Q: The Pros & Cons of Conducting an IA/OPS Investigation Concurrently with the Criminal Investigation in Officer Involved Shooting Cases?

Internal Affairs investigations are challenging. Investigators must balance their obligation to conduct a thorough investigation with preservations of the individual officer’s employment rights. Investigators also have to consider the community’s need for answers while protecting the department from liability and risk. Perhaps most importantly, that investigator is also likely to have an overwhelming caseload and few resources with which to investigate those cases.

The question of whether a department should concurrently conduct criminal and administrative investigations into officer involved shootings is essentially a question of resources. The advantages of concurrent investigations are numerous. Concurrent investigations provide for the administrative investigation being completed and not delayed by the criminal. Concurrent investigations also assure that compelled statements will only be used in an administrative investigation. Given that criminal cases require evidence beyond a reasonable doubt and administrative cases only require a preponderance of evidence, concurrent investigations allow each investigation to meet its own standard of evidence. The main argument against concurrent investigations is that concurrent investigations require twice the investigator resources.

Investigations of officer Involved Shootings, although a smaller part of an internal affair’s (IA) division’s function, are a high priority for an IA department. These shootings are often subject to great public scrutiny as well as involving great physical and professional risk to the officers involved. Here in New Orleans, we are living through the consequences of a badly investigated Officer Involved Shooting. Since Hurricane Katrina in 2005, three sets of officers have undergone high profile federal prosecutions for their involvement in officer involved shootings and/or investigations of officer involved shootings. In part, because of the mishandling of
these investigations, the New Orleans Police Department is now under a Federal Consent Decree. Additionally, our department has dismissed officers based on criminal convictions only to have those convictions reversed. NOPD was then forced to take officers back into the police force and pay back pay. The most prominent example is an officer convicted in federal court of conspiring to cover up an excessive use of force during the days following Hurricane Katrina. This officer was initially convicted and then – after a judge ordered that his case be severed from the other defendants’ – acquitted at retrial. Because the officer was criminally convicted, the administrative investigation was never completed. Now that the officer’s conviction has been reversed, the department could be ordered to reinstate the officer and award back pay. Proper investigations of officer involved shootings also protect officers from community distrust and potential criminal prosecution. Perhaps more importantly, adequate review of officer involved shootings can identify areas for correction in tactics and training that protect the officer from future risks.

Given the high risks to the department and officers presented - not only by the use of force itself, but the subsequent investigation - Police Departments must invest all necessary resources required to conduct a thorough, timely and accurate investigation. Because the criminal justice system has its own rules and standards, it cannot be relied upon to correct officer behavior or mitigate risk to the police department. The only way for the department to protect itself is for it to conduct its own investigations. Though it requires additional resources, the risk presented is serious enough to merit simultaneous, segregated criminal and administrative investigations of officer involved shootings.

1 The officer in question may have tendered a resignation.