



# FORCE SCIENCE<sup>®</sup> NEWS

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## Should cops see body cam video before giving UOF statements?

### I. Should cops see body cam video before giving UOF statements?

A recent webinar on the hot question of whether officers should be allowed to review body cam video before giving statements on use-of-force incidents features a spirited clash of opinions among two law enforcement lawyers and a forensics expert, but in the end offers agreement on two critical points:

1. To avoid potentially damaging pitfalls, officers and their attorneys need special expertise about the nature and limitations of video recordings, regardless of when they're viewed, and
2. Departments must be actively educating their communities now about the surprising realities of video footage to preserve trust in the face of future controversial episodes.



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INSTITUTE

The program, presented by Lexipol, the prominent public safety risk management and policy consulting group, runs 60 minutes and is titled "Point/Counterpoint: The Debate over Officer Viewing of BWC Video Footage." Click here to review it in full, free of charge. [There, after filling out a few quick "registration" questions, you can access the recording, starting and stopping it as desired.]

The roundtable participants are:

- Ken Wallentine, an attorney and supervisory special agent who directs the Utah Attorney General's Training Center. He is a certified Force Science Analyst and a current student in the Advanced Force Science Specialist program, as well as a consultant and senior legal advisor for Lexipol.
- Laura Scarry, an attorney and former police officer who specializes in defending LEOs and their agencies in litigation for her law firm, DeAno & Scarry in Chicago. Also an attorney for Lexipol, she is an instructor for Force Science Institute courses on Force Science Analysis and on Body Cameras & Other Recordings for Law Enforcement (see below).
- Grant Fredericks, a former Canadian officer and a certified Forensics Video Analyst who heads the firm Forensic Video Solutions in the Spokane, WA, area. A contract instructor in video analysis at the FBI National Academy, he has testified as an expert witness on video-related matters in more than 150 cases in North America and abroad.

Here are a few of the highlights of their exchanges:

COMMON BUT FLAWED. These days, Fredericks states, "video images are more common in serious criminal investigations than any other source of evidence—more than DNA, fingerprints, or eye-witness testimony."

The popular belief is that cameras capture exactly what happened at the scene they're recording. But in truth, Fredericks emphasizes, video images can be significantly deceptive because there literally is more to them than meets the eye.

In the webinar, he uses compelling footage from actual cases to demonstrate a few of the scientific shortcomings of body cams, dash cams, and surveillance cams that UOF investigators commonly are unaware of.

He explains that all modern digital video footage is "encoded using various forms of compression," a process that reduces data size but "fools the human eye." Because of compression a camera may appear to have recorded continuous action when, in fact, some of what appears to be new images is actually repeated footage "stolen" from previous recording.

Moreover, some action that occurred may be omitted entirely from what a viewer sees later, Fredericks says. When images are dropped but gaps are not immediately obvious, the footage "can give the illusion of increased levels of force that didn't exist" at the scene. In short, a distorted and false record of what happened is created but not easily detected.

Without a working knowledge of such sophisticated forensic techniques as "macro-blocking analysis" and "time tree analysis," it can be impossible to "identify the reliable

images and ignore the images that are not reliable," Fredericks says.

It's been his experience, he says, that officers can easily "misinterpret" video of force events they've been involved in. "They don't want to be perceived as lying," so if the video seems to contradict what they remember, "they'll change their memory to accommodate the video."

**HEIGHTENED VULNERABILITY?**  
Wallentine picks up on this concern in arguing that letting officers see their video before giving a statement merely sets them up for trouble "by making their entire account of the incident vulnerable" to damaging scrutiny.

"Inevitably they'll be asked by plaintiffs' attorneys, investigators, and the media, 'Are you relating perceptions of the event at the time you used force or are you giving a version you believe is supported by the recording?' There is almost no way for officers to prove the former," he claims.

"Once they've viewed a video, they can't unview it. They may see something on the video that is contrary to their perceptions and feel pressured to change their account. This makes them vulnerable to accusations they are lying. If they merely relied on their perceptions of the situation, they would be in a better position in court.

"Training can help cops be more comfortable testifying to what they remember, while being fully aware that video may depict something else. It is so innocent not to remember something perfectly. That fact needs to be impressed again and again on cops. Training should help officers admit without feeling funny that

they don't really know what all they saw at the time [of the incident] or precisely what they processed."

In defending a pre-statement viewing position, Scarry emphatically disagrees regarding enhanced vulnerability. Seeing video before giving a statement "will result in a statement that is much more difficult to pick apart in court," she insists.

Even with video's acknowledged shortcomings, she says, watching footage "allows the officer to review the incident in a more controlled environment in which he or she no longer experiences the distorted sensory perceptions that take place during a critical incident." This can aid the officer's recollection and "assist in obtaining the truth of what occurred."

The officer then has a chance to address contradictions, differences in perception, or memory gaps at the time the statement is taken. "It is much better that an officer's first and only statement address all issues," Scarry argues. "That's a lot better than having an officer make errors and then in a 'Gotcha moment' in court have to say, 'Oops, I guess I got it wrong.' "

She adds that investigators taking an officer's statement should make clear that the officer "should be as candid as possible about any differences" that he or she perceived at "the moment of executing a force option decision," compared to what he or she perceives during a video review.

**PUBLIC OPINION.** Allowing officers to preview video, Wallentine posits, "can contribute negatively to police/community relations and to a department's respect for transparency and legitimacy. Public

confidence can diminish if citizens perceive that an officer's statement is tailored to the video rather than a recall of perception."

Scarry counters: "Police/community relations rest on far more" than an officer viewing video of any singular incident. "Having a clear policy in place, educating citizens ahead of time about the policy, communicating clearly in the event of an officer-involved shooting—these all are essential and will help overcome any negative feelings associated with letting an officer watch a video.

"How an agency communicates about what is seen on body-worn camera video is far more important than the timing of an officer's viewing. The agency's transparency about how it handles the video and how it reached that decision and its willingness to engage the public's perception [are what] build trust."

ALSO DEBATED. The back and forth, principally between Wallentine and Scarry, ranges across a number of other topics, as well. These include:

- Whether permitting an officer to preview video violates the spirit of the Supreme Court's Graham decision, which cautions against bringing "20/20 hindsight" to a UOF evaluation;
- Whether previewing constitutes an unfair special privilege for officers that is not extended to suspects and key witnesses;
- Whether officers should be entitled to preview relevant video from all cameras, including cell phones and surveillance units, that are known to have recorded the action in question.

The purpose of debating these and other webinar topics is not to "solve" the controversy about previewing, explains moderator Shannon Pieper, Lexipol's marketing communications director. Instead, the aim is to "explore different perspectives" to arm stakeholders "with information to consider when making their own decisions" about training, practices, and effective written policies.

GUIDELINES. Scarry points out that the policy Lexipol currently recommends is not a rigid dictum but is "still evolving." She quotes it this way:

"Any officer involved in a shooting or death may be permitted to review available video or audio recordings prior to providing a recorded statement or completing a report."

The qualifier "may be" makes this policy "permissive, not restrictive," Wallentine observes. "It allows for a case-specific determination [that's] nimble, agile, and customizable" and accommodates possible input from outside parties like a district attorney or independent investigative agency that may have a critical role in the case at hand.

A possible "compromise" policy, the debaters agreed, would mirror the approach Fredericks strongly believes to be the best. First, the involved officer gives a statement "to the best of his memory and ability." Then, after being cautioned about the limitations of recordings and ideally with the assistance of a knowledgeable professional, he views video of the event. Then he is asked to "fill in gaps" by commenting on elements "that may not be consistent" with his memory."

TRAINING. The unequivocal point of agreement among the webinar's participants is succinctly stated by Wallentine: "Cameras without proper training are a recipe for disaster."

He supplements Fredericks' demonstrations of often-unrecognized video shortcomings with a litany of his own:

"Cameras don't track with an officer's eyes. They don't capture tactile cues, such as when a suspect flexes muscles and starts to resist. They don't reveal a suspect's prior history known to the officer. They don't record at the speed of life. They don't capture images in 3-D or represent distances accurately. They don't accurately reproduce what the human eye sees, and they don't reproduce the subjective fear an officer feels."

Without training to detect and assess the impact of such factors, a UOF video may appear skewed to an officer's severe disadvantage. Absent special analysis skills, in Fredericks' opinion, the "average LEO is not qualified to interpret video evidence."

In addition to strengthening the expertise of agency personnel, the webinar panel expresses the hope, in Scarry's words, that "agencies are educating their community about the scientific nature of body-worn cameras and other methods of gathering video surveillance," as well as the nature of human memory of high-stress encounters.

This is "absolutely mandatory," Wallentine says, as part of the effort to keep the public from rushing to judgment about UOF encounters.

Participants in the debate can be contacted as follows:

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For more information on Lexipol, go to: [www.lexipol.com](http://www.lexipol.com)

Our thanks to Lt. Glen Mills of the Burlington (MA) PD and president of the Massachusetts Assn. of Crime Analysts, for helping to facilitate this report.

## II. Mark your calendar for more on body cams...

- Another debate about body cameras will be featured at the annual Executive Training conference of the Minnesota Chiefs of Police Assn.

Dr. Bill Lewinski, executive director of the Force Science Institute, will advocate for the affirmative in a 90-minute presentation on "To View or Not to View, the Great Body Camera Question." The negative position will be argued by Atty. Eric Daigle of Southington, CT, a certified Force Science Analyst and use-of-force expert formerly with the Connecticut State Police.

The program is scheduled to start at 10:30 am Apr. 24 at the Rivers Edge Convention Center in St. Cloud, MN. [Click here for more information.](#)

- Body Camera Courses from Force Science: Two "Body Cameras & Other Recordings in Law Enforcement" have been scheduled by the Force Science Institute:

April 26-27: Scottsdale, AZ

May 23-24: San Diego, CA

Registrations for this popular, limited-offering course are being taken now.

CLICK HERE for full details on the course and for registration instructions or visit:

[www.forcescience.org/cameracourse.html](http://www.forcescience.org/cameracourse.html)

You can e-mail questions about the Force Science Body Camera Course to the training staff at: [training@forcescience.org](mailto:training@forcescience.org) or you can call Scott Buhrmaster at: (312) 690-6213.

### III. **Legendary police lawyer dies unexpectedly**

Martin “Marty” Mayer, considered a legendary figure among attorneys who specialize in representing officers and agencies in litigation and legal consultation, died unexpectedly on Jan. 30 in a California hospital after being found unresponsive in his home.

“A true hero” in the words of the California State Sheriffs’ Assn., Mayer was a partner in the Fullerton (CA) public sector firm of Jones & Mayer. He served as legal counsel to some 70 law enforcement agencies throughout California and for three decades was general counsel for the sheriffs’ association, the California Police Chiefs’ Assn., and the California Peace Officers’ Assn.

A prolific author and lecturer, he was awarded the Governor’s Lifetime Achievement Award for Excellence in Peace Officer Training in 2005 and in 2011 was selected as one of southern California’s “Super Lawyers” in the areas of government and employment law and police litigation.

“We have lost a giant in the law enforcement legal field,” says Force Science Analyst Greg Meyer, a retired captain of the Los Angeles PD who formerly headed that agency’s academy. “The legal bulletins he published for law enforcement on a variety of subjects, including use of force, were easy to understand yet hard-hitting on tough issues.”

Force Science Analyst Mildred “Missy” O’Linn, a police attorney with the LA firm Manning & Kass recalls: “Marty’s thoughtful, articulate, and concise summations of case law and his advice on matters of significance were a great service to peace officers at all levels of service. He was a very kind man, generous with his time, and always there for law enforcement.”

Adds Wayne Schmidt, former executive director of Americans for Effective Law Enforcement (AELE): “He was brilliant, utterly dedicated, and had a fantastic memory of case law.”

Written by Force Science Institute  
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