

Expansion of Body-Worn Cameras for Law Enforcement Agencies

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Abstract

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Under the supervision of Dr. Patrick Solar

The possibilities presented by modern technological advances frequently supersedes society's acceptance of new devices, software or other items. This occurs, in part, because society is complex and slow to keep up. For example, people had only recently become accustomed to cellular telephones as a convenient tool, and within a generation they were capable of tasks previously viewed as science fiction. A similar technological shift is occurring in the field of law enforcement. A generation of police officers who began their careers with cameras mounted to their squad cars, or with no cameras at all, now have body-worn cameras; small cameras that are affixed to the officer's uniform and record high-quality audio and video. Similar to other technological advances, body-worn cameras (BWCs) present many potential positive results, and potential negative outcomes as well. This research examined empirical studies of the effects of BWCs on law enforcement officers and citizens. The research also examined sociological theories, constitutional law, state law and department policies as they relate to the use of BWCs. The outcome of this research favors support for the expansion of BWC to more law enforcement officers.

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Section I - Introduction

Statement of the Problem

The commonly understood purposes of using BWCs are to increase transparency and build trust between a law enforcement agency and the community it serves. BWCs may also be useful for resolving citizen complaints about officers, reducing use of force by incidents, and improving evidence for prosecuting criminal cases. The problem with BWCs is that there are too few law enforcement agencies utilizing this potentially culture-shifting technology. It has been estimated that only 25% of law enforcement agencies use BWCs (Bureau of Justice Assistance, 2015, p. 2). There are approximately 1 million law enforcement officers in the United States (Bureau of Justice Statistics, 2016, Pg. 2). Presumably, not all of these 1 million officers will have access to a BWC. Conversely, there are approximately 200 million people who have smartphones (Statista, 2018). Although there are differences in some of the features between smartphones and BWCs (quality of audio and video, amount of data storage, etc.) this is a useful comparison as they are both small, electronic recording devices; both are frequently used to record police-citizen interactions.

Law enforcement officers have traditionally been provided with equipment that was either a new implement to be used on a daily basis, or an improvement over a previous model. For example, police officers previously did not wear body armor. Body armor slowly became standard equipment for all police officers. Today body armor for law enforcement is lighter and better fitting than previous versions. BWCs are similar in this respect; they are both a new invention and an improvement over squad car-mounted cameras.

Body worn cameras can many benefits to law enforcement officers, citizens who interact with the officers, and society as a whole. BWCs can provide a greater understanding of what actually occurred during an incident, assist with collection of evidence, and help maintain proper behavior of citizens and officers alike. The use of body worn cameras must be expanded to more law enforcement officers.

Methods and Procedures

This study utilized various empirical studies to determine what effects Body-Worn Cameras (BWC) have on law enforcement officers, and citizens during their interactions. Other empirical studies were reviewed for information about law enforcement officers' perceptions of BWC use, and how BWCs affected evidence of certain crimes.

Sociological theories of deterrence and social learning theory were examined to highlight some of the potential benefits to both law enforcement officers and citizens. Other literature reviewed included information about privacy issues related to BWC use. Much of the literature reviewed was from peer-reviewed articles. Other sources reviewed for this research included government websites or sources, law enforcement agency policy manuals, and state statutes. Other information was gathered through non-peer reviewed articles related to BWCs, articles from various news sources, and web searches using www.scholar.google.com, www.google.com, <https://www.uwplatt.edu/library>, and <https://www.bwccscorecard.org/>.

Results of Study

The results of this study indicate there are empirically documented benefits that favor expanding BWCs to more law enforcement agencies despite the potential negative outcomes.

The potential negative outcomes of BWCs must be recognized and mitigated. Support is needed from both the community and the agency where the BWCs are to be implemented. Agency policy must address issues related to activation, deactivation, officer discretion, privacy concerns and data storage. Additionally, officers and supervisors must be trained on the proper use of BWC, and data management systems, to ensure the agency policy is being followed. In short, the benefits of BWCs identified by this research surpass the potential negative outcomes.

Section II – Literature Review

This section will define Body Worn Cameras (BWC) and describe the reasons for their use in law enforcement. This note will then describe the current uses of BWCs in law enforcement in the United States. Next, there will be an examination of the relevant literature and how it will be applied to criminological theory, privacy issues, public policy, and law enforcement agency policies as they relate to BWCs.

General Information on Body Worn Cameras

Body Worn Cameras (BWC) are small, electronic devices that record audio and video images while worn by law enforcement officers while interacting with citizens (Bureau of Justice Assistance, 2015, Pg. 1). BWCs are worn in such a manner that they record information from the officer's perspective (Hayes & Ericson, 2012, Pg. 6). There are approximately 20 companies that manufacture BWCs (PoliceOne.com, 2018). Generally, the purpose of using BWCs is to increase an agency's transparency and build trust with their community; additional purposes include reducing complaints against officers, reducing use of force by officers and improving prosecution of criminal cases (Bureau of Justice Assistance, 2015, Pg. 4-5).

Technological advances have created smaller, more versatile and less expensive devices in general; these advances have not been limited to the consumer market. The use of BWCs is more common today due, in part, to these technological advances. However, some law enforcement agencies still lack funding for basic equipment, including BWCs. This issue was remedied in part by the federal government through a \$20 million Body-Worn Camera Pilot Implementation Program in May 2015 (Bureau of Justice Assistance, 2015, Pg. 7). This program

was intended to expand the availability, training and analysis of BWCs for law enforcement agencies in the United States.

The use of BWCs for law enforcement agencies has increased recently. In 2013, approximately on 25% of agencies used BWC (Bureau of Justice Assistance, 2015, Pg. 2). By comparison, there are approximately 200 million people who have smartphones; a device that has capabilities similar to BWCs (Statista, 2018).

A survey by an association of major city police chiefs and major county sheriffs reported the number of agencies using BWCs was 19% but an additional 77% of agencies were either intending to implement a BWC program, or had already completed a BWC pilot program (Major City Chiefs Association & Major County Sheriffs Association, 2015, Pg. ii). Many agencies also use BWC footage in training (PoliceOne.com, 2017).

While there is increasing interest and many perceived benefits of using BWCs, there are also many concerning issues raised by their use. These concerns are related to privacy (for both citizen and law enforcement officer), officer's health and safety, financial issues, and technological issues (White, 2014, Pg. 27-34) (Miller, Toliver, & Police Executive Research Forum (PERF), 2014, Pg. 11-34) (Shallwani & Quinn, 2018). These issues need to be considered as they could affect many, if not all, of the nearly 1 million law enforcement officers in the United States (Bureau of Justice Statistics, 2016, Pg. 2).

One of the many perceived benefits of BWC is improving evidence collection for corroboration of an officer's observations during a citizen encounter or incident (Smykla et al., 2015, Pg. 440). However, there has been little research to date on how BWC evidence affects court outcomes (Lum, Koper, Merola, Sherer & Reioux, 2015, Pg. 20).

Empirical Research Studies

This research will mostly focus on peer-reviewed literature regarding studies of BWC use in field experiments. This type of research has identified many potential positive effects of BWC use for law enforcement officers. One study involving random assignment of BWCs for patrol officers in Rialto, CA. indicated a decrease in both use of force incidents and citizen complaints against police (Ariel, Farrar and Sutherland, 2014, Pg. 531). Other research had similar results (Ariel, Sutherland, Henstock, Young, Drover, Sykes, Megicks and Henderson, 2017a, Pg. 293) (White, Gaub and Todak, 2017, Pg. 70-71). Another study found BWCs reduced the number of citizen complaints for use of force, but increased complaints for officer misconduct (Ariel, 2016, Pg. 729).

Another study indicated BWCs can decrease use of force when the officer's discretion to activate or deactivate the camera is minimized (Ariel, Sutherland, Henstock, Young, Drover, Sykes, Megicks and Henderson, 2016, Pg. 454). Another study regarding use of force showed BWCs reduced the officers' use of force in response to resistive subjects and the number of citizen complaints about officers (Jennings et al., 2015, Pg. 480).

Another study indicated police using BWCs were more likely to be more cautious during their contacts with citizens, averse to taking risks, make more voluntary contacts with citizens, and issued more citations (possibly because of concern for reprimand for not writing citations) (Ready and Young, 2015, Pg. 454). This study, along with others, also indicated police officers using BWCs on duty hold a favorable view of BWCs as being helpful for their job (Ready and Young, 2015, Pg. 454) (Jennings, Fridell and Lynch, 2014, Pg. 552-553) (Jennings, Lynch and Fridell, 2015, Pg. 480). A different study of law enforcement agency administrator's perceptions

found a similar positive view of BWCs as being helpful in obtaining evidence and guilty pleas (Smykla, Crow, Crichlow & Snyder, 2015, Pg. 442).

Other research indicated use of BWCs increased arrests, charges against suspects, furthered cases and more guilty pleas against suspects in intimate partner violence incidents (Katz, Choate, Ready and Nuno, 2014, Pg. 37).

Criminological Theory

Peer-reviewed literature related to criminological theory will also be examined. It is necessary to incorporate a theoretical examination of increasing BWC use in law enforcement because theory may help explain the perceived benefits of improving police behavior. Essentially, 'improving police behavior' is a simplistic manner of describing many of variables from the previously mentioned empirical studies. For example, Ariel et al. (2014, Pg. 510) referred to this as reducing police use-of-force and complaints against officers, enhancing police legitimacy and transparency.

Deterrence

Criminological theory can be used to examine police behavior, and how it is affected by BWCs, in the same manner as theories would examine a citizen's behavior. One such theory is deterrence theory. Deterrence espouses that the certainty of apprehension, and not the severity of legal consequences, is the more effective deterrent (Nagin, 2013, Pg. 202). Research has found that police misconduct can be prevented by legal and extralegal sanctions as described in deterrence theory (Pogarsky and Piquero, 2004, Pg. 381). Deterrence theory has been cited by BWC researchers as being partially responsible for changing officers' behavior due to the presence of BWCs (Ariel et al., 2014, Pg. 516) (Ariel et al., 2018, Pg. 23) (Ariel et al. 2017a, Pg.

297). A related theme is ‘contagious accountability’; police officers, with or without BWCs in operation, follow procedure because of being aware of the potential consequences for not following procedure due to the recording of citizen interactions on BWCs (Ariel et al., 2017a, Pg. 306). Other research indicated officers’ discretion should be limited for BWC activation in ensure the optimal effect of deterrence (Ariel, Sutherland, Henstock, Young, and Sosinski, 2017b, Pg. 13).

Social Learning Theory

Another theory that has also been used to examine the behavior of law enforcement officers is social learning theory. Social learning theory is an established, and well researched criminological theory (Akers, 1990, Pg. 676). The core concepts of social learning theory have been proven to be strong predictors of criminal and deviant behavior (Pratt et al., 2010, Pg. 788). Social learning theorists believe the same learning process can produce both conforming and deviant behavior; the determining factor is typically which behavior is exhibited by those who an individual associates with on a regular basis (Chappell and Piquero, 2004, Pg. 93). Chappell and Piquero (2004) applied social learning theory to police misconduct and determined the subculture of policing has a great impact on the behavior of a new officer.

Other research has also applied social learning theory, specifically the core concepts, to police subculture and changing police behavior (Maskaly and Donner, 2015, Pg. 211). Police subculture has norms and values designed to manage the strain created by an officer’s unique role in the community (Van Maanen, 1974, Pg. 85 as cited in Paoline, 2003, Pg. 200). Social learning theory is relevant to this research because it may reinforce the notion that improving police behavior through the presence of BWCs will have an additional positive impact on the overall subculture of that law enforcement agency. An examination of police subculture through

a social learning theory view is especially relevant because of the strong interpersonal bonds that exist in that subculture (Paoline, 2003, Pg. 203).

Field training officers can have considerable influence on the new officers under their tutelage. Chappell and Piquero (2004) applied social learning theory to police misconduct and determined the subculture of policing has a great impact on the behavior of a new officer (Pg. 95). Also, a new officer may be forced to behave in a way that satisfies the expectations of his new peers, instead of the expectations of the organization (Van Maanen, 1975, Pg. 226).

Additional research has linked field training officers with later officer misconduct (Getty, Worrall & Morris, 2014, Pg. 14).

Privacy Issues

There are many possible negative outcomes associated with BWCs in addition to their perceived benefits. Police officers, through the course of their everyday duties, have access to certain places where citizens are entitled to a certain amount of privacy: private residences, hospitals, schools, etc. Also, police officers encounter individuals who are personally involved in situations that may be sensitive, embarrassing, or humiliating: arrest or incarceration, domestic violence, child abuse, alcohol or drug-related incidents, etc.

Small size and mobility are double-edged swords for BWC use when related to privacy concerns; people in the United States enjoy a certain expectation of privacy whether inside or outside of their homes. *Katz v. United States* was a landmark constitutional court case related to privacy and the Fourth Amendment. In that case, the Supreme Court famously proclaimed that the Fourth Amendment protects people, not places (Katz v. United States, 1967, Pg. 351).

Essentially, a citizen's individual privacy is protected no matter where they are.

However, some research has called for the wave of BWC implementation as an opportunity to convert the notion of a reasonable expectation of privacy to a reasonable expectation of ‘trust’ as it relates to being recorded by the police (Hartzog, 2018, Pg. 1290). This same research also advocates for greater autonomy for the individual to decide not only if they can be recorded by the police, but how the digital recording may be stored, secured or disseminated (Hartzog, 2018, Pg. 1294-1295). Other research has developed similar concerns regarding the storage, security, and dissemination of BWC footage (Stanley, 2013, Pg. 4-6).

The Fourth Amendment affords people the right to privacy. Generally, someone who witnesses a crime and wishes to remain anonymous may do so. The introduction of BWCs may change or, minimally, complicate that privacy depending on where the police had contact with a person who gives a witness statement. For example, a person reporting a crime to the police while in their home may have more protection of their identity than a person approaching a police officer on the street (Gimbel, 2015, Pg. 1599-1600).

Others have argued for the furtherance of Fourth Amendment privacy protections to those who are recorded on BWC by requiring a search warrant, similar to what would be required to physically enter a dwelling, for the viewing of any footage captured of the inside of a constitutionally protected area (Henderson, 2016, Pg. 970-971). A similar argument can be made for police officers having the ability to search outside the scope of their warrant by later viewing BWC footage to gather new evidence without securing a more specific search warrant (Blitz, 2015, Pg. 14). Additional privacy concerns have been raised about BWCs when paired with ever-improving facial recognition technology (FRT) (Murphy, 2018, Pg. 26.).

Potential issues related to privacy must be anticipated and thoughtfully considered before the criminal justice field initiates wide-spread BWC use. Several general concerns related to

privacy have been identified as issues that should be considered prior to BWC program implementation. These general concerns include when officers should activate their BWC, length of time for data retention, who should have access to BWC footage, and how to deal with requests for BWC footage disclosure (Miller et al. 2014, Pg. 11). Any questions of privacy violations due to data retention, storage or dissemination invariably also raise question of liability (Letourneau, 2015, Pg. 453).

Some agencies using BWCs have already encountered technological problems related to equipment, data retention or redaction due to privacy concerns (Binion, 2014) (Bakst & Foley, 2015) (Edwards & Athavaley, 2015) (Newcombe, 2015) (Sullivan, 2015) (Mallory, 2015) (Shipman, 2016) (Desroches, 2016) (Pagliarella, 2016, Pg. 534). Similar issues have occurred in school settings involving school administrators in addition to police officers (Pierce-West, 2017, Pg. 1545) (National Association of School Resource Officers, n.d.).

Other research has identified concern about BWCs being used as a tool of intimidation in ‘certain localities and over-policed’ areas (Taylor, 2016, Pg. 131). Other research expressed concern about the use of BWCs in public as a tactic that may prevent people from exercising their First Amendment right to protest in public (Murphy, 2018, Pg. 26).

There have also been concerns raised about BWCs being used to gather footage and identify suspects for additional crimes other than the original police action to which an officer is already engaged (Freund, 2015, Pg. 98).

There are also concerns about the privacy of the law enforcement officers who use BWCs on a daily basis (Kampfe, 2015, Pg. 1174) (Stanley, 2015, Pg. 3).

Public Policy and Law Enforcement Agency Policy

Opinions on BWC footage, how it relates to privacy concerns, and how it should be collected, stored and disseminated varies from state to state (Fan, 2016, Pg. 413). These differences are also evident in BWC policy from different law enforcement agencies from around the country (Arlington Police Department, 2015) (Chicago Police Department, 2016) (Milwaukee Police Department, 2016) (Minneapolis Police Department, 2017) (New Orleans Police Department, 2016) (Parker (CO) Police Department, 2016) (Philadelphia Police Department, 2016) (Raleigh Police Department, 2017).

Other departments, such as the Madison (WI) Police Department, have not implemented BWCs for a variety of reasons (Rickert, 2018) (Mosiman, 2015) but may be joining other law enforcement agencies in initiating a pilot program to determine if BWCs are a good fit for their municipality (Becker, 2018).

This research will also highlight examples of how BWCs have provided more information about incidents involving police and citizens (Appleton, 2018) (Chavez, 2018) (Coleman, N., Denney, J., Guo, C., Lawther, E., & Wise, B., 2017) (Hamilton, 2016) (Louisiana Department of Justice, 2018) (McClatchy, 2018) (Skene, 2018) (Smittcamp, 2016) (WABF, 2018). Additionally, this research will examine another well-known incident where a BWC could have been beneficial to understanding the events that occurred (Department of Justice, 2015).

This research will focus on peer-reviewed empirical studies related to BWCs, criminological theories, and privacy concerns. Other types of literature utilized by this research will include non-peer reviewed articles related to BWCs, informational texts with general

information on BWCs, news articles, state statutes (Wisconsin Legislature, 2018), law enforcement agency department policy manuals and other similar information sources.

Information will also be gathered from online searches through various websites including <https://scholar.google.com>, <https://www.google.com/>, <https://www.uwplatt.edu/library>, and <https://www.bwccscorecard.org/>.

Section III – Theoretical Framework

There have been many studies and sociological theories devoted to explaining or predicting human behavior. Some of these theories can also be applied more narrowly to examine the law enforcement profession. The theories examined for this research are deterrence and social learning theory.

Deterrence

The theoretical framework of deterrence is centered on the belief that certain behaviors are prevented by the severity, certainty and celerity of punishment (Nagin, 2013, p. 205). Celerity is more commonly referred to as the swiftness of the punishment. The premise of increasing the number of body-worn cameras used by law enforcement officers is based partly on the theory that BWCs will act as an impartial observer; unbiased towards the officer or the citizen (Kampfe, 2015, Pg. 1155) (Ariel et al., 2014, Pg. 517). Theoretically, the presence of the BWC will act as a deterrent from inappropriate or criminal behavior by both parties (Ariel et al., 2014, Pg. 517). This application of deterrence theory, when examined through the use of BWCs, has been proven to change behavior of officers and citizens for the better (Ariel et al., 2014, Pg. 526).

The use of deterrence theory as it relates to BWCs is two-fold. First, law enforcement officers equipped with BWCs will have the cameras recording many, if not all, of their interactions with citizens. Some of these interactions will be contentious, antagonistic or otherwise disputed between the officer and citizen because of law enforcement's role as the enforcer of laws and ordinances on the citizenry. The presence of BWCs will act as a deterrent

for some citizens during these encounters because they represent another form of documentation, along with the officer's observations, of the citizen's behavior. Some citizens will modify their behavior because the BWCs will supplement an officer's justification for giving lawful orders, issuing citations or making an arrest. Basically, citizens will modify their behavior to be more desirable because of the perceived likelihood of apprehension represented by the presence of the BWC (Ariel et al., 2014, Pg. 526) (Ariel et al., 2017b, Pg. 9).

Second, the deterrent effect produced by the presence of BWCs will act as a safe-guard against improper behavior by law enforcement officers themselves. However, agencies must strike a delicate balance between not enough deterrence and too much. For example, if an agency has a BWC policy that allows for more discretion on when to activate (or deactivate) a BWC, then the deterrence effect is reduced (Ariel et al., 2017b, Pg. 9). Conversely, an agency policy that allows little or no BWC discretion risks officers being pressured into arrested or citing everyone for fear of a bureaucratic application of agency rules against them (Ariel et al., 2017b, Pg. 12). Agencies, and police supervisors, must take care to strive for accountability, not micromanagement. Agencies using BWCs should use them as a tool to teach new officers and to monitor job performance. BWCs can help ensure department policy is followed, and socially acceptable behaviors are being exhibited by officers.

Some officers will perform their job duties poorly, abuse their power, or commit crimes while on duty. One of the key concepts of deterrence is the belief that certainty of apprehension, not the severity of the consequences is the more effective deterrent (Nagin, 2013, pg. 202). Nagin (2013, pg. 253) believed police acting as community guardians made certainty of apprehension more effective as opposed to acting as an apprehension agent. When applied to BWCs for this research, 'apprehension' can be viewed as an officer being reprimanded by his or

her department for a policy violation recorded by a BWC during an encounter with a citizen.

The widespread use of BWCs can act as a 'guardian' against illegal or immoral police conduct.

Social Learning Theory

Another theoretical framework used to evaluate BWCs is social learning theory. Social learning theory is an established, and well researched criminological theory (Akers, 1990, Pg. 676). This theory assumes that the learning process is the same for a person learning both conforming and deviant behavior (Chappell and Piquero, 2004, p. 93). Essentially, a person will act in a deviant manner if they are associating with deviant people, and observing like behavior; the opposite is true for someone associating with a people exhibiting conforming behavior. Individuals develop positive or negative definitions to deviance through interacting with their peer group; these definitions are reinforced (positively or negatively) by the rewards or punishments that follow a person's behavior (Chappell and Piquero, 2004, Pg. 93).

The main concepts of social learning theory are differential associations, definitions, differential reinforcement and imitation (Maskaly and Donner, 2015, p. 207). These concepts have been proven to be strong predictors of criminal and deviant behavior (Pratt et al., 2010, Pg. 788). Differential associations can be behavioral (direct) or normative (indirect), and the effects can be moderated by the frequency, duration, priority and intensity experienced by a person (Maskaly and Donner, 2015, Pg. 208). Differential reinforcement is the balance of reward versus punishment for a specific behavior (Akers, 1990, Pg. 655). For example, a person may or may not commit a crime based on the threat of legal punishment because the possibility of reward does not exceed the likelihood of punishment.

Law enforcement officers are especially susceptible to responding to observed behavior because of the close-knit, tribal nature of the law enforcement society. Law enforcement officers are drawn from the citizenry but work in a highly specialized occupation with statutorily-granted privileges that separate them from others. Entering the law enforcement field involves entering a subculture governed by norms and values designed to manage the strain created by an officer's unique role in the community (Van Maanen, 1974, Pg. 85 as cited in Paoline, 2003, Pg. 200). The law enforcement profession involves working unusual hours and on holidays due to shift work. Police work exposes officers to experiences that are stressful, horrifying and above all, unique to that profession. These factors create strong interpersonal bonds between officers that result in social isolation and group loyalty (Paoline, 2003, Pg. 203).

Consequently, newer officers observe and model the behavior of the experienced officers to which they are exposed (Chappell and Piquero, 2004, pg. 95). The social learning theorist would believe a new officer will seek the approval of peers through behaving in a particular manner; previously described as differential reinforcement (Maskaly and Donner, 2015, p. 211). Additionally, the modalities for differential associations are present for interactions with an individual and members of a working group (Maskaly and Donner, 2015, Pg. 208). For example, if a new officer observes his FTO, or other experienced officers, disregarding a certain department policy because he disagrees with it, then the new officer may begin to disregard the same policy. The new officer may not actually disagree with the policy, but may be acting in a certain way to seek the approval of his peers. A new officer may be forced to behave in a way that satisfies the expectations of his new peers, instead of the expectations of the organization (Van Maanen, 1975, Pg. 226).

Social learning theory can be applied to this research by viewing BWC in two different ways. First, BWC can be viewed as a training tool for law enforcement agencies. BWCs can be used to show new officers what types of citizen behaviors or situations they may encounter. The use of BWCs can also provide examples to new officers of how to respond, both verbally and physically, during tense situations. Using BWCs as a training mechanism can provide new officers with video and audio examples of desirable police behavior that can supplement their knowledge base. Some agencies are integrating BWC video footage into training for their officers as well as after-action analysis following an incident (PoliceOne.com, 2017).

Second, BWCs can be a negative stimulus for an officer, or citizen, to modify their behavior. BWCs provide a threat of legal punishment; this threat is an aversive stimulus for differential reinforcement (Akers, 1990, Pg. 658). An officer will change their behavior to avoid punishment if they have been socially influenced by a peer who has received punishment because their behavior was captured by a BWC. The same may also be true for a citizen who has been socially influenced by a peer who has received punishment in the same manner.

Deterrence and social learning theory both contain concepts and assumptions that can be applied towards examining the social behavior of law enforcement officers. These theories can also both be further utilized to examine elements of law enforcement behavior as it relates to the use of BWCs. The need for deterrence and social learning theory, as well as other sociological theories, will likely continue as does the incorporation of BWCs into the criminal justice field.

Section IV – Assessment

Law enforcement will never be an easy profession. In American society, police officers are drawn from the ranks of citizens to police other citizens. Statutorily provided rights and privileges give these law enforcement officers the authority of their position. This imbalance of power between officers and citizens frequently leads to disputes and mistrust; occasionally it leads to unethical behavior or violence.

There has not been a manner or style of policing without some flaws; policing styles change and evolve with society. Modern technology has made it possible to have a glimpse of what an officer must deal with on a daily basis through BWCs. The current state of BWCs in law enforcement is still evolving; use of BWCs varies between agencies and states. The implementation and use of BWCs has not been perfected, but the benefits of BWCs to law enforcement and society are tangible based on the current information.

This section will begin with general information on body worn cameras. This section will discuss the benefits of expanding BWCs to more law enforcement agencies. Next, this section will discuss some of the potential negative aspects of BWC use.

General Information on Body Worn Cameras

BWCs are generally designed to be worn on an officer in a forward-facing manner (Bureau of Justice Assistance, 2015, Pg. 1). The preferred method may be to be worn on an officer's head, but BWCs can also be worn mounted to the chest, lapel or other similar locations (Hayes & Ericson, 2012, Pg. 6). Although the controls may differ, the cameras typically work in concert with a mobile docking station or cloud-based digital media server to store the video

collected during an officer's shift (Bureau of Justice Assistance, 2015, Pg. 1). There are over 20 different companies that manufacture BWCs (PoliceOne.com, 2018).

Benefits of Using BWCs

Reduction in Use of Force and Citizen Complaints

Law enforcement officers have statutorily granted authority over citizens. A similar legally-granted privilege gives officers the right to use physical force against citizens that would otherwise be considered a crime. For example, Wisconsin state statute 939.45 gives law enforcement officers defense from prosecution for certain conduct (Wisconsin Legislature, 2018). Much of the public outcry for increased BWC implementation has come as a result of high-profile use of force incidents between police and citizens. When mentioned by location, these incidents elicit an emotional response from officers and citizens alike; Ferguson, Missouri, Baton Rouge, Louisiana, Fresno, California. The expanded use of BWCs will provide an additional viewpoint as to what occurred when the next controversial incident occurs. Hopefully, this additional information will add clarity, context or explanation as to why the incident happened, and what can be done to prevent it in the future.

Currently, sociological research into the effects of BWCs is still more suggestive than definitive. However, the suggestive results offer potential positive outcomes for both citizens and officers. One of the earliest recognized randomized study of BWC use was conducted in Rialto, CA and it indicated officers using BWCs experienced a reduction in use of force and citizen complaints (Ariel et al., 2014, Pg. 531). Use of force incidents occurred twice as much for non-BWC-equipped officers (Ariel et al., 2014, Pg. 510) and citizen complaints were reduced by 88% over the preceding 12-month period when BWCs were not used (Ariel et al, 2014, Pg.

524). In that study, one group of officers was assigned to use BWCs and instructed to record all interactions throughout their entire shift, save for specific sensitive situations (Ariel et al., 2014, Pg. 519). Additionally, the officers were instructed to inform citizens they were being video recorded by the device mounted to the officer's shirt (Ariel et al., 2014, Pg. 520).

Another study conducted in Spokane, WA had similar results regarding a decrease in use of force (White et al., 2017, Pg. 1). This experiment was conducted in a similar manner as Ariel et al., (2014), in that some officers were deployed on shift with BWCs and some without. The results indicated a 39% reduction in use of force for the officers who used BWCs on duty (White et al., 2017, Pg. 5). Citizen complaints against officers using BWCs declined by 78% (White et al., 2017, Pg. 8). Interestingly, complaints against officers from the same department during the same time period, although not equipped with BWCs, also declined by 50% (White et al, 2017, Pg. 8). It is unknown why this additional decline in citizen complaints occurred. A possible explanation could be the non-BWC officers changed or modified their behavior in a way similar to the BWC-equipped officers that citizen complaints were reduced. A reduction in citizen complaints should be viewed as a positive outcome for the expansion of BWCs even in the absence of specific evidence to support this notion.

Another study conducted in Phoenix, Arizona did not address use of force related to BWCs, but offered insights into other related topics. The Phoenix study indicated officers wearing BWCs increased officer productivity, reduced the number of complaints against officers, decreased the number of substantiated complaints against officers and increased the effectiveness of court cases being processed for certain offenses (Katz et al., 2014, Pg. 41). Camera wearing officers in this study increased their average number of daily arrests by 42% (Katz et al., 2014, Pg. 31). Additionally, officers using BWCs experienced a 22% reduction in complaints and a

53% reduction in substantiated complaints (Katz et al., Pg. 33). These are both indicators in support of expanded BWC use.

Another similar study, conducted in Denver, Colorado, indicated BWC use produced no discernable change in the number of use of force instances and the total number citizen complaints increased by 38% (Ariel, 2016, Pg. 751-752). The author indicated this increase in complaints could be explained by examining the basis of the complaint; complaints about misconduct versus complaints about an officer using force. In the Denver study, there were more complaints filed about officer misconduct, but a significant decrease in complaints about use of force (Ariel, 2016, Pg. 761). The author indicated the disparity could be due to a citizen believing that the presence of a BWC would bolster their claim an officer was rude or disrespectful, but would reinforce the officer's actions as justified and reasonable for the circumstances (Ariel, 2016, Pg. 761-762).

Although it may seem counterintuitive, the findings from the Denver study regarding complaints should be viewed as positive evidence that BWCs are providing one of their supposed benefits: transparency. An increase in citizen complaints, because of the presence of BWCs, reinforces the belief that the citizen has recourse for perceived mistreatment by an officer. Unfortunately, the Denver study offers no information about the results of the citizen complaints (For example, sustained or unfounded). However, the author cites the use of BWC as a reason for enhanced transparency and accountability for that law enforcement agency (Ariel, 2016, Pg. 767).

Another similar study, conducted in Orlando, Florida, also assigned random officers to wear BWCs to determine their effect on use of force incidents when compared to officers without BWCs (Jennings et al., 2015, Pg. 481). This study used a slightly different variable

(‘response to resistance’ was measured instead of ‘use of force’) than previous studies but indicated similar results in regard to reductions in the amount of force used by officers and citizen complaints (Jennings et al., 2015, Pg. 480). The Orlando study resulted in a 53% reduction in use of force incidents, and 65% fewer citizen complaints for officers using BWCs (Jennings et al., 2015, Pg. 480). This study resulted in an unexpected side effect: use of force incidents and citizen complaints were reduced for officers from the same department who were not assigned a BWC during the experiment (Jennings et al., 2015, Pg. 485). Essentially, the presence of BWCs on fellow officers was sufficient to affect behavior and outcomes of non-BWC officers.

The Orlando study offered other information that supports increasing BWC use in law enforcement. Part of this study was focused on determining officer perceptions of how BWCs affect their jobs and the results were generally favorable. A majority of officers favored BWCs for all front-line officers, believed BWCs would help them become a better police officer, believed BWCs would assist with evidence collecting, and believed BWCs could help them identify ways to improve their interactions with the general public (Jennings et al., 2015, Pg. 484).

Law Enforcement Officers’ Perception of BWCs

The Orlando study also indicated officers favored the adoption of BWCs and believed their implementation would improve the behavior of their fellow officers, would improve the behavior of citizens, and would lead to a reduction in citizen complaints (Jennings et al., 2014, Pg. 552-553). Another study, this time involving law enforcement agency administrators,

indicated they supported the use of BWCs as a way to improve evidence collection and guilty pleas (Smykla et al., 2015, Pg. 440).

The Phoenix study indicated a similar favorable opinion related to evidence gathering. Specifically, the majority of BWC-wearing officers believed BWCs helped them gather more accurate and higher quality evidence (Katz et al., 2014, Pg. 23). Officers also mostly agreed that BWCs increased the ease of prosecuting domestic violence offenders and, specifically, when the domestic violence victim was unwilling to testify (Katz et al., 2014, Pg. 23). Unfortunately, there has been no specific evidence to support the belief that BWC evidence is more helpful for court cases (Lum et al., 2015, Pg. 20).

A study conducted in Mesa, Arizona also yielded additional information about officer perceptions of BWCs. Officers were more likely to perceive them as helpful for their job, in addition to making them more likely to issue citations and initiate an encounter with a citizen (Ready and Young, 2015, Pg. 452). That research indicated the outcomes of that study indicated officers using BWCs were more likely to be risk averse and cautious in their actions when wearing a BWC (Ready and Young, 2015, Pg. 454). The author also surmised that the increased risk aversion by officers was related to the officers' being more self-aware when the BWCs were activated (Ready and Young, 2015, Pg. 454).

State and agency autonomy for BWC laws and policies

Policy and laws regarding BWC footage storage, redaction and dissemination vary from agency to agency and from state to state. All states have freedom of information laws related to public disclosure of government records, but few have legislation that specifically addresses BWC footage containing private information (Fan, 2016, Pg. 400). BWC-specific laws vary

from state to state; laws also vary in how restrictive they are in regard to privacy (Fan, 2016, Pg. 413). Louisiana, Texas, Illinois and Oregon all have laws that provide for broad exemptions against requiring law enforcement agencies to disclose BWC footage (Fan, 2016, Pg. 414). Other states, like North Dakota and Georgia, exempt the public disclosure of BWC footage recorded “in a private place”, or in places where there is a reasonable expectation of privacy (Fan, 2016, Pg. 416). BWC laws that support privacy and transparency can vary from state to state, but the decisions on how the BWC should be operated (activation, deactivation, retention, etc.) are largely left up to the individual law enforcement agencies to decide what works best for their jurisdiction (Fan, 2016, Pg. 423).

Law enforcement agencies can differ in their BWC policies as they would any other topic. One agency may decide to keep non-evidentiary footage for 90 days (Arlington Police Department, 2015) (Chicago Police Department, 2016) while another agency may keep similar footage for one year (Minneapolis Police Department, 2017). Agencies can also establish their own policies for issues concerning activation and deactivation. For example, one agency specifies that an officer, once a recording has begun during an incident, should only stop recording prior to the end of that incident after they have verbally explained why, and it is recorded on their BWC (Milwaukee Police Department, 2016).

Some agencies also set specific policies for privacy-related concerns. For example, the New Orleans, Louisiana Police Department established a policy that strictly prohibits members from making recordings or using a secondary recording device from recording BWC footage from their BWC data storage system (New Orleans Police Department, 2016). The Philadelphia, Pennsylvania Police Department has policy that requires officers to deactivate their BWC when

entering a residence unless prior permission is granted and recorded by the BWC (Philadelphia Police Department, 2016).

Agencies also have policies on wearing a BWC on the front of the officer in a location that maximizes the camera's ability to capture the officer's activities (Raleigh Police Department, 2017) (Parker (Colorado) Police Department, 2016).

Other agencies have chosen not to implement BWC programs for a variety of reasons. One agency, the Madison, Wisconsin Police Department, has not received the support from the community or local government to implement a BWC program (Rickert, 2018). A city committee voted against starting a BWC pilot program in 2015 due to lack of community support; there was no strong favorable support and a general sentiment that BWCs would not improve the residents' safety (Mosiman, 2015). In a recent reversal, a city of Madison finance committee approved funds for a BWC pilot program even without firm community support in favor of adding BWCs (Becker, 2018).

Criminological Theory in Support of BWC Expansion

Deterrence

The criminological theory of deterrence can explain why some officers may or may not act in a deviant manner. Deterrence theory believes offenders make choices based on weighing the balance of the benefits of committing the offense versus the potential costs of being apprehended (Nagin, 2013, Pg. 205). Deterrence theory also incorporates the ideas that the severity, probability and swiftness (also referred to as *celerity*) of the punishment are related to the likelihood that a crime will be committed (Nagin, 2013, Pg. 206).

One hypothesized positive benefit of having law enforcement officers wear BWCs is a deterrent effect; the possibility of the officer's, or citizen's, actions being recorded in the moment and made available for all to see at a later date. Some of the sociological research conducted in relation to BWCs has stated, or simply implied, that the presence of BWCs had a deterrent effect on the officer, the citizen, or both during an encounter.

Ariel et al. (2015, Pg. 516-517) hypothesized the presence of cameras were a deterrent stimulus in regard to use of force; describing them as a 'neutral third eye, impacting both players' psyche'. That study found BWCs reduced the number of use of force incidents and citizen complaints. The author believed these results supported the tendency of humans to exhibit more desirable behaviors when they know they are under surveillance and subject to rules (Ariel et al., 2015, Pg. 526).

Ariel et al., (2018, Pg. 37), found that while the presence of BWCs reduced the number of force applications it may have caused officers to be 'over-deterred'; resulting in an increased number of officers wearing BWCs being assaulted. Essentially, these officers were so self-aware of the consequences provided by their BWC that they put themselves in an undesirable position and were assaulted by a citizen (Ariel et al., 2018, Pg. 38). However, as law enforcement tactics have evolved and improved, this paradox can also be overcome by training and experience to counter these 'over-deterrence' effects (Ariel et al., 2018, Pg. 39).

Other research acknowledged deterrence is the theoretical mechanism for BWCs as an agent of change in officer behavior (Ariel et al., 2017, Pg. 297). This research also argued 'contagious accountability' caused officers throughout a given department, with and without BWCs, to act in a more appropriate manner even when there was no BWC present (Ariel et al., 2017, Pg. 306). This research also believed the presence of the BWC affected officers and

citizens simultaneously (Ariel et al., 2017, Pg. 307). Essentially, deterrence was affecting the officer (internal behavior control), and the citizen (external behavior control), at the same time during the incident (Ariel et al., 2017, Pg. 307).

The effect deterrence has on officer behavior has been proven by prior research separate from BWCs (Pogarsky and Piquero, 2004, Pg. 381). This research also suggested using an early-intervention or early-warning system to identify officers who have the potential for misconduct (Pogarsky and Piquero, 2004, Pg. 382). The implementation of BWCs provides a conduit for early intervention for officer misconduct, and the added benefit of also having a deterrent effect on citizens.

Social Learning Theory

Another sociological theory that contributes to the explanation of the behavior of law enforcement officers is social learning theory (SLT). SLT is focused on the belief that the process of learning can produce either deviant, or non-deviant, behavior depending on the types of associations a person has (Chappell and Piquero, 2004, Pg. 93). The central variable in SLT is differential association; the influence of the people whom one associates with on a regular basis (Chappell and Piquero, 2004, Pg. 93). One can see the value viewing behavior through an SLT viewpoint when it is applied to the subculture of law enforcement (Chappell and Piquero, 2004, Pg. 95) (Maskaly and Donner, 2015, Pg. 211). For example, a new officer begins a career at a given department with a subculture of professionalism, adherence to policy, and service to others. That new officer is likely to adopt those same values through differential association. Field training officers, the person first responsible for training a new officer, can have a considerable impact on later behavior by their trainees (Getty, Worrall & Morris, 2014, Pg. 14).

The effect of the department's subculture on the new officer can be amplified through the proper use of BWCs. For example, a new officer begins training by observing his field training officer interact with the public in various situations and circumstances. The field training officer is equipped with a BWC, having a deterrence effect on his behavior, and is exhibiting actions (non-deviant) that tend to lead to less use of force incidents and citizen complaints. The new officer models his own behavior based on the field training officers' behavior and, consequently, has less use of force incidents and citizen complaints.

Potential Negative Outcomes of BWC Use

Some people view body worn cameras as a fix-all for the problems of modern policing. The usefulness of video and audio recording, combined with improved availability of technology, has some clamoring for BWCs for every police officer. However, the rush to 'do something' is sometimes confused with the desire to 'do the right thing'. BWCs may be a useful tool for both officer and citizen alike, but there are some collateral dangers that counterbalance the supposed benefits. For example, BWCs go everywhere a law enforcement officer goes while on duty. Investigations and daily calls for service take officers to numerous locations and situations of a private or sensitive nature; schools, hospitals, churches, and funeral homes to name a few. Officers frequently have knowledge of many different topics that citizens may not want to have memorialized on a high-quality audio and video recording; intoxicated episodes, domestic problems, child custody issues, extramarital affairs, sexual preference, financial stability or political activity. The following section will discuss potential issues related to BWCs and privacy concerns.

Privacy of Citizens

Katz v. United States was a landmark constitutional court case related to privacy and the Fourth Amendment. Katz was arrested after FBI agents recorded calls he made from an enclosed, public phone booth (*Katz v. United States*, 1967, Pg. 347). The case was appealed to the Supreme Court and overturned due to the constitutional protection afforded to Katz because of his rights as a person seeking to maintain his privacy (*Katz v. United States*, 1967, Pg. 351). Although the government argued Katz was not afforded the right to privacy in a public place, the court decided that the Fourth Amendment protects people, and not areas, against unreasonable searches and seizures (*Katz v. United States*, 1967, Pg. 353). Essentially, a citizen's individual privacy is protected, no matter their location, if they take steps to maintain their privacy. There are two generally accepted requirements for Fourth Amendment privacy implications: a person showed subjective expectation of privacy, and that expectation is reasonable by the standards of society (Freund, 2015, Pg. 115).

The circumstances of *Katz* occurred in reference to an individual's rights outside of the home. However, there are many more concerns with ensuring Fourth Amendment protections inside the home. The home, whether it be sprawling mansion, conservative ranch-style house or a shabby apartment, is where people enjoy the right to privacy the most. An individual's home is also where they exercise the most control over the people and things in their lives. Henderson (2016, Pg. 970-971) proposed requiring a search warrant to view BWC footage from inside of someone's dwelling after the incident is complete. Henderson (2016, Pg. 970-971) drew a comparison between the video footage and a computer located during a search of a dwelling; one search warrant would be required for the initial search and a second for the search of the computer. When related to BWC footage, the initial entrance into the residence may, or

may not, require a search warrant depending on the circumstances. However, the more intrusive entry into someone's private life (viewing footage of the interior of their residence after no longer legally present at the residence) would require additional permission, or oath and affirmation.

A related concern is evident if police attempt to search for additional crimes using BWC footage captured to the initial (legally permissive) entry into a residence (Blitz, 2015, Pg. 14) (Freund, 2015, Pg. 123). Again, additional permission, or oath and affirmation, may be required to secure an additional warrant to search for additional crimes outside of the scope of the original warrant.

Ever advancing modern technology can complicate the use of BWCs when paired with facial recognition technology (FRT). For example, a person may attempt to keep their face concealed, or 'private' as it pertains to the Fourth Amendment, even though they may be in a location accessible to the general public. This person could be concealing her face with a scarf may to keep her identity hidden from a BWC using FRT. A police officer may be required to secure a warrant to search for her face in the same way they would need a warrant to search a closed handbag or other container (Murphy, 2018, Pg. 26).

A related privacy concern surrounds police using BWC footage to identify suspects in other crimes separate from the original reason for which they were recording (Freund, 2015, Pg. 98). This is an idea that may be an extreme interpretation; officers scouring hours of video footage to observe new crimes, and identify possible suspects. Scholars who make this argument seem to be interpreting any police action involving viewing a BWC recording as a search. Invariably, they then view this type of search to be 'outside the judicial process, without prior

approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment' (Katz v. United States, 1967, Pg. 357).

There are also concerns with how the widespread use of BWCs related to the First Amendment. The First Amendment gives citizen the right to free speech, freedom of religion, freedom of the press and, generally, the freedom to protest. Some scholars view the expansion of BWCs as a possible infringement on the First Amendment because of the type of evidence that is collected by BWC use (Freund, 2015, Pg. 106). Specifically, that people may be less likely to feel free to protest if they know they will be recorded by police officers wearing BWCs (Murphy, 2018, Pg. 26).

Other research has raised questions surrounding the use of the possible negative impact that BWCs may have on relations between the police and the public. Hartzog (2018, Pg. 1290) questions how a citizen in need, or currently involved in sensitive circumstances, must waive their right to privacy and be recorded (at least initially) by police responding to a call for help. Hartzog (2018, Pg. 1290) also notes this forced trust in the police may prevent some victims from contacting the police in the first place. For example, police often work in concert with child protective services, domestic violence advocates or other related social service providers while investigating certain types of crimes or incidents. A victim's right to have privileged communication with a social service provider if a police officer is also present with an activated BWC (Fan, 2016, Pg. 440).

This privacy concern can also be applied to witnesses. Police frequently lament the lack of citizens willing to come forward with information about an incident they have witnessed. An activated BWC may be just another impediment to finding a witness willing to talk to an officer. A witness' right to privacy, from a Fourth Amendment standpoint, may be dependent on where

the officer encounters the witness (Gimbel, 2015, Pg. 1599-1600). For example, a witness contacted by police inside his residence may have more protections than a witness located on the sidewalk. Some went so far as to suggest police should ask permission to record a citizen or witness prior to activating their BWC (Fan, 2016, Pg. 404). While that suggestion may not be realistic, or feasible, it does illustrate the potential for BWCs to be counterproductive depending on how they are perceived by the public. The use of BWCs may have to opposite effect if they are perceived as a tool of intimidation in certain localities and over-policed areas (Taylor, 2016, Pg. 131). This may also be true if the burden to ask police to stop recording is placed on crime victims who recently suffered through a traumatizing incident (Fan, 2016, Pg. 441).

Another area of special interest is related to how BWCs would, or should, be used in schools. Approximately 20% of schools in the United States have a school resource officer (SRO) (National Association of School Resource Officers, n.d.). BWC use by school employees may be considered ‘school records’ and, therefore, subject to more stringent disclosure laws (Pierce-West, 2017, Pg. 1545). However, an SRO may be tasked with dual responsibilities; part law enforcement officer and part school employee (Pierce-West, 2017, Pg. 1545). Student education records are federally protected by the Family Educational Rights and Privacy Act (FERPA), but the topic of BWC video is not specifically addressed or defined (Pierce-West, 2017, Pg. 1536). Specific policies are needed to indicate which role an SRO is engaged while using a BWC inside a school.

Privacy of Law Enforcement Officers

Another topic related to privacy that receives considerably less attention is how BWCs affect the officers’ privacy. Generally, as public employees, the overwhelming majority

of anything related to law enforcement officers' jobs (arrest reports, salary, citations, memorandums, training records, etc.) are either public records, or subject to an open records request depending on the situation. However, law enforcement officers do have some right to privacy as an employee. For example, there would be no use of BWC or other recording devices permitted while an officer was using the restroom, or locker room while on duty. Police officers should have some reasonable expectation of privacy at work; be made aware that others are filming them to avoid revealing personal information or law enforcement tactics (Kampfe, 2015, Pg. 1174).

The ACLU suggested, from an accountability perspective, that officers should record with a BWC continuously throughout their shift (Stanley, 2015, Pg. 3). Conversely, the state of Texas passed legislation that prohibits police departments from requiring continuous recording throughout an officer's shift (Fan, 2016, Pg. 414). Ironically, the ACLU also offers some support for officer's as individual employees. Specifically, the ACLU recognizes the officers have a right to privacy as an employee, and constant recording could be stressful and oppressive (Stanley, 2015, Pg. 3). There is also a concern for misuse of officer-gathered BWC footage being used to punish whistleblowers or union activists (Stanley, 2015, Pg. 3).

Privacy Concerns Related to Data Storage, Retention and Dissemination

Most of the concerns surrounding BWCs are associated with how a law enforcement officer uses the BWC during an interaction with a citizen, or how the officer may use the footage later to look for additional crimes or suspects. However, there are other issues related to what happens to BWC footage once it is collected by a law enforcement agency. Agencies are potentially at risk for civil liability due to privacy violations if BWC footage is not stored,

retained, and disseminated properly (Letourneau, 2015, Pg. 453). For example, some redaction is necessary to prevent a private person from gaining BWC footage through an open records request, and then using it for the purpose of stalking or identity theft (Pagliarella, 2016, Pg. 539).

Electronic data from BWCs can be stored either on-site on a hard drive or remotely through the use of a cloud system. One concern for use of a cloud system is how it relates to the chain of custody needed to maintain the integrity of evidence (Pagliarella, 2016, Pg. 534). Cloud systems are likely to be owned and operated by a vendor, not the law enforcement agency paying for the BWC support services. This may be problematic when a determination must be made regarding who has control over BWC footage. For example, Axon (formerly Taser International) controls 75% of the BWC market (Joh, 2017, Pg. 14). Axon also controls their cloud service, Evidence.com, that many departments use in concert with Axon BWCs. There is potential for problems to occur if a police department experienced a financial catastrophe and was unable to pay Axon for the services provided. It would be disadvantageous business model for Axon, or any private company, to willingly maintain or relinquish control of terabytes of data to a law enforcement agency if there was no financial incentive. One must also wonder if a private citizen, or entity, could somehow acquire the department's debt, and take control over that department's BWC footage. Private companies are not subject to the same federal or state open records laws (Joh, 2017, Pg. 28). Some would argue that cloud service companies are similar to landlords in that they are an involved third-party (Couillard, 2009, Pg. 133). These service providers may have access to the content of data that should be constitutionally protected by the Fourth Amendment (Couillard, 2009, Pg. 133). Perhaps this is an unlikely scenario, but one that must be considered nonetheless.

Miscellaneous Costs and Detriments to BWC Implementation

Advancements in technology has made BWCs possible, but they are still mechanical devices which are subject to defect. Recently, the New York City Police Department was forced to recall nearly 3,000 BWCs from the field because of a significant battery fire hazard (Shallwani & Quinn, 2018). There have been other issues with BWC equipment not functioning properly: slow to begin recording from sleep mode, camera being easily dislodged from its' mounting on the officer's body, and a function that inadvertently turned off the sound during recording (Desroches, 2016).

The initial cost of equipment purchase is problematic for some agencies because of the per camera cost estimated between \$350 and \$700 (Edwards & Athavaley, 2015). The initial cost of equipment purchase is vastly outweighed by later costs for other hardware, and software needed to support BWCs. For example, the city of San Diego paid \$267,000 for 1,000 cameras, but had to pay another \$3.6 million for data storage services, software, warranties, maintenance and related equipment (Bakst & Foley, 2015). Some agencies who have begun BWCs programs have discontinued them due to the cost of maintaining their BWCs (Shipman, 2016).

Some agencies have been forced to make difficult decisions about data retention periods because of concerns for the financial burden associated with BWC footage retention (Edwards & Athavaley, 2015) (Newcombe, 2015). A large department like Oakland, California Police Department can generate approximately 7TB of data per month; other larger cities have delayed adopting BWCs because of data storage costs (Newcombe, 2015).

Another possibly unforeseen cost of BWCs is the amount of work needed to fulfill a request for BWC because of an open records request. Obviously, one person requesting footage from one incident involving a single officer would not be a significant task. However, a person,

or group, requesting all footage from a law enforcement agency could be a monumental task for any agency to fulfill. For example, a small police department in Washington received a records request for all of the body camera footage recorded by all of its' officers (1,100 hours of video over a 6-month period); the requester asked that the footage be uploaded to a Youtube account (Binion, 2014). The Seattle, Washington Police Department received an open records request for all 911 calls that officers were dispatched to, all written reports they produced, and all dash-camera and BWC footage collected by the department (Sullivan, 2015).

The inevitability of requests similar to this may force agencies to limit what type of interactions officer should record, limit the time period data should be stored, or hire more staff to manage the additional workload (Bakst & Foley, 2015). Some agencies have discontinued the BWC program because of the increased burden by open records requests (Mallory, 2015). All of these issues require further consideration prior to implementing a BWC program.

Section VI – Conclusions and Recommendations

This section will consist of three parts. The first will examine three well-known examples of police use of force incidents and how BWCs provided, or could have provided, additional context or details of the incident that would have otherwise not been available to anyone beyond the people who were present at the time of the incident. The second part will outline recommendations for implementation of a BWC program. The final part will contain the conclusion for the main purpose of this writing: advocating for the expansion of BWCs to more law enforcement agencies.

Body-Worn Cameras applied to notable incidents

Ferguson, Missouri

On August 9, 2014, Ferguson, Missouri Police Officer Darren Wilson shot and killed an unarmed citizen, Michael Brown, after being assaulted and attempted to be disarmed by Brown, while attempting to take him into custody (DOJ, 2015, Pg. 6-7). The subsequent federal investigation revealed witness statements and forensic evidence that supported Wilson's actions (DOJ, 2015, Pg. 5). No one knows if the protests and racial accusations that followed this incident could have been avoided (Kampfe, 2015, Pg. 1). However, there would likely be more clarity to the incident if Wilson had been wearing a BWC.

The addition of BWC footage would have benefitted the incident in Ferguson, Missouri in several ways. First, Wilson, and some witnesses, claimed Brown reached into Wilson's patrol vehicle for the purpose of assaulting him and trying to take control of his firearm when he first arrived on scene (DOJ, 2015, Pg. 5). No witnesses could corroborate Wilson's claim that Brown

tried to take his firearm, and other witnesses claimed Brown never reached inside the patrol car (DOJ, 2015, Pg. 7). Regardless of where a BWC is mounted (chest, lapel, head) it would have minimally captured evidence that Brown reached inside the vehicle. It would have possibly captured evidence that Wilson initially warned Brown to get back, that Wilson warned Brown to get back or he would be shot, or that Brown attempted to gain control of Wilson's firearm (DOJ, 2015, Pg. 13-14).

Next, a BWC could have provided more clarity to one of the most contentious details of that incident: Brown's physical movements just prior to being shot by Wilson. Some witnesses claimed Brown was running away from Wilson, but those claims were refuted by physical evidence, or their statements were inconsistent during the investigation (DOJ, 2015, Pg. 7). Other witnesses, who claimed Brown had his hands up as to 'surrender', later recanted their statements and admitted they did not witness this incident in the way they initially reported to investigators or the media (DOJ, 2015, Pg. 8). However, even the accounts of credible witnesses varied as to how Brown had his body, specifically his hands, positioned just prior to being fatally shot by Wilson (DOJ, 2015, Pg. 8).

Finally, BWC footage would have provided more information regarding other disputed circumstances of this incident: how far away Wilson was from Brown when he began shooting outside of the patrol vehicle, if Brown was moving towards him in the manner that Wilson claimed, and if Brown was making a movement of his right hand towards his waistband for a potential weapon as perceived by Wilson (DOJ, 2015, Pg. 14). A BWC could have corroborated Wilson's claims that he did not shoot at Brown as he was running away, that Brown was 'charging' towards him, and that Brown began reaching towards his waistband just prior to being shot (DOJ, 2015, Pg. 14-15).

The presence of BWCs may not have changed the behavior of either Wilson or Brown on August 9, 2014. BWC footage may not have prevented the civil unrest or violence that followed the incident. The redeeming quality for BWC in regard to this incident is that it would have further corroborated the officer's statements, some of the witnesses' statements, and the physical evidence collected at the scene. Wilson was not charged for any crime related to this incident, but his path to absolution would likely have been more direct with the benefit of BWC footage of the incident. Corroboration of statements made by an officer, corroboration of statements made by witnesses, and additional support for the physical evidence of an incident are all valid reasons to expand BWCs to more law enforcement agencies.

Fresno, California

On June 25, 2016, Fresno, California police officers were searching an area for a possible armed subject and attempted to stop a vehicle for a speeding violation (Coleman, N., Denney, J., Guo, C., Lawther, E., & Wise, B., 2017). The motorist in question, Dylan Noble, drove another half mile before stopping; police initiated a high-risk traffic stop as they initially believed he may have been the possible armed subject (Coleman et al., 2017). Noble exited the truck, but refused officers' commands to put both of his hands up; he continually kept one hand behind his back or by his side (Coleman et al., 2017). Noble refused to comply with officers' commands to show both of his hands and get down on the ground (Coleman et al., 2017). One of the officers told Noble he would be shot if he came towards the officers (Hamilton, 2016).

Both officers already had their firearms drawn and aimed at Noble when he made the statement, "I fucking hate my life", and charged towards them (Coleman et al., 2017). The first officer shot Noble twice, and he fell to the ground (Coleman et al., 2017). Noble continued to

disregard officers' commands and continued to move his hands (Coleman et al., 2017). The first officer shot Noble once more after he continued to attempt to reach into his waistband while he was on the ground (Hamilton, 2016). The second officer told Noble to stop reaching or he would be shot again; Noble continued to reach and was shot by the second officer with a shotgun (Hamilton, 2016). Noble died from his wounds. Toxicology reports later indicated Noble had a blood alcohol concentration of 0.12 as well as cocaine in his system at the time of the incident (Hamilton, 2016).

The Fresno police officers who shot Noble, Raymond Camacho and Robert Chavez, were not charged with any crime (Smittcamp, 2016). However, the city of Fresno's Office of Independent Review found that the shooting did not adhere to Fresno Police Department policy (Appleton, 2018). In August 2018, the city of Fresno reached a settlement with Noble's family for \$2.8 million dollars (Appleton, 2018).

There were also several changes to Fresno PD policy because of this incident. Officers were mandated to undergo additional training on high-risk traffic stops, and approaching a wounded subject on the ground (Appleton, 2018). Also, all Fresno PD rifles and shotguns must now come equipped with a sling so officers can easily transition to a less-lethal option if needed (Appleton, 2018). Finally, Fresno PD also planned a review of its' K9 policy to determine if it met best practices for dealing with an armed subject (Hamilton, 2018). In the BWC video, the first officer can be heard asking about the possibility of using the K9 prior to the first shots being fired at Noble (Hamilton, 2018).

The presence of BWC footage provided a benefit to the incident, and the aftermath in several ways. First, BWC footage was recorded from approximately 12-15 feet away and captured the entire incident; a bystander's cellphone captured only the last two shots fired by the

officers from a significantly greater distance (McClatchy, 2018). The bystander's video had good sound quality but lower visual quality; likely due in part to the increased distance and the camera being handheld instead of body-mounted.

Next, the reduced quality of the bystander video made it more difficult to see important details like Noble reaching underneath his shirt and near his waistband. This is a significant advantage in having the BWC footage available. The BWC footage undoubtedly helped exonerate the officers as it captured Noble's movements (keeping one hand behind his back, moving aggressively towards the officers, reaching under his shirt and towards his waistband) and verbal defiance ("I fucking hate my life") with clarity throughout the incident.

Finally, the BWC footage provided a permanent record of the incident that included details that likely changed Fresno PD policy for the better. The BWC footage captured several important details that may not have been preserved otherwise: the tactics of the officers during the high-risk traffic stop, the officer's verbal interactions with Noble prior to shots being fired, the question of whether or not to use a K9 prior to the first shots being fired, the verbal commands given to Noble between the shots being fired, Noble continuing to move his hands underneath his shirt and towards his waistband, and the presence of the second officer's shotgun with no sling attached.

This incident, and its' aftermath, provide further support for the expansion of BWCs to more law enforcement agencies. The BWC footage provided more clarity and transparency when compared to the bystander's cell phone video. The BWC footage also supported the decision of prosecutors not to charge the officers with any crimes related to this incident. BWC footage was also instrumental in effecting change in department policy. Transparency to the community, enhancing understanding of the sequence of events, and effecting change to policy to

reduce future similar incidents are all valid reasons to expand BWCs to more law enforcement agencies.

Baton Rouge, Louisiana

On July 5th, 2016, Baton Rouge, Louisiana police officers Blane Salamoni and Howard Lake were dispatched to a report of a person armed with a handgun outside of a convenience store (Louisiana Department of Justice, 2018, Pg. 6). The officers located the armed person, Alton Sterling, and tried to take him into custody; Sterling physically resisted and force was used to attempt to subdue him (Louisiana Department of Justice, 2018, Pg. 6).

Salamoni begins loudly yelling instructions and profanities at Sterling in response to Sterling physically resisting arrest; Salamoni also points his handgun at Sterling's head (Louisiana Department of Justice, 2018, Pg. 7). Salamoni tells Sterling, "Don't fucking move or I'll fucking shoot you in the head" (Louisiana Department of Justice, 2018, Pg. 7). Lake attempts to use his Taser on Sterling which was unsuccessful; all three men end up on ground in a physical struggle (Louisiana Department of Justice, 2018, Pg. 7).

Salamoni recognizes Sterling has a gun in his right front pants pocket and tells Lake the same; Sterling attempts to access the gun and Salamoni shoots him three times in the chest (Louisiana Department of Justice, 2018, Pg. 8). Salamoni rolls off of Sterling; Sterling reaches his hand towards his right front pants pocket (where the handgun was later located) and Salamoni shoots him three more times in the back and shoulder (Louisiana Department of Justice, 2018, Pg. 8).

The autopsy indicated Sterling was shot six times; three in the chest and three in the back and shoulder (Louisiana Department of Justice, 2018, Pg. 9). The autopsy also indicated Sterling had opioids, cocaine, alcohol, THC, amphetamines and fentanyl in his system at the time of the

incident (Louisiana Department of Justice, 2018, Pg. 10). There were no charges filed against Salamoni or Lake by the state of Louisiana; the U.S. Department of Justice found that their use of force was found to be reasonable and justified (Louisiana Department of Justice, 2018, Pg. 31).

The BWC footage in this incident revealed the intensity of the physical struggle between Sterling, Salamoni and Lake. The more valuable images captured on the BWC footage were the questionable tactics and concerning behavior by Salamoni; the tactics were described as “poor” and “aggravating” (Louisiana Department of Justice, 2018, Pg. 19). Additionally, the officers’ tactics and language used were believed to have escalated the situation as opposed to deescalating (Louisiana Department of Justice, 2018, Pg. 19-20).

When Salamoni arrives on scene, he almost immediately begins yelling and cursing at Sterling (Chavez, 2018). Salamoni can be heard telling repeatedly Sterling not to move or he would shoot him in the head (Chavez, 2018). Also, Salamoni initially attempted to use both of his hands to control Sterling’s right arm but then drew his handgun and pointed it Sterling’s head (Chavez, 2018). Salamoni created an unnecessary risk to Lake as he was frisking Sterling at the time (Louisiana Department of Justice, 2018, Pg. 17). The officers may have exacerbated the situation because of the language used and would have been better served to deescalate the situation by disengaging from Sterling, taking a better position of advantage and giving Sterling commands to take him into custody (Louisiana Department of Justice, 2018, Pg. 20). The officers were found to have used reasonable force during the incident with Sterling, but their training and tactics should be reviewed for deficiencies (Louisiana Department of Justice, 2018, Pg. 21-22).

Following the release of the BWC footage from this incident, the Baton Rouge Police Department was made aware of other concerning behavior by Salamoni from other prior incidents (WAFB, 2018). Salamoni's BWC footage from other these other incidents were reviewed and he was found to have exhibited other concerning behavior similar to what he displayed during the incident with Sterling (WAFB, 2018). Salamoni was observed on BWC footage using gratuitous profanity and unprofessional behavior during three separate incidents approximately one month prior to the incident on July 5th, 2016 (WAFB, 2018).

A fourth incident occurred on June 10, 2016 when Salamoni was involved in arresting a black male in a domestic incident (WAFB, 2018). Salamoni's BWC footage again captures him using profanity, but also shows him slapping the suspect in the head while the suspect was handcuffed on the ground (WAFB, 2018). Salamoni's report did not include information about the slap to the suspect's head (WAFB, 2018). Salamoni turned off his BWC while the suspect is being escorted from the scene (WAFB, 2018). Salamoni's BWC video is later turned back on as the suspect is being placed into a squad car; the audio is not yet activated (WAFB, 2018). Salamoni was later charged with battery and fired from the Baton Rouge Police Department (WAFB, 2018). Salamoni recently appealed his firing and the matter is still unresolved (Skene, 2018).

This incident, and its' aftermath, also provide support for the expansion of BWCs to more law enforcement agencies. The BWC footage provided additional clarity and transparency to the public for this incident. The BWC footage supported the decision of prosecutors not to charge the officers with any crimes related to this incident. Most importantly, the BWC footage in this incident offered a glimpse into the unprofessional conduct by Salamoni. This case was an example of how a law enforcement agency can utilize BWC footage to identify a pattern of

unprofessional behavior, and terminate officers who do not meet the ethical standards required to be a law enforcement officer. Transparency to the community, corroboration of the sequence of events, and identifying unprofessional behavior are all valid reasons to expand BWCs to more law enforcement agencies.

Recommendations for Implementation

Administrators, chiefs, sheriffs, politicians, and policymakers will always feel pressure from the general public, or their subordinates, to fix the mistakes of the past or make changes to avoid problems. These same people must respect their authority and responsibility bestowed upon them by their office to make the best decisions possible. Additionally, they must avoid succumbing to emotional demands to ‘do something’, and instead do the correct thing. The aforementioned leaders must take special care to take informed steps when implementing a BWC program for their agency or jurisdiction. The following are recommendations for implementation of a BWC program for a law enforcement agency:

Establish support from the community.

If a law enforcement agency is considering the implementation of a BWC program, it’s likely that there has been some support for such a program coming from the general public. The presence of BWCs marks a significant change in daily operations not only for the officers, but for the citizens who engage with them. Therefore, the law enforcement agency should make some efforts to seek opinions from the community prior to implementing a BWC program. This could be accomplished through open-forum public discussion or surveys to community stakeholders. There must be some favorable public opinion for a BWC program to meet one of

its' desired outcomes: increase transparency to the public. Public opposition to a BWC program is an indication that a community sees little or no benefit of a BWC program (Mosiman, 2015).

Concerns from citizens can be mitigated by engaging the community through social media to provide information about a BWC program (Miller and Toliver, 2014, Pg. 21). Specifically, an agency can increase transparency by publicly releasing their BWC policy or officer videos of a recent incident (Miller and Toliver, 2014, Pg. 22) (Stanley, 2015, Pg. 6). Additionally, BWC program implementation must comply with laws of their state. In some states, policy may have to be modified to meet state statute or vice versa (Philadelphia Police Department, 2016, Pg. 1).

Establish support from the agency.

In general, a law enforcement agency may choose policies and procedures that are preferred at the administrative level regardless of the opinions of the first-line officers or supervisors. However, an agency seeking greater acceptance, engagement, and cooperation from their officers would be well advised to solicit their officer's opinions prior to implementing a BWC program (Jennings et al., 2014, Pg. 550). For example, officers should be involved in policy development and equipment selection because they will be also be involved in the field-testing process, and the final BWC implementation (Katz et al., 2014, Pg. 13). Another significant factor in successful BWC implementation is the support of the administrative staff. Favorable support from administrative staff, and their involvement in policy development, can help aid the transition to a BWC program by having easing officers' concerns about BWCs (Smykla, 2015, Pg. 440). Essentially, an agency which involves administrative staff and officers in the policy development and equipment selection will likely have more buy-in for a BWC

program; an agency who has a BWC program forced on them by a mayor or city council may be less successful.

Establish policies for BWC operation, data storage and disseminated.

There are several aspects of BWCs that can determine the level of success in the implementation of a BWC program: how the BWC is operated by the officer, how the BWC data is stored and used by the agency, and how the BWC data is disseminated.

BWC device operation

One may view the BWC as they would a parachute: having it with you is good, but using it is better. One of the perceived benefits of BWC use is that it affects officer behavior through deterrence theory (Ariel et al., 2015, Pg. 516) (Ariel et al., 2018, Pg. 23) (Ariel et al. 2017a, Pg. 297) as well as effecting the behavior of other officers also present (Ariel et al., 2017a, Pg. 306). However, the effect on the officer is proportional to the amount of control an officer has over when, or when not, to activate or deactivate their BWC (Ariel et al., 2017b, Pg. 3). Therefore, this writing recommends the following policies related to activation and deactivation:

- BWCs shall be activated at the beginning of each encounter between an officer and a citizen, and only deactivating when the officer is reasonably aware that certain circumstances are occurring (See the sensitive incidents and private placed listed below).
- The officer should, if feasible, notify the person that they are being recorded.
- If requested to do so by a citizen, and if the officer believes there is little or no danger, or possibility for an enforcement action to be taken at that time, the officer should stop recording per the citizen's request.

- The officer should stop recording if they reasonably believe they have encountered a potentially sensitive incident (child victim, sexual assault, nudity, police informant, etc.) or location-specific privacy concern (hospital, mental health facility, etc.), and there is little or no threat of harm to the officer or other person.
- The BWC should only be deactivated after the contact is complete, and there is minimal likelihood for further law enforcement action.

These recommended policies will retain the deterrent effects that the BWC has on the officer and citizen, but gives the officer a measure of discretion to deactivate when faced with certain situations. These recommended policies will strike a balance between maintaining departmental transparency to the public, protecting the public's privacy in certain situations, and allowing officers to retain a measure of discretion that is part of their professional identities (Ariel et al., 2017b, Pg. 15).

BWC data storage and dissemination

BWC use and data collection is only part of the responsibility to the law enforcement agency. The other part encompasses how the agency will store and use that data. Ideally, an agency would have enough staff and resources to store and maintain their own data. In the absence of those resources, a third-party, online cloud service may be used. Regardless of the method, any agency implementing a BWC program should properly address the following issues through policy and legal contract: ownership of the BWC data, chain-of-custody maintenance, and audit procedures to prevent data tampering (Miller and Toliver, 2014, Pg. 45). The following

recommendations address the most relevant concerns of BWC data use, storage and dissemination:

- All video data shall be categorized as soon as possible following the completion of collection to determine retention timeframe needed.
- Any video categorized as being involved in a use of force incident, officer complaint, or other critical incident shall be maintained for a minimum of three years.
- Any video categorized as having evidentiary value, where someone is charged with a crime, should be maintained for the length of time as required by state statute, or as required by the prosecutor.
- Any video categorized as non-evidentiary shall be retained for no longer than 60 days. It is presumed that the majority of video collected by BWCs will fall into this category.
- An individual officer shall only be able to review BWC footage that was personally collected, and only for the purpose of documenting evidence of a crime. This policy shall not apply to any footage involving use of force, an officer-involved shooting or an officer-involved death.
- In incidents involving use of force, an officer involved shooting or an officer involved death, an officer must first memorialize their recollection of the incident in a report, or formal statement recorded by another officer, prior to being allowed to review their BWC video. After reviewing their BWC video, an officer may record a supplemental report, or make a supplemental statement, regarding the incident.

- The exception to the previous policy does not apply to BWC video from completed incidents (including court cases, right to appeal time periods, or other circumstances that would generally be detrimental if footage was viewed by others) that are to be used for in-house departmental training purposes.
- Supervisors should periodically view randomly selected videos of each officer to ensure professional and ethical standards are maintained.
- BWC footage should never be used arbitrarily by supervisors to search for policy violations by any officer when there is no justifiable reason to initiate such a search.
- BWC footage should be protected, redacted and disseminated by the existing state law only. Any dissemination, or other public release, of an incident not covered by existing state law should only be completed if such a release serves the best interests of the general public, and the agency.

These recommended policies will support the best interests of the agency, and its' officers, as well as the general public. These policies will also help the agency achieve the goals associated with the implementation of a BWC program: increased trust and transparency between the agency and the public, maintain professional behavior by officers, reduce use of force by officers, reduce citizen complaints, and improve evidence collection to aid the prosecution of crimes.

Conclusion

The field of law enforcement is at a cultural crossroads. Society today demands more of officers; more professionalism, accountability and virtue. The demand is fueled by improvements in modern technology that delivers high quality audio and video to the masses. Law enforcement agencies across the country should embrace this as truth or risk being left behind as the last remaining relics of the 'blue wall of silence.' Fair or not, any agency summarily dismissing BWCs will be viewed with suspicious eyes by the general public.

BWCs are not without potential pitfalls, but these issues can be mitigated by support from the community and the agency, proper department policy, training, and foresight before implementation of a BWC program. The benefits of BWCs identified by this research outweigh the potential negative outcomes. BWCs will not be a cure-all, or quick fix, for any agency or community. However, BWCs offer an opportunity to provide clarity, remove doubt and give an additional glimpse into interactions between officers and citizens that would otherwise be lost in time. The possibilities presented by BWCs make them a worthy option for all law enforcement agencies.

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