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OFFICER DISCRETION AND THE CHOICE TO RECORD: OFFICER ATTITUDES TOWARDS BODY-WORN CAMERA ACTIVATION*

BRYCE CLAYTON NEWELL** & RUBEN GREIDANUS***

In recent years, questions about when police officers should activate (or not activate) their body-worn cameras during police-public encounters have risen into the foreground of public and scholarly debate. Understanding how officers perceive body-worn cameras and policies surrounding activation (and how they view these as impacting their ability to make discretionary choices while on the job) can provide greater insight into why, when, and how officers may attempt to exercise their discretion in the form of resistance or avoidance to body cameras, seen as technologies of accountability. In this Article, we examine officer attitudes about how much discretion they ought to have about when (or when not) to activate their cameras, what concerns they have about overbroad, overly punitive, or ambiguous activation

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policies, and their perceptions about how frequently cameras ought to be activated in specific circumstances (i.e., general police-public interactions, arrest situations, domestic violence calls, traffic stops, when taking statements from witnesses or victims, and when responding to calls inside homes and medical facilities). These findings are drawn from a multi-year and mixed-methods study of police officer adoption of body-worn cameras in two municipal police departments in the Pacific Northwest region of the United States from 2014 to 2018.

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INTRODUCTION

In the past few years, questions about when police officers should activate (or not activate) their body-worn cameras (“BWCs”) when contacting or otherwise interacting with a member of the public have risen into the foreground of public and scholarly debate. Instances in which camera-wearing officers have failed to activate their cameras have also received significant media scrutiny.¹

1. See, e.g., Jared Goyette, *Australian Justine Damond Shot Dead by US Police in Minneapolis*, THE GUARDIAN (July 16, 2017), <https://www.theguardian.com/us-news/2017/jul/17/australian-woman-justine-damond-shot-dead-by-us-police-in-minneapolis> [<https://perma.cc/5XRS-79BG>]; Eric Levenson, *Minneapolis Police Shooting Exposes Flaws of Body Cameras*, CNN (July 19, 2017), <http://www.cnn.com/2017/07/19/us/minneapolis-police-shooting-body-camera/index.html> [<https://perma.cc/F5UK-NPZV>];

Departmental policies in police agencies around the country (and beyond) that ostensibly regulate officer behavior in this context are varied,² although emerging evidence suggests (predictably) that agency-level activation policies can impact officer activation rates in some circumstances (as can other factors, such as the presence of other officers and bystanders or whether camera use is mandated or voluntary).³ Concerns that civil society groups, the press, and members of the public have regarding activation policies and activation practices are often linked to normative ideas about police accountability and transparency, the appropriateness and limits of officer discretion, and, in some cases, the adverse impact that increased recording may have on privacy interests.⁴

Editorial, *Officers, Turn on Your Body Cameras*, WASH. POST (July 22, 2017), https://www.washingtonpost.com/opinions/officers-turn-on-your-body-cameras/2017/07/22/41290ff0-6e3e-11e7-b9e2-2056e768a7e5_story.html?utm_term=.67385a2d0d90 [https://perma.cc/MW4F-ZA54]; Brandt Williams, *Minneapolis Officers Failed to Turn on Body Cameras Before Fatal Shooting*, NAT'L PUB. RADIO (July 18, 2017), <https://www.npr.org/2017/07/18/537861230/minneapolis-officers-failed-to-turn-on-body-cameras-before-fatal-shooting> [https://perma.cc/L36T-FQ2L].

2. See Mary D. Fan, *Privacy, Public Disclosure, and Police Body Cameras: The National Policy Split*, 68 ALA. L. REV. 395, 422–23 (2016); POLICE BODY WORN CAMERAS: A POLICY SCORECARD, THE LEADERSHIP CONFERENCE & UPTURN (2017), <https://www.bwscorecard.org/static/pdfs/LCCHR%20and%20Uturn%20-%20BWC%20Scorecard%20v.3.04.pdf> [https://perma.cc/KL5T-H4W8].

3. See, e.g., Jacob T.N. Young & Justin T. Ready, *A Longitudinal Analysis of the Relationship Between Administrative Policy, Technological Preferences, and Body-Worn Camera Activation Among Police Officers*, 12 POLICING: J. POL'Y & PRACTICE 27, 36–39 (2018) (finding that camera activation rates declined under a discretionary use policy, especially by officers who had not volunteered to wear the cameras; but also finding that camera activation rates decreased when victims were present); Allyson Roy, *On-Officer Video Cameras: Examining the Effects of Police Department Policy and Assignment on Camera Use and Activation* 33–34 (May 2014) (unpublished M.S. thesis, Arizona State University) (on file with the North Carolina Law Review) (finding that department policy; the presence of bystanders, witnesses, or supervisors; and voluntary versus mandatory use affected camera activation rates).

4. See Fan, *supra* note 2, at 422–23; Alexandra Mateescu, Alex Rosenblat & danah boyd, *Dreams of Accountability, Guaranteed Surveillance: The Promises and Costs of Body-Worn Cameras*, 14 SURVEILLANCE & SOC'Y 122, 122 (2016) (noting that “balancing the right of public access with the need to protect against this technology’s invasive aspects” is important because “body-worn cameras present definite and identifiable risks to privacy”); Bryce Clayton Newell, *Collateral Visibility: A Socio-Legal Study of Police Body-Camera Adoption, Privacy, and Public Disclosure in Washington State*, 92 IND. L.J. 1329, 1341 (2017) (discussing how public disclosure of body-worn camera video under

In the end, questions about appropriate activation policies and practices are all about power, accountability, and information politics. They cannot always be easily separated from related questions about information access and control, meaning that the appropriateness of any particular activation policy may depend in large part on the local social, political, and legal context in which the cameras are being deployed.

These issues are hotly contested and often difficult to research. However, the implications of these policy decisions may have significant impacts on how BWCs are used by officers and what (and how much) visual evidence is collected, as well as on other aspects of officer behavior, such as on the frequency of officers engaging in uses of force⁵ or stop-and-frisks.⁶ Research suggests that strict (mandatory) activation policies may increase activation rates,⁷ while some studies have also found that compliance with activation policies has declined over time in certain police agencies.⁸ A growing body of literature also examines officer attitudes towards BWCs, and multiple studies engage Orlikowski and Gash's concept of "technological frames"⁹ to understand how officers' perceptions and interpretations

state access to information laws may negatively impact the privacy interests of members of the public).

5. 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*, 12 J. EXPERIMENTAL CRIMINOLOGY 453, 459 (2016).

6. Justin T. Ready & Jacob T.N. Young, *The Impact of On-Officer Video Cameras on Police-Citizen Contacts: Findings From a Controlled Experiment in Mesa, AZ*, 11 J. EXPERIMENTAL CRIMINOLOGY 445, 445 (2015).

7. Roy, *supra* note 3, at 33, 40.

8. CHARLES M. KATZ ET AL., ARIZ. STATE UNIV. CTR. FOR VIOLENCE PREVENTION & CMTY. SAFETY, *EVALUATING THE IMPACT OF OFFICER WORN BODY CAMERAS IN THE PHOENIX POLICE DEPARTMENT* 7, 21 (2014) https://publicservice.asu.edu/sites/default/files/ppd_spi_feb_20_2015_final.pdf [<https://perma.cc/777Y-GWYG>].

9. Wanda J. Orlikowski & Debra C. Gash, *Technological Frames: Making Sense of Information Technology in Organizations*, 12 ACM TRANSACTIONS ON INFO. SYS. 174, 178 (1994) ("We use the term *technological frame* to identify that subset of members' organizational frames that concern the assumptions, expectations, and knowledge they use to understand technology in organizations. This includes not only the nature and role of the technology itself, but the specific conditions, applications, and consequences of that technology in particular contexts.").

of the technology may impact how they use it.¹⁰ The concept of technological frames aims to capture how individuals or groups perceive and understand a technology, including the assumptions they have about how the technology functions, how useful the technology might be, and what sort of concerns they might have about learning to use it.¹¹ In the context of BWC deployment, these frames of reference should be seen as changing over time, as officers' experiences with cameras evolve, and not as fixed at a single point of reference (for example, at the moment of adoption).¹² Thus, understanding how officers perceive BWCs and policies surrounding activation (and how these perceptions may change over time), how they view the cameras as impacting their ability to make discretionary choices while on the job, and the reasons they have concerns about the use of BWCs, can provide greater insight into why, when, and how officers may attempt to exercise their discretion in the form of resistance or avoidance.¹³

This Article examines officer attitudes regarding the amount of discretion they think they ought to have in deciding when (or when not) to activate their cameras, as well as their perceptions about how frequently cameras ought to be activated in specific circumstances. These findings are drawn from a multi-year and mixed-methods study of police officer adoption of BWCs in two municipal police departments in the Pacific Northwest region of the United States from September 2014 to January 2018. The research draws on responses from sworn police officers in these departments during ride-alongs (informal interviews) and to both qualitative and quantitative responses to questions on a series of questionnaires.

10. Marthinus Christoffel Koen, *On-Set with Body-Worn Cameras in a Police Organization: Structures, Practices, and Technological Frames* 5–8 (2016) (unpublished Ph.D. thesis, George Mason Univ.) (on file at George Mason Univ.); Roy, *supra* note 3, at 12–13.

11. See Orlikowski & Gash, *supra* note 9, at 178–79.

12. Roy, *supra* note 3, at 13 (describing how officers' initial reluctance to new technology may change with time).

13. For a discussion of various forms of resistance, avoidance, and neutralization, see Gary T. Marx, *A Tack in the Shoe: Neutralizing and Resisting the New Surveillance*, 59 J. SOC. ISSUES 369, 372–84 (2003); Gary T. Marx, *A Tack in the Shoe and Taking Off the Shoe: Neutralization and Counter-neutralization Dynamics*, 6 SURVEILLANCE & SOC'Y 294, 294–97 (2009).

In addition, this Article seeks to answer the following research questions (at least insofar as they pertain to the two agencies included in our study): What discretion do officers feel they should have regarding when their BWCs should (or should not) be activated? How frequently do officers feel that BWCs should generally be activated in various contexts (i.e., in all police-citizen interactions, arrest situations, traffic stops, inside homes, inside medical facilities, during domestic violence calls for service, or while taking witness or victim statements)? How frequently do officers who have used cameras report activating their cameras in each of these same situations?

Of course, the policy options available here are not merely binary: there may be contexts where recording should be mandated or prohibited but, in many cases, it may also be appropriate to permit the officers to record in circumstances where recording is not mandatory or to make the choice not to record in circumstances where recording has not been prohibited.¹⁴ Importantly, officers have long been making these sorts of (discretionary) decisions (e.g., to document something they observe or hear) in many aspects of their work. The sophisticated understanding that many officers have of the law that regulates their ability to stop, search, or use force (at least on a practical level) has yet to be replicated with regard to the appropriateness and proportionality of recording across a variety of police-public interactions. Several scholars have made normative arguments about what legal consequences should follow a failure to record, particularly when the failure to record was in violation of mandatory activation policies.¹⁵

Our reliance on primarily self-reported attitudinal data in this study means, of course, that many of our findings are not conclusions about what happened (e.g., actual compliance rates) within each of

14. See Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1416 (2018) (“An agency policy that sets out clear standards for mandatory, permitted, and prohibited recording is a necessary component of a robust body-worn camera policy.”).

15. See, e.g., David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 365 (2010) (arguing for a “presumption that the defendant’s version of events should be accepted, absent (1) a compelling reason explaining the failure to record, and (2) a finding that the defendant’s version of events could not be believed by a reasonable person”).

these departments, but rather are reflections on how officers conceptualize, internalize, and frame their use of the cameras—at least insofar as they are willing to disclose this to third-party researchers. Collecting and analyzing attitudinal data over time is useful in this context, because, along with the qualitative insights gleaned during ride-alongs, it allows us to better understand the technological frames that officers have of the cameras (and how these may change over time), how organizational considerations shape technology use by officers, and ways in which officers might wish to resist compliance or use the technology in unexpected ways.¹⁶

Manning has argued that “[s]ignificant differences in response to and use of . . . technology [by police officers] are . . . best understood as consistent with the impressions members of the organization wish to convey to particular audiences.”¹⁷ If this is the case, it suggests that the information politics of the police have been impacted by the deployment of BWCs within these agencies. Because transparency and accountability (including access to BWC video) have become dominant themes surrounding the adoption of cameras across the United States, the potential visibility that camera activation implies for individual officers may impact how often, and when, cameras are activated—by regulating officers’ individual choices about whether to record, in accordance or not with departmental policy, or by influencing the development of departmental policy itself.

The Article proceeds as follows: First, we discuss relevant existing scholarship from both the legal and criminological literature and provide additional background and context for our study. Second, we describe our research methods and outline the demographic characteristics of our respondents and the agencies in which they work. Third, we present both qualitative and quantitative findings relevant to the research questions presented above. Finally, we conclude the paper by drawing connections between our findings and the existing literature, discussing implications of various policy choices on privacy, officer resistance, and evidentiary presumptions, and present the argument that activation policies need to be drafted

16. See Peter K. Manning, *Information Technology in the Police Context: The “Sailor” Phone*, 7 INFO. SYS. RES. 52, 52 (1996).

17. *Id.*

to provide officers clear and practical guidance and to incentivize activation in appropriate circumstances while allowing for some forms of discretion, particularly in situations that implicate the legitimate privacy-related concerns of bystanders, victims, witnesses, informants, and suspects. Importantly, we note that questions of public access to footage may also need to be addressed to properly incentivize recording in some circumstances where the potential for wide public visibility may push against officers' willingness to record due to privacy (or other) concerns.

I. BACKGROUND

Camera activation policies and the degree of officer discretion afforded to individual officers are key to realizing some envisioned benefits of BWCs. Recent studies have found contradictory results about whether BWC implementation leads to reduced levels of use of force and complaints against officers within an agency, but the evidence suggests that officer discretion may be a key variable. In the first randomized controlled trial of BWCs in the United States, researchers reported that the cameras had a significant impact on the frequency with which officers used force as well as the number of citizen complaints against officers.¹⁸ However, in a subsequent replication study across multiple police departments, the researchers found that, on average across sites, camera adoption had no significant effect on use of force rates.¹⁹ Interestingly, though, the results of the multi-site study showed that officers who complied with the experimental conditions by not exercising discretion and always activating their cameras engaged in less use of force than officers in

18. Barak Ariel, William Farrar & Alex Sutherland, *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509, 523–24 (2015).

19. Barak Ariel et al., *Wearing Body Cameras Increases Assaults Against Officers and Does Not Reduce Police Use of Force: Results from a Global Multi-Site Experiment*, 13 EUR. J. CRIMINOLOGY 744, 745 (2016); Ariel et al., *supra* note 5, at 459–60 (2016). Other randomized controlled trial-based studies have also found that cameras have little or no statistically significant effect on use of force rates. See David Yokum, Anita Ravishankar & Alexander Coppock, *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial* 11 (Lab @ D.C., Working Paper, Oct. 20, 2017) http://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf [<https://perma.cc/T99F-45S4>].

the control group, while those who exercised discretion engaged in use of force much more frequently.²⁰

Drawing from deterrence theory, the authors proposed the “deterrence spectrum,” ranging from weak deterrence (lax activation policies, lack of consequences for violations) to strong deterrence (mandatory activation policies, high likelihood of consequences).²¹ Accordingly, they concluded that, “[t]he deterrence spectrum is closely linked to activation policies, and specifically to discretion: the more officers can opt-out from mandatory activation procedures (and without consequences for deactivations), the less we should expect the BWCs to effect policing.”²² These findings led the researchers to conclude that “cameras should remain on throughout the entire shift—that is, during each and every interaction with citizens—and should be prefaced by a verbal reminder that the camera is present.”²³ This suggestion also tracks a recommendation by the American Civil Liberties Union (“ACLU”) that officers should activate cameras prior to any interaction with the public.²⁴ While the ACLU recommendation allows for some minor discretion, it simultaneously emphasizes that activation policies which allow for officer discretion can only be effective if (enforceable) consequences exist for failure to adhere to the departments’ activation policies.²⁵

One technological fix in this situation could be automated activation in various circumstances,²⁶ something that many body-camera manufacturers have already been developing and incorporating into their technologies.²⁷ This technical solution could

20. Ariel et al., *supra* note 5, at 459.

21. Barak Ariel et al., *The Deterrence Spectrum: Explaining Why Police Body-Worn Cameras ‘Work’ or ‘Backfire’ in Aggressive Police–Public Encounters*, 12 POLICING: J. POL’Y & PRACTICE 6, 14–16 (2018).

22. *Id.* at 22.

23. Ariel et al., *supra* note 5, at 461.

24. JAY STANLEY, AM. CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL (VERSION 2.0) 4–5 (2015), https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf [<https://perma.cc/777Q5-X6PJ>].

25. *Id.*

26. See Ariel et al., *supra* note 21, at 20–21.

27. Activation could be triggered by, amongst other things, holster activity, opening the car door, or activating the police sirens. See, e.g., Sebastian Anthony, *New Holster Forces All Nearby Body Cams to Start Recording When Gun is Pulled*, ARS TECHNICA,

simultaneously provide less discretion regarding when to record while also freeing the officer to deal with the situation at hand, and it would also lessen the possibility that activation during an already tense interaction may be seen “as a confrontational reaction made by the officer,” thus escalating the tension in the situation and making it more likely that force may be used (or necessary).²⁸

A report from the U.S. Department of Justice, based on its investigation of the Albuquerque (New Mexico) Police Department, described several incidents where officers failed to activate their BWCs in use of force contexts.²⁹ In some of these incidents, the officers initiated the contact, making the failure to activate “especially troubling.”³⁰ The report notes “repetitive or standardized explanations for failing to record,” such as “the immediacy of the situation,” despite officers having sufficient opportunity to activate the camera.³¹ In the end, only a small number of officers were disciplined for their failure to comply.³² Additionally, Denver’s Office of the Independent Monitor found that fewer than half of the use of force incidents (that occurred in one of the Denver Police Department’s patrol districts during the department’s pilot project) with a BWC present were actually recorded by the officers wearing the cameras.³³

A more fundamental issue concerns the fact that some departments simply do not have any written policy at all.³⁴ As such, it

(Feb. 28, 2017 8:46 AM), <https://arstechnica.com/gadgets/2017/02/axon-signal-sidearm-automatic-body-cam> [<https://perma.cc/GP9H-TN2X>].

28. Ariel et al., *supra* note 21, at 20.

29. Letter from Jocelyn Samuels, Acting Assistant Attorney Gen., Civil Rights Div., & Damon P. Martinez, Acting U.S. Attorney, Dist. of N.M., to Richard J. Berry, Mayor, City of Albuquerque, N.M. 25–26 (Apr. 10, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf [<https://perma.cc/4MT6-EWVJ>].

30. *Id.* at 26.

31. *Id.*

32. *Id.*

33. NICHOLAS E. MITCHELL, DENVER OFFICE OF THE INDEP. MONITOR, 2014 ANNUAL REPORT 10 (2015) https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014_Annual_Report%20Final.pdf [<https://perma.cc/PX5Y-4VHL>] (“[J]ust less than half (47%) of those use of force incidents were actually captured by BWCs. The remainder were not recorded either because the BWCs weren’t activated, or they weren’t used in a way that produced useable and complete footage.”).

34. See POLICE EXEC. RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 2 (2014),

is no surprise that the ACLU emphasizes the need for clear policies that also “have some teeth.”³⁵ Aside from the possibility of direct disciplinary action against individual officers, the ACLU goes several steps further and proposes the “adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or was destroyed” and even evidentiary presumptions on behalf of civil plaintiffs suing for damages.³⁶ Although courts have traditionally applied such evidentiary presumptions in cases where evidence was destroyed,³⁷ it is possible that courts may also apply evidentiary presumptions in cases where footage is absent altogether.³⁸

The position that cameras should always be on or that all encounters should be recorded has garnered criticism.³⁹ Arguments against such policy include negative impact on community relationships and the fact that it signifies a lack of trust in local officers.⁴⁰ As the President of the Association of Chief Police Officers in the United Kingdom puts it, “[l]egitimacy in policing is built on trust. And the notion of video-recording every interaction in a very tense situation would simply not be a practical operational way of delivering policing. In fact, it would exacerbate all sorts of problems.”⁴¹ Practically speaking, always-on policies also lead to a massive amount of video footage that must be processed and stored. Privacy concerns are also frequently cited as a strong argument against always-on policies and in favor of officer discretion. Privacy

http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf [https://perma.cc/5KT6-8F8H]; Kelly Freund, Note, *When Cameras Are Rolling: Privacy Implications of Body-Mounted Cameras on Police*, 49 COLUM. J. L. & SOC. PROBS. 91, 109 (2015).

35. STANLEY, *supra* note 24, at 4–5.

36. *Id.*; see also, Harris, *supra* note 15, at 365 (proposing a presumption in favor of the claimant’s testimony of officer misconduct when an officer fails to record).

37. See, e.g., *Wong v. Swier*, 267 F.2d 749, 759 (9th Cir. 1959) (stating that “when there is tampering with evidence, a presumption against the parties who are responsible arises.”).

38. MARC JONATHAN BLITZ, AM. CONSTITUTION SOC’Y FOR LAW & POLICY, POLICE BODY-WORN CAMERAS: EVIDENTIARY BENEFITS AND PRIVACY THREATS 11–12 (2015) https://www.acslaw.org/sites/default/files/Blitz_-_On-Body_Cameras_-_Issue_Brief.pdf [https://perma.cc/SCZ3-PCJ9].

39. See, e.g., Freund, *supra* note 34, at 119.

40. See, e.g., POLICE EXEC. RESEARCH FORUM, *supra* note 34, at 13–14.

41. *Id.* at 14.

interests might be raised by a witness, victim, or suspect—for example, through an affirmative request that the officer cease recording—but they may also be raised by the recording officer, based on concerns that recording a certain conversation or interaction might violate the privacy of the officer or of those with whom the officer is interacting, especially when public records laws provide for liberal public disclosure of such video without clear privacy-related exemptions.⁴²

Aside from privacy issues arising from police presence in private spaces, it has also been suggested that BWCs may implicate Fourth Amendment rights.⁴³ According to Blitz, however, this is unlikely because BWCs are unlikely to generate footage that allows for a comprehensive picture of someone's life (at least without a massive effort by government), and are, instead, predominantly used as a tool to monitor officers.⁴⁴ Nielsen comes to the same conclusion, and draws a parallel between BWCs and the prevailing view concerning pole cameras, which are thought to be incapable of recording anything covered under the reasonable expectation of privacy doctrine under regular conditions.⁴⁵ Although the fate of the mosaic theory of the Fourth Amendment is still undecided,⁴⁶ the incorporation of newer or more advanced capabilities, such as facial recognition, artificial intelligence, or increased field-of-view/zooming abilities into BWC systems would seem to make this sort of analysis more relevant in the body-camera context.⁴⁷ Where the use of

42. See Newell, *supra* note 4, at 1384–85 (noting in response to BWCs, officers have expressed “[p]rivacy concerns in connection to liberal public disclosure rules”).

43. See BLITZ, *supra* note 38, at 13 (discussing BWCs and the Fourth Amendment and observing “[s]ome critics of body-worn cameras have warned that by routinely recording the activities of citizens that unfold in front of a police officer, government would be engaging in a Fourth Amendment Search”).

44. *Id.* at 16.

45. Erik Nielsen, Comment, *Fourth Amendment Implications of Police-Worn Body Cameras*, 48 ST. MARY'S L.J. 115, 129–34 (2016).

46. See *United States v. Jones*, 565 U.S. 400, 400, 405–06 (2012). For a detailed overview and discussion of the mosaic theory after *Jones*, see Orin S. Kerr, *The Mosaic Theory of the Fourth Amendment*, 111 MICH. L. REV. 311, 313–14 (2012) (explaining that “[u]nder the mosaic theory, searches can be analyzed as a collective sequence of steps rather than as individual steps”).

47. See Nielsen, *supra* note 45, at 132–33 (concluding that increased technological capabilities of cameras could lead to Fourth Amendment violations).

wearable police cameras (both in public and in private spaces) may begin to implicate Fourth Amendment concerns—or even state wiretapping and eavesdropping concerns—remains somewhat unclear.⁴⁸

The literature recognizes that there are other ways of mitigating privacy concerns aside from granting officers' discretion to turn their cameras on or off. For instance, Lin argues that even though “giving police officers broad discretion on when to record would allow officers to take privacy and sensitivity concerns into consideration,” such discretion may also lead to selective recording.⁴⁹ Instead, he explores the possibility of data management techniques and data retention policies as a solution to the privacy problem (which takes place after the recording rather than prior to it).⁵⁰ Blitz also recognizes this possibility, but warns that ex-post strategies may not be enough to “ease the fears of a witness unwilling to talk with a camera running.”⁵¹ In this regard, privacy is not only an abstract citizen interest, but may also affect how well officers are able to do their jobs. Moreover, if cameras are left running nigh-permanently and departments instead rely exclusively on ex-post strategies, then officer privacy may also be unduly implicated.⁵² And, as we discuss later, in states with liberal access to information policies, the fact that a video record exists, even if only briefly, may make it subject to public disclosure, exacerbating the privacy-related concerns of civilians.⁵³

Although it is evident that policy influences officer behavior concerning camera activation to some degree or another, policy does not guarantee it. Indeed, it is commonly accepted that merely introducing a certain technology to police by no means guarantees the envisioned effect. Historically speaking, outcomes of introducing new

48. Freund, *supra* note 34, at 132 (“It is clear . . . that the legal limits of how cameras can be used have not been completely established”).

49. Richard Lin, *Police Body Worn Cameras and Privacy: Retaining Benefits While Reducing Public Concerns*, 14 DUKE L. & TECH. REV. 346, 359 (2016).

50. *Id.* at 360–61.

51. BLITZ, *supra* note 38, at 17.

52. See Freund, *supra* note 34, at 106–08, 120 (discussing privacy and safety concerns of police officers and citing the possibility of retaliation by superiors).

53. See Fan, *supra* note 2, at 411–12; Mateescu et al., *supra* note 4, at 122; Newell, *supra* note 4, at 1331, 1334, 1337.

technologies in law enforcement have been divergent across different police departments and different types of technologies, suggesting that “many organizational, technological and external factors” are at play.⁵⁴ In understanding those divergent outcomes, Orlikowski and Gash introduced the concept of technological and organizational frames, which they define as a “subset of members’ organizational frames that concern the assumptions, expectations, and knowledge [that members of an organization] use to understand technology in organizations.”⁵⁵ These frames, which are not static but rather, despite often being well entrenched, are capable of shifting,⁵⁶ consequently shape officer perceptions of new technologies. Therefore, altering these frames when needed can be crucial to reaching desired outcomes. When frames between groups are incongruent, then this “can result in conflicts about the development, use, and meaning of technologies in a police organization, as well as different outcomes of technology.”⁵⁷

In this regard, the idea of a single, uniform “police culture” has been contested, and it has instead been suggested that a multitude of police cultures exist, both between different departments and between different ranks of officers.⁵⁸ Specifically, “street culture” (which is often characterized as being concerned with “uncertainty, solidarity, on-the-job experience, and distrust of superior officers”)⁵⁹

54. Koen, *supra* note 10, at 26.

55. Orlikowski & Gash, *supra* note 9, at 178.

56. See Wanda J. Orlikowski & Debra C. Gash, *Changing Frames: Understanding Technological Change in Organizations* 4 (Mass. Inst. of Tech., Sloan Sch. of Mgmt., Working Paper No. 3368-92 1992), <http://dspace.mit.edu/bitstream/handle/1721.1/46992/changingframesun00orli.pdf> [<https://perma.cc/K337-FHBR>] (stating frames are “expected to vary by context and over time”).

57. Cynthia Lum, Christopher S. Koper & James Willis, *Understanding the Limits of Technology’s Impact on Police Effectiveness*, 20 *POLICE Q.* 135, 138 (2017).

58. See Eugene A. Paoline III, *Taking Stock: Toward a Richer Understanding of Police Culture*, 31 *J. CRIM. JUST.* 199, 207–09 (2003) (“In sum, the most recent developments in the study of police culture point out the changes in the demographics of occupational members and police philosophies over the past twenty-five years that may have eroded the monolithic police culture, to the extent that one ever existed.”); Carrie B. Sanders, Crystal Weston & Nicole Schott, *Police Innovations, ‘Secret Squirrels’ and Accountability: Empirically Studying Intelligence-Led Policing in Canada*, 55 *BRIT. J. CRIMINOLOGY* 711, 724 (2015) (concluding “workgroups” influence culture and rejecting “the notion of a monolithic universal police culture”).

59. Koen, *supra* note 10, at 138.

plays a key role in the grander scheme of police culture, as it is here that new officers are introduced to the job and “develop their style of policing.”⁶⁰ With BWCs being primarily employed at the patrol level, the importance of proper implementation becomes especially apparent as positive experiences with the technology may allow room for officers to develop different styles of policing (in contrast to the traditional, reactive style of policing). It is possible that BWCs, when perceived as a symbol of distrust and tool of surveillance to be used against officers, would reinforce feelings of uncertainty and distrust of superior officers, ultimately discouraging more proactive policing. After all, for new officers, adhering to the traditional style will tend to entail less risk than proactive policing, which requires taking initiative and treading beyond the boundaries of basic protocol and established tradition. This would not only affect officers directly in their current capacity as patrol officers but may also have long lasting consequences for the entire organization as they move up (or, at least, to different positions) within the organization.

Building on the concepts introduced by Orlikowski and Gash, Lum et al. found that “police view technology through technological and organizational frames determined by traditional and reactive policing approaches.”⁶¹ These traditional and reactive policing approaches “dominate law enforcement practice” and create “strong organizational and technological frames, which powerfully mediate the effects of technology on discretion, efficiency and effectiveness.”⁶² Officers place great value on technological efficiency, and new technologies that are considered inefficient “or do not contribute to what officers believe to be their primary tasks,” tend to be met with resistance.⁶³ Lum et al. perceive and note these same difficulties playing out in the domain of BWCs.⁶⁴

BWCs implicate police discretion beyond simply questions of activation. BWCs also allow for much greater oversight by superiors

60. Paoline, *supra* note 58, at 209–10.

61. Lum et al., *supra* note 57 at 135.

62. *Id.* at 155.

63. *See id.*

64. *Id.* at 157 (noting that “how police officers perceive and use body-worn cameras may be quite different from the community’s intended objectives . . . because of the technological frames by which they are filtered).

(and, in case of public access to footage, society), and officers may thus experience a lessened degree of autonomy and discretion on the job.⁶⁵ The ability to exercise discretion has been linked to job satisfaction⁶⁶ and, due to police work's inherent complexity, discretion has been described as being "at the core of police functioning."⁶⁷ A qualitative study by Koen found that BWCs moderately affect officer discretion.⁶⁸ While noting that no fundamental change had taken place in the way in which police officers made their decisions, some did feel their discretion had diminished: one-third of patrol officers responded that they used less discretion.⁶⁹ As expected, several officers explained that this was due to the now increased possibility of being scrutinized for their discretionary decisions.⁷⁰

The steady flow of controversies in the news reveal that the issue of missing camera footage during critical incidents remains pervasive. Those in favor of affording officers a high degree of discretion cite privacy concerns and argue that effective policing is built on trust. While some of the alleged benefits from strict activation policies and consequences for non-compliance have indeed been disputed, there is nevertheless a strong basis in the literature to support the claim that these play significant roles in camera activation by officers. At the same time, the literature also reveals that officers' willingness to activate the camera should be approached with an understanding of the technological frames held by the officers within any given organization. Many officers view BWCs as something that limits their autonomy and runs counter to their ideas of efficiency and primary job functions. To understand how, when, and why police officers may refuse to comply with activation policy, a deeper comprehension of

65. See Koen, *supra* note 10, at 71–79 (examining how BWCs have impacted police discretion and concluding that it has had a "moderate" impact).

66. See Richard R. Johnson, *Police Officer Job Satisfaction: A Multidimensional Analysis*, 15(2) POLICE Q. 157, 170 (2012).

67. Ariel et al., *supra* note 5, at 457 (quoting GEORGE L. KELLING, NAT'L INST. OF JUSTICE, "BROKEN WINDOWS" AND POLICE DISCRETION 6 (1999)).

68. Koen, *supra* note 10, at 73.

69. *Id.* at 73, 78. Discretion here, for example, entails letting someone off with a warning rather than a citation, i.e., being more "legalistic." *Id.* at 73–74.

70. *Id.* at 75–76.

police cultures and the way in which they frame and consequently perceive new technologies is key.

II. METHODS AND DEMOGRAPHICS

A. *Methods*

The findings presented in this Article are drawn from both qualitative and quantitative data collected through fieldwork (interviews, observation, ride-alongs) and surveys of police officers in two municipal police agencies in Washington State⁷¹—namely, the Bellingham Police Department (“BPD”) and Spokane Police Department (“SPD”). Data collection encompassed forty ride-alongs with twenty-nine different officers, ranging in duration from a few hours to entire ten-hour-and-forty-minute shifts; a variety of additional informal discussions with other officers and department administrators, and a series of four surveys administered in 2014, 2015, 2016, and 2017-2018, respectively. Ride-alongs were conducted primarily by one of the authors (Newell), although some of the later rides were conducted by doctoral students from the University of Washington after being trained on study protocols for data collection. The interviews that occurred during ride-alongs were informal and not audio-recorded, although detailed written and audio-recorded field notes were made during breaks and shortly after each ride. Many of the questions asked on the questionnaires were also addressed during interviews and discussions with officers throughout the fieldwork. The survey questionnaires, which were designed primarily to inform and build upon the qualitative investigation and, as appropriate, validate whether certain themes drawn from the qualitative work were more generalizable across the two departments, resulted in 148, 133, 126, and 102 valid responses, respectively, across both departments.

The first survey was administered just before and during each department’s initial BWC pilot, from September to December 2014. The earliest responses (BPD, n = 29) were collected on paper during

71. The general methods and respondent demographic information of this study have been reported previously in Newell, *supra* note 4, 1381–84. Because this Section uses the same dataset, much of the text here draws from that earlier paper.

initial body-camera training meetings and prior to the actual deployment of cameras by that agency. The remaining responses to the first survey (n = 119) were collected (from both departments) online between October and December 2014. The next two surveys were administered online in May/June 2015 and June 2016, respectively. The fourth survey was administered in June 2017 within BPD and, due to administrative request, from mid-December 2017 to mid-January 2018 within SPD.⁷² Officers (including front-line officers, supervisors, and detectives) were sent an email containing a link to the online questionnaire by a member of each department's administrative leadership along with a brief description of the research and a statement that participation was encouraged but entirely voluntary. Officers were presented with an information statement outlining the risks and benefits of participation prior to taking the survey.

On all four surveys, officers were asked qualitative and quantitative questions designed to elicit their attitudes and concerns about the use of BWCs within their agencies. On each survey, officers were asked how frequently they felt BWCs *should* be activated in different contexts (a normative question). For example, officers were asked questions such as: "In your opinion, how often should wearable cameras be used by police officers [to record encounters with civilians?]" On the latter three surveys, officers who reported having previously used a BWC were also asked to self-report how frequently they activated their cameras in these same contexts. Of course, these self-reported responses should not be read as necessarily being an accurate proxy for how frequently cameras were actually activated, but it is interesting to compare officers' normative judgments about activation with how they characterize their own activation practices, especially when they self-report activating less frequently than they report they should be.⁷³ All four surveys included questions about

72. The questionnaire was scheduled to be administered in June 2017, to coincide with the administration in Bellingham, but it was delayed at the request of the department due to the volume of surveys the Spokane Police Department's officers had been asked to complete in early 2017 (from other sources).

73. As another note of caution, it is not clear from our data whether, or how much, existing departmental activation policies impacted officers' responses to either the

activation during all police-public interactions (the example question above), during arrest situations, and during traffic stops, while additional context-based prompts were added on Survey 2 (recording inside homes and during domestic violence calls) and on Survey 3 (recording inside medical facilities, recording witness and victim statements).

Officers were also asked Likert-scale questions about whether they felt the use of BWCs would decrease their ability to use discretion in their work and how likely they thought it was that BWC use would expose officers to increased numbers of disciplinary actions. In addition to these quantitative measures, respondents were also asked the following open-ended question: “What discretion should officers have about when to record? – for instance, should officers be required to record ALL encounters with civilians? Why or why not?” Findings regarding officers’ privacy-related concerns, primarily as they related to public disclosure under state access to information laws, were reported previously.⁷⁴

B. Agency and Respondent Demographics

At the midpoint of the study, BPD employed over 110 sworn personnel, with over 60 personnel assigned to patrol (including K-9), and over 50 non-sworn civilian personnel. The department had jurisdiction over 31.7 square miles and served a population of over 83,000 citizens. At the same point in time, SPD employed over 310 sworn personnel, with over 140 personnel assigned to patrol, and just over 100 non-sworn civilian personnel. The department had a jurisdiction of roughly 76 square miles and served a population of over 210,000 citizens.

Across all four surveys, the vast majority of respondents were male, ranging from 83.7% (BPD, Survey 2) to 92.6% (SPD, Survey 4). The low number of female respondents (ranging from 4.4% to 16.3% by department, per survey) does limit the generalizability of analyzing

normative or descriptive questions about how frequently activation should occur or had occurred.

74. For findings regarding officers’ privacy-related concerns, primarily as they related to public disclosure under state access to information laws, see Newell, *supra* note 4, at 1335, 1381, 1384–93.

results by sex, but the response rate does generally reflect the overall demographic composition of the two departments. At the midpoint of the study, the total population of sworn officers at BPD was approximately 84.0% male and 16.0% female, and the total population of SPD employees (not just sworn officers) was 75.6% male and 24.4% female.⁷⁵ Qualitative interviews and ride-alongs were also conducted with a sample of officers that generally matched these populations (predominantly male but including some female officers as well; five of the forty ride-alongs were conducted with three different female officers).

Agency	Survey	n	Male	Female	No response (NR)
BPD	1	50	88.0%	12.0%	-
	2	49	83.7%	16.3%	-
	3	56	85.7%	12.5%	1.8%
	4	36	85.3%	11.8%	2.9%
SPD	1	98	88.8%	9.2%	2.0%
	2	84	90.5%	7.1%	2.4%
	3	70	88.6%	5.7%	5.7%
	4	68	92.6%	4.4%	2.9%
Combined	1	148	88.5%	10.1%	1.4%
	2	133	88.0%	10.5%	1.5%
	3	126	87.3%	8.7%	4.0%
	4	102	90.2%	6.9%	2.9%

Table 1. Sex of Respondents (by Department) Across the Four Surveys.

75. We were not able to get precise numbers for just the sworn personnel at SPD.

Most respondents on each survey reported being between thirty-five and fifty-four years of age, with very few reporting being under twenty-four or older than sixty-four. Likewise, those we interviewed during ride-alongs were also generally between the ages of twenty-four and fifty-four.

Survey	n	18–24	25–34	35–44	45–54	55–64	65+	NR
1	148	0.7%	16.2%	42.6%	33.1%	5.4%	-	2.0%
2	133	-	9.0%	43.6%	37.6%	7.5%	0.8%	1.5%
3	126	0.8%	8.7%	33.3%	44.4%	8.7%	-	4.0%
4	102	-	13.7%	33.3%	44.1%	6.9%	-	2.0%

Table 2. Ages of Respondents Across All Four Surveys.

The majority of respondents on each survey reported having worked in a law enforcement capacity for more than ten years, with only a very small number reporting less than five years of professional law enforcement experience. Regarding the ride-alongs, most officers we interviewed had more than five years of experience, but a few were also newer officers (a couple having only recently completed their field training).

Survey	n	< 1 yr	1–2 yrs	3–5 yrs	5–10 yrs	> 10 yrs	NR
1	148	2.0%	0.7%	5.4%	21.6%	68.9%	1.4%
2	133	-	1.5%	1.5%	13.5%	82.0%	1.5%
3	126	-	0.8%	2.4%	14.3%	79.4%	3.2%
4	102	-	2.0%	7.8%	7.8%	80.4%	2.0%

Table 3. Reported Time in Law Enforcement Across All Four Surveys.

Across the four surveys, regular officers (patrol, traffic, crime prevention, etc., including both junior and senior patrol officers)

constituted between 45.1% and 63.5% of all respondents. Between 23.6% and 30.4% of respondents on each survey reported serving in supervisory positions (designated “Supervisor” in Figures 3a–3c), including corporal (SPD only), sergeant, lieutenant, captain (SPD only), and major (SPD only). Additionally, between 7.9% and 11.3% of respondents reported being detectives or crime scene investigators. Ride-alongs were conducted primarily with regular patrol officers but also included three sergeants, two corporals, and one crime scene investigator. Additional interviews and informal conversations were conducted with higher ranking members of the departments’ command staff, civilian staff, and additional patrol officers.

All respondents to each survey reported having attended college or university, with a majority on each survey having earned a four-year baccalaureate degree. Approximately 20% of respondents reported having obtained a two-year associates degree, and between 2.7% and 7.8% having obtained a graduate degree. This question was not typically asked during informal interviews.

Response(s)	Survey 1		Survey 2		Survey 3		Survey 4	
	n	%	n	%	n	%	n	%
Major	-	-	-	-	-	-	1	1.0
Captain	1	0.7	3	2.3	3	2.4	2	2.0
Lieutenant	8	5.4	10	7.5	8	6.3	6	5.9
Sergeant	22 [*]	14.9	19 [*]	14.3	20 [*]	15.9	21 [*]	20.6
Corporal	4	2.7	5	3.8	5	4.0	1	1.0
Detective/CSI	12 [*]	8.1	15 [*]	11.3	10 [*]	7.9	9 [*]	8.8
Senior Officer ^{**}	28	18.9	21	15.8	14	11.1	13	12.7
Officer	66	44.6	42	31.6	46	36.5	33	32.4
Admin/Other	-	-	-	-	1	0.8	1	1.0
Did not report	8	5.4	19	14.3	20	15.9	17	16.7
TOTAL	148		133		126		102	
<p>* Includes one or more response where the rank of "Sergeant" and the position of "Detective" were both indicated. In these cases, respondents were coded as both (and as supervisors).</p> <p>** Only applies to SPD, as BPD does not separate these officers into junior and senior ranks.</p>								

Table 4. Reported Rank/Position of Respondents, by Survey.

Roughly 84% to 87% of respondents on each survey reported being "White," with small percentages of respondents identifying as "Hispanic," "Black/African-American," "American Indian/Alaska Native," "Asian," or "Hawaiian/Pacific Islander" (see Table 5, below). These responses generally match the populations at both departments, as BPD's population is approximately 90% White, 5.4% Asian and Pacific Islander, and 4.5% Black/African-American (with a few employees who identify as Hispanic in addition to one of the

previous categories). On the other hand, SPD's population is approximately 91.9% White, 3.0% Hispanic, 1.5% Black/African-American, 1.5% American Indian/Alaska Native, and 1.8% Asian/Hawaiian/Pacific Islander (with another 1.0% "Other"). Ride-alongs were primarily conducted with white officers, although some informal interviews were conducted with non-white officers.

Response(s)	Survey 1		Survey 2		Survey 3		Survey 4	
	n	%	n	%	n	%	n	%
White	130	87.8%	116	87.2%	107	84.9%	86	84.3%
Black/African American	3	2.0%	2	1.5%	2	1.6%	2	2.0%
Asian	2 [*]	1.4%	2	1.5%	3 ^{***}	2.4%	2 [*]	2.0%
Hispanic	5 [*]	3.4%	3 [*]	2.3%	2 [*]	1.6%	5 [*]	4.9%
American Indian/Alaska Native	3 [*]	2.0%	4 [*]	3.0%	2	1.6%	0	0.0%
Hawaiian/Pacific Islander	1	0.7%	1	0.8%	1 ^{***}	0.8%	1	1.0%
Other	2 ^{**}	1.4%	4 ^{**}	3.0%	3 ^{**}	2.4%	3	2.9%
No Response	6	4.1%	7	5.3%	11	8.7%	7	6.9%
Total	148	-	133	-	126	-	102	
<p>* Includes one or more response where "White" was also selected as a primary racial category.</p> <p>** Responses include: [blank], "American," "Merican," and "Human."</p> <p>*** Includes one response indicating both "Asian" and "Native Hawaiian/Pacific Islander."</p>								

Table 5. Reported Racial/Ethnic Backgrounds of Respondents, by Survey.

In terms of political attitudes, the highest percentages of respondents generally reported their political leanings as being

“conservative” (24.5% to 32.5% across surveys) or “moderate conservative” (27.7% to 35.3%), followed by a smaller number of respondents who reported being “moderate” (16.7% to 22.6%). Only very small numbers of respondents (fewer than 6%) reported being on the “liberal” side of the political spectrum, while 7.9% to 11.8% reported being “very conservative.” This question was not generally discussed during informal interviews.

III. FINDINGS

In the subsections below, we detail (1) officers’ normative assessments about activation, including what officers reported was the appropriate level of activation in each of these contexts as well as their self-reported perceptions about whether BWCs would diminish officer discretion; and (2) how frequently officers self-reported actually activating their cameras in these same contexts (as a point of comparison to officers’ normative responses).

A. *Desired Levels of Discretion*

Most of the responding officers reported that some degree of discretion regarding camera activation was appropriate, although a minority did support the “always on, no discretion” approach. Those officers who did support always-on activation policies often cited trust (or the lack of trust) as a primary reason for opposing officer discretion in activation policies—framing the requirement to “record everything” as a mechanism to preemptively shield officers against unjustified criticism or unfounded claims of misconduct by supervisors, the media, and the public. One sergeant, assigned to an internal affairs unit, stressed that activation was important “to avoid the accusation that [officers] are ‘selectively’ recording incidents to avoid showing bad behavior,” adding that he has “seen the cameras work to the advantage of officers more times than not.”

Officers’ desire to protect themselves by documenting police-public contacts also appears to stem from the feeling held by some officers that “every contact is a potential threat and should be recorded.” This focus on overcoming mistrust by documenting all their police-public interactions was often complemented by officers’ stated belief that their departments were not full of “bad apples” and deserved more respect from members of their communities. Some

officers expressed strong opinions on this issue. As one officer explained, “[t]he main reason to record all encounters is to make sure that the officer is protected from false accusations of misconduct. The officers of the [department] are professional and ethical people. They do not abuse anyone.” Another noted, “If the citizens think we can’t be trusted they shouldn’t be bitching when we record everything! I think we should record every encounter with a citizen.”

Some officers reported that they saw frequent activation as a means of producing video that could inform citizens about what real, daily, police work looked like, with the hope of educating the public about both the boring and stressful aspects of their jobs. One officer expressed this sentiment by explaining that “[t]he public wants to see what we do and the best way for them [to do so] is to see how we deal with a high stress situation.” Others echoed concerns about officers not wanting to engage with the cameras at all; for example, one officer expressed the sentiment that “there has to be an all-activation approach or else some cops would never turn it on.” Others felt that frequent activation was important because it resulted in the collection of better evidence to use in prosecuting the cases they investigated. Alternatively, some officers noted that “unpredictability of police work” and the difficulty of knowing, *ex ante*, whether an interaction should be recorded worked in favor of limited discretion.

Yet, some officers also felt that any attempt to record everything was “an exercise in futility” because, as one lieutenant stated, “[i]t doesn’t matter, because the one time you forget, or don’t [record,] people will say you were hiding something.” A sergeant stated forcefully: “Any application of officer discretion to not record would be viewed as deliberate intent to conceal unacceptable conduct. Remove all discretion. Record everything and watch ‘productivity’ go into a free fall.” Additionally, some officers in favor of recording all encounters also expressed concerns that they would be punished for forgetting to activate their cameras in every situation they encountered.

Responses to the quantitative survey questions are generally consistent with these qualitative findings. Notably, a small percentage of officers reported that cameras should “always” be activated during encounters with members of the public (15.5%, 17.3%, 15.1%, and 9.8%, respectively, by survey). However, when asked about activation in other, more specific, contexts, these percentages generally

increased. For example, closer to half of the respondents reported that cameras should “always” be activated during arrest situations. Table 6, below, includes more details.

Context	“Always” (%)				“Always” or “Most of the Time” (%)			
	S1	S2	S3	S4	S1	S2	S3	S4
All public encounters	15.5	17.3	15.1	9.8	51.4	52.6	55.6	53.9
Arrest situations	42.6	51.1	51.6	63.7	77.7	88.0	93.7	90.2
Traffic stops	41.2	45.9	48.4	53.9	75.7	78.2	90.5	86.3
Inside homes	-	15.8	15.1	16.7	-	42.1	54.8	62.7
Domestic violence calls	-	39.8	40.5	52.0	-	74.4	86.5	84.3
Inside medical facilities	-	-	7.9	4.9	-	-	32.5	30.4
Witness statements	-	-	27.0	30.4	-	-	65.1	70.6
Victim statements	-	-	21.4	28.4	-	-	61.1	65.7

Table 6. Percentage of Officers Who Reported That BWCs Should Be Activated “Always” or “Most of the Time” During Each Context, by Survey.

As depicted in Figure 1, officers also reported that activation should happen more frequently across contexts as time went on. Officer opinion that BWC activation should happen during most or all public-police interactions (that is, combining responses for

“always” or “most of the time”) rose slightly across surveys (51.4%, 52.6%, 55.6%, 53.9%), as it did for arrests (77.7%, 88.0%, 93.7%, 90.2%), traffic stops (75.7%, 78.2%, 90.5%, 86.3%), recording inside homes (42.1%, 54.8%, 62.7%), and during domestic violence calls (74.4%, 86.5%, 84.3%).

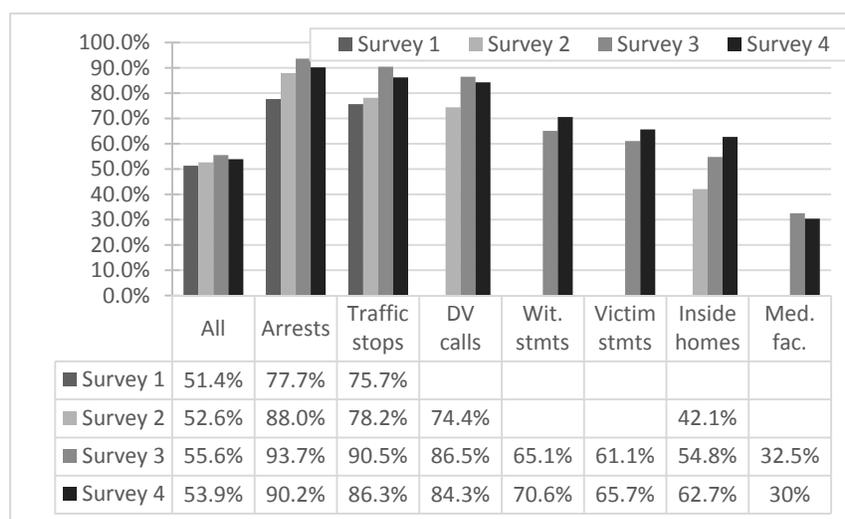


Figure 1. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, Across Both Departments.

However, as we see from Figures 2a and 2b, the responses varied by department, with SPD officers consistently more likely to report that frequent BWC activation was appropriate in certain circumstances; in some cases, they were considerably more likely to be in favor of more frequent activation.⁷⁶ There may be many

76. On Survey 1, SPD respondents were significantly more likely than BPD respondents to support more frequent activation during all police-public encounters ($U = 1777.5$, $Z = -2.857$, $p = 0.004$) and during traffic stops ($U = 1838$, $Z = -2.637$, $p = .008$), but not during arrest situations. On Survey 2, SPD respondents were significantly more likely than BPD respondents to support more frequent activation during arrest situations ($U = 1608.5$, $Z = -2.321$, $p = .02$), during traffic stops ($U = 1614$, $Z = -2.224$, $p = .026$), and while

variables that contributed to these differences, although it is difficult to say what the specific causes might have been. Some of this variance may be attributable to different activation policies in effect in each department. This seems especially likely in the case of recording inside homes, as BPD officers were instructed, at one point early in their body-camera pilot, to not record inside private residences due to privacy-related concerns. In any case, these findings suggest that BPD officers understood BWCs as appropriate tools in a particular range of circumstances—including during arrests, traffic stops, and domestic violence calls—but not necessarily in terms of constant recording or with the purpose of capturing all interactions an officer might have over the course of a shift. SPD officers, on the other hand, appeared to understand BWCs more as broadly applicable tools, useful across a broader range of contexts.

inside private homes ($U = 1650$, $Z = -1.992$, $p = .046$). The difference for recording during all police-public encounters was not significant, but marginally so ($U = 1661.5$, $Z = -1.952$, $p = .051$). On Survey 3, SPD respondents were statistically more likely to support frequent activation in every context except arrest situations: during all police-public encounters ($U = 1157.5$, $Z = -4.127$, $p < .001$), during traffic stops ($U = 1525.5$, $Z = -2.367$, $p = .018$), while recording inside homes ($U = 864$, $Z = -5.630$, $p < .001$) and medical facilities ($U = 1389.5$, $Z = -2.920$, $p = .003$), while recording witness statements ($U = 815.5$, $Z = -5.879$, $p < .001$) and victim statements ($U = 812.5$, $Z = -5.892$, $p < .001$), and during domestic violence calls ($U = 1590$, $Z = -1.987$, $p = .047$). Finally, on Survey 4, SPD respondents were statistically more likely to support frequent activation during all police-public encounters ($U = 858.5$, $Z = -2.237$, $p < .025$), while recording inside homes ($U = 792.5$, $Z = -2.737$, $p = .006$) and medical facilities ($U = 838$, $Z = -2.395$, $p = .017$), and while recording witness statements ($U = 625.5$, $Z = -3.967$, $p < .001$) and victim statements ($U = 601.5$, $Z = -4.116$, $p < .001$).

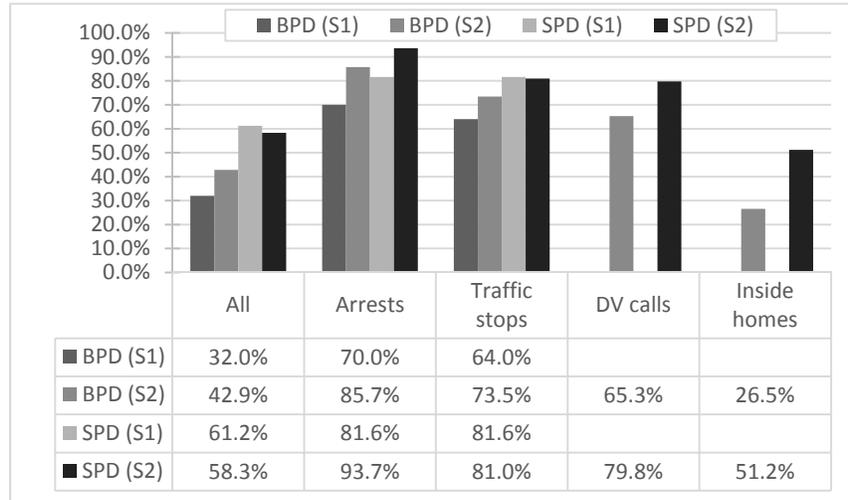


Figure 2a. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, by Department, from Surveys 1, 2.

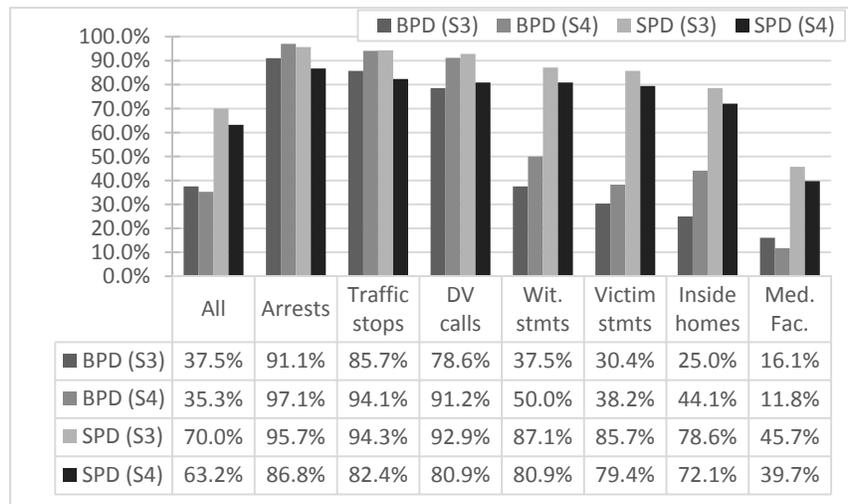


Figure 2b. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, by Department, from Surveys 3, 4.

The response to these questions also varied substantially by rank, with those in more senior or supervisory roles more in favor of frequent activation than those assigned as regular patrol officers (in terms of raw percentages). This unsurprising finding is true for every context across all four surveys and, in some cases, the percentage difference is greater than 30 points. When comparing “Supervisors” with “Officers” combined across both departments, we find statistically significant differences.⁷⁷ For example, on Survey 3, supervisors reported that frequent activation was appropriate during all police-public encounters at a rate of 78.4% compared to 46.7% of regular front-line officers. A much higher percentage of supervisors also reported that recording inside homes should occur frequently than regular patrol officers did (67.6% compared to 41.7%), as indicated in Figures 3a–3c, below.

77. On Survey 1, respondents who reported being Supervisors were significantly more likely than those who reported being (non-supervisor) Officers to support more frequent activation in all three contexts: during all police-public encounters ($U = 1136.5$, $Z = -2.810$, $p = 0.005$), during arrest situations ($U = 1247$, $Z = -2.260$, $p = .024$), and during traffic stops ($U = 1233.5$, $Z = -2.323$, $p = .020$) (this analysis excludes those in the Unknown category). On Survey 2, Supervisors were significantly more likely than Officers to support more frequent activation during arrest situations ($U = 767.5$, $Z = -3.072$, $p = .002$) and during traffic stops ($U = 824.5$, $Z = -2.515$, $p = .012$). On Survey 3, SPD Supervisors were statistically more likely than Officers to support frequent activation in every context except domestic violence calls: during all police-public encounters ($U = 742.5$, $Z = -2.875$, $p = .004$), during arrest situations ($U = 772.5$, $Z = -2.827$, $p = .005$), during traffic stops ($U = 781.5$, $Z = -2.448$, $p = .006$), while recording inside homes ($U = 792$, $Z = -2.448$, $p < .014$) and medical facilities ($U = 779.5$, $Z = -2.561$, $p = .010$), and while recording witness statements ($U = 781.5$, $Z = -2.537$, $p < .011$) and victim statements ($U = 829$, $Z = -2.168$, $p < .030$). Finally, on Survey 4, Supervisors were statistically more likely to support frequent activation during all police-public encounters ($U = 470.5$, $Z = -2.713$, $p < .007$), but not in other contexts.

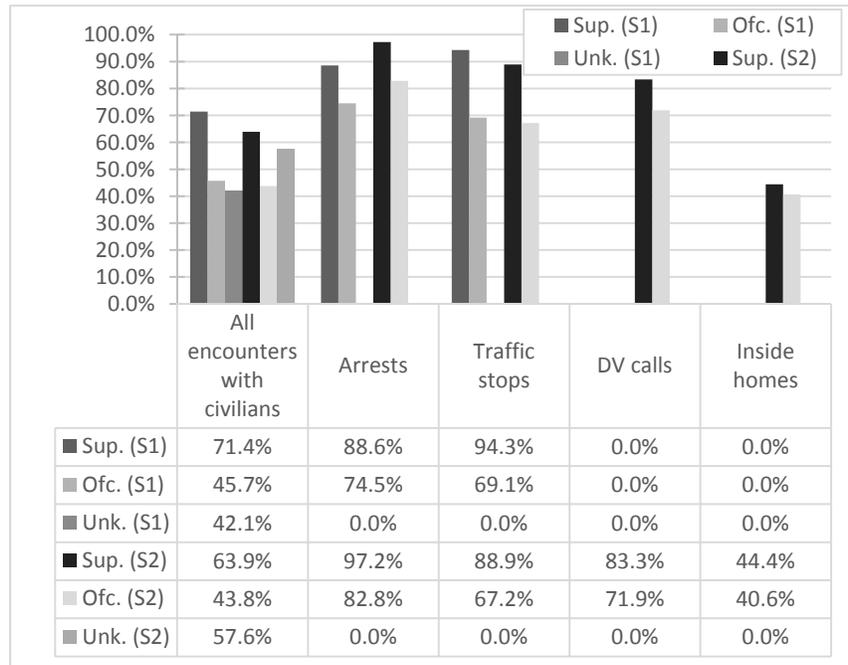


Figure 3a. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, by Seniority, from Surveys 1 and 2.

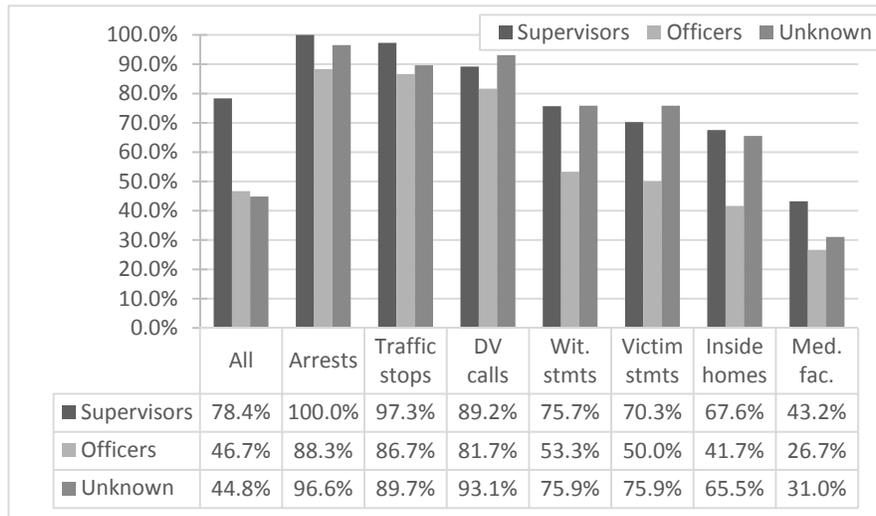


Figure 3b. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, by Seniority, from Survey 3.

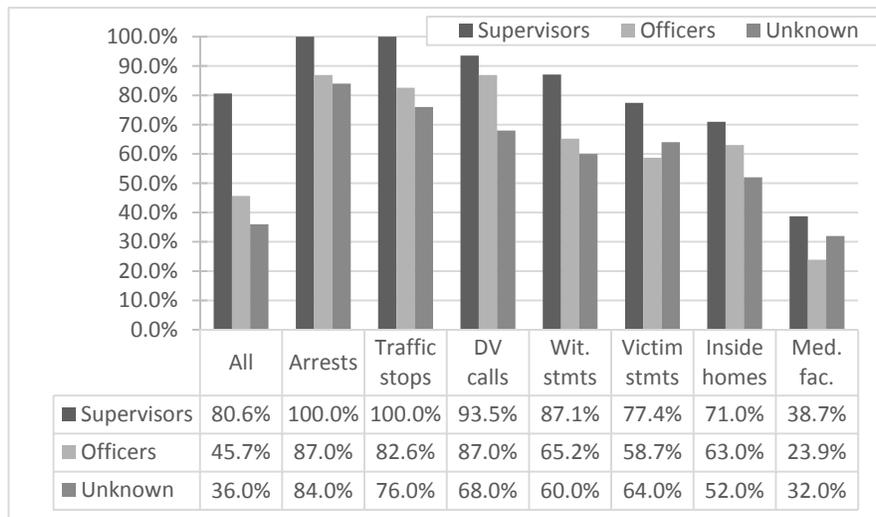


Figure 3c. Percentage of Respondents Who Indicated BWCs Should Be Activated “Always” or “Most of the Time” in Each Context, by Seniority, from Survey 4.

As stated above, most officers did support some amount of officer discretion about when to record. For these officers, discretion provided a means to have more honest, trusted, and authentic interactions with members of the public (as well as other officers); to avoid violating privacy or recording extremely sensitive (and potentially embarrassing or traumatic) situations or statements; and to minimize the amount of work required to annotate, tag, and sometimes watch footage. As outlined by one detective:

Officers should not be required to record all interactions with the public. The majority of contacts are non-criminal in nature. People should be able to feel they can approach officers, without fear or concern they are going to be recorded. The camera could have a dampening effect on reporting crimes, if people believe they are always being recorded.

These concerns were compounded by liberal public disclosure requirements in local public records law and officer perceptions that the video they produced was likely to be disclosed to the public and end up online (e.g., on YouTube.com).⁷⁸ In this regard, one senior patrol officer stated:

I don't have an issue recording every issue with citizens. However, the video should not be so easy to get through a [public] records request for just anybody to view. On incidents with a bridge jumper, for example, I feel we should record that, but we shouldn't have to tell the person we are recording so they don't think they have an audience. We should still record it for future civil law suits.

Several officers were concerned that citizens would be less willing to disclose information if officers could not choose to turn off their cameras. Officers also frequently cited privacy and sensitivity-related concerns (e.g., when interviewing rape victims or speaking to informants). The threat to citizen privacy was often viewed through the lens of public disclosure. Various officers suggested limits on who could access video or, at least, that they should have the flexibility to turn off a camera during sexual assault (and other sensitive) calls. The

78. For more details about the local public disclosure law and officers' perceptions towards public disclosure of their footage, see Newell, *supra* note 4, at 1363–80, 1384–93.

feeling that a “rape victim’s statements should not be accessible to a simple public information request” was not appropriate because it “could victimize them further” was echoed by several officers; others stated that officers should be able to choose not to record “citizens in mental crisis, medical crisis, or victims of a crime” when public disclosure was possible or likely. One officer stated, “Officer’s should have discretion. I’ve dealt with people whose loved one passed away naturally and they didn’t want it recorded for someone to get a copy and post it on the internet.” Here, too, some officers appear to view discretion as a tool by which officers can protect bystanders and non-criminal persons of interest from the public disclosure laws that many of them disagree with in the first place.⁷⁹ Some officers also refer to other types of threats which may follow from public disclosure (for example, burglars staking out a house prior to breaking and entering).⁸⁰ Officer privacy was also mentioned as a reason for allowing discretion. Officers were concerned that their private conversations (both with friends, family, or other colleagues) might be recorded and become subject to public disclosure requests. Similarly, some officers also expressed concern over certain actions being misinterpreted when viewed by others. As one officer remarked, “[officers] sometimes vent or laugh as a coping mechanism and it could be misunderstood” by outside viewers. Likewise, in survey responses, almost half of the officers agreed that “wearing a body camera will diminish officer discretion (e.g. to not issue a citation in certain circumstances).”

The tension between documenting everything to protect themselves and capture evidence and the risks to others that recording might impose was felt acutely by some officers. For example, at one point during a ride-along, an officer arrested a known gang member who also happened to be the officer’s confidential informant. After recording the arrest, the officer turned the camera off and sat down in the back seat of the patrol car with the arrestee to talk. After a few minutes, the officer emerged from the back of the

79. See *id.*

80. We are not aware of any incidents where something like this has actually occurred. It seems unlikely that these concerns are based on prior experience, or that such an issue presents a particularly pressing problem.

car, turned his camera back on, and proceeded to record the rest of our drive to the local jail where the arrestee was booked. On one hand, recording such a conversation with an informant could increase the risk to the informant, should others find out he or she had talked. On the other hand, the gap in the recording could likewise subject the arrestee to risk, at least when public disclosure laws require the release of such footage upon request, and it could also potentially open the officer to undocumented claims of misconduct.

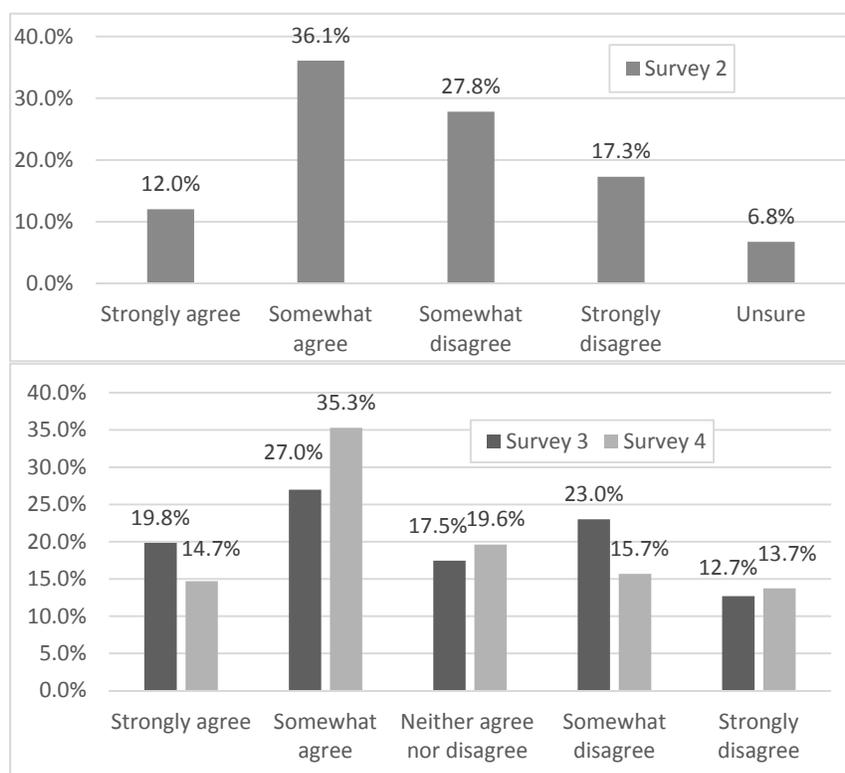


Figure 4. Responses to the Question: “Wearing a Body Camera Will Diminish Officer Discretion (e.g. To Not Issue a Citation in Certain Circumstances).”

On the latter three surveys, 48.1%, 46.8%, and 50.0% of respondents, respectively, agreed that BWCs would limit officer discretion, while 45.1%, 35.7%, and 29.4%, respectively, disagreed. Only 17.3%, 12.7%, and 13.7%, respectively strongly disagreed, while 12%, 19.8%, and 14.7%, respectively, strongly agreed. There was some difference between departments, although the differences were not always in the same direction (BPD officers reported 40.8% agreement on Survey 2, compared to 52.4% of SPD officers; 50% compared to 44.3% on Survey 3; and 38.2% compared to 55.9% on Survey 4).

Officers exercise discretion in a broad sense throughout their line of work. BWCs may restrict their willingness and perceived ability to exercise discretion in several ways. Our data is consistent with that of other authors in the sense that many officers are concerned about “Monday-morning quarterbacking.”⁸¹ As one officer remarked, “[Monday-morning quarterbacking] is already occurring. The current trend is to hand out as much discipline as possible to officers for any situation which is handled less than perfectly in the opinion of that particular captain. Cameras aid in that process.”

Officers also fear that the public (and in some cases, supervisors) do not understand the nuances of policing and what is sometimes required to achieve an effective outcome. One quote stood out in the sense that it reveals how important discretion can be but how it could simultaneously be misconstrued:

Anyone who has tried talking with a known street criminal with a “Hello sir the reason I’m contacting you today...” will instantly lose credibility with this contact, thus compromising officer safety. But if you approach this same street criminal with a “Bro, what’s the word on the street?” you’ll be called a racist, insensitive or otherwise unprofessional.

These tensions are reminiscent of the discrepancy described by He et al.: on the one hand, police work requires officers to exercise a great deal of discretion but, on the other, they are strongly bound by administrative rules (as police organizations are highly bureaucratic

81. See, e.g., Koen, *supra* note 10, at 73 (noting “[o]ne of the more common phrases mentioned by [the] officers during interviews was: ‘Monday morning quarterbacking,’” which refers to the public’s ex post facto judgment about an officer’s decision making).

in nature), and this causes additional stress.⁸² In this case, however, the discrepancy concerns unwritten rules of social convention to which officers are subjected.

Interestingly, very few respondents on the first three surveys (8.1%, 4.5%, and 9.5%, by survey and across departments) reported that BWC use was “very likely” to lead to increased numbers of disciplinary actions against officers. Similarly, combining “very likely” or “somewhat likely” responses only captured only about 20–30% of the total across these three surveys (see Figure 5). A supervisor with some experience in the Internal Affairs division of one of the departments stated that BWCs generally “protect officers against false allegations, while protecting citizens from ‘he said, she said’ stalemates.”

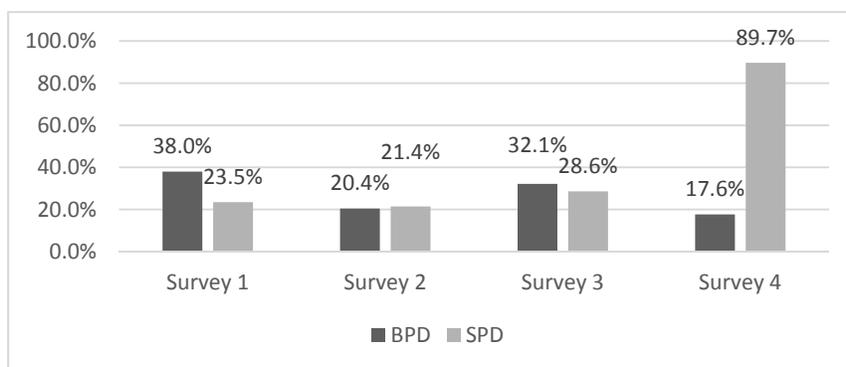


Figure 5: Percentage of Respondents who Indicated BWC Use Was “Very Likely” or “Somewhat Likely” to Increase the Number of Disciplinary Actions Brought Against Officers, by Department.

We also see that higher percentages of regular officers generally reported agreement that BWCs would lead to increased discipline

82. See Ni He, Jihong Zhao & Carol A. Archbold, *Gender and Police Stress: The Convergent and Divergent Impact of Work Environment, Work-Family Conflict, and Stress Coping Mechanisms of Female and Male Police Officers*, 25 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 687, 690–91 (2002) (noting the conflict caused by the requirement that officers “exercise considerable discretion while being tightly controlled by a plethora of administrative rules surrounding their work”).

than did supervisors (see Figure 6). On Survey 4, however, while BPD respondents indicated roughly similar responses (2.9% very likely, 14.7% somewhat likely), SPD respondents reported that increased disciplinary action was much more likely, at 58.8% indicating that such an increase was “very likely” and an additional 30.9% indicating it was “somewhat likely” (see Figures 5 and 6 for related data). It is unclear from our data what drove this spike, but it likely reflects either officer experience during the intervening period or altered expectations based on a change in departmental leadership (as a new chief of police with a stated commitment to departmental accountability to the Spokane community was hired in the intervening period⁸³). As one officer put it, “recently it appears the Department is overly consumed with whether or not our cameras are on as if we are not trusted.” Some officers also felt strongly that the cameras were being used unjustly by administrators as accountability tools. In the words of one officer, administrators had begun “imposing their own morals and opinions on my actions,” an indication that the department’s “policy protects the administration, but the officers have minimal protection from admin, and zero from the public release of every word spoken on every day in every scenario by people who condemn a single misspoken sentence as though we are murderers.”

Additionally, one SPD officer who had transitioned into investigations after initially being assigned a BWC reported, on Survey 4, a continuing “fear of being disciplined even though nothing was done wrong” due to perceived lack of clarity about how the law applied to the use of BWCs and officer accountability. Other officers also expressed concerns that “footage is not used by [the] prosecutor’s office and is only being used for [officer] discipline.” Similarly, another officer expressed concerns that, “if the officer sees something that is not captured on the camera, the assumption will be

83. See Mitch Ryals, *Craig Meidl Named Chief of Spokane Police Department*, INLANDER (Aug. 1, 2016, 12:48 PM), <https://www.inlander.com/Bloglander/archives/2016/08/01/craig-meidl-named-chief-of-spokane-police-department> [<https://perma.cc/7A2B-5FH7>]; Shawn Vestal, *Shawn Vestal: Spokane Police Chief Craig Meidl has Defied the Fears of his Critics to Become a Model Leader*, SPOKESMAN-REV. (Dec. 17, 2017, 6:00 AM), <http://www.spokesman.com/stories/2017/dec/17/shawn-vestal-spokane-police-chief-craig-meidl-has/> [<https://perma.cc/S8RA-4QJY>].

made that it didn't occur, and the officer's integrity will be called into question." Another elaborated a little more: "Right now, we're having issues getting our footage into court and then having it used against us when it does get in (e.g., officers discussing [probable cause] and defense saying we didn't know what we were doing). It's a double edge sword in court right now." Beyond general accountability for disciplining officers, one officer expressed the concern that "police and city administration" might use BWC footage "to identify and target officers who do not share the same religious/political beliefs." It is likely that these sorts of concerns in combination with a lingering lack of clarity or understanding about the law's application to the use of BWCs and related accountability processes amongst officers could have contributed to the spike in responses indicating that disciplinary action was a likely result stemming from BWC deployment.

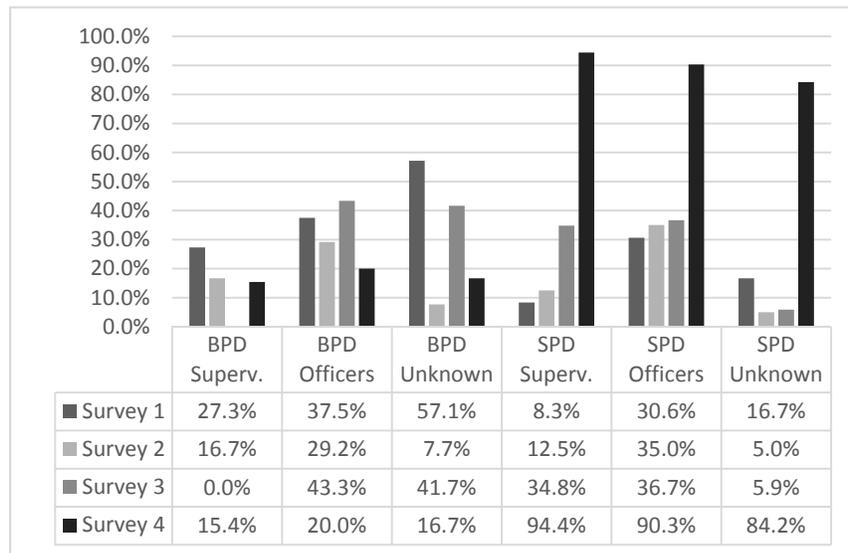


Figure 6: Percentage of Respondents Who Indicated BWC Use Was “Very Likely” or “Somewhat Likely” to Increase the Number of Disciplinary Actions Brought Against Officers, by Department and Rank (Supervisor, Officer, or Unknown).

Relatedly, on Survey 4, while a third to more than half of BPD respondents across categories (supervisor, officer, or unknown) reported that increased disciplinary actions were “somewhat unlikely” or “very unlikely” to arise as a consequence of BWC use, very few SPD respondents responded similarly (with only 5.6% of supervisors indicating “somewhat unlikely”; see Figure 7).

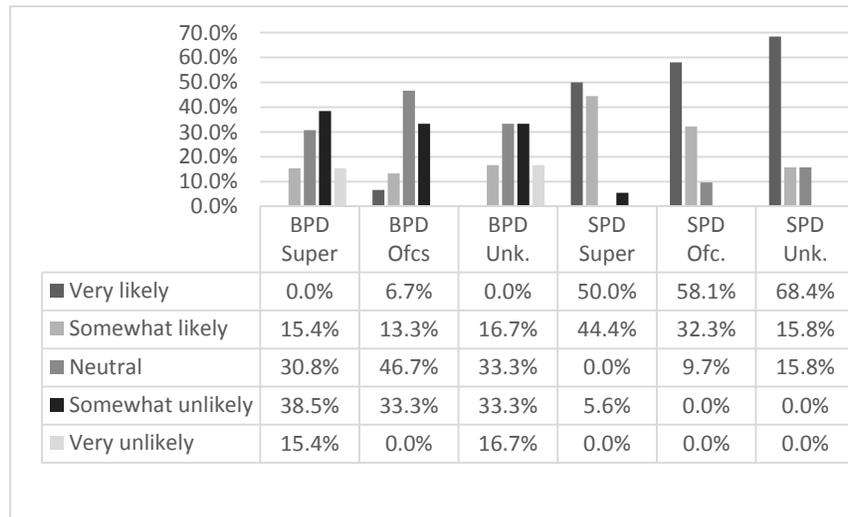


Figure 7: Responses to Question About How Likely BWC Use Would Lead to Increase Numbers of Disciplinary Actions Against Officers, by Department and Rank (Supervisor, Officer, or Unknown), on Survey 4.

Discounting the spike by SPD respondents in Survey 4, we expected more responses to indicate a “very likely” expectation than turned out to be the case. Because our qualitative responses show a recurring emphasis on themes of accountability and concerns over Monday-morning quarterbacking, we initially theorized that this would be reflected through strong expectations of increased disciplinary actions. However, it is quite possible that officers were concerned about the possibility of Monday-morning quarterbacking while, at the same time, also experienced relatively little of it in practice. If so, it is then conceivable that many would discount the possibility of increased disciplinary action as being “very likely,”

while still harboring concerns. However, when officer experience changes and concern is elevated to reality (as may have been the case for SPD in Survey 4) it stands to reason that expectations of disciplinary action would rise accordingly. Finally, the discrepancy can be further explained due to the fact that there are many other ways of being held accountable: Monday-morning quarterbacking does not by definition lead to disciplinary action. Scrutiny takes many forms, and disciplinary action is only one of them.

Another area in which officers' exercise discretion concerns the use of force. Several officers worry that the implementation of BWCs alongside Monday-morning quarterbacking will lead officers to use less force than is required or justified, ultimately jeopardizing officer safety. One officer stated that the decision to use force has been replaced with the decision to *estimate how others will perceive* that use of force. Interestingly, although officer discretion is usually thought of as "letting someone off the hook" the reverse is sometimes true here—rather than "conforming" by using the appropriate amount of force in situations in which policy would allow it, officers reported feeling obligated to use their discretion to de-escalate the situation and essentially be more lenient.

Even though many officers resist the idea of their cameras always being on and recording everything, they also frequently express concern over the *act* of having to turn on the camera. It stands to reason that this issue is amplified by the possibility of scrutiny if they fail to turn it on in a critical situation. And, as one officer mentioned, in addition to turning the camera on, officers also must "[advise] the person or persons of the recording" and "constantly evaluate if they can legally or within policy continue the recording." Our data also shows that some officers feel that policy and law are unclear on this point, and this uncertainty and perceived ambiguity may ultimately affect their decision to use discretion to turn the cameras on or off.

Another commonly recurring issue (closely related to the Monday-morning quarterbacking complaint) concerns the fact that officers believe that the public will mistakenly assume that anything caught on camera was perceived by the officer and vice versa. A few officers noted that this may lead to officers becoming more focused on positioning the camera so that it captures as much as possible, which may sometimes run in tension with their training to orient themselves in particular ways for the sake of safety. Finally, some

officers expressed concern that their word will no longer carry weight unless a video is present, and fear that, in the future, prosecutors will refuse to charge a case unless footage is present, or defense attorneys will be able to use the lack of footage to get charges dropped.

C. Self-Reported Activation Rates

On the second and third surveys, smaller percentages of officers reported activating their cameras frequently during police-public encounters than reported that cameras should be activated in the same circumstances.⁸⁴ This is an interesting finding, given that we assumed officers would generally not report activating their cameras less frequently than they felt they should be. However, on Survey 4, this trend reversed itself across most—but not all—of the contexts. These observations may suggest that officers may not be averse to somewhat stricter activation policies in these types of contexts. For example, closer to half of the respondents (51.1%, 51.6%, and 63.7%) reported that cameras should “always” be activated during arrest situations, while only 37.5%, 41.4%, and 61.4% reported always activating their own cameras in the same context. The self-corrective responses, if they are roughly true to officers’ actual experiences, would suggest that officers are increasingly activating their cameras as they become more accustomed to having them as part of their daily routine.

84. Compare the data in Table 7 with that in Table 6.

Context	“Always” (%)			“Always” or “Most of the Time” (%)		
	S2	S3	S4	S2	S3	S4
All public encounters	8.9	10.3	18.1*	51.8	47.1	61.4*
Arrest situations	37.5	41.4	61.4	85.7	88.5	96.4*
Traffic stops	46.4*	35.6	51.8	78.6	75.9	86.7*
Inside homes	19.6*	14.9	28.9*	39.3	49.4	68.7*
Domestic violence calls	32.1	31.0	54.2*	73.2	79.3	91.6*
Inside medical facilities	-	4.6	6.0*	-	18.4	31.3*
Witness statements	-	17.2	32.5*	-	59.8	69.9
Victim statements	-	16.1	30.1*	-	56.3	66.3*

* Indicates higher percentage response than to the normative results in Table 6.

Table 7. Percentage of Officers Who Reported That They Activated Their BWCs “Always” or “Most of the Time” During Each Context, by Survey.

Officers reported activating their cameras “always” or “most of the time” during arrest situations, traffic stops, and domestic violence calls much more frequently than in the other five contexts. Respondents indicated much less frequent activation inside medical facilities (e.g., hospitals), with a full third (33.3%) indicating they never activated in such circumstances on Survey 3 (see Figure 8, below, for more details).

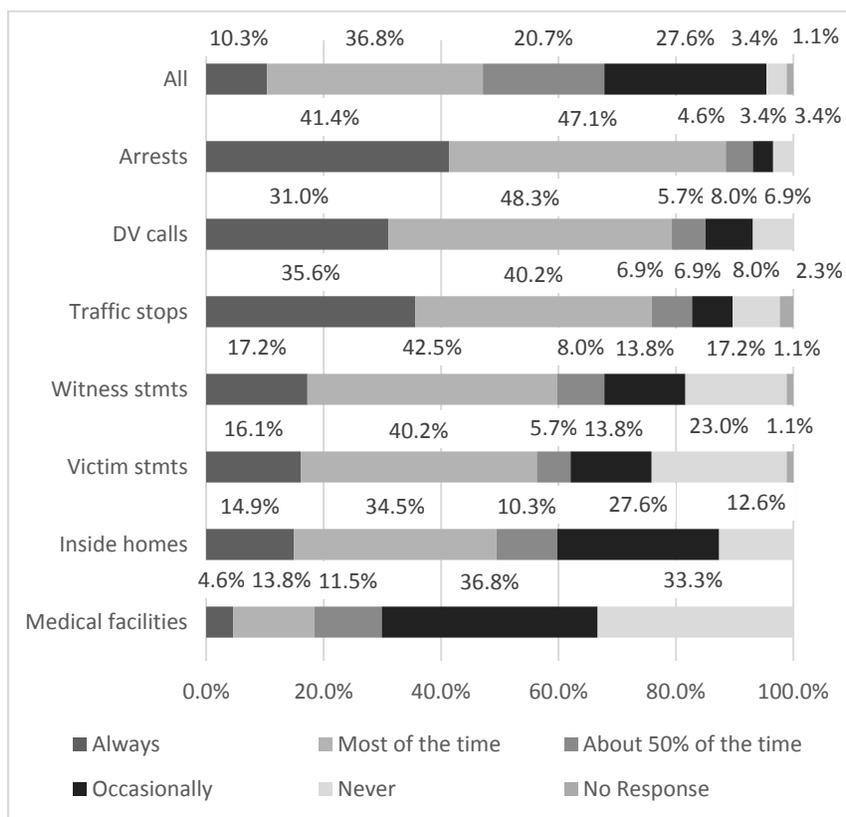


Figure 8. Self-Reported Responses to Questions Asking How Often They Typically Activated Their BWC in Each Given Context (n = 87). Data from Survey 3. Non-Responses Omitted.

IV. ANALYSIS

If BWC activation policies are—as organizations such as the ACLU suggest—indeed to be given “teeth,”⁸⁵ then we must also consider the possible consequences for officer behavior in terms of turning the cameras on or off. Substantially reprimanding officers or adopting evidentiary presumptions, should they fail to record, may lead to officers refusing to exercise discretion in favor of citizen privacy (to the extent they would choose to do so, if allowed). Although the privacy argument is often hailed as an argument in favor of officer discretion, it is often presented too simply.

Privacy is a difficult concept to grasp and is implicated in a variety of ways in different contexts.⁸⁶ The decision of whether privacy is sufficiently implicated to warrant turning the camera off in a particular scenario does not lend itself well to the quickly developing situations officers are often confronted with. It stands to reason that high-pressure and, consequently, high-stress circumstances will eventually cause officers to misjudge a situation, which will subsequently lead to reprimand or evidentiary presumptions in favor of a suspect. It does not seem likely that those same officers will risk turning the camera off for privacy considerations in the future. Instead, it seems much more likely that those officers will simply keep the camera running permanently.⁸⁷

The complexity of adopting strong disciplinary measures and evidentiary presumptions (which means that theoretically, criminals could go free through fault of an officer) and increasing the amount of complex on-the-spot decision-making is highlighted in the perspective, offered by a detective, that there are “so many rules [about when to activate or not activate] right now, I honestly could not recite them to you. Which means I am almost certainly breaking policy, yet with absolutely no intention to do so. Damned if I do,

85. See STANLEY, *supra* note 24, at 4.

86. See Bert-Jaap Koops et al., *A Typology of Privacy*, 38 U. PA. J. INT’L L. 483, 487 (2017) (“Privacy is notoriously hard to capture.”); Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. PA. L. REV. 477, 485 (2006) (“Privacy is too complicated a concept to be boiled down to a single essence”).

87. Theoretically, it is also possible that criminals, aware of police policy, could attempt to trick officers into turning the cameras off—although this scenario does appear far-fetched.

damned if I don't." Because these normative measures run counter to the nature of officers' primary job functions, it stands to reason that such policy would be met with significant resistance and negatively shape their perception of the technology.⁸⁸ However, the technological automation of BWC activation may serve to quell some of these problems, especially as it would simultaneously remove most officer discretion from the equation and, likewise, limit the applicability of evidentiary presumptions against officers (unless the evidence showed the officer manually deactivated the camera). However, these improvements should also be met with some concern and caution, especially when activation happens frequently and public disclosure allows wide access to footage, as officers would then be more limited in their ability to exercise their discretion to not record sensitive interactions. Essentially, this would place the onus of protecting privacy or of not exposing confidential informants on state legislatures (regarding public disclosure law) and public records units within police agencies.

Furthermore, policing is generally regarded as a line of work with a very high degree of occupational stress, and the accessibility of coping mechanisms is—amongst other things⁸⁹—considered key in this regard. Venting or laughing with fellow officers could be considered a positive coping mechanism, as opposed to negative coping mechanisms which are predominantly self-destructive in nature, such as (increased) drug use or social isolation.⁹⁰ Moreover, it is possible that inhibiting officers' ability (or willingness) to speak their minds freely to each other would also diminish their ability to form meaningful connections with co-workers, thus restricting the role of peer support; another key factor in reducing stress.⁹¹

88. See Lum et al., *supra* note 57, at 155.

89. For an excellent summary of the subject matter and overview of the literature, see generally He et al., *supra* note 82.

90. See *id.* at 691–92 (discussing examples of positive and negative “coping strategies”).

91. See *id.* at 690 (noting “a substantial body of literature addresses the important role of peer support and trust of co-workers and supervisors in buffering the effects of stress related to police work”); Harvey J. Burnett, Jr., A Study of the Relationship Between Police Stress and Moral Reasoning, Coping Mechanisms, and Selected Demographic Variables 22–23 (May 2001) (unpublished Ph.D. dissertation, Andrews University), <http://digitalcommons.andrews.edu/cgi/viewcontent.cgi?article=1253&context=dissertations>

A key component of the frame through which officers interpret BWC technology concerns the perceived polarization between the police and the public. Throughout the interviews, respondents expressed or otherwise implied that there is a severe disconnect between how they perceive themselves (and the reality of their work) and how outsiders perceive them, and how these different viewpoints drive different interpretations of BWC use. This incongruence may explain why many officers interpret the technology as, essentially, something to be used against them. Moreover, officers often assume that the worth of an officer's word—which, in their view, has already been significantly marginalized—will be diminished further through BWC adoption because courts and the public will only believe that something happened if it is caught on camera. Personal experience and training have taught officers that what the camera captures is not necessarily what the officer perceives (and vice versa). Not only in a literal sense, but also with regards to the various nuances that a particular incident or situation may involve. As one officer stated, “[t]he limitations of a body-worn camera need to be taught to [civilians] watching the video. The persons watching the video need to understand the science of force, the [anomalies] of the effects of adrenaline, and human behavior under stress.”

The perceived overemphasis on accountability was a prominent theme, and officers often saw this focus on accountability as hindering their ability to accomplish their primary police functions. These findings are generally consistent with those of other authors, such as Chan.⁹² Similarly, our respondents express worry that BWCs compound already existing issues regarding (lack of) trust in officers by supervisors and the public. At the same time, although benefits to the technology are most often framed as a safeguard against false accusations, many officers perceive a wider range of benefits. For the most part, these perceived benefits fit the traditional and reactive approach to policing which still dominates law enforcement as described by Lum et al., in the sense that BWCs assist officers in carrying out their primary duties via improved evidence collection,

[<https://perma.cc/AR26-RLLV>] (discussing the relationship between officers' support system and stress).

92. See Janet B.L. Chan, *The Technological Game: How Information Technology is Transforming Police Practice*, 1 CRIM. JUST. 139, 156 (2001).

easier report-writing, and the (alleged) mediating effect on citizen behavior.⁹³

However, several responses also suggest that some officers are developing a broader conception of the advantages that BWCs may bring: these officers express sincere concern that the public has lost trust in law enforcement and consider BWCs as a way to show the public the realities that they face and the good nature of their intentions. For example, some officers mentioned their hope that BWCs “will educate the public on what we see at the time of any encounter and see how little time we have to make a decision instead of assuming the worst.” Rather than experiencing camera footage as a possible safeguard against accusations—a highly reactive way of looking at things—these officers see the other side of the coin, which is much more proactive in nature. If organizational measures can be taken to further foster such perceptions (which may, for example, consist of convincing officers that effective policing in the modern era is highly reliant on community relations and demonstrating actual evidence which shows that BWCs can improve public trust in the police) then it stands to reason that some officers may be less resentful towards accountability demands.⁹⁴ Educating the public on what cameras do—and perhaps more importantly, do not—could help to further realize this effect.

In the end, activation policies need to be drafted in ways that provide officers with clear and practical guidance, incentivize activation in appropriate circumstances while allowing for some forms of discretion, particularly in situations that implicate the legitimate privacy-related concerns of bystanders, victims, witnesses, informants, and suspects. At least in states like Washington, with liberal public disclosure policies,⁹⁵ questions of public access to footage also substantially affect the technological frames that officers form regarding the implications of their own BWC use. In the future, these

93. *See id.* at 138, 155.

94. *See id.* at 155; *see also* Lum et al., *supra* note 57, at 157 (explaining that “from a policy and practice perspective, adjusting those frames (e.g., through training, technical support, and organizational incentives) becomes important to adjusting the outcomes that agency leaders or citizens want from technology”).

95. *See* Newell, *supra* note 4, at 1370–76 (discussing public disclosure law in Washington).

questions of public access to information and privacy should be addressed by state legislatures prior to wide BWC deployment, rather than only as an ex post reaction to otherwise predictable public requests for potentially sensitive footage. Properly balancing transparency interests and privacy interests in state freedom of information law is an important, and difficult, task—and it supports the practical obscurity⁹⁶ of innocent civilians caught by cameras intended to watch the police. However, striking a reasonable balance might help incentivize more frequent activation in circumstances where the potential for wide public visibility may otherwise push against officers' willingness to record due to privacy (or other, related) concerns.

As noted above, supervisors generally report that cameras should be activated more frequently than front-line officers do. At least in terms of those in higher supervisory and administrative positions, it seems clear that these two sets of officers might hold different technological frames regarding the purposes, benefits, and use of BWCs. When the frames between these groups are incongruent, it “can result in conflicts about the development, use, and meaning of technologies in a police organization, as well as different outcomes of technology.”⁹⁷ Questions about differences in supervisors' and front-line officers' perceptions of cameras, and the outcomes these differences drive, deserve greater focus in future research. Relatedly, concerns over ‘Monday-morning quarterbacking’ potentially pose significant barriers to camera activation. Because BWCs are generally seen and implemented as an accountability tool (at least in part), such Monday-morning quarterbacking is, to some extent, inevitable. At the same time, policy that provides officers with some protection against arbitrary scrutiny may prove to be valuable in incentivizing camera activation.

96. See Woodrow Hartzog, *Body Cameras and the Path to Redeem Privacy Law*, 96 N.C. L. REV. 1257, 1259–63 (2018).

97. Lum et al., *supra* note 57, at 138.

CONCLUSION

In conclusion, the officers we interviewed or surveyed within these two departments held varying initial technological frames regarding BWCs and the impact of BWCs on their discretion. Perceptions of BWCs ranged from the impression that the cameras were being used primarily (or solely) as a means to increase officer accountability to those that emphasized the positive role BWCs can play in the collection of evidence (including both for officers to use to counter claims of misconduct as well as to support investigations). Some officers also held the view that BWCs would provide a means to show the public what real police work looked like (often dull, routine, and boring or, at least, not filled with officers constantly using force against suspects). A minority of officers agreed that “always-on” activation policies were appropriate, generally due to their concerns that selective recording would inevitably be held against officers. In this sense, frequent activation was effectively seen as a mechanism to preemptively shield officers against unjustified criticism or unfounded claims of misconduct by supervisors, the media, and the public.

In terms of activation, officers reported high rates of agreement that certain types of calls warrant activation in most cases, particularly during arrest situations, traffic stops, and domestic violence calls. However, officers were somewhat less in favor of frequent recording inside medical facilities or inside private homes. Over half of our respondents reported that cameras should be activated during most or all police-public interactions, and that BWCs were an appropriate means to document witness or victim statements. Interestingly, our respondents reported overall less frequent activation in practice across contexts than their normative judgments would indicate, perhaps indicating that they would not necessarily be averse to stronger activation policies.

When considering the tensions between activation, accountability, transparency, and privacy, police agencies, and the legislatures that regulate them, should seek to carefully consider a balance between *ex ante* (policy) versus *ex post* (data management and freedom of information) strategies. More research is needed to examine how BWCs and activation policies affect officer and civilian privacy and the willingness of witnesses and victims to talk, including

in sensitive cases like domestic violence, sexual assault, death, inside homes and medical facilities, and when officers are dealing with confidential informants. Legislatures should be attuned to this research as it emerges, and account for it in the ways they regulate police use of BWCs and public access to BWC footage. Additionally, future research is needed to shed more light on how the technological frames that officers have of the cameras (and how these may change over time) and how organizational considerations shape technology use by officers, and how officers might choose to resist compliance or use the technology in unexpected ways.

As the technological landscape surrounding BWCs continues to evolve, so will the debate about camera activation. As mentioned previously, technological triggers are slowly but surely finding their way into newer versions of BWCs. It is tempting to think that this would solve the issue of discretion altogether, as activation would consequently cease to be a matter of discretion for officers but rather for engineers and leadership who set the relevant activation thresholds. However, these developments should by no means be considered a panacea. At least for the foreseeable future, technological triggers cannot replace human judgment in the inherently complex situations officers are faced with on a day to day basis. For example, cameras may inadvertently activate due to a loud sound or the subsequent increased heartrate of an officer during a highly sensitive conversation with an informant. Some degree of camera control by officers will always need to be present. At the same time, technological triggers hold significant promise—provided they are implemented appropriately, taking full account of the context of technological frames. We recommend, for example, that rather than engineers or leadership setting the trigger thresholds, officers would be allowed to set and tweak the triggers themselves (within certain limits set by departmental policy). This helps reinforce the idea that BWCs are useful tools that help them do their jobs, rather than tools by which to exercise surveillance and scrutiny. Considering that many officers spoke negatively of the need to manually activate the camera and the resulting consequences for officer safety, it is likely they would welcome such developments—if indeed framed correctly.

In a similar vein, developments in IT and computing are allowing for more effective and efficient data management. “Record-everything” strategies, when accompanied by strict and effective data-

management systems, would eliminate the issue of activation while simultaneously mitigating the resulting privacy harm. It remains, however, a matter of trust between state and citizen and the perception of the latter towards the former. Even when data management policy is backed by legislation (through, for example, strict limits on retention periods), it stands to reason that many citizens would nevertheless object to being recorded on video. This is particularly so for (possible) informants for whom anonymity is especially key.

As it stands, activation policies need to be drafted to provide officers clear and practical guidance, incentivize activation in appropriate circumstances while allowing for some forms of discretion, particularly in situations that implicate the legitimate privacy-related concerns of bystanders, victims, witnesses, informants, and suspects. Importantly, questions of public access to footage need to be addressed to properly incentivize recording in some circumstances where the potential for wide public visibility may push against officers' willingness to record due to privacy (or other) concerns. Additionally, officers' BWC activation (and attitudes toward activation) should not only be seen as a consequence of their fear of being held accountable for misconduct (e.g., due to the "deterrence spectrum"⁹⁸)—rather, because the officers we studied were also concerned with what and how their video would capture useful evidence and portray their work to others, we should also focus on how their "use of the technology . . . [might be] best understood as consistent with the impressions [they] wish to convey to particular audiences."⁹⁹ In this regard, individual officers have become part of, and may have begun to internalize, the broader information politics of the police to a greater extent due to the deployment of BWCs within their agencies. BWCs have forced officers to constantly balance and reconcile their (sometimes competing) interests in impression management, documenting and collecting evidence, and avoiding accountability for mistakes or malfeasance. To this end, it

98. See Ariel et al., *supra* note 21, at 14 (explaining that "[t]he deterrence spectrum encapsulates the entire range of deterrence effects that an intervention . . . can have on [certain behavior]").

99. Manning, *supra* note 16, at 52.

remains important to understand the technological and organizational frames that officers have of BWCs and other related technologies, including “the assumptions, expectations and knowledge”¹⁰⁰ of the police, and additional research is needed, in a variety of settings and contexts, so we can gain a broader and more generalizable understanding of how BWCs are impacting the nature of police work and the use of these and related surveillance technologies within police departments. In the end, questions about appropriate activation policies and practices are all about power, accountability, and information politics. They cannot always be easily separated from related questions about information access and control, meaning that the appropriateness of any particular activation policy may depend in large part on the local social, political, and legal context in which the cameras are being deployed.

100. Orlikowski & Gash, *supra* note 9, at 178.