

ARTFORUM

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IN PLAIN VIEW: VIDEO EVIDENCE



Still from George Holliday's video of LA police beating Rodney King, March 3, 1991. From a broadcast on *KTLA News*, Los Angeles, March 4, 1991.

THE CRUCIAL ROLE of video in the organization of Black Lives Matter and other recent movements of resistance to police violence calls for a fundamental reevaluation of the

history of moving images as evidence in the United States. Film has been used as evidence in US courts almost since the invention of the medium itself, but it was not until the beating of Rodney King by the Los Angeles Police Department and the subsequent trial of four of the officers involved that a broad public saw video evidence that would previously only have appeared in court.

On March 4, 1991, on the evening news, the TV station KTLA broadcast a grainy home video of Los Angeles police brutally assaulting King. Public reaction was swift and almost unequivocal—a poll taken a few days later found that 92 percent of Angelenos who had seen the tape felt that the police had used excessive force, and the footage would spark national outrage about police brutality and racism. Yet in legal terms, the video proved ineffective as a means of reining in police violence. When it was introduced as evidence in the criminal trial, the seemingly damning video proved nothing. Footage was presented at varying speeds or selectively frozen at key moments, and the court's rules about what the jury could conclude from physical evidence effectively created a visual context that rendered the reality of what the police had done to King invisible. The jury had no choice but to find that the police patrol involved had acted reasonably in subduing King. The public interpretation sharply contradicted the legal one: The police acquittal triggered an uprising that left Los Angeles in flames.

Again and again in recent years, videos of police violence have become the fuel for the next fire in the next city, and the time has come to ask ourselves what has become of the notion of video evidence since that 1992 verdict. Even in the aftermath of the King trial, advocates for police reform promoted such evidence as a means of preventing brutality by enabling prosecutors to get rid of the proverbial bad apples in law enforcement. But in the past quarter century, the increasing use of video evidence in trials has done nothing to prevent police violence. If the King footage unquestionably showed brutality against an unarmed man, many recent videos of victims dying at the hands of law enforcement show nothing less than a form of lynching, documenting the continual liquidation of disobedient black and brown bodies. Like the King video, these images have proved largely impotent as agents of legal justice. As David Joselit wrote in these pages last year, videos like that of Eric Garner being choked by police have not yielded convictions or even indictments. And an examination of recent examples suggests that the problem is not just one of

representation but also one of interpretation. The profound divide between the impact of these images in a courtroom and their effects in the media—already clear in the King case—has grown only more acute in recent years as new technologies have altered the ways that videos are produced and disseminated. More important, those changes have made the policing of poor black and brown communities publicly visible as war.

Indeed, video evidence has often become the latest mechanism of control in a long history of US law enforcement and evidentiary jurisprudence as systematic violence against nonwhite bodies and impoverished populations. The most recent response to continuing violence has been a call for the use of body cameras by police. The rhetoric promoting these devices stresses their prophylactic promise, and is grounded in clichéd assumptions about the power of surveillance and the camera's ability to function as the gaze of social judgment. Similar arguments were made in favor of dash cams mounted in police cars in the 1990s by Community Oriented Policing Services (COPS).

Perhaps surprisingly, dash cams were also largely embraced by law enforcement at the time. They survey all parties involved in a stop, the thinking went, so their gaze inhibits violence by police but also violence against police. When one understands a roadside encounter between law enforcement and a driver as a conflict, the dash cam appears as a tactically neutral superego. Many departments have argued that dash cams make patrols feel safer during traffic stops, increasing job satisfaction. The reduction of legal liability also played a key role in the dissemination of dash cams. In a sense, cameras mounted on police cars provided an archive of justifying recordings available to police defense lawyers. They tended to exonerate patrols when a close viewing, aided by expert testimony, shows that the police involved followed authorized procedure. Police attorneys have often been able to use them to pressure plaintiffs into considering their own complaints frivolous, leading litigants to drop suits prior to trial. Body cams take advantage of technical advances in video recording in that they may be fastened to patrol uniforms, but the tactical structure of their surveillance is the same. In fact, because these cameras are physically attached to police bodies, they are even less objective. Jurors see videos literally framed from the patrol's point of view, from a vantage point that moves with the bodies of police, helping to ensure that the violence committed by patrols remains structurally invisible in court. Contrary to the hopes of liberal activists for juridical police reform, they will only make

police departments stronger, burying structural racism deeper under cover of the purported prevention of individual racist actions.

Even if the legal effect of such videos has hardly changed in recent decades, the nature of their circulation has been profoundly altered. In the time of print and broadcasting, the dissemination of images of police brutality depended at least in part on the press's need to sell those images. George Holliday, who shot the tape of King's beating from the balcony of his apartment, initially found little interest in his video—he unsuccessfully tried to offer the footage to CNN before reaching an agreement with KTLA. Today, the ubiquity of smartphones fuels the proliferation of amateur videos, and social-media platforms have provided new means to distribute the footage shot on such devices and heightened awareness of their effectiveness as tools for cultivating rage on the streets. Indeed, smartphone videos are increasingly seen as a means of rebellion rather than evidence for liberal activists. Local cop-watch groups train people to gather video of police activity in their neighborhoods, even offering specific advice on where to stand and what to say while filming interactions between police and civilians, and group members actively gather and disseminate such footage online. Such practices don't aim at legal remediation against police violence, but instead seek to organize popular antipolice activity. The King video was captured serendipitously—Holliday happened to have his new Sony Handycam fully loaded and ready to use the next morning at the LA Marathon, and King's beating happened to take place almost directly below Holliday's balcony. Today, however, many videos are consciously produced with the intention of documenting and disseminating police violence. Taisha Allen, for example, one of the bystanders who filmed Garner incapacitated on the sidewalk after being choked by police, can be heard saying, "This is going viral," several times in the video. All this has dramatically increased the extrajudicial circulation of videos of police attacks. And the censorship or selective presentation and narration the state can impose to control the interpretation of video in court has not so far affected online distribution.



Police body camera, West Valley City, Utah, March 2, 2015. Photo: George Frey/Getty Images.

The disparate effects of contemporary evidentiary video as legal proof and as a catalyst for activism are particularly clear when one compares the legal and extralegal reactions to recent videos of Garner, Tamir Rice, and Luis Gongora. Two now-infamous videos of Garner’s arrest and the minutes following, one shot by Ramsey Orta and the other by Allen, were closely analyzed and widely shared in the media. Despite Orta’s video clearly showing Daniel Pantaleo of the NYPD choking Garner while other police helped bring Garner down to the ground and handcuff him, no indictments were issued by the grand jury. Yet we have seen repeatedly since Garner’s death that such videos can provoke reactions far beyond the specific case they record. Garner’s dying words—“I can’t breathe”—became an activist slogan, and even though no videos emerged of Mike Brown’s killing in Ferguson, Missouri, the riots there were in part a response to the Garner videos; outrage over video of Freddie Gray’s violent arrest in Baltimore was also amplified by its resonance with the Garner footage. Such protests acknowledge that seeking justice from the legal system is futile and reveal that evidentiary video has far less purchase in the

courtroom—but it has become a means for self-organized insurrection. Meanwhile, the Garner family filed a civil case against the city, which was settled for \$5.9 million, confirming a pattern of law enforcement and municipal governments buying social peace without admitting criminal wrongdoing.

In Cleveland, a security camera recorded a police patrol killing twelve-year-old Rice immediately after arriving at the park where the boy was playing with a toy gun. Forensic-video experts hired by the Rice family claimed that Timothy Loehmann shot him within a second of opening the door of his cruiser, which was being driven by his partner, Frank Garmback. In order to prove that the killing was justified, the Cuyahoga County prosecutor argued that the footage showed the child advancing toward the police car and continuing to do so despite shouted warnings to show his hands. Rice's family argued that the officers couldn't have warned Rice in such a short period, and that in any event he would not even have had the time to take his hands out of his pants, but apparently the grand jury disagreed, as no charges were filed. Like Garner's family, Rice's brought a civil suit against their city, which was settled for \$6 million.

But the far more fundamental problem is that the legal review, which was engineered to justify the police's behavior, offered no opportunity to make the absurdly obvious point that police simply should not shoot children. CNN's Jean Casarez reported that the grand jury heard audio of one of the policemen saying, "It's a black male, probably twenty." Yet in the context of the courtroom, the modes of perception that encouraged the police to see a twelve-year-old child as a threatening adult could not be discussed. The legal system's criteria for reasonableness in these killings exclude the racist context within which they take place. During the deliberations, Timothy J. McGinty, the county prosecutor, sought to assure the public that he was doing everything possible to search for the truth, as if there wasn't a question of which truth to find. Would the jury see exonerating details revealed by a minute parsing that treats instinctive reactions made in fractions of seconds as logical sequences of rational decisions, or the inherent racism of police policy that values the lives of police far more than those of minority civilians and systematically justifies police violence? Indeed, as political journalist Mychal Denzel Smith pointed out last year in *The Nation*, patrols have nothing to fear from cameras that record killings, because in a legal context such cameras only show police doing their job.

In San Francisco this past April, police Nate Steger and Michael Mellone shot Gongora, a homeless forty-five-year-old Yucatec Mayan, after outreach workers had reported that he was carrying a kitchen knife in the street. The *San Francisco Chronicle* published surveillance video that showed the police shot the man within thirty seconds of stepping out of their patrol vehicle (although the actual shooting takes place just off camera, the video captures the precise timing of the officers' actions). Investigators again framed the question of the killing's justification in terms of whether the patrol involved took the time to reason and whether they perceived an overwhelming threat.

Whatever official narrative emerges to explain Gongora's death, it must be seen as the latest example in a long string of evidentiary videos that are cumulatively revealing the tragically circumscribed possibilities of living in a nonwhite body. In 1992, most scholarly responses to the video of King's assault focused on an effort to imagine circumstances under which video evidence could lead to the conviction of violent police and the eventual prevention of police violence. Today, that thinking seems largely irrelevant, and the central question has become what to make of the widening chasm between legal and extralegal interpretation of these videos. Trials themselves, along with the entire justice system, have long since lost legitimacy as a search for the truth in the case of police violence. Outside the courtroom, as such footage increasingly triggers public interpretation and reaction in real time—before trials, before grand-jury findings—it seems destined to start more fires, which will burn hotter each time.

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