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Coordination of Resources in Officer-Involved Shootings

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ABSTRACT: The use of deadly force by police officers has come under critical review by law enforcement agencies, the media, and the legal profession. The authors describe procedures that have evolved and that serve to preserve the scene and witnesses' accounts, while marshaling the resources to document the circumstances. Evidence obtained through early response by specially trained homicide and physical evidence investigators is supported by a non-sworn scientist at the shooting scene. There is separate responsibility, as well as an overlap of responsibility, which must proceed concomitantly, as there are potentially both criminal and civil issues involved. Expedient handling of the investigation tends to result in all fatal shootings being referred to a grand jury for review.

KEYWORDS: criminalistics, jurisprudence, symposium, law enforcement, police

The purpose of this paper is to describe procedures that have been developed in processing officer-involved shootings (OIS). In late 1986, a series of OIS in Dallas, Texas, resulted in intense media scrutiny, inquiry by a Congressional body, and critical review by the City Council.

The immediate issue that had to be addressed was credibility. The authors suggest that this same issue of credibility is present at every OIS, whether it be in a large city of a million or more people or in a small town of a few hundred persons. Rightly or wrongly, our society has become litigious, and as a nation, we covet this right to bring civil suits for perceived wrongs. In this paper, there is some redundancy in the descriptions of function and responsibility. This is because we present the plan from three different perspectives: law enforcement, forensic science, and prosecution.

Law Enforcement Perspective

The use of deadly force by police officers is one of the most controversial and complex issues facing police administrators. The ramifications and repercussions of such actions can profoundly affect the lives of those directly and indirectly involved. Officer-involved shootings can affect a community's faith in its police department and become a divisive issue between various portions of that community. Not only are the actions of the involved officer or officers closely examined, but the conduct of every police official connected with the case is subject to intense review.

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Recognizing this fact, it is incumbent upon police executives to have in place procedures that will both facilitate the investigative process and help build the essential element of credibility into that process. The investigative processes of the Dallas Police Department were developed through research and examination of other police departments' policies, input from other local governmental agencies, and the experiences and expertise of departmental personnel. While not offered as a panacea, hopefully, these procedures will aid other professionals facing this complex issue.

Initial Police Response

Once an OIS incident has occurred, the first priority of the involved officers must be to gain control of the scene and to seek medical assistance for the injured. The Police Communications Division, upon notification of an OIS incident, immediately dispatches the necessary assistance to the scene. By using a checklist, the communications center ensures that all necessary personnel are notified. A police supervisor is immediately sent to the scene. The initial response for the police department is centered on this supervisor.

One of the supervisor's first duties upon arrival is to obtain a brief account of what has transpired. The crime scene is secured and a protective perimeter is established. The names of *all* personnel present are recorded. Access to the scene is limited to essential personnel only.

The supervisor must identify the officers who are directly involved as shooters and those who are witnesses. These officers are separated as soon as possible to prevent future allegations of collaboration. This is an important facet of investigating OIS incidents, because fellow officers may empathize with the officer and not wish to isolate him. It is of extraordinary importance later when reviewed by entities outside the department, such as a grand jury or attorneys. Immediate separation adds credibility to the investigation.

Civilian witnesses are located and isolated until a detective can interview them. To the degree possible, the supervisor's role, once he has gained control of the situation, is to prevent contamination not only of the crime scene but also of the incident by witnesses and participants.

Crime Scene Protection/Evidence Collection

Crime scene protection is an essential concern in any investigation. However, in OIS incidents, the investigating agency must guard against accusations of evidence tampering and contamination of the crime scene. A perimeter must be established as soon as possible. One common access point is designated and the name of every individual entering the crime scene is recorded. Access to the crime scene must have approval of the supervisor of the Physical Evidence Section (PES), who heads the evidence collection team. Naturally, crime scene access is limited to those personnel directly involved in the investigation.

The PES supervisor determines at what point in time access may be granted to the investigative team. This gives the investigative team a first-hand perspective of the scene prior to the evidence actually being collected. Prior to this time, the only member of the investigative team allowed within the secured crime scene is one detective, who acts as an observer. A member of the forensic science laboratory is also allowed unlimited access to the crime scene.

The PES team is charged with the task of identifying, collecting, and preserving the evidence found at the scene. This team does some analysis of the evidence, but the more detailed analysis is performed by the forensic science specialists with the Southwestern Institute of Forensic Sciences.

Because of the sensitivity of OIS incidents, the Dallas Police Department has designated a specific group of experienced detectives and supervisors to act as the evidence collection team. These individuals are aware of the review and scrutiny OIS cases receive and the special needs of the investigative team.

The evidence collection team not only concerns itself with the area immediately surrounding the crime scene, but also provides the investigative team with background and perspective information. This includes obtaining aerial and perspective photographs, recording the appearance of the officers and victims, providing detailed drawings enlarged for court presentation, and meeting any other special needs identified by the commanding officer conducting the investigation.

While each crime scene is unique, it has been found useful to employ a checklist of standard tasks to be performed at each scene.

OIS Investigative Teams

When a police officer exercises deadly force, there are two major areas of concern in the investigation. First, the incident is examined in light of the applicable criminal laws covering the use of deadly force. Second, the conduct of the officer is further examined to determine if he acted within departmental policies.

To accomplish these objectives, the Dallas Police Department uses two separate investigative teams. The Crimes Against Persons Division, Special Investigations Unit (SIU) conducts a criminal investigation into the incident. The focus of this investigation is much the same as that of any other criminal investigation. The same legal parameters apply to interviews with participants and to the ultimate admissibility of evidence in court.

The Internal Affairs Division (IAD) conducts a concurrent investigation focusing on departmental police policy issues. This investigation is governed by administrative rules and regulations, which differ significantly from the procedures used for criminal cases. The IAD investigators have the same access to the participants, witnesses, and crime scene as the criminal investigators. All information gathered during the criminal investigation is available to the IAD team. However, because an employee can be compelled to answer questions in an internal investigation, any statements made by the employee to IAD investigators cannot be used in a criminal proceeding.

The criminal investigation, as stated above, is conducted by the Special Investigations Unit. This team is led by a lieutenant and consists of four experienced homicide detectives. These detectives are familiar with the in-depth requirements and pressures of this type of investigation.

An involved officer's account of the incident is critical in an OIS investigation. However, one of the goals of the SIU is to determine, to the degree possible and independent of the officer's testimony, what actually occurred. This is accomplished through witness accounts and physical evidence analysis. Careful note is taken where there are discrepancies, and these areas are earmarked for further investigation.

Once the crime scene is secured and access is granted by the evidence collection team, a "walk-through" is conducted with key witnesses and the involved officers. This involves taking the witness or participant into the crime scene and allowing that person to describe the actions of all those who were present when the incident occurred. Present during the walk-through are representatives of both investigative teams, a Physical Evidence Section team member, a representative from the forensic science laboratory, and the involved officer's legal counsel, if he so desires. This gives all the major participants in the investigation a first-hand account from the witnesses at the actual shooting scene. This is an invaluable aid, not only to the SIU and IAD members but also to the evidence specialists as well. Questions may be asked by any team member as the walk-through progresses.

While this is taking place, the other detectives are searching for and interviewing potential witnesses. It is essential to conduct a thorough search for witnesses and should be done as soon after the incident as possible. A follow-up search should be conducted in most cases. It is also important to record the identities and locations at the time of the incident of all those persons contacted as potential witnesses, even those who state that they neither saw nor heard anything. A written, sworn statement should be taken from any witnesses located.

Having completed the on-scene investigation, the SIU team, the key witnesses, and the involved officers return to police headquarters. Written statements are taken from these key participants; these statements are in-depth accounts which not only give the witnesses' accounts but also address any issues brought up by the investigative team.

Liaison is maintained throughout the process with the evidence collection team and the scientists at the Southwestern Institute of Forensic Sciences. There must be a free flow of information between these elements. Witness and officer accounts must be available to the forensic experts during their analysis of the evidence. Likewise, timely information from these scientists aids the detectives in identifying critical issues and areas of conflict.

Grand Jury Presentation by Police Officers

All officer-involved shootings are presented to a grand jury for review. An incident file for each OIS is forwarded to the district attorney for review, scheduling, and presentation before the grand jury. The investigative team must be responsive to the needs of the district attorney for additional information or clarification. It is imperative that *all* information available be presented in an impartial manner. Detectives who testify before the grand jury should refrain from expressing any unsolicited opinion as to whether or not the involved officer's actions were justified. Any discrepancies in witness accounts or in the evidence must be brought to the attention of the grand jurors. The detectives presenting the case should view themselves as impartial gatherers of facts. The determination as to the appropriateness of the officer's actions rightly rests with the grand jury.

The Role of Forensic Science

Basically, the role of the civilian forensic scientist at the scene is twofold. First, since this person is a non-sworn individual and preferably outside the department, he takes on the responsibility of an ombudsman. This is to prevent the allegation of a cover-up or of alteration of the shooting scene. This requires complete access to the scene, to initial accounts of witnesses, and, especially, to the events as first described by the shooting officer or officers.

Second, oversight responsibilities must be assumed by the forensic scientist in ensuring that proper recognition, collection, and preservation of the physical evidence is accomplished. This task can be difficult when clear lines of authority are not assigned at the scene. Once the authority is clear, the officer in charge, whether he is a sergeant, lieutenant, or assistant chief, must be accessible to the scientist and responsive to any special evidence procedures requested. Inasmuch as the scene is a delicate, transient phenomenon, subject to alteration by persons and by the weather, the timeliness of this official's response is critical.

In jurisdictions where there is a medical examiner (such as Dallas) or coroner with statutory responsibilities as to the cause and manner of death, there is an overlap of authority. Here again it is necessary to have clearly defined authority. There has to be preservation of the physical evidence, including the body, but the disturbance of the body

by fingerprinting or removal of clothing at the scene can cause severe problems at autopsy. Generally, the medical investigator will be able to obtain the necessary photographs at the scene, but he or she must wait until all the physical evidence is documented, photographed, and collected before removal of the body is permitted.

Once the scene is stabilized and protected, as well as identified in scope, photographs will be obtained. At this point the walk-throughs, gone through separately with the shooting and witness officers, are conducted. The number of persons in the walk-through must be limited. In our scheme, this includes the shooting or witness officer, the head of the SIU, the detective assigned as primary investigator, one person from the Internal Affairs Division, one crime scene search detective, the forensic scientist, and the officer's legal counsel. After the shooting officer's rights are explained to him and he agrees to the walk-through, each person is identified and the officer narrates in his own words what took place. This is done by carefully walking through the scene during the narration. Questions may be asked by participants as the officer's narrative account progresses.

Once all walk-throughs are completed, the actual evidence collection begins. As expected, this can take a few hours or even days, depending on the scene. Patrol officers are stationed around the scene and remain until the scene is released. Portable lights powered by gasoline generators provide the light at night, but virtually always the scene is protected until daylight to ensure that evidence is not missed.

The documentation of the scene does not stop with photographs and sketches. When warranted, the assistance of the Department of Public Works surveying team has been requested. The principle followed is to prepare the case as if it were going to criminal or civil trial. Thus, the survey provides accurate placement of trees, shrubs, roadways, vehicles, and buildings. What might be a small bush at the time of the shooting may be a huge shrub in a few years. Using computer projections from the survey, perspective drawings can be prepared to assist in grand jury or trial proceedings.

The scientist at the scene must provide as much information as possible to the medical examiner at the time of autopsy. Usually a detective from the SIU will be present at autopsy to answer questions so that the flow of information is not impeded. The medical examiner needs the information provided by the forensic scientist and the detective. The detective, by being present at the autopsy, is able to pass information on to the SIU and to the chief of police within a short period of time.

In the laboratory, the case is given priority over all other matters. The firearms examiner will perform all examinations of the firearms and of the projectiles submitted from the body and the scene, and will evaluate the mechanical functioning of the weapons. The shooting officer's weapon is obtained from him at the scene, and it is sent to the police armorer for final evaluation before reissue to the officer. Gunshot residue examinations and other analyses are performed expeditiously, and the reports go to the SIU detectives assigned to the case. Particular attention is paid to the relationship between the gunshot residues present on the clothing and the discharge residue patterns determined for the weapon or weapons. Also, trajectory information is carefully coordinated with the information obtained at autopsy. Because the autopsy and laboratory procedures are performed in the same building, this coordination is simplified. Copies of the reports are sent to the Internal Affairs Division and the Office of the District Attorney.

Grand Jury and Prosecution Proceedings

Depending upon the particular jurisdiction, assaultive conduct committed by a police officer in the line of duty may or may not be presented by the prosecuting authority to a grand jury for review. In some jurisdictions, the prosecuting attorney will make an independent determination that no criminal culpability exists. Others, as a matter of

policy, will submit all or some police assaults, depending upon the seriousness of the injuries inflicted, to a grand jury.

A policy of submitting officer-involved shootings to grand juries where a fatality or serious bodily injury has occurred is a practice adopted in a large number of jurisdictions. A grand jury is an independent entity empaneled by the judiciary. It is not part of the traditional concept of "law enforcement." It serves as a vehicle to ensure public trust in the integrity of the law enforcement agencies and it investigates the conduct, the officers involved, and the prosecuting authority that works with each on a daily basis.

Unfortunately, critics may complain that, when police investigate police and the prosecutor who works with them presents the evidence surrounding the conduct to a grand jury, a "cover-up" of unlawful police conduct can occur. This criticism is unfounded if the prosecuting authority performs his or her job properly.

The preparation for submission of an OIS case and its actual presentation to the grand jury are unlike most factual scenarios that a prosecutor routinely presents to a grand jury. Despite the fact that the proceedings are not public, the community will be aware of the length of time the grand jury is in session hearing the matter and of the number, although not the identity, of the witnesses actually called. Potentially, there may be a review of the actual grand jury proceedings by the U.S. Department of Justice. As a result, all available witnesses and evidence should be presented. The proceedings *should not* be rushed. A complete record *must* be made.

Preparation of the case for presentation begins with a gathering of all paperwork generated by the police and the forensic science entities involved. Incident reports; witness statements; interview transcriptions; investigative notes; the involved police officer's training, commendations, and disciplinary records; diagrams; autopsy reports; hospital records; and ballistic reports should be reviewed, assimilated, and entered into the grand jury record. Likewise, photographs and all other tangible evidence should be examined and entered as evidence for the grand jury.

From the paperwork and physical evidence review, a potential witness list is prepared. All witnesses should be interviewed prior to testifying. Additional witnesses will often develop from those interviews. All factual and expert witnesses should be called to testify, even though their testimony may possibly be perceived as redundant, cumulative, and, in some cases, not believable. Any witness who wants to testify should be allowed to do so.

In most jurisdictions, a criminal investigation will parallel an administrative investigation conducted by the Internal Affairs Division of the police agency that employs the involved officer. *Garrity v. New Jersey* [385 U.S. 493 (1967)] and *Ward v. City of Portland* [857 F. 2d 1373 (9th Cir. 1988)] held that statements made by the officer or officers being investigated during the administrative investigation cannot be used in a criminal trial. Witness statements can be used. The results of the Internal Affairs Division investigation and the statements of OIS officers in that investigation should be reviewed and presented to the grand jury at the conclusion of the proceedings. This will ensure that the initial presentation is not tainted by inadmissible evidence.

If there is a "bottom line" for the prosecutor to remember, it is this: Do not leave anything undone or to chance. Present all information, build a complete record, and, hopefully, you will ensure trust in the integrity of the police, the prosecution office, and the criminal justice system.

Conclusions

What we have presented here is neither considered nor meant to be the "last word" in OIS investigations. These procedures have evolved, and continue to be modified, with

time and experience. We consider them a framework within which the appropriate agencies can operate and know what the division of responsibility is. The principles apply to cities and towns of all sizes. The need is the same, and there will be costly, time-consuming suits and investigations if shooting incidents are not investigated thoroughly and fairly.

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