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Officer Involved Shooting Statements: Wait

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ABSTRACT

An officer-involved shooting is one of the more high profile events that a police department will deal with. The proper investigation of which is important for the involved officer, the department, and the citizens served by the department. The investigation is important for the officer because his/her reputation and livelihood are at stake. It is important for the department because the department's credibility with its citizens hinges on the knowledge that a detailed, accurate, and unbiased investigation is conducted. The shooting officer's statement will be one of the most crucial elements of the investigation. Therefore, it is necessary to get the best statement possible from the officer. To accomplish this, police departments should give the shooting officer at least 24 hours, with a decent night's sleep inclusive, before requiring a statement from the officer.

A review of articles, internet sites, periodicals, and journals was conducted to gather research detailing the affects that a traumatic event, like an officer-involved shooting, has on a person. The review was also to learn how to mitigate these affects. Learning to recognize the affects and then to mitigate them will lead to the ultimate purpose, which is to get the best information from the involved person as possible.

The perceptual and memory problems that are inherent in a traumatic event are alleviated by the passage of time, particularly when sleep is involved (Grossman & Siddle, 2001; Honig & Lewinski, 2008). Police departments' policies and procedures should reflect the research on this subject and give officers involved in a traumatic event adequate time before requiring a statement from them.

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INTRODUCTION

One of the most traumatic events a police officer will ever be faced with in the course of his/her career is the use of deadly force, especially when it means shooting someone. This event is referred to as an officer-involved shooting. The amount of scrutiny that arises after an officer-involved shooting is intense. A point clearly stated in a concepts and issues paper written by the IACP National Law Enforcement Policy Center (1999):

The seriousness of officer-involved shootings cannot be overstated. The reputation and often the career of involved officers often depends upon whether a full and accurate determination can be made of the circumstances that precipitated the event and the manner in which it unfolded. The critical nature of these investigations is also underscored by the frequency with which these incidents result in civil litigation. ("Investigation of Officer-Involved Shootings", p. 1)

The scrutiny is on the police department as well. The public expects a thorough and unbiased investigation. Anything short will put the department's professionalism and the public's trust in the department in question ("Investigation of Officer-Involved Shootings", 1999). To ensure a thorough investigation, all the evidence must be handled properly. This includes one of the most important pieces of evidence, the shooting officer's statement.

Since a detailed and accurate account of the event from the shooting officer will make the investigation more efficacious, the statement should be taken under the best circumstances possible. Ensuring the best circumstance means understanding that an officer-involved shooting is a traumatic event and that the officer will feel the effects of that trauma rendering the sought after detailed, accurate account unlikely if the statement is compelled too soon after the shooting. Grossman and Siddle (2001)

indicated that because of a number of biological responses the body undergoes during a traumatic event, an officer may suffer post-incident amnesia where memory will suffer. Officers understand that they are responsible and will have to answer for all the choices they made during an officer-involved shooting. It is important to recognize that the scientific research on perception and memory shows that people seldom are able to recall incidents verbatim (Artwohl, 2002).

Providing the shooting officer time away from the traumatic event and the opportunity at sleep will enhance the likelihood of getting the type of statement that is desired. Just the passage of time helps the quality of memory (Honig & Lewinski, 2008), and memory can actually recover during a good night's sleep, giving a purer remembering of the totality of the event (Grossman & Siddle, 2001). Furthermore, sleep, specifically REM (rapid eye movement) sleep, after a traumatic event will significantly enhance that person's recall's detail and accuracy (Artwohl, 2002).

The importance of securing an accurate statement from the shooting officer involved in an officer-involved shooting is clear. So is the scientific research, which shows that traumatic events negatively affect memory. The research also pointed out that a waiting period after a traumatic event will increase the quality of memory. Police departments should give the shooting officer in an officer-involved shooting at least 24 hours, with a decent night's sleep inclusive, before requiring a statement.

POSITION

The acquisition of the most detailed and accurate statement from the police officer involved in an officer-involved shooting is in the best interest of the officer, the police department, and the public ("Investigation of Officer Involved Shootings", 1999;

Grossman & Siddle, 2001). To accomplish this goal, it must be remembered that police officers are human and subject to the physiological affects produced by a traumatic situation, and it must be known how to account for and lessen these affects. Honig and Lewinski (2008) stated that “An understanding of the science of human factors in force encounters needs to become an integral part of the investigation. Expectations that officers can defy the laws of science and exceed the limits of human performance are unrealistic” (p.146).

The traumatic event, or critical incident, impairs, among other things, perception and memory recall. These impairments are partially due to chemical reactions from adrenaline and hormones produced by the body in a traumatic situation (Honig & Lewinski, 2008). Police officers, by the very nature of their job, are more apt to be exposed to a traumatic event. They respond to traumatic situations one after the other and have the added stress of knowing that they are expected to handle everything correctly and then, afterwards, recall everything correctly. What the public, police administration, police investigators, prosecutors, and defense attorneys, should recognize is that memory problems after traumatic situations will usually occur and that “the greater the stress, the greater the potential will be for these memory problems to occur” (Grossman & Siddle, 2001, para.1).

The acute stress that is inherent in a traumatic event/critical incident, such as an officer-involved shooting, is pervasive at all points and will influence memory and memory recall (Grossman & Siddle, 2001; Honig & Lewinski, 2008; Lewinski, 2002; Welford, 1980). Acute stress situations can cause perceptual problems such as fixation, tunnel vision, and auditory exclusion (Artwohl, 2002; Grossman & Siddle, 2001;

Honig & Lewinski, 2008), which will, in turn, affect an officer's ability to process situation. These perceptual problems cause a reduction in what the brain can collect, compare, and examine during an event. The stress hormones that are released in the brain, along with the aforementioned perceptual problems, many times lead to "critical incident amnesia" where information is not readily remembered following a traumatic event (Grossman & Siddle, 2001, para. 3). Those charged with investigating or reviewing officer involved shootings need to be aware that "after a critical incident, much of the information may still be in the brain, but it has not been processed in such a manner that it can be retrieved" (Grossman & Siddle, 2001, Memory Reconstruction section, para.1).

It is understood and proven by research that the stress created by traumatic events negatively affects perception and memory. The question to answer now is how these affects are mitigated in order to get the best possible statement from a shooting officer. The information that is needed for a detailed, accurate account is there in the brain, but because of perception problems and stress, it may not be in a usable form (Grossman & Siddle, 2001). Officers need to be given a chance for their brains to consolidate the information it took in during the traumatic event. Time is the key. Simply waiting will improve memory; this is apparently due to a calming down period where stress is lessened and because sleep has been shown to be a time where memory is consolidated (Honig & Lewinski, 2008). Most police department's policies instruct investigators to remove the shooting officer from the direct scene to a calmer environment, usually in the company of a peer. This protocol serves to start a decompression process; however, fewer departments advocate that the officer be given

time with a chance at a decent night's sleep before being required to give their statement.

Research showed that sleep is an integral part of memory restoration. Sleep, specifically the REM cycle (dreaming state), is when previous information can be integrated (Honig & Lewinski, 2008). The processing and integration helps make sense of information, such as the type of information gleaned during a traumatic event. "Emotional-laden" information is more accessible to a person following REM sleep (Cartwright et al., 1975). Grossman & Siddle (2001) asserted that there is usually "memory recovery" following a good night's sleep, and ensuring a person gets a good night's sleep after a traumatic event is vital (Memory Recovery section, para.1).

COUNTER POSITION

While scientific knowledge supports a waiting period following a traumatic event there is a faction that believes there should be no waiting period before interviewing an officer involved in an officer-involved shooting. This point of view is definitively espoused in a report completed by the Police Assessment Resource Center (PARC), which reviewed Portland Police Bureau officer-involved shootings ("The Portland Police Bureau", 2003). PARC was hired by the Portland City Council to review their officer involved shootings and in-custody deaths and to provide recommendation on lessening their occurrences. The report asserted that officers should be treated as any other witness, which means being interviewed as soon as feasible following a shooting. PARC explained the reasoning for this view in The Portland Police Bureau: Officer Involved Shootings and In-Custody Deaths (2003) report:

Contemporaneous interviews enhance the integrity of the process by reducing the likelihood that the officers' account of events will be

deliberately contaminated (e.g., by efforts to “get officers’ stories straight”) or accidentally contaminated (i.e., where an officer’s memory of the incident is subconsciously affected by what he or she hears from others. (p. 56)

The PARC report delineated further reasons as to why “contemporaneous interviews” are preferable. They asserted that time delay will not produce more accurate statements and that any other suspect or witness in a shooting would be interviewed by investigators immediately or shortly thereafter. The report further stated that the notion that an immediate interview following a traumatic event will produce a faulty account is not backed up by “empirical” evidence (“The Portland Police Bureau”, 2003).

PARC’s point that officers should be treated like any other witness because there is no proof that waiting benefits a statement is, itself, lacking empirical proof. However, scientific research does support that contamination is an issue when it comes to memory. Honig and Lewinski (2008) stated that “contamination is the unintended influence of new information on a prior recollection. Contamination can never be totally eliminated” (p. 140). While Loftus (2002) stated that information from whatever source (t.v., newspaper, overheard conversation, etc.) is readily processed by the memory, and this new information gets processed with the old, making it hard for the mind to then differentiate between the two.

What PARC failed to account for in regards to treating officers differently from other witness is that officers’ situation is different. Officers are in these shootings, or, for that matter, involved in most traumatic events, due to totally different reasons. They are in situations because it is their job. They are doing what they have been trained to do to protect society and should not be treated like a criminal or a casual witness because of

it (“Are Controversial Recommendations About Officers”, 2006). Civilians that are witnesses must be interviewed immediately, or as soon as possible, because of the flight risk or the possibility of losing touch with them due to circumstances beyond the investigator’s control (“Are Controversial Recommendations About Officers”, 2006). Any number of situations could occur that would result in investigators not being able to get necessary information. Witnesses may give false phone numbers and addresses, may leave town, meet with an accident, and/or simply refuse to cooperate. These issues are not considerations with the officer. The investigator knows where the officer is at all times, and the officer is compelled follow any instructions given to him/her by the investigator.

The threat of memory and recall contamination is something that police departments should be aware of and should take steps to address. “In fact, involved officers should be ordered not to discuss details of the event with other involved officers, peers or support personnel until after they have given their official statements” (“How to Assure, Part I”, para. 16). Most police departments address this issue directly in their policies or general orders. The Iowa City Police Department, for one example, prohibits their shooting officer(s) from talking to anyone except the individuals authorized in their general order (“Iowa City Police Department General Order Inv-02.1”, 2001). These departmental policies and general orders are just that to police officers: orders and officers follow orders.

Finally, there is empirical evidence that giving an officer time to recover from a traumatic event will yield a more accurate statement. Research showed that officers will not be able to remember everything following an officer-involved shooting (Klinger,

2001). More to the point though, some researchers reported that “nearly 40 percent of officers experience a return of lost details to their memories just by waiting, not only after shootings but after physical-force altercations as well” (“Are Controversial Recommendations About Officers”, 2006, para.32).

CONCLUSION

The scientific evidence is abundant, and it is clear. An officer should not be required to give a statement right away following his/her involvement in a traumatic event such as an officer-involved shooting. Letting the officer wait at least 24 hours after the traumatic event, with a good night’s sleep inclusive, before giving a statement will result in a more accurate statement than if the officer was interviewed immediately.

The most accurate statement is what police departments strive toward in any investigation, but this becomes even more important in a high profile investigation like an officer-involved shooting. The officer’s statement is one of the most important pieces of evidence and is crucial to that sought after accurate, thorough, unbiased investigation. It cannot be overstated how important getting the best information is due the scrutiny that is placed on the officer and the department following an officer-involved shooting. This scrutiny comes externally and internally. Failure to give proper deference to the affects of the traumatic event on the shooting officer’s perception and memory by requiring an immediate statement could lead to problems. While traumatic events will affect people differently (usually based on the person’s experience, training, and emotional makeup), they will lead to some degree of confusion. An officer required to give a statement immediately or in a short amount of time will likely remember things incorrectly and/or not remember some things at all. When the officer is then interviewed

at a later time, after he/she has had time to decompress and get the restorative, consolidating benefits of a good night's sleep, he/she may provide much more detailed information or contradict something in the initial statement (Grossman & Siddle, 2001). To those unfamiliar with the scientific research, this may appear that the officer is being deceitful and has changed his/her story in an effort cover something up.

Waiting to interview the shooting officer is the best protocol and doing so will not impede the investigation. The officer can still immediately give a basic account of what occurred. He/she can provide an assessment of the scene, suspect information, witness information, and a basic explanation of what happened ("How to Assure, Part 1"). In fact, an investigator can compare what the officer is saying against the physical evidence and get an idea of the affect the traumatic event had on the officer.

Arguments that an officer should be treated in the same way a witness would do not consider the reason why witnesses are interviewed immediately. There is a potential that the witness may be "lost," so their information must be gathered as soon as possible. This is not to say that investigators should not be aware of witnesses' perceptions and memories being affected the same way by traumatic events. As with officers, the investigator needs to be cognizant of matching the physical evidence to the witness' account. Also, if a witness were to later add more detail or remember something differently the investigator should not assume that the witness was deceitful in his/her initial statement. Although not the focus of this paper, investigators should use the "cognitive" interviewing technique when interviewing anyone who had been involved in a traumatic event.

Concerns about officers' memories being contaminated either deliberately or by accident is something to be addressed. In today's information society, it is almost a guarantee that an event the level of an officer-involved shooting will be on all news outlet mediums. The officer could hear or see information regarding the event and that outside information very well may affect his/her memory of the event. More concerning is the public perception that an officer may collude with an outside source (fellow officer, crime scene technician, investigator, etc.) in order to get, "his or her story straight." Police department policy must prohibit officer interaction with anyone except specifically described persons (investigator, police administration, legal counsel, etc). Also, officers should also be told not to watch, listen to, or read any accounts of the event that may be circulated by the media (Honig & Lewinski, 2008). Further thought about how to effectively shield an officer from contamination needs to occur. A protocol where the officer is sequestered after a traumatic event may be an idea with merit.

The best interest of the officer, the police department, the public, and justice dictate that there should be a waiting period before requiring a statement from the shooting officer. Indeed, the Psychological Services Section of the International Association Chiefs' of Police in their "Officer-Involved Shooting Guidelines" (2004) recommended the following:

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 statement. (para. 6)

Those police departments that do not stipulate a waiting period, with a good night's sleep inclusive, before interviewing an officer and requiring a statement are not getting what is desired the most: accurate, thorough, and detailed information.

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