

Understanding the Impact of Police Body-Worn Cameras on Virginia Public Defenders

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Introduction

In the past five years, body-worn cameras (BWCs) have disseminated widely and rapidly to police departments across the United States (White & Malm, 2020). In 2013, only one-third of agencies had some form of BWC program, most of which were small-scale pilot programs of the relatively new technology (Reaves, 2015). By 2016, about half of agencies had BWCs, including nearly 80% of large agencies (more than 500 sworn personnel) (Hyland, 2018). The push for BWCs came at a time when there was a severe dearth of research from which to draw guidance or best practices. In 2014, at the time of the shooting of Michael Brown in Ferguson, Missouri, there were only five published studies or agency reports documenting findings related to the impacts of BWCs (White, 2014). The number of rigorous assessments had reached more than 70 by March 2019 (Lum, Stoltz, Koper, Scherer, & Scherer, 2019) and continues to grow.

Existing research has primarily focused on the impact of BWCs on police behavior and practice, such as officer use of force, citizen complaints against officers, officer activity, and officer and citizen perceptions of the technology (White & Malm, 2020). The impact on downstream criminal justice actors has remained under-researched, however, as few studies have empirically investigated the impacts on courtroom actors such as judges, prosecutors, and defense attorneys. For example, attitudinal studies show that police officers and courtroom actors alike believe BWC footage is more effective evidence because it provides a more nuanced picture of an encounter relative to a written report. Officers in both the United States and the United Kingdom believe that BWCs enhance evidence quality and lead to a greater likelihood of conviction (Ellis, Jenkins, & Smith, 2015; Gaub, Choate, Todak, Katz, & White, 2016; Goodall, 2007; Jennings, Fridell, & Lynch, 2014; ODS Consulting, 2011; Owens, Mann, & Mckenna, 2014). These sentiments are echoed by judges, prosecutors, defense attorneys, and other criminal justice actors (Todak, Gaub, & White, 2018).

Enhanced evidence can lead to better criminal justice outcomes, though this contention has only been assessed in six studies with significant limitations (Lum et al., 2019; White & Malm, 2020). Owens and colleagues (2014) found that domestic violence incidents handled by BWC-wearing officers were significantly more likely to result in a criminal charge; similarly, researchers in Scotland determined that BWC cases more often resulted in a guilty plea, and the plea was entered at earlier stages in the process (ODS Consulting, 2011). In cases of intimate partner violence in Phoenix, BWCs had a statistically significant positive effect at all stages of the process, from arrest to guilty pleas and verdicts. Additionally, implementing BWCs in Phoenix led to statistically significant declines in the time to disposition overall, and specifically the time to dismissal and time to guilty plea (Morrow, Katz, & Choate, 2016). In other words, BWCs led to a more efficient criminal justice process. White and colleagues (in press) found that BWCs had no impact on guilty outcomes, but the use of cameras was associated with significantly shorter time to adjudication. Thus, the presence of footage can both expedite removal of cases that are unsupported by the evidence (i.e., charges are not filed or cases are dismissed) and push cases towards early disposition (i.e., guilty plea at an earlier stage in the process).

Though the research base on judicial system impacts is limited, the effect of police BWCs on public defenders is altogether missing. This is an unfortunate oversight, as public defenders are a critical component of the American criminal justice system (Frederique, Joseph, & Hild, 2015). Public defenders provide criminal defense for those who cannot afford otherwise as provided by the Sixth Amendment and the Supreme Court in *Powell v. Alabama* (1932), *Gideon v. Wainwright* (1963), *In re Gault* (1967), and *Argersinger v. Hamlin* (1972; for case law recognizing indigent defense at additional criminal case processing stages, see Frederique et al., 2015). Importantly, this right to counsel means that a defendant is entitled to “the *effective* assistance of *competent* counsel” (Belden Russonello Strategists, 2016, p. 2; emphasis in original). Unfortunately, public defense is persistently underfunded and under-resourced; Simon (2008) notes that “[o]f the more than \$146.5 billion spent annually on criminal justice, over half is allocated to support the police officers and prosecutors who investigate and prosecute cases, while only about two to three percent goes toward indigent defense” (p. 586). That said, public support for indigent defense is relatively high: 66% of respondents in a recent public opinion survey support the use of taxpayer funds for the provision of public defenders (Belden Russonello Strategists, 2016).

To better understand how a local police department’s decision to implement BWCs impacts public defenders, the research team worked with the Virginia Indigent Defense Commission (VIDC) to track attorney time spent on BWC-related tasks and conduct focus groups to understand attorneys’ perceptions of the utility of BWCs for public defenders.

Background

The Background of Body-Worn Cameras in Virginia

Following the recommendations made in The President’s Task Force on 21st Century Policing Final Report (2015), law enforcement agencies in the Commonwealth of Virginia began implementing BWC programs much like agencies in the rest of the country. According to recent a survey conducted by the Commonwealth’s Attorneys Association, 77 of the 110 responding localities had a BWC program (Compensation Board, 2019). While the legal community of Virginia is most likely not experiencing a unique burden when compared to other states, they have been outspoken regarding the increased workflow and ethical burden both the Commonwealth’s Attorneys’ Offices and Public Defender Offices are challenged with in handling the dearth of BWC footage. This issue was brought to the forefront of the BWC conversation in Virginia in February 2018 when Chesterfield, VA’s Commonwealth’s Attorney William Davenport wrote a letter to the Honorable Pamela J. Berry regarding the curtailing of Commonwealth’s Attorney’s prosecution of misdemeanors and infractions in Chesterfield, VA due in large part to the time constraints of reviewing BWC footage (Bowes, 2018). While initial conversations in the Virginia State Legislature have focused on Commonwealth’s Attorneys, public defenders have faced the same issue with even less resources.

The issue at hand is the increased workflow created by BWC footage which must be watched and often redacted, a time-consuming process despite advances in technology. In

example, one incident may have several officers arrive on scene to aid the primary officer. Each officer present will have at least one, if not more than one, video recorded during their involvement with the incident. Both the prosecution and defense will need to review all footage related to a case, no matter how much footage exists and whether or not the footage is even relevant to the legal proceedings. As noted by the Virginia Association of Counties (2019), the:

Ethics Counsel for the Virginia State Bar have opined that prosecutors have an ethical duty to review all footage that may be part of a case as part of their responsibility to disclose material that may be exculpatory. (see Boyle & McDonald, 2019)

This same ethical responsibility of reviewing footage in its full extent also falls on the shoulders of public defenders, whose access to BWC footage is limited and reliant on Commonwealth's Attorneys timely sharing of footage. Thus, while initial focus on the legal system has centered on Commonwealth's Attorneys, the VIDC has sought to ensure the voice of the public defenders is heard and the workload increase created by BWCs for their members is documented.

The Virginia Indigent Defense Commission

The VIDC was statutorily established in 2004, replacing the Public Defender Commission, to protect the Constitutional right to counsel for people who are accused of criminal offenses and cannot afford to hire their own lawyer. It oversees 25 public defender offices, 3 satellite offices, and 4 capital defender offices across Virginia, with a central administrative office that certifies attorneys seeking appointments in criminal cases. In addition, the VIDC is responsible for the following: promulgate and enforce the mandatory Standards of Practice for Court-Appointed Counsel which sets out detailed expectations for attorneys seeking appointments in criminal cases; re-certify attorneys seeking appointments in criminal cases and maintain the certified counsel list; and develop certification training courses. The VIDC strives to provide high quality training to public defender offices and private court-appointed attorneys to continually improve criminal defense representation to vulnerable citizens of Virginia who are not able to hire an attorney of their choosing.¹

Data and Methods

Ultimately, our goal was to assess the impact of local police BWCs on public defenders' workload in the Commonwealth of Virginia. We completed this assessment by asking the attorneys in five public defenders' offices to track their time spent on BWC-related tasks, and to participate in focus groups designed to understand their attitudes regarding the utility of BWCs for public defenders. Each office covered at least one jurisdiction that used BWCs, and the research team and VIDC worked to ensure there was diversity in terms of geographic location, office size, and caseload. All five offices were asked to participate in both a time-use study and focus groups to

¹ For more information, see VA Code § 19.2-163.01.

better understand their perceptions of the effects of police BWCs on their workload and justice-related goals.²

Time-Use

The research team requested that each office instruct attorneys to track their time using a spreadsheet that gathered several variables, including case number, case type, charge type, court assignment, and minutes spent on BWC-related tasks. Due to inconsistencies in reporting across the offices, we were only able to track the total time spent on BWC-related tasks each month, and only for three of the five offices. Office A handles approximately 2,200 cases per year with seven attorneys. Their area of responsibility is nearly 1,200 square miles serving just over 85,000 residents (racial composition: more than 85% white). Office B also handles about 2,200 cases per year with six attorneys. Their area of responsibility is approximately 44 square miles and serves nearly 45,000 residents (racial composition: almost 50% white and 50% black; less than 4% are other races). Both Offices A and B are located in rural areas of southern Virginia. Office C handles over 3,000 cases per year with nine attorneys. Their area of responsibility is roughly 50 square miles serving more than 75,000 residents (racial composition: just over 60% white and 30% black) in central Virginia.

Focus Groups

Additionally, the research team conducted semi-structured focus groups with each office; two offices required more than one focus group to maintain group sizes of approximately four to six participants. Semi-structured focus groups require that the same set of core questions is asked to every group, but allows for probing follow-up questions in response to participant answers to the core questions. Focus groups lasted between 30 and 90 minutes. They were audio-recorded and then transcribed to permit exact quotations. Written consent to participate was obtained from every participant.

Results

Time-Use

The findings of the time-use portion of the study are consistent with other research on the impact of BWCs on downstream criminal justice actors. Specifically, BWCs create a time-intensive burden on public defenders, but they are deemed to be exceptionally useful. Each of the three offices reporting time-use data had varying levels of time spent on BWC-related tasks. Office A³ spent the least amount of time with BWCs – between 160 and 470 hours per month. This is the equivalent of 20-58.75 workdays spent only on BWC-related tasks. The other two reporting offices—Offices B and C—spent far more time, as an office, on BWC-related tasks: Between 1304 and 2983 hours for Office B and between 1025 and 2810 hours for Office C. Again, that is the equivalent of 163-372.875 workdays per month for Office B and the equivalent of 128.125-351.25

² Both components were approved by the East Carolina University Institutional Review Board (and later, the University of North Carolina at Charlotte Institutional Review Board) for the protection of human subjects.

³ Offices are anonymized for confidentiality.

workdays per month for Office C. In other words, all three offices spend more time on BWC-related tasks than could reasonably be assigned to even one full-time employee. In fact, Office A would require 1-3 full-time employees, Office B would require 8-16 full-time employees, and Office C would require 6-16 full-time employees, depending on the month.⁴

Table 1: Amount of Time Devoted to BWC-Related Tasks

Office	Monthly Hours		Monthly Workdays ⁵		Full-Time Employees	
	<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>
Office A	160	470	20	59	1	3
Office B	1304	2983	163	373	8	16
Office C	1025	2810	128	351	6	16

Focus Groups

The findings of the focus groups are divided into three main areas: The benefits of BWCs, the problems facing public defenders, and how to solve those problems.⁶

Benefits of BWCs

In each office, public defenders were overwhelmingly supportive of BWC use by their local law enforcement agencies. Consistent with research on other stakeholders (Todak et al., 2018), including police personnel (Gaub et al., 2016; Jennings et al., 2014; Lum et al., 2019), the attorneys believed that BWCs enhance truth-telling, “getting us a lot closer to the truth.” Several respondents noted this value:

Just having an objective view of what actually happened, not subject to everybody trying to remember. That’s a really good thing.

But as far the overall goal of justice, I think it benefits that goal because it just gives a more accurate representation of what the facts were.

One office specifically noted the value of the footage as a learning experience for new public defense attorneys, to learn how the local police do business.

⁴ *Workdays* were calculated using the monthly number of hours, divided by eight (the length of a standard workday). The number of *full-time employees* was calculated by dividing the number of workdays in a year (52*5=260) by 12 (260/12=21.6) to give an average number of workdays per month. The number of workdays was divided by 21.6 to obtain the number of full-time employees required to complete the BWC-related tasks.

⁵ Numbers shown in table are rounded.

⁶ To ensure anonymity of respondents, all identifying information—including attorney names and office locations—have been removed from the quotes provided here. Selected quotes were chosen such as that all five offices were represented.

It used to be when we came in you could do ride-alongs with the police just to see how they do things and the new Commonwealth Attorneys⁷ do a lot of ride-alongs [for the same reason]. So now for new attorneys, they get to actually see [via the BWCs] how the police do their job. And our clients often times would provide inaccurate information so for new attorneys a lot of times I think they had a difficulty really getting a sense of how the police conduct their business and I think being able to actually watch them as they pull people over, have them get out, do the DUI tests, and conduct searches and pat downs and all of that [...] benefits new attorneys [...] and] prepares them to do their job a lot quicker than people who came through when I came through.

Defense Preparation

In addition to these more general benefits of BWCs, the public defenders specifically noted that BWCs assist them in preparing a good defense for their clients, a cornerstone of the Constitution found in the Sixth Amendment. This can be accomplished several ways; for example, the footage can yield valuable information regarding potential witnesses or defense options. Specifically, one public defender recounted a homicide case in which over a dozen officers responded to the scene. They described the value gleaned from the footage of officers assigned to crowd/perimeter duty:

We often can find defenses from watching the footage.

As the officers are walking up and down the street talking to the hundreds of people that have assembled, watching what's going on, you can see people that [say], "I saw the whole thing, I know everything that happened." You know, the volunteers from the crowd who want to share everything they know. A lot of times we watch the videos and [say to ourselves], "I know that person, I know that person too. That's so-and-so." We sometimes can identify possible witnesses on our own through watching the body camera [footage], these are the people that we need to go out and talk to, speak to them and find out what they know about the case because they're there volunteering to tell the cops everything on camera and sometimes cops talk to them, sometimes they won't.

Another way BWCs can aid in defense preparation is by informing what avenues they should *not* pursue:

Being able to eliminate potential defenses is helpful as well. If we know that the stop was good, there was a Miranda warning read, we're not going to pursue that. I [have] found it helpful [...] knowing what we can't argue.

Additionally, the footage allows attorneys to better prepare for client interviews and hearings. This, in turn, allows clients to make a fully-informed choice about how to move forward with case resolution:

⁷ Hereafter referred to as "CAs."

I also think it's really helpful in terms of representing our clients in order for them to kind of really understand, you know, to have it all recorded, the whole interaction and I think it helps them make better decisions about how to resolve the case.

It helps me in my interview with my client because I can go in to the interview knowing what happened and when they know that I'm prepared and that I've already reviewed the evidence, they respect me. They know that I mean business and that I care about their case. Before, it wasn't that I didn't care, but I just didn't have the adequate tools to prepare myself. So now I feel like I have a very important tool that I can use in preparing a case and I think it benefits [everyone].

Client Management

Similarly, having footage available to show clients can help to mitigate client expectations in terms of a reasonable outcome for their case. In many instances, clients contest charges somehow: The officers said or did something substantially different from what appears in the report, they deny this, or allege a violation of rights in some way.

Showing BWC footage to clients allows identification of such inconsistencies. In some cases, this permits attorneys and clients to more quickly agree on how to proceed in the case.

[BWCs] allow us to show [clients], "This is what occurred, this is how the judge is going to interpret this, this is what we advise you to do."

[Let's say] you've got a client [who claims], "They violated this right" or "They did this to me," you [have] a way to [...] say, "Okay, well we can look at that." You look at it and now you can actually potentially show them, "Look, I understand how you remember it but that's just not how the video shows. [...] The video will back up what the officer has already written in his report." So that's when they start to become a lot more reasonable as far as looking at what their options are.

Case Disposition

In addition to clients and their attorneys coming to an understanding to mount a defense, BWC footage can also bring *everyone* involved in the case closer to resolution. As one attorney described, "It brings you, the Commonwealth, your client—it brings everybody to an agreed understanding of the case much sooner." The footage allows everyone to make better decisions, and this is ultimately a benefit for all involved.

I think the courts can make better judgements and sometimes the prosecutors will look at some of these things and it will affect the way they make deals when they prosecute cases.

This can impact case disposition time, which in turn has monetary costs and benefits. In some jurisdictions, the consensus was that BWC footage causes cases to be processed more quickly, which translates to a cost-savings. Others noted it can have divergent effects, depending on the case and what is found on video:

Having the video could expedite the process because it might send you directly to a plea based on what's on the video. But then again, it could also drive you to trial, whereas [before BWCs] you might have persuaded your client to plead guilty because of what the police said, rather than what you're [now] seeing on the video. So, it could go either way.

Problems Facing Public Defenders

Overwhelmingly, the primary problems facing public defenders related to BWCs, are how to deal with the sheer volume of footage. This includes workload necessary for triaging footage, the discovery process, and how Commonwealth Attorneys manage and respond to BWC footage. In many cases, these issues were intertwined.

Volume of Footage

Every office spoke to the sheer volume of footage available in their cases. As noted above in the time-use section of the study, attorneys already spend an inordinate amount of time on BWC-related tasks (e.g., requesting, obtaining, viewing, and documenting footage). In the focus groups, attorneys elaborated on the sheer volume of footage they have to wade through in order to provide competent and zealous representation as required by the U.S. Constitution.

The existence of more evidence means there's more workload, there's more work to do. But for each client, it's a better thing.

A routine DUI should take, let's say two hours of an attorney's time. Now it takes four hours of an attorney's time because there may be four videos that you have to watch. And you have to watch them all.

It's not only the time that we're spending presently watching the [videos] that we *can* watch, but the fact that there are a lot more we would *like* to watch, but it's just not feasible with the staff that we have.

They [the CA's Office] don't really do anything to help us out, either. I had [a serious felony] and I needed one specific [video]. I knew the officer's name, I knew everything, and I requested just that one—and they sent me 27 body camera tapes.

Triaging Footage

The deluge of footage means that public defenders often resort to “triaging” cases to determine which require watching BWC footage. In many instances, cases in which the client is claiming a violation of rights or something sticks out in the police report will necessitate pulling BWC footage; cases that seem, on the surface, to be more clear-cut are less likely to get this attention. The lack of time,

When you're talking about going to jail for a couple of days as opposed to 20 years, you've got to appropriate your time as best you can.

which is tied to a lack of resources, can be the deciding factor in whether a client receives a more favorable outcome.

Every single case that comes in there's going to be body camera footage. The only time that I watch the body camera footage now is if my client contradicts what is said in the police statement; then I will say, "Okay, well, we have body camera footage. Let's request that body camera footage." Or if [...] I'm questioning whether, from reading the police report, the stop was an issue or there are other issues that are really obvious in the report. But that being said, there's probably so many cases that go through our office where we probably should have watched the body camera footage, but we didn't because we don't have the capability to watch every single camera.

The attorneys openly acknowledged that triaging cases opens the possibility of missing something important, but noted that they have no choice given the resources at their disposal.

If you don't have the time to go through all of it, it's entirely possible you'll miss the five minutes in the very middle of a two-hour video where they suddenly had some sort of interaction that wasn't noted somewhere else or didn't make the police report or whatever. That might turn out to be really important, but it's just not within our kind of powers to go through all of it.

You don't have the time to watch every second of every video; you don't need to watch every second of every video. I tell my clients I've watched the pertinent parts of the video as best I can tell. But it's rare that I could tell them that I've watched every second of the video, because I just don't have the time to do that because there's other cases. I'd rather watch the pertinent parts of ten clients than all the videos of one client and not have time on the other nine.

Commonwealth Attorney Preparation

A common refrain from all offices was a perception that the CAs do not view the BWC footage in advance of the hearings. This is problematic because it puts the onus on the public defender to watch all of the footage to ensure that everything is in order. The lack of preparation on the part of the CA draws out the case, which has repercussions for the client and impacts the right to speedy trial.

I think [CAs] rely on officers more than we do and they're more trusting of officers than we are.

Our prosecutors don't watch the video footage unless and until we walk in that [court]room and say, "We're going to trial." They ask, "Why? This is open and shut. Look at the police report." And I say, "Have you watched the video?" [They haven't.] "That's why I'm taking this to trial, because of what is in that video." And that in and of itself creates a problem too because then the prosecutors are not watching them in advance and then when you come in the day the case is set and you want to challenge it, they say, "We're going to have to continue this so we can go watch it." No, no, no, no. You should have already watched it.

I think they watch it in a very different way than we watch it. I think they watch it for stuff they have to or want to take out rather than as a method of issue-spotting for what happened. Because a lot of times there are things where I ask, “Hey, did you realize that the officer just went to the patrol car and sat down for five minutes while the canine got called? That’s illegal, you know that, right?” [And the CA says], “No, I didn’t actually notice that.”

For many, it translated to immense frustration that the CAs are often unprepared (having not watched the footage), especially given the obstacles facing public defenders, including processes related to obtaining and viewing footage.

[It’s a glaring omission] for [CAs] to not even watch it until you tell them. It’s them assuming [...] things are just going to resolve the first time we walk in the door. No, we prepped. We watched the hours of video footage, we’ve talked to our client, we’ve talked to witnesses, we’ve called around—all in the same four weeks you’ve had with this case, and you got this disc dropped off to you. You didn’t have to come to our office, take pictures of the police reports. You didn’t have to come to our office, sit and make a disc that might or might not work. You didn’t have to do all of the intermediate steps, you just had to put it in your computer and press play.

Many attorneys also expressed frustration with CAs whose pattern was to wait until the day of a hearing or trial to turn over BWC footage, indicating they had just received it from the officer. In these cases, CAs either assumed there would be a continuance—in which case it was perceived to be a deliberate tactic by the CA to get more time on their side as well—or the CA would indicate that the public defender could simply watch the footage in the hall before the case was called. Attorneys hinted at feeling disrespected by these actions, as though they would not do their due diligence to present an effective defense for their clients and would accept the bare minimum.

You’ll show up for the first day of trial and they’ll say, “This officer just gave me their body cam footage. It’s an hour long so you can’t watch it now so we have to now continue this case so you can watch it on the off chance it is helpful.” [...] I don’t think it’s the prosecutors because we’ll see in their file that they’re requesting it. But a lot of officers aren’t bringing that footage or turning it in when they’re supposed to, so it’s [...] drawing out the process. And if your client’s in custody that’s a huge problem. We shouldn’t have to wait.

Sometimes they’ll just hand it to us and say, “Well, do you want to watch it? I don’t understand why you want to continue.” I need to sit. I need to watch this start to finish. I need to pay attention to it. There are certain parts I’m going to watch more than once. There may be motions that I need to file based on the video. I’m not going to sit here 20 minutes before trial or before a preliminary hearing and watch three hours of video footage in 10 minutes [with an attitude of], “Well, that can go missed, it doesn’t matter. It’s not important.” When that’s potentially going to make or break, in terms of a trial or a preliminary hearing, the entire case. It’s almost more insulting when they just hand it over and say, “We can just go now. It’s fine.

You can take time to review, the docket's long. We have probably 40 minutes." I've got to talk to my client, I need to watch these, I need to potentially have our investigator go look and talk to people.

Interviewee: It can be a trial strategy for the prosecutors because if they're just getting the video they know we're going to ask for the continuance and they haven't necessarily subpoenaed the right witnesses to testify for the video.

Interviewer: So, they benefit from the continuance as well?

Interviewee: Absolutely.

How to Solve Problems

In all five offices, three solutions consistently emerged for the problems faced by public defenders: Reform of the discovery process, which is already in progress in Virginia; additional personnel, particularly attorney positions; and updated technology to keep pace with CA technology and BWC needs (e.g., cloud technology like Evidence.com, programs required for viewing footage, etc.).



Overwhelmingly I think it's a good thing but the system's going to have to figure out how to handle it. Because right now, at least from our perspective, we don't have the time [or] the people to absorb all this.

Discovery Reform

Particularly, jurisdictions varied in the procedures for discovery. Some jurisdictions noted that it was very easy to get what was required through an open-file policy. Thus, when BWCs were implemented, all that was required was the addition of a simple form. For others, the process is much more onerous, as the addition of BWC footage meant the CA Office was less detailed.

[Our CA Office] has always had very good discovery. They have an open-file policy and so historically, when you wanted to go look at the file you just contact the attorney and they would put it out for you and you would just look at it. And we still do that some, but with the addition of the [BWCs] they basically just created a little form.

Before [BWCs], the Commonwealth would disclose statements in discovery, you would know the statements they want to use because they were being written right there in discovery and they can't use them if they're not included in that. Now they just turn the video over. Anything is fair game that was recorded. You don't have that nice little checklist of your client made these statements. It says, "We turned over 24 videos to the defense counsel." You [have to] figure it out.

Some jurisdictions perceived their CA Office's more liberal, or open, discovery process to be rooted in a belief that, at the end of the day, it is all about achieving justice.

But I've never had a situation where they would not send it to us. I think the way that they look at it is it either isn't going to help us so we're more than welcome to have it or it is going to help us at which point they're obligated.

[The CA is required to provide via discovery] the criminal record and any statements that were made by the defendant. That's it. Generally, in principle, we get the police report anyway based on our attorney's office. Here the CA Offices are very liberal in their discovery. We get everything that they have. And part of that is because I think they operate under the philosophy that prosecutors should, and then if he's not guilty, [they] don't want to charge him.

However, the lack of consistency in discovery across the Commonwealth means that some clients receive a better defense because their public defenders receive more information or can more easily discern exculpatory material. Nearly all attorneys argued that discovery should provide them with more information, including BWC footage if available. They did not believe it should *only* be the purview of the CA to determine what is exculpatory.

Additional Attorneys

In discussions about solving the concern about not having enough time to watch the BWC video, a number of potential solutions emerged related to additional personnel. The use of paralegals and/or interns to triage video was discussed but quickly dismissed because of the expertise required to find important pieces of information that could be used in forming a defense.



At some point the only solution to watching more video is to have extra people to do it [...] because in a perfect world we'd be watching all the video.

Whoever is watching the [footage], if you're going to have someone doing triage of the video then it's got to be a lawyer because of the things that we're looking for. It's got to be someone who's experienced in trying criminal cases and knows not just obvious things that are important, but the little things that are important.

Criminal defense work and the preparation for it, requires a very specific thought process and mindset that's very different than most other things in life.

Some of the offices noted the value of someone with video editing experience. Primarily, these were offices where attorneys described significant difficulty viewing footage in the office as well as showing the footage in court (this point is in more detail below).

It would be a huge time saver [...] to have someone other than a lawyer (i.e., someone with video editing expertise). [...] The courts] want us to just edit [the] clip out and present that. I have no idea how to do that. And if you can identify, "I want this this portion clipped out," then someone else with the skills can do it. It's a lower cost—it's a cost savings when someone at a lower paygrade does that. It gives us time to do other stuff for our clients.

Updated and Consistent Technology

A consistent refrain during the focus groups was a concern about technological resources made available to public defenders. Each office has a different process of requesting, obtaining, and viewing footage, as determined by the local CA Office as well as the BWC vendor(s) and storage option(s) used by the local police department(s). Agencies with cloud-based storage that facilitates easy transfer of videos via email links (as is the case with vendors such as Axon, using Evidence.com) will have a different process than those using local storage which may require burning physical copies on DVDs or Blu-Rays. This difference in process means that some public defender's offices encounter more difficulty playing footage in the office, encountering problems like an inability to start and stop videos or files on the discs are incompatible with the video players installed on VIDC computers.



In a perfect world, we could access the Axon system just like the guy with the CA Office.

*And sometimes you can't rewind it or fast forward it. You have to watch it on a loop. You have to watch the entire loop all over again, which is extremely frustrating. You have to let it play before court, pause it, have your computer ready open on the screen and hope your laptop doesn't die, crash, logout, do *anything* [to restart the video].*

We would need equipment that's specially designed. I mean, you can't sit there and watch it normal speed. You have to, at times, speed it up and other times [watch] at normal speed. So, we would need some sort of additional equipment. I think we've got computers that are 15-20 years old.

Additionally, attorneys in multiple offices described frustration at the fact their computers often do not permit videos to show video well in court. Whereas the technology available to CAs aligns well with courtroom technology, the public defenders do not have the same setup. Some attorneys described the timestamps on their version of the video being slightly different from the timestamps on the video presented in court by the CA. This often meant they couldn't find what they needed when in court, even when they had specific points (e.g., the time at which a statement was made, the time at which a search was conducted, etc.) written down.

I've had issues with footage where our computers or software maybe don't match up with the technology in the courtroom and so [...] you try to play it on your computer and try to get it heard. I have literally held a microphone to the speaker of my computer while a video played on my computer. Whereas the prosecutors, their computer hooks up to the big TV and it's very loud and clear. It somehow makes us look unprepared. And it's not that we're unprepared we just don't have the resources.

Conclusions

Ultimately, our study finds that public defenders spend a significant amount of time watching BWC footage. Nearly every attorney agreed that, based on their interactions with CAs, they spend more time watching footage than do prosecutors. The public defender's office serves a constitutionally-mandated purpose—to provide a competent and zealous defense for all people charged with a crime. Several attorneys noted the fact that one of the driving forces behind the push for police BWCs was renewed dedication to accountability and transparency, but that cannot happen if the footage is never viewed, or discrepancies are dismissed out-of-hand.

The whole point of the body cam is for us to, you know, to go through and verify what you're saying is true.

It's becoming a big thing about how great and transparent it's making the police department, but no one is focusing on the fact that it can't be transparent unless the other side can watch it.

A key point of contention for attorneys was also the unfairness associated with resource allocation. They acknowledged the recent developments to allocate new CA positions when localities adopt BWCs, but that only helps one side of the equation.

The CA Office has gotten an influx of people and manpower to tackle this new body camera issue, whereas we have not seen any change. How is that fair?

I know that prosecutors are getting positions because of body cameras. And what we're seeing is they're not watching the [footage]. They don't feel that they need to, but our office policy is you watch them. It's unethical *not* to. You're not doing your job for your client if you're not watching them. [If someone is going to get] new positions it should be us. We're the ones who are actually watching them and bringing the information to the Commonwealth's attention.

To that point, most attorneys conceded that it was a general public perception that indigent defense is not a worthwhile taxpayer endeavor, so they want to devote minimal resources. But the inability of public defenders to fully devote equal effort to their cases presented a moral quandary.

Because everyone is guilty in the public's eye. And it's the public trough. Guilty defendants are supposed to be paying at least a little bit of money and I don't know that they do. Yeah, that's because they're indigent, but when the taxpayers look at this they think, "Well these guilty people, we're having to pay for them."

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