



- **Increased civility**



Relatedly, some proponents of BWCs argue that the presence of a camera will improve civility, by both police and civilians. If both parties know their actions are being recorded, this theory contends, they may be less likely to act badly.

There is, however, very little if any empirical (or even anecdotal) evidence to support this effect. If anything, the evidence suggests a possible effect in the opposite direction. The highest quality evidence on the matter, from a set of randomized controlled trials across 10 sites in 8 cities, found a significant increase in assaults against officers wearing BWCs.¹ One quasi-experimental analysis also found an increase in assaults.² Four quasi-experimental analysis and two single-site randomized controlled trials, of variable quality, found no significant difference in assault rates against officers, or reports of resisting arrest, when officers wore BWCs.³⁴⁵⁶⁷⁸ White et al (2017) note that a civilizing effect would require meeting the preconditions that the citizen is aware of the camera's presence and, more importantly, that they are thinking rationally during the encounter. These authors note "Research has shown for decades that police frequently deal with citizens who are upset, traumatized, angry, under the influence of drugs or alcohol, and mentally ill and in crisis... All of the aforementioned issues can cloud someone's judgment and reduce the likelihood he or she will be able to rationally understand the implications of being recorded; and

¹ Ariel, B., Sutherland, A., Henstock, D., Young, J., Drover, P., Sykes, J., ... Henderson, R. (2016b). Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment. *European Journal of Criminology*, 13, 744–755.

² Toronto Police Service. (2016). *Body-worn cameras: A report on the findings of the pilot project to test the value and feasibility of body-worn cameras for police officers in Toronto*. Toronto, ON, Canada:

³ Grossmith, L., Owens, C., Finn, W., Mann, D., Davies, T., & Baika, L. (2015). *Police, camera, evidence: London's cluster randomised controlled trial of body worn video*. London: College of Policing Limited and the Mayor's Office for Policing and Crime (MOPAC)

⁴ Hedberg, E. C., Katz, C. M., & Choate, D. E. (2016). Body-worn cameras and citizen interactions with police officers: Estimating plausible effects given varying compliance levels. *Justice Quarterly*, 34, 627–651.

⁵ White, M. D., Todak, N., & Gaub, J. E. (2018). Examining body-worn camera integration and acceptance among police officers, citizens, and external stakeholders. *Criminology & Public Policy*, 17, 649–677.

⁶ Katz, C. M., Choate, D. E., Ready, J. R., & Nuño, L. (2014). *Evaluating the impact of officer body worn cameras in the Phoenix police department*. Phoenix: Center for Violence Prevention and Community Safety, Arizona State University.

⁷ White, M. D., Todak, N., & Gaub, J. E. (2017). Assessing citizen perceptions of body-worn cameras after encounters with police. *Policing: An International Journal of Police Strategies and Management*, 40, 689–703.

⁸ Headley, A. M., Guerette, R. T., & Shariati, A. (2017). A field experiment of the impact of body-worn cameras (BWCs) on police officer behavior and perceptions. *Journal of Criminal Justice*, 53, 102–109.

make the decision to change one’s behavior.” They concluded that, based on a self-report measure, a potential civilizing effect occurred in less than 3% of the encounters in their study.⁹

- **Fewer civilian complaints**

Research generally supports the contention that BWCs will reduce civilian complaints against police by a modest amount (on average, across high quality studies to date, by 16.6%).¹¹ Not all studies have shown this effect, but many have, and a meta-analysis of existed high quality studies showed an overall weakly statistically significant effect ($p=0.042$).¹² What is unclear from the research, however, is *why* BWCs reduce civilian complaints. The research itself notes that it could be because BWCs reduce police misconduct, or it could be that civilians, knowing that the incident is recorded, are dissuaded from filing frivolous complaints, or it could be that police are able to use BWC footage to resolve complaints informally, including via discouraging civilians from filing complaints [see the segment on “Decreased Civilian Complaints” in the “con” section of this report

One example of a potential beneficial effect on complaints came from MPD representative Captain Brian Austin. He noted that residents can have difficulty accurately recalling police encounters and can misremember events. He noted that in his experience there have been cases where video footage from dash cameras has provided residents with an independent record of the interaction, leading them to recognize the event played out differently than they remembered, providing resolution for potential complaints. That this could occur with some frequency with BWC footage is quite plausible. Though it also is worth noting that this description of how these prior cases played out (i.e., that these complaints actually had no merit and were merely a consequence of erroneous memories) is that of an MPD officer, as opposed to a description that the potential complainant might offer.



Goodison and Wilson (2017), in their randomized controlled experiment, found a reduction in complaints with officers wearing BWCs but no significant differences in citizens’ satisfaction with the interaction, perception of police legitimacy, or views of police professionalism.¹³ This combination suggested that BWCs had not changed officer behavior, but reduced complaints via an alternative mechanism. For the decline in complaints observed across multiple studies, Lum et al “hypothesize given the existing survey research on BWCs, this is likely due to a reduction in what officers feel are frivolous complaints and not due to significant changes in officer behaviors or in improvements in police–citizen relations.” They also note “The police might define as “frivolous” some complaints

⁹ White, M. D., Todak, N., & Gaub, J. E. (2017). Assessing citizen perceptions of body-worn cameras after encounters with police. *Policing: An International Journal of Police Strategies and Management*, 40, 689–703.

¹¹ Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. Campbell Systematic Review.

¹² Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. Campbell Systematic Review.

¹³ Goodison, S., & Wilson, T. (2017). Citizen perceptions of body worn cameras: A randomized controlled trial. Washington, DC: Police Executive Research Forum.

that are, in aggregate, meaningful to community members, and the overall process of dealing with such complaints may reflect the strength of an agency's accountability system.”¹⁴

- **Reduced police use of force and deaths at police hands**

Much of the debate about BWCs has focused on the possibility that their use might reduce police uses of force. Advocates tout the potential for cameras to reign in police violence, while critics argue that cameras have shown no such effect, and that therefore BWCs are not worth the expense and other tradeoffs. Frequently, the Committee heard from BWC critics that cameras have not stopped police violence. The social science research is not entirely consistent on the effect on police applications of force, but overall shows no significant reduction in police use of force. Certainly it does not show consistent positive effects on police uses of force. An anticipated reduction in police use of force appears to have been the primary catalyst for rapid implementation of BWCs across many cities, following the release of a study that appeared to show such an effect in 2014.¹⁵ Subsequent research has not upheld that result, as a generalizable finding. However, some proponents of BWCs would argue that the debate may have become overly focused on this question. To expect BWCs to reduce police violence is to expect too much and miss other sources of potential value, or potential down sides, of BWCs.

There is a substantial amount of research on this point, although the results are mixed and in combination suggest little reason to expect BWCs to reduce uses of force, at least on their own. Initial research suggested that BWCs can have a dramatic effect on reducing police uses of force,¹⁶ but recent much more comprehensive research has suggested that BWCs have no discernible, statistically significant effects on use of force.¹⁷

¹⁴ Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. Campbell Systematic Review.

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¹⁶ Anthony A. Braga, William H. Sousa, James R. Colden Jr., & Denise Rodriguez, *The Effects of Body-Worn Cameras on Police Activity and Police-Citizen Encounters: A Randomized Controlled Trial*, 108 J. CRIM. L. & CRIMINOLOGY 511 (2018); Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509, 524–25 (2015); E.C. Hedberg et al., *Body-Worn Cameras and Citizen Interactions with Police Officers: Estimating Plausible Effects Given Varying Compliance Levels*, 34 JUST. Q. 627, 642 (2016); Wesley G. Jennings et al., *Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment*, 43 J. CRIM. JUST. 480, 485 (2015).

¹⁷ LYNNE GROSSMITH ET AL., POLICE, CAMERA, EVIDENCE: LONDON'S CLUSTER RANDOMISED CONTROLLED TRIAL OF BODY WORN VIDEO 15 (2015).

A study released in 2014, based on a randomized controlled trial conducted in Rialto, California, appeared to show that wearing BWCs generated a 50% reduction in use of force reports relative to not wearing cameras during comparison shifts.¹⁸ In Arizona, the Mesa Police Department's quasi-experimental evaluation of BWCs indicated a 75% decline in use of force complaints.¹⁹ In Orlando, Florida, a randomized experiment found that BWC officers had a significantly lower rate of incidents involving electronic control devices, chemical agents, impact weapons, and other non-lethal implements.²⁰



A large randomized-controlled study in Washington, D.C., however, found no statistically significant effect on police use of force, citizen complaints, policing activity, or judicial outcomes (with BWCs, use of force showed an increase of 74 instances per 1,000 officers per year, but the increase was not statistically significant).²² Likewise, a multisite randomized experiment involving 2,122 officers across 10 sites in eight police departments reported no overall reduction in officer use of force, with significant increases in some cities and decreases in others, and an increase in assaults on officers wearing BWCs during treatment shifts relative to officers not wearing BWCs during control shifts.²³ And a recent study by the Urban Institute of the Milwaukee Police Department's BWC program found no reduction in police uses of force.²⁴

Interpreting these results is complicated by the fact that it appears that the Washington, D.C., and the Milwaukee studies employed a methodology that can potentially reduce the magnitude of effects of BWCs. Both studies randomized the deployment of BWCs at the officer level, rather than the shift level, which means that at recordable incidents some officers might show up equipped with BWCs and some officers at the scene might be assigned to the non-BWC group. In such cases, the presence of the BWCs may influence the behaviors of officers

¹⁸ Ariel, pp. 523-24.

¹⁹ MESA POLICE DEP'T, ON-OFFICER BODY CAMERA SYSTEM: PROGRAM EVALUATION AND RECOMMENDATIONS 11 (2013).

²⁰ Jennings et al., p. 485.

²² DAVID YOKUM, ANITA RAVISHANKAR, AND ALEXANDER COPPOCK, EVALUATING THE EFFECTS OF POLICE BODY-WORN CAMERAS: A RANDOMIZED CONTROLLED STUDY 18 (2017).

²³ Ariel et al., p. 750. [note Greg Gelembiuk: Which study is this? I would assume "Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment" Needs full reference somewhere.

²⁴ BRUCE E. PETERSON, LILLY YU, & NANCY LA VIGNE, THE MILWAUKEE POLICE DEPARTMENT'S BODY-WORN CAMERA PROGRAM: EVALUATION FINDINGS AND KEY TAKEAWAYS (May 2018).

not wearing BWCs just as much as the officers wearing BWCs. Any ameliorative effect that BWCs might otherwise have might therefore be minimized.²⁵

However, a lack of a significant reduction in police use of force was also found across studies that randomized by shift. A 2020 meta-analysis of existing BWC trials found no difference in mean percentage change in use of force by unit of randomization (officer, shift, or other). The largest multi-city study to date, involving randomized controlled trials across 10 sites in 8 cities with randomization by shift, for a total of 2.2 million officer hours, found no average change in use of force across the 10 trials. In this study as well in as some others, BWCs actually significantly exacerbated use of force in some cities. The authors note “One direct explanation might be that BWVs escalate an already inflamed police–public encounter, which results in more rather than less force being used. It might be that when BWVs are introduced into some ongoing police–public interactions, the suspect, officer or both become more aggressive.”

While the general trend in the research has been to show no effect on police use of force, the results are not uniform, and so it is possible that BWCs can have more positive or negative effects in some places, under some circumstances, than others. Researchers have noted that some of the variability in research results might be in part a result of variation in agency policies regarding how the devices should be used.²⁶

Nonetheless, from the available research, the Committee concluded that BWCs alone are not likely to have significant positive effects on reductions in police uses of force. It is clear that BWCs are not a quick fix and cannot be expected to significantly change the degree to which police use force, at least not alone. If BWCs are employed in Madison, they must be viewed as only one tool, and they must be adopted in conjunction with a wide range of other reforms aimed at minimizing force incidents and improving police/community relations. Fortunately, as we have noted, Madison is in the midst of enacting a wide range of reforms aimed at addressing these issues, based on the September 2019 Final Report of the Madison Police Department Policy and Procedure Review Ad Hoc Committee (the “Ad Hoc Committee”). The research does not tell us whether BWCs will have a greater positive impact on police and civilian interactions if BWCs are adopted as one part of a multi-faceted reform effort such as the one Madison is embarking upon, but it is at least possible. What is most important is that the City guard against relying too much on BWCs, at the expense of following through with the other 177 recommendations made by the Ad Hoc Committee. If BWCs are employed, it should only be done in conjunction with the other recommended reforms.

Moreover, the research suggests that BWCs can only be expected to potentially have ameliorating effects on police uses of force if police are not given discretion about when to turn on and off the video recording equipment. To be effective, it is essential that recording be automatic and non-discretionary in appropriate situations, to the

²⁵ For a discussion of the confounding effects of camera assignment at the individual, rather than shift, level in the research, see Ariel, Sutherland, & Sherman, *Preventing treatment spillover contamination in criminological field experiments: the case of body-worn police cameras* (2018).

²⁶ Lum, Stoltz, Koper, & Scherer, *Research on body-worn cameras: what we know, what we need to know* (2019)

greatest extent possible, and that officers be permitted to stop recording only under carefully prescribed and monitored circumstances. In a post hoc re-analysis of the multisite randomized experiment data cited above, which showed no reduction in police use of force, Professor Barak Ariel and his colleagues found that use of force by officers decreased by 37% in three sites with high compliance to a BWC policy that required officers to record every interaction with the public and to notify citizens that they were being recorded at the beginning of the encounter.²⁷ Ariel and his colleagues also reported a 71% increase in officer use of force in four sites with low compliance to this BWC policy.²⁸ There are weaknesses in the post hoc analytical approach taken in this study, so the results should not be taken as conclusive, but they are suggestive. Moreover, these results align with the results of a meta-analysis by Lum et al (2020) across 22 trials, regressing the logged relative incident rate ratio for use of force in a treatment versus control group against the level of discretion in departmental BWC policy (high, medium, or low). A significant association was found, suggestive of lower use of force where departmental policies provided less discretion. Though, as Lum et al (2020) notes, given weaknesses in the existed analyses, “Additional studies, however, are needed to establish whether use of force can be reduced when an agency restricts officer discretion in how they use BWCs.”²⁹ Nonetheless, these findings reinforce the Committee’s conclusion that any BWC system the City might adopt must dramatically reduce officer discretion about use of the cameras. Our model policy incorporates these checks on discretion.

- **Quicker case resolution**

BWCs may potentially lead to faster resolution of cases. The Las Vegas Metropolitan Police Department found reduced time to investigate an average misconduct complaint when BWC evidence was present.³¹ A New York Times article has noted, “[P]olice officials from Oakland to Greensboro, N.C., all cited the swift resolution of complaints against officers as one of the primary benefits body cameras had offered.”³² And a study in Phoenix noted that officers self-reported an increase in cases in which potential complainants did not actually pursue complaints because of BWC footage.³³

²⁷ Barak Ariel et al., *Increases in Police Use of Force in the Presence of Body-Worn Cameras are Driven by Officer Discretion: A Protocol-Based Subgroup Analysis of Ten Randomized Experiments*, 12 EUR. J. CRIMINOLOGY 453, 459 (2016).

²⁸ *Id.*

²⁹ Lum, C., Koper, C.S., Wison, D.B., Stoltz, M., Goodier, M., Eggins, E., Higginson, A., & Mazerolle, L. (2020). Body-worn cameras' effects on police officers and citizen behavior: A systematic review. Source. Campbell Systematic Review.

³¹ Braga A, Coldren JR Jr, Sousa W, Rodriguez D, Alper O (2017) The benefits of body-worn cameras: New findings from a randomized controlled trial at the Las Vegas metropolitan police (Cent Naval Analyses, Arlington, VA), Technical Report 251416.

³² Ian Lovett, In California, a Champion for Police Cameras, N.Y. TIMES (Aug. 21, 2013), <https://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html>

³³ Katz, C. M., Choate, D. E., Ready, J. R., & Nuño, L. (2014). Evaluating the impact of officer body worn cameras in the Phoenix police department. Phoenix: Center for Violence Prevention and Community Safety, Arizona State University.

There also may be an impact on processing of criminal charges. A study in Los Angeles found that filing decisions for misdemeanor criminal charges occurred more rapidly for cases in which BWC video was available. Prosecutors there only viewed the BWC footage in a small fraction of cases before they filed charges – it appears that the mere presence of BWC evidence led them to file charges more quickly.³⁴

Three older studies in the U.K. reported an increase in the rate of guilty pleas in cases with BWC footage,³⁵³⁶³⁷ but the number of cases was small and, as Lum et al (2019) note, “Conclusions from these studies should be taken cautiously, however, given the weaknesses in their research designs.”³⁸ A study in Phoenix reported an increase in the number of guilty pleas, but the percentage of cases resolved with pleas was small and no test of statistical significance was done for changes in plea rates.³⁹ The Phoenix study also found that “when we examined the number of days it took to process a case [i.e., to a final disposition], and compared our post-test comparison group to our post-test camera group our findings suggested that body cameras resulted in an increase in the amount of time that it takes to process a case to completion by about 80 percent” (a mean of 44 versus 78 days), but they also noted “While it appears from our analyses that cameras adversely impact case processing time (post-test comparison versus post-test camera differences), the assignment of a court liaison officer may overcome this issue.”⁴⁰ A large randomized controlled trial in Washington, DC found no significant change in the rate of guilty pleas in criminal cases with BWC footage available.⁴¹ A large randomized controlled trial by the Western Australia Police Force also found no change in the rate of guilty pleas when BWC footage was available.⁴²

Mike Gennaco of OIR, who presented to our committee, noted of BWCs, and the time burden they impose on public defenders:

³⁴ Groff, E.R., Ward, J.T., and Wartell, J. (2018). The Role of Body-worn Camera Footage in the Decision to File. Report for the Laura and John Arnold Foundation, p. 35. Philadelphia, PA: Criminal Justice Department, Temple University.

³⁵ Goodall, M. (2007). Guidance for the police use of body-worn video devices: Police and Crime Standards Directorate. London: Home Office

³⁶ Ellis, T., Jenkins, C., & Smith, P. (2015). Evaluation of the introduction of personal issue body worn video cameras (Operation Hyperion) on the Isle of Wight: Final report to Hampshire Constabulary. Portsmouth: Institute of Criminal Justice Studies, University of Portsmouth.

³⁷ ODS Consulting [Andrew Fyfe]. 2011. Body worn video projects in Paisley and Aberdeen, self evaluation.

³⁸ Lum, C., Stoltz, M., Koper, C. S., & Scherer, J. A. (2019). Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*, 18(1), 93–118.

³⁹ Katz, C. M., Choate, D. E., Ready, J. R., & Nuño, L. (2014). Evaluating the impact of officer body worn cameras in the Phoenix police department. Phoenix: Center for Violence Prevention and Community Safety, Arizona State University.

⁴⁰ Id. at p. 38.

⁴¹ Yokum, D., Ravishankar, A., & Coppock, A. (2019). A randomized control trial evaluating the effects of police body-worn cameras. *Proceedings of the National Academy of Sciences of the United States of America*, 116(21), 10329–10332.

⁴² Clare, J., Henstock, D., McComb, C., Newland, R., & Barnes, G.C. (2019). The results of a randomized controlled trial of police body-worn video in Australia. *Journal of Experimental Criminology*. Published online.

This has had a real impact on public defenders who have had to deal with this in so many ways. They just are overwhelmed with this information.... Sifting through all that information is making it very difficult for public defenders. I think an unintended consequence is, as a result of that, we're getting more pleas.

Because the public defenders don't have the resources to go through that body of evidence.

Thus, the effect on the rate of guilty pleas may in part be mediated by other aspects of the local system (e.g., how well resourced a public defender's office is).

BWCs might also affect time to resolution in civil court cases. This could potentially include an increase in the rate of summary judgements⁴³ (see, also, "Potential decreased access to jury trial and an increase in inappropriate summary judgements in civil cases" in the "cons" section of this report).

- **Training opportunities**

Video footage provides an opportunity for training—both in one-on-one review of incidents with involved officers, and in academy or other classroom settings for groups of officers. With such footage, other officers may be able to learn from officer experiences and refine their techniques and responses to volatile situations. In their report on the Milwaukee experience with BWCs, representatives of the Milwaukee Police Department told the Committee that they are able to use bad examples from BWC footage to show officers what is unacceptable, and they routinely hear from officers that they watched their camera footage, and they were glad they had it because they knew they had to behave in a way that was like being on TV. They said that in Milwaukee the Department stresses the need to use BWC footage for training and learning. Similarly, representatives of the Fitchburg Police Department told the Committee that BWC footage provides a valuable training opportunity.

- **More evidence for resolving complaints and charges**

Without a doubt, BWCs add to the quantity and, in some ways the quality, of evidence available to fact-finders. Whether that is a net positive or negative depends on how the evidence is collected, interpreted, and used, but the addition of BWC footage does indeed provide more evidence to potentially help fact-finders determine what happened.

In discussions about BWCs, additions to the evidentiary picture are typically considered in the context of sorting out what happened in a discrete police/civilian encounter. But BWCs can also add to the collection of evidence, and hence to the system's ability to find the facts accurately, on a wide range of incidents beyond the discrete officer/civilian encounter captured in the video. One effect of BWCs, which is often overlooked in the debates about BWCs, is the value they can offer in providing improved evidence for truth-finding in criminal cases, evidence that can benefit either the prosecution or the defense. BWCs can provide recordings not only of police confrontations with suspects in the field, but also with *all witnesses* whom they interview.

⁴³ Wasserman, H.M. (2015). Moral Panic and Body Cameras, 92 Wash. U. L. Rev. 831, 844.

One of the most significant reforms to emerge from the innocence movement (the reform movement based on the recognition of the pervasive nature of wrongful conviction of the innocent in our system) has been the widespread requirement for electronic recording of custodial interrogations of suspects. To almost everyone's surprise, the study of wrongful convictions in the last 30 years has revealed that a leading contributor to conviction of the innocent, present in nearly 25% of the DNA exoneration cases, is false confessions—that is, confessions, often to very serious crimes such as rapes or murders, that the suspect actually did not commit. And one of the reasons that false confessions have been so alarmingly prevalent in even very serious cases is that police were able to employ coercive and suggestive interrogation techniques in the secrecy of the stationhouse interrogation room. Electronic recording of custodial interrogations—which became a requirement under Wisconsin law in 2005—changed that. While false confessions still occur, electronic recording of interrogations has been universally heralded as a deterrent to misconduct in the interrogation room, and as a truth-revealing process that exposes both the tactics employed by police and the full truth about what suspects said—which sometimes benefits the police and prosecution, and sometimes benefits the suspect, depending on what actually occurred in the interrogation, as revealed by the recordings.

Statements from third-party witnesses are even more prevalent in criminal cases, but currently nothing compels (or would even make it practical) to electronically record witness interviews, or even suspect interviews outside the custodial setting. Yet disputes arise routinely in criminal cases about what police told the witnesses, and what the suspects said. Without recordings, all that is available for fact-finders is a swearing contest between the police officer and the witness (often people of color or other marginalizing background). In such cases, as Judge Everett told the Committee, the police win those swearing contests almost every time—even if they are, unbeknownst to the factfinder, not telling the truth.

BWCs can remedy that imbalance by providing a verbatim electronic recording of all of those investigative encounters. One thing we heard from the Fitchburg police was that, even in instances where the video portion of their BWC footage is blurred, misdirected, or grainy, the audio portion of the recordings is almost always crystal clear. No doubt that will often produce evidence favorable to the prosecution, when witnesses provide incriminating evidence to police in a timely and uncoerced or unprompted way. But that is at it should be, as that facilitates truth-seeking. In some cases, however—no doubt a smaller percentage of cases, but a very important percentage indeed—those recordings will reveal what the police officer's retelling of the interview alone often will not—that the witness was pushed to make an incriminating statement, or in fact said something entirely different in substance or emphasis than the officer thought she heard or that she reported.

Legal analysts routinely report that the existence of BWC footage reduces fact-finding burdens on courts because it provides a more reliable, and verifiable account of the facts rather than depending simply on competing narratives of officers and subjects. That was the message the Committee heard from a variety of legal experts, including Judge Everett Mitchell, Mike Gennaco, representatives of the State Public Defender's Office, and District Attorney Ismael Ozanne.

Additional anecdotal evidence also supports this potential benefit of BWCs. In 2013, Judge Shira A. Scheindlin of the federal district court in New York City issued a ruling finding police stop and frisk practices to be unconstitutional because police were targeting people for stops based on their race.⁴⁷ Judge Scheindlin noted that her decision in the case was handicapped by the reality that she was “relegated to finding facts based on the often conflicting testimony of eyewitnesses” since there was “no contemporaneous recording of the stop (such as could be achieved through the use of a body-worn camera) . . .”⁴⁸ To remedy the constitutional violation and address this problem, Judge Scheindlin ordered, among other things, “a trial program requiring the use of body-worn cameras in one precinct per borough . . .”⁴⁹ However, it is also worth noting that while NYPD has readily provided access to the resulting BWC footage for prosecution of civilians defendants, it has obstructed access by police abuse investigators, prompting Judge Scheindlin (now retired) to note, “This just seems like contempt. I understand privacy concerns. But they’re refusing to meet their obligations.”



BWCs can also bring evidentiary value in helping to protect police officers from false allegations of misconduct or abuse, and can thereby increase accountability for civilians as well as for police. With a video record, it will be inherently more difficult for civilians to make false or misleading claims of police misconduct. Though in this regard, in some circumstances, BWCs may also bring legitimate concerns about perceptual bias, leading to misjudgment about the veracity of a complainant.

However, in considering all the above, it is very important to note that MPD officers all already wear microphones, and are required to audio record the incidents in which they’re involved. Many of the aforementioned argued benefits of BWCs concern verbal interactions (e.g., police interrogations) and other auditory evidence. Insofar as the evidence that matters is auditory (e.g., what police said, what suspects said, what witnesses said, someone’s yell, etc.), it can be captured perfectly well by microphones, without introducing the degree of privacy infringement, perceptual bias, and cost that accompanies BWC recording.

In thinking about the potential value of BWCs in truth-seeking by a finder of fact, it is also important to recall their limitations. Many people, including judicial fact-finders, subscribe to a naïve realism with respect to video footage.⁵⁰ These issues, with respect to BWC evidence, are highlighted in an article discussing the work of BWC expert Seth Stoughton, who was also a consultant for the Madison OIR report:

The law professor had one main message for prosecutors when he came to town: You shouldn’t always believe your eyes.... [P]rosecutors took an afternoon last week to learn how to use that evidence in court. “As a prosecutor, any time we can have video footage of significant events in a criminal action it’s essential for us,” Chief Assistant State Attorney Mac Heavener said before the training. “The jury essentially becomes a witness to the things

⁴⁷ *Floyd v. City of New York*, 959 F.Supp.2d 540 (S.D.N.Y. 2013).

⁴⁸ *Id.* at 562.

⁴⁹ *Id.*

⁵⁰ Kahan, Dan M., David A. Hoffman, and Donald Braman (2009). “Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism. 122 Harv. L. Rev. 837.

that happened.” But then Seth Stoughton, a University of South Carolina law professor and one of the foremost body camera experts, raised his hand to interject. “Actually, I’m going to spend time this afternoon about why that’s not true.”... “When we’re talking about body-worn cameras as evidence, there are cases where it will help, cases it obviously won’t help, then cases where it looks like it will help but it actually hinders or harms.” He said the cameras could even potentially result in wrongful convictions or acquittals.”⁵¹ Dane County DA District Attorney Ismael Ozanne and State Public Defender Kelli Thompson both told the Committee that video footage has been used both to help solidify charges against suspects. and to vindicate criminal defenses and civilian complaints against police, in ways that would not have been possible without the footage. Survey data from McCluskey et al (2019) shows that both prosecutors and defense attorneys support the implementation of BWCs as an evidence-collection tool.⁵² “[A] statistically reliable contrast between the groups of respondents[—prosecutors (ADAs) and public defenders (PDs)—]involved the statement, ‘Attorneys in your office support the use of BWCs by law enforcement.’ Surprisingly, 81 percent of the PDs strongly agreed with this statement whereas 56 percent of the ADAs strongly agreed.”⁵³ “86 percent of PDs agreed or strongly agreed that BWCs could produce major differences with testimony, but only 18 percent of ADAs agreed or strongly agreed. General agreement between ADAs and PDs were found in that both groups believe that BWCs improved their respective abilities to defend or prosecute cases.”⁵⁴ Both prosecutors and public defenders agree that BWCs increase pleas.⁵⁵ “Slightly more than two-thirds of PDs (67.5 percent) agreed or strongly agreed that BWCs would increase the likelihood of dismissal, compared to 30 percent of ADAs.”⁵⁶ “Sixty-six percent of PDs agreed/strongly agreed that BWCs increased the likelihood of acquittals, whereas 61 percent of ADAs agreed/strongly agreed that they increased the likelihood of convictions.”⁵⁷ Meanwhile, in a separate national survey of state prosecutor’s offices (i.e., surveying 321 lead prosecutors), 79.5% indicated that prosecutors in their offices support BWC use, and large majorities believed that BWC evidence will help the prosecution more than it will assist the defense (62.7%), producing increases in convictions.⁵⁸

⁵¹ Andrew Pantazi. Body cameras tell truth, right? Not so fast, professor warns. The Florida Times-Union. March 23, 2018.

⁵² John McCluskey et al., *The Evidentiary Value of Body-Worn Camera Footage: A survey of Prosecutors and Public Defenders* (Jan. 2019), available at https://urldefense.proofpoint.com/v2/url?u=https-3A_www.bwctta.com_sites_default_files_Files_Resources_Evidentiary-2520Value-2520of-2520BWC-2520Footage-5FFINAL-5F0.pdf&d=DwMF-g&c=byefhD2ZumMFFQYPZBagUCDuBiM9Q9twmxaBM0hCgII&r=GX4Y7xW57tUvnbPi_LoBPVDIRG5jZglbjCaSa0DMvBcmqT7Db0NcUOrfIojqq1&m=n55iYj-0I0cIWFLWazU8jZAMRQPo-rlaxfhvLPcTrKI&s=3IsY3J8AN5y6wH_i-DG_btN3tzkRvGRUrVkneB2YNgg&e=.

⁵³ *Id.* at 7.

⁵⁴ *Id.* , p. 11.

⁵⁵ *Id.*, p. 12.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Merola, L.M., Lum, C., Koper, C.S., and Scherer, A.(2016). Body Worn Cameras and the Courts: A National Survey of State Prosecutors. Report for the Laura and JohnArnold Foundation. Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University.

It is noteworthy that the majority of PDs and the majority of ADAs have apparent contradictory beliefs about the effects that BWCs have on the likelihood of dismissal/acquittal/conviction. BWCs are a new technology. The three locations surveyed by McCluskey et al. (2019) had implemented BWCs only one, two, or four years prior to their survey (with the large majority of those surveyed working in counties where BWCs had been implemented only 1-2 years prior).⁵⁹ There have been high expectations for BWCs. For example, BWC expert Seth Stoughton has noted “I started paying attention to the calls for body cameras, and it seemed to me that almost everyone on every side who was calling for body cameras was doing so with more enthusiasms than perhaps was warranted.”⁶⁰ It may take considerable time before PDs and ADAs gain sufficient experience with the consequences of BWC evidence for their expectations to converge to reflect the true consequences. One phenomenon that may very plausibly be contributing to the apparent divergence in perception of PDs and ADAs is that research has shown that when viewing video, the facts that people see are shaped by their institutional and cultural loyalties – such that people on opposing “teams” tend to each perceive video of contested events as providing evidence predominantly favorable to their side.⁶¹

Effect on liability

Some have speculated that BWC implementation might beneficially impact misconduct lawsuits and settlements. However, data to this point in cities where this has been tracked does not appear to bear that out, or show any clear, consistent pattern. Given that randomized controlled trials of BWCs have not, on average, shown a reduction in use of force, this may not be surprising. In addition, Bill H. Nesbitt, CPP, president of Security Management Services International, Inc. notes that body cameras may create additional liability if an officer fails to adhere to the proper protocols.

The Police Executive Research Forum analyzed the impact on lawsuits and settlements in three cities that have implemented BWCs on large scale.⁶² Dallas data only included suits with payouts. After BWC implementation, number of such suits per year decreased slightly (-12%) and the average and median payouts increased (+287% and +262%). Data from Mesa and Phoenix included all suits, whether or not there was a payout. In Mesa, after BWC implementation, the number of suits per year increased (+71%) and the average number per year that resulted in

⁵⁹ John McCluskey et al., *The Evidentiary Value of Body-Worn Camera Footage: A survey of Prosecutors and Public Defenders* (Jan. 2019).

⁶⁰ Aaron Sankin. *How police body cameras change our perception of right and wrong*. Daily Dot. Feb 29, 2020.

⁶¹ Albert H. Hastorf & Hadley Cantril, (1954). *They Saw a Game: A Case Study*, 49 *J. Abnormal & Soc Psychol.* 129; Emily Balcetis & David Dunning. (2006). *See What You Want to See: Motivational Influences on Visual Perception*, 91 *J. Personality & Soc. Psychol.* 612; Dan Kahane, David A Hoffman, Donald Braman, & Danieli Evans (2011). ‘They Saw a Protest’: Cognitive Illiberalism and the Speech-Conduct Distinction. [Stanford Law Review](#) 64(4).

⁶² Police Executive Research Forum. (2018). *Costs and Benefits of Body-Worn Camera Deployments: Final Report*.

payouts remained largely unchanged (-4.5%), while the average and median payouts of suits with payouts decreased (-97% and -90%). In Phoenix, the average number of suits per year and number of suits per year with payouts decreased (-37% and -58%), and the average payout in suits with payouts decreased (-52%) while the median payout in suits with payouts increased (+67%). A separate study of Oakland found that, after BWC implementation, the number of suits decreased (-43%) and the average payout increased (+23%).⁶³ Though it is important to note that Oakland was under a strict consent decree, implementing many other reforms, so it is not really possible to isolate the effect of BWCs. Overall, there is no consistent pattern apparent. If BWCs do impact liability, the effects may be negative or positive.

ANALYZING THE “CONS”: THE POTENTIAL DOWNSIDES OF BWCs

- **Increased criminalization, particularly affecting minorities**

One of the most challenging problems the research identifies with BWCs is the potential they have to increase criminalization—that is, the potential to increase rates at which especially low-level crimes are pursued through arrest, detention, and ultimately prosecution.

While a full and accurate understanding of the facts of an incident appears on its face to be desirable, body cam footage, which might facilitate such fuller understanding, remains just a tool. Whether that tool and the increased evidence it produces is a net social good or social cost depends again on how that tool is used. Over-criminalization based on that enhanced access to camera footage might in fact be a net harm, rather than a benefit.

The reality is that not all crime, and especially not all low-level crime, is observed, reported, investigated, or prosecuted. Nor could we prosecute all such crime, as our institutional capacity for processing all the cases and sanctioning all the wrongdoing is nowhere close to what we would need to do that. Nor would we really want full enforcement of the laws, as such full enforcement would produce massive injustices and unintended consequences. As a society, we neither want nor could we afford full enforcement of all minor traffic, drug, or morality laws (e.g., adultery), for example. Few among us would want to see prosecuted the woman who provides her prescription anti-nausea medications to her horribly nauseated pregnant sister after her sister failed to refill her own prescription on time, although the act would constitute an illegal drug distribution. Few among us would want us all stopped and ticketed every time we fail to engage our turn indicators at precisely the right time, or every time we turn into the wide lane of traffic rather than the near one, or cruise in an otherwise safe manner five miles per hour above the speed limit. The same sense of justice should make us unwilling to pursue every, or an increased number of, low-level street incidents or victimless crimes, like sharing a marijuana cigarette on a street corner, or driving to work without incident in a car with lapsed license plates because of an inability to pay the registration renewal fee, or hanging out longer than a police officer deems appropriate in a public place (loitering).

⁶³ Nicolas Berdjis. (2016). A Descriptive Study on Police Body Cameras and Civil Liability Cases. Master's Thesis, University of Colorado.

While prosecution of some low-level offenses is no doubt unavoidable and can in the right circumstances serve legitimate purposes, an increase in arrests, detention, and prosecution for such offenses simply because of the happenstance of having bodycam footage runs the risk of increasing patterns of injustice and heightening community/police distrust. Moreover, social science research reveals that prosecuting some crimes can have a net negative impact on community stability and safety, by removing breadwinners, interrupting natural social structures, and making it in the end more difficult for prosecuted individuals to find work and housing and to become contributing members of their communities. A recent study, for example, found that adolescent boys (primarily Black and Latino) who are stopped by police “report more frequent engagement in delinquent behavior 6, 12, and 18 months later, independent of prior delinquency, a finding that is consistent with labeling and life course theories.”⁶⁴ The study concludes: “Police stops predict decrements in adolescents’ psychological well-being and may unintentionally increase their engagement in criminal behavior.”⁶⁵

There is evidence in the research that supports the concern that BWC implementation might increase the filing of charges by prosecutors, especially for lower-level crimes or misdemeanors. The increase in charging rates can be large and most people charged plead out. Misdemeanors account for about 80% of all arrests and 80% of state criminal dockets. BWCs thus have the potential to exacerbate the problem of overcriminalization, with the effect falling most heavily on the most highly policed communities (Black and Brown residents). In Madison, the proportion of arrests and charges that are against Black residents has continued to grow dramatically over the last two decades. One of the primary demands of Black Lives Matter protesters has been an end to overcriminalization of Black residents. This research suggests that BWCs could make this problem worse.

Several studies suggest that BWC officers make more arrests and citations relative to their non-BWC counterparts.⁶⁶ A Phoenix, Arizona quasi-experimental evaluation concluded that BWCs increased officer productivity when measured by the number of arrests.⁶⁷ The evaluators reported that the number of arrests increased by about 17% among officers in the BWC treatment group compared to 9% among officers in the comparison group.⁶⁸ In Essex in the United Kingdom, a randomized controlled trial found that incidents attended

⁶⁴ Juan del Toro et al. (2019). *The criminogenic and psychological effects of police stops on adolescent black and Latino boys*, PNAS, 116:8261-8268. <https://upenn.app.box.com/s/8qhyqawosea3l9oadpeb16f09h7q6aq3/file/737124787611>

⁶⁵ *Id.*

⁶⁶ Braga et al., p. 514-15; CHARLES KATZ ET AL., EVALUATING THE IMPACT OF OFFICER WORN BODY CAMERAS IN THE PHOENIX POLICE DEPARTMENT 31 (2014); CATHERIN OWENS ET AL., THE ESSEX BWV TRIAL: THE IMPACT OF BWV ON CRIMINAL JUSTICE OUTCOMES OF DOMESTIC ABUSE INCIDENTS 14–15 (2014); Justin Ready & Jacob Young, *The Impact of On-Officer Video Cameras on Police-Citizen Contacts: Findings from a Controlled Experiment in Mesa, AZ*, 11 J. EXPERIMENTAL CRIMINOLOGY 445, 452 (2015).

⁶⁷ Katz et al., p. 31.

⁶⁸ *Id.*

by BWC officers were more likely to result in criminal charges as compared to incidents attended by control officers.⁶⁹ Researchers Ready and Young used a quasi-experimental analysis of field contact reports to examine whether BWCs influenced Mesa, Arizona, Police Department officer behavior during police-citizen encounters over a ten-month period.⁷⁰ The analysis suggested that BWC officers were less likely to perform stop-and-frisks and make arrests, but were more likely to give citations and initiate encounters.⁷¹

This appears to be a consistent pattern across multiple studies that have examined the question. Prosecutors file more charges because they believe that, with bodycam video available, they have more evidence to sustain convictions. Many of the additional residents charged will actually be guilty of the crimes charged, but the overall impact on communities likely will be negative and increase racial disparities.

One of the most significant studies leading to this conclusion was conducted in 2018 for the Laura and John Arnold Foundation by Dr. Elizabeth Groff and her colleagues. In that study, which examined the effects of BWCs in Los Angeles County, Groff et al. noted at the outset that “little research exists on changes to charging patterns when BWC evidence is available.”⁷² To address that gap, they sought to compare charging outcomes in misdemeanor cases in Los Angeles in cases with BWC footage with those in misdemeanor cases without BWC footage. Their conclusion was that, when BWC evidence is associated with a case, the likelihood that the case is filed increases. The increase in probability of charging in cases with BWC footage was quite large (~2.4 fold) and highly statistically significant. Interestingly, the researchers also found that, while prosecution rates went up when BWC footage existed, that BWC footage had that effect only when prosecutors failed to review the footage prior to charging; when the prosecutors actually viewed the footage prior to charging, the rate of charging was lower than if video was not viewed.⁴⁷ This might be because prosecutors were more likely to view video to make a decision in cases in which they were uncertain whether a charge was supportable (weaker cases that were less likely to be charged in the first place) or because watching the video reduced the likelihood of charging.⁷³

It is not entirely clear whether the research that has shown charging increases across all jurisdictions examined to date means that similar charging increases are inevitable if BWCs were implemented in Madison, especially if Madison were to implement any BWC program in ways intentionally designed to prevent this effect. . Unique features of the research and differences between contexts and policies could affect the impact on charging decisions.

⁶⁹ Owens et al., p. 14-15.

⁷⁰ Ready & Young, pp. 448–49.

⁷¹ *Id.*, p. 454.

⁷² *Id.*, p. 5.

⁷³ Groff, E.R., Ward, J.T., and Wartell, J. (2018). *The Role of Body-worn Camera Footage in the Decision to File. Report for the Laura and John Arnold Foundation*, p. 35. Philadelphia, PA: Criminal Justice Department, Temple University.

Several factors caution against assuming that the research means charging rates will necessarily rise if Madison implements BWCs. First, while the data clearly show that cases with BWC footage are charged at a higher rate than cases without BWC footage, that does not necessarily mean that BWC led to an *increase* in charging or criminalization. What it shows rather is that, in the same time period, BWC-footage cases are charged more frequently than non-BWC-footage cases. Theoretically, it could be that BWCs have actually led to a decrease in charging in cases that lack video footage, rather than any increase in charging or criminalization overall. However, this would be extremely implausible. For example, in Los Angeles (the site analyzed by Groff et al), across the entire study period, cases where BWC evidence was available represented a very small fraction of all cases. Having BWC footage available in only a small fraction of cases would not cause a large reduction in charging rates in all the cases that lack BWC footage. In addition, the availability of BWC footage appears to result in faster case resolution, with defendants pleading out. This would reduce time constraints on prosecutors and allow for more prosecutions.

[note]

The Groff finding that charging rates *declined* when prosecutors actually viewed the footage,, along with an on-the-ground explanation of practices in Los Angeles by Mike Gennaco, supports the possibility that BWCs might reduce charging in some cases. In the research, charging in cases that had BWC footage was in the aggregate higher than in cases where there was no BWC footage, despite the fact that prosecutors had a lower charging rate when they viewed BWC footage, because prosecutors rarely viewed the footage prior to charging. Groff explained that, in Los Angeles, “the fundamental issue is that staffing levels [in the prosecutor’s office] are too low to keep up with the current number of cases that need to be evaluated for filing. As one attorney remarked ‘each day is triage’ ...”⁷⁴ Moreover, under the system employed in Los Angeles, prosecutors did not have automatic access to BWC footage, but instead had to request access. As Gross concluded, “This decreases the likelihood a DCA [prosecutor] will take the time to consider video evidence.”⁷⁵ The result was that in the vast majority of cases, prosecutors made charging decisions without ever viewing the BWC footage—BWC video was viewed by the filing attorney 1.6% of the time and not viewed in 98.4% of the cases that had BWC footage.

Mike Gennaco of the OIR Group, who resides and works in Los Angeles, provided a first-hand explanation of what was happening in Los Angeles. He said that the District Attorney in Los Angeles County has declared that if there is no body camera footage, the DAs will not file (again, supporting the possibility that the existence of BWC footage in some cases might lead to a reduction of charging in others). Gennaco also said that the anecdotal information available in Los Angeles suggests, by contrast, that if there is BWC footage to support the arrest, the DA’s office has an inclination to file the charges, even without viewing the footage first (supporting the finding that BWCs produce a higher charging rate). Indeed, consistent with Groff’s findings, Gennaco told the Committee that, because of a lack of resources, charging decisions are almost always made without viewing the BWC footage first. If the footage is eventually viewed, and it doesn’t match up with the police report in the case, the case will then be dismissed. But in the meantime, negative consequences from the initial charging decision accrue—the defendant

⁷⁴ *Id.*, p. 19.

⁷⁵ *Id.*, p. 19.

will have been arrested, will typically remain in jail unable to make bail, will lose work, and will face pressures to plead out to the case just to get out of jail.

All of this suggests that an essential component of a BWC system is that all measures reasonably possible must be taken to ensure that prosecutors have and review BWC footage prior to making charging decisions. One way to do that is to get a commitment from the Dane County District Attorney's Office, prior to adopting a BWC program, that the DA's Office will review BWC footage prior to charging in every case, absent unavoidable complications that make it impossible or impractical in a given case. When Dane County District Attorney Ismael Ozanne presented to our Committee, a Committee member asked him if the DA's Office would commit to adopting a formal policy requiring the prosecuting attorney to view BWC footage prior to charging. Mr. Ozanne responded, "We'd love to have bodycam footage so we can review it at charging,." He said that his office has been in discussions with law enforcement already about facilitating the transfer of video footage to his office promptly. He added, "I think it is very important for us to view the best evidence we have while we're going to make a charging decision." When asked if he would commit to a process in which BWC footage is obtained and reviewed promptly prior to charging, Mr. Ozanne said, "We are trying to actually get to that point." But he said he cannot control law enforcement, and therefore he needs to work with them to set up an electronic transfer system to ensure prompt access to the footage. Mr. Ozanne concluded, "Hopefully we will be at that level soon where we will have the video as soon as possible and be able to view it at charging, in all cases. ... And, yeah, I would like that to be where we are. That would be, I guess, best practice." When asked if he would adopt a policy that, when police are able to get his prosecutors the footage promptly, his attorneys would be required to view the footage prior to charging, he answered, "Yeah, I believe if we had the video we would view it, yes." He added: "If we have the video we will be looking at the video to make charging decisions, yes."

The Committee is encouraged by the DA's receptiveness to viewing video footage prior to charging. Because it appears that viewing footage prior to charging is so important to a successful BWC program, the Committee urges the City to pursue a more formalized agreement with the District Attorney's Office to ensure that footage is viewed whenever available prior to charging, and to make adoption of a BWC program contingent upon such formal agreement. Moreover, to make prompt viewing possible, the Committee recommends that the City, through the Madison Police Department, work with the Dane County District Attorney's Office and the State Public Defender's Office to create a technology system that permits prompt or immediate electronic transfer of BWC footage to those offices. Without such measures, BWCs run a significant risk of exacerbating racial disparities and racial tensions in Madison.

Dr. Groff's research suggests another important measure to facilitate pre-charging review of footage as well. One of the significant problems confronting prosecutors and defense attorneys is that BWC footage can often be voluminous. An incident may run many hours in length, and it may be captured by multiple officers on different cameras. The volume of footage can therefore make prompt review infeasible. To facilitate that reviewing process, Dr. Groff found that it was critical that police officers note in writing the points in the video that depict the significant events at issue (since the officers, having experienced the incident first-hand, will know where to direct

the lawyers without searching through hours of footage).⁷⁶ The Committee therefore recommends that officers be required to annotate any footage sent to prosecutors and defense attorneys to direct them to the relevant portions of the footage to aid in their review.

Finally, to ensure that BWCs are not creating unintended consequences in terms of increased criminalization of primarily Black and marginalized community members, the Committee recommends that deliberate steps be taken to create a culture that guards against such an effect. This might be accomplished in part through training on the need to avoid increased criminalization, and through appropriate record-keeping. It is for this reason that the Committee recommends that any policy require police to make initial charging recommendations prior to viewing BWC footage, and to write a separate report noting any changes to that initial charging recommendation that might be made after the officers review BWC footage, along with a written explanation for such changes. These measures might reinforce the seriousness of changing the charging recommendations after viewing footage, and create a record of any patterns. It is also for this reason that the Committee recommends that the Department widely and regularly publicize to its officers, through training and other communications, that no officer will be disciplined in any way for failing to recommend charges that subsequent video review suggests were appropriate. The MPD should then maintain records of all arrest and charging patterns among BWC-equipped officers to discern whether BWCs are having the unintended consequence of increasing charging for low-level offenses. If so, and particularly if this is exacerbating racial disparities, the City should be prepared to reconsider its use of BWCs. And officers should be trained to be aware that such increases in charging recommendations could imperil the continued use of BWCs.

- **Perceptual biases**

Ample research establishes that BWC footage can present a biased perspective of incidents that can enhance the appearance of chaos, danger, and threat posed by a civilian and reduce perceived intent and potential culpability of an officer. This occurs for a number of reasons. First, BWCs only show the perspective of the police officers wearing them, and may fail to capture critical context. Research shows that by focusing only on what the officer sees—and that means especially by focusing on the civilian subject—the cameras produce an effect that biases the viewer in favor of the officer and against the subject. One study found, for example, that viewer perspective—whether the viewer focused on the civilian or the officer—influenced interpretations of the video. Study participants who reported focusing on the civilian more than the officer or both reported more negative views of the civilian’s actions, but no difference in their assessments of the civilian’s character compared to those who reported focusing on the officer or both.⁵¹ Participants who reported focusing on the civilian conversely rated the police officer more positively in their subjective judgments of the officer, the officer’s character, and the officer’s guilt than those who reported focusing on the police officer or both individuals.⁵² However, viewer perspective did not affect how viewers reported the facts of the incident. The study concluded, “These findings taken together suggest that individuals make similar basic judgments when little interpretation about the police

⁷⁶ Groff et al., p. 20.

officer's actions is needed, regardless of their focus during the encounter. When subjective judgments are



⁵¹ Kalle & Hammock, *Bias in Video Evidence: Implications for Police Body Cameras* (2019):

⁵² *Id.*



made, focus away from the officer or focusing on the entire encounter results in more positive views of the officer.”⁵³

Another important perceptual distortion unique to BWCs is termed “deceptive intensity” – an interaction in BWC video can appear more intense than it actually was. As one study notes:

The attachment of the body cam to the uniform of the officer leads to an imbalanced representation of perspectives. The police perspective is emphasized by the footage that is literally taken from their perspective, in which others are filmed slightly from below, making them look bigger and more overwhelming. Also, the police officers’ movements create shaky footage with deceptive intensity that invokes the image of a hectic situation that calls for police action. Secondly, it is the officer who decides when to wear a camera and when to start and stop recording. This leaves the potential to not record any misconduct. Thirdly, access to the recorded images, whilst in theory open to police and citizens alike, is in practice exclusively for the police. Within the current regulatory framework, body cams are thus not neutral reporters of interactions between civilians and the police.... This imbalance was clearly visible in the imagery produced with the bodycams of the police officers that shot Arlon Sterling in the US in 2016. This imagery gives a hectic physical impression, sometimes called “deceptive intensity,” because of the jerkily moving images, the police screaming “Don’t fucking move!” and “Get on the ground!,” and the heavy breathing of the police officers. However, the same incident was filmed by a wall-mounted security camera. From this video it became clear that Sterling was not aggressive at all and that the shaky images were created because the police attacked him.⁷⁷

Perhaps the most important perceptual distortion is one in which BWC video of an incident results in lower observer judgments of the intentionality of police behavior (a measure of culpability) than dash cam video of the same incident.⁵⁷ This is closely connected to the concept of illusory causation - when the camera is focused on something, you assume they are the cause of what you are watching. As a study explains: “In general, attention is naturally drawn to the human form. Observers tend to attribute intentionality as a function of the visual salience of, and hence attention to, the focal actor. When an actor is visually deemphasized, judgments of the intentionality of that actor are reduced. The body cam wearer is typically less visually salient when depicted in body versus dashcam video, which corresponds with lower observer intentionality judgments.”⁵⁸ This is distinct from the effect of taking the wearer’s perspective. When the researchers asked some participants to “take the perspective of the police officer” it didn’t make much of a difference, suggesting that perspective-taking wasn’t the key factor driving people’s tendency to not blame the officer. Interestingly, however, this study also found that body cameras that captured even parts of the officer—arms and legs—eliminated the difference in intentionality assessments between viewers of footage from bodycams and dashcams.⁵⁹

Moreover, as an article about this study notes, the effect of the BWC video dominated other forms of evidence:

They found that people who watched a body cam version of an interaction—anything from the wearer bumping into someone to a police shooting—were less likely to believe that the person instigating that action did it on purpose, as compared to people who saw the same interaction filmed by a dash cam. There was a “diminished sense of blame or responsibility for the person who’s wearing the body cam,” Roesse says.....

⁷⁷ Houwing, Lotte, and Gerard Ritsema van Eck. (2020). Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands. *Surveillance & Society* 18(2):284-287.

In a lab experiment, the researchers asked 203 people to read the report. Some participants also viewed body cam or dash cam footage of the incident. Then they had to decide whether the officer should be indicted on several different charges. Seventy-one percent of dash cam viewers recommended indicting for assault, 69 percent for battery, and 60 percent for aggravated battery. But among body cam viewers, those figures were only 49 percent, 53 percent, and 49 percent, respectively.

Surprisingly, people who read the report without watching any videos were about as likely to indict as the dash cam group. The researchers don't know why, but they speculate that when people do watch a video, they tend to focus on that and pay less attention to the report. "Video dominates written words," Turner says. "It's almost like the report exists less when there's a body cam."

Another study similarly found that participants who watched body-camera footage, compared with people who watched surveillance footage of the same encounter, perceived the officer's behavior as being more justified and made more lenient punishment decisions.⁵⁴ The researchers concluded: "Our results demonstrate that some body-camera footage—specifically videos that capture an officer using his or her body to apprehend a civilian—can lead to biased perceptions of police encounters that benefit the officer. Our findings suggest that this occurs because: (i) in body-camera footage, the civilian is the more easily visible figure, thus making less salient the officer's role in the encounter; and (ii) the body camera—attached to an officer's uniform—is unable to adequately capture certain use of force movements that are important in determining an officer's intent."⁵⁵ This perceptual distortion may insulate officers from accountability when video from their own BWC is available, especially when they were the only officer present, exacerbating the sense of a lack of accountability of police officers.

⁵³ *Id.*, p. XX.

⁵⁴ Jones, Crozier, & Strange, *Look there! The effect of perspective, attention, and instructions on how people understand recorded police encounters* (2019)

⁵⁵ *Id.*, p. XXXX.

⁵⁶ Houwing & van Eck, *Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands* (2020).

⁵⁷ Turner et al., *Body camera footage leads to lower judgments of intent than dash camera footage* (2019). PNAS.

A related problem noted in one paper is that, over time, officers will learn how to manipulate the impression generated by recordings. For example, in one case involving BWC recordings, the officer kept yelling “stop resisting” as the officers beat an individual, Derrick Price, lying passively on the ground. The BWC recordings, with the “stop resisting” verbalizations and hectic jostling of the cameras, conveyed strong apparent evidence of resistance. But this impression was entirely erroneous—a CCTV camera also captured the incident, and showed that the individual was not resisting at all.⁷⁸ A jury would have been far more misled by the conjunction of the BWC video and officer reports, compared to officer reports alone (i.e., might have questioned the officer reports, but not when buttressed by the convincing BWC video). BWCs turn police officers into cinematographers, and it is possible for officers to learn to generate misleading verbal narratives during BWC recordings, to capture planted evidence on camera, etc.—and the impact of such misleading video (which appears to directly provide a viewer with the ground truth of what occurred at the scene) is powerful.

These studies and concerns make a powerful argument against BWCs. But the argument is not conclusive in itself. It is important to remember that *all* evidence is biased to one degree or another. Witness reports always reflect the perspectives and biases of the witness. Bystander video reflects other biases of perspective. Officers bent on framing a civilian can do so effectively without BWCs. While it is important to recognize the biases inherent in BWC footage, that does not necessarily mean that BWCs on balance obscure the “truth” more than they illuminate it. The question remains—despite its inherent limitations and biasing potential, does BWC footage on balance enhance a fact-finder’s access to the truth about an incident when compared to reviewing the incident without such footage, forcing the fact-finder to rely instead on, for example, competing police officer and subject verbal accounts of the incident.

On the other hand, the conjunction of biases unique to BWC video may distort judgements of viewers in ways that are quantitatively greater and specific to BWC evidence, posing unique risks. First, as with other video evidence, people tend to perceive BWC footage as providing an objective and unbiased form of evidence, such that people tend to believe that what they judge video to show is “obvious”. The U.S. Supreme Court has subscribed to such a view of video evidence (more information on this below). Secondly, as noted above, BWC footage appears to generate stronger and different forms of perceptual biases than other video evidence (such as CCTV footage from a fixed camera) – with reduced perception of police officer intent/culpability and deceptive intensity having particularly pernicious and misleading effects on human judgement (potentially worsening a fact-finders access to the truth about an incident, rather than improving it). In combination, these effects can result in an “illusion of accuracy”. These issues, with respect to BWC evidence, are highlighted in an article discussing the work of BWC expert Seth Stoughton:

The law professor had one main message for prosecutors when he came to town: You shouldn’t always believe your eyes....
[P]rosecutors took an afternoon last week to learn how to use that evidence in court. “As a prosecutor, any time we can have video

⁷⁸ Harlan Yu and Miranda Bogen, Sakira Cook, Shin Inouye, Tyler Lewis, Patrick McNeil, Leslie Paluch, and Corrine Yu. (November 2017). The Illusion of Accuracy. How Body-Worn Camera Footage Can Distort Evidence. Upturn and The Leadership Conference.

footage of significant events in a criminal action it's essential for us," Chief Assistant State Attorney Mac Heavener said before the training. "The jury essentially becomes a witness to the things that happened." But then Seth Stoughton, a University of South Carolina law professor and one of the foremost body camera experts, raised his hand to interject. "Actually, I'm going to spend time this afternoon about why that's not true."... "When we're talking about body-worn cameras as evidence, there are cases where it will help, cases it obviously won't help, then cases where it looks like it will help but it actually hinders or harms." He said the cameras could even potentially result in wrongful convictions or acquittals."

Seth Stoughton has also produced three BWC videos of simulated interactions involving police officers, highlighting such issues of interpretation.⁷⁹

In this regard, it is worth keeping in mind something that Mike Gennaco of OIR told the Committee. To reiterate, Gennaco said that BWC footage is most often useful in the low-level encounters, where there is no physicality, no chaotic shaking of the camera, and the real question is, for example, who said what, when. In those circumstances, the biasing effects of cameras are least pronounced, and the camera can clearly explain the encounter. Gennaco said, "in the routine conduct, when an officer comes up to a civilian, and the civilian at the end of that contact believes that the officer did not behave professionally in one way or another, the body camera will tell you what happened. Because there's no obstruction, there's no physicality, it's all there. And you can use that information once you have it to persuasively get a department to take remedial action if remedial action is called for in those kinds of cases."

But where such conditions do not hold, there's greater reason for concern. Again, as Jessica Chapman notes, part of the crux of the problem of the potentially misleading effects of perceptual biases in BWC video for a fact-finder is: "Our tendency to privilege what we can see over experiences mediated by our other four senses is deeply tied to our understanding that what we see is the truth. Jay argues that this is the result of a visually privileged order of knowledge, where what we see rests at the top of the hierarchy (1991, p.23). ...Despite significant proof to the contrary, we continue to believe that what we see is a one true reality." And news headlines such as "perfect, no. But bodyworn police cameras place an impartial set of eyes on what is increasingly a volatile and controversial job"⁸⁰ and "police say body-worn cameras provide an unbiased and accurate account of their interactions with the public"⁸¹ exemplify this ubiquitous understanding that BWC video provides direct, unmediated access to truth. Along these lines, Jessica Silbey (Associate Professor of Law, Suffolk University Law School) discusses the privileged position afforded video in courts:

This Article explores a puzzle concerning the authority of certain film images that increasingly find themselves at the center of lawsuits in the United States. These are surveillance or "real time" film images that purport to capture an event from the past about which there is a dispute. Increasingly, this kind of "evidence verité"—film footage of arrests, criminal confessions, and crime scenes—is routinely admitted in U.S. courts of law as the best evidence of what happened. This kind of evidence tends to overwhelm all other evidence, such as witness testimony, paper records, and other documentary evidence. Evidence verité also tends to be immune to critical analysis. It is rarely analyzed for its ambiguity, its bias, or its incompleteness. To the contrary, it is most often admitted without any cross-examination at all.

⁷⁹ Timothy Williams, James Thomas, Samuel Jacoby, and Damien Cave. (April 1, 2016). Police Body Cameras: What Do You See? New York Times. <https://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html>

⁸⁰ The Calgary Sun. June 24, 2015.

⁸¹ City Centre Mirror. May 28, 2015.

Because the biasing effect is real, however, any BWC program must be designed to minimize those biasing effects as much as possible. That is why the Committee’s model policy requires cameras with a wide angle of view—180 degrees if possible—to capture as much of the scene as possible, including the officer’s own arms and legs and other officers on the scene. That

⁵⁸ *Id.*, p. XXX

⁵⁹ *Id.*, p. XXX

is why the Committee recommends that cameras be worn on the body as high as possible, but in no event lower than shoulder level, to minimize the camera angle making civilians look larger and more menacing than they are. Though we will note that no mount position is ideal in every way. A head or glasses mount poses a number of reported issues. Officers cannot always wear glasses. Some officers have also reported that the headband cameras are uncomfortably tight, and some expressed concern about the potential of injury when wearing a camera so close to the eye area. Meanwhile, a shoulder or collar mounted BWCs can be blocked when an officer raises their arms, and cameras can more readily be knocked off the shoulder. However, in our judgement, the importance of reducing perceptual distortions of a low-mounted BWC outweighs these issues.⁸²

A desire to reduce these distortions is also why the Committee's policy requires the use of image stabilization software, to the extent feasible, to reduce the exaggerated sense of chaos and danger that otherwise can arise from the officer's body movements. It is also why the Committee's policy requires that all officers on the scene engage their cameras, and that the Department accept civilian or third-party videos on the same basis as BWC footage, to capture the incidents from as many perspectives as possible, and not just from the perspective of one officer focused on a subject, or worse, attempting to manipulate the recording to twist reality. Though it is important to keep in mind that there is no way to fully compensate for these perceptual distortions (e.g a BWC will always point away from an officer, and there is no feasible BWC providing a 360 degree view). Thus, these measures will not eliminate these perceptual biases, but they can at least reduce them to some degree. Similarly, the Committee is recommending that viewers of MPD BWC video be formally informed of the most important perceptual distortions associated with BWC video and instructed to attempt to compensate for them. The research literature is mixed on the efficacy of such instruction (it is notoriously difficult to get people to successfully compensate for cognitive biases), but there is evidence of a degree of mitigation from such instructions in similar contexts.⁸³

Cognitive illiberalism

One important limitation of video evidence, which is not adequately appreciated, and which may be especially important in BWC footage (when superimposed on perceptual distortions with BWCs, compromising interpretation), is cognitive illiberalism. This refers to a form of cognitive bias - an inability to recognize how cultural background influences one's own (as opposed to others') perceptions; psychic pressure individuals experience to conform their perceptions of risk and related facts to their cultural values. Howard Wasserman (Associate Professor of Law at the Florida International University College of Law) notes:

as Dan Kahn and his co-authors showed, what any viewer "sees"—and the inferences and conclusions she draws—are influenced by the viewer's cultural, demographic, social, political, and ideological characteristics. Video speaks "only against the background of preexisting understandings of social reality that invest those facts with meaning."⁸⁴

Upon reviewing video evidence, this leads to questionable interpretations and inappropriate certainty in interpretations, since people tend to subscribe to a naïve realism and believe video "speaks for itself". A paradigmatic case of cognitive illiberalism can be found in the U.S. Supreme Court case *Scott v Harris* (2007). Harris was clocked traveling 73 mph in a 55-mph speed zone on a county road in Georgia and, after a 6 minute chase, Officer Scott rammed Harris' vehicle as a way of ending the chase. Harris' car crashed, rendering him

⁸² Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services

⁸³ Elek, J. K., Ware, L. J., & Ratcliff, J. J. (2012). Knowing when the camera lies: Judicial instructions mitigate the camera perspective bias. *Legal and Criminological Psychology*, 17(1), 123–135

⁸⁴ Howard M. Wasserman, *Moral Panic and Body Cameras*, 92 *Wash. U. L. Rev.* 831, 844 (2015)

quadriplegic. Harris sued Scott and Coweta County under 42 U.S.C. § 1983, alleging a violation of his Fourth Amendment right to be free from excessive use of force. Scott moved for summary judgment, asserting an affirmative defense of qualified immunity. Summary judgment is supposed to be reserved for cases in which there's no substantive questions about the facts – with a court proceeding by viewing the facts and drawing reasonable inferences in the light most favorable to the non-movant (i.e., the court adopts the plaintiff's version of the facts). But in this case – with a central question of whether Harris' conduct posed a danger to pedestrians or other motorists or vehicles – the two sides offered substantially different versions of events, which would generally render the case inappropriate for summary judgment.

However, in *Scott v Harris*, the Supreme Court majority insisted that summary judgment was appropriate because of the "added wrinkle" of a video of the chase recorded from Scott's dash-mounted camera, which captured the chase from the moment he switched on his siren light. The majority held that this was "a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." The ordinary requirement that the court view the facts in favor of the non-movant gave way to the court viewing the facts based on their interpretation of the videotape.

As Wasserman notes:

But in treating the video as truthful, unbiased, objective, and unambiguous, and thus deserving of controlling and dispositive weight on summary judgment, the Court silently bought into the three basic, related myths that Jessica Silbey has identified about video evidence and evidence verite. The first is that film is an objective, unbiased, transparent moral observer, producing an evenhanded reproduction of reality. Video evidence is the "proverbial smoking gun," raw evidence incontrovertibly showing what happened in the real world. The video becomes "an unimpeachable eyewitness testifying to the only version of what happened." In fact, video replaces the eyewitness, making live testimony and corroboration unnecessary. Or, on summary judgment, allowing the court to disregard testimony altogether in favor of the video. This was captured by the Court's insistence that the video could "speak for itself." The second myth is that the meaning of the video is unambiguous and obvious to the viewer, the "last and best word on what happened" in the real-world events. The third myth is that the video transforms the viewer into an eyewitness to real events, the video "merely an extension of the jury's eye." Viewers believe they are witnessing the events as they occur and thus fully understand the truth and meaning of those events....

Justice Stevens recognized these myths in his sharply worded dissent. Stevens watched the same video, but saw a different event – not only was there not obviously a danger to the public in the chase, there were not even any "close calls." The video told Stevens that no pedestrians, parked cars, or private residences were visible in the video at any point, meaning there was no risk to person or property in the chase; Harris never lost control of the car and signaled whenever he changed lanes or went across the center line to pass; and the cars that he did pass already had pulled over to the side of the road, perhaps in response to the police siren. Stevens' larger, though unstated point, was that the chase video, as with other film evidence, was not unambiguous and its narrative not single or obvious. Nor did the video alone tell the entire story.⁸⁵

A study by Dan Kahan and colleagues found that when Scott's dashcam video was shown to a diverse sample of 1350 Americans, there were sharp differences of opinion on the facts of the events, along cultural, ideological, regional, racial, and other lines, inconsistent with the view of the Supreme Court majority that the video spoke for itself and provided only one obvious "reasonable" view of the facts.⁸⁶

Potential decreased access to jury trial and an increase in inappropriate summary judgements in civil cases

⁸⁵ Howard Wasserman. (2008). Video Evidence and Summary Judgment: The Procedure of *Scott v. Harris*, 91 *Judicature* 180.

⁸⁶ Dan M. Kahan, David A. Hoffman, and Donald Braman, *Whose Eyes Are You Going To Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 *HARV. L. REV.* 837 (2009).

In addition to cognitive illiberalism constituting a general issue for BWC video, the case described above creates the following specific issue, as noted by Wasserman:

[T]he Supreme Court shows no sign of moving from its view that video can be (and often is) so conclusive and unambiguous that the court can determine its meaning and jury consideration is not required. Paradoxically, body cameras may prove worse for civil rights plaintiffs — more constitutional cases will feature video, offering courts more opportunities to misuse video evidence and more opportunities to keep cases away from civil juries.⁸⁷

In combination with the perceptual phenomena described earlier (e.g., ascription of reduced intent to BWC wearers given their invisibility in BWC footage), this may have an adverse effect on accountability of law enforcement officers. Ample research establishes that BWC footage can present a biased perspective of incidents that can enhance the appearance of chaos, danger, and threat posed by a civilian. This occurs for a number of reasons. First, BWCs only show the perspective of the police officers wearing them, and may fail to capture critical context. Research shows that by focusing only on what the officer sees—and that means especially by focusing on the civilian subject—the cameras produce an effect that biases the viewer in favor of the officer and against the subject. One study found, for example, that viewer perspective—whether the viewer focused on the civilian or the officer—influenced interpretations of the video. Study participants who reported focusing on the civilian more than the officer or both reported more negative views of the civilian’s actions, but no difference in their assessments of the civilian’s character compared to those who reported focusing on the officer or both.⁸⁸ Participants who reported focusing on the civilian conversely rated the police officer more positively in their subjective judgments of the officer, the officer’s character, and the officer’s guilt than those who reported focusing on the police officer or both individuals.⁸⁹ However, viewer perspective did not affect how viewers reported the facts of the incident. The study concluded, “These findings taken together suggest that individuals make similar basic judgments when little interpretation about the police officer’s actions is needed, regardless of their focus during the encounter. When subjective judgments are made, focus away from the officer or focusing on the entire encounter results in more positive views of the officer.”⁹⁰

Another study similarly found that participants who watched body-camera footage, compared with people who watched surveillance footage of the same encounter, perceived the officer's behavior as being more justified and made more lenient punishment decisions.⁹¹ The researchers concluded: “Our results demonstrate that some body-camera footage—specifically videos that capture an officer using his or her body to apprehend a civilian—can lead to biased perceptions of police encounters that benefit the officer. Our findings suggest that this occurs because: (i) in body-camera footage, the civilian is the more easily visible figure, thus making

⁸⁷ Howard M. Wasserman, *Moral Panic and Body Cameras*, 92 Wash. U. L. Rev. 831, 844 (2015)

⁸⁸ Kalle & Hammock, *Bias in Video Evidence: Implications for Police Body Cameras* (2019):

⁸⁹ *Id.*

⁹⁰ *Id.*, p. XX.

⁹¹ Jones, Crozier, & Strange, *Look there! The effect of perspective, attention, and instructions on how people understand recorded police encounters* (2019)

less salient the officer's role in the encounter; and (ii) the body camera—attached to an officer's uniform—is unable to adequately capture certain use of force movements that are important in determining an officer's intent.”⁹²

Yet another study found:

The attachment of the body cam to the uniform of the officer leads to an imbalanced representation of perspectives. The police perspective is emphasized by the footage that is literally taken from their perspective, in which others are filmed slightly from below, making them look bigger and more overwhelming. Also, the police officers' movements create shaky footage with deceptive intensity that invokes the image of a hectic situation that calls for police action. Secondly, it is the officer who decides when to wear a camera and when to start and stop recording. This leaves the potential to not record any misconduct. Thirdly, access to the recorded images, whilst in theory open to police and citizens alike, is in practice exclusively for the police. Within the current regulatory framework, body cams are thus not neutral reporters of interactions between civilians and the police.⁹³

Finally, another study similarly found that body cam video of an incident results in lower observer judgments of the intentionality of police behavior (a measure of culpability) than dash cam video of the same incident.⁹⁴ The study explained: “In general, attention is naturally drawn to the human form. Observers tend to attribute intentionality as a function of the visual salience of, and hence attention to, the focal actor. When an actor is visually deemphasized, judgments of the intentionality of that actor are reduced. The body cam wearer is typically less visually salient when depicted in body versus dashcam video, which corresponds with lower observer intentionality judgments.”⁹⁵ Interestingly, however, this study also found that body cameras that captured even parts of the officer—arms and legs—eliminated the difference in intentionality assessments between viewers of footage from bodycams and dashcams.⁹⁶

A related problem noted in one paper is that, over time, officers will learn how to manipulate the impression generated by recordings. For example, in one case involving BWC recordings, the officer kept yelling “stop resisting” as the officers beat an individual lying passively on the ground. The BWC recordings, with the “stop resisting” verbalizations and hectic jostling of the cameras, conveyed strong apparent evidence of resistance.. But this impression was entirely erroneous—a CCTV camera also captured the incident, and showed that the individual was not resisting at all. A jury would have been far more misled by the conjunction of the BWC video and officer reports, compared to officer reports alone (i.e., might have questioned the officer reports, but not when buttressed by the convincing BWC video). BWCs turn police officers into cinematographers, and it is possible for officers to learn to generate misleading verbal narratives during BWC recordings, to capture planted evidence to capture planted evidence on camera, etc.—and the impact of such misleading video (which appears to directly provide a viewer with the ground truth of what occurred at the scene) is powerful.

These studies and concerns make a powerful argument against BWCs. But the argument is not conclusive. It is important to remember that *all* evidence is biased to one degree or another. Witness reports always reflect the perspectives and biases of the witness. Bystander video reflects other biases of perspective.

⁹² *Id.*, p. XXXX.

⁹³ Houwing & van Eck, *Police Bodycams as Equiveillance Tools?: Reflections on the Debate in the Netherlands* (2020).

⁹⁴ Turner et al., *Body camera footage leads to lower judgments of intent than dash camera footage* (2018):

⁹⁵ *Id.*, p. XXX

⁹⁶ *Id.*, p. XXX

Officers bent on framing a civilian can do so effectively without BWCs. While it is important to recognize the biases inherent in BWC footage, that does not necessarily mean that BWCs on balance obscure the “truth” more than they illuminate it. The question remains—despite its inherent limitations and biasing potential, does BWC footage on balance enhance a fact-finder’s access to the truth about an incident when compared to reviewing the incident without such footage, forcing the fact-finder to rely instead on, for example, competing police officer and subject verbal accounts of the incident.

In this regard, it is worth keeping in mind what Mike Gennaco of OIR told the Committee. To reiterate, Gennaco said that BWC footage is most often useful in the low-level encounters, where there is no physicality, no chaotic shaking of the camera, and the real question is, for example, who said what, when. In those circumstances, the biasing effects of cameras are least pronounced, and the camera can clearly explain the encounter. Gennaco said, “in the routine conduct, when an officer comes up to a civilian, and the civilian at the end of that contact believes that the officer did not behave professionally in one way or another, the body camera will tell you what happened. Because there’s no obstruction, there’s no physicality, it’s all there. And you can use that information once you have it to persuasively get a department to take remedial action if remedial action is called for in those kinds of cases.”

Because the biasing effect is real, however, any BWC program must be designed to minimize those biasing effects as much as possible. That is why the Committee’s model policy requires cameras with a wide angle of view—180 degrees if possible—to capture as much of the scene as possible, including the officer’s own arms and legs and other officers on the scene. That is why the Committee recommends that cameras be worn on the body as high as possible, but in no event lower than shoulder level, to minimize the camera angle making civilians look larger and more menacing than they are, and it is why the Committee’s policy requires the use of image stabilization software, to the extent feasible, to reduce the exaggerated sense of chaos and danger that otherwise can arise from the officer’s body movements. It is also why the Committee’s policy requires that all officers on the scene engage their cameras, and that the Department accept civilian or third-party videos on the same basis as BWC footage, to capture the incidents from as many perspectives as possible, and not just from the perspective of one officer focused on a subject, or worse, attempting to manipulate the recording to twist reality. These measures will not eliminate bias, but they can at least reduce it to some degree.

- **Officers as cinematographers**

BWCs are under the control of police officers. Given incentives officers have, with respect to the content of video and the understanding of events that it would generate in viewers, this creates a greater breadth of issues than is often recognized. Understanding of events captured in video can be manipulated not just by an officer turning a camera on and off (e.g., to film only favorable material), but also in a host of other ways. For example, by providing misleading accompanying verbal narratives that manipulate understanding, by controlling where the camera is pointed to distort understanding, by recording of staged scenes as with planted evidence (a has been occasionally occurring), etc.

In “Becoming the Camera: Body worn video and shifting expectations of police work”, Jessica Chapman outlines the basic nature of the problem – explicating what remains invisible in the dominant discourse:

Providing a glimpse of these underlying motivations of control, professor Christopher Schneider, an expert in the area of police and technology, explained to several media outlets, “police are rolling out these cameras so that when they have the recording on their chest, this becomes the official or authorized recording of the situation” (Mehta, May 16, 2015). Schneider goes farther, “in a world where cellphone videos of police interactions with the public can be placed online within minutes, body-worn cameras might offer authorities a way to regain control of the situation’s narrative” (Mehta, May 16, 2015). Comments like Schneider’s give us glimpses of how the “war on visibility” is motivating the adoption of BWV and attempting to ensure that those who represent the state remain exempt from the negative implications of their place in the surveillant apparatus.

Rather than viral citizen video, the footage of police organizations will be privileged *evidence verité*, giving them authority to determine what is considered 'official'. Police organizations will be able to frame the conversation surrounding their footage in a way that paints the police as favourably as possible. With current public perception of police perhaps at its lowest point in decades (Jones, 2015), having control over the visual evidence of their public interactions and conversations will give the police the opportunity to reframe how they are perceived. The result is that police organizations are embodying the technologies and techniques of the assemblage in order to impact it from within. The discourse surrounding the emergence of BWV as a policing tool has constructed a narrative that positions the device as superior, objective, and neutral. Acting as an extension of the officer's eyes, ears, and memory, BWV is characterized as a purportedly objective solution to the fallible human....

Arguably the most significant consequence of using BWV as a policing tool is the emergence of what I call a cinematic logic. Cinematic logic refers to the approach and mentality that officers are developing in order to ensure that they gather the desired footage with their BWV. This logic forces officers to think like their cameras and consider their environments in much the same way a videographer would. The components of this logic include a thorough understanding of the technology, a conscious attempt to leverage factors such as lighting, angles, background noise, field-of-view, etc., a recalibration of bodily movement, a commitment to producing footage that will meet the demands of the legal system, and in some cases taking steps to frame footage through practices like narration. Essentially, officers must fully embody the technology and approach their work using the same logic as their cameras, making them the directors of their own BWV films and changing the way officers look. The result is that for better or worse, officers are learning how to construct their footage, and more importantly to construct "better" footage.... The shift toward a cinematic logic among officers can be observed in the way that BWV manufacturers discuss their products as well as the way that officers themselves describe their experiences.... The problem is that they are *constructing* it [i.e., the footage], that the footage they make will hold the privileged position of *evidence verité* with the assumed truth status that accompanies that....

The redefinition of police work that accompanies the adoption of BWV has been almost entirely overlooked by every actor involved in the discussion of BWV. Limiting the scope of conversation to exclude considerations of the cinematic logic necessary to "properly" utilize BWV is impactful, as any suggestion that the footage can be manipulated would undermine all notions of objectivity and accountability. By framing BWV in such a way that closes down this line of critique, the actors involved in constructing the conversation are able to push the adoption of these devices with little opposition. Moreover, it has been suggested in the preceding chapters that part of the appeal of BWV is that it presents the officer's morally superior point-of-view meaning that any discussion of the agency or videography involved in using BWV would erode the attempts being made to ensure that the officer's footage is automatically privileged on the grounds that it is superior to the citizen's. Essentially, the war on visibility being waged by police officers is highly contingent on positioning BWV as non-threatening, making it crucial that the conversation avoids any explicit acknowledgement of the cinematic logic required for effective BWV use....

[T]here are... many ways in which these devices can be positioned and used to purposely highlight certain things and downplay – or exclude – others. These opportunities to infuse subjectivity into their footage further undermine claims of technological neutrality by suggesting that officers do some soft editing by learning from their footage and doing 'better' next time.... As BWV forces officers to become the camera, illusions of objectivity and moral superiority that underpin the dominant discourse surrounding the adoption of these devices as policing tools are eroded.... By ignoring issues of subjectivity, bias, manipulation, affordances, and logics actors are able to roll out BWV as a solution to misconduct and excessive force despite realities of subjectivity.... The result of technologically extending officers with BWV is that despite claims that these devices will provide much needed transparency and accountability, they are actually poised to undermine the level of visibility that citizens with smartphones had established.⁹⁷

- **Increased violence by civilians against officers**

At least one global multi-site study involved well-designed randomized controlled trials across ten sites in eight cities, found that the presence of BWCs had no effect on officer use of force on average, but actually increased the rate of assaults against officers (assaults against officers were 14% higher when cameras were present).⁹⁸ Importantly, however, the results were heterogeneous across sites—meaning the magnitude of the change in assault rates varied across locations. The

reason for this variation was not clear. Across cities, changes in rates of police use of force and

⁹⁷ Jessica Chapman. (2016). *Becoming the Camera: Body worn video and shifting expectations of police work*. Master's thesis. Carleton University, Ottawa, Ontario.

⁹⁸ Ariel et al., *Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment* (2016).

changes in assault rates showed opposing trends (assault rates rising the most where rates of use of force fell). A follow-up analysis of the data suggested that police use of force fell somewhat where officers wearing BWCs didn't have discretion in activating their cameras and rose where officers had more discretion in activating cameras. Examining the effect of officer discretion was a planned post hoc analysis, but doesn't provide definitive evidence of an effect of discretion without further replication. Nonetheless, this points to a potential important effect of policy and policy enforcement⁶¹ A meta-analysis of 15 studies examining either assaults on officers/officer injuries or resistance to officers found an increase of similar magnitude, but it wasn't statistically significant. Though it is worth noting that this meta-analysis was combining two different constructs, rather than examining assaults alone. Given that the meta-analysis did not find a significant effect the Committee hopes that such an effect will not manifest in Madison, though it is a concern.

Officers as cinematographers

- **Increased violence by civilians against officers**

A global multi-site study, involved well-designed randomized controlled trials across ten sites in eight cities, found that the presence of BWCs increased the rate of assaults against officers (with a 14% increase in assaults when cameras were present), but, on average, had no effect on officer use of force.⁶⁰ Why there would be such an effect is not clear, though it is possible that an announcement to a subject that they are being filmed can exacerbate an already tense situation, or that over-restraint by officers may lead to the effect. However, it should be noted that the results were heterogeneous across sites—meaning the magnitude of the change in assault rates varied across locations (as has been observed with most other BWC outcomes across test sites).— The reason for this variation was not clear.

Across cities, changes in rates of police use of force and changes in assault rates showed opposing trends (assault rates rising the most where rates of use of force fell). A follow-up analysis of the data suggested that police use of force fell somewhat where officers wearing BWCs didn't have discretion in activating their cameras and rose where officers had more discretion in activating cameras. In this study, examining the effect of officer discretion was a planned post hoc analysis, but doesn't provide definitive evidence of an effect of discretion without further replication. Nonetheless, this points to a potential important effect of policy and policy enforcement⁶¹

A meta-analysis of 15 studies examining either assaults on officers/officer injuries or resistance to officers found an increase of similar magnitude to the study cites above, but it wasn't statistically significant ($p = 0.143$). However it is worth noting that this meta-analysis combined two different constructs (resistance and assaults), rather than examining assaults alone. Nonetheless, the increase in assault rates should probably not be considered a definitive finding without further replication. Given some remaining uncertainty about this effect and the heterogeneity in assault outcomes across sites, the Committee hopes that such an effect will not manifest in Madison, though it is a significant concern.

- **Increased Officer Burnout**

There is evidence that BWCs increase officer burnout. A study of 271 officers across five police departments found that officers wearing BWCs reported higher levels of burnout compared to those who did not, and this difference was highly statistically significant.¹⁰⁰ BWCs also reduced perceived organizational support, and perceived organizational support mediated the relationship between BWCs and burnout. Though the level of statistical significance of these effects was high, there were some weaknesses in the experimental design (e.g., it was not a randomized controlled trial), such that further study of this question would be desirable. However, body-worn cameras can be seen as a form of electronic performance monitoring of officers, and studies on other forms of electronic performance monitoring have consistently shown increased burnout and stress, and a decrease in perceived organizational support. In addition, the results of this study are congruent with anecdotal reports from other BWC trials and ethnographic studies. For example, a BWC pilot program in Worcester noted "Officer morale — Officers in the pilot program felt less able to use their discretion at times. They thought that cameras caused them to become more "robotic" and less able to joke around and have fun while doing their jobs. Some officers felt pressure to maintain the demeanor of someone testifying in court. This has the potential to hurt officers' enjoyment of their jobs, and to reduce community engagement."¹⁰¹

Frontline law enforcement officers are already known to suffer higher rates of burnout than other professions, and this is linked to increases in suicides, substance abuse, and family stress. MPD has consistently expressed concern about officer burnout and rates of resignation. The inherent stress of always being "on camera" might exacerbate this problem.

- **Decreased civilian complaints**

A potential reduction in civilian complaints against officers is both a potential "pro" and a potential "con." The "con" arises if BWCs discourage residents from making valid complaints against officers. As noted above, the research confirms that BWCs generally reduce civilian complaints, but it is not clear why. Lum et al (2019) note "officers may be informally negotiating complaints by showing potential complainants or supervisors video footage of the encounter, which may discourage citizens from pursuing complaints for reasons unrelated to whether the complaint is legitimate. Goodall (2007) and Koen (2016), for example, observed these types of exchanges."¹⁰² A potential complainant with whom an officer is reviewing video may feel intimidated and may be discouraged from filing by authoritative assertions from the officer that the video shows no policy violations. Thus our model policy requires that "In-person review will specifically be provided by a representative of the Office of the Independent Monitor rather than by employees of the Madison Police Department." The Committee has no way of assessing, based on the research, to what extent BWCs reduce valid complaints, invalid complaints, or both.

¹⁰⁰ Ian Adams & Sharon Mastracci. (2018). "Police Body-Worn Cameras: Effects on Officers' Burnout and Perceived Organizational Support." *Police Quarterly*, 22(1), 5-30.

¹⁰¹ Worcester Police Department - Body Worn Camera Pilot Program Report. 2020.

¹⁰² Lum, C., Stoltz, M., Koper, C., & Scherer, J.A. (2019). Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*, 18(1), 93-118.

- **Decreased trust**

Just as it is possible that BWCs might increase trust in police, they might also have the opposite effect, especially if they are perceived as being used as a tool for monitoring of residents. As we heard from Freedom, Inc., and Upturn, some segments of the community will view cameras with suspicion, as another tool for police to use to oppress them. Moreover, researchers have hypothesized that “BWCs also might exacerbate an already challenged relationship between citizens and the police, especially if citizens expect cameras to be used to increase police accountability and transparency, but officers primarily use them to increase the accountability of citizens.”¹⁰³ And there are some anecdotal reports potentially consistent with this. That observation highlights the Committee’s emphasis that BWCs be adopted, if adopted at all, only in conjunction with other measures designed to increase police transparency and accountability and community trust, such as the 177 recommendations made by the Policy and Procedure Ad Hoc Committee. To date, however, we are not aware of any empirical research that shows that BWCs have in practice led to greater distrust.

- **Invasion of privacy**

One of the widely recognized threats posed by BWCs is its potential for serious invasion of privacy. Police officers frequently respond to incidents involving people in some of their most private, unflattering, and embarrassing moments—in domestic disputes, while injured or receiving medical care, while recounting a sexual assault, while suffering mental health breakdowns, while in states of undress, and the like. Recording these moments can sometimes infringe on legitimate privacy interests. In this regard, two aspects of BWCs—enhanced transparency and protection of legitimate privacy interests—are inherently in tension. Both interests can be respected, but doing so requires careful attention to providing extensive and uninterrupted recording and wide public access to the recordings when accountability and transparency concerns are at their highest, and limiting or preventing recording or public access when those concerns are less significant and privacy interests are paramount. And all of that must be done in a context in which officer discretion about whether to record or not is circumscribed. Accommodating all of these interests is not easy, but drawing on thoughtful legal literature on the privacy interests at stake,¹⁰⁴ the Committee’s proposed model police makes a serious, and we believe sensible, attempt to prescribe specific rules that accommodate both interests while limiting officer discretion as much as possible.

- **Abuse of purpose**

Concern exists among some that, as frontline users of the BWC technology, officers might quickly become experts in uses of the cameras and may discover techniques that permit them to misuse the cameras or the footage by, for example, erasing footage if it shows them in an unfavorable light or

¹⁰³ Lum, Stoltz, Koper, & Scherer, Research on body-worn cameras: what we know, what we need to know (2019).

¹⁰⁴ Hartzog, *Body Cameras and the Path to Redeem Privacy Law* (2018).

reveals violations of policy or the law. To avoid this and other abuses of the BWC system, the Committee’s model policy builds in various safeguards to ensure the integrity of the footage and the appropriate uses of the cameras.

- **Resident intimidation**

Some residents may feel fear due to the BWC recording them. This may lead them to act irregularly or drive them to not reach out to the police even when otherwise appropriate out of fear. It is possible that police might use the threat of recording to intimidate residents. While this concern exists, there is no research or empirical data showing that BWCs have had this effect. The only data the Committee has on this is the informal survey taken by Greg Markle of Operation Fresh Start, which revealed that a substantial majority of at-risk youths surveyed reported the opposite—that is, that they would be less fearful of and more trusting in police if they wore BWCs.

- **Selective usage**

Without any guardrails in place, police may simply use body camera footage when it benefits them, and block access when it does not. Leaving the footage solely in the hands of police may create a conflict of interest. The Committee has drafted model policy rules designed to prevent such selective usage.

- **Misuse for immigration enforcement**

Immigration and Customs Enforcement (ICE) has been issuing administrative subpoenas to access records, including records of noncooperating law enforcement departments. Such subpoenas supersede state laws and local ordinances or department policies. A federal court in Colorado has upheld such ICE subpoenas. ICE has increasingly been using facial recognition technology (e.g., using administrative subpoenas to mine state driver’s license databases, etc.) and is contracting with vendors, such as Cleaview AI, to expand use of this technology. Facial recognition technology can currently identify individuals in video, can be used to run video against large databases of faces (e.g., of individuals previously deported, etc.), and accuracy of the facial recognition software, and automation/ease-of-use, is evolving rapidly. In the near future, MPD BWC video, accessed via administrative subpoena, could be used to identify and locate undocumented Madison residents for deportation. BWC video, which will capture people in their homes, neighborhoods, and workplaces, would be extremely valuable for identifying undocumented individuals living in Madison and their domiciles, workplaces, and places they frequent. If national authorities continue to pursue this practice, that is a matter that cannot readily be addressed by local policy or ordinance. Moreover, the risk of using BWC footage for such purposes might leave undocumented residents less willing to call for police service when it is needed.

While this risk is largely beyond local control, the City can minimize the amount of footage available for ICE scrutiny. The model policy proposed by the Committee seeks to do this by requiring that all footage, which is not needed as evidence for a criminal prosecution or an investigation into police conduct, along with a few other exceptions, must be deleted after six months.

Resources that need to be allocated to DAs and Public Defenders

86% of PDs and 85.5% of ADA agreed/strongly agreed that BWCs increased case preparation time. there is considerable agreement that BWC use adds to the workload of PDs and ADAs. This is further illustrated in Table 7. Here, 90 percent of PDs and 95

percent of ADAs reported spending at least one hour reviewing case footage prior to hearings. Nearly a quarter of PDs and more than one-third of ADAs spent more than five hours viewing video for typical cases. Given caseloads in local jurisdictions, this time commitment is a substantial addition to the time already spent by ADAs and PDs working on prosecution and defense.

- **Facial Recognition Technology might be used against residents**

A significant concern about BWCs is that they will facilitate facial recognition technology to monitor individuals and groups. An increasing number of cases of mistaken arrests of Black men due to facial recognition technology have become apparent.¹⁰⁵ The Common Council has recently banned the use of facial recognition technology, so this issue might now be moot, at least as a matter of policy. Nonetheless, because it is possible that the City's ban on facial recognition technology might be repealed, the Committee has retained in its model policy a provision banning most uses of facial recognition technology.

- **Diminishing effect**

It is possible that, if BWCs have beneficial effects (e.g. on metrics like trust or certain measures of officer behavior) such effects might become less pronounced or reverse over time. For example, a study in Phoenix, Arizona, found that the rate of officer activation of BWCs was highest in the month immediately after officers received cameras.¹⁰⁶ A study in Milwaukee observed an immediate impact of BWCs on use of force (officers had 15% fewer use of force incidents in the month after receiving a BWC, a statistically significant reduction ($p = .023$)), but then engaged in 2% more use of force incidents for each subsequent month they had a camera (a statistically significant increase ($p = .008$)), thus making the overall impact null.¹⁰⁷ Anecdotal reports also suggest potential changes in favorability of civilian perceptions of BWCs over time after implementation.¹⁰⁸ Moreover, studies have found that prosocial effects from other tracking devices designed to record people's activities are susceptible to habituation and often dissipate as wearers become accustomed to the technology.¹⁰⁹ Such potential time effects of BWCs have been under-researched and warrant further investigation. Currently, there aren't data available to draw definitive or comprehensive conclusions..

- **Cost**

¹⁰⁵ Kashmir Hill. Dec. 29, 2020. Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match. New York Times.

¹⁰⁶ Katz, C. M., Kurtenbach, M., Choate, D. E., & White, M. D. (2015). Phoenix, Arizona, smart policing initiative: Evaluating the impact of police officer body-worn cameras. Bureau of Justice Assistance.

¹⁰⁷ Peterson, B.E. and Lawrence, D.S. (2020). Do the Effects of Police Body-Worn Cameras on Use of Force and Complaints Change Over Time? Results From a Panel Analysis in the Milwaukee Police Department. Criminal Justice and Behavior. Published online first.

¹⁰⁸ Nick Selby. (2016). Body-Worn Cameras. Quality Policing Podcast.

¹⁰⁹ Nasiopoulos, E., Risko, E. F., Foulsham, T., & Kingstone, A. (2015). Wearable computing: Will it make people prosocial? British Journal of Psychology, 106(2), 209–216.

BWCs **live serious costs, which**, which must be factored into any decision about implementing a BWC system. Expenses arise from purchasing the cameras, training personnel, maintaining the hardware, and processing, managing, and storing the footage. Preliminary estimates from the MPD are that the costs of a North District BWC pilot program could be in excess of \$136,000. More than \$72,000 of that total is for initial equipment acquisitions, which would not have to be incurred in subsequent years. A fundamental question the City must resolve is whether BWCs are worth the expense, given the alternative uses to which that money could be put. One engaged resident notes “In this way funds get siphoned away from community needs into tech. It’s a HUGE problem and not only in policing. And all for the ‘joy’ and supposed efficiency of a new tech or gadget.”

- **Surveillance system (Neutral)** – Residents may feel that they have reduced privacy
- **Innocent people pleading out**

COMMITTEE RECOMMENDATION:



DRAFT