

Body-Worn Cameras and the Law of Unintended Consequences: Some Questions Arising from Emergent Practices

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Abstract Research on body-worn cameras (BWC) has tended, through evaluations or randomized controlled trials, to look to demonstrate some assumed benefit or consequence of the use of BWC. This article is concerned with the ways in which police officers use and talk about BWC and draw on ethnographic research over the past 30 months in one force as it rolled out the use of cameras. BWC have become a useful tool in the array of those available to officers. At the same time, they come with some downsides. There are pressures to use the cameras in more and more encounters with the public and while their use may raise the standards of police–citizen interactions, there is also a concern that they constrain discretion. Beyond their immediate use, questions about their evidential value have also emerged. Finally, we begin to question the model of accountability cameras present to the public.

Seated in HQ, we watch the footage of a stop and search episode. It is a short clip, not one of those that goes on for 30 min and more. In part, that is why we have chosen this one. But it is also one of the few available to view in that it is marked as ‘not evidential’, which means in essence that the footage is unlikely to be used for evidence or be the subject of a complaint. The scene on the screen is a dark street somewhere in the force area. Centre stage, pale in the light of the camera and distorted a little by the lens, is a white male. It is hard to judge his age or anything much else about him.

He appears a little disorientated but quietly accepts that he is being stopped. He looks at the camera, seeing his own image displayed back to him. The image quickly closes in and we lose the sense of what it is focused upon. The officer is conducting his search. He is off camera, but we can hear his voice quite clearly. He is explaining to the man partially in view that he has been detained for the purposes of a search under the Misuse of Drugs Act. The officer has smelt cannabis on him. He goes through the other items he is required to inform the man of.¹ The search reveals nothing.

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¹ Using the mnemonic, GO WISELY: grounds for the search; object of the search; warrant card; identity of the officer; station the officer is from; entitlement to a copy of the search record; legal power used; and you are detaining them for the purposes of a search.

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The Panel, convened to review body-worn cameras (BWC) footage as a form of lay observation for the purposes of scrutiny and accountability, comment on and discuss the incident. They cannot know whether the grounds, as stated, were reasonable. They cannot know the context. All this happened before the camera was switched on. The street, the surroundings are not visible, just this pale man, seated in the open-side door of a police van. They discuss the manner of the officer. From the sound track, he was clear and polite. He covered all the issues he was required to under the Police and Criminal Evidence Act 1984. This is an example of a 'good' stop and search encounter. The Panel members quietly complete the paperwork confirming that the officer acted appropriately, adding additional comments if they wish. They meet regularly and are drawn from community groups representing the diverse ethnic, religious and other communities in the force area. Were there any comments or criticisms, these would be passed on to the individual officer concerned for his learning and development. And any repeated issues or concerns that indicate a more systemic problem would be highlighted for further discussion at a strategic level in the force.

In this sense, the BWC footage can form part of a process of accountability and of learning. What we cannot know is the effect that the camera itself has on the encounter. We can see the pale man looking at his own image, so we know that all parties are aware of it. We have observed this same officer perform searches in the past, before there were cameras in issue. His manner and behaviour are much as we recall them from the previous year. He has not obviously changed because of the BWC. However, as we observed him, he would also have been aware of the presence of a researcher. Perhaps he has adapted his conduct in the knowledge that he is now constantly observed? Then again, it might be argued, CCTV and smartphones have made much of the work of police officers observable, certainly that work that is carried out on the street. Many officers view each fresh clip posted on YouTube showing

embarrassing images of officers being harangued and accused of misconduct and worse by members of the public using their mobile phones. From our observations and conversations with officers, we cannot know the full impact BWC have had. But we know the sense officers have of being observed and observable constantly.

The evidence

The research that does reveal something of the impact, particularly that using randomised controlled trial (RCT), is not concerned with such questions. This work tends to confirm the intended benefits of the technology, such as improvements to interactions between the police and the public, reductions in complaints, reductions in police use of force and greater accountability (Ariel *et al.*, 2015; Drover and Ariel, 2015; Jennings *et al.*, 2015; POST 2015; Ready and Young, 2015; Ariel, 2016; Morrow *et al.*, 2016). Evaluative studies do highlight some of the difficulties, costs and so forth, but again tend to confirm the utility of BWC (e.g. Edmonton Police Service, 2015; Ellis *et al.*, 2015; see Cubitt *et al.*, 2017 for a fuller review). Much of this literature answers specific questions of effect and of value. Some questions of practice are raised. In particular, the question of when to switch a camera on and when to leave it off arise, as do concerns about cost and data storage.

The ethnographic research, on which we draw in this article, is not so directly concerned with these questions. The work is a long-term and continuing project focused on the use of discretion by uniformed officers in one police force in England. The force is one of the larger ones, in terms of officer numbers, and covers a largely urban area with a diverse population. Ongoing concerns about the disproportionate use of powers to stop and search citizens-prompted discussions about a research project to understand how and why officers were using their discretion in the disproportionate ways that the statistics suggested they were. For the past 3

years, we have been observing those uniformed officers who use these powers most regularly, including response, neighbourhoods, traffic, and territorial support. To date, we have observed more than 55 individual officers, some for one shift and others for more than 10. We have observed officers on all shifts, including early, late and night, during the week, and at weekends. These observations total more than 1,200 h of field notes, recordings, and other materials. All officers observed are volunteers and participate with the understanding that their anonymity is our primary concern.

While our original focus was on stop and search, from an early stage we broadened our observations to understand the way decisions to stop and search fit into an officer's understandings of her role and are influenced by broader factors, including resources and austerity, intelligence, training and briefings. In order to better understand these factors, we have then also observed officers in the Custody Suites, training at the Academy, staff working in the Control Room, and meetings of the independent Panel convened to review BWC footage, notes from which inform the opening vignette in this article. We have also observed the roll-out of BWC across the force during the 3 years. We have noted some of the early ambivalence identified in the work of others (Smykla *et al.*, 2016; Gaub, *et al.*, 2016; Pelfrey and Keener, 2016). We have also spoken with officers who value BWC as a way of minimizing and rebuffing complaints. As to violence, whether on the part of officers or the public, we can only speculate what effect our presence in the field might have had, but we can say we have seen little violence at all. In this respect, some of the questions that have been raised about the effect of observation on RCTs very clearly apply to our own work. But what we have observed is how officers use and talk about the use of BWC. We present here a series of vignettes that illustrate and illuminate these themes. While they are particular, they are ones we have each identified and

observed at different times and in different parts of the force concerned.

The use of BWC

Officers quickly get used to using the kit. In this force, the camera is worn on the chest. It is operated using a simple switch, a red light indicating it is on and the footage clearly visible in a small screen under the camera (cf. Timan, 2016). There is the potential for a 'stealth mode', which is without showing the image, but even then the red light comes on (College of Policing, 2014). At the start of every shift, cameras are issued and logged out to officers. There will be at least one camera for each pair of officers. When officers are deployed in a group, there might be three or four cameras issued. There is no discussion about it. Nobody complains or asks if someone else could wear it instead. It is part of the kit. Logged out to an officer, it is then logged back in and downloaded at the end of the shift. The responsible officer tags any clips to cases or calls. A stop and search recording will be connected to the record of the stop and marked as 'not evidential' unless something is found or there might be a complaint. In this sense, the officer can influence what is available for scrutiny by the reviewing Panel. But all the footage is available to an officer's supervisors for review.

Officers use the camera routinely as part of their work and are obviously conscious when a camera is on in their vicinity. In a van, one evening, approaching an address where a search warrant is to be executed, the officer in the front passenger seat calls out: 'Camera on!' It is not that the conversation changes dramatically, that the officers were saying something reprehensible before. But they paused and resumed, more measured in their language and moderated in volume. This is an unusual occurrence. More commonly, officers turn the camera on without comment, but officers are always aware. On another evening, talking to an officer, the researcher asks him how he will write

up a particular traffic stop that resulted in a ticket for driving without a licence or insurance. It was a 'good' stop, in that sense. He smiles, subtly points to the camera that is recording and cites sections of traffic regulations in response. These were valid grounds for a vehicle stop, but they were not the full story. Other factors played a part—the condition of the vehicle, the age of the male driver. He tells of these later, off camera. This self-consciousness, presenting a performance for the camera (Goffman, 1990) is in itself a routine part of the job. But it is the same performance officers present to the public the moment they leave their vehicles to speak or act on the street. They are aware of the possibility of being watched at all times.

This awareness of being filmed has some positives. Officers use the recordings to learn. In the course of a drugs operation on a property, a van of six officers and a second vehicle with another two approach a house on a notorious estate, the 'territory' of a violent gang. There are four cameras issued. Even as they approach the area, officers turn on their cameras. They will record anything they see: known faces, incidents, everything. In the event, the approach is without incident, but the cameras are rolling as they approach the address. Two officers are equipped in helmets, pads, overalls, and other equipment. These are the methods of entry (MoE) officers for this warrant. They are using a new piece of kit, a powerful electric saw, for the first time. But they are aware that another officer on another shift broke the blade on his first attempt. They do not want to be doing that. The officers approach the house, knock on the door, try the handle and then apply the saw, cutting from top to bottom to bypass locks and bolts. All of this is on camera. Indeed, all the subsequent search is on camera. Officers film the entry, the interior before the search, the search in progress as they 'discover' the drugs they know from intelligence to be there and the condition of the property as they finish. They do not ask for consent to film the interior. Their search is following up an arrest. But they do ask the occupant if the researcher, as an observer,

may enter the property. It seems the occupant has some rights to privacy (Coudert *et al.*, 2015).

All of this footage, from four cameras over nearly 2 h, is logged as 'evidential'. However, it has a more immediate value. The MoE officers are able to view their entry and their use of the new saw. The video is on screen within 10 min of their return to the station. It is viewed first by supervisors and then by the MoE officers. Everyone involved then watches it in turn, 20 s from knock to breaking down the door. There is some appreciation of this from all. And they know they will have the chance to mock their colleague on the other shift now! But there are also some serious points about technique (Phelps *et al.*, 2017).

BWC have then become another piece of kit, one of a range of tools that can be used to deal with each particular incident. Officers have to turn them on in particular contexts—when stopping and searching a person or in cases of domestic violence (Morrow *et al.*, 2016). But we have observed some more imaginative use. A traffic officer investigating a collision involving only minor injuries might record the scene, the condition of the vehicles and tyres, and the damage done rather than close the road for a more formal process of evidence gathering. Knowing this will be dealt with by insurance companies, the officer is more concerned to open the road and the BWC enables him to do this. A neighbourhood officer stops two men with a bin bag full of goods they cannot prove are theirs. Before taking them away, she films the goods as a record to avoid any argument should they be returned. The two return later with a receipt proving their purchase of what turns out to be very poor quality counterfeit goods—including 'Hogo Boss' shirts. Another traffic officer, dealing with a late night accident, is looking for CCTV footage. The city centre control room has caught the incident, but they will not be able to get a copy to the officer for a couple of days. He uses his BWC to record the relevant section so that, in the meantime, he can progress his enquiries.

For other officers, the camera is a useful counter to the habit of some to film police officers. We have noted that officers feel observed at all times. Switching on the BWC can redress the balance a little. In one incident, an officer had stopped a suspected member of an organized crime group (OCG) and was waiting for a form to be brought down from headquarters. The form was to warn his friend that there was a threat against him from a rival gang. The suspected OCG member was annoyed at the interference with his activities and, after a few heated words with the officer, got out his mobile phone and started recording. The officer responded by switching on his BWC, telling the individual that he was now recording him in return in an apparent attempt to regain dominance in the interaction. Another officer, in a similar encounter, found himself going viral on Facebook. He could be seen calmly filming the filmer in a manner that revealed to the world the person filming the police officer. The footage went viral because the officer was actually dealing with a 'local villain'. These are just some of the ways that officers have adopted the technology and adapted it to make their job easier. But in any calculation of the benefits of BWC, particularly those using randomized controlled trials, these ways in which cameras are actually used do not figure in the balance sheet.

Some intended consequences?

Opinions on the impact and effectiveness of BWCs inevitably varied between officers and, to a certain extent, teams. For many officers, the camera constrains their scope for discretion. In domestic disputes, it is a brave officer who does not arrest one party in a case where the camera captures clear evidence of physical harm. While they might believe the incident is a one-off or unintentional, the force would normally expect an arrest in order to separate the couple and to impose

conditions on at least one party. But this does mean that some arrests are made in circumstances officers believe to be a waste of resources. Within territorial support, officers acknowledged that BWC were curtailing their use of stop and search unlawfully. As an officer searches one male associated with organized crime, the man points at the camera: 'This [BWC] has ruined it for you, hasn't it?'²

In cases of police use of force, officers also believed that BWCs have had both an intended consequence in terms of reducing disproportionate use of force, but in turn have made officers more aware of the risks of getting the appropriate level of force wrong, which in turn could put them at risk. A Sergeant shows some footage from a recent incident. A man has been stopped in a car and is clearly under the influence of what the officer suspects are drugs. The camera rolls for some time, capturing his abusive language while they wait for another police car to arrive. The Sergeant does not have a drug-testing kit and has asked for colleagues to attend. They administer the test, taking saliva and placing it in a device that will provide an indication as to the presence of banned substances. But the test takes 8 min. The man is getting more abusive and more agitated. He puts his head down, clenches his fists and his tone of voice changes. We have learnt to recognize these, as all officers do, as indications that he is about to turn violent. The Sergeant is recording the incident as he orders the two officers to restrain and cuff the man. While showing the footage, the Sergeant comments that they should have taken the man to the ground. He might have got a bloody nose, but that is what force policy would suggest. But he was conscious of the camera and of the appearance that this tactic would have. It does not look good. He believes that he put two officers at risk of injury for fear of the impression that any BWC footage might leave in a subsequent hearing, one that has not actually occurred.

² We might also note similar incidents before the deployment of BWC where the presence of the observer has been noted. We have been thanked for our restraining influence on the conduct of officers on occasion. Again, our presence may affect behaviour in similar ways to BWC.

It is doubtless an intended benefit of BWC that officers treat domestic disputes differently (Morrow *et al.*, 2016), conduct searches with grounds, and use less force, for officers these are experienced as constraining their discretion, their ability to do the job. It challenges them to think about doing the job differently. The Sergeant confronted with a violent man might, for example, reflect on courses of action that could have defused the situation more effectively. But there are then, officers believe, other consequences, ones not intended.

Unintended consequences

Being on camera, being watched and being conscious of the possibility of being reviewed, officers complain that BWC can, in the words of one territorial support officer, ‘turn you into a robot’. Later in the shift, the officer switches on his camera before speaking to a male and says, ‘I’m going to be a robot for the next three minutes.’ Officers tasked with disrupting the activities of organized crime gangs recognize the value of BWC as a form of accountability and a protection against complaints. But it has changed the nature of the interactions they have with the people they stop. Instead of a relaxed exchange, at least as they conceive it, they feel constrained and scripted. The exchange becomes stilted and artificial. And with the image of the person detained visible to them, it is very obvious that the exchange is being recorded. They are much less likely to gather intelligence as a consequence. Members of the public, who had provided intelligence in the past, will not now because the BWC is on, or they think it is on.

Perhaps more seriously, officers turn to the BWC footage when writing statements. We observed one officer reviewing old footage from an incident in which a black officer was racially abused by a man he had arrested. The footage is from this colleague’s camera. The officer is using it to prepare his statement on the incident. He explains that he was not required to give a statement at the time of the

incident as he was not the arresting officer but, 2 months later, the Crown Prosecution Service have asked for it. So he is going back over the footage to refresh his memory. He shows the researcher the footage. There is an extended period of time where the man, who was originally arrested for being drunk and disorderly, remonstrates with the officer and refuses to move on. The officer is quite robust in answering the man’s questions about why he should move on—‘because you are pissed and being an idiot in a public place’. Eventually, the officer clearly loses patience with the man’s refusal to move on and arrests him. The man protests and is placed in the cage in a van. As the officer starts to close the door of the van, the man, who is already angry and shouting, calls him a ‘nigger’. The officer opens the door and rearrests him for a racially aggravated public order offence. The officer who has showed the researcher the footage is pleased—the sound clearly captures the word ‘nigger’. But did he hear the word spoken at the time? Where was he standing in relation to the incident? He could have heard it (Taylor, 2016; Bovin *et al.*, 2017; Phillips, 2017). And as he writes his statement, we wonder whether it matters? However, it is likely that evidence from BWC will increasingly be used in courts of law. Given that the system of criminal evidence in England and Wales is very much based on the primacy and superiority of verbal testimony in court, the admission of evidence and of statements by suspects and witnesses on BWC is likely to be a bone of contention in the future. Other problems relating to criminal justice procedure are likely to occur when defence counsel requests access to BWC footage that they believe may exonerate their client or cast doubt upon the credibility of a police witness.

By way of reflection

We offer these vignettes to provide a wider lens on the use of BWC than we glean from randomized controlled trials. Indeed, we would argue, this is the

value of long-term ethnographic research with police officers. The encounters we have observed are, in the view of many officers, more civil, less violent, and more formal ones than in the past, though we must acknowledge that, in this, our presence also plays some part. We have also observed the many ways in which officers have adapted the technology to serve a number of other purposes, making their job easier. But officers also identify ways in which these changes, ones that we might consider positive improvements, have unintended consequences in the eyes of officers and raise potential criminal evidence problems that may arise much further down the line.

But there is something more troubling about the footage with which we started this article. Indeed, the troubling image stays with us as we watch other footage, whether as part of the Panel or in police stations when officers show us an ‘interesting incident’. This is not accountability in a conventional sense. The actions of the officer recording the incident occur off stage. Some of their colleagues may appear, but this is by no means always the case. The actions are then to be inferred from the sound track and the responses of the person who is centre stage. Rather than a reporting to the public of actions or a relationship between actor and subject (Oliver, 1991; Roberts, 1991, 1996; Munro, 1996), the encounters make the individual, the person being searched or questioned, visible and accountable to those reviewing the material. This is evident in the eyes of the pale man as he sees his own image reflected back to him: ‘I am being watched.’

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