

**Preliminary Observations and Recommendations  
To the Fairfax County Police Department  
Regarding the Use of Body Worn Cameras**

**Submitted to the Use of Force Subcommittee  
Ad Hoc Police Practices Review Commission  
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While researching the issue of the creation (and promulgation) of a new Body Worn Cameras (BWC) policy for the Fairfax County Police Department (FCPD), two interesting occurrences took place. The first was the release in May 2015 of the FCPD Memorandum regarding the adoption on a trial basis of a new BWC policy by the Department. The second was the release of the long-awaited Report to the FCPD by the Police Executive Research Forum (PERF), which, coincidentally had just recently completed its review of the FCPD, to include a primary focus on the FCPD's Use Of Force Policy (June 2015). In light of these two occurrences, and because of PERF's reputation as acknowledged experts in national and international policing matters, this recommendation will reflect primarily the views of PERF with regard to the Use of Force issue.

Since the PERF report captures the "best practices" of the land, it was felt that the PERF November report would serve as the best guide for fashioning a new policy. One fact worth mentioning is that the PERF report of June 2015, while mentioning BWC, does ***not*** make any recommendation regarding the use of the devices (beyond referring to their recent study on the BWC issue, which was produced in November 2014). Moreover, in light of the issuance of the May 2015 Memorandum regarding the new BWC policy for the FCPD, the approach to this project was to reflect on the PERF and other Police Department reviews regarding BWC and attempt to marry the very best features of all of the available sources.

First, it should be clear that none of the source material related to BWC discussed any direct link between BWC and use of force. Rather, one

must infer from the various discussions of the cameras that in the use of force cases in the future, the best evidence in many instances will likely be the BWC video feed. Put simply, the BWC has been referred to as the “impartial witness” that is always present when the officer is conducting police activities. Clearly, then, whenever BWC are in use, whatever the situation the police officer is faced with, the cameras will be rolling, capturing the footage for use in subsequent prosecutions, administrative investigations, any resultant civil litigation, and finally, any training matters that may be derived from the video footage. It bears stating that any such video footage will be available, generally speaking, regardless of the outcome of the police incident, be it favorable or unfavorable to the police department.

### **WHY USE BODY WORN CAMERAS?**

The major advantages that management officials can site in recruiting patrol officers in the initial phases to encourage them to begin training and using the BWC should center on: evidence collection, officer safety, improved public relations, and, lastly, the ability for the department to monitor the performance of their officers. By their very nature, the BWC should also permit the county government and the police department to avoid both frivolous litigation and false complaints against its officers. One additional advantage is the so-called “civilizing effect” that results from the use of a body camera. The statistics seem to clearly show a decrease in use of force encounters, and in the resultant number of complaints by civilians against the local police departments once those departments employ the BWC.

### **GAINING COMMUNITY SUPPORT FROM THE PROGRAM’S INCEPTION**

Initially, and ideally, the recommendations in favor of employing BWC should emphasize one primary goal: improved interactions between the personnel of the police departments and the public whom those departmental personnel are sworn to serve and protect. Thus, the majority of experts recommend that, from the very inception, the departments should engage and include logical members of the public in some manner in fashioning their new BWC policies and procedures. One primary suggestion in this regard: departments are urged to engage their Public Affairs offices in campaigns to let the public know that they

are considering the use of BWC, which creates a sense of transparency by the police department. The publication of their BWC policy online and in local media will serve to get the word out about the impending policy and might even initiate a dialogue between the department and the community members.

In addition, FCPD should consult with the very patrol officers and others who will ultimately wear the BWC, along with local lawmakers, relevant policy makers and other stakeholders prior to initiating the new program. One such group of stakeholders that Police Departments are encouraged to consult with consists of local prosecutorial and County legal staff members to ensure that sufficient guidelines are created to deal with the resultant Freedom of Information Act (FOIA) requests for their video camera footage. Some states have allowed the Police agencies to invoke exemptions to the FOIA requests that may serve to protect police officers, informants, SWAT units and similar personnel footage from release. However, since the BWC includes an evolving technological area, new laws may have to be put into place to deal with future requests that might seek the release of footage of, just as one example, a neighbor's home that was the subject of an arrest incident. During such an incident, persons in the home may have been in various stages of undress and in compromising settings. All of these issues should be worked out with appropriate legal personnel while contemplating the rollout of the new procedures.

In addition, some studies have shown that local police officers may initially show some resistance to the new technology. Thus, general discussions should occur as frequently as possible from the very beginning in an effort to engage and encourage the persons most directly affected by the new technology. Accordingly, it is recommended that as soon as possible, the line officers be brought into the developmental stages of the new program. This will allow the officers' to "buy-in" while also "keeping them in the loop" as to the benefits that *they* stand to derive from the new technology. Thus, union representatives should be consulted, while briefings and pertinent discussions regarding the new technology and development of internal policy simultaneously should occur at roll calls. Some departments have even allowed the patrol officers to assist in the early stages of the policy development.

## **PERSONNEL TRAINING**

Various police personnel must be adequately trained in the use of the new BWC and its attendant technology prior to the use of the BWC technology. This would include all police officers who will wear the BWC, supervisory personnel, records and evidence management personnel, training division personnel, Internal Affairs and any other personnel who will be involved with the program. In addition, any prosecutorial personnel who will be using the fruits of the technology should be trained so they will understand the subtleties and nuances of using the BWC.

## **POLICY DEVELOPMENT**

The new policies regarding the new BWC program should be clear and unequivocal regarding the use of the cameras by the officers. All restrictions, exceptions and requirements should be clearly provided in writing. This will properly set expectations prior to the use of the new equipment. For example, PERF recommends that all departments require that officers record all activities (with some clearly stated exceptions) while conducting all official duties. Likewise, the standard rule is that, when possible and safe to do so, the officer wearing a BWC shall state - while the camera is still running - exactly what the reason is for deactivating the BWC. Thus, in many jurisdictions, departments have set forth a policy that repeated failure to use the BWC while conducting police activities can result in severe penalties, to include termination.

## **DOWNLOADING AND STORAGE OF VIDEO MATERIALS**

Specific guidelines must be put in place to ensure full compliance with the protocols regarding downloading, storage and retrieval of videos resulting from the BWC. The administrative actions that will result from failure to fully comply with the protocols must be provided to all personnel prior to their initial participation in the program. As an example, such topics as when a BWC shall be turned on or off, when the devices should be downloaded, and when an officer (or supervisor) will be allowed access to the videos, all must be firmly stated in writing and

followed. The policies should state clearly that an individual's failure to strictly adhere to the precise protocols will likely result in severe penalties.

### **PERIODIC EVALUATION OF THE BWC POLICY AND PROGRAM**

Departments should create a system that allows them to periodically evaluate the efficacy and to create statistical data regarding the use of the videos. This will allow a sense of transparency, promote public confidence in the program, and allow the agency to periodically evaluate whether departmental goals are being met with regard to the use of the cameras. Such data should also be made available to the public on a periodic basis. One major advantage to such evaluative studies will be the ability to demonstrate how much, a department will save, financially or otherwise, by using the videos.

Agencies should also evaluate whether they are following the best policies and protocols through their internal BWC policies, particularly with regard to whether their anticipated outcomes are being achieved through the use of Cameras. As just one example, the departments should be able to accurately assess whether civilian complaints against police officers are changing, perhaps, because of the use of BWC.

### **CONCLUSION**

In the wake of the past year's social upheaval with regard to police practices, the idea of using Body Worn Cameras seems to be a wise and timely decision by the Fairfax County Police Department. The potential rewards from such a program should instill a strong sense of community trust in the FCPD and its police officers, all of whom have sacrificed for their families while accepting the unenviable task of serving and protecting the citizens of Fairfax County. Applied properly, this BWC program should continue to reap many rewards for this County in the months, years and even decades to come.