

Body Worn Camera Training and Technical Assistance

Todd Maxwell: Hello again listeners, this is Todd Maxwell, a member of the Bureau of Justice Assistance Body Worn Camera team. And today, I am speaking with Seth Stoughton an Assistant Professor at the University of South Carolina School of Law. Seth Stoughton is affiliated with the Rule of Law Collaborative.

His research focus is on the regulation of police and has appeared in the Minnesota Law Review, Tulane Law Review, the Virginia Law Review, and other journals. He has appeared on national and international media and written for The New York Times, The Atlantic, The State, and other news publications.

He teaches in the criminal law area including criminal law, criminal procedure and the Regulation of Vice. Prior to that, Seth served as an officer with the Tallahassee Police Department for five years. I just wanted to say thank you for joining us today.

Seth Stoughton: Thank you so much for having me.

Todd Maxwell: You recently wrote a commentary for BJA, our TTA provider discussing three potential benefits of BWCs. Can you briefly give our listeners an overview of those benefits?

Seth Stoughton: Sure. So they're described in a lot of different ways, but I think they all sort of fall in three categories; a signaling benefit, a behavioral benefit, and an evidentiary or documentation benefit. The signaling benefit is really about the message or signal that the adoption or implementation of body-worn cameras sends to the public, the community, or whichever constituency the agency is focused on.

There's been a lot of, a number of calls for more police transparency and accountability and when a body-worn camera system is implemented or an agency starts to investigate the possibility of implementing one that can send a signal to the community that the agency is interested, is committed to the ideas of transparency and accountability. And even more that the agency has heard and respected the community concerns about those topics.

The behavioral benefits relate to the way that cameras affect human behavior. There's some evidence to suggest that cameras can have a civilizing effect on both civilians and on officers. So civilians may be less likely to resist officers, officers may be more likely to approach a situation professionally rather than rudely, maybe less likely to use force when they shouldn't.

And finally, there's the documentation benefit. And this is really evidentiary in nature. There are many benefits that flow from getting more information and better information than we currently have about a police interaction.

Being able to hear what an officer said and how they said it, being able to see, to some extent, from the officer's perspective what happened on a particular scene. That can help address administrative discipline issues, it can help provide evidence in court, it can help with a whole range of training and after-action reviews. The important thing to remember about each one of those benefits, there can also be negatives to them.

So for example, with signaling, if an agency has a body-worn camera system that captures a particular high-profile incident, like an officer-involved shooting, if the agency doesn't release that video particularly if they don't release it over a long period of time, it can now send a different signal. The message is the agency isn't interested in accountability and transparency and may actually be trying to hide relevant information to the public.

In some ways, it's better not to have a body-worn camera system than it is to have one but implemented badly. That's also true in the behavioral change context, where there are some behaviors that body-worn cameras may cause that we might not actually want. For example, officers may make more discretionary arrests because they may be worried that if their supervisors review a video and see a potential crime that the officer didn't enforce, that it could reflect badly on them.

Think, for example, of an officer who goes to a home burglary scene and in the process of walking around the burglarized home with a homeowner, sees a bong. Under normal circumstances the officer might chastise the homeowner for having a bong, maybe seize it, impound it for destruction and that may be

the end of it because you don't want to kick a burglary victim while they're down, so to speak. On the other hand, if the officer knows that the supervisor may watch that video and see a crime that doesn't go addressed, the officer may change their behavior in a way that we're not particularly happy with.

And finally, the evidentiary benefits, although there are very obvious and clear benefits to having cameras, having more information on the scene, it's also important to remember they're not perfect. Like any piece of evidence, they can be incomplete and sometimes misleading. So, the benefits are particularly important but so are the negative aspects of each one of those benefits.

Todd Maxwell: It's interesting that you mentioned supervisory review and an officer might lean towards an arrest or further action because a supervisor might review it. In one of our discussions with the prosecutors, the discussion point came up. If an officer were to review and see something in the video that wasn't evident at the first visit to the home or such, would – legally, would that officer or department have an opportunity to go back and arrest or do further law enforcement action based on that video?

And it became sort of a blurry line on how that was used if and where it fell in law enforcement, because now you're in a private home. But yet, you might have been there for them as a victim, like you had mentioned and now, all of a sudden, you see something but you didn't notice it at the time so then you come back, so any thoughts on that?

Seth Stoughton: Yes, that's a fascinating and difficult question. And it really tries to identify that -- that difficult line between privacy and law enforcement, the line that we try to draw, the balance that we try to develop between the public's interest in effective law enforcement and the private interest in privacy and liberty.

Todd Maxwell: Right.

Seth Stoughton: So typically, I would say that to give a very legal answer to your question, as long as the officer was lawfully in the location when the recording was made, then the recording can be reviewed and the information in the recording can

be used to support a search warrant or an arrest warrant, for an example, even if the officer didn't actually see things at the time. That's one of the important things that we may talk about later with the documentation benefits.

Cameras see more than but they also see less than the human eye, in different ways. So if I, as an officer, I'm sitting in somebody's living room going over the list of property that was taken in a burglary, I might not notice the bong sitting in the corner of the room. But when I go back and watch the video later to make sure that I have gotten all the stolen property listed out correctly, if that is where my eye falls when I'm watching the video, legally, I would say in most cases, yes that could be used to go and get an arrest warrant or a search warrant. And that's a different question than the policy question, should we be doing that?

Todd Maxwell: Right.

Seth Stoughton: And that's a really difficult issue that I think agencies are going to come to different answers about and communities are going to have different feelings about.

Todd Maxwell: Exactly.

Seth Stoughton: One of the benefits of our -- one of the benefits of our localized police system, is agencies can do things in a way that suits their community and we have different communities, with different preferences.

Todd Maxwell: Exactly. And some agencies might look at to the point where if they were to implement this policy, it might affect the community's willingness to call in crimes, so it'd be another factor to consider, but...

Seth Stoughton: Absolutely.

Todd Maxwell: Let's move on and focus on your documentation benefit in regards to evidence. Can you discuss the importance of the implementation and policy process on the video evidence aspect?

Seth Stoughton: Oh, sure. So, implementation starting with the selection of the camera system can have a tremendous impact on the value of the resulting footage. Not all

video footage is going to be created equal in all ways. So for example, there are BWC manufactures who sell a narrow-field-of-view camera, which means that when you watch the footage, you see, it looks a little more zoomed-in. And then there are agencies that sell a wider field-of-view camera. So I've seen anywhere between about 68 degrees field-of-view to 160 degree field-of-view.

That can totally change the viewer's perception of the video that they're watching. So for example, sitting here in my office right now, if I look in the same direction and I take the same video, one that has a 68 degree field-of-view and one that has a 160 degree field, whatever I am looking at may look closer or farther away. I may see more to the left and right or potentially, more to the top and bottom of the image.

So purely, technical implementation that is what hardware we are implementing can affect the ultimate value of video evidence. The same thing is true of policies, implementation policies, and especially implementation policies about mandatory permissive or prohibited recording. When must officers record? When can they record or choose not to record? And when must they not record?

It's an obvious point, but it bears mentioning, that video isn't going to be of much benefit unless it actually exists. So, if an agency allows for a lot of discretion and officers are free to use video or not use video, more or less as they see fit, then what existing studies have found, is they tend to use video in fairly predictable ways. So for example, officers are more likely to record domestic violence calls and less likely to record traffic stops. Of course, that can affect the value of that particular evidence.

If a motorist complains about an officer's rudeness and the officer didn't record that because they didn't have to, well, now we're back in the sort of modern era or the era just before body cameras where you have to do a long and fairly drawn out investigation that may never come to a satisfying conclusion because it's two people's word against each other. Another aspect is the policy with regard to recording, comes in the form of how we enforce mandatory or prohibited recording policies.

One of the things that the Phoenix Police Department's pilot study of body cameras found, is officers were often very reluctant to record even when the policy explicitly said, recording is mandatory here. So the compliance with the mandatory recording policy started in the about 45 percent range, which is to say only about 45 percent of the time, were officers recording the scenes that they were required to record.

And by the end of the pilot project, that number had shrunk to less than 14 percent. That's an obvious problem and it's not just a problem that can be addressed with a mandatory recording policy. It's a problem that you really have to look at how the mandatory recording policy was being enforced. Were supervisors doing any sort of audits to make sure officers were recording when they should have recorded?

And if they were, were officers being counseled, retrained, or disciplined for not abiding by the mandatory recording policy? So as we're thinking about implementation and policy and the affects that that can have on the documentation benefit, or for that matter on the behavioral benefits to body cameras, we need to think more holistically than just the policies that directly relate to the camera, themselves. Think more systematically and about what the agency is doing at a whole, on multiple levels to make sure that those front line policies are being followed.

Todd Maxwell: You touched on some important topics and evidence, in regards to video evidence. Are there any other important items that an agency should remember when utilizing BWCs as an evidence gathering tool?

Seth Stoughton: Yes, maybe the single most important thing of all, remember that they aren't perfect evidence. For many different reasons, cultural reasons and the familiarity that we all have with movies and television and the like, we tend to, that is people, now, tend to think of video evidence as more accurate and more objective and more complete than other forms of evidence. And that's not necessarily the case. That's incredibly important for an agency to keep in mind and it's also important for an agency to communicate to other

stakeholders, like community members, like prosecutors, judges, and defense attorneys, for example.

So we can imagine internal affairs investigators or use of force investigators will need to be very familiar with the limitations of video. The fact that sometimes, what a video appears to show may not be actually what really happened, either because the video is incomplete, maybe something happened off camera. Or maybe something happened on camera but it wasn't visual, like it was a smell for example. Or maybe it happened on camera, but it wasn't visual in some other way.

For example, if a suspect resists by pulling away from an officer but the officer's holding onto their arm, the end result might be neither the suspect's arm moves nor the officer's arm moves. If all of a sudden an officer uses force in that situation, the people investigating that use of force need to know that even though it looks like it's on camera, the camera might not be a complete source of evidence.

They also need to be aware of the many different reasons that video can be misleading. Sometimes it will make a situation look worse for the officer. Sometimes, it may make a situation look better for the officer. The difficult part is, when you watch any particular video, it's all but impossible to tell this is an accurate video or this is a misleading video. And that's – it's exactly the same thing that we see with every other form of evidence, right? If you think of a witness statement, you sit down with a witness statement, you get their statement, you read over their statement, and you know it may be accurate, it may be inaccurate.

But for some reason, we seem to forget that in the context of video evidence. So more than anything else, I think the single most important thing to remember when using BWCs as this evidence gathering tool, is they're just like other evidence gathering tools. They can gather a partial picture. They can give us some very useful information, but they can't give us everything and sometimes, what they give us may be a little bit misleading.

Dominique Burton: This concludes part 1 of podcast with Seth Stoughton, Assistant Professor at the University of South Carolina School of Law.