

OIR
G R O U P
7142 Trask Avenue
Playa del Rey, CA 90293
323 821 0586
michael.gennaco@oirgroup.com

October 21, 2015

San Francisco Police Commission
1245 3rd Street
San Francisco, California 94158

Dear Commission Members:

Please consider this correspondence as responsive to this Commission's consideration of a body worn camera policy for the San Francisco Police Department. I served for fifteen years as a Civil Rights federal prosecutor in which a significant portion of my responsibility was investigating criminal allegations of police misconduct. In addition, I have served as an oversight practitioner for over thirteen years, in which I have reviewed thousands of force incidents involving numerous law enforcement agencies in California and throughout the country. As a result of my work in oversight, I may well have reviewed more use of force incidents from as wide an array of law enforcement organizations as anyone in the country. I have also provided independent recommendations to a number of law enforcement agencies with regard to developing policies regarding video evidence, including body worn cameras. It is with that experience that I write setting out best investigative practices for when officers should view use of force incidents that have been video recorded.

When an officer is involved in a use of force or witnesses a use of force, the use of force incident must be assessed to determine whether the force was within Departmental policy. In order to make that assessment, it is imperative that the law enforcement agency obtain a pure statement from the involved and any witness officers so that the officers' observations, actions, and state of mind can be fairly gathered. If other accounts of the event such as a video of the incident are provided to the officers prior to the writing of a use of force report, that written account will necessarily be contaminated either consciously or subconsciously. As a result, such a

practice would cause the Department to forfeit any ability to obtain pure statements from involved or witness officers.

A better practice consistent with fundamental investigative practices is to obtain the use of force report from the officer and then provide the officer an opportunity to review any recordation of the event. If such review results in the officer having his or her recollection refreshed, the officer should be provided the opportunity to supplement the initial report. Under this procedure, the fact gathering process will have obtained a pure unvarnished statement based on the officer's recollection yet provide the officer the opportunity to refine his or her statement based on the review of the video.

The concern that not allowing the officer to review the video prior to writing a report will reduce the accuracy of the report is misplaced and confuses the concepts of accuracy and consistency. An "accurate" rendition of the officer's observations is an account based on the officer's recall which has not been contaminated by outside stimuli such as a conversation with other officers or exposure to video accounts. When an officer is exposed to a video, the subsequent written account may well be more "consistent" with the video, but it leaves the Department decision-makers unable to determine to what degree the officer has consciously or subconsciously tailored the report to what he or she has seen on video. If consistency was the overarching goal of police use of force reports, prior to the completion of the police report, the officer would have access to other accounts of the incident, including officer, civilian witnesses and the person upon whom force was used, practices that have long been discouraged.

To the degree that officers may be concerned that their recollection may be disparate from the video recording and any difference may subject them to unfair punitive action, any evaluator of their reports must recognize that a pure account of the incident may well not correspond exactly to a video rendition for a whole host of reasonable explanations, including the acuity of the camera, differing vantage points, the officer paying attention to different aspects of the event than the camera lens, and the fact that force incidents are generally rapid moving events, with the officer needing to react to a number of external stimuli quickly. For that reason, explainable differences between the officers' initial reports and what appears on video should not automatically cause reviewers of the force events to call into question the veracity of those reports.

Affording police officers a preview of body worn camera evidence would also potentially subject officers to questions about the accuracy of their

reports. While officers could be impeached on the witness stand in instances where the report is not exact with the recorded footage, if there is a preview opportunity, plaintiffs' attorneys may be able to successfully convince juries that police accounts are not to be trusted because they were contaminated by affording the officers access to video beforehand.

Finally, and perhaps most importantly, providing officers prior access to video evidence will likely undermine public perception that police leadership is interested in conducting an objective use of force investigation that is consistent with best investigative practices. Providing police officers the ability to preview evidence before obtaining an account of the incident from them will be seen by some as giving those officers an advantage during the force investigative process that is not afforded civilians whose conduct comes within criminal justice scrutiny.

Thank you for considering the remarks in this correspondence. If you are interested in further amplification or clarification of these views, I am happy to oblige. My best regards to you as you consider, as representatives of the community your Police Department serves, evaluating what policy is most advisable for the City of San Francisco.

Very truly yours,

Michael Gennaco
Principal
OIR Group