



# Jury News

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## Are Body-Worn Cameras the New *CSI Effect*?

The past year has been notable for the number of incidents of alleged police violence directed mostly at young, black men for relatively minor offenses. The names and circumstances associated with these cases have become infamous: Michael Brown in Ferguson, Missouri; Eric Garner in New York City; Tamir Rice in Cleveland, Ohio; Walter Scott in North Charleston, South Carolina; Freddie Gray in Baltimore, Maryland; Samuel DeBose in Cincinnati; and Sandra Bland in Waller, Texas. What is unique about these cases is the existence of videos of the encounters between the police and victims that were taken either by bystanders or captured on police-cruiser dashboard or body-worn cameras. In the past, police officers accused of aggressive policing often received the benefit of the doubt that force was justified. But videos provide an opportunity for objective viewers to observe the encounters and make independent judgments about what happened and why.

In part due to news accounts concerning police treatment of minorities, Americans are becoming increasingly aware that many police departments have implemented the use of dashboard cameras in police vehicles and body-worn cameras for officers. As of August 2015, an estimated 72 percent of state police and highway patrol vehicles were equipped with video systems,<sup>1</sup> and an estimated 25 to 30 percent of police currently use body-worn cameras.<sup>2</sup> Video technology is very familiar to most Americans from watching videos online and even filming their own cell-phone videos and posting them online for others to see.<sup>3</sup>

Currently, these videos are mostly being used by police investigators and prosecutors to determine whether the use of force was justified under the circumstances. Some videos have already been presented to grand juries at the start of formal criminal proceedings, and some of them will no doubt be presented to trial juries in both criminal and civil

cases filed against the police officers and their respective departments. It is none too soon to begin thinking about how grand jurors and trial jurors will interpret these videos in their deliberations. Will they credit their own assessments of the video evidence more than witness testimony? As important, how are they likely to interpret witness testimony if videos are not produced that corroborate police or victim statements? Will jurors refuse to indict or convict without video evidence?

The questions raised about juror assessment of video evidence are similar to those raised a decade ago concerning juror expectations about forensic evidence. The *CSI Effect* was the term used by criminal justice practitioners to describe two seemingly contradictory reactions by jurors in response to forensic evidence.<sup>4</sup> Criminal defenders claimed that trial jurors were overly impressed by and uncritical of fingerprint or DNA test results. Prosecutors, on the other hand, complained that jurors would not convict unless forensic evidence was presented at trial even for cases in which such evidence was unrelated to the key issue that jurors need to decide to reach a verdict.<sup>5</sup> In spite of these claims, empirical research has found no relationship between the television-viewing habits of prospective jurors and their preconceptions about the importance of forensic evidence in actual trials.<sup>6</sup> They did find, however, that jurors generally have enhanced expectations and demands about scientific evidence, particularly in cases relying primarily on circumstantial evidence for conviction.<sup>7</sup>

Many of the purported techniques highlighted in *CSI* episodes were highly, if not wholly, fictionalized. Indeed, a recent review by the National Academy of Science suggests that even some well-established forensic-science techniques have questionable reliability due to lack of objective assessment standards, inadequate sampling, and insufficient laboratory controls.<sup>8</sup> Videos, in contrast, are a much more straightforward technology, and their interpretation is based on the viewer's perspective rather than filtered by an expert witness. Moreover, Americans are increasingly aware that

the policy direction in many jurisdictions is to equip police with dashboard and body-worn cameras, precisely to provide evidence that confirms the oral testimony of the police or victim/defendant. In South Carolina, for example, state law requires certain aspects of DWI cases (e.g., field sobriety tests, secondary chemical testing) to be videotaped.<sup>9</sup>

So what can we expect in terms of the impact of video evidence on grand-jury decisions and trial-jury verdicts? First, it is important to keep in mind the types of cases in which dashboard or body-worn cameras are likely to be used—namely, drug sale/possession, DWI/DUI and other traffic infractions, resisting arrest, assault on a police officer, and other cases in which the behavior of the defendant during a police stop is relevant to the alleged crime. Videos would also be relevant in civil cases filed against police for false arrest or use of unnecessary force.

It is likely that both grand and petit jurors will show less deference to police testimony, at least in situations in which there is or should be supporting video evidence. Depending on whether a police officer is the witness or the defendant in a grand-jury investigation or trial, presumptions concerning the credibility of witness testimony could shift. In cases in which the police officer is a witness, grand juries may refuse to indict defendants without corroborating video evidence and trial jurors may be more likely to acquit. When police officers are themselves defendants, grand jurors may issue an indictment, leaving the criminal justice process, including trial jurors, to determine guilt or innocence. Indeed, judges are already beginning to exhibit skepticism about police testimony, as was illustrated recently in Virginia. A trial judge dismissed several DWI cases in which the police officer intentionally turned off the microphone and moved the defendants out of the camera frame to conduct field sobriety tests, despite department policies that officers check the operation of microphones before each shift and reposition dashboard cameras to ensure videos of encounters with the public.<sup>10</sup>

While video technology itself may present some new wrinkles in trial management, existing evidentiary rules are well-positioned to handle situations and questions as they arise. The same is true for grand and trial jurors. At the end of the day, jurors are the ultimate judges of fact, and it is their prerogative to be skeptical of witness credibility. Assessing video evidence or weighing the significance of its absence is no different than what jurors have been doing for centuries.

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#### ABOUT THE AUTHOR

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#### NOTES

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