

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Video Release Post Officer Involved Critical Incidents

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

**By
Tim Griffith**

**Kyle Police Department
Kyle, Texas
September 2018**

ABSTRACT

The environment in the United States in this day and age is suspicious of law enforcement. This is due to a lack of understanding of how law enforcement entities conduct business, along with the spread of inaccurate news and information. These factors have created a perception that law enforcement entities lack legitimacy in the eyes of the citizens who empower those entities to protect and serve the nation. Law enforcement entities can help combat that perception by being as transparent as possible in as timely a manner as possible. If information about officer involved critical incidents is disseminated as accurately and quickly as possible after these incidents, then much of the misperception created by media sources can be avoided. This will increase the perception of legitimacy in the eyes of the public. Therefore, law enforcement agencies should release videos of officer involved critical incidents as soon as practical after the incident occurs.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	3
Counter Arguments	9
Recommendation	13
References	15

INTRODUCTION

In today's world of instant access to information, law enforcement professionals are under more public scrutiny than they have been in our history (Lee & McGovern, 2013). The use of social media and the ability for anyone and everyone to record law enforcement interactions has changed the way we view officer involved critical incidents. This has had the unfortunate side effect of allowing a large number of misleading and incorrect perceptions of the law enforcement profession to be proliferated on a large scale. Many times, incidents of police use of force are reported as unethical and excessive without any justifiable basis for this judgement except that the incident appeared unlawful from the untrained spectator who doesn't have a complete picture of the actual events during the use of force and leading up to it.

When this message is proliferated widely across all media platforms, the law enforcement entity involved is often silent, not offering any information to explain or refute false allegations. This creates the perception that law enforcement officials are purposely hiding the truth about the incident (Bohrer & Chaney, 2010). Once a perception is accepted by the public it becomes the truth in their eyes. By the time the law enforcement agency releases the actual details and findings of the incident, it is too late. Many people have already come to accept the false narrative and find the newly emerged details, long after the fact, difficult to believe. This loss of legitimacy is damaging to the fabric of our society, it is therefore the responsibility of the law enforcement agencies to take what action is necessary to combat these future crises by responsibly releasing information to the public as soon as practical.

A widely held perception of injustice on the part of the police has caused many instances of social unrest (Bohrer & Chaney, 2010; Martinelli & Jarmie, 2015). The public responds emotionally to the story of alleged violations of a suspect's rights by assembling large protests and these assemblies can sometimes turn violent which results in injuries and wide scale property damage. Law Enforcement has a duty to protect the citizens and communities from this unrest.

Over time, society has created new technology to watch large areas and many people with few resources. A prevalent example is the use of cameras as security and monitoring devices. Foucault (1975) proposed the theory known as panopticism, the concept originating the prison design known as the panopticon. The panopticon situates the prisoner's cells around a central tower. Panopticism theorizes that the many who are watched change their behavior because they know they are being monitored to adhere to the standards of the few, in this case the guards. As society created more technology to watch the many with few resources, they also created the same technology that law enforcement use to record their interactions and made huge advancements in recording technology allowing that technology to be easily portable and cheaply made. This placed recording devices into smart phones which made them more prevalent than ever.

Mathieson (1997) used the theory of panopticon and created the synopticon, the theory that the many watch the few and the few must change their behavior to conform to the norms of the many (as cited in Lee & McGovern, 2013). Inadvertently, those that were seeking to better control society, created a way for society to have more control

over the few that regulate their actions. Now that the majority of police interactions are recorded, it has had an impact on the way police conduct routine business.

One of the major advancements undertaken by law enforcement to help increase legitimacy in the eyes of the public, and protect the officers and the citizens, is the use of recording devices. This includes in car cameras and body worn cameras. These resources can provide an encompassing view of the incident from the perspective of the responding officers and could provide insight to the variables and actions leading up to the critical incident. As law enforcement has advanced the use of video technology, so has the public at large. Any person with a smartphone has the ability to record an interaction with the police which in turn can be spread rapidly through the use of the internet and social media. These videos spread extremely quickly across several social media platforms and are often only representative of a small portion of the actual incident (Bakshy, 2012). It is the responsibility of the law enforcement agency to protect the officers, citizens and communities by releasing information about these incidents to allow the spread of the actual factual information about the situation. Law enforcement agencies should release videos of officer involved critical incidents as soon as practical after the incident occurs.

POSITION

Lee and McGovern (2013) stated, "To be effective, policing requires the ongoing support, consent and voluntary cooperation of the public" (p. 107). This concept is core to the democratic values that create the fabric of the United States. When the public support fails or wanes, law enforcement becomes less effective. In the past, society was wary about police use of force in certain contexts. Court cases such as *Tennessee*

V. Garner (1985), where police use of deadly force was reined in by the United States Supreme Court, were indicative of this attitude (Robertiello, 2017). Police use of force is not well documented by any government entity or large clearing house and therefore not easily studied (Hickman & Poore, 2016; Robertiello, 2017). This is due to the varying ways that force is implemented, regulated, documented and reported across the country. It is theorized by some that the number of persons who are the victim of police use of deadly force is double the amount that is reported to the Federal Bureau of Investigations (Robertiello, 2017). Given the ambiguity of the data and studies on the topic, it is left to public perception to decide what level force is misused by the police (Robertiello, 2017).

The expectation of police conduct is often unfairly generated by the majority of the populace. Studies indicate that the most of the public attain their perceptions of law enforcement through television, social media or other forms of media rather than firsthand knowledge of actual law enforcement practices (Lovell, 2001; Lee & McGovern, 2013). According to Dowler and Zawilski (2007) the type of media that a person normally watches has the most impact on their perceptions of law enforcement. For example, people who reported watching mostly “reality” television shows or police fictional dramas had a more positive perception of law enforcement than those who reported watching more traditional news programs. This also had another effect, it created a false perception of law enforcement practices. Those who watch police drama shows had unrealistic expectations of police practices and use of force (Dowler & Zawilski, 2007). This creates yet another barrier that law enforcement agencies must contend with when it comes to public perception of an officer involved critical incident.

People are often wary or suspicious of what they do not understand. For many, the job of law enforcement seems more like a secretive cult with its own rules and traditions than a group of protectors to serve the public (Lovell, 2001; Hickman & Poore, 2016; Robertiello, 2017). Law enforcement can often be its own worst enemy when it comes to releasing information after an officer involved critical incident. When an agency fails to release information after a debated incident where the actions of law enforcement are called into question, it casts doubt in the minds of the public. This reinforces the perception that the law enforcement organization is hiding some important and damaging piece of information (Bohrer & Chaney, 2010; Dowler and Zawilski, 2007).

Law enforcement cannot control public perception but must try to instill trust through being transparent when it is most important. The use of media is the most prolific way an agency can assist in that endeavor (Lovell, 2001; Chermak & Weiss, 2005). The media is a business, a business that needs an engaging product in order to make sales. The goings on of law enforcement often attract a lot of attention as officers' deal with many issues of life and death. Well over half of media stories on local news stations are directly or indirectly related to law enforcement (Vance, 2007). The most prolific of these media stories are stories of police use of force (Bohrer & Chaney, 2010).

Mass media has changed the way the world is perceived. Media outlets realize the power that they wield as these entities now control the perception of society and therefore have the largest impact on government operations. Law enforcement often reacts to this power negatively. However, it should not be viewed as a burden, but as

an opportunity to assert some level of control over societies perception of the law enforcement profession (Lovell, 2001). Even if the video that is released after an officer involved critical incident shows an unlawful or excessive use of force by an officer, releasing it and being upfront about the process for dealing with this failure increases legitimacy in the eyes of the public (Lovell, 2001; Vance, 2007). High profile incidents place law enforcement entities in a spot light and while all hope to avoid them, they are the perfect opportunity for law enforcement agencies to show transparency to the public. Releasing video as soon as practical after an officer involved critical incident demonstrates transparency to the public and helps increase legitimacy of the law enforcement profession as a whole.

Not only do law enforcement agencies have to contend with unrealistic expectations and a public that is suspicious of their actions, but another obstacle to overcome is the false narrative that often comes with media stories. Many times the media is quick to rush stories to the viewers or readers with little to regard for fact checking (Martinelli & Jarmie, 2015). The more severe a use of force by law enforcement appears the more attention it will get from mass media sources (Meyer, 2015). The media companies are for-profit entities, so speed of getting information out and the more salacious a story appears are of paramount concern for them. Accuracy is an afterthought, at best. In the absence of information about an incident, media outlets will run the story anyway, and the gaps will be filled in by whatever means they have at their disposal (Vance, 2007).

While there are certainly examples of blatant fabrications being reported in media, it is often *how* a story is reported that creates a false perception. “As early as

1922, Walter Lippman wrote that the public reads not the news, but the news with an aura of suggestion about it” (as cited in Lovell, 2001, p. 9). Lovell argues that this practice continues today unabated and is the most frequent source of misinformation on a law enforcement critical incident.

The concept of soft power was first brought to the stage by Nye Jr (1990) (as cited in Roselle, 2014). Soft power refers the concept of influencing others through appeal rather than through coercion or actualized authority. A factor in the attainment of soft power is a concept Roselle (2014) refers to as strategic narrative. Strategic narrative, in essence, is an innovative way to convey a story by using compelling language to set the plot to match the needs or desires of the writer (Roselle, 2014). Classes are taught on it, journals dedicated to the topic, and many businesses that specialize in the art of strategic narrative.

Unfortunately, the use of strategic narrative is often misused to make a story more salacious for mass media. This creates a false impression in the reader or viewer of the actual events (Lovell, 2001). To combat this issue, the timely release of information about an incident by the law enforcement agencies involved is recommended in order to put as many facts as possible into the media story before a false narrative spreads (Meyer, 2015; Lee & McGovern, 2013, Vance, 2007). This affords the law enforcement entities the opportunity to shape their version of the events in a favorable light and control the narrative on the incident from the outset (Lovell, 2001)

Specifically, the release of any video of an officer involved critical incident as soon as practical after the occurrence will allow law enforcement agencies to get ahead

of the false narrative. This step could prevent an untruthful strategic narrative from being placed on the event before the facts have a chance to mold the public perception of the incident. The mistrust of law enforcement, combined with the false narrative that is promulgated by mass media, creates a dangerous situation for the officers involved and the communities' agencies are charged with protecting. This backlash by the public is often characterized by violence against officers themselves, threats against their families, and destruction of property on a massive scale. This is another reason releasing video quickly is vitally important.

At this writing, the name Darren Wilson is well known and carries an air of infamy. Officer Wilson was involved in a critical incident on August 9th, 2014 when he happened across a robbery suspect, Michael Brown, while Wilson was on his way to meet his wife for their lunch break (Halpern, 2015). Wilson, in an effort to defend himself, shoots and kills Brown after an altercation for his weapon. The eyewitness accounts of the incident reported that Brown was surrendering to Wilson when he was shot and killed. However, these witnesses were debunked by the facts of the investigation as found in the Department of Justice Civil Rights Division (2015) report on the investigation of the incident. The report indicates that Brown was charging toward Wilson at the time of his shooting as Wilson alleged at the outset.

This report was not released until seven months after the shooting took place. By then, most people had already decided, given the portrait presented to them by the media, that Wilson had murdered Brown (Halpern, 2015). During the time immediately following the incident, mass protests turned to rioting that destroyed businesses and ended up in countless injuries for officers and citizens. This was not an isolated incident

as there have been many documented incidents of the same reaction to officer involved critical incidents (Martinelli & Jarmie, 2015; Bohrer & Chaney, 2010; Halpern, 2015).

As for Wilson, he has been unemployed since the incident took place and is unable to find work in his chosen career field. Wilson has interviewed for several jobs however was told each time that hiring him would be detrimental to the department given the polarizing image his name brings. Wilson has suffered under constant threats of death to him and his family because of the incident. Wilson moved to an undisclosed address and must hide in his home away from the public eye (Halpern, 2015). Wilson was cleared by two separate investigations and the Department of Justice of any wrongdoing (Halpern, 2015; Department of Justice Civil Rights Division, 2015).

There was a vacuum of information after the incident took place and it was quickly filled by half-truths and outright misinformation. Once those narratives took hold, the truth could not protect Wilson nor keep the rioters from destroying the city. In Wilson's case, there was no video of the incident. However, had there been video that could have showed the incident as it unfolded to debunk the myths being spread, it could have prevented much of the agony that the country and Wilson has gone through since the shooting.

COUNTER ARGUMENTS

The common stance by law enforcement agencies for much of the last century has been that releasing information after the incident, prior to the trial has taken place, could taint the investigation and fair trial of those involved. The Freedom of Information Act allows exceptions for law enforcement information use in criminal cases. The concept of law enforcement investigative privilege has been upheld by the court system

as an exception to the release of public information by police agencies (Perkins & Heil, 2013). The purpose is to protect investigative techniques, sensitive information and to protect law enforcement confidential sources with on-going investigations.

Law enforcement has even been admonished by the courts for releasing too much information during controversial trials (Haines II, 1968). Since this time, law enforcement has held information away from public view as much as possible, in an effort to protect the criminal case. The courts have been reluctant to rule many changes to this standard as this would place undue burdens on the court system (Perkins & Heil, 2013). The common practice is to withhold releasing video until a case has been disposed completely by the courts, to keep from tainting the trial process. However, given the changes the availability of information due to mass media and social media, this standard may not be as valid as it once was.

In today's age many more people have the ability to video record encounters with the police from the side lines. These videos do not always show a complete view of what actually occurred. When combined with a false narrative pushed through social media, it creates a story that may not be the reality of the situation. The reality then becomes the "truth" of the incident and it spreads extremely quickly through social and mass media (Martinelli & Jarmie, 2015; Meyer, 2015). Research suggests that information promulgated through social media platforms spreads more quickly than traditional mass media and is often considered more accurate by the reader or viewer than traditional media sources (Bakshy, 2012).

Now that information spreads so quickly, even when the information is unsubstantiated, it causes people to make assumptions about a case and in turn

damages the legitimacy that the practice of withholding information was intended to protect. Holding video of an officer involved critical incident from release in turn only damages the likelihood of a fair outcome for all involved.

Another argument for not releasing video after an officer involved critical incident, are concerns of the personal privacy of citizens. Body worn cameras are considered more invasive as they are worn by officers into people's homes so there is an interest of the people to be secure in their homes weighed against the needs of law enforcement accountability (Freund, 2015). As law enforcement will be recording much more video with the use of body-worn cameras, many more interactions with the public will be subject to release through open records. These interactions will at some point possibly record life events of members of the general public that those subjects may find embarrassing and would not want to be released (Freund, 2015).

In response, many departments do not release video unless they are required to do so by law (Vance, 2007). The American Civil Liberties Union (ACLU) is often in support of restricting the recording of citizens by government entities. However, in this case the ACLU supports the use of the increased recordings for police accountability reasons (Stanley, 2015). In the report prepared by the ACLU on body cameras, The argument is made that the increased invasiveness of body-worn cameras can be mitigated by the correct use of policy to govern when officers use the cameras (Stanley, 2015).

The Police Executive Research Forum (PERF), along with the Department of Justice, published a report on the use of body cameras as well. PERF's recommendation is to allow officers the discretion to stop recording when sensitive or

embarrassing events occur in their presence, as long as those events have no evidentiary value (Miller, Toliver and PERF, 2014). Both PERF and the ACLU recommend the timely release of video after a high profile officer involved critical incident (Freund, 2015).

The next logical question is whether a person has a reasonable expectation to privacy in certain situations that may be recorded, particularly the home. The courts have given several reasons why a subject has a diminished right to privacy in their homes when law enforcement recordings are involved. The first is the landmark case *United States v. White* (1971). In this case, the Supreme Court set the standard that as long as one party in the residence has given permission for the police to be present and recording, the other parties involved have no expectation of privacy as they have elected to be there or have invited this person into their home.

In *Jean v. Massachusetts State Police* (2007), “the court found that police actions in a private residence give rise to a strengthened public interest in the release of recordings” (as cited in Freund, 2015, p.116). The court felt that the recording of police actions, even though it was in a private home, was paramount to the privacy concerns since citizens have a greater concern in monitoring police conduct (Freund, 2015). Given the needs of the public to monitor law enforcement conduct and need for legitimacy and transparency during high profile incidents. Release of video after the incident, while possibly against the privacy interests of a citizen, is of paramount concern to the government and the public.

RECOMMENDATION

The release of video evidence as soon as practical after an officer involved critical incident is to the benefit of all. It can increase the legitimacy and public image of the law enforcement organization, if not the profession as a whole. It serves to prohibit a false narrative from being implemented early on that will be nearly impossible to overcome at a later time when video and details are finally released. Perhaps most importantly, it protects the officers and the community from the violent backlash that often comes with the perception, whether accurate or not, of the public that law enforcement has violated the rights of certain individuals.

Some would argue that releasing the video would damage the criminal case. However, the advances in mass media and social media make the dissemination of information, whether true or not, extremely prolific. Withholding of video after a high-profile incident will not prevent the tainting of the populace on the information of the case. Privacy concerns, while legitimate, do not apply in these situations due to the needs of the public to scrutinize the actions of law enforcement and the lack of expectation of privacy when dealing with law enforcement.

After a high-profile incident, agencies should make it a policy to release the video of the incident as soon as practical. This would likely require some portions of the video to be redacted which can easily be explained if done correctly. This would also require the buy-in of the district attorney or prosecutor who will ultimately be responsible for trying any criminal cases which may spur from the incident. Some departments already have similar practices but there is no one policy that could account for all departments as each jurisdiction has different stakeholders and requirements depending on elected

officials and legal requirements. But if all stake holders are involved and understand the ramifications of not releasing that information after an officer involved critical incident, then all will hopefully agree that releasing it is in the best interest of the people and the justice system.

REFERENCES

- Bakshy, E. (2012). The role of social networks in information diffusion. *WWW'12*, 519-528.
- Bohrer, S. &. (2010). Police investigations of use of deadly force can influence perceptions and outcomes. *FBI Law Enforcement Bulletin*, 1-7.
- Cermak, S. &. (2005). Maintaining legitimacy using external communication strategies: An analysis of pulice-media relations. *Journal of Criminal Justice*, 501-512.
- Department of Justice Civil Rights Division. (2015). *Investigation of the Ferguson Police Department*. Washington D.C.: Department of Justice.
- Dowler, K. &. (2007). Public perception of police misconduct and discrimination: Examining the impact of media consumption. *Journal of Criminal Justice*, 193-203.
- Foucault, M. (1975). *Discipline and Punishment*. New York: Vintage Books.
- Freund, K. (2015). When cameras Are rolling: privacy implications of body-mounted cameras on police. *Columbia Journal of Law and Social Problems*, 91-133.
- Haines II, R. (1968). The aftermath of Sheppard: Some proposed solutions to the free press-fair trial controversy. *Journal of Criminal Law, Criminology and Police Science*, 234-247.
- Halpern, J. (2015, August 10). *The cop*. Retrieved from The New Yorker:
<http://www.newyorker.com/magazine/2015/08/10/the-cop>
- Hickman, M. &. (2016). National data on citizen complaints about police use of force: Data quality concerns and the potential (Mis)(Use of statistical evidence to address police agency conduct. *Criminal Justice Policy Review*, 455-479.

- Jean v. Massachusetts State Police, 30 (1st Circuit June 22, 2007).
- Lee, M. &. (2013). Force to sell: policing the image and manufacturing public confidence. *Policing and Society*, 103-124.
- Lovell, J. (2001). *Media power & information control: A study of police organizations & media relations*. Washington D.C.: National Institute of Justice.
- Martinelli, R. &. (2015, June 30). *Independent reviews: Just the facts*. Retrieved from Police: <http://www.policemag.com/channel/patrol/articles/2015/06/independent-reviews-just-the-facts.aspx>
- Meyer, G. (2015, June 18). *Digital video: Working under the microscope*. Retrieved from Police: <http://www.policemag.com/channel/technology/articles/2015/06/digital-video-working-under-the-microscope.aspx>
- Miller, L. T. (2014). *Implementing a body-worn camera program: Recommendations and lessons learned*. Washington D.C.: Office of Community Oriented Policing Programs.
- Perkins, D. &. (2013). Do not forget about the law enforcement investigatory privilege. *IDC Quarterly*, 1-3.
- Robertiello, G. (2017). *The use and abuse of police power in america: historical milestones and current controversies*. Santa Barbra: ABC-CLIO.
- Roselle, L. (2014). Strategic narrative:A new means to understand soft power. *Media, War & Conflict*, 70-84.
- Stanley, J. (2015, October). *Police body-mounted cameras: With right policies in place a win for all*. New York: American Civil Liberties Union. Retrieved from urbanillinois.us:

<http://www.urbanainlinois.us/sites/default/files/attachments/police-body-mounted-cameras-stanley.pdf>

United States v. White, 13 (Supreme Court of the United States April 5, 1971).

Vance, J. (2007). Media Interviews. *FBI Law Enforcement Bulletin*, 1.