

Does Video Evidence Make A Difference in Excessive Force Cases?

Author : Mary Fan

Date : June 4, 2020

Mitch Zamoff, [Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases](#), 54 **Ga. L. Rev.** 1 (2019).

In happier times, shortly before the vise of COVID-19 descended, I joined a conference room full of veteran defense attorneys from New Jersey and New York. The topic for the training convened by the National Association of Criminal Defense Attorneys and the Federal Defenders was [missing body camera videos](#). My co-panelist [Benjamin West](#), a brilliant civil legal aid attorney, [writer](#), and public defender, and the defense attorneys in the audience, had powerful accounts of battling for videos of contested police encounters that should have been available from the police but were missing, partial, or not disclosed.

An article I carried on the flight to share with the defenders was [Mitch Zamoff's study](#) of the impact of police body camera evidence in excessive force cases. Unusual bedfellows, including civil rights activists, bereaved parents, and police leaders, drew together to call for police-worn body cameras. One of their [hopes](#)—and hypotheses in need of testing—was that video would provide powerful evidence in excessive force cases. Aiming to investigate that hypothesis, Zamoff's study found another related, important issue. Nearly a third of body camera recordings in the cases he collected failed to capture the entire contested encounter. Summary judgment in favor of defendants was more likely to be granted if a complete recording is available than if there was no video available at all. The effect was the opposite where only a partial recording was available—plaintiffs were more likely to survive summary judgment than if there was no recording at all. Recordings matter—and the effect is modified by whether they are partial or complete.

Zamoff collected all published summary judgment decisions between 2015 and 2018 in the federal courts on excessive force claims brought under 42 U.S.C. § 1983 in which there was police-worn body camera evidence. Excluding pro se prisoner petitions challenging events during incarceration, Zamoff gathered 66 cases involving body camera evidence. He identified a pool more than a thousand-fold larger of summary judgment decisions from which he could draw a comparison group of § 1983 cases alleging excessive force with no body camera evidence. He ended up selecting 66 cases from that pool, matching his no-recording controls and recordings-available cases by judicial district.

Delving into his dataset, Zamoff made an important discovery: nearly a third of his body camera cases involved incomplete recordings. Various reasons were proffered for incomplete video, such as officers not activating the camera in time, officers arriving at the scene at various times, field of vision being obstructed, and poor video quality.

Zamoff found that summary judgment motions were granted in just 31.8% of cases with partial body camera evidence. In contrast, where there was complete body camera evidence, summary judgment was granted in 77.1% of cases. In his comparison group where there was no recording at all, judges granted summary judgment about 53% of the time. Zamoff ran chi-square tests and found significant associations between the likelihood of a grant of summary judgment and having partial or complete video.

If body camera cases are not stratified by whether video is partial or complete, then the impact of complete body camera recordings are obscured by effect modification in partial video cases. In other words, if we crudely compared cases where there was no recording to those with a recording, we might erroneously conclude there was no impact because we would be lumping together the partial video cases where judges are less likely to grant summary judgment with the complete video cases where judges are more likely to grant summary judgment.

Zamoff concludes that judges are more comfortable dismissing excessive force claims on summary judgment where the judge can see the whole contested encounter on video for themselves. In contrast, judicial willingness to let a case go to a jury appears heightened if a recording is only partial. Zamoff posits that judges might not give officer testimony the same weight if there is a partial recording than if there is no recording at all and that partial video may just magnify the factual disputes that are the jury's province to decide. Commentators who predicted that body camera evidence recording the officer's view would benefit law enforcement defendants appear correct, but only where the recording is complete rather than partial.

Zamoff's findings bring to mind another debate among commentators after the U.S. Supreme Court decided [Scott v. Harris](#), an excessive force case with a dash camera recording. Prominent commentators, including [Erwin Chemerinsky](#) and [Dan Kahan](#), contended that the majority of justices succumbed to the allure of video and the temptation to decide a matter in lieu of the assigned fact-finder, the jury. Perhaps where video is literally partial—incomplete—judges are more alert to how videos are not merely transparent, unbiased windows into what happened. In contrast, complete video may lull judges into thinking they have the full story, missing the [subtle framing effects](#), single-perspective, and [other hidden partiality in video](#).

Zamoff's study is a laudable first foray into an important empirical question. He investigates issues about which more empirical research would be illuminating. One can always critique methods, such as the construction of the comparison group, multiple comparisons issues, and whether investigation into effect modification was pre-specified, and so forth. The bigger picture is that there is much fertile ground to explore. Thanks to Zamoff's work, we know that future inquiries should be sensitive to effect modification by partial or complete video—perhaps even by reason for partial video, as the dataset of cases with body camera evidence grows larger over time. From the experience of litigators in the trenches, the issue of missing or partial video—and the larger question of whether having video matters, and how—are practically important and worthy of further investigation joining Zamoff's work.

Cite as: Mary Fan, *Does Video Evidence Make A Difference in Excessive Force Cases?*, JOTWELL (June 4, 2020) (reviewing Mitch Zamoff, *Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases*, 54 **Ga. L. Rev.** 1 (2019)), <https://crim.jotwell.com/does-video-evidence-make-a-difference-in-excessive-force-cases/>.