



Cite as: 2011 (6) AELE Mo. L. J. 501

ISSN 1935-0007

Special Articles Section - June 2011

Videotaping and Police Behavior

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❖ Introduction

The introduction of in-car video capturing the visual and audio of police interactions with the public has generally been accepted as a positive advancement for law enforcement. However, incidents from video of police officers engaged in unbecoming verbal and physical behaviors have resulted in local and national media attention.

Further, the ease of recording by the public's use of cell phone and other video media compounds the negative scrutiny. These incidents result in legal actions against police agencies and police officers. The action of police officers begs the question, "If you know you are being recorded, why do these behaviors occur?" The impact upon litigation and training will be discussed.

❖ Background

The adage, “a picture is worth a 1,000 words”, aptly applies to the subject matter of this article. Almost weekly, the television news captures a brief video clip of one or more police officers striking, hitting, punching, and/or kicking a subject who appears disarmed and helpless. On March 3, 1991, a bystander, George Holliday, using a hand-held video camera, videotaped the interactions between Rodney King and members of the Los Angeles Police Department (LAPD).

The footage showed LAPD officers repeatedly striking King with their batons while other officers stood by watching, without taking any action to stop the beating. A portion of this footage was aired by news agencies around the world, causing public outrage that raised tensions between the black community and the LAPD and increased anger over police brutality and social inequalities in Los Angeles.

Four LAPD officers were later tried in a state court for the beating but were acquitted. The announcement of the acquittals sparked the 1992 Los Angeles riots. A later federal trial for civil rights violations ended with two of the officers found being guilty and sent to prison and the other two officers acquitted. In 1991, there were no cell phone cameras with video capability as we know it today. The very first mobile picture phone was built by the American inventor Daniel A. Henderson in 1993.^[1] Today, there are billions of cell phone subscriptions worldwide with the majority having video recording capabilities.

The rapid technological advances have led to scrutiny of police actions with reliable documentation of these actions by the public. The video cell phone technology is not going away but has the training of police officers kept pace with these advances during the past 20 years? Entry and in-service training of police officers will address integrity issues and topics of unbecoming conduct but few programs address the range of behaviors captured on video.

- **If you know you are likely to be video-recorded, why engage in acts that may lead to job termination and criminal prosecution? There is no easy explanation for the phenomenon.**

The rationalization that there is always “one bad apple” serves to minimize the frequency and severity regularly portrayed on the evening news. Also, the involved officer is frequently described favorably by his agency and “must have lost it” at the time video-recorded by a citizen.

The dynamics involved reflect a lack of appreciation for psychological processes involved in police misconduct, generally, and group/individual officer behaviors, specifically.

- **These psychological influences are not addressed as part of the training curriculum.**

In contrast, hours of officer survival training are provided to instill that the training will solely determine decisions like “shoot – don’t shoot.” The discussion of problematic behavior captured on video would lack balance if the thousands of instances of proper conduct were not, also, noted. Among these is an example from a dash-cam recording that is posted at <http://www.youtube.com/watch?v=Wtcvmu3p6WM> The video shows an officer stopping a driver for speeding.

The officer attempts to explain the driver’s ability to seek a trial date or simply pay the ticket. However, the driver becomes irate, snatches the ticket from the officer and viciously insults him. The driver also dives into a long diatribe about the nature of the economy and his personal economic circumstances.

After the officer informs the driver that the ticket carries an accompanying fine of \$137.00, the driver, angrily, tears up the citation and throws it on the ground at the officer’s feet. At the end of the stop, the driver sped off cursing the officer.

The officer exhibited extraordinary patience while dealing with the angry driver. Throughout the entire encounter, the officer remained calm as he explained the driver’s rights, responsibilities and options. The officer was not affected by the driver’s personal insults or his erratic and abusive behavior.

In contrast, a South Carolina State Trooper, traveling in an unmarked patrol vehicle, attempted to stop a 26 year-old nursing student from Florida, for speeding. After the trooper engaged his emergency equipment, the driver drove an additional eight miles before pulling over to the side of the highway. Following the incident, the driver stated that she was unsure who was trying to pull her over and wanted to reach a more populated area before stopping.

Once she stopped, the Trooper charged out of his cruiser with his weapon drawn, demanding that the driver get out of the vehicle. The trooper holstered his weapon, opened the driver’s side door and attempted to forcefully pull the driver out of the vehicle.

The female driver advised the male trooper that her seat belt was still engaged. However, this did not stop the trooper from continuing to pull on the driver's left arm. Eventually, the driver was able to release her seat belt and was pulled to the ground where she landed on her hands and knees.

The Trooper placed his knee on the driver's back, pressing the driver into the ground, and placed her in handcuffs. The videotape clearly shows that the driver put up no resistance at any time during the encounter and that the Trooper was not dealing with a combative individual.

As a result of her treatment at the hands of the Trooper, the driver filed a civil suit against the South Carolina Department of Public Safety, which was settled before trial, for \$400,000. Following the incident, the Department investigated the Trooper's actions, determined that he had acted outside of Department policies and removed him from his post.

The video may be viewed at <http://www.youtube.com/watch?v=z5btll9myYo>

❖ **BART incident**

On New Year's Day 2009, police officers responded to reports of a fight on a crowded subway platform.

Numerous cell phones captured the scene as three BART officers questioned a number of males as they sat with their backs against a wall. One of the men being questioned was 22-year-old Oscar Grant. At some point during the questioning, the officers attempted to place Mr. Grant face-down on the ground.

From the video, it appears that Mr. Grant struggled with the officers, forcing them to attempt to subdue him. The officers struggled to handcuff Mr. Grant when Officer Mehserle stood, drew his service weapon, and fired a single round into Mr. Grant's back. Oscar Grant died the next day in an area hospital.

• ***Initial Public Response***

Numerous different cell phone videos of the incident were released to the media and resulted in an initial wave of peaceful and violent demonstrations. The violent protests reportedly caused over \$200,000 in property damage.

• ***Response from BART***

BART launched an immediate investigation into the events leading up to the shooting in an attempt to determine if any other officers should be held responsible. The internal investigation was inconclusive; however, the results were then forwarded to an outside firm who conducted a follow-up investigation. The outside firm rendered two reports to BART, only one of which was released to the public.

In the publicly released report, the firm made the following recommendations. ^[2]

1. Update the BART policy manual
2. Reinforce tactical concepts
3. Improve communications and leadership during incidents
4. Institute more strenuous use-of-force reporting requirements and investigations
5. Enhance transparency into the process
6. Train officers on updated policies
7. Additional Taser training for officers

The investigators placed a large share of the blame for the New Year's Day shooting on inadequate training, insufficient reinforcement of department protocols and the failure of the involved officers to take necessary steps to successfully quell a disturbance. The authors of the report made the following factual finding regarding the shortcomings that led to the death of Mr. Grant:

Shortcomings in tactics used by officers responding to the Fruitvale incident; officers did not follow recommended procedures; officers failed to work as a team, reducing their effectiveness by working independently while also increasing their chances of being assaulted; lapses in tactical communication and leadership.

Following the release of the findings, BART officials stated that they had begun to review the reports and were in the process of making necessary changes.

• ***Other officers involved in the incident***

As a result of action taken at the scene, one other officer was fired from the Department.

• *Officer Johannes Mehserle*

On January 13, 2010, the County prosecutors charged Officer Mehserle with murder. During his trial, Officer Mehserle testified that he intended to fire his Taser at Mr. Grant, but mistakenly drew and fired his pistol instead.

The jury was instructed to consider the charges of Second Degree Murder, Voluntary Manslaughter, and Involuntary Manslaughter. Officer Mehserle's mindset at the time of the incident was a key factor because the legal difference between Second Degree Murder and Involuntary Manslaughter is a matter of the perpetrator's intentions.

In order to convict Officer Mehserle of Second Degree Murder, the prosecution had to prove that he either: (1) intended to kill Mr. Grant; (2) intended to cause Mr. Grant great bodily harm; or (3) acted with extreme recklessness.

On the other hand, the jury could have returned a conviction on the lesser charges of Voluntary Manslaughter or Involuntary Manslaughter. A defendant is guilty of Voluntary Manslaughter if they intentionally kill someone while in the heat of passion caused by an adequate provocation (e.g. mutual combat). In order to find Officer Mehserle guilty of Involuntary Manslaughter, the Jury had to believe that he killed Mr. Grant unintentionally, but through actions that exhibited criminal negligence.

On July 8, 2010, the jury announced that they had found Officer Mehserle guilty of the less severe charge of Involuntary Manslaughter. Based on this verdict, it appears as though the jurors believed Officer Mehserle's defense that he had unintentionally drawn his service weapon when he had intended only to use his Taser.

On November 5, 2010, the court sentenced Officer Mehserle to serve two years in jail, the shortest term of imprisonment allowable by statute.

• *Community Response*

Following the verdict, the community again protested. Initially, the demonstrations remained peaceful. However, after nightfall, the protestors became violent causing more property damage and leading to the arrest of at least 85 people.

• *Civil Action*

The family of Mr. Grant filed a wrongful death lawsuit against BART.^[3] BART reached a settlement with Mr. Grant's daughter, whereby, she will receive \$1.5 million.^[4]

The above two cases crystallize the need to address social-psychological processes as part of an officer's training. Programs that only address the tactical factors or the policy and procedures of an agency are unlikely to achieve the desired behavioral changes in their officers.

The training elements described below are an extension of cogent papers on the Psychology of Police Misconduct.^[5] Further, the best practices (for handling investigation of videotaped incidents) is not the focus of this paper but can be found in a Special AELE Report.^[6]

❖ Psychological Factors

• *De-Individuation*

Social psychologists have contributed to the study of “mob psychology” for over 40 years. There are two elements to this psychological factor that are relevant to understanding and implementing training of police officers. First, when people think they are anonymous, they will behave in anti-social ways because they do not believe they can be singled out among the crowd and be evaluated or held responsible. Second, group behavior tends to be more extreme than the usual behavior of any one individual. The latter we can identify with easily.

You are seated in the stands of a football game featuring rivals (SEC, Big 10, etc.) when an opposing player is soundly tackled to the ground. You jump to your feet screaming “kill him”, punching your first in the air, wildly. This is unlikely to reflect your typical individual response at the Monday morning staff meeting reviewing crime stats.

Social Psychologists attribute this effect to a process of de-individuation, defined as the loosening of normal constraints on behavior when people are in a crowd, leading to an increase in impulsive and deviant acts.^[7] Compounding the effects are when dehumanization of the person(s) occurs with labels like “enemy”, “bad guys” and “dirt bags”.

The element of anonymity may appear curious to the casual observer. Police officers are typically dressed in uniforms that easily identify the police agency. How anonymous can this be? However, under the stress where high anxiety is present, individuals, including police officers, lose self-awareness. The higher the stress, the less self-awareness occurs.

• *Dominant response*

An additional psychological process involved is the social facilitation theory. Simply being in the presence of others causes arousal, leading to an increase in the dominant response, which is defined as the most common response in a given situation. ^[8]

When presented with a task where other people are present (such as the driver of vehicle in the South Carolina case), the dominant response will be enhanced and the subordinate response, or less common response, will be inhibited. In a situation where the dominant response is mostly correct, such as if the task uses previously acquired skills, the subject will exhibit better performance.

If the dominant response is mostly incorrect, such as inappropriate police behaviors, then the officer will demonstrate poorer performance. A factor contributing to the incorrect response is that the presence of another person creates a conflict between attending to that person and attending to the task (such as traffic stop procedures).

When there is conflict in attending to both the task and attending to another person, the situation is psycho-physiologically arousing and creates what is described as “social facilitation effects”. While multiple factors may be involved, the poor performance is postulated as mostly reflecting inadequate training.

❖ **Recommendations**

It is recommended that recruit and in-service training programs implement classroom instruction about psychological factors that contribute to police misconduct. Further, live training scenarios are an important component to reinforcing the classroom instruction. A theoretical overview of the principles is not sufficient. Practical training scenarios involving community members, reflecting the diversity of the citizens, are essential. An example to consider modeling is the FBI’s Hogan’s Alley.^[9] Another realistic training program has been developed by the United States Army^[10] as part of pre-deployment training to Iraq and Afghanistan.

❖ **Notes**

1. Camera phones – from the Intellect to the Tsunami.
http://www.articlealley.com/article_933331_64.html [Retrieved February 5, 2011].
2. http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf

3. *Wanda Johnson, et al. v. Bay Area Rapid Transit District, et al.*, No. 3:09-cv-00901 (N. D. Cal. 3/2/09). <http://dockets.justia.com/docket/california/candce/3:2009cv00901/212214/>
4. Source: San Francisco Chronicle. January 28, 2010. Page C-1
<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/01/27/BAFV1BONH6.DTL>
5. See [Understanding the Psychology of Police Misconduct](#) written by Brian D. Fitch, Lieutenant, Los Angeles, California Sheriff's Department, *The Police Chief*, Vol. LXXVIII, No. 1, January 2011, pages 24-27.
6. <http://www.aele.org/video.html> and additional information on the subject at <http://www.policeone.com/legal/articles/1916414-IACP-Special-Are-officer-involved-shooting-videos-the-next-hot-button-issue/>
7. Zimbardo, P. G., (2007). *The Lucifer Effect: understanding how good people turn evil*. New York: Random House. ISBN 978-1-4000-6411-3.
8. Rosenbloom, T., Shahar, A., Perlman, A., Estreich, D., & Kirzner, E. (2007, November). Success on a practical driver's license test with and without the presence of another testee. *Accident Analysis and Prevention*, 39 (6), 1296-1301. The original research was published in Zajonc, R. B. & Sales, S. M. (1966, April). Social facilitation of dominant and subordinate responses. *Journal of Experimental Social Psychology*, 2 (2), 160-168.
9. The FBI Academy's [Hogan's Alley](#) complex is a realistic, urban, practical problem training area which was initiated in March 1987. The Operational Skills Unit (OSU) manages and schedules all practical training events, administers practical problem exercises primarily to New Agent trainees, and provides safety and survival training to law enforcement officers and FBI Agents.
<http://www.fbiacademy.edu/hogansalley.htm> [accessed March 7, 2011].
10. <http://www.army.mil/-news/2009/06/11/22533-3rd-id-soldiers-receive-validation-before-deployment/> [accessed March 7, 2011].

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AELE Monthly Law Journal

Special Articles Section
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Tel. 1-800-763-2802

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