer can be deposed on each conversation and so can the other individuals involved. There will inevitably be contradictions and inconsistencies that plaintiffs’ attorneys can thrive on.”

Because of attorney-client privilege, an officer can share or ask anything he wants in conversations with his lawyer without that dialog being subject to unwanted disclosure. “The attorney becomes an important filtering agent,” Scarry said.

She emphasized that it’s important for officers to arrange for competent on-call legal representation before it’s needed. A lawyer automatically provided by a police union may not necessarily be best suited to handle the challenges of an OIS investigation, she warned. “Union attorneys typically know about contracts, disciplinary hearings, and labor negotiations, but the vast majority do not have experience with shooting cases where complex constitutional issues may be involved.”

Before a formal statement or interview, Bostain recommended that an officer walk through the shooting scene with only his attorney present. Research has shown that “this will improve recall by 50% to 70%,” he said.

Don’t video this event, he advised. “You don’t know what reaction an officer is going to have the first time he returns to the scene. You may not want that caught on tape.”

INTERVIEW STRATEGY

FSN readers and certification class graduates are familiar with the cognitive interviewing technique developed by Dr. Geiselman and his research partner, Dr. Ron Fisher. Their

method is “ideally suited” as a research-based replacement for the adversarial interrogation-type approach in OIS investigations, Geiselman told the audience. “Easy to train and understand, it produces the most complete read-out of the memory record and reveals the involved officer’s state of mind, which is important to investigators.”

In contrast to standard interrogation, cognitive interviewing stresses rapport building and a cordial, conversational collaboration in mining memory. Once the officer is comfortable with the interviewer, the process usually begins with having the officer mentally go back to the shooting scene before the event started to unfold.

“This is a potent element,” Geiselman said. “When you experience something, it unavoidably becomes associated with context, so to best retrieve what happened the officer needs to put himself back in that context.”

Then he is encouraged to give a free-flowing narrative of events. In the usual suspect interrogations, Geiselman said, investigators interrupt the subject about every sentence and a half. But in cognitive interviewing, an officer’s narration is initially uninterrupted. Later on, the interviewer may seek elaboration or clarification, employing to the fullest extent possible open-ended questions and various proven memory-jogging techniques.

Overall, the interviewee does about 80% of the talking, the reverse of the usual suspect interrogation, Geiselman said. “Done well, the cognitive approach can expect to elicit 50-55% more information than a typical interrogation, without compromising accuracy.”

Although the shooting encounter may have lasted only seconds, a successful interview may take up to 3 hours, he explained. He recommended that the officer’s attorney be present and that the session be conducted in a setting of the officer’s choosing, “not in the traditional suspect interrogation room.”

Bostain added that many investigators “falsely believe that an officer will remember everything that happened” regarding a shooting. In reality, “unexpected events may produce a greater deficiency of memory than those that are anticipated. An officer’s answer to a lot of questions may be, ‘I don’t know,’ and that is not necessarily a sign of deception.

“If we ignore the way science says the brain works,” he said, “we are not getting closer to a fair and competent investigation.”

CALL TO ACTION

Quoting Atty. John Hoag, a Force Science certification instructor, Bostain reported that the most important thing officers want to know after an OIS is “What’s going to happen now?”

“Are you ready to answer that question?” he asked the audience. “There is a difference between a post-shooting policy and a scene-management policy, which is what most

agencies have. If you don't have a comprehensive post-shooting policy in place, for the benefit of your agency, your officers, and your community please do something about it."

Note: An excellent bound handout, created by Bostain, accompanied this IACP session. Titled "Officer-Involved Shooting Workshop," it includes a 2-part Police One report on post-shooting "legal first aid," IACP's OIS guidelines, recommendations on officer statements and use-of-force reports from Americans for Effective Law Enforcement, Mount Prospect's post-shooting policy, and articles on memory and investigative "best practices."

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