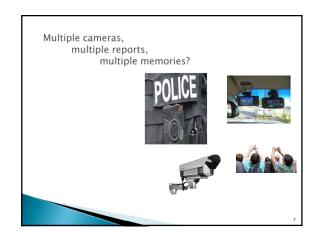
Memory, Video, and Truthfulness in Reporting a Use of Force Avoiding and Explaining Incompleteness and Apparent Inconsistencies; Robert Higgason and Bradley A. Morefield	
▶ Part I by Bradley	
Part II: Reporting the Incident: Memory vs Video?	









Multiple cameras,	
multiple reports, multiple memories?	
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> What if the videos, reports, and memories are different?	
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› What legal difference would that make?	
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"The reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them"	
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More from <i>Graham.</i> "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second	
judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." 490 U.S. at 396-97.	

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See also Lincoln v. Turner,874 F.3d 833, 842 (5th Cir. 2017) ("Probable cause exists when the totality of the facts and circumstances within a police officer's knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense.")	
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Cf. Devenpeck v. Alford, 543 U.S. 146, 152–53, 155 (2004) ("Whether probable cause exists depends upon the reasonable conclusion to be drawn from the	
facts known to the arresting officer at the time of the arrest. Maryland v. Pringle, 540 U.S. 366, 371 (2003).)	
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Sometimes those facts will be captured by a camera.	
Will the video contradict the officer's statement?	
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But what constitutes a conflict?	
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Does the presence of the body worn camera create a potential for undermining an officer's credibility?		
If so, how should we approach this?		
Be prepared to reconcile the Report with the Video.		
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What is a "report"?		
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What is a "report"? How many reports are there?		
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What is a "report"?]		
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Purpose of District Attorney's report: To evaluate the officer's shooting to determine if it appears to have constituted a criminal act and should be	
referred to the grand jury.	
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 Potential for quite a number of videos, which could show the encounter—or portions of it—from very different perspectives. 		
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Purpose of Citizens' cell phone cameras: To capture video of anything that interests them.	
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Should the officer view the video before writing his statement?	
Controversy over this:	
Some departments permit it, others prohibit it.	
What is the effect of viewing video?	-
More consistency?	
Taint memory?	
How deal with this?	
Two statements?	
One before, one after 48 hours and viewing video?	
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The essence of a determination on Qualified Immunity is whether there are any genuine disputes of material fact.	
Factual disputes when compared with an officer's statement can come from	
video, from a plaintiff, or from other witnesses. But if the disputes, while genuine, are not material, then the officer is entitled to Qualified Immunity.	
For comparison, consider <i>Salazar-Limon v. City of Houston</i> , 826 F.3d 272, 275 n.2, 279 n.6 (5th Cir. 2016), cert. denied, 137 S.Ct. 1277 (2017).	
Houston Police Officer Chris Thompson used deadly force against Ricardo	
Salazar-Limon, who survived the gunshot wound and sued. The district court held that Officer Thompson was entitled to Qualified Immunity, and Salazar-	
Limon appealed, pointing to a factual dispute about which direction he (plaintiff) was turning when Officer Thompson fired.	
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(SIM S)	
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(cont'd)	
The Fifth Circuit disposed of that argument in two footnotes, observing	
that:	
"Salazar disputes the direction of the turn, or indeed that he was turning at all at the time he was shot. This factual dispute does not preclude summary	
judgment for the reasons noted infra[,]" and	
"in the context of the facts of this case, it is immaterial whether Salazar turned left, right, or at all before being shot. Specifically, we have never	
required officers to wait until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety."	
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Whether the officer views the video first or later, it is imperative that the officer write down in his own words his perception of the encounter, describing the objective facts upon which he relied in deciding that the use of	
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The officer must not just rely on video.	
If the officer writes a second statement after viewing the video, he should explain any differences and how they did or did not enter into his decision.	
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Conclusion	
From the beginning of any high-risk encounter, the officer naturally narrows his focus on the aspects of the suspect's conduct that would tend to put the officer or anyone else in imminent danger of serious harm.	
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If a video shows something different from what the officer said, the officer should be permitted to harmonize the video and his statement.

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