

June 24, 2021

Dear Mayor Rhodes-Conway and Alders,

I write as the former co-chair of the Body-Worn Camera (BWC) Feasibility Review Committee. While the issue of BWCs has become controversial, even unfortunately personal, I firmly believe that both sides come to this debate with shared goals and values, including a profound desire to increase police transparency and accountability and to improve police/community relations. Unfortunately, much of the debate addresses BWCs in a vacuum, as if they were being recommended as a stand-alone solution to Madison's policing challenges. That, however, is not how our committee approached BWCs. If BWCs were being offered as a stand-alone solution, without attention to creating the appropriate context and rules for their deployment, our committee would have been firmly opposed to BWCs. Indeed, we specifically said as much in our committee's final report.

Our committee understood that BWCs are a tool, nothing more—a tool that can be used for the benefit of the community, or that can be used in ways that can be detrimental to the community. The key is *how* this tool is used.

For many who oppose BWCs, their opposition appears to arise understandably from a perception or concern that BWCs will be just another tool for police, which will be used against the community, and particularly our communities of color. That perception, however, considers BWCs as if they were a stand-alone reform. Our committee was very attentive to the concerns underlying that perception, and accordingly we designed policies, procedures, and preconditions to ensure that BWCs are not just a tool for use *by* the police, which can be used *against* marginalized communities, but rather so that they are instead a tool to be used *by the community*. When understood as a tool to be used and controlled by the community, the equation becomes quite different. That is why our report recommends specific, detailed technologies and policies to limit officer discretion, to prevent tampering with the footage, to minimize biases, to prevent unintended increases in charging for low-level offenses, and to ensure control and access of the footage by the community—including immediate and unedited access by the new Civilian Oversight Board, the new Independent Monitor, and the Public Defender's Office as well as the District Attorney's Office.

In the end, after seven months of intensive study, in which we invited 32, and ultimately heard from 18, separate community groups and individuals, many if not most representing marginalized communities, and after intensively studying the social science research on BWCs and intensively debating the issues over the course of 27 long meetings, our committee ultimately voted 5-1 to recommend a body-worn camera pilot project. We made clear, however, that Madison should go down this path *only if* BWCs were undertaken pursuant to the strict set of preconditions and policies, unparalleled anywhere in this country in their rigor, which are laid out in detail in our report and its accompanying model policy.

After this in-depth study, our committee recognized that real police accountability and transparency require two essential components: (1) The tools for gathering the information (evidence) needed; and (2) the institutions and community structures for using those tools to hold police accountable and make their work transparent. BWCs are a big part of the first component—they are a tool for gathering information. But without the second component—the institutions and commitment needed to ensure transparency and accountability, BWCs alone would be ill-advised. What opponents seem to forget is that, in Madison, over the past six-plus years we have worked hard to create the institutions, structures, and indeed the culture to use the tools to ensure accountability and transparency. We have created the new Civilian Oversight Board and are about to hire our first Independent Monitor; because our policies will give those entities full access to and control over BWC footage, we will have equipped them to use that tool to full effect. The Madison Police Department Policy and Procedure Ad Hoc Review Committee in 2019 issued its report with 177 recommendations for reform, which the Common Council adopted; BWCs do not stand alone in this city as the only reform tool. We have hired a new police chief who is committed to transparency and accountability, and to working cooperatively with our new civilian oversight mechanisms. Finally, cases like the Derek Chauvin conviction for the murder of George Floyd suggest that perhaps a new era of accountability might be emerging. At this moment when we are for the first time creating the institutions and culture for meaningful police accountability and transparency, it would be unfortunate indeed if we were then to deprive those entities of the tools they need to do their work.

With that framework in mind, let me step back and tell you more specifically why I think trying BWCs in Madison is worth it. First, as one who has devoted his entire career to representing indigent individuals caught up in our criminal justice system, both as a public defender and then as co-founder and co-director of the Wisconsin Innocence Project, I have seen how the system operates when it has no video evidence. And it's not pretty. I can't tell you how many times I have cross-examined police officers, believing fully in my client's version of events, but without a chance of prevailing because there was no video proof. As Judge Everett Mitchell—a Black man, civil rights leader, pastor, and circuit court judge—told our committee, he believes we need BWCs because police don't need cameras to get convictions, but the accused do need them to defend themselves; when there's a swearing contest in court between a police officer and a suspect, the officer wins every time.

Second, any impression that may exist out there that our communities of color overwhelmingly oppose BWCs is simply not true. Tell that to Judge Mitchell. Tell that to Tom Brown, the co-chair of our Committee, a Black man who grew up on the south side of Chicago and who witnessed police brutality on a regular basis, and in impassioned terms described why he believed BWCs are needed to protect people like him. Tell that to your new colleague on the Council, Alder Charles Myadze, a Black man on our Committee who voted for the BWC pilot project, and who spoke movingly about the need for healing in our community, and about the potential that BWCs can make in our new civilian oversight era for fostering that healing. Tell that Dr. Ruben Anthony of the Urban League, or to Dr. Floyd Rose of 100 Black Men, or to Greg Jones & Pia Kinney James of the NAACP of Dane County, all of whom voiced various degrees of

support for BWCs. Or tell that to the Black at-risk youth served by Operation Fresh Start, who in response to a survey reported by significant majorities that they would favor implementation of BWCs, that they would trust police more if they wore them, and that they would be more likely to call police in a dangerous situation if police wore BWCs.

Third, let's not forget how important footage can be when used in a context in which we are committed to accountability. Take the George Floyd case and the trial of Derek Chauvin. On that, let me quote from a New York Times editorial by Farhad Manjoo, a columnist who is quite critical of police. He commented on the value of BWC footage in this way (see https://www.nytimes.com/2021/04/21/opinion/derek-chauvin-trial.html?campaign_id=2&emc=edit_th_20210422&instance_id=29488&nl=todaysheadlines&egi_id=76529252&segment_id=56071&user_id=4344681bac138ab6ac30be5ad7eb6fa2):

Damning though it is, Frazier's [bystander] video was only one clip in a deluge of images. There were cameras everywhere that day. Frazier was just one of several [bystanders](#) with a phone pointed at the scene. There were surveillance cameras [inside Cup Foods](#), the convenience store in which Floyd was accused of passing a counterfeit [\\$20 bill](#), and outside, mounted on [buildings](#) and [a city-owned pole](#). ***And then there were body cameras worn by officers themselves.***

Taken together, all these recordings created a multiplicity of views that could be cross-referenced against one another, providing what felt at times like a God's-eye view of the killing.

The comprehensiveness helped overcome what is often a central defense in such cases — that the camera doesn't tell the whole story. ...

Chauvin's attorney ... asked jurors to consider the scene from the officer's [point of view](#). But ... Chauvin's point of view was caught on tape, too, as were the perspectives of his fellow officers. These recordings were rarely exculpatory, and ***at times the most chilling details about Chauvin's conduct were caught by his own camera.*** (Emphasis added.)

Or let me remind you of the power of the BWC footage in the shooting of 13-year-old Adam Toledo in an alley in Chicago. Police initially reported an "armed conflict," and a state attorney said Toledo was holding a gun when the officer shot him. BWC footage revealed the truth—that Toledo had dropped the gun and was raising his hands in compliance with police orders when they killed him.

Or consider the shooting of Andrew Brown, Jr., in Elizabeth City, North Carolina, in late April. It was vitally important to the family and the community to see what was on the footage of his death, so everyone could know what happened. This photograph from the New York Times on May 3, 2021, says it all. The sign held by the woman in the photo reads, "Would you demand Footage If It was your Son?"



Andrew Brown Jr. was killed by sheriff's deputies in Elizabeth City, N.C., nearly two weeks ago, and it could be many more weeks before video of his death is publicly shown. Amr Alfiky/The New York Times

Under NC law, the footage could only be released upon approval of a judge. Under the rules recommended by our committee, by contrast, footage would be presumptively and swiftly available. But if we don't have the cameras, the kind of accountability and transparency that the family and community begged for in NC simply could not be available.

As the New York Times noted, "A video can mean the difference between drawing attention or dying in obscurity."

Recall also the fatal shooting of Daunte Wright in Minnesota. As the NY Times reported, "The day after [Daunte Wright](#) was fatally shot by a police officer at a traffic stop in Brooklyn Center, Minn., on April 11, in the midst of the murder trial against the former Minneapolis police officer who killed George Floyd, officials opted to quickly release some of the body camera footage. The video shows the officer, who has since resigned and has been [charged with second-degree manslaughter](#), shouting, 'Taser,' suggesting she mistook one weapon for another. The [swift release](#), which was not required by law, came after a night of particularly intense demonstrations, in which the police fired tear gas and rubber bullets." That "swift release" of the footage would be required in Madison under our recommendations.

Or take the shooting of Andre Hill in December 2020 in Columbus, Ohio. BWC footage showed that Officer Adam Coy shot and killed an unarmed Andre Hill, who was holding an illuminated cell phone in his raised hand. <https://www.cnn.com/2021/04/23/us/reckless-homicide-andre->

[hill/index.html](#). The officer failed to turn his bodycam on until after the shooting, but the buffering system nonetheless captured the previous 60 seconds, including the shooting. Because of the BWC footage, the officer has now been terminated and charged with homicide, and the City of Columbus has settled for a record \$10 million with Hill's family.

https://lawprofessors.typepad.com/evidenceprof/2021/05/today-it-was-announced-that-the-city-of-columbus-ohio-has-agreed-to-pay-a-record-10-million-settlement-to-the-familyand.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+typepad%2Fiuae+%28EvidenceProf+Blog%29. Under the Madison policy we have proposed, the officer's camera would have turned on automatically prior to the encounter (and the buffering system would have caught even more). But without BWCs, all we would have had would have been the officer's claim that he thought Hill was armed. Without the BWCs, the accountability that has occurred in Columbus would have been impossible.

Fourth, we have an opportunity here to add to the social science on BWCs to determine if in the unique context we are creating they can have significant benefits. A great deal of controversy in Madison has focused on what the social science research on BWCs shows. Opponents of BWCs would have you believe that the social science research is conclusive, that BWCs don't work. But as our committee's report shows, the research is far from conclusive. The best meta analyses (statistical analyses that combine the results across many studies) show no marked effects of BWCs on most behavioral measures (one notable exception being that the research suggests a distinct pattern of reducing civilian complaints against police after BWC adoption, for whatever reason). But the research notes that the results of the studies vary widely from place to place, suggesting that we cannot know what effect BWCs will have in Madison, under the unique circumstances being created here with our enhanced civilian oversight mechanisms and our very strict proposed policies governing BWC use, until we try them here and study them here, under those strict conditions. As Dr. Cynthia Lum (professor of Criminology, Law and Society and director of George Mason University's [Center for Evidence-Based Crime Policy](#)), the leading researcher in this field, whose work is quoted extensively in our report and by the critics of BWCs as well, wrote in her in-depth meta-analysis:

[T]he estimated effects of BWCs are quite variable (i.e., statistically heterogeneous) across studies, meaning that BWCs may increase these behaviors in some contexts and decrease them in others with considerable uncertainty about any typical effect across implementations. Our analysis examined several factors that may contribute to this variability, including whether randomized designs were used; the unit of assignment; susceptibility to contamination of treatment and control conditions; study fidelity; the level of discretion allowed by an agency's BWC policy; and an agency's recent history with reform initiatives or sentinel events. None of these factors were sufficient to explain the variability in BWC results, though there are tentative (albeit inconclusive) indications that BWCs are more effective in reducing police use of force (broadly defined) when agencies limit officer discretion in the use of the cameras.

(quoted and cited in the Committee's report at page 7.)

Since the Committee issued its report I have had several in-depth conversations with Dr. Lum and other leading researchers in the field, who reiterate and confirm that the research is as yet inconclusive on most matters related to BWCs. Dr. Lum brought in Dr. Anthony Braga (Professor and Distinguished Professor of Criminology and Criminal Justice; Director, Center on Crime and Community Resilience at Northeastern University), another leading researcher in the field, to join our conversations and to contemplate undertaking the randomized control study that our committee recommended as part of Madison's proposed pilot project. These researchers are excited about the possibility of the research we have proposed precisely because, if our recommendations are adopted, this will provide an opportunity for the first time anywhere to study the effects of BWCs when adopted pursuant to the kinds of stringent policies and protocols we have recommended. Dr. Braga has expressed preliminary interest in leading the research on this, if requested, and believes there are funding sources that can be tapped for such a project, because this project has the potential to produce such nationally important data.

It is important to note, however, that both Dr. Lum and Dr. Braga have told me that the randomized controlled study would best be conducted not as a pilot project in one district, as the current Common Council plan provides, but through some alternative means of randomizing the use of BWCs. Before proceeding with the pilot project, therefore, it seems critical that the City engage in an in-depth conversation, of the type I have begun with these researchers, to determine the best way to set up the pilot project to ensure that the study results are as valid as possible. Also, along those lines, Dr. Lum has volunteered to address the Common Council to explain the current state of the research in this area, if the Council would be interested in hearing from her as a neutral expert in the field.

Two other areas in the research deserve final comment. First is that the research is clear that BWCs can present a perspective of events that is biased in various ways. The Committee was very aware of this challenge, and therefore wrote into its policies a variety of measures designed to minimize this bias—including a requirement that all officers on the scene activate their cameras so we get multiple perspectives, including perspectives of cameras pointed at other officers; a requirement that image stabilization technology be used to limit the exaggerated impression of chaos and danger that can be caused by body movements; a requirement that cameras be worn as high on the body as possible, so that suspects are not depicted as larger and hence more threatening than they really are; a requirement that all footage of the incidents, including surveillance camera and bystander footage, be collected and maintained on the same footing as BWC footage; a requirement that fact-finders be warned of the biasing potential of BWC footage; and the like.

Importantly, one must remember that perspective and similar biases are not unique to BWC footage; *all* evidence is biased in one way or another. Eyewitness and officer testimony, for example, is always biased and shaded, whether intentionally or not, by the perspective and motivations of the witness. BWC footage at least has the advantage of being truthful and of capturing reality, at least from one perspective. Without video, if all we have is testimony from witnesses and participants, the evidence will inevitably be *more* biased and incomplete than in

a case with footage. Yet, as Judge Mitchell reminds us, if all we have is competing testimony between a police officer and a suspect (or even bystander witnesses), the biases in the evidence will go unchecked, and the police will win every time. As the case examples cited above reveal, BWC footage can in some cases trump the biased witness accounts provided by police and help us access the truth. BWCs cannot ensure accountability in every case, but they at least give it a chance in some cases where it otherwise would not be possible.

Finally, another significant concern the Committee had was that some research suggests that BWCs might have the effect of increasing charging for low-level offenses, which likely would have a disparate impact on minorities. Again, however, the Committee confronted that concern head on and wrote policies and procedures designed to minimize that potential effect. (See the Committee's Report at pages 10, 30-34, and Model Policy sections 5.a. & b.; 8.e., f., & g.; 9.a.xi. & xii; and 10. Key among these recommendations is that footage be forwarded promptly to the DA's Office and Public Defender's Office and that a firm commitment be obtained from the DA to review all footage prior to charging (because pre-charging review tends to mitigate the increase in charging), and that a commitment be obtained from the DA to take measures to counteract any increases in low-level offense charging caused by BWCs. In this way, adoption of BWCs in Madison offers our community a rare opportunity to leverage the adoption of BWCs to influence charging decisions in the Dane County DA's office in a way that reflects our community's values, and to change the nature of policing in Madison so that police serve both sides in the criminal justice system more evenly, and not predominantly prosecutorial interests.

So I repeat, BWCs are a tool. We have designed the Madison BWC program to make them a tool for the community. BWCs are coming; adoption of this program ensures that Madison is ahead of the curve, and is able to seize this opportunity to employ BWCs the right way, the way that best ensures they can support our community's urgent need for enhanced transparency and accountability and for building trust in police Madison's in most marginalized and heavily-policed communities.

Thank you for your consideration of these points.

Best regards,

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