

ISSUE

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Should the Police Be Required to Wear Body Cameras?

Yes: Jay Stanley, from "Police Body-mounted Cameras: With the Right Policies in Place, a Win for All," American Civil Liberties Union (ACLU) Report (2015)

No: Jennifer L. Doleac, from "Do Body-worn Cameras Improve Police Behavior?" *The Brookings Institute* (2017)

Learning Outcomes

After reading this issue, you will be able to:

- Discuss the founding fathers' rationale for the Fourth Amendment.
- Discuss generally the legal status of the use of high-technology surveillance by government agents.
- Discuss the significance of the Supreme Court's decision in *Dow Chemical Corporation v. United States*.
- Present and discuss several arguments for and against requiring police officers to wear body cameras.
- Discuss the privacy implications of requiring the police to wear body cameras.
- Discuss the significance of the Supreme Court's decision in *Tennessee v. Garner*.
- Present and discuss the significance of the "Rialto Study" of the use of body cameras by the police.

ISSUE SUMMARY

YES: American Civil Liberties Union (ACLU) Senior Policy Analyst Jay Stanley contends that if U.S. police departments develop proper policies for the use of police body cams they will be a "win for all." These devices will enhance police accountability and protect officers against false claims of abuse.

NO: Jennifer L. Doleac, in contrast, argues that body cameras are extremely costly, mostly due to the costs of storing and managing the video footage. Because there is no evidence that these devices have a significant impact on police behavior, law enforcement agencies may be better off spending taxpayers' dollars in other ways.

Technological advances can be a wonderful thing. They have the potential to encourage creativity, innovation, and achievement and make life more satisfying and efficient in countless ways. It seems likely that 40 years ago, this manuscript would have been prepared in handwritten form or on a standard typewriter, involving a much greater expenditure of time, effort, and scrap paper. Clearly, technology can make our lives easier; however, are there any downsides to technical advancement? Is it possible to become so technologically advanced that we are held hostage by what we have created?

Think about what has happened with regard to surveillance technology recently. A few years ago, former National Security Agency analyst Edward Snowden revealed that the agency had been tracking the Internet activity and cell phone calls of a large number of Americans as well as those of persons in various other countries. Moreover, during the last few years, it has become possible for cameras mounted in police patrol cars to record the license plates of oncoming vehicles to check for active warrants, registration defects, or other problems. Likewise, highly sensitive surveillance cameras that may record all activity in a particular area have been deployed in some

cities. Coupled with sophisticated facial recognition software, such surveillance has Orwellian implications for personal privacy in our nation.

The U.S. legal system and the courts in particular seem to have struggled to keep pace with some of these modern surveillance practices. The Fourth Amendment to the U.S. Constitution was adopted in 1786. It provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

At the time of its adoption, the Founding Fathers were chiefly concerned with abusive practices by the British government, such as the issuance of "general warrants" and "writs of assistance," which gave governmental authorities virtually unlimited power to search whom-ever they wished, even without any cause. The Fourth Amendment was a direct reaction to such practices. In 1786, however, the Founding Fathers could never have possibly imagined these technological advances and just how intrusive these searches could become.

In more recent times, the Supreme Court has considered the use of highly technical devices by law enforcement officers to investigate crimes. A central theme of these cases appears to be that if a criminal investigation is directed at a home, the courts are more likely to require law enforcement officers to obtain a search warrant than if it occurs in a more public area. This remains true even if investigators employ highly sophisticated technology, often not available to the general public.

For example, an early case that involved a high technology investigation by law enforcement agents occurred in *Dow Chemical Company v. United States*, 476 U.S. 227 (1986). Here, the United States Environmental Protection Agency (EPA) hired a commercial aerial photographer to take high-tech photos of a 2,000 acre chemical manufacturing facility, after the company had refused to allow an EPA inspection of the plant. Dow then challenged the Agency's right to take such technical photographs without a search warrant. The U.S. Supreme Court rejected this argument. Chief Justice Warren Burger stated:

It may well be, as the government concedes, that surveillance of private property by using highly sophisticated surveillance equipment not generally available to the public, such as satellite technology, might be constitutionally proscribed absent a warrant. But the photographs here are not so revealing of intimate details as to raise constitutional concerns. . . . The mere fact that human vision is

enhanced somewhat, at least to the degree here, does not give rise to constitutional problems (238).

In a dissenting opinion, Justice Louis Powell asserted that under the majority's analysis, "the existence of an asserted privacy interest apparently will be decided solely by reference to the manner of surveillance used to [intrude] on that interest. Such an inquiry will not protect Fourth Amendment rights, but rather *permit their gradual decay as technology advances*" (239) [Emphasis added]. As Justice Powell predicted, highly sophisticated technological devices are being used currently by law enforcement agents in public places without search warrants. The courts have generally upheld these searches, despite their implications for personal privacy. For example, if a police cruiser's video camera surveys the license plate numbers of all automobiles in a particular place, does it compromise the personal privacy interests of all vehicle occupants in the area? Moreover, where is the information stored and how long is it kept by law enforcement agencies? Are these simply modern high-technology manifestations of governmental dragnet searches, or "fishing expeditions," that the Founding Fathers would have clearly despised? Such searches are not targeted at homes, so the courts would be likely to uphold the practice under *Dow Chemical*. Unfortunately, Justice Powell's statement about decaying Constitutional protections seems eerily prophetic as surveillance technology has continued to advance.

Some of the same privacy interests are implicated in cases involving police body-mounted cameras. Should police officers be required to record all encounters with citizens, or should they retain the discretion to turn them on and off at will? What should be done with the recordings that are not used in a criminal case? Should they be erased immediately or stored in a law enforcement database for possible later use? Although the use of body cameras does appear to have significant potential for improving law enforcement encounters with the public, privacy concerns must be addressed.

ACLU Senior Policy Analyst Jay Stanley supports the use of police body cameras, subject to certain limitations. Stanley recommends that law enforcement agencies develop appropriate policies to insure that police officers cannot "edit on the fly" or choose which encounters to record with limitless discretion. He believes that if the police are free to turn the cameras on and off at their discretion, the cameras' "role in providing a check and balance against police power will shrink and they will no longer become a net benefit." Moreover, Stanley asserts that it is imperative that any law enforcement deployment of body cameras be accompanied by good privacy policies,

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so that the "benefits of the technology are not outweighed by invasions of privacy." Further, the ACLU asserts that the data produced by these cameras should be retained no longer than necessary for the purpose for which it was collected. Thus, most recordings should be deleted quickly.

Jennifer Doleac, however, believes that body cameras may actually increase police use of force. Officers may become more likely to use force when they know camera footage will demonstrate the facts were on their side. Moreover, BWCs programs are extremely expensive; because a recent research study in Washington, DC,

showed no impact on police behavior, cities might be better off spending its taxpayer dollars in other ways.

As you read the articles presented in this section consider whether you believe that requiring the police to wear body cameras and record their encounters with citizens is a positive development for American law enforcement. Is it likely to improve the overall performance of police officers and lead to heightened professionalism? Or is it, to paraphrase Justice Powell, another step down the slippery slope of decaying Constitutional protections in criminal cases?



YES

Jay Stanley

Police Body-mounted Cameras: With Right Policies in Place, a Win for All

Since we published the first version of this policy white paper in October 2013, interest in police body cameras has exploded. The August 2014 shooting of Michael Brown in Ferguson, Missouri and the subsequent protests focused new public attention on the problem of police violence—and on the possibility that body cameras might be part of the solution. The following December, a grand jury's decision not to indict an officer in the videotaped choke hold death of Eric Garner in New York City further intensified discussion of the technology.

With so much attention being paid to body cameras, we have received a lot of thoughtful feedback on our policy recommendations. Overall, considering how early in the discussion we issued our paper, we believe our recommendations have held up remarkably well. But in this revision of the paper we have seen fit to refine our recommendations in some areas, such as when police should record. And of course, the intersection of technology and human behavior being highly complex and unpredictable, we will continue to watch how the technology plays out in the real world, and will most likely continue to update this paper.

"On-officer recording systems" (also called "body cams" or "cop cams") are small, pager-sized cameras that clip on to an officer's uniform or are worn as a headset, and record audio and video of the officer's interactions with the public. Recent surveys suggest that about 25% of the nation's 17,000 police agencies were using them, with fully 80% of agencies evaluating the technology.

Much interest in the technology stems from a growing recognition that the United States has a real problem with police violence. In 2011, police killed six people in Australia, two in England, six in Germany and, according to an FBI count, 404 in the United States. And that FBI number counted only "justifiable homicides," and was comprised of *voluntarily submitted* data from just 750 of 17,000 law enforcement agencies. Attempts by

journalists to compile more complete data by collating local news reports have resulted in estimates as high as 1,000 police killings per year in the United States. Fully a quarter of the deaths involved a white officer killing a black person.

The ACLU's Interest

Although we at the ACLU generally take a dim view of the proliferation of surveillance cameras in American life, police on-body cameras are different because of their potential to serve as a check against the abuse of power by police officers. Historically, there was no documentary evidence of most encounters between police officers and the public, and due to the volatile nature of those encounters, this often resulted in radically divergent accounts of incidents. Cameras have the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse.

We're against pervasive government surveillance, but when cameras primarily serve the function of allowing public monitoring of the government instead of the other way around, we generally support their use. While we have opposed government video surveillance of public places, for example, we have supported the installation of video cameras on police car dashboards, in prisons, and during interrogations.

At the same time, body cameras have more of a potential to invade privacy than those deployments. Police officers enter people's homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations.

For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but *only* if they are deployed within a framework of strong

policies to ensure that becoming yet another of the public, and maintaining integrity of those privacy frameworks, their actions exceed their privacy rights.

On-officer cameras implicate important, if will have to watch carefully what their effects are over our current thinking about technology. These recom-

Control Over Recording

Perhaps most important, designed to ensure that, i.e., choose which encounters. If police are free as they please, the camera balance against police power longer become a net benefit.

The primary question implemented.

Purely from an accountability policy for body-worn cameras recording throughout a day any possibility that an officer abuses committed on duty.

The problem is that many thorny privacy issues officers. For example, the Forum (PERF) pointed out on body cameras, crime abuse, and other sensitive who are concerned about with police, may have video police to record their interactions body camera policies designed for these individual

Continuous recording mass surveillance of communities would be less problematic centered town where except to engage in encounters in a place like New Yorking 30,000 camera-equipped streets, where an officer encounter thousands of surveillance. That urban neighborhoods—

policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks.

On-officer cameras are a significant technology that implicates important, if sometimes conflicting, values. We will have to watch carefully to see how they are deployed and what their effects are over time, but in this paper we outline our current thinking about and recommendations for the technology. These recommendations are subject to change.

Control Over Recordings

Perhaps most importantly, policies and technology must be designed to ensure that police cannot "edit on the fly"—i.e., choose which encounters to record with limitless discretion. If police are free to turn the cameras on and off as they please, the cameras' role in providing a check and balance against police power will shrink and they will no longer become a net benefit.

The primary question is how that should be implemented.

Purely from an accountability perspective, the ideal policy for body-worn cameras would be for continuous recording throughout a police officer's shift, eliminating any possibility that an officer could evade the recording of abuses committed on duty.

The problem is that continuous recording raises many thorny privacy issues, for the public as well as for officers. For example, as the Police Executive Research Forum (PERF) pointed out in their September 2014 report on body cameras, crime victims (especially victims of rape, abuse, and other sensitive crimes), as well as witnesses who are concerned about retaliation if seen cooperating with police, may have very good reasons for not wanting police to record their interactions. We agree, and support body camera policies designed to offer special privacy protections for these individuals.

Continuous recording would also mean a lot of mass surveillance of citizens' ordinary activities. That would be less problematic in a typical automobile-centered town where officers rarely leave their cars except to engage in enforcement and investigation, but in a place like New York City it would mean unleashing 30,000 camera-equipped officers on the public streets, where an officer on a busy sidewalk might encounter thousands of people an hour. That's a lot of surveillance. That would be true of many denser urban neighborhoods—and of course, the most heavily

policed neighborhoods, poor and minority areas, would be the most surveilled in this way.

Continuous recording would also impinge on police officers when they are sitting in a station house or patrol car shooting the breeze—getting to know each other as humans, discussing precinct politics, etc. We have some sympathy for police on this; continuous recording might feel as stressful and oppressive in those situations as it would for any employee subject to constant recording by their supervisor. True, police officers with their extraordinary powers are not regular employees, and in theory officers' privacy, like citizens', could be protected by appropriate policies (as outlined below) that ensure that 99% of video would be deleted in relatively short order without ever being reviewed. But on a psychological level, such assurances are rarely enough. There is also the danger that the technology would be misused by police supervisors against whistleblowers or union activists—for example, by scrutinizing video records to find minor violations to use against an officer.

On the other hand, if the cameras do not record continuously, that would place them under officer control, which allows them to be manipulated by some officers, undermining their core purpose of detecting police misconduct. Indeed, this is precisely what we are seeing happening in many cases.

The balance that needs to be struck is to ensure that officers can't manipulate the video record, while also placing reasonable limits on recording in order to protect privacy.

One possibility is that some form of effective automated trigger could be developed that would allow for minimization of recording while capturing any fraught encounters—based, for example, on detection of raised voices, types of movement, etc. With dashcams, the devices are often configured to record whenever a car's siren or lights are activated, which provides a rough and somewhat (though not entirely) non-discretionary measure of when a police officer is engaged in an encounter that is likely to be a problem. That policy is not applicable to body cams, however, since there is no equivalent to flashing lights. And it's not clear that any artificial intelligence system in the foreseeable future will be smart enough to reliably detect encounters that should be recorded. In any case, it is not an option with today's technology.

Another possibility is that police discretion be minimized by requiring the recording of all encounters with the public. That would allow police to have the cameras off when talking amongst themselves, sitting in a squad

care, etc., but through that bright-line rule still allow officers no discretion, and thus no opportunity to circumvent the oversight provided by cameras.

An all-public-encounters policy is what we called for in the first version of this white paper, but (as we first explained here), we have refined that position. The problem is that such a policy does not address the issues mentioned above with witnesses and victims, and greatly intensifies the privacy issues surrounding the cameras, especially in those states where open-records laws do not protect the privacy of routine video footage.

If a police department is to place its cameras under officer control, then it becomes vitally important that it put in place tightly effective means of limiting officers' ability to choose which encounters to record. Policies should require that an officer activate his or her camera *when responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public.* That would include stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions of all kinds. This should cover any encounter that becomes in any way hostile or confrontational.

If officers are to have control over recording, it is important not only that clear policies be set, but also that they have some teeth. In too many places (Albuquerque, Denver, and other cities) officer compliance with body camera recording and video-handling rules has been terrible. Indeed, researchers report that compliance rates with body camera policies are as low as 30%.

When a police officer assigned to wear a body camera fails to record or otherwise interferes with camera video, three responses should result:

1. Direct disciplinary action against the individual officer.
2. The adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or was destroyed.
3. The adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct. The presumptions should be rebuttable by other, contrary evidence or by proof of exigent circumstances that made compliance impossible.

Evidentiary presumptions against a defendant-officer in a criminal proceeding should not be sought, as they are insufficient for meeting the burden of proof in a criminal case and might lead to false convictions.

Limiting the Threat to Privacy from Cop Cams

The great promise of police body cameras is their oversight potential. But equally important are the privacy interests and fair trial rights of individuals who are recorded. Ideally there would be a way to minimize data collection to only what was reasonably needed, but there's currently no technological way to do so.

Police body cameras mean that many instances of entirely innocent behavior (on the part of both officers and the public) will be recorded. Perhaps most troubling is that some recordings will be made inside people's homes, whenever police enter—including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls. In the case of dashcams, we have also seen video of particular incidents released for no important public reason, and instead serving only to embarrass individuals. Examples have included DUI stops of celebrities and ordinary individuals whose troubled and/or intoxicated behavior has been widely circulated and now immortalized online. The potential for such merely embarrassing and titillating releases of video is significantly increased by body cams.

Therefore it is vital that any deployment of these cameras be accompanied by good privacy policies so that the benefits of the technology are not outweighed by invasions of privacy. The core elements of such a policy follow.

Notice to Citizens

Most privacy protections will have to come from restrictions on subsequent retention and use of the recordings. There are, however, a few things that can be done at the point of recording.

1. Body cameras should generally be limited to uniformed police officers and marked vehicles, so people know what to expect. Exceptions should be made for non-uniformed officers involved in SWAT raids or in other planned enforcement actions or uses of force.
2. Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dashcams in some states such as Washington). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying "lapel camera in operation" or words to that effect. Cameras might also have blinking red lights when they record, as is standard on most other cameras.

3. It is especially important to be used to surreptitious information based on speech, associations, and policies are adopted would not be possible.

Recording in the Home

Because of the uniquely private nature of recordings made inside private homes, it is important to provide clear notice of recordings except in circumstances where necessary. And departments should require that officers ask residents whether recordings should be turned off before they begin recording in those circumstances. (Citizens should not be required to turn off recordings themselves.) Cameras should never be used in similar police actions.

Retention

Data should be retained for a period of time for the purpose for which it was collected. Retention of police encounters with cameras should be deleted relative to the purpose for which it was collected.

1. Retention periods should not exceed a few years, and should be shorter than the period unless a compelling reason for a longer retention period exists (e.g., to a longer retention period for a year period cumulative). (State).
2. These policies should be applied to department's video encounters with cameras.
3. Flagging should be required for incidents:
 - involving a crime
 - that leads to a conviction
 - where either party has been injured
4. Any subject of a recording, even if not involved in an investigation, should be notified.
5. The police department should be able to delete recordings on a case-by-case basis to believe

3. It is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion. (If the preceding policies are adopted, this highly problematic use would not be possible.)

Recording in the Home

Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. And departments should adopt a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off must themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.

Retention

Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly.

1. Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged. Once a recording has been flagged, it would then switch to a longer retention schedule (such as the three-year period currently in effect in Washington State).
2. These policies should be posted online on the department's website, so that people who have encounters with police know how long they have to file a complaint or request access to footage.
3. Flagging should occur automatically for any incident:
 - involving a use of force;
 - that leads to detention or arrest; or
 - where either a formal or informal complaint has been registered.
4. Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.
5. The police department (including internal investigations and supervisors) and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or

have reasonable suspicion that the video contains evidence of a crime. We do not want the police or gadflies to be able to routinely flag all recordings in order to circumvent the retention limit.

6. If any useful evidence is obtained during an authorized use of a recording (see below), the recording would then be retained in the same manner as any other evidence gathered during an investigation.
7. Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence.

Use of Recordings

The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime. Otherwise, there is no reason that stored footage should even be reviewed by a human being before its retention period ends and it is permanently deleted. Nor should such footage be subject to face recognition searches or other analytics.

Subject Access

People recorded by cop cams should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

Public Disclosure

When should the public have access to cop cam videos held by the authorities? Public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by policymakers. One way to do that is to attempt to minimize invasiveness when possible:

Jennifer L. Doleac



Do Body-worn Cameras Improve Police Behavior?

Police departments across the United States are facing a crisis of confidence. Bystanders have recorded on cell phone video a large number of incidents where officers appear to unjustifiably harm or kill civilians, sparking outrage across the country and making us wonder what additional abuses our cameras have missed. Communities are no longer willing to take police officers' word for it that force was necessary in violent incidents, and this lack of trust makes it difficult for police to do their jobs. In response, citizens and legislators have called for all officers to use BWCs, so that all interactions with civilians are recorded. Many people are hopeful that this technology will facilitate cultural reform, increasing officer accountability and reducing abuses of power. Unfortunately, the evidence so far is mixed.

BWC advocates hope that the cameras will have a civilizing effect on all involved: officers and civilians alike should behave better when they know their behavior is being recorded, reducing the number of violent interactions between officers and civilians. In cases where officers do use force, the video footage will offer factual evidence about what occurred, so that abusive officers can be quickly disciplined, fired, or even convicted of crimes, preventing them from further abusive use of force. If BWCs have either of these effects, use of force by police should fall.

However, it's also possible that BWCs could increase the use of force: perhaps most officers show restraint in heated situations to avoid being accused of bad behavior. You might think this implausible, given how rare it is for police officers to face disciplinary action. But facing an accusation can be quite unpleasant, even if it does not lead to penalties, and even a small chance of losing your job or going to prison might be enough to make at least some police officers wary of using force in a borderline situation. Those officers may become more likely to use force when they know camera footage will demonstrate the facts were on their side.

Since the effect of BWCs could be positive or negative, we need to rigorously test the effects to know how people respond to this tool.

Over the past several years, many police departments have implemented BWCs in randomized controlled trials (RCTs), randomizing when officers are supposed to wear a camera and when they're not. Most studies randomized by shift, so that everyone on duty at particular times wears a camera, and at other times everyone doesn't. In a new study in Washington, DC, the police department randomized BWCs by officer, so that some officers always wore a camera, while other officers never did. There are pros and cons to each of these randomization strategies, mostly involving the types of spillover effects we might expect across shifts or individual officers. But both strategies allow us to compare the behavior of those who are wearing BWCs with the behavior of a control group that isn't wearing BWCs.

Previous RCTs in American and European police departments found that BWCs reduced the number of complaints filed by local residents against the police. However, they showed mixed effects on the use of force by and against police officers. In some places, BWCs increased force, and in others, they decreased force. The context surely matters—how severe is the local problem, how motivated are officers to change their behavior, and how much accountability do the cameras provide? Local policies about when officers are required to turn their cameras on, and when footage is released, likely have an impact on the value of BWC programs. Figuring out whether changing these policies can increase BWC effectiveness is a crucial next step in this research area.

The DC study was the first in a major U.S. city, and so will be of particular interest to other large cities rolling out BWC programs. The study was conducted by The Lab @ DC, a research group in the mayor's office, in collaboration with the Metropolitan Police Department (MPD). (Full disclosure: I am a Senior Social Scientist with the Lab,

Doleac, Jennifer L., "Do Body-worn Cameras Improve Police Behavior?" Brookings.edu, May 25, 2017. Copyright ©2017 The Brookings Institute. Used with permission.

though I certainly do not speak for that office and I am not an author of the BWC study.) This study found no significant impact on the use of force by officers, or citizen complaints against officers: that is, the behavior of officers who wore cameras all the time was indistinguishable from the behavior of those who never wore cameras. The authors looked at myriad other outcomes and found that BWCs had no significant effect on any of them.

It's possible that BWCs affected community trust in ways that don't show up in DC's police data: if individuals feel safer and trust the police more, that's a good thing, even if actual use of force isn't changing. And it could be worthwhile to have footage in rare events where a problem officer needs to be held accountable. But it's tough to argue from the DC data that BWCs affected day-to-day police behavior in any way.

This could be because the MPD had already made other meaningful changes to its training and accountability systems, and so the types of behavioral changes BWCs might induce have already happened. The MPD was under DOJ investigation between 1999 and 2001 and committed to implementing a variety of policies aimed at reducing the use of force. Perhaps those policies already reduced forced as much as it could be reduced. It's also possible that cameras are so ubiquitous in the district (due to the widespread use of cell phone cameras and CCTV cameras)

that officers already assumed they were being recorded at all times. In any case, the marginal value of BWCs in the district seems to be zero.

You might think that as long as the BWCs aren't doing any harm, it makes sense to keep using them. But BWC programs are extremely costly, mostly due to the costs of storing and managing the video footage. DC spent \$1 million dollars on cameras and will spend an additional \$2 million each year for data storage going forward. Given this new evidence that BWCs have no impact on police behavior in the district, DC might be better off spending its taxpayers' dollars in other ways. If the MPD chooses to keep BWCs, it should be clear about what goals it is trying to achieve in doing so, and why the Lab's RCT could not measure those effects. It's possible that BWCs will have bigger impacts on police behavior in other cities. But places considering implementing BWCs should follow DC's lead and rigorously evaluate their programs to be sure they're getting the progress they hoped for.

JENNIFER L. DOLEAC is an assistant professor of public policy and economics at the University of Virginia's Frank Batten School of Leadership and Public Policy and founding director of the Justice Tech Lab. She is also a nonresident fellow in Economic Studies at the Brookings Institution.

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EXPLORING THE ISSUE



Should the Police Be Required to Wear Body Cameras?

Critical Thinking and Reflection

1. Why did the founding fathers include the Fourth Amendment in the Constitution's Bill of Rights?
2. What is the current legal status of the use of high-technology surveillance by government agents?
3. What is the significance of the Supreme Court's decisions in *Dow Chemical Corporation v. United States*?
4. Present and discuss several arguments for and against requiring police officers to wear body cameras.
5. What are the privacy implications of requiring the police to wear body cameras?
6. What is the significance of the Supreme Court's decision in *Tennessee v. Garner* (1985)?
7. What is the significance of the "Rialto Study" of the use of body cameras by the police?

Is There Common Ground?

Should the police be required to wear body cameras? The authors of the articles in this chapter provide different answers to these questions. Jay Stanley contends that police officer use of body cams may have an overall positive impact on law enforcement policy in the United States. The Harvard Law Review lists several different problems associated with the use of these devices. In any case, it seems clear that increased public demands for law enforcement officer accountability may require police departments to embrace this new technology in coming years. Several recent cases serve to underscore the highly significant role that this technology is likely to play.

In 2014, a *USA Today* newspaper article observed that "Local Police are involved in 400 killings per year." During that same year, police officers in Ferguson, MI, shot and killed Michael Brown, which led to several days of rioting in the community and demands for increased police accountability. Shortly thereafter, a citizen's cell phone recording was used as evidence in a New York City case involving Eric Garner who was accused of a minor crime and placed in a choke hold by police officers; Garner later died from the injuries he received. A grand jury declined to indict the officers involved.

If videotapes of the Ferguson case had been available, would the police officers involved have been indicted and charged with a crime? It is difficult to tell. Moreover, just how much force would be police officers in these cases have been justified in using? Were the police justified in using a choke hold in the Garner case, a violation of their department's policy? U.S. Supreme Court precedents

appear to provide some guidance. First, when the police restrain the freedom of someone to walk away, they have "seized" that person, which implicates the Fourth Amendment. Second, there is no question that apprehending someone by the use of deadly force is a "seizure" subject to the reasonableness requirement of the Fourth Amendment.

In *Tennessee v. Garner*, 471 U.S. 1 (1985; unrelated to the Erik Garner "choke hold" case in 2014), the Supreme Court considered the issue of police use of deadly force to stop a fleeing felon. Memphis police officers were dispatched to investigate a possible burglary. When they arrived on scene, the officers saw a woman standing on her porch and gesturing toward an adjacent house. One officer heard a door slam and saw a suspect run across the backyard. The officer saw no sign of a weapon and believed the suspect was not armed, but he was attempting to escape by climbing a six-foot-high chain link fence. The officer called out "police, halt" and moved toward the suspect. Convinced that if Garner had made it over the fence he would escape, the officer shot him. The bullet hit Garner in the back of the head and he later died on the operating table. Ten dollars and a purse taken from the house were later found on his body.

In using deadly force to prevent the escape, the police officer was acting under the authority of a Tennessee law that permitted the use of deadly force to stop a fleeing burglary suspect. A grand jury refused to indict the officer. The Supreme Court held that a reviewing court must examine the totality of the circumstances that support a particular sort of search or seizure. Justice Byron White asserted:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances is constitutionally unreasonable. It is not better that all suspects die than that they escape. Where the suspect poses no immediate threat to the officer or to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects (11).

It seems plausible that under this standard, the amount of force used in the Erik Garner "choke hold" case may have been unreasonable. Erik Garner was suspected of committing a minor misdemeanor offense. Was it really worth using potentially deadly force to take him into custody for such a crime?

Another example is provided by the Harvard Law Review. Marcus Jeter was charged in 2012 with "eluding police, resisting arrest and aggravated assault on a police officer" (8). Much of the incident was videotaped by a dashboard camera in the police cruiser. Jeter asserted that the officers had used excessive force while arresting him and that he had not acted violently. Following an internal police department investigation that had concluded that "the officers did nothing wrong," Jeter's attorney discovered evidence that a second police cruiser, with a second video recorder, had been on the scene that night. The videotape was allegedly never viewed by the prosecutor's office, though it had been in the possession of the police department since 2012. In the second video, the police car is seen "swerving across oncoming traffic and running into the front of Jeter's SUV, causing him to hit his head on the steering wheel" (9). The video also showed Jeter with his hands in the air, sitting passively in the driver's seat as officers approached the car. One officer pointed a pistol at the window and another had a shotgun. The video then showed an officer using a nightstick to smash the driver's side window. He then pulled Jeter from the car and threw him on the ground. While beating Jeter, the officer yelled "stop resisting" and "stop trying to take my f—gun." The video indicated that Jeter was neither resisting nor capable of reaching for the officer's gun. As Jeter was dragged out of the car his face was smashed into the cement and another officer took a swing at his head.

As a result of the discovery of the second videotape, the prosecutors dropped all charges against Jeter. The

officers were indicted: one retired after pleading guilty to tampering, and two were arraigned on charges of official misconduct, tampering with public records, and false swearing (10). If it had not been for the video recording, Jeter may well have spent several years in prison and the police would not have been held accountable (Id.).

As this case illustrates, video recordings can be an effective measure to ensure just outcomes in criminal cases. Moreover, these devices may help to professionalize the delivery of police services and enhance accountability. In any case, it seems that police body cams are a practice that is here to stay and should be embraced by modern law enforcement agencies. This may well be a net positive development for both law enforcement officers and suspects in criminal proceedings: to paraphrase the late William O. Douglas, the longest serving U.S. Supreme Court Justice in history, "sunshine can be the best disinfectant."

Moreover, some of the available empirical evidence appears to suggest that police who wear body cameras use force less often than those who do not. In a research project that has become known as the "Rialto Study," the authors concluded that shifts without cameras had twice as many use of force incidents as those with cameras, and "the rate of use of force incidents per 1000 contacts was reduced by 2.5 times." (Harvard Law Review, 13, citing Barak Ariel & Tony Farrar, 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 8 (2013).)

Additional Resources

1. Police Executive Research Forum (PERF), "Implementing a Body-Worn Camera Program," 25 (2014).
2. Connie Fossi-Garcia & Dan Lieberman, "Investigation of 5 Cities Finds Body Cameras Usually Help Police," *Fusion* (December 7, 2014).
3. Thomas J. Hickey, Christopher Capsambelis and Anthony LaRose, "Constitutional Issues in the Use of Video Surveillance in Public Places," *Criminal Law Bulletin* 39 (5) (September–October, 2003).
4. A. J. Vicens, "Putting Body Cameras on Cops is Hardly a Cure-All for Abuses," *Mother Jones* (August 21, 2014).
5. Robinson Meyer, "Seen It All Before: 10 Predictions About Police Body Cameras," *The Atlantic* (December 5, 2014).

Internet Ref

National Institute of Justice
Body-Worn Cameras for Law
(NIJ, 2012); PoliceOne Staff
Cops speak out about body

www.policeone.com

U.S. Dept. of Justice, "Police
Excessive Force: A Conciliatory
for the Police and the Community"

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