



11-13-2019

Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases

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Zamoff, Mitch (2019) "Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases," *Georgia Law Review*. Vol. 54: No. 1, Article 2.

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ASSESSING THE IMPACT OF POLICE BODY CAMERA EVIDENCE ON THE LITIGATION OF EXCESSIVE FORCE CASES

*Mitch Zamoff**

In the wake of several hotly debated and widely publicized shootings of civilians by police officers, calls for the increased use of body-worn cameras (bodycams) by law enforcement officers have intensified. As police departments across the country expand their use of this emergent technology, courts will increasingly be presented with video evidence from bodycams when making determinations in cases alleging the excessive use of force by the police. This Article tests the hypotheses that bodycam evidence will be dispositive in most excessive force cases and that such evidence will positively impact the way those cases are litigated and decided. In doing so, it presents the first review of the evidentiary impact of bodycams on the outcomes of excessive force cases. By compiling and evaluating the first data set of reported excessive force cases filed in the federal courts involving bodycam evidence, this Article makes several findings about how this highly anticipated evidence is affecting excessive force litigation and jurisprudence. Those findings include (1) about one-third of all bodycam videos submitted in support of defense summary judgment motions do not capture the entire incident at issue in the lawsuit; (2) whether a bodycam video is complete or partial has a profound impact on summary judgment outcomes in bodycam cases; (3) bodycam evidence improves defendants'

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likelihood of success on summary judgment in excessive force cases only if the bodycam video is complete; (4) defendants are actually more likely to prevail on summary judgment in excessive force cases without any bodycam video evidence than in cases with a partial bodycam video; and (5) summary judgment motions are filed and adjudicated more expeditiously in excessive force cases with bodycam videos (especially complete videos) than cases without bodycam evidence. These findings illustrate both the benefits and limitations of current bodycam technology, suggest the need for America's police departments to accelerate the adoption of bodycam programs and promulgate policies that will maximize the evidentiary value and accuracy of bodycam evidence, and highlight the need for continued research to inform policy and funding determinations related to the use of bodycams by law enforcement.

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I. INTRODUCTION

In the wake of several hotly debated and widely publicized shootings of civilians by police officers, tensions between the police and civilians are high—and trust in law enforcement, at least among certain communities, is low.¹ Amid the many theories about what is wrong with American law enforcement and how to make it better, there is growing consensus that outfitting police officers with body-worn cameras (bodycams) is one of the reform measures most likely to have a positive impact on the situation. While commentators have expressed concerns about the privacy implications of bodycams, the ability of police officers to manipulate bodycam evidence (for example, by selectively turning the camera on and off), and the outsized psychological impact bodycam evidence might have on a finder of fact, their concerns typically focus not on whether to deploy bodycams at all but how to regulate and optimize their use. In fact, few, if any, observers have advocated against the use of bodycams altogether since most agree that the potential benefits of bodycams outweigh the potential downsides of this emergent technology.

The projected benefits of bodycams fall principally into two categories: (1) impacting behavior—both police and civilian—on the streets; and (2) impacting the quality of evidence in court, both in criminal cases and when disputes arise between civilians and the police about the reasonableness of law enforcement conduct.²

As to the first category of expected benefits, researchers already have begun testing the predictions that bodycams will improve police and civilian behavior and community-police relations. Field studies have been conducted in police departments across the country which have generated the first data sets regarding the effects of equipping police officers with bodycams. Four of the

¹ See, e.g., Roxanne Jones, *Could This Be a Sign of Change in Police Shooting Crisis?*, CNN (Mar. 30, 2018), <https://www.cnn.com/2018/03/30/opinions/black-men-police-shootings-finding-hope-jones-opinion/index.html>; German Lopez, *Police Have to Repair Community Trust to Effectively Do Their Jobs*, VOX (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938262/police-shootings-brutality-black-on-black-crime>; David J. Thomas, *Law Enforcement Must Regain the Public's Trust*, NAT'L POLICE FOUND., <https://www.policefoundation.org/law-enforcement-must-regain-the-publics-trust> (last visited Nov. 21, 2019).

² This Article does not address the role—and potential benefits—of bodycam evidence in proving the guilt or innocence of defendants in criminal cases.

principal initial studies were conducted in Rialto, California (2012–13),³ Mesa, Arizona (2012–13),⁴ Phoenix, Arizona (2013–14),⁵ and San Diego, California (2015–17).⁶ While the results of these studies vary, they generally provide support for the propositions that equipping officers with bodycams (1) reduces the number of civilian-police interactions involving the use of force by the police and (2) decreases the number of civilian complaints against the police involving alleged excessive force.⁷ A few cross-department studies have yielded similar data.⁸ While there is more data

³ In the Rialto study, Police Chief William Farrar worked with Professor Barak Ariel of the Institute of Criminology at the University of Cambridge (UK) and Hebrew University. See Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. TIMES (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html>. During every week of the study, half of the uniformed patrol officers were randomly assigned bodycams which were activated every time an officer left his or her vehicle to interact with civilians. *Id.* The study ran from February 2012 to July 2013. *Id.*

⁴ In this study conducted by Arizona State University, the Mesa Police Department assigned fifty officers bodycams while simultaneously monitoring a control group of fifty officers who were not given cameras. MICHAEL D. WHITE, OFFICE OF JUSTICE PROGRAMS, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 17–18 (2014), https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police_Officer_Body-Worn_Cameras.pdf. The study ran from October 2012 to September 2013. *Id.*

⁵ The Phoenix study was conducted by the Phoenix Police Department in conjunction with Arizona State University for one year, beginning in April 2013. *Id.* at 18. In the Phoenix study, fifty-six officers were given bodycams for use in patrolling one precinct of the city. Howard M. Wasserman, *Recording of and by Police: The Good, the Bad, and the Ugly*, 20 J. GENDER, RACE & JUST. 543, 549 (2017).

⁶ While not formally structured as a research study, the city of San Diego released an internal report in early 2017 on the San Diego Police Department's three-year experience with bodycams. Wasserman, *supra* note 5, at 549.

⁷ For example, the Rialto study found that officers without bodycams were involved in twice as many use-of-force incidents as officers who wore bodycams. LINDSAY MILLER & JESSICA TOLIVER, POLICE EXEC. RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 5 (2014) [hereinafter COPS REPORT], <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>. The Rialto study also found an eighty-eight percent reduction in the number of citizen complaints against the police during the year after bodycam implementation. *Id.* The Mesa study found, among other things, that the officers assigned bodycams were the subject of forty percent fewer total complaints and seventy-five percent fewer use-of-force complaints than during the previous year when they were not wearing bodycams. *Id.* at 5–6.

⁸ In one study of 2,000 police officers across seven different police departments, researchers found a ninety-three percent reduction in complaints against officers wearing bodycams. Barak Ariel et al., “Contagious Accountability”: A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens’ Complaints Against the Police, 44 CRIM. JUST. & BEHAV. 293, 295, 301 (2017). To date, at least seventy pieces of peer-reviewed scholarship have discussed bodycams, with more than thirty of them investigating how bodycams impact the behavior of the police officers who wear them. Cynthia Lum et al., *Research on Body-Worn Cameras: What We Know, What We Need to*

collection and analysis to be done,⁹ the preliminary results of these empirical studies are generally encouraging.

But what about the other key projected benefit of bodycams—that their real-time video recordings of police-civilian encounters will have game-changing evidentiary value in excessive force cases? Although that hypothesis has been the source of robust debate, it has not been the subject of empirical research prior to this Article.

This Article provides the first assessment of the evidentiary impact of bodycam videos on the outcomes of excessive force cases. By comparing a group of excessive force cases without bodycam evidence to a group of excessive force cases with bodycam evidence from the same federal districts during the same period of time, this Article concludes that bodycams are already making their mark in excessive force litigation.

The cases with bodycam evidence decided to date reveal, among other things, that (1) approximately one-third of all bodycam videos submitted in support of defense summary judgment motions in excessive force cases do not capture the entire incident at issue in the lawsuit; (2) whether the bodycam video is complete or partial has a dramatic impact on summary judgment outcomes in bodycam cases, with defendants winning summary judgment motions in close to eighty percent of cases with complete bodycam videos but less than one-third of the cases with partial videos; (3) bodycam evidence improves defendants' likelihood of success on summary judgment in excessive force cases only if the video is complete; (4) defendants are actually more likely to prevail on summary judgment in excessive force cases without any bodycam video evidence than in cases with a partial bodycam video; and (5) summary judgment motions are filed and adjudicated more quickly in excessive force cases with bodycam videos (especially complete videos) than cases without bodycam evidence.

Know, 18 CRIMINOLOGY & PUB. POL'Y 93, 96–99 (2019). While the findings of these studies differ, sometimes dramatically, with respect to the impact of bodycams on officer behavior, the vast majority of the studies find that civilians file fewer complaints against officers with bodycams. *Id.* at 99–102.

⁹ Since 2015, at least nine states have authorized pilot programs or charged working groups or agencies with studying bodycams. *Nearly All States Considered Police Body Cameras in 2015, Few Enacted Laws*, FISCALNOTE (Aug. 6, 2015), <https://www.fiscalnote.com/2015/08/06/nearly-all-states-considered-police-body-cameras-in-2015-few-enacted-laws/>.

Part II of this Article discusses the emergence of bodycams as a law enforcement tool. Part III provides an overview of the public and political support for bodycams in the aftermath of several high-profile police shootings of civilians and the barriers that have prevented and continue to impede widespread adoption of bodycam programs by police departments notwithstanding this support. Part IV focuses on the evidentiary value of bodycam videos by first discussing the predicted benefits of bodycam video footage in disputes between civilians and law enforcers regarding the alleged use of excessive force in Part IV.A, and then summarizing concerns about the potential negative effects of bodycam footage in excessive force cases in Part IV.B. Part V outlines the methodology that was employed to assess the impact of bodycam evidence on the litigation of excessive force cases to date. Part VI discusses the findings of this study. Finally, Part VII suggests reforms for police bodycam programs based on the learnings from the first wave of bodycam cases, as well as further research that should be conducted as the universe of excessive force cases with bodycam evidence continues to grow.

II. BODYCAMS IN AMERICAN POLICING

Bodycams are small cameras that can be clipped onto a police officer's uniform or worn as a headset to record video and audio of law enforcement encounters with the public.¹⁰ Bodycams are unique because of their placement, which provides a real-time, first-person perspective on officer-civilian interactions. The recorded video is often saved with time and date stamps, as well as GPS coordinates.¹¹ Footage is then uploaded to external databases for secure storage.¹²

Bodycams were used by police in the United Kingdom before they were deployed in the United States.¹³ The first testing of bodycams

¹⁰ *Body-Worn Cameras*, ELECTRONIC FRONTIER FOUND. [hereinafter EFF], <https://www.eff.org/pages/body-worn-cameras> (last updated Oct. 18, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ MARTIN GOODALL, POLICE AND CRIME STANDARDS DIRECTORATE, GUIDANCE FOR THE POLICE USE OF BODY-WORN VIDEO DEVICES 6 (2007), <http://library.college.police.uk/docs/homeoffice/guidance-body-worn-devices.pdf> (discussing the commencement of police use of bodycams in the United Kingdom).

occurred on a small scale in the Devon and Cornwall police departments in 2005, with the first significant U.K. police force bodycam deployments in 2006.¹⁴ A larger bodycam study was conducted in Plymouth from October 2006 through March 2007, which ultimately led to widespread adoption of bodycams in police departments throughout the United Kingdom.¹⁵

Bodycams first started appearing in the United States in 2012 around the time when the first American bodycam study commenced in Rialto, California.¹⁶ That study led to increased awareness among U.S. police departments about the potential effectiveness of bodycams and sparked law enforcement organizations around the country to begin deploying them on the street.¹⁷ The controversial 2014 death of Michael Brown in Ferguson, Missouri, which created a national movement for police accountability, hastened the pace of adoption.¹⁸ There are now several manufacturers and vendors of bodycam technology in the United States, including COBAN, Motorola, Panasonic, Pinnacle, Utility, PRO-VISION, and Axon.¹⁹ Axon, formerly known as Taser International—which recently acquired its largest competitor, Viewu, in May of 2018—is the largest supplier of bodycams in America today.²⁰

Different bodycam models have different features—all of which may impact the quality of the videos they produce.²¹ The technology is continuing to evolve in an effort to improve, among other features,

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See WHITE, *supra* note 4, at 17.

¹⁷ See Rory Carroll, *California Police Use of Body Cameras Cuts Violence and Complaints*, GUARDIAN (Nov. 4, 2013, 12:00 PM), <https://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto>.

¹⁸ See Ray Sanchez, *Police Shootings Highlight Concerns About Body Cameras*, CNN (Aug. 4, 2016, 10:25 AM), <http://www.cnn.com/2016/08/03/us/police-body-cams/> (“The chorus for the use of body cameras gained strength nationally after the August 2014 police shooting of Michael Brown in Ferguson, Missouri.”).

¹⁹ EFF, *supra* note 10, at 4.

²⁰ *Id.*; see also Joshua Brustein, *The Biggest Police Body Cam Company Is Buying its Main Competitor*, BLOOMBERG (May 4, 2018, 10:00 AM), <https://www.bloomberg.com/news/articles/2018-05-04/the-biggest-police-body-cam-company-is-buying-its-main-competitor>.

²¹ See Hilary Romig, *In Focus: Advancements in Body Camera Technology*, OFFICER.COM (Mar. 15, 2018), <https://www.officer.com/on-the-street/body-cameras/article/20992070/body-camera-technology-advancements> (discussing developments in bodycam technology).

the camera's overall field of vision, night vision capabilities, and picture stability.²² While “[a] wider angle lens may capture more of a particular scene,” the “video may become distorted and less detailed as the lens angle increases.”²³ Technological issues are further complicated by issues of perspective.²⁴ For example, if bodycams are equipped with wider angle lenses and night vision enhancements, they may capture more of a scene than an officer is actually capable of perceiving and thus create false expectations regarding what the officer should have been able to see.²⁵ In addition to options for lenses and night vision, some bodycam models have buffering capabilities that allow the cameras to capture footage before the officer activates the camera, while others have the capacity to take still photographs.²⁶ At the same time, methods for stabilizing the images taken by the cameras continue to improve.²⁷

III. BODYCAMS IN 2020: POPULAR IN CONCEPT BUT FACING MEANINGFUL BARRIERS TO ADOPTION

In the wake of the Michael Brown shooting, prominent civil rights groups called for police departments to equip their officers with bodycams.²⁸ This initiative soon gained “overwhelming support from every stakeholder in the controversy—the public, the White House, federal legislators, police officials, [and] police unions.”²⁹ Indeed, shortly after Ferguson, a whitehouse.gov petition urging federal action to require all police officers to wear bodycams

²² *Id.*

²³ PROSECUTORS' CTR. FOR EXCELLENCE, POLICE BODY-WORN CAMERAS—WHAT PROSECUTORS NEED TO KNOW 3 (2017) [hereinafter PROSECUTORS].

²⁴ *Id.*

²⁵ *Id.* (addressing body camera technology and policy issues from a prosecutorial perspective).

²⁶ *Id.* at 3–5 (describing bodycam model features).

²⁷ See, e.g., Kristi Belcamino, *Minneapolis Police Release Body Camera Footage of Thurman Blevins Shooting*, PIONEER PRESS (July 29, 2018, 8:31 PM), <https://www.twincities.com/2018/07/29/minneapolis-police-release-blevins-body-camera-footage/> (“The department posted . . . a stabilized and analyzed video that was produced by the National Center for Audio & Video Forensics in Beverly Hills, Calif.”).

²⁸ See Howard M. Wasserman, Commentary, *Moral Panics and Body Cameras*, 92 WASH. U. L. REV. 831, 831–33 (2015) (describing civil unrest and proposed measures following the Michael Brown shooting).

²⁹ *Id.* at 832–33.

garnered more than 100,000 signatures.³⁰ And a December 2014 Pew Research poll showed that eighty-seven percent of respondents believed that bodycams are a good idea, with roughly similar numbers across racial and political lines.³¹

This bipartisan endorsement of bodycams has found support within all three branches of government. In 2014, President Obama proposed reimbursing communities half the cost of buying and storing bodycam video to promote widespread bodycam adoption—“a plan that would require Congress to authorize \$75 million over three years.”³² While this entire amount was not authorized, in 2015, the Bureau of Justice Assistance awarded \$22.5 million to state and local police departments to defray the cost of implementing bodycam programs.³³ On the legislative front, at least thirty-six state legislatures have taken action to increase the adoption of bodycams.³⁴ In the courts, consent decrees entered into by the Department of Justice and cities in pattern-or-practice civil

³⁰ Aja J. Williams, *Petition Asking Cops to Wear Body Cameras Passes 100K*, USA TODAY (Aug. 20, 2014, 12:11 PM), <https://www.usatoday.com/story/news/politics/2014/08/20/mike-brown-law-petition/14336311/>.

³¹ *Sharp Racial Divisions in Reactions to Brown, Garner Decisions: Many Blacks Expect Police-Minority Relations to Worsen*, PEW RESEARCH CTR. (Dec. 8, 2014), <https://www.people-press.org/2014/12/08/sharp-racial-divisions-in-reactions-to-brown-garner-decisions>.

³² Peter Herman & Rachel Weiner, *Issues over Police Shooting in Ferguson Lead Push for Officers and Body Cameras*, WASH. POST (Dec. 2, 2014), https://www.washingtonpost.com/local/crime/issues-over-police-shooting-in-ferguson-lead-push-for-officers-and-body-cameras/2014/12/02/dedcb2d8-7a58-11e4-84d4-7c896b90abdc_story.html?utm_term=.205a1c0ac4ad.

³³ *Body-Worn Camera Laws Database*, NAT'L CONF. OF ST. LEGISLATORS (Feb. 28, 2018), <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>.

³⁴ Brian Heaton, *Body-Worn Camera Legislation Spikes in State Legislatures*, GOV'T TECH. (June 1, 2015), <http://www.govtech.com/Body-Worn-Camera-Legislation-Spikes-in-State-Legislatures.html>; *see also* Camera Authorization and Maintenance Act of 2014, H.R. 5865, 113th Cong. (2014) (attempting to create a federal grant program for purchasing and maintaining bodycam systems); H.B. 474, 84th Leg., Reg. Sess. (Tex. 2015) (requiring state law enforcement officers to wear bodycams and create a grant program for their acquisition); H.B. 455, 84th Leg., Reg. Sess. (Tex. 2015) (attempting to require and regulate bodycam use by state law enforcement); H.B. 2393, 2015 Gen. Assemb., Reg. Sess. (Va. 2015) (requiring all law enforcement officers to wear bodycams and adopting policies regulating their use); H.B. 2280, 2015 Gen. Assemb., Reg. Sess. (Va. 2015) (requiring all law enforcement officers to wear bodycams and adopting policies regulating their use); H.B. 1534, 2015 Gen. Assemb., Reg. Sess. (Va. 2015) (requiring Superintendent of State Police to implement a body-worn camera program statewide and directing the Attorney General to maintain a statewide database of the recordings); H.B. 1521, 2015 Gen. Assemb., Reg. Sess. (Va. 2015) (requiring law enforcement entities that employ more than 100 officers to use bodycams).

actions have required the establishment of comprehensive bodycam programs.³⁵ Additionally, judges in individual cases have embraced the idea that bodycams “should . . . alleviate some of the mistrust that has developed between the police and the black and Hispanic communities.”³⁶

All of this momentum has led to the implementation of bodycam programs in police departments across the United States, primarily in major cities. For example, the New York City Police Department, Los Angeles Police Department, and the Metropolitan Police Department of the District of Columbia all have launched substantial bodycam programs.³⁷ According to the Leadership Conference on Civil and Human Rights, as of November 2017, sixty-two of sixty-nine police departments in major cities had some type of bodycam program in place.³⁸ However, those programs differ substantially in terms of coverage; having a bodycam “program” definitely does not mean that all officers wear bodycams all the time.³⁹

In fact, there are substantial barriers to entry that have prevented several major urban police departments from equipping all their officers with bodycams and that have kept many other police forces from adopting any bodycam program at all. These

³⁵ “Pattern-or-practice” litigation, in the realm of policing, centers on a claim that a police department has “systemically engaged in discriminatory activities.” *Pattern or Practice Case*, BLACK’S LAW DICTIONARY (10th ed. 2014). To succeed in a pattern-or-practice case generally, the plaintiff must show a pattern of discrimination on the part of the police department. *Id.* If alleging official complicity in discriminatory acts, the plaintiff must show “consistent failure to respond to complaints or implement corrective measures.” *Id.*

³⁶ *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013). In *Floyd*, Judge Shira Scheindlin rejected the stop-and-frisk policies of the New York City Police Department and suggested improvements to those policies. *Id.* To ensure compliance, she suggested, among other things, that patrol officers be required to wear bodycams. *Id.*; see also Milton Heumann et al., *In the Eyes of the Law: The Effects of Body-Worn Cameras on Police Behavior, Citizen Interactions, and Privacy*, 54 CRIM. L. BULL. 584, 585 (2018) (discussing Judge Scheindlin’s suggestion to require bodycams).

³⁷ Herman & Weiner, *supra* note 32.

³⁸ *Police Body Worn Cameras: A Policy Scorecard*, LEADERSHIP CONF. ON CIVIL & HUM. RIGHTS & UPTURN (2017) [hereinafter BWC SCORECARD], <https://www.bwcorescorecard.org>.

³⁹ A 2015 national survey from the Major Cities Chiefs and Major Counties Sheriffs found that only about nineteen percent of bodycam programs were “fully operational.” LAFAYETTE GRP., MAJOR CITIES CHIEFS AND MAJOR COUNTY SHERIFFS, SURVEY OF TECHNOLOGY NEEDS—BODY WORN CAMERAS 6–9 (2015) [hereinafter MAJOR CHIEFS AND SHERIFFS SURVEY], <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rvnT.EAJQwK4/v0> (explaining that of the programs that have implemented bodycams, almost half of the officers reported capturing video for three hours or less per day).

barriers include not only the cost of the equipment but the cost of storing vast quantities of bodycam data, as well as a lack of sufficient technological capacity within many police departments.⁴⁰ As of 2016, only about one-third of the nation's 18,000 local and state police departments—most of which are small and medium-sized—were using bodycams.⁴¹ While there are some federal and local bodycam funding initiatives, as well as financial incentives offered by certain bodycam manufacturers to use their models,⁴² the start-up cost of outfitting a force with bodycams is daunting for cash-strapped departments.⁴³ According to the Council on Law Enforcement and Reinvention, cameras alone can cost from \$150 to \$1,000, and docking stations range from \$500 to \$3,000.⁴⁴ Data storage entails additional costs, “either in the form of subscription fees for cloud services, or an up-front purchase of additional equipment, and ongoing payments for staff and maintenance of storage systems.”⁴⁵ The costs of storing and transmitting the data collected by bodycams “can be particularly staggering: some departments have already spent hundreds of thousands or even millions of dollars managing their data.”⁴⁶

The cost and expertise required to store bodycam videos and develop and maintain a sufficient IT infrastructure to support a bodycam program are significant—even for the nation’s largest and

⁴⁰ See, e.g., Kimberly Kindy, *Some U.S. Police Departments Dump Body-Camera Programs Amid High Costs*, WASH. POST (Jan. 21, 2019), https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fcc9e4_story.html (describing the prohibitive costs of storing and collecting data from bodycams).

⁴¹ Josh Sanburn, *Storing Body Cam Data Is the Next Big Challenge for Police*, TIME (Jan. 25, 2016), <http://time.com/4180889/police-body-cameras-viewu-taser>.

⁴² Most manufacturer discounts on bodycam equipment are bundled with a requirement that the law enforcement agency contract with the manufacturer to handle data storage—the cost of which, as discussed herein, is prohibitive. See Jackie Wattles, *This Company Is Offering Body Cameras to Every Cop in the U.S.*, CNN MONEY (Apr. 5, 2017, 3:04 PM), <https://money.cnn.com/2017/04/05/technology/police-body-camera-taser-international-axon/index.html>.

⁴³ See *Developments in the Law—Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1809 (2015) [hereinafter *Considering Police Body Cameras*] (discussing the opportunities and drawbacks of police bodycam programs).

⁴⁴ PROSECUTORS, *supra* note 23, at 10 (citing Tod Newcombe, *For the Record: Understanding the Technology Behind Body Worn Cameras*, 2015 DIGITAL COMMUNITIES 29, 38 (2015)).

⁴⁵ *Id.*

⁴⁶ *Considering Police Body Cameras*, *supra* note 43, at 1809.

best resourced departments.⁴⁷ In fact, as of 2015, nearly seventy percent of major urban police departments “recognized a need to expand and improve their current IT infrastructure to fully support [bodycams],” specifically identifying technology gaps such as “a lack of data storage capacity, inadequate network or bandwidth capability, and inadequate wireless capacity.”⁴⁸ Major city police departments generate thousands of hours of video each week.⁴⁹ Indeed, data storage costs often account for the majority of bodycam programs’ total cost and represent a formidable barrier to the implementation of bodycam programs—especially for small and medium-sized police departments.⁵⁰

IV. PREDICTIONS ABOUT THE IMPACT OF BODYCAM EVIDENCE IN COURT

Having reviewed the emergence of bodycams as a law enforcement tool in the United States, and having outlined the widespread support for the increased use of bodycams along with the barriers to implementation of bodycam programs, this Article now turns to its principal focus—the evidentiary value of bodycam videos in excessive force cases. Section A describes the potential benefits of bodycam video evidence, such as an objective, and often-dispositive, account of the events giving rise to the lawsuit. Section B then considers the potential negative effects of bodycam evidence, such as the risk that increased reliance on bodycam video

⁴⁷ See Heumann et al., *supra* note 36, at 603 (“The costs of BWC programs is often the major sticking point for policymakers both in government and within law enforcement departments. Costs such as initial hardware, continued storage, and personnel to maintain the equipment and train those using it can quickly add up. Other potential costs involve citizen requests to view video footage, especially when redaction is involved . . .”).

⁴⁸ MAJOR CHIEFS AND SHERIFFS SURVEY, *supra* note 39, at 3.

⁴⁹ Sanburn, *supra* note 41. For example, the Seattle Police Department expects its bodycam program—which will equip less than half of its officers with cameras—to generate 220,000 hours of footage each year. Heumann et al., *supra* note 36, at 604.

⁵⁰ Private cloud-based systems appear to be the future of bodycam data storage because of the low capacity of local storage systems. PROSECUTORS, *supra* note 23, at 29. They offer the efficiency and scalability necessary to handle the large quantities of data generated by bodycams. *Id.* However, cloud-based systems also present significant challenges and concerns. In addition to the hefty up-front cost that deters many departments from using them, they also raise questions about security vulnerability and confidentiality, as they are stored in private facilities not directly overseen by a law enforcement agency. *Id.*

evidence may skew outcomes due to the technology's limits. These shortcomings include bodycams' limited field of vision and the fact that videos are exclusively filmed from the perspective of the defendant-officer. Section C outlines key unanswered questions regarding the impact of bodycam evidence in excessive force cases that arise out of the predictions about bodycam evidence—both positive and negative—that have been made to date.

A. THE PROPONENTS: BODYCAM EVIDENCE—WHICH SHOULD BE DISPOSITIVE IN MANY CASES—WILL POSITIVELY IMPACT LITIGATION AND DECISION-MAKING IN EXCESSIVE FORCE CASES

As set forth below, bodycam advocates have theorized that the adoption of bodycams will improve the litigation and adjudication of excessive force claims by providing objective, often-dispositive evidence that will lead to more accurate outcomes and more efficient proceedings. When determining whether a police officer has violated a civilian's Fourth Amendment right to be free of unreasonable seizures, the threshold question is whether that officer used a reasonable amount of force.⁵¹ If the use of force is determined to be reasonable, “the possibility of criminal or civil liability is foreclosed.”⁵² Bodycams will supply especially probative evidence, observers predict, since they capture the perspective that is supposed to be outcome determinative as a matter of law: the perspective of the police officer.⁵³ This is because “[t]he calculus of

⁵¹ See *Graham v. Connor*, 490 U.S. 386, 397 (1989) (“[T]he question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”).

⁵² Kami Chavis Simmons, *Body-Mounted Police Cameras: A Primer on Police Accountability vs. Privacy*, 58 *How. L.J.* 881, 885 (2015) (discussing the potential impact of body cameras on the scrutiny of police misconduct).

⁵³ See *Graham*, 490 U.S. at 396 (“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (citing *Terry v. Ohio*, 392 U.S. 1, 20–22 (1968))); see also *id.* at 396–97 (“Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, . . . violates the Fourth Amendment.” (citations omitted)); Alberto R. Gonzales & Donald Q. Cochran, *Police-Worn Body Cameras: An Antidote to the “Ferguson Effect?”*, 82 *MO. L. REV.* 299, 320 (2017) (“[C]ourt determinations . . . involving allegations of excessive force are judged from the perspective of a reasonable officer on the scene . . .”). Even if a court decides that a reasonable jury could find that the police defendants employed greater force than was reasonably necessary under the *Graham* framework, the defendants are still entitled to summary judgment pursuant to the doctrine of qualified immunity if their conduct did not “violate clearly established statutory or constitutional rights of which a reasonable

reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”⁵⁴

Whether the force is reasonable from the officer’s perspective can implicate numerous factors, such as the immediacy of the threat to the officer, the actions and demeanor of the subject, the proximity of weapons, and the extent to which the subject is restrained or has the ability and opportunity to escape.⁵⁵ Since it is difficult for judges and juries to apply these “fact-intensive standards in a context where the stories of police and suspects often differ,”⁵⁶ scholars and commentators have forecasted that bodycam evidence will result in “more accurate findings” in excessive force cases as video evidence displaces “a credibility determination as between the complainant and one or more of the officers involved.”⁵⁷

The potential of bodycam evidence from a litigation perspective is exciting. If a bodycam video of a police encounter can truly rise above the fray of competing witness testimony—inevitably fraught with self-interest, emotion, and all the frailties of memory and

person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (discussing the conditions under which qualified immunity may protect government officials)). An objective standard of reasonableness is also used to determine whether the defendants are entitled to qualified immunity. *See Graham*, 490 U.S. at 399 n.12 (citing *Anderson v. Creighton*, 483 U.S. 635 (1987) (discussing the importance of an officer’s good faith in raising a qualified immunity defense)). Qualified immunity is intended to give government officials “breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Nonetheless, if there is a material dispute as to the “facts and circumstances within an officer’s knowledge” or “what the officer and the claimant did or failed to do,” summary judgment on the issue of qualified immunity is not appropriate. *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993).

⁵⁴ *Graham*, 490 U.S. at 396–97 (discussing the determination of reasonable force).

⁵⁵ *Id.* at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985) (discussing the factors that contribute to a determination of the reasonableness of police force)).

⁵⁶ Mary D. Fan, *Hacking Qualified Immunity: Camera Power and Civil Rights Settlements*, 8 ALA. C.R. & C.L. L. REV. 51, 62 (2017) (discussing the benefits of body cameras in civil rights cases).

⁵⁷ *Considering Police Body Cameras*, *supra* note 43, at 1801–02 (quoting POLICE COMPLAINTS BD., ENHANCING POLICE ACCOUNTABILITY THROUGH AN EFFECTIVE ON-BODY CAMERA PROGRAM FOR MPD OFFICERS 3 (2014)) (discussing the evidentiary benefits of police body cameras).

perception—and reflect the unvarnished truth about what actually occurred on the street, it will be a game-changer. Thus, some have envisioned a stream of bodycam videos entering the sea of excessive force litigation and providing factfinders with a unique kind of high-impact evidence that is “inherently less biased and more reliable than an eyewitness[;]”⁵⁸ that will “eliminate issues of credibility or at least show one objective view of the event that reasonable jurors could interpret[;]”⁵⁹ that offers an objective “check[] [on] the fallibility of human perception, providing a means for the factfinder to replay, perceive, and decide on events, free of the adverseness, passion, and partisanship attached to witness testimony, especially from parties[;]”⁶⁰ and that “easily and quickly [will] resolve most cases without the hassle of the ‘he said, she said’ debate that is often a central feature of the American adversarial system.”⁶¹

Bodycam proponents also tout the potential for the technology to reduce the overall amount of excessive force litigation. They argue that definitive video recordings of disputed encounters will dissuade some prospective plaintiffs from filing lawsuits and prompt some defendants to quickly settle cases that do not appear defensible.⁶² For excessive force cases that are litigated, commentators have predicted that bodycam evidence will “greatly increase the efficiency” of adjudicating those lawsuits as courts gain “[t]he ability to watch an encounter as it happened, rather than merely hearing secondhand accounts of the incident that may not even be accurate.”⁶³ In theory, this evidential “trump card” could save the parties in excessive force lawsuits significant time and money in the discovery phase of the lawsuit, as the need for depositions and document discovery would be greatly reduced by the existence of a

⁵⁸ Gonzales & Cochran, *supra* note 53, at 312.

⁵⁹ Kami N. Chavis, *Body Worn Cameras: Exploring the Unintentional Consequences of Technological Advances and Ensuring a Role for Community Consultation*, 51 WAKE FOREST L. REV. 985, 992 (2016) (exploring the risks and benefits associated with body-worn cameras).

⁶⁰ Wasserman, *supra* note 5, at 551.

⁶¹ Iesha S. Nunes, Note, “*Hands Up, Don’t Shoot*”: *Police Misconduct and the Need for Body Cameras*, 67 FLA. L. REV. 1811, 1832 (2015) (arguing that police bodycams will help protect unarmed victims).

⁶² See, e.g., Wasserman, *supra* note 5, at 543 (“Video evidence will reduce citizen complaints, produce less constitutional litigation and greater accuracy in any litigation that does result, and better prove accurate claims and disprove false claims.”).

⁶³ Nunes, *supra* note 61, at 1832.

video record of the event. Also, judges would no longer need to pore over extensive deposition testimony and documents as they decide excessive force cases on summary judgment—they can just watch the tape.⁶⁴

B. THE SKEPTICS: BEWARE OF BODYCAM EVIDENCE

The predictions regarding the evidentiary impact of bodycam footage in excessive force disputes have not been uniformly optimistic, however. While almost all commentators acknowledge that bodycam videos would likely add value in certain scenarios, several have expressed concern not only that bodycam footage is unlikely to be an evidentiary panacea for excessive force cases but that bodycam evidence has certain characteristics that could actually skew the outcomes of excessive force disputes in unintended ways. Some have predicted that a court's consideration of bodycam video—which is always filmed from the perspective of the police officer—will provide police defendants with an “appreciable advantage” in excessive force litigation.⁶⁵ Others have forecasted that bodycam evidence will distort the factfinder's perspective on the relevant events since a bodycam recording “can never truly be comprehensive[;]” that is, it may fail to show relevant events or conditions outside the coverage of the lens that may have influenced an officer's decision.⁶⁶ Another concern is that bodycam

⁶⁴ See *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (holding that the existence of video evidence overrides competing and contradictory testimony of the parties, because the video creates a clear record and removes any genuine dispute as to material facts—courts should view any disputed facts “in the light depicted by the videotape”).

⁶⁵ See Caren Myers Morrison, *Body Camera Obscura: The Semiotics of Police Video*, 54 AM. CRIM. L. REV. 791, 795, 817 (2017) (“For a judge or juror trying to determine whether the ‘protagonist’ acted reasonably, the perspective of police video puts at least a thumb on the scale toward sympathy for the officer. We are threatened by the suspect; we are chasing the running man; we are jostled and surprised by sudden violence. The factfinder, then, is asked not only to evaluate whether the action was reasonable but also to evaluate it from a police perspective that the video invites her to share.”); see also *Considering Police Body Cameras*, *supra* note 43, at 1813 (“This sort of distortion is especially concerning given that body-camera footage will always be filmed from the perspective of the officer, making it easier for a jury to credit this perspective.”).

⁶⁶ *Gonzales & Cochran*, *supra* note 53, at 320; see also *Considering Police Body Cameras*, *supra* note 43, at 1813 (“Even with body cameras rolling at all times, though, the picture may not capture either ‘what happened outside the camera’s view or the causation for actions shown . . . depend[ing] on ‘the camera’s perspective (angles) and breadth of view (wide shots and focus).’”); Wasserman, *supra* note 5, at 552 (“But the closeness of the body camera may

evidence will be so emotionally compelling that it will render “factfinders vulnerable to a host of biases, including naïve realism, or the belief that what one sees is the uncontroverted truth; the inability to recognize the role of subjectivity; the fragmentation of perspective; and identification bias.”⁶⁷ Several observers have pointed out that the inferences that judges and juries will have to make about video evidence that is inherently ambiguous will reflect their implicit biases about race, gender, and other characteristics.⁶⁸

limit the amount of information shown, thereby limiting what story a viewer can see in the video. The camera shows what the officer saw at close range, not the entire scene.”) A related concern is that there is no guarantee the officer actually absorbed everything captured on film; the officer may have been focused on one particular movement or been distracted and turned his eyes away from the scene captured by the body camera. See Howard M. Wasserman, *Orwell’s Vision: Video and the Future of Civil Rights Enforcement*, 68 MD. L. REV. 600, 619–20 (2009) (discussing the inherent limitations of bodycam recordings).

⁶⁷ Morrison, *supra* note 65, at 796.

⁶⁸ See *Considering Police Body Cameras*, *supra* note 43, at 1813–14 (discussing how “implicit biases may subtly affect how viewers . . . process the story told by body-camera footage”); Gonzales & Cochran, *supra* note 53, at 320 (noting the interpretation problems plaguing court determinations of body camera evidence); Wasserman, *supra* note 5, at 553 (arguing that “[c]ultural, demographic, social, political, and ideological characteristics and attitudes of the viewer affect what the viewer sees”). To illustrate this point, Professor Dan Kahan conducted an empirical study using the dashboard camera video in the case of *Scott v. Harris* that eight members of the U.S. Supreme Court found to be unambiguous. Gonzales & Cochran, *supra* note 53, at 311–12 (citing *Scott*, 550 U.S. at 380–81). This case involved a civil excessive force suit against a deputy sheriff brought by a motorist who was left paralyzed when the car he was driving was rammed during a high-speed chase. *Scott*, 550 U.S. at 374–75. Kahan’s researchers found that when they allowed the video to “speak for itself”—as the Court encouraged readers of its opinion to do—“what it says depends on to whom it is speaking.” Gonzales & Cochran, *supra* note 53, at 312. As Kahan observed:

Whites and African Americans, high-wage earners and low-wage earners, Northeasterners and Southerners and Westerners, liberals and conservatives, Republicans and Democrats—all varied significantly in their perceptions of the risk that Harris posed, of the risk the police created by deciding to pursue him, and of the need to use deadly force against Harris in the interest of reducing public risk.

Id. (quoting Dan M. Kahan et al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 903 (2009)); see also Nicole E. Negowetti, *Judicial Decisionmaking, Empathy, and the Limits of Perception*, 47 AKRON L. REV. 693, 696 (2014) (“[A]s recent studies have demonstrated, even highly qualified judges inevitably rely on cognitive decisionmaking processes that can produce systematic errors in judgment Indeed, judges, like everyone else, are the product of their race, ethnicity, nationality, socioeconomic status, gender, sexuality, religion, and ideology. Ideally, judges reach their decisions utilizing facts, evidence, and highly constrained legal criteria, while putting aside personal biases, attitudes, emotions, and other individuating factors. However, this ideal does not coincide with the findings of behavioral scientists, whose research has shown that the human mind is a complex mechanism, and regardless of conscious or avowed

And still others have wondered whether the absence of bodycam evidence will disproportionately impact excessive force litigation in light of the public's growing awareness that bodycam footage is available in other situations.⁶⁹

C. TESTING THE PREDICTIONS ABOUT BODYCAM EVIDENCE IN EXCESSIVE FORCE LITIGATION

These competing commentaries and theories suggest a list of questions susceptible to empirical research that will help all stakeholders assess not only the evidentiary value of bodycam videos but also their broader impact on the litigation of excessive force claims. A non-exhaustive list of these questions includes the following:

- How often do defendants prevail on summary judgment motions in cases with bodycam evidence?
- Are defendants more likely to prevail on summary judgment in cases with bodycam evidence than in cases without such evidence?
- In cases with bodycam evidence, how often does the bodycam video capture the entire incident that gave rise to the excessive force lawsuit?
- Is a defendant's likelihood of success on summary judgment impacted by whether a bodycam video is complete or partial? If so, how significant is the impact?
- Does the existence of even partial bodycam footage increase a defendant's odds of prevailing on summary judgment?
- Does the nature of the plaintiff's encounter with the police have a greater impact on the outcome of bodycam cases as opposed to non-bodycam cases?

biases and prejudices, most people, no matter how well educated or personally committed to impartiality, harbor some unconscious or implicit biases." (footnotes omitted).

⁶⁹ *Considering Police Body Cameras*, *supra* note 43, at 1803 (discussing potential implications of public awareness and expectations of body camera footage).

- Are courts able to resolve cases with bodycam evidence more efficiently than non-bodycam cases?⁷⁰

The answers to these questions are critically important, not just for litigants, counsel, judges, and the court system but for law enforcers, civil rights advocates, and society as a whole. The answers will help inform decisions about whether to increase the funding for bodycam programs and whether to allocate existing funds to the purchase of bodycams.

Moreover, those in law enforcement who may be resistant to the adoption of bodycams, whether because of their cost or skepticism about their value,⁷¹ might be interested in data suggesting that bodycams meaningfully reduce excessive force claims or result in outcomes that favor police defendants, or both. And if factfinders expect that there will be bodycam video of police encounters with civilians—and, as a result, police defendants are prejudiced when they cannot produce such footage—that might also motivate law enforcement agencies to put more bodycams on the streets.

The data also will help inform police departments about how to implement their bodycam programs to maximize the evidentiary

⁷⁰ Theoretically, although two excessive force cases (one with and one without bodycam evidence) might both result in an award of summary judgment to the police defendants, the summary judgment motion in the case with bodycam evidence might be filed and adjudicated earlier (perhaps much earlier) than the motion in the case with no bodycam evidence because there is no need for the parties to engage in extensive discovery or the court to wade through a substantial evidentiary record in the bodycam case.

⁷¹ In the Mesa bodycam study, a survey of police officers found that only twenty-three percent thought that the department should adopt a bodycam program, and fewer than half believed that other officers would welcome the presence of a bodycam at a scene. WHITE, *supra* note 4, at 21 n.10. In the Phoenix study, most officers' attitudes were either ambivalent or negative regarding bodycams. *Id.* at 21. In a survey of more than two hundred Los Angeles Police Department officers conducted in August 2015, approximately two-thirds thought bodycams would be a distraction, half thought bodycams would be an invasion of their privacy, and fewer than ten percent thought bodycams would reduce the amount of time spent on paperwork. Gonzales & Cochran, *supra* note 53, at 325 (citing Craig Uchida, President, Justice & Security Strategies, Inc., Body-Worn Cameras Statewide Symposium (June 23, 2016)). And the New York Police Department's leadership and police union have voiced opposition to requirements that officers wear body cameras. See Larry Celona, *NYPD in a 'Snap' Judgment: PBA and Brass Resist Order to Carry Cameras*, N.Y. POST (Aug. 14, 2013), <https://nypost.com/2013/08/14/nypd-in-a-snap-judgment-pba-and-brass-resist-order-to-carry-cameras/> (outlining police dissatisfaction with new body camera rules). *But see* Gonzales & Cochran, *supra* note 53, at 325 (observing that some police officers and departments have begun to embrace bodycams based on a study finding that "officers' attitudes toward the cameras improved significantly after wearing them for three months").

value of the video evidence they generate.⁷² Technological advances could be stimulated if the data were to show that the limited perspective offered by today's bodycam models precludes bodycam videos from being the dispositive piece of evidence that some predicted they would become. Efficiencies throughout the judicial system likely would arise out of data that would enable litigants and counsel to predict with a higher degree of certainty which excessive force cases were likely to be the subject of defense summary judgment awards rather than trials. And to the extent that bodycams are causing excessive force jurisprudence to evolve in unhelpful ways (or not to evolve enough), legal scholars and stakeholders will be able to draw upon empirical evidence—rather than mere speculation—in crafting their proposals for change.

V. METHODOLOGY

This Article represents the first attempt to assess the evidentiary impact of bodycams on the outcomes of excessive force cases. By compiling and analyzing the first data set of reported summary judgment decisions in excessive force cases filed in the federal courts involving bodycam evidence, as well as a comparison group of excessive force cases from the same districts during the same time frame that do not involve bodycam evidence, preliminary determinations can be made about how this highly anticipated evidence is affecting excessive force litigation and jurisprudence. The data provide a preliminary verdict on some of the predicted benefits and drawbacks of bodycam evidence in excessive force litigation.

Before delving into the methodology of this study of summary judgment outcomes and decisions, however, it is important to highlight the ways in which bodycams are likely having a positive impact on the litigation of excessive force cases that are not captured here. To do so, it is useful to think about actual or potential excessive force claims in three categories: (1) meritless claims that should not be pursued (Category One); (2) meritorious claims that

⁷² For example, the data might show that courts are more likely to rule for the police on summary judgment based on bodycam evidence where the officers adhered to a policy that limited their discretion with respect to when to turn the camera on and off.

should be settled by the defense (Category Two); and (3) claims that are neither clearly meritless nor clearly meritorious (Category Three).

It seems indisputable that bodycam evidence is useful in identifying cases that belong in Category One. Prior to the advent of bodycams, plaintiff's counsel assessing a potential excessive force claim would typically have had to rely upon the plaintiff's version of events—together with evidence of any injuries suffered by the plaintiff and any other witness accounts of the incident—to decide whether to file an excessive force lawsuit. As a matter of discovery, whether formal or informal,⁷³ the most persuasive evidence the police could offer was testimony and reports of the officers on the scene (possibly supplemented by audio recordings of police calls and radio communications), which most plaintiffs and their counsel would discount as self-interested. As a result, it was difficult to convince a plaintiff or his counsel that the case was meritless. But bodycam-generated videos inject more objective evidence into the Category One triaging process. Now that potential or actual Section 1983 plaintiffs and their lawyers can actually see the encounter at issue on video, they can make more informed decisions about whether to pursue their claims. It seems obvious that, over time, bodycam videos will increase the number of Category One cases—those that should be abandoned in the interest of conserving time and resources, not to mention complying with Rule 11.⁷⁴ The early and accurate identification of Category One cases benefits the justice system as a whole, not only by reducing costs and focusing the courts on cases with potential merit but by reducing the risk that a defendant will be on the wrong side of an unjust verdict. Thus, while it would be extremely difficult to measure the number of potential excessive force claims that are not filed—or, if filed,

⁷³ As an example, informal discovery might take place prior to the formal discovery process if a police department was willing to proactively share a bodycam video with a plaintiff's attorney in advance of the filing of a lawsuit, or in the early stages of a lawsuit, in an effort to dissuade the plaintiff from bringing or pursuing the action.

⁷⁴ By filing an excessive force complaint in federal court, the plaintiff and his or her counsel certify that, to the best of their knowledge, after conducting an inquiry "reasonable under the circumstances," the factual allegations in the complaint "have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." FED. R. CIV. P. 11(b)(3).

dismissed or settled for a *de minimis* amount—because of bodycam videos, these videos certainly should add value in the Category One context.

It also seems beyond dispute that bodycam videos will help defendants in excessive force cases identify cases that belong in Category Two. Without a video of the encounter at the heart of an excessive force claim, law enforcement agencies and their counsel typically have little choice but to take the word of the officers involved. Just like plaintiffs, some officers may not be able to accurately recall—or recall at all—what happened during a police-civilian encounter that likely took place under stressful circumstances. And some officers (like some plaintiffs) may shade the truth or simply lie about what happened. The availability of a bodycam video provides defendants and defense counsel, like plaintiffs and plaintiffs' counsel, with a case evaluation tool containing a built-in lie detector that is free from the infirmities of human memory. While it is challenging to quantify how many actual or potential excessive force claims have been or will be settled because the defense determined that the case was not defensible (or should not be defended) based upon its review of a bodycam video, there is little doubt that bodycam videos will be useful as defendants and their lawyers decide whether to place excessive force cases into Category Two.

This study is about the cases in Category Three. These are the closer cases where both sides—after reviewing a bodycam video documenting all or part of the allegedly unconstitutional police encounter—believe they can win the case, or at least prevail on summary judgment. Category Three cases are the most interesting to study in terms of assessing the impact of bodycam evidence because they are not as clear cut as the cases in Categories One and Two. The factfinder's reaction to bodycam video footage does not matter so much in Categories One and Two—since those cases will either be settled, abandoned, or never filed—but it matters profoundly in Category Three. These are also the cases that will be the first to make law and set precedent in the bodycam era in the wake of the Supreme Court's direction that district courts should view disputed facts “in the light depicted by the videotape” when deciding summary judgment motions based on video evidence, rather than viewing the facts in the light most favorable to the

non-moving party.⁷⁵ This is because where a videotape provides an indisputable record of the material facts relevant to an excessive force claim, the Supreme Court has held that the non-moving party's inconsistent contentions do not create "genuine" disputes of fact.⁷⁶

Turning now to the methodology used to collect the data analyzed in this Article, Section A describes how the data set was defined. Section B provides an overview of the bodycam cases that were analyzed, while Section C describes the group of non-bodycam cases which were evaluated for comparative purposes. Finally, Section D describes the process for data collection and analysis.

A. BASIC PARAMETERS

This Article is based on an analysis of (1) all published federal summary judgment decisions in excessive force lawsuits filed under 42 U.S.C. § 1983 involving bodycam evidence that were decided on or before December 31, 2018;⁷⁷ and (2) an identically sized set of summary judgment decisions during the same time frame from the same federal district courts in Section 1983 excessive force cases, but with no bodycam evidence.⁷⁸ The study excludes *pro se* prisoner cases relating to incidents that allegedly occurred while the plaintiffs were incarcerated.⁷⁹ The study treats partial summary awards as two decisions rather than one since by granting partial

⁷⁵ See *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (holding that the district court should have disregarded the non-moving party's version of the facts in light of clear video evidence to the contrary and instead "viewed the facts in the light depicted by the videotape"); see also *Herschel v. Watts*, No. 1:17-cv-02828-JMS-MJD, 2018 WL 5044682, at *2 (S.D. Ind. Oct. 17, 2018) ("A significant twist on the normal standard of review is at play here: when the record evidence includes a videotape of the relevant events, the Court should not adopt the non-movant's version of the facts when that version contradicts what is depicted on the videotape.").

⁷⁶ *Scott*, 550 U.S. at 380.

⁷⁷ As discussed in Sections V.A.1–2, most excessive force actions are filed pursuant to Section 1983 and litigated in federal court.

⁷⁸ A more robust discussion of the methodology that was used for selecting the comparison group cases is contained in Section V.C.

⁷⁹ Excessive force cases filed by *pro se* prisoners regarding alleged incidents during their term of incarceration were excluded from the study as these cases usually involve Eighth Amendment issues and are likely to be found meritless at a higher rate than other excessive force claims.

summary judgment the court has ruled both for and against the movant.⁸⁰

1. Section 1983 Is the Primary Vehicle for Asserting Excessive Force Claims Against the Police.

Originally known as Section 1 of the Ku Klux Klan Act of 1871, Section 1983 was enacted to provide a neutral forum for citizens, primarily freed slaves, to file grievances against state officials who failed to enforce the law or deprived citizens of their constitutionally guaranteed rights.⁸¹ In the fifty years following the passage of the Ku Klux Klan Act, however, only twenty-one cases were decided under what would become Section 1983.⁸² The volume of Section 1983 litigation began to slowly increase around 1939 when the Justice Department established a civil rights section and started prosecuting both lynch mob and police brutality cases.⁸³ Then, in 1961, the Supreme Court decided *Monroe v. Pape*, which is widely viewed as the starting point for modern-day Section 1983 litigation.⁸⁴ The reach of Section 1983 was further enlarged and clarified in a series of landmark Supreme Court decisions in the ensuing decades, including *Monell v. Department of Social Services of the City of New York* and *Tennessee v. Garner*.⁸⁵

⁸⁰ Prior summary judgment studies that treat any partial summary judgment award the same as a complete summary judgment award are flawed. As an initial matter, a partial summary judgment award may simply represent a compromise adjudication which, without further detail, does not indicate much about how the court feels about the overall merits of the plaintiff's case. Moreover, the plaintiff whose case continues to trial often does not view a partial summary judgment award as defeat (depending, of course, on which claims and defendants remain in the case), and the defendant who prevailed on only part of the plaintiff's case as a matter of summary judgment likely does not view the partial summary judgment award as a victory (unless the parts of the complaint that remain viable are of limited value). At least in the world of excessive force litigation, it seems more consistent with the experience of litigants to treat partial summary judgment awards both as defense victories, as to the claims and defendants eliminated by the partial summary judgment award, and as defense losses as to the claims and defendants that remain alive for trial.

⁸¹ See H.R. REP. NO. 96-548, at 1 (1979) (stating that Section 1983 provides a federal forum for the redress of civil rights violations).

⁸² Avidan Y. Cover, *Reconstructing the Right Against Excessive Force*, 68 FLA. L. REV. 1773, 1781 (2016).

⁸³ *Id.* at 1782.

⁸⁴ See *Monroe v. Pape*, 365 U.S. 167, 187 (1961) (finding that plaintiffs had a viable cause of action against state and local officers under Section 1983 for constitutional violations).

⁸⁵ See *Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985) (modifying the common law rule that permitted the use of deadly force against a fleeing felon and holding that the felon must pose a significant threat to the officer or others for the use of deadly force to be constitutional);

Today, it is accepted that Section 1983 is the primary vehicle for plaintiffs to sue state actors for violations of the Fourth, Eighth, and Fourteenth Amendments.⁸⁶ As such, the statute has become the principal mechanism for parties to bring excessive force claims against the police.⁸⁷ Furthermore, while some Section 1983 plaintiffs also plead state tort claims in their complaints,⁸⁸ they would almost always prefer to prevail under Section 1983 because it provides for the recovery of attorney's fees by prevailing plaintiffs and does not contain any cap on damages,⁸⁹ unlike many state tort claim acts that do impose caps.⁹⁰

2. Most Section 1983 Cases Are Litigated in Federal Court.

Federal courts have jurisdiction over Section 1983 claims.⁹¹ While state courts also may exercise jurisdiction over Section 1983

Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978) (holding that municipalities and local government units are "persons" for purposes of Section 1983 claims); *see also* Graham v. Connor, 490 U.S. 386, 388 (1989) (holding that seizure of a free citizen should be analyzed under the Fourth Amendment's reasonableness standard); Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 394–96 (1971) (holding that individuals can bring claims against federal actors for alleged constitutional violations).

⁸⁶ *See* Graham, 490 U.S. at 393–94 (holding that excessive force claims are not guided by a generic standard but must arise out of a specific constitutional right).

⁸⁷ *See id.* (concluding that Section 1983 is not itself a source of a substantive rights but is instead a vehicle to assert federal rights conferred in the constitution or elsewhere); Cover, *supra* note 82, at 1776 ("The causes and solutions go well beyond the limited reach of civil litigation—primarily lawsuits against police officers under [Section 1983].").

⁸⁸ *See* Kathleen L. Daerr-Bannon, *Cause of Action Under 42 U.S.C.A. § 1983 for Use of Excessive Force by Police in Making Arrest* ("The plaintiff may have alternative actions based on the same factual circumstances that give rise to the action under § 1983. For example, most commonly, plaintiff will be able to assert state law tort actions, whether or not the action rises to the level of a deprivation of federally guaranteed constitutional rights."), in 59 CAUSES OF ACTION 2D 173 § 3 (2019).

⁸⁹ *See* 42 U.S.C. § 1988 (2012) (providing for the award of attorney's fees in Section 1983 cases to the party that prevails).

⁹⁰ *See* 1 CIV. ACTIONS AGAINST STATE & LOC. GOV'T § 6:12 (2009) ("Most state tort claims acts contain provisions which limit the amount of damages for which a governmental entity may be liable in a tort action.").

⁹¹ Federal courts have jurisdiction over cases that raise a federal question, according to 28 U.S.C. § 1331, or seek, through 28 U.S.C. § 1343(a)(3),

[t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Section 1983 actions do both. *See* 42 U.S.C. § 1983 ("Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of

actions,⁹² most of these cases are litigated in federal court,⁹³ either because the plaintiff filed her suit there or because a defendant removed the case from state to federal court.⁹⁴ Of course, there may be cases where all parties prefer to litigate a Section 1983 claim in federal court—perhaps based on the perceived expertise of the judge in applying the statute or the perception that federal judges are less likely than state judges to be influenced by local pressures—but the agreement of both parties is not necessary to situate a Section 1983 action in federal court in view of the defendant’s right of removal.⁹⁵ The vast majority of Section 1983 cases end up in federal court because it is usually the case that at least one party would prefer to litigate in that forum.

3. Most Section 1983 Excessive Force Actions Involve a Defense Summary Judgment Motion.

Almost all defendants move for summary judgment in excessive force cases based on the alleged objective reasonableness of the officers’ conduct, the doctrine of qualified immunity, or both.⁹⁶ Defendants invariably argue that the record evidence—which, in the bodycam cases, includes a complete or partial video of the encounter at issue in the lawsuit—compels the conclusion that any

Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . .”).

⁹² See *Maine v. Thiboutot*, 448 U.S. 1, 3 n.1 (1980) (holding that “[a]ny doubt that state courts may also entertain [Section 1983] actions was dispelled by *Martinez v. California*” (citing *Martinez v. California*, 444 U.S. 277, 283–84 n.7 (1980))).

⁹³ At the time this Article was drafted, a Westlaw search of the terms “excessive force” and “42 U.S.C. § 1983” yielded well over 10,000 federal court decisions but less than 600 state court decisions.

⁹⁴ Removal is explained in 28 U.S.C. § 1441(a), which provides that “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

⁹⁵ *Id.* (providing that a defendant may remove any civil action to a federal district court even without the plaintiff’s permission).

⁹⁶ The doctrine of qualified immunity essentially provides police defendants with an extra layer of protection from liability in excessive force cases. See, e.g., *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (holding that in addition to proving that the police officer used an unreasonable amount of force amounting to a violation of the Fourth Amendment of the United States Constitution, an excessive force plaintiff also must prove that her Fourth Amendment rights were “clearly established” under the circumstances to overcome the qualified immunity defense).

force used by the defendants was reasonable, or that the Fourth Amendment right asserted by the plaintiff was not clearly established under the circumstances, or both.⁹⁷ In fact, given the availability of qualified immunity, it is difficult to understand why any defendant in an excessive force case would forego the chance to prevail on summary judgment and simply proceed to trial.⁹⁸

Summary judgment decisions provide a fruitful vantage point from which to assess the impact of bodycam evidence on excessive force actions. While defendants might move to dismiss an excessive force case prior to the summary judgment phase (usually on the basis of an alleged defect in the plaintiff's complaint), such motions are, by their nature, not evidence-based and therefore cannot properly rely upon a bodycam video.⁹⁹ Further, all summary judgment decisions provide the court's rationale for its decision.¹⁰⁰ While some bodycam cases have been decided by juries after the court denied a defense summary judgment motion, absent a special verdict form or jury interrogatories,¹⁰¹ it is not possible—short of

⁹⁷ Federal Rule of Civil Procedure 56(a) provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

⁹⁸ While some defendants in civil cases might opt not to file a summary judgment motion in a close case to conserve resources, most of the municipalities and law enforcement agencies that employ excessive force defendants have the resources or access to insurance proceeds, or both, to fund a summary judgment motion, particularly when foregoing a summary judgment motion all but ensures that the case will be decided by a jury. See Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211, 237 (2017) (noting that most Section 1983 excessive force actions “name only individual officers as defendants [as] any judgments will be covered by municipal insurance”). Moreover, defendants who unsuccessfully assert a qualified immunity defense at the district court level are entitled to an interlocutory appeal, which adds to the rationale for asserting the defense in almost every case. See *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (“[A] district court’s denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’ within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment.”).

⁹⁹ If a defendant presents “matters outside the pleadings”—like a bodycam video—in connection with a motion to dismiss the lawsuit for a pleading deficiency, “the motion must be treated as one for summary judgment under Rule 56.” FED. R. CIV. P. 12(d).

¹⁰⁰ The court must “state on the record the reasons for granting or denying” a summary judgment motion. FED. R. CIV. P. 56(a).

¹⁰¹ While the Federal Rules of Civil Procedure allow for a court, in lieu of a general verdict, to require a special verdict with specific findings of fact or answers to written questions in connection with a general verdict, FED. R. CIV. P. 49, these provisions are infrequently used and typically reserved for cases more complex than excessive force actions.

interviewing the jurors—to assess the impact of the bodycam evidence on the verdict.

Moreover, as a matter of litigation tactics and exposure, summary judgment is the moment of truth in excessive force cases. Defendants in the possession of a bodycam video do not want to go to trial and risk an uncertain jury verdict. Plaintiffs, on the other hand, acquire considerable leverage if they can defeat a defense motion for summary judgment and get the case on track for a jury trial. And, finally, if bodycam videos are truly dispositive of what happened in a contested police-civilian encounter, as many proponents of bodycams have predicted, bodycam cases should be well-suited to adjudication at the summary judgment stage of the litigation.

B. THE BODYCAM CASES

As of December 31, 2018, there appear to be sixty-six Section 1983 excessive force cases involving bodycam evidence in which a federal district court issued a published decision on a defense summary judgment motion.¹⁰² The first such case was decided in 2014, and the number of bodycam cases has increased each year since then. There appear to have been four such lawsuits in 2015, fourteen in 2016, eighteen in 2017, and twenty-nine in 2018. This study incorporates all of those cases.¹⁰³

*Table 1: Summary Judgment Decisions in Bodycam Cases
by Year of Decision*

¹⁰² Although there are sixty-six excessive force lawsuits that meet the criteria for this study, those lawsuits generated a total of seventy-one summary judgment decisions in view of the fact that, in certain cases, the court granted summary judgment on some claims or as to some defendants and denied it as to other claims or other defendants. As discussed above, those partial summary judgment awards are treated separately for purposes of this study to reflect the fact that the case, in essence, resulted in two separate summary judgment decisions involving bodycam evidence: one that favored the defense and one that did not.

¹⁰³ The search terms used to identify the bodycam summary judgment decisions analyzed in this Article were “body cam!” or “bodycam” or “body worn camera” or “BWC” or “chest cam!” and “42 U.S.C. 1983” or “Section 1983” or “excessive force” and “qualified immunity” or “summary judgment.” Decisions where bodycam evidence was referenced in connection with a claim other than an excessive force claim (such as a false arrest claim), or where the bodycam did not capture any of the events that gave rise to the excessive force claim, were excluded.

Year of Decision	Number of Bodycam Cases (66 cases)
2014	1
2015	4
2016	14
2017	18
2018	29

The bodycam cases were decided in district courts across the country within all but two of the federal judicial circuits. Over one-quarter of the cases were decided by courts sitting in the Ninth Circuit, the largest circuit in the United States.¹⁰⁴ Courts within the Fifth and Sixth Circuits, two of the other largest judicial circuits, decided almost an additional thirty percent of the bodycam cases between them.¹⁰⁵ The remainder of the cases were scattered throughout the rest of the country.¹⁰⁶ The highest number of bodycam summary judgment decisions rendered by any one judicial district—the Northern District of California—was six.¹⁰⁷ The District of South Carolina decided four bodycam cases,¹⁰⁸ while courts in seven other judicial districts issued three bodycam

¹⁰⁴ The Ninth Circuit also encompasses all of the four police departments—Rialto, California; Mesa, Arizona; Phoenix, Arizona; and San Diego, California—that conducted the first bodycam field studies in the United States. *See supra* notes 3–6 and accompanying text.

¹⁰⁵ District courts in the Fifth and Sixth Circuits each decided ten of seventy-one, or almost fourteen percent each, of the bodycam summary judgment decisions.

¹⁰⁶ The remainder of the bodycam summary judgment decisions were decided by judicial circuit as follows: First Circuit—one decision; Second Circuit—two decisions; Fourth Circuit—seven decisions; Seventh Circuit—four decisions; Eighth Circuit—four decisions; Tenth Circuit—seven decisions; and Eleventh Circuit—six decisions.

¹⁰⁷ *Crump v. Bay Area Trans. Dist.*, No. 17-cv-02259-JCS, 2018 WL 4927114 (N.D. Cal. Oct. 10, 2018); *Zeen v. Cty. of Sonoma*, No. 17-cv-02056-LB, 2018 WL 2445518 (N.D. Cal. May 31, 2018); *Greer v. City of Hayward*, 229 F. Supp. 3d 1091 (N.D. Cal. 2017); *Littler v. Bay Area Rap. Trans. Dist.*, No. 14-cv-05072-DMR, 2016 WL 1734095 (N.D. Cal. Apr. 29, 2016); *J.A.L. v. Santos*, No. 15-cv-00355-LHK, 2016 WL 913743 (N.D. Cal. Mar. 10, 2016); *Sheehan v. Bay Area Rap. Trans. Dist.*, No. 14-cv-03156-LB, 2016 WL 777784 (N.D. Cal. Feb. 29, 2016).

¹⁰⁸ *Reeder v. Vanpelt*, No. 6:18-416-TMC, 2018 WL 6288253 (D.S.C. Dec. 3, 2018); *Fulton v. Nisbet*, No. 2:15-4355-RMG, 2017 WL 5054704 (D.S.C. Nov. 1, 2017); *Landers v. Chastain*, No. 6:15-1533-MGL-KFM, 2017 WL 9289384 (D.S.C. Apr. 5, 2017); *Wingate v. Byrd*, No. 4:13-cv-03343-BHH-KDW, 2016 WL 8672954 (D.S.C. Aug. 19, 2016)

decisions each.¹⁰⁹ No other judicial district in the United States decided more than two of the bodycam cases.

Federal district court judges issued sixty-five of the seventy-one summary judgment decisions in the bodycam cases. In total, federal district court judges granted forty-two defense summary judgment motions and denied twenty-three. United States magistrate judges rendered an additional six decisions with the parties' consent.¹¹⁰ Those magistrate judges granted three defense summary judgment motions and denied three.¹¹¹

One district court judge, B. Lynn Winmill of the District of Idaho, decided three of the summary judgment motions in the bodycam cases.¹¹² No other judge decided more than two.¹¹³

This overview of the bodycam cases reflects that they are fairly well dispersed across the courts and across the country. No individual circuit or district dominates the landscape. To the extent we can discern trends in the early bodycam decisions, those trends do not appear to be disproportionately influenced by any particular geography, police department, or group of jurists.¹¹⁴

¹⁰⁹ These districts are the District of Arizona, the Southern District of California, the District of Idaho, the District of Kansas, the Eastern District of Kentucky, the Western District of Michigan, and the Southern District of Texas.

¹¹⁰ Pursuant to Federal Rule of Civil Procedure 73, magistrate judges may conduct a civil action or proceeding with the consent of all parties.

¹¹¹ *Crump*, 2018 WL 4927114 (granting summary judgment); *Earle v. Atkinson*, No. 6:17-CV-281, 2018 WL 4333538 (E.D. Tex. Sept. 11, 2018) (granting summary judgment); *Esty v. Town of Haverhill*, No. 17-cv-59-AJ, 2018 WL 2871862 (D.N.H. June 8, 2018) (granting summary judgment); *Zeen*, 2018 WL 2445518 (denying summary judgment); *Sheehan*, 2016 WL 777784 (denying summary judgment); *Stevenson v. Cordova*, No. 14-cv-00649-CBS, 2016 WL 5791243 (D. Colo. Oct. 4, 2016) (denying summary judgment).

¹¹² *Martin v. City of Nampa*, No. 1:15-cv-00053-BLW, 2017 WL 5349537 (D. Idaho Nov. 13, 2017); *McDowell v. Jefferson Cty.*, No. 4:15-cv-507-BLW, 2017 WL 241319 (D. Idaho Jan. 18, 2017); *Kinghorn v. City of Idaho Falls*, No. 4:14-cv-410-BLW, 2015 WL 6697270 (D. Idaho Nov. 3, 2015).

¹¹³ The following judges decided two of the summary judgment motions in the bodycam cases analyzed here: Laurel Beeler (Magistrate Judge, Northern District of California); Karon Bowdre (District Court Judge, Northern District of Alabama); Carlos Murguia (District Court Judge, District of Kansas); Nelva Gonzalez Ramos (District Court Judge, Southern District of Texas); Sam Sparks (District Court Judge, Western District of Texas); and William H. Steele (District Court Judge, Southern District of Alabama). No other judge decided more than one motion in the bodycam group.

¹¹⁴ *See supra* notes 104–09 and accompanying text (detailing the geographic sources of the bodycam decisions).

C. THE COMPARISON GROUP

There are many more federal excessive force cases that do not involve bodycam evidence than those that do. In fact, from just 2017 through 2018 (half the time period covered by the bodycam case data set), the same search terms that were used to develop the data set of bodycam cases described above yield over 5,300 hits when the terms relating to bodycams are deleted.¹¹⁵ There are many reasons for this disparity. First, as discussed above, less than half of the police departments across the United States have adopted bodycam programs of any kind and even those departments that use bodycams typically only have enough cameras for a limited number of officers.¹¹⁶ Second, many police departments that have adopted bodycam programs have done so only recently, and one would expect some lag time before an excessive force case worked its way from the incident itself to the filing of the lawsuit to a decision on a summary judgment motion.¹¹⁷ Indeed, many of the excessive force cases with summary judgment decisions handed down from 2015 to 2018 involve incidents that occurred prior to the adoption of bodycams by virtually any police department.¹¹⁸ Third, even where a police officer involved in the encounter was wearing a bodycam, he or she may not have turned on the camera in time to capture the events the plaintiff is complaining about.

In view of the tremendous volume of non-bodycam excessive force summary judgment decisions, the study uses as a comparison group a sample of those non-bodycam cases with characteristics similar to the bodycam cases. First, the comparison group is composed of sixty-six non-bodycam cases—the same number as the bodycam

¹¹⁵ The following terms that were used to generate the bodycam data set were excluded from the comparison group search: “body cam!,” “bodycam,” “body worn camera,” “chest cam!,” and “BWC.” *See supra* note 103 (explaining the search terms used to find the bodycam decisions).

¹¹⁶ *See supra* Part III. Some estimates suggest that about one-third of the approximately 18,000 U.S. state and local police departments have bodycam programs. Chavis, *supra* note 59, at 987.

¹¹⁷ There is no statute of limitations contained within 42 U.S.C. § 1983 (2012). However, the U.S. Supreme Court has held that 42 U.S.C. § 1988 (2012) “requires courts to borrow and apply to all § 1983 claims the one most analogous state statute of limitations.” *Owens v. Okure*, 488 U.S. 235, 240 (1989) (citing *Wilson v. Garcia*, 471 U.S. 261 (1985)). For this reason, the statute of limitations varies by jurisdiction.

¹¹⁸ *See supra* notes 40–41 and accompanying text (discussing the adoption rate of police bodycam programs in the United States).

cases.¹¹⁹ Second, the same search terms, except those terms relating to bodycams, were used to generate the cases in the comparison group as the bodycam cases.¹²⁰ Third, the comparison group decisions fall within the same date range—2015 through 2018—as the bodycam cases, although the comparison group emphasizes more recent decisions in an effort to capture the most current trends in the caselaw.¹²¹ Fourth, in an effort to control for geographic variations (especially where the rate of bodycam adoption might meaningfully vary from region to region), the comparison group contains the exact same number of cases from each judicial district as the bodycam cases.¹²²

D. DATA COLLECTED AND ANALYZED

Except for information relating to bodycam evidence (which is not present in the comparison group cases), the same data were collected regarding both the bodycam and non-bodycam cases. A non-exhaustive list of the information that was gathered and analyzed includes:

1. Summary Judgment Decisions and Rationales.

All cases in both groups involved a defense motion for summary judgment. The district courts' ruling on each summary judgment motion and rationales for their decisions—with a focus on the role that the bodycam evidence played in the outcome of cases where bodycam evidence was presented to the court—were collected and analyzed.

¹¹⁹ See *supra* Table 1. Since twelve of the comparison group cases resulted in partial summary judgment awards, there are seventy-eight total summary judgment decisions in the comparison group.

¹²⁰ See *supra* notes 103, 115.

¹²¹ See *supra* Table 1.

¹²² For example, because the bodycam database includes six summary judgment motions decided by the Northern District of California, the comparison group also contains six summary judgment decisions from the Northern District of California. The most recent decision or decisions from each district within the date range that met the search term criteria were selected for the comparison group. This approach was taken for every judicial district that decided a bodycam case.

2. Information Regarding the Bodycam Evidence.

The summary judgment decisions in the bodycam cases were reviewed to determine whether, from the court's perspective, the bodycam video captured all of the pertinent events at issue in the excessive force lawsuit or whether it was only a partial recording.¹²³ It was also noted whether the court referenced footage from multiple police bodycams or a single camera in its decision.

3. Information Regarding the Nature of the Police Encounter.

For all decisions in the bodycam and comparison groups, information was collected regarding the nature of the police encounter that led to each of the Section 1983 lawsuits. In all of the cases, the police officers encountered the plaintiff either (1) during the course of responding to a 911 call or other call for assistance; (2) while on routine patrol (other than in connection with a traffic stop); (3) during a traffic stop; or (4) while executing a search or arrest warrant.

4. Information Regarding the Length of Time it Took the Summary Judgment Motion to Be Filed and Decided.

To test whether the availability of bodycam evidence makes the litigation of excessive force cases more efficient, data was collected regarding how long each case had been pending when (1) the defense filed its summary judgment motion and (2) the court rendered its decision.¹²⁴ It is possible that the existence of bodycam evidence would obviate (or at least reduce) the need for much, if any, discovery and allow defendants to get their summary judgment motions filed more quickly than in cases without such evidence. It is also possible that judges would be able to decide summary

¹²³ It is possible that one of the parties (presumably the defendant) believed a bodycam video treated here as partial was, in fact, complete. This Article relies on the summary judgment decisions of the court, not the arguments of the parties, with respect to whether a bodycam video was complete. While it is theoretically possible that a judge might overstate the completeness of a bodycam video to help justify her decision on summary judgment, there is no evidence that is the case with respect to any of the bodycam cases. Moreover, one would expect such exaggeration, if any, to be aberrational in view of the availability of the video itself and the potential for an appeal.

¹²⁴ The data was compiled from both Westlaw and Bloomberg databases, which contain the same information as the Public Access to Court Electronic Records (PACER) database that tracks docket information from federal appellate, district, and bankruptcy courts.

judgment motions supported by bodycam evidence more quickly than those that are not.¹²⁵

VI. FINDINGS

This study provides support for some of the key predictions made by bodycam advocates about the evidentiary impact of bodycam videos in excessive force cases. While these predictions should, of course, be retested as an increasing number of cases involving bodycam evidence are adjudicated, there already are meaningful trends in the caselaw that provide an evidence-based rationale for accelerating the adoption of bodycam programs across the nation, expanding those programs that are already in place, and implementing or reforming bodycam program policies and procedures to maximize the likelihood that bodycam videos are complete.¹²⁶

A. ALMOST ONE-THIRD OF THE BODYCAM CASES INVOLVE BODYCAM VIDEOS THAT DO NOT CAPTURE THE ENTIRE ENCOUNTER AT ISSUE IN THE LAWSUIT

All bodycam videos are not created equal. While one of the fundamental assumptions underlying support for bodycam programs is that bodycams will fully document disputed interactions between police and civilians,¹²⁷ it turns out that a significant number of the bodycam cases adjudicated to date involve videos that do not capture the entire incident at issue in the excessive force lawsuit. In fact, of the seventy-one summary judgment decisions in the bodycam cases, only forty-eight were based on bodycam videos that captured the entire encounter that

¹²⁵ A significant amount of additional data was collected on the bodycam and comparison group cases including: demographic information about each of the district court judges who decided the cases in the database (race, gender, age and political affiliation); information regarding whether plaintiffs against whom summary judgment was entered filed an appeal from the district court's order; and the "freedom" status of each plaintiff in each case as Section 1983 excessive force actions can be filed by free civilians, pretrial detainees and prisoners. Analysis of this additional data will be the subject of separate articles.

¹²⁶ Section VII.A of this Article discusses the implications of these findings for U.S. police bodycam programs and suggests some lessons police departments might learn from these findings that could help maximize the value of bodycam evidence in excessive force litigation.

¹²⁷ See *supra* Part IV.

gave rise to the Section 1983 claim.¹²⁸ Twenty-two of the summary judgment decisions were based on one or more bodycam videos that captured only a portion of the allegedly unconstitutional interaction between the plaintiff and the police.¹²⁹

The cases reveal multiple reasons for the significant number of partial videos. First, the police officers sometimes did not activate their cameras in time to capture the entire incident.¹³⁰ The ability of law enforcement officers to manually turn their bodycams on and off has been the subject of some consternation as U.S. bodycam protocols have evolved. In particular, some commentators have expressed concern about an officer's ability to influence the narrative of an encounter by selectively choosing which portions to record.¹³¹ Bodycams will not provide a meaningful check against police excessive force, it has been argued, if the police can simply turn off the camera when they want to impose force that is excessive.¹³² Thus, there is considerable momentum for bodycam technology and protocols to essentially leave the camera running.¹³³

¹²⁸ This group includes cases with a single bodycam video that documented the entire incident as well as cases where a combination of bodycam videos captured all of the relevant events. Sometimes more than one officer at the scene was equipped with a bodycam and the record contained video footage from more than one bodycam.

¹²⁹ The summary judgment decision in one of the bodycam cases did not provide sufficient information about the video to permit a determination about its completeness. *See Little v. Miss. Dep't. of Pub. Safety Bureau of Narcotics*, No. 1:16-CV-00048-GHD-RP, 2017 WL 2999141 (N.D. Miss. July 13, 2017) (mentioning the video footage just twice in passing).

¹³⁰ *See, e.g., Van Pelt v. Palma*, No. 3:17-CV-00861 (MPS), 2018 WL 564570, at *3, *5 (D. Conn. Jan. 25, 2018) (detailing that bodycam footage does not begin until after three officers already were on the scene and holding the plaintiff's identification); *McDowell v. Jefferson Cty.*, No. 4:15-cv-507-BLW, 2017 WL 241319, at *1 (D. Idaho Jan. 18, 2017) (showing that the officer did not activate bodycam until after he already had made contact with the plaintiff); *Madison v. City of Evansville*, No. 3:14-cv-00072-TWP-WGH, 2015 WL 9455670, at *2 (S.D. Ind. Dec. 23, 2015) (showing that the bodycam was not activated until after the plaintiff had been handcuffed).

¹³¹ *See, e.g., Gonzales & Cochran, supra* note 53, at 315 (noting that some critics are uncomfortable with allowing officers to decide when to activate a body camera); *Wasserman, supra* note 5, at 555–56 (observing a lack of agreement on the discretion officers should have in turning the bodycam on and off).

¹³² While none of the summary judgment decisions in the bodycam cases found that an officer purposefully manipulated the bodycam to skew the video recording of the incident, in one case involving a partial video, the court found that the only images not captured on the bodycam video would have revealed the events leading up to the alleged “slam to the ground” that was the focus of the plaintiff's Section 1983 claim. *Zeen v. County of Sonoma*, No. 17-cv-02056-LB, 2018 WL 2445518, at *7 (N.D. Cal. May 31, 2018).

¹³³ In fact, some bodycam models can now record up to a minute of video prior to the activation of the camera. *PROSECUTORS, supra* note 23, at 3. And several police departments

Second, an officer with a bodycam may not be the first officer to arrive at the scene; thus, even though that officer may have activated her bodycam immediately upon arriving at the location of the incident, some of the allegedly unlawful police misconduct may have preceded her arrival.¹³⁴ This means that the first officer to arrive at the scene was not equipped with a bodycam. This scenario is not atypical as even police forces that have adopted bodycam programs often do not have enough cameras to go around.¹³⁵ In these cases, a complete bodycam video might have been available had all of the officers involved in the incident been equipped with bodycams.

Third, sometimes the nature of a police encounter prevents all of the relevant events from being fully recorded on the bodycam video. Since the bodycam is affixed to the officer, the camera does not capture what the officer is not able to see. Thus, if an officer with a bodycam loses sight of a civilian during a pursuit and another officer (without a bodycam) allegedly uses excessive force to restrain that civilian, that restraint will not be captured on video.¹³⁶ Even if an officer who allegedly used excessive force is wearing a bodycam, the bodycam's field of vision might be pushed and pulled in different directions while the officer is running or in a physical struggle with a civilian—all of which could result in a partial video.¹³⁷ Absent

are adopting policies that reduce or eliminate officer discretion with respect to when to activate and deactivate the camera. COPS REPORT, *supra* note 7, at 14 (“[W]hen officers have discretion to not record an encounter, many departments require them to document, either on camera or in writing, the fact that they did not record and their reasons for not recording. Some departments also require officers to obtain supervisor approval to deactivate the camera if a subject requests to not be recorded.”).

¹³⁴ See, e.g., *Fulton v. Nisbet*, No. 2:15-4355-RMG, 2017 WL 5054704, at *1 (D.S.C. Nov. 1, 2017) (detailing that two officers with bodycams arrived on the scene after another officer already had allegedly used excessive force against the plaintiff).

¹³⁵ See Dana Liebelson & Nick Wing, *Most Major Cities Still Don't Have Body Cameras for Cops*, HUFFPOST (Aug. 17, 2015), https://www.huffpost.com/entry/police-body-cameras_n_55cbaac7e4b0f1cbf1e740f9 (finding that out of police departments in twenty-seven major U.S. cities most are able to equip only a small portion of their officers with bodycams due to funding limitations).

¹³⁶ See, e.g., *Crittenden v. City of Tahlequah*, No. CIV-17-106-RAW, 2018 WL 3118182, at *3 (E.D. Okla. June 25, 2018) (explaining that the police shooting was not captured on bodycam video because only one of the three officers involved was wearing an activated bodycam); *Wingate v. Byrd*, No. 413-cv-03343-BHH-KDW, 2016 WL 8672954, at *2 (D.S.C. Aug. 19, 2016) (demonstrating that bodycam footage did not capture the shooting).

¹³⁷ See *Osborn v. Crews*, No. 7:16CV00389, 2018 U.S. Dist. LEXIS 37850, at *5 (W.D. Va. Mar. 8, 2018) (noting officer with bodycam fell down a flight of stairs); *Lewis v. City of*

technological developments to expand the field of vision and stabilize the images of a bodycam, some of these partial videos may be unavoidable.

Fourth, even though a police bodycam may have been running throughout the entire incident and the incident was within the camera's field of vision, the quality of the video may not have been good enough for the court to discern what actually happened.¹³⁸ The images could be blurry, dark, distant, or unstable. Technological advancements will presumably address these issues over time and result in fewer partial videos, provided law enforcement agencies are able to afford the new technology.

The premise of many theories concerning the evidentiary value of bodycam videos is that they will document the entire encounter that is the subject of the lawsuit. Whatever the reason or combination of reasons, in almost one out of every three summary judgment decisions to date, that premise turns out to be incorrect. The number of partial videos will have to be meaningfully reduced for bodycams to realize their full evidentiary potential.

B. LAW ENFORCEMENT DEFENDANTS ARE FAR MORE LIKELY TO PREVAIL ON SUMMARY JUDGMENT MOTIONS WHEN THE BODYCAM

Shreveport, No. 15-2034, 2018 WL 1162987, at *2 (W.D. La. Mar. 5, 2018) (discussing the bodycam footage described by the court as "chaotic"); *Martin v. City of Nampa*, No. 1:15-cv-00053-BLW, 2017 WL 5349537, at *4 (D. Idaho Nov. 13, 2017) (noting a portion of bodycam video showing the takedown of the plaintiff did not capture all of the alleged police misconduct); *Windham v. City of Fairhope*, 20 F. Supp. 3d 1323, 1332 (S.D. Ala. 2014), *aff'd*, 597 F. App'x 1068, 1069–70 (11th Cir. 2015) (involving bodycam video that was unclear due to roughness of altercation between the plaintiff and police officers).

¹³⁸ See, e.g., *Conser v. Campbell*, No. 17-2313, 2018 WL 4222371, at *2 (D. Kan. Sept. 5, 2018) ("In the video, plaintiff becomes visible sitting on the porch steps just before defendant Campbell told him to get on the ground the first time. Before then, the scene is too dark to discern where plaintiff is or what he is doing."); *Zeen v. County of Sonoma*, No. 17-cv-02056-LB, 2018 WL 2445518, at *4 (N.D. Cal. May 31, 2018) ("The dark conditions, the lack of ambient lighting other than limited lighting from the deputies' flashlights, and the limited visual angles of the cameras make it difficult to see on the videos everything that took place."); *Martin*, 2017 WL 5349537 at *4 (showing portions of the video were too blurry for the court to discern what was happening); *Landers v. Chastain*, No. 6:15-1533-MGL-KFM, 2017 WL 9289384, at *2 (D.S.C. Apr. 5, 2017) (discussing that video was too dark for the court to make factual findings).

FOOTAGE CAPTURES ALL, RATHER THAN JUST PART, OF THE ENCOUNTER AT ISSUE IN THE LAWSUIT

The question that naturally follows is whether the outcomes of the bodycam cases were impacted by the completeness of the bodycam video in evidence at the summary judgment stage of the case. The answer is yes.

As Table 2 shows, of the forty-eight summary judgment decisions where the defense relied upon a complete bodycam video (or collection of videos), thirty-seven were in the defendants' favor.¹³⁹ Because this study treats awards of partial summary judgment as both a victory and a defeat for the defense, this means defendants prevailed—not in part, but entirely—on their summary judgment motions almost eighty percent of the time when the court watched the entire incident on one or more bodycam videos.¹⁴⁰ In contrast, Table 2 reflects that the court granted the defendants' summary judgment motions in only seven of the twenty-two situations where the defense relied on a partial video—a rate of success of under thirty-two percent.¹⁴¹ Based on standard statistical test methods, these data are statistically significant and not the result of random variation.¹⁴²

*Table 2: Summary Judgment Outcomes in Bodycam Cases, Complete Video and Partial Video*¹⁴³

Outcome of defense SJ motion	Complete bodycam video (48 decisions)	Partial bodycam video (22 decisions)

¹³⁹ See *infra* Table 2 (compiling data on summary judgment motions).

¹⁴⁰ See *infra* Table 2 (calculating the percentage of defense summary judgment awards when there was a complete bodycam video).

¹⁴¹ See *infra* Table 2 (calculating the percentage of defense summary judgment awards when there was a partial bodycam video).

¹⁴² *Chi-square* = 13.2393, *df* = 1, *p* < .001.

¹⁴³ This table excludes the one bodycam case where there was not sufficient information to determine whether the video was partial or complete.

Granted	37 of 48 (77.1%)	7 of 22 (31.8%)
Denied	11 of 48 (22.9%)	15 of 22 (68.2%)

Law enforcement defendants prevail on summary judgment nearly four out of every five times when they have the benefit of a complete bodycam record of the encounter that gave rise to the lawsuit.¹⁴⁴ This is consistent with the predictions of the commentators who hypothesized that factfinders would often side with the police when confronted with a real-time video taken from the officer's perspective.¹⁴⁵ There is no way to tell from the decisions themselves whether the videos unduly influenced the judges by preying on their fears and biases, as some predicted,¹⁴⁶ or whether they simply provided objective, indisputable evidence that reasonably led the judges to the conclusion that the police acted reasonably. Judges in cases with a complete bodycam video might also feel more comfortable taking the case away from the jury by means of a summary judgment ruling than judges in cases with only partial bodycam footage because of their perceived responsibilities under Federal Rule of Civil Procedure 56.¹⁴⁷ Indeed, the Supreme Court in *Scott v. Harris* instructed district court judges to “view[] the facts in the light depicted by the videotape.”¹⁴⁸ The constant refrain from the courts in these cases was that the video was so clear and incontrovertible that it eliminated any genuine issues of

¹⁴⁴ See *supra* Table 2 (calculating the percentage of defense summary judgment awards when there was a complete bodycam video).

¹⁴⁵ See *supra* note 65 and accompanying text.

¹⁴⁶ See *supra* note 68 and accompanying text.

¹⁴⁷ See FED. R. CIV. P. 56(a) (requiring the court to “state on the record the reasons for granting or denying” a motion for summary judgment).

¹⁴⁸ 550 U.S. 372, 381 (2007).

material fact under Rule 56 and permitted only one reasonable conclusion.¹⁴⁹

¹⁴⁹ See, e.g., *Crump v. Bay Area Trans. Dist.*, No. 17-cv-02259-JCS, 2018 WL 4927114, at *11 (N.D. Cal. Oct. 10, 2018) (“Mr. Crump’s testimony at his deposition and his statement to the internal affairs officer that Officer Bahaduri put a gun to his head and that he begged the officer not to shoot him is flatly contradicted by the video footage, which shows no such thing. Thus, that testimony is not sufficient [to] demonstrate a material dispute of fact under *Scott*.”); *Copeny v. Prosser*, No. 5:16-cv-00865-KOB-SGC, 2018 WL 4502010, at *2 (N.D. Ala. Sept. 20, 2018) (“[T]he video and audio recordings of the entire event totally contradict the plaintiff’s version of events.”); *Birair v. Kolycheck*, No. CV-15-01807-PHX-DJH, 2018 WL 4220759, at *6 (D. Ariz. Sept. 5, 2018) (“Officer Flam’s testimony, which is supported by his body camera footage from the scene, is that he did not even touch Mr. Birair, much less use excessive force against Mr. Birair.”); *Uribe v. City of Fresno*, No. 1:16-CV-01914-LJO-SAB, 2018 WL 4042906, at *7 (E.D. Cal. Aug. 22, 2018) (“The undisputed body camera evidence showing that the Decedent reached for his waistband before making a sudden movement to face Officer Price, viewed in conjunction with Ninth Circuit law parsing analogous factual circumstances, lead the Court to conclude that Defendant Price’s actions were objectively reasonable under the totality of the circumstances.”); *Leath v. Webb*, 323 F. Supp. 3d 882, 901 (E.D. Ky. 2018) (“The video is clear: a non-compliant, resisting Leath made numerous threats to officers. Indeed, the *only* reason police touched Leath at all was because he resisted.”); *Esty v. Town of Haverhill*, No. 17-cv-59-AJ, 2018 WL 2871862, at *8 (D.N.H. June 8, 2018) (“Here, there is direct video evidence of the shooting, which the court may rely upon for the purposes of its analysis. . . . As Esty’s argument . . . essentially ignores the videos, it is not persuasive.”); *Colson v. City of Alcoa*, No. 3:16-CV-377, 2018 WL 1512946, at *9 (E.D. Tenn. Mar. 26, 2018) (explaining that plaintiff’s version of the incident is “outright fiction” and “blatantly contradicted” by the bodycam video); *Estate of Collins v. Wilburn*, No. 16-68-HRW, 2017 WL 4111414, at *5 (E.D. Ky. Sept. 15, 2017) (“In this case, the video speaks for itself: Collins’ actively resisted arrest, failed to comply with Sergeant Wilburn’s directions, tensed up and refused to let go of the banister so that both hands could be handcuffed, became combative and aggressive, assaulted Sergeant Wilburn, barricaded himself inside LPD, refused to open the door, refused to get on the ground even after being successfully tased, and continued to refuse to give his hands to be handcuffed. He actively resisted arrest and the Officers responded with appropriate measures. Based upon the video alone, there is no factual dispute in this regard.”); *Davis v. York Cty. Bd. of Supervisors*, No. 4:17-CV-39, 2017 WL 6397833, at *7 (E.D. Va. Sept. 7, 2017) (“The pat-down can be seen in the video footage from Deputy McCay’s body camera, and the video footage refutes Plaintiff’s claim of ‘excessive force.’”); *Vaughn v. Caruthers*, No. 3:15-0709, 2017 WL 1366009, at *2 (M.D. Tenn. Feb. 1, 2017) (“The video does not show that Officer Caruthers took the Plaintiff down or was involved in holding him down, handcuffing him, or placing him on the hood of the police car.”); *Addona v. D’Andrea*, No. 3:14-CV-01757-WWE, 2016 WL 5107054, at *3 (D. Conn. Sept. 19, 2016) (“Here, as in *Scott*, the videotape evidence directly contradicts the plaintiff’s testimony such that no reasonable jury could believe his testimony. Under the circumstances, ‘no rational jury could [find] that the force used was so excessive that no reasonable officer would have made the same choice.’” (alteration in original) (quoting *Lennon v. Miller*, 66 F.3d 416, 426 (2d Cir. 1995))); *Clark v. Campbell*, No. 3:14-CV-00333-LRH-WGC, 2015 WL 7428554, at *4 (D. Nev. Nov. 20, 2015) (“While the officers were generally calm and reasonable in their conduct with him, Clark grew increasingly belligerent throughout the encounter. He began shouting, he categorically refused to put the gun down, he used curse words and racial epithets, and he moved toward the officer before the officer tased him. All this is evident from the video.”); *Culver v. Armstrong*, No. 14-CV-012-J, 2015 WL 12916994, at *11 (D. Wyo. May

The rate of success for defendants in cases with complete bodycam videos is well over twice as high as in cases with only partial videos.¹⁵⁰ While it makes sense that a complete video would be more likely than an incomplete video to trigger a summary judgment award, one might not have predicted (1) that the impact would be so significant or (2) that complete videos would favor defendants so much more than plaintiffs, especially in Category Three cases where the plaintiff and his counsel elected to contest summary judgment after watching the video.¹⁵¹

C. BODYCAM EVIDENCE IMPROVES DEFENDANTS' LIKELIHOOD OF SUCCESS ON SUMMARY JUDGMENT ONLY IF THE BODYCAM VIDEO IS COMPLETE

When no distinctions are made between complete and partial bodycam videos—and all bodycam evidence is treated as equal—the cases decided to date suggest that the mere existence of any bodycam evidence does not increase (at least meaningfully) defendants' likelihood of success on summary judgment in excessive force cases.¹⁵² As Table 3 shows, of the seventy-one summary judgment decisions contained in the bodycam universe (which includes both complete and partial videos), forty-five granted the defense's motion and twenty-six denied it. This equates to an overall success rate of approximately sixty-three percent for defense summary judgment motions in excessive force cases with any kind

1, 2015) (“The video recordings determine the relevant and material facts, regardless of the spin the plaintiff wants to give the events shown on the video recordings. Viewed through the lens of the objective reasonableness standard, Armstrong’s demeanor, his show of authority and conduct were not unreasonable in the circumstances that night as he confronted Culver.”).

¹⁵⁰ See *supra* Table 2.

¹⁵¹ Plaintiffs in five of the cases with bodycam videos filed cross-motions for summary judgment against the police defendants on their excessive force claims. All of the motions were denied. This is at least in part attributable to the heavier summary judgment burden imposed upon parties that bear the burden of proof at trial—like plaintiffs in excessive force cases. See, e.g., *Hotel 71 Mezz Lender L.L.C. v. Nat’l Ret. Fund*, 778 F.3d 593, 601 (7th Cir. 2015) (“Where, as here, the movant is seeking summary judgment on a claim as to which it bears the burden of proof, it must lay out the elements of the claim, cite the facts which it believes satisfies these elements, and demonstrate why the record is so one-sided as to rule out the prospect of a finding in favor of the non-movant on the claim.”).

¹⁵² See *infra* Table 3.

of bodycam evidence, regardless of whether the entire incident was captured on the bodycam video.

Table 3 reflects that the results are fairly similar in cases without any bodycam evidence at all. In the comparison group, the court granted the defendants' summary judgment motion forty-one of seventy-eight times, or about fifty-three percent of the time. And, notably, defendants' rate of success remained constant regardless of what type of non-bodycam evidence was presented to the court in connection with the summary judgment motion. About twenty-five percent of the decisions in the comparison group involved some type of non-bodycam video or audio recording of a portion of the events at issue in the case.¹⁵³ This included everything from police dashboard camera footage to cellphone videos taken by non-police witnesses to security camera video to audio picked up by a dashboard camera or body-worn microphone.¹⁵⁴ The court granted the defendants' summary judgment motion in nine of eighteen, or fifty percent, of the instances where there was some audio or video evidence in the summary judgment record.¹⁵⁵ The defense's rate of success was nearly identical in the sixty comparison group summary judgment decisions involving no audio or video evidence of any kind. The courts granted summary judgment in thirty-two, or just over fifty-three percent, of those decisions.¹⁵⁶

¹⁵³ See *infra* Table 3.

¹⁵⁴ In only one case in the comparison group was the entire encounter captured on non-body cam video. Maddox *ex rel.* D.M. v. City of Sandpoint, No. 2:16-cv-00162-BLW, 2017 WL 4343031, at *1–2 (D. Idaho Sept. 29, 2017) (multiple dashboard cameras captured the entire incident, which took place in a parking lot).

¹⁵⁵ See *infra* Table 3.

¹⁵⁶ See *infra* Table 3.

*Table 3: Summary Judgment Outcomes in Excessive Force Cases, Bodycam Cases vs. Comparison Group*¹⁵⁷

	Bodycam cases (71 decisions)	Comparison group (78 decisions)	
		Some non-bodycam video/audio evidence	No video/audio evidence
Defense SJ motion granted	45 of 71 (63.4%)	9 of 18 (50%)	32 of 60 (53.3%)
Defense SJ motion denied	26 of 71 (36.6%)	9 of 18 (50%)	28 of 60 (46.7%)

Some might find this data at least somewhat surprising. It would not be unreasonable to forecast that the existence of any bodycam evidence—regardless of its completeness—would only augment the non-bodycam evidence that law enforcement defendants rely upon in non-bodycam cases and, therefore, meaningfully increase defendants' likelihood of success on summary judgment.¹⁵⁸ But, at least so far, that is not the case. The mere existence of a bodycam video (without taking into consideration its completeness) does not materially enhance defendants' prospects for success on summary

¹⁵⁷ These data are not statistically significant based on the applicable statistical calculations. This supports the finding in this Article that the mere existence of any type of bodycam evidence in an excessive force case does not tell us much about how a summary judgment motion will be decided. What matters, at least so far, is whether a bodycam video documents all or part of the police conduct alleged to be violative of Section 1983.

¹⁵⁸ While not all bodycam videos will support the police officers' version of the encounter at issue, it is reasonable to assume, consistent with the discussion of Category Two cases above, that most defendants would settle cases involving clearly unhelpful bodycam videos before the court ruled on their summary judgment motions. It is also reasonable to assume that defendants believe the bodycam videos tendered in support of summary judgment motions that go to decision are reasonably supportive of their position in the lawsuit.

judgment.¹⁵⁹ Defendants prevail on summary judgment in excessive force cases at about the same rate—fifty to sixty-plus percent—whether they rely on bodycam evidence, video or audio evidence not recorded by a bodycam, or witness testimony and other evidence that does not include any video or audio recordings. What moves the needle is not any bodycam video, regardless of its completeness, but bodycam videos that document the entire incident in question.

D. DEFENDANTS ARE LESS LIKELY TO SUCCEED ON A SUMMARY JUDGMENT MOTION SUPPORTED BY A PARTIAL VIDEO THAN NO VIDEO AT ALL

In fact, the comparison group cases suggest that partial bodycam videos—which one might have thought would be better than no video at all in terms of figuring out what actually happened on the scene of an alleged incident involving excessive force—actually appear to reduce a defendant’s prospects for success on summary judgment. Table 4 shows that the summary judgment success rate experienced by defendants with partial bodycam videos—slightly over thirty percent—was not only much lower than the success rate of defendants with complete videos but lower than the success rate of defendants in the comparison group with no bodycam video at all.

¹⁵⁹ While there do not appear to be any prior studies of summary judgment rates specifically in excessive force cases, the findings in Table 3 are more or less consistent with the study released in 2007 by the Federal Judicial Center, which is widely considered to be one of the leading studies of summary judgment rulings in U.S. courts. Joe S. Cecil et al., *A Quarter-Century of Summary Judgment Practice in Six Federal District Courts*, 4 J. EMPIRICAL LEGAL STUD. 861 (2007) [hereinafter *FJC Study*]. The *FJC Study* examined a sample of civil cases filed in six federal districts over a 25-year period from 1975 to 2000—before the arrival of bodycams on the scene. *Id.* While recognizing that summary judgment outcomes will likely vary by district and case type, the *FJC Study* found that defense summary judgment motions were granted—in whole or in part—forty percent of the time in 1986, forty-seven percent of the time in 1988, and forty-nine percent of the time in 2000. *Id.* at 887. The *FJC Study* further attempted to examine summary judgment success rates on certain types of claims—with “civil rights” claims identified as one of the categories of claims. The *FJC Study* found that defendants prevailed on summary judgment—in whole or in part—at a rate of about fifty percent on “civil rights” claims. *Id.* It is hard to extrapolate this rate of success into the excessive force realm, however, since excessive force claims represent only a portion of the overall civil rights cases filed in federal court and, as discussed above, the *FJC Study* includes *pro se* prisoner claims and treats all partial summary judgment awards as defense victories whether or not they meaningfully impacted the defense’s liability and exposure.

Based on standard statistical test methods, these data are statistically significant and not the result of random variation.¹⁶⁰

Table 4: Summary Judgment Outcomes in Bodycam Cases, Complete Video, Partial Video, and Comparison Group

Outcome	Complete bodycam video (48 decisions)	Partial bodycam video (22 decisions)	No bodycam video (comparison group) (78 decisions)
Defense SJ motion granted	37 of 48 (77.1%)	7 of 22 (31.8%)	41 of 78 (52.6%)
Defense SJ motion denied	11 of 48 (22.9%)	15 of 22 (68.2%)	37 of 78 (47.4%)

One might have theorized that partial videos, while not as persuasive as complete videos, would still augment and corroborate all of the other evidence that defendants introduced at the summary judgment phase of excessive force cases prior to the advent of bodycams. One might expect defense summary judgment motions predicated on partial bodycam videos to experience a higher success rate than motions unsupported by any bodycam video, even if the rate was lower than the success rate in cases with complete videos. But far from strengthening the evidentiary value of the defense case, in many cases, the court's review of a partial video only highlighted the existence of material issues of fact that, in the court's view, precluded the entry of summary judgment.¹⁶¹ This

¹⁶⁰ *Chi-square = 14.242, df = 2, p < .001.*

¹⁶¹ *See, e.g., Landers v. Chastain*, No. 6:15-1533-MGL-KFM, 2017 WL 9289384, at *4 (D.S.C. Apr. 5, 2017) ("The body camera recordings provide some audio of the arrest, but the video is not helpful in resolving which parties' version of events (and the reasonableness of

finding suggests that courts are not reflexively siding with the police whenever bodycam footage forces judges to “stand in the shoes” of a police officer but are instead trying to apply Federal Rule of Civil Procedure 56’s standards regarding disputed issues of fact.

In general, the early bodycam decisions suggest that a partial bodycam video tends to weaken—if not altogether negate—the value of non-bodycam evidence for summary judgment purposes. In the non-bodycam cases, law enforcement defendants won summary judgment motions at a rate of over fifty percent based solely on officer testimony and other evidence. But officer testimony may not be given the same weight in cases where there is a partial video, because the existence of the video heightens expectations about the quality of the defense’s evidence. By electing to introduce a partial bodycam video, the defense may be raising the evidentiary bar in a way that makes it hard to plug the gaps in the video with testimony or other evidence. The argument that “a partial video is better than no video at all” does not seem to be getting much traction as several courts seem to be taking the view that an issue of material fact arises automatically if part of the encounter is not on the video.¹⁶²

The moral of the story, at least based on the cases decided to date, is that complete bodycam videos materially enhance the defense’s prospects for success on summary judgment. Partial videos, on the other hand, are not helping defendants obtain summary judgment. In fact, so far, the submission of such videos in support of a summary judgment motion has proven counterproductive by highlighting factual disputes that perhaps would not be as stark absent any bodycam video whatsoever.

the deputies’ actions) is more accurate.”); *Sampsel v. City of Rochester*, No. 3:14-CV-1631 JVB, 2016 WL 2733704, at *4 (N.D. Ind. May 11, 2016) (“Crediting Sampsel’s testimony and viewing the video in the light most favorable to him, a jury could find that Reason and Haines joined in Halterman’s unprovoked assault on him as he was attempting to comply with Halterman’s order to get back to the car.”).

¹⁶² It is also possible that the lack of a complete video might raise a suspicion that the video was purposefully manipulated (or selectively filmed) to hide something. Such a suspicion, however, has not been articulated by any of the judges who have decided a summary judgment motion in a bodycam case to date.

E. OUTCOMES REMAIN RELATIVELY CONSTANT REGARDLESS OF WHETHER THE POLICE WERE RESPONDING TO A CALL OR ON ROUTINE PATROL

The largest number of summary judgment decisions in the bodycam cases (forty-one of seventy-one) and comparison group (thirty-five of seventy-eight) involved police-civilian encounters in which the police were summoned to a location by a 911 or other call from a civilian. The next most common type of interaction in both groups of cases was a non-traffic-stop “routine patrol” encounter—where the police were not specifically alerted to the plaintiff’s conduct by a third party. Over one-quarter of the bodycam and almost one-third of the comparison group decisions fell into this category. In each of the bodycam and non-bodycam data sets, there were fewer than ten decisions involving traffic stops and five or fewer decisions involving incidents that occurred while the police were executing search or arrest warrants.¹⁶³

Based on the bodycam cases to date, the type of police-civilian encounter does not appear to be a meaningful driver of the outcome of Category Three excessive force cases—regardless of whether the case involves a complete bodycam video, a partial bodycam video, or no bodycam video.

Table 5: Summary Judgment Outcomes, Type of Encounter

Outcome	Responding to call			Routine patrol		
	Complete video	Partial video	No video	Complete video	Partial video	No video
Def. SJ motion granted	22 of 28 (78.6%)	4 of 13 (30.8%)	19 of 35 (54.3%)	11 of 13 (84.6%)	3 of 6 (50%)	14 of 24 (58.3%)
Def. SJ motion denied	6 of 28 (21.4%)	9 of 13 (69.2%)	16 of 35 (45.7%)	2 of 13 (15.4%)	3 of 6 (50%)	10 of 24 (41.7%)

¹⁶³ Since the number of bodycam decisions to date involving traffic stops and the execution of search or arrest warrants is so small, it is unlikely that any meaningful conclusions can be derived from these decisions at this point in time.

It seems reasonable to predict that law enforcement defendants would have better outcomes in response-to-call, as opposed to routine-patrol, scenarios because officers responding to a call almost always have reason to believe that someone has done or is about to do something harmful which, in turn, might make it more reasonable for an officer to use force to arrest or otherwise restrain that person than a civilian who is not the subject of a police call. Nevertheless, the cases decided to date do not provide support for such a prediction. Defendants' rate of success on summary judgment motions in excessive force cases was not meaningfully different in response-to-call and routine-patrol cases. And the rates of success remained relatively constant regardless of whether the case involved a complete bodycam video, a partial video, or no bodycam video at all. In fact, analyzing the data from this perspective provides additional support for the finding that a principal driver of outcomes to date is whether there is a complete bodycam video of the relevant events, not how the police encountered the plaintiff on the street.

Consistent with the findings set forth above, defendants' rate of success in both response-to-call and routine-patrol scenarios was lower when they relied on partial bodycam videos than when they relied on no bodycam video at all.¹⁶⁴ In response-to-call cases with partial bodycam videos, defendants won four of thirteen cases on summary judgment—a rate of about thirty percent.¹⁶⁵ In routine-patrol cases with partial bodycam videos, defendants won three of six cases on summary judgment.¹⁶⁶

F. BODYCAM CASES TAKE LESS TIME TO LITIGATE THAN NON-BODYCAM CASES

In addition to looking at the outcomes of summary judgment motions in the bodycam and comparison group cases, this study also

¹⁶⁴ See *supra* Table 5.

¹⁶⁵ See *supra* Table 5.

¹⁶⁶ See *supra* Table 5. There may well be more meaningful ways to sort the police-civilian encounters that give rise to excessive force lawsuits for purposes of predicting case outcomes. There is obviously significant variability within both the response-to-call and routine-patrol categories. Moreover, traffic stop cases are usually a variety of a routine-patrol encounter, albeit with some different dynamics. Such predictive categorization of excessive force cases is beyond the scope of this Article.

examined the potential impact of bodycam videos from a litigation efficiency perspective. As set forth below, the data strongly suggest that there is an impact and that the impact is more pronounced in cases involving complete bodycam videos.

Table 6: Efficiency Impact of Bodycam Video Evidence

Average number of days	Bodycam cases (71 decisions)			Comparison group (78 decisions)
	Any bodycam video	Complete bodycam video	Partial bodycam video	
From filing of initial complaint to filing of SJ motion	413.3	392.4	460.6	535.9
From filing of SJ motion to decision	157.7	152.3	172	238.7
Case pending before decision on SJ motion	571	544.7	632.6	774.6

1. Bodycam Videos, Especially if Complete, Expedite the Filing of Summary Judgment Motions.

A comparison of the bodycam and non-bodycam cases reflects that the existence of a bodycam video expedites the litigation and disposition of excessive force lawsuits.¹⁶⁷ Motions for summary judgment are filed more quickly in cases with bodycam evidence, presumably because the video reduces the need for additional discovery. In cases without bodycam evidence, defendants filed their

¹⁶⁷ See *supra* Table 6. As previously discussed, this sets aside the efficiency benefits that bodycam videos create with respect to the early identification and resolution of actual or potential claims in Categories One and Two. See *supra* Part V.

motion for summary judgment, on average, almost eighteen months after the initial complaint was filed. In contrast, defendants in cases with bodycam evidence—regardless of whether the bodycam video was complete or partial—filed their motions for summary judgment close to four months earlier. And motions for summary judgment are brought even more quickly in cases with complete bodycam videos than partial videos. On average, defendants in cases with complete bodycam videos filed their summary judgment motions approximately thirteen months after the original complaint was filed. In contrast, defendants in cases with partial videos filed their Rule 56 motions more than two months later—over fifteen months after the lawsuit commenced.

Since defendants can file a motion for summary judgment at any time during the course of discovery, the timing of the filing of a Rule 56 motion—at least from an evidentiary perspective—largely turns on when the movant believes it has sufficient evidence to satisfy the summary judgment standard without the need for additional discovery.¹⁶⁸ The data show that moment happens earlier in bodycam cases than in other excessive force lawsuits—and significantly earlier in cases with complete bodycam videos. And while Rule 56(d) affords plaintiffs more time to conduct additional discovery to rebut a summary judgment that they view as prematurely filed,¹⁶⁹ only one plaintiff in a bodycam case sought Rule 56(d) relief.¹⁷⁰ This shows that both plaintiffs and defendants agree, at least implicitly, that bodycam cases (especially with complete videos) are ripe for summary adjudication earlier than non-bodycam cases.

¹⁶⁸ See FED. R. CIV. P. 56(a) (noting that a summary judgment motion may be filed “at any time until 30 days after the close of all discovery”).

¹⁶⁹ See FED. R. CIV. P. 56(d) (“If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations to take discovery; or (3) issue any other appropriate order.”).

¹⁷⁰ See *Baker v. Bd. of Comm’rs of Johnson Cty.*, No. 16-2645, 2017 WL 2118351, at *1 (D. Kan. May 16, 2017) (denying the plaintiff’s motion to permit additional discovery under Rule 56).

2. Courts Decide Summary Judgment Motions More Quickly When Bodycam Evidence Is Involved.

The study also shows that judges take less time to decide summary judgment motions filed in excessive force cases with bodycam evidence—and even less time in cases with complete as opposed to partial videos. This is likely because the court’s ability to review the bodycam video reduces the need to comb through a record of deposition transcripts and other evidence before reaching a decision. As predicted by bodycam proponents, bodycam evidence does in fact appear to streamline the record in excessive force cases, enabling courts to expedite their decisions on dispositive motions filed in those cases.

As Table 6 illustrates, it took the courts almost three months longer to decide summary judgment motions in non-bodycam cases than in cases with bodycam evidence. Not surprisingly, cases with a complete bodycam video were decided most expeditiously—just over five months after the summary judgment motion was filed.¹⁷¹ Motions filed in cases with partial bodycam videos were decided close to six months after they were filed, while motions filed in cases with no bodycam evidence took about eight months to decide. From an efficiency perspective, it is compelling that it took courts nearly twice as long to decide summary judgment motions in comparison group cases than cases with complete bodycam videos.

3. The Early Returns Strongly Suggest that Bodycam Evidence Is Accelerating the Disposition of Excessive Force Litigation.

The net result of the acceleration of summary judgment motion filing and adjudication is that cases with a complete bodycam video progress through the summary judgment phase over seven-and-a-half months faster than cases without bodycam evidence. That is a meaningful amount of time in the life of an excessive force lawsuit. Even cases with partial bodycam videos see summary judgment decisions rendered over two months earlier than cases in the comparison group.

¹⁷¹ This pace is even brisker than it seems at first blush. When the filing of the opposition to the motion, the filing of the reply in support of the motion, and a possible oral argument are factored in, the decisions on motions in cases with complete bodycam videos are actually being rendered, in many cases, less than a few months after the motion is ripe for decision.

VII. WHERE DO WE GO FROM HERE?

The early returns from the bodycam cases support the accelerated implementation of bodycam programs by U.S. police departments, the expansion of existing bodycam programs, and the adoption of policies and protocols that maximize the likelihood that a bodycam video will capture all of the relevant events in a disputed police-civilian encounter. Finally, the preliminary trends in the bodycam cases suggest several important issues that should be the subject of continued research as the universe of bodycam cases continues to expand.

A. POLICE DEPARTMENTS SHOULD ACCELERATE THE IMPLEMENTATION OF BODYCAM PROGRAMS AND PROMULGATE POLICIES THAT MAXIMIZE THE EVIDENTIARY VALUE OF BODYCAM VIDEOS

Police departments should take note of the early trends in the summary judgment decisions in bodycam cases. They strongly suggest, among other things, that (1) police departments need to do more to capture complete recordings of encounters between the police and civilians; (2) effective bodycam programs benefit the police as well as the public at large; and (3) bodycam programs are a good investment for law enforcement and the civil justice system as a whole.

First, based on the cases decided to date, complete bodycam videos are proving helpful to police defendants in excessive force litigation, while partial videos actually seem to be hurting their cause.¹⁷² The lesson is clear: in implementing bodycam programs, police departments should be maximizing the likelihood that encounters with civilians are documented in full. The bodycam cases reveal the principal reasons why some bodycam videos are partial rather than complete—almost all of which can be addressed by expanding bodycam programs and putting procedures in place to minimize officer discretion with respect to camera activation and deactivation. In some of the cases with partial bodycam videos, a complete video would have been possible if the first officer on the

¹⁷² See *supra* Table 4 and accompanying text.

scene been equipped with a bodycam.¹⁷³ Other partial bodycam videos would have been made complete by videos from other officers' bodycams had all of the officers on the scene been outfitted with bodycams activated during the entire incident.¹⁷⁴ And still other videos would not have been partial had the officers activated their cameras in time to capture all of the pertinent events¹⁷⁵—which will happen more frequently if police departments require officers to film civilian encounters in their entirety and impose meaningful consequences for failing to do so.¹⁷⁶ At present, the majority of bodycam policies implemented by police departments serving the 100 largest cities in the United States—which are presumably more robust than the policies of smaller law enforcement departments—do not contain any provisions regarding the consequences for violating a requirement to record an encounter with a bodycam.¹⁷⁷

¹⁷³ See, e.g., *Fulton v. Nisbet*, No. 2:15-4355-RMG, 2017 WL 5054704, at *1 (D.S.C. Nov. 1, 2017) (detailing that two officers with bodycams arrived on the scene after another officer already had allegedly used excessive force against the plaintiff).

¹⁷⁴ See *supra* note 135 and accompanying text.

¹⁷⁵ See cases cited *supra* note 130.

¹⁷⁶ As of November 2017, almost forty-five percent of police departments with any type of bodycam program “clearly describe[] when officers must record” a bodycam video but “do[] not require[] officers to provide concrete justifications for failing to record required events.” BWC SCORECARD, *supra* note 38, at 2–6. Indeed, while the U.S. Department of Justice has taken the position that bodycam recording policies “should provide officers with guidance” on when recordings are required, it also has stated that “it is critical that policies also give officers a certain amount of discretion concerning when to turn their cameras on or off.” COPS REPORT, *supra* note 7, at v–vi. Such discretion is “important,” according to the Justice Department, “because it recognizes that officers are professionals and because it allows flexibility in situations in which drawing a legalistic ‘bright line’ rule is impossible.” *Id.* The Chicago Police Department’s bodycam policy, which is highlighted in the BWC SCORECARD as a “leading example” of a policy that appropriately limits officer discretion with respect to camera activation, “provides officers with a clear list of situations that must be recorded” and requires officers to “state the reason for deactivation on camera before turning it off.” BWC SCORECARD, *supra* note 38, at 9–10. Under the Chicago Police Department policy, “[i]f an officer fails to record a required event, the officer must justify this failure on camera after the fact.” *Id.* at 10; see also David K. Bakardjiev, *Officer Body-Worn Cameras—Capturing Objective Evidence with Quality Technology and Focused Policies*, 56 JURIMETRICS J. 79, 93 (2015) (“[M]andatory activation policies are not always easy to follow as casual encounters sometimes escalate into life-threatening situations that can make turning on a body camera impractical. Yet, with strategic mandatory policies in place, such problems can be avoided. For example, a policy may require all officers to turn on their body cameras right before stepping out of their patrol car and engaging in the call for service.”)

¹⁷⁷ See Mary D. Fan, *Missing Police Body Camera Videos: Remedies, Evidentiary Fairness, and Automatic Activation*, 52 GA. L. REV. 57, 65 (2017) (“[E]merging reports from the field indicate that some body-worn cameras are disabled or turned off when they are supposed to be recording.”). Professor Fan argues that while more departments might be enacting policies

In view of the fact that partial videos do not seem to be helping—and may even be disadvantaging—law enforcement defendants in excessive force cases, police departments would be well-advised to minimize their reliance on partial video evidence. Indeed, as bodycam evidence becomes more and more commonplace, it is reasonable to predict that judges and juries will only become more dissatisfied with bodycam videos that fail to tell the whole story.

Second, the decisions analyzed in this Article should help any skeptical police officials and officers overcome their concerns about bodycams.¹⁷⁸ Bodycam videos, when complete, are proving to be a significant asset to law enforcement defendants in excessive force litigation. Putting aside the bodycam videos that dissuade potential plaintiffs and their counsel from pursuing excessive force claims (which, over time, could result in a meaningful reduction in excessive force claims), police defendants are winning four out of

that limit officer discretion with respect to bodycam recording, “recording rules that provide little incentive to comply is only a reform on paper.” *Id.* at 82. Fan notes that even where bodycam policies address the consequences for non-compliance, the most prevalent approach is a general warning. *Id.* And some departments “even expressly tell officers that noncompliance with the body-worn camera recording policy will generally not result in disciplinary consequences.” *Id.*; see also Jordan M. Hyatt, Renée J. Mitchell & Barak Ariel, *The Effects of a Mandatory Body-Worn Camera Policy on Officer Perceptions of Accountability, Oversight, and Departmental Culture*, 62 VILL. L. REV. 1005, 1019, 1031 (2017) (finding that “[s]tudies examining activation of the BWCs have found varying levels of compliance with required activation policies” and citing, *inter alia*, a study in Essex, United Kingdom where only seventeen percent of the officers studied activated their bodycams as required and the Phoenix, Arizona study discussed above where, despite the implementation of a “mandatory activation policy,” only thirty-two percent of encounters were recorded, “indicating that policy alone is not sufficient for compliance, and other mechanisms are required to ‘institutionalize’ the use of BWCs and thereby increase activation levels”).

¹⁷⁸ See COPS REPORT, *supra* note 7, at 14 (“Some police executives . . . believe that requiring officers to record all encounters can signal a lack of trust in officers, which is problematic for any department that wants to encourage its officers to be thoughtful and to show initiative. For example, a survey of officers conducted in Vacaville, California, found that although seventy percent of officers were in favor of using body-worn cameras, a majority were opposed to a policy containing strict requirements of mandatory recording of all police contacts.”); *id.* at 19–20 (“Some police executives fear, for example, that people will be less likely to come forward to share information if they know their conversation is going to be recorded, particularly in high-crime neighborhoods where residents might be subject to retaliation if they are seen as cooperating with police.”); *id.* at 24 (“One of the primary concerns for police executives is the fear that body-worn cameras will erode the trust between officers and the chief and top managers of the department. Some officers may view the cameras as a signal that their supervisors and managers do not trust them, and they worry that supervisors would use the cameras to track and scrutinize their every move.”).

every five cases involving complete bodycam videos.¹⁷⁹ It is noteworthy that this is not a random collection of complete bodycam videos but rather videos that plaintiffs and their lawyers have reviewed and determined to be sufficiently helpful that they are willing to take their chances on summary judgment. Indeed, the data collected to date suggest that plaintiffs in excessive force cases may be misjudging the likelihood that complete bodycam videos, even if imperfect from a defense perspective, will result in defense summary judgment awards. On the other hand, the data also suggest that police defendants and their counsel may be misjudging the evidentiary value of incomplete bodycam videos, which seem to be doing more harm than good to defendants' prospects of prevailing on summary judgment.

Third, while adopting and managing an effective bodycam program is no doubt expensive, this study provides evidence that the investment is worthwhile. This evidence comes at a critical time as "many [police] departments—especially in smaller jurisdictions—are now dropping or delaying their [bodycam] programs, finding it too expensive to store and manage the thousands of hours of footage."¹⁸⁰ Bodycam videos, at least when complete, are not only helping dissuade potential plaintiffs from bringing excessive force cases they are likely to lose and helping police defendants promptly identify and resolve indefensible cases; they are also reducing exposure for law enforcement defendants in the cases that are close enough to trigger a summary judgment decision. And it is reasonable to forecast that if the existing trends continue, and as plaintiffs' lawyers become aware of this data and better at predicting outcomes of excessive force cases involving bodycam evidence, the number of excessive force cases involving complete bodycam videos will decline. This not only has economic benefits for police departments,¹⁸¹ but helps law enforcement build trust in the communities they serve.

¹⁷⁹ See *supra* Table 2.

¹⁸⁰ Kindy, *supra* note 40. "Though urban areas with high crime rates are often viewed as having the greatest need for police body cameras, a *Washington Post* database that tracks fatal shootings by police shows that such incidents occur more frequently in small communities. Of the 1,800 departments that have reported a fatal officer-involved shooting since 2015, nearly 1,300 were smaller departments with 50 or fewer officers." *Id.*

¹⁸¹ Assuming that most U.S. law enforcement agencies are insured against excessive force claims, most of these economic benefits would be realized in the form of lower insurance

Moreover, bodycam videos are saving parties and courts significant time and resources in excessive force litigation. When the life of an excessive force lawsuit is reduced by several months, it means that the parties and courts are expending fewer resources on discovery and discovery-related motions practice prior to summary judgment. When bodycam videos result in defense summary judgment awards, cases are cleared from congested trial court dockets, allowing other parties in other disputes to have their day in court sooner—which benefits the whole civil justice system. While unsuccessful plaintiffs are no doubt disappointed in such decisions from a substantive perspective, it is better for them to have an adverse decision sooner rather than later, so that decisions can be made about whether to pursue an appeal at an earlier date. The appeals process adds considerable time to the life of a lawsuit—it benefits plaintiffs who are going to be unsuccessful at the district court level to commence that process as soon as possible. And even when summary judgment motions are denied, their expedited resolution will almost always accelerate the resolution of the entire suit, whether by trial—which will almost always happen sooner in a bodycam case because of the earlier adjudication of the defense’s summary judgment motion—or settlement. Presumably, if a case is going to settle, a prompt settlement seems preferable for many reasons, ranging from the avoidance of additional attorney’s fees to the equity of paying a deserving plaintiff to the psychological benefits of obtaining closure.

B. QUESTIONS FOR THE FUTURE

As more excessive force cases with bodycam evidence work their way through the civil justice system, the findings set forth in this Article should be retested to ascertain their continuing validity. Amid a growing universe of bodycam evidence, police departments might make modifications to their protocols and equipment, law enforcement agencies might adopt bodycam programs for the first

premiums. But there are other potentially meaningful cost savings to consider as well, including reducing the significant sums that police departments pay their officers to prepare for and testify in trials and other court proceedings. *See* Heumann et al., *supra* note 36, at 604 (“For every case that goes to trial, any officer who appears in court is paid overtime. By reducing the number of these cases before they ever go to trial by disproving complaints with body camera footage, a department can save significant funding.”).

time, technological advances might enhance the quality of bodycam videos, and courts might begin viewing bodycam evidence differently over time. This is a fast-evolving area from a technology and policy perspective; we should expect that the case law will evolve as well.

The data on bodycam cases collected in connection with this study will also inform the exploration of other important issues relating to the evidentiary impact of bodycam evidence. For example, as more cases with bodycam evidence are adjudicated, more plaintiffs who are unsuccessful at the district court level will have to decide whether to appeal adverse summary judgment decisions. It is possible that plaintiffs will be less likely to appeal adverse decisions in bodycam cases than in non-bodycam cases if the video is perceived to possess special evidentiary muscle. If so, this could provide additional support for the argument that bodycams are making the system work more efficiently. A related issue, which will be ripe for analysis after more bodycam cases have reached the appellate courts, is whether the existence of bodycam video evidence will alter—implicitly or explicitly—the standard of review applied by appellate courts to these district court decisions. It is possible that appellate courts with the ability to review the same bodycam video as the district court—especially if it completely captures the incident at issue—will be less deferential to the district judge than they would be in cases without bodycam evidence (and perhaps less deferential than they should be under the applicable standard of review).

It will also be important to explore how the backgrounds of the judges deciding bodycam cases factor into their decisions. Do judges with certain gender, age, race, and political characteristics decide excessive force cases differently based on whether a bodycam video (or a complete bodycam video) is offered into evidence? It is possible that judges who have leaned either pro-plaintiff or pro-defendant in non-bodycam cases might decide cases differently when presented with a bodycam video recording of the events in question. The data collected in connection with this Article will facilitate the exploration of these questions.¹⁸²

¹⁸² Of course, it is possible that other variables beyond the scope of this Article also impact the outcomes of excessive force lawsuits involving bodycam evidence. For example, it is possible that certain police departments do a better job training their officers than others and

Finally, the decisions reviewed here should be evaluated further to detect patterns that can provide concrete guidance to the police as they perform their duties on the street. As more bodycam cases are decided, it may become possible to discern what judges want or need to see on a bodycam video to convince them to award summary judgment to a defendant—and, equally as important, what conduct depicted on video gives rise to an issue of material fact that is reserved for a jury to decide. While the potential benefits of bodycams in the field are typically treated separately from the in-court benefits of bodycam evidence, it seems inevitable—and, perhaps, desirable—that the impact of bodycams in these two venues will ultimately merge so that feedback from the courts informs police conduct on the street.

VIII. CONCLUSION

This examination of the first wave of excessive force litigation in the bodycam era provides support for the proposition that bodycams have the potential to be as helpful in the courts as they are on the streets. In the closest cases—where both sides have eschewed settlement and elected to litigate a summary judgment motion to decision—police defendants are prevailing at a rate of nearly eighty percent prior to trial as long as there is a complete bodycam video record of the incidents at issue in the lawsuit. But the prospects of success for law enforcement defendants are not only reduced, but greatly reduced, when the bodycam video does not capture all of the alleged incidents of excessive force. Police testimony, witness testimony, audio recordings, transcripts of 911 calls and police radio communications, and all the other evidence that law enforcement

that those departments experience better outcomes in excessive force cases, regardless of whether bodycam videos are complete or partial. In order to explore that possibility, one would have to construct a comparison group based not on judicial districts, but on police departments involved in the allegedly excessive force. It is also possible that some police departments assign their limited inventory of bodycams only to more experienced officers, who are less likely than other officers to violate Section 1983, regardless of whether a bodycam video is complete. It is also possible that the race or other characteristics of the civilians or officers, or both, depicted in a bodycam video (partial or complete) have an impact on the outcome. Additional research into how police departments and law enforcement officers are impacting the outcomes of excessive force cases in the bodycam era will add a valuable perspective that could help improve outcomes on the streets for both civilians and officers.

defendants rely on in cases with no bodycam evidence is, at least so far, proving insufficient to close the evidentiary gap created by an incomplete bodycam video. In fact, this study reflects that police defendants are more likely to win an excessive force case on summary judgment where there is no bodycam video at all than when there is a partial bodycam video.

As discussed above, this highlights the need to expand the implementation of bodycam programs and to prescribe rules for those programs that minimize officer discretion concerning when to record and impose meaningful consequences for the violation of mandatory recording rules. In any event, regardless of the outcomes of the summary judgment motions that are filed in excessive force cases, this study leaves little doubt that bodycam videos are meaningfully expediting the litigation and adjudication of excessive force lawsuits. This not only inures to the benefit of the parties to these actions but has system-wide benefits beyond the excessive force arena.

