



## FBI Law Enforcement Bulletin

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### Criminal Interrogations of Police Officers After Use-of-Force Incidents

By Jeffrey J. Noble, J.D., and Geoffrey P. Alpert, Ph.D.



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Discussion continues to grow among law enforcement organizations concerning how officers receive treatment different from other citizens after encounters involving physical resistance or force. Despite interrogating civilians soon after violent incidents, agencies increasingly advocate and defend a "cooling off" period to precede interrogations of their own personnel, believing that more accurate statements will result.

Law enforcement policy makers base their support of these delayed interrogations on research concluding that the psychological trauma of critical incidents may create perception and memory distortions and, thus, result in statements that could inadvertently contradict other investigatory evidence.[1] These important findings seem consistent with other research indicating that officers experience such effects during events involving the use of force.[2] Drawing from these conclusions, experts have suggested delaying interviews of police personnel for a few hours to several days after a critical incident to enhance investigators' memory and produce more accurate statements.

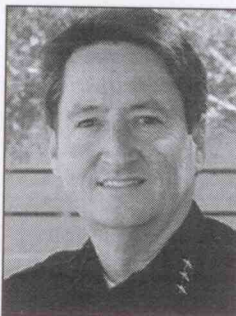
This differs from the practice of immediately questioning civilians. According to conventional wisdom, interviewing or interrogating soon after events produces the most accurate and truthful statements and minimizes the opportunity to fabricate a story. To this end, despite the outcry to delay interviews or interrogations of officers, no similar push exists for other persons, regardless of the research indicating potential perception or memory distortions.

The authors present a review of research suggesting that delaying interviews or interrogations of officers after critical incidents may lead to more accurate statements. Further, they examine the equally important issue—whether law enforcement personnel enjoy special status due to their unique position and responsibilities—possibly overlooked by researchers. If appropriate, a delayed interview or interrogation must serve the best interest of the truth, as well as the community.

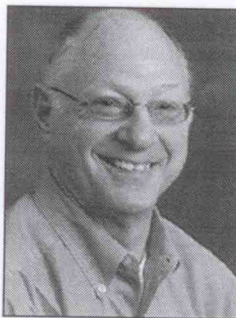
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While much research has examined memory and stress, limited attention has focused on officer-involved shootings or significant uses of force by law enforcement personnel. One notable study used simulation exercises followed by interviews conducted during different time frames to assess the accuracy of officers' memory.[3] The researchers examined a survey sample of 265 police officers from the Midwest who were exposed to three stressful conditions—live-fire simulation; video footage of the training, including the shooting; and a silent video recording of the simulation scene without a shooting. After 12 weeks all participants answered questions about their experiences, but a sample also participated in a rehearsal, which entailed responding to the inquiries immediately after exposure to one of the conditions.

Overall, the researchers concluded that "...stress was related to memories for armed people positively, unrelated to memories of unarmed people, and related to objects negatively...." Interestingly, officers exposed to the rehearsal had better recall after 12 weeks than those not involved in the immediate questioning or debriefing.[4] The findings also confirmed research suggesting that eyewitnesses focus on the source of the threat or stress more intensely than on the peripheral information about a scene or incident.[5]

In another study a researcher surveyed law enforcement personnel over a 6-year period after their involvement in a shooting. She found that more than 60 percent experienced the incident in slow motion, while 17 percent recalled the pace speeding up. Almost 90 percent of the officers reported auditory lockout, and 16 percent heard intensified sounds. Similarly, more than 70 percent reported experiencing heightened clarity of vision and responding to the threat not with conscious thought, but rather, while on "autopilot." Forty percent claimed disassociation—an altered state of consciousness commonly characterized as detachment from one's emotions, body, or immediate surroundings—while 46 percent reported memory loss.

To provide guidance on when to interview law enforcement personnel after incidents, researchers developed a pilot study involving groups of officers responding to active-shooter scenarios, including a school shooting and a terrorist attack.[6] Teams cleared buildings, helped victims and hostages, and secured suspects. Following the simulations, each officer attended a short debriefing. When training concluded for the day, researchers asked a group of officers to write a report of the event. The same group also gave recollections 3 days later. Additionally, researchers had a second group of officers provide their memories only after 3 days had passed. The study focused on determining whether officers had better recollections immediately following a shooting or sometime later.

The researchers recognized that the studies involved simulations that could not completely replicate the stressors of an actual incident and that none of the officers were tired, injured, or otherwise impaired. However, the results offered insight on stress and memory—that the officers reporting on the threat immediately after it occurred had sharper recollections than those who shared their memories only after a few days had passed.

Additionally, the recollections of individuals who shared their memories about the environment immediately after the incident improved slightly when also reporting sometime later. Although differences were not remarkable, evidence indicated that officers had a better recall for threats than for surroundings and that asking them to relay facts immediately after an event may provide the best results for threat-related variables.

These studies hold importance because they showed that law enforcement personnel more likely focus on the threats, rather than peripheral objects or people. In other words, officers' memories function at different levels under stress. If an officer has a vivid or distinct memory of a person with a weapon but lacks a clear recollection of an unarmed individual or some object in the environment, this could reflect how memory functions under stress, rather than planned, conscious deception by the officer. Of course, law enforcement personnel may have a vested interest in the outcome of an investigation, or, perhaps, they cannot answer questions to strengthen their version of an event.[7] However, the research clearly demonstrated that officers' memories after a stressful event can alter their perception of reality, change as a result of the pressure or anxiety of the incident, or reflect exhaustion or other factors.[8]

The research also supported that it remains unclear as to when officers should undergo interviews concerning their observations, actions, and reactions after involvement in a shooting. While not enough research exists to determine best practices for timing officer interviews, many agencies do not question exhausted, injured, or otherwise impaired personnel immediately after a traumatic event. Those departments believe that doing so may pose serious risks to officers' health and well-being and that stress resulting from the incident may cause personnel to inadvertently provide information that contradicts other evidence, thus, proving harmful to both the officer and the agency. Of course, the health and well-being of personnel after a critical incident is important. However, agencies also must seek justice and act transparently and consistently in events involving possible criminal sanctions for the officer or civil actions for both the officer and the agency. Further, they must consider the interests of decision makers who will decide the timing of the interview or interrogation.

Although science currently does not support any specific best practices for timing interrogations, organizations that make policy recommendations have developed guidelines. For example the Police Assessment Resource Center (PARC) suggests that investigators interview personnel who participated in or witnessed an officer-involved shooting no later than a few hours after the incident.

Conversely, the International Association of Chiefs of Police (IACP) suggests giving officers time to  
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Conversely, the International Association of Chiefs of Police (IACP) suggests giving officers time to recover—from a few hours to overnight—prior to any detailed interrogation. Other organizations recommend that officers provide an initial statement giving only general details about the event and then undergo a more thorough interview at least 24 hours later and after a full night's sleep.[9] The fact that these guidelines contradict each other indicates the need for additional research, as well as the difficulty facing police managers who make policy decisions.

### Special Status

Law enforcement personnel hold a unique status in society and have a level of influence over the citizens they serve. Officers are entrusted with tremendous powers including, for example, the authority to make warrantless arrests and use reasonable force and are expected to exercise this authority within the constraints of the law. Oversight in the form of the courts, the grand jury, and, perhaps, civil sanctions exists to ensure that this authority is not abused. When officers use force, they are investigated by peers, possibly from the same agency, to determine if policy and protocols were followed.

Recent discussion has focused on whether the status held by law enforcement personnel entitles them to delays of interviews and interrogations—thus, special treatment—after use-of-force incidents. Advocates for these delays argue that most use-of-force events involve officers who disregard their own safety while responding to violent acts of other persons and who resort to force only to protect themselves or others from harm. Some authorities see interviewing or interrogating officers immediately after such incidents as unfair. Other experts argue that law enforcement personnel serve the community in a dangerous profession and that subjecting them to an immediate interview or interrogation could create a chilling effect that results in officer hesitation to respond to future potentially violent situations. This would stem from personnel fearing that their statements, while honest and well-intended, could contradict other evidence and that as a result, they could face a civil lawsuit or criminal offense charge or become a scapegoat for political advantage. Sometimes immediate interviews or interrogations are considered unfair only if personnel make statements contradicting evidence developed during the investigation. Conversely, other community members in similar circumstances who provide such inconsistencies may face criminal filings from officers.

Most recently researchers proposed that treating officers and civilians, especially suspects, similarly "...is counterproductive and is not a factually accurate representation of their true status.... The involved officers...play a unique role in the criminal justice system, and it is justified to develop specialized procedures in dealing with them to ensure that they are provided with fair, neutral, and objective investigations." [10]

Understanding the process of officer use-of-force investigations helps determine if a cooling-off period is justified or, even, necessary. Unlike when they investigate other citizens under suspicion for criminal conduct, agencies confront a situation in which they may identify an employee as a criminal suspect. The suggestion of some researchers to train investigators to assume officers have not engaged in misconduct "...unless and until evidence of wrongdoing has been developed...." may not be appropriate.[11]

When officers use deadly force, proper law enforcement procedures typically require the initiation of at least two concurrent investigations to determine the appropriateness of the use of force.[12] These include a criminal investigation, which determines if an officer's use of force constituted a criminal action, and an administrative query to ensure that the individual followed department policies and procedures.

Like everyone else police officers have the right to protect their own interests during each of these investigations. Of course, the Fifth Amendment allows them to refuse to answer questions during a criminal investigation if the question would implicate the officer criminally and if the officer has not been compelled under the threat of dismissal. However, while officers may assert their own right to refuse speaking with investigators, they may aggressively seek statements from other citizens during the critical time period soon after the incident to get to the truth. Investigators ask for the cooling off period for officers, but not for any other citizen equally impacted by such a stressful event. Indeed, in the case of a shooting involving one dead person and another holding a gun, only an officer may avoid immediate arrest for refusing to explain the events leading to the death.

As employees, law enforcement personnel also may face an administrative investigation to ensure they complied with departmental policies and procedures. Officers may have a vested interest in their employment, and, among other things, they may have the right to notice prior to an interrogation, representation while it progresses, and a reasonable interrogation at an appropriate time.[13] Recognizing the public's expectation for the police to remain above reproach, the U.S. Supreme Court in *Garrity v. New Jersey* crafted an exception for officers that allows law enforcement managers to order their personnel to answer questions under the threat of termination.

[14] Balancing management's rights with those of the employee under the Fifth Amendment, *Garrity* holds that information discovered in this manner during an administrative investigation cannot be used against the officer in a criminal matter.

Administrative interviews and interrogations almost always occur days, weeks, or even months after an incident so as not to interfere with the more important criminal investigation—thus, no requirement exists for a cooling off period.

The manner in which an agency investigates its own, especially after a shooting incident, directly

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impedes the public trust. People have concerns of corruption because of the powers held by officers and the potential for abuse, and well-documented instances exist of excessive force at the hands of unprincipled officers.[15] This public trust concern becomes heightened because police officers frequently face investigation by their own agencies, which may have an interest in protecting personnel from criticism and liability, thus, enhancing their reputation or avoiding financial damages. Departments have demonstrated through proactive investigations, criminal arrests, convictions, and disciplinary actions that they will address officer misconduct. However, while no evidence exists that outside investigatory agencies do a better job, the public reasonably perceives that officers may receive special treatment not available to other citizens. While a cooling off period legitimately may exist to help officers accurately and truthfully recall events, it also serves a similar purpose as *Miranda* in that it raises a red flag warning the officer to seek counsel, encouraging others to suggest to the officer to do so, and providing an opportunity for a dishonest officer to either develop a deceitful version of events or to collaborate in doing so with other involved officers. Agencies avoid all of these potential problems when dealing with the average citizen because they seek an immediate interview. Creating such policies that further the perception of special treatment, combined with a lack of transparency, can only diminish public trust.

#### Alternatives to a Waiting Period

While a cooling off period may allow officers to more fully restore and mine their memory, as well as prevent statements that appear inconsistent with other evidence developed during the investigation, obtaining a trustworthy and accurate account from the officer may not depend on it. More important, police officers, prosecutors, and judges recognize that not all witnesses—including law enforcement personnel—view traumatic incidents under optimal conditions, possess reliable memories, articulate or express their recollections effectively, or have sufficient psychological health after such an event to provide a detailed and accurate statement.[16] Recognizing the impact on the ability of witnesses to perceive, understand, recall, and express events as they occurred allows investigators, prosecutors, and judges to understand some conflicts between witness statements and other evidence.

Rather than providing a cooling off period to police while not applying it equally to citizens, agencies should train investigators to conduct interviews in a manner that recognizes the impact of the traumatic event on witnesses' minds. Interviewers should gain information through a "cognitive interviewing process," which avoids common approaches in which interviewers do most of the talking; questions focus too specifically; witnesses are discouraged from providing information unrelated to the specific question; interviewers determine question sequence, sometimes based on a checklist; a round of formal questions (e.g., name, address, phone number) opens the interview to allow the interviewer to complete a report; interviewers may interrupt witnesses to ask follow-up questions; and leading questions suggest answers that conform with the interviewer's hypothesis about the event.[17]

Instead, cognitive interviews involve fewer, open-ended questions that allow witnesses to guide the interview through long narrative responses—to tell their story as well as they can. Officers should allow interviewees to report everything they remember without interruption, including details that seem trivial or out of chronological order or context. Interviewers should encourage active participation and only ask follow-up questions after witnesses have completed the narrative. Interviewees will continue to think about the incident days later, and officers should allow follow-up interviews to clarify important points and determine if the witness has recalled additional details. This type of cognitive interviewing process helps witnesses to recount events as accurately as possible, allows investigators to gain statements early in the investigation, and enhances interviewees' well-being by letting them express emotions and develop a sense of closure by narrating a story.

#### Conclusion

Clearly, the need exists for additional research on memory distortion after critical incidents and how timing impacts interviews and interrogations of officers whose use of force may have involved a criminal action. Certainly, if research indicates that the prevalence of memory distortion signifies that statements made immediately after an incident are untrustworthy, this finding would apply not only to law enforcement personnel but to anyone else involved in such an incident. In the interim, the authors suggest that police management support a cognitive interviewing style that allows investigators to obtain immediate statements when possible and not to promulgate policies that give special status to police officers who are the subject of a criminal investigation.

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Rather than focus on the narrow issue of when and even how to conduct an interview following a critical incident, agencies may find it more important to have strong, strict, and clear policies and procedures. Treating all parties fairly and equally likely will result in an increase in public trust in the police without any reduction in the fair and impartial fact finding important in these investigations.

The authors do not suggest making comprehensive changes to existing practice, but beginning a dialogue and encouraging research that will help to develop policies and practices to assist with fair and impartial fact finding. A first step in this process is to understand that people recall things and events and handle stress differently. This means that statements from the same person may include reasonable and normal contradictions. Agencies must recognize that stress often impacts memory and that people see things from different perspectives.

Perhaps, the instant replay in football serves as a simple analogy.[18] After a play ends and several

referees interpret the outcome of the action, other officials who have the benefit of hindsight and  
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reviewers interpret the outcome of the audio, other similar video have the benefit of multiple camera angles review the initial decision. While the later decision may or may not agree with the real-time call made on the field, most fact finders are comfortable with the process. In law enforcement, any step that encourages public trust and confidence and increases the likelihood of finding the truth will be a great asset to police officers and the public they serve.

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## Endnotes

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