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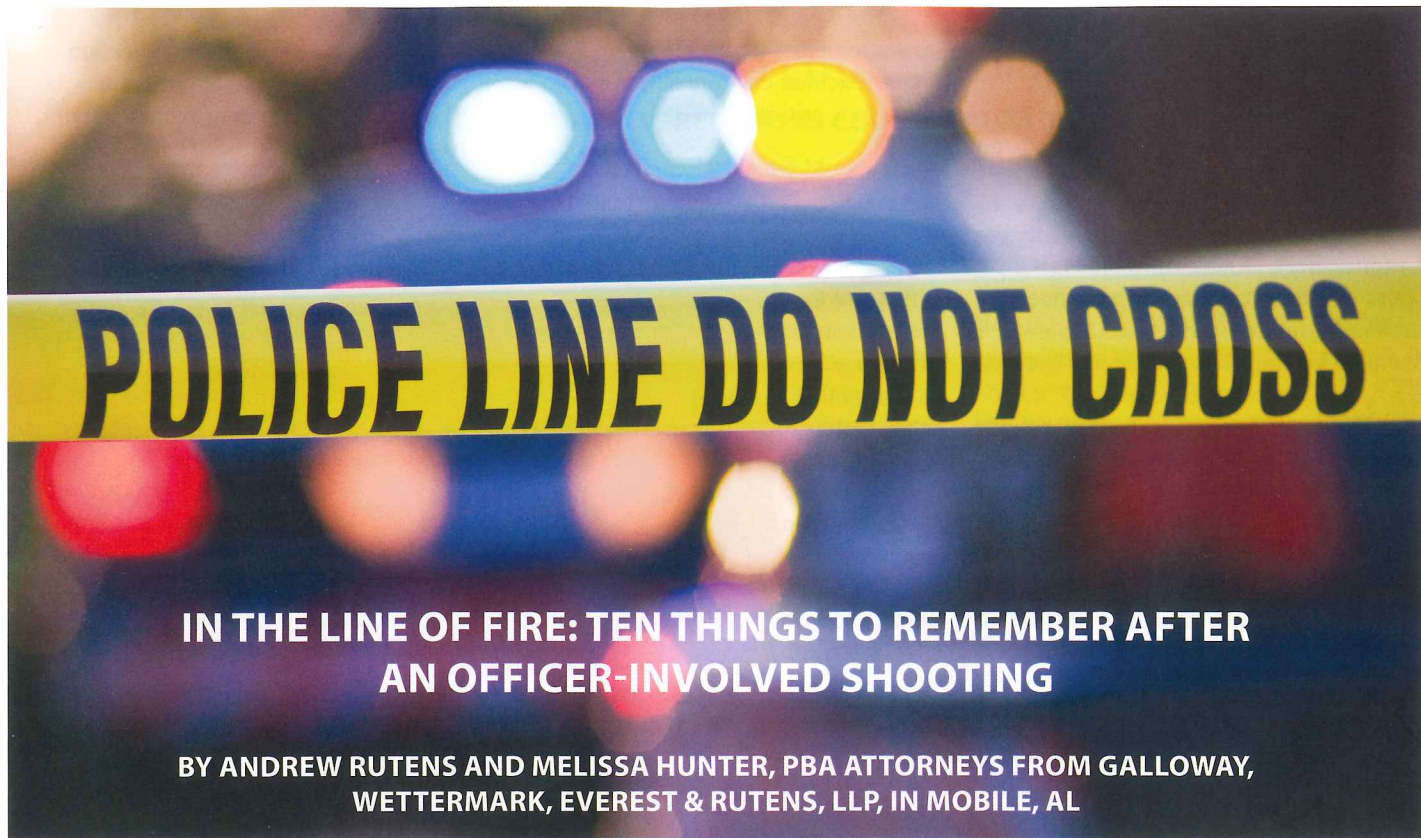
AN IN-DEPTH LOOK AT THE PBA, ISSUE 10

IN THE LINE OF FIRE: 10 THINGS TO REMEMBER AFTER AN OFFICER-INVOLVED SHOOTING

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IN THE LINE OF FIRE: TEN THINGS TO REMEMBER AFTER AN OFFICER-INVOLVED SHOOTING

BY ANDREW RUTENS AND MELISSA HUNTER, PBA ATTORNEYS FROM GALLOWAY, WETTERMARK, EVEREST & RUTENS, LLP, IN MOBILE, AL

The following list of things to remember when involved in an officer-involved shooting is designed to provide general guidance to an officer who is confronted with this type of incredibly stressful situation. Please note that general procedural orders always take precedent and should be adhered to at all times. You should also rely on your PBA assigned attorney's advice. They will be in the best position to advise you on the appropriate course of action in your specific set of circumstances.

1. Secure the scene. Immediately after a shooting, you should make sure that all suspects have been secured and first aid has been rendered to any injured persons. Maintenance of evidence is imperative. Photographs or video of the area may be taken, and certain items, such as your weapon or duty gear, may be collected and preserved. Work within your department's policies to make sure that patrol vehicle and officer body camera video are captured.

2. Reach out to PBA. If you were involved in the shooting, after the scene has been secured you should contact the



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PBA and request their assistance. The PBA will promptly have an attorney contact you on scene to provide you with representation and address any immediate concerns that you may have.

3. Do not talk to the media. The best policy for all parties involved is a 48-hour release policy. During that time, neither the name of the officer nor the name of the injured individual should be released. The policy gives the officer involved time to notify his or her family and arrange for temporary, secure accommodations if the department fears that threats or retaliation may follow. The policy also gives the department time to properly notify the family of the injured individual. The department may wish to issue a formal media release to assure the public that the incident is being handled professionally and expeditiously. Inadvertent release of information through off the cuff statements made to the media can result in two problems. First, people with an agenda who wish they had witnessed the event can use bits and pieces of accurate information to bolster a version of the events that didn't occur. Second, off the cuff comments become the gospel in court.

This even though news reporters often don't air or even keep the entire clip of an interview. It is way too easy for things to be taken out of context, and you can be

confronted with having to explain or even contradict yourself later on.

4. Know your rights. If you are questioned after an incident, you should first determine whether the questioning is of an administrative or criminal nature. If the questioning is for alleged criminal conduct, you should invoke your Miranda rights and ask for an attorney. Under law established by the United States Supreme Court in *Garrity v. New Jersey*, 385 U.S. 493 (1967), a compelled statement cannot be used as evidence against you in a criminal investigation. This is also commonly referred to as your Fifth Amendment Right against self-incrimination. However, a compelled statement may be used for internal review. If the questioning is of an administrative nature, you should answer all related questions truthfully. An internal investigation may take place to determine whether the shooting was consistent with agency policy and training. If criminal charges are filed, the case may be investigated by a grand jury. The grand jury has the opportunity to review the investigative file and take testimony from witnesses. To return an indictment, the grand jury members must vote that the probable cause standard has been met.

5. Complete your use of force report. When you use force, the details of the event should be thoroughly documented. The written report may be accompanied by photographs, evidence collected and recorded statements. Details leading up to the force event should be described in detail. All facts known or perceived by you should also be included. You should document the reasons why you believed that the force used was necessary at that time. The type of force, including number of shots fired, should be indicated. The report should identify the location of the injured person as well as any outstanding subjects. It should also include the description and location of known victims, witnesses and evidence. Make sure you have invoked your Garrity rights discussed above.

6. Give your statement/debriefing. Providing an internal statement or having a debriefing of the event is common.



Attorney Melissa Hunter

Usually, statements will be taken 24-72 hours after the incident. This waiting period provides ample time for securing representation, sleep, rest and reflection. It's very important that you describe in detail all facts leading up to the point that deadly force was used. Most often, these interviews will be conducted individually, rather than in a group setting. This prevents any type of intimidation from another officer. A walk-through may be needed. Audio and/or video recordings may also be taken. Make sure you have invoked your Garrity rights discussed above.

7. Be aware of possible civil issues. Officer-involved shootings sometimes result in the filing of a civil lawsuit against the officer or department. These claims, most often for excessive force, are analyzed under the Fourth Amendment's "objective reasonableness" standard. As a law enforcement officer, you are protected by various immunities in civil cases. One of the most important is qualified immunity. The basic concept of the immunity is that, because police officers often have to make difficult split-second decisions, they should not face civil liability in the absence of a violation of clearly established law. Your PBA membership assures you adequate

representation and legal counsel should you find yourself named as a defendant in a civil lawsuit. Most cities and counties have general liability insurance which should afford you coverage and pay for your legal defense. Immediately request that a claim be submitted on your behalf for coverage under this policy.

8. Ask about administrative leave. Check to see whether or not your department has a policy that requires leave after an incident. Regardless of whether or not it is required, a period of leave may be to your benefit. Taking leave will allow you time to decompress and allows the department or investigative agency to perform their investigation without media or social organizations making accusations that the officer was involved in the investigation and "tainted" the results. After being cleared to return to work, requalification or retraining may be necessary.

9. Seek peer support. Don't be afraid to ask for help. It is normal to feel scared and uncertain after a shooting. If you're involved in a shooting, you may be assigned a companion officer for assistance and support. This individual will be trained in dealing with the after-effects of these types of incidents. Take advantage of these resources. If you know an officer who has been involved in a shooting, please don't isolate them. Instead, offer them your support.

10. Disciplinary Action. Your concerns over administrative consequences may be the most stressful part of the shooting. It may be that, after an internal investigation has taken place, the department determines that adverse employment action is warranted. Typical administrative actions may include: written reprimand, retraining, reassignment or termination. Again, this is why you have a PBA membership. The PBA serves to provide you with top quality representation.

Visit SSPBA.ORG to update your beneficiary information.