Final Report of the Ad Hoc Committee of the Civilian Oversight Commission Regarding Body Worn Cameras and Recommendations of the Sheriff Civilian Oversight Commission

July 26, 2018

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EXECUTIVE SUMMARY

Since the tragic shooting in Ferguson, Missouri in 2014, two-thirds of the major law enforcement agencies of our country have or are implementing body worn cameras (BWCs) for their patrol officers. Unfortunately, the Los Angeles County Sheriff's Department (LASD) is not one of them.

Last fall, the Civilian Oversight Commission (COC), through an Ad Hoc Committee, undertook an extensive study of Body Worn Cameras (BWCs). In this report, the Committee evaluates their efficacy, the policies needed for implementation, and their cost.

Efficacy

As more fully detailed in the report, we find that BWCs are effective in reducing the number of citizen complaints as well as excessive and unnecessary force. Even when complaints are made, they can be resolved faster, more definitively and at less cost. These benefits alone would justify the prompt implementation of BWCs by the LASD. But the weight of the evidence also suggests that BWCs have the benefit of increasing social justice, primarily by assuring that individuals encountering law enforcement are treated with greater dignity and respect. This works both ways, as it appears that BWCs have a "civilizing effect" on these interactions on both sides that tends to de-escalate potentially violent confrontations. Moreover, although the impact on the justice and disciplinary systems has been little studied, it seems clear that BWC video will result in better decisions and more reliable results in criminal, civil, and administrative proceedings. Exoneration of the innocent will be more certain and speedier and those who violate the law or policy can be held accountable. In addition, we believe that a release policy after a shooting resulting in death or serious bodily injury will, over time, build trust between the Sheriff's Department and the community.

Given these significant benefits, we recommend that the Board of Supervisors (the Board) promptly provide the necessary funding to implement a BWC program for all LASD patrol deputies and their immediate supervisors (Recommendation 1). We also recommend that the Sheriff make the implementation of BWCs a priority and revise his BWC Plan from four to two years (Recommendation 2). In this regard, we note that the Los Angeles Police Department (LAPD) deployed a slightly larger number of BWCs to all of its patrol officers in two years.

Policies

Sound policies are needed when BWCs are adopted by a law enforcement agency (LEA). Given the large number of LEAs that have implemented BWCs, there is an array

of policy options. Our task was to consider and recommend to the Sheriff what we view as the best policies based on our review.

Some of our key policy recommendations are:

- The Sheriff should make his policies regarding BWCs accessible to the public (Recommendation 4).
- Deputies should be required to activate their BWC prior to all law enforcement activity involving a member of the public. Any exception to the activation policy should be limited and clearly defined, e.g., interview of a sexual assault victim unless consented to (Recommendation 5).
- De-activating only after the law enforcement interaction is complete. Documentation of the reason for de-activation that is contrary to policy (Recommendation 6).
- In situations where deadly use of force is used, deputies should not be allowed to review BWC video until after providing an initial statement (Recommendation 8).
- Deputies should be prohibited from using personally owned BWCs while on duty (Recommendation 11).
- The Sheriff should release BWC video of deputy involved shootings and use of force resulting in death or serious bodily injury within thirty (30) days of the incident (Recommendation 13).
- Facial recognition technology should not be used in conjunction with BWCs (Recommendation 15).
- Deputies should be encouraged to notify persons that they are being recorded when safe and practical to do so (Recommendation 16).

Cost

The biggest obstacle to implementing BWCs appears to be cost. The Sheriff's BWC plan, which has been reviewed by the County Chief Executive Officer (CEO), calls for an additional 239 sworn and unsworn personnel, resulting in an annual, recurring cost of $55 million. To date, the Board has not provided the requested funding.

The Committee has reviewed the cost of implementation of other LEAs. On the one hand, most police departments, large and small, have been able to implement a BWC program to all their patrol personnel at costs considerably less than the LASD request. On the other, most of these police departments did not factor in the additional staffing needed in the form of increased time by patrol officers in preparing reports, by detectives in reviewing evidence, and by internal affairs components. The Sheriff believes, and we agree, that a new BWC Bureau will be needed and at least several additional personnel at each of the LASD's 32 bureaus, including all 23 patrol stations. He also foresees the need for more staffing to comply with the California Public Records

Act and other requests for video, including the redaction of same. No doubt, significant additional staffing is needed. But we are not convinced that this equates to 239 FTE. Nonetheless, the Board should assure adequate funding.

Because of this impasse, the Committee recommends that the Sheriff and the Board, together with the CEO, promptly meet, confer, and resolve the budget numbers needed to implement a two-year, phased in BWC plan (Recommendation 3). The Civilian Oversight Commission stands ready to assist and facilitate this discussion so that a BWC program can be implemented by the LASD without further delay.

I. INTRODUCTION

Following the tragic death of an unarmed civilian by police in Ferguson, Missouri in August 2014, over two-thirds of the major law enforcement agencies in the United States have or are implementing the use of body worn cameras (BWCs) by their patrol officers. The Los Angeles County Sheriff's Department is not yet one of them.

Although it conducted a limited pilot program involving BWCs in 2014- 2015, the Los Angeles County Sheriff's Department (LASD) has yet to roll out BWCs to its patrol deputies. The Sheriff developed a plan to implement a BWC program that would equip all 5,895 Patrol deputies to the sergeant level with BWCs, but although he submitted his plan to the Board of Supervisors (the Board) in June 2017, to date the LASD has not received funding from the Board to move forward. Notwithstanding the Sheriff has not promulgated the policies needed for implementation: policies relating to when BWCs must be activated, when video will be released and to whom, whether a deputy involved in a categorical use of force is permitted to view video before making a statement, etc.

In June 2017, the Sheriff Civilian Oversight Commission (COC) formed an Ad Hoc Committee to study use of excessive and/or unnecessary force by Sheriff's deputies assigned to the Patrol Division and determine whether the COC should recommend any changes in current use of force policy, training, and discipline. On September 2, 2017, the Sheriff invited the COC to assist the LASD regarding his proposed BWC program by soliciting feedback from the public regarding, among other things, potential policies for the program.[1] As BWCs are potentially a means for reducing inappropriate use of force, the Use of Force Ad Hoc Committee (hereafter "the Ad Hoc Committee"), upon behalf of the Commission, undertook to evaluate the proposed BWC program and solicit input from the public. The members of the Ad Hoc Committee are Commissioners Xavier Thompson, Robert Bonner, James P. Harris, and Sean Kennedy.

The Ad Hoc Committee has undertaken to evaluate the efficacy of BWCs and the best practices and policies that should be adopted as part of the implementation of BWCs. We have also considered the cost of implementing such a program. We have not, however, evaluated the technology or potential vendors, neither of which is necessary for this report and the proposed recommendations.

[1] See Sheriff McDonnell's Letter to Chair Bonner of the Sheriff Civilian Oversight Commission dated September 6, 2017, attached hereto as Exhibit 1.

II. ACTIONS OF THE COC AD HOC COMMITTEE

At the request of the Ad Hoc Committee, the full Commission was briefed by the Sheriff's Department on its proposed BWC program at its regular monthly meeting on November 16, 2017.

The Ad Hoc Committee, with assistance of the COC staff, has interviewed and gathered information from subject matter experts, including Dr. Craig Uchida of Justice & Systems Strategies, Inc., Harlan Yu of Upturn, and Professor Michael White of Arizona State University. It has also studied much of the available literature regarding the efficacy of and policies adopted by law enforcement agencies implementing BWCs.

The Ad Hoc Committee has spoken to persons most knowledgeable at three police departments which have deployed BWCs to their patrol officers: the Wichita, Kansas Police Department, the Spokane, Washington Police Department, and the Los Angeles Police Department (LAPD). It has met with Inspector General Max Huntsman and reviewed his September 2015 report titled "Body Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program." We have also reviewed the Sheriff's BWC Plan submitted to the Board in June 2017 and the CEO's budget analysis of the Sheriff's plan of October 10, 2017.

With the assistance of staff, the Ad Hoc Committee developed a survey, published it online, and obtained public comment. We also received public comment at COC and town hall meetings.

The Committee also met with and obtained comments from the Association for Los Angeles Deputy Sheriffs (ALADS), the union representing rank and file deputies, regarding the proposed BWC program and potential policies. Based on a poll of its members, we were advised that a majority of deputies who responded to the poll supported the deployment of BWCs. Moreover, ALADS supports the implementation of BWCs provided that it is accompanied by appropriate policies, training, and adequate funding. They expressed the belief that significant additional staffing would be needed to effectively implement a BWC program and expressed the concern that it not result in a diminution of resources for other functions.

III. BACKGROUND

A. The Pilot Project: LASD's Test and Evaluation of BWCs

Between August 2014 and March 2015, the LASD implemented a pilot program on BWCs for six months to test and evaluate BWC equipment as well as to inform the

development of the BWC program and policies. The pilot involved the use of 92 BWCs being marketed by several different vendors. The pilot phase featured guidelines for deputies who volunteered to use the BWCs.[2] The pilot involved testing BWCs at one station in each of the LASD's four Patrol divisions. The pilot policy guidelines called for BWCs to be used to record everything from traffic stops to calls for service.

B. OIG Report

In September 2015, the Office of Inspector General (OIG) issued a report on the LASD's BWC Pilot Program. The OIG, after considering the policy guidelines used for the pilot project, made policy recommendations to be adopted when BWCs are fully implemented by the LASD.[3]

Some of the key policy recommendations and observations of the OIG included:

1. Requiring specified events to be recorded, such as traffic stops and domestic violence responses, as well as "any other law enforcement action." The OIG recommended that "law enforcement action" should be more clearly defined in the LASD policy formulated for full implementation (p. v).

2. The OIG believed that the substantial benefits of BWC video to resolve complaints, identify and correct misconduct, and reduce use of force incidents outweighs privacy concerns.

3. Adopting the LASD's pilot program protocol of not requiring consent from citizens in private locations when entering for legitimate and necessary law enforcement purposes. The OIG reasoned that this would address both the need to protect privacy rights as well as provide for transparency and evidence-gathering.

4. Noting that law enforcement best practice and jury expectations are that interviews will be recorded, the OIG recommended recording victim and witness statements, unless doing so would compromise the deputies' duties.

5. Allowing deputy the discretion whether or not to record confidential informants.

6. In line with law enforcement standard practice, the OIG advocated a policy that requires deputies to document reasons to stop recording a law enforcement

[2]"Body Worn Camera System Test & Evaluation Project Implementation Plan," *Los Angeles Sheriff's Department*, August 27, 2014, https://www.bja.gov/bwc/pdfs/LASD_BWCS-DEPLOYMENT-PLAN-SEPTEMBER-15-MPP-CORRECTION.PDF

[3] Office of Inspector General, "Body-Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program," September 2015, https://oig.lacounty.gov/Portals/OIG/Reports/Body-Worn%20Cameras_OIG%20Report.pdf

event or for failing to record such event, by articulating their reason in writing or on camera. In addition, the pilot guideline requiring recording "until completion of the detention" needs further definition.

7. Encouraging but not requiring deputies to notify civilians that interactions are being recorded when appropriate to do so. The OIG recognized there may be instances when providing notice would be "unnecessary, unsafe, or impossible" (p. vi).

8. In use of force incidents, the OIG recommends a policy that the involved deputy should write their initial report before viewing the video of the incident. The OIG notes that this is consistent with LASD's current policy relating to use of force incidents captured on CCTV surveillance cameras in the Los Angeles County jails and is consistent with LASD standard investigative procedure when interviewing civilian witnesses.

9. The OIG recommends clear policy guidelines on when video footage of use of force incidents is to be released to the public, so that the LASD is not viewed as making self-serving decisions. But at the time of its September 2015 report, the OIG notes that no other law enforcement agency has such a policy.[4] The OIG makes no recommendation as to the timeline for such releases.

10. The OIG notes that there needs to be a plan "for funding not only the equipment needed to implement body-worn cameras, but the staff and infrastructure necessary to properly use the video that is captured, including responding to public and private requests for access" (p. viii).

As discussed in the Findings and Analysis section, the Ad Hoc Committee generally agrees with the OIG's recommendations listed above.[5]

[4] With certain safety valves, the LAPD has recently adopted a policy of releasing video footage to the public within 45 days of critical incidents involving significant uses of force. The LAPD policy is discussed in this Report, at p. 18, infra.

[5] As noted in the Analysis section, infra, we have these modifications to the OIG's recommendations: regarding OIG Report Recommendation 1 on activation, we would keep the policy broad, similar to the LAPD's policy, i.e., the BWCs are to be activated for any (1) law enforcement, or (2) investigative action involving an interaction with a member of the public. We prefer this formulation to a lengthy definition and training to multiple situations. Regarding OIG Report Recommendation 3, we would give deputy discretion to not video record an interview of a sex crime victim or a victim in a hospital, but the deputy should state the reason for not recording. Regarding OIG Report Recommendation 4, we concur with giving discretion regarding the recording of confidential informants (CIs), but there should be a statement that generally CIs will not be recorded. The danger of a CI's identity being compromised can be a death sentence. Regarding OIG Report Recommendation 8, release of video of all categorical uses of force should be within 30 days of an incident involving deadly force.

C. Funding for a BWC Program

Pursuant to a July 12, 2016 motion the Board expressed the desire to implement BWCs "in the shortest timeframe possible."[6] Thereafter, after forming and working with County-wide stakeholders (including the District Attorney, Public Defender, and Alternate Public Defender) brought together in a BWC Implementation Working Group, the LASD developed a plan to implement BWCs. Pursuant to the same motion and based on the BWC Plan, the Chief Executive Office (CEO) prepared a budget proposal for the implementation of the BWC program.[7]

The LASD budget proposal identifies the cost of the BWC program, including the system hardware, staffing and resource requirements, and anticipates workload increases in monitoring the recording, reviewing and redacting footage for criminal cases and public records requests, as well as preparing videos for administrative investigations and review at various levels by incident review boards within the LASD. Within LASD, there is a one-time cost of $20.4 million primarily for equipment and infrastructure and an ongoing or recurring annual operation and maintenance cost of $55.2 million, with much of that funding for 239 positions or FTE. The Board motion directed the CEO to prepare a budget proposal and recommended that the LASD hire a consultant with law enforcement expertise to assess the policies, procedures, deployment plan, staffing levels, and operational impact of BWCs on the department. However, LASD decided not to proceed with the recommendation due to other priority needs such as addressing their critical staffing shortage.[8] We are advised by the LASD that it had the internal expertise in the Sheriff's BWC team to develop policies, procedures, a phased deployment plan, and the budget for the staffing needed to fully implement its BWC plan.

The Sheriff's BWC plan proposes that BWCs would be fully implemented in four phases. The first year is the pre-deployment phase and the following three years are Phases I, II, and III, leading to approximately 5,900 BWCs being deployed to the Patrol Divisions. The plan also includes the staffing cost associated with reviewing and storing video, and retrieving and redacting it to make it accessible pursuant to the California Public Records Act (PRA) and other requests. The LASD appears to be assuming that it needs additional staffing for California PRA requests, although as we note below, the

[6] Los Angeles County Board of Supervisors motion by Supervisors Sheila Kuehl and Hilda L. Solis on July 12, 2016, agenda item number 2, http://file.lacounty.gov/SDSInter/bos/supdocs/105129.pdf

[7] Chief Executive Office, "Sheriff's Plan to Implement Body-worn Cameras (Item No.2, Agenda of July 12, 2016)", October 10, 2017, http://file.lacounty.gov/SDSInter/bos/bc/1029611_B100822.BWC.101017.bm.pdf#search="body worn camera"

[8] See Sheriff McDonnell's Letter to Sachi Hamai, Chief Executive Officer dated February 20, 2018, attached hereto as Exhibit 2.

LAPD is taking the position that all BWC video recorded by its patrol officers is "evidence" and therefore exempt from California PRA requests.[9]

By far, the biggest recurring cost is for additional staffing to implement the BWC program. The cost of the 239 FTE positions comprises at least 77% of the recurring annual costs. In an earlier report to the Board, the Sheriff shared a detailed implementation plan for the BWC program, which provided additional clarity on the staffing needed.[10] The 239 FTE is attributable to the LASD estimations of the staffing needed for a new BWC Bureau and for increased workload relating to BWCs in the LASD's 23 patrol stations, detective units, internal affairs and audit, and IT. Although no FTE breakdown is provided, the increased FTE (both sworn and unsworn) would be allocated to the following:

<u>New BWC Bureau:</u>
Unit commander
Operations and administrative support staff
Technical experts

<u>Patrol Stations:</u>
Risk Management sergeant positions for administrative review and supervision of the stations BWC program
Detectives for review of videos
Forensic video specialist positions
Clerical and staff positions to manage daily operations

<u>Specialized Detective Units:</u>
Additional Investigative personnel

[9] The California Public Records Act, Cal. Govt. Code § 6250 et seq., requires state and local government agencies to disclose records in response to a request from any member of the public; however the California PRA exempts "records of … investigations conducted by … any state or local police agency." Id. at § 6254(f). The California Supreme Court has held that even recordings of routine encounters between patrol officers and members of the public that do not result in prosecution are "records of investigation" exempt from mandatory disclosure under § 6254(f). Haydie v. Superior Court, 26 Cal.4th 1061, 1069-71 (2001). More recently, the California Supreme Court unanimously held that "data collected en masse" by automated license plate readers (ALPR) did not qualify as records of investigation that are exempt under § 6254(f) "because the scans [were] not conducted as part of a targeted inquiry into any particular crime." ACLU Foundation of Southern California v. Superior Court, 3 Cal.5th 1032, 1038, 1041-42 (2017). But the Court nevertheless authorized LAPD and LASD to withhold unredacted ALPR scans under the California PRA "catchall exemption," which authorizes withholding records if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Id. at 1043; see also Cal. Govt. Code § 6255(a). Thus, the weight of authority favors LAPD's position that BWC videos are exempt from the California PRA. See Exhibit 7.

[10] Letter to the Honorable Board of Supervisors by Sheriff Jim McDonnell, "Body Worn Camera Plan," June 2, 2017, http://file.lacounty.gov/SDSInter/bos/bc/1029608_BodyWornCameras06-02-17.pdf#search="body worn camera"

Professional Standards (additional personnel for below):
Internal Affairs Bureau
Internal Criminal Investigation Bureau
Audit and Accountability Bureau

Information Technology Support:
IT staff to support the new personnel and impact on technology infrastructure

IV. SUMMARY OF EVIDENCE GATHERED BY COC

The COC, largely through the Ad Hoc Committee and the COC staff, has gathered considerable information, including best practices. This has included a review of research regarding the effectiveness of BWCs and policies implemented regarding them. A summary of that information follows.

A. Presentation by the LASD of its BWC Program

Commander Chris Marks of LASD made a presentation to the Commission on November 16, 2017 reviewing the genesis of the Sheriff's plan for implementing BWCs throughout the Patrol Divisions of the LASD. The presentation included a review of the LASD BWC pilot project in 2014-2015 as well as the processes and different levels of review that video footage will go through once recorded by deputies. He discussed the substantial workload impacts of BWCs when implemented in the areas of investigative and administrative operations of the LASD, as well as the evidence management challenges arising from deputy and detective review of video footage and handling California PRA requests. Commander Marks noted that the additional FTE required to address the workload impacts became evident during the test and evaluation of BWCs. Currently a deputy needs to input the case number and other fields to tag the videos. Policy development is still a work in progress. The LASD has not finalized any policy around implementation of BWCs, although the Sheriff would like to develop a path for the timely release of video footage to the public following the high visibility use of force incidents.

In addition to the November 2017 briefings, the Ad Hoc Committee has met with LASD leadership on two occasions, March 21 and June 11, 2018, to discuss the BWC program and potential polices that are necessary before implementation.

B. The Policing Los Angeles Forum at Loyola Law School

On April 4, 2018 COC members and staff participated in a session of the Policing Los Angeles Forum at Loyola Law School that focused on best practices and policies for body-worn cameras. The panel was moderated by Professor Eric Miller, whose scholarship focuses on policing and race and featured the following speakers: Peter Bibring, Director of Police Practices & Senior Staff Attorney, ACLU of Southern California; Commissioner Cynthia McClain-Hill, Los Angeles Police Commission; Hamid Khan, Campaign Coordinator, Stop Police Spying Coalition; and Commander Chris Marks, LASD. After the panel discussion, representatives of numerous local community-based organizations publicly spoke for and against the use of police body-worn cameras in Los Angeles.

C. Presentation and Interviews of Subject Matter Experts

The COC Ad Hoc Committee obtained feedback from three nationally recognized subject matter experts. They included Dr. Craig Uchida, Harlan Yu, and Professor Michael White. Dr. Uchida is with the Justice & Security Strategies, Inc., a research organization funded by the U.S. Department of Justice's (DOJ) Office of Justice Programs, as part of the Training and Technical Assistance (TTA) team that provides consultation for BWC programs. Harlan Yu is the Executive Director of Upturn, a non-profit organization based in Washington, D.C. that catalogs policies developed by law enforcement organizations nationwide and evaluates or scores them against civil rights principles. Professor White is the Associate Director of Arizona State University's (ASU) Center for Violence Prevention and Community Safety, and is also part of the TTA team of the DOJ program.

Dr. Craig Uchida

Dr. Uchida presented his evaluation of BWC programs to the Commission on November 16, 2017.[11] As part of the DOJ TTA Team, Dr. Uchida and his organization provide technical assistance to law enforcement agencies that apply for DOJ grants related to BWCs. He discussed preliminary data from research that indicated the evidentiary value of BWCs as well as positive findings on the decline in citizen complaints and police use of force where BWC programs have been implemented. He noted that while some studies indicate a decline in use of force, a recent study of the Washington, D.C. Metropolitan Police Department (D.C. MPD) indicated that BWCs had no impact one way or the other on use of force.[12] Dr. Uchida noted that several aspects

[11] Craig Uchida, "Body-Worn Cameras: What Do We Know?," COC Presentation November 16, 2017, http://file.lacounty.gov/SDSInter/bos/supdocs/1030484_Item4-BWCPresentationsCombined.pdf

[12] David Yokum, Anita Ravishankar and Alexander Coppock, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial," 2017, https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf

of that study might be flawed, and in any event, the most important question is whether BWCs reduce inappropriate (excessive or unnecessary) use of force. As Dr. Uchida pointed out this is much more difficult to measure and will take a good deal of time and experience with BWCs before the answer is known. But in Dr. Uchida's opinion, cameras do affect behavior. By changing both police and civilian behavior, the prevailing notion was that BWCs were expected to directly affect citizen complaints and use of force.

Additionally, Dr. Uchida testified that two Arizona studies on public perceptions showed citizens being in favor of police using BWCs. Without dictating what policies ought to be, Dr. Uchida stressed the importance of agencies developing clear policies around areas such as a) when to activate/deactivate the camera, b) when citizens should be notified of the recording, c) officer and supervisor authority to review footage, and d) release of video footage to the public.

Harlan Yu

On April 30, 2018, the Ad Hoc Committee telephonically interviewed Harlan Yu of Upturn who, together with the Leadership Conference on Civil and Human Rights, created a Policy Scorecard for the BWC policies of major law enforcement agencies nationwide.[13] The scorecard evaluates the body worn camera policies of law enforcement agencies nationwide, including agencies that received at least $500,000 in DOJ funding for BWC programs. Their scorecard evaluated how closely the policies adhered to eight civil rights criteria created by the Leadership Conference and Upturn. These criteria are based on the Civil Rights Principles on Body Worn Cameras developed collaboratively by civil rights, privacy and media rights groups.[14] The eight criteria are:

1) Policies should be made available to the public.
2) Policies should be clear in identifying when to record as well as justifying the failure to record.
3) Informed consent should be obtained before recording from vulnerable individuals such as sex crime victims.
4) Law enforcement personnel should not be permitted to view footage before writing reports for all incidents.
5) Limit retention to six months for unflagged footage (footage not used for any other reason such as training or investigations).

[13] The Leadership Conference on Civil and Human Rights & Upturn, "Police Body Worn Cameras: A Policy Scorecard," 2017, https://www.bwcscorecard.org/

[14] The Leadership Conference, "Civil rights, privacy, and media rights groups release principles for law enforcement body worn cameras," 2015, https://civilrights.org/civil-rights-privacy-and-media-rights-groups-release-principles-for-law-enforcement-body-worn-cameras/

6) Prohibit unauthorized access to and tampering with footage, and monitor access to footage.
7) Release footage to individuals filing complaints of officer misconduct.
8) Limit use of BWCs with biometric technologies such as facial recognition.

Mr. Yu emphasized that the first recommendation is critical and a surprising number of police departments that have deployed BWCs have not made their policies accessible to the public and so they cannot be scored. Moreover, Mr. Yu estimated that two-thirds of the major local law enforcement agencies in the U.S. have or are implementing BWCs.

Professor Mark White

On June 4, 2018, the Ad Hoc Committee telephonically interviewed Professor White of ASU. According to Professor White, there is "persuasive" evidence of the effectiveness of BWCs regarding three important goals: (1) reducing citizen complaints against law enforcement officers and reducing use of force by officers, (2) improving the relationship between communities and the LEAs served by them and (3) improvement in evidence, quality, and timing of justice decisions.

On the first goal, while the data is mixed, there were declines in citizen complaints in 14 of 18 law enforcement agencies where the use of BWCs has been studied. Seven of 14 law enforcement agencies showed reductions in overall use of force; none showed increases in complaints or use of force. The most recent study on the D.C. MPD[15] that did not show any effects on use of force may have been due to changes already made under a Consent Decree before deploying BWCs, and which may be the reason BWCs showed no impact. There are not enough studies to determine whether they have any effect on "extrajudicial" force, e.g., lethal force that is excessive or unnecessary.

Regarding the second goal, the data indicates that "social justice" is improved, with community members who interact with officers perceiving they have been treated better and with more respect.

As to the third goal, it does appear that officers are exonerated sooner and that the few that use inappropriate use of force can be disciplined appropriately. In other words, accountability is enhanced, and there are better judicial and administrative decisions because the reliability of evidence is improved. Among policy issues we discussed, Professor White stated that there are arguments on both sides regarding the ability of officers to review videos before making statements. Research on memory indicates

[15] Yokum, Ravishankar, and Coppock, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial."

that an officer's recollection is likely to be "contaminated" by pre-viewing videos and that important visual observations that were not captured by the BWC may be lost. But observations written in first reports that differ from BWC images should not be interpreted to mean that the officer lied as the camera is not the human eye. He also mentioned that although most BWC policies he has seen do not require civilian notification of video recording, it may be beneficial in promoting improved behavior on both the civilian and officer, so long as it does not impact officer safety.

D. Other Law Enforcement Agencies

The Ad Hoc Committee had telephonic interviews with subject matter experts with several police departments which have implemented BWCs. They included the Wichita Police Department, LAPD, and Spokane Police Department.

All three police departments believed that BWCs are effective and saw substantial benefits in using them. Although they generally reported similar challenges in their use, for example, the increased workload in reviewing, they are beginning to see some advantages such as the number of complaints decreasing or being resolved much more efficiently.

Wichita Police Department

The COC Ad Hoc Committee interviewed Chief Gordon Ramsay of the Wichita, Kansas Police Department (WPD) on April 16, 2018. The city of Wichita has a population of approximately 390,000.[16] The WPD has about 700 sworn officers assigned to four patrol stations. Chief Ramsay formally implemented its BWC program in 2016 when it equipped all uniformed patrol officers with BWCs.

Efficacy

Chief Ramsay was formerly the Chief of Police of Duluth, Minnesota and has been one of the earlier pioneers of patrol vehicle (dash cams) and body worn cameras and the policies that surround their implementation. He believes BWCs are "extremely effective" for a variety of purposes. As to how he became a believer, he related a 2010 incident in Duluth that was recorded on a dash cam in which a young man armed with a baseball bat was shot and killed by a police officer. There was a community outcry that the young man had been unarmed until the video was released showing the young man attacking the officer with the bat.

[16] United States Census Bureau. "QuickFacts Wichita City, Kansas Population Estimates July 1, 2017," https://www.census.gov/quickfacts/fact/table/wichitacitykansas,US/PST045217

Chief Ramsay cautioned that BWCs are not a panacea and public outreach is essential to manage expectations. Nonetheless, he is convinced the BWCs protect both the officer and the public by providing evidence of what happened in highly charged situations where lethal force is used. Out of policy conduct can be identified quickly while appropriate conduct can be readily identified and unnecessary investigations avoided. BWCs have reduced citizen complaints and allowed those that are made to be resolved much more quickly. Most complaints (80%) are withdrawn after the citizen reviews the video. BWC recordings benefited their criminal investigations because prosecutors and defense attorneys can gain more understanding of the situation and make decisions based on the merits of cases. There are some workload reductions that flow from using BWCs. BWC video increases the reliability of court proceedings and saves officer time. Court visits by WPD officers are down 20% from two years ago, saving both time and money as cases are settled or pleaded out earlier as a result of video evidence.

Policy

The WPD actively engages the city's Citizens Review Board and community members to obtain input on policies that have frequent community touch points. Policies are currently available online and revised regularly.[17] Some of the noteworthy WPD policies include:

1) Giving discretion to officers as to when they activate their BWCs. Officers are to make "every effort to activate . . . to record citizen contact when law enforcement action is or may be taken . . ." [716.24]. This includes traffic and pedestrian stops, surveillance of suspects or any other situation when the officer deems it appropriate or as directed by a supervisor.
2) Not recording at locations of privacy (restrooms, etc.) unless required under 716.24 noted above [716.37].
3) If affirmatively asked, informing persons they are being recorded [716.23].
4) Officers may stop recording if necessary to discuss criminal investigative activity with fellow officers [716.27].
5) Officers may ordinarily review video recordings to prepare reports, but may not review recordings in incidents of deadly force until after interviewed by criminal investigators [716.49 and 716.50].
6) Supervisors may review recordings for administrative inquiries or other reasons [716.51].

[17] Policy Manual Policy 716 - Body Worn Camera, *Wichita Police Department,* 2016, http://www.wichita.gov/WPD/WPDPolicyAndProcedureManual/Policy%20716%20-%20Body-Worn%20Cameras.pdf#search=body%20worn%20camera%20policy

7) Footage may be released to the public in accordance with the state of Kansas' Open Records Act [716.63].

At present Chief Ramsay mentioned that they are revisiting their video footage release policy but affirmed his commitment to do so in collaboration with the District Attorney.

Costs/Budget

In addition to the annual software cost of about $400,000, WPD has hired or backfilled with four BWC administrator/managers, one for each of its four patrol stations. These BWC station managers' functions are to categorize and audit videos, oversee and ensure accountability for their use. This is separate and apart from the extra workload by patrol officers and detectives in reviewing video as it relates to arrests, use of force, and case filings.

Lessons learned

1) A robust software system with a proven track record is necessary to be able to locate specific videos among thousands upon thousands of videos in storage.
2) Measures to track the impact of BWCs should be implemented, for example, to determine the number of complaints filed and followed up on, the amount of court time saved in terms of officers not being needed to testify, or the number of cases settled as a result of decisions made by viewing footage.
3) WPD strongly recommended having a policy of releasing videos to the public where lethal use of force has occurred or use of force has resulted in serious injury, because of its potential to help the public understand a situation. They are currently working to revise their policies to more closely reflect their goals of wider public transparency, but are doing so in concert with the District Attorney for Sedgwick County.
4) WPD also remarked that the public should be involved in policymaking because it is the right direction and is the future of the law enforcement profession.

Los Angeles Police Department (LAPD)

The COC Ad Hoc Committee interviewed Sgt. Daniel Gomez of the LAPD on May 16, 2018. The city of Los Angeles has about 4 million people.[18] LAPD has about 5,200 patrol officers and began formally implementing and phasing in its BWC program in 2015, but the program became fully deployed to all patrol officers only about two

[18] United States Census Bureau, "QuickFacts Los Angeles City, California Population Estimates July 1, 2017," https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia,US/PST045217

months ago, in April 2018. Los Angeles Mayor Eric Garcetti secured full funding for the LAPD's phased roll-out of BWCs in August 2015 and the funding began with the LAPD's July 1, 2016 budget. It is noteworthy that the LAPD phasing in from receiving funding to full implementation was slightly under two years.

Efficacy

LAPD recently completed a third-party evaluation of their BWC program with the five stations that initially ramped up the program. It was a three-year evaluation that looked at impact on rates of complaints, uses of force and procedural justice. The initial results show a decrease in the amount of complaints generated and an increase in perceptions of "procedural justice."[19] In other words, through objective third-party surveys, the evaluation found that interaction with members of the public where BWCs were used resulted in an increase in the belief by citizens that they were treated with dignity and respect.

Policy

The LAPD used their existing in-car video policies as a stepping stone towards formulating their BWC policies. They developed a diverse panel comprising the city attorney, the Police Protective League, risk management, and other stakeholders to discuss issues. They also reached out to the courts, rape, and domestic violence treatment facilities to understand related concerns and conducted public forums and surveys to obtain community input. Their BWC policies were established on April 28, 2015[20].

LAPD's polices include, among others:

1) Requires recording all law enforcement and investigative activity involving a member of the public. Examples given include situations including vehicle and pedestrian stops, crowd management, or when an officer decides recording would be beneficial during investigations [III].
2) Does not require recording statements of witnesses, victims or confidential informants [VI].
3) Requires documenting reasons for failing to record or de-activating, when activation is required by policy [VI].

[19] McCluskey et al., "Assessing the Effects of Body-Worn Cameras on Procedural Justice in the Los Angeles Police Department," 2018.
[20] Office of the Chief of Police, Special Order No. 12, "Body Worn Camera Procedures," *Los Angeles Police Department,* 2015, http://assets.lapdonline.org/assets/pdf/body%20worn%20camera.pdf

4) Encourages citizen notification of the recording, although obtaining consent is not required [IX].
5) Officers can review recordings before writing reports, except in incidents of categorical use of force such as shootings, in which case they may not review them unless and until they receive authorization by internal affairs investigators [XVIII and XIX].
6) Supervisors shall review officer recordings before submitting administrative reports, except in categorical use of force incidents unless and until authorized by internal affairs investigators [XXI and XXIII].

As the LAPD is the first major police department to do so, it is especially noteworthy that in April 2018, the LAPD and the Police Commission issued a release policy for critical incidents, which include officer-involved shootings or those resulting in serious injuries or death. Critical incident footage involving serious uses of force will be released within 45 days of the incident, except in circumstances such as protecting the safety of individuals in the recordings or the accused individual's constitutional rights. Such circumstances require a unanimous decision by both the Chief of Police and the LAPD Commission's two designated liaisons to delay the release.[21]

Costs/Budget

The direct contract costs for LAPD's BWC program is $32 million for a five year period, which includes all capital expenses to outfit all of their uniformed officers. Their annual operational costs are $8 million. They have unfunded staffing requirements that include inspection teams for each division to monitor compliance with policy and BWC managers at each station (there are 21 Community Police Stations) within the five LAPD Divisions. There is a considerable workload impact on the officers and supervisors in terms of the requirement to review video for report writing as well as on personnel involved in the LAPD's multi-layered incident review process, as LAPD officers and supervisors must review video footage that did not exist before BWCs were deployed. Video has to be reviewed by detectives for all cases referred to the District Attorney's Office for prosecution. There are additional administrative support burdens as well. However, all of these workload impacts appear to have been absorbed within the LAPD's existing staffing levels. Significantly, the LAPD did not have the need to hire additional staff to work on California PRA requests because video footage relating to law enforcement and investigative encounters with members of the public is deemed to be "evidence" and, therefore, exempt from the California PRA. It remains to be seen if this will withstand judicial scrutiny in the future. Aside from the California PRA, LAPD

[21] Office of the Chief of Police, Administrative Order No. 6, "Critical Incident Video Release Policy," *Los Angeles Police Department*, 2018, http://assets.lapdonline.org/assets/pdf/Administrative%20Order%20No.%206.pdf

policy to release video of critical incidents constitutes a tiny fragment of the video records and does not require additional staffing. Moreover, regarding the additional time needed for report writing when video must be reviewed, all LAPD officers are issued cellular smart (Android) phones that allow them to connect to the BWCs and review the footage in the field. So, while it takes additional time to write reports, they can do so without returning to the station.

Lessons learned

1) Construction infrastructure should be established for every station as well as having a formal project manager to manage the BWC program overall and at each station.
2) Consistent messaging internally and externally is important in the dissemination of policies to ensure that both the public and departmental personnel are clear in the intent and execution of the policies.
3) Include the courts early on in the discussion, especially when it comes to civil litigation that involves officers, and which posed unanticipated issues for LAPD around redaction, licenses, and juveniles.

Spokane Police Department

On May 22, 2018, the Ad Hoc Committee interviewed Major Kevin King and Officer Ryan Snyder of the Spokane, Washington Police Department (SPD). Major King has overseen the development and implementation of BWCs to patrol officers of the SPD from 2012 on. Officer Snyder manages the entire SPD BWC program.

Both Major King and the SPD Chief of Police are strongly supportive of the use of BWCs by patrol officers. Spokane, Washington has a population of approximately 217,000.[22] The SPD currently has 328 sworn officers and after the 2014 pilot program conducted in conjunction with Arizona State University, it fully implemented a BWC program in 2016. 251 BWCs have been acquired and assigned to all SPD patrol officers, from the rank of sergeant on down, and to some of its detective investigators. While there had been resistance by the rank and file officers initially, that has changed. Most officers now see significant benefits to the use of BWCs. SPD also obtained considerable community buy-in from conducting forty public forums to explain how BWCs operate (including test video), their limitations, and the SPD policies. Not only did this help with community buy-in, but importantly it helped to manage public expectations.

[22] United States Census Bureau, "QuickFacts Spokane City, Washington Population Estimates July 1, 2017, "https://www.census.gov/quickfacts/fact/table/spokanecitywashington,US/PST045217

Efficacy

The SPD strongly believes that the BWCs are effective. Given the size of the SPD, they have not experienced a large number of officer-involved shootings.[23] There were seven in 2017 and six the year earlier. All were captured on BWC video. The videos showed that all the shootings were justified. Overall use of force within the SPD has gone down since the full rollout of BWCs, but because there have been other policy changes relating to the use of force, it is difficult to disaggregate how much effect BWCs played a role as opposed to other policy changes on this downward trend line. In addition, there has been a decrease in citizen complaints, especially demeanor complaints. Many complaints have been avoided entirely by allowing the concerned citizen to view the BWC video. Administratively, citizen complaints are resolved faster and with greater certainty of facts. Video often eliminates the "he said, she said" problem with actually resolving complaints. While there is a significant cost to implementing BWCs and unquestionably an increase in workload for officers and administrators, the costs are considered well worth it, given the benefits.

Policy

Policies regarding BWCs were promulgated in 2016 concurrent with the equipping of patrol officers with BWCs. The policies are incorporated into the SPD Policy Manual, as Policy 703.[24]

Noteworthy policies include:

1) SPD officers are required to use their BWCs to record "law enforcement activity," and then examples are given regarding what constitutes law enforcement activity, such as traffic stops, searches, and pursuits [703.4 C and D1 (a)].
2) The officer has discretion to turn the BWC off in sensitive situations or exigent circumstances, but must document why s/he made the decision to do so [703.4 D1 (b)]. In general, officers are given more discretion regarding activation and de-activation than most policies we reviewed.
3) During traffic stops and prior to custodial interrogations, officers shall give notification that they are recording [703.4 D2 (a) 1 and 2].
4) Officers may turn off recordings during sensitive communications [703.4 D1 b(1)b] and should document reasons for doing so [703.4 D2].
5) Officers involved in categorical uses of force are allowed to review video footage before giving a statement [703.9A].
6) Supervisors may review recordings for administrative investigations such as complaints [703.9 B5].

[23] Major King of SPD noted that the numbers, although small, are high for the Spokane PD.
[24] Policy Manual – Body Worn Cameras, *Spokane Police Department*, 2017, https://static.spokanecity.org/documents/police/accountability/bodycamera/spd-body-camera-policy.pdf

7) There is no clear release of video policy after a categorical or lethal use of force. Until the investigation is complete, any release has to be cleared by the county prosecutor's office. SPD must deal with an extremely broad PRA in the State of Washington in which any member of the public must be given access to any and all video. This imposes a huge burden in terms of storing, managing, reviewing and redacting video to comply with the State of Washington's onerous PRA.

Costs/Budget

In 2017, the SPD entered into a five-year contract for the equipment, licenses and storage for its BWC program. They have unlimited storage capability under their contract through Evidence.Com. They do not use their own servers as there is a great risk of the system crashing and having additional costs for its restoration. The total contract is $1.7 million, or $340,000 per year. They have one FTE, Officer Ryan Snyder, who manages the program. In addition to the contract costs, they have hired one FTE mainly for redaction of PRA video. Although not built into its budget, the SPD has calculated that a patrol officer spends an extra 28 minutes per shift because of the need to review video as part of their report writing.[25] In other words, part of the increase in workload related to BWCs reduces, on average, time spent on the streets by about a half an hour for each eight hour shift. For the Spokane PD to maintain its pre-BWC patrol coverage would require an additional 16 officers, or FTE.

Lessons learned

1) Get stakeholders on board early in the process, particularly the leaders among patrol officers that may have reservations towards BWCs, in order to gain their buy-in.
2) There needs to be clarity in the wording of the policy, such as when to actually activate the BWC, as they initially had inconsistencies in when the officers were turning them on. They are currently reviewing the policy to address this.
3) Officers were getting cautious in recording during certain sensitive locations due to the Health Insurance Portability and Accountability Act (HIPAA) considerations. It was determined that it may be easier to just record and redact later if necessary to avoid losing potentially critical footage.
4) Costs for redaction could easily become burdensome. Redaction costs need to be carefully considered.
5) Having an internal BWC Review Board which evaluates the program and policy annually and make corrections where necessary may be beneficial.

[25] Etico Solutions Inc., "Spokane Police Department Patrol Allocation, Beat Design, and Shift Scheduling Study," 2017, 21, attached hereto as Exhibit 3.

E. Review of Literature and Academic Research

There have been many claims that BWCs result in a number of benefits, to include reduction in overall use of force by police, decreases in civilian complaints, improvement in the way civilians are treated by police, improvement in the behavior of civilians interacting with police, fewer lawsuits and judgments for use of excessive force, more rapid and just adjudication of civilian complaints, disciplinary and judicial proceedings, greater accountability when inappropriate force has been used, less time spent in court, and improved transparency. Unfortunately, some of these claims have not been researched at all or the research has been limited. Even where there is academic research on the effects of BWCs, the outcomes are often mixed. On rates of law enforcement use of force, for example, the findings go both ways. Some studies of BWCs have indicated lower rates of police use of force.[26] Other studies, particularly the study of the D.C. MPD, showed no effects of BWCs on police uses of force.[27] In one study, there was even an increase in fatal shootings by police of civilians.[28] Because of the small numbers, however, most of the research to date has not grappled with the most significant question, post-Ferguson: do BWCs reduce the inappropriate use of force (i.e., excessive, unnecessary, out of policy force), especially the unwarranted use of lethal force?

BWCs appear to result in a reduction in the number of citizen complaints.[29] These can arguably result in fewer lawsuits and judgments that inevitably arise from such complaints.

There is data that indicates that BWCs may reduce the time police officers have to spend in court. A recent cost benefit analysis showed an annual savings of around $3,000 per BWC user through the more expeditious investigation of complaints.[30]

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[26] Anthony Braga et al., "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department," *National Institute of Justice*, 2017. https://www.cna.org/cna_files/pdf/IRM-2017-U-016112-Final.pdf; Wesley Jennings, Mathew Lynch and Lorie Fridell, "Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment," *Journal of Criminal Justice 43*, 2015, https://media.fox13news.com/media.fox13news.com/document_dev/2016/03/15/JCJ2015paper_1009260_ver1.0.pdf; Michael White, Janne Gaub and Natalie Todak, "Exploring the Potential for Body-Worn Cameras to Reduce Violence in Police–Citizen Encounters," *Policing 12 (1),* 2017, https://www.bja.gov/bwc/pdfs/2017-Policing-Spokane-Force-and-Complaints.pdf.

[27] Yokum, Ravishankar and Coppock, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial;" Barak Ariel et al., "Report: Increases in Police Use of Force in the Presence of Body-Worn Cameras are Driven by Officer Discretion: a Protocol-Based Subgroup Analysis of Ten Randomized Experiments," *Journal of Experimental Criminology 12,* 2016, https://link.springer.com/content/pdf/10.1007%2Fs11292-016-9261-3.pdf;

[28] Min-Seok Pang and Paul Pavlou, "Armed with Technology: The Effects on Fatal Shootings of Civilians by the Police, 2016, https://www.bja.gov/bwc/pdfs/SSRN-id2808662.pdf

[29] Braga et al, "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department;" White, Gaub and Todak, "Exploring the Potential for Body-Worn Cameras to Reduce Violence in Police–Citizen Encounters," 2017; Jennings, Lynch and Fridell, "Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment," 2015; Police Executive Research Forum, "Citizen Perceptions of Body-Worn Cameras: A Randomized Controlled Trial," 2017, https://perf.memberclicks.net/assets/bodyworncameraperceptions.pdf.

[30] Braga et al, "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department."

Studies show other benefits of BWCs. For example, a recent study on the LAPD shows positive outcomes on procedural justice, or the idea of fairness during police-citizen interactions involving law enforcement officers using BWCs.[31] The use of BWCs is associated with an increase in procedural justice experienced by the civilians.

Finally, BWCs are increasingly used as an important tool for training law enforcement officers by allowing the review of incidents, not only to identify areas of improvement, but to show how different law enforcement situations are handled appropriately and within policy.[32]

F. Public Comment and Feedback

The COC solicited and received public comment regarding the LASD's proposed BWC Program at its regular monthly and Town Hall meetings. The issue was explicitly agendized for the November 16, 2017 COC meeting and through several town hall meetings where public input was solicited. Status reports were given at several COC meetings. During the June 10, 2017 town hall meeting, Dignity and Power Now voiced its objection to BWCs, stating that research has shown no evidence of their impact on use of force, and in some studies has seen an uptick in use of force rates. Furthermore, they stated their objection to more surveillance from the LASD which they asserted has a history of tampering with evidence.

Public comment gained from the COC and town hall meetings generally yielded both support and opposition towards LASD's use of BWCs. Those who voiced support mentioned the need for increased transparency and accountability on the part of LASD regarding incidents such as deputy-involved shootings, but also to improve civilian behavior. Those opposed stated that they are another tool for surveillance and questioned the LASD's goals for their use, i.e., in merely reducing liability and in showing only footage that puts LASD in a positive light.

The Ad Hoc Committee requested COC staff to develop a survey to obtain public feedback. The survey had 13 questions concerning the use of BWCs as well as policy areas and was available in English and Spanish. The COC staff disseminated the survey via town hall and other meetings as well as online. The online survey was available through the COC website from April 26th through May 17th. It was advertised on the COC website, through flyers distributed at COC monthly and town hall meetings, and via LASD's general "NIXLE" subscription list. The online survey received 2,252

[31] John McCluskey et al., "Assessing the Effects of Body-Worn Cameras on Procedural Justice in the Los Angeles Police Department," 2018, http://www.bwctta.com/sites/default/files/Files/Resources/1%20Procedural%20Justice%20CRIM%20%2010%2017%202017.pdf

[32] Michael White, Police Officer Body-Worn Cameras - Assessing the Evidence, 2014, Office of Community Oriented Policing Services, https://www.ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police_Officer_Body-Worn_Cameras.pdf

responses (of which five completed the Spanish version). The hard copy surveys were distributed at several locations from March 29th through May 10th, with 148 hard copy surveys collected (of which 12 completed the Spanish version).

For the analysis, responses which indicated zip code areas outside of Los Angeles County were excluded (online=73; hard copy=3), yielding a total of 2,179 online responses and 145 hard copy responses. The responses from both methods overall followed a similar trend. The results showed that a majority of respondents:[33]

- Supported the use of LASD-issued BWCs by deputies
- Opposed giving deputies discretion when to record or not record
- Supported clear policies stating when to activate or record
- Supported deputy notification of civilians that encounters are being recorded
- Supported recordings being released to the public

General concerns noted by the respondents were around deputies tampering with footage, having the ability to mute or turn off recording, as well as its use for surveillance.

The COC also received a written submission from the American Civil Liberties Union (ACLU) Southern California in a letter dated November 15, 2017.[34] The ACLU believes that BWCs should be used for deputy oversight and not for evidentiary purposes. Their letter enumerated several policy requirements for the LASD's BWC program to address, including:

1. Deputies should be required to record all law enforcement encounters with the public.
2. Deputies must not be allowed to view recordings before providing a statement in use of force or complaint investigations.
3. Deputies should give notice to civilians that they are recording.
4. The LASD should timely release footage of officer-involved shootings and other serious uses of force within 30 days after an incident.
5. BWCs should not be used in conjunction with other surveillance tools such as facial recognition technology.

[33] See Exhibit 4.
[34] See ACLU's letter to the Civilian Oversight Commission dated November 15, 2017, attached hereto as Exhibit 5.

V. FINDINGS AND ANALYSIS

A. Summary of Key Findings

Based on our study, we find that the weight of the evidence is that BWCs are effective and will likely have substantial benefits for the County, the LASD and the residents of Los Angeles County. They will:

(1) Likely reduce excessive and unnecessary use of force. In particular, deployment of BWCs is likely to reduce uses of all categories of force, including lethal force, by decreasing the rate of use of force in the first place. In other words, BWCs have the potential to save lives that would otherwise be lost.
(2) Over time, BWCs will likely substantially reduce millions of dollars in judgments and settlements by the County based on lawsuits alleging use of excessive or unnecessary force.
(3) Will reduce the number of civilian complaints and the time, effort and costs to deal with and resolve such complaints.
(4) Behavior of deputies and civilians interacting with LASD deputies will improve.
(5) Actual and perceived degrees of social justice will ensue, i.e., there is likely to be a greater degree of dignity and respect, actual and perceived, shown by deputies to the civilians they encounter (sometimes defined as "procedural justice.")
(6) Potential civil unrest may be avoided or reduced as a result of the timely release of video recordings of shootings resulting in death or serious bodily injury.
(7) The quality of evidence used in the criminal justice system will improve, leading to better prosecutive decisions, increased reliability and, whether there is a guilty plea or a trial, improvements in achieving just results based upon the facts.

These are important benefits, and in our view, make the prompt implementation of the Sheriff's BWC Program imperative.

B. Analysis

I. Efficacy of BWCs

Within the past several years, since Ferguson, body worn cameras and video recording of incidents have become an essential part of modern American policing. BWCs are effective, and there is no turning back. The public itself has come to expect that major law enforcement incidents will be captured on video. Indeed, the COC's public feedback survey overwhelmingly supports the use of BWCs by the LASD. We do not believe that the foregoing is reason alone to adopt BWCs, but given that two thirds of

the major law enforcement agencies of our nation have or are implementing BWCs for their patrol personnel, it is fair to ask why the LASD is not one of them. This is particularly true as the evidence mounts that BWCs are effective for a number of important purposes.

II. BWCs will likely reduce excessive and unnecessary force.

Arguably, the promise that BWCs will reduce excessive force, particularly lethal force, has been the most important driver for adopting this technology. Deadly encounters with law enforcement and their aftermath still roil communities across our nation and give extraordinary momentum and urgency to the use of BWCs.

The evidence of whether BWCs have reduced the use of force, including inappropriate[35] or excessive use of force, is mixed. A number of studies of BWCs indicate that overall use of force is reduced when law enforcement agencies implement BWCs. This has included studies of the LVMPD, the Orlando Police Department and the SPD.[36]

On the other hand, a relatively recent study of the D.C. MPD suggests that BWCs had no impact, one way or other, on the use of force.[37] Although data regarding use of force, and level of such force, makes interpreting use of force trends difficult, the more important question is whether inappropriate use of force is reduced. The study of the D.C. MPD did not address this issue, nor have most other studies. Analysis of the inappropriate use of force is much more difficult given the relative paucity of data. As was the case in Spokane, use of force was markedly reduced after BWCs were introduced, but how BWCs factored in could not easily be disaggregated from other reforms put into place.

To understand the deterrent effect of cameras on significant use of force, however, we need look no further than the LASD itself. Referring to the need to expand CCTV cameras in the County jails, the Citizens Committee on Jail Violence (CCJV) in its September 2012 report found that "[c]ameras serve as a deterrent to the use of unnecessary and excessive use of force …."[38] Urging the prompt installation of cameras at the Twin Towers and the other facilities of the L.A. County jail system, the CCJV further observed that "it was unfortunate that it took years of discussion and delay before they were installed at Men's Central Jail."[39] As a result of the CCJV

[35] By "inappropriate" use of force, we mean force that is excessive or unnecessary, out of policy, unreasonable under the circumstances and unconstitutional.

[36] Braga et al., "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department"; Jennings, Lynch and Fridell, "Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment;" White, Gaub and Todak, "Exploring the Potential for Body-Worn Cameras to Reduce Violence in Police–Citizen Encounters."

[37] Yokum, Ravishankar and Coppock, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial."

[38] Report of the Citizen's Commission on Jail Violence, September 2012, 8, http://ccjv.lacounty.gov/wp-content/uploads/2012/09/CCJV-Report.pdf.

[39] Ibid.

recommendation, LASD has now deployed CCTV cameras to every corridor of every facility of the Los Angeles County Jails.

While other CCJV recommended reforms have played a part, widespread camera coverage has deterred the use of significant force by deputies against inmates. The more serious use of force appears to have declined. Indeed, in a recent report, the court-appointed monitors have stated that Category 3, the most serious use of force which includes broken bones, has been "nearly eliminated."[40]

There is no question that cameras affect behavior. And there is no reason to think that this will be any less true of BWCs. Intuitively, and consistent with the CCJV's finding on this point, we believe that BWCs will reduce the inappropriate use of force, and most especially, the use of lethal force when it is not justified. Unfortunately, it is taking almost as long to get BWCs to patrol deputies as it did to get widespread camera coverage in the County jails.

III. Over time, BWCs will save the County money

Over the past five years, between Fiscal Year (FY) 2012-13 through FY 2016-17, the County has paid out $95.1 million in judgments and settlements in civil cases involving excessive force by Sheriff's patrol deputies.[41] Most of these cases involved death or serious bodily injury as a result of shootings and were based on allegations of inappropriate use of force.

We cannot say that the implementation of a BWC program by the LASD will be entirely paid for by the reduction in indefensible uses of force by deputies, but we do find that such payouts will likely be reduced over time. By funding the LASD's BWC program at the level needed to make it effective, the County will potentially save millions of dollars annually that it would otherwise pay out in future judgments and settlements.

IV. Civilian complaints will decrease

A great deal of the available evidence indicates that civilian complaints against law enforcement decrease when BWCs are implemented.[42] This is a significant benefit of BWC programs. First, allowing citizens to view BWC footage often results in a decision not to file a complaint. Second, it allows a citizen complaint to be resolved quickly and definitively. Both of these outcomes reduce the time and effort that would otherwise be

[40] Panel's Third Report filed March 22, 2018 in Rosas v. Baca, 7.
[41] Office of the County Counsel, "Overview of Sheriff's Department Law Enforcement Paid Judgments and Settlements FY 2011-12 through FY 2015-15, Presentation to the COC meeting March 23, 2017; Steven Estabrook, personal communication, June 11, 2018.
[42] Braga et al., "The Benefits of Body-Worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department"; Jennings, Lynch and Fridell, "Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs) on Response-to-Resistance and Serious External Complaints: Evidence from the Orlando Police Department (OPD) Experience Utilizing a Randomized Controlled Experiment;" White, Gaub and Todak, "Exploring the Potential for Body-Worn Cameras to Reduce Violence in Police–Citizen Encounters."

involved in investigating and resolving complaints. Third, if officer conduct warrants counseling or discipline, appropriate action can be taken.

V. Both civilian and officer behavior tends to improve when the camera is on

The evidence tends to indicate that a community member's interactions with law enforcement and vice versa are more civil and less confrontational when the civilian is aware a BWC is in use.[43] The presence of BWCs has led to a perceived "civilizing effect" on both.[44] This "civilizing" effect of BWCs leads to less escalation and less force.

VI. Increase in actual and perceived social justice

Social justice issues largely involve how law enforcement treats citizens. The preliminary evidence strongly suggests that BWCs improve both the actuality and perception of better interactions between law enforcement and the public. One of the most important ways of building public trust is for law enforcement officers to treat people with whom they interact with dignity and respect. That this social justice issue is facilitated by BWCs is another benefit that flows from their implementation.[45]

VII. Reducing social unrest following a deputy involved shooting

One of the effects of Ferguson and related incidents in Baltimore, New York City and elsewhere is serious social unrest because of the actual or perceived lack of justification for the use of lethal force, sometimes against those who are or are believed to be unarmed. The damage caused by rioting, both in terms of property loss and disruption, is often incalculable. Most who have studied this issue believe that BWCs coupled with the ability of the head of a law enforcement organization to timely release video footage would go a long way in ameliorating these situations. We agree. Even though only the LAPD and the LVMPD have adopted public release policies,[46] we are persuaded that making timely public release of BWC footage of use of force incidents resulting in death or serious bodily injury is a best practice for modern urban policing, and it should be adopted by the LASD. See Recommendation 13.

VIII. The quality of justice is enhanced with BWC video

Often lost in the debate over BWC is the significant benefit that inures to the criminal justice system itself. The fact is that the ability to record law enforcement and

[43] McClure et al., "How Body Cameras Affect Community Members' Perceptions of Police, *Urban Institute*, 2017, https://www.urban.org/sites/default/files/publication/91331/2001307-how-body-cameras-affect-community-members-perceptions-of-police_5.pdf; Toliver et al., 2014.
[44] Natalie Todak, Janne Gaub and Michael White, "What Happens Downstream? External Stakeholder Perceptions of Police Body-Worn Cameras, A*rizona State University Center for Violence Prevention and Community Safety*, 2017, https://www.researchgate.net/publication/320170875_What_Happens_Downstream_External_Stakeholder_Perceptions_of_Police_Body-Worn_Cameras
[45] McCluskey et al., "Assessing the Effects of Body-Worn Cameras on Procedural Justice in the Los Angeles Police Department."
[46] Office of the Chief of Police, Administrative Order No. 6, "Critical Incident Video Release Policy;" Body Worn Camera Recordings, *Las Vegas Metropolitan Police Department*, https://www.lvmpd.com/en-us/Pages/BodyCameraVideo.aspx

investigative activity with members of the public results in better and more reliable evidence. Such evidence can result in a speedier exoneration of the innocent[47] and more reliable evidence against the guilty. The same benefits are derived in the disciplinary proceedings. Moreover, as the WPD Police Chief Ramsay observed, a secondary effect of BWCs is to save time of officers having to testify in court because it is unnecessary when the incontrovertible evidence results in guilty pleas or dismissals. BWCs will also save court time and the time of Deputy District Attorneys and public defenders.[48]

In light of the substantial benefits of BWCs, we recommend that the Board of Supervisors promptly provide the funding necessary for the LASD to implement BWCs to all Patrol deputies. See Recommendation 1.

IX. Timing

In his June 2017 BWC Plan, Sheriff McDonnell proposed an implementation plan over four years, once funding was approved by the Board.[49] The plan envisions a pre-deployment phase, followed by three one-year implementation phases during which an increasing number of LASD patrol deputies would be issued BWCs. In other words, once funding is approved, and this has already been delayed by at least a year, it will take four years to complete implementation. We believe the benefits of BWCs are such that a more ambitious completion date is warranted.

The LAPD and the LASD both piloted BWCs going back to 2014. Once the LAPD secured funding in 2016, it was able to complete implementation of a BWC program for all of its patrol officers within two years. We believe that when the LASD BWC Plan is funded by the Board, the LASD should complete its rollout of BWCs to all 5,900 patrol deputies within two years. See Recommendation 2.

X. Cost/Budget

The main impediment in moving forward with the Sheriff's BWC Plan appears to be the cost. Over the four year/four phases of BWC implementation, approximately $18 million, averaging $4.5 million a year, are for one-time startup costs. The real kicker is that the Sheriff seeks an increase in annual, recurring funding to support the BWC Plan of $55.2 million. Most of this amount, slightly over 75%, is for the 239 additional FTE (Salary &

[47] One example is *Scott v Harris*, 550 U.S. 372 (2007). Under *Scott*, the U.S. Supreme Court held that unfounded civil lawsuits against law enforcement personnel can be disposed of before a lengthy and expensive trial where there is clear video evidence that an officer's conduct was reasonable.

[48] Braga et al., 2017; Lindsay Miller, Jessica Toliver and Police Executive Research Forum, "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," *Office of Community Oriented Policing Services*, 2014, http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf

[49] Letter to the Honorable Board of Supervisors by Sheriff Jim McDonnell, "Body Worn Camera Plan."

Employee Benefits) for sworn and unsworn personnel that the Sheriff projects will be needed to effectively implement the program.[50]

The Sheriff's BWC program will not move forward until it is funded. It appears that the majority of the Board supports a BWC program for the LASD, but are not convinced of the level of funding necessary.

Leaving aside the staffing needed for deploying BWCs and having the personnel to administer the program, the base level costs are not exceptionally great for getting the equipment and the basic storage capability. The LAPD's five-year contract for these services, including upgrades that become available, is $32 million for a somewhat comparable number of uniformed patrol personnel. While the LAPD recognizes there are significant workload increases for its personnel, it has been in a position to absorb this workload evidently with no increase in authorized and funded FTE. Our knowledge of the LASD staffing challenges, even without a BWC program, convinces us that the LASD is not in a position to do likewise.

Some of the smaller police departments we examined were able to implement a BWC program for their patrol officers for rather modest amounts and little for increased staffing. Indeed, the annual recurring contract costs for the average police department are approximately $1,000 per user. In some instances the law enforcement agencies implemented before fully comprehending the workload impact. Moreover, as noted by the CEO in her October 10, 2017 letter to the Board, "the size and complexity" of the LASD's proposed BWC plan "makes comparisons difficult."[51]

At a minimum, the LASD will need additional personnel in the form of several FTE for the new BWC Bureau and three FTE at each of its 23 Stations, plus nine other units with patrol-like functions (Transit Services, Parks, County Services, Community Colleges Bureaus). Additionally other support units (Headquarters detective units, Homicide, Internal Affairs, Internal Criminal Investigations, Audit and Accountability Bureaus, etc.) will have a potential 25% increase in workload.[52] Moreover, we note the additional time for report writing that will be needed for LASD patrol deputies when BWC video footage becomes available. The Spokane PD study indicates nearly 30 additional minutes each shift, and translates into additional FTE for patrol deputies for the LASD if implementation of BWCs is to be accomplished without reducing patrol time in contract cities and unincorporated areas of the County.

The LASD budget request, which was evaluated by the CEO in October 2017, also appears to include a significant number of FTE for handling California PRA requests. There is no question, as is evident from the budgets of police departments in the State

[50] Chief Executive Office, "Sheriff's Plan to Implement Body-worn Cameras (Item No.2, Agenda of July 12, 2016)", 6.
[51] Chief Executive Office, "Sheriff's Plan to Implement Body-worn Cameras (Item No.2, Agenda of July 12, 2016)", 7.
[52] Chief Executive Office, "Sheriff's Plan to Implement Body-worn Cameras (Item No.2, Agenda of July 12, 2016)", 5.

of Washington, including the Seattle and Spokane PDs, that the review and redaction process for PRA requests add significantly to their workload and requires additional FTE. Indeed, this workload and attendant costs potentially threaten BWC programs in the State of Washington. Thus, one significant difference between the LAPD and LASD budgeting is that the LAPD factored in no workload increase to handle California PRA requests on the ground that all BWC video of members of the public captured for law enforcement and investigative purposes is "evidence" and, therefore exempt from California PRA requests. The LASD appears to have factored in FTE to handle and process California PRA requests, which will result in the review of prodigious amounts of video and making the needed redactions to assure privacy, etc.

Our own analysis is that the LAPD's position is correct and whatever FTE, and it is not clear what that number is, requested by the Sheriff for this purpose is unnecessary, at least at this time.

Our preliminary budget analysis leads us to conclude that while the LASD will require a substantial increase in staffing, or FTE, to implement a BWC plan, it may well be somewhat less than the 239 requested. As this appears to be the holdup in moving forward with a BWC plan, we recommend that the Sheriff, the CEO and the Board meet, confer and resolve the budget impasse as expeditiously as possible. See Recommendation 3. If needed, the COC offers its services to mediate and/or facilitate such a meeting.

We are mindful that the CEO, which has already reviewed the budget proposal for BWCs, recommended that the LASD hire a consultant to evaluate the BWC plan and its operational impact. We believe bringing in a consultant should be viewed as a last resort as it will likely delay implementation of BWCs another year. Any consultant hired by the County will have to be brought up to speed on the issue.

In sum, we believe that the political will is there on the part of the Sheriff and the Board. It is time to overcome the budgetary hurdle and move forward with BWCs.

The COC is also aware that similar efforts in the past have been met with some hesitation on the part of LASD. For example, the Ad Hoc Committee reviewed the 1992 Report by the Special Counsel James G. Kolts, a report issued over 25 years ago, that recommended video cameras be installed in patrol cars.[53] However, the LASD at that time decided against installing cameras in patrol cars, regarding them as "somewhat useless" due to the cost and the fact that it was only able to resolve a few complaints of officer misconduct.[54] This rejection by the LASD is a cautionary tale and raises

[53] A Report by Special Counsel James G. Kolts & Staff , "The Los Angeles County Sheriff's Department," 1992, https://www.clearinghouse.net/chDocs/public/PN-CA-0001-0023.pdf

[54] See Lt. Arthur Ng's (LASD Risk Impact Unit) letter to Captain Lee McCown (LASD Risk Management Bureau) dated January 30, 1996, attached hereto as Exhibit 6.

concerns, although we are satisfied that the current LASD leadership genuinely desires to implement BWCs and is not using costs as a delaying tactic.

Some degree of cost mitigation would likely be realized in those LEAs deploying BWCs. Although precious few BWC programs have been accompanied by cost-benefit analysis, one exception is a September 2017 study of the LVMPD which provides some interesting metrics.[55] The study determined that there was a per-unit per year cost of between $828 and $1,097. This appears to be the per unit contract cost with a BWC vendor. The study projected an offset of between $2,909 and $3,178 per user annually. The cost savings in this study were based on savings to be realized primarily through significantly faster investigations of complaints. Additionally, the study showed that complaints themselves were reduced. The study projected that were the entire 1,400 person LVMPD patrol force given BWCs, the annual savings would be $4.1 to $4.4 million.

Scaling this to the LASD, annual savings for less time responding to civilian complaints of approximately $16-18 million annually could be realized if the assumptions of the LVMPD are valid for the LASD.[56]

Another cost benefit the study noted was an increase in officer productivity and a decrease in the uses of force, both cost reducers. The LVMPD study strongly suggests that BWC technology can, in the long run, save officer time and money.

XI. Policy

Although much work has gone into the BWC policy by the LASD, Sheriff McDonnell has yet to announce the policies he will adopt in conjunction with the implementation of his BWC Plan, once funded. Much of the Ad Hoc Committee and staff's time and effort has been spent looking at the policies that are needed to properly implement a BWC program and which policies adopted by other law enforcement agencies are, in our judgment, best practices. Indeed, the Sheriff requested the COC to advise him regarding the BWC policy and to seek public input.

As the ACLU has observed, BWCs are a win for all, "but only if they are deployed within a framework of strong policies."[57] We agree. The Ad Hoc Committee, after careful study, believes it is proposing the "right" policies – the ones that strike us as best

[55] Braga et al., "The Benefits of Body-worn Cameras: New Findings from a Randomized Controlled Trial at the Las Vegas Metropolitan Police Department," 10-11.
[56] This calculation is based on the fact that the number of projected BWC users in the LASD is roughly four times the number of those in LVMPD.
[57] Jay Stanley, Police Body-Mounted Cameras: With Right Policies in Place, A Win for All, Version 2.0, Washington, DC: *American Civil Liberties Union*, 2015, 1, https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf

practices – and proposes to the full Commission that it adopt the policy recommendations set forth below as the recommendations of the COC. We discuss our reasoning for each recommendation.

Recommendation 4. In the interest of transparency, the Sheriff should make his BWC policy accessible to the public. This could be done by posting it online on the LASD website once it is adopted.

This recommendation is axiomatic, and we are confident that the Sheriff would do so, even if we made no recommendation. Still, based on the Upturn scorecard, which reflected that fully 41% of law enforcement agencies with a BWC program do not make their BWC policy available to the public,[58] we believe this recommendation is fundamental and a threshold requirement for a minimal degree of transparency.

Recommendation 5. We can imagine nothing worse than having BWCs deployed, but not activated before a serious or lethal use of force incident. A law enforcement agency may be better off not having BWCs than having BWCs that are not activated in high visibility situations. Yet regrettably this has occurred in law enforcement agencies that have equipped their officers with BWCs.[59]

While some law enforcement organizations give a measure of discretion as to when BWCs are activated, the better practice is to make activation mandatory for *all* law enforcement and investigatory interactions with the public. This will further enhance transparency and the integrity of the department. It should be clear that activation should occur *before* the law enforcement activity begins, not after arrival on the scene. The limited exceptions to policy, e.g., when requested by a rape victim, in child abuse cases, or for confidential informants, need to be clearly defined. When officers are given discretion to decide when to activate/deactivate, it is likely to lead to unintended consequences such as misperceptions, complaints and possible litigation.[60] This is also supported by research that shows that minimizing officer discretion in activating the camera is associated with a decrease in use of force rates.[61] Last, while a list of examples may be given as to when activation is required, it should be clear that these are not exhaustive. If a patrol deputy is interacting or about to interact with a member of the public, the BWC should be activated. Results from the COC's public feedback survey also show strong support for having clear and specific policies on when to activate BWCs.

[58] The Leadership Conference on Civil and Human Rights & Upturn, "Police Body Worn Cameras: A Policy Scorecard."
[59] Annie Sweeney and Jeremy Gorner, "Body Camera Failed to Record Chicago Police Shooting of Black Teenager," *Tribune News Service*, August 2, 2016, http://www.governing.com/topics/public-justice-safety/tns-body-camera-failed-record-chicago-police-shooting-black-teenager.html
[60] Howard Wasserman, "Moral Panics and Body Cameras," *Washington University Law Review* 92 (3), 2015. https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6136&context=law_lawreview
[61] Barak Ariel et al., "Report: Increases in Police Use of Force in the Presence of Body-Worn Cameras are Driven by Officer Discretion: a Protocol-Based Subgroup Analysis of Ten Randomized Experiments."

Recommendation 6. The reason for failure to activate or de-activation, where activation is required by policy, must be documented in writing or on the video recording device. This is clearly the best practice. Intentional failure to activate, without satisfactory justification, is likely to cause public consternation and should be subject to discipline.

Recommendation 7. The value of BWCs relies heavily on the integrity of the video footage produced by them. It follows that altering or editing a video must be a serious violation of policy that can, and ordinarily will, lead to discipline.

Recommendation 8. Video captured by a deputy should ordinarily be available to be reviewed by him/her as part of his/her official duties, e.g., for report writing, responding to citizens' demeanor complaints and the like. But there is disagreement whether a law enforcement officer involved in an officer-involved shooting or the use of lethal force should be allowed to view the video before making a statement. While BWC policy of LEAs goes both ways on this issue, the majority of BWC policies currently allow viewing of the video before interview.[62]

As noted earlier, the Ad Hoc Committee held a meeting with ALADS on June 13, 2018. While ALADS confirmed their support for a BWC program, they stated that their support was conditional upon adequate funding, training for deputies, and appropriate policies. Many police departments, after consulting with their union representatives, permit officer pre-viewing of video before making a statement. Further, we note that there is a U.S. Department of Justice-PERF recommendation that "officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident."[63]

While reasonable minds may differ, there are several reasons why the no-viewing-before-interview policy strikes us as the best practice. First, as other law enforcement experts have observed, a statement made after viewing the video is likely to be overly influenced by the video. In that situation, much valuable information may be lost, including what was observed by the officer that is not captured on the video and the deputies' perceptions of the event. Moreover, the OIG report cites the public's misgivings over potential tailoring of statements to conform to the video.[64] Both accuracy and accountability suggest that pre-statement access to video should not be allowed. Second, the current policy of the LASD regarding CCTV cameras in the jails, where serious use of force has occurred, is to not allow deputies to see the video footage before writing their reports. This policy was based on a recommendation of the CCJV regarding video captured on jail cameras.[65] The policy for BWC video should be

[62] The Leadership Conference on Civil and Human Rights & Upturn, "Police Body Worn Cameras: A Policy Scorecard."
[63] Miller, Toliver and Police Executive Research Forum, "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," 45.
[64] Office of Inspector General, "Body-Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program," 28.
[65] Report of the Citizens Commission on Jail Violence (CCJV), September 2012, Recommendation 7.3, 171.

consistent with the LASD's policy that applies to video of use of force in the Custody Division. Citing the President's Task Force on 21st Century policing, the OIG considered this issue and advocated for a policy against allowing involved deputies to view video before making a statement.[66]

The OIG suggested a policy, however, to allow a deputy to view the use of force video *after* making his/her initial report or statement, once a supervisor so approves, so as to provide an "opportunity to the deputy to supplement his or her statement after viewing the video."[67] We agree with the OIG. Affording deputies the opportunity to review the video after they have made their initial statement is appropriate. The objective is not to set up a deputy, but to assure that significant evidence is not lost because of over-reliance on BWC video. Supplemental reports are frequently provided by deputies and their submission are often nothing more than supplying additional facts not previously recalled or perceived at the time of the initial interview.

Recommendation 9. No deputy should be sent out to the field with a BWC without the training to operate it properly and without understanding the LASD BWC policy. Given the LASD's shorthandedness, even this essential training will require some funding for training augmentation and overtime.

Recommendation 10. The LASD must make clear policies around BWCs. And it needs to make clear that violation of BWC policy will result in discipline. This recommendation is self-evident and requires no lengthy elaboration. No policy is credible if there are not clearly understood consequences that flow from failure to abide by it.

Recommendation 11. The COC Ad Hoc Committee has become aware that a substantial number of Patrol deputies – perhaps in the hundreds -- have and may be using personally-owned BWCs while on duty.[68] Yet there are absolutely no policies governing their use nor even allowing access by the LASD to video footage on these devices. The LASD advises that they are legally prohibited from demanding video recorded by a deputy on a personally owned device. This is an untenable situation and a recipe for disaster. The Police Executive Research Forum (PERF) report strongly advised against the use of personally owned devices.[69] It is an additional reason that we are urging funding and a rapid implementation of LASD-authorized BWCs. The Sheriff will be hard put to ban personally-owned BWCs until the LASD can fund and issue BWCs as part of the equipment that a patrol deputy must wear. As part of the policy package around implementation, therefore, we include Recommendation No. 11,

[66] Office of Inspector General, "Body-Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program," 28-30.
[67] Office of Inspector General, "Body-Worn Cameras: Policy Recommendations and Review of LASD's Pilot Program," 30.
[68] Peter Johnson, "Some LA Sheriff's Deputies Equipping Selves with Body Cameras," *Fox News.com Police and Law Enforcement*, August 13, 2017, http://www.foxnews.com/us/2017/08/13/some-la-sheriffs-deputies-equipping-selves-with-body-cameras.html
[69] Miller, Toliver and Police Executive Research Forum, "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," 53.

i.e., a prohibition on use of personally-owned BWC devices for official LASD business or while on duty.

Recommendation 12. Regular audit and inspections will be essential, especially to assure policy compliance with BWC activation policy and the like. This will have some resource impact on the LASD, but should primarily be covered by assigning a BWC manager to each patrol station and adding this as a regular inspection element for LASD's audit unit.

Recommendation 13. In some ways, it can be argued that release of BWC captured video of serious and lethal use of force incidents is what BWCs are all about, and yet most police departments with BWCs still hide behind the old hunker down rule. This is often facilitated by the excuse that it is up to the local prosecutor, a person who usually has an interest in winning cases, but no interest in releasing BWC video to the public in a timely fashion after a serious use of force incident. The policy vacuum in this area is glaring.

One of the first major city police departments to fill this void was the LAPD. Just two months ago, in April 2018, and concurrent with the completion of deployment of BWCs to all LAPD uniformed patrol officers, the Los Angeles Police Commission adopted a release policy in which, unless certain narrow safety valves are met, BWC video of use of force incidents will be made available to the public within 45 days of the incident. The LAPD Commission did so in order to build public trust between the LAPD and the community it serves. The LVMPD adopted an even more aggressive release policy, promising release of footage within 5 days.[70] However, while the LVMPD does not require immediate release of video footage that is considered evidentiary, in the past the Sheriff has released pertinent BWC video footage at his 72-hour press briefings after critical incidents.[71] The shortcoming of this policy is that it appears to give the Sheriff complete discretion whether and what footage to release and is vulnerable to the argument that only video favorable to the LVMPD is shown.

The LAPD release policy, in particular, addresses both the hunkering down problem and also the perception by some segments of the public that police departments are highly selective, self-serving and arbitrary when it comes to making video public. Video of use of force incidents should be released, good, bad or ugly. This is the only way to maintain credibility with the public and gain its confidence. The results of the COC's public feedback survey also echo support for the public release of BWC recordings.

[70] Body Worn Camera Recordings, *Las Vegas Metropolitan Police Department*.
[71] Officer L. Meltzer, Public Information Office, LVMPD, personal communication, June 19, 2018.

We applaud the LAPD release policy, and the efforts to improve transparency and accountability, but we believe its release policy can be improved upon by the LASD by shortening the outer time period for release to the public to no more than 30 days from the date of the incident. Although we believe that often BWC video can and should be publicly released within a few days of an incident, without compromising an investigation, it is reasonable to give the Sheriff up to 30 days to do so. The public should be given the reason for delay, however, if the Sheriff does not meet the 30-day timeframe.

Recommendation 14. Enormous volumes of video will be generated by the deployment of BWCs with an activation policy that encompasses all law enforcement and investigative interactions with members of the public. It follows that enormous amounts of video will need to be stored for some period of time. Yet only a small fragment of the video will have value unless there is a criminal investigation, prosecution, civil lawsuit, and/or a disciplinary proceeding. For that reason, we recommend, unless the video is valuable for training, required for criminal, civil or administrative proceedings, a six (6) months retention policy. This is the maximum length of time recommended by the Upturn scorecard.[72]

Recommendation 15. Based on public comments received by the Commission, it is safe to say that some of the public angst over BWCs is related to the possibility that they will be linked to evolving facial recognition technology (FRT).[73] At least part, although not all, of this concern is the false positive rates with FRT which could unnecessarily heighten safety concerns and lead to an increase in unnecessary force as a result of mis-identifications. While we have not evaluated technology issues in depth, we are satisfied that the concerns are genuine and, based on current technology, well taken. Moreover the use of FRT in conjunction with BWCs raises legitimate privacy concerns that counsel that the Sheriff, should he ever wish to incorporate FRT with BWCs, first seek the advice of the COC and solicit public comment.

Recommendation 16. The notification of civilians of BWC recording by patrol deputies is encouraged when it is safe and practical to do so. Although a majority of the BWC policies do not require this, the discussion with Professor White of ASU and others convinces us that this is a desirable practice, particularly in light of the research indicating the "civilizing effect" of BWCs. In his report, the Inspector General expressed support for this recommendation, and the results from the COC's public feedback survey also strongly approved this practice.

[72] The Leadership Conference on Civil and Human Rights & Upturn, "Police Body Worn Cameras: A Policy Scorecard," 6.
[73] See letter from civil rights groups to the Axon AI Ethics Board dated April 26, 2018, http://civilrightsdocs.info/pdf/policy/letters/2018/Axon%20AI%20Ethics%20Board%20Letter%20FINAL.pdf

Recommendation 17. While there are demonstrable benefits from the use of BWCs, they are by no means a panacea. There are significant limitations on what they capture, even assuming timely activation. For example, in terms of video, they often visually capture little during a chase and capture nothing of value when a deputy wrestles a subject to the ground. BWCs do not capture the panorama of vision of the human eye. The Spokane PD used public outreach - - over 40 meetings with the community to discuss and show what BWCs are capable of, and more importantly their limitations.[74] We believe a public education campaign is an important component of a plan to implement BWCs. The expectations of the public will understandably be high, but those expectations should not be higher than what is reasonable.

[74] Major Kevin King, SPD, personal communication, May 22, 2018.

VI. RECOMMENDATIONS OF THE CIVILIAN OVERSIGHT COMMISSION

The Sheriff Civilian Oversight Commission (COC) makes the following Recommendations:

To the Board of Supervisors, CEO and the Sheriff:

1. In light of the substantial benefits to be derived by the deployment of Body Worn Cameras (BWCs), the Board of Supervisors should make BWCs a budget priority and promptly provide the necessary funding to implement the Sheriff's BWC Plan.
2. The Sheriff should make the BWC program a priority and revise the timeline of his BWC Plan to provide for full implementation within two years of funding by the Board.
3. Because there is an issue regarding the level of funding, primarily driven by the increased workload and number of additional FTE needed to implement effectively the Sheriff's BWC Plan, we recommend that the Sheriff, the CEO, and the Board meet, confer and resolve this issue as expeditiously as possible. The COC stands ready to assist the parties in reaching agreement. Given the further delay that would be entailed in hiring a consultant and bringing him/her up to speed, this step should be a last resort.

To the Sheriff:

Recommendations regarding policies needed before implementation

4. Transparency. The policies adopted by the LASD for BWCs should be readily accessible to the public.
5. Activation. Deputies should be required to activate their BWCs prior to all law enforcement and investigative activity involving a member of the public. Any exceptions should be limited and clearly defined, e.g., investigative interviews involving sex crime victims and confidential informants. For sex crime victims, consent to record should be obtained.
6. Failure to Activate/Deactivation. Deputies should document in writing or via video recording the reason his/her BWC was not activated as required by policy or was deactivated before the law enforcement event or investigative activity was complete.
7. Deputies should be expressly prohibited from altering or editing of BWC recordings.

8. Generally, deputies should be allowed to view video recordings captured on his/her BWC, but only for the writing of routine reports, resolving citizen complaints, etc. However, a deputy involved in a deputy-involved shooting, serious injury or use of lethal force should not be allowed to view video footage until after his/her initial statement or the writing of their first report.
9. As part of the LASD's phased roll-out of BWCs, all deputies provided with a BWC shall receive training in the operation of the device and LASD policy regarding activation, de-activation, anti-tampering, etc.
10. It should be made clear that violations of BWC policy are subject to disciplinary action, up to and including termination.
11. Deputies assigned LASD-issued BWCs should be prohibited from using personally-owned video recording devices while on duty.
12. The Sheriff should require regular internal audits to ensure compliance with BWC policy.
13. The Sheriff should have a clear policy calling for release of video footage of deputy involved shootings and use of force resulting in death or serious injury within thirty (30) days of the incident.
14. Video footage not used for training purposes, ongoing investigations, court or disciplinary proceedings should be retained no longer than six (6) months.
15. Because of the false positive rates, the Sheriff should not authorize the use of facial recognition technology for BWCs without first seeking advice from the COC and public comment.
16. Deputies should be encouraged to notify persons that they are being recorded when safe and practical to do so.
17. Concurrent with the implementation of BWCs, the LASD should launch a public education campaign designed to educate the community on the benefits and limitations of BWCs.

EXHIBIT 1 – SHERIFF MCDONNELL'S LETTER TO CHAIR ROBERT BONNER OF THE SHERIFF CIVILIAN OVERSIGHT COMMISSION DATED SEPTEMBER 6, 2017

OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

September 6, 2017

Robert C. Bonner, Chair
Sheriff Civilian Oversight Commission
World Trade Center
350 South Figueroa, Suite 288
Los Angeles, California 90071

Dear Mr. Bonner:

As you may be aware, the Los Angeles County Sheriff's Department (Department) is currently working on policy, staffing, and funding for a Body Worn Camera Program (Program). As we move forward in this endeavor, I would like to invite the Sheriff Civilian Oversight Commission to assist us in facilitating public meetings to solicit feedback from the public.

I believe this is an opportunity to show the Department's deep commitment to transparency and to give strong consideration to the public's concerns during the developmental stage of the Program.

Your assistance in this matter is greatly appreciated. If you have any questions regarding this request, please contact Undersheriff Jacques La Berge at (213) 229-3008.

Sincerely,

JIM McDONNELL
SHERIFF

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

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EXHIBIT 2 – SHERIFF MCDONNELL'S LETTER TO CHIEF EXECUTIVE OFFICER SACHI HAMAI DATED FEBRUARY 20, 2018

HAMAI
JONES
McGLOIN*
WILLIAMS*

*FYI

OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM MCDONNELL, SHERIFF

February 20, 2018

RECEIVED
2018 FEB 26 AM 8:55
CHIEF EXECUTIVE OFFICE

Sachi Hamai, Chief Executive Officer
County of Los Angeles
713 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Dear Ms. Hamai:

CHIEF EXECUTIVE OFFICER'S RECOMMENDATIONS FOR BODY WORN CAMERAS

In your report to the Board of Supervisors, dated October 10, 2017, on the Sheriff's Plan to Implement Body Worn Cameras (BWC), you recommended that the Los Angeles County (County) Sheriff's Department (Department) "engage a consultant, with law enforcement experience, to evaluate/assess the proposed policies, procedures, deployment plan, staffing levels, and operational impact of BWCs in the Department. The assessment would include a community engagement process to solicit public input regarding the LASD's proposed BWC policies and procedures. This would be in advance of the rollout of the proposed BWC plan. The purpose for the community engagement and public comment process would be to give all constituents a meaningful opportunity to have a say in how BWC will be used in the County, and to ensure LASD's BWC policies is, to the extent possible, consistent with the interests and preferences of the communities it serves." Your report provided for a report back in 180 days.

At this time, I will not be moving forward with the recommendation to engage a consultant.

As you are aware, the Department is currently struggling with hundreds of vacancies in the sworn ranks, compounded by several hundred additional staff who are unable to work due to on-duty injuries. The rollout of a BWC program would require the Department to hire additional staff, further exacerbating our vacancies and putting additional strain onto our existing workforce. In light

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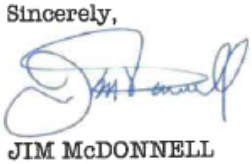
of this, I do not feel it is prudent to spend additional resources for a consultant at this time.

In the future when our vacancy numbers have improved, we will revisit a BWC program and reevaluate the recommendations in your report.

If you have any questions, please contact Assistant Sheriff Jill Serrano at (213) 229-3066.

Sincerely,



JIM McDONNELL
SHERIFF

* P. 21 of the 64-page report

Daily Administrative Duties

In addition to answering calls for service and conducting self initiated activities, there are a number of administrative duties that must be performed each day by the patrol officers. Based on discussions with agency personnel, the activities and their average times per day per officer were estimated.

The administrative duties listed in Table 3 occur daily for every officer fielded in patrol. The time spent performing these administrative duties is time taken away from the ability to answer calls for service. Thus, each administrative duty increases the need for officers in the Patrol Division. Many of these administrative duties are unavoidable either due to labor agreements or practicality. However, they should be reviewed continuously due to their direct effect on patrol staffing.

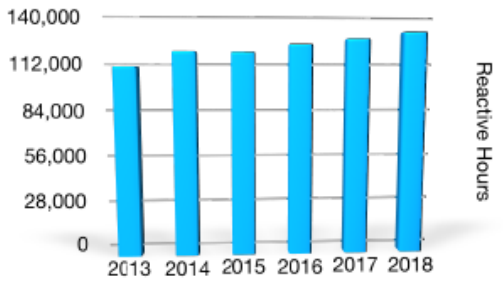
Table 3.	Minutes per shift	Hours per shift
Briefing	37.626	0.6271
Administrative Work	39.264	0.6544
Meal Break	26.628	0.4438
Officer Breaks	26.886	0.4481
Refueling	20.000	0.3333
Body Cameras	28.248	0.4708
Admin hours per shift		***2.9775***

Total Reactive Workload

Bringing all of these activities together, the total reactive workload for the Patrol Division consists of: the total time required to handle reactive activities reported in the CAD; the time required for report writing and any other activities that are not currently being captured by the CAD; the time required for the daily administrative duties of the officers; and the time required for expected service activities. It is important to remember that the total reactive workload assumes that officers will be responding from call to call with no proactive time in between. Therefore, this workload will determine only the minimum number of officers required to meet minimum expectations.

From the calculations on the accompanying spreadsheet, the actual hours of reactive workload for the patrol division from 2013 to 2015 and the forecasted hours of reactive workload for 2016 through 2018, are graphed in Chart 1 and listed in Table 4. Table 4 also shows the expected number of reactive activities and the expected minimum staff required on duty each day assuming officers respond from call to call for the entire length of their shift.

CHART 1. Reactive hours per year



The numbers reflected in Chart 1 are yearly totals. The minimum number of on-duty officers required

EXHIBIT 4 – HIGHLIGHTS OF THE SURVEY TO OBTAIN PUBLIC INPUT ON THE LASD BWC PROGRAM AND POLICIES*

	ONLINE (n=2,179)			HARD COPY (n=145)		
Question	**Yes**	**No**	**Don't Know**	**Yes**	**No**	**Don't Know**
1. Do you support the use of Body Worn Cameras?	90%	7%	3%	86%	8%	3%
2. If you support the use of Body Worn Cameras (BWC's), please explain below						
a. To reduce confrontations between police and the public if everyone knows they are being recorded	82%	10%	4%	68%	5%	1%
b. To allow LASD to review and improve its performance and practices with the public	85%	7%	3%	67%	.7%	.7%
c. To help provide evidence in criminal investigations and in court cases	87%	5%	4%	65%	.7%	3%
d. To protect civilians interacting with law enforcement officers	83%	9%	3%	77%	1%	3%
e. To protect law enforcement officers against false accusations	84%	7%	4%	70%	2%	4%
3. Do you have concerns about the use of BWCs?	47%	44%	7%	32%	34%	5%
4. If you have concerns about the use of BWCs, please explain below						
a. Privacy	30%	52%	5%	28%	38%	5%
b. Costs	12%	51%	6%	21%	39%	5%
5. If you have any concerns about the use of BWCs, are there any policies that if adopted and enforced would reduce or eliminate your concerns?	38%	18%	27%	12%	7%	10%
6. If the LASD implements the BWC program to all patrol deputies, what situations should or should not be recorded by the BWCs?						
a. During traffic stops	79%	6%	4%	81%	8%	2%
b. During pursuits	73%	6%	3%	81%	6%	2%
c. Responding to a 911 call where use of force is likely	83%	4%	2%	86%	6%	.7%
d. Responding to calls involving persons suspected of suffering from a mental illness	81%	5%	3%	81%	6%	1%
e. Responding to a domestic violence call	79%	6%	4%	79%	8%	1%
f. Responding to active crime scenes, e.g., robbery, active shooter, etc.	83%	4%	2%	88%	3%	.7%
g. Responding to routine calls for service	62%	16%	10%	70%	14%	7%

h. Crowd management and control	71%	12%	5%	73%	12%	5%
i. Interviews with witnesses or victims	63%	16%	9%	69%	12%	6%
j. All interactions with the public should be recorded	54%	22%	12%	67%	18%	4%
7. Should patrol deputies be able to decide whether to record or not record?	12%	71%	5%	11%	79%	4%
8. Should there be clear policies when to activate or record?	81%	6%	2%	74%	7%	1%
9. Should patrol officers notify citizens that encounters are being recorded?	66%	18%	6%	81%	10%	4%
10. Should deputies be able to view recordings before writing their reports or giving their statements to investigators?	35%	42%	13%	34%	49%	11%
11. Should recordings be released to the public?	59%	14%	16%	72%	14%	10%
12. If recordings should be released, when should they be?						
a. Within 10 days of incident	46%	22%	16%	30%	6%	12%
b. Within 45 days of incident	29%	32%	12%	21%	8%	12%
13. Are there any other policies you would like to see that would reduce any concerns?	19%	35%	28%	6%	11%	17%

DEMOGRAPHICS (OPTIONAL)	**ONLINE (n=2,179)**	**HARD COPY (n=145)**
What is your gender?		
a. Female	39%	44%
b. Male	39%	38%
c. Prefer not to say	8%	0
d. Not listed	.4%	0
Which race/ethnicity best describes you?		
a. American Indian or Alaskan Native	.8%	0
b. Asian/Pacific Islander	5%	5%
c. Black or African American	6%	23%
d. Hispanic	13%	32%
e. White/Caucasian	54%	22%
f. Multiple ethnicity/Other	9%	3%
What is your age?		
a. Under 18	.5%	0
b. 18-29	10%	15%
c. 30-59	50%	39%
d. 60+	27%	10%

*Responses may not always total 100% due to skipped responses

EXHIBIT 5 – LETTER FROM ACLU OF SOUTHERN CALIFORNIA TO THE CIVILIAN OVERSIGHT COMMISSION DATED NOVEMBER 15, 2017

Via email

November 15, 2017

Civilian Oversight Commission
350 S. Figueroa St., Suite 288
Los Angeles, CA 90071
cocnotify@coc.lacounty.gov

Dear Members of the Sheriff Civilian Oversight Commission:

The ACLU of Southern California wishes to reiterate the issues raised in our August 1, 2017 letter regarding the proposed acquisition of LASD body cameras. In that letter we recognized that body cameras have the potential to increase the transparency and accountability of law enforcement agencies, but only when used under a policy that furthers those goals. If body cameras are used primarily as tools for evidence gathering, and the recorded footage is only released selectively when it supports the Department's narrative, then the adoption and use of body cameras will only serve to undermine public faith in LASD. If body cameras are not adopted to promote transparency, accountability and public trust in LASD, then they should not be adopted at all.

As explained more fully in that letter, if LASD adopts a body camera program, it should only do so under a policy that, at minimum, addresses the following requirements:

1. Deputies should be required to record all law enforcement encounters with the public.
2. Deputies must not be allowed to view recordings before providing a statement in use of force or complaint investigations.
3. Deputies should give notice to civilians that they are recording.
4. The Department's use of body camera footage must bar the use of the cameras for general surveillance and should preclude its use with other surveillance tools, such as facial recognition technology.
5. Disclosure and retention of body-worn camera footage should be limited, and sharing or release of video should be prohibited for any reason other than to promote accountability or transparency according to policy.
6. The Department should timely release footage of officer-involved shootings and other serious uses of force within 30 days after an incident.
7. Disclosure policies should reconcile transparency and privacy interests by allowing redaction of footage implicating privacy interests when released.
8. Individuals recorded by body-worn cameras should have access to the footage.
9. Body camera footage should be retained for the purpose of deputy oversight, and therefore should be reviewed only when there is a specific reason to believe the video contains evidence relevant to an allegation of deputy misconduct; where there has been a use of force or other reason for mandatory internal investigation; or as part of a

randomized audit or corrective plan for an officer based on specified prior conduct.

Because a policy is only effective to the extent it is enforced, LASD should also adopt a plan to ensure enforcement, including auditing to ensure cameras are being activated properly and strict discipline for failing to activate body cameras, or a presumption of misconduct for incidents that are not recorded. The Department should also audit deputy access to body camera footage to ensure compliance with these policies.

In addition to these concerns, the recent revelation of a Los Angeles Police Department officer captured on body camera planting evidence on an arrestee[1]—as well footage from other jurisdictions capturing officers planting or falsifying evidence[2]—underscores the need for body camera policies that guard against misuse and the rigorous enforcement of these policies to ensure that officers face real consequences for failing to follow the policy in addition to consequences for the discovery of any misconduct. In addition to the above requirements for any effective body camera policy, LASD should also adopt strategies that would prevent officers from falsifying evidence. To that end, LASD should adopt an always-on policy while in the field—allowing officers to shut off body cameras while engaged in personal activities or breaks or in sensitive situations involving the public's privacy as discussed previously—or adopt a longer buffer period that will retroactively record 20 or 30 minutes prior to being activated.

***

Please do not hesitate to contact us with any questions about the content of this letter. We are happy to discuss further our concerns and recommendations related to the implementation of body-worn cameras by Los Angeles County Sheriff's deputies.

Sincerely,

Melanie Ochoa
Staff Attorney
ACLU of Southern California

[1] German Lopez, "An LAPD officer accidentally filmed himself putting cocaine in a suspect's wallet," VOX (Nov. 14, 2017), available at https://www.vox.com/policy-and-politics/2017/11/14/16649034/lapd-police-plant-evidence-ronald-shields.

[2] *See, e.g.*, Kevin Rector, "Analysts: Whether planting evidence or 're-creating' a find, Baltimore body camera footage shows police misconduct," BALTIMORE SUN (Aug. 7, 2017) available at http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-body-camera-react-folo-20170807-story.html.

EXHIBIT 6 – LETTER FROM LASD RISK IMPACT UNIT TO LASD RISK MANAGEMENT BUREAU DATED JANUARY 30, 1996

761551N25A - SH-AD-32A (2/72)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: January 30, 1996

FILE:

FROM: ARTHUR NG, LIEUTENANT
RISK IMPACT UNIT

TO: LEE C. McCOWN, CAPTAIN
RISK MANAGEMENT BUREAU

SUBJECT: **PATROL CAR CAMERA INFORMATION**

At your direction, I had the Risk Impact Unit contact Newport Beach Police Department for information on their newly installed radio car cameras. Deputy Ann Ramirez was assigned to handle the research project.

Lieutenant Tim Riley said they chose *Kustom Signal* to develop their camera system. Kustom Signal can customize their product to the customer's needs for such things as clarity, environment control, tamper-safe, etc. The price of the unit is based on options chosen and quantities purchased. The Newport Beach Police Department purchased 29 "top of the line" units at a cost of $6,300 per unit.

Lieutenant Riley offered his assistance in this matter saying that it was an enormous undertaking for his department to research and incorporate the camera systems. He gave Deputy Ramirez the name of the *Kustom Signal* representative that helped their department develop their patrol car camera system.

Deputy Ramirez contacted *Kustom Signal* and spoke with Dave Teeter who provided her with the technical information regarding their patrol car cameras. Mr. Teeter told her that *Kustom Signal* holds the patent on the "system of separated components" within the camera set up. He explained how the recording system, which is stored in the trunk of the vehicle, is similar to an airplane's "black box." The recorder's housing is fireproof and kevlar protected to ensure the integrity of the recording device. The quality of equipment is of industrial grade, not commercial grade, which greatly enhances the quality of the image and sound, and has a life span of 7-8 years. He went on to say that the customer chooses which components of the "system" would best suit their needs. The Newport Beach Police Department chose a two-transmitter system which can record not only the visual contact with a motorist but also the audio, and can be activated by either the contact officer or a backup officer at any point during the contact.

Mr. Teeter was aware of the Department's previous field trial of the *Doc-U-Cam* recording

system in 1993 and said that due to marketing changes, *Doc-U-Cam* backed out of the patrol camera aspect of the business.

Deputy Ramirez also contacted Captain James Mulvihill, who in 1993 was assigned to Field Operations Support Services, investigated the feasibility of installing video cameras in the patrol cars for the Department. He said the estimated the cost of installing cameras in approximately 850 patrol cars at that time was between four and seven million dollars. He went on to say that the Department would have needed to set up a warehouse with a minimum staff of 12 persons to maintain the literally hundreds of thousands of video tapes needing a retention period of three years. The warehouse and staff would have cost another two to three million dollars. Besides the cost, Captain Mulvihill said that while the prototype cameras were being tested, the video recordings, helped resolve only two complaints of deputy misconduct. He said that because of the unique nature of our work, most of our citizen contacts are away from the patrol car or out of the camera's range of view.

Considering the information gathered, it appears that while the idea of a camera may seem to be a good tool to more accurately capture a series of events, closer examination of the equipment rendered it somewhat useless.

KUSTOM SIGNAL
Dave Teeter, Consultant
9325 Pflumm
Lenexa, Kansas 66215
800-852-1270 ext 3110

NEWPORT BEACH POLICE DEPARTMENT
Lieutenant Tim Riley
714-644-3660

AN:ar

EXHIBIT 7 – LEGAL MEMORANDUM REGARDING THE CALIFORNIA PUBLIC RECORDS ACT AS APPLIED TO POLICE BODY-WORN CAMERAS DATED JUNE 18, 2018

SHERIFF CIVILIAN OVERSIGHT COMMISSION MEMO

To: COC Ad Hoc Committee on Use of Force

From: Sean Kennedy

Date: June 18, 2018

Re: California Public Records Act as Applied to Police Body-Worn Cameras

I. QUESTION PRESENTED

Does police body-worn camera (BWC) video footage have to be produced in response to any request from a member of the public pursuant to the California Public Records Act (CPRA)?

II. FACTUAL BACKGROUND

Los Angeles Sheriff's Department (LASD)--one of the last big-city departments in the nation without a working BWC program--submitted to the Board of Supervisors a proposal to buy 5,895 BWCs so that every deputy could be required to wear one while on patrol. In June 2017, LASD requested $20.4 million for equipment and infrastructure, followed by a budget increase of $55.2 million per year to implement the BWC program.

The price of the proposed LASD BWC program caused "sticker shock" because the Los Angeles Police Department (LAPD) already implemented a similar BWC program for $32 million for a five-year period. The annual operational costs of the LAPD BWC program are $8 million—far less than the $55.2 recurring annual cost estimated by LASD.

The difference in cost between the two BWC programs arises from LASD's and LAPD's different approaches to hiring new employees (referred to as "FTE" in budget proposals). LASD has asked for 239 additional FTE to administer its new BWC program, while LAPD did not ask for or receive any new FTE to administer its BWC program.

LASD has justified its request for 239 new FTE based, in part, on its interpretation of the CPRA, which the department believes requires it to produce all BWC footage of an incident in response to a CPRA request. LAPD has declined to produce BWC footage in response to a CPRA request because it classifies such footage as records of investigation that are exempt from disclosure under CPRA.

III. LEGAL ANALYSIS

A. CPRA's Broad Right of Access

CPRA, Cal. Govt. Code § 6250 *et seq*., requires state and local government agencies to produce records about how they conduct public business in response to a request submitted by a member of the public. CPRA proclaims that "every person has a right to inspect any public record," Cal. Govt. Code § 6253(a), and commands that every "agency, upon a request for a copy of records that reasonably describes identifiable records, shall make those records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable." *Id.* at (b). The agency has ten days to respond that it will disclose the requested information or explain why it will not. *Id.* at (c).

CPRA is so important that in 2004 it was incorporated into the state constitution. Cal. Const., art. I, § 3(b)(1), added by Prop. 59, approved by voters, Gen. Elec. (Nov. 2, 2004). The state constitution implemented this right of access with the general directive that a "statute, court rule, or other authority … shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." *Id.* at (b)(2). The courts have interpreted CPRA broadly to support disclosure in order to achieve as much transparency as possible.

CPRA "does not require disclosure of" myriad listed categories of public documents. Cal. Gov. Code § 6254. CPRA creates a floor, not a ceiling of disclosure. An agency such as LASD may choose to voluntarily disclose records that are exempt from CPRA mandatory disclosure. Thus, the sheriff has enormous freedom to disclose BWC footage if he wants to.

B. Police Investigation Exemption

Section 6254(f) exempts from mandatory disclosure all "records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of … any state or local police agency, or any investigatory or security files com[1]piled by any other state or local police agency for correctional, law enforcement or licensing purposes." Cal. Gov. Code § 6254(f). Even brief, routine traffic stops that do not result in a prosecution qualify for the law enforcement investigation exemption. *Haydie v. Superior Court*, 26 Cal.4th 1061, 1069-71 (2001). The focus is on the investigatory purpose of the contact, not the result. *Id.*

Because BWC footage records "investigations conducted by" LASD deputies during patrol duty, the footage should be exempt from CPRA disclosure pursuant to § 6254(f). The vast majority of California law enforcement agencies take this position with respect to BWC footage.

LASD management argues that the implementation of a BWC program requires them to assume that the department will have to disclose all BWC footage of an incident in response to any CPRA request. LASD's interpretation of CPRA as applied to BWC footage is the minority position, but it is not unreasonable. In *ACLU Foundation of Southern California v. Superior Court*, 3 Cal.5th 1032 (2017), the ACLU petitioned for a writ of mandate to require LASD and LAPD to produce pursuant to CPRA all data collected by automated license plate reader (ALPR) scans. The lower courts denied mandate, holding that ALPR data were police investigative records that are exempt under § 6254(f). *Id.* at 1038.

A unanimous California Supreme Court, however, held that the ALPR data did not qualify for the law enforcement investigation exemption because "bulk data" collected by scans is different from traditional police investigative records. *Id.* at 1041-42. The court reasoned that the department's "process of ALPR scanning does not produce records of investigations because the scans are not conducted as

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[1] There have been several attempts, since at least 2015, to amend CPRA to require law enforcement agencies to publish policies and adopt timeframes for the release of BWC footage. To date, none of these bills has been enacted into law. AB 748, which would amend § 6254(f) to require the release of BWC footage depicting police uses of force and/or alleged police criminal conduct within 45 days (subject to exceptions), passed the Assembly without opposition, but remains pending in the Senate. *See* ABA 748 (amended in Senate June 14, 2018), available at leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748. Both the LAPD and the LASD unions oppose AB 748.

part of a targeted inquiry into any particular crime," and stressed that the "scans are conducted with an expectation that the vast majority of data collected will prove irrelevant for law enforcement purposes." *Id.* at 1042.

The LASD BWC program will generate massive amounts of video footage, most of which will lack investigative or evidentiary value. To the extent that the BWC program involves "data collected *en masse*," it shares some of the characteristics of ALPR scanning. *Id.* at 1041. Mass surveillance was the primary factor in *ACLU v. Superior Court* that prompted the court to hold that ALPR data did not qualify as records of investigation. *Id.*

BWC footage differs from ALPR scanning in several respects. First, BWC footage is created by individual deputies responding to patrol calls, not a machine mounted on a car indiscriminately scanning the environment. Second, BWC footage only records specific encounters between a deputy and an individual, whereas ALPR functions like a panopticon, seeing and recording all events. Finally, BWC footage will often be used as evidence in civil and criminal court cases, confirming that its purpose is essentially investigatory, not surveillance. As such, BWC footage should be treated like the audio recordings in *Haydie*, which were deemed to be exempt records of investigation.

ACLU v. Superior Court has muddied the waters, so there is some ambiguity as to how BWC footage will be treated under the CPRA . The dearth of case law and secondary authority applying *ACLU v. Superior Court* to BWC footage means we don't yet know whether courts will extend the rationale for excluding ALPR data from the law enforcement investigation exemption to BWC footage. Therefore, LASD will likely face more CPRA lawsuits if it refuses to produce BWC footage in response to CPRA requests, as LAPD does.

C. Catchall Exemption

Despite finding § 6254(f) inapplicable, the court in *ACLU v. Superior Court* affirmed withholding raw APLR data pursuant to § 6255, but remanded for a determination whether LASD and LAPD could properly withhold anonymized or redacted ALPR data pursuant to the same section. *Id.* at 1043. Section 6255, commonly referred to as "the catchall exemption, " *Williams v. Superior Court*, 5 Cal.4th 337, 347, n. 9 (1993), authorizes withholding a public record if "on the facts of the particular case the public interest served by not disclosing the record clearly

outweighs the public interest served by disclosure of the record." Cal. Govt. Code § 6255(a). "This provision contemplates a case-by-case balancing process, with the burden of proof on the proponent of non-disclosure to demonstrate a clear overbalance on the side of confidentiality." *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal.4th 1065, 1071 (2006). The balancing includes considering a variety of factors, including the impact on "privacy," *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 74 (2014), as well as "the expense and inconvenience involved in segregating exempt and non-exempt information." *ACLU Foundation v. Deukmejian,* 32 Cal.3d 440, 452-43 (1982)

The court in *ACLU v. Superior Court* agreed with the trial court that § 6255(a) balancing favored withholding raw ALPR scan data because its release would negatively impact privacy by revealing specific locations where an individual driver lived, worked and frequented. 3 Cal.5th at 1043-44. However, the court disagreed that § 2255(a) balancing favored withholding anonymized or redacted ALPR data, stressing that anonymization would allow stakeholders to study the impact of APLR scanning on society without sacrificing any particular individual's privacy rights. *Id.* at 1044-47.

Section 6255(a) balancing may justify withholding BWC footage, especially if the courts hold that the law enforcement investigation exemption doesn't apply to such footage. The release of a video of a particular incident may implicate an individual's protected privacy. Separating and redacting the relevant footage from all other BWC footage may be so time-consuming and costly that the balance will tip in favor of non-disclosure.

From a policy perspective, the primary impetus for LASD to implement a BWC program is to build trust with the communities most affected by police use of force by increasing transparency. The invocation of the catchall exemption may erode trust and create more problems than it solves.

D. Disclosure Obligations Independent of CPRA

California Penal Code § 1054.1 requires the prosecution to produce discovery after criminal charges have been filed. Due Process requires the prosecution to disclose to the accused any materially exculpatory evidence in the possession of the prosecution team, which includes the police. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *see also Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("[T]he

individual prosecutor has a duty to learn of favorable evidence known to others acting on the government's behalf, including the police."). Thus, LASD will have to disclose BWC footage in criminal cases regardless of CPRA exemptions. It is appropriate for LASD to request additional FTE to manage and produce relevant BWC footage to ensure that the prosecution meets its statutory and constitutional discovery obligations prior to trial.

IV. CONCLUSION

BWC footage, like all other more traditional records of investigation, should be exempt from CPRA disclosure. Even if BWC footage falls outside the law enforcement investigation exemption, Cal. Govt. Code § 6254(f), it could be exempt under the catchall exemption, *id.* at § 6255(a), due to the difficulty and cost of separating exempt and nonexempt information. While LASD overstates the likelihood of having to produce BWC footage to any member of the public, current legislative efforts to amend CPRA to require disclosure of BWC footage of police uses of force may change the traditional CPRA analysis. BWC footage that relates to a charged offense must be produced to the parties independent of CPRA.