

POLICE BODY CAMERAS: SEEING MAY BE BELIEVING

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ABSTRACT

While the concept of body-mounted cameras (BMC) worn by police officers is a controversial issue, it is not new. Since in the early-2000s, police departments across the United States, England, Brazil, and Australia have been implementing wearable cameras. Like all devices used in policing, body-mounted cameras can create a sense of increased power, but also additional responsibilities for both the agencies and individual officers. This paper examines the public debate regarding body-mounted cameras. The conclusions drawn show that while these devices can provide information about incidents relating to police–citizen encounters, and can deter citizen and police misbehavior, these devices can also violate a citizen’s privacy rights. This paper outlines several ramifications for practice as well as implications for policy.

Keywords: police, body-mounted cameras, liability insurance, deterrence

INTRODUCTION

After several high-profile civilian deaths that recently occurred at the hands of American police officers—forty-three-year-old Eric Garner in July 2014, twenty-five-year-old Ezell Ford in August 2014, and Walter L. Scott of North Charleston in April 2015, to name a few—Americans have demanded that it should be mandatory for the police to use body-mounted cameras (BMC)¹ as a means of curbing police misconduct and providing clear accounts of an officer’s actions. US President Obama proposed a budget of \$US75 million to be applied over three years as a fifty-percent matching program to fund the purchase of 50,000 body-mounted cameras (Henderson, 2014).

A body-mounted camera is a video recording device used by law enforcement officers to record citizen interactions (Mason, 2015). In 2005, the first testing of body-mounted cameras in England was conducted by Devon and Cornwall police officers (Associated Press, July 13, 2007). Sir Bernard Hogan-

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Howe, the Commissioner of the London Metropolitan Police, said, “video was a ‘compelling piece of evidence’ and would help record situations that were previously ‘really hard to capture in writing,’ such as a frightened child at the scene of a domestic violence incident,” while on other occasions, “the mere presence of this type of video can often defuse potentially violent situations” (BBC, 8 May 2014).

Stanley (2015) pointed out that, “The August 2014 shooting of Michael Brown in Ferguson, Missouri and the subsequent protests focused new public attention on the problem of the possibility that body-mounted cameras might be part of the solution to police misconduct.” In December 2014, “a grand jury’s decision not to indict an officer in the videotaped chokehold death of Eric Garner in New York City further intensified discussion of the technology” of BMCs (Henderson, 2014).

In the Nineteenth-Century, Sir Robert Peel, a British prime minister, statesman, and often called the father of modern policing, introduced the “Peelian Principles” (Mayhall, 1985), which became the framework and foundation for modern ethical policing (Feeney, 2015). The fourth Peelian Principle posits that police should “recognize always that the extent to which the co-operation of the public can be secured diminished proportionately the necessity of the use of physical force and compulsion for achieving police objectives” (Lentz and Chaires, 2007). As this proposition was true during the time of Robert Peel, 190 years ago, so is the Peelian Principle true and applicable today. It is arguable that police officers need to know that good policing brings the citizen and the police closer while reducing the need for excessive physical force.

On 20 May 2015, the United States Senate subcommittee hearing reached a consensus admitting that there is unlikely to be a “silver bullet” that could restore the public’s confidence in the police after so many high-profile cases of police killing citizens; the lawmakers from both parties, and the witnesses who testified, concurred that police officers should wear body-mounted cameras (Ludwig, 2015). Considering public opinion on police misconduct and the introduction of BMCs as a mandatory policing device, it is timely that the issues involving body-mounted cameras is examined.

PUBLIC DEBATE

Much of the interest in, and research examinations for, reducing police–citizen violence in the United States stem from the fact that in 2011 alone, police officers killed 404 in the United States; there were also six people in Australia, six in Germany, and two in England (Stanley, 2015). But, when we examine the literature regarding the effect that body cameras have on the behaviour of police and citizens, it presents us with several advantages as well as disadvantages.

According to a study conducted by Farrar and Southerland (2015), fifty-four randomly selected patrol officers were requested to trial body-mounted cameras on a combined total of 988 shifts. The officers were instructed to turn on their cameras for all interactions with citizens, except for dealing with confidential informants and cases that dealt with the sexual assault of minors. The study revealed that excessive force incidents and complaints dropped by fifty-percent, and of the twenty-five excessive force complaints that occurred during the trial period, seventeen occurred when body-mounted cameras were not used, and only eight occurred when the cameras were used. The authors of that study stated that “we do not know on which party in an encounter the cameras have had an effect on, or how the two effects—on officers and on suspects—interact” (Feeney. 2015: 3).

Despite these statistics, scholars still question the merit of camera technology. Take for instance the case of Mr Eric Garner, a forty-three-year-old black man, was suffocated by police officers while being arrested for allegedly selling untaxed cigarettes. A grand jury acquitted the officers even though the incident was recorded and the footage showed the officers administering an illegal “chokehold” on Garner. Yet, oddly, Garner’s death was ruled a homicide by a medical examiner (University of Cambridge, 2014).

Russell Beckman, who teaches social studies to at risk youth in Milwaukee, pointed out that cameras are an emerging technology just like DNA evidence, and argues that cameras will revolutionize policing just as DNA evidence did, and ultimately bring us closer to the truth. For example, 325 people who had been convicted of crimes in the United States were later exonerated by DNA evidence (Derby, 2015). Others state that “transparency is not accountability,” and point to the incident of Rodney King in 1991. Video

footage captured King being beaten by police officers, and yet some of them were acquitted of all charges (Derby, 2015; Otu, 2006).

US Senator Lindsey Graham asked, “If you could get the right protocols to protect privacy and make sure the officer is using the camera in an appropriate manner, do you think it's best for the nation to go down this road?” (Ludwig, 2015) The United States Senate subcommittee hearing witness Wade Henderson told the committee that “there is a real risk that these devices could become instruments of injustice instead of accountability.” (Ludwig, 2015)

According to Elinson and Frosch (2015), a body-mounted camera clipped to an officer’s uniform may “increase police transparency and may even improve police behaviour,” but the problem remains that “police departments and prosecutors are struggling with how to sift through, preserve, and share the visual evidence,” and how to best create “policies and personnel to respond to formal requests from both journalists and the public to release video footage” while still complying with laws concerning freedom of information. In the case of *Riley v. California* (2014), Chief Justice John Roberts stated, “The fact that technology now allows an individual to carry information in his hand does not make the information any less worthy of the protection for which the founders fought.”

After a meeting between President Obama and United States police executives, Boston mayor Marty Walsh declared that police body cameras may not, in fact, be the right thing for Boston police officers (Enwemeka, 2014). Mayor Walsh told the *Boston Globe* that cameras, “aren’t going to help with the fundamental problems between community and police;” he went on to say that “I’m not going to be distracted by having a conversation about whether or not police have body cameras” (Enwemeka, 2014: 2). Walsh also stated that, “we have to have a lot more discussion around race and racial issues—it’s not one that people want to have and people would rather forget about, but we’re not going to forget about it in Boston. I made a commitment to have that conversation, and we’re going to have it” (Enwemeka, 2014: 2).

Although Mayor Walsh did not see the need for police body cameras, Mr Ned Merrick, the Chief of Police for Plainville, and former president of the Massachusetts Police Chiefs Association, saw the issue differently. Mr. Merrick stated that, “from a management point of view, it makes all the sense in the world,” and added that most of the resistance to body cameras results from the

“big brother syndrome,” since nobody wants to be watched twenty-four hours a day, seven days a week, (Johnson and Murphy, 2014). According to Malkia Cyril, who was a witness at the United States Senate subcommittee hearing, the police body camera is an unproven technology device used to collect evidence and it “can’t be relied upon to ensure police accountability that we, as a nation, have failed to implement” (Ludwig, 2015).

Missouri representative Mr Jeff Roorda, a law maker, who does business for the St. Louis Police Officers Association and who is vice president of a charity organization, told the *Los Angeles Times* that police officers who have experienced the use of body-mounted cameras are uncertain about the benefits of them; instead of using the cameras to protect the officers, those in authority often use them to monitor, and administer punishment for, petty things such as officers violating uniform codes and stop sign infringements. Roorda also said that “that’s one of the hottest issues for my guys. They’re tired of the nitpicking, and that’s what the cameras have been used to do” (Pearce, 2014: 4). Above all, there have been arguments for and against police body cameras for a very long time and has been the biggest police reform issue currently in the United States.

It is common knowledge that those in support of body camera technology have said that both police officers and citizens behave better when they are aware of the presence of cameras. In many of these instances, complaints against the officers have decreased (Sproull, Subramani, Walker, Kiesler, & Waters, 1996; Lovett, 2013). Interestingly, “with proper design and effective use of the build environment (body cameras), for example hardening of security devices on windows and doors can lead to a reduction in the fear and incidence of crime, and improvement of the quality of life” (CPTED, as defined by the National Crime Prevention Institute).

PRO ET CONTRA OF POLICE BODY CAMERAS

Positive Aspects

Body-mounted cameras are intended to increase police accountability, trust, and transparency (Gibbs, 2015). In August 2015, camera recordings “led to the indictment of University of Cincinnati Police Officer Ray Tensing for the murder of unarmed Samuel DuBose” (La Vigne, 2015).

We do not have the empirical evidence to support the increased transparency and accountability of police officers, although some random control

trial studies have found a decrease in use of force by police when cameras are being worn. It is not clear, however, if the decreases will be lasting, since the possibility that officers' cognitive awareness of the cameras will fade overtime is a realistic consideration (Barak, William, & Southerland, 2015; Steinbery, 2012).

According to Jarrod Bruder (Ludwig, 2015), another witness at the United States Senate subcommittee hearing, "body-mounted cameras can increase protection for both police officers and the public, but policy makers should not put 'too much trust' in the technology. It cannot 'magically' prevent tragic situations like the death of Walter Scott, the unarmed black man who was fatally shot in the back by a police officer in Charleston, South Carolina, after attempting to flee a routine traffic stop."

Mr. Wade Henderson, also a USS subcommittee witness, said: "There is a temptation to create a false equivalence between these citizen-recorded videos and body-worn cameras operated by law enforcement" (Ludwig, 2015: 2). "I urge the committee not to give into this temptation, because body-worn cameras won't be operated by concerned citizens and won't be recording officers. They will instead be directed at members of the community" (Ludwig, 2015: 2).

Body-mounted cameras may increase the possibility that police officers will behave in an ethically and approved procedural manner, as humans tend to behave better when they know they are being watched. Some scholars have already jumped to theorising a 'civilizing' effect for community members and police officers in life interactions due to the presence of cameras (Lawrence, 2015). It is important to remember the Hawthorne effect, also called Observer effect as coined by Henry A Landsberger in 1958, which states that human subject change their behaviour because they being studied (Munger, Shelby, 1989).

This is nothing new to the research arena, although promising studies on officers' behaviours while wearing cameras during interactions with citizens have, in the majority, resulted in respectful, polite, and ethical action. To confirm the positive effect of body worn cameras, scholars hold that we must survey and interview the community members who have had interactions with police who were BMC equipped and that, until then, it is too early to conclude one way or another about the true impact of a BMC (Lawrence, 2015).

One of the primary benefits of a body-mounted cameras is that it will capture whatever is in front of it. Cameras will never misrepresent what happens

within the reach of the lens, and they are subsequently one of the best objective witnesses in the court of law (Buchner, 2015). This fact is supported by CPTED theory of territorial reinforcement, which BMC complement other evidence used or discovered by law enforcement officers in a particular case (Crowe, 2000).

Sir Bernard Hogan-Howe stated that "our experience of using cameras already shows that people are more likely to plead guilty when they know we have captured the incident, and that the BMCs have sped up the criminal justice process and puts offenders behind bars more quickly and protects potential victims" (BBC, 8 May 2014).

Drawbacks

A body-mounted camera does have its limitations. A single BMC may not capture all the activities that occur during an interaction between a citizen and the police, which creates a challenge for an investigator and/or police department to properly interpret and evaluate it as evidence. The point here is the potential for misinterpretation of the recordings of a BMC (Buchner, 2015).

Additionally, we must be aware that video footage could produce misleading pictures of events, such as a suspect reaching for a weapon who is outside the camera's view. This type of situation could very plausibly be interpreted by a viewer as an officer acting without justifiable reason. However, in cases of night activity, image enhancing capabilities may reduce a distorting glare, and low-light correction may show more clearly the footage of an activity, thereby either verifying or countering what the officer claims to have seen during the encounter (McClure, 2015). Here also, BMCs complement CPTED where weather may become a problem by distorting surveillance measures (Crowe, 2000).

It is a universal policy that police officers must file a report after an encounter with a citizen. BMCs allow officers to review footage of each encounter before filing a report so that their documented statements are accurate. In April 2015, the Los Angeles Board of Police Commissioners voted in favour of a policy that allows its officers to review recordings of fatal encounters prior to being interviewed by investigators (McClure, 2015).

Police officers are legally allowed to use deadly force if they have reason to believe that there is risk of danger to themselves or other persons present, or that there is the potential for serious bodily injury by a suspect. If officers are

allowed to view the footage from BMCs before speaking to investigators, or before writing a report, officers may use this opportunity to either fabricate or create reasonable suspicion regarding the encounter. In such cases, their statement would not be the correct recollection of the encounter (McClure, 2015). According to Klepper & Nagin (2006), “Getting caught doing something morally or socially wrong is often registered as behavior that can potentially lead to negative consequences, which is an outcome rational individuals tend to avoid.”

The Police Executive Research Forum surveyed 500 police departments obtaining 254 responses. The survey found that the majority of respondents approved of an officer’s ability to view BMC recordings before making a statement to investigators (Miller & Toliver, 2014). Some officers claimed “that it is better for an officer’s statement to reflect what he or she perceived during the encounter, rather than what the camera footage revealed” (Miller & Toliver, 2014). However, others respondents stated that body-mounted cameras should be treated like other video recording devices; that is, if police activity is recorded by, say, a store camera, the officers involved are generally not given the opportunity to review those images before making their statement (McClure, 2015).

The legal standard for the use of force is that the officer must first evaluate the perceived type and level of danger to themselves, other officers, and/or people present. A body-mounted camera has the ability to ‘see and capture’ things that an officer may not be aware of, or have the opportunity to observe; these factors may be influenced by the technology of the camera and the environment in which the officer is maneuvering (e.g. adverse physical or environmental conditions, stress, fear, etc.). Straub (2015) pointed out that because such factors may colour an officer’s memory of an encounter, reviewing footage of the incident from the camera before writing a complete and accurate report should be allowed.

Officers are often required to make a split-second decision about using force; if they can review the footage and then reflect, they can write a more accurate statement, but also learn from what the camera ‘saw’ and, with hindsight, learn from experience.

DISCUSSION

Body-mounted cameras can be a double-edged sword when an officer attempts to explain their decision to use force. Before the deployment of body-mounted cameras, investigators relied primarily on ‘my word against his/her dead body’ and ‘my word against his/hers as the only options for weighing-up what took place. The use of BMCs provides a third point of reference to validate the events. If officers can review the camera’s vision before writing their report, the prospects of it changing their account of the encounter are increased. In this way, justice may not be guaranteed or even possible, since reports influenced by the viewings minimise the writing of an impartial statement (McClure, 2015).

It is possible that the reaction from BMC recordings can be a positive influence on how officers interact with the communities they serve, and it has been demonstrated that BMCs can help decrease the number of complaints against officers regarding allegations of unnecessary force. BMC video feedback may be used in training scenarios, such as observational techniques for writing reports and interpersonal skills, as well as to reinforce appropriate behaviour and procedure, and improve police-community relations skills (Lynch, 2015).

In the case of *Scott vs. Harris* (2007), the US Supreme Court watched footage from an in-car dash-mounted camera and “ruled 8–1 that the police officer who had run a speeding car off the road had in fact behaved reasonably, and did not violate the driver’s Fourth Amendment rights” (Feeney, 2015). The same video was shown to a diverse sample of Americans from varying ideological and cultural backgrounds and the resulting opinions varied concerning the blameworthiness of both the driver and the officer. Because a group of individuals viewing the same video can interpret the details of the footage differently, the perceived accuracy of footage from a body camera should never be based solely on what the officer saw at the time of the incident (Feeney, 2015).

Many courts in the United States have ruled that the police should not have an expectation of personal privacy while in public and while on duty. Perhaps BMCs will help remind the police of this principle and might in some ways serve to ‘police the police.’ Many organisations, including the American Civil Liberties Union, which always opposes the use of omnipresent cameras implemented by the government, have supported BMCs so long as officers are allowed limited authority on when to turn them off. In an investigation of a domestic crime (in a two-party consent state), the husband may want the camera

turned on while the wife might want it off. Because the officer's decision may violate the right to privacy of one of the individuals present, "it's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public" (Sledge, 2013). Lindsey Miller, another witness at the USS subcommittee hearing, commented that it is important to make sure that people who are in a moment of vulnerability do not end up on *YouTube* (Ludwig, 2015).

Ramifications for Practice

Citizen Privacy. While it has been confirmed that equipping police officers with a camera can possibly decrease civilian complaints regarding the use of excessive force, the issue of personal privacy must not be disregarded. A body camera should be a device that assists in providing accountability, not an instrument to scan every person that the officer encounters (Ludwig, 2015). "Although, any redaction of citizen(s) actions for the sake of protecting their privacy removes critical context for understanding and interpreting the officer's action" (McClure 2015), reaction or inaction. There is also a privacy concern for a person captured in the footage who may have nothing to do with the incident. Further concerns about BMCs include how the video data will be produced, interpreted, handled, stored, the length of storage, and above all, how much this will cost taxpayers.

Occupational Liability Insurance. The presence of BMCs may not always settle a controversial police altercation, especially if the officer has 'forgotten' to turn on the camera, the camera malfunctions, or the officer turns off the camera before the interaction is recorded. One implication for practice is that police officers purchase their own BMCs; this might assist officers who take out occupational liability insurance with supporting their defense to any possible citizen allegations, and as a means of supporting any claim they bring against their employer for worker's compensation, or the like.

Reduction of Police Misconduct. From a citizen's point of view, body-mounted cameras are likely to continue to have a deterrence affect that was noted in Farrar and Southerland's (2015) study. According to the deterrence theory by Hirsch, Bottoms, Burney, Wikstrom (1999), "the greater the actual certainty, celerity and severity of punishment, the less the crime," hence, police officers do not commit crimes because they are afraid of getting caught by the camera (which does not point at them), and they will be dissuaded from committing a crime if the

punishment (anticipation of higher premium) is swift, certain, and severe (Akers, 1990). By applying the ideas of the rational choice theory and the deterrence theory, we assume that the actions or inactions of the police are based on rational decisions, namely, that they are aware of the consequences of that action. According to the deterrence theory, the rational calculus of the high insurance premium will offset the motivation for misconduct, and thereby deter police misconduct (Akers, 1990; Otu, 1999)

Policy Implications

Accountability and Transparency. Along with other efforts, BMC programs should include polices that provide for accountability and transparency. But, in some cities—Albuquerque, for example—reports show that officers’ compliance with the use of body cameras and video-storage rules and policies have been as low as thirty-percent (Guerin, et al., 2016). In these instances, and when a police officer interferes with the BMC video or fails to record an incident, the department needs to consider what policy options it has. Three suggestions follow:

- 1) Administer disciplinary action against the officer with consideration of the totality of the circumstances surrounding his/her action or inaction.
- 2) Consider the rule of exclusion—evidence obtained against a suspect in violation of the BMC policy should be well scrutinised or excluded from the case.
- 3) Allow the suspect the option to sue the individual officer involved (with good faith exceptions), and his/her liability insurance (not the employer’s) should handle the case with consideration of the totality of the circumstances that made compliance difficult or impossible.

ENDNOTE

1. They are also referred to as *body-worn video* (BWV) and *body-worn cameras* (BWCs), or simply, *body cameras*.

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