

The Use of body Worn Cameras by the Police: Recommendations for Dealing with the
Unforeseen Consequences

Approved: Dr. Cheryl Banachowski-Fuller 12/05/2017

The Use of Body Worn Cameras by the Police: Recommendations for Dealing with the
Unforeseen Consequences

A Seminar Paper

Presented to the Graduate Faculty

University of Wisconsin – Platteville

In Partial Fulfillment of the Requirement for the Degree

Master of Science in Criminal Justice

Joseph E. Roy

December 2016

Under the Supervision of Dr. Susan Hilal

Abstract

The Use of Body Worn Cameras by the Police: Recommendations for Dealing with the Unforeseen Consequences

Joseph E. Roy

Under the Supervision of Dr. Susan Hilal

Purpose of the Study

The purpose of this research is to promote and contribute to the larger discussion of whether body-worn cameras (BWCs) are good for law enforcement by providing a method with which to discover those yet unknown consequences. This report will highlight further scientific studies into the impact that BWC systems have on law enforcement, the public, and other factions of the criminal justice system, that need to be conducted prior to widespread implementation. Without looking at the criminal justice system as a whole, it is difficult to determine whether or not an advantage of a BWC in one division carries similar benefits in others. Lastly, this report seeks to identify some of the most pertinent, yet mostly undiscussed, factors that must be considered before an agency can effectively deploy BWC technology.

Methods of the Study

In determining the most appropriate research method to utilize in the discussion of BWC's and police, it is important to understand that arriving at a defensible conclusion as to the overall worth of a BWC program is a multi-step research process. The current project seeks to better define the additional questions that need to be asked and researched before the

overall impact of any BWC program can be determined. The best way to derive those questions is to conduct a problem analysis, which is a type of evaluation study. It is the intention of this project to focus on a summative evaluation of the scope of the issue as it stands today. This will be accomplished through secondary analysis of a number of sources to include scholarly, sources, government resources, and other related information found in trade publications and news sources.

Findings of the Study

The findings of this seminar research paper show that there are a number of potential unforeseen consequences with the use of BWCs that must be addressed in order to assure that any BWC program is effective and sound. Certain facets of the criminal justice system, such as discretion and privacy, along with the protections provided for by the Constitution, must be safeguarded when BWCs are utilized by law enforcement officers. This research project shows that when administrators make important decisions up front regarding obtaining consent from those that are recorded, properly storing the videos, restricting who has access to them, and by choosing cameras that record as close to what the officer saw as possible, these concerns can be mitigated and BWCs can be used to their full potential in assisting both law enforcement and the communities that are served.

Acknowledgments

First and foremost, to my grandfather, who taught me that, despite having only made it through the eighth grade, education was the tool that could take you anywhere in life. Without your patience, guidance, and never say never spirit I wouldn't be here today. Thank you.

To my parents, thank you both for the sacrifices you made and hardships you endured to provide me the best educational opportunities available. I know that there were times that I made life difficult, but you never gave up. You both, instead, buckled down and showed me that learning can be accomplished at any age, despite having other commitments. I hope I, in turn, can pass on your vision and commitment to my children.

To the many faculty members at the University of Wisconsin-Platteville who have pushed, pulled, and sometimes dragged me to this point. Your leadership, compassion, and commitment to excellence was the fuel that got me here. This process really started many years ago during my Bachelor Degree studies through the University of Wisconsin-Platteville Distance Education Program. Professor Gary Apperson drove home the skills I needed to produce quality, peer-reviewable work. Professor Dan Avenarius just wouldn't take no for an answer when he approached me about this program. Dr. Patrick Solar gave me the freedom to explore topics that were new and unstudied, and Dr. Cheryl Banachowski-Fuller for putting together such a magnificent team all while guiding me down the right path even when I didn't know where I was headed.

To Dr. Susan Hilal, thank you for teaching me that formulating the question is just as important in research as answering it. Once I understood that, a whole new world of opportunity became evident. This paper really is testament to what you taught me and I thank

you so much for opening up my eyes. Also, thank you for pulling me back on track in the middle of this project when I lost my way.

Lastly, to my wife Michelle, my children Emily, Collin, and Clayton, there are no words. This journey was hard and without your never ending support, undying love, and unwavering understanding, I would not have made it. This paper is for you.

Table of Contents

Abstract	iii
Acknowledgments	v
Section 1: Introduction	1
Statement of the Problem.....	1
Purpose of the Study	1
Significance of the Study	2
Methods of Approach.....	2
Section 2: Literature Review	4
Definition	4
History of Video Recording in Law Enforcement.....	5
Overview of Current Body-Worn Camera Studies.....	7
Pertinent Federal Case Law	14
State Laws regarding Body-Worn Cameras	17
Section 3: The Current State of Body-Worn Cameras.....	20
Review of Current Body-Worn Camera Policies	20
Current Stance on Police Use of Body-Worn Cameras.....	22
Section 4: Identification of Potential Ramifications	26
Administrative Concerns	26
Constitutional Concerns	30
Operational Issues	32
Section 5: Recommendations and Conclusion	36
Consent	36
Video Storage.....	38
Limit Access.....	39
Restrict Field of View.....	40
Section 7: References	42

Section 1: Introduction

Statement of the Problem

Recent high-profile use of force incidents such as those that occurred in St. Anthony, Minnesota, Ferguson, Missouri, New York City, and Milwaukee, Wisconsin, have caused many citizens to call for greater accountability when police officers use force (Harvard Law Review, 2015). The use of BWCs by police officers is one way of addressing this issue. While the cameras may provide an unbiased, permanent historical record of the event, there also exists the possibility that negative, unintended consequences may emerge that could make BWCs less than ideal for policing.

There are clear arguments that can be made both for and against the use of BWCs by police officers. However, prior to either argument being accepted as the standard for modern policing policy, the topic needs to be further investigated to ensure that any potential negative impacts of BWC programs do not outweigh the benefits.

Before the consequences of BWC programs can be labeled as positive or negative, program goals need to be clearly defined so that empirical studies can be conducted and scientific data collected in order to determine whether these goals are ultimately met. Without first understanding the possible outcomes of the use of BWCs, it is impossible to state whether or not any of those results were unexpected.

Purpose of the Study

The purpose of this research is to promote and contribute to the larger discussion of whether BWCs are good for law enforcement by providing a method with which to discover those yet unknown consequences. This report will highlight further scientific studies into the

impact that BWC systems have on law enforcement, the public, and other factions of the criminal justice system, that need to be conducted prior to widespread implementation. Without looking at the criminal justice system as a whole, it is difficult to determine whether or not an advantage of a BWC in one division carries similar benefits in others. Lastly, this report seeks to identify some of the most pertinent, yet mostly undiscussed, factors that must be considered before an agency can effectively deploy BWC technology.

Significance of the Study

The use of body cameras has continued to gain momentum in law enforcement, fueled both by criminal justice administrators and public outcry. Despite a number of pilot programs currently being fielded by agencies across the county, very little scientific research has been conducted into the implications of recording, storing, and disseminating police-citizen encounters. There are a number of potential issues that could arise from different programs, and proper responses and those have yet to be fully vetted in either the courts or the court of public opinion. The significance of this project is that it will demonstrate some of these potential situations in hopes of stimulating further discussion and research into the legalities of such programs prior to their implementation.

Methods of Approach

In determining the most appropriate research method to utilize in the discussion of BWCs and police, it is important to understand that arriving at a defensible conclusion as to the overall worth of a BWC program is a multi-step research process. The current project seeks to better define the additional questions that need to be asked and researched before the overall impact of any BWC program can be determined. The best way to derive those questions

is to conduct a problem analysis, which is a type of evaluation study. It is the intention of this project to focus on a summative evaluation of the scope of the issue as it stands in the fall of 2016. This will be accomplished through secondary analysis of a number of sources to include scholarly, sources, government resources, and other related information found in trade publications and news sources.

Section 2: Literature Review

The following section is divided into four parts. The first defines important terms. The second lays out a brief history of the use of video recording in law enforcement. The third section then discusses a number of current research projects on the topic. The final section highlights pertinent case law regarding video recording of citizens by the police and the use of BWCs.

Definition

Body-Worn Cameras- A body worn camera is a small video camera that is capable of capturing both audio and video recording, storing that recording to a memory system which can later be reviewed, downloaded, copied, archived, and distributed (International Association of Chief's of Police, 2015). The camera is generally worn on the front of a police officer's uniform, built into the frame of eyeglasses, or attached to helmets that record the activities of that officer throughout his/her shift, including (but not limited to) traffic stops, arrests, break times, meal times, squad assembly times (roll call), interviews, interrogations, accident investigations, crime scene investigation, and use of force incidents. Most current policies provide for times and locations in which the systems should and should not be used, such as locker rooms, restroom breaks, and potentially when interviewing sensitive witnesses or victims.

History of Video Recording in Law Enforcement

Video recording got its start in the late 1950's when Charles Ginsburg and a team of inventors created the first modern, portable means of recording images to magnetic tapes (Bellis, 2016). Since that time video recording technology has exploded and so have the potential uses and benefits it provides. Video recording in law enforcement in the United States is said to have begun in the early 1960's when the Connecticut State Police experimented with placing a video camera in a squad car (International Association of Chief's of Police, 2003). Due to the technology available at the time, the camera took up the entire front passenger seat and was nothing more than a TV camera on a tripod. The devices were found to be bulky and inefficient for their intended purposes.

As the years progressed and technology advanced, camera equipment began to shrink in size and it became more useful. Video recording by the police is said to have begun in earnest in the 1980's (International Association of Chief's of Police, 2003). In that era Mothers Against Drunk Driving (MADD) began bringing significant pressure on the criminal justice system to increase the conviction rate in drunk driving cases. Police departments began to find that it was much easier to gain a conviction when juries were shown video-graphic proof of defendants' behavior at the time of the stop and arrest. It was at this time that technology and need met and therefore, in-squad camera systems began to be developed and implemented.

The usefulness of video recording in law enforcement continued into the 1990's when it took a more introspective look at the police themselves. In the early morning hours of March 31st, 1999, members of the Los Angeles Police Department were filmed by a citizen as they utilized a tremendous amount of force against Rodney King, a suspected drunk driver who

failed to yield and led police on a high speed chase (Martin, 2005). The aftermath of the video being released and the trials of the officers accused of using excessive force left many parts of the city burning and in ruin.

Fast forward to Ferguson, Missouri. On August 9th, 2014, Ferguson Police Officer Darren Wilson shot and killed 18-year old Michael Brown after Officer Wilson attempted to stop and question Brown in regards to a strong-arm robbery (NBC News, 2014). According to witnesses a physical struggle ensued between Officer Wilson and Brown when Brown refused to stop. Ultimately Wilson shot Brown, killing him. Shortly after the incident one of the witnesses, Dorian J. Johnson, reported that Officer Wilson shot Brown while Brown was holding his hands up in the air, yelling that he didn't have a gun and attempting to surrender (NBC News, 2014). The shooting was not captured on video.

Many claim that there may not have been the level of unrest that occurred in the aftermath of the shooting had it been videotaped. The belief held today by some groups in society, like the National Association for the Advancement of Colored People (NAACP) and American Civil Liberties Union (ACLU), is that video recording of incidents, such as shootings, will provide irrefutable evidence that immediately and in great detail shows whether or not the actions taken by the officer was justified (Simpson, 2015) . While the incident in Ferguson is not the first use of force that was not captured on video, it is the one that is most often quoted as sparking the national debate on the subject of body cameras today. In fact, shortly after the shooting of Michael Brown, the Ferguson Police Department issued body worn cameras to a majority of its' officers (Crabtree, 2015).

In May of 2015, the United States Department of Justice announced a new \$20-million-dollar grant program to help local police agencies purchase and operationalize new body cameras. The program is part of an overall \$75 million dollar initiative shepherded by President Obama to place 50,000 body worn cameras in the hands of officers on the street over a three year period (Kelsh, 2016).

It is hard to quantify exactly how many police agencies currently employ body worn cameras. According to the National Institute of Justice (NIJ) (2016), as of 2013, 75% of the law enforcement agencies around the country reported that they did not use body-cameras. In contrast, a 2015 report published by the Major Cities Chiefs Association in conjunction with the Major County Sheriffs' Association reported that of 70 major police organizations in the country, 20% reported having fully operational BWC programs while nearly the remaining 80% were moving towards implementing them (Major Cities Chiefs Association and Major County Sheriffs' Association, 2015). The NIJ is continuing to fund research projects, in an amount near \$600,000, to assess the viability of current body worn camera programs (National Institute of Justice, 2016).

Overview of Current Body-Worn Camera Studies

As of November 2016, there have been three major empirical studies published on BWCS in the United States. While there have been other survey-type analyses conducted by a number of organizations, Arizona State University seems to be at the forefront when it comes to controlled, scientific experiments surrounding the outcomes of deploying body-cameras on police officers. All three studies, as reviewed below, are important and are likely having an

impact on BWC programs being developed today. However, as with any study, there are limitations.

Phoenix Police Department

Katz, Choate, Ready, and Nunn (2014) conducted a study to examine the effects of the use of BWCs by Phoenix Police officers in six major areas: the compliance rate of officers activating the cameras as directed, the utility and use of the camera systems, the impact on the officers' job performance, the impact on the compliance of the public and their level of cooperation with camera-equipped officers, and the impact on the domestic violence case presentation, charging, and conviction rates.

The researchers hypothesized that the deployment of BWCs on officers would create a greater sense of accountability on the part of both the officer wearing the camera and the citizens involved in the interaction (Katz, et al., 2014). They further hypothesized that Phoenix police officers would see an increase in their effectiveness in protecting the citizens of Phoenix. They ventured that by having video documentation of incidents, officers would be able to author more accurate reports which would aide in prosecution. Furthermore, by having video evidence to support the statements of the officers, the probability of conviction at trial was likely to increase.

The cameras were deployed on the officers of one of the two Mayville districts, with the other serving as the control group, for a period of 15 months. Over 17,000 video files were collected and analyzed during the study. Of the over 17,000 video files recorded in the 15-month time frame, 15, 519 were clips of an actual citizen encounter or incident (Katz, et al.,

2014, p. 18). The remaining clips were either unable to be classified, accidental, duplicates, or created while officers were testing the camera units prior to their shifts.

Overall the researchers found that only about 25% of the incidents that, per policy, “should” have been recorded were. The majority of those incidents were domestic violence incidents as the group had hoped. Only 6.5% of traffic stops were recorded despite indications that most if not all should have been. On the positive side, complaints against officers wearing cameras declined over 23% and the number of arrests made by camera-wearing officers increased significantly. Ultimately the researchers discovered that the majority of Phoenix police officers who tested the cameras were dissatisfied with them. In fact, only 12.5% of the test group officers felt that the advantages of BWCs outweighed the disadvantages.

The study contains by far the most collected and analyzed data available on the topic to date. Beyond the expressed limitations, the data would seem to indicate that the program was a marginal success if one at all. The researchers hoped to increase the rates of prosecution in domestic violence requests, which did occur during the test phase. However, as stated in the report, the video evidence presented to the prosecutors so overwhelmed them that a Phoenix Police Detective had to be permanently assigned to the prosecutors to aide in digesting the video evidence.

Further, officers wearing BWCs experienced a 130% increase in resistance from citizens during arrests. It is not known if the increase in citizens resisting arrest was due to an actual increase in the number of combative residents or the fact that officers wearing body-cameras were better able to capture proof of that resistance and therefore were more apt to forward charges than they were in the past. However, since the increase in combative arrestees was

similar in both the control and test groups, it is unlikely that the existence of video evidence was the sole driving factor.

Mesa Police Department

Ready and Young (2015) studied how on-officer camera systems influenced the interactions between citizens and police officers. Specifically, the focus was whether or not the cameras affected the behavior of the officers towards the citizens. The researchers hypothesized that the use of BWCs by members of the Mesa, Arizona, Police Department would result in officers “perform[ing] significantly fewer warnings, stop-and-frisks, arrests (felony or misdemeanor) and officer initiated contacts (Ready & Young, 2015, p. 4).” On the flip side, the researchers hypothesized that officers wearing body-cameras would issue significantly more municipal citations (tickets) than those in the control group and would overall be very happy with the cameras.

Data was collected over a period of ten months, from November 1, 2012 to October 1, 2013. In that time 100 Mesa police officers were selected from all the patrol areas in the city for the study, 50 of which were control members and 50 were assigned cameras to wear for the test period. Of the 50 treatment officers, 25 volunteered for the study and the other 25 were randomly selected after controlling for similarities in race, age, and gender between the treatment group and the control group.

The 50 treatment officers were assigned to wear the BWCs each day they worked a shift for the entire test period. Ready and Young randomly selected five days per month and on those days they required the treatment officers to complete a field contact report in which they documented every contact they had with a citizen regardless of whether a formal police report

was filed on the incident or not. The researchers collected and analyzed 3,698 of these forms over the course of their experiment.

Ready and Young (2015) found that treatment officers, those assigned to wear body cameras, issued 23% more citations than their counterparts in the control group, which paralleled their hypothesis. The treatment officers did initiate 13% more citizen encounters than those not wearing the BWCs. Overall, the control group only made 6.9% more arrests than the treatment group, a statistically low number which may have surprised the researchers.

The researchers concluded that the BWC systems did make the officers wearing them more “risk averse and cautious about their actions” (Ready & Young, 2015, p. 10). They attribute this to the belief that officers wearing the cameras were more sensitive in regards to whether or not they had sufficient probable cause or reasonable suspicion to justify a particular stop or detention. In addition, the group found that treatment officers were more likely to issue citations than verbal warnings in many situations. They attributed this to the officers fearing reprisal, whether it be in the form of internal discipline or civil liability, for what some may consider failing to take appropriate action.

As for the potential limitations of their study, Ready and Young (2015) suggested that future researchers should utilize a more controlled process to select both control and treatment officers as there can be friction between members of the administration, the researchers, and the police union. When looking at this experiment critically, it is difficult to dismiss the fact that their contact sample size is hard to quantify when it comes to being a percentage of all the contacts or interactions by Mesa officers over the 10 months as the total number of stops is not documented. The fact that official department records were not consulted for this particular

study makes it difficult to determine the actual impact the officers wearing BWCs had in the community.

Ready and Young believe increased accountability will stem from the fact that officers will temper their actions because a recording of the interaction will be available for review by police administrators and the public. They profess that citizens will have access to the recorded video through a “public request via the Freedom of Information Act (5 U.S.C. 552 as amended).” The Freedom of Information Act, or FOIA, only applies to federal agencies and as such the Mesa Police Department would not be subject to those regulations (United States Department of Justice, 2016). Instead, the researchers should have alluded to the fact that the video would likely become available at some point under Arizona’s Freedom of Information Statute, §39-121 (Arizona State Legislature, 2007).

Rialto Police Department

Starting in February of 2012 and running for the period of one year, Ariel, Farrar, and Sutherland studied the impact of BWCs within the Rialto, California, Police Department. The purpose of their study was to determine if the utilization of BWCs reduced the number of use of force incidents by police and the number of citizen complaints filed against those officers. They hypothesized that mistrust and a lack of confidence in the police by the public characterized the relationship between the Rialto Police Department and the citizens it served prior to the study. Further, complaints against officers could serve as a proxy of the relationship between the officers and the community. The researchers felt that the use of BWCs would reduce the number of incidents in which Rialto police officers utilized force against citizens.

The researchers utilized a 12-month process in which they randomly assigned 988 shifts to be either treatment, during which officers of the Rialto Police Department were fitted with BWCs, or control, during which time BWCs were not utilized. The study encompassed officers from all three patrol shifts and all of the patrol areas in the city. There were 115 sworn police officers serving approximately 100,000 citizens. The team utilized BWCs produced by Taser International for the study.

Over the course of the study, there were 25 instances where officers used force against a subject. The researchers relied on official police department reports to document when force was used, and those reports indicated that use of force incidents, while relatively rare to begin with, did decline during the experimental period (Ariel, Farrar, & Sutherland, 2014). Of those 25 documented use of force incidents, 17 occurred on non-recorded shifts, and 8 were captured on video. As a percentage of all police/citizen contacts, officers in Rialto used force in less than 1% of interactions both before and during the study.

In terms of citizen complaints, sworn members did observe an almost 90% reduction in citizen complaints during the experimental period. There were three total complaints during the study, two filed against officers in the control group at the time of the incident and one against an officer utilizing a BWC at the time of the alleged infraction. While the difference in the number of complaints between the control and treatment groups is not statistically significant within the parameters of the study, the overall drop from 24 complaints in 2011 to 3 in 2012 is significant.

As for the limitations of their study, Ariel et al. had trouble controlling the interspersing of treatment shifts and control shifts because it is extremely common for officers from differing

shifts to overlap so as not to leave the municipality “un-protected” at shift change times. The researchers concluded that it was hard to determine whether the drops in the use of force were solely the work of officers deploying the cameras, or were the results of all the officers at a particular scene being aware that they were being recorded. They identify this limitation as the Hawthorne effect and were unable to control for it.

Ariel et al. undoubtedly completed one of the widest spanning studies of the effects of BWCS and policing. While their sample size was smaller than that in Phoenix and Mesa, it spanned the entire department, every sworn officer participated in some way. The methods and data, while significant and impressive, are not without critiques. A common thread that runs throughout their report, much like Ready and Young (2015), appears to be unmasked bias towards the actions of police officers. For example, the researchers, in describing the trouble with categorizing the use of force based on police reports alone, refer to the number of strikes with a baton as to the “times he or she was beaten with a baton before lying down...” (Ariel et al. 2014, p. 522).

Pertinent Federal Case Law

As of the fall of 2016, there have been no direct cases surrounding the use of BWCS decided by the United States Supreme Court. However, there are a number of cases that could potentially have an impact on their use by police. The cases noted below are just a sample of cases which may likely be considered by the court in the future.

Katz v. United States (389 U.S. 347 (1967))

In *Katz*, the United States Supreme Court agreed to consider the constitutionality of recording a private conversation in a public place by law enforcement (*Katz v. United States*, 1967). Charles Katz was arrested by the Federal Bureau of Investigation after covert microphones placed on a public phone booth recorded him making illegal gambling bets over the phone. Katz argued that the FBI's warrantless seizure of his private conversation was a violation of his Fourth Amendment rights. The government argued that the conversation took place in a public phone booth and therefore was not covered by the Fourth Amendment.

In siding with Katz, the court found that the Fourth Amendment does not pertain solely to a place, such as a home, but actually applies to people. The court suggested that a persons' Fourth Amendment rights should apply when they have an actual, subjective expectation of privacy if that expectation is objectively reasonable.

United States v. Koyomejian (970 F.2d 536 (1992))

Koyomejian and eighteen other defendants were arrested by the FBI for laundering money obtained in narcotics trafficking. After beginning their investigation, the FBI applied for and was granted a court order allowing the installation of covert surveillance video and audio recorders at the location that the defendants were utilizing to launder the funds. Once enough evidence was collected, all eighteen were indicted (*United States v. Koyomejian*, 1992).

Koyomejian argued that covert video surveillance of potential domestic crimes was a violation of Title I (18 U.S.C. § 2511(1)) and the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. §§ 1801-1811 (1988)). In their ruling, the Second District Court of Appeals, held that nothing in

either Title I or FISA specifically prohibit the use of covert surveillance cameras while investigating crimes of a domestic nature.

United States v. Jones (565 U.S. ___, (2012))

In 2004, the FBI began investigating Antoine Jones, the owner of Washington D.C. nightclub, for drug trafficking. As part of that investigation, agents applied for and were granted a search warrant to place a GPS tracking unit on Jones' car. Agents failed to install the GPS within the 10-day limitation imposed by the warrant, placing the device on the vehicle on the 11th day. The FBI then utilized the device to track the movement of Jones' vehicle 24-hours a day for over four weeks.

The FBI arrested Jones in 2005 and charged him with conspiracy to traffic illegal narcotics and other offenses, which they supported with data obtained from the GPS surveillance of Jones' vehicle. Jones was charged in federal court, during which time his defense attorney motioned to have the GPS evidence suppressed. The motion was denied, but the jury ended up in deadlock. Jones was retried and in 2008 was convicted of conspiracy to distribute and possess with intent to distribute five or more kilograms of cocaine and cocaine base. He was sentenced to life in prison. Jones appealed to the Appeals Court of the District of Columbia, which overturned Jones' conviction based on the belief that the warrantless application of a GPS unit was a violation of Jones' Fourth Amendment rights. The Supreme Court granted certiorari and eventually affirmed the lower court's ruling.

The Court held that the use of modern surveillance technology without a warrant or consent is a much greater intrusion into ones' life than a police officer conducting real-time surveillance. Further, the Court ruled that the warrantless installation of the GPS was a violation

of Jones' rights to privacy as the Court now more interprets the Fourth Amendment to be a bubble around actions in which there is a greater expectation of privacy rather than solely possessions contained within a building. In her concurring opinion Justice Sonia Sotomayor indicated that even movements made in a public place may in fact be private in nature, such as "trips to the psychiatrist...abortion clinic...criminal defense attorney...mosque...church... or gay bar and on and on" and as such provided the protection afforded by the Fourth Amendment.

State Laws regarding Body-Worn Cameras

The current laws governing the use of BWCs are as diverse as the states they come from. As of August 2016, only 30 state legislatures, and the District of Columbia, had begun to address the legal ramifications of their use (National Conference of State Legislators, 2016). Many of those states merely approved divesting funding for specific grants to study and implement the various programs. Of those states that passed resolutions specifically addressing BWCs, the overwhelming majority, 10 states plus Washington DC, cited only that policies need to be prepared and approved prior to the use of any BWCs.

The next two largest categories of legislative action were states that implemented grant programs and set some guidelines as to who can view footage and when they can see it. Only four states, Nevada, New Jersey, South Carolina, and Connecticut, currently have laws indicating that BWC usage is mandatory by law enforcement agencies in the state. South Carolina is the only state that mandates all law enforcement agencies within the state implement BWC programs. Connecticut is the second closest in language, mandating that any agency accepting state grant funds must implement a BWC program.

Other notable state laws include the one in New Hampshire which authorizes police officers to utilize BWCs only after notifying the person they are in contact with that they will be recorded (National Conference of State Legislators, 2016). The legislation in North Dakota exempts BWC footage taken inside a private place, whether it be a home or not, from open records requests. In Pennsylvania, the legislature has only proclaimed that game wardens may utilize body worn cameras.

A number of other states fall somewhere in the middle on these key issues. Minnesota, for example, has determined that BWC footage is private property and not open to public distribution unless it depicts an incident of great bodily harm or the individual in the video consents to its release (Associated Press, 2016). However, a Minnesota police officer cannot review their BWC footage prior to completing their initial reports.

By the far the most encompassing law is that from the state of Illinois. Illinois, like many other states, ran into issues with police utilizing BWCs as they had strict electronic surveillance and eavesdropping laws already on the books. Those states chose to modify their state statutes so that the use of BWCs by law enforcement for official purposes does not violate those privacy laws. Interestingly, legislators in Illinois took the time to craft the law in such a way as to spell out that it is illegal to utilize BWC footage to discipline officers for “minor infractions” (National Conference of State Legislators, 2016). The law does not preclude BWC footage from being utilized in investigation both formal and informal complaints, use of force issues, or to corroborate other misconduct investigations, but it does seem intent on preventing police administrations from arbitrarily reviewing the video and then using it against

their officers. This is in no doubt hope that officers will use the BWCs as they are legally protected from any undue harassment within their agencies.

Section 3: The Current State of Body-Worn Cameras

This section highlights the current state of BWCs across the country at an agency level, specifically examining departmental policies, and the positions of both police and civil rights organizations on a number of issues specific to BWCs.

Review of Current Body-Worn Camera Policies

According to available research, currently 22 major city police departments make their BWC policies easily available to the public (Yu, Cook, & Yu, 2016). The Leadership Conference on Human and Civil Rights recently partnered with Upturn, a forward thinking progressive company that hopes to make technology and the law work for everyone, and developed a website that documented and reviewed the available BWC policies from those agencies. A review of a majority of those policies shows that they are as varied as the departments they emanate from. However, they all seem to cover similar aspects of BWCs.

In 2014, the International Association of Chiefs of Police (IACP) released a model policy that details which policy sections the organization feels are most critical to a legally defensible, operable BWC policy (IACP, 2014). Those sections include: who is authorized or required to wear a BWC, how and when to use the BWC, procedures for the use of the BWC, restrictions on when BWCs should not be used, storage, and dissemination. While these topics are largely self-explanatory, each of them contain particular nuances important to the current study.

Most agencies restrict the use of BWCs to those members that have been trained in the particular model of recording system utilized. A majority of the policies reviewed indicated that all members assigned or issued a BWC will wear those devices at all times while working, including off-duty overtime assignments and to and from work for members with take home

vehicles (Yu, Cook, & Yu, 2016). As with any other tool in law enforcement, training is necessary to ensure uniform application of the system is accomplished. One of the largest sections of that training is likely when and where the cameras have to be or should be activated.

Many of the policies, such as those of the Chicago Police Department and Milwaukee Police Department, detail exactly during which incidents or calls for service the cameras should be activated (Chicago Police Department, 2016; Milwaukee Police Department, 2016). Those incidents include traffic stops, calls for service, investigative detentions, field interviews of victims or witnesses, and use of force incidents to highlight a short section of the list.

On the other side of the coin, many agencies detail situations where officers may choose not to record interactions such as interviews of certain sensitive victims (sexual assault, child abuse, etc.), as well as any period of “down-time” between calls where officers are interacting casually (Yu, Cook, & Yu, 2016). Most agencies prohibit recording in locker rooms, restrooms, medical or psychiatric treatment facilities and jails.

The last two major categories covered by all of the reviewed policies direct how the video is categorized and archived. One of the major concerns of certain civil liberties organizations across the country is the length of time that departments retain the video and who amongst the agency has access to it. For example, the Dallas Police Department deletes any video not tagged for long-term retention, which would typically be that video used in a criminal court case, under review by the department for potential discipline, as well as any other video that is required to be retained by law or policy, after 90 days. In contrast, the Albuquerque Police Department has no policy for the removal of non-essential video clips.

As for who is able to access and review the video recordings, almost all of the reviewed policies had limits in place that indicated that the recordings could only be used for official law enforcement purposes and that unauthorized distribution would be treated with disciplinary action. The agencies seemed to vary when it came to whether or not an officer could view their own recording prior to filing official reports, but most agencies seemed to allow for it to some degree. It should be noted that a number of agencies, including the Chicago Police Department, included verbiage in their policies that indicated that BWC footage should not be randomly reviewed in an effort to locate and punish officers for minor policy violations (Chicago Police Department, 2016).

Current Stance on Police Use of Body-Worn Cameras

As with many issues facing law enforcement today, not everyone sees BWC programs the same way. While many groups may welcome similar outcomes from BWC programs, often their methods and reasoning for obtaining those goals are different. The two groups most vocal in this process are police organizations and the civil rights community. Discussions of BWCs in those circles tend to focus on when to record an interaction, who can view the recording, and what happens to the recording after it is archived. This section will identify and document the current stance of police organizations and civil rights organizations on those main topics.

Police Organizations

The Police Executive Research Forum (PERF), a nationwide police research and policy organization, recommends that police departments across the country implement BWC programs in an effort to improve police service, increase accountability, and promote legitimacy within the community (Miller, Tolliver, & Forum, 2014). PERF recommends that the

recorded videos be open to public review in all but a few limited circumstances in hopes of demonstrating transparency and openness within the community. PERF indicates that video being utilized for on-going criminal or internal investigations should be withheld until the conclusion of those investigations. They also recommend that any video capturing extremely sensitive subjects, such as nude individuals or dead bodies, be redacted to prevent offending the public. In addition, they are a proponent of officers being allowed to review their own BWC footage before and while completing their reports.

PERF recommends that officers be given discretion as to when and when not to record. Certain situations, such as interviewing witnesses or victims may be times when officers chose not to record the interaction in order to protect those individuals. Policies that define the types of calls that should be recorded are more agreeable to most police agencies as opposed to policies that require constant recording. They argue that policies that mandate recording of all police / citizen interactions actually cause more damage to community relations than they benefit.

As to retention of police video recordings, PERF recommends that non-evidentiary video be deleted from the system automatically within 60 to 90 days of the recording. This is in effort to try and protect the privacy of those individuals whose image may have been captured accidentally, or in a manner outside of criminal investigation.

The IACP echoes many of PERF's recommendations. The IACP also addresses whether or not officers should be allowed to review their own BWC footage prior to completing a report (International Association of Chief's of Police, 2014). They indicate that administrators should closely examine whether or not officers involved in critical situations should review their video

prior to completing a report or interview. Overall they recommend that officers have access to the recordings in an effort to allow them to review their own tactics.

Another issue addressed by the IACP is the review of video by supervisors. The general recommendation is that front line supervisor review the recordings of those officers assigned to them at least once a month. Those videos can be chosen randomly or systematically, but should come from all individuals assigned to the supervisor. The IACP does suggest some flexibility in that officers identified as having certain issues, especially when it comes to dealing with the public, should be reviewed on a regular basis to determine whether training or discipline is appropriate. The group concludes that this type of monitoring can be detrimental to the overall acceptance of the body-worn program if abused or not properly managed, but that the potential benefits outweigh the consequences.

Civil Rights Organization

The ACLU, a nationwide organization that strives to protect the individual rights and freedoms for citizens, also promotes the use of BWCs by police officers (Stanley, 2015). The ACLU indicates that it is generally opposed to any form of surveillance cameras in general life, however, it believes that the use of BWCs by police officers will bring about some accountability, especially when it comes to use of force incidents, by those officers and their law enforcement organizations.

The ACLU agrees with PERF in that officers should have discretion as when to and when not to utilize BWCs to record specific incidents. The ACLU is more concerned with the ability that officers may have to edit or delete their own videos, actions which would undermine the reasons for the program. They recommend that future equipment be equipped with features

that would allow for automatic triggering of the recording system, such as raised voices or certain movements by the officers, as a way to help guarantee that those encounters are recorded.

According to the ACLU, most video should go completely unviewed by humans, including the public and police officers, unless that video is known to provide direct evidence of police misconduct or there is reasonable suspicion to believe that the recording captured a crime in progress. They do provide that those subjects who have been recorded should be allowed access to view and copy those recordings, and prior to releasing any video footage, consent from all the subjects in the recording should be obtained. Further, they recommend that video retention periods should be “measured in weeks, not years” (Stanley, 2015).

Other civil rights organizations, such as the NAACP and Voices for Racial Justice, go further than the ACLU in their recommendations. According to The Leadership Conference, a broad coalition of civil rights organizations feels strongly that all video recorded by police officers should be open to public review and released as quickly as feasible (Simpson, 2015). They oppose any law, like that in Minnesota, that restricts the release of the footage. The group also professes that allowing officers to review their own video prior to filing their official police reports damages the evidentiary value of those reports and may end up doing more harm to the officer and citizens involved than they would good. The group acknowledges that BWCs cannot capture every nuance of a situation, and fears that officers may change their reports based on the recordings and not what they personally say, felt, or heard

Section 4: Identification of Potential Ramifications

The current studies suggest that the benefits of BWCs far outweigh any potential negative outcomes. Very few of those consequences are identified and explained. This section will identify a number of ramifications that have yet to be fully studied and discussed, including civil issues, constitutional issues, and operational issues within law enforcement organizations.

Administrative Concerns

The two issues to be touched on and better explained in this section are the concerns over consent by citizens to police video recording and then the retention and distribution of those recorded situations. Federal wiretapping laws, generally covered under 18 U.S.C. 2511, prohibit the capturing and disclosing of any communications, whether they be wire, oral, or electronic, without the consent of one or more parties involved in the conversation (Cornell University Law School, n.d.). As of 2014, ten states, California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania and Washington, all required “two-party consent” to any recordings of a private nature (Digital Media Law Project, 2014). Since 2015, six states, California, Georgia, Illinois, Nevada, New Hampshire and Oregon, have made changes to their state statutes to indicate that police use of body-cameras does not violate the individual states consent or wiretapping laws (National Conference of State Legislators, 2016).

When the legal right to record interactions with the public by the police is viewed within the boundaries of the above federal statutes and court cases such as those in *Katz* and *Jones*, serious potential issues arise. In both *Katz* and *Jones*, the behaviors that were observed and recorded by law enforcement officials occurred in public places. By utilizing BWCS on most calls

for police service, as is the recommendation of many groups, a large number of those interactions will occur in a private place. Some will occur without the consent of those being recorded. So then Federal law currently prohibits the warrantless recording of private conversations, and the United States Supreme Court has ruled that the warrantless recording of certain actions taken in plain view is unconstitutional, yet many believe that somehow the recordings captured by BWCs in private places without consent will fall outside the purview and control of both.

Some proponents of BWCs point out that most states have already addressed the issue of consent, and 18 U.S.C. 2511 (2)(a)(iii)(c) allows for recordings to be made under the color of law, yet very few have attempted to explain how the recordings would be viewed under current constitutional guidance (Mateescu, Rosenblat, & Boyd, 2015). *Jones* is the case that is most applicable to this point, as of November 2016, and the Supreme Court was very clear in their declaration that the Fourth Amendment serves more like a bubble around the actions of citizens in their personal lives than a barrier at the front door of a home. Therefore, once litigated, it is very possible that the use of BWCs by law enforcement may face some serious constitutional issues.

The storage, dissemination, and ultimate use of BWC videos is also of great concern. Cost is an incredibly important thing in today's era of ever shrinking budgets and increasing equipment costs. Beyond the initial startup cost for a BWC system, which can run in the \$100's of thousands of dollars depending on the size of the agency, the recorded videos need to be digitally stored somewhere and that storage often is not cheap (Ariel, Farrar, & Sutherland, 2014; Katz, et al., 2014). Certain studies point to the fact that on average a law enforcement

organization should budget \$100 per year per body worn camera just to store the video footage captured (Kotowski, 2016). That equates to \$10,000 for a one-hundred-member department, and a little over \$3.4 million dollars a year for the New York Police Department. Those amounts are substantial annual increases that must be budgeted for annually. For comparison, in 2017 the NYPD has budgeted \$57.5 million dollars for all equipment expenses occurred by the department (Eng, 2016). At these rates, BWC video storage would equate to a little under 16% of the NYPD's total equipment budget.

Costs routinely increase in law enforcement, and ways of garnering new sources of income are always being researched. When any new program is contemplated, a cost/benefit analysis is conducted. Some programs have benefits that outweigh costs and some programs actually generate their own revenue. BWC programs are said to “pay for themselves” through the reduction of civil claims and lawsuits filed against an agency (International Association of Chief's of Police, 2015). The cameras do not generate any revenue on their own, unlike laser traffic speed detectors and such. The problem, when it comes to budgets, is that most municipalities carry insurance to cover them and their law enforcement agencies against monetary claims. They do not budget monies every year to pay claims out. It is possible that the deployment of body cameras may reduce those insurance premiums, thereby saving the municipality money, but saving money is the not the same as generating money and premium reductions cannot be relied upon year after year.

If an agency is able to earmark the funds for retaining BWC videos, the next thing that must be considered is the security of that digital storage system. Most BWC manufacturers, such as Taser International, can provide their customers with what they call “a secure end to

end data management system” for an additional cost (TASER International, n.d.). However, how secure is secure? Is TASER’s digital storage system more secure than the digital safety protocols employed by the United States government, the Department of Defense, the Democratic National Committee, all of whom were the victims of computer hackers (Koerner, 2016). While TASER no doubt employs state of the art digital protection, the fact of the matter is that digital data transmitted via the internet is still susceptible to attack and destruction. It would look very poor if an agency had to explain to a magistrate that their video evidence in a particular case was either destroyed or disseminated by a hacker.

Lastly in this section is the issue of dissemination. As mentioned in an early section, most civil rights organizations argue against the release of BWC footage except under certain limited circumstances. While understandable, those suggestions do not change the fact that BWC footage becomes something held in the normal course of business by a governmental agency and as such should generally be open to public inspection (Grabowicz, 2014). While there are some exceptions to this principle, and each state has their own laws governing the release of documents, each agency has to address who gets to see what video and when they can see it prior to capturing any video evidence.

A potential oversight in this area that is especially sensitive is the video evidence captured at domestic violence scenes. The study conducted by the Phoenix Police Department showed that BWCs had an impact on increasing the likelihood that a domestic violence case would be charged (Katz, et al., 2014). However, there are instances where law enforcement officers respond to potential domestic violence situations where there is either no probable cause for arrest or other non-custodial resolutions are employed. BWC footage captured by the

officers at those scenes could remain and may possibly be available for public review. The danger in that is the damage such video could do to the reputation of a person who was not arrested or charged with a crime. It might be possible that an individual's employer could request to see the video and then take action against their employee based on something in the video, hence causing that person direct and measurable harm through the actions of a governmental agency. As will be discussed in the next section, that borders on a violation of the citizen's Fourth Amendment rights.

Constitutional Concerns

The Constitution of the United States was written to limit the power of the government and protect certain rights of the people. The Fourth Amendment to the United States Constitution states "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (Cornell University Law School, n.d.). There have been a number of interpretations of this edict since its inception, and many of those have changed as time and technology have changed, however the basic tenets have remained strong.

The potential for violating this central pillar of the American criminal justice system is extremely high with BWCS. As was detailed previously, many states have enacted their own laws to protect citizen's privacy to the greatest extent possible, but those statutes do not carry the weight of the Fourth Amendment, nor can they modify it in any way. The potential problem with BWCs is that they can see more than the naked eye, save those images which can then be

manipulated and enhanced, and whose memory lasts as long as desired. As the U.S. Supreme Court pointed out in *Jones*, the use of technology to monitor citizen's lives is a much greater intrusion than traditional forms of surveillance or monitoring. *Jones* dealt with capturing the movements of an inanimate object (the car) that occurred in places and ways visible to anyone in the area. BWCs have the potential of capturing incredibly intimate or personal moments, actions, and dialogues conducted in places well secreted away from public scrutiny and almost all will likely occur without the issuance of a warrant and many will be captured without the direct consent of those being recorded. Based on that description, the use of BWCs is almost certainly a violation of the Fourth Amendment.

Legal scholars, law enforcement administrators, judges, and eventually society, are going to have to be able to define exactly what is "unreasonable" when it comes to the use of BWCs. While the decision to not record dead bodies and sensitive victim interviews seems just, the line between reasonable and unreasonable is very, very thin. The Supreme Court has ruled that it is unreasonable to search a citizen's cellular phone without consent or a warrant (*Riley v. California* 573 U.S. ____ (2014)), yet proponents of BWC programs would have citizens believe that the recording of their actions inside their own home, whether they be legal or not, is ok simply to increase police legitimacy. While the search of an individual's cellular phone could no doubt be intrusive and revealing, there is some defense in the argument that it is often difficult to tell who exactly was in control of the device at the time of the incident in question. There is very little defense when one's likeness and actions are recorded in high definition.

Further, what happens when the warrantless BWC recording is deemed by a judge to have been an unreasonable intrusion and as such is struck from trial and that footage contains

images of other evidence or the process with which other pertinent information is located.

Does the fruit of the poisonous tree doctrine then take over (Cornell University Law School, n.d.), and all subsequent evidence captured on that video also become unusable in court? What if the video from one officer is excluded, but other officer's videos are not? These are constitutional questions that must be answered at some point and unfortunately the only way to answer many of them is through litigation.

Operational Issues

Beyond the civil and constitutional issues, there are operational issues that must be addressed prior to the broad acceptance of BWC programs. One of those concerns is the potential loss of privacy that officers deploying BWCs face. In June of 2016, an officer employed by the Round Lake Illinois Police Department discovered that his department-issued BWC was constantly recording, even in sleep or off mode (Associated Press, 2016). According to a lawsuit filed by ten members of the organization, officers who reviewed their video observed thousands of private images, including their own genitals at times, that were never have to been recorded. The manufacturer of the particular BWC deployed by the Round Lake Police Department indicated to the officers that the constant recording was a feature that was highlighted to the Round Lake Police Department administration, and could have been disabled if the administration had so chosen.

Police officers, despite their position within the criminal justice system, are still afforded First and Fourth Amendment rights. There are certain circumstances in which some of those rights are curtailed based upon their profession, but certain modicums of privacy are still expected. The IACP, PERF, and the various civil rights organizations all mandate that BWCs

should not be utilized in locker rooms, restrooms, common squad areas, police break rooms, and other locations where interaction with citizens is highly unlikely. Despite those recommendations, errors can still occur. How those types of situations are dealt with must be addressed by the organization before BWCS are deployed.

Beyond the privacy aspects of BWCs, a large number of officers' fear that they will be used by administrators to discipline officers for minor policy infractions (Miller, Tolliver, & Forum, 2014). Agencies engaged in reviewing video for other than complaints and legitimate training concerns stand a significant chance of eroding trust and morale between administrators and officers to a dangerously low level.

A second, and perhaps more critical, issue is that of the BWCs field of view. Most BWCs are worn near the centerline of the body or closer to the officer's dominant (shooting) hand (National Insitute of Justice, 2016). They are generally attached to outer ballistic vest carrier or shirt worn by the officer, while some can be mounted to eyeglass frames worn by the officer. The exact field-of-view, that is the dimensions of the area that can be seen and recorded by the cameras, varies by model but is generally around 75 degrees (TASER International, n.d.). Other camera brands advertise having up to 130-degree field of view with their cameras (Schechter, 2014). The issue is that the human eye can only discern detail out to about a 60-degree field of view. With BWCs able to record double that field of view in high definition and then able to save those images for eternity, opens up tremendous legal liability for officers (Utility, 2014). Biologically, peripheral vision cannot discern or record detail in the human mind, it can only trigger a response that indicates something is outside the individual's field of view. The ability to "armchair quarterback" officers' decisions based upon wide-angle BWC video is

unreasonable as it is entirely likely that the officer couldn't actually see whatever it is that occurred outside that 60 degrees.

Another issue with how BWCs are deployed is the fact that being an exterior uniform accessory the likelihood of them being dislodged or broken in a physical altercation is very high. Many police physical control tactics involve bringing the resistive actor closer in to the officer's body so as to limit their reach and power and provide the officer with the upper hand in controlling the situation. When that happens, the BWCs, as well as other pieces of equipment, tend to become dislodged or broken (Miller, Tolliver, & Forum, 2014). If another officer equipped with a BWC is not on the scene at the time and in a position to record, there is no footage of the incident. Unfortunately, this can lead to the integrity of the officers involved being questioned, as was seen in the police shooting of Alton Sterling in Baton Rouge, Louisiana, in July of 2016 (BBC News, 2016). The officers involved in that incident had their BWCs fall off of their uniforms during the struggle and as such the shooting itself was poorly captured. Some have accused the officers of deliberately knocking the cameras off so as to not have their actions recorded. In a situation like that it comes down to the word of the officer versus, all too often, the word of the media, social media, and others which can be a difficult battle.

The last, and potentially most important operational concern with the deployment of BWCs on police officers is the effect that constant surveillance will have on the officer's use of discretion. Discretion is the ability of police officers to use their training and experience, within the confines of their local laws and policies, along with a healthy dose of common sense to make a decision on how best to handle the situation they find in front of them (Nielsen, 2011).

In short, discretion means that law enforcement officers do not have to take official action on every violation of the law they encounter. An effective police officer must be able to use discretion ethically, responsibly, and with some form of reasoning as support. Up until the introduction of BWCs, a lot of police work occurred in private situations, away from the public and often other officers and supervisors. It has been argued that in those situations, seasoned police officers may have been more apt to utilize their discretion in certain lower level offenses, such as the possession of marijuana or drug paraphernalia. Officers may take those opportunities to educate the offender and provide that person a “second chance” rather than arresting them for the violation. Officers were rarely ever questioned about these situations by command staff as official reports were rarely filed and those given a warning over a ticket or arrest hardly ever filed complaints. In other words, much of policing occurred almost in secret.

With the deployment of BWCs, those private events are no longer private. It is entirely possible that once faced with the knowledge that every decision they make is going to be recorded and possibly reviewed, officers will be reluctant to utilize discretion. After all the easiest way to not be questioned is to simply make the arrest or write the citation. The IACP highlights this very point when they detail an increase in the number of traffic citations issued by officers after the installation of dash cameras in patrol cars (International Association of Chief's of Police, 2003), and as BWCs are proclaimed to have the same effect as dash-cams, it would be logical to assume a similar progression. Police discretion is a vital part of the criminal justice system. It is the first measure that prevents the system from becoming overloaded to the point it can no longer function. Losing it could be catastrophic.

Section 5: Recommendations and Conclusion

It would appear that there is little argument that BWCs are here to stay. Their benefits are clear, but their limitations are becoming more evident as agencies begin to utilize them. By considering a couple of recommendations, it is possible for a law enforcement agency to deploy a legally-defensible, constitutionally sound, and effective BWC program that will benefit both the agency, the officers, and the community. Those things to be considered include obtaining consent from those recorded whenever possible, storing footage locally, restricting when video can be accessed by anyone, as well as limiting the field of view of the cameras to near that of the human eye.

Consent

It is recommended that officers utilizing BWCs obtain consent from all persons that may have been captured on the recording. If capturing moments, actions, and conversations that are reasonably believed to be private in nature is a search under the Fourth Amendment, as the sections above indicate, then obtaining consent is one exception to the search warrant requirement of that amendment. This is as easy as speaking with those present at the time and advising them that they are being recorded and then asking them for permission to continue. Even in states that have one party consent laws regarding recording, gaining consent from the citizens involved will save potential legal issues down the road just like in any other search. This approach is not feasible in all law enforcement situations, emergencies and in-progress type of incidents may make this impossible at the time. However, if an agency makes an attempt to record consent whenever possible, a majority of the captured incidents should be covered.

Whenever possible, officers unable to obtain consent upon arrival should attempt to gain that consent after the fact. Even though the search has already occurred, prior to anyone viewing that video, the fruits of that intrusion have yet to be utilized and therefore the intrusion is limited. In instances where consent is not granted, or cannot be obtained, the video evidence would still be available after a search warrant for it can be secured.

Obtaining consent for recoding does two things for BWC operators, first it negates any issue with the issue of a warrantless search, but secondly it becomes a powerful tool in modifying the behavior of those citizens involved in the interaction. As the studies highlighted earlier point out, humans will often change their behavior for the better when they know they are being recorded. When an officer takes the time to explain that department policy requires they obtain consent to be recorded by all effected people present, it offers that ability to notify the citizens that they are being watched without having to use potentially inflammatory statements such as “You are being recorded right now.” While that phrase may seem innocuous enough, perceived in the wrong tone during a heated situation may aggravate the situation rather than calm it. This period of interaction near the time of arrival also allows officers to open a line of dialogue with the people present at the scene without having to actually discuss the incident. When officers are able to quickly gain rapport, and perhaps trust, with the individuals involved, things It is possible that this opportunity to build rapport, while mitigating constitutional issues, will improve the efficiency of the officer in the investigation, achieving one of the main goals of BWC usage.

Video Storage

Law enforcement agencies should seek to store BWC footage locally, on a server that is not routinely connected to the internet. This approach to data storage would accomplish two things, first it would allow agencies to budget for and control costs as storing the videos is documented to be one of the largest costs of a BWC program. Secondly, it would offer unprecedented security and access control to those videos. While the initial purchase of technologically sound data servers will necessarily increase upfront BWC costs, the lack of a yearly budgetary expense may make the program more enticing to a municipality looking to utilize a federal grant to offset those startup expenses and minimize financial exposure moving forward.

By keeping the video server relegated to a minimal number of work stations which are disconnected from any external network, the access of the videos contained within can be positively controlled. While video management systems offered by the various BWC manufactures may be convenient, even the most secure of servers that are connected to the internet are subject to attacks and breaches by hackers. An internal system is free from those maladies. Most video management systems log when a video is viewed and by what user, but documentation alone does not change the fact that video has been viewed and the information contained within is now out and no longer protected. A stand-alone workstation, under the direct control of a department administrator, ensures that those who view videos in fact have the need and permission to view the footage.

An approach like this to video storage would not necessarily require a law enforcement agency to have an information technologies (IT) department. Videos captured by BWCs could

be stored in much the same manner that digital photographs or audio recorded statements are stored by departments today. The hardware may be slightly more sophisticated, but the procedure for securing digital evidence doesn't change between audio, still photograph, and video. This type of cost-effective, self-contained storage system may put BWCs closer in reach to some of the thousands of smaller agencies across the country that deal with limited budgets and personnel.

Limit Access

The ACLU was correct in their assertion that most BWC video should go unwatched by anyone and be deleted within a reasonable time frame. Body-worn camera footage is documentation collected by a governmental agency during the normal course of business, and if it is viewable by that agency, it should be reviewable by the general public upon request. The easiest way to satisfy the public's interest in seeing the video while maintaining the appropriate level of privacy is to restrict everyone from viewing the video, unless that video is known to provide direct evidence of police misconduct, there is reasonable suspicion to believe that the recording captured a crime in progress, or upon the issuance of search warrant. If the police themselves cannot as a matter of routine view the BWC footage, it is easier to restrict the public from doing so as well. One of the main objectives of BWC programs is still accomplished, the behavior of those citizens being recorded is modified to the extent possible, yet the concerns for privacy are taken into account.

Much like the Illinois state law prohibiting department administrators from routinely reviewing video for minor policy violations, restricting access to the video by department members, except when it is evidence of a crime or upon the receipt of a formal complaint of

police misconduct, may provide officers with the assurance that they are not being monitored and judged at all times while they are working. This will help preserve and promote the necessary utilization of discretion by officers. It does not hamper law enforcement agencies from monitoring their employees, it just restricts them to the methods that they have utilized since the inception of police forces. Those methods, such as direct supervision, are still available and as effective today as they were decades ago.

Restrict Field of View

Despite the opinion that most BWC video should go unseen, there should be some controls in place to mitigate the potential exposure officers face based on a physiological limitation they have no control over. The field of view for BWCs should be limited to as close to that of the human eye as possible. Police officers utilizing BWCs should not be held liable for things evident in the video that were outside their field of view at the time the incident was happening. Reviewing any video of a situation allows for hindsight to creep in, but it is unfair to hold officers accountable after the fact for things they could not have physically seen at the time. Body-worn camera footage, as with any other evidence, must be objectively reasonable in its application and the use of wide-angle lenses, some capable of capturing double what the human eye can, are not reasonable.

Evidence must be viewed by the court in the context in which it was collected and is applicable. Video captured by the BWC outside the direct view of the officer at the time is not evidentiary in nature, and based on the costs of storing video evidence, any reduction in file size is a cost savings for the agency.

In conclusion this report has promoted and contributed to the larger discussion of

whether BWCs are good for law enforcement by demonstrating some of the unknown consequences and providing recommendations for addressing them. This report highlighted that further scientific studies into the impact that BWCs systems have on law enforcement, the public, and other factions of the criminal justice system, need to be conducted prior to widespread implementation. Lastly, this report identified some of the most pertinent, yet mostly undiscussed, factors that must be considered before an agency can effectively deploy BWC technology. It is apparent that BWCs will gain greater popularity with law enforcement agencies in the future, and their utilization will increase across the country. By first addressing a couple of concerns, law enforcement administrators can be assured that their BWC programs will be both beneficial and sound for all people involved.

The recommendations provided are not meant to tie the hands of police departments seeking to utilize BWCs, but are designed to assure that the future of BWCs is safe and secure.

Section 7: References

- Ariel, B., Farrar, W. A., & Sutherland, A. (2014, November 19). The effect of police body-worn cameras on use of force and citizens' complaints against the police: A randomized trial. *Journal of Quantitative Criminology*, 31, 509-535.
- Arizona State Legislature. (2007). *Title 39 - Public Records, Printing and Notices*. Retrieved October 6, 2016, from Arizona State Legislature Revised Statutes: <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=39>
- Associated Press. (2016, June 25). *Illinois officers claim body cameras an invasion of privacy in lawsuit*. Retrieved from Fox News: <http://www.foxnews.com/us/2016/06/25/illinois-officers-claim-body-cameras-invasion-privacy-in-lawsuit.html>
- Associated Press. (2016, May 31). *Minnesota Gov. Mark Dayton signs bill on police body cameras*. Retrieved from StarTribune: <http://www.startribune.com/dayton-signs-bill-on-police-body-cameras/381408391/>
- BBC News. (2016, September 25). *Police accountability: Why body cam footage is not always released*. Retrieved from BBC World News: <http://www.bbc.com/news/world-us-canada-37440114>
- Bellis, M. (2016, August 21). *The History of Video Records - Video Tape and Camer*. Retrieved October 15, 2016, from About.com: <http://inventors.about.com/od/famousinventions/fl/The-History-of-Video-Recorders-Video-Tape-and-Camera.htm>
- Brennan Center for Justice. (2016, August 3). *Police Body Camera Policies: Retention and Release*. Retrieved October 6, 2016, from Brennan Center for Justice: <https://www.brennancenter.org/analysis/police-body-camera-policies-retention-and-release>
- Chicago Police Department. (2016, May 10). *Body Worn Cameras*. Retrieved October 17, 2016, from bwscorecard.org: <https://www.bwscorecard.org/static/policies/2016-05-10%20Chicago%20-%20BWC%20Policy.pdf>
- Cornell University Law School. (n.d.). *Fourth Amendment*. Retrieved from Cornell University Law School LII: https://www.law.cornell.edu/wex/fourth_amendment

Cornell University Law School. (n.d.). *Fruit of the Poisonous Tree* . Retrieved November 9, 2016, from Cornell University Law School LII:
https://www.law.cornell.edu/wex/fruit_of_the_poisonous_tree

Cornell University Law School. (n.d.). *18 U.S. Code 2511 - Interception and disclosure of wire, oral, or electronic communications prohibited*. Retrieved November 5, 2016, from U.S. Code: <https://www.law.cornell.edu/uscode/text/18/2511>

Crabtree, S. (2015, August 13). *One year after Ferguson, still no body cameras on cops*. Retrieved October 4, 2016, from The Washington Examiner:
<http://www.washingtonexaminer.com/one-year-after-ferguson-still-no-body-cameras-on-cops/article/2570110>

Digital Media Law Project. (2014). *Recording Phone Calls and Conversations*. Retrieved November 1, 2016, from Digital Media Law Project: <http://www.dmlp.org/legal-guide/recording-phone-calls-and-conversations>

Eng, E. (2016). *Report on the Fiscal 2017 Executive Budget New York Police Department*. New York: The Council of the City of New York.

Grabowicz, P. (2014). *Tutorial: Police Records*. Retrieved from UC Berkley Graduate School of Journalism: Advanced Media Institute:
<https://multimedia.journalism.berkeley.edu/tutorials/police-records/>

International Association of Chief's of Police. (2003). *The Impact of Video Evidence on Modern Policing*. Alexandria: IACP Research Center.

International Association of Chief's of Police. (2014). *Body-Worn Cameras*. Alexandria: IACP National Law Enforcement Policy Center.

International Association of Chief's of Police. (2015). *Recording Police Activity*. Alexandria: IACP Law Enforcement Policy Center.

Katz v. United States, 389 U.S. 347 (United States Supreme Court 1967).

Katz, C. M., Choate, D. E., Ready, J. R., Nuno, L., Kurtenbach, M., & Johnson, K. ". (2014). *Evaluating the impact of officer worn body cameras in the Phoenix Police Department*. Phoenix: Arizona State University.

- Kelsh, C. (2016, July 1). *Do body cameras change how police interact with the public?* Retrieved October 4, 2016, from The Journalist's Resource:
<http://journalistsresource.org/studies/government/criminal-justice/body-cameras-police-interact-with-public>
- Koerner, B. I. (2016, October 23). *Inside the cyber attack that shocked the US Government.* Retrieved from Wired: <https://www.wired.com/2016/10/inside-cyberattack-shocked-us-government/>
- Kotowski, J. (2016, March 8). *Money, storage primary obstacles in police body camera implementation.* Retrieved from Emergency Management:
<http://www.emergencymgmt.com/safety/Police-Body-Cam-Installation.html>
- Major Cities Chiefs Association and Major County Sheriffs' Association. (2015). *Technology needs - Body cameras.* Major Cities Chiefs Association and Major County Sheriffs' Association.
- Martin, B. (2005). The beating of Rodney King: The dynamics of backfire. *Journal of Critical Criminology*, 307-326.
- Mateescu, A., Rosenblat, A., & boyd, d. (2015). *Police body-worn cameras.* Washington: Data & Society Research Institute.
- Mesa Police Department. (2015). *Annual Report 2015.* Mesa: Mesa Police Department.
- Miller, L., Tolliver, J., & Forum, P. E. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned.* Washington, DC: Office of Community Oriented Policing Services.
- Milwaukee Police Department. (2016, July 15). *Standard Operating Procedure 747- Body Worn Cameras (BWC).* Retrieved October 17, 2016, from [bwscorecard.org](https://www.bwscorecard.org/static/policies/2016-06-15%20Milwaukee%20-%20BWC%20Policy.pdf):
<https://www.bwscorecard.org/static/policies/2016-06-15%20Milwaukee%20-%20BWC%20Policy.pdf>
- Munger, K., & Shelby, J. (1989). Effects of an observer on hand washing in a public restroom. *Perceptual and Motor Skills*, 693, 733-734.
- National Conference of State Legislators. (2016, August 30). *Body-Worn Cameras Interactive Graphic.* Retrieved October 20, 2016, from National Conference of State Legislators:

<http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx#/>

National Institute of Justice. (2016, June 3). *Research on Body-Worn Cameras*. Retrieved October 4, 2016, from Office of Justice Programs National Institute of Justice:

<http://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx#ongoing>

NBC News. (2014, August 15). *Ferguson Chief Names Darren Wilson as Cop Who Shot Michael Brown*. Retrieved June 1, 2016, from NBC News:

<http://www.nbcnews.com/storyline/michael-brown-shooting/ferguson-chief-names-darren-wilson-cop-who-shot-michael-brown-n181326>

Nielsen, J. (2011, March 6). *Discretion - The art of law enforcement*. Retrieved from Rasmussen College: <http://www.rasmussen.edu/degrees/justice-studies/blog/discretion-the-art-of-law-enforcement/>

Ready, J. T., & Young, J. T. (2015, June 14). The impact of on-officer video cameras on police-citizen contacts: findings from a controlled experiment in Mesa, AZ. *Journal of Experimental Criminology*.

Riley v. California, 573 U.S. ____ (United States Supreme Court June 25, 2014).

Schechter, E. (2014, December 3). *How police officer body cameras work*. Retrieved from Popular Mechanics: <http://www.popularmechanics.com/military/a11668/how-police-officer-body-cams-work-obama-ferguson-17490512/>

Simpson, S. (2015, May 15). *Civil rights, privacy, and media rights groups release principles for law enforcement body worn cameras*. Retrieved from The Leadership Conference : <http://www.civilrights.org/press/2015/body-camera-principles.html>

Stanley, J. (2015). *Police body-mounted cameras: With right policies in place, a win for all*. New York: The American Civil Liberties Union.

TASER International. (n.d.). *Digital Evidence Management*. Retrieved November 9, 2016, from TASER.com: <https://www.axon.io/solutions/evidence-management>

The Free Dictionary. (2016). *Public Records*. Retrieved October 4th, 2016, from The Free Dictionary : <http://legal-dictionary.thefreedictionary.com/Public+records>

United States Census Bureau. (2015). *Quick Facts, Ferguson City, Missouri*. Retrieved June 1, 2016, from United States Census Bureau 2010 Census:

<https://www.census.gov/quickfacts/table/PST045214/2923986>

United States Department of Justice. (2016, July 11). *Department of Justice Guide to the Freedom of Information Act*. Retrieved October 6, 2016, from The United States Department of Justice: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

United States v. Jones, 565 U.S. ____ (The Supreme Court 2012).

United States v. Koyomejian, 970 F.2d 536 (United States Court of Appeals, Second District 1992).

Utility. (2014). *Police Officer Legal Risks from a Wide Field of View in a Body-Worn Camera*. Decatur: BodyWorn.

Yu, C., Cook, S., & Yu, H. (2016, August). *A Policy Scorecard: Police Body Worn Cameras*. Retrieved October 17, 2016, from [bwcorecard.org](http://www.bwcorecard.org): <https://www.bwcorecard.org>