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Chuck Remsberg
Editor-in-Chief

Overcoming the "Achilles heel" of use-of-force investigations

Part 1 of a 2-part series

As an expert in interviewing skills, Dr. Ed Geiselman has seen the good, the bad, and the ugly when it comes to officers being questioned by investigators after use-of-force events.

Recently he was asked to review transcripts and audio recordings of interviews in cases where LEOs' jobs were on the line because of allegedly inappropriate force. In each he concluded that poor interviewing techniques had hampered the officers in their efforts to explain their actions adequately. One interview, he told Force Science News, was the worst he'd come across in his 28 years of working with law enforcement.

"In many cases," Geiselman says, "interviewing involved officers remains the Achilles heel of otherwise good investigations. When an interviewer fails to thoroughly and accurately mine an officer's memory, everyone loses."

With his recent reviews still fresh in his mind, we asked Geiselman, a UCLA psychology professor and a faculty member of the Force Science Analysis certification course, what lessons he'd offer investigators for conducting fair, impartial, and comprehensive interviews in OISs and other critical-incident cases.

And we asked also what he'd advise involved officers to do when they're in the hot seat and potentially subject to poorly conducted questioning. The result is this 2-part series.

We begin with those asking the questions.

TIPS FOR INVESTIGATORS

1. Don't make special assumptions about police memories. "Investigators don't want to hear 'I don't know' from people they're interviewing," Geiselman notes. "Some make unreasonable assumptions, especially of police officers, about what can be legitimately remembered, and by insistently pressing for information, whether interviewees can actually give it or not, investigators may in fact elicit inaccurate 'recollections.'"

"Officers have the same perceptual and memory systems as other human beings. Research shows they tend to be affected by the same situational factors, such as stress and selective attentional focus, and experience the same memory failures, such as inconsistencies, gaps, and delayed recollections.

"For example, when a deadly weapon is pointed at an officer, threatening his life, there is an instinctive propensity to stare at the weapon instead of the offender holding it, just as a civilian does. Thus memories of other details about the scene or of actions taken may be hazy or nonexistent.

"But interviewers often believe that an officer *should* remember an emotionally charged event completely. In an effort to stretch an officer's memory, they may ask leading questions or encourage him to recall what would have been 'logical' under the circumstances or suggest that he speculate about what he 'likely' would have done in a given situation.

"Sometimes investigators state what *they* would have done in similar circumstances or chidingly remark that if they had been there they would remember 'that,' as if establishing an expected norm.

"Eventually through these persuasion techniques, the officer may come to believe that he or she actually does remember things that they don't, and then you have a fiction disguised as a memory in the record. It's really quite easy for an interviewer to modify an officer's memory, even without intending to do so.

"There are legitimate means of helping an officer to recall, but he or she should not be pressured to reach beyond his or her limitations. At the beginning of the interview, the officer should be advised to state candidly when he does not remember something and to avoid imagining or guessing. Periodically the interviewer should thank him for his ongoing concentration and effort at accurate recollection."

2. Use a style that encourages free-flowing information. Unless there's good reason to suspect wrongdoing, an involved officer should not be interviewed with the intimidating "*confrontational, interrogation-type approach*" that's often used successfully with offenders, Geiselman stresses. "With an officer who has experienced a critical incident, this often proves counter-productive."

Rather than opening up memories, he explains, confrontational or adversarial questioning is more likely to limit responses or to encourage answers that the officer feels the interviewer wants to hear, "especially if the officer is worried about losing his job or receiving other punitive action."

Equally undesirable, is what Geiselman calls "*confirmation bias*" questioning. Here "an investigator goes into the interview with a concept in mind of what happened and why. Then he tends to concentrate only on questions--and recollections--that support his theory." In addition to stifling broader-based communication, like the confrontational approach, this "may cause an officer to second-guess and otherwise question his own memories."

Yet in reviewing transcripts, Geiselman notes, he finds that use-of-force investigators often "go into an accusatory mode right from the start. It's as if they already know in their head that the involved officer has done something wrong. They bring to the interview the belief that the officer is guilty."

Instead, Geiselman favors an impartial information-gathering approach, specifically so-called "cognitive interviewing," which he and Dr. Ronald Fisher of Florida International University have spent years developing for law enforcement.

As explained in a variety of previous *Force Science News* reports [see the FSN archive at: www.forcescience.org/fsinews/archive], cognitive interviewing emphasizes cordial rapport-building, open-ended questions that encourage uninterrupted narrative responses, and proven memory-prompts to enhance recall. The latter may include having an officer employ all his senses to help reconstruct the event, recall what happened "frame by frame," relate the account in reverse order, and so on.

"Not only does this approach produce a far greater volume of accurate information," Geiselman says, "but research has established that in emotionally charged situations it also tends to convey a therapeutic benefit to the person being interviewed." That is explained in a detailed article on cognitive interviewing that Geiselman and Fisher wrote for the *International Journal of Law and Psychiatry*, available free of charge. [Click here](#) to download a complimentary copy.

Inconsistencies, gaps, and any suspicions regarding an officer's account are best addressed "during the later phases of the interview," after his memory has been thoroughly tapped for "the totality of the circumstances surrounding the moment of the use-of-force decision."

"Anything an interviewer does early on to give the impression he's skeptical "encourages the person being questioned to shut down," Geiselman says. "In conducting the interview, it's important to come off as being nonjudgmental and interested in everything the subject has to say, encouraging them to talk more."

3. Understand the limitations of "deception cues." Even when dealing with fellow officers, investigators are always on the alert for deceptive answers, as their job demands. Many have specific training in detecting deception, based on body language and response cues. But Geiselman cautions not to "overly apply" that training during involved-officer interviews.

"Keep in mind," he advises, "that some classic 'signs' of lying can also be indicators of intense concentration, such as long pauses, deep breaths, and gaze aversion. So an officer trying hard to remember things may unwittingly mirror behavior presumed to indicate deviousness.

"Remember that all signs that may indicate deception should be regarded only as red flags or 'hot spots' that require clarification or further exploration before the interview is over, not as absolute lie exposers. Rather than interrupt an officer's narrative flow with challenges as he tries to relate his version of events, keep an open mind throughout the interview. Pinning down loose ends should wait until a time when it is less likely to disrupt recall.

"Until you can determine otherwise in the later phases when you address confusing or suspicious statements, the default assumption about delayed recollections, inconsistencies, and other possible deception cues should be that they reflect natural memory phenomena."

4. Consider delaying the interview. "An officer's state of mind at the time of the interview can be as relevant and as important as his state of mind at the time of the shooting or other force encounter," Geiselman says. "Fatigue is the natural enemy of a sharp memory and lucid articulation."

Thus he suggests, "For best results, consider delaying a full investigative interview for 24 to 48 hours after the incident in question, so the officer has a chance to benefit from at least one sleep cycle before giving a detailed statement.

"Remember that the officer not only is coping with lingering stress from the incident itself but may be burdened with added stress from concerns about possible consequences of discipline, criminal prosecution, and lawsuits. Sleep can help relieve some of this anxiety as well as consolidate memories.

"If the goal is to minimize inconsistencies and maximize comprehensive recall, then delaying the interview until the incident has been well thought out by the involved officer could be a wise choice. If the interview is not delayed and the officer is highly stressed and sleep-deprived, his recollections may well be incomplete, disorganized, and more open to suggestion from the interviewer.

"Under those conditions, expect inconsistencies and delayed recollections, and do not automatically label these memory failures as indications of deceit and dishonesty."

5. Handle eyewitnesses with care. Any eyewitnesses to an OIS or other force incident, including civilians, should be given the same consideration shown the involved officer, including a non-leading, cognitive approach to interviewing, Geiselman believes. "They, of course, are subject to the same perception and memory issues," he says.

One common mistake he sees among investigators is "joining the prosecution team." Instead of impartially eliciting whatever the witness has to say, "the interviewer conveys the impression through his questions, tone, and comments that the involved officer acted inappropriately and the investigator, with the witness's help, is going to see that 'justice' is served.

"Do not comment on evidence in the case or on the possible or alleged actions of the involved officer. This can contaminate a witness's recollections going forward. The manner in which you frame the incident during the interview can cause an eyewitness to artificially conform his or her thinking to fit your hunch.

"Don't, for example, make observations such as, 'I think there is some truth in what I'm hearing about all this. If someone has abused their authority, then this has to be dealt with, maybe even from a criminal standpoint. What the officer did is wrong.' Unfortunately, I see that sort of thing done in transcripts I review.

"Instead, remain strictly in the impartial information-gathering mode. Conclusions about what you found out can come later and should not be shared with the interviewee during the questioning."

NEXT: Tips for protecting yourself from an interviewer who doesn't understand the principles of human memory.

*For information on instruction and consultation about interviewing techniques, Dr. Geiselman can be reached at: geiselma@psych.ucla.edu. Also see the authoritative text by Geiselman and Fisher, *Memory-Enhancing Techniques for Investigative Interviewing: The Cognitive Interview*.*

II. "Weapons confusion": A case to watch

In a case with important training implications, the U.S. Court of Appeals for the West Coast has ruled that a municipal patrol officer who killed a suspect when she confused her M26 Taser with her Glock pistol was not entitled to a summary judgment in her favor on the basis of qualified immunity.

A jury should have been allowed to decide if her mistake was reasonable, the 9th circuit appellate judges said in overturning a district judge's decision and remanding the case for fresh action.

"Whatever the ultimate outcome, this case bears watching and studying because of the critical issues it raises regarding training, weapons placement, personal responsibility, and decision-making," says Dr. Bill Lewinski, executive director of the Force Science Institute. As we have reported previously, Lewinski was involved as an expert witness in the BART incident, a widely publicized mistaken-weapon shooting by a transit officer in the San Francisco area.

The current case, *Torres v. City of Madera (CA)*, is a 1983 civil action brought by parents of a suspect who was fatally shot in the chest while handcuffed in the backseat of a patrol car. The involved officer intended to Tase him because he was kicking the rear door and she feared he would cut himself if he broke the window. Unwittingly, she grabbed and fired her sidearm instead of her Taser.

Among other things, these factors emerged as evidence at trial:

- As instructed when it was issued, the officer carried her Taser "in a thigh holster immediately below her holstered Glock on her dominant right side." Earlier on the night of the shooting, she had turned off the safety on her Taser, to enable its quicker deployment.
- Reaching down, she unsnapped the holster holding her Glock, removed the gun, aimed its laser at the suspect's center mass, put her left hand under the gun for support, and pulled the trigger, "all without looking at the weapon in her hand." Both weapons had laser components.
- Twice previously the officer had confused the 2 weapons, once when trying to reholster her gun and her Taser after a jail visit and again when trying to drive-stun a combative suspect during a field encounter. The latter time she ended up pointing her mistakenly drawn pistol at her partner's head.
- Frightened by that potentially tragic error, she told her sergeant, who advised her to "keep practicing" in drawing her Taser and in distinguishing between the 2 weapons. She informally "practiced" daily on her own for 9 months leading up to the shooting, but underwent no "formal" retraining.
- Her initial training had consisted of a single 3-hour class, during which she fired the weapon only once. There was no discussion during that session of the weapon-confusion risk nor of weapon-confusion incidents that had occurred on other departments.

The district court found that the officer's mistake in drawing her gun was "reasonable" and granted summary judgment in favor of her and the city. But the appeals court declared that

the district judge had over-reached with that decision. "While a jury might ultimately find [the officer's] mistake of weapon to have been reasonable, it was inappropriate for the [lower] court to reach this conclusion," the appellate decision states.

Further action by the district court is now pending. To read the appellate decision in full, with more details of this case, [click here](#).

For an article about the case from the Legal & Liability Risk Management Institute, [click here](#)

Our thanks to Wayne Schmidt, executive director of Americans for Effective Law Enforcement, for bringing this case to our attention in his monthly legal newsletter. Access to more than 30,000 digests of cases pertinent to law enforcement is available free of charge through AELE's website: www.aele.org