

Recommendation xx: MPD should automatically conduct an administrative investigation of all officer-involved shootings and other critical incidents separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers, if necessary. A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights. [OIR 73, CRT 13]

Under state law, after a critical incident, the initial investigation into the lawfulness of police conduct must be conducted by an independent agency, and the State DOJ has determined that its Division of Criminal Investigations (DCI) has that responsibility. The DCI investigation, and its component interviews, are narrowly focused on determining whether the officer involved violated minimum constitutional due process standards, and hence violated the criminal law (the DCI thereby provides information for a determination by a district attorney regarding criminal prosecution). This investigation and its interviews are tightly focused on the moment the officer took the action involving deadly force and the reasons for it. This investigative effort is not geared toward gathering evidence relevant to broader questions of whether departmental policy was violated, or assessments of tactical decision-making prior to the use of deadly force or post-incident conduct such as provision of medical care.

Many police agencies routinely conduct thorough follow-up interviews, in which questions of planning, tactical decision-making, supervisory decisions, communication, equipment, and post-shooting conduct are carefully explored. Such a comprehensive fact set is required both for determinations of individual accountability and to learn from incidents, with a goal of Departmental improvement (e.g. so as to avert such incidents in the future).

But as OIR notes, in MPD's case:

per the relevant SOP, MPD's Professional Standards and Internal Affairs Unit is responsible for conducting an "internal investigation to ensure compliance with the MPD Policy, Procedures, Regulations, Work Rules, and Training and Standards." In the relevant case files we studied, the PSIA review usually relied entirely on the criminal investigation's collection of facts, summarized those facts, and rendered findings that were limited to the question of whether the use of deadly force was within policy. Contrary to its stated policy, MPD's current administrative process does not usually consist of an "investigation," but instead a repackaging of the facts collected by the criminal investigators [T]he Department generally relies on the interviews conducted by the criminal detectives in making its administrative determinations. This resultant gaps [sic] in evidence may end up being even more pronounced now that DCI has assumed investigative responsibilities for fatal shootings: MPD no longer has any ability to influence the breadth of the initial interviews.

In response to the OIR report, MPD argued that re-interview of officers may be unnecessary – if the DCI interviews answered all its questions, there may be no need for additional interviews. MPD also indicated that it subscribed to a school of thought that multiple interview of officers involved in critical incidents should be avoided.

In response, OIR noted *"In the hundreds of detective and administrative interviews we have reviewed, there has consistently been additional, relevant, and often critical information that emerges from the administrative interview."* As Mike Gennaco of OIR told the Committee *"In my experience, I have not yet*

seen an interview conducted by a detective that couldn't be or shouldn't have been embellished to get into tactical issues and other decision making, that the district attorney is not going to be interested in."

The Ad Hoc Committee strongly agrees with the OIR recommendation, that administrative investigations should automatically be conducted and that these should include re-interview of involved and witness officers. Given MPD's concerns, however, the Committee has modified the OIR recommendation, appending the words "if necessary" so that re-interviews will not be required in cases where they would be of no value, but also including a stringent definition of "necessary" (a provision proposed by the CRT and strongly endorsed by Mike Gennaco of OIR) to avoid the recommendation being undermined. Specifically, *"A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights."*