

The Future Is Here: How Police Officers' Videos Protect Officers and Departments

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The old adage that “seeing is believing” is truer now than ever before given the ability to record law enforcement encounters. Cameras are everywhere; the proliferation of smart phones, iPhones, mounts in stores, ATMs, and the many videos of law enforcement arrests and interactions with the public that are uploaded to You Tube on a daily basis underscore how important video evidence is to law enforcement. We live in a world of digital media, and cameras have become commonplace. Unfortunately, many of these videos are taken by the public at the point where force is being used on a resisting suspect with law enforcement being portrayed in an unfavorable light. They rarely record the incident that led up to and justified the use of force. This often leads to community and media outrage over legitimate and justified uses of force that are being negatively shown in partial video recordings and do not tell the whole story from the officers' perspective.

What Every Police Chief Needs to Know About On-Officer Mounted Videos

Video evidence, also referred to as the “silent witness” has the ability to present unbiased facts. It is by its nature “extremely persuasive, vivid, and unforgettable.”¹ Video images have always been compelling when presented as evidence in court. Juries that are presented with video evidence will stay alert and will remember far more information than those who simply hear the words without having the advantage of the corresponding visual depiction that should have accompanied it.

In a study conducted by the International Association of Chiefs of Police, prosecutors were asked to rate the value or effectiveness of

video evidence in court proceedings. They reported that the presence of video evidence enhances their ability to obtain convictions and increases the number of guilty pleas prior to going to trial. Ninety-three percent reported that video evidence is an effective tool for prosecutors and the majority reported a reduction in the time they actually spent in court.²

In any litigation involving law enforcement action, whether civil or criminal, a big legal hurdle is overcoming the “he said, she said” dilemma. In civil rights cases involving claims of excessive use of force, this factual dispute will preclude the court from granting summary judgment in favor of the officer. The court must find that there is no dispute as to material facts before granting summary judgment. If there is a video recording of the event, the video speaks for itself as to what really happened. If the police officer and department have a complete video that shows the circumstances leading up to the use of force and captures the entire incident, oftentimes there will be no dispute as to material facts and the court is able to grant summary judgment, often saving significant time and expense for the law enforcement agency and officer, as well as avoiding the risk of a large award for damages.

The value of video evidence was emphasized by the U.S. Supreme Court in the case of *Scott v. Harris* where the court held that video recordings are more reliable than eyewitness testimony, which was later contradicted by the video of the incident.³ The Court in its landmark 8 to 1 decision went on to say that when opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. That was the case in *Scott*—and whether Scott was driving in such fashion as to endanger human life. Scott’s version of events was so utterly discredited by the record that no reasonable jury could have believed him. “The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.”⁴ Wow! What a great decision for police officers and agencies alike. That decision answers the question of whether to film or not to film; who would not want this added protection for their police officers and departments?

Another example of how video evidence can impact a civil case is the case of *Burton v. Taylor* where, an officer followed the driver of a car into a gas station following a high-speed chase and deployed a TASER on him a few times when he resisted being handcuffed.⁵ Although the man’s story contradicted the officer’s, the video of the

event fully credited the officer's story and completely discredited the man's version of events. Consequently, the officer was granted summary judgment following the roadmap laid out in the *Scott* decision by utilizing evidence that previously had not been allowed to be considered by a court until the time of trial.

Since video evidence is so compelling, courts have set high standards to ensure the integrity and admissibility of those images in their rules of civil procedure concerning the admissibility of video evidence.

Admissibility of Video Evidence

In federal court the admissibility of video recordings as photographic evidence is governed by Rule 1001(2) of the *Federal Rules of Evidence* (Federal Rules) that establishes seven criteria to determine admissibility:

1. The recording device was capable of recording the activity.
2. The recording is authentic and correct.
3. No changes, additions, or deletions have been made to the recording.
4. The recording has been preserved in the manner shown to the court.
5. The operator was competent to operate the recording device.
6. The persons being recorded are identified.
7. The activity elicited was made voluntarily, in good faith, and with no inducements.

Most states have similar rules of evidence that vary by jurisdiction. The foundation for the admissibility of video recordings is generally laid through eyewitness testimony, usually the operator, establishing the video as an "accurate and faithful representation" of the scene or object depicted.

It should be noted that the first five of the above seven admissibility criteria from the Federal Rules are dependent on the ease of use, quality, reliability, security, and integrity of the recording device and the software storage and management system where the video recording is stored. It is critical therefore, that these factors are given serious consideration when evaluating an on-officer video camera and backend software storage and management systems.

William Farrar, the police chief in Rialto, Calif., conducted a study that began in February 2012 to determine whether officers' use of video cameras can improve relations between the police and citizens. Chief Farrar stated that "it wasn't the easiest sell," when he informed officers in Rialto of the introduction of the new, on-officer, miniaturized cameras, with some officers "questioning why 'big brother' should see everything they do." He reminded them that citizens could use cellphones to record interactions, "so instead of relying on somebody else's partial picture of what occurred, why not have your own?" he asked. "In this way, you have the real one." Chief Farrar describes the before-and-after figures for complaints and uses of force as "simply amazing."⁶

Citizen Complaints: Citizen complaints about perceived officer misconduct or poor performance declined nearly 88 percent. In some cases, citizens decided not to file grievances after they were shown the video of their incident.

Use of Force: Uses of force dropped 60 percent. The study found that "[s]hifts without cameras experienced twice as many incidents of use of force as shifts with cameras."⁷ In addition, the rate of use of force incidents per 1,000 contacts was reduced by 2.5 times compared to the 12 months prior to the study period.

Change in Behavior: Chief Farrar stated that the study showed there was a change in behavior both by his officers and the public. He explained "I think it's a mixture: Officers become more professional, and citizens tend to behave better."⁸

Legal Considerations When Evaluating On-Officer Video Systems

Ease of Operation and Training: One of the criteria under the Federal Rules for a video to be admitted as evidence is that the operator was competent to operate the recording device. Both ease of use of the recording system with safeguards, as well as good officer training in the operation of the camera are critical to meet this criterion. For example, the recorder should have a very simple, easy to use on/off switch that can be easily operated by dexterity alone without looking, with private audio signals to confirm when it is turned off and on, as well as safeguards to prevent accidentally turning it on or off. Video transfer from the recorder to a secure evidence database should be very simple and automatic with no room for error. Be sure to evaluate the manufacturer's training program to ensure operator training to a competency level.

Quality and Reliability: Another requirement for admissibility under the Federal Rules is that the recording device be capable of recording the activity. To satisfy this requirement, the video recording system must have professional-grade quality, ruggedness, and reliability to work the first time, every time—and with extended battery life. In addition, the camera should have low-light capability to mirror the human eye. Many consumer grade cameras do not meet this standard. Also pre-buffering is an important feature where the camera continuously records and holds the most recent 30 seconds of video when the camera is off. With this feature, the initial activity that causes the officer to turn on the camera is likely to be captured automatically, thereby increasing the capability of recording the entire activity.

Security, Anti-Tampering, and Audit Trail: The Federal Rules also require that the recording be authentic and correct and that no changes, additions, or deletions were made to the recording for it to be admitted as evidence. To meet this requirement, the whole camera system, including the camera, the transfer of video from the camera to storage, and data storage system must be secure and tamper proof. The best systems are those with no human access to camera memory where the original video cannot be modified, only viewed. Also important are anti-deletion safeguards and permissions for viewing and copying. The worst systems are those that use an accessible SD card, which allows the security risks of either losing the SD card or tampering with the original video on the SD card. Best practices also require a time and date stamp, watermarks and hashing to ensure integrity, and safeguards to ensure that the camera cannot record over or delete video files. Another important security consideration is requiring permissions for viewing and copying a video file.

Chain of Custody: Because video tampering is possible, it is important to establish chain of custody or other evidence establishing that the content of the video has not been altered from the original recording. The Federal Rules require proof that the recording was preserved in the manner shown to the court. This is best accomplished with an audit trail record and chain-of-custody report that lists all persons who had access and viewed or copied the video, the time and date of each event, and what action was performed. Software systems that preserve the original video file unaltered and track the audit trail and chain of evidence automatically with report writing capability are usually more accurate than an officer trying to keep manual track of removable SD cards and personal computer video files, documenting all people who had access to the video, and what action was taken.

Officers' Perspectives: In *Graham v. Connor*, the U.S. Supreme Court ruled that all excessive force claims against law enforcement are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.⁹ It held that the "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. Therefore, any camera system that best records the incident from the perspective of the officer at the scene would be best qualified to meet this evidentiary standard.

There are generally four types of video camera systems currently being used by law enforcement:

- **In-Car Camera.** This type of camera records the perspective of the officer while in the car looking forward within the fixed field of view of the camera. It has been estimated that 90 percent of the officer's interaction takes place outside the field of view of the in-car camera.
- **Camera Mounted on Conducted Energy Weapon (CEW).** This camera records the perspective of the officer when he is looking in the direction of where the CEW is aimed and the safety is turned to power on.
- **Body-Mounted Camera.** This camera is usually mounted on the officer's uniform facing forward and has a fixed field of view pointing in front of the officer, but does not see what the officer sees since the field of view is quite a bit lower than eye level, which results in obscured views when a firearm or CEW is raised to firing position or when driving a car where the steering wheel and hands on the steering obscure the view or when the officer turns his or her head.
- **Head-Mounted Camera.** Since the camera is mounted on the officer's head at eye level facing forward on a head band or a pair of glasses, it best records what the officer sees and is the best evidence of the officer's perspective.

Privacy: Some states require two-party consent before video recording, and some states allow video recording but not audio recording. In addition to these privacy issues, there is also a concern about first amendment rights and other privacy concerns. The *New York Times* reported that Jay Stanley, a senior policy analyst at the American Civil Liberties Union, said: "We don't like the networks of police-run video cameras that are being set up in an increasing number of cities. We don't think the government should be watching over the population en masse."¹⁰

Mr. Stanley states that all parties benefit from officer-worn cameras. They protect the public from police misconduct—and officers from bogus complaints. “There are many police officers who’ve had a cloud fall over them because of an unfounded accusation of abuse,” he said. “Now police officers won’t have to worry so much about that kind of thing.”¹¹

Conclusion

The future is here, and police chiefs need to equip their police officers with the tools required to protect themselves, the public, and their departments. Police officer videos are the answer to combating negative public perceptions created by partial cellphone videos often showing only an officer’s use of force, and, more importantly, they help courts have the evidence needed to overcome the “he said/she said” situations resulting from a police officer’s need to use force to effectuate an arrest or to protect themselves or others. As Captain Joe Fiumara said in the Technology Talk column, “The Future Is Near: Getting Ahead of the Challenges of Body-Worn Video,” in September 2012: “It is imperative that law enforcement takes proactive steps to guide policy development, standards, legal processes, and best practices in a manner that will foresee and overcome the anticipated challenges [facing police officers].”

Therefore, common sense and best practices (as seen in the *Scott* decision) demand that, if at all possible, all departments should equip their officers with body-worn video cameras. To do less is no longer acceptable.

Notes:

¹See Jordan S. Gruber, “Videotape Evidence,” 44 AM. JUR. TRIALS 171, § 74 (2009).

²*The Impact of Video Evidence on Modern Policing* (Alexandria, Va.: International Association of Chiefs of Police, 2003), http://www.cops.usdoj.gov/Publications/video_evidence.pdf (accessed August 21, 2013).

³*Scott v. Harris*, 127 S. Ct. 1769 (2007). A link to the video from the case can be found on the U.S. Supreme Court website <http://www.supremecourt.gov/media/media.aspx>. This case marks the first time the Court posted video evidence on its website.

⁴*Id.*

⁵2012 WL 832624 (M.D. Tenn. Mar. 12, 2012)

⁶Randall Stross, "Wearing a Badge, and a Video Camera," *The New York Times*, April 6, 2013, http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html?pagewanted=all&_r=0 (accessed August 21, 2013).

⁷Nick Kolakowski, "Should Cops Wear Google Glass?" Slashdot, August 15, 2013, <http://slashdot.org/topic/bi/should-cops-wear-google-glass> (accessed August 27, 2013).

⁸"New Study Measures Impact of Body Cams on Complaints, Force Use," *Force Science News* 230, <http://www.forcescience.org/fsnews/230.html> (accessed August 27, 2013).

⁹*Graham v. Connor*, 490 U.S. 386, 395 (1989), quoting *Tennessee v. Garner*, 471 U. S. 1 (1985).

¹⁰Stross, "Wearing a Badge, and a Video Camera."

¹¹Joe Fiumara, "The Future Is Near: Getting Ahead of the Challenges of Body-Worn Video," Technology Talk, *The Police Chief* 79 (September 2012): 54.

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