

Visual Studies of Police Violence

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9. Visual Studies of Police Violence

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In this paper, Watson, Meehan, Lynch, Nave, and Dennis discuss their investigations of how video evidence is used in criminal trials for police officers charged in on-duty shootings. Although still ongoing, their study has already yielded several lessons worth sharing. The authors consider how making sense of the violence seen on video is no simple task. They conclude that to understand videos of police violence they needed to turn to courts of law rather than directly analysing videos of police violence. In this sense, their research led to an investigation of investigations.

Introduction

This contribution discusses a study in which we have been engaged for two years, investigating how video evidence is used in criminal trials for police officers charged in on-duty shootings. The study is ongoing and our findings are only starting to fall into place but we nonetheless already have several lessons worth sharing for those interested in understanding the complexity of this kind of evidence. Despite a broadly held cultural maxim that “seeing is believing,” we find that, even among members of our own team, making sense of the violence we see on video is no simple task, and we often come to different conclusions about the propriety of violent force. We, of course, are not alone in this: Christopher Schneider’s (2016) analysis of comments on a video of the shooting of Sammy Yatim by Constable James Forcillo posted to YouTube showed remarkable use of details outside the video itself to make sense of the ambiguous scene depicted. The inescapable ambiguities associated with this form of evidence led us to conclude that there was little to be gained by directly analysing videos of police violence in our study (cf. Collins 2008; Lowrey-Kinberg and Buker 2017). Instead, we followed the methodological advice of Harold Garfinkel and Harvey Sacks, who instructed students interested in some phenomenon to *find someone whose job it is to interpret that phenomenon* (in this case videos of police violence) *and have them teach us how they do it* (Garfinkel 2002, 182). Thus, we concluded that to understand videos of police violence we needed to turn to those who are officially sanctioned to decide when violence is unlawful – courts of law. In this sense, our research involved us in an investigation of investigations, where the courts were attempting to decide *what happened* and we were attempting to understand how they came to determine that for their practical legal-investigative purposes. Following, among others, Ginzburg’s (2013 [1976]) pioneering analysis of transcripts taken from the trial of a miller during the Roman Inquisition in the 16th C, our view is that this kind of second order investigation of investigation reveals something important about the social, cultural and institutional spaces, practices and imaginaries police-involved shootings are situated within that would be difficult to draw out in other ways – and it is in drawing those insights out that we see our contribution here as resting upon.

To expand and concretise the issues somewhat more, there are several complicating factors when it comes to dealing with videos of police violence. Bittner’s formulation of police force is instructive: “the role of the police is best understood as a mechanism for the distribution of non-negotiable coercive force *employed in accordance with the dictates of an intuitive grasp of situational exigencies*” (1970, 46, emphasis ours). Police are mandated and expected, under appropriate circumstances, to use (up to) lethal force in the appropriate conduct of their job. However, as the public gains greater capacity to scrutinise the dictates of situational exigencies (at least in part due to proliferations of video evidence), and as video evidence has diminished the capacity of the police to control the narrative of use-of-force incidents (Wasserman 2017), recurrent questions about that “intuitive

grasp” have emerged. Here, we hope to argue that for those concerned with the incidents of violence depicted in video, there is a path for help from social science. That help arrives not in further analyses of videos, but rather in an examination of the *rules* that govern police conduct as well as after-the-fact analyses of that conduct. Examining how *rule-adherence* or *rule-deviance* is demonstrated through court interrogations thus affords sociologists an opportunity to critically engage, among other things, with the sense that is made of state violence on video from within the official settings charged with that very task; no small matter.

A Statement of the Problem: Seeing Things from an Officer’s Perspective

Videos of police violence are challenging materials. The victim is often (although not always) outnumbered, unarmed or less armed, intoxicated (sometimes visibly) or otherwise disoriented, and can be interpreted as making efforts to comply with police orders. It is worth noting that the incidents we examine involve some *prima facie* evidence of wrong-doing, and as such we spend relatively little time examining incidents where use-of-force is self-evidently lawful (i.e., use-of-force in response to an armed suspect). As Collins (2008) notes, very few people engage in violence themselves, and interpreting videos of violence is constrained not only by the limitations of technology (camera frame rates, lighting conditions, sound recording or a lack thereof, blur and other recording artifacts, etc.), but also by the moral valence a viewer applies to the material. For some viewers, violence can never be excused, whereas for others any use-of-force by police will be seen as lawful because of the character of police work.¹

In legal circumstance, there is an added layer to the analysis of video evidence. Courts acknowledge that police officers are imperfect and can make “bad” decisions in “good faith.” Courts in Canada and the United States explicitly instruct triers of fact not to assess police conduct with “20/20 hindsight,” and instead to adjudicate incidents according to an *objective* assessment of the officer’s *subjective* perception at the time. This puts triers of fact into scenarios where they are pulled in opposing directions because they have to use (often graphic and disturbing) video evidence, as well as various interpretations and expert analyses thereof, to assess what an accused officer was seeing and experiencing in the moments leading up to a shooting, including making some assessment of physiological responses to stressors that are associated with life-or-death incidents such as “tunnel vision” or “auditory exclusion” and using (quasi-) scientific considerations of physiological response times. The *interpretive asymmetries* (Coulter 1975; Mair et al. 2013) between an officer’s on-the-scene perception and a trier-of-fact’s *post hoc* interrogation of that perception render video evidence less meaningful than might be otherwise expected. Officers can go so far as to concede that they were mistaken in their decision to use lethal force, but that some combination of factors on the scene, either physical or psychological, produced conditions for a good-faith mistake that results in a tragic lethal outcome.

The sociological problem therefore extends beyond merely trying to resolve disparate post-incident assessments of legitimacy across broad populations to produce consensus on what individuals see in videos of violence. Instead, it is better conceived as one of understanding how video facilitates the task of seeing through another individual’s eyes and grasping what they were experiencing. As Garfinkel and Sacks (see, e.g., Garfinkel 2002, 181-182) instructed, rather than trying to codify or define the parameters of legitimate use of force, we turn our attention to those who do this professionally and allow them to teach us how they do it.

Methodological Procedures for Viewing Video Evidence

We generally describe our approach as ethnographic, albeit more in accord with Dianne Vaughan’s *documentary ethnography* (1996) than more conventional observational fieldwork. We have acquired

courtroom transcripts and/or videos of eight criminal trials for on-duty shootings – four convictions and four acquittals – and as a team we collectively re-watch or read through the trials while engaging with video and other evidence. Perhaps the most important “methodological” consideration is the composition of our team; while we are sociologists / criminologists / anthropologists by profession, each member of our team has background in an area that contributes to our analysis of the trial. This includes a former police officer who has considerable experience with use-of-force policies, a police ethnographer who has significant experience in ride-along research, a socio-legal studies scholar and trained lawyer, and scholars of socio-legal procedure. Our position in viewing the trial roughly emulates that of jurors – we attend to the arguments and testimony and then collectively discuss what we have seen. However, unlike jurors, we take an *ethnomethodologically indifferent* orientation to the arguments made. We are not trying to verify the evidence or second guess juror’s decisions, but rather to closely consider what is assumed to be known-in-common or presumed evident by lawyers as they craft narratives that accompany video evidence.

This is likely a methodological stance that requires some further expansion, as it is not uncommon for Garfinkel’s attitude of *indifference* to raise eyebrows (Cosser 1975). We are certainly not indifferent to the moral implications of use-of-force incidents that disproportionately affect Black, Indigenous, and People of Colour (BIPOC) communities. Indeed, this is largely our motive for engaging in study in the first instance. If we must live in a world with police,² we would prefer to see police officers *and police services* held accountable for killings of especially unarmed individuals. However, our personal opinions on where criminal culpability begins or ends take a back seat to the arguments and decisions by those empowered to make them – i.e., lawyers and jurors. Ethnomethodological indifference does not mean we are ambivalent to killings, indeed if we were, we would not be engaged in the study in the first instance. Instead, we attend to how rules that govern police conduct, court procedure, evidence, and jury instructions acquire their meaning through use. However we may want the rules enforced is set aside and we instead attend to the artful practices of appealing to the letter of a rule and the intention alongside that rule’s invocation.

This perspective is inspired by the later works of the philosopher Ludwig Wittgenstein (1953, 1969) as well as Peter Winch (2003 [1958]), which argue (roughly) that the meaning of a rule is its use (Zimmerman 1971; Sharrock and Button 1999). The implication of this approach is, following from the guidance from Garfinkel and Sacks above, that there is limited utility in attempting to read formal codes of conduct and layer over them some empirical example of a candidate breach of that code to test whether a trier-of-fact *got it right* – who are we to make such determinations? The task instead is to investigate how the candidate breach is conceived of either aligning or deviating from the code in practice. This work is done, most transparently, in courts,³ but a courtroom proceeding does not merely hold up video (or any other) evidence to see how it compares to the letter of the law. Instead, the search is for *good reasons* for a *prima facie* bad decision. Watching court proceedings results in a live exercise in interpreting and applying a rule and considering a rule’s malleability in light of the inherent unpredictability of social life, including the social life of police officers evaluating individual conduct. It seems to us that a great deal of this work does not revolve strictly around rules at all, per se. The focus tends to be on how an officer’s testimonial narrative holds up to the scrutiny of video and other evidence.

In addition to video evidence and officer testimony, we have come to expect expert witness testimony in nearly every trial for police involved shootings. This has been a standard tactic since at least the trial of the four Los Angeles Police Department officers charged with brutality offenses in the arrest of Rodney King in 1991 (Goodwin 1994). The significance of expert opinion was illustrated through that trial. In the initial criminal trial, an expert witness, LAPD training sergeant Charles Duke, was introduced by the defense to opine, using the bystander video and still images,

that King's movements would be reasonably interpreted by officers at attempts to resist arrest, necessitating force. The prosecution in the state criminal trial held that the brutality in the video spoke for itself. The result was all four accused officers were acquitted. In a subsequent federal civil rights trial, both prosecution and defense employed expert witnesses to interpret the video and two of the four officers were convicted.

Much like the position of ethnomethodological indifference, the Bloorian (1976) principle of *symmetry* absolves the researcher of deciding whether evidence is *right* or not. Instead, the principle notes that all beliefs, true or false, are premised on the same types of causes (Galassi 2019, 33), so analytic attention is paid to the formulation of the (quasi-) "scientific" information that is presented in trial to assist a trier-of-fact in making a decision about use-of-force incidents. In particular, we have been struck by the pervasiveness of something called "Force Science,"⁴ which constitutes, among various other aspects of police interactions, the amount of time physically required to perceive and react to a threat as well as the cessation of that threat. While we remain somewhat personally perplexed by the claims of the accredited experts who opine on "Force Science," we maintain the principle of symmetry in our analyses. We are not (at least immediately⁵) invested in debunking force science as much as we are intrigued by seeing its reception in criminal proceedings. Of significance to the venue of an adversarial criminal trial is legal counsel effectively go about the process of introducing and interrogating "Force Science" for us, holding the claims made about some officer's conduct to scrutiny for the overhearing audience, the judge and jury. Our job is to discuss the positioning of "Force Science" within the broader discussion of the trial to gain purchase on how such information relates to arguments made with video evidence. "Force Science" becomes another technique of building meaning into otherwise complex and esoteric video materials.

Expertise in Trial: The Case of Roy Oliver

On April 29th, 2017, Officer Roy Oliver and his area partner Tyler Gross of Balch Springs Police Department, Texas, were called to the scene of a house party attended by dozens of adolescents. The officers were responding to a call for service to break-up the party on grounds of noise violations. The call out was recorded on both officer's body worn cameras, and interactions between officers and youths as the party-goers were dispersed were described as amicable and professional by both prosecution and defense counsel at trial. After the house was nearly cleared and the officers were moving toward the exit, a series of gun shots rang out nearby, and the departing youths on the street were seen running away from the apparent source of the shooting. Officer Gross immediately went toward the location where the shots were presumed to originate, while Oliver first went to his vehicle for his department-issued MC5 carbine rifle (nearly identical to the more commonly known AR-15), before proceeding to back-up Gross. As Gross approached a T-intersection at the end of the street with his service pistol and flashlight in hand, he observed a black Chevrolet Impala reversing and maneuvering toward the intersection. Unaware of who the occupants were, Gross ordered the car to stop and those orders went unheeded by the driver. Gross first spoke then yelled the car's license plate number into his police radio, which Oliver heard over his radio and testified heightened his perception of threat posed by the vehicle, leading Oliver to break into a run to catch-up with Gross. As Oliver ran toward Gross and the Impala, the car shifted into forward gear and began to accelerate past Gross and away from the scene. Gross reached out with his pistol hand, striking and breaking the rear passenger side window of the car. A mere 0.31-millisecond later, Oliver shot at the now evidently fleeing vehicle, a single burst of five bullets from the MC5, one of which struck the front passenger, 15-year old Jordan Edwards, in the head, killing him instantly. Moments later, other responding officers from Balch Springs PD performed a "felony stop" on the car and discovered the occupants were teenagers who had been at the party and were not involved with the shots heard to spark the incident. Oliver

was subsequently fired from BSPD, criminally charged, and convicted for the murder of Edwards. He was sentenced to 15-years in prison on August 29th 2018, although both his sentence and conviction are being appealed to the Texas Supreme Court at the time of writing.

Body Worn Camera Evidence

The incident took place at night and the BWCs used by BSPD were not well suited for recording in low-light conditions. In addition, both Gross and Oliver were moving continuously throughout the incident, resulting in the cameras shaking, diminishing the quality of visual recording such that, for us, the images were nearly incomprehensible. The audio recording was much more reliable, and seconds after the shooting Oliver is heard saying to Gross “You alright? He was trying to hit you.” Gross responded he was fine, but otherwise did not reply to Oliver. After dozens of viewings, no one on our team could make sense of the scene through the video evidence, or how the evidence could possibly feature in trial.

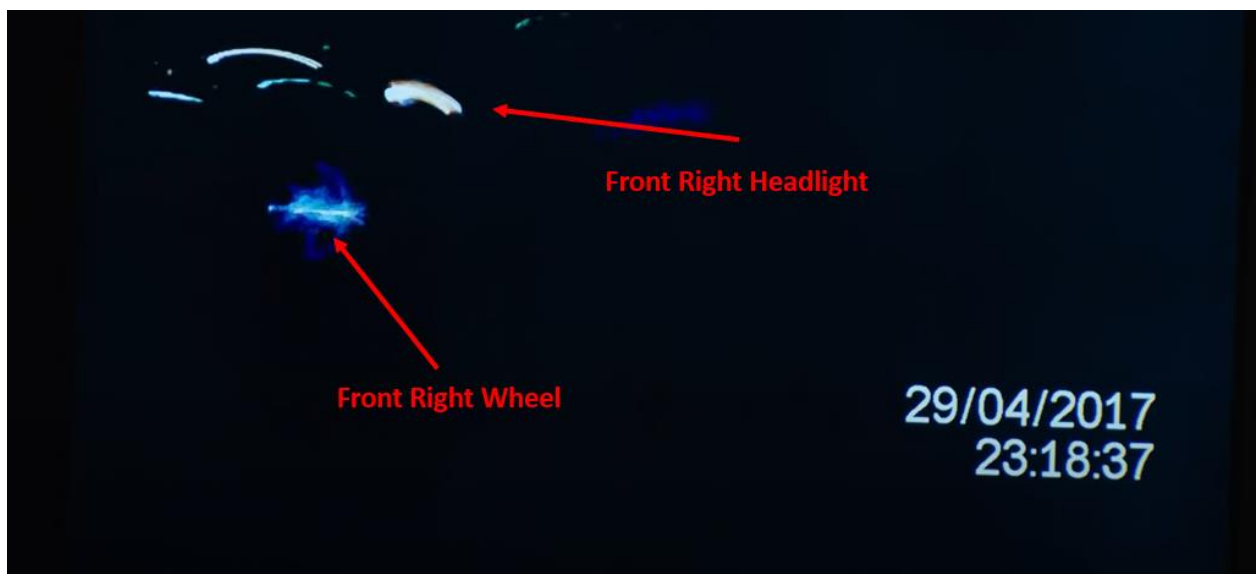


Figure 1: Screen grab of Oliver’s body camera as he is shooting. Readers should note the visible outline of the Impala’s front right tire and headlight, one of the few frames from the video where any part of the car is recognisable in Oliver’s video.

On day three of the trial (August 20th 2018), the prosecution introduced expert witness Grant Fredericks, a former Federal Bureau of Investigations (FBI) forensic video analyst who now runs a private consultancy offering expert opinion often, though not exclusively, in police use-of-force cases. Fredericks has a national reputation among legal counsel and law enforcement officers in the United States for being at the forefront of forensic video reconstructions, and is a member of the board for the Force Science Institute. Fredericks was commissioned to reconstruct the scene with laser spectrometry and other modes of image reconstruction that would, within fractions of an inch, indicate where Oliver, Gross and the Impala were at the time of shooting. Although a detailed discussion of Fredericks’ testimony, which lasted almost two full days, is not possible in this paper, of relevance to us is Fredericks’ submitted opinion: that, upon reconstructing and analysing the scene, the Impala had driven past Gross by the time Oliver began shooting. Thus, Fredericks concluded that Oliver’s use-of-force was unreasonable because the car could not have been perceived as a threat to Gross since it was beyond him before Oliver started shooting. If Oliver could not be perceived as reacting to a threat, his actions should properly be seen as motivated by

malice – i.e., revenge upon the driver and/or occupants for failing to adhere to Gross’ instructions – as opposed to a measured reaction to a perceived threat, erroneous or otherwise.

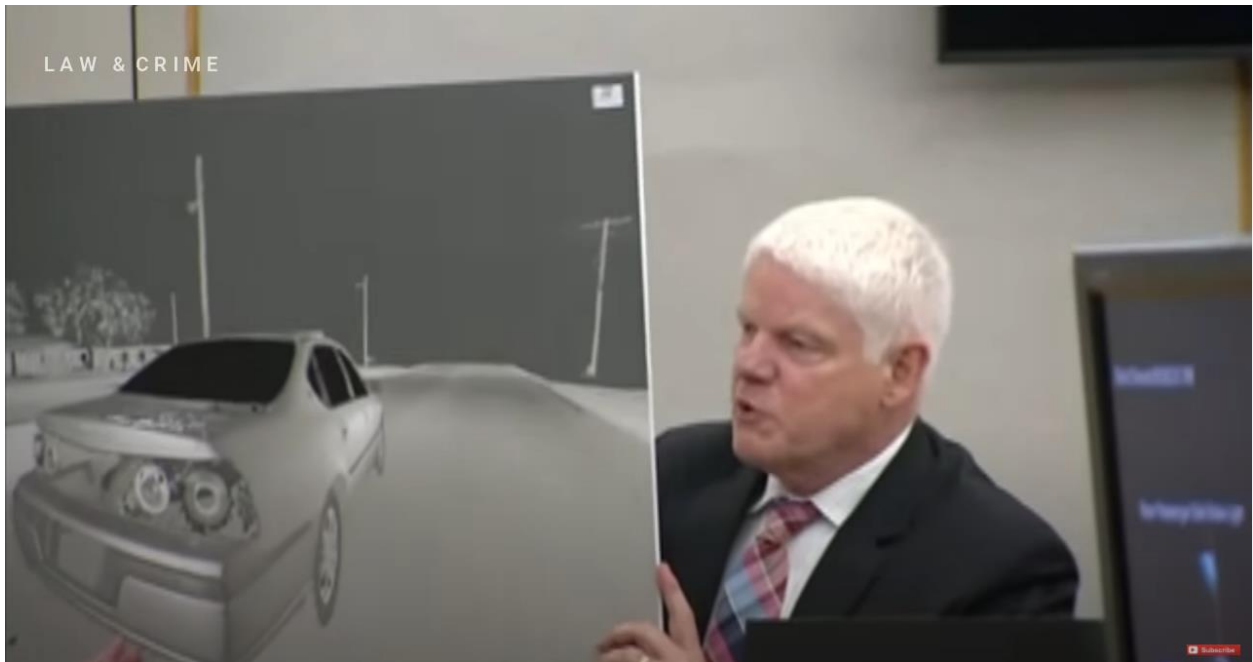


Figure 2: Grant Fredericks holds the output of laser spectrometry modelling to show where the Impala was relative to Officer Gross’ body cam the moment Oliver shoots the first bullet.

“Force Science” and OODA Loops

Partially in response to Fredericks’ testimony, Oliver’s defense counsel introduced their own expert in “Force Science,” police Captain Jay Oliver Coons, who also has a side business opining as an expert witness in use-of-force cases. The defense sought opinion from Coons on the issue of reaction times, and how long it takes for human beings to make the decision to shoot and stop shooting. Using a concept from “Force Science” called OODA loops (Observe, Orient, Decide, Act), Coons opined that it takes anywhere from 0.5 to 1.5 seconds for a police officer to see, interpret, decide to act and then (re)act to a perceived threat. This being the case, Coons opined that Oliver would have made the decision to shoot at the Impala to protect Gross while Gross was on a possible path along which the vehicle may have proceeded. That decision may only have manifested after the car was passed Gross, but for Coons, since the decision to shoot apparently preceded the physical pulling of the trigger by such a significant time, Oliver’s actions should have been deemed reasonable, as in Oliver was acting on a good faith mistaken belief that the vehicle posed an imminent threat of death or serious bodily harm to Gross by its speed, proximity and (potential) trajectory.

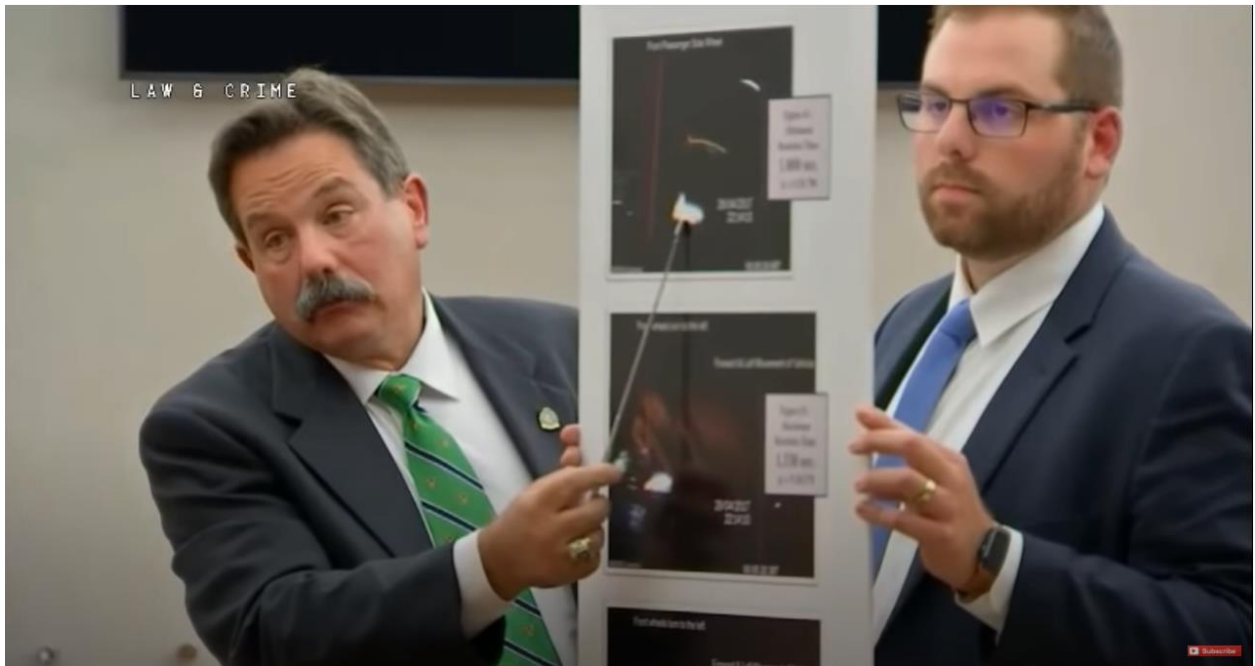


Figure 3: Cpt. Jay Coons (left) demonstrates to the jury what Oliver's body-cam showed when he believed the decision to shoot occurred.

Coons recalled that it was shown through video analysis that only 0.31-seconds occurred between Gross striking and breaking the rear passenger window and Oliver shooting, which for Coons indicated that Gross, by necessity, would have been within an arm's length of the car and the car would be moving alongside Gross as Oliver formulated the decision to shoot. Coons' explanation is that the reason the shooting started after the car had passed Gross was merely a consequence of the frailties of human reaction speeds, not of intent on Oliver's part. Of interest here, perhaps, is how Coon's "Force Science" leveraged analysis was framed by its appeal to ordinary human capabilities, and thus partly aimed to show how "normally human" rather than how extraordinary officers are.

As Wittgensteinian ethnomethodologists, we are of course fascinated by the somewhat curious employment of the term "decision" through Coons' testimony. However, following both ethnomethodological indifference and the symmetry principle, we do not take it upon ourselves to decide which of these two competing accounts (Oliver was unreasonable, Oliver was reasonable) is correct, or to conduct an extended analysis on the vernacular usage of "decide" in context, since this was not a significant issue in court. Indeed, we are not even confident jurors would have any strong opinions on either testimony. We are instead interested in how the notion of "motive" gains salience for a jury through the apparent positioning of the vehicle proposed by Fredericks (a spatial argument) and the ostensible reaction times proposed by Coons (a temporal argument). We would have to conclude that were jurors convinced by Coons' testimony, and they believed in the science of OODA loops, they almost certainly would have had to decide Oliver was acting on a good faith mistaken belief the Impala posed a threat to Gross. That they convicted Oliver seems to indicate they were unconvinced by the veracity of Coons' particular invocation of "Force Science" on this matter.⁶

Conclusion: Making Sense of Videos of Violence

We are in full agreement with Randall Collins (2008) that videos of violence are remarkably complex materials that by no means establish their own sense. When we study videos of police

violence, it is hard to hold back on personal assessments of what is right or wrong about the conduct of officers or victims of police violence as seen on video. Our position is that it makes little *sociological* sense to do so, or at least doing so is not an activity reserved to sociologists. In a democratic society, policing is conducted *with the consent of the public*, and we would contest that anyone has as much right as anyone else to make arguments about the propriety of what is seen in recordings of violence. For us, the sociological interest arrives when we start to consider how these assessments are made. Looking at how video features to produce accusations or defences in cases of police violence, in our opinion, not only leads to better public understanding of the decisions of courts, but also potentially allows for greater public scrutiny of those decisions in ways that can lead to a more civically appropriate interpretation and application of rules. Given that a rule gains its meaning through its use, we see little utility in simply reviewing videos for candidate faults and asking policy makers to re-write rules in light of our objections; to us, there are sufficient rules in place to thoroughly enforce police misconduct. The issue for us, instead, has much more to do with how officer intent and *reasonableness* is injected into the images caught on video.

Through this contribution we have argued that our own personal interpretations of police violence on video are not of particular sociological significance, and that a more sociologically interesting question is to consider how those whose job it is to make such assessments use video to do so. We also note that analysing these cases involves more than mere deferral to rules (i.e., prohibitions against shooting at individuals under certain circumstances such as into moving vehicles), and that these legal rules gain their sense through their application in court. These are also important contributions to cognate disciplines such as psychology, legal studies, philosophy, criminology and police studies, and others taken up with issues of perception and applications of rules. Our interest in what constitutes a “reasonable officer” is furnished by attending to the arguments made by those who opine on the subject, investigating the investigators, to see how they attribute things like “motive” and “reasonableness” through video and other evidence. We would stress that video evidence is not a panacea, not only because of technical frailties exhibited in this case and others, but also because the phenomenon of interest – officer intent – cannot be recovered through video viewing alone. This necessitates an investigation into the properties of interrogating video and other evidence to make sense of what a police officer must have experienced when using lethal force. By introducing the methodological tropes of ethnomethodological indifference and the principle of symmetry, we do our best to bracket out our own interpretations of these scenes and defer to the way sense is derived through expert testimony. We put ourselves alongside the jury, trying to make sense of the evidence as it is presented, and in light of the decision at which jurors ultimately arrive. This said, we fully acknowledge we are not broadly indifferent to our topic; each of us is motivated to deliver justice and “better” police services, albeit we may not fully agree on what “better” police services are. We merely hold an indifference to legal arguments, as it is not our place to second guess jurors, rather than to understand their decisions. A final word on investigations: as Garfinkel (1967) and Ginzburg (2013 [1976]) showed, investigations are part and parcel, indeed constitutive, of social orders. Investigating investigative practices thus offers an interesting reflexive take on investigative methods, insofar as it invites us to consider the place of investigations in our social, cultural and political worlds – our own work included – rather than simply taking it for granted.

Notes

¹ Readers may recall Cleveland Police Patrolmen’s Association president Jeffrey Follmer’s news interviews following the Tamir Rice shooting, in which he suggested there was no such thing as a bad police shooting.

² We add this caveat in relation to the recent public discourse around defunding or abolishing (disbanding) the police that gained significant public attention in the wake of the killing of George

Floyd by Officer Derek Chauvin, May 5th 2020, and the vote of Minneapolis City Council to disband their municipal police service shortly thereafter.

³ Although in a subsequent project we are investigating a similar process in the investigative stage of police use-of-force incidents that do not result in criminal charge.

⁴ We capitalise “[Force Science](#)” on the grounds that it is a brand name, a “research institute” that offers training and consulting services, rather than a coherent body of inquiry. Indeed, the institute incorporates several different disciplines, including medical science, behavioural science, and assorted forensic sciences such as ballistics to study “... the true nature of human behavior in high stress and deadly force encounters.”

⁵ There is a significant body of research on the questionable character of forensic sciences or the capacity of courts to evaluate scientific evidence (i.e. Jasanoff 1995; Cole 2000; Faigman 2002; Burns 2008). We would be interested in seeing future studies that apply the analytic lens from these studies into a considered analysis of “Force Science” and its practitioners.

⁶ Coons was the only witness called by the defense other than Oliver himself. While we would be reluctant to conclude this makes Coons key evidence (especially since the defense only has to raise reasonable doubt about the prosecution’s case), it perhaps does show the defense’s confidence in that evidence.

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