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PERSPECTIVE

A guide to effectively presenting body-camera evidence at trial

By Eugene Ramirez

Technology is constantly changing the role of law enforcement agencies, which are being challenged to deploy the latest technology to improve policies and procedures, weapons systems, and even on how officers perform daily duties. Meanwhile, the public is demanding — and law enforcement is trying to provide — as much transparency as legally permissible.

Even with the latest technology available, the actions and tactics of law enforcement are criticized by the media and the public. Juries often return large verdicts against law enforcement agencies. However, body-worn cameras may actually be reducing exposure to litigation and unwarranted citizens' complaints.

Both law enforcement agencies and the communities they serve have benefited from the deployment of body cams. As noted by the U.S. District Court for the Southern District of California: "The body-worn camera provides a technological aide to better serve the community by protecting both police officers and citizens. An accurate depiction of the contacts between the police and community improves public safety, provides an objective means for evidence gathering, and serves as valuable training tool for police officers." *Emmons v. City of Escondido*, 168 F. Supp. 3d 1265 (S.D. Cal., 2016).

California is one of the leaders in deploying body-worn cameras. The adoption of body cams accelerated after the city of Rialto began testing body cams around 2012. More studies were then conducted by other departments and organizations, which validated the original Rialto experiment with body-worn cameras. The use of body-worn cameras has now become the norm. Communities expect their law enforcement agencies to use them. And law enforcement agencies rely on the videos to assist in resolving citizen complaints, training new officers, and to defend their actions when accused of misconduct.

Accusations of misconduct often present themselves in the form of a civil lawsuit. This was the case in *Emmons*, where police officers responded to a 911 call for a welfare check and potential domestic complaint. Events at the residence would lead to the arrest of one occupant, subsequent dismissal of the criminal charges by the district attorney, followed by a civil rights lawsuit against the officers. The federal district judge dismissed the individual claims against the officers. In doing so, the judge wrote: "The court notes that if a picture is worth a thousand words, a video from the body-worn camera of a law enforcement officer during a 'contact' giving rise to litigation may be worth a thousand pictures. Such is the case here. The video shows that the officers acted professionally and respectfully in their encounter with Plaintiffs."

The widespread use of body-worn cameras is now impacting how attorneys prepare their cases for litigation, in both criminal and civil cases.

Preparing for Litigation Using Body-Worn Camera Videos

What actually occurred between an officer and a civilian may be captured on video, or maybe only portion of the incident was recorded — meaning the videos sometimes provide more questions than answers.

In preparing a case, care must be taken to not overly rely on the video/ audio of an incident. Attorneys must still conduct an investigation, through the traditional discovery devices, in order to learn the actual facts of the incident. Witnesses must be identified, located and interviewed/deposed. The scene of the incident should be visited to understand where witnesses were located and whether they could have seen what they claimed to have seen. Measurements should be taken, when warranted, to determine how far away witnesses were from the actual incident.

The use of a video is only part of the litigation preparation plan. When reviewing and analyzing a video, the following steps may assist in ensuring that the video evidence is used to support your case position.

Insert a Counter on the Video

When you first receive a video, immediately have a counter installed, if there is not one already present. When preparing witnesses for depositions/ testimony, it is extremely helpful to know how quickly the event unfolded. Many times witnesses are incorrect on their time estimates. Having a counter on the video will assist in understanding how quickly, or slowly, the incident lasted.

Have a Copy of the Video Slowed Down

In addition to watching the video in real-time speed, an attorney should review the video with witnesses with the video slowed down in speed. This will enable both attorneys and witnesses to see what someone was holding or not holding in their hands. This will also assist in anticipating counter arguments from the opposing side.

Show the Number of Commands Given During an Incident

If commands being given during a recorded incident are an issue, as it is in many law enforcement cases, then note the number of commands given. If you are defending a law enforcement officer, it may be advantageous to demonstrate how many times the officer gave commands before force was used.

Prepare to Have Still Shots from the Video Used in Litigation

In a recent case, the opposing counsel used still shots from a body-worn camera to question my law enforcement client. The issue was whether the suspect was armed with a weapon at the time of the shooting. Instead of showing the video the witness, the opposing attorney merely showed still shots of the video and questioned the witnesses about what he saw or did not see in the suspect's hands. The witness had been prepared for this line of questioning and was able to respond by stating that while he could not see anything in the still photos, it was difficult to determine if the suspect was armed when the actual encounter happened because of how fast the incident took place. He noted that he was multi-tasking in determining the level of threat, watching out for civilians walking into the area of threat, and handling other concerns. Even though the witness was well prepared, the opposing counsel's tactic of using the still photos was well done.

Conclusion

The use of body worn camera videos, and other video media such as cell phone videos, has impacted litigation preparation. There has to be an acknowledgment that the video is not always the best evidence. However, it is still an item of evidence that has to be addressed, which means that witnesses need to be properly prepared to testify about the video. The steps provided above should provide some guidance in how to assist in preparing your witnesses to deal with video evidence.

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