

Officer Involved Critical Incidents

Navigating Troubled Waters

Hunt Shooting



Darrien
Hunt



Corporal Matt
Schauerhamer



Officer Nick
Judson

Overview

- 9:40 a.m., Sept. 10, 2014, Saratoga Springs
- Officer Judson dispatched to a call of a person walking down Redwood Road carrying a sword



Overview

- Officer Judson found Darrien Hunt walking in front of a Chevron; Corporal Schauerhamer responded as backup
- The officers spoke with Hunt between a Cypress Credit Union and the Chevron
- Initial encounter is calm and non-threatening
- With no apparent provocation Hunt lunged and swung at Schauerhamer with the sword and both officers drew and shot their handguns





- Hunt was immediately shot but was able to flee
- Officers shoot at him at two other locations



- North side of Panda Express showing location of Hunt's body, sword, scabbard, blood drops (oval), and spent .40 casings
- Hunt has bullet wounds in his back

- Hunt's mother immediately alleges racism, claims the sword was a toy and begins an aggressive media campaign against the police



"They killed my son because he's black. No white boy with a little sword would they shoot while he's running away. . . those stupid cops thought they had to murder over a toy."

- 25 officers from 10 agencies participated in interviewing witnesses



- 13 officers from 6 agencies assisted at the crime scenes



Role of the County Attorney

- Utah Code Section 26-4-6 (Utah Medical Examiner Act). Investigation of Deaths
- “The following have authority to investigate a death described in Section 26-4-7 and any other case which may be within their jurisdiction:”
- “[T]he district attorney or county attorney who has criminal jurisdiction

Role of the County Attorney

- Utah Code Section 26-4-7. Custody by medical examiner
- The County Attorney has authority to investigate the following types deaths (among others):
 - Deaths by violence, gunshot, suicide, or accident
 - Deaths resulting while the decedent was in prison, jail, police custody, the state hospital, or in a detention or medical facility operated for the treatment of the mentally ill, emotionally disturbed, or delinquent persons

Role of the County Attorney

- Utah Code Section 26-4-21. Authority of County Attorney or District Attorney to Subpoena Witnesses and Compel Testimony -- Determination if Decedent Died by Unlawful Means.
 - “The district attorney or county attorney having criminal jurisdiction may subpoena witnesses and compel testimony concerning the death of any person”
 - “Upon review of all facts and testimony taken concerning the death of a person, the . . . county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.”

Role of City Attorney

- Reduce liability
 - Information management with victim's family
 - Ensure impartial, reliable investigations
- Manage public perception
 - Police and city/county executive looks to us for release of information guidelines
- Risk management
 - Crisis Intervention Training
 - Training documentation
 - Hiring/firing

Role of County Attorney vs. Chief of Police or Sheriff

- Both have duty/authority to conduct a criminal investigation
- Chief has additional duty to investigate for administrative action
 - Chief has a duty to protect his city from liability
 - Chief has to maintain “good order and discipline” among his force
 - Chief must maintain public confidence with his city administration and with his citizenry
- County Attorney has duty to determine criminal liability (prosecute)

Friction Points Between Roles of County Attorney and Chief of Police

- Chief wants to “own” investigation/crime scene
- Chief’s initial review indicates a bad shoot
 - City’s liability exposure: circle the wagons?
- Who pays for lab tests and expert witness fees?
- When does County Attorney issue an opinion—do we wait for medical examiner report?
 - Is chief waiting for opinion prior to putting the shooting officer back to work?
- Media
 - Chief usually wants to release more information
 - Who owns the information?

Information Management

- What should we release?
- Protected records: 63g-2-305(10) records created or maintained for civil, criminal, or administrative enforcement purposes . . . if release of the records:
 - (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
 - (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
 - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing
- Do we release officer's names?
 - 63g-2-305(11) records the disclosure of which would jeopardize the life or safety of an individual

Genesis of UCA Section 76-2-408

- Fraternal Order of Police
 - Concerned about quality of investigations in rural jurisdictions
 - Proposal to create task force in AG's Office
- Response to Ferguson, Missouri shooting
- Legislative perception of biased investigations

Requirements of 76-2-408

- Defines an “officer involved critical incident”
- Mandates notification process and designation of who will investigate
- Mandates posting of policies, procedures and protocols on public web site

Officer Involved Critical Incident Defined

- The use of a dangerous weapon by an officer against a person that causes injury to any person
- A fatal injury to any person except the officer, resulting from the use of a motor vehicle by an officer
- The death of a person who is in law enforcement custody, but not including deaths that are the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death
- A fatal injury to a person resulting from the efforts of an officer attempting to prevent a person's escape from custody, make an arrest, or otherwise gain physical control of a person

Notification and Designation of Investigating Agency

- “The law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney”
- The chief and county attorney will jointly designate an investigating agency
 - Will also designate which agency is the lead investigative agency if there are multiple criminal investigations
- But, the investigating agency may not be the involved officer’s agency

Reasons for a Task Force

- Need to prepare for civil liability and duty to involved officer(s) and deceased require “atypical” investigations
- All agencies have limited investigation resources
 - *Average* investigation requires 500 officer hours
- Economy of scale—Task Force provides access to expertise not present in every agency
- Efficiency—having the County Attorney and one or more police agencies investigate the same incident would be inefficient and create conflict

Administrative Investigation

- Conducted by shooter's agency
- Criminal investigation should have priority over administrative
- Admin investigators should have timely access to all of the criminal investigation--but should not be on the team
- Evidence obtained by admin investigators under Garrity cannot be shared with criminal investigators
 - But, admin investigators *should* share all other evidence
- Chief should announce (if appropriate) findings after county attorney issues opinion

Lessons Learned

- Have a written protocol agreement
 - Iron out disagreements now
- When a protocol is in place, work one-on-one with new chiefs
- Establish a task force
 - Evidence collection is crucial
- Train the task force
 - Force Science Institute
- Train all officers on what to expect if involved in a shooting

Lessons Learned

- Consider legal representation for involved officers
- Communicate with chief, investigation team, media, victim's family, etc.
 - Use the media—err on the side of disclosure
- Conduct post shooting reviews
 - Task Force self-evaluates after each investigation
 - Task Force presents to shooter's department an overview of shooting
- Shooting at vehicles—train your agencies
- Don't reach conclusions until the investigation is complete

Lessons Learned

- Officers should give statements
 - Some insurance defense attorneys advising cities to have officers NOT give witness statements
 - This is generally a mistake; physical evidence commonly cannot show officer's perception—why he felt he needed to shoot
- Chiefs and city attorneys need to train city administration—whose in charge of the investigation and what is the process?
- Send investigators (and county attorney) to train with Force Science Institute

