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Developing a Mobile Video Policy for
Law Enforcement

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Abstract

Mobile video technology is advancing rapidly, causing the price of this technology to drop as well. Law enforcement agencies have been quick to put the latest video equipment in use, without first developing an overall policy for its use. Mobile video can be used to document arrests, record officer actions to verify or contest complaints, and secure convictions in court by the collection of video evidence. Today's law enforcement administrator must develop a written standard operating procedure (SOP) for mobile video to ensure the validity of the evidence recorded. This paper will provide recommendations on key issues for policy development.

The major points to be addressed include officer training, legal issues, and operational procedures. The key to standardization is training.

It is recommended that each officer should receive eight hours of training prior to using the mobile video equipment on duty. This training should consist of equipment operation, legal issues, and guidelines for the collection of valid video evidence. Case law has established the validity of mobile video as evidence.

Operational considerations include vehicle positioning, and the custody of tapes. Officers should retain custody of video tapes until they are full, or needed as evidence in a criminal case. Full tapes should be turned in according to policy to be kept for later review if necessary.

Mobile video has proved itself as a valuable tool for law enforcement. Higher conviction rates, and reduced court overtime have resulted in savings for many police agencies. A formal written mobile video policy will provide uniformity within the department. This uniformity will ensure the proper use of the equipment, and the documentation needed for prosecution.

Introduction

The technology available to law enforcement is expanding daily. The influx of this technology into the work environment has created the need for new policies and procedures. These policies and procedures need to address both daily use, and their legal implications.

Mobile video is a field that has grown rapidly in recent years. In the past, mobile video was confined primarily within specialized traffic, and DWI enforcement units. Technology advancements have been made in both the quality, and the size of the equipment. The cost of purchasing mobile video equipment has fallen, allowing more agencies to consider this technology for routine patrol.

This paper will address the various uses of mobile video for law enforcement. This will be accomplished by discussing operational procedures, training issues, and legal aspects.

Developing standard operating procedures to ensure the proper use of the equipment is critical for law enforcement. Uniformity is the key to quality (Kuboviak 1993: 64). It is essential for the validity of any evidence that may be collected. Once these procedures are established, then a training program can be carried out. This training program will educate officers in the use of the equipment, and the steps needed to obtain admissible evidence. Officers use mobile video on the street to document arrests, gather effective evidence, and secure criminal convictions in court (Kuboviak 1995: 50).

This policy research paper is designed for law enforcement administrators who are looking to establish a mobile video program within their department. In addition it can be used as a tool to evaluate an existing mobile video policy. The information in this paper has been

gathered from various sources, including professional journals, case law, personal interviews, and a survey of police departments currently using a written policy for their mobile video equipment.

The purpose and intended outcome of this paper will be to establish a need for a comprehensive mobile video policy within today's modern police agency. This paper will begin by discussing the uses of mobile video technology within the scope of modern patrol practices. The legal issues will be highlighted to point out the need for proper procedure to validate any evidence obtained. Finally, recommendations will be made on key issues to be included in a standard operating procedure to illustrate proper operation, along with the ability to withstand legal challenges that may arise.

Historical, Legal, and Theoretical Context

The development of mobile video camera systems may be one of the most valuable assets in police work today (Pilant 30). The idea was first implemented in the late 1960's when the Connecticut State police mounted a video camera and recorder in a patrol car. The idea proved impractical at the time, due to the size of the equipment involved. The equipment alone took up the passenger side front seat along with the entire back seat (Wark 59). The equipment found today in the modern police vehicle is highly compact, and is designed to handle the rigors of daily exposure to the elements.

Mobile video is currently used by patrol officers on the street to gather effective evidence for arrests, document officer actions to verify or contest civilian complaints, and secure convictions in court (Kuboviak 1995: 50; Giacoppo 4). A complete record of what occurred is captured on

mobile video. When officers are hurt or killed in the line of duty, mobile video becomes valuable evidence ("Vehicle Mounted TV" 55). Without this evidence the offender may never come to trial. Two incidents in Texas have strongly illustrated this point.

The first incident occurred in January 1991. Constable Darryl Lunsford was on routine patrol when he stopped a car heading north on IH59 deep in East Texas. The vehicle was occupied by three illegal immigrants. All the occupants exited the car, and within five minutes Lunsford was dead, killed with his own gun. The suspects left the scene, but they left behind a valuable piece of evidence. The video tape from his patrol car camera was the only clue to his killers (Pilant 30).

The second incident occurred in 1993. It involved the case of Lorenzo Colston for aggravated assault on Trooper Bryan Barnhart in Athens, Texas. Colston had filed suit against Trooper Barnhart claiming excessive use of force was used during his arrest. Barnhart had shot Colston during the incident, but the shooting was ruled justifiable in grand jury proceedings. During the trial the defense had no way to refute the aggressive actions of the defendant captured on tape (Kuboviak 1994D: 77).

The video tape as evidence has become so effective in the court room that defense attorneys are doing everything possible to keep it from being entered as evidence (Kilpack 8). The effectiveness of mobile video is illustrated by the results experienced by the Royal Canadian Mounted Police, Highway Patrol Division. They have been using mobile video cameras in their patrol cars since the early 1990's. During a two year period, none of the officers using the mobile video cameras were required to testify in court. All of the defendants involved pleaded guilty ("Training Key" 60).

Rules of evidence must be strictly followed, and written procedures must be established. Video tapes must be protected so that one cannot

intentionally or inadvertently record over evidence. The system must also restrict access by the officer so that the time and date documented on the tape cannot be changed (Wark 61). If the defendant can reasonably contend that the video tape equipment used by the officer allows them to record over or otherwise alter the evidence, the evidence will probably be suppressed (Wark 61).

Many times in court it is the police officer's word against that of the defendant's. Allegations concerning violations of the Fourth, Fifth, and Sixth Amendment rights flow freely. The use of mobile video taping allows the judge and jury to view the facts of the case. (Kuboviak 1992B: 63). If properly handled, the tapes should be considered indisputable evidence in court. Officers involved in a court case should review their tapes before court. There is nothing illegal, unprofessional, or wrong about reviewing the evidence before trial with the prosecutors or supervisory personnel (Kuboviak 1994D: 82).

Often the officer develops further evidence from conversations between defendants secured in the back seat of a patrol car. The officer is under no obligation to inform the subjects that they are being recorded by audio or visual equipment (Kuboviak 1994C: 81). Upon a request by the defendant of the recordings the officer should answer truthfully. Though the officer is not required to disclose this information, honesty is the best policy.

There are many court cases that confirm the validity of these conversations as evidence. One of the first cases was a 1968 California appeals court finding that "the right of a defendant to privacy while under valid arrest in a police car can be no greater than if they were confined to jail" (*People v. Chandler*, 68, California Reporter 645). In *People v.*

Seaton the court ruled that the government has an interest in recording a patrol car conversation between two defendants. This would insure that the defendants do not take the opportunity to get their stories straight or plan an escape (*People v. Seaton*, 194, California Reporter 33).

In *People v. Williams* the court decided that once a person has been taken into custody by a law enforcement agency, their right to privacy has diminished. They then have no reasonable expectation that their conversations would be held as private (*People v. Williams*, 180, California Reporter 734). This decision was later upheld in *Brown v. State* (*Brown v. State*, 349, Southern Reporter 1196).

Defendants may attempt to challenge the admissibility of surreptitiously recorded conversations based on the Fifth Amendment self-incrimination clause. To be successful the defendant would have to establish that the conversations in question were the product of unlawful custodial interrogation (Crawford 27; Kuboviak 1992A: 69).

After a suspect has requested their right to counsel, the Supreme Court has determined that simply placing the suspect in a situation where they are likely to incriminate themselves does not constitute a Fifth or Sixth Amendment violation. Rather, the defendant must show there was some deliberate attempt on the part of government, beyond mere listening, to elicit the information from the defendant. (*Kuhlmann v. Wilson* 477, United States Reports 437).

The above issues discussed show the value of having a formal written policy governing the proper use of the video equipment. This will ensure that the tapes produced are of the highest quality, and admissible as evidence.

Review of Literature or Practice

There is a tremendous need for departments incorporating mobile video taping in their patrol operations to have a formalized standard operating procedure (SOP). This SOP protects the officer, the administration, and the department. It should foster both uniformity within a department, and standardization of procedures in the law enforcement community. The SOP should give the officers the necessary flexibility to experiment with new ideas for the collection of evidence on tape. On the other hand, the policies governing the maintenance of equipment and legal procedures need to consist of strict rules. (Kuboviak 1994C: 79).

All officers should complete a training course for the proper operation of the equipment. This training can come from several sources. Mobile video equipment vendors offer training concerning the use of their equipment. Additional training can be obtained at the Law Enforcement Mobile Video Institute, offered at Tarrant County Junior College in Fort Worth, Texas. This training incorporates the "National Train the Trainer Instructor's Course" curriculum. After officers attend this course, they can then return to their agency to train local officers in the proper use of the equipment.

Videotapes shall be issued and stored according to established written policy (Kuboviak 1994C: 79). This policy should be very specific, as maintaining a chain of custody for evidentiary purposes is crucial. The mobile video equipment should be set up in such a way that the patrol officer cannot record over what has been previously recorded.

At the beginning of their tour of duty, each officer must functionally check the mobile video equipment in their assigned police unit. The check should include both the audio, and video portions of the

equipment (Kuboviak 1994C: 80). In many departments, officers do not have access to the video tape. The tape vault in the trunk is locked before the patrol vehicle leaves at the beginning of the shift, and unlocked when it returns. This ensures that neither the suspect, nor the officer can alter or record over the scenes captured on tape ("Vehicle Mounted TV" 55-56).

Upon beginning patrol duties the officer should turn on the mobile video unit. The majority of mobile video units are wired to operate automatically whenever the officer activates the emergency lights ("Vehicle Mounted TV" 55-56). Officers can begin recording manually whenever a violation occurs in front of the camera. Even before stopping the vehicle, officers should verbalize on video this initial traffic violation, and continue verbalizing other violations as they occur. When the officer activates his emergency lights, they should verbalize this for the tape. This shows the point when the officer feels sufficient probable cause exists, and displays the suspect's response to the officer's presence (Kuboviak 1994B: 52).

When making a violator stop, consideration should be given to the location of the patrol vehicle during the stop. The preferred location for the collection of video evidence is stopping directly behind the violator's vehicle, and turning the front wheels on the patrol vehicle hard to the left. In case of a rear end collision the patrol unit will likely move left, away from the officer and violator on the shoulder of the roadway. For officer safety a distance of two car lengths is recommended for traffic stops. This area between the two cars is called the "arena of performance" (Kuboviak 1996: 80). This distance allows the officer to perform the field interview off to the side of the roadway at the rear of the violator's vehicle. In this position the officer and violator will both be in the field of view for the video camera, but not so far as to miss telltale

signs of intoxication. Throughout the violator contact officer safety is the first priority. Never should the safety of the officer and the violator be sacrificed to capture evidence for prosecution (Kuboviak 1996: 80).

As part of the research for the project, SOP's for mobile video equipment were obtained from various agencies across the country. A comparison of these policies is shown in Appendix 1.

Discussion of Relevant Issues

Today's police administrator must be aware of how mobile video will affect the department, and the community in which it serves. There are several important issues to be considered in developing a standard operating procedure for mobile video. These issues include training, legal issues, operational procedures, citizen complaints, and cost analysis.

Training is the first key to a successful mobile video program. Without it, officers will end up with a collection of tapes that display poor quality, improper questioning of suspects, and the violation of the suspects constitutional rights (Kuboviak 1992B: 61). It has been recommended that each officer should receive eight hours of instruction covering both operational aspects and legal issues (Cooper; Kuboviak 1995: 50). This training can begin while the officers are still in the basic academy. Officers can become comfortable with the equipment while in the academy, and can easily adapt to the use of mobile video in a field training program. Mobile video is an excellent tool in field training. It allows the officers the opportunity to observe inappropriate behavior immediately after it occurs. By reviewing the mistake soon after it occurs the recruit can move to a new task without worrying for the remainder of the day about a mistake that happened hours ago (Kuboviak 1994A: 48). The

officer's job performance is then maintained on tape to provide documentation of performance and progress.

After completion of a field training program the mobile video continues to be a valuable tool in the area of in-service training. Video can be used to reinforce proper safety habits, appropriate behavior, and lead to the improvement of interpersonal skills (Pilant 33; Wark 60). Tapes that were once considered only for evidence, have turned into training tools that allow officers to view their own mistakes (Kuboviak 1993: 66).

Legal issues routinely arise over the admissibility of tapes into evidence. We have seen that proper training is the key. Now I will address the content of that training, and how the video tapes can be used to protect the officers and the department.

Officers should activate the equipment at the earliest possible moment, and should leave it running until the stop has been completed. The date and time generator shall remain activated to prevent allegations that the tape has been altered (Kuboviak 1994D: 80).

Officers should continue to verbalize all their actions through the stop. Officers normally think out their actions before proceeding; by verbalizing these thoughts the judge and jury can observe the officer's rational thought process toward developing probable cause (Kuboviak 1994D: 80).

One of the biggest areas of contention between patrol officers and their supervisors is control over the tapes. James Kuboviak, District Attorney of Brazos County, Texas is one of the leading authorities on mobile video policy today. His opinion on the custody of tapes is:

"Officer integrity is an issue of utmost importance and should be the mainstay of any procedure. There is a misunderstanding that line officers should not have access to the recordings after they are made, and that only supervisors should have access. Nothing is further from the truth. Saying that only

supervisors should have access to the tape is, in essence, implying that only supervisors are credible and responsible. This also conveys to the courts that line personnel are not credible and cannot be trusted" (Kuboviak 1994C: 83).

The mobile video tape is a piece of evidence. Police supervisors entrust officers on a daily basis to handle all forms of evidence. By allowing these same officers to have control of the tape, their fears may be reduced concerning the intent of the mobile video for use against them.

The use of mobile video also protects the public. By knowing that their actions are being recorded officers are more likely to act in a professional and appropriate manner (Pilant 33). Most agencies maintain all video tapes for an established time period. These tapes can be pulled for review if the need arises. Video can be used to verify or defend officers accused of brutality or excessive force, allowing internal affairs investigators to check the validity of a complaint against a video tape without tying up the officer's and investigator's time with paperwork (Pilant 30). In many cases complaints have been dropped once the complainant has learned of the existence of the video tape. Just the act of pointing out the camera at the scene can calm a belligerent suspect ("Vehicle Mounted TV" 56).

The quality and size of mobile video cameras have improved in recent years. As technology develops, pricing has become more competitive. The police administrator must weigh the cost / benefit of this purchase.

Currently a complete mobile video system costs approximately \$5,000.00 per unit plus installation. This price includes a low light camera, LCD monitor, both covert and officer body microphones, and locked trunk storage for the video recorder. Recently the Sunnyvale, California Department of Public Safety purchased 30 mobile video systems for installation in their patrol vehicles. Following is a table reflecting the

bids received by this agency:

Product	Total Price	Price/Unit
Mobile Vision	\$139,972	\$4,666
EagleEye Technologies	\$157,091	\$5,236
SpectraTek	\$170,418	\$5,681
Eyewitness by Kustom Signals	\$174,802	\$5,826

(Wesely 1,2)

The use of mobile video begins to pay for itself over a period of time. This comes about through higher conviction rates and reduced court time for officers (Kilpack 9; "Vehicle Mounted TV" 56; Wark 59). One department experienced a 50 percent reduction in overtime court costs, a savings that paid for the expense of the mobile video system (Pilant 33).

Conclusion/Recommendations

The purpose of this research project is to review the essential elements in the development of a mobile video policy. Mobile video has become more common in routine patrol use in many police agencies. The development of a comprehensive policy is essential for uniformity within the agency, and effective use of the tape for evidentiary purposes. The major issues discussed in this paper are important to the law enforcement administrator looking to develop a policy for their agency, or to compare an existing policy with trends in law enforcement today.

The issues examined in this paper include training, legal issues, operational procedures, citizen complaints, and cost analysis. The first four of these issues should be addressed in a formal written policy. The last issue is a matter that must be decided by the individual agency.

Training is the key to both operational issues, and legal

considerations. Without proper training, the officer will end up with tapes of poor quality and limited evidentiary value. It is recommended that each officer receive eight hours of training before being allowed to use the video equipment. This training should include use of the equipment itself. Proper vehicle position, along with positioning of officer and suspect. This will allow the officer to perform safely on the street, and produce a tape of high quality. The training must also include current case law on questioning of suspects, admissibility of surreptitiously recorded conversations, and the securing of the tape as evidence.

The written SOP should include the training requirements, as well as the care and custody of the tape itself. I feel that officers should retain custody of the tape until the time it is full, or needed for evidence. The tape then should be tagged as evidence, or stored for a period of time. This covers any possibility that the tape would be needed for evidence in either a criminal or civil action.

The mobile video protects the officer from unjust complaints. At the same time it can protect the agency from civil action for wrongful termination. The actions of the officer and defendant are captured by the mobile video equipment. There can be no disputing the scenes captured on tape.

The cost issue will vary within each agency. The mobile video system will save money in the area of court overtime. The cost savings may take an extended period of time to develop, as cases are disposed of in the court system.

In conclusion, the development of a standard operating procedure for mobile video equipment is essential in today's modern police agency. The policy can protect the agency from civil litigation, while promoting professionalism and uniformity within a department.

BIBLIOGRAPHY

- Brown v. State*, 349, Southern Reporter 2d 1196,1197 (Florida District Court of Appeals 1997).
- Bryan Police Department. General Order Number 32-05.1. Bryan, Texas. 1 October 1995:1-6.
- Carmel Police Department. Divisional Order Number 97-01-U. Carmel Indiana. 9 October 1997: 1-3.
- Cooper, Billy. Bryan, Texas Police Department, mobile video instructor, personal interview, January 1998
- Crawford, Kimberly A. J.D.. "Surreptitious Recording of Suspects' Conversation." FBI Law Enforcement Bulletin September 1993: 26-32.
- Crisp County Sheriff's Department. Policy Number 8-A. Crisp County, Georgia. 1 April 1993: 57-62.
- Farmers Branch Police Department. Standard Operating Procedure Number 32:03-95.0. Farmers Branch, Texas. 1 March 1995: 1,2.
- Frankfort Police Department. General Order No. 01-96. Frankfort, Kentucky. 25 July 1996: 1,2.
- Georgia Department of Public Safety, Troop J. Policy Statement 36. Atlanta, Georgia. 7 July 1992: 36-1:36-8.
- Giacoppo, Michael. "The Expanding Role of Videotape in Court." FBI Law Enforcement Bulletin November 1991: 1-5.
- Kilpack, Lloyd. "Use of a Video Camera for DUI Investigations." FBI Law Enforcement Bulletin May 1987: 7-9.
- Kuboviak, James M.. "Going to Greater Lengths." LAW and ORDER February 1996: 80,81.
- Kuboviak, James M.. "Mobile Videotaping: A Tool for Field Training Officers." LAW and ORDER March 1994A: 47-49.
- Kuboviak, James M.. "Mobile Videotaping: How to Win a DWI in Court." LAW ENFORCEMENT TECHNOLOGY June 1994B: 52-56.
- Kuboviak, James M.. "The Importance of Mobile Video as a Training Tool." THE POLICE CHIEF November 1995: 50,51.
- Kuboviak, Jim. "A Model Videotaping Policy." LAW and ORDER April 1994C: 79-83.
- Kuboviak, Jim. "Mobile Video Evaluation Check List." LAW and ORDER October 1993: 64-67.

Kuboviak, Jim. "Mobile Video Speaks for Itself." LAW and ORDER September 1994D: 77-82.

Kuboviak, Jim. "Mobile Videotaping: A Look at Tomorrow's Law Enforcement Tool." LAW and ORDER July 1992A: 66-70.

Kuboviak, Jim. "Training for Mobile Videotaping." LAW and ORDER August 1992B: 61-63.

Kuhlmann v. Wilson, 477, United States Reports 436-477 (Supreme Court 1982).

Monroe County Sheriff's Department. General Order G.O. 96-02-13. Monroe County, Florida. 4 September 1996: 1-5.

People v. Chandler, 68, California Reporter 645,649 (California Court of Appeals 1968).

People v. Seaton, 194, California Reporter 33,41 (California Court of Appeals 1983).

People v. Williams, 180, California Reporter 734,737 (California Court of Appeals 1982).

Pilant, Lois. "In-Car Video Systems." THE POLICE CHIEF April 1995: 30-36.

"Training Key #432: Mobile Audio / Video Recording." THE POLICE CHIEF March 1993: 59-63.

"Vehicle-Mounted TV: A Patrol Officer's "Silent Partner"." LAW and ORDER February 1990: 55-57.

Wark, Robert. "Mobile Audio/Video Recording." THE POLICE CHIEF March 1993: 59-63.

Wesely, Elaine. "Award of Bid #F9712-32 for Mobile Video-Audio Recording Systems for Patrol Cars." (24 March 1998): 1-3. Online. Internet. 6 June 1998.

Appendix 1

Comparison of Current Video Policies

Agency	Training	Custody and Control of Tapes	Review of Tapes	Time Period Tapes Kept on File	Use of Mobile Video Equipment	Defendant Notification of Recording
Bryan Police	not stated	officer	none	not stated	DWI	not stated
Carmel Police	required for use	officer or supervisor	none	3 years	mandatory on emergency runs	not stated
Crisp County Sheriff Department	not stated for use, tapes can be used for training	officer	none	1 year	mandatory of traffic stops and pursuits	informed on request
Farmers Branch Police	not stated	supervisor only	none	2 months	mandatory on traffic stops and pursuits	not stated
Frankfort Police	required for use	not stated	none	not stated	mandatory on traffic stops	not stated
Georgia Department of Public Safety	not stated for use, tapes can be used for training	officer	routinely by Post Commander	3 years	mandatory on traffic stops and pursuits	informed on request
Monroe County Sheriff Department	required for use	officer	none	30 days	mandatory on traffic stops, DUI, arrests, and pursuits	informed on request