

**RUNNING THE GAUNTLET  
POCKET VIDEO RECORDERS IN MODERN POLICING**

**by**

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

## **RUNNING THE GAUNTLET POCKET VIDEO RECORDERS IN MODERN POLICING**

If your agency hasn't been stung yet by a viral video recording of your officers in action, prepare yourself. This phenomenon has already happened to police departments all over the country. Unless your staff and policies are ready to respond effectively to this trend, it will surely work against you. If one were to ask San Francisco PD or NYPD if viral video recordings can hurt a department's image, or destroy an officer's career; they can. They have. They will again.

Ordering people to "turn that off" as a solution to this phenomenon is no longer a practical option. There are only three effective countermoves for unwelcome video recording of your officers: 1) prepare them to handle these situations through training and clear policies on portable video recorder use, 2) equip them with functional equipment to document their actions when appropriate, and 3) train your staff (especially investigators) to seek, analyze, and exploit information and evidence for your cases available through the Internet. Using these tools will protect your agency and staff in the world of the future.

If current trends continue, by the end of the decade, every person present at a law enforcement detention will be able to video record the contact and instantly publish the video. California law enforcement agencies must prepare their officers now to manage the problems this will cause, and to exploit the opportunities this will present. The trends in portable video recording devices (PVRD) and their impact on California law enforcement will be phenomenal. It is critical we all have practical tools to utilize and put into action to meet this instant public scrutiny in the future.

### **Current trends and what they mean for the future**

In modern day California, a typical member of the public has a cellular phone capable of taking high quality digital photographs or video recordings, and instantly transmitting the

recording to another phone or through the Internet to nearly any location on the planet. If current trends in technology continue to advance, in a few short years it will be impossible to either detect or prevent nearly any activity from being recorded on video and transmitted anywhere.

### **What has changed: Analog to Digital**

Over the last twenty years, revolutionary advances in microchip technology, analog to digital image processing systems, battery engineering, and digital file storage have reduced the required size, form, and weight requirements for portable video recording devices. Digital video recording devices with a 60-minute recording capacity can now be concealed in a ball point pen for less than one hundred dollars (10-8 Video.com 2010). Video recording technology has become so small and inexpensive, the ability to record digital video in high resolution is now routinely incorporated into music players, phones and other electronic devices. A common use of these devices is to record newsworthy activity, including police activity in public places. People record activity to document the actions of the police or to influence officers in their actions and decisions. As possession of tiny, high quality video recording devices becomes universal, law enforcement must respond to this change.

An expert forum was convened to identify important trends affecting this issue, and to identify likely events which will affect the future impact of PVRDs on law enforcement. The panel included representatives of law enforcement, information technology and legal disciplines. Working as a group, the panel came up with the following strong trends of relevance to this issue:

1. Police recording of contacts will increase
2. This will cause privacy concerns about video recorder use by police

3. The state or federal government, via judicial action, or passage of a new law, will create a “right to video record” public law enforcement activity

Recent and current events show these trends happening now. In the next few years in California, legal issues involving public video recording of police and police video recording of people they contact will be settled in state and federal courts. Cases on these issues are currently ongoing in Massachusetts, Maryland, and Illinois (Cohen 2010). Judicial mandates, or federal laws that may result from these cases will impact law enforcement here in California.

### **Implications on the future of Policing**

Just as the saying goes that a picture is worth a thousand words, a video recording of an event can show a thousand times more than a picture of the same event. A future replete with high quality PVRDs will produce a wealth of powerful evidence for law enforcement to identify suspects and solve cases. This currently-available technology is being used to document activity of law enforcement officers both by the public and by some officers. The maxim “all officers should act as if they are being videotaped at all times” will become “all officers should expect *to be* videotaped almost all of the time”.

Among police, the response to this increase in video recording of public activity has been two-pronged. One response has been to equip officers with similar devices. Manufacturers of electronic equipment for law enforcement have begun marketing compact, durable video recorders to police. These devices are marketed to use for protection from false allegations of misconduct, and to capture statements and events the officer would normally observe, but not record (10-8 Video.com 2010).

A second response, not seen in California to date, is to deter bystanders from making video recordings of police by arresting them (Time.com 2010). In a 2007 Massachusetts case,

Boston Police arrested attorney Simon Gik after he used a cellular phone to video record the search of a drug suspect on Boston Common. The officers were recently denied immunity in a federal civil rights lawsuit over this arrest, and the case is being appealed to the U.S. Court of Appeals (ACLU.org 2011).

The practice of arresting bystanders or detainees for recording police actions without consent is not likely to withstand judicial scrutiny in the states where it has recently occurred. The expert panel concluded that, if this practice continues, it is highly likely a legislative mandate or judicial action will eventually occur to create a “right to record” the on duty public activity of peace officers in almost all situations. As of January 2011, Connecticut is currently reviewing a proposed state law to create a “right to record police activity by the public” (RCFP.org 2011). During 2010, New York congressman Ed Towns introduced House Resolution 298, a proposed federal law recognizing the same right (Library of Congress, 2010).

PVRD documentation of activity by officers is a powerful risk management tool when used by law enforcement to document their actions. Some agencies currently video record high risk activities such as search warrant service, cell extraction or crowd control. In lower profile situations, video recordings of field activity can provide supervisors with an efficient means of resolving low level complaints quickly and with confidence. The current use and proliferation of compact audio/video recorders by peace officers is an expansion of documentation of ordinary contacts that officers have routinely been audio recording for twenty years.

### **How PVRD Video Works Now**

To see how the issue of community-generated videotaping and distribution of police-involved incidents can unfold, consider the press release published by the San Francisco Police on July 17<sup>th</sup>, 2011:

*On Saturday, July 16, 2011 at 4:44pm two uniformed San Francisco Police officers were assigned to a fixed post at Third Street and Palou Street as part of a violence reduction program, in response to recent shootings in the area. Information is still preliminary. The officers detained a 19 year old male suspect on the Muni light rail platform. This suspect then ran from the police officers who pursued him on foot. It appears that the suspect was armed with a gun and fired at the pursuing officers. At least one of the officers returned fire, in self defense, wounding the suspect. The suspect was transported to the hospital with life threatening injuries. He was pronounced deceased at 7:01 pm. (sf-police.org 2011).*

In the high profile shooting described above, SFPD was confronted with a lot to manage. They had an officer involved shooting, with a chaotic scene and the officers stating the suspect shot at them, but no gun was found by the police. The scene was not secured until minutes after the shooting, which took place at a transit stop on a busy summer afternoon, with numerous bystanders nearby. Many of these bystanders recorded video with their cell phones as the suspect succumbed to his injuries in the street. Several different videos of the chaotic scene were published on YouTube during the hours and days following the shooting.

Although posting these videos appears to have been done to fuel public anger at police, it gave investigators access to several angles of digital video of the shooting scene they would not otherwise have seen. At least one of these videos showed a handgun on the ground at the scene. Another showed a male in the crowd picking up a cellular phone from the ground. A witness who recorded the video including the presence of a gun told police and the media that he saw the same person pick up the gun and leave with it. The posted videos gave investigators valuable information about the scene, including an image of the gun, and clear video of the person who

took it from the scene. As part of the Department's response to allegations of misconduct by local activists, SFPD included news coverage of the Internet scene videos in a press release on 7/17/2011. (sf-police.org 2011).

By effectively using the unfiltered, quickly published scene videos this way, SFPD was able to use videos that were posted to demonstrate the fact the suspect had been armed, and the weapon was removed from the scene. SFPD's response to the video posted online in this case shows how law enforcement can use posted video data to develop investigative leads, identify suspects and resolve cases. The case exemplifies the potential to use, and misuse, video recordings of the police. It also adds credence to the need to address the legal issues to ensure video recording is managed in a manner consistent with the best interests of society.

#### **What we should do to limit the damage and optimize the future**

California law enforcement may be creating a risk by adopting the new, expanded capacity of audio/video recording of contacts by officers without clearer legal authority to record those contacts and conversations. The exemption allowing on duty law enforcement officers to audio record criminal investigations without notice to the other party has been in place since the Invasion of Privacy Act was enacted in 1968 (findlaw.com 2010). Although relevant laws were updated during the 1990s to address wireless and cellular phone use, audio recording with video is not addressed. The potential for misuse of audio/video recordings from on duty contacts is high (via unauthorized release or publication of recordings of contacts, for example), as their content is much more potentially invasive of an individual's privacy than an audio only recording of the same conversation. Agencies that plan to manage the pending flood of both officer and civilian generated PVRD recordings by treating them as audio recordings may not succeed in the world of the future.

### **What we can do now**

Agencies will significantly benefit if they prepare now to make use of the increased use of PVRD recordings by citizens, suspects and officers. To do this effectively, agencies should review their current policies on audio recordings and update them to address the issues of a future with extensive PVRD use. According to our expert panel, updated policies should minimally classify recordings as one of the following:

1. Evidence (criminal investigation)
2. Records (performance and supervision use)
3. Risk management records (documentation of use of force, high risk incident or potential complaint)
4. Personnel complaint material (subject to legal requirements to determine purge date)
5. Policy should cover retention periods based on classification and scheduled purging of PVRD recordings
6. Policies should also cover an officer's use of a personally owned PVRD while on duty

Certain managers and investigative staff members should be trained to use software to view and analyze PVRD recordings, as they will need to analyze recordings to develop investigative leads. Investigators should be trained on software to capture PVRD recordings from Internet sites such as YouTube, as some PVRD recordings will not be turned in as evidence, but published online. A free program to capture streaming video from Youtube and similar Internet sites is available from here: <http://www.applian.com/freecorder5/> .

Agencies should also prepare their officers and supervisors to navigate the practical, tactical, and ethical landscape in a world where their actions and statements will often be recorded by others on video, sometimes with their knowledge, sometimes surreptitiously.

Training should be developed to reinforce current legal authority and limits of video recording of others by peace officers and of peace officers by others. A practical way to train and test on this issue during police academy scenario testing would be to include a role-player who takes out a cellular phone and begins recording the trainee during scenarios that test appropriate actions and responses in use-of force:detention, or vehicle stops. Scenario based training should be used to encourage officers to make good decisions with these limits in mind. Agencies and administrators will suffer later if they fail to prepare now for a future where video recordings of their officers are routinely video made and published on the Internet by bystanders with portable video recording devices.

### **Conclusion**

Trends indicate that by the end of this decade, every police contact will be witnessed by someone with a PVRD, and many will be published on the Internet. Law enforcement will fail in the future if they either ignore this phenomenon, or respond to it by arresting people who record them. Experts have indicated that as police use of video recorders increases in the future, privacy concerns will be raised about this practice. Given these trends, it is also likely there will be state and federal laws giving bystanders an affirmative “right to record” public police activity by the end of the decade. To succeed in the world of the future, agencies need to learn now how to use the Internet to seek, analyze, and exploit videos posted on-line to further their mission. Updated policies should include classifying incoming PVRD recordings in their workflow, and use of PVRDs by their on-duty officers. SFPD’s recent response to a controversial shooting demonstrates that agencies can succeed despite inflammatory bystander videos, if they seek, analyze, and exploit the information they need to tell the real story. We should all learn, and then follow suit.

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