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Law Enforcement and Prosecution Panel
This panel of law enforcement and attorneys address questions of when an officer should turn on and off the camera, the privacy rights of victims and witness, how body cam policies and guidelines should be legislated, and what should be left to the discretion of the local jurisdiction. But before these specific issues can be addressed, communities first need to understand why police departments are implementing body cams in the first place. Is it for officers? Or citizens? Or for evidence?

The transcript of the panel discussion follows below.
EUGENE RAMIREZ: Yes, and just to let you know, I used to be in LA County Deputy DA so you’re not the only person here...

DAVID ANGEL: Oh, well, there you ...

EUGENE RAMIREZ: That was a long time ago though, but ...

DAVID ANGEL: Now I’m definitely leaving.

EUGENE RAMIREZ: As far as patrol goes, yes, I believe the cameras are going to help reduce the use-of-force complaints. It’s going to help, hopefully, reduce use-of-force incidents. Of course, I have a different perspective from a special operations unit, my tactical units, my canine units. But I have a case right now with a local law enforcement agency where our motorcycle officer purchased his own body worn camera because the agency had not yet gone to them a few months ago, and he captured his shooting on very high-def camera. It is amazing how clear it is.

And everything the deputy said in his statement was buttressed by the fact that it’s all on the camera. And ... we ... put a counter on the video to 100th of a second showing just how much time that deputy had to respond to the response of the suspect, how he made his movements, and we were able to show it frame by frame as I get ready now to move to a jury trial in the civil case. But I think it’s going to be incredibly beneficial, so in that sense yes, I’ve really come to like body worn cameras.

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DAVID ANGEL: And how about you, Mike? ... What’s your take on them?

MIKE OTERI: Overall, highly positive. I think, you know, there’s some unfortunate incidents that brought us to today. But at the same time, I think it’s going to, kind of, end up working out for the better, budgets aside. ... The officers that I supervise on a shift are not going to depose as often simply because of the— well, what I attribute to the body worn camera video, so that’s one way.

Another way is the field training officers are starting to use these cameras now to help point out deficiencies when an officer is going through training. Hey, you went way too far ... on your approach with that traffic stop ... you should have stayed back a little bit further and, you know, be safer for you or you didn’t quite do that building search exactly, you know, this is ways you can improve. Things like that.

I have yet to see any agency statistics say that their use-of-force complaints, use-of force incidents, or civilian complaints went up since we’ve started using body cameras. And I believe there’s around 8,500 agencies that are now using them out of 18,000. So everybody I’ve talked to, and all the statistics that have been thrown out there—either in white papers or just talking to agencies— everybody is down—I would say an average of 40 percent or more—in all of those so ...

DAVID ANGEL: And Chief Holloway—now, you don’t have a system yet, right?

ANTHONY HOLLOWAY: That is correct. But I am for body cameras. But the question that we’re asking also with the American Bar Association on body cameras, is, first thing is what are— who are the cameras for? Are they for the officers? Are they for the citizens?

And then the next thing is when you start looking at these body cameras— I said earlier every time I go this is all — this is going to be a marriage, folks. When you go to these body cameras you’ve got to figure out you’re in for the long haul. Because once you’ve decided you don’t want these cameras anymore it’s going to be a messy divorce. And I really mean that. Between the vendors, and between the citizens, it’s going to be a pretty messy divorce.

So as you go through these body cameras—again, I’m for them—but you’ve got to get your input from your citizens, from your officers, and figure out, again, [why] are you using these body cameras and what are you using them for? If you’re only getting them for trust, you’re not going to build trust in your community with a body camera.

DAVID ANGEL: Yes. And I would say from my perspective there— they’ve
ANTHONY HOLLOWAY joined the Clearwater Police Department in 1985 as a patrol officer. Upon his retirement in 2007 as the patrol division commander, he was selected as the chief of police for the city of Somerville, Massachusetts. Chief Holloway rejoined the Clearwater Police Department in February 2010 as chief of police, and in August 2014, he was selected and now serves as chief of police for the St. Petersburg Police Department.

Chief Holloway earned his Bachelor of Arts degree (Business Management) in 1999 and Master’s degree (Business Administration) in 2001. In June 2011, he was awarded a Certificate of Completion for the Senior Executives in State and Local Government Program from Harvard University’s Kennedy School of Government, Executive Education. In August 2015, he successfully completed the Executive Leaders Program at the Naval Postgraduate School’s Center for Homeland Defense and Security.

Chief Holloway has taught law enforcement to governmental, educational, and community organizations throughout Florida. He was appointed to the Board of Governors of the Florida Bar in June 2012, and serves as co-chair of the Law Enforcement Committee of the Criminal Justice of the American Bar Association. He was also elected president of the Tampa Bay Area Chiefs of Police Association in January 2015. He is a current member of the Florida Police Chiefs Association and the International Association of Chiefs of Police, and serves as consultant/trainer to organizations such as the Department of Juvenile Justice, U.S. Department of Justice, and St. Petersburg College.

been tremendously helpful. I can think of just two quick antidotes that happened, one relatively recently. We had a father of a young man who was autistic. And he had a very negative interaction with the police and claimed the police officer had not returned his—or rather had returned his wallet, but he had taken all his money out of the wallet.

And the father came in incredibly upset. And the father was—a—you know, an affluent citizen. I point that only [because] he was someone who's going to be very connected. And he was upset about the way his mentally disabled child had been treated.

Well, through the various cameras—and it was not easy because there was different point of views—but we were able to show that the officer did take his wallet, but looked in it for identity, and then he handed it back to him, and that it was cleared at the whole time. And once we showed that to his—that parent, you know, that cured what I think might have been a ruinous situation for that officer otherwise and restored a lot of trust.

And then the second was just a—prosecuting a case. This was actually not a body cam. It was an MVAR, you know, the video in the automobile. And I got called down the hall and somebody said, “Hey, I want you to read this report and then I want to show you the video.” And it was a robbery, and then they do a show-up because they catch the person who they think they did [it] a little ways away. And we all know show-ups can be the best, but they can also be the worst as a prosecutor to prove up, because they’re so, you know, obviously they’re so suggestive. And the report reads, “I had victim in my squad car. Brought into the location to show up. She was not able to identify the suspect. I then instructed the victim to look closer. The victim was still not able to identify the suspect. I then counseled the victim of how important it was for her to look closely, and she looked closely, and then identify the suspect,” okay?

So I’m reading this. I’m like, “Did we even issue this?” This is terrible right? And then the issuing deputy said, “No let’s look at the tape.” And so they rolled the tape. And you see the officer who’s transporting this victim was not, like, the lead on the case, so he was just transporting her. And so far from the police report, [it] makes you think this is this overzealous cop, right? I mean if he’s criticized for anything, it’s that, clearly, he could care less whether this case was solved, right? Because he had his arm on the window of the car and he’s kind of just driving like this. And they pulled on over. And next to him, you see the victim. And she was, you know, maybe a little bit of an older woman. And clearly she is extremely frightened and extremely upset, which you can see in this video.

And so he says, “All right, you know, do you see anyone?” Like I said, he—it was so obviously unimportant to him whether this case was solved or not. And she says, “No,” but if you’re looking at the video she never took her eyes off of her feet. She had her head down like this because she was so scared.

And then he says to her, “Hey, you got to look.” And then she still says—she shakes her head and says, “No.” And then he says, “You have to look at the person.” And then she lifts up her hand and she begins to sob and says, “That’s him.”

And so we went from what clearly would have been a non-violent, terrible case, to a case where—talk about saving over time—like nobody was going to prelim on this. I mean, this was just going to be a guilty plea once we filed it. So I think it has … extraordinary potential, and I think there’s so many stories like that.

But there are some real challenges, and maybe now [let’s] ... go in the reverse way. What—if you have one worry that you feel like you want to get—you feel like folks have to really start thinking about, what would that be? And I'm going to do the same thing again. Gary, what do you think?

GARY INGEMUNSON: One word? Vietnam. And here's why. There are some people that say we lost the Vietnam War because the violence was brought into the living room of the population of the United States. In
other words, we saw how horrible it was to have burn victims, and people being shot, and explosions, and all of that sort of thing. And as human beings, we’re against violence in any way shape or form. When we look at it we go, “Oh God, I don’t want to watch that.”

What we’re seeing now, I think, with the Ferguson effect that’s sweeping the nation, is that with all of the videotapes going on now and all of the YouTube’s and all of that sort of thing, people in the United States are now looking at their televisions and seeing uses of force in their living rooms by law enforcement officers and we’re getting the same sort of effect. And I’ve seen at least two jury trials now where the prosecutor essentially plays the tape, which is ugly—somebody swinging a baton, as somewhat in a silent movie, as opposed to being there where the officer’s yelling, “Get on your knees, get on your knees,” and looking at the video and telling the jury essentially, “You don’t need an expert to interpret that, look at that. It’s horrible, It’s uncalled for. Forget about the experts, you’re the experts.” And I think that sort of use of the video—when there are reasons for using uses of force—but just playing on the ugliness of the force to persuade a jury is one of the critical problems the prosecutors and defense attorneys face when police officers are being prosecuted for uses of force.

DAVID ANGEL: Yes, I think— actually I think that’s a really good point. I think that, well, especially for those of you out here in law enforcement as opposed to prosecutors … there can just be a lot of very upsetting things. And ... I think to a great degree, juries and communities have been shielded from this. And I think those days of being shielded are coming to an end. Although I suspect that—as you pointed out—that’s largely because of all the videotape that’s out there anyway. But I think that is going to be an issue. Gene, what do you think about when you worry about this?

EUGENE RAMIREZ: Over-reliance. That everybody's going to so over-rely on the videos that they're going to fail to do thorough investigations as they always have. They're going to fail to write excellent reports because they're going to over-rely the video.

I'm also worried that prosecutors may over-rely on the videos to such an extent that, are they going to prosecute or file cases [if] there's not a video to go along with it? So I want to make sure that we're not over-relying on these videos, and eliminate the other parts of law enforcement that we still need to happen.

DAVID ANGEL: And what do you think, Mike?

MIKE OTERI: Yes, you kind of just wrapped that all up into one. Graham vs. Connor, you know, it’s the— what can happen and unfold, and what the perception is of the officer at that point in time, is going to— a decision's going to be made on a Monday morning with a cup of Starbucks coffee in somebody’s hand rather than doing a complete investigation.

So, I mean, our workload increases every single day. Body cam systems like we talked about all afternoon is ... about increasing your workload because you're— you have so many things to attend to in the system. So therefore, you're going to have to— administrators, professional standards or internal affairs, or the media and the public is going to make very quick decisions off of what is off of the video.

And we've already seen numerous cases tried on CNN already. So, you know, it's just going to be expounded upon to the internal workings of what's going on on a case-by-case basis.

DAVID ANGEL: Chief Holloway, when you— when you're exploring this, what is kind of the thing that keeps you up at night when you worry about adopting this?

ANTHONY HOLLOWAY: And again, I think body cameras are a great thing but what I feel is two-percenters are changing the way that 98 percent of these guys start doing our jobs. Because there’s 2 percent of the population— they are doing things out there wrong— [and] we all have to adapt to what they’re doing wrong.

“[W]hat are the cameras being used for? What are you trying to capture? Are you trying to capture the citizen doing something wrong or the officer doing something wrong? … What are you trying to do? We're rushing to get these body cameras out into the community, but what are we rushing to get them out there for? What are we trying to solve?”

—ANTHONY HOLLOWAY
So these body cameras are going to come to find out that we're doing a lot of good things. But to catch those 2 percent you're taking those 98 percent and putting them in the same picture. So I see now, officers are writing reports to say in their narrative, “see video.” I mean, so it's really taken like, I said, taken a lot away from police work. Then I see a lot of officers that are worried about what's being videotaped instead of worrying about officer safety.

I look at it as the officer controls the video. In a perfect world, the videos should be overhead because I'm behind that video. I'm behind the camera. I'm in control of that camera. So what I capture— I can make you do anything I want you to do because I'm behind that camera. I can say things to you that is not going to be captured on the video. So instead of putting— again, what are we using this video camera for?

I think it's going to be a good thing, but I think we still have to get them to write the policies making sure that we are covering the 98 percent and we are trying to catch the 2 percent that are doing things wrong, and not making this blanket policy.

DAVID ANGEL: And when you say 2 percent, are you referring to the 2 percent of the officers that you think you're going to have a problem with or 2 percent of the community?

ANTHONY HOLLOWAY: Both. Two percent of the officers and the community. There's 2 percent of people out there that are going to do bad things and we're going to catch them on videotape. But it's almost to the point now that the video cameras are for the “got you” moment; I got the citizen doing something wrong. I got the officer doing something wrong. So, and again, it comes back to that trust.

After a while — and I heard somebody said earlier everybody's going to be wearing a video camera pretty soon because everybody wants to catch that person doing something wrong. I see it now at different scenes. You see it on the news. Instead of people getting out of the incident, everybody's got their camera out videotaping everything that's going on at that moment. So we're at this age where we're videotaping everything we do.

DAVID ANGEL: And I have to — this is actually — this is going to be a preview for tomorrow. A section on the what we call — well, for those of us from California, we call the CPRA, the California Public Records Act, and others call FOIA. But I almost think the next big hurdle is getting that balance right between privacy and transparency, and having a disclosure policy that's not going to corrupt your investigations and your prosecutions, and that's not going to bankrupt your department as you try to handle it.

I think that's kind of the next emergent issue that I think can either, you know, kind of kill this in the cradle, or allow us to move forward. But I certainly agree with those other issues that you talked about.

While — so we've all — I assume we've all talked about the importance of having some sort of protocol. And I know Kris Hamann was speaking to us this morning. And I know one thing she's worked on a lot was, when we first started — first started thinking of these issues of body cameras, a lot of agencies nationwide were buying them but had no particular policy on how to use them which was, you know, bad.

And if they had a policy, often ... it had no, you know, there was no communication between the DA and the police. I'm also going to go out on a limb and say that's also bad. I think at this point — though everyone agrees that we need to actually have a written protocol of some sort. And do you — does everyone — we don't really need debate that.

... I thought we could spend a little bit of time going over what might be considered pinch points or points where you have to make some sort of critical decision. So, for example, there is a school of thought that says you really need to basically have these cameras running 24/7. I mean when the officer is — and you — I'm sure some of you
have read articles where people say either it should be on all the time or there should be some sort of biometric reading where, just like with the audio, the MVAR, the videotape on the camera, ... will turn on automatically when certain incidents happen. So most of the time if the lights go on or if—once the car has stopped there's various things—that camera automatically goes on.

There have been those who have proposed doing the same thing for body cams so they just automatically get on, like whenever an officer gets out of the squad car, for example, because they want to make sure that you [have] an absolute consistency on how they're used. The other extreme is one that just leaves it up to the discretion of each individual officer. And of course you've got problems there. I'm sure we've all read about agencies where you spend all this time and effort putting body cams in and then officers just don't use them or don't use them when they need them. Mike, let me just jump to you. What do you—does your protocol describe when an officer is supposed to activate and terminate the body cam?

MIKE OTERI: Yes, it does. It says that at any point in time an officer is dispatched to a call, they're required to activate their camera and any type of interaction with the public. So when I train officers, when they first get their cameras and I'm doing the training, I refer back to the book of common sense. Listen, somebody flags you down and asks you where the beach is. No, we don't require you to turn the camera on. But if they flag you down and say, “Hey, I just got robbed,” yes, you're required to turn your camera on.

We offer our officers that latitude as to when to turn them on, as well to turn them off, like some of the earlier discussion of, “Well, do we need to have that sidebar consultation” or, “Do we have the PC to arrest this person? Do I need to speak with my supervisor first,” things like that. And we really have not had an issue with the video not being recorded. I mean, we stress on the fact of, “Listen, here's the rule book and you've got to follow it. And if you don't it's going to sting because we don't want any issues.” But from an internal investigation standpoint, it's kind of obvious when the camera [goes] off, and it comes back on, and somebody's missing teeth. I mean, ... it's so ... you don't have to worry about that so much because the writing is usually on the wall when there's a malicious act that's been done.

DAVID ANGEL: So now, how do you handle it ... [when] it's not always apparent when somebody's flagging an officer over what the incident's going to be about? Are they required to start it if they believe it's going to be an enforcement incident or how do you write that?

MIKE OTERI: It just says that any legal interaction with a citizen or the public. Our cameras have that 30-second pre-event buffer, so it captures at least the video that 30 seconds prior to the activation. So usually, you find out within the first few seconds why a citizen is walking up to the officer; whether they need something or whether it's just, “What do you think of Daytona Beach?” Stuff like that.

DAVID ANGEL: And then what about termination?

MIKE OTERI: Termination— we offer them that latitude to turn it off if they need to have those consultations or if they're going to go back to their car and gather some paperwork and start an initial report while they're waiting on victims or witnesses to fill out a statement. There's no reason for them to record that entire time. But when they leave and go back to the person or persons they're dealing with, they're required to turn it back on.

DAVID ANGEL: And do they need to document all of those decisions at the time or in the report somewhere?

MIKE OTERI: No. Just our report says that the incident was recorded on the Axon body camera. But it doesn't specify, “I turned it off because of this reason or another.” The only time we do require officers to document that is when we have clearly identified either victims or witnesses as far as the privacy goes.

”[A]ccuracy is our most important product. ... [F]rom a law enforcement standpoint, people go to jail over us being accurate. The civil suits are won over us being accurate. Accuracy trumps everything in my view. And ... an officer has ... not only the duty but, ...the right, to use every single way possible to make sure that that report is accurate, that that testimony is accurate, and that that interview is accurate. And that includes looking at any and all available videos, notes— whatever it takes to make that final product an accurate product. And if you withhold the video, all you're doing is providing a cheap credibility test that will be used against the officer at some point in time.”

—GARY INGEMUNSON
DAVID ANGEL: Oh, so in other words if you— so if you have a victim or a witness, they would document why they’re turning it on and off?

MIKE OTERI: Right. For us we try to do our best to maintain the privacy of the general public. And that includes people who are victims and witnesses. So we all know for— from an officer's perspective, you get to a call and many times it’s hot, and it’s dynamic, and it’s fluid. You don't really know who is a suspect or who is a victim.

But once everything calms down and you identify who those victims and witnesses are, for our— for us and dictated by our policy, we are required to ask them if we can continue recording. If they say, “No, I don't want to be recorded,” then the officer is just simply required to state the date and time and that the video is being stopped at the request of the victim or the witness. If they say, “No, we don't mind,” then obviously, the camera is kept on, and continues to record and it’s made part of the investigation.

DAVID ANGEL: Right. Can I jump? Gary, what about in LA?

GARY INGEMUNSON: In LA the rules are very specific. Of course, management wanted as little wiggle room as possible. We wanted as much as possible. And it ended up being … that everything was specifically named. For instance, you shall turn it on for vehicle stops, pedestrian stops, calls for services, Code 3 responses, foot pursuits, searches, arrests, uses of force, in-custody transports, witness and victim interviews, crowd management and control, and any other time you think it might be valuable.

And then they throw in a couple of exceptions. If the witness refuses to talk when they’re being interviewed, you can turn your camera off. If you're in a private situation, like for instance a rape investigation, or you’re inside a hospital, or something like that, you can turn it off. And then in situations where you might be burning a confidential informant, you can turn it off. If there’s not much debate on turning the camera on or off, you will be subject to discipline if, for instance, you go on a foot pursuit without turning it on.

DAVID ANGEL: And what about termination? I mean, so they have to turn it on when it starts ...

GARY INGEMUNSON: Yes.

DAVID ANGEL: … what sort of guidance do people get on when they can turn this off, particularly in the middle?

GARY INGEMUNSON: On the termination issue, again, as I think I stated in the last segment, the purpose of the body worn camera is to record interactions between the police and the public. So when your interaction with the citizen is over, you can turn the camera off, hopefully you won’t be discussing your captain's intelligence with the citizen. So that's the rule. When the contact is over with the citizen, you can turn the camera off.

DAVID ANGEL: And Chief Holloway, have you thought about when— I mean what are you exploring for those rules?

ANTHONY HOLLOWAY: What I hear from these two guys, we're talking about right here, and I always say if a sixth grader can't understand the policy, you're in trouble. And you just heard two different policies right here. And that's the thing. You're trying to govern turn it on, turn it off, when you have it on, when you have it. What is that expectation of private owners, non-expectation of privacy. So and that’s what you've got to go through.

Again, what are the cameras being used for? What are you trying to capture? Are you trying to capture the citizen doing something wrong or the officer doing something wrong? Again, like I say, I'm for the body cameras. It's just, what are you trying to cover, and that's what we talk about. What are you trying to do? We're rushing to get these body cameras out into the community, but what are we rushing to get them out there for? What are we trying to solve?

And so [the way] we answer that question I think it's a big issue. We talked about it earlier, the vendors are doing a great job. They're giving us a
great piece of equipment, but [what] is that cost at the end? You know, again like that marriage, you know, once I get married to you and I decide that I want to change halfway down the road, remember that vendor has all that data. So you leave. How much is it going to cost you to leave that marriage? You know, so again—and these are all the things that not only does law enforcement, you’ve got legal professors, thinking about it. ACLU. What are you going to do with all of this?

And again, that policy. I think I read about 50 policies and they’re all different: shall, will, will not. So I think once you get the guidelines, I think everybody will be able to use it the right way.

DAVID ANGEL: Yes. And I think what we’ve done in Santa Clara County that’s worked so far—well with us, but it’s very dynamic because I think, as other panelists pointed out earlier, this is also new. So I don’t think there’s other areas of criminal justice where, I think, there really are best practices. I don’t think this is one of them because nobody knows, really, what’s going to work yet. I think we have some ideas of things that are definitely bad ideas, but what is good is hard to say.

That having been said, the approach that we took is we developed a county-wide kind of protocol which was meant to be a foundation upon which each agency could then build a more granular policy. And the reason we did that was two-fold. One—well, one, I was in charge of developing that county-wide protocol, and I didn’t want to reinvent the wheel and try to tell every single agency how they’re supposed to log evidence, and who they’re going to get clearance from. And I had no idea whether this should be logged in at the end of your shift or at the end of the week. I mean, I just had no expertise in doing it, and I thought it would be kind of crazy to try to.

But the other reason we did that is we wanted core questions to be consistent between the agencies. Like when do you turn it on, and when [do] you turn it off? But we wanted each department to be able to kind of make their own rules as those fit them. And in answer to your question, we have believed very strongly that the purpose of the body camera is to gather evidence. And that evidence is going to be evidence that we use in criminal prosecutions, mainly. But admittedly, sometimes it’s going to be evidence largely of what they encounter. But that may be evidence involving the police officer if that’s ultimately what the case is about.

And having made that decision, it made a lot of other decisions easier because if you decide this is evidence then you ask yourself, “Well how— what do I normally do with evidence? Do I normally reveal evidence before the investigation is done? Do I normally require the police to log the evidence into a file?” And the answer—those answers suggest themselves.

And we also have adopted policy that we require—well, it is a best practice. So you are supposed to activate the body camera at the beginning of—certainly any law-enforcement-related incident. And then you’re encouraged to do it with any citizen interaction or civilian interaction if it seems appropriate.

But we allow, again, the leeway if there’s some reason not to, as long as that’s documented in some contemporary and some contemporaneous way. And then we allow people to terminate it at the end of whatever the incident is, or if there’s some other articulable reason that they document at the time. So, for example, we don’t really need if a homeowner’s going through a list of the various things that have been stolen. And a lot of times—let’s say it’s somebody stole something from somebody’s parked car. Well, we know this is almost—it’s not likely to end up in a prosecution. It’s not likely to end up in trial. But it’s very important for them to document, if nothing else, for insurance purpose of what they’ve lost. Well, we don’t need a 45-minute video rolling of them listing each of those things. There would be an example of something that they typically would not feel the need to report.

And we do allow them—folks terminated for any sort of tactical or strategic reason, and also, just practical.

I think it’s good to have a generalized framework of how body cameras should be used. I reluctantly say that because I have seen legislation in other states that has been passed. … But it’s horrendous because these legislators are not … drafting and getting these laws passed for the right reasons. They’re doing it for personal agenda. To put their face on the map because of the social climate in this country right now.

—MICHAEL OTERI
EUGENE P. RAMIREZ, a founding partner of the firm of Manning & Kass, Ellrod, Ramirez, Trester LLP, leads the Governmental Entity Liability; Military and Veterans Law; and School Civil Liability teams. He is a frequently quoted national expert in police use of body worn cameras. He serves as legal section chair for the National Tactical Officers Association (NTOA), as well as general counsel for both the California Association of Tactical Officers (CATO), and United States Police Canine Association. Mr. Ramirez is frequently invited to speak to law enforcement agencies across the U.S. on use of force, handling high-profile cases, and risk management issues.

He was selected as the Los Angeles County Sheriff’s Department’s Trial Lawyer of the Year in 1993 and 2006, by two different sheriffs. He was selected in 2011 as one of the Top 25 Municipal Attorneys in California by the Daily Journal, California’s largest legal news provider.

Mr. Ramirez has been profiled in California Lawyer magazine for his law enforcement defense work, and been honored with a Lifetime Achievement Award from the Association of Los Angeles Deputy Sheriffs (ALADS). He has also been named as a 2005–2011 and 2014–2016 Super Lawyer for Southern California.

Before joining the firm, Mr. Ramirez was a deputy district attorney for the Los Angeles County District Attorney’s Office, where he conducted numerous misdemeanor and felony jury trials, including murder trials. He has also worked as a reserve police officer for the Whittier police department and the Monterey Park police department. He graduated from Whittier College School of Law (JD, 1987).

If you're setting up a perimeter and you've got six officers out there and they're going to be there for three hours, I really didn't—what was that, 18? I didn't want 18 hours of video churning while you're just kind of waiting for somebody to get home so you can serve your warrant, or whatever you're going to do.

Gene, you had something you wanted to say?

EUGENE RAMIREZ: Yes. This isn’t rocket science. We’ve had audio recorders for 20, 30 years. We’ve had dash-mounted videos for several years, as well. The policies are pretty much the same. And so I was at the Perth conference when they had their first body worn camera conference a couple years ago at D.C. It’s kind of amazing, there was like 400 people there from around the world.

And they asked everybody, you know, raise your hand if you’re playing with body board cameras now, and almost everybody raised their hand. How many have had policies? Maybe 10 percent had policies. And back then they were also saying, “Well we’re going to start recording the moment we go 10–8 until the moment we go end of watch.” And then they realized, we can’t afford the storage costs so we have to change our policies because this is just cost exorbitant at this point.

And so now I see people, you know, stressing out over the policy. As the chief said, I hate the words “you must,” “you shall,” because in law enforcement where—particularly when I get the case in the civil world, we’re getting judged on everything we do or don’t do according to the policy which [is] just merely guidelines.

So I’d rather have it say, “if possible you should,” instead of, “you must do that because.” There’s going to be instances all the time where I wish they had turned on their video, or their audio, or whatever they could under the circumstances. Does that mean they should be judged and we should be found liable? No, of course not. So we’ve got to be careful when we draft these policies, that you allow your officers some leeway. Again, this isn’t a “got you” moment. This isn’t that “we’re going to get you on this.”

We’ve got to give them the opportunity and enough wiggle room to maneuver out in the streets, because things happen very quickly, and then I have to defend them. It costs everybody out there money. Somewhere down the line, if we trap our officers and give them such a difficult policy, it does no one any good.

DAVID ANGEL: Okay. So does anyone here—do you have any requirements to get people’s permission before you record? No?

GARY INGEMUNSON: The policy that we have is that you don’t—you do not—need permission from the people that you’re recording if you’re in a lawful place. And we’re not looking at one of the exceptions.

DAVID ANGEL: And so what about if you’re in somebody’s home and they’re a victim. I mean would you—Mike, I thought you were saying that you would often ask them, but it sounds like you don’t have to ask them, is that right?

MIKE OTERI: Well, it isn’t our policy. I’m sorry, I thought you were thinking from a legislative perspective. But it is in our policy that once we identify the victim or witness, that we ask them for
permission to continue recording. But we did have to put that into our policy. There wasn’t anything making us do that.

But the reality is, I mean any one of us, our home could be broken into at 2:00 in the morning and when you’re half-asleep, and you’re in your sleep clothes, and an officer comes in and wants to talk to you and he doesn’t afford you the latitude of turning off the video recorder, and then that video can end up on YouTube because somebody who doesn’t like you makes a public records request.

And not to mention the layout of your home, and they see the huge gun safe in the spare bedroom, or all your valuables, or the 70-inch flat screen, and they know the layout of your house. I mean, these are significant things that I think we need to think about. Yes, the body cameras serve a great amount of purposes but, at the same time, they can be used in malicious and devious ways, and we know that they’re going to. So my feeling is we need to, kind of, be proactive and protect against that.

ANTHONY HOLLOWAY: And I think in Florida they just passed a law, or they’re trying to pass a law, that says anything inside your home is an expectation of privacy ...

MIKE OTERI: Right.

ANTHONY HOLLOWAY: ... and the hospital’s an expectation of privacy ...

MIKE OTERI: Right.

ANTHONY HOLLOWAY: ... so no one can get a copy of the video. So we’ll see where it goes from there.

DAVID ANGEL: Right. And we’ll have a panel tomorrow— we will be talking a little bit about this. But yes, that’s, I think, one of the areas where this balance of privacy and transparency— it’s going to be really important to get right.

Well, has anyone noticed a difference in relation? I mean, in other words, do you think it does, in fact, deter poor behavior and ...

ANTHONY HOLLOWAY: Absolutely.

DAVID ANGEL: ... violent behavior on the part of the public? And then let’s just be honest, do you think it deters what would be negative behavior on behalf of officers? What’s been your experience?

MIKE OTERI: Both sides. I would say both sides, hands-down. You know, there’s a growing phase of knowing that you have a camera. So you start changing the way you interact with people that may, normally, wouldn’t say things that you— or wouldn’t normally say something that you wouldn’t say, you know, in the future.

When we first started our pilot program we gave— we got 10 cameras. We gave six to everyday, normal patrol officers. And then we gave four to our problem children. And like, define “problem children.” The ones who are constantly getting complaints that they’re not looking for it, but somehow the pile of crap finds them.

So we wanted to see how it had an impact on their interaction, their behavior, the amount of work that they did. Things like that. Initially, being one of the front runners in getting into the program, yes, there was some pushback. There was some, you know, people pulling back and not being so proactive. But over time, now that we’re over 3-1/2 years into it, and it’s, you know, as soon as you get hired you’re getting that camera, it’s just kind of— it’s one of those things. So you only know what you know, so if you didn’t know how it was in the past, you’re not really going to have a baseline to compare to.

As far as officer interactions with the public, I’ve seen plenty of citizens— they realize, “Oh, camera’s on. Okay, I’m not going to do what I normally would do.” And I can say that because I have personal history with some of these people in the community that normally, they will push every single button they can, either to get a lawsuit or to show out and try and get the attention of neighbors and everything else. And once they realize they’re being recorded, then all of a sudden their style of business

“ This isn’t rocket science. We’ve had audio recorders for 20, 30 years. We’ve had dash-mounted videos for several years, as well. The policies are pretty much the same.”

—EUGENE RAMIREZ
changes as well.

DAVID ANGEL: Gene, from your end seeing it—I don’t know if it’s been too soon, but have you seen— what’s your sense on that question whether it’s helped ...

EUGENE RAMIREZ: I think it’s good originally, but then complacency sets in. You see it with the audio recorders where now officers are using the F-bomb, you know, as an adjective, as a noun, an adverb, and it really kills us with our credibility with the jurors because we’re dropping F-bombs all over. I think initially, we’re going to be really good. I think a great example is Britt McHenry from ESPN when her celebrated tape came out, when she was talking with that tow truck secretary, went and got her car towed. And she was swearing at this one, making fun of her appearance. And the lady says, “You know, there is a video up there?” And Britt McHenry is on TV all the time. She’s a pro. She knows what to do in front of the camera. She completely lost it and made fun of this woman’s lack of teeth, and body image, and everything else.

And I’ve seen it with a Phoenix officer, it was another celebrated case with a Phoenix officer who was shown on TV throughout Arizona in a compilation of his best body worn camera videos, and it was horrible. It was absolutely horrible because he became complacent. The training wasn’t there. The supervision wasn’t there.

So that’s my only concern, is if we get more complacent with it, are going to go to the F-bombs? Are we going to lose our professionalism? And the moment we do, you’re killing us in court, so we’ve got to be on top of that at all times.

DAVID ANGEL: Gary, what’s your take on that from LA?

GARY INGEMUNSON: I think that the stories from the officers are that it does call on situations when the citizen is told, “you’re on a camera” and they’re acting the fool. So I think it does have a benefit to calm everybody down. And also the officer that might have had a different attitude before the camera is on, may have a better attitude when the camera is on. So I think it helps in both of those situations.

We have the F-bomb problem also. Especially in uses of force. I think to the younger generation, that doesn’t have the impact that it has with maybe our generation. Nobody’s here in my generation are they? Anyway, and so I think that the Millennials really don’t see it as badly as we see it. But it does sound horrible when you’re sitting in the room watching the video in mixed company and there’s [an] F-bomb, hands-up F-bomb, you know, all the things that go on. And we tried, management and LAPD has tried to reduce that by defining tactical language as opposed to non-tactical language. So that’s the current fight that we’re in right now. Where’s the line between tactics and just talking bad?

DAVID ANGEL: Wait, so actually can I follow-up on that? So you’re trying— as an agency, you’re trying to define what’s tactical language?

GARY INGEMUNSON: That’s correct. Yes, we are. And do you want [to know] how they do it?

DAVID ANGEL: Yes. I really do.

GARY INGEMUNSON: Okay. I ask you to do something. I tell you to do something. You ignore me, and now I have to convince you that I’m serious enough that I’m going to hurt you, so now I get to say the F-bomb.

DAVID ANGEL: You know, that actually ...

GARY INGEMUNSON: But I have to go through those first two steps.

DAVID ANGEL: That is actually frighteningly close to my parenting philosophy that I ...

((Crosstalk))

DAVID ANGEL: And I actually had another parent chastise— I mean part of it is my wife is working criminal justice, and I’m a prosecutor so I actually don’t care about— I mean I don’t want my
kids to say it in school, but I don't really care about language that much. But a parent was actually like, "Oh, you really shouldn't say that to your kid?" And I said, "Well, I can't hit them and so I need something to like raise the bar," right? So I've given up on physical discipline but in its place I've — but now I know. I just thought I was a bad parent. I now know I have tactical language. ...

You know, actually, that does remind me of when we first started in our county, we instituted recording interviews with suspects. And we had a huge amount of — and I mean, like with everything you get some pushback or [what]not. And I'm sure this won't shock you, for my law enforcement colleagues here, to know that I've [never] heard one cop ever say "Oh, that's a good idea, I'd like to change how I do things," right? I mean once ever. The only other thing they don't like is doing it how they're doing it now, which also is terrible.

But I remember when we began to record suspect statements, and people were like, "Oh, you can't do that because once you start playing these to juries people are going to be very upset by the techniques we use." And that just turned out not to be true. I mean, it was true in some cases. And in other cases I think behavior became modified. But I think on the whole, jurors kind of understood that a situation for an interview is going to be different than a conversation when you're having a cup of coffee. So I think here, too, I think there may be more understanding then we fear at the outset, but maybe not.

Well, let me ask. I know we've touched on this in other panels so — and I don't want to take our whole time with it because there's so much — I think there's controversy because there's really legitimate different arguments. But I'd like to hear your thoughts on whether you think officers should be allowed, or in fact should, view their video before writing a report. And I think there's probably agreement that they definitely should in the general course of cases, right?

So what we're really talking about is when there's officer involved shootings or a fatality or some other critical force incident. And there's, you know, there's just a pretty live debate on it. So I just would like to hear what your perspectives are? And, Gary, I think I know what everyone's position is, but I'd like to hear yours.

GARY INGEMUNSON: My position, basically, is accuracy is our most important product. And if you're not going to be accurate, and if you think about it from a law enforcement standpoint, people go to jail over us being accurate. The civil suits are won over us being accurate. Accuracy trumps everything in my view.

And it — an officer has the — not only the duty but, I think the right, to use every single way possible to make sure that that report is accurate, that that testimony is accurate, and that that interview is accurate. And that includes looking at any and all available videos, notes—whatever it takes to make that final product an accurate product. And if you withhold the video, all you're doing is providing a cheap credibility test that will be used against the officer at some point in time. He will be called a liar, if not by the prosecutor [then] by the persons that are suing us, or by the media, or by whoever. And so accuracy is our most important product.

DAVID ANGEL: So you think — so you advocate looking at video and ...

GARY INGEMUNSON: Yes.

DAVID ANGEL: ... any other evidence? Now, so if that's the case...

GARY INGEMUNSON: Everything, yes.

DAVID ANGEL: ... what you would— because we've heard, I think on an earlier panel some people had said, well, you— oh no, actually you were the one who's saying, that you can look at your own video but you can't look at your partner's video, and you can't look at the security video. But wouldn't your argument say you should be able to look at all of those things?

GARY INGEMUNSON: Yes, my argument does say that. Unfortunately the LAPD management disagrees with

“[W]e have believed very strongly that the purpose of the body camera is to gather evidence. And that evidence is going to be evidence that we use in criminal prosecutions, mainly. But admittedly, sometimes it’s going to be evidence largely of what they encounter. But that may be evidence involving the police officer if that’s ultimately what the case is about.”

—DAVID ANGEL
DAVID ANGEL: Oh, okay, all right. For a brief moment I thought I discovered an inconsistency.

GARY INGEMUNSON: I know that's hard to believe but, you know ...

DAVID ANGEL: But, in fact, the consistency was the failure of management. All right, well that's not a surprise. Gene, how about you?

EUGENE RAMIREZ: Well, since a lot of the agencies in this room hire me to defend themselves and their officers in civil cases my—even in a perfect world, if an officer's involved in a critical situation, you allow that officer to review their video prior to the homicide statement.

I know a lot of people say, “Oh, my God, we've got to get the state of mind and then maybe or maybe not we'll let them see the video.” Well, you're setting people up for failure because you're taking that statement. And again, I hope you only get one statement and we don't have multiple statements. You can get your criminal statement, make it a really good one, not just a 20-minute, “Hey what happened out there.”

Because then you may have your [internal affairs] statement and then you may have a use-of-force review board somewhere down the road, two years later. That's three separate statements that you have to give over to the other side, and they get to cross-examine your employees on that for the rest of their lives while they're involved in that case. It's not fair for you. It's not fair for your agency. It's not fair for your excess insurer who may have to pay a lot of money if we screw up. Because I always tell people, my best closing argument is always on the way home, “God, dang, I should've said this, I should've said that.”

And same thing with your employees when they're involved in a critical incident. They may go home and say, “Oh, my God. I forgot something,” come back, and now we have two statements. Why didn't you remember that before? So I know—and I know there's kind of a halfway point where a lot of people are graying out. So let's get their state of mind. Although we know they're going to be wrong, we get into all of the four science/physiological issues. But then show them the video and get their statement immediately, right then and there, so we end up with one good statement.

Have your IA people ask their questions so it's all done. That's all I have to worry about down the road when I'm defending them in a civil case. Make not only my life easier, but make your own lives easier. Make your officer's life a lot easier. Let's not set them up for failure.

And I'm seeing that happen in many agencies where they're not showing the video and all of a sudden we got you. But really what have you just proven if we just had to write out a check for $5 million? So let's do the right thing. Let them see the videos. Get their statements. Get the best statement we can. And then we're in a much better position down the road in the civil case to give you the result you're hoping to get.

MIKE OTERI: I'm on board with the same thing but the—if you're not going to allow an officer to review their video, the video, in and of itself, is a statement of events and it's up to you as to how you perceive it. But if the officer's statement without reviewing the video is going off to the left, and your perception or the media's perception is going to the right, there's obviously that instant credibility being brought into question. So I mean, like Gene said, I mean, if you don't want to have three different statements then you need to consolidate the evidence that they are.

Now I was at an officer-involved-shooting course in Florida where the Florida Department of Law Enforcement does most of the OIS investigations. And they were adamantly against it. They were like, “We do not want the officer's statement to be taken.”

Like I said earlier, our out is we just simply make this blanket statement or generalized statement that it's encouraged that all officers review statements, review video prior to making statements, so that's kind of our out
with it. I'm on the side of reviewing the video because I am a believer in science of like Dr. Lewinski said, what happens when your cortisol levels and all these other chemical, body-chemical, changes occurs and you can't remember accurately as to what took place? So if you just remember bits and pieces and snapshots of it, you could potentially be in trouble because you have a video camera there that was a documenter.

DAVID ANGEL: Chief?

ANTHONY HOLLOWAY: And I agree with the panel. You're talking about somebody's livelihood, and their credibility. They should have a chance to take a look at the video before they give a statement.

DAVID ANGEL: Well, I'm going to take a lonely position. We don't allow officers to view the video before the officer-involved-shooting event or if— well in OIS in general, in fatalities especially. And we have the hybrid approach that I think, Kris [Hamann] talked about earlier. So let me tell you the reason why we did it. And I should say, I'm not sure it's right. I mean, it feels like it's right for our county. We had a huge amount of debate and talk about it and our reasons were a few.

The first was we really want to find out what the officer felt and thought at the time, just unvarnished. We just wanted to know what that is. Because a lot of the criminal investigation, which is of course what we're doing, we're not looking— when I'm involved in it—we're not looking as was this the best practice or could it have been done better, what are the training issues? We might consult on that a bit later but, really we're just looking [at is] if it's a crime or not. If it's a crime really depends on the subjective perceptions of that officer.

And I guess this is where the science goes both ways, as Lewinski said, that I think it's pretty obvious you're going to contaminate whatever your memory is once you've looked at the video. It's going to be almost impossible for you to remember what you remember, as opposed to what you just saw.

The second— so there's that kind of prosecutorial or case management reason. The other one was just a practical one. In our community we do not allow witnesses to look at the evidence before they give a statement. We—and as, you know, when you say you want to make life easier for your officer at that particular moment, I mean this no— I really don't mean it with any disrespect. But as a prosecutor, it's not my job at that point to make the officer's life more easy—or anyone's life more easy. It's my job to try to figure out what happened at that moment.

And I don't know if this officer is the [98] percent or the 2 percent, you know, at that moment. So I don't know if it's a valid shooting or not. What I know is there's somebody dead in my county with a bullet in them and we treat all of those as homicides that need to be investigated. And when we investigate, we don't invite eyewitnesses to rest for two days and to look at all of the other evidence and hear what everyone else had to say. We segregate them, we get their statement.

Now we're highly cognizant of, you know, the statement that they give may—is probably not going to be completely accurate because who could possibly remember all of the things that are happening in a dynamic situation? So that's why we then allow in the same ... interview to go back and say, “all right, well, you saw this, and this is what you remember, but here are some other factors, and ... what's your take on what happened here? And that allows our officers at that point to say, “Oh, well, what you couldn't see was the gun over there.”

And I actually thought—even one of the videos we saw today—it really shows you could come down on either side. But the video that he showed where the individual in the white T-shirt appeared to have— be shot while his hands were up but through his analysis ... you could argue that he—I mean certainly he was shot very close in time one way or the other. Well, my fear is if our officer sees that video in his memory, which is accurate—he did—he had his hands ready to shoot me when I fired.

Now if he looks at the video and sees
something different, what is he or she going to say? I think he or she's going to start changing what they remember to try to, you know, comport to what they just saw, which may or may not be right. So that's the policy we go with and I know we have—we discussed it before, but it's such an emerging issue I really want to get everyone else's opinions out there.

MIKE OTERI: I think if it was in a sterile environment and there wasn't political pressure for the videos to be released to the public in an outcry, then I can understand what you're saying. I mean, I can agree with you more. But unfortunately, how many cases have we seen tried on Fox or CNN ...

DAVID ANGEL: Well, and that's—and you make a good point. And again, we don't know exactly what's going to happen in California. And we have a panel on this, and the law on this is, again, developing. But in general, we don't release—at least in our county—we don't release any of these videos pursuant to public record or any other request. So ideally, no one has seen these videos. That's not always true.

Sometimes the Chief, for various reasons—and sometimes very, very good reasons—they feel like the public needs to know. And that's actually another one of our concerns. We really don't want—we want to be able, if we have witnesses coming in, [to] say, "Hey, I saw this event." If we release the video too soon we have no way of testing that witness to know if they were there, not because they could just comport their statement to what they saw in the video. And it's hard for us to then know whether they really were there or not. Okay, Gene?

EUGENE RAMIREZ: I addressed all the chiefs and the sheriff of Santa Clara County, and your DA was there, and I talked about these issues of body worn cameras. And what—and we got into, well, why do we treat civilians differently? While they don't have to give a urine test or GSR test, but my officers do. They can't get compelled to give a statement and be threatened with termination if they don't give a statement. So law enforcement has different rights that civilians don't. So that really doesn't bother me. It really doesn't pop up in the civil case.

What pops up in the civil case, if our officers are giving their state-of-mind statement and they're wrong, they're always wrong. Perception, distortion, auditory inclusion—every physiological thing that Dr. Lewinski talks about actually happens. So I will bring in Dr. Lewinski. I'll bring in the best shrinks in the world to testify on behalf of my clients. But jurors nowadays think you're lying. Why do you have to bring a shrink in to explain why the officers said I think it was behind the mailbox there? It turns out he wasn't. He was actually 10 feet away, but in his mind he saw it. So when he gave the statement, "I was behind the postbox." "Then where did you go up and search the suspect after you shot and killed him?" "No, my partner did." "I never touched a body."

Then another video that no one turned over to us until just before trial, they gave it to the plaintiffs. Shows my guy going up, searching—it's his trained to do, but he didn't remember that. The jurors thought my guy was lying. And I brought in the best psychologist (unintelligible). We ended up hanging that case and they had to settle for reasons unrelated later on.

But seeing that, I said, "We cannot put our people in a position where jurors think they're lying when we know they're not." And shame on those law enforcement agencies that put their people in that position and wonder why are we spending $10 million? That's why. So I disagree with you on that. And I understand the point, but law enforcement should be treated differently than the average citizen.

DAVID ANGEL: But, Gene, I mean it sounds like you're suggesting that your officers truthfully said, "I saw him behind the post office box or ..."

EUGENE RAMIREZ: In his mind they did.

DAVID ANGEL: Okay. But are you suggesting that if he had watched the video first that he would have said
something differently? I mean ...

EUGENE RAMIREZ: I think he would've realized he was wrong and that he was actually 10 feet in front of it. But in his mind he saw it. Because when you're involved in a critical incident— I don't know if you've ever been in a shooting before but the whole world stands still and all of a sudden you're just scared about, what am I seeing? Someone's shooting at me. Your mind may think this. So are we going to criticize them and condemn that person because their mind put them in that position? I would hope not.

GARY INGEMUNSON: I'll tell you the way that I— that we've handled it in our situations. And that is the officer sees the video and something that he remembers is not in the video. The officer simply says, “My memory is X, Y, Z, although I see the video shows A, B, C.” And it's harder to make a liar out of them then.

DAVID ANGEL: All right. Well, let's see, the next thing— now this might be more helpful for if we had— but do you have a protocol, or what is the protocol for making sure all of this information gets into the prosecution file? Mike, why don't I start with you on that?

MIKE OTERI: Like I said earlier, we give three employees of our state attorney's office kind of carte blanche to our system to go in and cherry pick out what they need. Some of the more high-profile cases, we'll do a little bit more leg work to work in collaboration with them to make sure that our video wasn't maybe mislabeled or overlooked or things like that. And then we'll put everything together in a digital case file and share it like that, so ...

DAVID ANGEL: And Chief?

ANTHONY HOLLOWAY: And I think we [talked] about [it] at our last task force meeting. When you start [giving] evidence to the prosecutor, you also make sure you give it to the state public defender's office and also a private attorney. And I guess he's talked to him about the cost. A private attorney— he or she gets to bill by the hour verses you guys and gals that work for the public sector. It's harder for you. So do you watch that whole eight hours of tape, 20 hours of tape? It can be very time consuming, I think, in your profession. So it's how much of that tape do you turn over and what do you turn over at that time?

DAVID ANGEL: Gary, how about— do you know for LA how you make sure you get all this information to the DA's office?

GARY INGEMUNSON: Because everybody has to [put] in their reports that there's a video, it puts it in issue right away. And that, supposedly, is going to make it go to the District Attorney's Office. Is there any guarantee? No. And we hope our officers watch the video before they testify but that doesn't always happen either. But the DA should be able to look at the reports and see the video exists and then go after it.

DAVID ANGEL: And I think, actually, when Gary's saying there's no guarantee, I mean, let's remember it's not like the status quo we always had—all the evidence that got from one place to the other. I mean it, you know, I mean, I'm sure all— every one of you, as a prosecutor when you sometimes go to the agency to review their file you often find things that were missing. So this is not like a brand new problem.

Well, before I open this up for questions that people wanted … I have one other I'm really curious [about]: ... whether you think there is the need for legislation that actually needs to be passed to help make the implementations of body cams more successful?

And I guess the converse, is there any sort of legislation that you feel really should not be passed to allow for the successful implementation? Chief Holloway?

ANTHONY HOLLOWAY: Yes. I think as we look at and you look at policy that's going to affect not just only the state that we're in, but nationwide, because there's certain things that we need to pass ... just go with the guidelines so everyone can at least have a general sense of where we're going with these
body cameras.

MIKE OTERI: I reluctantly say yes only because I’ve seen legislation ...

DAVID ANGEL: Which part? I asked two questions. Yes, bad or yes, good?

MIKE OTERI: I think it’s good to have a very basic generalized framework of how body cameras should be used. I reluctantly say that because I have seen legislation in other states that has been passed. And if there’s any Illinois people in here, I apologize because you’ve got your work cut out for you. But it’s horrendous because these legislators are not—they’re not drafting and getting these laws passed for the right reasons. They’re doing it for personal agenda. To put their face on the map because of the social climate in this country right now.

So at the very least, yes, if it is going to become legislation then these folks who [are] drafting these laws need to be educated. And I teach this in an eight-hour class from beginning to end, but—and I stress to them, every single one, listen, some of you have connections to your capital, whether it’s through your union, direct personal relationships, or whatever. You need to make the trip, or you need to make that phone call, because they don’t always know how these systems and programs are going to be intertwined with the way we do business on a daily basis.

The thought of turning on your camera at the beginning of your shift until the very end is ludicrous. I don’t even think that there’s a product out there that’s able to do it without swapping out a battery. Let alone, how are you going to keep these videos organized?

And that’s just one small example, let alone writing the rule—the whole rulebook of policy and making it state law. So when the officer doesn’t turn on the camera and it becomes legislation what happens? They’re open for prosecution? Are they open to a civil penalty? I mean, you know, so it really needs to be thought out in great detail if it is going to become legislation.

DAVID ANGEL: Gene, what do you think?

EUGENE RAMIREZ: [If] the California Legislature told me today is Monday, I’m going to double check because I don’t trust our legislature. They’re trying to do away with our pictures privileges for law enforcement as we speak. They are working on legislation. I know Cal chiefs and Cal sheriffs are working with them because I don’t trust our legislature to pass a law that would benefit law enforcement. It would do whatever it could to eviscerate whatever rights law enforcement has and make our life much more difficult. So I wish they’d stay out of it but they won’t. It’s just my thoughts.

DAVID ANGEL: Gary, how about you?

GARY INGEMUNSON: I second that. The legislation’s always a knee-jerk reaction to some television or newspaper, pushing on a bad shooting that has to be corrected somehow or one way or another. So we watch the legislation and we try to affect it as much as we can. My preference would be, just stay out of my life and let the local jurisdictions do it. One size does not fit all as somebody said earlier.

EUGENE RAMIREZ: Exactly.

DAVID ANGEL: And I think, I mean, the 2 cents that I would say is the one thing I’ve gotten out—one of the things I’ve gotten out of this conference so far is that, you know, there are not really clear answers to this. So I think for body cams it’s just way premature to start passing legislation about what a best practice is or isn’t because we just don’t know yet. Even the questions that are so contentious about whether officers can, you know, view them or not before a shooting, well, I think we need a little time to see what the facts show us of what policies work and what don’t work, and I think different communities [have] different needs.

On the other hand, and this will—we’ll touch on this tomorrow in our CPRA panel, but I do think we need some sort of legislation to clarify under what circumstances the public has a right to see these videos, and on what
circumstances individuals have the right, and agencies have the right, to keep these things private. And I think there's a real danger if that gets out of balance, that it could really damage our ability to use these.

So at this point I'd like to open it up for questions on any of the topics related to what we talked about or about the law enforcement and prosecution use of these? And I think we have folks with mics. It looks like there's someone right there. Sean, right in front of you.

MAN: My question is related to whether you let an officer look at a video before they actually write a report. There was that incident now in Texas with Sandra Bland, and that officer wrote his report. She later, three days later, died in jail and then he was charged with perjury …

EUGENE RAMIREZ: Correct.

MAN: … because his report didn't match that video. And I guess I'm wondering from the panel, does that concern you going forward with your officers?

EUGENE RAMIREZ: Yes, it does. I actually have a PowerPoint presentation on my iPad right now that talks about it. And he was wrong with like one sentence and it differed from what the video showed. I just had a case for a local agency—I won't say who it is—but our officers were involved in a fight. Our one officer pulled up his car to get it on his dash-mounted video because he knew this was going to be important. Well, then he went to make sure it was on, and he reached up to press the button which turned it off. So officers write the reports. They were both injured, one dislocated his shoulder. Rotator cuff injury. They write the report. We find out three weeks later that the investigator for the criminal defense found a surveillance video from the apartment building. And guess what? It was different than what the officers report. It was pretty close, but there was some minor differences.

They tried to make a big deal of it in the Superior Court for [the] criminal case. The judge ended up ruling that, hey, not the best thing in the world to turn it off. But they allowed the prosecution to go, but let him plead to a misdemeanor. Now brings the federal civil rights case, and now I'm defending these officers in this case, and our judge said, “What the heck? What happened with this video?”

We ended up having to settle because it's certainly focused on the credibility of the officer, and they brought a person most knowledgeable to come in, who trained the officers on how to operate our dash-mounted videos. And he basically said it was idiot proof. There was no way this guy should've touched that video. It was already on the moment he went Code 3, that thing's already on. So, yes, I can see what happened in the Sandra Bland case and we do need to be concerned about that.

ANTHONY HOLLOWAY: And that's why you see some agencies nationwide who are putting in C video because they don't want officers to write a report. They're saying, “Hey, you're going to call me on it anyway so go look at the video and that's my report.”

DAVID ANGEL: Yes. I mean, I think it's going to be, you know, it's— I don't know enough— I mean, I saw the video, of course, and I followed the story but, you know, I'm sure like all of you, if I haven't reviewed it myself, like, I don't really have an opinion as to what happened. But I feel a little bit like those stories—like, you'll always hear about some crazy teacher who kicked the kid out of the classroom for no good reason or didn't. And, you know, it's a big country so there's going to be a lot of— I mean, if you want to find boneheaded examples of something, like, it's a big country here so you can always find it.

I should say for the way we look at it, it's not dissimilar, Mike, from what you talked about when you file charges against people for filing false police reports based on these. I mean, I don't think we want to do that every single time there's some discrepancy between what somebody said and what we turn out to find. But if it's big enough, you know, then we would file.

And I think it's going to be the same thing for perjury with officers. I've reviewed quite a few videos now where there's some discrepancy between what
they've written and what's on the video. But, you know, if the discrepancy is part of, kind of the human condition, you know, you just made some minor—I mean, just like our jury instruction, right at the end where we talk about minor discrepancies don't have—you know, don't indicate willful falsehood. ... If it appears the evidence shows willful falsehood, then we pursue it that way. So I think it's one that we need to be worried about—that people don't have unrealistic expectations. But I don't think we should panic about, and assume that our jurors and our community are going to have unrealistic expectations.

Oh, other questions? Are you questioning why we're still talking when it's almost 5 o'clock? That would be wise. All right, I think that might be it. So thank you everyone, and Mark, I'm sure, has some comments.