

**Written Testimony of Harlan Yu
Principal, Upturn**

**Philadelphia City Council
Committee on Public Safety**

**Hearing on
the Ongoing Implementation of Body-Worn Cameras
by the Philadelphia Police Department**

Resolution No. 161113

March 13, 2017

Chairman Jones, Vice Chairman Johnson, and members of the Committee, I thank you for the opportunity to testify about the use of body-worn cameras (BWCs) by the Philadelphia Police Department (PPD).

My name is Harlan Yu. I am a Principal at Upturn, based in Washington DC.¹ I work alongside civil rights and social justice leaders to shape the impact of new technologies on people's lives. I received my Ph.D. in computer science from Princeton University, and I focus on technology and public policy issues.

I am one of the primary authors of the Police Body-Worn Cameras Policy Scorecard,² which identifies nationwide best practices for BWC policies. Through my work, I have examined the current BWC policies from all of the major police departments in the United States, including PPD's Directive 4.21.³

One of the main selling points for BWCs is their potential to provide transparency and accountability into community-police interactions, and to help protect civil rights, especially in heavily policed communities of color.

But accountability is not automatic. Whether these cameras hold police more accountable — or simply intensify police surveillance of our communities — depends on how the cameras and footage are used, and the specific policies that departments put into place.

These concerns are shared by a broad coalition of 34 leading civil rights groups, including the NAACP, National Council of La Raza, National Urban League, the Leadership Conference on Civil and Human Rights, and Philadelphia's Media Mobilizing Project. In 2015, the coalition

¹ Upturn, <https://www.teamupturn.com>.

² The Leadership Conference on Civil and Human Rights and Upturn, *Police Body-Worn Cameras: A Policy Scorecard* (Aug. 2016), <https://www.bwcscorecard.org>. [hereinafter BWC Scorecard]

³ Philadelphia Police Department, *Directive 4.21, Body-Worn Cameras* (Jun. 21, 2016), available at <http://www.phillypolice.com/assets/directives/D4.21BodyWornCameras-rev1.pdf>. [hereinafter PPD Directive]

published a set of Civil Rights Principles on Body-Worn Cameras, which recognized that “without carefully crafted safeguards in place, there is a real risk that these new devices could become instruments of injustice, rather than tools for accountability.”⁴

Whether BWCs ultimately help or hurt communities will largely depend on the policy details. When must officers turn their cameras on? When can officers turn their cameras off to protect the privacy of vulnerable victims? Are officers allowed to watch footage before writing their initial reports? How long is footage retained? Under what circumstances can recorded individuals and the broader public gain access to footage? Each of these questions involves difficult policy tradeoffs between the needs of departments and its officers, and the needs of the communities that they are sworn to serve.

This is why Upturn, in partnership with the Leadership Conference, developed the Police Body-Worn Cameras Policy Scorecard, which compares and evaluates the BWC policies from 50 major police departments across the country across eight civil rights criteria.⁵ Our Scorecard highlights promising policy approaches that leading departments have adopted, and it helps each department identify specific opportunities where it can improve its policies.

Our Scorecard found that the Philadelphia Police Department has substantial opportunities to improve Directive 4.21, which was last updated on June 21, 2016.

Here are five key areas for improvement:

1. **Access to footage.** When a high-profile incident occurs, communities will expect the department to release relevant footage in short order. When an individual alleges police misconduct, that individual will expect access to available footage during the complaint process. If the Committee believes that cameras should serve as tools for transparency, then these minimum expectations should at least be met.

However, the current Directive gives the Police Commissioner full discretion to decide whether to release footage or not.⁶ The Directive also allows individuals to file a public records request under Pennsylvania’s Right to Know Act⁷ — a burdensome process that contains broad exceptions for personal privacy and investigatory records.

But there is a better way to provide access to footage. In both Washington DC⁸ and Las

⁴ The Leadership Conference on Civil and Human Rights, *Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras* (May 15, 2015), <http://www.civilrights.org/press/2015/body-camera-principles.html>.

⁵ BWC Scorecard, *supra* note 2.

⁶ PPD Directive, *supra* note 3, at 12 (§9-B-5).

⁷ PPD Directive, *supra* note 3, at 11 (§9-A-4).

⁸ District of Columbia Metropolitan Police Department, *GO-SPT-302.13 (Body-Worn Camera Program)*, at 20-22 (Mar. 11, 2016), available at https://go.mpdconline.com/GO/GO_302_13.pdf.

Vegas,⁹ each department has created a special process whereby a *recorded individual* can schedule a time with the department to watch his or her own incident footage with a lawyer present. This is a simple remedy that PPD could adopt that would provide the community with a meaningful transparency guarantee, while carefully balancing people's privacy interests.

2. **Officer review of footage.** Reviewing video footage can distort memories and skew eyewitness accounts.¹⁰ An interactive New York Times feature recently illustrated how camera angle, distance, and motion can lead to incomplete and misleading interpretations of actual events.¹¹

PPD's Directive also recognizes this concern: It rightly states that "[body-worn cameras] should not be viewed as the only measure of truth because they may show more or less than what the officer sees, hears, or observes."¹²

However, the Directive in fact requires officers to review footage *before* they write their incident reports, which could skew officer accounts with new extrinsic information.¹³ Even after a critical incident, like a weapons discharge, the Directive does not explicitly prohibit the officer from reviewing the footage before giving an initial, untainted statement.¹⁴

This policy creates an unfair structural advantage. If this policy becomes permanent, officer reports will always appear more consistent and more accurate than other witnesses' statements, which may contain natural inaccuracies that will make those statements appear less credible. This concern is particularly acute in officer-involved shootings and other high-level uses of force, where the officer may be the subject of an investigation.

Other departments, such as the Oakland PD, have adopted a more even-handed approach: for high-level uses of force, officers must first provide an initial written statement or interview before watching any footage. Then, in a second step, officers can watch footage and document any additional information that they recall, while clearly

⁹ Las Vegas Metropolitan Police Department, *Body-Worn Camera Recordings*, <http://www.lvmpd.com/Records/BodyWornCameraVideo/tabid/583/Default.aspx>.

¹⁰ See generally Adam Benforado, *Frames of Injustice: The Bias We Overlook*, 85 Indiana L.J. 1333 (2010). See also Robert N. Kraft, *The Influence of Camera Angle on Comprehension and Retention of Pictorial Events*, 15 Memory & Cognition 291 (1987) (finding that "camera angle can profoundly affect the meaning viewers ascribe to pictorial events").

¹¹ Timothy Williams *et al.*, *Police Body Cameras: What Do You See?*, N.Y. Times (Apr. 1, 2016), <http://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html>.

¹² PPD Directive, *supra note 3*, at 1 (§1-B).

¹³ PPD Directive, *supra note 3*, at 11 (§9-B-2).

¹⁴ PPD Directive, *supra note 3*, at 9 (§7-K).

demarcating what information came before and after footage review.¹⁵

This is a more logical and equitable procedure. The PPD has an opportunity to be a national policy leader on this issue, by adopting this procedure not only after high-level uses of force, but after every incident.

3. **Facial recognition.** Earlier this year, the CEO of TASER (PPD's camera vendor) publicly discussed future plans to add facial recognition capabilities into their camera systems.¹⁶ This would fundamentally change the nature and purpose of BWCs and would create enormous new risks to Philadelphia's communities.

If and when facial recognition capabilities arrive, body cameras will become powerful tools for enhanced police surveillance — especially in communities of color where cameras will be pervasive — rather than tools for accountability. This dangerous combination could also amplify existing disparities in law enforcement practices and undermine progress toward building public trust. A recent study from Georgetown University found that half of all American adults are in law enforcement facial recognition databases, with little to no regulatory constraints on their use.¹⁷

Several departments, including in Baltimore¹⁸ and Boston,¹⁹ have made public commitments in their BWC policies that strictly limits their own use of facial recognition and other biometric enhancements, together with their BWC systems. The PPD could make a similar public commitment, and make clear to the community that enhanced surveillance is not one of the goals of its BWC program.

4. **Footage storage and retention.** BWCs will capture video evidence that could be invaluable to adjudicate both criminal cases and police misconduct complaints. But the vast majority of footage that cameras will capture will have no foreseeable evidentiary or accountability value.

¹⁵ Oakland Police Department, *Departmental General Order I-15.1: Portable Video Management System*, at 8 (Jul. 16, 2015), *available at*

<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf>.

¹⁶ See Matt Stroud, *Taser Plans to Livestream Police Body Camera Footage to the Cloud by 2017*, Motherboard (Jul. 18, 2016, 3:06 PM), https://motherboard.vice.com/en_us/article/taser-axon-police-body-camera-livestream; see also Alex Pasternack, *Police Body Cameras Will Do More Than Just Record You*, Fast Company (Mar. 3, 2017, 7:55 AM), <https://www.fastcompany.com/3061935/police-body-cameras-livestreaming-face-recognition-and-ai>.

¹⁷ See generally Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, *The Perpetual Line Up: Unregulated Police Face Recognition in America*, Georgetown Center on Privacy and Technology (Oct. 18, 2016), <https://www.perpetuallineup.org>.

¹⁸ Baltimore Police Department, *Policy 824, Body Worn Cameras Pilot Program*, at 6 (Oct. 26, 2015), *available at* <https://www.bwccscorecard.org/static/policies/2015-10-26%20Baltimore%20-%20BWC%20Policy.pdf>.

¹⁹ Boston Police Department, *Special Order 16-023, Body-Worn Camera Pilot Program Policy*, at 1 (Jul. 12, 2016), *available at* <https://www.bwccscorecard.org/static/policies/2016-07-12%20Boston%20-%20BWC%20Policy.pdf>.

The ongoing cost of storing footage is the most expensive aspect of a BWC program, and storing vast amounts of unneeded footage will be expensive for taxpayers. It will also expose the department (and those caught on video) to greater privacy risks if a data breach occurs.

Many departments across the country have adopted the best practice of automatically deleting unneeded (or “unflagged”) footage after a short amount of time. For example, the Dallas PD automatically deletes unflagged footage after 90 days,²⁰ and Las Vegas MPD does so after 45 days.²¹

PPD’s current Directive specifies that unflagged footage “shall be retained for no less than thirty (30) days,” but it does not specify a maximum retention period nor does it appear to require automatic deletion for unflagged footage.²² PPD’s Directive could be changed to provide a retention limit for unflagged footage, and require that unflagged footage be deleted when the limit is reached.

5. **Public reporting.** Body-worn cameras are still a new technology, and their impact on Philadelphia’s communities are still to be seen. As the Department expands its BWC program, the City Council and the public must be able to closely monitor PPD’s progress, to ensure that PPD’s policies and procedures continue to serve the interests of Philadelphia’s communities.

The Directive could require PPD to publish quarterly public reports about its ongoing BWC implementation. The reports could provide meaningful statistics, for example, on the total hours of footage captured and stored, the number of times officers failed to turn on their cameras for required incidents, the number of public records requests for footage and whether footage was released, the number of cases in which prosecutors accessed footage, and so on. As one example, DC MPD is required by law to publish detailed statistics about its BWC program every six months.²³

In order for Philadelphia to reap the full benefits of cameras, the Department must adopt strong, enforceable policies that fairly balance the interests of officers and the expectations of the community. The suggested improvements above are realistic, sensible policy options that reflect nationwide best practices. They are policies that have already been successfully implemented by other major police departments, and there is no reason why the Philadelphia Police Department couldn’t do the same.

²⁰ Dallas Police Department, *General Order 3XX.00 Body Worn Cameras*, at 3 (May 26, 2015), available at <https://www.bwcorecard.org/static/policies/2015-05-26%20Dallas%20-%20BWC%20Policy.pdf>.

²¹ Las Vegas Metropolitan Police Department, *5/210.01 Body Worn Cameras*, at 10 (Oct. 2015), available at <https://www.bwcorecard.org/static/policies/2015-10%20Las%20Vegas%20-%20BWC%20Policy.pdf>.

²² PPD Directive, *supra* note 3, at 10 (§9-A-1).

²³ See generally District of Columbia Metropolitan Police Department, *Reports on MPD's Use of Body-Worn Cameras* (Apr. 7, 2016), <https://mpdc.dc.gov/node/1116387>.