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POLICE BODY CAMERAS: IMPLEMENTATION WITH CAUTION, FORETHOUGHT, AND POLICY

On August 9, 2014, Officer Darren Wilson shot and killed Michael Brown, an unarmed teenager, on a Ferguson, Missouri street.¹ The incident immediately ignited protests in the Ferguson area.² Several of these demonstrations included rioting, looting, and violence.³ In response, officials used force, military-style tactics, and military-grade weapons.⁴ In November 2014, Missouri Governor Jay Nixon called the National Guard to attempt to restore order and keep the peace.⁵

Following Mr. Brown's death, people turned out to the streets because many believed that the shooting was motivated by racial discrimination—Officer Wilson is white, and Mr. Brown was black.⁶ There is disagreement over the exact course of events that led up to Mr. Brown's death: Ferguson police report that Mr. Brown fought with Officer Wilson and attempted to gain control of his weapon, while several witnesses recount that Mr. Brown had his hands raised above his head and did not threaten Officer Wilson.⁷ Critics of the officer's use of force point to these witness statements as proof that the officer's actions were unwarranted and racially motivated.⁸

Unfortunately, there is no evidence available from the incident that is dispositive of the true course of events. There is no source

1. Ralph Ellis, Jason Hanna & Shimon Prokupecz, *Missouri Governor Imposes Curfew in Ferguson, Declares Emergency*, CNN (Aug. 16, 2014, 7:09 PM), <http://www.cnn.com/2014/08/16/us/missouri-teen-shooting/>.

2. *See id.*

3. *See id.*

4. *See id.*

5. Jack Healy et al., *Ferguson, Still Tense, Grows Calmer*, N.Y. TIMES (Nov. 26, 2014), http://www.nytimes.com/2014/11/27/us/michael-brown-darren-wilson-ferguson-protests.html?_r=0.

6. Ellis, Hanna & Prokupecz, *supra* note 1.

7. *Id.*

8. *See* Healy, *supra* note 5; Laura Santhanam & Vanessa Dennis, *What Do the Newly Released Witness Statements Tell Us About the Michael Brown Shooting?*, PBS NEWS-HOUR (Nov. 25, 2014, 7:43 PM), <http://www.pbs.org/newshour/updates/newly-released-witness-testimony-tell-us-michael-brown-shooting>.

that all parties can use to determine whether Officer Wilson was justified in his use of force. Instead, police officials, citizens, and the justice system have been forced to rely on differing accounts of the events, along with physical evidence, to draw their own conclusions.⁹

After an inundation of information and differing interpretations of the event, a grand jury ultimately did not indict Officer Wilson on any offense relating to the death of Mr. Brown.¹⁰ To return a true bill, the grand jury would have needed to find probable cause that Officer Wilson actually committed an offense—that he was not acting in self-defense during the incident and did not use lawful force in attempting to arrest Mr. Brown.¹¹ Robert McCulloch, the chief prosecutor of the grand jury proceedings, promised the jurors “[b]y the time everything is finished, you will have heard everything.”¹² In fulfilling that promise, Mr. McCulloch and his team presented to the jurors conflicting versions of events.¹³ An example of such conflict is between the police interview with “Witness 10”—who claimed that Mr. Brown did not have his hands raised and that Mr. Brown charged Officer Wilson¹⁴—and “Witness 12”—who claimed that Officer Wilson got out of his police vehicle and immediately began firing his weapon.¹⁵

9. See Monica Davy & Julie Bosman, *Protests Flare After Ferguson Police Officer is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <http://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

10. Ryan J. Reilly, *Ferguson Officer Darren Wilson Not Indicted In Michael Brown Shooting*, HUFFINGTON POST (Nov. 24, 2014, 10:59 PM), http://www.huffingtonpost.com/2014/11/24/michael-brown-grand-jury_n_6159070.html.

11. Transcript of Grand Jury Testimony at 134–40, *State v. Wilson*, No. GJ 2014-1121, 2014 WL 6660755 (Mo. Cir. Ct. Nov. 21, 2014).

12. Transcript of Grand Jury Testimony at 9, *State v. Wilson*, No. GJ 2014-0820, 2014 WL 6657091 (Mo. Cir. Ct. Aug. 20, 2014) (referring to the decision to present jurors every piece of evidence available surrounding Mr. Brown’s death, instead of presenting select evidence to make a specific case).

13. See Julie Bossman et al., *Amid Conflicting Accounts, Trusting Darren Wilson*, N.Y. TIMES (Nov. 25, 2014), <http://www.nytimes.com/2014/11/26/us/ferguson-grand-jury-weighed-mass-of-evidence-much-of-it-conflicting.html?r=0>.

14. Transcript of Interview with Witness 10 at 4, *State v. Wilson* (Mo. Cir. Ct. 2014), <http://int.nyt.com/newsgraphics/2014/11/24/ferguson-evidence/assets/interviews/interview-witness-10.pdf>.

15. Transcript of Interview with Witness 12 #2 at 2, *State v. Wilson* (Mo. Cir. Ct. 2014), <http://int.nyt.com/newsgraphics/2014/11/24/ferguson-evidence/assets/interviews/interview-witness-12-02.pdf>.

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But the true course of events surrounding Mr. Brown's death need not have been clouded by such uncertainty. Had Officer Wilson been wearing a body camera during his interaction with Mr. Brown, there would have been a digital record of the event. Such a record may have provided a single evidentiary source for definitive answers to the questions surrounding the altercation. Had a body camera been worn, the consequent clarity of the situation may have prevented the protests, looting, destruction of property, and escalation of violence. In addition, justice could be confirmed or assured for both Officer Wilson and Mr. Brown.¹⁶

Though the benefit of a police body camera in this scenario appears obvious, a wide-scale implementation of such devices cannot be undertaken without caution. Risk of negative consequences such as a lack of uniformity in the use of camera data across jurisdictions,¹⁷ the possibility of irreversible changes to the nature of criminal trials,¹⁸ and the practical challenges relating to the costs of increased implementation¹⁹ must be weighed against the potential benefits of amplified camera use²⁰ before making a decision to implement the devices.

This article will provide a workable initial implementation policy that would maximize the benefits of increased police use of body cameras, while minimizing the negative impacts. Part I defines police body cameras and explores their current use in and impact on today's law enforcement world. Parts II and III encompass some of the perceived benefits and anticipated challenges of increased body camera use. Part IV considers and recommends exactly where the responsibility of camera implementation should lie. In addition, this section also provides an initial implementation policy recommendation for policymaker consideration that attempts to ensure the materialization of the benefits outlined in Part II while preventing the materialization of the consequences considered in Part III. Part V applies the recommended implementation policy to the perceived benefits and outlines what that policy is designed to accomplish—the maximiza-

16. See Mark Potter & Tim Stelloh, *Michael Brown's Death in Ferguson Renews Calls for Body Cameras*, NBCNEWS (Aug. 17, 2014, 7:54 PM), <http://www.nbcnews.com/storyline/michael-brown-shooting/michael-browns-death-ferguson-renews-calls-body-cameras-n182751>.

17. See *infra* Part III.C.2.

18. See *infra* Part III.C.3.

19. See *infra* Part III.A.

20. See *infra* Part II.

tion of benefits and minimization of concerns as realized during the initial implementation of police-body-camera technology in the field. Part VI takes a microcosmic testimonial look at the use of police body cameras by the Chesapeake Police Department—an early implementer of the technology—to highlight the challenges, benefits, and changes that have materialized through prolonged use of body-camera systems.

I. POLICE BODY CAMERAS AND THE DEFICIENCY OF METHODOLOGICAL RESEARCH SURROUNDING THEIR IMPLEMENTATION AND EMPLOYMENT

Police body cameras are compact devices that can create both audio and visual records of police officer actions, observations, and interactions with the public.²¹ Officers wear them on their uniforms—just like badges and firearms.²²

The devices range in cost from several hundred dollars up to several thousand dollars.²³ Multiple companies manufacture such cameras, including TASER International²⁴—a common supplier of non-lethal weapons in the law enforcement community. The cameras vary slightly in their configuration across manufacturers; some are self-contained devices about the size of a pager, others have separate components that capture audio data, video data, and house a battery.²⁵ Independent of the manufacturer, all such devices support a method of transferring recorded data for storage and management purposes.²⁶ Further, many producers offer cloud-based data storage on their own private servers, eliminating a law enforcement agency's need for physical on site record storage.²⁷ Irrespective of differences among available devices, they

21. See Devin Coldewey, *Cop Watch: Who Benefits When Law Enforcement Gets Body Cams?*, NBCNEWS (Aug. 17, 2013, 11:08 AM), <http://www.nbcnews.com/tech/tech-news/cop-watch-who-benefits-when-law-enforcement-gets-body-cams-f6C10911746>.

22. *Id.*

23. See Michael White, Washington, DC: Office of Community Oriented Policing Services, *Police Officer Body-Worn Cameras: Assessing the Evidence* 9, 32 (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

24. *Id.* at 12.

25. *Id.*; see LINDSAY MILLER, JESSICA TOLIVER & POLICE EXECUTIVE RESEARCH FORUM (PERF), WASHINGTON, DC: OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED* 11 (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

26. WHITE, *supra* note 23, at 4, 12.

27. *Id.* at 9, 33.

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28. See MILLER,

29. *Id.*

30. *Id.*

31. See BRIAN A ENFORCEMENT AGEN

32. Dr. White is zona State Universi Smart Policing Initia

33. *Id.* at 5–6.

34. *Id.*

35. *Id.*

36. *Id.* at 16.

37. See Dr. M

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all provide the same basic function: recording what the officer sees and hears.

The current use of body cameras in police departments across the nation remains limited, though their implementation is undoubtedly increasing.²⁸ In an informal survey conducted in July 2013, the Police Executive Research Forum (“PERF”) distributed surveys to 500 police departments nationwide to determine the prevalence of body camera usage and the issues various departments faced with their implementation of the technology.²⁹ PERF received 254 responses, with only 63 agencies reporting the use of these devices.³⁰

In spite of—or perhaps because of—the apparently small number of police departments in the United States using body cameras (there are approximately 18,000 state and local law enforcement agencies operating in the United States³¹), a report piloted by Dr. Michael White³² for the Department of Justice discovered that only a small quantity of empirical studies have been conducted to examine the implementation and impact of body camera usage.³³ That report unearthed only five studies that have been conducted, two in the United Kingdom and three in the United States.³⁴ These five studies vary in methodological rigor, but comprise the entirety of the empirical evidence gathered to support or refute a justified expansion of the use of police body cameras.³⁵

As Dr. White noted in his report, “[t]he absence of rigorous, independent studies using experimental methods has limited understanding of the impact and consequences of body-worn cameras.”³⁶ Since that report’s publication in August of 2014, the base of research on the topic has not significantly increased.³⁷ In an April

28. See MILLER, TOLIVER & PERF, *supra* note 25, at 2.

29. *Id.*

30. *Id.*

31. See BRIAN A. REAVES, U.S. DEP’T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008 2 (2011), <http://www.bjs.gov/content/pub/pdf/csllea08.pdf>.

32. Dr. White is a professor in the School of Criminology and Criminal Justice at Arizona State University and also serves as an expert for the Bureau of Justice Assistance Smart Policing Initiative. WHITE, *supra* note 23, at 54.

33. *Id.* at 5–6.

34. *Id.*

35. *Id.*

36. *Id.* at 16.

37. See Dr. Mike White Body-Worn Camera Interview, BUREAU OF JUSTICE

2015 interview, Dr. White poignantly translated the continued deficiency when he commented, “the bottom line is that our entire knowledge base on the impact and consequences of this technology really boils down to these three or four [methodologically rigorous] research studies. And that means core questions about planning, about implementation, about the impact to expect, and about the unintended consequences.”³⁸

Though eye opening in its candor concerning the lack of reliable information about the results stemming from body camera use, the findings of Dr. White’s report and his subsequent remarks do not necessarily preclude a wider implementation of body cameras across a greater number of law enforcement agencies before more reliable studies take place. It suggests that if implementation is executed before the full magnitude of the decision is known, then the accompanying camera implementation policy should strive to negate perceived and potential negative concerns—even if that policy limits some of the assumed benefits of the device’s use.³⁹

II. PERCEIVED BENEFITS—POLICE TRANSPARENCY, IMPROVED INTERACTIONS WITH CITIZENS, AND COMPLAINT RESOLUTION REALIZED THROUGH THE INCREASED PRESENCE OF POLICE BODY CAMERAS

Because of the relative lack of data on the true benefits of police body cameras, there is little evidence to support or refute the claims made by supporters and critics of the new technology.⁴⁰ The reports that do exist, however, encourage a further investigation into the merits of body cameras and tend to point towards verification of some of the touted benefits.⁴¹

ASSISTANCE (BJA), at 2 (Apr. 27, 2015), https://www.bja.gov/bwc/pdfs/transcripts/4-24-2015-Podcast-Transcript_Dr-%20Mike-White-Interview-508.pdf [hereinafter White, *Interview*] (interviewing Dr. White for the BJA’s Body-Worn Camera Podcast Series, conducted by the BJA Senior Policy Advisor, Mike Roosa).

38. *Id.*

39. *See id.* at 6–10 (discussing what Dr. White considers to be the chief concerns of camera policies); *see also* WHITE, *supra* note 23, at 6 (recognizing that research confirming the risks and benefits of camera usage is lacking).

40. WHITE, *supra* note 23, at 6.

41. *See id.*

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A. Body Camera Oversight and Transparency

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42. MILLER, TOL

43. *Id.*

44. *Id.*

45. WHITE, *supra*

46. *See* MILLER,

47. WHITE, *supra*

48. ODS CONSUM EVALUATION, EVALUATION /uploads/2013/07/BW

49. *Id.* at 13.

Today, it is very likely that police interactions with the public in urban areas are recorded.⁴² For example, the citizen or citizens speaking to an officer may record a conversation, as may witnesses.⁴³ Security cameras are also a constant presence.⁴⁴ It seems reasonable that a video record from the perspective of an officer, the person who likely has the most power and responsibility in any encounter with the public, is a perspective worth having.

A. *Body Camera Implementation Increases the Availability of Oversight and Review, Potentially Promoting Police Transparency, Legitimacy, and Improving Citizen Perceptions*

Police body cameras can demonstrate to the public that the department using them intends to increase its transparency and willingness to be examined by outside actors.⁴⁵ The mere fact that superiors and individual citizens who were not present at the time of an incident can review an officer's action lends itself to the notion that departments employing body-camera technology expect review to take place. In turn, it is expected that public confidence and trust in the actions of police will improve, promoting law enforcement legitimacy.⁴⁶

The only studies that have attempted to measure citizen perceptions of police body cameras where they were actually implemented took place in the United Kingdom.⁴⁷ These include the Renfrewshire and Aberdeen study and the Plymouth Head Camera Project. In the Renfrewshire and Aberdeen study, conducted in Scotland, 64% of respondents in Renfrewshire thought that all officers should wear cameras and 49% felt safer as a result of the cameras.⁴⁸ In Aberdeen, 76% of those surveyed thought officers should wear cameras, and 57% believed body-worn cameras would make their community safer.⁴⁹ The Plymouth Head Camera Project survey, which conducted interviews with thirty-six

42. MILLER, TOLIVER & PERF, *supra* note 25, at 1.

43. *Id.*

44. *Id.*

45. WHITE, *supra* note 23, at 19.

46. See MILLER, TOLIVER & PERF, *supra* note 25, at 21; WHITE, *supra* note 23, at 19.

47. WHITE, *supra* note 23, at 19.

48. ODS CONSULTING, BODY WORN VIDEO PROJECTS IN PAISLEY AND ABERDEEN SELF EVALUATION, EVALUATION REPORT JULY 2011 12 (2011), <http://www.bwvsg.com/wp-content/uploads/2013/07/BWV-Scottish-Report.pdf>.

49. *Id.* at 13.

crime victims, found that twenty-six reported body-worn cameras were beneficial during their police encounter (72%) and twenty-nine reported feeling safer because of the cameras (81%).⁵⁰

The referenced studies are far from dispositive of the benefits of transparency or its effect on the public perception of local law enforcement agencies. There were very few people interviewed in either study and the results may not convert well to the United States—in part due to differences in the relationship between citizens and police in the two countries. Despite those weaknesses, the numbers seem to trend towards the public believing police body cameras increase safety in their community. They do not, however, directly translate to the public perception that departments using cameras are opening up their actions to scrutiny.

B. *Cameras Change Conduct—Improved Officer Behavior When Carrying a Body Camera May Result in an Increase of Officers' Personal Awareness and Dampen Escalation of Force*

Proponents of police body cameras suggest that the mere existence of such devices will positively impact officers' behavior during interactions with citizens.⁵¹ This rationale is based on the theory that human behavior changes under observation.⁵² That is, when people are observed, they are "more prone to socially acceptable behavior and sense a heightened need to cooperate with the rules."⁵³ An officer equipped with a body camera inherently creates an observable record of his or her own behavior, a record potentially observable by others. Should the social science hold true, the creation and potential observation of that record will lead the equipped officer to more socially acceptable behavior.

Whether stemming from the human reaction to camera observation or because of some other yet-undetermined factor, one study in the United States produced remarkable results. The Ri-

50. MARTIN GOODALL, POLICE AND CRIMES STANDARDS DIRECTORATE, GUIDANCE FOR THE POLICE USE OF BODY-WORN VIDEO DEVICES 68 (2007), <http://library.college.police.uk/docs/homeoffice/guidance-body-worn-devices.pdf>.

51. See WHITE, *supra* note 23, at 20.

52. TONY FARRAR, WASHINGTON, D.C.: POLICE FOUNDATION, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE 2 (2013), <http://www.policefoundation.org/wp-content/uploads/2015/06/The-Effect-of-Body-Worn-Cameras-on-Police-Use-of-Force.pdf>; WHITE, *supra* note 23, at 13.

53. FARRAR, *supra* note 52, at 3.

alto study, conducted in California (a mid-western state), nearly 50% of officers reported significant drops in complaints against officers reduced into the force incidents in Rialto.⁵⁶ In 2011, five use-of-force incidents involving officers.⁵⁷

Another study conducted with the Mesa Police Department, using results from a survey of officers, 77% believed that their ranks, and the person would make a difference in the field.⁵⁸ The initial study of officers wearing body cameras, demographics were collected over months of the study. The subjects of the study were trying the technology for a period of time. Interestingly, the study found that during Mesa's

54. *Id.* at 5.

55. *Id.* at 8.

56. *Id.* at 11.

57. LEE RANKIN, *supra* note 23, at 11.

RECOMMENDATIONS FOR POLICE BODY CAMERA SYSTEMS. RANKIN, *supra* note 23, at 6 (Lee Rankin stated, "it's going to have a de-escalation effect in a tense situation, the officer will be able to deescalate the situation").

58. LEE RANKIN, POLICE FOUNDATION, POLICE BODY CAMERA SYSTEMS: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE 2 (2013), <http://www.policefoundation.org/wp-content/uploads/2015/06/The-Effect-of-Body-Worn-Cameras-on-Police-Use-of-Force.pdf>; see also Rankin, *supra* note 23, at 11 (Rankin stated that "[a]nytime you see an officer use a body camera, you know that the camera is on").

59. RANKIN, *supra* note 23, at 11.

60. WHITE, *supra* note 23, at 13.

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alto study, conducted with the Rialto Police Department in California (a mid-sized department that deals with a homicide rate nearly 50% higher than the United States as a whole)⁵⁴ found a significant drop in both police officer use-of-force instances and complaints against police when police body cameras were introduced into the department.⁵⁵ In 2011, there were sixty use-of-force incidents and twenty-eight complaints against officers in Rialto.⁵⁶ In 2013, the year of the study, there were only twenty-five use-of-force incidents and three complaints made against officers.⁵⁷

Another study of body camera implementation, a pilot program with the Mesa Police Department in Arizona, also showed promising results. Of Mesa officers surveyed at the outset of the project, 77% believed that cameras would increase professionalism in their ranks, and 81% thought that having a camera on their person would make them more cautious about their decisions in the field.⁵⁸ The initial portion of the Mesa study compared fifty officers wearing body camera systems to fifty officers of similar demographics without the technology.⁵⁹ During the first eight months of the study, the officers without camera systems were the subjects of twenty-three citizen complaints, while officers carrying the technology received only eight.⁶⁰ Perhaps most interestingly, the study also found that the officers assigned cameras during Mesa's pilot program received 40% fewer total complaints

54. *Id.* at 5.

55. *Id.* at 8.

56. *Id.* at 11.

57. LEE RANKIN, MESA POLICE DEPARTMENT, END OF PROGRAM EVALUATION & RECOMMENDATIONS: ON-OFFICER BODY CAMERA SYSTEM 11 (2013), http://issuu.com/leerankin6/docs/final_axon_flex_evaluation_12-3-13-; see also MILLER, TOLIVER & PERF, *supra* note 25, at 6 (Lieutenant Rankin stated that "[a]nytime you know you're being recorded, it's going to have an impact on your behavior. When our officers encounter a confrontational situation, they'll tell the person that the camera is running. That's often enough to deescalate the situation.").

58. LEE RANKIN, END OF PROGRAM EVALUATION & RECOMMENDATIONS: ON-OFFICER BODY CAMERA SYSTEM 11 (2013), http://issuu.com/leerankin6/docs/final_axon_flex_evaluation_12-3-13-; see also MILLER, TOLIVER & PERF, *supra* note 25, at 6 (Lieutenant Rankin stated that "[a]nytime you know you're being recorded, it's going to have an impact on your behavior. When our officers encounter a confrontational situation, they'll tell the person that the camera is running. That's often enough to deescalate the situation.").

59. RANKIN, *supra* note 58, at 6.

60. WHITE, *supra* note 23, at 21.

and encountered 75% fewer use-of-force incidents than those same officers the year before the program.⁶¹

Questions remain as to the exact cause of the change in behavior measured in the Rialto and Mesa studies. For example, are the noticeable declines in use-of-force incidents and complaints against officers caused by improved officer behavior because of the possibility of review of their actions? Or should the change be attributed to improved citizen behavior during interactions with police, such as acting less aggressively towards the officer because of the presence of the recording device? Or is the result a combination of the two, where both citizens and officers exercised improved behavior?⁶² Perhaps more importantly, does it matter why complaints and use-of-force incidents dropped precipitously, as long as there are positive results?

C. *Cameras Change Conduct—Improved Citizen Behavior During Interactions with Officers Carrying Body Cameras May Result From the Devices' Presence*

Proponents suggest that officers wearing body cameras will improve the behavior of the citizens with whom they interact, citing a belief that those citizens are more likely to be respectful and compliant.⁶³ However, the empirical evidence in the United States is neither definitive nor clear.⁶⁴ Anecdotal evidence endorsing the impression of the positive influence of cameras on behavior is much more complimentary, especially that originating from police chiefs who oversee camera programs.⁶⁵ For example, Rialto's Chief Farrar claimed, "[I]f a citizen knows the officer is wearing a

61. MILLER, TOLIVER & PERF, *supra* note 25, at 5–6. Bearing in mind that there were only fifty officers assigned camera systems during Mesa's program, the number of complaints did not have to be particularly high to result in such a large reduction in complaints. That is not to say that the reduction in the body-worn-camera group is not significant, especially when compared to their previous complaint record.

62. WHITE, *supra* note 23, at 20–21 (noting that the exact cause of the decline in complaints against police is yet unknown).

63. *Id.* at 22.

64. *Id.*

65. See Ian Lovett, *In California, a Champion for Police Cameras*, N.Y. TIMES (Aug. 21, 2013), <http://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html> (discussing the use of body cameras with police chiefs who have led departments in Rialto, New York, Los Angeles, and Oakland); see also MILLER, TOLIVER & PERF, *supra* note 25, at 20 (discussing the benefits of body-worn cameras in police-community interactions with police chiefs from Daytona Beach and Fort Collins).

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66. Lovett, *sup*

67. MILLER, TOLIVER & PERF, *supra* note 25, at 5–6.

68. *Id.*

69. See *supra* note 23.

70. See FARRAR, *supra* note 65, at 20 (discussing the benefits of body-worn cameras in police-community interactions with police chiefs from Daytona Beach and Fort Collins).

71. WHITE, *supra* note 23, at 20–21.

72. See WHITE, *supra* note 23, at 20–21.

73. *Id.*

camera, chances are the citizen will behave a little better."⁶⁶ Daytona Beach's Chief Chitwood experienced a related phenomenon, in that "cameras help defuse some of the tensions . . . during encounters with the public."⁶⁷ Fort Collins' Deputy Chief Christensen similarly recounted that "[o]fficers wearing cameras have reported a noticeable improvement in the quality of their encounters with the public."⁶⁸

While the testimonial experiences of Chiefs Farrar, Chitwood, and Christensen are encouraging, they do little to prove that police body cameras affect the public's behavior. The Rialto study's finding of a sharp decrease in instances of police use-of-force comes closer to empirical evidence of such.⁶⁹ The decrease could be attributed to changes in citizen behavior, where they acted with more respect and compliance when officers carried cameras, which reduced the need for force.⁷⁰ Unfortunately, it is simply not possible to determine from the collected evidence that it was the presence of body cameras that influenced the behavior observed in Rialto.⁷¹ That is to say, correlation does not equal causation; any actual behavioral benefits remain perceived and unproven.

D. *Body Camera Recordings of Police and Citizen Interactions Provide the Possibility for Decisive Resolution of Citizen Complaints and Lawsuits Against Officers*

Advocates allege that body cameras can produce records of events that could expedite the resolution of complaints and lawsuits against officers.⁷² Currently, there is no empirical evidence verifying this claim, though what is available tends to point toward a positive effect on citizen complaint resolution.⁷³ Complaints against officers are often found to be "not sustained" because frequently there are no witnesses present during the

66. Lovett, *supra* note 65.

67. MILLER, TOLIVER & PERF, *supra* note 25, at 20.

68. *Id.*

69. *See supra* Part II.B.

70. *See* FARRAR, *supra* note 52, at 10 (discussing the possibility that body cameras modify citizen behavior); *see also* WHITE, *supra* note 23, at 22-23 (indicating the impact that body cameras can have on citizen behavior).

71. WHITE, *supra* note 23, at 23; *see* FARRAR, *supra* note 52, at 10.

72. *See* WHITE, *supra* note 23, at 23.

73. *Id.*

aggrieved interaction other than the officer and the individual filing the complaint.⁷⁴ Records produced by body cameras have the potential to change this by providing evidence that can result in proper adjudication of complaints.⁷⁵

Video records of police interaction are beneficial in this vein for both officers and involved citizens. For the police, video records can provide reassurance for officers wrongly accused of improper behavior,⁷⁶ may reduce resource expenditure investigating claims,⁷⁷ and could show citizens an alternate perspective of events—the officer's—which has the potential to highlight possible mistakes the citizen made during an interaction of which they were not initially aware.⁷⁸

Members of the public, on the other hand, may be less likely to file frivolous or unfounded complaints because they know video evidence could instantly refute their claim.⁷⁹ If a citizen has a valid complaint against an officer, video evidence will support their version of events. This should result in officers being held accountable for violations or mistakes they commit.⁸⁰ The ability to accurately and more frequently place responsibility on an officer when it is due should directly translate into increased departmental transparency.⁸¹

Though perhaps empirically unproven, police body cameras seem to hold great potential to benefit both officers and the public. Cameras could have the effect of putting both parties on their

74. *Id.*

75. *Id.*

76. See ODS CONSULTING, *supra* note 48, at 12.

77. *Id.* at 12, 18.

78. See David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 363–64 (2010).

79. See WHITE, *supra* note 23, at 24.

80. See Harris, *supra* note 78, at 364.

81. With the failure of a Staten Island grand jury to indict New York Police Department Officer Daniel Pantaleo, despite video evidence of his alleged misconduct resulting in the death of Eric Garner on July 17, 2014, public confidence in the positive impact of police body cameras was shaken. See J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html?_r=1. A common negative perception growing out of the grand jury's action is that police are above the law, and even evidence of wrongdoing is not sufficient to bring transgressing officers to justice. See *id.* In response to the grand jury's decision, New York City Mayor Bill de Blasio announced a pilot program to equip officers with body cameras. *Id.*

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best behavior, which could result in fewer complaints against of-
ficers and fewer situations where an officer finds it necessary to
use force. Even if such incidents still occur, cameras have the po-
tential to resolve them in a just manner. However, these per-
ceived benefits come at a price, both in actual monetary expendi-
tures, which far exceed initial purchase costs, and in potential
unintended consequences, which must be evaluated and consid-
ered in order to fully recognize the scope of the impact of body
camera implementation.

III. ANTICIPATED NEGATIVE SIDE EFFECTS, CONCERNS, AND CHALLENGES OF INCREASED POLICE BODY CAMERA USE

Like many material investments that require continued spend-
ing to ensure continued use, the true costs of ownership for a de-
partment's worth of police body cameras are not realized in the
initial purchase. The cameras themselves are expensive gadgets,
especially when multiplied by a department with a large number
of officers. But the initial cost of the physical devices is not the
source of the largest budget constraints the cameras will ulti-
mately cause. The long-term usage of police body cameras will
require substantial continued expenditure—especially in data
storage, data manipulation, and the production of a courtroom-
ready product.

While high monetary totals are not the only costs conceivably
associated with implementation and sustained use, body camera
technology may come at the expense of traditional privileges and
protections citizens across the nation enjoy. For instance, the
mere presence of body cameras in public may impinge on an indi-
vidual's fundamental privacy rights, as they are currently de-
fined. Then, once in the courtroom, body-camera-produced rec-
ords have the potential to alter the well-founded fundamental
nature of the adversarial trial system.

A. *Initial Costs and Continued Funding Challenges with Body Camera Implementation and Prolonged Use*

Implementing police body cameras is an expensive proposition,
even at the department level—these devices can reach up to

\$1000 per camera unit.⁸² Allocations for replacement hardware also must be considered.⁸³ Further, the largest cost of camera implementation and use does not lie in the equipment itself but in the storage, management, and retention of data.⁸⁴

Police must determine standard timelines for data retention and preservation, in addition to how data must be managed and edited. The longer camera data is stored, the larger the data storage requirements, and the higher the cost of that storage.⁸⁵ Some major device manufacturers offer cloud-based storage solutions on their own private servers for an annual subscription price.⁸⁶ According to the Mesa Police Department study, one option for this type of data storage for a single year exceeded the initial cost of the recording devices—the fifty cameras purchased and used in the study totaled \$67,526.68, but one option for data storage for the second year of the devices' use in Mesa required a staggering \$93,579.22.⁸⁷

There is an additional expense associated with the use of body-camera produced records, assessed through editing and redacting video footage when it is requested by the public to protect privacy interests.⁸⁸ Edits include the removal of juvenile faces, removal of identifying features of informants and undercover officers, and removal of personal biographical information.⁸⁹ The Mesa Police Department received three to four public record requests per month for body-camera-produced video during the period of study and found that several of those records required approximately ten man-hours of edits essential to make them safe for release.⁹⁰ If such requests are honored, the number of requests will undoubtedly increase as the public gains more awareness of body camera implementation.⁹¹ Mesa's experiment with necessary editing does not even begin to take into account the obligation to re-

82. See WHITE, *supra* note 23, at 32.

83. *Id.*

84. *See id.*

85. See MILLER, TOLIVER & PERF, *supra* note 25, at 33.

86. WHITE, *supra* note 23, at 33.

87. *Id.*

88. *Id.* at 33–34.

89. *Id.* at 33.

90. *Id.* at 33–34.

91. See MILLER, TOLIVER & PERF, *supra* note 25, at 33 (indicating that the workload for a camera program will increase as the public familiarity with the program increases).

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B. Police Body-Camera Individual Relationships

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92. See Steve //www.riskandinsu reduce a police dep

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96. See Katz v

view and edit body-camera-produced records if they are to be used in court, which could far exceed the manpower requirements of mere public requests for footage.

Without proper editing, records produced by police cameras can expose departments to civil liability for privacy violations, infliction of emotional distress, and public humiliation claims—for example, if camera footage of an uninvolved party becomes available publically to the uninvolved party's detriment.⁹² Thus, in order to implement a camera program, departments must be able to commit substantial resources not just to the devices themselves, but also to the operational costs of storing and editing data.⁹³ The total dollar requirement associated with camera implementation is not yet known, but assuredly the costs will rise as camera programs and the use of their produced records expands.

B. *Police Body Cameras Create Concerns Over the Invasion of Individual Privacy Rights, Implied Consent to Recording, and Relationships Among Officers, Witnesses, and Victims*

Increasingly sophisticated technology poses a potential threat to individual privacy, resulting in a tension between the benefit to the collective good of such technology and individual freedom.⁹⁴ It is probable that police body cameras will test this balance considerably, especially if the majority of interactions with officers are recorded. In addition, body cameras coupled with other technology, such as facial recognition software, have the possibility to deepen the mire of privacy issues.⁹⁵

Indiscriminate recording with body cameras in many situations may constitute an unconstitutional search and seizure if it violates an individual's reasonable expectation of privacy.⁹⁶ This protection is derived from the Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and

92. See Steve Yahn, *Capturing the Moment*, RISK AND INSURANCE (Oct. 8, 2014), <http://www.riskandinsurance.com/capturing-moment/> (claiming that while body cameras may reduce a police department's risk in some areas of liability, it increases risks in others).

93. WHITE, *supra* note 23, at 33–34 (discussing the cost and work that must be performed on the camera program outside of the cost of the products themselves).

94. Ronald Bacigal, *Watching the Watchers*, 82 MISS. L.J. 821, 821 (2013).

95. See MILLER, TOLIVER & PERF, *supra* note 25, at 11; WHITE, *supra* note 23, at 27–28.

96. See *Katz v. United States*, 389 U.S. 347, 353, 357–59 (1967).

seizures in addition to providing a warrant protection for individual privacy interests.⁹⁷ These interests and their subsequent protections are unique and particularly high in the private home, where officers frequently find themselves in the line of duty.⁹⁸ If in the home without a warrant or without consent, any recording an officer's camera creates may be considered an unreasonable search and seizure in violation of the Fourth Amendment, especially if that record becomes publically available through a state's public disclosure laws⁹⁹ (many states have statutes that could be read to classify the data produced by police body cameras as a public record, thus making the footage accessible to the general public under that state's disclosure laws¹⁰⁰) or if it is used in trial and displays the private contents of an uninvolved individual's home. Determination of exactly when individuals have an expectation of privacy and thus have a Fourth Amendment protection from governmental intrusion, of which police recording may be considered, is under constant development.¹⁰¹ Such lack of definition due to the evolving nature of Fourth Amendment protections presents a strong challenge to deciding exactly when an officer can and should record.

Many states also have statutes—known as “two-party consent” laws—that prohibit the audio capture of private conversations without the consent of both parties to the conversation.¹⁰² These

97. U.S. CONST. amend. IV.

98. JAY STANLEY, AMERICAN CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL 4, 6 (2015), <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

99. See MILLER, TOLIVER & PERF, *supra* note 25, at 15.

100. See, e.g., MINN. STAT. § 13.03(1) (2014) (requiring disclosure of all data created by a government body unless it meets certain classifications); see MILLER, TOLIVER & PERF, *supra* note 25, at 17.

101. See *Riley v. California*, 134 S. Ct. 2473, 2494–95 (2014) (detailing the present and ever-evolving status of Fourth Amendment privacy interests by protecting the digital contents of an individual's cellular phone from warrantless searches incident to arrest); *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (finding that the governmental use of technology that is not widely available which reveals more than is traditionally observable in the warrantless surveillance of a home is unreasonable); *California v. Ciraolo*, 476 U.S. 207, 215 (1986) (holding that visual observation of a home does not constitute an unreasonable search); *Katz*, 389 U.S. at 357–59 (defining the scope of an individual's right to privacy in the context of his reasonable expectation of privacy).

102. See CONSTITUTION PROJECT COMMITTEE ON POLICING REFORMS, THE CONSTITUTIONAL PROJECT, THE CONSTITUTIONAL IMPLICATIONS OF THE USE OF POLICE-WORN CAMERAS BY LAW ENFORCEMENT App. B 3 (2015), <http://www.constitutionproject.org/wp-content/uploads/2015/02/TCP-The-Use-of-Police-Body-Worn-Cameras.pdf>; MILLER, TOLIVER & PERF, *supra* note 25, at 14; see also MANTECH, A PRIMER ON BODY-WORN

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103. See CONSTITUTION PROJECT, THE CONSTITUTIONAL IMPLICATIONS OF THE USE OF POLICE-WORN CAMERAS BY LAW ENFORCEMENT App. B 3 (2015), <http://www.constitutionproject.org/wp-content/uploads/2015/02/TCP-The-Use-of-Police-Body-Worn-Cameras.pdf>; MILLER, TOLIVER & PERF, *supra* note 25, at 14; see also MANTECH, A PRIMER ON BODY-WORN CAMERAS FOR LAW ENFORCEMENT App. B 3 (2015), <http://www.manotech.com/~/media/Manotech/Products/Body-Worn-Cameras-for-Law-Enforcement/Body-Worn-Cameras-for-Law-Enforcement-App-B-3.pdf>.

104. See, e.g., 1

105. MILLER, T

106. See *id.* at

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laws impose limitations that may preclude or at least limit body camera use in many situations if police are forced to ask for consent or if consent is not given.¹⁰³ Though there are law enforcement exceptions for the required consent in some of the two-party-consent states,¹⁰⁴ the exceptions must be closely read and adhered to for compliance in order to affect a legal use of the devices. Other states only require one-party consent, a role that the officer would fulfill if wearing a camera.¹⁰⁵ Before a department can institute a police-worn camera system, it must first determine what recording restrictions exist in its state.¹⁰⁶ If necessary, it may be desirable to obtain a legislative exemption from two-party recording consent laws, rather than facing the possibility of civil suit exposure because of unauthorized recording.¹⁰⁷

It is common practice for police to record people during custodial interrogations, public rallies, and traffic stops.¹⁰⁸ The Supreme Court has consistently upheld such recording, despite the fact that recordings are often made without individual knowledge or consent.¹⁰⁹ The reasoning cited in those holdings usually centers on the determination that citizens have no expectation of privacy in the situation considered.¹¹⁰ However, the Court has only spoken on specific situations with specific facts—it has not giv-

CAMERAS FOR LAW ENFORCEMENT 8 (2015), <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (listing several states that require all parties to consent to recording of audio communications).

103. See CONSTITUTION PROJECT COMMITTEE ON POLICING REFORMS, *supra* note 102, at App. B3; Alexandra Mateescu, Alex Rosenblat & Danah Boyd, *Police Body-Worn Cameras* 9 (Data & Society Research Inst. Working Paper, 2015), <http://www.datasociety.net/pubs/dcr/PoliceBodyWornCameras.pdf> (documenting the ten states with wiretapping laws that create the two-party consent requirement: California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania, and Washington).

104. See, e.g., 18 PA. CONS. STAT. § 5704 (2014).

105. MILLER, TOLIVER & PERF, *supra* note 25, at 12.

106. See *id.* at 4; WHITE, *supra* note 23, at 27; Matt Rosenberg, *Seattle Police Memo: Body Cameras Easier Said Than Done, Now*, SOCIAL CAPITAL REVIEW (Sept. 7, 2011), <http://socialcapitalreview.org/seattle-police-memo-body-cameras-easier-said-than-done-now/>.

107. Rosenberg, *supra* note 106.

108. Marianne Kies, *Policing the Police: Freedom of the Press, the Right to Privacy, and Civilian Recordings of Police Activity*, 80 GEO. WASH. L. REV. 274, 303 (2011).

109. See, e.g., *Hudson v. Palmer*, 468 U.S. 517 (1984); *United States v. White*, 401 U.S. 745 (1971).

110. See, e.g., *Hudson*, 468 U.S. at 525–26 (denying an expectation of privacy in jail cell conversations); *White*, 401 U.S. at 751 (denying an expectation of privacy in conversations with government informant wearing a device to facilitate warrantless electronic eavesdropping).

en a blank check to police to record most or all of the incredibly varied situations to which they respond. Thus, police departments should not consider the Court's previous decisions as tacit approval of body camera use.

Ignoring the potential privacy intrusions of individuals directly interacting with officers, it is worth noting that cameras will capture everything in their view—barring technical complications, distortions, or other glitches.¹¹¹ Often that recording will include people not involved in the police interaction.¹¹² Not only does this bring into question the privacy concerns of non-parties, it may also have a chilling effect on witnesses and confidential informants relating information to officers if they know the interview will be recorded and viewable by others at a later point.

Body cameras also have the conceivable ability to exacerbate the emotional impact of citizen and police interactions.¹¹³ Cameras would capture the experiences of victims of crimes, the gruesomeness of medical emergencies and accidents, and the identities of individuals being detained.¹¹⁴ One police sergeant observed, “[o]fficers . . . are seeing people on the worst day of their lives, and we’re capturing that on video that’s now a public record.”¹¹⁵

C. *When Police Body Cameras Are Used for Evidence Collection and Subsequently in Prosecution, Results Are Uncertain*

Many proponents of police body cameras suggest that video evidence from these devices “will facilitate the arrest and prosecution of offenders.”¹¹⁶ The existence of a real-time, permanent record of the events of an arrest in some cases can provide almost irrefutable confirmation of guilt.¹¹⁷ Such evidence has the tendency to produce more guilty pleas and may preclude trials in many cases, which would significantly reduce costs in police and court resources and time.¹¹⁸

111. Kate Hinds, *Some Police Departments Embrace Body Cameras*, WNYC (Aug. 13, 2013), <http://www.wnyc.org/story/312260-police-departments-and-body-cameras/>.

112. *Id.*

113. *Id.* WHITE, *supra* note 23, at 27–28.

114. *Id.*

115. Hinds, *supra* note 111.

116. WHITE, *supra* note 23, at 24.

117. *See id.*

118. *Id.*

Recorded evidence from body camera defendants in court's dependent on guilt. Testimonies ranging from to show one side of tapes" protect to heavily rely on exaggerated. 119

While expected to be indicative of the double-edged nature of body camera produced records' mere the procedure

1. Barriers to Propensity Acceptance

Currently, the risk of various issues arising from the possibility. In federal is prohibited ("FRE"), or of Court.¹²¹

Thus, the produced evidence must litigation.¹²² requires that stantially ou

119. Bacigal, s

120. *Id.* at 823

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Recorded evidence also has the potential to positively assist defendants in court. A video of a police interaction reduces the court's dependence on the testimony of individuals to determine guilt. Testimonies of both police and witnesses "[have] weaknesses ranging from outright perjury to less blatant 'slanting' of facts" to show one side's case in a better light.¹¹⁹ The ability to "go to the tapes" protects defendants from the court and the jury's tendency to heavily rely on police and defendant testimony, which may be exaggerated.¹²⁰ With body camera records, courts could more accurately come to the truth of events in some instances.

While expedited prosecution and defendant protection are indicative of the better facilitation of justice, recorded evidence is a double-edged sword. Perhaps due to the current rarity of police body camera use, it is unclear at this point just how body-camera-produced records could or should be used in court. Further, those records' mere existence could open a Pandora's box of changes for the procedures of the court system.

1. Barriers for the Admissibility of Recorded Evidence Have the Propensity to Create Variation Among Courts in the Acceptance of Body Camera Records

Currently, the admissibility of recorded evidence in court runs the risk of varying across jurisdictions and states due to several issues arising from rules of evidence that form barriers of admissibility. In federal court, *relevant* evidence is admissible unless it is prohibited by federal statute, the Federal Rules of Evidence ("FRE"), or other rules prescribed by the United States Supreme Court.¹²¹

Thus, the first barrier of admissibility for body-camera-produced evidence is a determination of relevance, whereby such evidence must have a sufficient relationship to the issue under litigation.¹²² The next barrier issue derives from FRE 403, which requires that the probative value of the recorded evidence substantially outweigh the possible prejudicial nature of the evi-

119. Bacigal, *supra* note 94, at 823–25.

120. *Id.* at 823.

121. FED. R. EVID. 402.

122. Martin Schwartz, *Analysis of Videotape Evidence in Police Misconduct Cases*, 25 TOURO L. R. 857, 857 (2009).

dence.¹²³ For example, the evidence must not mislead or confuse the jury, waste time, or create some other unfair prejudice.¹²⁴ Scenarios are easily conceivable where video footage detailing the circumstances surrounding an arrest is given more weight by a judge or jury than a defendant's actual criminal acts—such as an instance where guilt is inferred from a defendant's demeanor, which is often irrelevant to the crime charged.¹²⁵ This balancing test of probative value over prejudicial value applies to a great deal of evidence in federal courts, and must be overcome in state courts as well in order to introduce video evidence.¹²⁶

Another barrier of admissibility requires the proponent of video evidence to lay a foundation for that evidence, which requires authentication or identification of the video.¹²⁷ This includes an account of the chain of custody of the record, sufficient to convince the trial judge that there was not a substantial likelihood that the record had been altered or tampered with.¹²⁸

If there is an audio component of the digital evidence—which body camera-produced records invariably will include—then voice identification of those speaking must also be included in the foundation established by a witness.¹²⁹ The admission of an audio record creates an additional barrier issue: hearsay concerns. Since all audio content recorded by police body cameras is derived from out-of-court statements, if the audio component of the record is offered for the truth of what it asserts, then it is hearsay for that purpose.¹³⁰ As such, the proponent would be required to find an exception to the hearsay rule in order to get the audio component of the record admitted to court.¹³¹

123. FED. R. EVID. 403; Schwartz, *supra* note 122, at 857–58.

124. FED. R. EVID. 403; Schwartz, *supra* note 122, at 857–58.

125. See *Payne v. Kentucky*, No. 2010-SC-000199-MR, 2011 WL 4430860, at *4 (Ky. Sept. 22, 2011) (detailing the prejudicial effect of a video record of an arrest: “Even if the video accurately reflects Payne’s mental state at the time of his crimes, the probative value is very slight compared to the prejudicial effect of the jury watching Payne scream and curse at arresting officers.”).

126. Schwartz, *supra* note 122, at 857–58.

127. FED. R. EVID. 901.

128. *Id.*; Schwartz, *supra* note 122, at 859.

129. Schwartz, *supra* note 122, at 859.

130. FED. R. EVID. 801(c).

131. FED. R. EVID. 801(d), 803, 804; Schwartz, *supra* note 122, at 859. Though some exceptions to hearsay, such as the “Opposing Party Statement” exception of FRE 801(d)(2), may permit the admission of some parts of a camera record, it does not provide a blanket

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2. Perceived Problems Arising From Differences in the Application of Admissibility Requirements Across Jurisdiction and Localities¹³²

The requirements to admit a record captured by a police body camera into evidence can be time-consuming exercises in a trial court with a full docket, particularly if formally adhered to in every instance a record is introduced. Furthermore, the application of admission requirements may vary in rigidity and the results will likely depend on the court or even the judge. Those possibilities merit hesitation concerning the use of video record created by police-worn cameras in trial.

If prosecutors are permitted by policy to use video record in trial at the inception of a police body camera program, then it is logical to assume that with the anticipated growth of camera employment, use in court of the records they produce will increase proportionally. As such, if the issues and barriers for admissibility of camera records have to be argued, proven, and overcome in every case, then the evidentiary benefits of the records frequently may be mitigated by the burden of their use, especially in situations where traditional sources of evidence can fulfill the same function.

Because of the differences among courts and judges, it is foreseeable that recorded evidence from police-worn cameras will be admitted with inconsistent regularity and permitted for inconsistent uses. For example, where one court may find that the officer who recorded an interaction is qualified to testify to all of the foundational grounds for the admissibility of the camera created record, another court may require an expert technician of the equipment who understands the fundamentals of data storage to establish foundational chain of custody.

Admissibility differences may play little role in an individual prosecutor's local use of such evidence or in a local police department's decision to implement body cameras. As long as the police

exception for all records or even all parts of a single record.

132. The concerns listed in this section are a product of the author's analysis of the impact of body-worn-camera records. Current research is relatively silent on the procedural impact of this type of recorded evidence in court (apart from the perceived benefits). This analysis attempts to consider the broader impact recorded evidence may have, but because this impact has not been realized in any real measure, the analysis is speculative as a result.

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and prosecutors know exactly what is required or considered by judges in their jurisdiction to admit the evidence, they justifiably could have little interest in the requirements of their counterparts in a different locality. However, differing requirements and results may create so great a burden that use of a video record is effectively precluded for evidentiary use in some localities, while the same video record could be freely introduced in another location with minimal effort and expense. For example, if the policies of one court forced the state to hire an equipment expert to testify at every trial to lay foundation for the admissibility of video evidence, then time and expense constraints may prohibit frequent and effective use of body-camera-produced evidence in that court. Meanwhile, another locality's courts may only require an officer's testimony to lay foundation—a significantly smaller burden. Video evidence is thus much more likely to be used with frequency in the second locality as opposed to the first.

Police body camera records, if inconsistently used as evidence, may serve to obscure the future understanding of the true benefits of the technology in court. More importantly, inconsistent use could result in an inconsistent application of the law across differing courts, localities, and judges. Though an appellate court holding could ease or even erase much of the uncertainty in the admission practices of body camera records by clearly defining the standard of admission, no case has yet arisen to provide that opportunity. Until that time, questions of admissibility remain immediate problems. The potential benefits and burdens to both prosecutors and defendants, when afforded to some but not others, is inconsistent with the justice system's goal of fairness.

3. Potential Unintended Consequences Arising From Assumed Admissibility of Camera Records

If the anticipated inconsistent admissibility rulings on evidentiary records created by police-worn body cameras do not materialize, the pervasive use of such evidence has the potential to significantly alter the core nature of a criminal trial in several fundamental ways. These include an increased reliance on recorded evidence to the detriment of witness testimony, a reduction

in the protection of the factfinder's role. The factfinder's role could result in a significant impact on the trial by redefining

Though records themselves be, or as a result of the effect of the record.¹³⁴ As such, the "public records" to be admitted as evidence is available to declarants.¹³⁶ In the case of the video record while within the personal perception of this analysis, action could even if the court sent in court

If admitted, the factfinder's role may begin to assume is always admitted against a crime. This or her presence show the video and ask them to testify—though Constitutional

133. See FED. R. EVID. 101.

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135. FED. R. EVID. 101.

136. FED. R. EVID. 101.

137. See FED. R. EVID. 101.

138. U.S. CONST. art. III, § 2, cl. 3.

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in the protections and purpose of the FRE,¹³³ and a destruction of the factfinding purpose of juries. Conceivably, such alterations could result in the degradation of a defendant's right to a fair trial by redefining the entire criminal trial process.

Though records produced by officer-worn cameras may themselves be, or at least contain, hearsay statements, they could have the effect of making the actions of officers a matter of public record.¹³⁴ As such, courts could decide that the recording falls within the "public record" exception to hearsay, which permits such records to be admitted, regardless of whether the "declarant" of the record is available as a witness.¹³⁵ Only people may be considered declarants.¹³⁶ Thus an object, like a radar gun, cannot be considered a declarant—but the officer reading the radar gun can be. Or in the case at hand, an officer may be considered the declarant of the video record since that record sets out the matters observed while within the scope of his legal duty, is not taken from his personal perception, and is a regularly produced record.¹³⁷ Taking this analysis to conceivable ends, all video records of officer interaction could feasibly be admitted to evidence as a public record, even if the contents are hearsay, and even if the officer is not present in court to offer the record.

If admittance thus becomes commonplace in courts across the nation, the FRE—including the discussed barriers of admissibility—may suffer from lack of strict enforcement. Judges may begin to assume police recorded evidence, no matter its contents, is always admissible. Taken to the extreme, if virtually every case against a criminal defendant uses the video record of events in his or her prosecution, it may become typical practice to merely show the video record to a jury, point out the elements of a crime, and ask them to make a finding. Officers may not need to even testify—though they must be available as per the defendant's Constitutional right to face the witnesses against them.¹³⁸

133. See FED. R. EVID. 102.

134. MILLER, TOLIVER & PERF, *supra* note 25, at v.

135. FED. R. EVID. 803(8).

136. FED. R. EVID. 801(b).

137. See FED. R. EVID. 803(6), (8).

138. U.S. CONST. amend. VI.

Under the premise of prosecution through mere video evidence, reliance on witness testimony to convey information and eventually make findings in court would become a mere backup-plan. Currently, the state can deprive defendants of the testimony of subpoenaed witnesses through various means; what is to stop an extension of this trend if video records are used?¹³⁹ The criminal justice system, forever reliant in the past on witness testimony, may forsake witness testimony in favor of “seeing” and “hearing” the testimony as it happened, only allowing witness testimony as an afterthought.

No matter the source of testimony, a jury still must make a finding. However, their critical pursuit of determining how much reliance to place on individual witness testimony and separating fact from fiction within that testimony will be minimized. A jury will merely have to watch a video record and decide what they see—but with prosecutorial suggestion. Thus, the use of body-camera-produced evidence in trial creates a risk for a jury to come to improper conclusions, such as making a finding not supported by the record or being incapable of making a clear finding through just a recording.

A prime anecdotal example can be found in the Supreme Court’s decision in *Scott v. Harris*.¹⁴⁰ There, the Court considered whether a video recorded by a police dash-mounted camera of a pursuit that led to an allegation of excessive use of force could serve as a sufficient basis to grant summary judgment in favor of the arresting officer.¹⁴¹ The lower court found that factual questions still existed after watching the recording and decided that the case should go to a jury.¹⁴² The Supreme Court, on the other

139. See, e.g., *United States v. Stroop*, 121 F.R.D. 269, 274–77 (E.D. N.C. 1988) (stating that the rule for disclosure places the burden on the defendant to show specific or particularized reason for witness lists and testimony); see also Edward J. Imwinkelried, *The Worst Surprise of All: No Right to Pretrial Discovery of the Prosecution’s Uncharged Misconduct Evidence*, 56 *FORDHAM L. REV.* 247, 250–51 (1987) (noting the broad array of evidence that can be used by prosecutors compared to the extremely limited information provided to defendants and counsel, and how this disparity can leave defendants unprepared to meet the prosecution’s strongest evidence).

140. 550 U.S. 372 (2007).

141. See *id.* at 378–81.

142. *Harris v. Coweta County*, 433 F.3d 807, 814–16 (11th Cir. 2005) (holding that introduced video evidence did not provide sufficient justification for officer’s use of force, thus a jury should decide if use of force was otherwise justified), *rev’d sub nom.* *Scott v. Harris*, 550 U.S. 372 (2007).

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hand, watched the video and held in an 8-1 decision that summary judgment should be granted for the officer because the suspect led him on such a wild chase that "no reasonable jury could believe" an excessive use of force claim was justified.¹⁴³ If Supreme Court Justices and multiple appellate judges differ on their ability to make a finding from a police video record—a decision that presumably should be simple with the entirety of events captured on that record—jury determinations based on similar recorded evidence may prove even more difficult and divisive.

IV. INITIAL POLICY RECOMMENDATIONS—LOCAL LEVEL RESPONSIBILITY FOR IMPLEMENTATION AND A SUGGESTED INITIAL POLICY RECOMMENDATION

Body cameras are just one new technology increasingly employed by police departments across the country, but their use has the potential to significantly impact the field of policing.¹⁴⁴ According to Ronald Davis, the director of the Office of Community Oriented Policing Services, law enforcement agencies use body-worn cameras in various ways. Cameras may be used to "improve evidence collection, to strengthen officer performance and accountability, to enhance agency transparency, to document encounters between police and the public, and to investigate and resolve complaints and officer-involved incidents."¹⁴⁵

Despite the assorted justifications touted by law enforcement agencies, as well as the benefits body cameras appear to be able to provide, a department's decision to use such technology is not one to be made without careful consideration. The use of such devices raises abundant concerns that must be examined and creates several obstacles in implementation that must be overcome. These obstacles include constitutional issues of privacy¹⁴⁶ and continuing costs of data storage and camera maintenance.¹⁴⁷ Furthermore, the needs and resources of law enforcement groups

143. *Scott*, 550 U.S. at 373, 380–81.

144. MILLER, TOLIVER & PERF, *supra* note 26, at vii (suggesting other new technologies law enforcement agencies utilize in fulfilling their duties such as social media and data analytics).

145. *Id.* at vii.

146. *See supra* Part III.B.

147. *See supra* Part III.A.

across the country are diverse, so police body cameras cannot be employed in the same manner in every locality.¹⁴⁸

In the face of such challenges, police departments nationwide cannot immediately heed a general public outcry for the blanket employment of body cameras.¹⁴⁹ Nor should a broad Congressional Act force their use, as every local department across the country must have the ability and discretion to both give different weight to the concerns that challenge them most and to determine how the cameras can provide the most benefit to their communities.¹⁵⁰ Finally, a state-by-state implementation is impracticable as departmental needs vary, even between neighboring cities, and should not be made without serious limitations to the use of such cameras through policy constraints.¹⁵¹

A. *Implementation Responsibility Recommendation—Individual Police Departments Need Control, Choice, and Flexibility*

Implementation of police body cameras is best accomplished by individual police departments, or perhaps through regional cooperation, planning, and policy construction.¹⁵² The local-level approach to implementation is appropriate to take into account acute local factors, concerns, and the input of local groups with particularized concerns and interests. One example of this approach can be seen in the Hampton Roads area of Virginia, which had the highest violent crime and property crime rates of any region in the Commonwealth in 2013.¹⁵³ Each of the seven cities that make up the Hampton Roads metropolitan area have looked at camera implementation—four of the cities actively use police

148. MILLER, TOLIVER & PERF, *supra* note 25, at v.

149. *Id.* at 51; Nick Gillespie, *Make Cops Wear Cameras*, TIME (Aug. 14, 2014), <http://time.com/3111377/ferguson-police-cameras/> (exploring several recent incidents of questionable police use of force where body-worn cameras may have impacted the understanding of events).

150. See MILLER, TOLIVER & PERF, *supra* note 25, at 37 (Because every law enforcement agency is different, what works for one agency may not work for another. There needs to be flexibility in camera adoption so that agencies can adapt policy and recommendations for their own needs, state law requirements, and their particular understanding of the philosophy of community trust, transparency, and privacy.).

151. *Id.*

152. *Id.* This is the same stance taken by the Office of Community Oriented Policing Services. *Id.*

153. Virginia Performs, *Measuring Crimes in Virginia*, VIRGINIA.GOV, <http://vaperforms.virginia.gov/indicators/publicsafety/crime.php> (last visited Oct. 1, 2015).

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156. See MILLE

157. *Id.*

body cameras, one has conducted a trial with devices, and the remainder have taken their use into consideration.¹⁵⁴ A police spokesman for Virginia Beach, one of the cities in Hampton Roads that has declined to implement police body cameras, pointed to “several concerns, including cost, durability and privacy” in their decision not to implement the devices.¹⁵⁵

PERF recommends individual departments “consult with front-line officers, local unions, the department’s legal advisors, prosecutors, community groups, other local stakeholders, and the general public”¹⁵⁶ in order to improve the perceived legitimacy of the particular department’s camera policies within the community, while also streamlining the execution of implementation by laying a solid foundation of public trust in the department’s camera usage.¹⁵⁷

Local consultation is worthwhile if a department is considering camera implementation, and it serves similar legitimacy purposes, even if body cameras are not ultimately implemented at the time of inquiry. Community input and discussion alerts residents that their local law enforcement agency is responding to national concerns. This is especially useful if cameras are not immediately implemented, as it provides departments an existing channel of discussion to disseminate their choice and the factors they considered in making that choice.

B. *Initial Implementation Policy Recommendation*

Though the ultimate decision to implement police body cameras is best left to individual departments, the policies enacted concerning their use need not necessarily originate entirely from local departments. For example, state governments could draft laws that provide funding assistance for departments that elect

154. See Scott Daugherty, *Chesapeake’s Police Body Cameras Mean a Lot of Work*, THE VIRGINIAN-PILOT (May 4, 2014), <http://hamptonroads.com/2014/05/chesapeake-polices-body-cameras-mean-lot-work> (noting Virginia Beach and Hampton’s consideration of the devices in addition to detailing Portsmouth’s trial run); Margaret Kavanagh, *More Officers Getting Body Cameras in Hampton Roads*, WTKR.COM (Apr. 7, 2015), <http://wtkr.com/2015/04/07/more-officers-getting-body-cameras-in-hampton-roads/> (outlining Chesapeake’s, Newport News’s, Suffolk’s, and Norfolk’s use of body cameras).

155. Daugherty, *supra* note 154.

156. See MILLER, TOLIVER & PERF, *supra* note 25, at 37.

157. *Id.*

to use body cameras. The funding could be contingent on the adoption of a state-written general camera-use policy, with local departments retaining the ability to modify the policy in minor ways to fit their particular needs. Subsequent modifications could be subject to oversight of a state-run committee to ensure compliance with state goals, or modification could be assumed accomplished in good faith by local departments. Virginia legislators have proposed several bills to do just that—provide state funding to local police departments with the most need in order to implement policy body camera systems, while also establishing a statewide camera-use policy.¹⁵⁸ In addition to state efforts, federal funding for the implementation of police body cameras may be forthcoming.¹⁵⁹ In December 2014, President Obama proposed a plan designed to strengthen community policing—part of which included the “Body Worn Camera Partnership Program,” a \$75 million investment program that would provide a 50% match to state and local department spending on body cameras.¹⁶⁰

While a “general camera use policy” is ambiguous, it is crucial that some semblance of policy accompanies the implementation of police body cameras, though many early camera adopters appear to have neglected this necessity.¹⁶¹ According to PERF’s 2013 survey gauging camera popularity, of the sixty-three agencies that reported employing the technology, almost one-third of them did not have a written policy in place corresponding to the devices’ use.¹⁶² Police administrators, when questioned about their apparent deficiency, point out a lack of guidance as to what exactly their policy should include.¹⁶³ The comments of these administrators emphasize the need for a standard practice regarding the use of police body cameras.¹⁶⁴

158. See *Despite House Killing Two Police Body Camera Bills, VA Legislators Press for Surveillance and Transparency for PD’s State-wide*, RVAMAG (Jan. 28, 2015), <http://rvamag.com/articles/full/24211/despite-house-killing-two-police-body-camera-bills-va-legislators-press-for> [hereinafter *Despite House Killing*].

159. See David Hudson, *Building Trust Between Communities and Local Police*, WHITEHOUSE.GOV (Dec. 1, 2014, 8:25 PM), <http://www.whitehouse.gov/blog/2014/12/01/building-trust-between-communities-and-local-police>.

160. *Id.*

161. See MILLER, TOLIVER & PERF, *supra* note 25, at 2.

162. *Id.*

163. *Id.*

164. *Id.*

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PERF recommends a variety of topics that should be addressed in the policy written by each individual department implementing a body-worn camera program.¹⁶⁵ These include policies on: basic camera usage, designating staff for camera maintenance, recording protocols, the data downloading process, and data retention and viewing protocols.¹⁶⁶ Each of the suggested topics is worthy of consideration; some speak to the broad concerns and criticisms of the police-camera system, some are technical affairs,¹⁶⁷ and others deal with determining how collected data will be used and shared with the public. Every topic PERF recommends should be dealt with in some capacity; however, a general policy on camera usage with local-level adaptations (either adopted at the state level or by individual departments) can better serve the justice system and its ends.

The following recommendation serves as a suggested initial departmental implementation policy:

(A) Law enforcement agencies implementing body-worn camera systems should generally require officers to activate their cameras at the outset of any public interaction within their course of duty as an officer.

(B) Officers should be permitted discretion to deactivate their camera if required by the situation; for example if a cooperating witness requests their interview not be recorded, or upon arrival at a scene or location where domestic or sexual abuse is suspected. However, upon the culmination of an incident or interaction where an officer has deactivated their camera at any point, the officer should be required to note in her incident report when they deactivated their camera and for what reasons. Failure to make appropriate notes in deactivation situations, or where deactivation was deemed inappropriate by supervising officials, should result in reprimand or discipline—the severity of which is to be determined at the discretion of supervising officials.

165. *See id.* at 37–38.

166. *Id.* (including further recommendations that each individual department's policy should cover, such as: methods for documenting chain of custody, the length of time data will be retained, processes and policies for accessing and reviewing data (who can review and when), policies for releasing data to public (redaction considerations, responding to public requests), and policies with third party vendors that data stored with them is owned by the agency).

167. For example, determining who is responsible within a department for downloading recorded data.

(C) Officers should provide notice to those individuals concerned in the interaction that they are being recorded, to the best of the officer's abilities, and as the situation allows. If providing notice in any way endangers the officer or a member of the public, the notice requirement should be excused. Allegations of abuse of the notice requirement should be reviewed by supervising officials by viewing the camera's recording of the incident, the officer's incident report, and any other source deemed reliable. If abuse is found, the officer responsible can suffer reprimand or discipline—the severity of which is to be determined at the discretion of supervising officials. In addition, departments implementing a camera program should make community wide announcements at the outset of their program and then periodically after its inception, alerting local citizens that interactions with officers may be recorded.

(D) Recorded data is not to be accessed or reviewed unless requested by a party to the incident in question for the purpose of filing a complaint or for their defense against a criminal charge arising from the recorded incident, or at the discretion of supervising officials. Requests should be made through a formal channel, such as when filing a complaint against an officer. Any other use should be prohibited within the bounds of applicable law.

(E) Recorded evidence from body-worn cameras should *never* be used in the prosecution of a criminal defendant, unless the defendant first requests the use of the digital record in his defense and then moves to use the record in court.

(F) Officers should *always* be permitted to use digital records recorded from their body-worn device, or the devices of other officers in attendance of an incident, in their defense for claims against them in their capacity as officers of the law. These records should be subject to redaction or other necessary requirements to protect uninvolved parties that may be recorded in the record.

This general baseline suggests that the majority finds most police discretion, and the concern is the clarity of play and the established procedures of recorded evidence. Legislators need to be concerned where their own policy regarding their individual

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168. Several cases, e.g., *Miller v. City of Richmond*, 2014 WL 12345 (2014), <http://www.courts.va.gov/courts/12345>; *MILLER, TOULSON*, 2014 WL 12345 (2014).

169. See *supra* note 168, recorded testimony.

This general camera use policy¹⁶⁸ should be taken merely as a baseline suggestion. It chiefly addresses the concerns the author finds most pressing—namely when to record, when to allow discretion, and how the recorded data should be used. This last concern is the chief apprehension—when rights to privacy come into play and the possible impact of widespread use of cameras on the established rules of evidence. In order to curtail influence on the procedures of the justice system, the author seeks to minimize recorded evidence used in court.¹⁶⁹ Local departments or state legislators need not follow the outlined policy exactly, and on concerns where it is silent, local departments should fortify their own policy relating to those concerns in a manner best suited for their individual department.

It is the author's hope that the application of this policy recommendation serves not only to highlight the necessity of ensuring that the apprehensions explored in Part III do not materialize upon a department's implementation of body cameras, but that many of the perceived, if unproven, benefits outlined in Part II may still be preserved.

V. APPLICATION OF THE RECOMMENDED POLICY

The intended purpose of the policy recommendation is to maximize the potential benefits of body-worn camera use while minimizing the changes to the justice system as it exists in its current form, in addition to minimizing other potential negative challenges and effects. More specifically, the recommendation is designed to keep recorded evidence from police body cameras out of court as much as possible, except in circumstances where it could speak to the absolute truth of the issue before the court—namely the innocence of the defendant or the innocence of the officer.

Allowing a full video record of events at a trial has the potential to weaken the testimonial nature of witnesses in court, to weaken a jury's job and abilities as fact-finder, and to circumvent

168. Several sources were referenced before drafting this model policy. See generally Gary Schons, *Police Officer Body Worn Cameras: The Future is Now*, PUBLICCEO (Oct. 7, 2014), <http://www.publicceo.com/2014/10/police-officer-body-worn-cameras-the-future-is-now/>; MILLER, TOLIVER & PERF, *supra* note 25; WHITE, *supra* note 23.

169. See *supra* Part III.C.3 (discussing the potential for improper use or abuse of recorded testimony).

or displace existing rules of evidence. The recommended policy suggests extreme restrictions to the evidentiary use of police body-camera-recorded evidence in order to prevent these changes, while simultaneously reducing the potentially staggering costs of preparing video evidence for trial on a grand scale. It also hopes to constrain interference with individual privacy interests by limiting video record access and use in court.

Though the recommended policy limits record use, most of the anticipated and possible benefits associated with police cameras should still materialize. The mere existence of cameras demonstrates to the public the willingness of a department to undergo scrutiny and to be held accountable for the actions of its officers, increasing transparency of the system and thus improving public perceptions of law enforcement officers. Camera presence during officer and citizen interactions should still have the potential civilizing effect on the conduct of the parties involved because those benefits are not attendant to the produced record, but to the camera itself. Finally, in cases where camera records could have the greatest impact—the resolution of alleged officer misconduct—the record should be used, but sparingly. Thus, the high cost of video editing and preparation will only occur occasionally, lowering the overall cost for a department's implementation.

This recommendation purports to be a starting place for policy development, and as such it should be temporary. The issues and effects of police body cameras are just beginning to be understood, and due to that stand in virtually uncharted territory.¹⁷⁰ Implementation policies need to be flexible enough to be readily altered to take into account new laws, practices, and protocols as this technology's use progresses.¹⁷¹ This recommendation, as it stands, aims to utilize the new technology beneficially, without significantly altering the legal landscape in which it is placed. As the implementation of body cameras grows and the law surrounding their use develops, it is possible that the impact of the evidence produced by these cameras on court proceedings may actually be negligible. In that event, procedural limitations can then be relaxed. Conversely, the influence of body cameras may turn out to

170. MILLER, TOLIVER & PERF, *supra* note 25, at 49.

171. *Id.*

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VI. MATERIALIZATION OF ISSUES—POLICE BODY CAMERAS IN CHESAPEAKE, VIRGINIA

The City of Chesapeake, Virginia began implementing police body cameras in 2008, utilizing a Bureau of Justice Assistance grant to purchase ninety systems at a cost of about \$650 per camera.¹⁷² Since then, the Chesapeake Police Department has spent more than \$440,000 purchasing additional cameras and related accessories necessary to make the devices function—shouldering almost half of the cost burden out of the Department's own operating budget.¹⁷³ Despite the initial implementation costs, the Chesapeake Police Department has become so reliant on the technology that their police cruisers no longer carry dashboard cameras.¹⁷⁴

Though Chesapeake's experiment with police body cameras is still ongoing, challenges arose quickly—particularly in the practical handling of the recordings. In 2013, Chesapeake police released 5127 recordings to prosecutors taken from police-worn cameras in response to 1245 requests.¹⁷⁵ Such a volume taxed police support staff so greatly that Chesapeake Police Chief Kelvin Wright petitioned his City Council for the creation of a "video evidence coordinator" position, at a starting yearly salary of just over \$34,000.¹⁷⁶ Support staff individually save data created by the Department's body camera systems onto compact disks—"it's a lot of work," according to Chief Wright.¹⁷⁷ The Chesapeake City Attorney's Office has dealt with some of the pressure created by the extreme volume of video data by denying all public record requests for the footage.¹⁷⁸ Further, the citizens who request the

172. Daugherty, *supra* note 154.

173. *Id.*

174. *See id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. Mike Mather, *Chesapeake Bills Citizens After Denying Requests to See Body Camera Footage*, WTKR.COM (May 18, 2015, 9:05 AM), <http://wtkr.com/2015/05/18/chesapeake-bills-citizens-after-denying-requests-to-see-body-camera-footage/>.

footage are billed for their trouble—of a review of around 300 open-case files with public record requests, almost all denial letters ended with the phrase, “Attached you will find a bill.”¹⁷⁹

Since it began implementing police body cameras, Chesapeake has experienced changes in the number of complaints it receives against police. In 2013 there were fifty-one complaints against officers, down from eighty-one the year before.¹⁸⁰ There were only thirty-six complaints filed in 2014.¹⁸¹ Complaints upheld against officers have also declined from twenty-four in 2012 to nineteen in 2013.¹⁸² Curiously, across the same years, complaints alleging racial profiling increased from five to eleven, and procedural complaints rose from three to fourteen.¹⁸³ As with other studies, these statistical changes cannot be directly attributed to body-camera use, though the changes are noteworthy.

Chesapeake prosecutors also have experience with police body cameras. Chesapeake’s Commonwealth’s Attorney Nancy Parr recognized the difficulty in adjusting to her office’s use of camera records in and out of court.¹⁸⁴ According to Ms. Parr, her attorneys dealt with the increase of information concerning individual cases resulting from camera records by spending nights and weekends reviewing the videos.¹⁸⁵ Local defense attorneys compounded resultant time constraint issues by reviewing videos the morning before trial instead of setting up appointments, which created court delays.¹⁸⁶ Further, Chesapeake courts lack the capacity to properly display videos.¹⁸⁷ Prosecutors and defense attorneys do not share computers for camera record viewing due to confidentiality issues, and only two computers are available for jury viewing—even though Chesapeake’s Circuit Court has six courtrooms.¹⁸⁸ Despite these challenges and costs, the Chesapeake

179. *Id.*

180. Associated Press, *Chesapeake Complaints Fall, Camera Use Up*, WASH. TIMES (May 4, 2014), <http://www.washingtontimes.com/news/2014/may/4/chesapeake-police-complaints-fall-camera-use-up/?page=all>.

181. Margarete Matray, *Chesapeake Has Become the Go-To for Police Forces Looking into Body Cameras*, VIRGINIAN-PILOT (June 1, 2015), <http://hamptonroads.com/2015/05/chesapeake-has-become-goto-police-forces-looking-body-cameras>.

182. Associated Press, *supra* note 180.

183. *Id.*

184. *See* Daugherty, *supra* note 154.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

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191. *See id.*

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195. *Id.*

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Commonwealth's Attorney's office frequently utilizes camera records in DUI prosecutions, so much so that Ms. Parr believes the technology is responsible for an increase in guilty pleas.¹⁸⁹

Notwithstanding the challenges Chesapeake has experienced with the city's employment of police body cameras, the Commonwealth of Virginia as a whole is pressing onward with increasing camera implementation. Several bills have been tendered to the Virginia legislature to facilitate camera use. House Bill 2393 is just one example.¹⁹⁰ Under that proposed legislation, the Attorney General would determine which departments got priority state funding for camera implementation, in addition to establishing a statewide camera-use policy.¹⁹¹ According to the bill's sponsor, the proposal is intended to promote transparency of Virginia's law enforcement agencies.¹⁹² As of March 2015, the lawmakers of twenty-nine other states have considered or are considering body camera bills, though no state mandates the technology yet.¹⁹³

Until such a bill is passed, local police departments are free to—or consigned to—define their own recording and usage policies, usually with consultation of their jurisdiction's legal advisors.¹⁹⁴ This lack of rigidity has resulted in policy variations across localities; for example, Norfolk police are required to notify citizens that they are being recorded, while Chesapeake police officers have no such obligation.¹⁹⁵

Concerning more than just consent, Chesapeake has further developed their camera policies as their experience has grown. All 250 of Chesapeake's officers are required to wear body cameras in the field and all recorded data is automatically uploaded to Evidence.com—a subscription storage solution Chesapeake intended to last a year, but filled within six months.¹⁹⁶ Officers review videos as they write incident reports, tagging videos as evidence as

189. Mike Maciag, *What We Can Learn From the Police that Pioneered Body Cameras*, GOVERNING MAGAZINE: THE STATES AND LOCALITIES (Apr. 13, 2015), <http://www.governing.com/topics/public-justice-safety/gov-body-cameras-chesapeake-virginia.html>.

190. H.B. 2393, Va. Gen. Assembly (Reg. Sess. 2015).

191. *See id.*

192. *Despite House Killing*, *supra* note 158.

193. Maciag, *supra* note 189.

194. *See id.* (recognizing the lack of policy definition not just in Virginia but in other locations without legislative guidance).

195. *Id.*

196. *Id.*

necessary.¹⁹⁷ Videos deemed non-evidentiary are kept on file for thirteen months.¹⁹⁸ Further, Chesapeake policy dictates situations where officers are not to record, such as when inside medical facilities or in front of a magistrate,¹⁹⁹ instead of prescribing situations where recording is necessary.

Police departments across Virginia and the nation have looked to Chesapeake for guidance in implementing their own body camera programs, including Virginia's Henrico and Chesterfield counties, the District of Columbia, and leaders from Kansas and New York City.²⁰⁰ The Henrico County Police Department met with leaders of the Chesapeake Police in the summer of 2014 for advice.²⁰¹ Following that meeting, Henrico purchased 400 body cameras and had implemented 160 as of June 1, 2015.²⁰² Lieutenant Chris Eley, spokesman for Henrico Police, said of the meeting, "[The Chesapeake Police] helped us write our policy based upon their experience [T]hey were able to know what worked and what didn't work."²⁰³

Though Chesapeake's Chief Wright predicts, "officers will wear [body cameras] very much as they do their sidearm"²⁰⁴ (a claim no doubt bolstered by the compliment so many departments have bestowed on Chesapeake through their consultation and imitation), Chesapeake's body camera experience exemplifies the necessity for caution, forethought, and policy when implementing a police body camera program. Staggering costs of hardware, data storage, and man-hours for video viewing and editing are just some of the manifested obstacles of such a program. Chesapeake courts have also shared much of the burden, ranging from practical issues of when and how to view camera records in court to changes in methods of prosecution.

Differences among neighboring jurisdictions have emerged as well. Despite the materialization of such concerns, Chesapeake, along with many other jurisdictions considering camera implementation, has recognized the importance and benefit of policy

197. *Id.*

198. *Id.*

199. *See id.*

200. Matray, *supra* note 181.

201. *Id.*

202. *Id.*

203. *Id.*

204. Maciag, *supra* note 189.

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considerately implemented along with the cameras themselves. Policy, carefully tailored to reflect local needs, has the distinct penchant to limit the impact of existing concerns—such as privacy issues arising from citizen interaction or the handicap of public record requests—while simultaneously serving as a breakwater for unanticipated consequences—like issues stemming from novel record use in court. Perhaps most importantly, Chesapeake's implementation of body cameras proves that the technology's benefits are real and ascertainable.

If implementation of police body cameras is executed after careful consideration of the potential pitfalls among the potential profits and is accompanied by purposeful policy limiting expedited change, then the devices' perceived and potential benefits can be realized and compounded as their place in law enforcement continues to be defined.

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