

Testimony of the Center for Constitutional Rights

**Before the New York State Assembly on the
Use of Body-worn Cameras by Law Enforcement Officials**

December 8, 2015

On behalf of the Center for Constitutional Rights, I would like to thank the Assembly Standing Committees on Codes, Judiciary and Governmental Operations for holding this hearing and inviting us to take part. The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization committed to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

The Committee has requested testimony regarding the “feasibility and effectiveness of body-worn cameras by law enforcement officials,” and raised several key questions about how these body-worn camera (“BWC”) programs should be constructed. As you know, the issue of a body-worn camera program in New York City first emerged as part of the remedial order in our case *Floyd v. City of New York*.¹ Although not part of the relief requested by plaintiffs, the Court ordered a “pilot program” of body-worn cameras by the New York City Police Department (“NYPD”) as a possible way to “address[] the constitutional harms at issue” in *Floyd*, namely the practice of “stop-and-frisk” which the Court found the NYPD had been using in an unconstitutional manner. Fast-forward two years later and the Department of Justice has endorsed body-worn camera programs as a method law enforcement can use to “demonstrate transparency to their communities; to document statements, observations, behaviors, and other evidence; and to deter unprofessional, illegal, and inappropriate behaviors by both law enforcement and the public.”²

While we recognize that many law enforcement agencies are embracing this new technology, it is much too early, and the research to this point is much too sparse, to draw any real conclusions about the effectiveness of BWC’s as a police accountability and transparency tool. However, the Center for Constitutional Rights firmly believes that BWCs should *not* be regarded as a “cure-all,” and will not spawn more fair, respectful and constitutional policing unless combined with robust systems for supervising, monitoring and disciplining officers. We believe law enforcement agencies must put significant care and thought into developing BWC protocols, specifically by instituting transparent, community-driven processes to help address the many privacy, data storage, and access concerns raised by this new technology. I wish to address some of these concerns in my testimony.

First, CCR strongly believes that the public – especially those communities impacted most by law enforcement practices - should have a voice in how these programs are both designed and

¹ Brought by CCR along with co-counsel Beldock Levine Hoffman LLP, Covington & Burling and DEMOS.

² Bureau of Justice Assistance “Body-Worn Camera Toolkit” available at <https://www.bja.gov/bwc/Topics-GettingStarted.html>

evaluated. The DOJ has noted that “Like many new law enforcement strategies and technologies, a successful body-worn camera (BWC) implementation requires community input. Active participation from the community is essential to create a robust program and is critical to securing the necessary support, endorsement, and ongoing dialogue for the BWC program.”³ In his 2015 report on the NYPD’s voluntary body-camera pilot program,⁴ the Inspector General of the NYPD recommended the department “expressly design and incorporate mechanisms for obtaining input from citizens and community stakeholders.”⁵ Many cities implementing BWC programs, such as Madison, WI or Minneapolis, MN, have made obtaining community input an important component as they developed and piloted BWCs. A recent example is the city of Toronto, which consulted with community leaders and sent out 20,000 surveys in the development of their BWC pilot program, and now at the conclusion of the pilot, are initiating community surveys of anyone who came into contact with a body-worn camera.⁶ Robust and ongoing community input is critical to the development of any BWC program.

Second, we wish to directly address one of the Committee’s questions. In Question #4, the Committee asks: “*What length of time should body-worn video recordings be retained?*” The Center for Constitutional Rights strongly believes that at a minimum, all BWC recordings must be retained for the same length of time as any statute of limitations regarding how long a member of the public has to file a civilian complaint. For example, the New York City Civilian Complaint Review Board’s statute of limitations for administrative complaints is currently 18 months. All BWC video in New York City should be retained for at least that length of time, if not longer.⁷

Finally, we would like to emphasize that the implementation of BWC programs should not be used to de-legitimize civilian-recorded video of law enforcement abuses. The DOJ has called the recording of law enforcement by the public “core First Amendment conduct,”⁸ and we strongly believe that an individual or community group’s use of video in documenting law enforcement actions is just as valid as recordings taken by police departments.⁹ Furthermore, it is often necessary: in October, the Washington Post found that less than half of the fatal shootings by police officers caught on body-cameras have been publicly released, and even in the footage released, several videos had been edited.¹⁰ Simply put, if a city chooses to engage a BWC program, video recorded by police officers should not be given more weight than that of civilians simply because of who is behind the camera.

³ See <https://www.bja.gov/bwc/Topics-Community.html>

⁴ This program was initiated separately from the Court-ordered program in *Floyd*.

⁵ Office of the Inspector General for the NYPD, “Body-Worn Cameras in NYC: An Assessment of NYPD’s Pilot Program and Recommendations to Promote Accountability.” July 2015, p. 44

⁶ See <http://www.cp24.com/news/police-to-survey-those-who-ve-interacted-with-officers-using-body-worn-cameras-1.2633865>

⁷ The NYPD Inspector General’s report on body-worn cameras also reaches a similar conclusion. See report at 43.

⁸ Statement of Interest of the United States, March 4, 2013, in *Garcia v. Montgomery County, et al.* at 2.

⁹ CCR has litigated this issue in recent years. This includes an amicus brief filed in 2011 in support of the plaintiff in *Glik v. Cunniffe* on behalf of grassroots organizations who document police activity in their communities, as well as our 2007 case *Bandelet v. City of New York*, on behalf of several members of a “cop-watch” group falsely arrested and imprisoned for video-taping law enforcement.

¹⁰ See <http://www.washingtonpost.com/sf/national/2015/10/08/police-withhold-videos-despite-vows-of-transparency/>

As BWC programs have proliferated throughout the country and the world, the narrative of who should benefit from these programs seems to be changing, from one of police accountability and transparency into a law enforcement-oriented focus on evidence collection, “officer safety” and surveillance of our communities. This shift in focus is worrying, and calls for an increased level of public input in deciding how these programs are designed. CCR strongly urges the Committee to take into account the concerns and questions from local communities across New York state before instituting body-camera programs. We believe this process starts with a commitment by local and state governments to community input and an ongoing, transparent dialogue with the public - before, during and after any programs and policies are established.

Thank you for inviting the Center for Constitutional Rights to submit testimony at this hearing.