

# These Are the Police Body Camera Questions State and Local Stakeholders Must Address Quickly

📷 pio3 / Shutterstock.com

**Law enforcement policies must be established before the video evidence piles up.**

BY BRYAN CUNNINGHAM AND NELSON BUNN, CONTRIBUTORS | SEPTEMBER 20, 2015

A North Carolina jury failed to reach a verdict in the case of a police officer who shot an unarmed black man 10 times in the back and the judge dismissed the case in late August.

Police cruiser dashboard camera footage showed the suspect rapidly approaching the car but did not capture the 13 shots fired by the officer, or the 10 that struck the deceased.

In defense, the officer claimed the suspect tried to grab his gun. The jury voted 8-4 to acquit, and the attorney general said he would not retry the officer due, in part, to lack of evidence.

We will never know what really happened that night. Had the officer been wearing a body-worn video camera (BWC), we might.

Enter email address for daily news

---

The jury might or might not have acquitted, but one thing is certain: More information would have been helpful.

On the flip side, the alarming rise in cold-blooded murder of police officers cries out for ways to deter and punish those who have decided it's open season on cops.

Would broad deployment of BWCs help reduce and punish such assassinations? It certainly couldn't hurt.

Even now, a massive manhunt continues to catch the three men who gunned down an Illinois police officer in cold blood.

These are just a few of numerous recent incidents—some ongoing—that have sparked a national debate on issues involving our nation's criminal justice system, police-community relations, trust in law enforcement officers, and the expanding role of technology.

Into this breach comes the broadly supported idea of BWCs for law enforcement officers, one that is not a silver bullet that will solve all criminal justice and civil liberties issues.

BWC use by police is certain to expand rapidly across America. The idea enjoys bipartisan support in Washington, D.C., and across the country and, at least at the most macro level, seems a common-sense way to increase law enforcement and citizen accountability and accurately capture interactions between police and those they are sworn to protect.

The U.S. Department of Justice recently launched a \$20 million pilot project to help law enforcement agencies buy BWC technology and train officers. As many as 50 grants will go to local police agencies under the plan, with funds also set aside for the department's Bureau of Justice Statistics (BJS) to study the impact of BWCs.

In Congress, Sens. Brian Schatz of Hawaii and Rand Paul of Kentucky have teamed up to introduce the Police CAMERA Act (<https://www.congress.gov/bill/114th-congress/senate-bill/877/all-info>), aimed at providing grant funding to local agencies for the purchase of cameras, as well as the costs associated with implementation. Sen. Tim Scott of South Carolina introduced the Safer Officers and Safer Citizens Act (<https://www.congress.gov/bill/114th-congress/senate-bill/1897>), which provides a federal grant program to incentivize agencies to purchase BWCs for police officers.

At the state level, South Carolina and Illinois have enacted laws addressing BWC deployment and use.

But BWC deployment is not as simple as it seems.

Both the purchase and use of the hardware itself and, more importantly, handling the data generated by the cameras raise numerous crucial policy and procedural issues that responsible authorities must deal with effectively, ideally *before the cameras are up and generating terabytes of data*.

A series of policy choices must be made now in order to best protect individual privacy and civil liberties, safeguard the constitutional rights of criminal defendants and support honest officers doing their difficult and dangerous jobs.

Decisionmakers must work to balance seemingly conflicting interests at the dawn of BWC deployment, not after huge quantities of footage have already been captured, stored, indexed, used, and shared. Without such policies in place and enforced, volumes of digital evidence crucial to seeking justice, exonerating the innocent, convicting the guilty, and protecting the rights of innocent bystanders may well be missing, incomplete and inadmissible in court.

This series of articles will address what we see as the most important and time-sensitive of issues that police departments, prosecutors and political authorities need to address.

First, the right stakeholders must be involved in deciding such issues, including, at a minimum: police officers, chiefs and sheriffs, prosecutors, defense counsel, law-enforcement unions, privacy and civil liberties advocates, the judiciary, and the media.

Once engaged, these groups must resolve complex policy and procedural questions such as: When should BWCs be turned on and off and should individual officers have control over this; should cameras record audio and, if so, must officers get consent of all involved; can we identify a “best practices” standard for such policy issues as: retention and destruction of data, analytics of the video and related metadata, and restrictions on secondary use of BWC data (e.g., in civil lawsuits, such as “deadbeat dad” and insurance claim litigation); how should the collection, handling and

auditing of BWC data be managed to best ensure accurate access and use by the government and defense counsel; and how should BWC footage and metadata be handled under Freedom of Information Act (FOIA) and sunshine law requests and records laws in the various states?

In the second part of our series, we take a deeper dive into the complicated issues of data collection, retention, storage, use, auditing and destruction of BWC data. For now, we simply offer a wake-up call to decision-makers: Tackle the hard issues early or they will only get harder.

Bryan Cunningham is an information security, privacy, and data protection lawyer, and a senior advisor of The Chertoff Group (<http://www.chertoffgroup.com/>), a security and risk management advisory firm.

Formerly, he was a U.S. civil servant, working for the CIA and serving as Deputy Legal Adviser to National Security Advisor Condoleezza Rice..

Nelson O. Bunn, Jr. is Director of Policy and Government Affairs at the National District Attorneys Association. He previously served as the Director of Government Affairs at The Charles Group, LLC, where he worked primarily with the Major County Sheriffs' Association, representing their views on numerous law enforcement issues.