

**The Bill Blackwood  
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**Mandated Recording and Transparent Release of All Police Contacts**

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**A Leadership White Paper  
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## **ABSTRACT**

In this age of immediate information, social media, and 24-hour news cycles, people have come accustomed to and demanding of quick information. Too often in controversial police encounters, bad information based on speculation permeates public opinion before correct and confirming information is released by law enforcement. Often, the best available evidence to quickly release in times of extreme civil unrest comes from video of the event, especially video captured on a body worn camera. The research in this paper will clearly show convincing evidence that there should be mandates that all law enforcement related contacts be audio and video recorded when practical and the recordings should be released as soon as practical for transparency in cases of extreme civil unrest.

This paper examines how two high profile law enforcement encounters had starkly different results due to the lack of video in one event and the quick release of video and information in the other. It will also show how the use of body worn cameras has proven to lower police complaints and clear officers of wrong doing. Mandates on the recording of all law enforcement encounters and releasing the recordings for transparency will build public trust and that is a win-win for everyone.

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## INTRODUCTION

The purpose of this project is to examine the need for mandates requiring law enforcement to record, when practical, all self-initiated and dispatched law enforcement contacts and the need for the timely release of recordings in times of extreme civil unrest. This is a big order. However, the research will show just how important the transparency of the video evidence can be in when the citizenry is left to speculate based on limited information and sometimes biased media reporting.

Transparency has become a word used daily in government and business. Meriam-Webster Dictionary defined the word Transparency (2015) as “free from pretense or characterized by visibility or accessibility of information especially concerning business practices” (para. 2). For the purpose of this article, focus will be on this definition and the importance of transparency in emotionally charged and controversial law enforcement encounters. Transparency is especially paramount in domestic governmental operations to combat the lack of public trust and promote accountability of those hired and sworn to protect and serve.

Several high profile law enforcement contacts have caused emotionally charged debate across the country. These events are especially concerning when there is a perceived racial bias. More often than not, the release of a videotaped law enforcement encounter would quickly make a visual point of view depiction available to the public and help combat possible destructive speculation that is based on limited information.

On August 9, 2014, Michael Brown, an unarmed black male, was shot and killed by Darren Wilson, a white male police officer in Ferguson, Missouri. There was no video evidence gathered in the altercation which left the narrative open for speculation.

False eye witness accounts and the media's insatiable need to provide quick information gave birth to the false narrative of the events that day, sparking extreme civil unrest. Dorian Johnson, a friend of Brown's who was with him at the time of the incident, perpetrated a lie which led to "Hands up Don't Shoot", a mantra of a movement that gave rise to several riots and protests for weeks in the area and across the nation (Capehart, 2015). It is safe to believe that had video evidence been captured and quickly released to the public, the event that later led to the larger "Black Lives Matter" movement could have laid to rest the false narrative that has been so destructive to race relations in America.

On the contrary, a little over a year later, University of North Texas professor Dorothy Bland, who is the dean of UNT's Mayborn School of Journalism, wrote an op-ed piece in the Dallas Morning News claiming that she had been racially profiled (Bland, 2015). In the story, she claimed she was stopped for "Walking While Black" and insinuated that she was racially profiled by two white Corinth, Texas police officers. She claims that she did not want her encounter to play out like that of Trayvon Martin, a black male who was shot and killed by George Zimmerman, a neighborhood watch member, in Sanford, Florida in February 2012 ("Trayvon Martin shooting fast facts," 2017). She went on to reference Sandra Bland, a black female who died in police custody in a Waller County, Texas jail after she was arrested for a traffic violation by a Texas Department of Public Safety Trooper in July, 2012 (Schuppe, 2015) and Freddie Gray, a black male who died in police custody, during a transport, after being arrested by Baltimore Police Department in April, 2015 ("Arrest to death," 2015). Dorothy Bland's

perception of the stop is that she was stopped for no reason, unless it was the color of her skin, since she was simply walking in her affluent neighborhood.

Corinth, Texas Police Chief Debra Walthall wrote a response to the article and quickly released the videotaped encounter (Bland, 2015). Walthall explained that the officers were simply responding to being flagged down by a citizen who was unable to get around Dorothy Bland who was walking in the middle of the roadway. There were sidewalks on either side of the roadway and her walking in the roadway constituted a violation of the Texas Transportation Code, a misdemeanor offense. The video of the encounter showed clear evidence of a professional police contact, for a violation of the law, which clearly contradicted Bland's version of the event.

An overwhelming majority of the public who quickly went to social media, did so in defense of the police and criticized Bland for trying to make this an event in the already heavily charged racial tension in the country. Given Bland's position in the community and journalism credentials, the story quickly spread to media outlets around the world sparking discussion or racial tensions. Had the law enforcement encounter not been recorded and the video quickly released, the public would have been left to speculate with only Bland's version of the events. The same event, without the recording could have quickly started the type of protests and riots seen in other areas of the country.

Both of these law enforcement encounters turned out starkly different, partially due to the lack of video in one event and the quick release of the video in the other. Had the Michael Brown shooting been recorded and the video released in a timely manner, there is a strong possibility that the riots and protests that sparked extreme

racial tensions in America and further led to a still continuing “Black Lives Matter” movement could have been quieted or even stopped in the early stages. In this age of immediate information, social media, lack of trust in law enforcement and a thirst for transparency in government, there should be mandates that all law enforcement related contacts be audio and video recorded to when practical and the recordings should be released as soon as practical for transparency in cases of extreme civil unrest.

## **POSITION**

Transparency could not be more important than it is in today’s world. Transparency is a buzz word used in every corner of the world, in business, government and in personal lives. In a memo titled “Transparency and Government,” President Barack Obama described his philosophy as being committed to “creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen democracy and promote efficiency and effectiveness in Government” (Israel, 2013, para. 1). Transparency in and of itself leads to an atmosphere of trust and accountability. There are times when transparency is not practical and times when it will expose misconduct, but the benefits far outweigh the negatives.

Video and audio taping all law enforcement related encounters is the ultimate exercise in transparency. Video evidence puts the viewer in a position as close as practical to actually viewing the event in real time. The new technology in body worn cameras (BWC) captures the closest thing to an actual point of view of the officer at the time of an encounter. There is no way to capture the exact experience and view of the

officer at the time of the encounter; however, this is the best option currently available and should be used for the benefit of the officer and the subject of the encounter.

Video evidence captured on BWCs has proven to reduce the number of citizen complaints and use of force by officers. In a study done by the Rialto, California, police department, research showed a 58% reduction in use of force by officers and an 88% reduction in citizen complaints compared to the year prior (Capps, February 2015). This is a significant finding that cannot be ignored.

With the technology available today and the ability to even record after the fact in case officers are unable to activate their BWC, it borders on negligent to not use these tools for the protection of the law enforcement officer and the contact. Watch Guard has come up with technology that allows agencies to retrieve video footage up to a day or two after a critical event even if the officer was not able to hit the record button (Watch Guard, 2015). This would have been extremely helpful in gathering evidence in situations such as the Michael Brown shooting. Former Fort Worth Police Chief Jeffery Halstead explained that in the short time their BWC program had been in place, it helped to save four officer's jobs and kept two from going to the indictment phase of a use of force incident (Griffith, 2014). While recording all law enforcement related contacts will not always show the entire story, it will most definitely improve transparency and help to rebuild public trust. Video evidence is telling and much easier for humans to visualize instead of having to rely solely on one individual's recollection of an event.

The American Civil Liberties Union (ACLU) supports the implementation of BWCs on police. They understand that without video evidence and due to the volatile



nature of some law enforcement contacts, often accounts of the incidents are radically divergent (Stanley, 2015). The ACLU believes there can be a win-win, protecting the public against police misconduct and police against false accusations of abuse.

The protection against false allegations has an immeasurable impact on the law enforcement officer and the public. In the Dorothy Bland incident mentioned earlier, without video evidence, the false allegations would have been left to the word of what would be considered a credible person against the word of what would be considered two credible police officers. Without video, a claim of misconduct at that level would have required an internal affairs investigation be initiated on the two officers involved and possibly a Department of Justice investigation. This incident had the potential to consume many personnel hours on an investigation that could have never come to a definitive conclusion. Another side effect of not quickly producing the video to the public could have been a situation of extreme civil unrest and erosion of trust in the police with no validity. The video in this incident quickly produced a definitive conclusion and was able to save and even build public trust.

Evidence gathering is another benefit of recording, especially on BWCs. The initiative to video police encounters began in 1980 when Mothers Against Drunk Drivers (MADD) was formed. Initially, the push was to gather evidence that became necessary in the prosecution of drunk drivers. The use of in-car cameras became more prevalent in the 1990s with the war on drugs (Draisin, 2011). The BWC is an extension of the in-car video. The vantage point is able to pick up visual evidence that was previously missed by the in-car camera systems. The BWC goes where the officer goes and for the most part, sees what the officer sees. This video evidence has the potential to

extend this view to a future juror, virtually giving them a first-hand view of some offenses. In the unfortunate event of an officer being murdered on-duty, and with the advantage of the record after the fact technology, the possibility of gathering evidence and identifying a suspect is strong.

The potential to save and build social capital through the transparency video would allow should be enough of an argument for even the biggest doubters; however, there are many other benefits. The ability to gather firsthand video evidence, the opportunity to reduce complaints, disprove police misconduct, and increase police accountability are benefits with great magnitude. Law enforcement related encounters should, with little exception, be audio and video recorded when practical.

## **COUNTER POSITION**

Buy-in, especially on implementing BWCs, could prove difficult, but with the right information, it should become a credible option that is agreeable on all fronts. Among the concerns are privacy issues, prosecutors becoming dependent on video, the limitations of the video, training issues, and costs (Capps, February 2015). Privacy is a concern among the citizen and the law enforcement officer being recorded. Officers are concerned about when and how the recordings can be used and fear that the recordings could be videoed during private, non-work-related conversations or activities. Citizens are concerned about their privacy in their homes or work areas. The ACLU believes there can be a win-win situation regarding the use of BWCs. They recommend policies that would call for officers to disclose to citizens that they are being recorded, redaction of the video when feasible, destroying of video with no evidentiary value, and release of video only when the need for oversight generally outweighs the privacy

interests at stake (Stanley, 2015). The ACLU recognizes that police should have times of privacy and should not be recorded when not involved in official encounters. This can be regulated by policies that specify when videos are required to be activated.

As far as privacy of citizens, the viewpoint of the officer is commonly fair game when involved in official course of duties and there is no reasonable expectation of privacy (Draisin, 2011). The COPS (Community Oriented Police Services) office of the Department of Justice is mostly in line with the recommendations of the ACLU (Miller, Toliver, & Police Executive Research Forum, 2014). They suggest that officers should be required to record all law enforcement related contacts with few exceptions. Among the exceptions would be while speaking with witnesses to a crime and citizens who want to speak about a criminal activity where they live.

Prosecutors could find themselves becoming dependent on the use of video to prove their cases. Prosecutors should be trained in how to present video to a jury and know that video is not the whole story. Video is incapable of capturing the exact perspective of a human. Video should be looked at like one angle of a sports replay. Just like different video angles appear to show a different story, video should only be used as an additional witness point of view.

Video has limitations. According to the Force Science Institute Ltd. (n.d.), limitations could include the camera not capturing the angle of the officer's view, light conditions, blocked views and not capturing in 3-D. These cannot be completely remedied, but can be limited with training and the selection of the best equipment. There are high quality options available such as cameras that mount on glasses to simulate an officer's view and cameras with wide angle lenses. The video should

always be considered another point of view and used as an evidence gathering tool after the fact. The Supreme Court of the United States, in *Graham v Conner* (1989) has long held that use of force situations have to be viewed from a reasonable officer's point of view, at the scene, without 20/20 hindsight.

Cost of implementing a recording program can be limiting to some agencies. Post-Ferguson, discussion has been heavy across the country on mandating BWCs. In August of 2015, the State of Illinois did just that by signing into law a mandate requiring the use of BWCs. To help supplement the cost to agencies, they added a five dollar fee to the court costs of every citation written that would be used to fund the cameras (Geiger & Gerner, 2015). This model could be used across the nation to implement the program. Most municipal courts already have technology fees built into their fees. The truth is that the cost of the program could be minuscule compared to the cost and liability of not implementing the program. The cost savings in the reduction in complaints and the ability to disprove misconduct is priceless.

## **RECOMMENDATION**

Law enforcement in America is under increased scrutiny by the public and the media. This is, in part, due to the lack of transparency and the long felt need to keep every aspect of an investigation a secretive process. In this age of social media, people have the ability to get information in a matter of seconds. The word Google, once just the name of an internet search engine, has become a verb. One can Google just about anything and find information, albeit not always accurate information. Law enforcement should embrace this thirst for knowledge and use the release of information, especially video as an educational opportunity.

Law enforcement should be required to record video and audio, when practical, all law enforcement related encounters with citizens. In times of civil unrest, where the release of this video can provide the public with a fair representation of facts that would clear up speculation, the videos should be released in a timely manner. There is no reason, with the technology available for there not to be video of encounters like that of the Michael Brown shooting. It is fair to say that if there was video and the video was released in a timely manner, as it was with the encounter with Dorothy Bland, that the outcome could have been totally different. It is also fair to say that the erosion of race relations and public trust would not have been as severe.

Video has the added benefit of evidence gathering, greater accountability, and a reduction in complaints on officers. Since the initial implementation of in-car video systems, it has been shown to be a great tool in documenting an accurate portrayal of a citizen contact. Often the knowledge alone of the recording will limit false allegations on law enforcement officers and the video itself can disprove misconduct. BWCs give an added perspective, as close as possible, to an actual point of view to the spectrum. The video from BWCs provide a much easier format for a viewer to translate to a real world event. It is important that the public and even prosecutors be educated and cautioned that no video will ever replace the officer's actual perception and point of view. It has long been the standard that an event has to be viewed without 20/20 hindsight to determine if a reasonable officer would have acted the same, in the same scenario, with the same information.

In the wake of the Michael Brown shooting, there has been public demand for more transparency and demand for recording of law enforcement contacts. Some

states have already enacted legislation that would require BWCs be worn and all law enforcement related contacts be recorded. All states should follow suit. With the technology available and the benefit it affords the officer and the public, it borders on negligent to not have mandates requiring all law enforcement contacts to be recorded when practical. The cost of implementation can be shared with the public with programs such as that voted into law in Illinois, where an additional five dollars is charged to court fees on traffic citations to help pay for the equipment.

The ACLU believes the implementation of mandates on recording and the use of BWCs can be a win-win for law enforcement and the public (Stanley, 2015). The benefits far outweigh the negatives. Privacy issues are a concern, but can be regulated with departmental policy on the use of the cameras and redaction of information and evidence gathered. The release of video to the public would need to be gauged so that video would only be released with consent, or when the need for transparency outweighs the need for privacy, especially in times that a video could calm civil unrest.

The research has shown that there is demand for and a need for mandates on recording law enforcement related encounters. The increased transparency, accountability, evidence gathering potential and the reduction in complaints show that is difficult to argue against implementing a program. Recording of law enforcement related encounters and the transparency it provides truly is a win-win on a national, if not global, level.

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