

2018

Do You See What I See? Problems with Juror Bias in Viewing Body-Camera Video Evidence

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Morgan A. Birck, *Do You See What I See? Problems with Juror Bias in Viewing Body-Camera Video Evidence*, 24 MICH. J. RACE & L. 153 (2018).

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DO YOU SEE WHAT I SEE?
PROBLEMS WITH JUROR BIAS IN VIEWING BODY-
CAMERA VIDEO EVIDENCE

Morgan A. Birck[★]

In the wake of the Michael Brown shooting in Ferguson, Missouri, advocates and activists called for greater oversight and accountability for police. One of the measures called for and adopted in many jurisdictions was the implementation of body cameras in police departments. Many treated this implementation as a sign of change that police officers would be held accountable for violence they perpetrate. This Note argues that although body-camera footage may be useful as one form of evidence in cases of police violence, lawyers and judges should be extremely careful about how it is presented to the jury. Namely, the jury should be made aware of their own implicit biases and of the limited nature of the footage. Taking a look at the biases that all jurors hold as well as the inherent subjectivity of video footage, this Note shows how implicit biases and the myth of video objectivity can create problems in viewing body-camera footage, and the footage should therefore be treated carefully when introduced at trial.

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[★] J.D. Candidate, May 2019, University of Michigan Law School; Managing Editor for Volume 24 of the Michigan Journal of Race & Law. Thank you to the Michigan Journal of Race & Law and its editors, especially Lauren Latterell Powell, Allie Horwitz, and Cleo Hernandez, for helping this piece come together. I also thank the professors and students of Michigan Law School for letting me hone my ideas with them and supporting me along the way.

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INTRODUCTION

Nine hundred eighty-seven people were shot and killed by police in 2017.¹ One hundred and four of those deaths were recorded by body cameras.² What will happen with that body-camera footage? Will the footage prove conclusively what happened and bring justice? How will a jury view the footage and decide?

A revolution occurred in policing after the shooting of Michael Brown in Ferguson, Missouri.³ On August 9, 2014, Brown, an eighteen-year-old Black college student, was shot six times by Ferguson police officer Darren Wilson.⁴ He was left on the street for hours.⁵ For over a week, people protested in the streets.⁶ Missouri Governor Jay Nixon declared a state of emergency, imposing a curfew in Ferguson.⁷ Protests sparked again a few months later when a state grand jury decided not to indict Officer Wilson.⁸ Most significantly, Brown's death ignited a deeper conversation in the United States about police violence and particularly the racial disparities in use-of-force.⁹

After Ferguson, President Barack Obama and his administration proposed several law enforcement initiatives aimed at reducing police vi-

1. *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2017/>.

2. *Id.*

3. Max Ehrenfreund, *Body Cameras For Cops Could Be the Biggest Change to Come Out of the Ferguson Protests*, WASH. POST (Dec. 2, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/12/02/body-cameras-for-cops-could-be-the-biggest-change-to-come-out-of-the-ferguson-protests/?utm_term=.4261c86a113f.

4. *Major Characters and Timeline in the Michael Brown Case*, ST. LOUIS POST – DISPATCH, Nov. 25, 2014, at A5.

5. *Id.*

6. *Id.*

7. *Id.*

8. Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer Is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

9. See, e.g., Howard M. Wasserman, *Moral Panics and Body Cameras*, 92 WASH. U. L. REV. 831, 835 (2015) (“Ferguson became a flashpoint for broader concerns about police misconduct, unreasonable force, racial justice, the role of public spaces for First Amendment activity, and how police respond to public First Amendment Activity.”) [hereinafter Wasserman, *Moral Panics*]; Chapter Four *Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1794-95 (2015).

olence, including equipping police departments with body cameras.¹⁰ Commentators began to consider body cameras as a cure-all to the problem of police violence, and body-camera use was supported widely, including by “the public, the White House, federal legislators, police officials, police unions, and the American Civil Liberties Union.”¹¹ These supporters believed that video footage could be objective carriers of the truth, “eliminat[ing] the he-said/he-said ambiguity that often characterizes police-citizen encounters, and deter[ring] misbehavior by police and citizens.”¹² Further, law enforcement may prefer body cameras to civilian-held cameras, as the perspective of body cameras is as if the viewer is a police officer herself, “giving viewers a sense of what the officer sees and hears” and also giving the “legally relevant perspective.”¹³

By the end of 2015, only 18 percent of police agencies had fully implemented body cameras.¹⁴ However, about half of agencies had at least started adopting cameras, and 95 percent intended to implement a full program.¹⁵ The search for “magic policy solutions” and “public pressure to prosecute wrongdoers” seemed to be reflected in this overhaul of police policy.¹⁶

But body cameras are not a panacea. On the front end—the interactions between the police and citizens—body cameras have not been as effective as proponents had hoped.¹⁷ Research indicates that there is no statistically significant effect of body cameras worn by police, and that wearing them does not alter police behavior.¹⁸ The criminal justice potential of cameras has so far not been any more promising. In 2017, of 1,147 cases where there was a police killing, 149 of those cases involved

10. Ehrenfreund, *supra* note 3.

11. Wasserman, *Moral Panics*, *supra* note 9, at 833. See also German Lopez, *The Failure of Police Body Cameras*, VOX (July 21, 2017, 10:00 AM), <https://www.vox.com/policy-and-politics/2017/7/21/15983842/police-body-cameras-failures> (citing polls that found nearly 90 percent support for body-worn cameras among Americans generally).

12. Wasserman, *Moral Panics*, *supra* note 9, at 833.

13. Alberto R. Gonzales & Donald Q. Cochran, *Police-Worn Body Cameras: An Antidote to the “Ferguson Effect”?*, 82 MO. L. REV. 299, 308 (2017).

14. Mike Maciag, *Survey: Almost All Police Departments Plan to Use Body Cameras*, GOVERNING MAGAZINE (Jan. 26, 2016), <http://www.governing.com/topics/public-justice-safety/gov-police-body-camera-survey.html>.

15. *Id.*

16. See Wasserman, *Moral Panics*, *supra* note 9, at 835.

17. See Michael Durkheimer, *Why Don’t Police Cameras Work Like We Expected?*, FORBES (Oct. 23, 2017), <https://www.forbes.com/sites/michaeldurkheimer/2017/10/23/why-dont-police-body-cameras-work-like-we-expected/#520bc83b1244> (explaining that instances of and complaints of use-of-force by police did not decline in Washington, D.C. after body cameras were implemented).

18. *Id.*

an unarmed suspect.¹⁹ Six-hundred-forty killings began with police responding to suspected non-violent offenses or cases where no crime was reported.²⁰ Although nearly half of those killed reportedly had a gun on them, one in five “were not threatening anyone when they were killed.”²¹ Of the 1,147 cases in 2017, only thirteen cases resulted in charges being brought against an officer.²² Although many cases from 2017 have not yet gone to trial, data from 2015 shows that only 1 percent of cases in that year resulted in any officers involved being convicted of a crime.²³ It seems, therefore, that even with video evidence, it is still exceedingly difficult to get a conviction in a use-of-force case.

Why has seemingly objective evidence of use-of-force so far failed to lead to convictions or changes in police behavior? One potential answer is the pervasiveness of implicit biases in the United States. Implicit bias is driven by “attitudes and stereotypes that we have about social categories, such as genders and races.”²⁴ An attitude is an association between a concept (here, Black Americans) and an “evaluative valence,” or a positive or negative psychological evaluation.²⁵ A stereotype is another kind of association, in this case between a concept (Black Americans) and a trait, such as criminality.²⁶ It is important to distinguish the two concepts, because it is possible to have a positive attitude and a negative stereotype of the same concept.²⁷ For example, “one might have a positive

19. MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited Oct. 17, 2018). According to this site, there were 1,152 people killed by a police officer from January 1 through December 15, 2015 (this includes non-shooting deaths). *Id.* The Washington Post records 990 people shot and killed by police in 2015. Kimberly Kindy & Kennedy Elliott, *2015 Police Shootings Investigation*, WASH. POST (Dec. 26, 2015), <https://www.washingtonpost.com/graphics/national/police-shootings-year-end/>. The number of indictments of police officers tripled in 2015 (18 for the year) compared with averages over the previous ten years (5 per year). *Id.* “In [ten] of the 2015 cases, prosecutors had a video record of the shooting, a big increase over previous years.” *Id.* “The Post found that 6 percent of the killings captured by body cameras.” *Id.* There were no convictions for the killings in the year 2015. Matt Ferner & Nick Wing, *Here’s How Many Cops Got Convicted of Murder Last Year for On-Duty Shootings*, HUFFINGTON POST (Jan. 13, 2016), https://www.huffingtonpost.com/entry/police-shooting-convictions_us_5695968ce4b086bc1cd5d0da. “[S]ince 2005, there have only been [thirteen] officers convicted of murder or manslaughter in on-duty fatal shootings . . .” *Id.*

20. POLICE VIOLENCE REPORT, policeviolencereport.org (last visited Oct. 17, 2018).

21. *Id.*

22. *Id.*

23. MAPPING POLICE VIOLENCE, *supra* note 19.

24. Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1128 (2012).

25. *Id.*

26. *Id.*

27. *Id.* at 1129.

overall attitude toward African Americans and yet still associate them with weapons.”²⁸

Recent studies have shown that these attitudes can not only be explicit, but they can be implicit, or “not consciously accessible through introspection.”²⁹ These social cognitions impact a person’s behaviors and decision-making without the person’s knowledge of even having them.³⁰

Implicit biases thus affect all of us in some way, and when it comes to the evaluation of interactions between police and citizens, may have dangerous effects. For instance, in the context of the jury, when viewing body-camera footage, implicit biases may dictate what the juror perceives, or at the very least create a lens through which a juror will watch the footage. For, “as any undergraduate film student knows, what video actually says depends on a number of different considerations—who and what is depicted, who created the images and how, and details of the images themselves.”³¹ Additionally, what any viewer sees is “influenced by the viewer’s cultural, demographic, social, political, and ideological characteristics.”³² This Note argues that while body cameras can help provide evidence in credibility battles between opposing witnesses, they are dangerous because they give a narrow perspective of an encounter that may simply reinforce the implicit biases of those who watch the video. In arguing this, this Note discusses how implicit biases, influenced by each juror’s subjective interpretation of the world, impact jurors in the courtroom, particularly in relation to video footage and specifically body-worn camera footage.

Part I discusses implicit bias and how it impacts every person in the criminal justice process, as well as how these biases necessarily inform how a jury looks at camera footage—especially body-camera footage. Part II discusses the issue of apparent objectivity of video footage and its actual subjectivity, looking at the Supreme Court’s decision in *Scott v. Harris* and its problems. Part III connects the implicit bias discussion and video discussion, to focus on how implicit bias informs body-camera analysis. Finally, Part IV examines possible solutions to the problems with using body-camera footage as evidence in trial.

Ultimately, this Note cautions the use of body-camera footage as a cure-all for police brutality because the footage provides a narrow view of what occurred, and jurors who are shown the footage witness a story of White fear, which serves to reaffirm their own implicit biases. Body-camera footage, while it can be helpful, must be used with skepticism and

28. *Id.*

29. *Id.*

30. Kang, *supra* note 24, at 1129.

31. Wasserman, *Moral Panics*, *supra* note 9, at 840.

32. *Id.*

bolstered by additional evidence and implicit bias education to truly achieve justice.

PART I

Not many people would openly admit they are racist. Explicit racism is increasingly unacceptable normatively; however, unconscious attitudes and biases exist underneath the surface of almost every individual.³³ In part because of these biases, racial disparities continue to exist in the American justice system, especially in jury verdicts and sentencing.³⁴ This Part discusses implicit bias and how every person harbors their own implicit biases. It elaborates on how certain parts of the media exacerbate this bias. Finally, this part concludes that these biases necessarily inform how a jury looks at any camera footage, but especially body-camera footage.

A. *Implicit Biases*

American law has been shaped by the understanding that humans have attitudes and stereotypes, and these explicit social cognitions are easily recognizable and well-documented.³⁵ For example, a private individual may display explicit negative attitudes by refusing to serve an individual of a different race.³⁶ In fact, explicit racial social cognitions form much of the basis of our current antidiscrimination laws.³⁷

However, recent psychological studies show that attitudes and stereotypes can be implicit, and therefore can impact a person's decision-making and behaviors without the person knowing they are being influenced by these attitudes and stereotypes.³⁸ This means that although people may outwardly condemn racism and embrace egalitarian values, implicit attitudes and stereotypes can operate to distort decision-making,

33. See, e.g., Jennifer K. Elek & Paula Hannaford-Agor, *First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making*, 49 CT. REV. 190, 190 (2013).

34. *Id.* at 191.

35. Kang, *supra* note 24, at 1129.

36. See Icek Ajzen & Martin Fishbein, *Attitude-Behavior Relations: A Theoretical Analysis and Review of Empirical Research*, 84 PSYCHOL. BULLETIN 888, 893 (1977) (discussing how almost all studies of attitudes toward Black people by White people show “nonsignificant relations between attitude and behavior”).

37. Kang, *supra* note 24, at 1129.

38. *Id.*

particularly—at least in the United States—to the detriment of Black individuals.³⁹

Social psychologists have documented the stereotype of Black Americans as violent and criminal for over fifty years,⁴⁰ but the stereotype can be traced back to the foundation of slavery in the United States.⁴¹ This association occurs whether one intends it or not.⁴² Furthermore, there is a “bidirectionality” of associations—not only are Black Americans associated with crime, but crime itself is associated with Black Americans.⁴³ These bidirectional associations “function as visual tuning devices—directing people’s eyes, their focus, and their interpretations of the stimuli with which they are confronted.”⁴⁴ For example, individuals are more likely to feel that “mildly aggressive behavior” is more threatening if the actor is a Black person than if the actor is a White person.⁴⁵

One study of implicit bias showed that participants in a study more quickly associated guns with Black faces, a bias called “weapon bias.”⁴⁶ In this study, participants were asked to identify guns or harmless objects, with a human face flashing just before each object appeared (some versions included a Black face, some included a White face).⁴⁷ In one version of the test, participants responded at their own pace.⁴⁸ While accuracy was high regardless of race, “participants detected guns faster in the presence of a [B]lack face.”⁴⁹ In a second version, participants had to respond within a half-second.⁵⁰ In this version, participants “falsely claimed to see a gun more often when the face was Black than when it was White.”⁵¹

39. See, e.g., Elek & Hannaford-Agor, *supra* note 33, at 190-92; Samuel R. Sommers & Phoebe C. Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCHOL. PUB. POL. & L. 201, 202 (2001).

40. Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 876 (2004).

41. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW* 28 (2010); Roger D. Abrahams, *The Negro Stereotype: Negro Folklore and the Riots*, 83 J. AM. FOLKLORE 229, 230 (1970); Ronald E. Hall, *The Ball Curve: Calculated Racism and the Stereotype of African American Men*, 32 J. BLACK STUD. 104, 106 (2001); 13TH (Netflix 2016).

42. Eberhardt et al., *supra* note 40, at 876.

43. *Id.* at 877.

44. *Id.*

45. Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N. CAR. L. REV. 1555, 1581 (2013).

46. B. Keith Payne, *Weapon Bias: Split-Second Decisions and Unintended Stereotyping*, 15 CURRENT DIRECTIONS PSYCHOL. SCI. 287, 287 (2006).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

Not only did study participants more quickly associate Black faces with guns, but participants (using a video game to simulate real-life situations) also fired at an armed target more quickly if he was Black and decided *not* to shoot at an unarmed target more quickly if the unarmed target was White.⁵²

A separate study concluded that Denver police officers have a greater ability to differentiate armed from unarmed targets than the community they police, but that there were no differences between Denver officers and the Denver community in terms of the magnitude of bias.⁵³ Officers were better than civilians in terms of final decisions: while civilians tended to set lower criteria for shooting Black targets than White targets (i.e., they were “trigger happy”), this bias was much weaker, and possibly nonexistent, for officers.⁵⁴ But, like the previous study, participants shot armed targets more quickly when they were Black rather than White and chose to *not* shoot unarmed targets more quickly when they were White.⁵⁵ Additionally, officers serving in districts with a large population, high rate of violent crime, and greater concentration of Black people showed increased bias in reaction times.⁵⁶

52. This is what Joshua Correll calls “shooter bias.” Joshua Correll et al., *The Police Officer’s Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1317 (2002). This is the first of two related studies. See *infra* note 53. The authors of the study gave participants an 850-millisecond window to “maximize correct responses.” *Id.* at 1318. The average proportion of errors across participants was 4 percent of the trials. *Id.* Within these errors (shooting unarmed targets more frequently than armed targets), though, the tendency to shoot the unarmed target was stronger when the target was Black than when the target was White. *Id.*

53. Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. PERSONALITY & SOC. PSYCHOL. 1006, 1012-13 (2007) [hereinafter Correll, *Thin Blue Line*]. The magnitude bias is the magnitude of the racial bias the participants in the study exhibited based on their response times. To determine the magnitude, the researchers measured the response time of participants when faced with “stereotype-incongruent” targets, i.e. unarmed Black targets and armed White targets, and compared that with their response time when faced with “stereotype-congruent” targets. The bias shown by police officers and community members who were part of the study did not differ. This indicates that officers do not show greater bias than the people in the communities they serve (although this does not mean that bias is not a problem in the community). *Id.* at 1015.

54. *Id.* at 1015.

55. *Id.* at 1013-14.

56. *Id.* at 1014.

B. *The Media Stoking Racial Bias*

The media, particularly the news media, further contributes to the stereotype that Black people are criminal and violent.⁵⁷ Images in the news reinforce feelings of racial tension which then impact how individuals interact with the criminal justice system, including strengthening biases against a Black defendant even if there is no publicity for his specific trial.⁵⁸ This subpart will show how the media can reinforce racial biases, which in turn may affect juror decision-making.

To start, the news media overrepresents Black individuals as culprits of violent crime, not aligning with actual arrest rates, while White individuals are overrepresented as victims of violence and as law-enforcers.⁵⁹ Black individuals are more likely to have negative pretrial publicity, especially if the victim of the alleged crime is White.⁶⁰

Additionally, Black individuals are more likely to live in poverty. This reality “encode[s] poverty as an especially [B]lack trait” and “undermine[s] potential sympathy . . . for antipoverty programs.”⁶¹ This undermining of antipoverty programs is important because poverty also is more often associated “with threats in the form of crime, violence, drugs, gangs, and aimless activity.”⁶² Instead of garnering support for antipoverty programs, messages of poverty reinforce racial resentment and correlate to White “support of punitive crime policies.”⁶³ They also contribute to stereotypical associations between “[B]lacks, criminality, and guilt that can influence evaluations and behavior.”⁶⁴ These stereotypical associations have real-world effects, such as the “shooter bias” described above.⁶⁵

These associations don’t just occur in the news, but also in other television programming, movies, advertising, and sports.⁶⁶ These associa-

57. Robert M. Entman & Kimberly A. Gross, *Race to Judgment: Stereotyping Media and Criminal Defendants*, 71 L. & CONTEMP. PROB. 93, 97 (2008).

58. *Id.* at 97-98 (“These images . . . are a central component in a circular process by which racial and ethnic misunderstanding and antagonism are reproduced, and thus become predictable influences in the criminal-justice process.”).

59. *Id.* at 98-99. See also ALEXANDER, *supra* note 41, at 106 (“[F]or nearly three decades, news stories regarding virtually all street crime have disproportionately featured African American offenders.”).

60. Entman & Gross, *supra* note 57, at 100.

61. *Id.* at 102.

62. *Id.*

63. *Id.* at 103.

64. *Id.* at 102.

65. *Id.* at 104.

66. Entman & Gross, *supra* note 57, at 102. For example, the historic Zulu chief Zulu was depicted as a “bloodthirsty madman” in a 1986-T.V. miniseries called *Shaka Zulu*. Helán E. Page, “Black Male” Imagery and Media Containment of African American Men, 99

tions reinforce negative racial stereotypes, which in turn affect behaviors of individuals.⁶⁷ The media, therefore, has fed into the racialized fear of Black Americans, increasing and reinforcing negative stereotypes.⁶⁸

C. Jurors and Implicit Biases

The media has become a ubiquitous part of our lives and has the power to reach millions of people across the United States. Because of this, individuals across the United States are influenced by the images on their screens, from the news to television to film, that reinforce negative stereotypes of Black people. The reinforced stereotypes may influence behavior, and empirical studies show that they do.⁶⁹ This subpart will discuss how the implicit biases explored above impact how jurors approach evidence. Because body-camera footage is evidence, jurors will approach it and judge it using their implicit biases; therefore, courts should caution jurors in placing too much weight on the footage without examining their own and the police officer's biases.

Jurors are chosen from the "State and district wherein the crime shall have been committed."⁷⁰ This means that jurors are average citizens who are selected at random, and who likely have implicit biases that have been reinforced by media stereotypes. When confronted with evidence in court, jurors are analyzing it through a lens shaped by their biases, whether or not they are conscious of them.

Studies that show the ways individuals react to Black suspects compared with White suspects support the conclusion that when jurors see footage from the viewpoint of an officer, they are already harboring attitudes in which they are more likely to see a Black person as dangerous, and thus are less likely to find problems with the officer's conduct. For example, individuals may have a lower threshold for thinking it is acceptable to shoot Black targets.⁷¹ Because of this, those individuals may be more likely to see actions or objects in the body camera video that they feel justify the police using excessive force.

AM. ANTHROPOLOGIST 99, 101 (1997). There was no mention of his "brilliant anticolonial military innovations." *Id.*

67. See Page, *supra* note 66, at 103.

68. See *id.*

69. See, e.g., Entman & Gross, *supra* note 57, at 104. For example, after a standard crime news "script," "60 percent of viewers who saw a story with no image falsely recalled seeing one, and 70 percent of those viewers believed the perpetrator to be African American." ALEXANDER, *supra* note 41, at 106.

70. U.S. CONST. amend. VI.

71. See Correll, *Thin Blue Line*, *supra* note 53, at 1015.

A prosecutor, like any other person, is susceptible to racial bias. Prosecutors may “interpret and respond to identical criminal activity differently based on the race of the offender.”⁷² Prosecutors may describe Black and White defendants differently, attributing crime by Black defendants to personality flaws while attributing White defendants’ criminal acts to “external conditions such as family conflict.”⁷³ Subtle language cues may interact with and reinforce stereotypes jurors hold, contributing to the ways bias plays a part in juror decision-making.

Furthermore, individuals may be more likely to associate “black” with “guilty” and “white” with “not guilty.” At least one study indicates that these implicit associations predict the way mock jurors evaluate ambiguous evidence.⁷⁴ While these associations refer to Black defendants, it would logically follow that jurors would similarly evaluate ambiguous evidence in the case of an officer using force in ways that track their implicit attitudes toward Black people.

The studies above tend to show that although responses may differ, both the police and jurors share the same biases. Body-camera footage, then, necessarily shows police use of force from a distinct perspective. This distinct perspective reflects the officer’s racial bias. It follows that jurors, who are ordinary citizens, confronted with the ambiguity of a jostling body camera, may draw on these biases in their decision-making.⁷⁵ Body cameras, therefore, should be viewed cautiously, as the footage from them may simply depict what the viewer wants to see.⁷⁶

Courts should develop instructions to the jury that explain both the value of having body-camera footage and the danger of relying too heavily on that body-camera footage. Since it is susceptible to analysis based on internal attitudes and stereotypes, courts should be careful to emphasize that the footage is only one part of the evidence, and that jurors should take all evidence into account when deciding the case. Courts could accomplish this by instructing the jury of the dangers of implicit bias and warning juries not to place dispositive weight on this type of evidence. Further, Courts should limit the use of body-camera footage if they find that the evidence would be too prejudicial for the jury, or the jury would place too much weight on the video itself.

72. See ALEXANDER, *supra* note 41, at 117.

73. *Id.* at 115.

74. Justin D. Levinson et al., *Guilty by Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test*, 8 OHIO ST. J. CRIM. L. 187, 190 (2010).

75. See, e.g., Elek & Hannaford-Agor, *supra* note 33, at 191-92.

76. See Eberhardt et al., *supra* note 40, at 877.

PART II

Imagine you are watching a video of a man hitting another man. Is this video definitive proof of the guilt of the hitter? What if you later find out the man who was hit had a deadly spider on his arm that you couldn't see, and the hitter was trying to kill it?

This Part discusses the supposed—and falsely construed—objectivity of video footage. Subpart A discusses the subjectivity of video footage, particularly body-camera footage. Subpart B focuses on the Supreme Court's problematic interpretation of the video footage in *Scott v. Harris*.

A. *Inherent Subjectivity of Video Interpretation*

“What a piece of video evidence means or signifies depends on who is watching, perceiving, and interpreting.”⁷⁷ And yet, people perceive video footage as “truthful, unbiased, objective, and unambiguous reproduction of reality, deserving of controlling and dispositive weight.”⁷⁸ Courts give strong deference to video evidence as an “unambiguous source of proof,” with only one reasonable way to view it.⁷⁹

However, a video's meaning is shaped by whomever is viewing it, and as such should not be prioritized over other types of evidence. As humans, we tend to believe our eyes, and thus forget to approach the video with the “ingrained, institutionalized skepticism” we use when analyzing text.⁸⁰ We view images as a “neutral depiction of facts,” not needing any interpretation.⁸¹

The problem with the notion that video is a “neutral depiction of facts” is that we may not be getting the entire context surrounding the situation going on in the video. Even if we do not get a full picture, however, we “mentally complete” the image and interpret it using our own backgrounds, experiences, and biases as guides.⁸² Video is thus inevi-

77. Howard M. Wasserman, *Orwell's Vision: Video and the Future of Civil Rights Enforcement*, 68 MD. L. REV. 600, 608 (2009) [hereinafter Wasserman, *Orwell's Vision*].

78. *Id.* at 607.

79. *Id.*

80. Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1756 (2014).

81. *Id.* at 1754. See also *infra* Part II.b, discussing *Scott v. Harris* and how the Supreme Court believes video footage is objective evidence.

82. Porter, *supra* note 80, at 1753; Caren Myers Morrison, *Body Camera Obscura: The Semiotics of Police Video*, 54 AM. CRIM. L. REV. 791, 801 (2017). See also, e.g., 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, 879 (2007). This study showed the video footage from the *Scott v. Harris* decision and asked participants to respond to questions about what a jury would be required to find in the case, such as the risk of death, the degree of risk

tably subjective; “contextualized within a system that posits blacks as more dangerous than whites and devalues black suffering at the hands of the police.”⁸³

Additionally, video evidence is limited by context—body-camera video especially so. Body-camera footage focuses on one frame of a longer situation, and depending on the jurisdiction, begins when police realize they are likely to confront a person or situation that could turn violent.⁸⁴ The “temporal limitations” of video footage means that the viewer misses what happens before and after the recording, which makes it easy to misconstrue the video.⁸⁵

The limited nature of video evidence is further narrowed in body-camera cases, where the camera shows events only from the perspective of the officer. This limited perspective necessarily fails to cover relevant information outside the view of the lens that could have changed the entire outcome of a situation.⁸⁶ Body-camera footage is fragmentary, eliminating anything not in the field of view of a limited lens.⁸⁷ If a scene is not clearly lit, close enough, or able to be seen from the angle and height of the camera, the footage the jury sees provides a piecemeal version of the full episode.⁸⁸ Two opposing (or maybe contrasting) camera angles of the same event can present vastly different meanings to viewers.⁸⁹

For example, body-camera footage may show a suspect shift from one foot to the other, looking nervous. A viewer may see this as suspicious activity. However, there may be things going on outside the frame of the body camera’s view, such as the officer unbuttoning his gun holster, or additional officers entering from behind or beside the officer. With that added context, the suspect’s body language no longer looks quite as suspicious, but could be viewed instead as reacting to an increasingly hostile situation. Since ambiguous body language is interpreted as more threatening if a suspect is Black, this lack of added context inherent in body-camera footage is especially disadvantageous to Black victims of police violence.⁹⁰ Finally, images, more than text, are more closely correlated with emotion.⁹¹ “If police video can heighten the sense of danger to

the police created in comparison with Harris, and the “relative culpability” of the police and Harris. See also Wasserman, *Orwell’s Vision*, *supra* note 77, at 626.

83. Myers Morrison, *supra* note 82, at 804.

84. *Id.* at 800.

85. *Id.* at 807.

86. Gonzales & Cochran, *supra* note 13, at 320.

87. See Myers Morrison, *supra* note 82, at 807.

88. *Id.*

89. See *id.* at 809–11.

90. Elek & Hannaford-Agor, *supra* note 33, at 191.

91. See Porter, *supra* note 80, at 1755.

the officer,” a juror may view the video with a heightened sense of their own danger, and thus “place a thumb on the scale in favor of the officer.”⁹²

Because video evidence is inherently subjective, a juror should not be allowed to view the video as if it is objective. If a juror views the video as an objective description of the circumstances, she will not get the whole picture, and she may fill in the blanks using her own lived experiences and personal biases. This is antithetical to the court’s goal of fact-finding based only on the evidence presented. Therefore, courts should instruct the jury of the subjective nature of the video footage and reiterate that it should not be given undue weight.

B. *Scott v. Harris and Video Objectivity*

Unfortunately, the Supreme Court has taken the opposite stance, claiming that video is objective, and has assigned video footage definitive weight.⁹³ In *Scott v. Harris*, the Supreme Court considered the question: “Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist’s flight from endangering the lives of innocent bystanders?”⁹⁴ Phrased that way, this question, as Justice Scalia put it, seems to engender only one reasonable answer. Yet the Court believed it decided the case in an objective way, stating, “we are happy to allow the videotape to speak for itself.”⁹⁵ This subpart analyzes *Scott v. Harris* to show the dangers of assuming that video evidence is objective, and argues that perceived objectivity ultimately hurts Black victims of police violence because it ignores the subjective nature of interpretation, and the biases inherent in analyzing video footage.

Police officer Timothy Smith deliberately hit the back of Victor Harris’s car during a car chase, knocking Harris’s car off the roadway and down an embankment where it overturned and crashed.⁹⁶ As a result of his injuries, Victor Harris became a quadriplegic. After Harris filed a suit under 42 U.S.C. § 1983 for a violation of his Fourth Amendment rights,⁹⁷ the District Court and United States Court of Appeals for the Eleventh Circuit agreed that there were material issues of fact that needed to be decided by a jury. Once the case arrived at the Supreme Court, however, Justice Scalia and the seven other justices who joined him stat-

92. See Myers Morrison, *supra* note 82, at 800.

93. *Scott v. Harris*, 550 U.S. 372, 373 (2007).

94. *Id.*

95. *Id.* at 378 n.5.

96. *Id.* at 375.

97. Excessive force resulting in an unreasonable seizure.

ed that, “[t]he videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals.”⁹⁸ Scalia thus set aside the normal rule of viewing the facts in the light most favorable to the plaintiff, because Harris’s version of events was apparently blatantly contradicted by the record.⁹⁹ According to Scalia, no reasonable jury could have found for Harris.¹⁰⁰ The Court reversed the Court of Appeals and granted summary judgment to Scott.¹⁰¹

There was no further analysis beyond a viewing of the video evidence in *Scott v. Harris*. The outcome seems “a particularly blinded example of a more general neglect of narrative analysis on the part of judges.”¹⁰² What belied the seeming objective analysis that Justice Scalia believed the Court applied, however, was the fact that one Justice took a different point of view: Justice Stevens.¹⁰³ Justice Stevens said that the fact that the judges and justices themselves saw different things in the video means that a reasonable juror could also have differing opinions about what the video depicted.¹⁰⁴ Because there was a question of whether Harris’s actions actually rose to a level warranting deadly force, the question should have been reserved for a jury.¹⁰⁵

To test whether a reasonable jury could believe different things about the video, a group of social scientists conducted an empirical study.¹⁰⁶ In the study, a majority saw the video the same way the Court did.¹⁰⁷ However, certain discrete groups, such as African-Americans, low-income workers, and liberals, saw things a different way, and were generally more pro-plaintiff than the *Scott* Court.¹⁰⁸

98. *Harris*, 550 U.S. at 378.

99. *Id.* at 380.

100. *Id.*

101. *Id.* at 386.

102. Peter Brooks, *Scott v. Harris: The Supreme Court’s Reality Effect*, 29 L. & LIT. 143, 148 (2017).

103. Kahan et al., *supra* note 82, at 840. *See also Harris*, 550 U.S. at 395–96 (Stevens, J., dissenting) (noting that although eight of the justices agreed with Justice Scalia, the fact that two lower-court judges and Stevens himself saw ambiguity undercuts Scalia’s argument in footnote 5 that the video “speak[s] for itself.”) “If two groups of judges can disagree so vehemently about the nature of the pursuit and the circumstances surrounding the pursuit, it seems eminently likely that a reasonable juror could disagree with this Court’s characterization of events.” *Id.* at 396.

104. *Harris*, 550 U.S. at 389 (Stevens, J., dissenting).

105. *Id.* at 395.

106. Kahan et al., *supra* note 82, at 841.

107. *Id.*

108. *Id.*

Based on the study, Kahan and his fellow authors believed that the *Scott* Court “was wrong to privilege its own view.”¹⁰⁹ They believed that by summarily dismissing the case, the Court delegitimized anyone with a different perspective, who, in this case, were generally minorities or outsiders.¹¹⁰ The problem with the Court’s decision is that they believed no reasonable jury could view the video as anything other than how they viewed it, and yet, two lower courts, a Justice, and at least some of 1350 participants in a study—a statistically significant number of them—viewed the tape differently.¹¹¹

Scott is crucial for understanding how courts understand body-camera footage as evidence, because the ruling allows judges to summarily dismiss cases if they feel as if “no reasonable jury could believe” anything other than what the judge believes. Video footage is not objective as the *Scott* Court believed.¹¹² Judges, like jurors and police officers, will come to the footage with their own biases.¹¹³ The *Scott* decision clearly rests on naïve realism, wherein “[f]irst, we naïvely believe that we see the world in an objective, neutral manner. Second, we assume that other reasonable people view the world in the same way we do—that is, accurately.”¹¹⁴

The Supreme Court justices are not alone in this conceptualization of the nature of video evidence. Lower courts and academics also think this way,¹¹⁵ stating, “advanced body-camera technology can be used to create an objective record of what transpired.”¹¹⁶ The danger of this perceived objectivity is that it ignores the biases all individuals harbor, and will therefore likely disproportionately impact Black Americans in the viewing and analysis of video footage.

Therefore, courts should approach body-camera footage with the skepticism they would with any other piece of evidence. Courts should also allow juries to be the factfinders of video evidence in every situation, for as shown by Justice Stevens in *Scott*, video footage may be viewed differently depending on who is watching. Because of the inherent subjec-

109. *Id.*

110. *Id.* at 842.

111. *See id.* at 881; *Scott v. Harris*, 550 U.S. 372, 376, 381-90 (2007).

112. *See supra* notes 80-95.

113. *See, e.g.,* Myers Morrison, *supra* note 82, at 801.

114. Adam Benforado & Jon Hanson, *Naïve Cynicism: Maintaining False Perceptions in Policy Debates*, 57 EMORY L.J. 499, 513 (2008).

115. *See* Wasserman, *Orwell’s Vision*, *supra* note 77, at 631.

116. John T. Cigno, *Truth and Evidence: The Role of Police Officer Body Cameras in Reforming Connecticut’s Criminal Justice System*, 49 CONN. L. REV. 293, 315 (2016). *But cf.* *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (2014) (holding that there was at least some circumstantial evidence that “could give a reasonable jury pause”).

tivity of video footage, courts should warn jurors about their biases and encourage a holistic approach to analyzing the evidence.

PART III

This Part connects the implicit bias and video discussions to focus on how implicit bias informs body camera analysis. The first subpart discusses the problems with perspective, and how it disadvantages suspects. The second subpart explores cognitive biases that affect how viewers analyze video footage. Finally, the third subpart argues that using body-camera footage as evidence at trial disadvantages Black victims of police violence.

A. Point-of-View Problems

One of the biggest problems with body-camera footage is the perspective bias necessarily associated with it. At the same time, body-camera footage coming from the officer's perspective is helpful because "(1) the officer's perspective is the legally relevant perspective, and (2) it gives context to the final frames often recorded by citizens."¹¹⁷ Viewing body-camera footage is the best way of putting jurors in the officer's position, where they can then determine whether the officer's actions in that position were reasonable.¹¹⁸

However, the officer's perspective as shown by the body-camera footage is severely limited in both range and direction.¹¹⁹ Video cannot capture every detail in a situation, such as peripheral movement or what the officer is doing with his hands below the view of the camera.¹²⁰ Moreover, the camera may appear to be unbiased, but the positioning and perspective of the camera can frame how the viewer analyzes the video without the viewer realizing the impact of the perspective.¹²¹ When jurors view the situation from the officer's point of view, they get a "sense of intimacy," which "heightens sympathy for the officer's perspective because [they] have the sense of seeing through his eyes."¹²²

117. Gonzales & Cochran, *supra* note 13, at 308.

118. *Id.*

119. Howard M. Wasserman, *Recording of and by Police: The Good, the Bad, and the Ugly*, 20 J. GENDER RACE & JUST. 543, 552 (2017) [hereinafter Wasserman, *Recording of and by Police*].

120. See Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897, 951 (2017).

121. *Id.* at 948.

122. *Id.* at 949.

Finally, the point of view of an officer is also a perspective of bias. Law enforcement is not immune from systemic biases and attitudes. While Part I discussed shooter bias, police use of a firearm is not as common as most people believe.¹²³ More commonly, officers disproportionately stop, search, and arrest Black individuals, especially young Black men.¹²⁴ Officers also generally use excessive force at a higher rate for Black individuals than White individuals; Black people who are stopped are 14 percent more likely to experience excessive force than their White counterparts.¹²⁵ Officers wearing body cameras thus are subject to the same implicit biases as jurors, which may in turn reinforce jurors biases when viewing the footage.

B. *Body Cameras and Cognitive Biases*

A New York Times article by Timothy Williams et. al depicts clearly the difficulty in relying on body-camera footage for definitive evidence as well as the way our implicit biases impact how we view the footage.¹²⁶ The article first asks readers how they feel about the police, measured by their tendency to trust or distrust the police. Then, the article asks the reader to watch a video (with no sound) taken from a chest-mounted body camera, and then asks the reader to respond to the question: “How threatening was the situation the officer faced?” and “How confident are you in your answer?”¹²⁷ The body camera shakes, the subject being filmed is very close to the officer, and the subject’s arms flail, hands fisted tightly.¹²⁸ Seth W. Stoughton, a law professor at the University of South Carolina and the producer of these videos, said most people usually agree that the officer “face[d] a serious threat to his safety and quite possibly, his life.”¹²⁹ When viewing the interaction from a different angle, however, we see that the officer and the subject in the camera footage are dancing.¹³⁰ This reflects “deceptive intensity,” according to Stoughton.

123. Rich Morin & Andrew Mercer, *A Closer Look at Police Officers Who Have Fired Their Weapon on Duty*, PEW RES. CTR. FACT TANK, Feb. 8, 2017. In fact, only 27 percent of police officers have ever fired their gun on the job. *Id.*

124. Robert J. Smith, *Reducing Racially Disparate Policing Outcomes: Is Implicit Bias Training the Answer?*, 37 U. HAW. L. REV. 295, 297 (2015).

125. *Id.* at 297 n.13.

126. Timothy Williams et al., *Police Body Cameras: What Do You See?*, N.Y. TIMES, (last updated Apr. 1, 2016).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

Another video in the article's study depicted a foot pursuit, where the body camera does not—but a camera from another angle does—catch the officer touching his gun, which triggered the suspect's run.¹³¹ A final video depicted a car stop, recorded by both a body camera and a dashboard camera from the police car; neither video truly made clear the entire incident.¹³² A bystander video from another angle, though, showed what the police videos could not, and cleared up some ambiguity about whether the police was knocked down by the suspect opening his car door, and why the man got out of his car in the first place (a bee was inside!).¹³³

The article answered questions based on initial viewings of the body-camera footage, and then gave total results based on what people answered in the initial question of trust in the police, updated every few minutes based on quiz responses.¹³⁴ The responses from the people who took the quiz and followed the questions through the article showed a disparity: those people who generally trust the police tended to see a serious threat more often than those who generally distrust the police.¹³⁵

The results suggest that what we see in a body-camera video footage will be shaped by the biases we already hold.¹³⁶ This bias disproportionately harms Black Americans and slows justice for those subjected to excessive force by police. “‘Our interpretation of video is just as subject to cognitive biases as our interpretation of things we see live,’ Professor Stoughton has said, ‘[p]eople disagree about policing and will continue to disagree about exactly what a video shows.’”¹³⁷

C. Body Cameras and Racial Biases

If individual interpretations of body-camera footage are necessarily influenced by our “cognitive biases,”¹³⁸ then it stands to reason that individual interpretations of body-camera footage are necessarily influenced by the implicit racial attitudes and stereotypes we hold. We all come from subjective positions, and our “cultural, demographic, social, political, and ideological characteristics and attitudes” thus affect what we see when we view a video.¹³⁹

131. *Id.*

132. Williams et al., *supra* note 126.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Williams et al., *supra* note 126.

139. Wasserman, *Recording of and by Police*, *supra* note 119, at 553.

Combining the studies discussed above with the juror's duties as factfinder shows that jurors may interpret body-camera footage using their preexisting biases. These biases, which often associate Black people with criminality and violence, may make jurors associate a Black subject of a body camera video with violence at a higher rate, thereby justifying the use of force. Furthermore, individuals tend to see ambiguity as more threatening if the target is Black, and biases will direct jurors attention in video to things that reinforce previously held attitudes.¹⁴⁰ Jurors may see weapons on Black subjects at a higher rate than White subjects, especially in highly ambiguous videos, which a significant portion of body-camera footage is.¹⁴¹ Jurors, who are likely not trained in addressing racial bias, tend to be "trigger-happy".¹⁴² All of these studies suggest that jurors, after seeing body-camera footage, are more likely to conclude that the officer was justified in using excessive force against a suspect, even in, and perhaps especially in, ambiguous circumstances.

The outcome is that police officers, unless some intervention is taken, will likely not be held accountable by juries for excessive force against Black Americans. Jury decision-making, influenced as it is by implicit biases, will not bring justice through body cameras, as was thought when they were first introduced. This is not to say that body-camera footage is not useful or helpful, but rather that when viewed and not given context or qualified with warnings of implicit bias, does nothing more than reinforce beliefs that a juror already has.

Courts should thus be more careful in allowing body-camera footage to be played in the courtroom without sufficient context, or without warning jurors of the dangers of implicit biases and placing too much weight on the video evidence. Body-camera footage may be helpful in that it provides additional evidence in cases of police violence, but because jurors have subjective worldviews that impact how they view the footage, there is a danger that Black victims of police violence will not get the justice that people hoped for when first advocating for police body cameras. Jurors are imperfect, and host implicit attitudes and stereotypes that may fill in the blanks of the videos, likely making Black victims look violent or more criminal than they really are.

To protect the fact-finding mission of the jury based solely on the evidence presented, courts should take affirmative steps to counteract potential biases and warn against placing too much weight on the authority of the camera. One way to do this is to provide jury instructions to jurors to alert them to the danger of placing too much weight on this evidence

140. Elek & Hannaford-Agor, *supra* note 33, at 191.

141. See, e.g., *supra* notes 46-56 and accompanying text (explaining "weapons bias" and "shooter bias").

142. Correll, *Thin Blue Line*, *supra* note 53, at 1015.

and of implicit biases on video interpretation. By doing so, courts can minimize the impact of subjective biases and give victims of police violence hope that justice can be achieved.

PART IV

To adequately address use-of-force by police against Black Americans, implicit bias must be addressed in both policing and in courtrooms. Body-camera footage, while helpful evidence, will be informed by and viewed through a lens of implicit bias. To ensure the evidence is being used appropriately, there are steps a court can take to reduce the impact of racial bias in juror decision-making. There are also steps police can take to reduce the impact of racial bias in policing. These steps can help to create a fairer system that holds police accountable when they use excessive force, especially against Black Americans.

Although White jurors “no longer perceive all trials involving Black defendants as racially charged,” “the race of a defendant still influences the decisions of many criminal juries.”¹⁴³ Today, it is no longer socially acceptable to be or appear to be racist; when an issue in a trial is racially salient, it is “more likely to remind White jurors that they should avoid prejudice.”¹⁴⁴ Essentially, where a White juror is not reminded by the issues to avoid prejudice, she often lets down her guard and demonstrates bias.¹⁴⁵ It follows, then, to address bias in a trial, attorneys should introduce racial issues to remind White jurors they need to work to remain unprejudiced.¹⁴⁶

The downside of making racial issues salient in a trial is that if it is too heavy-handed, this technique can backfire and bring out not only implicit but also explicit biases of jurors. One set of studies shows that some types of individuals, when pressured to comply with mandatory nondiscrimination instructions, are “more likely to engage in biased decision-making, presumably to . . . ‘reassert their personal freedom.’”¹⁴⁷ Further, “if claims of racial injustice or police misconduct are perceived by Whites as baseless or as manipulative attempts to get a seemingly guilty defendant off the hook, the strategy might actually backfire.”¹⁴⁸

143. Sommers & Ellsworth, *supra* note 39, at 203.

144. *Id.*

145. *Id.* at 209.

146. *Id.* at 223.

147. Elek & Hannaford-Agor, *supra* note 33, at 193 (quoting E. Ashley Plant & Patricia G. Devine, *Responses to Other-Imposed Pro-Black Pressure: Acceptance or Backlash?*, 37 J. EXPERIMENTAL SOC. PSYCHOL. 486 (2001)).

148. Sommers & Ellsworth, *supra* note 39, at 223.

Another way of combating juror bias is to simply include Black people on a jury. “The mere presence of Black jurors might be a normative cue that makes race salient and reminds many Whites about their egalitarian values.”¹⁴⁹ Simply by knowing they would be serving on a jury that was not entirely composed of White jurors, White jurors were less likely to believe a Black defendant was guilty between the time evidence was concluded and deliberations.¹⁵⁰

Although it is difficult to root out implicit biases even through voir dire, voir dire can be used to remind potential jurors about their “egalitarian values,” decreasing the likelihood they will express racial bias later.¹⁵¹ A particular type of voir dire focused on reflecting on oneself and the possibility of one’s own racial bias can help remove juror racial bias.¹⁵²

Finally, courts can provide subtle implicit bias training in the form of jury instructions. Judge Mark Bennett, for example, warns the jury and asks them to recognize that implicit biases may affect everyone’s decisions, and to think critically about the evidence and resist the urge to be influenced by biases.¹⁵³ These instructions should also be “couched in accurate, evidence-based, and scientific terms,” because jurors tend to comply with instructions depending on how persuasive is the instruction’s rationale.¹⁵⁴ Appealing to the universality of implicit biases helps to temper defensive reactions to instructions.¹⁵⁵

As shown above, judges and attorneys can both diminish the impact of racial bias in jury decision-making. Using these techniques to remind

149. *Id.* at 221.

150. Kang et al., *supra* note 24, at 1181.

151. See Sommers & Ellsworth, *supra* note 39, at 222.

152. Kang et al., *supra* note 24, at 1181–84.

153. Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL’Y REV. 149, 169 (2010). Judge Bennett’s full instruction reads:

As we discussed in jury selection, growing scientific research indicates each one of us has “implicit biases,” or hidden feelings, perceptions, fears and stereotypes in our subconscious. These hidden thoughts often impact how we remember what we see and hear and how we make important decisions. While it is difficult to control one’s subconscious thoughts, being aware of these hidden biases can help counteract them. As a result, I ask you to recognize that all of us may be affected by implicit biases in the decisions that we make. Because you are making very important decisions in this case, I strongly encourage you to critically evaluate the evidence and resist any urge to reach a verdict influenced by stereotypes, generalizations, or implicit biases.

Id. at 169, n.85.

154. Kang et al., *supra* note 24, at 1183.

155. See *id.*

jurors to consider biases, jurors may be less likely to use body-camera footage to reinforce their biases. If jurors work hard to remain unprejudiced, then body-camera footage may be viewed with less racial bias, creating a fairer process and allowing the jury to view the footage in a more nuanced way. If jurors can recognize their own biases in viewing body-camera footage, then the use of body-camera footage more closely aligns with its purpose of addressing police brutality and racial disparities associated with it.

Implicit bias in policing should also be addressed. Implicit bias affects police in visual surveillance, recall, and armed response.¹⁵⁶ This will likely not only decrease the amount of deadly interactions with the police in the first place, but will also then provide a more objective video for jurors to view on the back end.

Addressing bias in policing is not just theoretical. A study by E. Ashby Plant and B. Michelle Peruche indicates that racial bias can be eliminated.¹⁵⁷ In the study, law enforcement officers completed a computer simulation, and decided when to shoot and not shoot Black or White suspects based on whether there was a gun in the picture.¹⁵⁸ The initial results mirrored the 2002 Correll et al. study discussed in Part I. However, after training with the program, in which “the race of the suspect was unrelated to the presence of a weapon, this racial bias was eliminated both immediately after training and 24 h[ou]r[s] later.”¹⁵⁹ After training, participants undertook a word-completion task that indicated they were “inhibiting racial concepts.”¹⁶⁰ This study shows that not only is it possible to eliminate racial bias in policing, but that it is not overly difficult to do so. Training officers with a program that makes the weapon unrelated to the race of the suspect did not just lessen the bias: it eliminated it entirely.¹⁶¹

Although this was a short-term study, its results are heartening in that it suggests the possibility that through a simple training exercise, police officers can become more objective in terms of race and weapons bias. If police are more accurate in their use of force because bias has been eliminated, body cameras can become a better way of determining whether a shooting was justified.

156. *Id.* at 1139.

157. E. Ashby Plant & B. Michelle Peruche, *The Consequences of Race for Police Officers' Responses to Criminal Suspects*, 16 *PSYCHOL. SCI.* 180, 180 (2005).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

CONCLUSION

By addressing implicit bias on both ends of the criminal justice system, we can hope to bring real justice for those who have long been the victims of both explicit and implicit biases. Body-camera footage is a first step to improving racial disparities in use of police force. It provides a source of evidence that can show problematic police behaviors, in the hope the footage can hold police accountable.

On the other hand, we must be cautious about using body-camera footage as a cure-all for problems in the justice system. The body-camera footage may simply reinforce implicit biases that jurors hold, and thus do nothing to address the core problems the cameras were designed to address in the first place. Courts should admit this footage as evidence, but be careful about how it is presented and how much import is assigned to it. Courts should also address how body-camera footage is only part of the bigger picture, and should not be viewed as any more or less telling than any other piece of evidence. Finally, courts should bring up the issue of race to prod jurors into introspection of their own implicit biases. Overall, body cameras can bring accountability and protect Black lives, but the footage must be viewed cautiously to truly bring about justice.