WITNESSES: A CRITICAL ELEMENT IN ADMINISTRATIVE INVESTIGATIONS

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PATC Legal & Liability Risk Management Institute  5235 Decatur Blvd  Indianapolis, IN  46241


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Witnesses: A critical element in administrative investigations

When your law enforcement agency conducts an administrative investigation you usually have a complainant and your agency employee. Frequently, the complainant has a witness or two. Your employee often has other agency employees, such as a partner or back-up officer, supervisor and the dispatcher.

Other witnesses with little or no allegiance to either the complainant or employee are commonly referred to as "disinterested witnesses." These witnesses might be the difference between a investigative outcome that is not sustained, or one which you can legitimately classify as sustained, exonerated or unfounded.

Gathering of witnesses and the process for interviewing them is embodied in most of the Consent Decrees and other agreements between police departments and the U.S. Department of Justice, Civil Rights Division. Following a controversial shooting in 1999 in Riverside, CA, the department came under a Consent Decree with the California Attorney General and a citizens' review panel was created. In 2004, the Riverside review board issued its annual report including “...strengthen complaint investigations by interviewing all witnesses as required by policy... abstaining from asking leading questions... ensuring that field sergeants who were present when alleged misconduct occurred would not investigate the same misconduct cases.” No reasonable police administrative investigator would subscribe to these deficiencies if they occurred.

In this article we’ll discuss three essential issues when dealing with witnesses during an administrative investigation. First you need to identify known witnesses. Secondly, you need to make a reasonable, concerted effort to finding other witnesses. Lastly, you need to interview witnesses in a manner to protect the professionalism of your investigation.
IDENTIFY KNOWN WITNESSES

The form at the end of this article (excerpt from Law Enforcement Administrative Investigation) can be helpful not only for the investigator, but also the investigator’s supervisor. It requires the investigator to identify the complainant and any witnesses he/she may have offered. During the preliminary investigation conducted by the investigator - to include the gathering and reviewing of police reports, communications records and shift logs - the investigator should identify most of the other police agency employees who may have information concerning the complaint. Incidents resulting from an arrest situation may identify co-arrestees in the police reports and victims which the complainant often will not want to identify. Sources often overlooked are MDT transmissions occurring during the period of the alleged misconduct encounter. Officers who may not appear in normal police records might have communicated with the accused officer concerning issues involved in the alleged encounter.

An essential part of this form is that it forces the investigator to identify the results of his/her contact with each witness. The form requires that the investigator provide a written explanation if the interview is not tape recorded, if the citizen witness refuses to be interviewed, or whether the complainant or witness is not located. These are critical for supervisory oversight.

Citizen complainants and witnesses don’t have to cooperate with our administrative investigations. They may have pending criminal charges or are intending to file a civil lawsuit. Their attorney may not want them to be taped, but might still allow them to be interviewed. Try to get their refusal on tape, then turn it off, put it away, and proceed with the interview. Your ultimate mission is to get their version of what occurred. In some cases civilian witnesses and complainants may refuse to even give you any interview. Again try to get their refusal on tape. In any event, their refusal to cooperate can be used in the final adjudication of the complaint and may serve as a factor in your determination of their credibility.

This form quickly will note whether the witnesses have been located and what form of contact was made by the investigator. It’s important to focus on those persons not contacted. Has there been a reasonable and concerted effort to locate that person, whether they are the complainant or civilian witness. Some of the common problems observed during audits of IA cases are:

- The investigator doesn’t leave the office and all contacts are either by telephone or letter.
- Attempts to contact the complainant are directed at the last known address as reflected on the complaint form or arrest report. There is no attempt to determine whether these are correct or current.
- Investigators may overlook the possibly that the complainant and/or witness is still in jail, even your own detention facility.
- If the complainant or civilian witness fails to come in to the IA location for an interview, there is no attempt to run them down.

FINDING OTHER WITNESSES

There are three (3) main sources for locating other witnesses. When you end each of your interviews with your known sources you should ask civilians and police employees whether they are aware of any other persons who might have information regarding the allegations. This is most productive with officers, though. They might recall other officers stopping by the incident that might not have notified communications or noted their status on the MDT. These frequently are officers who slide by the scene for back-up and wait for the involved officer to signal that they can leave.
Canvasses are the other sources for unknown witnesses. There are two (2) main types of canvasses. Realize, however, that not every administrative investigation warrants a canvass. It really depends on the type of allegation and the location.

The first canvass is the area search for witnesses. It’s important that this type of canvass is done as soon as possible and at the same time as when the incident giving rise to the allegations occurred. It can also be coupled with a site visit to determine what barriers might have been present which might adversely affect witness' perceptions. It’s good to use a simple canvass sheet. Essentially this is just a piece of paper that indicates the date, time and area of the canvass and which locations were contacted. Persons contacted should be specifically asked whether they were witnesses to the incident or whether they might have other information regarding the occurrence. Some of this might assist in future credibility determinations. While it’s a good idea to tape record these contacts, even the negative ones, it is only necessary with those found witnesses who have specific information regarding the allegations.

The second canvass is very important and often overlooked. It’s a lock-up canvass. This would extend to the sally port, booking area, holding cells, and detention facility. Sources for determining who might have been in these areas at the time of the allegation are communications tapes, sign-in logs, holding cell sheets, booking records, location video monitoring tapes, and detention facility assignment logs. Who was in a position to have seen or heard aspects of the events concerning the allegations? These persons need to be contacted and either ruled out or interviewed.

PROFESSIONALIZE YOUR INTERVIEWS

We are conducting administrative interviews rather than criminal interrogations. The main difference is the accusatory nature of criminal interrogations and that the mission of the interrogator during the criminal inquiry is usually to get the subject to make an admission. During administrative interviews, however, the person on the other side of the interview should perceive that they are being interrogated if you’re doing your interview correctly.

There are three (3) major indicators of your professionalism to these interviews. These interviews are indicative of your skill as an investigator, your orientation to determine the truth of what occurred, and your objectivity. These interviews also can be graphic evidence of your bias and lack of objectivity.

The first indicator is the extent of your use of leading questions. One good way to determine the extent of this is to evaluate your skills by reviewing transcripts of your interviews. Put a mark in the margin every time you use a leading question. How much of the interview is consumed by your voice rather than the person you’re interviewing? Leading questions aren’t always inappropriate. Civilians don’t normally know police terminology or procedures. They also aren’t familiar with being responsive to questions being posed by another person. Agency employees also may be avoiding or evading answering sensitive questions. In these cases it might be reasonable to use leading questions. But frequently investigators will use leading questions to direct or guide particularly police employees to the right answer. This will destroy the ultimate professionalism of your entire administrative investigation.

The second indicator is the intenseness of your approach to your interviews. You need to challenge each witness, whether they are civilian or police employee. Each witness needs to be confronted with differences between the versions of other witnesses, inconsistencies with other versions they may have given, and discrepancies between their versions and the physical evidence. The challenge for you is to do so professionally, with courtesy, and with an air of objectivity. This may be difficult at times when you know that the person being interviewed is not being truthful. Another observation during audits of IA processes is that...
many administrative investigators rarely leave the police station. If the civilian complainant or witness doesn’t come into the police facility the investigator simply conducts the interview on the telephone. A major drawback from this is that the investigator can’t justifiably make a credibility determination without a face to face encounter.

The last indicator is when there is an imbalance between the interview process of the civilians and police employees. Is the length of the interview of civilians consistently longer than those of police employees? During many IA audits it has been seen that the agency requires civilian complainants and witnesses to come to the police facility to be interviewed, when police employees may be required to simply respond in writing to the complaint or a prepared list of questions. Are civilians challenged when police employees aren’t? Are you confronting police employees when their answers are indicative of avoiding or evading providing adverse information concerning another fellow employee?

A final word

The professionalism of your agency’s and your own administrative investigations will be maintained when you ensure that these investigations are consistent and follow an acceptable investigative protocol. The best way to ensure that this level of quality control is present is to conduct regular audits of your administrative investigations. You can do this in-house with an audit template; or you can bring someone in from the outside which might increase the objectivity of this monitoring. The Legal and Liability Risk Management Institute can assist you either during your in-house audit or by conducting an external review.
PERSONS INVOLVED CONTACT CONTROL FORM

CASE NO. __________

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<thead>
<tr>
<th>Code</th>
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<th>Person to contact</th>
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PERSONS INVOLVED CODE (LIST IN FOLLOWING ORDER WHEN POSSIBLE)

1. Complainant(s)
2. Witness(es) provided by the complainant
3. Non-agency witness(es)
4. Agency employee witness(es)
5. Involved agency employee(s)
6. Accused agency employee(s)

CONTACT CODES

A. Person contacted, interviewed, taped, transcribed
B. Person contacted, interviewed, taped, but not transcribed
C. Person contacted, interviewed, not taped nor transcribed (explain in notes)
D. Person contacted, not interviewed (explain in notes)
E. Person not located (explain in notes)

________________________________________  ____________________________________
Investigator                                  Supervisor approving

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