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The Impact of Body-Worn Cameras (BWCs) on  
Adjudication

by

Shakierah Smith

A Capstone Project Submitted in Partial Fulfillment of the Requirements  
for the Degree of Master of Science in Criminal Justice

Department of Criminal Justice

College of Liberal Arts

Rochester Institute of Technology

Rochester, NY

May 2, 2019

# RIT

## **Master of Science in Criminal Justice**

### **Graduate Capstone Approval**

Student: **Shakierah Smith**

Graduate Capstone Title: **The Impact of Body-Worn Cameras (BWCs) on Adjudication**

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Date:

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## Capstone Overview

Body-worn camera (BWC) is an emerging technology that has had a profound impact on the American legal system. This capstone explores the various ways in which BWCs are actively transforming the adjudication process of criminal cases. The first chapter discusses how BWCs have impacted the adjudication of cases in Monroe County, NY from the perspective of prosecutors, public defenders, and Rochester city court judges. The second chapter utilizes data from the previous paper to examine the evidentiary value of BWCs in Monroe County, NY. The third chapter discusses how prosecutors in Monroe County, NY, Travis County, TX, and San Diego County, CA think BWCs are becoming the new “CSI Effect.” More specifically, it details how prosecutors in these three jurisdictions believe that jurors are growing to expect BWC evidence in most cases and that such evidence impacts their decision-making. The final chapter uses data collected from the previous paper to discover how BWCs are impacting the adjudication process of domestic violence cases from the perspective of prosecutors.

Body-Worn Cameras (BWCs): How Prosecutors, Public Defenders, and Judges Perceive the  
Implementation and Utilization of BWCs in Monroe County  
Rochester Institute of Technology

## **Abstract**

The overt use of body-worn cameras (BWCs) was initially adopted to monitor everyday interactions between civilians and law enforcement. The pervasive implementation of this technology across police agencies has, however, yielded intended and unintended consequences. One group of legal actors who is greatly impacted by the use of body-worn cameras are prosecutors. Unfortunately, there is very little empirical research highlighting the various ways in which body-worn camera footage has and is continuously impacting adjudication. The purpose of this study is to explore how prosecutors, defense attorneys, and judges are actively using body-worn camera footage. The interviews that were conducted in Monroe County, NY suggest strengths and limitations regarding the use of body-worn footage as evidence in the judicial system.

## **Introduction**

Technological advances in the 21<sup>st</sup> century have revolutionized the ways in which people communicate and work. The implementation of various technologies has had a profound impact on diverse disciplines or areas of study. One particular field that is greatly influenced by the continued growth of technology is Criminal Justice. For example, the legal system has been able to modify how criminals are captured (e.g., DNA testing, Combined DNA Index System (CODIS)), prosecuted, and ultimately sentenced.

## **Literature Review**

Police body-worn cameras (BWCs) are one of many examples of how the legal system has capitalized on the rapid expansion of technology. These particular devices are worn by police officers, often capturing their day-to-day activities and interactions with the community. Such devices were initially adopted after it was found that the Stop-and-Frisk policy used by law enforcement in New York City engendered much racial profiling and excessive use of force (White, 2014). Although body-worn cameras were initially developed as a way of monitoring the perceived misbehavior of law enforcement officers, they are now also being used to help prosecutors filter cases. In fact, Ariel et al (2014) noted in their research that body-worn cameras have the potential to improve prosecution rates and enhance the quality of evidence being captured by law enforcement. Body worn camera footage or audio/video evidence also grants prosecutors immense leeway on deciding the severity of charges to apply to any particular case and whether or not a plea bargain is an appropriate alternative to trial (Kutateladze, Lawson, & Andiloro, 2015).

Domestic violence or intimate partner violence is one type of crime that has the potential to be greatly impacted by body-worn cameras. Morrow, Katz and Choate (2016) conducted a study regarding the impact of body-worn cameras on arrests, prosecution, and convictions in intimate

partner violence cases. They divided officers within the Phoenix Police Department (PPD) into two groups: a target and a control group. The target group consisted of officers with body-worn cameras whereas the control group included officers without body-worn cameras. The study took place over a 30-month period, which was split into pre and post intimate partner violence data. After analyzing their findings, investigators concluded that the use of body-worn cameras did appear to improve how police officers collected evidence for intimate partner violence cases. This improvement in evidence collection has advantages to prosecutors. Prior to the implementation of body-worn camera evidence, police officers would draft reports for various intimate partner violence cases based on their observations and statements from the parties involved. The use of BWC footage in this study exposed what happened at a given scene in real time and allowed officers to review such footage to formulate more thorough statements, thus assisting prosecutors in successful convictions or plea deals. The authors concluded that criminal cases, particularly intimate partner violence cases, are more likely to result in the conviction or acceptance of a plea deal by a perpetrator due to the evidentiary benefits of body-worn camera footage that prosecutors could use to secure a conviction if taken to trial.

Westera & Powell (2015) also made similar claims regarding the benefits of video evidence in domestic violence cases. Their study focused on the perceptions of prosecutors regarding the ways in which evidence collection could be improved for intimate partner violence cases. After conducting a focus group consisting of 13 prosecutors, researchers were able to conclude that prosecutors strongly believe and often seek out video evidence that showcases initial responses to domestic violence disputes by law enforcement, which are ultimately used to help prosecution. Such evidence was found to produce affective reactions that leave lasting impressions on both jurors and judges in comparison to other forms of evidence (Moore & Singh, 2017).

Dawes et al (2015) was also able to draw similar conclusions after conducting a study of

BWCs and law enforcement. Police officers from Phoenix, AZ with patrol experience served as participants in this study. Officers were deployed to three test scenario calls, including domestic violence, traffic stop and reportedly theft. Additionally, there were two moderators that accompanied each officer to each scenario. While one of the moderators fulfilled the role of dispatch and video recorder, the other moderator simply served as a “referee” to ensure that each scenario followed a particular script. Upon completion of each test scenario, the participants were asked to complete an arrest and use-of-force form describing their experiences. After comparing the body-worn camera footage to the police reports, researchers found that there was an overall “average of 2.63 minor errors (range 0-7), 5.4 moderate errors (0-14), and 0.9 major errors (range 0-3) corrected by their BWC recordings” (Dawes et al., p. 8, 2015). This particular finding suggests that body-worn camera footage can actually improve or enhance officers’ report writing accuracy. Accurate, detailed reports can further serve as significant evidence for prosecutors in addition to footage from body-worn cameras.

Bakardjiev (2015) drafted an academic working paper regarding the challenges of utilizing body-worn camera footage as evidence in court and ways in which policies can be adopted to improve the quality and use of such evidence. One major challenge identified in the author’s commentary was the quality of body-worn cameras. They highlighted that footage from body-worn cameras could actually be inadmissible in court based on whether or not the video is accurate, reliable and clear. In addition to video quality, Bakardjiev discussed how the lack of universal policies across police agencies regarding body-worn cameras is also quite problematic. For example, agencies often differ on issues such as officers’ discretion to turn their camera on/off, where footage is stored, who can/cannot watch the footage and what is ultimately done with the video evidence. These issues are particularly challenging for prosecutors who may rely heavily on video footage from body-worn cameras to strengthen their cases. In other words, prosecutors could

be forced to dismiss, or plea bargain a case if their primary evidence from a body-worn camera is deemed inadmissible by a judge.

Harris (2010) also wrote a scholarly working paper focusing on how body-worn cameras could be used to ensure police compliance with the fourth amendment. The overarching hypotheses of this particular paper suggests that body-worn cameras influence one's self-awareness, which can ultimately result in a positive change in behavior on behalf of citizens and police officers. The author further recommends that video and audio recordings of searches and seizures become part of public policy governing police practices. Such policy could aid prosecutors and even judges in determining whether or not a search and seizure was executed in the proper manner. In addition, it could also provide officers with a sense of legal security, if and when they are following protocol.

Given the limited research on how prosecutors utilize body-worn camera footage and what impact it has on them, there can be several conclusions drawn from the research reviewed herein. First, there was overwhelming support found regarding the use of body-worn cameras by law enforcement during domestic violence disputes. It was further insinuated that recordings from initial intimate violence encounters has the potential to be extremely useful evidence for these particular cases, especially when victims refuse to cooperate with prosecutors. Additionally, video and audio evidence can generally have a more profound impact on jurors because such footage tends to reveal a victim and/or perpetrator in their raw state and their behaviors during or immediately after a crime was committed. In addition, body-worn camera footage can assist prosecutors in making independent decisions related to law enforcement and excessive use of force complaints that often generate national outcry. However, issues with universal policies and the quality of body-worn cameras could also have a negative impact on prosecutors, especially if the footage cannot be used in court.

## **Purpose Statement**

The purpose of this study is to discover how the implementation of BWCs has impacted legal actors other than law enforcement, including prosecutors, public defenders, and judges. More specifically, we sought to understand how prosecutors, defense attorneys and judges perceive BWC footage in relation to its use as potential evidence, discover if there has been a delay in the processing of cases and/or criminal proceedings throughout the legal system, further understand if the implementation of BWCs has changed the decision making process of cases with regard to charges, plea deals and trials, and to highlight positive and negative consequences of BWC footage.

## **Research Questions**

1. How has the implementation of BWCs impacted prosecutors and other agents of the legal system, such as defense attorneys and judges?
2. What technological and/or monetary resources are needed by the District Attorney's Office, Public Defender's Office and the court system to help support the implementation of BWCs?
3. How have BWCs changed the dynamics of the adversarial relationship between defense attorneys and prosecutors?
4. What are the perceived benefits and/or limitations of BWCs?
5. What questions or future areas of study related to BWCs do prosecutors, defense attorneys and judges think researchers should focus on the most?

## **Methodology**

To better understand how BWCs have impacted various legal actors, we took a qualitative

research approach and conducted interviews. Subsequent to reviewing extant research related to BWCs and prosecution, we were able to draft, edit, and finalize a set of 20-25 interview questions tailored to prosecutors, defense attorneys, and judges' particular concerns. After finalizing the interview questions, researchers contacted both the Monroe County District Attorney's Office and the Monroe County Public Defender's Office regarding interviewing attorneys. Ultimately a snowball sample was obtained in which we were able to interview other attorneys based on referrals from previous respondents. This was also the case with Rochester City Court judges who were all referred by prosecutors and public defenders. Notes of interviewees' responses were taken during the initial meetings by three researchers, two of which are graduate level researchers from the Center for Public Safety Initiatives at RIT. Ultimately, researchers interviewed 22 individuals, including 11 prosecutors, 8 defense attorneys and 3 judges. Out of the 22 interviews, 16 were conducted face-to-face while the other 6 were conducted by telephone.

## **Results**

### **Prosecutors: General Perceptions**

All of the prosecutors who were interviewed expressed positive views regarding the use of BWC footage as evidence for their cases. For example, one prosecutor (interviewee #3) stated:

“I love it. I think it's great. Prior to this bureau I was in the DWI bureau prosecuting felony DWI's. There's nothing quite like having an intoxicated person on camera as evidence. In this bureau, there's so much that can be said with words, but to be able to show footage to the jury and a judge, it's priceless.”

A theme emerging from the prosecutors who were interviewed framed cameras within their stated objectives to seek justice and discover the truth. In essence, their praise for the use of BWCs stemmed directly from its ability to visually capture what may have occurred at the scene of a crime between victims, law enforcement, and suspects. For instance, one attorney (interviewee #1)

highlighted the value of BWC footage in domestic violence cases by stating:

“The footage helps in Domestic Violence cases because the victims tend to become uncooperative. It can also show how horrible a scene that officers walk into can be”

However, many of the interviewees also expressed one limitation of utilizing such footage. Officers are often called to the scene of a crime after it has already occurred, therefore they do not capture the criminal act in real time.

### **Prosecutors: Resources**

There was an overwhelming consensus amongst the interviewees that the Monroe County District Attorney’s Office was not fully prepared for the implementation of BWCs by local police departments within their jurisdiction. The DA’s office currently has one full-time technology staffer who is responsible for retrieving BWC footage from police departments and distributing the footage to approximately 70-80 prosecutors. These prosecutors could potentially be working on many cases at any given moment. In addition to distributing BWC footage, their tech person is also responsible for retrieving other forms of evidence for important trials. The reliance on one individual for such evidence has put a strain on the office, ultimately leading to a delay in the processing of cases and distribution of BWC footage to defense attorneys. In addition to the lack of personnel, the DA’s Office is also having issues with their outdated technology. As one attorney (interviewee #3) put it:

“Our technology is not great. Our computers are older. We only have a handful of blu ray players [to view video files downloaded onto discs] for 80 attorneys. Tech moves so fast that it's hard to keep up with it so we need to do a better job of that. It's hard to show someone evidence on a screen smaller than TVs at home. XXX (tech person) was an amazing addition to the system but we need a few more.”

The implementation of BWCs has created technological needs that stem beyond what the District Attorney’s Office can afford and manage. As a result, prosecutors have

been forced to use outdated technology that hinders them from accessing, reviewing, and distributing footage across departments and to defense attorneys in a timely manner.

### **Prosecutors: Case Processing**

As previously noted, the District Attorney's Office needs additional funding to support the growing demands of accessing BWC footage in a timely manner. The lack of resources and personnel creates a time delay in receiving and sending BWC evidence to defense attorneys. Prosecutors are required to watch all BWC footage associated with a case, which can take many hours. This is especially true if there were multiple police officers at the scene of a crime. After reviewing BWC footage in preparation for a case, prosecutors must turn over the footage to defense attorneys consistent with the rules of discovery. Discovery is a "process through which defendants find out about the prosecution's case. For example, through standard discovery procedures, they can get copies of the arresting officers' reports and statements made by prosecution witnesses and examine evidence that the prosecution proposes to introduce at trial" (Bergman, UCLA Law, n.d.). The process of accessing and reviewing BWC footage is quite lengthy, ultimately leading to time constraints for prosecutors, coupled with concerns from defense attorneys and judges regarding defendants' rights to a speedy trial. One prosecutor (interviewee #2) commented on this particular issue by stating,

"Prosecutors are at least recently expected to review all BWC footage before releasing it to the Defense – this can be difficult when prosecutors have a huge caseload and have to watch footage for most of those cases within a short period of time."

Although the relationship between prosecutors and defense attorneys has always been described as adversarial, unintended consequences of BWC use, such as the delay in processing case, have the potential to negatively impact their relationship.

## **Public Defenders: General Perceptions**

Similar to responses from prosecutors, the majority of public defenders possessed positive views regarding the implementation of BWCs. Many of them discussed receiving negative feedback from their clients regarding police-community interactions for years prior to the implementation of BWCs. They further discuss not having a way to verify their clients' claims, especially since they believe jurors favor the witness testimony of police officers. However, BWCs have allowed them to substantiate numerous claims previously made by their clients and prevent wrongful convictions. For example, one public defender (interviewee #17) discussed a case in which a BWC showcased a police officer illegally detaining an individual while also using excessive force. The camera also captured the officer's superior advising him/her to revise what happened in the written report. When the report was received, the public defender noted many inconsistencies between the report and the BWC footage. This finding allowed the public defender to advocate for the defendant, resulting in a favorable outcome. The public defender noted that without the BWC footage, the defendant would likely have been convicted and/or forced into accepting a plea deal, even though he/she was clearly innocent. One public defender (interviewee #13) summed up the general consensus of most public defenders regarding BWCs by saying,

“[I’m] completely in favor. I haven’t had a situation yet where I’ve watched BWV footage and thought I hope no one sees this. It’s always helpful in some way. If I can watch it with my client and he can point stuff out I can better understand how things happened. Memories are fleeting but not footage. Body cam shows everything.”

Although the general consensus on BWCs appear to be positive, there are some public defenders who are skeptical of the implementation, particularly officers' discretion. For example, interviewee #13 further expressed the following,

“I think everyone is cautiously pleased with the roll out. We don’t think officers are using it as much as they should be. We’ve had instances where officers

remind other officers they are on camera like a code as to not say anything you shouldn't say. For example, a suspect was fleeing. One cop said to another cop, "Why didn't you just shoot him?" and the other officer said, "Hey, you're on right?" as an indicator to not say stuff like that."

In conclusion, there is a mixture of views, some positive and negative, held by public defenders regarding the use of BWCs and their overall value as evidence.

### **Public Defenders: Resources**

The implementation of BWCs has created new technological needs for public defenders. Advances in technology, including updated software and better computers are now needed as a result of BWC usage. As one public defender (interviewee #13) succinctly put it,

"[We need] better software for viewing. A lot of cases are at night. It's hard to see the footage. There's no backlight. We've had to adjust the brightness of the video just to make out various shapes and that's problematic. I would prefer that there were ways to lighten the footage. It feels junky to use a laptop to show to a jury. There needs to be a way to have remote viewing. It's minor but it'd help."

Similarly, another public defender (interviewee #12) further elaborated on the Public Defender's Office technological challenges by stating,

"Some videos we get you can't play it. We have one blu ray player for all the video. Prosecutors are obligated to get us the recording. Sometimes we have formatting issues with the video and we can't play it. But I imagine we'll adjust to it ... eventually it won't come in different formats."

The lack of adequate technological resources could potentially lead to more delays in the processing of various cases, which is problematic for the legal system as a whole.

### **Public Defenders: Case Processing**

Public defenders have also experienced delays in case processing due to the

implementation of BWCs. Defense attorneys do not have access to BWC footage and have to wait for prosecutors to turn over such evidence, which can take additional time. One public defender (interviewee #15) expressed that,

“[BWC footage is not turned over] as fast as we would like. Not sure if it is prosecutors’ fault. They’ll suggest to us that we do subpoenas because discovery has been so slow. So, I don’t think it’s intentional. Subpoenas involve several extra steps to be taken that otherwise would not need to be done. I want to see it provided to prosecutors faster so they can get it to us faster, too. They’re also dragging their heels for prosecution as well.”

While many of the defense attorneys seemed to understand the impact BWCs have had on the DA’s Office, other attorneys were not so understanding. In fact, one public defender (interviewee #13) stated,

“I just don’t think [prosecutors] care to turn it over. They don’t see it as necessary or important. For defense, it’s crucial to understand the case. This technology is pertinent to cases. It’s almost like someone can be there and we don’t have to rely on testimony.”

Generally speaking, public defenders expressed an overwhelming sense of frustration regarding delays in getting BWC footage from prosecutors later than expected. When public defenders receive BWC footage at the last minute, they have to rearrange their schedule to watch such footage, which might include taking the footage home and reviewing it on their television outside of standard business hours.

### **Judges: Overall Impressions**

The City Court judges who were interviewed expressed positive views towards the use and expansion of BWCs in Monroe County. Many of them discussed how BWCs could provide transparency and a sense of safety between law enforcement and the community. For example, one judge (interviewee #20) revealed that,

“[The BWC policy] should lend itself to the community feeling some sense of safety. They don’t have to take out their phone and record themselves. [BWCs could] also provide a sense of safety for people the police are interacting with and protect police officers when they are doing the right thing...could be useful in cases to clarify some of the things that happen during the interactions or arrests.”

Such sentiment shows the value of video evidence that may more clearly illustrate the facts of an interaction or case for all legal actors involved.

Although the judges were generally appreciative of the value BWCs bring to the Criminal Justice System, they also expressed sincere concerns regarding its impact on the processing of cases and standard court proceedings. According to a judge (interviewee #20),

“Because [BWCs] are new, getting discovery turned over is overwhelming. Technology is moving faster than the law can; the law and system have not been put in place to support it.”

Another judge (interviewee #21) gave an example of how time-consuming viewing video footage can be in the following account,

“Just before the interview, an ADA told me that he had 8 gigabytes of BWC footage of people protesting in a specific incident. Viewing the entirety of the data would require at least 48 hours [or]going non-stop for 2 and 1/2 days because there is a lot of footage from different officers who were on the scene.”

Regarding the lack of resources currently available to attorneys, one judge (interviewee #22) noted that,

“We need more people to help alleviate some of these unintended consequences. [Attorneys] are not robots. They are people. There is only so much footage they can watch in a 24-hour day!”

In conclusion, there was a common consensus that despite the value that BWCs bring to the legal system, their implementation was flawed on various levels. More specifically, as one judge

(interviewee #21) stated,

“A lot of money was paid for training, but they (local police departments) did not think about the extra money that would be needed for court-related processes like the storage and retrieval of footage or the additional personnel that would be needed.”

### **Conclusion**

The implementation of BWCs was a direct response to national outcry regarding egregious community and police interactions. Although such devices are proven to be valuable, especially when it comes to making critical decisions about the future of any given case, there are certain areas within the implementation process that need improvement. Findings from this evaluation of BWC policy in Monroe County are a direct reflection of the Criminal Justice Thermodynamics Theory which states that “when reforms attempt to control workload pressures in one location, the pressures are displaced into another location as if in a “thermodynamic” or “hydraulic” system” (Bernard & Engel, p. 17, 2001). Ultimately, the implementation of BWCs created unintended consequences for other legal actors, such as prosecutors, defense attorneys, and judges, clearly illustrating how changes in one area of the legal system can impact processing and processes in other areas.

Based on the respondents’ feedback regarding the implementation of BWCs, one can logically conclude the need for the following steps. First, the county needs to be provided with additional resources and personnel so that cases are processed throughout the system in a timely manner. In knowing this, it would be valuable to receive additional funding from the State Legislature so that more attorneys and tech-personnel could be hired to help with the growing demands of BWC evidence. In addition to personnel, there should also be funding for updated technology that allows for better and more efficient viewing of BWC footage coupled with financial support for the storage of such footage. Although these steps do not guarantee the success

of the BWC policy in Monroe County, they have the potential to alleviate some of the pressures or issues attorneys and judges are currently facing now that BWCs have been implemented.

### **Future Research**

One area of future research that could be examined regarding prosecutors and body-worn cameras is how they impact “victimless” crimes. The current body of literature focuses heavily on how BWCs are beneficial to domestic violence cases. However, there has been little research regarding crimes such as theft. Researchers could also examine the difference between how prosecutors view and use body-worn camera footage in comparison to video evidence from surveillance cameras or citizens’ cell phone that frequently go viral on the internet. It might also be interesting to investigate how prosecutors feel about video evidence from body-worn cameras that implicate agents of the legal system, such as police officers, committing crimes or using excessive force. In other words, how does using such evidence against law enforcement make them feel and/or change the dynamic of the relationship between the District Attorney’s Office and law enforcement agencies, if at all? Lastly, it would be useful to examine how jurors not only perceive the use of BWCs in relation to their evidentiary value, but also how their judgement is impacted when BWC footage is missing and/or an officer forgot to turn on his/her camera.

A Critical Analysis Regarding the Evidentiary Value of Body-Worn Camera Footage and its  
Impact on the Processing of Criminal Cases

Rochester Institute of Technology

## **Abstract**

The utilization of body-worn cameras (BWCs) has presented new challenges and benefits to legal actors within the judicial system, including prosecutors, public defenders, and judges. Unfortunately, due to the recent and rapid implementation of BWCs throughout the nation, very little research has been conducted to examine such challenges and benefits. The purpose of this study is to discover the evidentiary value of body-worn camera footage and how such evidence has impacted the processing of criminal cases. Researchers interviewed a total of 22 legal actors consisting of 11 prosecutors, 8 public defenders, and three city court judges. The interviews ultimately revealed that body-worn camera evidence is most useful in cases reliant on police involvement, such as DUIs/DWIs, disorderly conduct, and domestic violence. Additionally, the interviewees revealed that although retrieving body-worn camera evidence has slowed the down the processing of cases, such evidence has been paramount in solidifying plea deals and resolving cases faster.

## **Introduction**

The American legal system often prides itself on being fair, objective, and just in punishing offenders and assisting victims in restoring reprehensible damages resulting from the commission of crime. Although the combination of these three fundamental principles work to form an ethically sound and morally righteous justice system, these attributes are not always a direct reflection of reality nor consistently adopted in practice (Swanson, 2015). More specifically, when it comes to issues of race and socioeconomics, poor minorities, particularly African Americans, tend to fall victim to the system, ultimately representing the criminal population at a disproportionate rate in comparison to other races (Maurer, 2010). While such a finding may indicate that there are unjust outcomes in some criminal proceedings involving minorities, it fails to highlight imperative rights and privileges that govern defendants. In essence, fundamental constitutional rights established by the founding fathers make the legal system a general equal playing field for everyone, despite differences related to one's phenotype.

The Criminal Justice System includes three key legal actors that facilitate criminal and civil proceedings, including a judge/jury, prosecutor, and defense attorney. While judges serve as legal gatekeepers who oversee such proceedings, and jurors as fact finders, prosecutors represent the interest of the people, which differs from that of defense attorneys, who represent the accused (Thompson, 2018). Although prosecutors have a lot of discretionary power, such as deciding charges and offering and/or accepting a plea agreement, they also have the burden of proving beyond a reasonable doubt that the accused committed the alleged crime ("Criminal Law," 2015). Additionally, according to the U.S. Constitution, defendants have the right to a speedy trial, adequate legal representation, due process, presumption of innocence, confront accuser(s), and double jeopardy ("Legal Resources," n.d.). In preparation for cases, prosecutors and defense attorneys heavily rely on evidence, such as testimonies of witnesses and forensics. They also try to

work together to make sure cases are processed in the system and resolved as quickly as possible, which is largely why approximately 95% of criminal convictions result from a plea deal (Bureau of Justice Statistics, 2017)

The evolution and wide-spread use of technology has added to the various forms of evidence that may be admissible in criminal court cases. Although video evidence, such as surveillance footage, has been consistently used in criminal proceedings, the introduction of body-worn camera (BWCs) footage has certainly morphed the ways in which video evidence is used and perceived, particularly by legal actors (McCluskey & Smith, 2017). Due to limited research regarding body-worn camera use by legal actors, the purpose of this study is to examine how prosecutors, public defenders, and judges perceive and utilize body-worn camera footage as evidence and how such evidence has come to impact the processing of cases.

## **Literature Review**

The pervasive implementation of body-worn cameras by law enforcement agencies throughout the nation stemmed directly from issues related to race, civilian complaints relating to excessive force, and public outcry regarding triggering events such as the Michael Brown case in Ferguson (Sanburn, 2014). The purpose of utilizing body-worn cameras is to create transparency between the community and law enforcement in addition to increasing the legitimacy of police practices (Barr, 2014). The effectiveness of body-worn cameras has been studied by various research scholars who have discovered one critical finding; body-worn cameras are effective in distinct areas of police practices and interactions with the public. For example, Jennings, Lynch, & Fridell (2015) conducted a study to examine how body-worn cameras impact law enforcement's response-to-resistance, ultimately finding a reduction in the frequency of response-to-resistance incidents and external complaint reported in the sample of officers who possessed body-worn

cameras in comparison to the control group of officers who did not have body-worn cameras. Additionally, the officers who used body-worn cameras in the study also noted better evidence collection practices and drafting of reports as a result of being able to watch footage stored on their camera to further corroborate their reports. Similarly, Ariel, Farrar, & Sutherland (2014) facilitated a research project that studied the impact of body-worn cameras on incidents of use-of-force and complaints made by citizens against police officers. After dividing law enforcement into two groups consisting of a sample of officers wearing body-worn cameras and a control sample of officer without them, investigators discovered a striking reduction in use-of-force incidents and citizens' complaints against law enforcement. While Hedberg, Katz, & Choate (2017) did find support in their study for a reduction in citizens' complaints against police officers, they did not find any substantial statistical finding indicating that there was a notable reduction in rates of arrest and resistance.

In regard to citizens' perceptions of body-worn cameras, researchers have found that race plays an important role in how individuals come to view the implementation of body-worn cameras. For example, Ray, Marsh, & Powelson (2017) found that minorities tend to report being more fearful of and having pervasive negative encounters with law enforcement in comparison to their white counterparts. Additionally, researchers found two noticeable categories that emerged from participants regarding their attitudes towards law enforcement adopting the utilization of body-worn camera, including those who were supportive and those who were overwhelmingly skeptical about the effectiveness of this technology. Again, it is worth noting that a large portion of participants who were skeptical of body-worn cameras improving police relations were minorities, such as African Americans, which may be a direct reflection of their fear and pervasive negative interactions with law enforcement. Overall, these research findings indicate that body-worn cameras can be an effective tool for law enforcement, particularly in reducing citizens' complaints,

report writing, and the frequency of response-to-resistance incidents. Although there is general support for the utilization of body-worn cameras, there is still overwhelming evidence that minorities tend to have some doubts regarding how effective body-worn cameras can be in truly impacting transparency, trust, and improving law enforcement interactions with citizens (Sousa, Miethe, & Sakiyama, 2017).

The acquisition of evidence is a rudimentary practice for prosecutors and defense attorneys. Evidence, which can be inclusive of various types of tangible and intangible things, such as fingerprints and surveillance footage, can be used to prove or disproves a defendant's alleged guilt. Body-worn camera footage can be used in criminal proceedings as evidence. Similar to other forms of evidence, body-worn camera footage can only be admissible in court if it meets a series of legal standards, such as authentication, relevancy, and credibility, which usually includes someone attesting to these criteria through their testimony in court ("Photo and Video Evidence," 2017). Although the utilization of body-worn cameras is fairly new, there is some research that has been conducted examining the evidentiary benefits of such footage and how this form of evidence impacts the processing of cases, including outcomes. For example, Morrow, Katz, & Choate (2016) conducted a study that focused on how body-worn cameras impact domestic violence cases, ultimately concluding that footage from body-worn cameras can serve as an instrumental tool in domestic violence cases by capturing emotional statements and behaviors from both victims and perpetrators that may still be on the scene of a crime. Additionally, intimate partner violence cases in which there was body-worn camera footage produced better legal outcomes, including more arrests, charges being brought forth by the prosecution, plea agreements, and guilty verdicts at trial. These findings are particularly important because some victims of domestic violence may drop charges against their partner and/or recant their statements, ultimately leaving prosecutors with little to no choice but to dismiss their case. However, the use of body-worn camera evidence

can be beneficial for prosecutors when they engage in evident-based prosecution, which consists of prosecutors moving cases forward without the cooperation of a victim (Westera & Powell, 2017). Body-worn camera evidence may be especially useful in crimes involving law enforcement and citizens, such as disorderly conduct, by capturing the entire crime in real time, which can be shown to jurors, thus increasing the likelihood of a conviction or defense being more open to a plea agreement in light of such evidence (Goodall, 2007). Ultimately, body-worn camera footage serves as a vital piece of evidence in cases involving crimes committed in the presence of law enforcement, and cases in which the camera captures emotional reactions of victims of deplorable crimes such as rape and domestic violence. Possessing this type of evidence can also produce better outcomes throughout the processing of these types of cases, such as an increase in plea deals.

Although there is empirical research that indicates body-worn cameras provide evidentiary value, there are also challenges related to the use of video evidence, such as body-worn camera footage, in different cases. Bakardjiev (2015) developed a scholarly commentary regarding some of the challenges of utilizing body-worn cameras, including admissibility of such evidence, which again, much be identified through testimony by someone with knowledge about the footage who could authenticate the video evidence as a fair and accurate depiction of what happened. He also noted that while body-worn camera footage could allow judges and jurors to vicariously experience what happened at the scene of a crime, the quality of cameras, such as having a wide lens or high definition resolution, and additional outside factors, such as lighting, could distort some aspects of body-worn camera footage, making it quite difficult for jurors to decipher the importance of the video evidence. Bakardjiev (2015) work also describes chain of custody issues that can arise when body-worn camera evidence is not securely stored and subject to modifications. Additional evidentiary issues that were mentioned include potential juror bias,

specifically in the wake of the Mike Brown era, and differences in recording procedures and policies across law enforcement departments that allocate a great deal of recording discretion to officers.

### **Research Questions**

1. How do prosecutors, public defenders, and judges perceive video evidence, such as body-worn camera footage, from law enforcement?
2. Why types of cases (e.g. domestic violence, sexual assault, and theft) are most affected by body-worn camera footage?
3. What are some of the benefits and challenges of body-worn camera evidence?
4. How does body-worn camera evidence impact the outcome of criminal cases in regard to conviction rates, plea bargaining, and trials?

### **Methodology**

The purpose of this study is to discover how body-worn camera evidence is perceived and utilized by legal actors, such as prosecutors, defense attorneys, and judges. This study also seeks to identify how body-worn camera evidence impacts the processing of cases. A total of 25 interviews were conducted with legal actors in the Monroe County, NY legal system based on a set of 20-25 interview questions most salient to answering the research questions. In total, 22 legal actors were interviewed, including 11 prosecutors, 8 defense attorneys, and 3 Rochester City Court judges. Out of the 22 interviews, 16 were conducted face-to-face while the other 6 were conducted over the phone. Contact with the interviewees was made possible through interactions with the Monroe County District Attorney's Office and the Monroe County Public Defender's Office. Participants were also located through referrals from other interviewees, ultimately leading to a snowball

sample. The Rochester City Court judges were also all referred by prosecutors and public defenders. Upon completion of each interview, written notes were transcribed to online documents by three researchers, two of which were graduate level researchers from the Center for Public Safety Initiatives at RIT. After the 22 interviews were complete and the notes were transcribed into Word documents, researchers compared the legal actors' responses and divided them into themes based on the research questions.

## **Results**

### **Prosecutors, BWC Evidence, and Case Processing**

All of the respondents expressed positive attitudes towards body-worn cameras and their evidentiary value in legal court proceedings. Prosecutors specifically noted that body-worn camera footage has been helpful in certain criminal cases involving police-citizen interactions that showcase the commission of a crime in real time, such as a DWI or disorderly conduct. In fact, one prosecutor (interviewee #9) stated,

“Prior to this bureau I was in the DWI bureau prosecuting felony DWIs. There’s nothing quite like having an intoxicated person on camera as evidence. In this bureau, there’s so much that can be said with words, but to be able to show footage to the jury and a judge, it’s priceless.”

Most of the prosecutors discussed how beneficial body-worn camera footage is to DWI cases. In addition to body-worn camera potentially capturing a person driving intoxicated, many prosecutors also suggested that this evidence can be most important for cases involving criminals who refuse to take breathalyzer and sobriety tests. Additionally, they discussed how officers may accidentally leave out important observations from traffic stops involving individuals driving under the influence or drunk that can be extremely important in bringing charges forth against the defendant. In essence, body-worn cameras work to eliminate some of these evidentiary issues by providing jurors with a seemingly objective look into what happened during a stop. One prosecutor

(interviewee #12) mimicked this finding by stating,

“Intoxication is hard to describe but you know when you see it. Now you get to see body language and words that were spoken and how they were spoken. It paints a better and stronger picture for us; often it shows that officers were doing the right thing.”

While body-worn camera evidence was discussed by many prosecutors as being most beneficial to driving under the influence (DUI) or driving while intoxicated (DWI) cases where defendants are uncooperative, others noted the value of body-worn camera footage in domestic violence cases. Domestic violence incidents are often he said/she said cases that tend to be rather difficult to prove in the court of law without physical evidence, such as bruises or documented threats, and a victim’s testimony against their abuser. The lack of evidence in domestic violence cases could result in charges being dropped, coupled with assailants going free and abuse escalating. One prosecutor (interviewee #9) highlighted the power of video evidence in domestic violence cases by expressing,

“I can’t think of a type of case that [body-worn camera evidence] hasn’t benefitted. All do but I believe [body-worn camera footage] helps domestic cases the most. I don’t specialize in domestics, we have a separate group of attorneys for that. With domestics, [the cameras] are going to capture who's there, the injuries, etc. Unfortunately, on those cases, you might not have witnesses or victims who are cooperative. So to be able to see first-hand what happened and who was there, we can prosecute without cooperative victims because we have physical evidence.”

Another prosecutor (interviewee #13) also suggested that there is immense evidentiary value in using body-worn camera footage in domestic violence cases by stating,

“[Body-worn camera evidence] works mostly on felony domestic violence cases. The footage helps in domestic violence cases because victims tend to become uncooperative. It can also show how horrible a scene that officers walk into can be.”

In general, all of the prosecutors seemed to agree that body-worn camera evidence was most powerful because it could serve as a visual aid in support of claims made by law enforcement about certain crimes and defendants. This idea was most prevalent in the statement of a prosecutor

(interviewee # 19) who claimed,

“[The] best thing is [body-worn cameras] can help show what happened and the truth is recorded. The cameras also allow us to look at issues related to how the police handle civilians. Body-worn cameras can also illustrate if constitutional rights were violated. If so, [prosecutors] will not pursue that case.”

The prosecutors who were interviewed provided overwhelming support and praise for the implementation of body-worn cameras as a result of their evidentiary value. However, several attorneys did discuss some of the issues that they were concerned about when using such footage as evidence. The overarching issue that was continuously discussed throughout many of the interviews was jurors’ expectations. Some prosecutors were wary as to how jurors would perceive footage that reinforced their negatives attitudes toward law enforcement, especially those most similar to cases in the media regarding incidents of excessive use of force. In essence, they were worried that jurors’ lack of knowledge regarding police procedures could impact some of their decision practices. In addition to misinterpreting body-worn camera evidence, prosecutors were also concerned with how prosecutors may perceive the lack of body-worn camera evidence, particularly when footage is missing, or an officer forgot to turn on his/her camera. This was most heavily implied by one prosecutor (interviewee #13) who explained,

“Jurors [will] start to expect for every case to have body-worn camera footage (CSI Effect). Jurors may also not necessarily understand why police do certain things – they don’t understand their training or policy. For example, in the ER officers have discretion over recording [as a result of HIPPA regulations related to privacy], and if the jury doesn't see body-worn camera footage, this can negatively impact cases.”

Many prosecutors also expressed how all forms of new evidence, such as body-worn camera footage, tends take jurors and even legal actors awhile to adjust to and truly understand how such evidence will impact different case in the long run. One attorney compared the rapid adoption of body-worn camera evidence to what happened when DNA evidence was introduced in the legal

system as a result of technological developments, ultimately stating,

“Like with DNA testing, when it first happened there was a learning curve. It probably will be the same thing when it comes to [body-worn camera evidence], like how to access the video, etc. It's been a learning curve mostly. Our office has added more staff. We added a guy whose main job is to get video and stuff. Since we're a government agency, we're constrained to our budget.”

In addition to issues related to jurors' expectations and the general learning curve that has accompanied the implementation and use of body-worn camera evidence, prosecutors further discussed issues with technology. Some of the technological issues discussed included quality viewing technology, such as television screens, to show jurors the footage on and obtaining the evidence in the first place. One prosecutor (interviewee #9) expressed this by stating,

“I will say though, that our technology is not great. Our computers are older. We only have a handful of blu ray players for 80 attorneys. Tech moves so fast that it's hard to keep up with it so we need to do a better job of that. It's hard to show someone evidence on a screen smaller than TVs at home. [The tech person] was an amazing addition to the system but we need a few more.”

Prosecutors provided overwhelming support regarding the benefits of body-worn camera evidence in criminal cases, such as domestic violence. In addition to changes related to evidence in criminal proceedings, the attorneys also discussed how body-worn camera evidence has redefined the processing of cases. One of the major issues related to the processing of cases now that body-worn cameras have been implemented is continued delays stemming from retrieving the video evidence. Since there is only one tech person in the Monroe County District Attorney's Office who disseminates all of the body-worn camera evidence, prosecutors have been receiving such evidence slow. In addition to receiving footage later than expected, prosecutors are expected to watch all of the footage in order to determine what parts of a video could be used as evidence.

One prosecutor (interviewee #14) expressed details about these issues when stating,

“Prosecutors are at least recently expected to review all body-worn camera footage before releasing it to the defense. This can be difficult when prosecutors have a huge caseload and have to watch footage for most of those cases within a short period of time.”

Another attorney (interviewee #9) gave similar insight into problems related to body-worn camera evidence and processing by suggesting,

“You need more time. It’s necessary to watch all of [the footage] so you need more time.” There's no way around that. It ends up being a lot more expensive too because of the costs of footage storage. It's in a way put a strain on the department, but it's helped out in terms of resolving cases. Sometimes I wish I could watch five videos at once to save time because it is invaluable.”

Time constraints are even more problematic when multiple officers arrive on the scene of a crime because all of the officers’ body-worn camera footage would have to be viewed by prosecutors.

The same attorney (interviewee #9) provided further information regarding viewing massive amounts of footage, insinuating,

“One of the tougher things, ex: a crime happens and 8 officers come to the scene and all have cameras. Before, preparing for a case you read reports and interview everyone and get photos. Now you have to watch 8 different videos which potentially takes hours. It’s definitely added time when it comes to processing cases.”

Although retrieving body-worn camera evidence and watching all footage that is provided has proven to be a constraint on the Monroe County District Attorney’s Office, many of the prosecutors mentioned tremendous success related to using such evidence. In fact, various attorneys noted how body-worn camera evidence has resulted in rapid case resolutions after the footage is received, plea deals, and dismissal of charges altogether. For example, one attorney (interviewee #13) stated,

“[Body-worn camera evidence] can affect whether or not charges are pursued, for example, a mom spanked her child and was being charged with Endangering the Welfare of a Child, but camera footage clearly showed that the child was acting out and behaving terribly. This led to the charges being dismissed. Footage could also result in a prosecutor lowering charges, for ex: A defendant violated a restraining order. However, the footage from the body-worn camera showed that the defendant was very intoxicated and somewhat unaware of his location. The prosecutor was lenient and lessened the charges, even though it was evident that the defendant had broken the law.”

Another attorney (interviewee #11) was even more optimistic about how body-worn camera evidence will likely impact the processing and outcome of criminal cases for prosecutors, specifically stating,

“[Body-worn camera evidence will] give us a high conviction rate in the long run. It’ll force [defendants] to take a plea/reduction. Some cases we didn’t have any evidence but now there is evidence for those people who don’t take field sobriety tests. It’ll cut down on number of cases where we have not guilty.”

Although most of the prosecutors’ projections regarding the impact of body-worn camera evidence on cases seemed to suggest more favorable outcomes for the prosecution, one attorney (interviewee #14), while in support of the other statements, revisited such claims by revealing the current state of plea bargains in comparison to how it might become, ultimately admitting,

“[Body-worn camera evidence] can speed up the time to resolving the case with a plea bargain. However, many cases plea out anyways, so in some circumstances body-worn video is just “one more thing to get,” and the 15 day [discovery] rule makes things hectic.”

#### Defense Attorneys, BWC Evidence, and Case Processing

Similar to prosecutors, all of the public defenders who were interviewed appeared to possess a series of positive perceptions regarding body-worn camera evidence. In general, defense attorneys were most approving of being able to retrieve body-worn camera footage that

corroborated claims made by their clients. For example, one attorney (interviewee #3) proclaimed,

“[I’m] completely in favor. I haven’t had a situation yet where I’ve watched body-worn camera footage and thought I hope no one sees this. It’s always helpful in some way. If I can watch it with my client and he can point stuff out, I can better understand how things happened. Memories are fleeting but not footage. Body cam shows everything.”

Another public defender (interviewee #8) expressed similar approval of the value of body-worn camera evidence by stating,

“You get to see the raw footage of what actually happened as opposed to a police report that has been thought out and sanitized or potentially manipulated. Whether or not it’s intentional it’s through their lens which is different from other lenses as they are not unbiased.”

The importance of body-worn camera footage was made most clear by one public defender (interviewee #2) who discussed a case in which body-worn camera evidence worked to prevent an innocent individual from facing assault charges against law enforcement. The public defender ecstatically summarized the happenings of the case, stating,

“The body-worn camera footage contradicted what the officer said. It showed the officer telling the [false] story to the supervisor, too. The supervisor basically aided and instructed his officer to make up something on his report in order to justify detaining my client. The judge dismissed the case because it was bogus. The officer essentially made up a reason to detain my client. Without the footage the judge likely would have accepted the officer’s statement

The sample of prosecutors and defense attorneys interviewed in this study were also similar in their description of the kinds of cases that benefit most from body-worn camera evidence. More specifically, many of the public defenders agreed that body-worn camera footage could be extremely important in DWI/DUI cases. This statement was supported by a public defender (interviewee #3) who claimed,

“DWIs come down to officer observations of clients. The way they sound, coordination, demeanor. If I have all that on camera I can [potentially] impeach officers’ testimony [when it contradicts written reports] and point out to the jury that the footage may depict it differently.”

Many public defenders also discussed how body-worn camera footage is especially valuable in crimes against law enforcement. The importance of the video evidence in crimes against police officers was discussed in terms of the lack of evidence these cases tend to have. As a result, prosecutors and public defenders often have to rely on statements from law enforcement and defendants. One defense attorney (interviewee #2) spoke directly to this issue when claiming,

“[Body-worn camera evidence works best for] crimes against police officers, resisting arrest, and assaults on police officers. [The body-worn cameras can] capture an entire incident. In most other crimes, there isn’t a police officer present. Only when the actual crime is filmed does it help a lot. Body-worn camera video is only relevant to the arrest of the actual crime. After the fact, the footage doesn’t help as much.”

Additionally, another attorney (interviewee #1) highlighted how body-worn camera evidence can also be useful in gun cases, especially because,

“Often there are legal issues on those cases. Police chase people they shouldn’t chase or violate constitutional rights. Officers often exaggerate what happened at that time and body-worn camera video can potentially dispute what officers say. [Body-worn camera evidence is valuable] mostly in cases where constitutional rights come into play.”

The value in body-worn camera evidence revealing issues related to defendants’ constitutional rights and possible violations at the hand of law enforcement was reiterated by a different defense attorney (interviewee #3) who stated,

“A lot of times officers will pat down people without reasonable suspicion. An officer before can say he did X-Y-Z, but the video can contradict this. Footage can [also] help show that searches are unlawful.”

Many of the public defenders also expressed some challenges related to body-worn camera

evidence related to issues of viewing body-worn camera footage and quality of such footage. More specifically, one attorney (interviewee #3) noted,

“[We need] better software for viewing. A lot of cases are at night. It’s hard to see the footage. There’s no backlight. We’ve had to adjust the brightness of the video just to make out various shapes and that’s problematic. I would prefer that if there were ways to lighten the footage. It feels junky to use a laptop to show to a jury. There needs to be a way to have remote viewing. It’s minor but it’d help.”

Surprisingly, outside of issues related to inadequate viewing technology and quality of footage, most of the public defenders did not express some of the same issues related to body-worn camera footage that prosecutors did. While the public defenders rarely expressed concerns related to the expectation of jurors, some did discuss how jurors may react to this new form of evidence. For example, one attorney (interviewee #7) suggested,

“In the perspective of someone on the jury, [body-worn camera evidence] might be alarming to them. The [footage] is really raw in comparison to reports which often show a case being really “clean.” The videos are very rough, people use bad language, etc. Police don’t like that people are seeing how the sausage is made.”

While most of the public defenders were relieved that body-worn camera footage has finally provided evidence that corroborated some of the issues many of their clients had been telling them for years, a lot of them were still alarmed by some of the things they saw on such footage. For example, one public defender (interviewee #1) expressed that,

“It’s been eye opening the things officers will do knowing they’re wearing a body-worn camera. It scares me thinking [about] what they did before. Very abusive language and behavior towards people. Unprofessional behavior on the part of the officers. It concerns me because it seems like they’re operating in a culture where that’s acceptable. Before body-worn cameras, it was hard to prove [misconduct] unless someone had a phone camera and was videoing it.”

All of the public defenders further expressed challenges relating to receiving body-worn camera evidence in a timely manner from prosecutors, which has had an impact on the processing of cases. For example, when asked about issues related to receiving body-worn camera evidence, one public defender (interviewee #1) said,

“[We] probably do not [receive body-worn camera evidence] as fast as we would like to. Not sure if it’s prosecutors’ fault. They’ll suggest us to do subpoenas because discovery has been so slow. So I don’t think it’s intentional. Subpoenas involve several extra steps to be taken that otherwise would not need to be done. I want to see it provided to prosecutors faster so they can get it to us faster too. They’re also dragging their heels for prosecution as well.”

Similarly, another public defender (interviewee #7) mirrored this response related to the issue of getting cases processed throughout the system in a timely manner by stating,

“[Body-worn camera evidence] doesn’t increase number of cases. It does [however] take a lot of hours to look at the footage. DA’s often chunk out the recordings before giving it to the defense. Sometimes DA’s will cut out stuff that does actually matter. We have to sit there and watch all the footage. The police may decide to not give the DA all the video. It might not be because of the DA it might be because the police chose not to do whatever. There’s no way around spending more time on cases when there’s body-worn camera video. Especially in trial we watch more video.”

Time management appeared to be one of the major issues experienced by both prosecutors and public defenders. However, some attorneys expressed concerns regarding their relationship with prosecutors. In fact, one public defender (interviewee #3) spoke directly to this issue by explaining,

“I think in some cases [body-worn camera evidence] has made me more adversarial with DA’s. I’ve seen a reluctance on their part to use the camera footage. It’s their job to make the case but it’s also their job to seek truth and justice. So when I see it as a willful denial of what’s on the body-worn camera footage, such as a DWI case where they kept footage out of case, which to me is irritating because I knew it was bad for my case.”

In spite of these processing issues, many of the public defenders also discussed some of the ways in which body-worn camera evidence has positively impacted the outcome of different cases. More specifically, they mentioned experiencing notable differences in plea deals and charges being brought forth by the prosecution. For example, one attorney (interviewee #8) stated,

“[I’ve noticed a] big reduction in police “bogus” charges [and] disorderliness, etc. I think something that’s happening now [is] police will say things on camera in order to influence someone that may potentially be watching [the footage] down the road. [In the] long term, I think [body-worn camera evidence is] positive. The body-worn camera video answers a lot of questions that [attorneys] argue over. The only thing it goes to trial over is if it is a condition of law.”

Another attorney (interviewee #3) also spoke to differences in negotiations between prosecutors and public defenders as a result of body-worn camera evidence, ultimately stating,

“At the very least negotiations are impacted. It’s impacted what case offers have been. [I] had a drug possession case last week and it was unclear to me why I couldn’t see on the [body-worn camera] video where [the officer] found drugs. The officer said he found it in the car as my client was getting out, but all the video showed was that the officer never found drugs. When I went to hearing the ADA asked if we could work [a deal] out. Drugs never were on the video. The drug charge was dropped to disorderly.”

In relations to trials and acquittals, one public defender (interviewee #1) suggested,

“I think [body-worn camera evidence] is going to weed out trials. We have an intelligent crew of attorneys on both sides. Body-worn camera video that’s helpful will help reduce trials. Acquittals not as much, but maybe less cases will not need to go to trial because evidence may be really clear.”

### Judges, BWC Evidence, and Case Processing

The interview framework for judges was slightly different in comparison to that of prosecutors and defense attorneys, which was identical outside of changes in language. There was also less judges interviewed in comparison to prosecutors and public defenders. As a result, there was very limited findings in regard to the evidentiary value of body-worn camera footage from the

perspective of judges. Despite these limitations, important similarities emerged from the interviews, including agreement amongst the three judges that body-worn camera footage could be valuable evidence in specific kinds of cases involving law enforcement. For example, one judge (interviewee #22) summarized which cases are most impacted by body-worn camera evidence by stating,

“DWIs are impacted, resisting arrest cases, part of the hearing consists of determining whether the defendant has voluntarily given up rights to consent to speak to officer, or performance on sobriety test, probable cause for arrest are usually on the officer testimony, now there is BWC footage.”

This rhetoric was consistent throughout the other interviews as well. However, one judge (interviewee #20) did make note of the importance of capturing the perspective of law enforcement during incidents in which other evidence may be murky by stating,

“It’s important to see the officer’s perspective. It may be useful to see some of the “shoot/don’t shoot” situation videos. There may be a dynamic tension between free press and a fair trial.”

Generally speaking, judges appeared to be approving of body-worn camera evidence particularly that of which is admitted into court. However, they did express sincere concern regarding how body-worn camera evidence will impact jurors. One judge (interviewee 20) even stated that,

“CSI and other media in culture affects the expectations of jurors. [We] need to disabuse these unrealistic expectations from jurors prior to court proceedings. Litigants [and jurors] may feel that something is missing if certain types of evidence [like body-worn camera evidence] aren’t present.”

In regard to processing cases, all of the judges also discussed how the introduction of body-worn camera evidence has slowed down the processing of cases, resulting in numerous adjournments, which allow attorneys more time to watch the footage. Admissibility of body-worn

camera evidence was also heavily discussed by the judges. While the criteria for admitting body-worn camera evidence is the same as admitting any form of video evidence, the judges did mention that body-worn camera evidence could result in preclusion if discovery is not met in a timely manner. One judge (interviewee #22) summarized the overarching opinions of all three judges regarding the processing of cases by stating,

“Because [body-worn cameras are] new, getting discovery turned over is overwhelming. Technology is moving faster than the law can and the law and system have not been put in place to support it. [There’s also] a lot of pretrial arguing about whether or not the BWC footage was timely produce, subject to preclusion, suppress, different judges different rule, until court of appeal make cases law everyone will do something different in different department. Preclusion [of body-worn camera evidence] if it’s not produce in 15 days. [Body-worn cameras] have slowed down the resolution of cases, the footage has to be obtained, reviewed, additional cost for maintaining/storing footage and burning CDs, to receive the data there is a delay.”

## **Conclusion**

The introduction of body-worn cameras was initially predicted to have the biggest impact on the behaviors of law enforcement. However, research, while limited, has illustrated how body-worn cameras are impacting not only law enforcement, but also prosecutors, public defenders, and judges. This research study presents insight into some of the challenges and strengths of body-worn cameras as described by legal actors. More specifically, it examines how body-worn camera evidence is utilized in addition to how such evidence impacts the process and outcomes of cases.

Overall, the interviews conducted with prosecutors, public defenders, and judges provided valuable information regarding body-worn camera evidence and the specific kinds of cases this particular type of evidence is most beneficial to. While such footage can shed light on crimes that take place in front of law enforcement, such as DUIs/DWIs, and assaults on victims that showcase

their initial emotional reactions and/or bruises, like domestic violence cases, these legal actors were extremely perceptive of some of the limitations body-worn camera evidence presents. The most notable being jurors' expectations, technological learning curve, dated technology, and prompt accessing body-worn camera evidence to use, which has been most problematic due to budget constraints of both offices. As expressed throughout the interviews, these limitations also create issues with case processing, ultimately causing delays in criminal court proceedings and the detainment of defendants. Although case have been delayed, the outcomes of cases in which body-worn camera evidence is most vital, the outcomes were noted as being seemingly swift, resulting in more plea deals and favorable resolutions on behalf of both the prosecution and defense.

Although this research study adds to the growing body of literature regarding body-worn cameras, there are some important limitations that must be discussed. First, the sample size was small. While there are between 70-80 prosecutors, 70-80 public defense attorneys, and 10 city court judges, there was only a total of 22 legal actors interviewed. A larger sample size could have shed light on other processing issues and evidentiary benefits this study fails to address. Additionally, some of the interviews were conducted in groups, which made it difficult to document all of the responses to each interview question from each individual interviewee. In terms of future research, it would be advantageous to examine jurors' expectations and perceptions regarding body-worn camera evidence, especially since this was of great concern for all of the legal actors interviewed.

Prosecutorial and Public Defender Perceptions: Anticipated Impact of Police Body Worn Cameras  
on Jurors' Decision Making

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## Abstract

The jury serves an important reference point for criminal case processing, despite the fact that the majority of cases are disposed of by pleas or dismissals. This paper examines the prosecutor and defense attorney's perceptions of the impact that body-worn cameras (BWC) will have on juries and how, even in cases they negotiate, perceptions regarding juror expectations and decision-making may change. Research involved surveys and interviews with prosecutors and defense attorneys in urban counties in California, New York, and Texas. The results indicate that both defense and prosecution anticipate BWC changing approaches to cases and how cases may be negotiated to an outcome. Future research on whether and how case flow and attrition is systematically affected by the introduction of BWC in crimes, especially those where police are primary witnesses, is suggested.

## **Introduction**

Technology is associated with change in the local practice of criminal justice including the oft noted introduction of police cars and 911 systems which helped redefine police into a reactive force (Kelling & Moore, 1982). A recent large-scale change involves the testing and adoption of body worn cameras (BWCs) by local police departments (Reaves, 2015). The motivation for adoption largely rests on anticipated improvements in police-community relations, reducing police complaints, reducing use of force (White, 2014) and responding to a crisis of police legitimacy (Makin, 2017). Despite the origination as a solution to issues primarily confronting police in day-to-day encounters, the impact of BWC on prosecution and defense has recently become more salient as BWC footage becomes more prevalent as a form of evidence.

Morrow, Katz & Choate (2016), for example, trace changes in prosecutorial processing of intimate partner violence cases in Phoenix, AZ, with the introduction of BWC including a greater likelihood of plea outcomes or guilty verdicts. Westera and Powell (2015) have added to the conversation on video applications for domestic violence cases as a tool for evidence collection and securing a record of witness, victim, and suspect statements. Lum, Stoltz, Koper and Scherer (forthcoming) note, however, that this research avenue is specific to intimate partner violence cases and may not apply to the larger body of cases pursued by local prosecutors. Further Merola, Lum, Koper and Scherer's (2016) survey of state prosecutors indicate about six in ten believe BWC would be more helpful to prosecutors, however slight majorities believe it will increase preparation time and make for difficulty in generating discovery.

These contradictory expectations regarding the consequences of this technological change should be placed firmly against the reality that few cases make it to trial, but instead are negotiated to pleas or have charges dismissed. As such the current research focusses on how prosecutors and

public defenders in three counties are adapting to BWC in their everyday practice and construct the value of BWC video as evidence in cases, much as officers construct its usage in practice (Makin, 2016). The current research applies a mixed methods approach to explore one facet of the value and impact of BWC on courtroom practice. More specifically, we consider prosecutorial and public defender notions regarding BWC on juror's expectations for that type of evidence and how BWC may affect juror decision-making. Below we first review the literature with a focus on decision-making, the role uncertainty plays in negotiation, and how new evidence, such as the CSI-effect, is anticipated to influence juries and jurors. We then describe the three sites and methods for data collection. Quantitative analyses from surveys are then informed by qualitative results drawn from in-depth interview. Finally, these results are framed in the conclusion as having import for policymakers.

### **Literature Review**

The criminal jury in U.S. criminal justice has multiple functions as it represents a community reference point for the application of law and procedure (Murley & Sutton, 2014; Feeney, 1983: p. 238) and is sometimes at odds with the expectations of judges (Kalven & Zeisel, 1971), and a check on prosecutors (Mather, 1979) and defense attorneys (Flemming, Nardulli & Eisenstein, 1992: Chapter 6). The jury can be considered part of the local culture's impact on adjudication decision-making (Heumann, 1979; Worden, 2016). Given this backdrop, the question of the effect of police use of body-worn cameras (BWC) on juror decision-making and expectations is an important one for prosecutors and defense attorneys as an anticipated reference point for their negotiations. Clearly the vast majority of cases are settled prior to trial and convictions are overwhelmingly obtained by pleas as compared to guilty verdicts (Reaves, 2013). The proliferation of BWC footage, especially with regard to cases where police are typically the

primary witnesses to the crime (e.g., DUI, assaulting a police officer/resisting arrest, disorderly conduct, weapon or drug possession, and so on) are similarly a large proportion of the criminal cases which are charged and settled as contrasted with the more serious violent felonies. Thus, we explore the jury as a referential point for negotiation in this literature review; particular regard is accorded how case evidence yields more or less credible cases, thereby influencing variations in prosecutors' and defense attorneys' uncertainty about prospects for conviction and acquittal at trial. Second, we consider the expectations that jurors may have for the existence of BWC regardless of its utility for adding information at trial. In sum we consider uncertainty and the CSI-effect (e.g., Todak, Gaub & White, 2018) as essential elements that may be influenced by the emergence of BWC technology.

The extant literature indicates that prosecutors weigh dismissal, bargaining, and trial strategies against juries and expectations about their decision-making. McDonald, Rossman, and Cramer (1979) explored defense and prosecution decision-making through case simulation and found information related to case strength (evidence and case facts) to be nearly universally important to both. Further, that research indicated that defense attorneys and prosecutors across a variety of jurisdictions generally agreed on which cases were likely to result in convictions in front of a jury. This suggests a common understanding of case outcomes given similar evidence and case facts on which prosecutors can negotiate outcomes or choose to dismiss cases deemed weaker or low probability convictions at trial. For example, Stanko (1981/82) interviewed prosecutors in New York City and reported that they considered the question "can a case be persuasive to a jury?" independent of evidence and suspect guilt. Her research focused on the credibility of the victim/witness in influencing prosecutors' decisions, but similar concerns were found among defendants regarding credibility in Casper's research (1972), and among defense attorneys.

Frohmann's (1991) research indicates that, specifically in sexual assault cases,

prosecutorial case rejection hinged on a “downstream” concern regarding anticipated moves by defense, and judge and juror responses to testimony, especially with regard to victim credibility. Spohn and Holleran (2001) further explored decision-making in sexual assault cases and found victim character and behavior to be particularly salient in non-stranger assaults. Frederick and Stamen (2012) extended these observations to a more general set of cases in interviews with prosecutors to evidence weighed by an expectation of how the jury may evaluate information or the absence of information such as lack of indications of drunkenness from a dashboard camera at a DUI stop.

Thus, a key constituent for prosecutorial decision-making and prosecution and defense attorney negotiation is a background of beliefs about how case information will be interpreted by the jury. Bennett and Feldman’s (1982) research, for example, indicates that “storytelling” is a profound reference point for understanding how evidence yields jury decisions regarding convictions or acquittals. In that context, we would surmise that the proliferation of BWC footage would be a particularly salient tool that contributes to these aspects of story-telling and it may serve several purposes for the negotiated outcomes of adjudication. BWC presents a unique crucible in the sense that it reorients the consideration of the jury and storytelling in at least two interrelated ways: First, the jury may come to expect BWC as evidentiary material available and exculpatory part of case construction; second the video is likely to become part of juror decision-making in that it provides the contextual and informational backdrop to scenes, speaks directly to elements of a crime, or presents information that undermines or supports the credibility of defendants, witnesses, or the overall prosecutorial case-theory.

Prosecutorial decision-making is often considered in a theoretical framework in reference to uncertainty. Albonetti (1986) drawing on March and Simon’s (1958) concept of satisficing argues this is an apt characterization of strategy for dealing with uncertainty in the negotiated

outcomes with defense attorneys. Trials take time (inefficiencies can thus result) and can yield losses (uncertainty). Evidence and seriousness are two key pieces of information for helping to weigh, manage, and make decisions under uncertainty. As a reference point, the jury is also explicitly referenced as a source of uncertainty (Albonetti, 1986; Johnson, 1997) against which negotiations are weighed. Managing uncertainty, then, becomes tied to prosecutorial and defense expectancies regarding juries even though both sides know that jury trials are rare. Thus, in establishing the bounded rationality on which to achieve goals of justice and order, novel evidentiary elements such as BWC are expected to make for renegotiations about going rates, what constitutes a strong case, and perhaps new forms of evidence (such as DNA, blood, and other forms) that are available. Westera & Powell, 2015 encourage the collection of video evidence in intimate partner violence (IPV) cases and research findings from Phoenix, AZ (Morrow, Katz & Choate, 2016) regarding the increased likelihood of charge filing, case furtherance, guilty pleas and convictions in IPV cases with BWC, suggest, at least with regard to these case types, that such a renegotiation or change in process is taking place.

### *CSI Effect*

Another such avenue, more general than that one might expect in IPV cases, is the new “CSI effect” that has been ascribed to BWC evidence by judges interviewed in research in Tempe, AZ and Spokane, WA (Todak, Gaub & White, 2018). This draws on the perception of the Crime Scene Investigation (CSI) Effect, which was believed to be a widespread phenomenon associated with the TV crime show which had viewership reaching 60 million per week (Heinrick, 2006). The CSI Effect is often linked to the Cultivation Theory which suggests that television viewing impacts how viewers perceive the real world (Alldredge, 2015). Some have argued that watching CSI produced unrealistic expectations regarding the types of forensic evidence that can be utilized in a

criminal case and the availability of such evidence at trial (Johnson, 2017). While prosecutors suggested that the lack of forensic evidence could harm their case(s) and result in the acquittal of defendant(s) as a direct result of watching CSI, defense attorneys worried, conversely, that jurors may become overly impressed by the utilization of forensic evidence and convict their clients (Johnson, 2017).

Initially, survey responses from legal practitioners, such as prosecutors, provided support for the CSI-effect (Johnson, 2017). For example, in 2005, researchers surveyed 102 prosecutors in Maricopa County and found overwhelming support, including prosecutors' reports of jurors questioning the lack of forensic evidence as well as beliefs that acquittals resulted from the lack of such evidence (Thomas, 2006). Watkins (2004) also found perceptions that unrealistic expectations of jurors regarding forensic evidence stemmed directly from viewing crime shows, such as CSI, among a sample of Florida attorneys, and that modified their trial tactics to combat the CSI Effect.

Shelton, Kim, & Barak (2006) studied 1027 participants called for jury duty in Michigan. Although they did not find the CSI Effect to impact acquittals, investigators found that most participants did *expect* forensic evidence in serious cases, such as murders and rapes, especially among those who watched CSI. Kim, Barak, & Shelton (2009) revisited the CSI Effect in a different study and found little evidence of an impact on jurors' decision-making.

Hayes-Smith & Levett (2011) research on 104 dismissed jurors and Baskin & Sommers (2010) exploration of 1,201 telephone surveys revealed scant support for the CSI effect.

In sum, the current literature on the CSI Effect has produced mixed findings which can be dichotomized as practitioners within the legal system have produced support for its existence, while studies more representative of prospective jurors have shown limited support for the effect.

Like the CSI Effect, legal practitioners have recently become worried about the impact body-worn camera (BWC) evidence will have on jurors' perceptions of law enforcement, their

growing expectations regarding the availability of BWC evidence, and their decisions to acquit or convict based on the presence or lack of body-worn camera evidence, especially since the implementation of body-worn cameras within many police departments has been publicized across the nation (Merola, Lum, Koper & Scherer, 2016).

While policymakers are starting to consider how BWC evidence will impact adjudication decisions, there is currently conjecture that specific case types in which body-worn camera is extensively used, will include traffic infractions, drug sale/possession, resisting arrest, assaults on officers, DWI/DUI, in addition to other cases in which the alleged crime is caught on camera. It is also argued that jurors will rely more heavily on body-worn camera evidence in comparison to testimony from witnesses and victims, especially when video footage should be available, and lastly, juries may acquit or even refuse to indict a defendant on the grounds that there is not body-worn camera footage to corroborate the statement and claims of witnesses and victims, which might speak directly to their credibility (Hannaford-Agor, 2015). Frederick & Stamen's (2012) interviews with prosecutors yielded the concern: "*videos are now used in all arrests for DUI and people are expecting to see a person very drunk in the videos*; however, as one ADA pointed out, *not everyone looks really drunk in the videos*" [italics in original]. Similarly, Todak, Gaub, and White (2018) interviewed a variety of stakeholders in Tempe, AZ and Spokane, WA and a judge commenting on BWC noted: "People have a CSI expectation that they're going to get this awesome video of everything unfolding..." These point to a concern regarding jury expectancy that BWC will provide dispositive information. Given the sense that storytelling and uncertainty over outcomes form the backdrop against which negotiations occur, we offer the following general research question:

The introduction of a new technology, such as BWC, will have affordances of on-scene audio-visual documentation and is likely to affect jury expectations; prosecutors and

defense attorneys will work to anticipate these impacts in their processing and negotiation of cases as well as in their preparations for and presentations of cases in court. Below we explore this proposition in three jurisdictions using a mixed-method approach.

### **Sites**

This research involved data collection in three counties located in New York, California, and Texas, details of the counties and primary law enforcement agencies of interest are highlighted in table 1. The Monroe County, New York District Attorney’s Office, which is overseen by District Attorney Sandra Doorley, is staffed by 70 to 80 attorneys working in 12 bureaus (“The Monroe County District Attorney’s Office,” 2018). The Monroe County Public Defender’s Office is overseen by lead public defender, Tim Donaher (“Public Defender,” 2018) and is staffed by approximately 70 attorneys.

**<<Insert Table 1 About Here>>**

Monroe County, New York is located within the western area of New York State with an estimated population of approximately 747,000 residents. Monroe County has a total of 14 police departments and 21 municipalities. The City of Rochester is the largest city in Monroe County with a population estimated at 208,880 people (“US Census QuickFacts,” 2018) and is home to the largest police department in Monroe County, with more than 800 officers (“Rochester Police Department,” 2018). RPD fully deployed the cameras to police officers in early 2017 after approximately 6 months of roll-out (“Body Worn Camera Project - Rochester Police Department,” 2018).

The San Diego County, California District Attorney’s Office, which is the second largest office in the state, is led by District Attorney Summer Stephan. The office has approximately 320 attorneys and 18 criminal divisions (“Staffing and Organizational Chart,” 2017). The North County Prosecutors office, with between 50 and 60 attorneys, was the geographic focal point for

data collection on this project. The San Diego County Public Defender's Office is led by Randy Mize. The office is inclusive of several indigent defense services, including Primary Public Defender, Alternate Public Defender, Office of Assigned Counsel, Juvenile Delinquency & Multiple Conflict Office ("San Diego County Public Defender Office," 2018). The North County division of the office has approximately 40 attorneys.

San Diego County, CA is in southwestern California and encompasses 18 cities with approximately 3,337,000 residents. The City of Escondido, one of the primary cities served by the North County Office, has an estimated population of 151,000 served by the Escondido Police Department (EPD) which has approximately 150 officers ("New Escondido police chief sworn in," 2013). EPD began implementing body-worn cameras in 2010 and eventually switched to body-worn cameras produced by TASER in a department-wide rollout in 2014 (Littlefield, 2016). The office also covers police departments in the similarly-sized cities of Oceanside and Carlsbad, as well as cases generated by the Sheriff in cities such as Mesa, where there is no municipal police force.

The Travis County Texas, District Attorney's Office is overseen by District Attorney Margaret Moore. The department has approximately 95 attorneys and seven divisions. Unlike the other sites the county does not have a dedicated public defender's office except for a small juvenile and mentally ill public defense division (Satija, 2018). As a result, the county recruits and pays approximately 400 attorneys in the private sector to represent adults who are unable to afford counsel (Satija, 2018).

Travis County, TX is in south-central Texas and has an estimated population of approximately 1,226,000 residents. The City of Austin, TX, the largest within Travis County, has an estimated population of 947,890 persons and is served by the Austin Police Department (APD) staffed by approximately 1900 officers ("Chief Brian Manley's Biography," para. 1, 2018). The

APD started implementing body-worn cameras in 2016 (Shokar, 2016).

### **Quantitative Data**

Online surveys were collected via the Qualtrics survey platform. Lists of emails for assistant district attorneys (ADAs) and public defenders (PDs) in the three sites were obtained with permission of the chief prosecuting attorney or public defender. The survey was distributed to sites between late summer and early autumn of 2018, with at least three follow-up reminders to each office. The data collection was designed so that separate surveys allowed specific wording of questions for defense attorneys and prosecutors.

**<<Insert Table 2 About Here>>**

As can be seen in table 1 a total of 217 ADAs were surveyed via email, and 107 public defenders (public defenders work on a narrow set of cases in Travis, Co. Texas, thus no surveys could be delivered there) across the three sites. The response rate for ADAs was 53.5% and 41% for public defenders. The highest office-level response rate was in Monroe County New York, with approximately 76% response rate and the lowest level of response was from San Diego, where 23% of ADAs responded. The latter may be due to the fact that the entire office was not subjected to the survey but only the North County bureau as noted above.

### **Qualitative Data and Methods**

The qualitative data for this study are from 40 interviews of prosecutors and defense attorneys at the three research sites. We interviewed 10 prosecutors at the Monroe County District Attorney office, and 9 attorneys at the Monroe County Public Defender office. In San Diego County California, we interviewed 14 prosecutors from the North County Office and 7 public defenders. In Travis County, Texas we interviewed 11 prosecutors from the District Attorney's and

County Attorney's office. The interviews were conducted in-person and lasted approximately 30 to 80 minutes. In only one interview, involving three attorneys, was more than one respondent present. Each respondent was queried regarding their perceptions of the impact of BWCs on jury decision making and juror expectations of BWC availability. The specific questions asked of respondents are as follows: 1) Are there growing expectations among potential jurors about the availability of BWC footage? And 2) What is your perception of the impact of BWC on juries' decision making?

Each interview was transcribed and responses to the aforementioned questions were coded. Some codes were constructed prior to reading the interview and others were generated in the process of reading the transcriptions. The coded portions of the interviews were extracted and reread to arrive at more general categories and themes. We compared statements and accounts for evidence of patterns, continuities, and discontinuities in the data. We were particularly attentive to differences in perceptions across jurisdictions, and between prosecutors and defense attorneys. Basic counts were also generated to identify the strength of the patterns uncovered (Creswell, 1998, 2003; Straus & Corbin, 1998). It is important to note however, that roughly two-thirds of the respondents are prosecutors, thus the data is more reflective of their perspectives rather than public defenders.

### **Analysis**

At least four items in the electronic survey are germane to the inquiry at hand regarding the impact that BWC would have on adjudication processes, vis-à-vis the anticipation of jurors changing expectations and decision-making. The first three questions in table 2 present respondents with five response categories of strongly disagree, disagree, no opinion, agree, and strongly agree:

*Video evidence results in higher rates of plea bargaining;*

*Plea bargaining has increased since the implementation of police body cameras;*

*Juries favor video evidence over testimony.*

**<<Insert Table 3 About Here>>**

The fourth question asks respondents if they are highly concerned, somewhat concerned, or not at all concerned with Jurors questioning key testimony when video footage is not available. Regarding the impact on plea bargaining, a majority of PDs and ADAs agree with the statement that video results in higher levels of plea bargaining, and a chi-square test indicates no statistically discernible difference across the two groups of respondents ( $\chi^2 = 5.6$ , 3 d.f.). Only 35% of ADAs and 28% of PDs agreed or strongly agreed that plea bargaining increased since BWC implementation, and the differences across groups in terms of response were not statistically different ( $\chi^2 = 1.8$ , 3 d.f.). Nearly 80% of PDs and more than 90% of ADAs agreed or strongly agreed that juries favored video evidence over testimony, again there were no statistically distinguishable differences between group responses ( $\chi^2 = 6.9$ , 4 d.f.). By contrast ADAs responded with statistically significantly higher levels of concern (only 2% of ADAs compared with 23% of PDs were “not at all concerned”) regarding jurors questioning key testimony when video footage is not available ( $\chi^2 = 20.3$ , 2 d.f.,  $p < .01$ ). In sum we see important convergence regarding the impact of BWC on negotiations towards plea bargains across the groups, both affirming a strong jury preference for video, and a divergence in the consequence of video absence in how jurors may weigh testimony. This backdrop on the two groups provides a foundation for exploring the responses obtained from the more in-depth interviews executed on site during late summer and early Fall 2018.

### **Qualitative Interview Results**

***District attorney’s perceptions of juror expectations related to BWC availability and impact on juror decision making***

San Diego County, California

*Juror Expectations*

Overwhelmingly the prosecutors interviewed in San Diego report that there are growing expectations among potential jurors regarding the availability of BWC. This expectation they believe is due to the “CSI Effect.” They perceive that jurors are being exposed to BWC via various types of media and bring those expectations with them when they serve on juries. Additionally, the ubiquitous nature of video via cell phones and other type of video surveillance heightens expectations even in the absence of BWC. Jurors are suspicious of officer and witness testimony/credibility if BWC is not presented at trial. Prosecutors express that due to the CSI-Effect, jurors also expect good quality BWC and often they have to temper the unrealistic expectations of jurors regarding forensic evidence. The following interview excerpts are indicative of statements offered by the prosecutors that we interviewed:

*I think that because of the media portrayal of BWC, jurors expect everything now to be on camera. So, it's really frustrating or hard to explain why not everything is on camera and when things happen you know, camera gets knocked off or what not, it always seems to be that it's assumed that it's ill-intentioned or was you know purposeful, which is really frustrating. I just did a resisting arrest...they [local police department] didn't have BWC yet. My jurors did not like that at all and because the officers had to get physical with the defendant, they just assumed it was basically the officers beating up the defendant, but that wasn't the case, but it wasn't on camera... [DA\_SD 1.7]*

*I think most jurors at this point are aware that police officers have body-worn camera, and so, I think again it depends on the case, but I think if there's a dispute then and we don't show it, or the defense doesn't show it, if there's a dispute, then the juries would want to see that. I think that's been communicated not just to me but to other attorneys after trials by jurors is like oh, we saw the body-worn camera and that helped us make a decision or oh, we wish we would have seen the body-worn camera on this. I do think it's still in the phase where it's a lot like DNA was when it first came out, where, you know, sort of the CSI Effect ten years ago where they're assuming that every case has DNA, you know, and every case doesn't have usable DNA and not every case has usable body-worn camera footage. So, sometimes I do feel like juries, aren't quite at the point where they realize that body-worn camera isn't always the most effective evidence in every case. [DA\_SD 1.3.1 and DA\_SD 1.3.2]*

### *Impact on Juror Decision Making*

Prosecutors in San Diego report that BWC as evidence has much evidentiary value and plays an important role in juror decision making. More specifically, they offer that jurors use BWC when determining credibility of witnesses, and that it carries more weight than live testimony. The threshold to prove a case has increased due to BWC, and it gives jurors an opportunity to see what officers deal with, and that most officers do the right thing the vast majority of the time, which is contrary to what they view via media. During voir dire they ask jurors if they are willing to vote guilty if for example BWC falls off. BWC plays an important role in particular type of cases such as domestic violence, recanting witness, and officer involved cases. The following interview excerpts are indicative of statements offered by the prosecutors that we interviewed:

*I mean I think that most jurors really use it when determining credibility, and I would imagine that most jurors probably think that what someone said at the time, in the heat of the moment is more reliable than what they are saying now since you know its 6 months after the fact. And having that opportunity to rehearse their testimony. I think generally jurors find that they carry more weight than a live testimony and certainly it gives the case life. I think a case that seems pretty insignificant or minor at the time can have a lot more impact when it's got BWC. [DA\_SD 1.7]*

*Anything that corroborates what my witnesses are saying and you know I may have a witness you know maybe she was a witness to an attack and there were threats prior to the attack and that witness is now being interviewed moments after it happens and it used to be that the officer could just jot down some notes. Maybe had a recording device and could stick that in their face and record it but, because the body worn camera is almost hidden, even though It's out in the open, people don't notice it and I think they would give a much more real statement to the officer. And so when that witness testifies about how they felt emotional and they were scared and that they couldn't believe what they were seeing, well then when you can push play and let the jurors see exactly the emotional state of that witness or that victim and then it helps the jury make a determination as to whether or not to actually believe them. But because you can see that emotion and hopefully the truthfulness of that I think that's important to play for the jury as well as just the chaos of a scene itself. Witnesses, people, EMTs moving around sometimes. And to the extent that a couple of witnesses might give different accounts of what happened jurors can understand why that is - because of the lighting, where things are situated, the movements of the people, but what it comes down to is anything I can do to corroborate what it is that's being said by witnesses on the stand, that's what I need it for. [DA\_SD 2.4]*

Travis County, Texas

### *Juror Expectations*

All the assistant district attorneys that we interviewed in Travis County, perceive that jurors expect that BWC will be available during trial. Additionally, jurors do not like it when footage is missing, and will question why a police officer chose to turn off the camera. To a person, the attorneys offer that there is a CSI “mindset” regarding BWC use such that jurors expect what they view on television. District Attorneys seek to limit juror expectations regarding BWC evidence in voir dire and if it is not present they may not be willing to convict, or the case may be skewed in the defendants’ favor.

*...the jurors that I’ve talked to over the last sort of three years ever since cameras became a thing. You talk to them after the trial and depending on the case, a lot of times the first question they ask is, “How come this was not on video? Where’s the video? (x3)” It includes surveillance cameras, but for the most part it’s like, “How come this officer is the only one that had the video on?” And that’s even after finding guilty, they still want to know. Being from...I didn’t win a lot of cases, FYI. But now for the most part jurors expect the criminal courts to mirror not only what they see on TV but to mirror their real-life expectancies and what they have. We have in our pockets, cell-phones that have the capacity that any juror would want. The question is, “why isn’t that something that’s more standardized?” So, things like, you know, you identify this person in a show off, “why didn’t you take a picture of him?” Right, and so defense attorneys will first start with, “Well officer, you know you have a cell phone and it has a camera and you could have used that camera to take a picture of this person sitting in the back of a police car.” And their response is always, “Well it’s not a department issued camera and I don’t have a general order that says to do that and blah, blah, blah...” [Kent]*

*I think that, the moment a juror hears that the police have or have access, or the potential to have access to BWC, they are going to expect to see. I know I would, because isn’t that the whole purpose of the BWC. And so, I think absolutely the jurors will expect, you know when we always talk to them about you know CSI, all of these scientific, DNA shows because you have people just have those unrealistic expectations, that every case is going to have that. I think in our cases that it is probably the truth, you know in terms of BWC, but not necessarily in every case, but I think these days you’re community, absolutely your jurors, absolutely expect you to have some type of video evidence, some type of DNA, something a lot...more hi-tech evidence, or...better evidence, for lack of a better word, than just eyewitness testimonies. And not to say that we don’t have those cases, but that’s supposed to be the purpose of the BWC...but I think with the advent of the BWC’s you’re going to get more jurors expecting to see more video evidence. And they may not certainly*

*be the case, because like I said the officer comes in after the fact, but I think the expectations will be there. [Simone]*

### *Impact on Juror Decision Making*

Overwhelmingly, Travis County prosecutors believe that jurors rely heavily on BWC evidence in the decision making and it is a critical piece of evidence. They think that jurors want to be sure that they are making the correct decision and that video evidence is an objective manner by which to determine defendant's guilt or innocence. With BWC, jurors can become their own investigators, it makes their decision making easier and they may be unwilling to convict when video is not available.

*Oh, it's huge. Juries and people watch television. They are on television, and YouTube, and on Instagram. These are all visual media. And they work because the most impactful portion of our brain, the one that's most directly connected to it is our visual center. And so if they see something, they're going to be influenced by it. There's also a reason that any piece of research that's done on how you influence people starts with visual. If you watch what hypnotist does, they prepare the room that they are in if they are hypnotizing somebody with lots of subliminal cues that the brain accepts without any filter at all and without knowing that, it accepts it. And it influences that person's decision. So, the BWC as a visual persuader is second to none. [Kent]*

*I think they have much better information to make their decisions, but I do think that it is a different dynamic for decision making by jurors. It used to be that you would listen to a police officer witness or a civilian witness or whoever is testifying about what happened, and those jurors would go back and decide who they believed. Now they will view these body cams and substitute their judgment for everybody who was there, and that's a different thing, it really is. I think it's good in some ways and bad in others. It's good because they have more information to make that judgement than ever before, but I think there are a lot of times where...that dynamic of they are going to make their own decision and sort of disregard everybody at the scene and I'm just going to decide for myself what I am seeing. They don't have the experience of dealing with those situations' day in and day out. I think that's kind of problematic. [Stewart]*

Monroe County, New York

### *Juror Expectations*

All but one Monroe County Prosecutor report that there are growing expectations among jurors regarding the availability of BWC. The majority of the attorneys report that there is a "CSI-Effect

due to media exposure to BWC. Prosecutors believe that jurors expect court proceedings to mirror those that they view on television regarding the quality of BWC images, they prefer to see evidence instead of relying on the testimony of the police, and jurors are suspect of police testimony when BWC video should be present but is not. The following interview excerpts are indicative of statements offered by the prosecutors that we interviewed:

*Speaking to jurors' post-trial...body cameras are obviously a big discussion in the news even though especially with the number of police shootings in the past few years and that is always a question that people have if it's not on video. Why wasn't it on video? Or if it is on video, then they're question the accuracy of the video or the statement of the officers there. So just by those reactions it seems people are expecting that all these interactions should be on video. [Robo]*

*Yeah, I think that now that people know it's out there. I mean obviously it's in the news and it's not just you know in Monroe County, it's all over. A lot of police departments do have body cams now and I think that jurors expect that. And I think that sometimes it's a little harder to explain to them or ask them, I guess have them understand you know, Even though there isn't body worn camera footage, are you willing to still listen to what the officers say and their testimonies like that?" You take that for what it is. I think that just because a lot of police department are using them now, it sometimes is frustrating cause I think people think, well, if it's not on body cam, it didn't happen. Which is not true at all. So, I think that's the frustration that we deal with in our office. [Amanda]*

### *Impact on Juror Decision Making*

Monroe County District Attorney's report that BWC has a significant impact on juror decision making. Jurors are skeptical of police if no BWC is available when it should be, and it is not good for the prosecutor when jurors see police officers engage in "bad behavior" or do not follow proper protocol regarding BWC use. They also report that BWC is important in particular types of cases, namely DWI and officer assault cases. The following interview excerpts are indicative of statements offered by the prosecutors that we interviewed:

*I think it helps them a lot in their decision making to see for themselves the defendant at the time of arrest or at the time of the crime. I think it helps them just have another piece of evidence to decide the facts rather than the testimony. [Rigatoni]*

*I think it's a big impact on jurors' decision making. I mean I can only speak from my experience, but you know I had a case where it was a DWI and there was BWC footage and I think that based on what was on the body cam footage, the jurors know, even though...he almost refused everything, but based on what they saw and how he was reacting and things like that... they came to the decision that he was intoxicated at that point. [Amanda]*

***Defense attorney's perceptions of juror expectations related to BWC availability and impact on juror decision making***

San Diego County, California

*Juror Expectations*

According to the public defenders that we interviewed in San Diego County, California, juror expectations of the availability of BWC depends on level of education, and the “CSI-Effect” of media exposure to BWC.

*I think that now that the general public knows that body worn is more common and people know that it exists, I think that they expect to see it. And I think that whether for the good or for the bad people would prefer to see a video than listen to people testify about what happened. So, I think that if it is possible that it exists that they expect it is shown. [PD\_SD 2.3]*

*I think it would depend on the juror and how educated they were and how aware that this is something that can be employed by law enforcement and is or isn't. [PD\_SD 2.1]*

*Impact on Juror Decision Making*

San Diego public defenders perceive that jurors expect to have BWC at trial and “struggle” to make decisions when it is missing. They also offer that BWC makes it easier for jurors to discern the facts of a case, and that BWC is preferred over testimony. The following interview excerpts are indicative of statements offered by the public defenders we interviewed:

*I think they like it. The feedback that I've gotten from jurors' post-trial that have seen body worn, the most common comments are “well we saw it on the video” or “it was there” so, it often just serves as a very clear answer to any disputed fact. I've also heard jurors say that “without that video we probably would've been thinking differently” or “the video gave us everything we needed”. In both directions, I've heard jurors say, “we watched the video and that gave us the answer that we needed we didn't need to hear anything else because we saw the video”. I've heard jurors in cases where there was no video ask after the trial “why wasn't there video?” or “was there video and why didn't we see it?” So, I*

*think that in general jurors want to see it and I think that it is very impactful on their decision-making process and I think it comes down to the fact that a picture is worth a thousand words kind of idea. Like if I can see it for myself in relatively real time they would rather make their decision based on that rather than listening to attorneys or witnesses telling them what they should think or how they should feel about it. [PD\_SD 2.3]*

*I think that if they know that it is there, or they know that the possibility that the officer had access to that technology that they expect to see it and they are disappointed, or they start to struggle when that footage goes missing. [PD\_SD 2.2]*

Monroe County, New York

### *Juror Expectations*

Approximately one-third of the public defenders interviewed in Monroe County invoke the “CSI-Effect” in their perceptions of juror expectations regarding BWC. Based on what jurors view in the media, defense attorneys believe that there is an expectation that BWC will be available. A few attorneys also offered that they would hope that jurors expect BWC footage and if it is not available or used according to the standing orders of the police department, then they would use that fact as part of their larger strategy to defend their clients. The following interview excerpts are indicative of statements offered by the public defenders that we interviewed:

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*I hope so...because I would like to think, again, most of our cases deal with RPD, so I certainly try to get out with every time I speak to a cop during an RPD case in front of a jury that they're supposed to be recording the lion share of what they do and if for no other reason than to show that when they or other officers don't, that's a breach of their protocol. I think the juries need to know that, whether it's again them simply not doing it because they turn it off instead of on or whether juries can take the inference that no, you know what, there was this critical stage and suddenly nobody had their camera on? Well, that seems fishy. [John]*

*I think juries in this day and age, um, come to expect that we shouldn't have to rely upon he said/he said, or he said/she said because they're aware of the fact that trace evidence is left behind when a person's been in a room, that their DNA is probably there. If a person is likely to have touched something, there should be physical evidence of that. It shouldn't resolve into a swearing contest while we have the \$2 million crime lab that could pretty much get to the bottom of any of these things. [RonMexico]*

### *Impact on Juror Decision Making*

Roughly half of the public defenders offer that they think BWC will be helpful or they hope it will be helpful in juror decision making. They also offer that jurors are suspicious when officers do not follow protocol regarding BWC use, and that BWC can enhance or detract from the credibility of witnesses. The following interview excerpts are indicative of statements offered by public defenders that we interviewed:

*I would hope they have that expectation. Um, there is a case that came out of this office that didn't involve body-worn camera, but it involved camera footage at the jail, and I believe it was People v. Dayshawn Handy, but the jail failed to preserve the footage and as a result, the case – we had requested all footage, and as a result, the case was reversed and returned for a retrial. And the defense attorney could get something called an adverse inference, it's read to the jury and that is that if the police have failed to preserve something that they were supposed to preserve or the prosecutor, that the jury can conclude that whatever was not preserved might have been inconsistent with the prosecutor's version or what they've laid out. [Benji]*

*Again, I think it takes away kind of – it'll either give somebody credibility, a witness credibility, or it won't. The biggest concern as far as when the body-worn cameras came out and the police officers' perspective is that they were afraid that the body-worn camera wasn't going to show what the officer, everything that the officer had seen, and I just don't think that's the case, especially from what I've seen. I haven't had an issue where an officer says this is what I saw, and it not being on the body-worn camera. [Orangemen]*

Overall prosecutors are more likely to share similar perspectives on the influence of BWC on juror expectations and decision making than are public defenders. We interviewed a much larger sample of prosecutors than we did defense attorneys, and this may impact the data such that themes were more emergent in the data from the prosecutors as opposed to the data from the defense attorneys. Defense attorneys were also more likely to offer that they “don't know” the impact that BWC will have on juror expectations and decision making. It may be that prosecutors are more invested in understanding the thinking of potential jurors than are defense attorneys.

### **Discussion and Conclusion**

Below we first consider the findings in the context of the current BWC technology adoption in the

U.S. Next, we discuss the limitations and weaknesses of the current research design. Finally, we offer some policy implications and future directions for research.

The impact of the widespread introduction of BWC technology in American policing on local prosecution has received relatively scant attention (Lum, Stoltz, Koper & Scherer, 2019). Merola and colleagues (2016) surveyed lead prosecutors across the U.S. and uncovered some concerns about the impact the BWC would have on juror expectations about the absence of video as two-thirds of lead prosecutors voiced this concern. Thus, an issue was raised that cases would be perceived as weaker if BWC evidence was lacking. The current research aimed to fill this gap by exploring three local county prosecutor's offices via mixed methods research design. The results from these three jurisdictions indicate that BWC is perceived to have had an impact on adjudication processes and reinforce prosecutorial concern with video absence influencing juror weighing of evidence. In-person interviews more deeply probe these questions and yield insights about an anticipated concern coined as a new "CSI effect" that video will have on juror expectancy. Put differently, the absence of video is a concern for the assistant district attorney's especially in cases where the police are the primary witness.

The current research has filled in this empirical gap with data from interviews allowing for a more nuanced sense of how the absence of video may influence jurors and subsequently negotiations between defense and prosecution. Further, the defense attorneys interviewed made some important contributions to the perspective they have regarding police behaviors (discourtesy, unconstitutional searches) that may become part of their strategy for assisting clients. Overall, the absence of video, according to the ADAs doing the day-to-day work in three offices, is expected to have an influence on the jury. The anticipation of this "video CSI-effect", given the jury's role in establishing bargaining expectations and the uncertainty that may be introduced, has developed into concrete responses both in dismissals, negotiations, and presentations to the jury.

Interestingly, as noted in the outset, data from the largest urban U.S. felony courts indicates that the jury is not used explicitly in all but a small percent of criminal cases (Reaves, 2013: <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf>). However, recalling the importance of the jury as a referential backdrop for case negotiations illustrates the importance of the anticipated change for local adjudication. Several commented that jurors speculated, inquired about, or asked if video existed in post-deliberation debriefings.

The second major area probed in the individual interviews involved how the presence of BWC video would influence jury decision-making. Here ADAs and PDs indicated that certain cases were particularly prone to influence via video. In elaborating on this, interaction crimes, that is events where police interact directly with the suspect while they are committing a crime, including DUI, assaulting officers, resisting arrest, and disorderly conduct, were particularly prone to video checks on officer reporting to confirm facts and establish appropriate charge levels. A second commonly mentioned usage was securing victim testimony at the scene, such as in domestic violence cases, where recanted testimony is a frequent problem that can thus be challenged, but conversely, absence of video may compound domestic violence case weaknesses (e.g., Todak, Gaub, & White, 2018). Overall, the video is described as essential in terms of utility for shaping jurors' decision-making. One area that did not rise as a concern was the video perspective as distorting how jurors might make decisions. This is, however, an important concern noted by Lassiter and colleagues (2005; see also Kahan, Hoffman & Braman, 2009) is that distortions in video aspect ratio and point of view may lead to systematic biases and desensitization to the "officer point of view" that is likely the primary focus of BWC captured video.

## **Limitations**

The research design here, involving a survey of three offices, and in-depth interviews with prosecutors and defense attorneys across those jurisdictions has at least three limitations that should be explicitly noted. First, the response rate to the survey, though acceptable by current standards where expectations are lower for on-line surveys, is especially weak among PD respondents and within one prosecutor's office. An in-person survey would likely have taken more time and effort but generated a higher response rate. Since we use the survey as a platform for contextualizing and launching our exploration and analysis of in-depth interviews this problem is not particularly serious. Second, the three sites are not randomly chosen and are unlikely to represent DAs offices throughout the U.S. They reflect, however, typically sized offices that are faced with BWC adoption in local agencies and substantial regional variation. Wright and Levine (2017) have argued that prosecution research, in general, has overrepresented the 20 largest offices in the U.S. and the generalizability of the results from those leviathans to more typically sized county offices is questionable. Here we have offices serving counties with a wide range of populations, and the North County Office of San Diego specifically serves smaller cities (Carlsbad and Escondido, for example) in the Northern part of the county. Thus, we do not cover a wide swath of prosecutorial experiences, but ADAs and PDs in these counties deal with sufficient crime problems and case flow to speak to common challenges presented by BWC. To the extent the themes emerge from the three sites we would argue they likely represent a common experience in grappling with new technology. Third, it is clear that prosecutors' offices have a variety of organizational and administrative variation which can impact practice, although this is not an element we have explored explicitly here and may be a gap in our understanding (e.g., Levine & Wright, 2013). Our strategy, however, sampled ADAs to address horizontal and vertical prosecution patterns, bureaus, and special units in each thus reflecting on a wide variation of experiences within offices. As noted, the experiences of these three offices may not generalize to

every jurisdiction, but we would argue that similarly situated counties, in terms of size, BWC adoption and use, and crime problems, are likely to face similar issues.

### **Conclusion and Policy implications**

In conclusion, the study of BWC impact on adjudication is an area that has been recognized as ripe for research (Lum and colleagues, 2019). We repeat that consideration here. Consideration of issues of time, technological adequacy, and other expectancies for ADAs and PDs are areas of important theoretical and policy implications. More rigorous evaluation of the impact of BWC on case attrition and outcomes by case type (e.g., DUI, domestic violence, disorderly conduct) will likely help further illuminate the impact of BWC on pleas and dismissals. Overall, the current research should raise the profile of the prosecutor's office as an area of study to enhance efficiency, fairness, and justice as prosecutorial goals.

How the Utilization of Body-Worn Camera Evidence Impacts the Adjudication of Domestic  
Violence Cases in Three Jurisdictions

Rochester Institution of Technology

## **Introduction**

Domestic violence (DV), also referred to as intimate-partner violence (IPV) and domestic abuse, consists of intimidating and/or violent behavioral tactics projected onto an individual(s) within a given home or domestic partnership (Arizona Coalition to End Sexual and Domestic Violence, 2019). Domestic violence perpetrators often attempt to acquire a sense of power and control over a victim(s) by utilizing emotional, physical, psychological, financial, and/or sexual abuse. Disturbingly, this type of violence is a global issue that has had a devastating, lifelong impact on many victims and survivors. In fact, intimate-partner violence impacts over 12 million individuals every year in the United States, most of whom are vulnerable women (The National Domestic Violence Hotline, 2019). Some of the long-term impacts of domestic violence on survivors and victims includes stress, migraine headaches, heart problems, post-traumatic stress disorder, depression, anxiety, and approximately a \$250,000 lifetime income loss (Smith et al., 2017).

Domestic violence is a complex societal issue because such abuse occurs in a continuous cycle. The cycle of domestic abuse includes three main phases; the tension building phase, abusive incident, and honeymoon phase. The tension building phase occurs when a victim or survivor is actively trying to do everything in his/her power to keep the abuser calm, which usually means walking on eggshells around their abuser. The abusive act happens in the incident phase. This is often followed by the honeymoon phase in which the abuser is extremely apologetic, promises to never behave in such a manner again, and tries to win back the affection of the victim or survivor through words, actions, and/or gifts (Focht, 2019). The cycle of domestic abuse coupled with other factors, such as financial needs and even fear, are some of the reason why victims and survivors do not leave their abusive partner or go back to them after a failed attempt to leave and discontinue

further communication (The National Domestic Violence Hotline, 2019).

Historically, domestic violence was widely accepted and encouraged by various societies who viewed this type of violence as a private, necessary matter. For example, early Roman laws allowed men to beat and even murder their partner if she were to commit acts that served as a threat to her husband's honor and/or property rights. Likewise, English common law also granted men the ability and right to abuse their spouse by beating them with a stick no bigger than their thumb, which is how the term "rule of thumb" came about (Swisher & Wekesser, 1994). Additionally, in the 1960s doctors labeled domestic violence as "violent, temporary therapy," ultimately believing that "the periods of violent behavior by the husband ... served to release him momentarily from his anxiety about his ineffectiveness as a man, while giving his wife apparent masochistic gratification and helping probably to deal with the guilt arising from the intense hostility expressed in her controlling, castrating behavior" (Dockterman, para. 7, 2014). In addition, during the 1970s-1980s responses to domestic violence, especially by law enforcement, were minimal (Black, 1980). In fact, police officers often delayed responding to domestic violence calls in hopes that such disputes would resolve on their own in the private sphere and were less likely to make an arrest when they did respond to such calls for service (Townsend, Hunt, Kuck, & Baxter, 2005; Sherman, Schmidt, & Rogan, 1992). Sadly, it took the voices, stories, and actions of many victims, survivors, and women's rights groups, such as the Women's Liberation Movement, for domestic violence to become a societal issue. It also took many legal battles, such as the *Thurman v. City of Torrington* case in which Tracey Thurman sued the City of Torrington after law enforcement failed to take her domestic violence complaints against her estranged husband seriously, ultimately resulting in her being stabbed by him multiple times and almost dying, for Americans to see how detrimental this form of violence was (Dellinger, 2018). Fortunately, domestic violence became a criminal offense near the end of the twentieth century,

which resulted in shifting attitudes and criminal justice responses towards domestic violence victims, perpetrators, and incidents (Erez, 2002).

The act of criminalizing domestic abuse in America has been a long, yet incomplete journey. However, prosecuting such cases has now become the main issue at hand. The adjudication process of domestic violence cases can be prolonged or shortened based on the cooperation of victims. Unfortunately, many domestic violence victims may seek to drop charges and relieve their abuser of prosecution (Vilhauer, 2000). As a result, many policies have been adopted to aid in the prosecution of domestic violence perpetrators, including mandatory arrest and no-drop policies (Han, 2003). Despite these prevalent policy changes, bringing intimate partner violence cases to justice is often an uphill battle for prosecutors who lack cooperation and corroboration of the abuse from victims. Fortunately, technological advancements such as body-worn cameras (BWCs) may serve as an evidentiary tool that could be utilized during the prosecution of domestic violence perpetrators even when victims fail to cooperate (Prather, 2015). This exploratory study seeks to determine the influence of BWC on the adjudication of domestic violence cases. Particular attention is given to the evidentiary value of BWC for the prosecution of these cases.

### **Literature Review**

Prosecutors are legal agents that act on behalf of the government in criminal litigations. Additionally, they serve as gatekeepers of the American legal system by actively deciding what kinds of perpetrators and what types of cases are filtered through the Criminal Justice System (Eisen, 2015). In other words, prosecutors have the ability to exert their discretionary power in deciding whether or not a case will proceed beyond the initial charging stage, which is often initiated by law enforcement, and what charges are most suitable for a particular case (Jacoby &

Ratledge, 2011). Prosecutors decide to process cases based on the answer to two profound questions, including “Can I prove this case,” and “Should I prove this case” (Frederick & Stemen, p. 5, 2012). Domestic violence is one particular case type in which prosecutors tend to closely examine readily available evidence, such as witness statements and police reports, before processing and ultimately prosecuting an alleged abuser. The pervasive and serious nature of domestic violence, which could lead to fatal outcomes, is one of the reasons as to why researchers have studied the charging decisions of prosecutors in such cases. This literature review will begin by discussing the charging decisions of prosecutors in DV cases, which will be followed by a brief overview of victimless prosecution and how this form of prosecution is utilized in DV case processing. The section will conclude with a summary of how visual evidence has impacted the processing of DV cases with a particular emphasis on research that highlights the impact of BWCs on this particular case type.

Schmidt and Steury (1989) examined the charging decisions of prosecutors in DV cases for the purpose of discovering influential legal, extralegal, and organizational factors. The district attorney’s office in Milwaukee provided researchers with three forms of data from misdemeanor DV cases that occurred between 1983 and 1984, including police reports, official files, and records. The DV case sample consisted of 200 non-charged cases and “(1) police-supported cases falling within the operational definition that were charged during the study period and closed by May 1, 1985 (n = 106) and (2) all cases originating from a complaint filed in the Citizen Complaint Unit (CCU) that fell within the operational definition and were charged during the period under study (n = 103)” (Schmidt & Steury, p. 491, 1989).

After examining and comparing the available data from the cases, investigators were able to identify important factors that impacted prosecutors’ charging decisions in these misdemeanor DV cases. Victim preference was found to be a major determinant of prosecutors’ failure to issue

charges. Additionally, “other justifications for not charging cases include legal problems with the cases (30%; n = 60), a problem of victim provocation (7%; n = 13), a judgment that the case is *de minimus* (14%; n = 27), or a probation or parole hold on the defendant (4%; n = 8)” (Schmidt & Steury, p. 495, 1989). In addition, prosecutors were more likely to charge a suspect if the victim sustained serious bodily injuries as a result of the domestic dispute and/or a weapon was used during the time of the assault. This study also found that the evidentiary strength of a case heavily impacted the charging decisions of prosecutors overseeing DV cases. For example, charges were more likely to be issued if a defendant had a prior criminal history or conviction(s) and if the defendant did not show up to the charging conference. Extralegal factors that were found to have a significant impact on prosecutors’ decision to file charges in misdemeanor DV cases include the defendant’s use of drugs or alcohol at the time of the dispute, the defendant’s source of income or financial support, and the history of abuse in the relationship at hand. Lastly, it found that there were charging disparities in DV cases that had been filed by law enforcement in comparison to those by citizens; cases issued by law enforcement were more likely to receive some form of sanction as compared to citizen-initiated complaints.

Similarly, Worrall, Ross, & McCord (2006) conducted a research study examining the impact of case, offender, and victim attributes on the charging decisions of prosecutors in DV cases. Researchers gathered a total of 245 criminal reports of DV incidents from a Southern California police department to analyze in hopes of obtaining a better understand of prosecutorial charging decisions in intimate partner violence (IPV) cases. These reports, which included data from DV cases that had occurred in 2003, were completed by the police officers within the municipal agency and then submitted to the district attorney’s office for processing. The three primary independent variables examined in this study, which were previously mentioned, include case, offender, and victim characteristics. The dependent variables that were examined include

charging decision(s), which focused on whether or not a charge was brought forth in a DV case by a prosecutor, and the file type, which was coded as being either a felony or misdemeanor charge.

Upon completion of data collection, several statistical tests were run, including a bivariate and logistic regression analysis, to explore salient characteristics that influence charging decisions in DV cases. Research results indicated that prosecutors were more likely to press criminal charges if the perpetrator was male and if the victim possessed serious bodily injuries. On the contrary, prosecutors were less likely to press charges if the alleged perpetrator was not arrested at the crime scene as compared to when perpetrators were arrested. In addition, mutual assaults in which both parties assaulted each other, or the police officer(s) could not distinguish between who was the aggressor and who was the victim, were also less likely to be prosecuted. Lastly, felony charges in comparison to misdemeanor charges were more likely to be brought forth by prosecutors when a victim wanted their case to be prosecuted.

O'Neal, Tellis, & Spohn (2015) conducted a study regarding influences on the charging decisions of prosecutors in cases involving intimate partner sexual assault (IPSA). In doing so, investigators compiled and analyzed 47 IPSA reports from 2008 which were initially handled by the Los Angeles Police Department (LAPD) and transferred to either the district attorney's office or city attorney's office in Los Angeles for charging decisions to be decided by the prosecution. The attributes of cases, defendants, and victims were all identified through the use of information collected from the police reports and evaluation worksheets utilized by prosecutors when deciding a charge. A qualitative and Grounded Theory methodological approach was employed by researchers which allowed them to code and identify various themes that shed light on the decision-making process of prosecutors in issuing charges for IPSA cases.

After conducting a textual analysis on the 47 reports by coding them for commonalities, researchers were able to identify themes related to case, defendant, and victim characteristics that

influenced charging decisions in IPVA cases. Legal factors, such as proof beyond a reasonable doubt, victim credibility, and victim cooperation were all salient factors that influenced the charging decisions in IPVA cases by prosecutors. More specifically, prosecutors were less likely to press charges if they believed the case was not provable beyond a reasonable doubt, the victim lacked credibility, and/or there was a lack of victim cooperation. Additionally, the lack of corroborating evidence, like multiple supporting witnesses or documented injuries were other factors that influenced whether or not charges were brought forth in IPVA cases. Ultimately, researchers concluded that similar to existing research, their study provides evidence that prosecutors are more likely to issue charges in IPVA cases when they are certain of a conviction.

Dawson & Dinovitzer (2001) studied the role victim cooperation plays in the prosecution of DV cases. More specifically, they wanted to examine how witness cooperation influences prosecutors in DV cases to file charges or prosecute, and what potential factors influence victims to cooperate with prosecutors. Researchers collected and analyzed IPV court files from a specialized DV court in Toronto, Canada and tracked 474 cases from the initial charging stage to the ultimate resolution of those cases. The cases were tracked for approximately a year in which the investigators consistently collected data from the updated files of prosecutors and the Victim/Witness Assistance Program (VWAP). This study also utilized a qualitative methodology by conducting 60 interviews with victims in order to better understand their experiences and decision to cooperate or not cooperate with prosecutors. Ultimately, three categories of variables were examined in relation to prosecutors' willingness to prosecute cases and victims' willingness to cooperate, including legal variables, like evidence strength and the seriousness of the crime, process variables, such as the nature and frequency of interactions between legal actors and victims, and lastly, characteristics of the defendant, such as their prior criminal history.

Researchers analyzed the case files using statistical tools and coded the interview responses

by categorizing them based on prevalent themes. Consistent with previous literature, this study found that female offenders were less likely to be prosecuted in comparison to their male counterparts. In regard to legal variables, recorded interviews of victims' initial account of an alleged dispute was shown to increase the likelihood of a case being prosecuted. Also, a case was more likely to be prosecuted if the victim participated in at least one meeting with an official from the VWAP. More strikingly, it was revealed that the likelihood of prosecution in DV cases is seven times higher if a victim cooperates in comparison to when victims do not cooperate with the prosecution. Regarding victim cooperation, researchers also found that cooperation of victims was more likely to occur if their statement was video recorded and three times more likely if the survivor met with someone from the VWAP. The qualitative interviews revealed that meeting with workers from the VWAP was helpful in boosting victim cooperating because the workers were friendly, provided useful information regarding DV and the victims' cases, and ultimately supported the victims throughout their interactions with the legal system. These positive encounters are what ultimately encouraged many of the victims to cooperate.

### Victimless Prosecution

As previous literature has indicated, prosecuting DV cases can be a difficult task that is heavily influenced by factors that ultimately increase the likelihood of a successful outcome for prosecutors. Some of the main issues that often arise during the prosecution of DV cases include a lack of victim cooperation and the recanting of initial police statements made by a victim, which could have a negative impact on the overall outcome of a case (Hall, 2009). Since victim cooperation has become an area of concern within the realm of DV prosecution, prosecutors have been forced to develop alternative prosecutorial strategies in order to successfully prosecute domestic abusers. One of the innovative techniques that has been employed by prosecutors of IPV cases is victimless prosecution, also known as evidence-based prosecution. The primary goal of

victimless prosecution is to “seek to introduce reliable evidence without the victim's in-court testimony, often to maintain the victim's safety or to avoid re-victimizing the victim. The victimless prosecution is based largely on the admission of hearsay statements that a victim makes to 911 operators, police officers, doctors, nurses, paramedics, and social workers” (King-Ries, p. 301, 2004).

The widespread adoption of victimless prosecution has created a novel area of research within the criminal justice field regarding its effectiveness and impact on DV cases. Ellison (2002) wrote a commentary on evidentiary issues related to prosecuting DV cases without victim cooperation, how victimless prosecution has served as a suitable solution to such problems, and whether or not this technique could be successfully implemented in other jurisdictions such as Wales and England. The commentary further addresses challenges faced by prosecutors of DV cases, such as the lack of cooperation and collaboration between victims of IPV and prosecutors. In addition, it provides a detailed discussion regarding evidentiary rules, such as hearsay evidence, which may be utilized in DV cases under certain conditions. While the effectiveness of evidence-based prosecution is not heavily discussed in the article, it is noted that the San Diego County Task Force on DV has been quite successful in prosecuting DV cases without the cooperation of victims. In fact, it was found that approximately 70% of DV cases in San Diego, CA that are prosecuted do not involve victim cooperation, yet such cases possess a high level of success for prosecutors (Ellison, 2002). Although this finding may be indicative of the effectiveness of victimless prosecution, it's important to note that law enforcement in San Diego County, CA received training on evidence-based prosecution in regard to how to best collect evidence in DV cases that would be able to withstand a lack of victim cooperation, such as taking photographs of the scene, victim, and defendant. Ultimately, the article sheds light on the ways in which prosecutors and police agencies can adopt and implement evidence-based prosecution practice in

hopes of successful DV outcomes, some of which include better police training on evidence-based prosecution and the utilization of evidentiary rules that allow for different forms of evidence to be used in place of a victim's testimony.

Similarly, Messing (2014) conducted a study regarding the use of evidence-based prosecution in DV cases. However, this study specifically examined factors, such as incident, victim, and perpetrator traits in relations to how prosecutors decide which DV cases are eligible for evidence-based prosecution. It also focuses on how such factors may be influenced by the *Crawford v. Washington* United States Supreme Court case decision, which states "that testimonial out-of-court statements are inadmissible at trial unless the declarant is available for cross-examination" (Rouhanian, p. 2, 2017). In order to determine salient factors that influence evidence-based prosecution decisions, researchers collected a total of 904 DV case files from a police department in California. The case files, which were all from 2005, were split into two groups. One group included 422 DV cases that were described as being of low to moderate violence. The second group was inclusive of 482 DV cases that were classified as being high in violence.

The researcher utilized data from the case files to run a statistical analysis, such as a logistic regression, to determine the relationship between prosecutors' decision to prosecute a DV case and characteristics related to the scene, victim, and defendant, which may influence their decision(s). This study generated many findings, however, the most significant factors that were found to increase the likelihood of evidence-based prosecution in wake of the *Crawford v. Washington* era include perpetrators being arrested at the crime scene and documented bodily injuries of the victim inflicted by the perpetrator. These two factors were discussed in terms of assisting prosecutors in being able to illustrate the seriousness and severity of the case and alleged abuse, which could lead to favorable outcomes for the prosecution. Another important finding

generated by this study was the fact that DV cases with high violence were more likely to be prosecuted in comparison to DV cases with low to moderate levels of violence.

### Visual Evidence and Domestic Violence

Visual evidence, such as photos or video footage, can greatly impact the outcome of DV cases. Possessing photographs of injuries to a victim, such as a black eye or busted lip, could aid prosecutors in the utilization of evidence-based prosecution, which relies almost exclusively on the use of evidence to corroborate claims made by a victim in place of their cooperation. Garcia (2003) explored the power of utilizing digital photographic evidence in the adjudication of DV cases and its impact on case outcomes. During the beginning phase of the study, law enforcement officers were equipped with digital cameras as part of a project initiated by the Marion and Hamilton County Prosecutors' Offices. The purpose of equipping officers with digital cameras was to assist with better evidence collection in DV cases.

Two research groups were formed, including a treatment group, which consisted of 27 DV cases that had photographic evidence produced by officers with digital cameras from the program initiated by the Marion and Hamilton County Prosecutors' Offices. The second research group, also referred to as the comparison group, consisted of 49 DV cases that did not have any photographic evidence. Several forms of data were also collected and analyzed by the investigator to assist in identifying distinct differences between the treatment and comparison groups. Such data included police and court reports, and interviews conducted with officers, prosecutors, and judges. After comparing case outcomes between the groups, it was found that "far more treatment group defendants (64 percent) pled guilty than defendants in the comparison group (28 percent,  $P < .005$ ). Moreover, treatment group members were more likely to be convicted than comparison group members. Specifically, 65 percent of the treatment group cases resulted in conviction, whereas only 37 percent of the comparison group members were convicted ( $P < .05$ )" (Garcia, p.

583-584, 2003). Additionally, the interviews that were conducted yielded results indicating that the officers possessed positive perceptions of the utilization of the cameras in regard to their ability to better collect valuable evidence that could help with the prosecution of DV cases. Law enforcement officers also felt as though the use of photographic evidence increased the likelihood of a DV case being prosecuted. The prosecutors who were interviewed also believed that the photographic evidence helped their cases, especially with regards to plea bargaining and convictions. Likewise, the judges found the photographic evidence to be quite compelling and vital in showcasing the severity of DV disputes.

Similarly, Peterson & Bialo-Padin (2012) wrote an article regarding DV and evidence collection. This article specifically discusses and presents various suggestions about not only the collection of evidence for DV cases, but also the types of evidence that are most useful in DV cases based on prosecutors' experiences with this case type in Brooklyn, NY. The authors ultimately recommended that police officers receive training on how to collect DV evidence and implement training programs related to obtaining statements from defendants that could likely corroborate claims made by a victim. Additionally, they recommended video recording statements made by both defendants and victims to combat issues of recanting and the changing of accounts. In addition, it was recommended that photographs be taken of the crime scene and injuries on the victim, which again, could showcase the seriousness of the domestic encounter. The combination of these recommendations was found to successfully assist prosecutors in the prosecution of DV cases in Brooklyn, NY.

The collection of evidence that corroborates claims made by victims of DV is crucial. Although photographic evidence has been found to be helpful in DV cases, new technological advancements in the criminal justice field have altered the way DV evidence is collected and utilized. One primary evidentiary tool that has been proven by research to be valuable in DV cases

is BWCs. A research study was conducted by Morrow, Katz and Choate (2016) regarding this very phenomenon. More specifically, this study examined the effect of BWCs on three key areas within the processing of DV cases, including the arrest, prosecution, and conviction of abusers. In order to do so, researchers divided approximately 100-110 officers from the Phoenix Police Department (PPD) into a control and treatment group. The officers in the treatment group were equipped with BWCs whereas officers in the control group did not wear BWCs. A 30-month pre and post methodology was employed in the study; 15 months pre-implementation of body-worn cameras and 15 months post-implementation of BWCs. In addition to analyzing case outcomes across these two groups, researchers collected and examined arrest files, court data, DV pocket cards and self-reported survey data from officers.

After analyzing all available data, researchers found that posttest camera cases were more likely to result in favorable case outcomes for prosecutors, such as a guilty plea or verdict at trial in comparison to pretest non-camera cases. Also, “posttest camera cases were significantly more likely to result in arrest (40.9% vs. 34.3%), have charges filed (37.7% vs. 26%), have cases furthered (12.7% vs. 6.2%), result in a guilty plea (4.4% vs. 1.2%), and result in a guilty verdict at trial (4.4% vs. 0.9%)” (Morrow, Katz & Choate, p. 313, 2016). In regard to officers’ views of BWCs, evidence collection, and DV cases, researchers found that pre-camera officers had more favorable opinions regarding BWC evidence aiding in the successful prosecution of IPV cases in comparison to post-camera officers.

A similar study was conducted by Dawes et al. (2015) regarding the evidentiary value BWCs serve in the report writing of domestic violence, theft, and traffic stop cases. Unlike the previous study, researchers created three test scenarios for subjects, all of whom were experienced police officers from Phoenix, Arizona, to participate in. The test scenarios were incidents involving a traffic stop, domestic violence dispute, or theft incident. The officers were

accompanied by two moderators during the test scenarios, one of which acted as the dispatch/video recorder while the other served as a referee to ensure the scenarios ran according to the outlined plans. After the participants finished the test scenario, they were asked to document their experiences from memory by completing an arrest and use-of-force form. Next, the officers were given their BWC footage to view and asked to both compare and correct any discrepancies in their reports based on the footage. They were then asked to complete a survey centered on their views of report writing and BWCs. Ultimately, it was found that the reports contained an “average of 2.63 minor errors (range 0-7), 5.4 moderate errors (0-14), and 0.9 major errors (range 0-3)” that were “corrected by their BWC recordings” (Dawes et al., p. 8, 2015). Additionally, the survey data revealed that the majority of the officers thought that the BWC footage assisted them in better and more accurate report writing based on their participation in the study. However, there were also concerns found in the survey data related to BWCs, such as the increased time spent on report writing as a result of writing reports based off of camera footage. Although the overarching purpose of this study did not directly relate to the impact of BWCs on domestic violence, it does shed light on better evidence collection, such as more accurate report writing on behalf of law enforcement, which could be useful evidence in DV cases.

The use and value of video evidence, such as BWC footage, was further explored by Westera & Powell (2015). This study primarily focused on prosecutors’ perceptions regarding the ways in which evidence collection in DV cases could be improved. Researchers recruited a total of 13 prosecutors from New Zealand and Australia to serve as participants in the study. The subjects participated in 60-minute focus groups that were primarily concerned with DV cases and evidence collection. The responses from the participants in the focus group resulted in various themes that contributed to the discussion of evidence collection in DV cases. One of the primary themes that emerged from the focus groups was the importance of video evidence in DV cases.

More specifically, the prosecutors recommended the recording of initial police responses to DV incidents because such footage often showcases the raw and emotional state of victims, in addition to chaotic scenes and visible bruises. This form of evidence collection can be done through the use of BWCs.

### Summary of Findings

Domestic violence is a serious crime that warrants examination by criminal justice practitioners and researchers. The current state of literature suggests that prosecutors actively choose to issue charges in DV cases based on various factors that help increase the likelihood of successful case outcomes, such as bodily injuries, the use of a weapon, and a defendant's prior criminal history. Research also suggests that prosecuting DV cases can be an uphill battle, especially when victims refuse to work in tandem with the prosecution. Emerging prosecutorial techniques, such as victimless prosecution in which a prosecutor proceeds with a DV case without the help of a victim by solely utilizing corroborating evidence, have been shown to be quite promising in regard to combatting the issue of uncooperative DV victims, and generating positive case outcomes. In addition, other areas of literature suggest that the success of victimless forms of prosecution depend on the type of evidence that is available to a prosecutor. Such literature supports the idea that visual evidence, including photographs and video recordings, can be extremely helpful in DV prosecution, especially if they capture injuries, disastrous crime scenes, statements from defendants, witnesses, and victims, and the overall emotionality of distressed survivors.

Body-worn camera footage is one form of evidence that has been shown to be valuable in the prosecution of DV perpetrators. The vivid and raw accounts captured on camera during the initial domestic disturbance can reveal the severity of the violent attack. Although there is a growing body of literature that supports these claims, such research is still quite limited in this

area. Additionally, current research fails to examine how body-worn camera evidence is used at trial, how such utilization is perceived by jurors, provide specific examples of DV cases in which such footage served to be useful or harmful, and the specifics of how such footage is used in plea negotiations with defense attorneys. The purpose of this study is to answer these questions by drawing upon data from interviews conducted with prosecutors in three unique jurisdictions, including Monroe County, NY, Travis County, TX, and San Diego County, CA.

## **Methods**

### **Site Descriptions**

In-depth semi-structured interviews regarding the impact of body-worn cameras (BWCs) on domestic violence prosecution were conducted with prosecutors from the Monroe County, NY, Travis County, TX, and San Diego County, CA district attorney's office.

Monroe County, New York is located within the western area of New York State. The City of Rochester is the largest city in Monroe County. The Rochester Police Department (RPD) is the largest police department in Monroe County. RPD is currently headed by Mark Simmons and is home to over 870 officers who patrol five sections in Monroe County within a 37.1 square mile radius (City of Rochester, 2019). The Rochester Police Department implemented body-worn cameras in January of 2016 and underwent an independent process evaluation by the Center for Public Safety Initiatives at RIT (LeMahieu et al., 2017). The Monroe County District Attorney's Office is overseen by District Attorney Sandra Doorley. The department has approximately 70-80 attorneys who process various cases at any given time. It also has 12 bureaus, including Major Felony, Special Investigation, DWI, Non-Violent Felony, Economic Crime, Grand Jury, Local Courts, Appeals, Child Abuse, Sex Crimes, Domestic Violence, and Elder Abuse (District Attorney Sandra Doorley, 2018).

San Diego County, CA is in the southwestern area of the State of California. The City of Escondido, California, The Escondido Police Department (EPD) is currently headed by Chief of Police, Craig Carter, and is home to approximately 159 officers who patrol areas within Escondido, CA (Kirwin, 2017). EPD, which was one of the first police departments in San Diego County, CA to utilize body-worn cameras, implemented them in 2010 and eventually switched to body-worn cameras produced by TASER International, Inc in 2014 (Littlefield, 2016). The San Diego County District Attorney's Office, which is the second largest District Attorney's Office in California, is overseen by District Attorney Summer Stephan. The department has approximately 310 attorneys. The DA's Office has 18 criminal divisions, including Appellate & Training, Bureau of Investigation, Case Issuance / Extraditions, Collaborative Courts, Economic Crimes, El Cajon Branch, Family Protection, Gangs, Information Technology, Insurance Fraud, Juvenile, Narcotics, North County Branch, Sex Crimes and Human Trafficking, South Bay Branch, Special Operations, Superior Court, and Victim Services (San Diego County District Attorney, 2018).

Travis County, Texas is in the south-central area of Texas. The City of Austin, Texas is the largest city within Travis County, TX. The Austin Police Department (APD) is the largest police department in Travis County. The APD is currently headed by Interim Chief of Police, Brian Manley, and is home to 2,646 police officers who patrol "operations within the City of Austin, as well as the Austin-Bergstrom International Airport, city parks and lakes, and municipal courts" (The Official Website of the City of Austin, para. 1, 2018). Funding to implement body-worn cameras citywide was approved in June of 2016 by the City Council (Craver, 2018). Additionally, "since October, the Austin Police Department has equipped officers at three of its four substations with body cameras. The department plans to implement the cameras for officers at the north substation next and plans to have all patrol officers equipped by the end of the first quarter of the year" (Craver, para. 2, 2018). The Austin Police Department estimates that all patrol officers will

be equipped with body-worn cameras by March of this year. Currently, 658 cameras are being used and another 200 is supposed to be added soon (McGlinchy, 2018). The Travis County District Attorney’s Office is overseen by District Attorney Margaret Moore. The department has approximately 95 attorneys. The DA’s Office has seven divisions, including Intake Division, Trial Division, Special Victims Unit, Special Prosecutions, Operations, Investigations, and the Civil Rights Unit (Moore, 2017). Descriptive statistics of select characteristics from Monroe County, NY, San Diego County, CA, and Travis County, TX could be found below in Table 1.

	Monroe County, NY	Travis County, TX	San Diego County, CA (North County Office)
Population	747,642	1,226,698	3,337,685
Primary Department Served	Rochester	Austin	Escondido
Year BWCs Implemented	2016	2017	2014
Violent Crime Rate	332 per 100,000	387 per 100,000	328 per 100,000
Homicide Rate	6 per 100,000	4.2 per 100,000	3 per 100,000
Number of Prosecutors	10	12	14
Total Interview Minutes	448	531	539

Table 1: Select Characteristics of Three County District Attorney’s Offices

### Sample

The Monroe County, NY, Travis County, TX, and San Diego County, CA jurisdictions were selected from a convenience sample. However, the diversity and similarities of these three counties allowed researchers to draw conclusions that may be fairly representative of the experiences of medium to large sized cities, police departments, and district attorney’s offices in regard to BWCs and their impact on prosecution. Prosecutors from various units, such as Domestic Violence and Gangs, were contacted by the research team and interviewed from each of the three district attorney’s offices. Interviews were scheduled by the prosecutors and interviewers via email communication. Based on availability, researchers were able to schedule and complete interviews

with 10 prosecutors from the Monroe County District Attorney's Office, 14 prosecutors from the San Diego District Attorney's Office, and 12 interviews with prosecutors from the Travis County District Attorney's Office. In total, 36 prosecutors were interviewed for this research project.

### Data Collection

The interview questions were strategically created through a rigorous process of analyzing existing BWC qualitative research and discovering gaps in the literature that this project ultimately aimed to fill. The questions were primarily centered on the evidentiary value of BWCs and how such evidence affects the case processing and role of prosecutors. The interviews were semi-structured which allowed researchers to tailor the discussion and follow-up questions towards the responses of the interviewees. Interviews were recorded during face-to-face meetings with the district attorney's and the abovementioned offices. Each of the prosecutors were independently interviewed with at least one person from the research team. These interviews lasted on average between 30 to 80 minutes. After all of the interviews were completed, the recordings were transcribed for analysis. In total (refer to Table 1), approximately 448 minutes' worth of interviews with prosecutors were transcribed for Monroe County, NY, followed by San Diego County, CA with 531 minutes, and Travis County, TX with 539 minutes.

### Analysis

Although none of the interview questions asked specifically about the impact of BWCs on domestic violence prosecution, many of the prosecutors discussed their prior work experience in the domestic violence or family protection unit and answered various questions based on such experience. As a result of this limitation, researchers thoroughly searched each interview transcription for quotes related to domestic violence using an electronic document search, which

highlights all quotes or body of text that contain the search terms. Some of the terms that were searched include domestic violence, abuse, family violence, family protection unit, and intimate partner violence. All quotes and questions containing any of the above terms were then extracted and pasted into a Word document table. The extracted data was simultaneously coded by two members of the research team. We specifically coded for patterns in the data, and these patterns were aggregated into categories/themes. With two researchers simultaneously involved in the coding process, we have much confidence in the reliability of the codes and subsequent patterns that were generated (Saldana, 2015). Coding of the data resulted in four themes that are explored below in the results.

## **Results**

In our interviews of thirty-six prosecutors in three different jurisdictions -- San Diego County, CA, Monroe County, NY, and Travis County, TX -- they reveal that BWC footage is significantly impacting the adjudication of domestic violence cases. More specifically, they offer that BWC footage is important for case processing strategy, jury decision making, establishing the credibility of various types of witnesses and for use in cases where victims and witnesses refuse to cooperate in the prosecution of defendants.

### **Uncooperative Victims/Witnesses**

Very often in domestic violence cases, victims/witnesses become uncooperative, recant and/or change their original statements regarding what occurred altogether. The lack of victim cooperation was found to be a salient theme throughout the interviews of prosecutors. In order to combat this problem, many prosecutors discussed their use of BWC footage to showcase the initial first responder account of the domestic violence dispute as originally disclosed by the victim.

Prosecutors offer that this form of visual evidence is a fundamental tool in victimless or evidence-based prosecution, which is what often occurs when victims refuse to cooperate and/or diverge from their original account of what happened. For example, when asked what types of cases do you think are most affected by body-worn camera footage or video evidence, prosecutor Jerry from San Diego County, CA stated the following:

“... I also think it's particularly useful in cases where you would, from a prosecution standpoint, where you would expect a recanting witness. So, oftentimes what happens in a domestic violence case, for example, is the officers will report to the scene, in the heat of the moment the domestic violence victim tells the officers what happened so that they can solve the problem. Okay, he's hitting me, I need him taken out of the house because he's in a rage or whatever and the officers do that. They do it diligently, they respond, they see the black eye on the woman's face, they see how she's reacting, she seems obviously upset, there's corroborating evidence and so they take that guy out of the house and arrest him. And then once things have cooled off...it's well known that domestic violence victims often do recant... either for monetary reasons, they can't afford to have that person out of the house, or, you know, they have second thoughts about pursuing charges or they're intimidated against pursuing charges. And so, there are certain cases where we go into it not necessarily expecting every time that the victim might recant, but knowing that it's possible, and if we have their statement in the scene at the moment of exactly what happened, it can be useful for us.”

Additionally, when asked about his general views of the utility of body-worn camera footage from law enforcement, prosecutor Tom from San Diego County expressed a similar outlook on the evidentiary value of BWC footage in DV cases when victims recant or change their story by stating:

“They're great for us in the domestic violence context because it's very often... sort of the nature of the cycle of violence ...specifically with victims of domestic violence... it's common for them to change their story or recant, and there's a number of reasons why they do that and understandably why they do that, but we have to expect and anticipate that very often a victim of domestic violence may change their story or recant.”

Interestingly, similar perspectives regarding BWC evidence and victim cooperation were found in Monroe County, NY and Travis County, TX. For instance, Clifton, a prosecutor from the Monroe County District Attorney's Office, was asked what types of cases, for example, domestic violence, sexual assault, or theft, are most affected by body-worn

camera footage or video evidence and offered:

“You know, I could see it, you know, domestic violence cases...when I was in domestic violence you have victims who are uncooperative, and you try and do what's called a victimless prosecution. I could see, and I am not in that bureau anymore, so I can't really point to any cases, but I could see body camera making that easier.”

A similar response was given when prosecutor Congress St. from Travis County, TX was asked to offer an example of a particular case where BWC footage was particularly helpful for the prosecution. He responded as follows:

“... anything involving the domestic violence, I think body camera would probably be more helpful because generally, in those cases you're interviewing witnesses who have a personal relationship with the defendant, and once they calm down, they cool off, they had an opportunity to discuss the case with the defendant, they realize the consequences of what they are reporting, they oftentimes change their story. So, if you can get them on video closer in time to what they're reporting happened, I think that oftentimes that's probably more likely than not what actually happened.”

The above accounts made by several prosecutors illustrates the value in having BWC evidence in domestic violence cases. As previously stated, DV victims/witnesses often refuse to cooperate, recant, and/or change their statement(s), which leaves prosecutors with very little corroborating evidence needed in order to prosecute defendants. Previous literature indicates the refusal of victims to cooperate in the prosecution of defendants in DV cases made it difficult to adjudicate these cases. The availability of BWC footage, however, allows prosecutors to engage in what is effectively a “victimless prosecution” where in the past they may have had to abandon the case.

### **Jury Decision-Making**

Prosecutors also report that BWC footage was important for jury decision making. Prior to the implementation of BWCs, jurors would evaluate domestic violence cases based on police reports, witness statements, in-court testimonies and other pieces of evidence such as photographs

or medical records if available. However, these forms of evidence in isolation were not typically able to show juries the complete picture of what happened, such as the severity of injuries, chaotic crime scenes, and the overall demeanor of the victim immediately following the domestic violence incident. According to the attorneys that we interviewed however, BWC footage allows for a more complete picture of what occurred. This was also especially true in cases where victims/witnesses recanted, refused to cooperate, or changed their story, in which case jurors would have to rely on other available evidence to formulate a decision. The importance of BWC capturing the “complete picture” for jurors by showcasing the demeanor and emotional state was highlighted by various prosecutors from all three counties. For example, when asked if body-worn camera footage as evidence affected how cases are processed in his/her section, prosecutor Irene from San Diego County, CA responded:

“I have routinely, in Family Protection, probably 90% of the cases the victim is a female. She'll say that her boyfriend or significant other beat on her and did X Y and Z to her. Then she'll come back to court and write a letter and say none of it happened, I lied, it was mutual combat, he really didn't do this, I wasn't hurt...whatever it is that she's going to say. Well, I have her on body-worn camera talking to the police officer sobbing hysterically with a big black eye and her talking about what happened and so when she comes in and tells me this new statement about how she made it up and this, I listen to her. It's good for me to know...what her... position is now but in terms of proving the case, I'm not particularly concerned about it because her initial disclosure is so convincing. And sometimes when I tell the victims well, you do know that I have this on body-worn camera, it'll change how...they respond; not always. Sometimes they're defiant, and they're like I don't care what's on there, you know, this is what I'm telling you, but typically...the initial disclosure on body-worn camera is going to be a lot more influential to a jury than before.”

Likewise, prosecutor Clifton from Monroe County, NY also discussed the importance of BWC capturing the initial disclosure of domestic violence victims, especially when officers are unable to take photographs of their injuries and the prosecutor wants to engage in victimless prosecution:

“When I was in domestic violence you have victims who are uncooperative, and you try and do what's called a victimless prosecution. I could see, and I am not in that bureau anymore, so I can't really point to any cases, but I could see body camera making that easier. A lot of times we're trying to do a victimless prosecution

and show that an injury took place. It's hard to show someone's injured without that person coming to court but if you have...camera footage of them with a big black eye or something of that nature it tends to help and so sometimes officers, you know, don't take pictures just because they didn't have cameras on them, or things of that nature back when it was just you know no body-worn cameras. Now, you automatically have a picture because you have a body-worn camera. So, if they turn that on I could see it helping in those type of cases.”

This assessment of the impact of BWC on the adjudication process was further supported by prosecutor Stewart from Travis County, TX. When queried about his general views of the utility of body-worn camera footage he noted the importance of BWC evidence in highlighting the veracity of domestic violence by stating:

“...body cams are going to be huge in cases of sexual assault and in cases of domestic violence because again, the police officer is going to get up on the stand and say, ‘I walked up to the resident and there's a crying female and she's got a bruise under her eye and she says my boyfriend hit me and went that way and you know we caught up to him down the block and he was, you know, he was panting and out of breath and he was sweating and kind [of] out of sorts’ and the jury's going to sit there and listen to it and just go, yeah whatever. But when they see that videotape and they see the woman with a bruise under her eye and she's crying and screaming, they're going to go, that's somebody who just got their ass whipped, you know, in a way that we just never could before. So yeah... they're fantastic on the evidentiary side.”

The ability to show jurors how a domestic violence dispute unfolded in real time was consistently discussed by prosecutors as being a valuable aspect of BWC footage. This capability was highlighted by prosecutors Alice and Clarence from Monroe County and San Diego County respectively. When discussing the best aspect of BWC evidence and how it may have improved the adjudication of cases, they offer the following:

“Yeah, I mean it improves cases in that it helps us. Like I said at the beginning, it helps us bring a jury back to, to that day. When something horrible happened, you can actually see someone's demeanor and see what the victim was like especially in our unit... I think BWC is more important than any other type of case because our victims typically recant, and they come in and they say I was just pissed off because I found out he was cheating on me. Before we didn't have anything to, to refute that other than an officer coming and saying no, she was crying. Okay that's great, I mean, for a jury to hear she was crying versus seeing someone crying and shaking and not able to speak and hyperventilating, that just makes it way easier for us to

prove our case.” – Clarence

“Best again I think is helping us provide to the jury and even to defense the full story. Obviously, the only people who know what happened are the victim and defendant and it gives us a little bit more to add to what we're trying to prosecute.”

– Alice

Juries have a difficult job in that they are asked to decide the fate of various individuals' future. Possessing evidence that is “objective” in nature and an accurate depiction of how a particular type of crime, such as domestic violence, impacted a victim after the criminal act occurred is crucial. BWC footage is becoming that crucial piece of evidence that allows jurors to see the serious impact of domestic violence on victims. As prosecutor Irene put it, “you just can't at all...underrate the importance of it then because that's, majority of our victims recant or you know are uncooperative at a later time and there is nothing like seeing somebody right on camera crying and sobbing about what happened and you know they're telling the truth then, and their, you know, their calm demeanor a week later is not believable compared to that.”

### **Credibility of Testimony**

Prosecutors also assert that BWC footage was important in terms of establishing the credibility of testimony from witnesses and police officers during trial. Prior to the utilization of BWC evidence, prosecutors discussed how the credibility of officers would often come into question by jurors when victims refused to cooperate, recanted, and/or changed the story that was initially documented and told to law enforcement. This issue was discussed in depth by prosecutor Tom from San Diego County, CA. Speaking specifically about domestic violence cases, he/she recalled that:

“... when I first started doing these kind of cases in the beginning of my career when we didn't have body-worn camera it was very easy for victims or witnesses to come into court and say well the officer just wrote it down wrong or the officer didn't hear me correctly or I never said that flat out and it became a credibility contest between the officers and the victim and the officer and the witness, whereas

now those initial statements and their demeanor and all of that is right there, it's captured. So, it makes it much more difficult for victims or witnesses to come in and change their statements or stories. It protects the officers a lot from having their credibility challenged because...we just play the video, and so, it's been a real valuable tool in the prosecution of domestic violence for certain.”

The use of BWC evidence as a means of establishing rather than diminishing officer credibility was also expressed by prosecutor Jerry regarding some of the “he said/she said” nuisances that often arise during trial. More specifically, this prosecutor states:

“If you're expecting a contradiction to come on the witness stand, you can play for the jury hey...this is what happened...at the scene... We used to just have to have the officer who took their statement come in and say nope, that's what they told me on the scene but then jurors can sometimes perceive that as he said/he said whereas now you can just play the camera footage; the he said/he said it's between the witness now and the witness then.”

In addition to officer credibility, prosecutors also mentioned how BWC evidence could be used to impeach the testimony of witnesses or victims that deviate from their initial statements that was captured on the BWC footage. As prosecutor John from Travis County, TX put it:

“You're also going to have statements that they made on video, especially on something like more of a he said she said type of situation, like an assault family violence where each person is telling their version of the story and that's going to come up because they can use that to impeach people if later on they try to say something different on the stand...”

Similarly, prosecutor Katie from San Diego states:

“So obviously with domestic violence one of the biggest hurdles we face is recanting victims and it's pretty compelling to a jury when we're able to, when we have a victim who comes in that's now all of a sudden saying oh, I was just mad at him, I actually fell and hit my head on the door, um ... to be able to impeach her with her prior... video of her crying and saying how he punched her repeatedly that's pretty compelling evidence.”

Ultimately, it was found that the existence of BWC evidence has allowed prosecutors to protect the legitimacy and credibility of testimony coming from law enforcement. Likewise, prosecutors are now able to discredit victims and/or witnesses through the use of BWC evidence if they decide to change the narrative of what happened.

## Case Processing Strategy

The last salient theme that arose from the interviews of prosecutors is that BWC is particularly important in terms of case processing strategy. In fact, prosecutor Katie said the use of BWC evidence resulted in a “180-degree change in how we handle our cases...and for the better.” This sentiment regarding the relationship between BWC and plea-bargaining strategy was also found among other attorneys. Two San Diego attorneys offer the following regarding BWC and plea-bargaining strategy:

“So, for...domestic violence... defense attorneys will come in and plea bargain and tell the judge well, she says it never happened, she doesn't want him prosecuted for this, she says it was a misunderstanding, a mistake. And then we say well, you know we have the body-worn camera evidence where she's, or she'll, classic scenario, she's not afraid of him, she's not scared of him, she says it's a big misunderstanding. We have the body-worn camera evidence where she's running out of the house screaming he's going to kill me, crying, and emotional. Okay, well...to have that, to be able to confront the judge with that which before we would just say well that's not what the officer said, now we have her actually on video with her emotions and her reactions. So, it's, yeah, it definitely becomes a tool in plea bargaining as well... and I've had defense attorneys say do you have the body-worn? Can I see it? And [we've] said yeah, and we play it for them and they think all right, let me go talk to my guy and they plead guilty. So, it's definitely played a pretty big factor in plea bargaining as well.” – Tom

“They'll [defense attorneys] say she's recanting...she doesn't want to prosecute, she says it's her fault, blah blah blah blah, and I go well, did you watch the body-worn camera because in watching the body-worn camera, she's terrified and she's crying hysterically and she's gasping for air. Those are consistent with what she actually told the officers happened, versus now, she's the one that started the fight or fell down the stairs, whatever it might be. So, we do have those conversations, but I would say it's very rarely like the hanging factor in terms of whether a case resolves at that point, but it has happened before after watching the body-worn camera.” – Rose

On the contrary, some prosecutors discussed how inappropriate police conduct can influence how domestic violence cases are processed and ultimately resolved. This is made quite apparent in the following statement:

“... when the officer came on scene his interaction with the defendant was more aggressive than it needed to be and it wasn't that he was over the top, it was just more aggressive than it needed to be in comparison to the underlying domestic violence event and after watching the body-worn camera I suggested that he needed to plead the case because the jury is not going to, it's no longer going to be, I think he was also charged with resisting arrest and so the trial was no longer going to be about the underlying domestic violence, the trial was now going to be about the officer's excessive use of force and this, that, and the other, and really what we wanted was to get him on DV probation so that we could have him go in and get counseling and do that kind of stuff. So ultimately, we gave him some kind of pretty good deal to get him in DV counseling because I knew that once we got to trial that it would, that that was going to look bad.” – Irene

Another important area of case processing that prosecutors claim is impacted by BWC evidence are sentencing recommendations. Prior to BWC evidence, prosecutors would use evidence, such as statements taken by law enforcement and photographs of a victim's injuries, to persuade a judge or jury to issue a certain sentence. With the advent of BWC, prosecutors are able to show judges or juries why they should grant a certain sentence due in part to being able to visually show the severity of domestic violence in particular cases. This was expressed by prosecutor Katie in the San Diego District Attorney's Office:

“I would say the biggest impact it's had is on the domestic violence cases because it's so much easier for me to be able to say like no, I'm going to stick to this, this is the sentence I want, and this is why I feel like I can get there even if the victim recants I can play this video and you know be convincing to a jury. Yeah, and I think it's given us just less question about the facts of the case and now maybe plea bargaining has become more about mitigants and aggravants than it is about what actually happened because we all know what happened, we can see it right there on video in some of the cases.”

Witness preparation is another area in case processing that has been transformed by BWC evidence. It is particularly useful in cases where victims recant or change their story. When this does occur, prosecutor Katie stated that he uses it to remind victims or witnesses of their prior accounts. More specifically, she states that “when I have a witness that I feel

that is beginning to recant or minimize, I have used it [BWC footage] and played it for them [jurors] and just reminded them gently that...you're under oath and keep in mind we have a video of you that...has your entire statement from the night of this incident. So, you know, just keep that in mind and if I think that playing it for them will be beneficial to keeping them on track then I have done that many of times.”

BWC evidence was also found to help supplement the lack of detail in police reports. For example, prosecutor Irene states:

“There are plenty of times where officers will write a report...they'll say that the victim had swelling and bruising to her eye and then I'll look on the BWC and I'm just aghast at how bad of an injury that it actually is and so there are many times that something is not described because of the sterile nature of how reports are written and just not every officer is as colorful in their writing and so you can't always get a picture of what is going on. But then you look at the BWC and you're like wow! I had a case recently where a defendant vandalized his former girlfriend's home. The officer described some of the vandalism but when you see the BWC and they're walking through, it looked like a bomb went off in the place...there wasn't anything that was left unturned. So, viewing it was unbelievably more powerful than anything that was in the report.”

In sum, the aforementioned statements reveal various ways in which BWC evidence is actively impacting the adjudication of domestic violence cases. Some of the areas within case processing that are affected by BWC evidence include plea bargaining, witness preparation, and sentencing recommendations.

### **Conclusion**

Domestic violence prosecution is unique in that this particular case type presents various challenges for prosecutors. Such challenges include victims/witnesses recanting, changing their original story, and/or refusing to cooperate altogether. Additionally, prosecutors have to deal with the possibility of officers' credibility being called into question, sterile report writing that may not illustrate the seriousness of the domestic dispute, and just an overall lack of corroborating evidence outside of police statements from victims/witnesses. The combination of these issues makes it

difficult for prosecutors to seek justice for domestic violence survivors.

The widespread adoption and implementation of BWCs has created a sense of hope for domestic violence prosecution. This research study finds BWC evidence to be valuable for victimless prosecution, in which victims refuse to cooperate. It has also been helpful for jury decision-making by allowing them to have a glimpse into what occurred immediately following the domestic violence incident. Likewise, BWC evidence has helped prosecutors bolster the credibility of law enforcement as witnesses and impeach the testimony of witnesses who make statements that diverge from the reality of what is showcased on the BWC footage. Regarding case processing, BWCs have aided in plea bargaining negotiations, sentencing recommendations, and the preparation of witnesses that may be hostile or uncooperative. Ultimately, this research study provides a baseline for prosecutors in understanding the ways in which BWC evidence could strengthen and potentially limit the prosecution of domestic violence cases.

### **Limitations**

This research study generated findings that are paramount to criminal justice research and legal practitioners. Although such findings are quite informative, there are some methodological shortcomings that should be noted. While some of the prosecutors were in the DV unit at the time of their interview, others were not. Of the ones who were not, many indicated that they had prior experience in the DV unit or were knowledgeable about how BWCs were impacting prosecutors in the DV unit based on their interactions and conversations with attorneys from this particular unit. Additionally, respondents were not asked specific interview questions about the ways in which BWC evidence is impacting domestic violence cases. Instead, they were asked general questions concerning the evidentiary value of BWCs, which may have limited the amount of information we were able to obtain regarding BWC and DV adjudication. In addition, prosecutors were not

randomly selected from the three district attorneys' offices. Instead, participants were selected using a convenience and snowball sample methodology in which they were either referred to researchers by the lead district attorneys or volunteered to participate on their own after learning about the study.

### **Future Research**

Although this study highlights the impact of BWCs on the adjudication of DV cases, there is still much to be learned. One area of interest that researchers should consider studying is defense attorneys' perspective on BWC evidence and its evidentiary use, or lack thereof, in the adjudication of DV cases. Additionally, researchers could explore how jurors perceive the use of BWC evidence in DV cases and how such use impacts their decision-making. In addition, scholars should examine how the use of BWC evidence in DV cases impacts victims in the long run. For example, are uncooperative victims less likely to report future domestic violence incidents if BWC evidence is used against them? This is one question that could potentially be answered by investigators. Researchers should seek to determine when BWC evidence is admissible in court and what exceptions to various rules, such as hearsay, allow this type of evidence to be admitted. Lastly, researchers should examine various DV cases in different jurisdictions to determine whether BWC evidence actually does impact case processing and case outcomes, similar to the study conducted by Morrow, Katz, and Choate (2016). This type of analysis could be inclusive of a pre/post methodology in which researchers compare DV case processing and outcomes in a jurisdiction prior to the implementation of BWCs and after the implementation of BWCs.

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