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The Police and the Communities They Serve: A Look at the Civil Rights Issues arising from Last Year's Events in Ferguson, Missouri

W. Edward Sell Inn of Court
March 31, 2015

Ferguson Documents: How the Grand Jury Reached A Decision

by Eyder Peralta & Krishnadev Calamur

November 25, 2014 6:41 AM ET



Police guard the Ferguson police department as rioting erupts following the grand jury announcement in the Michael Brown case on Monday in Ferguson, Mo. Scott Olson/Getty Images

After sitting through hours of testimony and reading through thousands of pages of documents, a grand jury decided that there was not enough probable cause to indict police officer Darren Wilson in the shooting death of Michael Brown, an unarmed 18-year-old.

Their decision, like the shooting that led up to all this, sparked violent protests overnight in Ferguson, Mo.

"The duty of the grand jury is to separate fact and fiction," the prosecuting attorney, Robert McCulloch, said in a televised address Monday night. After weighing the evidence, the grand jury decided that Wilson acted within the limits of the lethal-force law. To issue an indictment, the jury needed at least 9 members to vote for it.

In a rare move and in an attempt to allay concerns about bias, McCulloch made public the mountain of evidence presented to the grand jury. We're combing [through the thousands of pages](#) — including testimony from Wilson and many witnesses — and throughout the day, we'll update this post with the pieces that help explain how the jury reached its decision.

Last Updated at 11:14 a.m. ET. Witness Testimony:

Leading up to this decision, witness testimony has been hotly debated — so much so that the symbol of this story has become protesters raising their hands, symbolically telling police, "Hands up, don't shoot."

We have documents of dozens of witness interviews. If you listened to McCulloch last night, much of this jury's decision came down to whether Brown was charging Wilson or surrendering or running away.

As we've [detailed in another post](#), it's really complicated. Some witnesses say Wilson started shooting after he got out of the car; some say he started shooting inside the car. Some say Brown was very clearly surrendering, others say it didn't look like he had been hit at all.

Perhaps the simplest way to explain all of this is to take a close look at Witness 14.

Without a doubt, Witness 14 is sympathetic to Brown and, in fact, had run into him at least once in the past.

"[Brown] was to me, and I'm going to say it, he was executed," [the witness said](#). "[Wilson] had made up his mind he was going to kill him."

That was the witness' conclusion — that as Brown was shot, he was surrendering, he had his hands up.

That's what the witness told local authorities. But when the feds interviewed Witness 14 and drilled down on the details, the witness' assumptions became less clear.

Were Brown's hands a sign of surrender? Or was he checking his injuries? Were his palms facing the officer or facing Brown?

The witness eventually says: "He was defenseless, hands up, he was trying to stay on his feet and you could see that his knees was beginning to buckle and he was going down."

But the investigator eventually gets to a very important point. He leads the witness to say that Brown was moving toward Officer Wilson, who was screaming, "Stop," as he fired his weapon:

[Witness 14: Moving Toward Officer Wilson \(pg 15\)](#)

- <http://www.documentcloud.org/documents/1371259-interview-witness-14-2.html#document/p15/a189458>

: I don't want to guess if you don't know I just want to know ...

I know I can't for sure.

: Alright.

I am trying to picture it but tell you the truth I didn't really want to see it you know because when, it was that when-when got, ran up there and I saw who it was I'm like oh my God I just saw him earlier this morning.

: Alright so let me ask you about that in a second but let me just clarify, so you saw two additional, two volleys of shots after that first one correct?

Right.

: And each time the officer was firing Michael Brown was coming toward him?

Yes.

: Okay and at no time did Michael Brown say anything correct?

I could not tell or hear if he did say anything.

: You didn't hear him yell um, don't shoot?

No, I didn't.

: But you were able to hear the officer say stop?

Oh yeah he was very-he was very loud .

: Um, you didn't hear Michael Brown say anything like okay, okay , okay?

No, I didn't hear that.

: Okay 'cause...

I'm...listen I'm dealing with two very excited and this is the first time s seen anything like that and is right here arararar.

: You are saying talking in your ear.

Right.

Last Updated at 12:30 p.m. ET. Wilson Testimony:

Wilson's [testimony to the grand jury](#) presents the image of an officer who was scared for his life during the confrontation with the larger man who he says was physically assaulting him. One excerpt:

[Wilson on punch \(pg 216\)](#)

1 **A** Yes, ma'am.

2 **Q** And would those photos help you to sort of
3 explain or to explain to the grand jurors what took
4 place regarding the struggle with your weapon that
5 you were trying to describe to us?

6 **A** I think this would be the most helpful.

7 **Q** Okay. And we are going to put it on the
8 projector as soon as we can and have you, you know,
9 tell us what's going on.

10 I have a few other questions while we
11 are waiting on that. So during the time that he's,
12 you said Michael Brown is striking you in the face
13 through the car door?

14 **A** Right.

15 **Q** And it was your opinion that you needed to
16 pull out your weapon because why did you feel that
17 way, I don't want to put words in your mouth?

18 **A** I felt that another one of those punches
19 in my face could knock me out or worse. I mean it
20 was, he's obviously bigger than I was and stronger
21 and the, I've already taken two to the face and I
22 didn't think I would, the third one could be fatal
23 if he hit me right.

24 **Q** You thought he could hit you and it would
25 be a fatal injury?

Wilson is 6 feet, 4 inches tall and weighs about 210 pounds. Brown was an inch taller and weighed about 290 pounds.

The officer said Brown and his associate, Dorian Johnson, were walking in the middle of the street, preventing normal traffic from passing. He said he told them to move to the sidewalk, and after a brief exchange Brown used a vulgarity at him. Wilson said he called for backup and tried open the door of his police car. Brown, he said, slammed the door shut. They struggled and Brown hit him in the face twice, Wilson said.

He said he thought, "What do I do to not get beaten inside my car?"

Wilson said he had considered using Mace, his baton and his flashlight before drawing his gun and telling Brown, "Get back or I'm going to shoot you." Brown then grabbed his gun, Wilson said, and twisted it and dug it down into the officer's hip. The officer said he feared he would die if Brown got hold of the gun. He said he managed to raise the gun and fired twice. It just clicked. But the third time, the gun went off, startling both men.

That's when, Wilson said, Brown looked up at him "and had the most intense aggressive face. The only way I can describe it, it looks like a demon, that's how angry he looked. He comes back towards me again with his hands up."

Wilson said he tried firing again but nothing happened. When he tried once more, it went off. Brown then hit him again, he said.

The officer said that when he looked up, Brown was running away. Wilson said he got out of the car, called for backup and began chasing Brown. He said Brown then stopped and he did, too. He said he ordered Brown to get on the ground, but the 18-year-old did not. He said Brown made an "aggravated sound" and ran back toward him. He said he warned Brown repeatedly to get on the ground, but when he did not comply the officer fired "a series of shots."

"I don't know how many I shot, I just know I shot it," he said.

Wilson then proceeded to explain his rationale for why he chased Brown. He said he wanted to keep Brown "contained" until support arrived. He said he thought that if he could buy 30 seconds of time, until other officers arrived, they could "make the arrest, nothing happens, we are all good."

"And it didn't happen that way," Wilson said.

Last Updated at 3:47 p.m. ET. The Physical Evidence:

One really important part of this case is of course the physical evidence. We've gone into [more details in a separate post](#).

There are two findings of major importance: First, the autopsy found that Michael Brown was never shot in the back, as some early witnesses claimed.

Second, they found Brown's blood inside the police car and on Wilson's gun. This implies that there was close-range contact as Wilson alleges.

We've also posted the photographs taken of Wilson on the day of the confrontation. Doctors diagnosed him with a bruise. That seems to cast some doubt on Wilson's testimony about the intensity of the confrontation.

Last Updated at 6:41 a.m. ET. The Documents:

We've uploaded most of the documents we received from prosecutors. We invite you to look through them and tip us off to anything you find interesting in the comments.

Article and additional document may be found

at: http://www.npr.org/blogs/thetwo-way/2014/11/25/366507379/ferguson-docs-how-the-grand-jury-reached-a-decision?utm_source=npr_newsletter&utm_medium=email&utm_content=20150326&utm_campaign=npr_email_a_friend&utm_term=storyshare

Correction: Dec. 1, 2014

An earlier version of this post said at least nine members of the grand jury found Wilson acted within the law. That's not necessarily the case. All we know for certain is that the jury needed nine members to believe there was probable cause to hand down an indictment. The jury did not meet that threshold.

**Champion
June, 2013**

Feature

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The modern federal grand jury has been warped from its beginnings as a bulwark against prosecutorial misconduct into a tool for misconduct. That misconduct is not just accidental or innocuous misconduct, but legally sanctioned abuses in the grand jury that are overlooked -- and thereby encouraged -- as long as a defendant is convicted at the end of the day. The judiciary's disavowal of almost all responsibility for what takes place in the grand jury room has left overzealous prosecutors free to obtain an indictment by any means necessary and to unjustly bolster their case at trial with false or distorted evidence obtained in the grand jury. NACDL has been calling for grand jury reform for over a decade and that call continues. In a criminal justice system in which the government has more power than ever, unexposed and unchecked grand jury abuses do not lead to greater justice. The grand jury gives the government the ability to intimidate and threaten witnesses long before defense counsel even knows who those witnesses are. Among the various needed reforms, and in light of the unquestionable importance of the right to counsel, the ability of a grand jury witness to have counsel present in the grand jury chamber is the low-hanging fruit of the needed reforms and would do the most to bring the functioning of the grand jury back in line with its intended and proper function as a true bulwark between the government and the accused.

One Part of the Problem: Bully Prosecutors

In Massachusetts, as is typical in jurisdictions around the country, a grand jury witness receives an ominous-looking subpoena from a federal court *commanding* her to present herself, perhaps along with documents, to be questioned by a grand jury investigating criminal activities. The letter accompanying the subpoena "requests" that the witness not tell anyone about the existence of the subpoena or the fact that the witness *will* be complying with it. The letter goes on to state that while the witness is not required to comply with the request to keep quiet, disclosure could impede the government's investigation and thereby interfere with the enforcement of federal criminal law. The intended implication is clear: *Do what we say or you could be in big trouble.* At the very outset, and from the first contact, the government is intimidating the witness and making sure that there is no question as to who has the power over whom: *You don't have to keep quiet but if you don't, we might decide that you are interfering with a federal criminal investigation. If you don't do what we say, we might decide that you have committed a crime.*

If the recipient has counsel already, that lawyer can prepare the witness for what she is going to face in the grand jury. However, many recipients, after receiving the subpoena and reading its warnings, may be confused about whether they are allowed to even tell a lawyer that *35 they have been subpoenaed. They may not know if they have the right to retain counsel and, rather than risk going afoul of the government's orders, may decide to go it alone. The government has set the stage for such witnesses to help its case tremendously.

The next step might be a meeting with the prosecutors, and usually a battalion of agents and investigators, to prepare for the

witness's likely testimony. Perhaps this is a proffer session to determine whether the witness has something helpful to say, or something that the prosecutor thinks might be valuable enough to justify giving the witness immunity from prosecution. This meeting -- the memorialization of which most likely will not be disclosed until the eve of or at trial -- can provide fodder later for cross-examination if the witness shades her testimony in order to curry favor with or immunity from the prosecutor. But perhaps a cunning prosecutor, who senses a malleable witness, might prefer to wait to ask certain questions and only make that record in the grand jury chamber. Or if information comes via an attorney proffer, the witness cannot be properly impeached with his attorney's statement. Waiting until the witness is in front of the grand jury enables the prosecutor to make the record and lock in testimony outside the protective presence of the witness's counsel and ensures that there is only one statement, under oath, that will not be compared to an interview memorandum, and which is therefore more insulated against impeachment.

Whether or not the witness has counsel or has been interviewed by the government prior to giving testimony to the grand jury, when she arrives at the federal courthouse and passes through security and into the secretive grand jury area, she becomes well aware of the gravity of the proceedings and that the prosecutor is in complete control of those proceedings. No judge is in sight. It is the prosecutor who brings the witness into the grand jury room. The prosecutor closes the door, leaves the witness's counsel outside, and thus cuts the witness off from her lawyer.

In a recent investigation in Massachusetts, over several months the government brought dozens of employees of a corporation before the grand jury to testify about possible fraud by the employer corporation. The government granted immunity to many of the employees so that they could testify about the company's fraud without fear of being prosecuted for their own contributions to the crimes. Each witness entered the grand jury chamber and faced three prosecutors, who all asked questions. All witnesses knew that the government believed they had been a party to a crime and that their immunity was all that stood between them and a criminal charge. At the beginning of each witness's testimony, one of the prosecutors led the witness through the familiar protocol: "You received a subpoena. You advised us that you would assert your Fifth Amendment privilege against self-incrimination and refuse to testify. You intend today to refuse to testify. Therefore, you have received immunity, and that immunity protects you from being prosecuted for any crimes that are the subject of your testimony." The prosecutor then told each witness that the immunity order only protects a witness if the witness tells the truth. If the witness lies, there is no protection from criminal prosecution. If the witness is "evasive" or "equivocal," or says "I don't know" or "I don't remember" when that is not true, the witness could be charged with obstruction of justice or perjury. The warning is then repeated: "If you obstruct this grand jury's investigation or lie to this grand jury, you can be prosecuted for obstruction of justice or perjury, which carry penalties of five years in prison."

At this point in the process, if it had not been very apparent before, it is certainly clear now that the prosecutor is running the show. It is also unmistakable that it is the prosecutor who will determine if the witness has obstructed justice or committed perjury. At this point, whether decided consciously or not, a witness's desire for self-preservation may cause her to want to please the prosecutor rather than suffer the all too clear consequences of displeasing the prosecutor. With no evidentiary rules standing in the way, the prosecutor asks leading questions, to which a fearful witness might simply agree rather than be deemed obstructionist. If it is obvious that the prosecutor seems convinced that certain crimes have been committed, in order to stay on the good side of that prosecutor the witness might, wittingly or not, embellish certain bad facts or suppress others that are inconsistent with the prosecutor's theory. The prosecutor has warned the witness not to lie, but it may be apparent that the prosecutor wants an indictment and the witness is either with the prosecutor or against him.

If the prosecutor is not getting the testimony that he feels the witness should be giving, the threats are sometimes ramped up to get the witness in line. A recent First Circuit case reported that during "approximately three hours of testimony - ... the government reminded the [witness] repeatedly that a failure to testify truthfully would be subject to possible perjury charges."¹ During examination the prosecutor repeatedly "verbally abused" the witness. Evidently displeased with certain testimony, the prosecutor warned the witness to "stop playing games with us" and to "answer the question truthfully."² Still unsatisfied, the prosecutor asked, "Please, again, do you have a hearing problem?"³

In the investigation of the corporate fraud referenced previously, the prosecutor in the grand jury proceedings who had given the stern warning at the beginning of testimony received an answer that he did not like, and so he repeated multiple times, "That is your testimony?" He then asked if the witness was sure about the testimony the witness had given. The prosecutor undoubtedly wanted to make sure that the witness knew at that point that the prosecutor did not believe or like the answer given. The implication was that the witness was now at risk. It would have been abundantly clear to the witness that the prosecutor believed the witness should give a different answer to the question.

Faced with threats of prosecution for perjury or obstruction of justice during testimony, a desire to please the prosecutor and to give the helpful testimony that the witness thinks the prosecutor wants to hear may push the witness to *36 shade her testimony,

even if only slightly. Any shading of testimony, however, whether intended by the prosecutor or not, is an alteration of evidence and an obstruction of justice. Once the witness testifies, the prosecutor has locked in the testimony. Changing testimony upon further reflection or after discussions with counsel could result in the threatened perjury charge, especially when faced with a zealous prosecutor steamrolling towards indictment.

In this type of grand jury scenario, justice has been done a serious disservice that could potentially have been avoided if an attorney for the witness had been permitted to be present during the witness's testimony.

Why It Can Happen -- Judicial Disavowal

Given the volume of Supreme Court jurisprudence devoted to analyzing and remedying prosecutorial misconduct, it is difficult to comprehend how the Court has almost thoroughly abdicated any responsibility for preventing prosecutorial misconduct in the grand jury. In its 1992 opinion in *United States v. Williams*, the Court made clear that the grand jury was an island unto itself, over which no court has real oversight.⁴ The implication must have been clear to prosecutors: almost anything goes behind the closed doors of the grand jury chamber.

The protection afforded by the Fifth Amendment, that no person may be charged with a serious crime without the presentment of an indictment to a grand jury, was contemplated by the drafters of the Bill of Rights as a protection for a would-be defendant. As Justice Scalia said in *Williams*, the grand jury "serv[es] as a kind of buffer or referee between the government and the people."⁵ But "[i]n fact the whole theory of [the grand jury's] function is that it belongs to no branch of the institutional government." In Justice Scalia's textualist interpretation, it is the mention of the grand jury right in the Bill of Rights but not in the "body of the Constitution" that determines what controls can be placed on the grand jury process by any branch of government. "It has not been textually assigned ... to any of the branches [of government] described in the first three Articles. It is a constitutional fixture in its own right."⁶ Therefore, according to the Supreme Court, while no defendant can be prosecuted without an indictment being presented to a grand jury for its review, there is no branch of government that can oversee the grand jury process in order to ensure that it is fair. Seemingly ignored by the Court, however, is the fact that one branch of government -- the Executive Branch, the prosecutors -- does in fact control the grand jury process with minimal outside interference.

The issue in *Williams* was whether a prosecutor had an obligation to present "substantial exculpatory evidence" to a grand jury deciding whether or not to return an indictment. The Court held that there was no such obligation and that federal courts had no power to order certain actions in the grand jury. The Supreme Court acknowledged that courts had limited supervisory power to prescribe procedural rules but that beyond such procedural rules, courts cannot interfere with the independence of the grand jury process. "Because the grand jury is an institution separate from the courts, over whose functioning the courts do not preside, we think it clear that, as a general matter at least, no such 'supervisory' judicial authority [to prescribe standards of prosecutorial conduct] exists."⁷ By its holding, the Court washed its hands of almost any responsibility for the fairness of the grand jury process. In typical fashion, Justice Scalia essentially said that if Congress wants to prescribe standards for this criminal justice function, it can do so, but the Court is not going to interfere. While ABA Standards of Conduct and the U.S. Attorneys' Manual may provide some persuasive guidance to prosecutors about grand jury fairness, the implication from the Supreme Court's holding in *Williams* is that grand juries -- but in reality, prosecutors leading the grand jury presentation -- can do whatever they want.

In *Williams*, the Court refused to prescribe a code of conduct for prosecutors and in *United States v. Mechanik* and *Bank of Nova Scotia v. United States*, it confirmed the lack of any real oversight of the grand jury process. In *Mechanik*, the Court held that a violation of [Federal Rule of Criminal Procedure 6\(d\)](#) -- one of those permissible procedural rules that Justice Scalia spoke about, which prohibits unauthorized people from being in the grand jury chamber -- did not result in dismissal of an indictment because the defendant was ultimately convicted at trial.⁸ The Court employed a harmless error standard and held that virtually any error -- or any misconduct -- in the grand jury is excused by the eventual conviction of the defendant.

In *Bank of Nova Scotia*, the Court had to decide what standard to apply to determine whether blatant grand jury misconduct could result in dismissal of an indictment prior to the conclusion of trial. In the opinion from Justice Kennedy, the Court adopted the standard articulated by Justice O'Connor in her concurring opinion in *Mechanik*. The Court held that "dismissal of an indictment is appropriate only if it is established that the violation substantially influenced the grand jury's decision to indict or if there is grave doubt that the decision to indict was free from the substantial influence of such violations."⁹

In *Bank of Nova Scotia*, the prosecutor had, among other violations, knowingly presented misinformation to the grand jury and had verbally abused a witness in front of grand jurors. The Court briefly addressed these and other violations and determined that even cumulatively the misconduct did not "raise a substantial question, much less a grave doubt, as to whether they had a

substantial effect on the grand jury's decision to charge."¹⁰

Regarding, in particular, its belief that the witness abuse had no effect, the Court reasoned that despite its finding that the prosecutor was "abusive" to an expert witness during a recess in testimony and the government conceding that the conduct was improper, the witness had testified later that his testimony was unaffected by the misconduct.¹¹ This testimony from the witness and an instruction to the grand jury to disregard any of the inappropriate comments allowed the Court to conclude that "there is nothing to indicate that the prosecutor's conduct *39 toward this witness substantially affected the grand jury's evaluation of the testimony or its decision to indict."¹²

The opinion does not specify what the abusive conduct consisted of and relies for its finding of nonprejudice on the fact that the abused witness testified that his testimony was unaffected by the misconduct. However, in the same case, the Court also did not find that any prejudice resulted from the government having threatened to withdraw immunity from a particular witness if that witness testified for the defendant. The Court stated that the district court had not made a definitive finding that the government had improperly threatened the witness. The Court reasoned that "[t]he witness may have felt threatened by the prosecutor's statement, but his subjective fear cannot be ascribed to governmental misconduct and was, at most, a consideration bearing on the reliability of his testimony."¹³

In essentially sanctioning the misconduct of the government in *Bank of Nova Scotia*, the Court also missed the need to adopt a standard of greater scrutiny when there are clear instances of witness abuse. Although the Supreme Court relied on the particular witness testifying that his testimony had not been affected by the prosecutor's abusive treatment, for the witness to admit that he had changed his testimony, he would have had to admit that he had perjured himself when he testified. The district court -- the court closest to the facts -- thought that the misconduct warranted dismissal of the indictment. Furthermore, there is the evidence that the government threatened other witnesses with withdrawal of immunity and prosecution if they did not cooperate. How can it be reasonably or reliably determined what the witness did as a result of the prosecutor's abuse? It is entirely possible that he changed his testimony as a result of the prosecutor's abuse and was thereafter unwilling to admit that he had done so, in order to avoid a possible future perjury charge or simply to preserve his livelihood as an expert witness. An expert who admits to having his testimony modified by a prosecutor would not likely have much future business as an expert witness as opposed to one who claims that he stood up and did not alter his testimony in the face of government threats.

In almost every case in which a witness is abused by a prosecutor and alters or shades his testimony, there is no reliable way to detect it. And in any case in which a witness does alter testimony, it goes right to the heart of the *Bank of Nova Scotia* prejudice standard if it related to some matter of evidence that was material to the grand jury's decision to return an indictment.

Justice Marshall hit the problem right on the head in his dissent in *Bank of Nova Scotia*. He noted the fact that grand jury secrecy rules most often prevent instances of grand jury misconduct coming to light. When they do come to light, it is often not until trial is under way when Jencks Act materials are finally disclosed. Justice Marshall said, "The fact that a prosecutor knows that a ... violation is unlikely to be discovered gives the [*Bank of Nova Scotia*] Rule little enough bite."¹⁴ Moreover ... any case-by-case analysis to determine whether the defendant was actually prejudiced is simply too speculative to afford defendants meaningful protection, and imposes a difficult burden on the courts that outweighs the benefits to be derived.¹⁵

Federal courts' grand jury jurisprudence has rendered the "right" to a grand jury a hollow shell in some cases, and one which can do more harm than good for a defendant. The courts have refused to prescribe any substantive rules of conduct for prosecutors in the grand jury and employ a harmless error standard to review misconduct that encourages prosecutors to make certain they get a conviction at trial in order to absolve themselves of any sins in the grand jury.

Grand Jury Reform and The Due Process Clause

Justice Scalia based his holding in *Williams*, that the Court could not prescribe enforceable standards of conduct for prosecutors in the grand jury, on the fact that neither the Bill of Rights nor the body of the Constitution assigns the grand jury to the courts or to either of the other branches of government. Under his originalist interpretation, defendants are to take comfort in the required assumption that the Framers knew exactly what they were doing and defendants should just trust that they were correct and that the lack of any oversight was intentional, unless and until Congress decides otherwise. In theory the grand jury itself is supposed to act independently with the prosecutors as marshals of the grand jury's evidence and the courts as enforcers of the grand jury's commands to intransigent witnesses. But in actuality, prosecutors control what evidence is to be considered and how it is presented to the grand jury. The grand jury system does not work independently and free from the control of the Executive Branch, and no real check exists on the government's influence in the grand jury.

The Due Process Clause, along with the grand jury right, is part of the Fifth Amendment and must also be given some consideration in the grand jury process. Broad Due Process protections are afforded defendants and provide for myriad substantive rights not specifically enumerated in the Constitution. Application of Due Process jurisprudence must allow for additional protections for defendants and witnesses in the grand jury.

Prior to the *Williams* decision, several cases highlighted the dangers of unchecked prosecutorial misconduct. As quoted by Justice Stevens in his dissent in *Williams*, Justice Sutherland in *Berger v. United States* “identif[ied] ... the basic reason why that sort of misconduct is intolerable”:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.¹⁶

Justice Stevens continued his urging for greater judicial oversight of prosecutorial misconduct in the grand jury, citing an opinion from the Third Circuit:

[T]he costs of continued unchecked prosecutorial misconduct before the grand jury are particularly substantial because there the prosecutor operates without the check of a judge or a trained legal adversary, and virtually immune from public scrutiny. The prosecutor’s *40 abuse of his special relationship to the grand jury poses an enormous risk to defendants as well. For while in theory a trial provides a defendant with a full opportunity to contest and disprove the charges against him, in practice, the handling up of an indictment will often have a devastating personal and professional impact that a later dismissal or acquittal can never undo. Where the potential for abuse is so great and the consequences of a mistaken indictment so serious, the ethical responsibilities of the prosecutor, and the obligations of the judiciary to protect against even the appearance of unfairness, are correspondingly heightened.¹⁷

A reading of the Fifth Amendment’s right to a grand jury that is consistent with the Supreme Court’s broad Fifth Amendment Due Process jurisprudence requires the court to ensure that the grand jury process includes fundamental fairness protections. The grand jury process is fraught with peril for witnesses and defendants, which can carry over to trial and affect the eventual outcome.

Witness Counsel in The Grand Jury Room

It is a glaring violation of Due Process for a prosecutor to be allowed to intimidate, threaten, and abuse a witness and then for the justice system to consider the witness’s testimony to be reliable. As long as a defendant is convicted, such prosecutorial abuse is deemed “harmless.” But it is certainly not harmless. A witness, without counsel, who shades testimony in favor of the prosecution’s case has harmed the defendant and has harmed herself. The witness is thereafter locked in to that inculpatory testimony or faces possible perjury and obstruction charges. Cross-examination by defense counsel at trial is overseen by a judge and any intimidation, threats, or abuse will be immediately stopped lest defense counsel be held in criminal contempt, as would a prosecutor who threatened a witness at trial. Faced with trial questioning from defense counsel overseen by a judge, a witness might easily stick to her altered inculpatory testimony and avoid the danger of a perjury charge. The evidence at trial has thus been infected by the wrongdoing wrought behind closed doors in the grand jury by the prosecutor.

The right to counsel in the U.S. criminal justice system is sacrosanct in almost every instance except in the federal grand jury. At almost no other time is a person denied the right to counsel while being questioned by a government prosecutor. The fundamental right to consult with counsel outweighs any danger of interference by defense counsel or secrecy violations, which could be acceptably addressed via procedural rules. The current process of requiring a witness to interrupt testimony and leave the grand jury chamber to consult with counsel wastes time and does not afford the same ability for counsel to be able to advise the witness after having observed the actual question and testimony. The presence of counsel alone would likely guard against the abuses seen in *Bank of Nova Scotia* and in Massachusetts.

Many badly needed grand jury reforms have been proposed and discussed, but the extension of the right to counsel beyond the

closed door of the grand jury chamber is the single reform that would do the most good to protect the due process rights of witnesses and defendants and to curb unchecked prosecutorial misconduct. A growing number of state statutes permit a witness to have counsel in state grand juries. Different states have employed different levels of restriction on the presence of counsel for the witness, but in none of those jurisdictions has the criminal justice system suffered. NACDL's 2011 survey and report¹⁸ of the impressions of prosecutors and defense counsel in two such states, New York and Colorado, is illuminating. Almost all surveyed, from both the defense and prosecution, indicated that the presence of defense counsel in the grand jury led to fairer questioning and to a greater sense of an equitable administration of justice as well as brought a previously missing air of legitimacy to the grand jury process. The same is needed in the federal grand jury system. If the courts cannot do it, it is time for Congress to make clear that due process does not stop at the door to the grand jury room.

Footnotes

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¹ *In re Grand Jury*, 566 F.3d 12, 14 (1st Cir. 2009).

² *Id.* at 22 n.9.

³ *Id.*

⁴ 504 U.S. 36 (1992).

⁵ *Id.* at 46.

⁶ *Id.*

⁷ *Id.* at 47.

⁸ 475 U.S. 66 (1986).

⁹ 487 U.S. 250, 256 (1988).

¹⁰ *Id.* at 262.

¹¹ *Id.* at 261

¹² *Id.*

¹³ *Id.* at 262.

¹⁴ *Id.* at 265-66.

¹⁵ *Id.* at 266.

¹⁶ 295 U.S. 78, 88 (1935) as quoted in *williams*, 504 U.S. at 62 (Stevens, J., dissenting).

¹⁷ *United States v. Serubo*, 604 F.2d 807, 817 (3d Cir. 1979) as quoted in *Williams*, 504 U.S. at 62-63.

¹⁸ Go to NACDL's website (<http://www.nacdl.org/News.aspx?id=22961&terms=reform>) for more information about the survey and report.

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109 S.Ct. 1865
Supreme Court of the United States

Dethorne GRAHAM, Petitioner
v.
M.S. CONNOR et al.

No. 87–6571. | Argued Feb. 21, 1989. | Decided May 15, 1989.

Diabetic brought § 1983 action seeking to recover damages for injuries allegedly sustained when law enforcement officers used physical force against him during course of investigatory stop. The United States District Court for the Western District of North Carolina, 644 F.Supp. 246, directed verdict for defendants. On appeal, the Court of Appeals, 827 F.2d 945, affirmed, and certiorari was granted. The Supreme Court, Chief Justice Rehnquist, held that claim that law enforcement officials have used excessive force in course of arrest, investigatory stop or other “seizure” of a person are properly analyzed under Fourth Amendment’s “objective reasonableness” standard.

Vacated and remanded.

Justice Blackmun concurred in part and concurred in the judgment and filed opinion in which Justices Brennan and Marshall joined.

REHNQUIST, C.J., delivered the opinion of the Court, in which WHITE, STEVENS, O’CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and concurring in the judgment, in which BRENNAN and MARSHALL, JJ., joined, *post*, p. ____.

Opinion

Chief Justice REHNQUIST delivered the opinion of the Court.

^[1] This case requires us to decide what constitutional standard governs a free citizen’s claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other “seizure” of his person. We hold that such claims are properly analyzed under the Fourth Amendment’s “objective reasonableness” ****1868** standard, rather than under a substantive due process standard.

In this action under 42 U.S.C. § 1983, petitioner Dethorne Graham seeks to recover damages for injuries allegedly sustained when law enforcement officers used physical force against him during the course of an investigatory stop. Because the case comes to us from a decision of the Court of Appeals affirming the entry of a directed verdict for respondents, we take the evidence hereafter noted in the light most favorable to petitioner. On November 12, 1984, Graham, a diabetic, felt the onset of an insulin reaction. He asked a friend, William Berry, to drive him to a nearby convenience store so he could purchase some orange juice to counteract the reaction. Berry agreed, but when Graham entered the store, he saw a number of people ahead of him in the check ***389** outline. Concerned about the delay, he hurried out of the store and asked Berry to drive him to a friend’s house instead.

Respondent Connor, an officer of the Charlotte, North Carolina, Police Department, saw Graham hastily enter and

leave the store. The officer became suspicious that something was amiss and followed Berry's car. About one-half mile from the store, he made an investigative stop. Although Berry told Connor that Graham was simply suffering from a "sugar reaction," the officer ordered Berry and Graham to wait while he found out what, if anything, had happened at the convenience store. When Officer Connor returned to his patrol car to call for backup assistance, Graham got out of the car, ran around it twice, and finally sat down on the curb, where he passed out briefly.

In the ensuing confusion, a number of other Charlotte police officers arrived on the scene in response to Officer Connor's request for backup. One of the officers rolled Graham over on the sidewalk and cuffed his hands tightly behind his back, ignoring Berry's pleas to get him some sugar. Another officer said: "I've seen a lot of people with sugar diabetes that never acted like this. Ain't nothing wrong with the M.F. but drunk. Lock the S.B. up." App. 42. Several officers then lifted Graham up from behind, carried him over to Berry's car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal that he carried. In response, one of the officers told him to "shut up" and shoved his face down against the hood of the car. Four officers grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to let him have it. Finally, Officer Connor received a report that Graham had done nothing wrong at the convenience store, and the officers drove him home and released him.

390** At some point during his encounter with the police, Graham sustained a broken foot, cuts on his wrists, a bruised forehead, and an injured shoulder; he also claims to have developed a loud ringing in his right ear that continues to this day. He commenced this action under 42 U.S.C. § 1983 against the individual officers involved in the incident, all of whom are respondents here,¹ alleging that they had used excessive force in making the investigatory stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983." Complaint ¶ 10, App. 5.² The case was tried before a jury. At the close of petitioner's evidence, respondents moved for a directed verdict. In ruling on that motion, the District Court considered the following *1869** four factors, which it identified as "[t]he factors to be considered in determining when the excessive use of force gives rise to a cause of action under § 1983": (1) the need for the application of force; (2) the relationship between that need and the amount of force that was used; (3) the extent of the injury inflicted; and (4) "[w]hether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm." 644 F.Supp. 246, 248 (WDNC 1986). Finding that the amount of force used by the officers was "appropriate under the circumstances," that "[t]here was no discernable injury inflicted," and that the force used "was not applied maliciously or sadistically for the very purpose of causing harm," but in "a good faith effort to maintain or restore order in the face of a potentially explosive ***391** situation," *id.*, at 248–249, the District Court granted respondents' motion for a directed verdict.

¹ Also named as a defendant was the city of Charlotte, which employed the individual respondents. The District Court granted a directed verdict for the city, and petitioner did not challenge that ruling before the Court of Appeals. Accordingly, the city is not a party to the proceedings before this Court.

² Petitioner also asserted pendent state-law claims of assault, false imprisonment, and intentional infliction of emotional distress. Those claims have been dismissed from the case and are not before this Court.

A divided panel of the Court of Appeals for the Fourth Circuit affirmed. 827 F.2d 945 (1987). The majority ruled

first that the District Court had applied the correct legal standard in assessing petitioner’s excessive force claim. *Id.*, at 948–949. Without attempting to identify the specific constitutional provision under which that claim arose,³ the majority endorsed the four-factor test applied by the District Court as generally applicable to all claims of “constitutionally excessive force” brought against governmental officials. *Id.*, at 948. The majority rejected petitioner’s argument, based on Circuit precedent,⁴ that it was error to require him to prove that the allegedly excessive force used against him was applied “maliciously and sadistically for the very purpose of causing harm.”⁵ *Ibid.* Finally, the majority held that a reasonable jury applying the four-part test it had just endorsed *392 to petitioner’s evidence “could not find that the force applied was constitutionally excessive.” *Id.*, at 949–950. The dissenting judge argued that this Court’s decisions in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), required that excessive force claims arising out of investigatory stops be analyzed under the Fourth Amendment’s “objective reasonableness” standard. 827 F.2d, at 950–952. We granted certiorari, 488 U.S. 816, 109 S.Ct. 54, 102 L.Ed.2d 32 (1988), and now reverse.

³ The majority did note that because Graham was not an incarcerated prisoner, “his complaint of excessive force did not, therefore, arise under the eighth amendment.” 827 F.2d, at 948, n. 3. However, it made no further effort to identify the constitutional basis for his claim.

⁴ Petitioner’s argument was based primarily on *Kidd v. O’Neil*, 774 F.2d 1252 (CA4 1985), which read this Court’s decision in *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), as mandating application of a Fourth Amendment “objective reasonableness” standard to claims of excessive force during arrest. See 774 F.2d, at 1254–1257. The reasoning of *Kidd* was subsequently rejected by the en banc Fourth Circuit in *Justice v. Dennis*, 834 F.2d 380, 383 (1987), cert. pending, No. 87–1422.

⁵ The majority noted that in *Whitley v. Albers*, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986), we held that the question whether physical force used against convicted prisoners in the course of quelling a prison riot violates the Eighth Amendment “ultimately turns on ‘whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.’ ” 827 F.2d, at 948, n. 3, quoting *Whitley v. Albers*, *supra*, 475 U.S., at 320–321, 106 S.Ct., at 1085. Though the Court of Appeals acknowledged that petitioner was not a convicted prisoner, it thought it “unreasonable ... to suggest that a conceptual factor could be central to one type of excessive force claim but reversible error when merely considered by the court in another context.” 827 F.2d, at 948, n. 3.

Fifteen years ago, in *Johnson v. Glick*, 481 F.2d 1028, cert. denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973), the Court of Appeals for the Second Circuit addressed a § 1983 damages claim filed by a pretrial detainee who claimed that a guard had assaulted him without justification. In evaluating the detainee’s claim, Judge Friendly applied neither the Fourth ****1870** Amendment nor the Eighth, the two most textually obvious sources of constitutional protection against physically abusive governmental conduct.⁶ Instead, he looked to “substantive due process,” holding that “quite apart from any ‘specific’ of the Bill of Rights, application of undue force by ***393** law enforcement officers deprives a suspect of liberty without due process of law.” 481 F.2d, at 1032. As support for this proposition, he relied upon our decision in *Rochin v. California*, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952), which used the Due Process Clause to void a state criminal conviction based on evidence obtained by

pumping the defendant's stomach. 481 F.2d, at 1032–1033. If a police officer's use of force which "shocks the conscience" could justify setting aside a criminal conviction, Judge Friendly reasoned, a correctional officer's use of similarly excessive force must give rise to a due process violation actionable under § 1983. *Ibid.* Judge Friendly went on to set forth four factors to guide courts in determining "whether the constitutional line has been crossed" by a particular use of force—the same four factors relied upon by the courts below in this case. *Id.*, at 1033.

⁶ Judge Friendly did not apply the Eighth Amendment's Cruel and Unusual Punishments Clause to the detainee's claim for two reasons. First, he thought that the Eighth Amendment's protections did not attach until after conviction and sentence. 481 F.2d, at 1032. This view was confirmed by *Ingraham v. Wright*, 430 U.S. 651, 671, n. 40, 97 S.Ct. 1401, 1412, n. 40, 51 L.Ed.2d 711 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions"). Second, he expressed doubt whether a "spontaneous attack" by a prison guard, done without the authorization of prison officials, fell within the traditional Eighth Amendment definition of "punishments." 481 F.2d, at 1032. Although Judge Friendly gave no reason for not analyzing the detainee's claim under the Fourth Amendment's prohibition against "unreasonable ... seizures" of the person, his refusal to do so was apparently based on a belief that the protections of the Fourth Amendment did not extend to pretrial detainees. See *id.*, at 1033 (noting that "most of the courts faced with challenges to the conditions of *pretrial* detention have primarily based their analysis directly on the due process clause"). See n. 10, *infra*.

In the years following *Johnson v. Glick*, the vast majority of lower federal courts have applied its four-part "substantive due process" test indiscriminately to all excessive force claims lodged against law enforcement and prison officials under § 1983, without considering whether the particular application of force might implicate a more specific constitutional right governed by a different standard.⁷ Indeed, many courts have seemed to assume, as did the courts below in this case, that there is a generic "right" to be free from excessive force, grounded not in any particular constitutional provision but rather in "basic principles of § 1983 jurisprudence."⁸

⁷ See Freyermuth, Rethinking Excessive Force, 1987 Duke L.J. 692, 694–696, and nn. 16–23 (1987) (collecting cases).

⁸ See *Justice v. Dennis*, *supra*, at 382 ("There are ... certain basic principles in section 1983 jurisprudence as it relates to claims of excessive force that are beyond question[,] [w]hether the factual circumstances involve an arrestee, a pretrial detainee or a prisoner").

^[2] We reject this notion that all excessive force claims brought under § 1983 are governed by a single generic standard. As we have said many times, § 1983 "is not itself a *394 source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker v. McCollan*, 443 U.S. 137, 144, n. 3, 99 S.Ct. 2689, 2694, n. 3, 61 L.Ed.2d 433 (1979). In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. See *id.*, at 140, 99 S.Ct., at 2692 ("The first inquiry in any § 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged").⁹ In most instances, **1871 that will be either the

Fourth Amendment’s prohibition against unreasonable seizures of the person, or the Eighth Amendment’s ban on cruel and unusual punishments, which are the two primary sources of constitutional protection against physically abusive governmental conduct. The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized “excessive force” standard. See *Tennessee v. Garner*, *supra*, 471 U.S., at 7–22, 105 S.Ct., at 1699–1707 (claim of excessive force to effect arrest analyzed under a Fourth Amendment standard); *Whitley v. Albers*, 475 U.S. 312, 318–326, 106 S.Ct. 1078, 1083–1088, 89 L.Ed.2d 251 (1986) (claim of excessive force to subdue convicted prisoner analyzed under an Eighth Amendment standard).

⁹ The same analysis applies to excessive force claims brought against federal law enforcement and correctional officials under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right “to be secure in their persons ... against unreasonable ... seizures” of the person. This much is clear from our decision in *Tennessee v. Garner*, *supra*. In *Garner*, we addressed a claim that the use of deadly force to apprehend a fleeing suspect who did not appear to be armed or otherwise dangerous violated the suspect’s constitutional rights, notwithstanding the existence of probable cause to arrest. *395 Though the complaint alleged violations of both the Fourth Amendment and the Due Process Clause, see 471 U.S., at 5, 105 S.Ct., at 1698, we analyzed the constitutionality of the challenged application of force solely by reference to the Fourth Amendment’s prohibition against unreasonable seizures of the person, holding that the “reasonableness” of a particular seizure depends not only on *when* it is made, but also on *how* it is carried out. *Id.*, at 7–8, 105 S.Ct., at 1699–1700. Today we make explicit what was implicit in *Garner*’s analysis, and hold that *all* claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other “seizure” of a free citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard, rather than under a “substantive due process” approach. Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of “substantive due process,” must be the guide for analyzing these claims.¹⁰

¹⁰ A “seizure” triggering the Fourth Amendment’s protections occurs only when government actors have, “by means of physical force or show of authority, ... in some way restrained the liberty of a citizen,” *Terry v. Ohio*, 392 U.S. 1, 19, n. 16, 88 S.Ct. 1868, 1879, n. 16, 20 L.Ed.2d 889 (1968); see *Brower v. County of Inyo*, 489 U.S. 593, 596, 109 S.Ct. 1378, 1381, 103 L.Ed.2d 628 (1989).

Our cases have not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins, and we do not attempt to answer that question today. It is clear, however, that the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment. See *Bell v. Wolfish*, 441 U.S. 520, 535–539, 99 S.Ct. 1861, 1871–1874, 60 L.Ed.2d 447 (1979). After conviction, the Eighth Amendment “serves as the primary source of substantive protection ... in cases ... where the deliberate use of force is challenged as excessive and unjustified.” *Whitley v. Albers*, 475 U.S., at 327, 106 S.Ct., at 1088. Any protection that “substantive due process” affords convicted prisoners against excessive force is, we have held, at best redundant of that

provided by the Eighth Amendment. *Ibid.*

*396 ^[3] Determining whether the force used to effect a particular seizure is “reasonable” under the Fourth Amendment requires a careful balancing of “ ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ ” against the countervailing governmental interests at stake. *Id.*, at 8, 105 S.Ct., at 1699, quoting *United States v. Place*, 462 U.S. 696, 703, 103 S.Ct. 2637, 2642, 77 L.Ed.2d 110 (1983). Our Fourth Amendment jurisprudence **1872 has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. See *Terry v. Ohio*, 392 U.S., at 22–27, 88 S.Ct., at 1880–1883. Because “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” *Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, 471 U.S., at 8–9, 105 S.Ct., at 1699–1700 (the question is “whether the totality of the circumstances justify[es] a particular sort of ... seizure”).

^[4] 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. See *Terry v. Ohio*, *supra*, 392 U.S., at 20–22, 88 S.Ct., at 1879–1881. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, *Hill v. California*, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971), nor by the mistaken execution of a valid search warrant on the wrong premises, *Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987). With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” *Johnson v. Glick*, 481 F.2d, at 1033, violates the Fourth Amendment. The calculus of reasonableness must embody *397 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.

^[5] As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the 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. See *Scott v. United States*, 436 U.S. 128, 137–139, 98 S.Ct. 1717, 1723–1724, 56 L.Ed.2d 168 (1978); see also *Terry v. Ohio*, *supra*, 392 U.S., at 21, 88 S.Ct., at 1879 (in analyzing the reasonableness of a particular search or seizure, “it is imperative that the facts be judged against an objective standard”). An officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional. See *Scott v. United States*, *supra*, 436 U.S., at 138, 98 S.Ct., at 1723, citing *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973).

Because petitioner’s excessive force claim is one arising under the Fourth Amendment, the Court of Appeals erred in analyzing it under the four-part *Johnson v. Glick* test. That test, which requires consideration of whether the individual officers acted in “good faith” or “maliciously and sadistically for the very purpose of causing harm,” is incompatible with a proper Fourth Amendment analysis. We do not agree with the Court of Appeals’ suggestion, see 827 F.2d, at 948, that the “malicious and sadistic” inquiry is merely another way of describing conduct that is objectively unreasonable under the circumstances. Whatever the empirical correlations between “malicious and sadistic” behavior and objective unreasonableness may be, the fact remains that the “malicious

and sadistic” factor puts in issue the subjective motivations of the individual officers, which our prior cases make clear has no bearing on whether a particular seizure is “unreasonable” under the Fourth ****1873** Amendment. Nor do we agree with the ***398** Court of Appeals’ conclusion, see *id.*, at 948, n. 3, that because the subjective motivations of the individual officers are of central importance in deciding whether force used against a convicted prisoner violates the Eighth Amendment, see *Whitley v. Albers*, 475 U.S., at 320–321, 106 S.Ct., at 1084–1085,¹¹ it cannot be reversible error to inquire into them in deciding whether force used against a suspect or arrestee violates the Fourth Amendment. Differing standards under the Fourth and Eighth Amendments are hardly surprising: the terms “cruel” and “punishments” clearly suggest some inquiry into subjective state of mind, whereas the term “unreasonable” does not. Moreover, the less protective Eighth Amendment standard applies “only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.” ***399** *Ingraham v. Wright*, 430 U.S. 651, 671, n. 40, 97 S.Ct. 1401, 1412, n. 40, 51 L.Ed.2d 711 (1977). The Fourth Amendment inquiry is one of “objective reasonableness” under the circumstances, and subjective concepts like “malice” and “sadism” have no proper place in that inquiry.¹²

¹¹ In *Whitley*, we addressed a § 1983 claim brought by a convicted prisoner, who claimed that prison officials had violated his Eighth Amendment rights by shooting him in the knee during a prison riot. We began our Eighth Amendment analysis by reiterating the long-established maxim that an Eighth Amendment violation requires proof of the “ ‘unnecessary and wanton infliction of pain.’ ” 475 U.S., at 319, 106 S.Ct., at 1084, quoting *Ingraham v. Wright*, 430 U.S., at 670, 97 S.Ct., at 1412, in turn quoting *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 (1976). We went on to say that when prison officials use physical force against an inmate “to restore order in the face of a prison disturbance, ... the question whether the measure taken inflicted unnecessary and wanton pain ... *ultimately turns* on ‘whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.’ ” 475 U.S., at 320–321, 106 S.Ct., at 1084–1085 (emphasis added), quoting *Johnson v. Glick*, 481 F.2d, at 1033. We also suggested that the other prongs of the *Johnson v. Glick* test might be useful in analyzing excessive force claims brought under the Eighth Amendment. 475 U.S., at 321, 106 S.Ct., at 1085. But we made clear that this was so *not* because Judge Friendly’s four-part test is some talismanic formula generally applicable to all excessive force claims, but because its four factors help to focus the central inquiry in the Eighth Amendment context, which is whether the particular use of force amounts to the “unnecessary and wanton infliction of pain.” See *id.*, at 320–321, 106 S.Ct., at 1084–1085. Our endorsement of the *Johnson v. Glick* test in *Whitley* thus had no implications beyond the Eighth Amendment context.

¹² Of course, in assessing the credibility of an officer’s account of the circumstances that prompted the use of force, a factfinder may consider, along with other factors, evidence that the officer may have harbored ill-will toward the citizen. See *Scott v. United States*, 436 U.S. 128, 139, n. 13, 98 S.Ct. 1717, 1724, n. 13, 56 L.Ed.2d 168 (1978). Similarly, the officer’s *objective* “good faith”—that is, whether he could reasonably have believed that the force used did not violate the Fourth Amendment—may be relevant to the availability of the qualified immunity defense to monetary liability under § 1983. See *Anderson v. Creighton*, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). Since no claim of qualified immunity has been raised in this case, however, we express no view on its proper application in excessive force cases that arise under the Fourth Amendment.

Because the Court of Appeals reviewed the District Court's ruling on the motion for directed verdict under an erroneous view of the governing substantive law, its judgment must be vacated and the case remanded to that court for reconsideration of that issue under the proper Fourth Amendment standard.

It is so ordered.

Justice BLACKMUN, with whom Justice BRENNAN and Justice MARSHALL join, concurring in part and concurring in the judgment.

I join the Court's opinion insofar as it rules that the Fourth Amendment is the primary tool for analyzing claims of excessive force in the prearrest context, and I concur in the judgment remanding the case to the Court of Appeals for reconsideration of the evidence under a reasonableness standard. In light of respondents' concession, ****1874** however, that the pleadings in this case properly may be construed as raising a Fourth Amendment claim, see Brief for Respondents 3, I see no reason for the Court to find it necessary further to reach out to decide that prearrest excessive force claims are to be analyzed under the Fourth Amendment *rather than* under a ***400** substantive due process standard. I also see no basis for the Court's suggestion, *ante*, at 1871, that our decision in *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985), implicitly so held. Nowhere in *Garner* is a substantive due process standard for evaluating the use of excessive force in a particular case discussed; there is no suggestion that such a standard was offered as an alternative and rejected.

In this case, petitioner apparently decided that it was in his best interest to disavow the continued applicability of substantive due process analysis as an alternative basis for recovery in prearrest excessive force cases. See Brief for Petitioner 20. His choice was certainly wise as a matter of litigation strategy in his own case, but does not (indeed, cannot be expected to) serve other potential plaintiffs equally well. It is for that reason that the Court would have done better to leave that question for another day. I expect that the use of force that is not demonstrably unreasonable under the Fourth Amendment only rarely will raise substantive due process concerns. But until I am faced with a case in which that question is squarely raised, and its merits are subjected to adversary presentation, I do not join in foreclosing the use of substantive due process analysis in prearrest cases.

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Jordan Miles jury reaches split verdict

Awards damages but finds against excessive force claim

March 31, 2014 11:12 PM

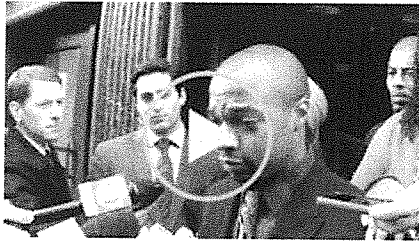
By Rich Lord and Liz Navratil / Pittsburgh Post-Gazette

A split verdict Monday in which a jury awarded Jordan Miles more than \$119,000 for a false arrest in 2010 but found against a claim of excessive force, isn't likely to end federal court sparring over the case, nor to bridge the police-community divide.

"I don't think it's likely to satisfy anyone," said David Harris, a University of Pittsburgh law professor who managed a police-community roundtable effort that grew from the case. The verdict "does not supply a kind of clean resolution going either way, and so both sides will proceed from here as if they did not get what they thought they were entitled to."

Mr. Miles, 22, of Homewood called the civil verdict "a victory. ... The jurors found the police officers to be guilty, at least in one aspect, and that's all I really needed."

Attorneys discuss verdict in Jordan Miles case



Attorneys for Jordan Miles and those representing three police officers accused in a civil suit of false arrest and use of excessive force discussed a mixed verdict returned today by the jury. (Video by Bob Donaldson; 3/31/2014)

"We may not agree with everything, but it's good to know, so I can try to put this behind myself and try to go back to school," said Mr. Miles, now a shift manager at CVS Pharmacy.

"It's not over," he added. "It's not over until God says it's over."

Police Officers Richard Ewing, Michael Saldutte and David Sisak, each of whom was assessed \$6,000 in punitive damages on top of an overall award of \$101,016 for compensatory damages, left the U.S. Courthouse without a word. The city is required by contract to indemnify them for verdicts related to their job duties.

Their attorneys seemed puzzled by the outcome.

"These are three fine police officers, and you have got to wonder what message this sends to the police department," said attorney Robert Leight, who represented Officer Ewing,

formerly of Pittsburgh and now working for McCandless. He added later, "Knowing these three officers -- and we've talked about it -- they'd do it all over again. They did nothing wrong. They have nothing to be ashamed of."

The verdict came more than four years after Mr. Miles, on the way from his mother's on Tioga Street in Homewood to his grandmother's house a block away, encountered the three plainclothes officers who were driving an unmarked car. Nearly everything about the following three minutes was disputed.

The officers said they went by the book, identified themselves as police, asked Mr. Miles questions and chased him when he ran. They said a bulge in his pocket made them think he had a gun. They said he elbowed Officer Saldutte and kicked Officer Sisak, so they used the necessary force to get him handcuffed.

Mr. Miles said the officers did not say they were police, demanded of him money, drugs and guns, and beat him before and after he was handcuffed. His persona as a viola-playing student at Pittsburgh's Creative and Performing Arts high school, and the photos of his bloated face, made the case Exhibit A for police-community tension.

Because Mr. Miles is black and the officers white, the case also had racial overtones.

The all-white jury heard three weeks of testimony, then deliberated for a day and a half before coming to its verdict. Jurors left the courthouse without comment, and those who could be reached Monday declined comment.

The verdict is "unusual and it is a little puzzling at first glance, because you would think if the arrest was false any force might be excessive," said Mr. Harris. "I could see either side appealing this."

"I cannot explain the jury's failure to find excessive force," said attorney Joel Sansone, who represented Mr. Miles. "It remains a mystery, and until I am able to speak with [jurors] it will remain a mystery."

Attorney Bryan Campbell, who represented Officer Saldutte, expressed similar puzzlement.

Mr. Leight speculated that it may have been a "sympathy" verdict. "The jury felt bad for Jordan Miles," he said.

The compensatory damages amounted to the total of the medical bills placed into evidence by Mr. Miles -- \$41,016.75 -- plus \$60,000. It's unclear why the jurors added that amount, nor why they settled on \$6,000 per officer for punitive damages.

"A six-figure verdict, while it may not seem much to some, is a lot of money, and it's a lot of money for people to award against police officers who said they didn't do anything wrong," said Mr. Sansone.

Tim Stevens, chairman of Black Political Empowerment Project, who attended much of the trial, said of the verdict, "I'm sure we'd like from the community side to see [the amount] be larger, to send a clearer signal."

"Monetarily this is a win for the officers and for the city of Pittsburgh," said attorney James Wymard, who represented Officer Sisak.

"I wouldn't have said that if I were them," said Mr. Sansone.

The history of the case suggests that the city's ultimate payout will be a matter of further litigation.

In 2011, the city offered Mr. Miles \$180,000 to settle the case. Under federal rules, if a defendant makes an offer that is rejected, and a jury later awards less than that amount, the plaintiff's attorney can't demand payment of costs and fees by the defendant.

The defense attorneys think that may preclude Mr. Miles' attorneys from collecting for their time and expenses. Mr. Sansone, though, noted that the offer came before the first of two trials in the case, and was only related to the city, not the officers.

He said that he, Michigan attorney Robert Giroux and Mr. Miles' former attorneys, J. Kerrington Lewis and Timothy O'Brien, intend to demand "a very large attorney fee award."

Mr. Sansone called on the city to fire Officers Saldutte and Sisak, who remain with the bureau.

Pittsburgh Mayor Bill Peduto issued a statement saying the "community must start healing, and must start rebuilding the trust we must have for safe communities and a better police force.

"I am ready to start that now," he said in the statement, without saying how.

Mr. Sansone also asked that U.S. Attorney David Hickton reopen the federal criminal investigation of the officers, which was closed without charges being filed in 2011.

Would a federal prosecutor reopen a criminal probe because of a civil verdict?

"I think it's very unlikely, because the standard of proof in a criminal trial on the federal side is very high," said Mr. Harris.

First Published March 31, 2014 12:35 PM



Timeline: Events in the Jonny Gammage case

October 12, 2005 12:00 AM

Pittsburgh Post-Gazette

1995

- ♦ **Oct. 12:** Jonny Gammage, 31, a black businessman and cousin of then-Steeler lineman Ray Seals, dies after a seven-minute fight with five white police officers during a traffic stop. An autopsy determines Gammage suffocated after pressure was applied to his neck and chest.
- ♦ **Nov. 3:** After a three-day open inquest, a coroner's jury recommends that homicide charges be filed against Brentwood Lt. Milton Mulholland, Baldwin Borough Patrolman Michael G. Albert, Brentwood Patrolman John Vojtas and Sgt. Keith Henderson and Patrolman Shawn Patterson, both of the Whitehall force.
- ♦ **Nov. 27:** District Attorney Bob Colville announces he will file charges against only Mulholland, Albert and Vojtas. No charges are filed against Henderson or Patterson.

1996

- ♦ **Oct. 15:** Mulholland and Albert go on trial at the Allegheny County Courthouse. Vojtas is to be tried separately. All face a charge of involuntary manslaughter.
- ♦ **Oct. 18:** Judge David R. Cashman grants a mistrial a day after Dr. Cyril H. Wecht on the witness stand suggests that Mulholland take the stand and explain his actions.
- ♦ **Nov. 4:** In his opening statements in Vojtas' trial, defense attorney Alexander H. Lindsay says an adrenaline rush, exhaustion or cardiac arrest could have caused Gammage's death.
- ♦ **Nov. 13:** An all-white jury finds Vojtas not guilty of involuntary manslaughter.

1997

- ♦ **April 22:** Cashman bars the Allegheny County District Attorney's Office from retrying Mulholland and Albert on involuntary manslaughter charges in Gammage's death.
- ♦ **Oct. 10:** The state Supreme Court unanimously reverses Cashman's ruling and clears the way for Mulholland and Albert to be retried. The justices remove Cashman as the trial judge and designate James E. Rowley of Beaver County, retired president judge of state Superior Court, to preside in the case.
- ♦ **Dec. 13:** Rowley declares a mistrial in the Mulholland-Albert retrial after the jury deadlocks 11-1 for acquittal. The lone holdout for conviction is the only black juror, who later said he was convinced of the officers' guilt and would have held out until "doomsday."

1998

- ♦ **Jan. 29:** Attorneys for Mulholland and Albert file motions to dismiss the charges, saying another trial would amount to unconstitutional "double jeopardy" against their clients. The motion is filed with Judge Joseph F. McCloskey, newly appointed by the state Supreme Court to preside in the case.
- ♦ **July 22:** McCloskey dismisses the charges against Mulholland and Albert, agreeing with defense lawyers that a new trial would violate their constitutional protection against double jeopardy.

1999

- ♦ **Feb. 19:** U.S. Justice Department said it would not file civil rights charges in the death of Gammage because it couldn't prove that the five suburban officers had used unreasonable force to subdue him.

- ♦ **March 22:** In Syracuse, a group of clergy and community leaders held a march protesting the way the case was handled in Pennsylvania and calling for the U.S. Justice Department to reopen the investigation.
- ♦ **June 28:** Gammage's family met face-to-face with Assistant Attorney General Bill Lann Lee to hear firsthand why he did not plan to pursue civil rights charges against the five police officers.
- ♦ **Oct. 22:** In another rally against police brutality, Gammage supporters said they were disappointed that federal authorities would not pursue criminal charges, but said they would focus their energies on trying to change the law to require all local police brutality cases to be handled by the federal courts.

**PICTURE THIS: BODY-WORN VIDEO DEVICES
(HEAD CAMS) AS TOOLS FOR ENSURING
FOURTH AMENDMENT COMPLIANCE
BY POLICE**

David A. Harris[†]

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I. INTRODUCTION

Picture this: a police officer shoots a civilian in the back in a public place. The police officer says that the man assaulted him, resisted arrest, and appeared to have a gun, leaving the officer no choice but to fire. In the last fraction of a second, the man turned away from the officer to hide the gun—perhaps to try to conceal the gun—which resulted in the shot in the back. Witnesses said that they saw no gun in the man’s hand and that the officer fired on the man as he ran from the officer. The shooting victim’s companions insist he had no weapon and that police planted the gun found underneath the body. Faced with these two diametrically opposed stories, and with no physical evidence to support the claims of planted evidence, the authorities either credit the police officer’s account or decide that insufficient evidence exists to allow them to come to any conclusion about what happened. Either way, the officer faces no charges or consequences; community members become angry, cynical, and lose trust in the police department.

This imaginary scenario will ring true to many because it is so familiar that it could have come from news reports in almost any American city. The details change, but the outline remains the same: an encounter between a police officer and a citizen turns deadly, and the stories of police and civilian witnesses vary widely. Police investigators and prosecutorial authorities side with police officers, either because they find the police stories more credible or because no evidence exists that can demonstrate

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definitively what happened. But what if, instead, investigators and prosecutors—as well as community members—could look at audio and video recordings of the incident? What if these recordings became par for the course in nearly all police-civilian encounters? Would such a development not have the potential to change the dynamics of many conflicts between officers and members of the public?

Consider an example that emerged from New York City recently. Periodically, New York City finds itself playing host to large, group bicycle rides called Critical Mass.¹ These rides sometimes feature hundreds of riders and effectively take over the city streets that the bicyclists use as their route; they do this without prior warning to the authorities and without legal niceties such as permits.² This has made the Critical Mass bicyclists outlaws in the eyes of the New York Police Department.³ During one Critical Mass ride in 2008, a police officer arrested a rider and charged the man with various crimes alleged to have occurred when the man assaulted the officer during the ride.⁴ The officer stated in his arrest report that the rider used his bicycle as an offensive weapon to knock the officer down, resulting in an injury to the officer's arm.⁵ Another person standing nearby, unnoticed by the officer, recorded the entire interaction on a cell phone video camera.⁶ After the officer made his report and charged the bicyclist, the recording came to light.⁷ The recording made it obvious that the officer had lied about every aspect of the encounter.⁸ The rider had not assaulted, imperiled, or confronted the officer at all.⁹ Rather, the officer had gone out

1. See Ben McGrath, *Holy Rollers*, THE NEW YORKER, Nov. 13, 2006, at 44, 44 (characterizing Critical Mass as a social movement and the monthly rides in New York as “monthly political-protest rides”). New York is only one of the many cities around the world playing host to Critical Mass rides. See, e.g., Richard Madden, *London: How Cyclists Around the World Put a Spoke in the Motorist's Wheel*, DAILY TELEGRAPH (Dec. 16, 2003, 12:01 AM), <http://www.telegraph.co.uk/travel/729324/London-How-cyclists-around-the-world-put-a-spoke-in-the-motorists-wheel.html>.

2. See McGrath, *supra* note 1, at 44-45.

3. James Barron, *Police and a Cyclists' Group, and Four Years of Clashes*, N.Y. TIMES, Aug. 4, 2008, at B1, available at http://www.nytimes.com/2008/08/04/nyregion/04critical.html?_r=1 (describing long-running tensions between Critical Mass riders and the police who view the riders as lawbreakers). Even before the incident caught by a cell phone camera described above, other incidents had occurred in which NYPD officers were accused of inappropriate actions, false arrests, and excessive force against Critical Mass riders. See, e.g., *City Reaches Settlement Over Critical Mass Arrest*, NY1 (March 30, 2010, 5:45 PM), http://www.ny1.com/5-manhattan-news-content/top_stories/116112/city-reaches-settlement-over-critical-mass-arrest (describing settlement of lawsuit by five Critical Mass riders against NYPD officers for wrongful arrest and excessive force—the settlement totaled nearly \$98,000).

4. Murray Weiss, Kati Cornell & Kyle Murphy, *Rookie Cop Slammed for Cycle of Violence*, N.Y. POST, July 29, 2008, at 5, available at http://www.nypost.com/seven/07292008/news/regionalnews/rookie_cop_slammed_for_cycle_of_violence_122079.htm (stating that the police officer arrested the rider for attempted third degree assault on the officer, resisting arrest, and disorderly conduct).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

of his way to assault the rider with considerable force, pushing him off his bicycle and onto the ground.¹⁰ The cell phone video, which quickly found its way to YouTube, directly contradicted the officer's statement in his official report and the charges he had sworn out against the cyclist.¹¹ As a result, the prosecutor dropped all charges against the rider, and the police officer was investigated and indicted for his conduct.¹²

This incident signals more than simply the ability to use technology to correct a single rank injustice against an individual citizen. It demonstrates how cheap, widely available technology "has ended a monopoly on the history of public gatherings that was limited to the official narratives, like the sworn documents created by police officers and prosecutors."¹³ For police officers and the agencies in which they serve, this revolution represents a huge change as many may feel that the public has them "under surveillance," or at the very least, under observation.¹⁴ The possibility that videos of police-citizen incidents will surface after the fact, as well as the wide availability of these videos on services such as YouTube, means that police must take seriously the possibility that irrefutable images of their actions on the job may contradict their own versions of what happened.¹⁵ This risk now looms large enough that commanding officers in some departments discuss it during training and at roll calls.¹⁶

This raises an intriguing possibility—increasing police compliance with Fourth Amendment rules by making video and audio recording of search and seizure incidents a part of routine police practice, wherever and however these actions occur. The technology that could allow this to happen has arrived, and it seems ideally suited to this task.¹⁷ What is more, this technology can serve numerous other functions that police will find not

10. *Id.*

11. *See Critical Mass Bicyclist Assaulted by NYPD*, YOUTUBE (July 25, 2008), <http://www.youtube.com/watch?v=oUkiyBVytRQ>.

12. John Eligon & Colin Moynihan, *Police Officer Seen on Tape Shoving a Bicyclist Is Indicted*, N.Y. TIMES, Dec. 16, 2008, at A33, available at <http://www.nytimes.com/2008/12/16/nyregion/16critical.html?fta=y>. The officer, who resigned from the force after the incident, was convicted of lying; the judge elected not to impose jail time or probation. John Eligon, *No Jail for Ex-Officer in Encounter With Bicyclist*, N.Y. TIMES, July 15, 2010, at A26, available at <http://www.nytimes.com/2010/07/15/nyregion/15pogan.html>.

13. Jim Dwyer, *When Official Truth Collides with Cheap Digital Technology*, N.Y. TIMES, July 30, 2008, at B1, available at <http://www.nytimes.com/2008/07/30/nyregion/30about.html?fta=y>. The Critical Mass incident is only one example demonstrating this. *See id.* At the 2004 Republican National Convention in New York City, police arrested a large number of people. *Id.* But "[h]undreds of cases . . . collapsed under an avalanche of videotaped evidence that either completely contradicted police accounts, or raised significant questions about their reliability. The videotapes were made by people involved in the protests, bystanders, tourists and police officers." *Id.*

14. *See Mary Erpenbach, The Whole World Is Watching: Camera Phones Put Law Enforcement Under Surveillance*, L. ENFORCEMENT TECH., Feb. 2008, at 40, 41.

15. *See id.*

16. *See id.* at 43 (citing one supervisor as saying that he addresses it with trainees and another recommending that this possibility should be addressed at roll call or in training).

17. *See id.*

just useful, but welcome.¹⁸ This versatility makes the idea one of the most promising possibilities for assuring police accountability and compliance with the law to come along in many years.¹⁹

II. THE TECHNOLOGY: BODY-WORN VIDEO (BWV)

By now, most people know that police often have camera systems installed in their vehicles.²⁰ These systems now use digital technology that allows them to be much smaller and much more popular with police officers and their departments.²¹ A study by the International Association of Chiefs of Police found that the installation and use of cameras had an overwhelmingly positive impact across multiple dimensions—camera use enhanced officer safety, improved agency accountability, and reduced agency liability, among other effects.²² Officers tend to resist the cameras at first, feeling that they do not want “big brother” spying on them, but after a short time, most see that the cameras protect them by preserving evidence and backing up their versions of events.²³ Most importantly for our purposes, officers reported that recording their actions increased professionalism and performance in the sense that it forced officers to give more attention to following agency protocols in their dealings with citizens and suspects; citizens supported the use of the cameras as a way to change police behavior and to hold officers accountable.²⁴

Given the universal trend in technology for digital devices to become both more capable and smaller over time, recording systems for police have become so small that instead of mounting these units on police car dashboards, we can now mount them on police officers themselves.²⁵ First used in the United Kingdom, police there referred to the equipment as “head cameras,” or more formally, Body-Worn Video (BWV).²⁶ BWV consists of video and audio recording equipment “attached to the officer” in the way one might wear a wireless cell phone ear piece.²⁷ At least two

18. See generally *infra* note 25 (describing new body-worn devices as beneficial to police work).

19. See *infra* note 24.

20. See, e.g., Rachel Conway, *Caught on Camera: Suburban Police Departments Realize Benefits of “Cruiser Cams,”* PITTSBURGH POST-GAZETTE, Apr. 15, 2010, at E2-1 (detailing use of in-car cameras “for decades” with cameras installed in squad cars in the majority of police departments).

21. See *id.*

22. See *The Impact of Video Enhancement on Modern Policing*, THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, 13-26 (2003), http://www.cops.usdoj.gov/files/ric/publications/video_evidence.pdf.

23. L. Pilant, *Spotlight on In-Car Video Systems*, POLICE CHIEF, Apr. 1995, at 30.

24. See Lonnie J. Westphal, *The In-Car Camera: Value and Impact*, POLICE CHIEF, Aug. 2004, at 8.

25. See *A Watching Brief with Body-Worn Devices*, BAPCO J., Aug. 2007, http://www.bapcojournal.com/news/fullstory.php/aid/752/A_watching_brief_with_body-worn_video_devices.html.

26. See *id.*

27. See generally *id.* (describing various device technologies).

American companies manufacture versions of these devices, and they have begun to appear in small numbers in U.S. police agencies.²⁸

British police departments became the first to show an interest in BWV devices, and they began to conduct field tests on them as early as 2005.²⁹ The initial pilot studies, small in size, took place in Plymouth, England, in 2005 and 2006.³⁰ The head cams showed great promise in these tests, so police then conducted a full-scale study in Plymouth, lasting seventeen months, in which 300 officers tested BWV.³¹ The U.K. Home Office (the equivalent of the U.S. Department of Justice) then commissioned an independent assessment of the Plymouth studies to identify issues of concern and to evaluate the benefits of the devices.³² The evaluators' final report on the subject stated that the pilot studies demonstrated that police received significant benefits from the use of BWV.³³ In 2007, the U.K. Home Office used the findings to publish *Guidance for the Police Use of Body-Worn Video Devices (Guidance)*.³⁴ In its key findings, *Guidance* explains how BWV helps police.³⁵ First, using BWV enabled officers to record evidence in real time, with far more accuracy than other methods allowed and much less doubt about what happened or what was said.³⁶ Second, officers could quickly make and keep records, causing a more rapid resolution of cases through guilty pleas and allowing officers more time on the street.³⁷ Third, when the public saw officers wearing BWV, it reduced public order offenses; when such offenses were committed, they were resolved faster.³⁸ Fourth, officers

28. See TASER, <http://www.taser.com/products/law/Pages/taseraxon.aspx> (last visited Sept. 3, 2010). Taser International, the manufacturer of the eponymous taser weapon, manufactures its own BWV device, which uses a camera mounted on a headpiece. *Id.* The manufacturer describes its device, the TASER AXON, as "a tactical networkable computer combining advanced audio-video record/capture capabilities worn by first responders." *Id.* The company claims that "AXON significantly changes officer efficiency by reducing report documentation workload while increasing accuracy and accountability" and describes the device as a way of combating "false allegations and complaints that question their integrity and honor." *Id.* Another model, called the VIEVU, comes from a company of the same name in Seattle, Washington. See VIEVU, <http://www.viewu.com> (last visited Sept. 3, 2010). The company describes its device as "easy to wear and use," and it makes different versions for civilians and law enforcement. *Id.* The VIEVU is roughly the size and shape of a pager and clips to the officer's shirt, jacket pocket, or hat. *Id.*

29. See generally "Smile, You're on Camera!" Police to Get "Head Cams," LONDON EVENING STANDARD (Dec. 7, 2007), <http://www.thisislondon.co.uk/news/article-23403984-smile-youre-on-camera-police-to-get-head-cams.do> (describing early prototypes of head cameras).

30. See *A Watching Brief with Body-Worn Devices*, *supra* note 25.

31. POLICE & CRIME STANDARDS DIRECTORATE, HOME OFFICE OF THE U.K., GUIDANCE FOR THE POLICE USE OF BODY-WORN VIDEO DEVICES 6 (July 2007), <http://www.audaxuk.com/products/documents/HomeOfficeReport-guidance-body-worn-devices.pdf>.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 7.

37. *Id.*

38. *Id.* at 7-8.

found recording of events via BWV especially helpful for the prosecution of domestic violence cases.³⁹ Last, when officers discharged firearms in the course of police business, the use of BWV created a finely-detailed record for investigation of these critical incidents.⁴⁰

While the United States has not conducted a formal evaluation of the devices, police departments are testing them in Cincinnati, San Jose, San Diego, and the smaller jurisdictions of Aberdeen, South Dakota, and Fort Smith, Arkansas.⁴¹ American police departments that have used the head cams have shown great enthusiasm for them, and video taken from BWV has begun to show up in television news reports.⁴² For example, in a recent CBS News television report, an officer in the Cincinnati Police Department used the head cam to capture exactly what she saw as she received a radio call and began to pursue a person reportedly carrying a gun into an apartment complex.⁴³ Another recording in the report shows a different officer pursuing a man into an alley yelling, "Put your hands up now!" with his gun pointed at the suspect; the man surrendered and was arrested.⁴⁴ Another recording showed what happened when a disturbed individual resisted a police officer's efforts to detain him and took control of the officer's Taser.⁴⁵ The video and audio record has a remarkable clarity, even the images taken at night; it also shows a full picture of the event, including the other officers involved.⁴⁶

All of these examples help explain why police officers and their leaders strongly support the use of head cams.⁴⁷ Officer Melissa Cummins, the first Cincinnati police officer to use a head cam in the field, says, "It's going to help us as law enforcement officers through this country to be able to capture that actual moment, what we're seeing. . . . Instead of a jury or a judge taking my word, now you can hear [and see] it."⁴⁸ Officer Cummins's unabashed support for use of head cams is matched by the enthusiasm of her department's chief, Tom Streicher, who especially appreciates the capacity of the device to record any incident as it really happens and to supply evidence in criminal cases in the form of the recording.⁴⁹ "It is the real thing. It is the evidence. It is the incident as it's

39. *Id.* at 8.

40. *Id.* at 7.

41. See Russ Mitchell, *Police Head Cameras Capture Action, Evidence*, CBS NEWS (Apr. 4, 2010), <http://www.cbsnews.com/stories/2010/04/04/eveningnews/main6363152.shtml>.

42. See *id.*

43. See Russ Mitchell, *Are Cop-Cams the Future?*, CBS NEWS (Apr. 4, 2010, 3:56 PM), <http://www.cbsnews.com/video/watch/?id=6363119n&tag=related;photovideo>.

44. *Id.*

45. See *id.*

46. *Id.*

47. *Id.*

48. Mitchell, *Police Head Cameras Capture Action, Evidence*, *supra* note 41.

49. See *id.*

unfolding,” Streicher says.⁵⁰ Evidence of what the suspect and the officer did appearing in an unrehearsed, spontaneous recording will, without doubt, prove superior to any other kind of post-hoc report, which by its nature would contain only the word of the officer. But Streicher would take the use of BWV further than just the production of evidence; he would extend it to the arena of police accountability.⁵¹

Citizens sometimes file complaints and even lawsuits against police officers, alleging everything from rudeness to brutality.⁵² In some cases, supervising officers may suspect—either because of a complaint, but sometimes for other reasons—that the officer did not follow proper protocol or procedures.⁵³ With a working head cam system, the officer’s supervisor can see for himself what really happened.⁵⁴ As Chief Streicher says, “What better way of evaluating that officer’s conduct [than] by taking a look at what the officer is seeing?”⁵⁵ On the other hand, the devices may raise expectations of citizens; for example, some worry that “a police officer’s word may be trusted only when there is video to support it,” making the police effectively prisoners of the technology, instead of having the technology serve them.⁵⁶ Other skeptics voice concern that making a recording of every interaction with citizens “could make some witnesses reluctant to speak to cops.”⁵⁷ Streicher embraces BWV despite these fears, and he does so without hesitation: “I think that every uniformed officer working, that’s out on the street, should be wearing this.”⁵⁸

Beyond improvements in police work and police accountability, BWV can also help improve police compliance with the Fourth Amendment and its strictures. Researchers using observational studies of officer behavior have shown, using conservative assumptions, that police violate the Constitution in 30% of the searches or seizures they conduct.⁵⁹ Moreover, the vast majority of these unconstitutional searches or seizures—97%—produce no evidence.⁶⁰ This means that citizens suffering unconstitutional police actions can obtain no relief through the exclusionary rule of the Fourth Amendment—no evidence exists to suppress.⁶¹ Thus, any mechanism we can find that might enhance Fourth Amendment compliance

50. *Id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. See Jon B. Gould & Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 *CRIMINOLOGY & PUB. POL’Y* 315, 331 (2004).

60. *Id.* at 332.

61. *See id.*

by police seems worth exploring.⁶²

We can find clues regarding how BWV could help increase police compliance with Fourth Amendment rules in the U.K. Home Office's *Guidance* on the use of these devices.⁶³ Among other aspects of the use of BWV, *Guidance* discusses how the technology has helped police departments vis-à-vis the handling of complaints by citizens regarding misconduct by police officers.⁶⁴ When a citizen wants to make a complaint about the conduct of an officer, the recording of the incident made with the officer's head cam can play a central role.⁶⁵ Police agencies have shown BWV recordings "to those wishing to make complaints about police action at the scene. . . . In a number of cases the complainants have reconsidered their complaint [sic] after this review, thus reducing investigation time for unwarranted complaints."⁶⁶ This is, unequivocally, a good thing.⁶⁷ If citizens can see that they were perhaps mistaken, that they did not understand the situation from the officer's point of view, or that they did not have all the facts, they may come away with a better grasp of the situation and not continue with the complaint process. Also according to *Guidance*, BWV reduced the number of baseless complaints, allowing the resources needed to work through these complaints to become available for other police purposes.⁶⁸

But even if we assume that in most cases, the recording supports the officer's version of events and not the citizen's, the opposite will surely be true some of the time—that is, sometimes the recordings will support citizens' complaints. In such a case, the officer can be held accountable for mistakes made or violations committed. Thus, understanding that a commanding officer or internal affairs agent could investigate any search or seizure conduct based not on the (naturally self-serving) *ex post* report or court testimony of the officer, but on a spontaneous recording of the event made in real time, should minimize not just phony citizen complaints, but also incorrect or illegal behavior by officers.⁶⁹ To make this work, commanding officers would have to have unfettered access to all recordings. This would build a level of accountability into the system never before seen; in addition, supervisors could use the recordings for more general (i.e., not complaint responsive) assessment, training, and

62. See generally David A. Harris, *How Accountability-Based Policing Can Reinforce—or Replace—the Fourth Amendment Exclusionary Rule*, 7 OHIO ST. J. CRIM. L. 149, 149-215 (2009) (providing a fully fleshed-out exploration of how to enhance Fourth Amendment compliance by police, and how BWV might fit into it).

63. POLICE & CRIME STANDARDS DIRECTORATE, *supra* note 31, at 6.

64. *Id.*

65. *Id.*

66. *Id.* at 7.

67. *Id.*

68. *Id.*

69. See Harris, *supra* note 62, at 179.

disciplinary decisions. This would go not just for search and seizure related conduct, but officer conduct of any kind. This has the potential to transform search and seizure conduct and compliance. With the knowledge that the camera will record all such actions, police behavior would likely change for the better, with higher levels of compliance with Fourth Amendment law, as well as internal departmental regulations.

In order for recordings of search and seizure encounters to have this kind of effect, the law, departmental rules, or both would have to *require* officers to record *every* interaction with citizens. Activation of head cams would need to become absolutely routine for any encounter between a police officer and a citizen: any frisk, arrest, or search of a car, a bag, or a house. This can be accomplished by crafting a presumption for use in cases in which a search or seizure plays an important role, for example, a search that results in the recovery of evidence from the defendant's pocket, which is then used to prosecute the defendant. In a criminal case in which the legality of the search and seizure is at issue because it produced evidence the state wishes to have admitted against the defendant in court, absence of a recording of the relevant search and seizure would give rise to a presumption that the defendant's version of events should be accepted, absent (1) a compelling reason explaining the failure to record, and (2) a finding that the defendant's version of events could not be believed by a reasonable person.⁷⁰ In a civil case alleging a violation of the Fourth Amendment—for example, a *Bivens* action based on a wrongful search—the absence of a recording would raise a similar presumption or entitle the plaintiff to a jury instruction of the same nature.⁷¹ These simple presumptions would change the equation; the default method of proceeding on street patrol would include the use and activation of head cams, so that, along with the benefits police would get with these devices—evidence gathering, protection against false claims, and the like—they would do another important job at the same time by increasing police compliance with the Fourth Amendment.

A system in which BWV would play so central a role would require that two issues receive satisfactory attention: tampering and technical dependability.⁷² With small-scale use of head cams now beginning in the United States, following comprehensive field testing in Britain, issues of technical dependability have presumably gotten, and will continue to get, the kind of scrutiny they deserve.⁷³ If the units show high levels of malfunctions and failure, police administrators like Chief Tom Streicher of Cincinnati will not want them and will condemn them instead of singing

70. *Id.*

71. *See generally* *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) (creating an implied cause of action for the conduct of federal officers who violated the Fourth Amendment).

72. *See* Mitchell, *Police Head Cameras Capture Action, Evidence*, *supra* note 41.

73. *Id.*

their praises; the movement toward adoption would then wilt and fade.⁷⁴

Tampering is at least as important a concern as dependability. In order for BWV systems to do the good that the public anticipates, people will have to conclude that officers cannot tamper with the recordings once made.⁷⁵ This seems to be addressed in the case of the device made by Taser; at the end of a shift, the officer “docks” the device into a computer and the recordings are automatically downloaded and securely stored off-site, putting them out of reach of anyone who might wish to alter or erase the recordings.⁷⁶ At least as important, departments deploying head cams must have a mechanism to assure that the recording equipment is activated in every encounter with a citizen. This could be accomplished by requiring that officers keep them on during the entire time an officer is on shift, excluding times when an officer calls in that he is “out of service” (on a lunch break, in the restroom, etc.). Another possibility is to key the devices into the officer’s use of other emergency equipment—using a technological tie-in so that the device switches on whenever the squad car’s emergency lights or siren are used. Departments might also tackle the problem by creating a mandatory requirement that the officer turn the device on in any emergency and whenever an encounter with a citizen takes place.⁷⁷ Without ways to handle these issues, the public will doubt the trustworthiness of the devices, and the efforts to use them to ensure police accountability and Fourth Amendment compliance will come to nothing.

III. NOT A PANACEA, BUT A POSSIBILITY

The use of head cams as a way to create more Fourth Amendment compliance by police would not, by any means, solve the whole problem of police behavior that violates search and seizure rules. Technology rarely solves the whole of a complex human problem. It can help, but often creates its own new issues; this has happened in law enforcement in the past.⁷⁸ The two most important technological innovations in police work in the twentieth century, the automobile and the two-way radio, revolutionized and re-invented what police could do.⁷⁹ Police officers could swoop in on

74. *See id.*

75. *See id.*

76. *Id.*

77. *See* Peter Hildebrandt, *Dash-Cams Keep Records: Recording Officers’ Interactions with the Public with Mobile Video Isn’t Enough*, L. ENFORCEMENT TECH., Feb. 2009, at 10, available at [http://www.officer.com/print/Law-Enforcement-Technology/Dash-Cams-Keep-Record/1\\$45824](http://www.officer.com/print/Law-Enforcement-Technology/Dash-Cams-Keep-Record/1$45824). For example, policy in the South Carolina Department of Public Safety states that officers driving a patrol car with in-car video recording technology must activate the recording system as soon as the vehicle’s emergency lights and siren go on, and must remain active during the entire interaction with the person stopped. *Id.* Similar rules would work, and be just as necessary, for BWV.

78. DAVID A. HARRIS, *GOOD COPS: THE CASE FOR PREVENTIVE POLICING* 18-19 (2005).

79. *Id.* at 19.

criminals, swiftly and stealthily, when dispatched by radio and transported by motorized vehicles; no longer did police response depend on how many officers might run or ride horseback to the scene of a crime or disturbance after an audible alert or alarm.⁸⁰ This new level of speed and mobility clearly constituted a huge step forward, and experts hailed it as such.⁸¹

But it also created a new set of problems. Officers had formerly walked their beats, and this limited a beat to the size of what an average person could cover on foot.⁸² This meant seeing and interacting with many of the same people day after day.⁸³ With radio cars, beats now covered much larger areas, and instead of walking the streets and talking with people who lived and worked there, police officers rolled through in cars, visible only from the shoulders up, seldom interacting with anyone except at the worst possible times: addressing emergencies, making arrests, and the like.⁸⁴ Thus, the unanticipated consequence of the greater mobility and speed of the modern police force has been that officers have been cut off from the best source of intelligence they have—the people who live and work in the neighborhoods they patrol—and have become at best unknown to, and at worst alienated from, those they serve.⁸⁵

The use of BWV may have unanticipated consequences too. Some worry that fewer people will talk with police officers if they know that a recording of the interaction will happen automatically, though there is no evidence to prove any such effect might occur.⁸⁶ But the greater concern is that BWV might not actually influence Fourth Amendment compliance in the positive direction anticipated here. It could be, for example, that the recordings of police search and seizure conduct might not impress all viewers the same way—that is, perhaps judges viewing the images would tend to see the police actions as justified, even if others would not. That is the implication one might draw from a study by Dan M. Kahan, David A.

80. See NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON POLICE 90-98 (1931) (discussing how vehicles and police radios would change policing).

81. HARRIS, *supra* note 78, at 19 (quoting August Vollmer, one of the twentieth century's greatest proponents of modern, technologically-assisted policing, concerning "the advent of the radio equipped car" bringing the criminal to the realization that "a few moments may bring [police officers in radio cars] down about him like a swarm of bees . . . lightning swift. . .").

82. *Id.* at 20.

83. *Id.*

84. *Id.* at 20-21.

85. *Id.*

86. See Mitchell, *Police Head Cameras Capture Action, Evidence*, *supra* note 41 (pointing out that some in law enforcement harbor concerns that witnesses or suspects might be intimidated by the presence of the cameras and not talk to officers because of it). In a related context, fears that suspects under interrogation will refuse to talk or cooperate during routine interrogations have proven unfounded. Thomas P. Sullivan, *Police Experiences with Recording Custodial Interrogations*, NORTHWESTERN SCHOOL OF LAW CENTER ON WRONGFUL CONVICTIONS 19-23 (2004), http://www.innocenceproject.org/docs/Police_Experiences_Recording_Interrogations.pdf.

Hoffman, and Donald Braman, called *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*.⁸⁷

The article focused on the recent *Scott* case, in which the Supreme Court decided that a police officer did not violate the Fourth Amendment when he deliberately rammed his patrol car into the car of a fleeing motorist who was leading the officer on a high-speed chase.⁸⁸ The ramming forced the motorist's car into a catastrophic accident, resulting in the motorist becoming a quadriplegic.⁸⁹ A recording of the chase, from the police officer's in-car camera, became part of the record in the lower court.⁹⁰ While the lower court found that there was a genuine issue of material fact on the question of whether the danger posed by the motorist's flight justified the use of deadly force by the officer, the Supreme Court majority disagreed, based on its view of the recording.⁹¹ Normally, "courts are required to view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the [summary judgment] motion,'" the Justices stated, but in this case, watching the videotape had convinced them that the motorist had driven in so dangerous a fashion during the chase that his story—and the findings of the court below that had sided with him—lacked all plausibility.⁹² "Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him," the Court said.⁹³ Casting aside any need for further legal reasoning, the Justices did something the Court had never done in an opinion before: they posted the entire recording of the chase to the Court's website, gave the web address, and stated, "We are happy to allow the videotape to speak for itself."⁹⁴

Kahan and colleagues took the Court's challenge: they decided to conduct an empirical study to see what the recording of the chase said to people viewing it.⁹⁵ To do this, the researchers showed the tape to a sample of 1,350 Americans and studied their reactions to what they saw.⁹⁶ In short, not everyone looking at the tape saw the same thing, and opinions on what the tape showed tended to have much to do with who the viewer was.⁹⁷ The authors reported that a "fairly substantial majority" interpreted the tape as the Court did: the fleeing motorist had posed a danger grave enough to

87. See Dan M. Kahan, David A. Hoffman, & Donald Braman, *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 837 (2009).

88. *Scott v. Harris*, 550 U.S. 372, 374-76 (2007).

89. *Id.* at 375.

90. *Id.* at 378.

91. *Id.*

92. *Id.* at 378-79.

93. *Id.* at 380.

94. *Id.* at 378 n.5.

95. Kahan, Hoffman, & Braman, *supra* note 87, at 841.

96. *Id.*

97. *See id.*

justify the police officer's use of deadly force.⁹⁸ But other viewers did not agree.⁹⁹ They saw the motorist's flight as less dangerous; indeed, they viewed the conduct of the officer in chasing the motorist as the factor creating the danger in the situation and found the officer's ramming of the motorist's car unnecessary and unjustified.¹⁰⁰ Those who disagreed with the Court fell into certain identifiable groups: African Americans, low-wage workers, residents of the Northeastern U.S., liberals, and Democrats.¹⁰¹ As the researchers saw it, the correct question that emerged from their results was not, as the Court had said, whether to believe one's own eyes, but rather *through whose eyes* the law should view an incident "when identifiable groups of citizens form competing factual perceptions."¹⁰² Thus, Kahan and his colleagues argued that the Court was incorrect to privilege one view of the incident—the majority's—over all other possible views, because this deprived the other views of any opportunity to be heard at trial and delegitimized the decision in the eyes of everyone who viewed the facts differently than the majority did.¹⁰³

The work of Kahan, Hoffman, and Braman alerts us to the fact that, in the case of BWV, we should not expect or assume any particular outcome from a recording via BWV of a search or seizure interaction between an officer and a citizen. It is possible that some viewers might view a particular scenario as unconstitutional, but others—perhaps most—might disagree. More to the point, one cannot be certain that judges hearing motions to suppress, aided by BWV video, would necessarily find police conduct unconstitutional, even if, when tested via the method Kahan et al. used, the majority of Americans would find the search or seizure unconstitutional. Having the recording guarantees no particular results; judges may continue to decide cases in roughly the same patterns they always have.

But even so, this should not keep us from seeing the advantages of BWV as a tool for Fourth Amendment compliance because what is most important is that head cams can improve police behavior when officers know their actions can be observed. Put another way, any particular set of facts recorded by BWV may sway a judge one way or another. But if the presence of the camera has an effect on the behavior of police officers, making them more likely to hew to proper legal and constitutional standards, that is reason enough to move toward the use of these devices. As officers told researchers concerning the use of in-car cameras, knowing that their supervisors might review the recordings as part of performance

98. *See id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 841-42.

reviews or in investigations of citizen complaints or lawsuits had the effect of moving them toward greater attention to, and compliance with, all manner of departmental rules and regulations.¹⁰⁴ Extrapolating from these studies, there is every reason to think that this could also occur with head cams, in the context of Fourth Amendment behavior: officers who know they are watched will behave better and will perform searches and seizures according to applicable constitutional rules. Beyond assuring compliance with departmental performance standards, or for purposes of addressing citizen complaints, the recordings could be called upon as evidence for search and seizure suppression motions in court.¹⁰⁵ Coupled with the presumption described above, this could have the type of effect on Fourth Amendment compliance sought here.¹⁰⁶

At least one other point bears mentioning. Of all the ways which one might imagine handling the issue of Fourth Amendment compliance, BWV has a major advantage: there is a realistic possibility that it could happen.¹⁰⁷ Given the large number of purposes benefiting police that might cause departments to adopt BWV, one can easily imagine that law enforcement might actually welcome the wide use of these devices.¹⁰⁸ As in Britain, head cams would likely produce evidence for use in court, defend officers against baseless complaints and lawsuits, speed up the resolution of criminal charges, and even deter some crime that might otherwise occur.¹⁰⁹ Moreover, head cams have undergone study and field-testing by law enforcement—something that police take very seriously.¹¹⁰ None of this may have anything to do with the reason that the author might wish to see head cams in wide use: to ensure police compliance with the Fourth Amendment. In other words, while both police and people who want greater police compliance with the law might agree on little else, they could agree on the utility and desirability of deploying BWV. In this sense, head cams may present an instance of interest convergence—a case in which two parties, usually on different sides of an issue, find common ground for their

104. See Westphal, *supra* note 24, at 8.

105. This point, of course, holds true only if some form of the Fourth Amendment exclusionary rule stays in place in the law. And this may not necessarily be true much longer. See *Hudson v. Michigan*, 547 U.S. 586, 595-603 (2006). Part of Justice Scalia's opinion for the Court in *Hudson* would have overturned the exclusionary rule, *id.* at 595-99, but for Justice Kennedy withholding his vote from that section of the opinion, *id.* at 603 (Kennedy, J., concurring). In *Herring v. United States*, 129 S. Ct. 695 (2009), a majority of the Court, including Justice Kennedy, voted to limit the exclusionary rule's application in ways that may be far reaching. See Craig M. Bradley, *Reconceiving the Fourth Amendment and the Exclusionary Rule*, 85 CHI.-KENT L. REV. 315 (2010). I thank my friend and colleague Professor Jack Chin of the University of Arizona Rogers College of Law for this insight.

106. See *supra* notes 31-40 and accompanying text.

107. See Harris, *supra* note 62, at 198-209.

108. See *id.* at 178 (listing benefits of BWV).

109. *Id.*

110. *Id.*

own very different reasons.¹¹¹ Agreeing on the same solution for very different problems may not be ideal, but it is agreement nonetheless; the reasons for it are less important.

IV. CONCLUSION

We know one thing for certain: when a technology useful to law enforcement becomes available, law enforcement will attempt to make use of it. Head cams have arrived, and they can certainly serve a number of important functions for police officers and their departments. They can also serve other purposes. Accountability of officers for their actions with citizens—most of which would never have become visible in any way except via an officer's own written, and possibly self-serving, reports—is one purpose that leaps out at anyone looking for ways to assure greater compliance with the law in the course of enforcing it. No one would argue that BWV will solve deep-seated problems of police abuse or misconduct. Surely, however, having a permanent factual record of interactions between officers and citizens could at least help us begin to address the issues.

111. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 518 (1980) (explaining that the flowering of civil rights served different, but converging, interests as between African Americans and the U.S. Government).

Discussion on the legal and other implications of Body Cameras for Police

1. Privacy concerns – both to cops and to the public, due to video recording
 - What are the privacy concerns to the public due to body cameras?
 - Are the privacy concerns for the public similar to those with Google Glass or Google maps?
(see <https://epic.org/privacy/google/glass/>)
 - What are the privacy concerns of the Police due to body cameras?
 - Are these concerns similar to those of airline pilots for cameras in cockpits?
2. Privacy concerns on storage and sharing of information
 - What are the data storage concerns, and are they similar to those in NSA cases?
 - What are the data sharing concerns, and are they similar to those on social media?
3. Cost
 - The amount of money spent on police departments and technology have increased over the years. Does the additional amount spent of police departments result in the need for a larger tax base to support them, which in turn lead to the alienation of police from the society they are serving?
4. Maturity of technology
 - Do you think the technology is mature, or are there any limitations?
 - Are there any concerns about who activates the cameras?
5. Perception of the same data by different people may be different
 - Will the outcome in the recent NY case have changed, if cops had body cameras?
 - Will different people have different interpretations of the same video?
6. Emotional state of police not measured
 - What are the reasons for the alienation of the police from the community ?
 - Are there any similarities between the emotional state of police in some communities with troops in overseas wars, and can any lessons be learned from the troops experience?



Contacts between Police and the Public, 2008

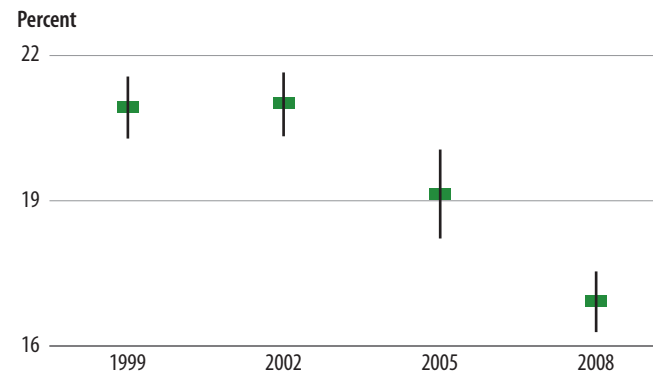
Christine Eith and Matthew R. Durose, *BJS Statisticians*

In 2008, an estimated 16.9% of U.S. residents age 16 or older had face-to-face contact with police. This was a decline from the 19.1% of U.S. residents who reported having contact with police in 2005 and a decrease from the 21% who experienced contact with police in 1999 and 2002 (figure 1).

Between 2002 and 2008, about 5.3 million fewer residents had face-to-face contact with police, down to an estimated 40.0 million from 45.3 million. Among persons who had a face-to-face contact with police in 2008, about 1 out of 4 had more than one contact during the year. The public most commonly came into contact with police when driving a vehicle that was pulled over in a traffic stop. Other frequent reasons for contact with police included reporting a crime to police or being involved in a traffic accident.

The findings described in this report are based on the Police-Public Contact Survey (PPCS) that the Bureau of Justice Statistics (BJS) periodically uses to interview all persons age 16 or older in a nationally representative sample of households about their contacts with police during the previous 12 months. The PPCS is a supplement to the National Crime Victimization Survey. This report summarizes data from the 2008 PPCS and compares findings to the 2002 and 2005 surveys.

FIGURE 1
Percent of U.S. residents age 16 or older who had face-to-face contact with police, 1999–2008



Note: Lines above and below data points represent 95% confidence intervals. The percentage scale along the vertical axis has been adjusted to more clearly reveal the change over time.

HIGHLIGHTS

- The percent of U.S. residents age 16 or older who had face-to-face contact with police declined from 2002 (21.0%) to 2005 (19.1%) and declined again in 2008 (16.9%).
- An estimated 9 out of 10 residents who had contact with police in 2008 felt the police acted properly.
- The most common reason for contact with police in 2008 was being a driver in a traffic stop (44.1%).
- White (8.4%), black (8.8%), and Hispanic (9.1%) drivers were stopped by police at similar rates in 2008.
- Male drivers (9.9%) were stopped at higher rates than female drivers (7.0%).
- In 2008 about 5% of traffic stops led to a search. Police were more likely to search male drivers than female drivers.
- Black drivers were about three times as likely as white drivers and about two times as likely as Hispanic drivers to be searched during a traffic stop.
- During traffic stops in 2008, about 57.7% of searches of the driver only and 60.0% of searches of the vehicle only were conducted with the driver's consent.
- About 36.1% of drivers who were only physically searched and 20.7% of drivers who only had their vehicle searched believed police had a legitimate reason to do so.
- Among persons who had contact with police in 2008, an estimated 1.4% had force used or threatened against them during their most recent contact, which was not statistically different from the percentages in 2002 (1.5%) and 2005 (1.6%).
- A majority of the people who had force used or threatened against them said they felt it was excessive.

Police-Public Contact Survey interviewed U.S. households about their face-to-face interactions with law enforcement officers

BJS conducted a pilot test of the PPCS in 1996 as a supplement to the National Crime Victimization Survey (NCVS). The 1996 survey was administered to determine whether the NCVS could serve as a useful method for collecting data on contacts between U.S. residents and the police and to obtain preliminary estimates on this topic. The pilot survey revealed that about 21% of the public experienced face-to-face contact with a police officer at least once during 1996. Survey findings helped to inform the development of an improved questionnaire. In addition to the pilot study, a panel of law enforcement experts reviewed and provided recommendations on the survey procedures and questionnaire.

A revised version of the PPCS was fielded in 1999 among a national sample nearly 15 times as large as the 1996 pilot sample. The 1999 survey included a more detailed set of questions about traffic stops by police, which was the most frequent reason for contact with police. The 1999 survey yielded estimates similar to those in the 1996 survey on the prevalence and nature of contacts between the public and the police.

Since 1999, the PPCS has been administered every 3 years (in 2002, 2005, and 2008) as a supplement to the NCVS. During the survey, U.S. residents age 16 or older were asked whether they had a face-to-face interaction with a law enforcement officer during the 12 months prior to their interview. Survey respondents who said they had face-to-face contact with police were asked to describe the nature and outcome of that contact. Persons who reported more than one instance of face-to-face contact during the year were asked to describe the most recent occurrence.

Contact with police excluded contact by telephone or written correspondence, contact with private security guards, social contact, or contact that occurred because of employment or volunteer work that brought the respondent into regular contact with police. In addition, members of the household who were living in an institution at the time of the interview—for instance, incarcerated persons—were excluded from the PPCS sample. Such exclusions may affect the findings because contact with police leading to incarceration would involve more serious outcomes.

This report summarizes the results of the 2008 PPCS and provides comparative analysis with findings from the surveys conducted in 2002 and 2005. (See *Methodology* for information on the reasons for limiting certain comparisons to these 3 years.) The findings are based solely on the personal accounts of the PPCS respondents. Official police records on contacts between police and the public were not used in the study. Data collected and described in the

report cannot provide a sufficient basis to infer a causal relationship between characteristics of the respondent and police behavior.

In comparisons described in the text, an explicit or implied difference indicates that BJS conducted tests of statistical significance, and the difference was significant at the 95% confidence level or above. Certain differences were not significant at or above the 95% level, but were significant at the 90% confidence level. The terms “somewhat,” “some indication,” “some evidence,” or “slightly” refer to differences significant at the 90% level. (See *Methodology* for more information on confidence intervals and statistical significance tests.)

Number of persons who had contact with police declined between 2002 and 2008

In 1999, an estimated 20.9% of U.S. residents age 16 or older experienced face-to-face contact at least once with a police officer. About the same percentage of contact between police and residents (21.0%) occurred in 2002. About 19.1% of residents had face-to-face contact with police in 2005, a decrease from the percentage who had police contact in 2002. In 2008, the percentage of residents who experienced contact with police further decreased to 16.9%.

Overall, about 5.3 million fewer residents had face-to-face contact with police during 2008, compared to the total number who had contact in 2002 (table 1). An estimated 45.3 million residents age 16 or older had police contact in 2002, while about 40.0 million had contact with the police in 2008.

TABLE 1
Number of U.S. residents age 16 or older who had contact with police, by reason for contact, 2002, 2005, and 2008

Reason for most recent contact	Number (in thousands)			Difference in contacts, 2002–2008	
	2002	2005	2008	Number (in thousands)	Percent change
Total	45,279	43,658	40,015	-5,264	-11.6%
Traffic-related contacts	23,894	24,621	23,708	-186	-0.8%
Driver during traffic stop	16,783	17,920	17,663	880	5.2
Passenger during traffic stop	1,218	1,238	1,146	-72	-5.9
Traffic accident	5,892	5,463	4,898	-993	-16.9
Other contacts	21,385	19,037	16,307	-5,078	-23.7%
Resident reported crime/problem to police	11,960	10,356	8,345	-3,615	-30.2
Police provided assistance or service	3,265	2,720	2,506	-758	-23.2
Police investigating crime	2,615	2,430	2,257	-359	-13.7
Police suspected resident of wrongdoing	1,158	1,231	1,014	-144	-12.4
Other reason*	2,388	2,299	2,185	-203	-8.5

Note: Data are based on the resident’s most recent contact with police in 2002, 2005, and 2008. See appendix table 1 for standard errors. Detail may not sum to total because of rounding.

*Includes a small percentage of cases in which the reason for contact was unknown.

While the second most common reason for contact with police during this period continued to be reporting a crime or problem, the percentage of all contacts that occurred for this reason decreased from 26.4% in 2002 to 23.7% in 2005 and 20.9% in 2008 (table 2). Nearly 12 million residents said their most recent contact in 2002 was to report a crime or problem to police, compared to about 8.3 million (or 30.2% fewer) residents in 2008. The decline in these contacts accounted for about 3.6 million (69%) of the 5.3 million fewer contacts residents had in 2008 compared to 2002. The drop in the number of residents reporting crimes or other problems to police was consistent with findings from the NCVS that showed a decline in criminal victimization during this period. Between 1999 and 2008, the violent crime rate declined by 41%, and the property crime rate fell by 32%.¹

¹*Criminal Victimization, 2008*, NCJ 227777, September 2009 (<http://www.bjs.gov>).

TABLE 2
Reason for contact among U.S. residents age 16 or older who had contact with police, 2002, 2005, and 2008

Reason for most recent contact	2002	2005	2008
Total	100%	100%	100%
Traffic-related contacts	52.8%	56.4%	59.2%
Driver during traffic stop	37.1	41.0	44.1
Passenger during traffic stop	2.7	2.8	2.9
Traffic accident	13.0	12.5	12.2
Other contacts	47.3%	43.6%	40.8%
Resident reported crime/problem to police	26.4	23.7	20.9
Police provided assistance or service	7.2	6.2	6.3
Police investigating crime	5.8	5.6	5.6
Police suspected resident of wrongdoing	2.6	2.8	2.5
Other reason*	5.3	5.3	5.5
Number of residents with police contact (in thousands)	45,279	43,658	40,015

Note: Data are based on the resident's most recent contact with police in 2002, 2005, and 2008. See appendix table 2 for standard errors. Detail may not sum to total because of rounding.

*Includes a small percentage of cases in which the reason for contact was unknown.

In 2002, 2005, and 2008, more than half of residents reported that their most recent contact with police was the result of a traffic stop or accident. The most common reason for police contact all 3 years was a person driving a vehicle that police stopped. Overall, the portion of all contacts that occurred as the result of being a driver in a traffic stop increased from 37.1% in 2002 to 41.0 in 2005 and 44.1% in 2008.

Among residents age 16 or older in 2002, the rate of contact that occurred to report a crime or other problem was 5.5% (table 3). This rate decreased to 3.5% in 2008. The rate of contact with police for being a person driving a vehicle that police stopped was 7.8% in 2002 and 7.5% in 2008. The difference between these percentages was not statistically significant.

TABLE 3
Percent of U.S. residents age 16 or older who had contact with police, by reason for contact, 2002, 2005, and 2008

Reason for most recent contact	2002	2005	2008
Total	21.0%	19.1%	16.9%
Traffic-related contacts	11.1%	10.8%	10.0%
Driver during traffic stop	7.8	7.9	7.5
Passenger during traffic stop	0.6	0.5	0.5
Traffic accident	2.7	2.4	2.1
Other contacts	9.9%	8.3%	6.9%
Resident reported crime/problem to police	5.5	4.5	3.5
Police provided assistance or service	1.5	1.2	1.1
Police investigating crime	1.2	1.1	1.0
Police suspected resident of wrongdoing	0.5	0.5	0.4
Other reason*	1.1	1.0	0.9
Number of residents age 16 or older (in thousands)	215,537	228,085	236,512

Note: Data are based on the resident's most recent contact with police in 2002, 2005, and 2008. See appendix table 3 for standard errors. Detail may not sum to total because of rounding.

*Includes a small percentage of cases in which the reason for contact was unknown.

Overall, there was no discernable statistical difference between the number of persons whose most recent contact was as a driver in a traffic stop in 2002 (16.8 million) and 2008 (17.7 million) (table 4). While the difference between the number of male drivers stopped by police in 2002 and 2008 was not statistically significant, the number of female drivers stopped by police increased nearly 12% during this period. The number of white and black drivers stopped by police during their most recent contact did not increase between 2002 and 2008. Among Hispanic drivers, the number of residents stopped by police increased nearly 28%.

A decline in the number of persons whose most recent contact with police was to report a crime or other problem between 2002 and 2008 was found among both males and females. White, black, and Hispanic residents also experienced a drop in the number of face-to-face contacts that occurred from reporting a crime or problem during this period.

TABLE 4
Number of U.S. residents age 16 or older who had contact with police, by demographic characteristics and reason for contact, 2002 and 2008

Demographic characteristic	Driver during traffic stop				Resident reported crime/problem to police			
	Number (in thousands)		Difference in contacts, 2002–2008		Number (in thousands)		Difference in contacts, 2002–2008	
	2002	2008	Number (in thousands)	Percent change	2002	2008	Number (in thousands)	Percent change
Total	16,783	17,663	880	5.2%	11,960	8,345	-3,615	-30.2%
Sex								
Male	10,210	10,330	119	1.2%	5,232	3,665	-1,567	-29.9%
Female	6,573	7,333	760	11.6	6,727	4,679	-2,048	-30.4
Race/Hispanic origin								
White ^a	12,842	12,933	91	0.7%	9,202	6,379	-2,823	-30.7%
Black/African American ^a	1,852	1,845	-8	-0.4	1,347	713	-634	-47.1
Hispanic/Latino	1,596	2,038	442	27.7	1,072	837	-234	-21.9
Other ^{a,b}	493	710	217	44.0	339	314	-25	-7.4
Two or more races ^a	~	137	~	~	~	102	~	~
Age								
16–17	487	331	-156	-32.1%	292	182	-110	-37.6%
18–24	3,874	3,547	-327	-8.5	1,449	1,122	-327	-22.6
25–34	3,765	4,122	357	9.5	2,466	1,597	-869	-35.2
35–44	3,714	3,620	-94	-2.5	3,050	1,665	-1,385	-45.4
45–54	2,712	3,042	330	12.2	2,457	1,792	-665	-27.1
55–64	1,459	1,978	520	35.6	1,142	1,209	68	5.9
65 or older	773	1,024	251	32.5	1,104	777	-327	-29.6

Note: Data are based on residents whose most recent contact with police in 2002 or 2008 occurred as the result of being a driver in a traffic stop or reporting a crime or problem.

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

^aExcludes persons of Hispanic origin.

^bIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.

Males had contact with police at higher rates than females

The percentage of males experiencing face-to-face contact with police was higher than the percentage of females in 2008 (table 5). Among residents age 16 or older, persons ages 18 to 24 experienced the highest percentage of police contact in 2008. White residents experienced a higher rate of contact with police than black and Hispanic residents in 2008. These differences were consistent with findings from the 2002 and 2005 surveys.

In 2005 the racial categories changed from previous years of the PPCS to separately identify persons of other races (American Indians, Alaskan Natives, Asians, Native Hawaiians, and Pacific Islanders) and those of any race indicating two or more races. In 2005 and 2008, the PPCS found that whites were more likely than Asians, Native Hawaiians, and other Pacific Islanders to have contact with police. Whites did not have a higher rate of police contact than American Indians and Alaskan Natives in 2005 or in 2008.

Similar patterns were found in the demographic composition of persons who had contact with police in 2002, 2005, and 2008. Males accounted for just over half of all persons who had contact with police during these three years (table 6). White residents made up about three-quarters of contacts, and black residents made up about 1 out of 10 persons who had police contact. Hispanic residents also accounted for about 1 out of 10 persons who had contact with police in 2002, 2005, and 2008.

TABLE 5

Percent of U.S. residents age 16 or older who had contact with police, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	2002	2005	2008
Total	21.0%	19.1%	16.9%
Sex			
Male	23.0%	21.2%	18.5%
Female	19.2	17.2	15.5
Race/Hispanic origin			
White*	22.1%	20.3%	17.8%
Black/African American*	19.3	16.5	14.2
Hispanic/Latino	17.5	15.8	15.0
Other*	16.2	15.3	14.0
American Indian/Alaskan Native*	~	25.7	22.1
Asian/Hawaiian/Pacific Islander*	~	14.4	13.0
Two or more races*	~	27.4	21.0
Age			
16–17	20.8%	20.7%	13.2%
18–24	31.7	29.5	24.9
25–34	25.2	23.2	21.2
35–44	23.1	20.5	18.8
45–54	20.3	19.0	16.7
55–64	15.6	14.6	13.4
65 or older	9.7	8.4	8.2
Number of residents age 16 or older (in thousands)	215,537	228,085	236,512

Note: See *Methodology* for the distribution of the number of police contacts and the U.S. population. See appendix table 5 for standard errors.

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

*Excludes persons of Hispanic origin.

TABLE 6

Characteristics of U.S. residents age 16 or older with and without face-to-face police contact, 2002, 2005, and 2008

Demographic characteristic	With police contact			Without police contact		
	2002	2005	2008	2002	2005	2008
Total	100%	100%	100%	100%	100%	100%
Sex						
Male	52.8%	53.6%	53.1%	47.0%	47.2%	47.7%
Female	47.2	46.4	46.9	53.0	52.8	52.3
Race/Hispanic origin						
White ^a	76.7%	75.7%	74.9%	72.0%	70.6%	70.2%
Black/African American ^a	11.0	9.7	9.5	12.2	11.6	11.6
Hispanic/Latino	9.3	9.5	10.3	11.6	11.9	11.9
Other ^{a,b}	3.0	4.0	4.3	4.2	5.3	5.3
Two or more races ^a	~	1.1	1.1	~	0.7	0.8
Age						
16–17	3.8%	4.0%	2.8%	3.8%	3.6%	3.8%
18–24	19.1	19.2	18.2	11.0	10.9	11.2
25–34	20.8	21.1	21.7	16.4	16.5	16.4
35–44	22.5	20.3	19.8	19.9	18.7	17.4
45–54	17.6	18.5	18.5	18.4	18.7	18.8
55–64	9.0	10.2	11.4	12.9	14.1	15.0
65 or older	7.1	6.7	7.7	17.6	17.5	17.4
Number of residents age 16 or older (in thousands)	45,279	43,658	40,015	170,258	184,417	196,497

Note: See appendix table 6 for standard errors.

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

^aExcludes persons of Hispanic origin.

^bIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.

About a quarter of persons with contact in 2008 had more than one contact during the year

Among persons who had face-to-face contact with police during 2008, about 1 out of 4 (25.1%) experienced contact more than once during the year (table 7). Among the 40.0 million persons who had contact with the police in 2008, nearly 67.0 million encounters occurred with an average of 1.7 contacts per resident who experienced police contact.

A greater percentage of males (26.9%) than females (23.0%) who had police contact in 2008 experienced more than one contact during the year. Among persons who had contact with police in 2008, black residents (28.4%) were somewhat more likely than white residents (24.6%) and more likely than Asian, Native Hawaiians, and other Pacific Islanders (20.4%) to have multiple contacts. Persons ages 18 to 24 were more likely than older age groups to experience multiple contacts during 2008.

TABLE 7
Number of contacts between police and the public, by demographic characteristics, 2008

Demographic characteristic	Percent who had contact with police—			Average number of contacts per residents who had contact in 2008
	Total	One time	Two or more times	
Total	100%	74.9%	25.1%	1.7
Sex				
Male	100%	73.1%	26.9%	1.7
Female	100%	77.0	23.0	1.6
Race/Hispanic origin				
White*	100%	75.4%	24.6%	1.7
Black/African American*	100%	71.6	28.4	1.6
Hispanic/Latino	100%	74.0	26.0	1.6
American Indian/Alaskan Native*	100%	70.0	30.0	1.4
Asian/Hawaiian/Pacific Islander*	100%	79.6	20.4	1.3
Two or more races*	100%	68.8	31.2	1.7
Age				
16–17	100%	69.0%	31.0%	1.6
18–24	100%	67.3	32.7	1.8
25–34	100%	72.0	28.0	1.7
35–44	100%	74.7	25.3	1.7
45–54	100%	78.0	22.0	1.7
55–64	100%	81.7	18.3	1.6
65 or older	100%	86.8	13.2	1.6

Note: Among residents who had contact with police in 2008, data on the number of contacts were reported for 99.7% of cases. Detail may not sum to total due to rounding. See appendix table 7 for standard errors.

*Excludes persons of Hispanic origin.

A majority of survey respondents said they felt the police acted properly during face-to-face contact

As was the case in 2002 (90.1%) and 2005 (90.4%), the vast majority of residents (89.7%) with police contact during 2008 felt the officer or officers acted properly.² In addition, about 9 out of 10 (91.8%) residents who experienced a contact in 2008 reported that the police were respectful (table 8).

Overall, most white, black, and Hispanic residents who had contact with police felt the officer or officers acted properly. Opinions about police behavior varied across reasons for contact. For instance, persons who police suspected

²Findings come from the 2002 and 2005 Contacts between Police and the Public reports. See *Methodology*.

TABLE 8
Perceptions of police behavior during contact, by reason for contact and race/Hispanic origin of residents, 2008

Reason for contact	All races ^a	Black/African American/Hispanic/Latino		
		White ^b	American ^b	Latino
Percent of residents who felt that police acted—				
Respectfully				
All contacts	91.8%	92.7%	87.4%	89.1%
Traffic accident	94.9	95.0	94.6	94.6
Driver during traffic stop	91.6	92.4	86.6	89.8
Resident reported crime/problem to police	94.1	94.9	93.1	90.8
Police provided assistance or service	95.9	95.6	93.0	98.1
Police investigating crime/suspected resident of wrongdoing	82.4	84.9	72.8	74.5
Properly				
All contacts	89.7%	90.8%	84.2%	87.2%
Traffic accident	92.6	92.8	91.8	93.4
Driver during traffic stop	90.4	91.7	82.9	89.1
Resident reported crime or problem to police	91.8	92.5	88.9	88.9
Police provided assistance or service	93.9	93.3	95.9	97.8
Police investigating crime/suspected resident of wrongdoing	78.5	82.3	69.6	62.3

Note: Percentages are based on most recent contact with police in 2008. Data on perceptions that police acted respectfully were reported for 98.2% of police contact cases and for perceptions that police acted properly for 98.0%. See appendix table 8 for standard errors.

^aAll races includes estimates for persons identifying with other races or with two or more races, not shown separately.

^bExcludes persons of Hispanic origin.

of wrongdoing or who had contact through a criminal investigation (78.5%) were less likely than those who had contact with police during a traffic accident (92.6%) to feel police behaved properly. Blacks (69.6%) and Hispanics (62.3%) were less likely than whites (82.3%) to believe police acted properly during contacts that occurred because police were investigating a crime or suspected the person of wrongdoing. For those who had contact with police in the context of a traffic accident, no differences were found in the estimated percentage of whites, blacks, and Hispanics who felt the police acted properly.

Drivers in 2008 were stopped by police at rates similar to those in 2002 and 2005

In 2008, an estimated 17.7 million persons age 16 or older indicated that their most recent contact occurred as a driver pulled over in a traffic stop (table 9). These contacts include stops of all kinds of motor vehicles—for example, motorcycles, buses, and private and commercial cars and trucks—being used for both personal and business travel.

Of the estimated 209.2 million who drove during 2008, the 17.7 million drivers stopped by police represented 8.4%—nearly 1 out of 12 drivers. An additional 1.7 million individuals were stopped by police at some point during

the 12-month period, but had experienced more recent contact in a different context. In total, an estimated 9.2% of all drivers, about 19.3 million, were stopped at least once by police in 2008.

Overall, drivers in 2008 (8.4%) were stopped by police at a rate similar to that of 2002 (8.8%) and 2005 (8.8%). A greater percentage of male drivers (9.9%) than female drivers (7.0%) were stopped by police during 2008. Drivers between the ages of 16 and 29 had a greater likelihood than other age groups of being pulled over by police. These differences were consistent with findings from the 2002 and 2005 surveys. White (8.4%), black (8.8%), and Hispanic (9.1%) drivers were stopped by police at similar rates in 2008. White, black, and Hispanic drivers were also stopped at similar rates in 2002 and 2005.

In 2008 white drivers (8.4%) were more likely than Asian, Native Hawaiian, and other Pacific Islander drivers to be stopped (6.3%), but somewhat less likely than American Indian or Alaskan Native drivers (12.6%) to be stopped by police. The likelihood of being stopped by police in 2005 did not differ significantly among white drivers (8.9%), American Indian or Alaskan Native drivers (11.9%), and Asian, Native Hawaiian, and other Pacific Islander drivers (7.9%).

TABLE 9
Drivers stopped by police, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Number of drivers stopped by police during most recent contact (in thousands)			Percent of all U.S. drivers ^a		
	2002	2005	2008	2002	2005	2008
Total	16,783	17,920	17,663	8.8%	8.8%	8.4%
Sex						
Male	10,210	10,982	10,330	10.6%	10.8%	9.9%
Female	6,573	6,938	7,333	6.9	6.9	7.0
Race/Hispanic origin						
White ^b	12,842	13,510	12,933	8.8%	8.9%	8.4%
Black/African American ^b	1,852	1,638	1,845	9.2	8.1	8.8
Hispanic/Latino	1,596	1,815	2,038	8.6	8.9	9.1
Other ^b	493	773	710	7.1	8.2	7.0
American Indian/Alaskan Native ^b	~	98	140	~	11.9	12.6
Asian/Hawaiian/Pacific Islander ^b	~	675	570	~	7.9	6.3
Two or more races ^b	~	184	137	~	12.6	7.9
Age						
16–19	1,654	1,561	1,299	13.7%	13.3%	11.0%
20–29	4,707	4,959	4,850	14.1	13.7	13.0
30–39	3,741	3,842	3,678	9.8	10.2	9.8
40–49	3,235	3,732	3,460	7.8	8.8	8.4
50–59	2,074	2,396	2,605	6.8	6.8	7.0
60 or older	1,372	1,431	1,772	3.8	3.6	4.1

Note: Detail may not sum to total due to rounding. See appendix table 9 for standard errors.

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

^aSee *Methodology* for information on the U.S. driving population.

^bExcludes persons of Hispanic origin.

Speeding was the reason for about half of all traffic stops

The PPCS includes a detailed set of questions for respondents whose most recent contact with police occurred as a driver in a traffic stop. When drivers were asked what reason the officer gave for the traffic stop, the most frequent reason was exceeding the speed limit, cited by about half of drivers stopped in 2002 (54.8%), 2005 (53.7%), and 2008 (50.2%) (table 10). About 1 in 10 drivers were stopped for vehicle defects, such as a burned out headlight or a loud muffler, in 2002 (9.3%), 2005 (9.5%) and 2008 (12.0%).

Most drivers pulled over by police believed they were stopped for a legitimate reason

An estimated 84.5% of drivers pulled over by police in 2008 felt they had been stopped for a legitimate reason (table 11). More than 80% of stopped drivers in 2002 (84%) and 2005 (86%) also believed police had a legitimate reason for pulling them over in a traffic stop.³

In 2008, about 73.8% of black drivers believed police had a legitimate reason for stopping them compared to 86.3% of white and 82.5% of Hispanic drivers. Opinions also varied across reasons for traffic stop. Overall a higher proportion of drivers stopped for speeding (90.0%) believed they were stopped for a legitimate reason compared with those stopped for a vehicle defect (82.6%). These proportions varied by race and Hispanic origin. An estimated 78.7% of black drivers stopped for speeding felt they were pulled over for a legitimate reason, compared to 88.7% of Hispanic and 91.8% of white drivers. Among traffic stops for vehicle defects, black drivers (60.7%) were less likely than Hispanic (84.3%) and white (86.8%) drivers to feel they were pulled over for a legitimate reason.

³Findings come from the 2002 and 2005 Contacts between Police and the Public reports. See *Methodology*.

A majority of stopped drivers were issued a traffic ticket

An estimated 26.7% of stopped drivers received either a written (17.0%) or verbal (9.7%) warning during the traffic stop (table 12). Police issued a traffic ticket to 55.4% of the drivers and arrested 2.6%. No enforcement action was taken for approximately 15.3% of stopped drivers, meaning they did not receive a verbal or written warning nor were they ticketed or arrested.

Police ticketed the majority of drivers stopped for speeding (68.6%), a seat belt violation (70.3%), an illegal lane change (52.7%), or a stop light or stop sign violation (58.4%).

By comparison, the majority of drivers stopped during a roadside sobriety check reported having no enforcement action taken (68.5%).

TABLE 10
Reasons police gave drivers for traffic stop, 2002, 2005, and 2008

Reason for traffic stop	Percent of stopped drivers		
	2002	2005	2008
Total	100%	100%	100%
Speeding	54.8%	53.7%	50.2%
Vehicle defect	9.3	9.5	12.0
Record check	11.5	10.6	6.3
Roadside sobriety check	1.3	2.2	2.1
Seatbelt violation	4.4	4.7	4.1
Illegal turn or lane change	4.9	5.7	6.6
Stop sign/light violation	7.1	7.2	8.6
Other reason*	6.7	6.5	10.0
Number (in thousands)	16,234	17,254	17,151

Note: Data on reason for traffic stop in 2002 were reported for 96.9% of traffic stop cases, in 2005 for 96.3%, and in 2008 for 97.1%. Detail may not sum to total due to rounding. See appendix table 10 for standard errors.

*Includes other reasons for traffic stops, such as reckless driving, improper cell phone usage, and following too closely.

TABLE 11
Drivers' perceptions of traffic stop legitimacy, by race/Hispanic origin and reason for stop, 2008

Reason for traffic stop	Percent of drivers who perceived they were stopped for a legitimate reason			
	All races ^a	White ^b	Black/African American ^b	Hispanic/Latino
All reasons	84.5%	86.3%	73.8%	82.5%
Speeding	90.0%	91.8%	78.7%	88.7%
Vehicle defect	82.6	86.8	60.7	84.3
Record check	89.1	91.6	83.5	82.4
Roadside sobriety check	76.9	73.8	100.0!	78.5!
Seatbelt violation	84.7	84.7	86.6	79.0
Illegal turn or lane change	75.4	72.9	72.3	85.3
Stop sign/light violation	71.3	73.9	66.9	57.5
Other reason ^c	74.7	75.8	64.6	81.3
Number (in thousands)	16,598	12,212	1,666	1,932

Note: Data on reason for traffic stop and whether driver felt stop occurred for a legitimate reason were reported for 93.9% of traffic stop cases. All reasons includes stopped drivers who did not report the reason for the traffic stop, not shown separately. See appendix table 11 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

^aAll races includes estimates for persons identifying with other races or with two or more races, not shown separately.

^bExcludes persons of Hispanic origin.

^cIncludes other reasons for traffic stops, such as reckless driving, improper cell phone use, and following too closely.

Police were equally likely to issue tickets to males (55.9%) and females (54.9%) during a traffic stop (table 13). Males (3.5%) were more likely than females (1.4%) to be arrested following a traffic stop, whereas females were somewhat more likely to receive a written or verbal warning.

A greater percentage of black (4.7%) than white (2.4%) drivers were arrested during a traffic stop. Black drivers (58.3%) were somewhat more likely than white drivers (53.1%) to be ticketed during a stop. An equal percentage of Hispanic (2.6%) and white (2.4%) drivers were arrested following a traffic stop, while a greater percentage of Hispanic drivers (62.9%) than white drivers (53.1%) received

a ticket. In addition, a greater percentage of white drivers (11.2%) received a verbal warning from police, compared to Hispanic (4.5%) and black (6.0%) drivers.

Drivers ages 20 to 29 were more likely than drivers age 50 or older to be ticketed by police during a traffic stop. Drivers ages 20 to 29 (4.4%) were also more likely than drivers ages 40 to 49 (1.5%), 50 to 59 (1.3%), and drivers age 60 or older (1.5%) to be arrested during a traffic stop. Due to sample size limitations, further analysis could not be done on police enforcement actions during traffic stops sorted by reason for stop and drivers' race, sex, and age demographics.

TABLE 12
Enforcement actions taken by police during traffic stops, by reason for stop, 2008

Reason for traffic stop	Number (in thousands)	Percent of drivers who were—					
		Total	Arrested	Ticketed	Issued a written warning	Given a verbal warning	Allowed to proceed with no enforcement action
All reasons	17,596	100%	2.6%	55.4%	17.0%	9.7%	15.3%
Speeding	8,586	100%	1.3%	68.6%	14.4%	11.0%	4.6%
Vehicle defect	2,061	100%	3.4	36.3	28.3	14.1	17.9
Record check	1,076	100%	1.6!	23.9	8.8	4.7	61.1
Roadside sobriety check	367	100%	9.1!	14.7	5.4!	2.3!	68.5
Seatbelt violation	707	100%	1.7!	70.3	13.1	4.4!	10.5
Illegal turn or lane change	1,137	100%	4.0!	52.7	24.0	7.4	11.9
Stop sign/light violation	1,462	100%	1.4!	58.4	23.7	8.5	8.0
Other reason*	1,697	100%	6.6	40.6	18.3	9.4	25.0

Note: Data on the types of enforcement actions taken by police were reported for 99.6% of traffic stop cases. All reasons includes stopped drivers who did not report the reason for the traffic stop, not shown separately. Detail may not sum to total due to rounding. See appendix table 12 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

*Includes other reasons for traffic stops, such as reckless driving, improper cell phone usage, and following too closely.

TABLE 13
Enforcement actions taken by police during traffic stops, by demographic characteristics of drivers, 2008

Demographic characteristic	Number (in thousands)	Percent of drivers who were—					
		Total	Arrested	Ticketed	Issued a written warning	Given a verbal warning	Allowed to proceed with no enforcement action
Total	17,596	100%	2.6%	55.4%	17.0%	9.7%	15.3%
Sex							
Male	10,287	100%	3.5%	55.9%	16.4%	9.0%	15.3%
Female	7,309	100%	1.4	54.9	17.8	10.6	15.3
Race/Hispanic origin							
White ^a	12,873	100%	2.4%	53.1%	17.7%	11.2%	15.6%
Black/African American ^a	1,841	100%	4.7	58.3	14.8	6.0	16.2
Hispanic/Latino	2,034	100%	2.6	62.9	15.0	4.5	15.0
Other ^{a,b}	710	100%	0.9!	65.0	15.7	7.5!	10.8
Two or more races ^a	137	100%	4.2!	74.4	12.7!	2.4!	6.2!
Age							
16–19	1,294	100%	2.1%!	56.7%	21.2%	9.2%	10.7%
20–29	4,840	100%	4.4	57.1	15.5	9.3	13.5
30–39	3,665	100%	2.9	60.9	15.4	7.7	13.1
40–49	3,452	100%	1.5	54.8	18.2	9.3	16.3
50–59	2,587	100%	1.3!	50.9	17.6	12.3	18.0
60 or older	1,758	100%	1.5!	46.4	17.7	12.1	22.4

Note: Data on the types of enforcement actions taken by police were reported for 99.6% of traffic stop cases. Detail may not sum to total due to rounding. Separate statistics on the racial categories that make up the other race category are not shown due to too few sample cases to obtain reliable estimates. See appendix table 13 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

^aExcludes persons of Hispanic origin.

^bIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.

About 5% of drivers were searched during traffic stops

During a traffic stop, police sometimes conducted a search for illicit drugs, open containers of alcohol, stolen property, or other evidence of criminal wrongdoing. In about 5% (870,000) of the traffic stops documented in the 2008 PPCS, police conducted a search of the driver, the vehicle, or both (table 14). The 2008 PPCS data show that—

- Police were more likely to conduct a search of the vehicle or driver in traffic stops with male drivers (7.4%) than female drivers (1.6%).
- Black drivers (12.3%) were about three times as likely as white drivers (3.9%) and about two times as likely as Hispanic drivers (5.8%) to be searched during a traffic stop.
- Drivers ages 20 to 29 (9.0%) were more likely than drivers ages 30 to 39 (4.5%), 40 to 49 (2.5%), or 50 to 59 (2.5%), and drivers 60 or older (1.6%) to be physically searched or have their vehicle searched.

TABLE 14
Stopped drivers who were searched by police, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	2002	2005	2008
Total	5.0%	4.7%	5.0%
Sex			
Male	7.1%	6.7%	7.4%
Female	1.8	1.5	1.6
Race/Hispanic origin			
White ^a	3.5%	3.6%	3.9%
Black/African American ^a	10.2	9.5	12.3
Hispanic/Latino	11.4	9.1	5.8
Other ^{a,b}	2.9!	4.5!	2.1!
Two or more races ^a	~	7.9!	8.6!
Age			
16–19	8.9%	9.8%	7.0%
20–29	6.6	7.9	9.0
30–39	6.4	3.3	4.5
40–49	3.4	3.2	2.5
50–59	1.5	2.2	2.5
60 or older	--	0.2!	1.6

Note: Data on whether police searched a stopped driver or vehicle in 2002 were reported for 98.2% of traffic stops, in 2005 for 96.2%, and in 2008 for 99.5%. Persons of Hispanic origin were excluded from all other race categories. See appendix table 14 for standard errors. Separate statistics on the racial categories that make up the other race category are not shown due to too few sample cases to obtain reliable estimates.

! Interpret data with caution; estimate based on 10 or fewer cases, or coefficient of variation is greater than 50%.

--Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

--Less than 0.05%

^aExcludes persons of Hispanic origin.

^bIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.

The 2002 and 2005 surveys also found that about 5% of stopped drivers were searched by police during the traffic stop. Among drivers stopped by police in 2002 and 2005, males were more likely than females and blacks and Hispanics were more likely than whites to be searched during a traffic stop.

About 1 out of 10 searches conducted during traffic stops uncovered illegal items

Among the estimated 870,000 searches of the driver, vehicle, or both in 2008, about 187,000 were searches only of the driver, 226,000 were searches only of the vehicle, and 458,000 were searches of both the driver and the vehicle (table 15). An estimated 57.7% of driver-only (driver physically searched, frisked, or patted down by police) and 60.0% of vehicle-only searches were consent searches. About 50.8% of searches of both the driver and vehicle were conducted with consent. Consent searches occurred because either the officer asks permission to perform a search and the driver then granted it, or the driver volunteered to allow the officer to conduct a search.

TABLE 15
Type of search conducted by police during traffic stop and the outcome, 2008

Characteristic of search	Driver only	Vehicle only	Both driver and vehicle
Total	100%	100%	100%
Type of search			
With consent	57.7%	60.0%	50.8%
Without consent	42.3	40.0	49.2
Outcome of search			
Criminal evidence found	2.1%!	1.6%!	14.3%
No criminal evidence found	97.9	98.4	85.7
Driver's perception of legitimacy			
Search perceived as legitimate	36.1%	20.7%!	21.7%
Search perceived as not legitimate	63.9	79.3	78.3
Number (in thousands)	187	226	458

Note: Data on whether the driver consented to the search were reported for 100% of driver-only searches, 100% of vehicle-only searches, and 94.6% of both driver and vehicle searches. Data on whether evidence was found were reported for 100% of driver-only searches, 96.0% of vehicle-only searches, and 98.9% of both driver and vehicle searches. Data on whether the driver felt that police had legitimate reason for search were reported for 84.2% of driver-only searches, 92.0% of vehicle-only searches, and 91.3% of both driver and vehicle searches. In the "both driver and vehicle" column, drivers who consented to one type of search but not the other were classified as a search without consent. Drivers who experienced a search of both driver and vehicle and felt police had a legitimate reason for one search but not the other were classified as search perceived as not legitimate. See appendix table 15 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Searches conducted without consent may occur because the police officer fails to ask permission before conducting the search, the officer asks but the driver refuses, or the search is conducted as a result of an arrest. Among drivers searched and arrested during a traffic stop, about 42.8% were searched after the arrest, and 57.2% were searched before the arrest (not shown in table).

An estimated 2.1% of driver-only searches and 1.6% of vehicle-only searches conducted in 2008 discovered evidence of criminal behavior (e.g., drugs, illegal weapons, open containers of alcohol, or other illegal items). When both the driver and vehicle were searched, evidence was uncovered about 14.3% of the time. Evidence was discovered in an estimated 8.4% of searches of a vehicle, driver, or both (not shown in table).

No comparisons of the number of searches that yielded criminal evidence were made between drivers of different gender, age, and race categories, as many of the samples on which the separate categories were based were too small to form reliable estimates.

Approximately 1 out of 5 drivers (20.7%) who had only their vehicle searched believed police had a legitimate reason to do so. An estimated 36.1% of drivers who had only their person searched and 21.7% of individuals who had both their person and vehicle searched indicated that police had a legitimate reason to do so.

Most searches conducted during a traffic stop occurred at night

Overall, a larger percentage of traffic stops documented in the 2008 PPCS occurred during the day (67.3%) (6 a.m. to 6 p.m.) than at night (32.7%) (6 p.m. to 6 a.m.) (table 16). However, a majority of traffic stops involving a search (59.7%) or an arrest (68.1%) occurred at night. Among drivers who experienced the use or threat of force by police during a traffic stop, the percentage of stops that occurred at night (60.5%) was slightly larger than the percentage of daytime stops (39.5%).

Males, blacks and younger persons were more likely to have a contact with police in 2008 that resulted in the use of force

An estimated 776,000 persons experienced force or the threat of force by police at least once in 2008 (table 17). This total represented an estimated 1.9% of the approximately 40.0 million people experiencing face-to-face police contact during 2008. The 2008 PPCS included detailed questions about use-of-force incidents, including the types of force police might have used and whether the respondent thought the amount of force used or threatened was excessive. Respondents who reported more than one contact during 2008 were asked about the use or threat of force by police during their most recent contact that year.

TABLE 16
Actions taken by police during traffic stops, by time of day, 2008

Actions taken by police during traffic stops	Number (in thousands)	Total	Percent of drivers stopped—							
			During the day				At night			
			All daytime contacts*	6 a.m.–noon	Noon–6 p.m.	Day, time unknown	All nighttime contacts*	6 p.m.–midnight	Midnight–6 a.m.	Night, time unknown
All stops	17,479	100%	67.3%	22.3%	41.3%	3.7%	32.7%	24.3%	8.0%	0.5%
Police searched the driver/vehicle	866	100%	40.3%	13.7%	24.4%	2.2%!	59.7%	34.4%	25.0%	0.4%!
Police arrested the driver	454	100%	31.9	16.5	15.4	--	68.1	35.7	32.5	--
Police used or threatened force	160	100%	39.5	4.7!	28.3	6.5!	60.5	37.6	22.9!	--

Note: Data were based on most recent contact with police in 2008. Data on time of day of traffic stop were reported for 98.9% of all stops, for 99.4% of searches, for 97.1% of arrests, and for 98.3% of stops involving the use or threat of force by police. Detail may not sum to total due to rounding. See appendix table 16 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

--Less than 0.05%.

*Includes cases in which the specific time was unknown.

TABLE 17
U.S. residents age 16 or older who experienced the use or threat of force by police at any time during the year, 2005 and 2008

U.S. residents age 16 or older	2005	2008
Number of residents (in thousands)—		
Who had police contact	43,491	39,914
Experiencing use/threat of force at any time during the year	997	776
Percent of residents who experienced use/threat of force by police among those who had police contact	2.3%	1.9%

Note: Data on residents who experienced the use/threat of force by police at any time during 2005 were reported for 99.6% of police contact cases and in 99.7% for 2008. In the 2002 PPCS, data were not collected on the total number of residents who experienced the use/threat of force by police at any time during the year. Respondents were asked only about whether police used or threatened force during their most recent contact in 2002. See appendix table 17 for standard errors.

During 2008, about 574,000 persons age 16 or older had force used or threatened against them during their most recent contact with police (table 18). This estimate represents about 1.4% of those persons who reported face-to-face contact with police in 2008. The difference between the percentages of contacts involving police use of force in 2002 (1.5%), 2005 (1.6%), and 2008 (1.4%) were not statistically significant.

Males were more likely than females to have force used or threatened against them during their most recent contact with police during 2002, 2005, and 2008. Blacks were more likely than whites or Hispanics to experience use or threat of force in 2008. In 2002 and 2005, blacks and Hispanics were more likely than whites to experience the use or threat of force during contact with police. Individuals between the ages of 16 and 29 were more likely than those age 30 or older to experience contact that resulted in force or the threat of force in 2002, 2005, and 2008. Due to sample size limitations, analysis could not be done on the likelihood of experiencing force according to the reason for the contact and race, sex, and age differences.

Most persons who experienced force felt it was excessive

Residents who experienced a police contact that involved force were asked if they felt any of the physical force used or threatened against them was excessive. The PPCS did not define excessive for the respondent. Most (74.3% or about 417,000) people whose most recent contact with police in 2008 involved force or the threat of force thought those actions were excessive (table 19). Among persons who had a contact that involved force or the threat of force in 2008, no differences were found in the percentage of white, black, and Hispanic individuals who described the incident as excessive.

More than half of police use-of-force incidents involved the police pushing or grabbing the individual

Survey respondents who said they experienced the use or threat of force by police in 2008 were asked to describe the incident. Some respondents reported that more than one type of force was used by police. Among respondents who

TABLE 18
Contacts with police in which force was used or threatened, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Residents experiencing use or threat of force during most recent contact					
	Number (in thousands)			Percent ^a		
	2002	2005	2008	2002	2005	2008
Total	664	716	574	1.5%	1.6%	1.4%
Sex						
Male	520	514	390	2.2%	2.2%	1.8%
Female	144	202	184	0.7	1.0	1.0
Race/Hispanic origin						
White ^b	374	406	347	1.1%	1.2%	1.2%
Black or African American ^b	173	183	130	3.5	4.3	3.4
Hispanic/Latino	103	105	68	2.5	2.6	1.6
Other ^{b,c}	15!	3!	19!	1.1!	0.2!	1.1!
Two or more races ^b	~	19!	11!	~	4.0!	2.4!
Age						
16–19	152	168	78	3.6%	4.0%	2.4%
20–19	230	271	253	2.1	2.5	2.5
30–39	117	135	122	1.2	1.6	1.5
40–49	95	66	61	1.0	0.7	0.8
50–59	50	39	33!	0.8	0.6	0.5!
60 or older	21!	38	27!	0.4!	0.8	0.6!

Note: Table is based on the resident's most recent contact with police that year. Data on use of force by police during most recent contact in 2002 were reported for 99.3% of police contact cases, in 2005 for 99.6%, and in 2008 for 99.8%. Detail may not sum to total due to rounding. See appendix table 18 for standard errors. Separate statistics on the racial categories that make up the other race category are not shown due to too few sample cases to obtain reliable estimates.

! Interpret data with caution; estimate based on 10 or fewer cases, or coefficient of variation is greater than 50%.

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

^aSee *Methodology* for distribution of U.S. population who had contact with police.

^bExcludes persons of Hispanic origin.

^cIncludes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.

had force used or threatened against them, an estimated 76.6% reported that police threatened to use force during the incident (table 20). An estimated 75.5% of police-use-of-force incidents involved the officer or officers shouting at the respondent. About half (53.5%) of the police-use-of-force cases involved the respondent being pushed or grabbed by police. About 1 out of 4 (25.6%) respondents who reported that force was used or threatened during the contact said police pointed a gun at them.

Among persons who experienced the use or threat of force by police and characterized it as excessive, about 60% were pushed or grabbed by police. The police kicked or hit the respondent during an estimated 17.2% of incidents involving the threat or use of excessive force.

Overall, about 3 out of 4 (74.3%) persons who experienced the use or threat of force in 2008 felt it was excessive

TABLE 19
Persons who felt the threat or use of force against them by police was excessive, by demographic characteristics, 2008

Demographic characteristic	Percent who felt force was excessive
Total	74.3%
Sex	
Male	76.2%
Female	70.6
Race/Hispanic origin	
White*	72.8%
Black/African American*	70.0
Hispanic/Latino	78.9
Age	
16–29	69.6%
30 or older	80.8

Note: Table is based on the residents most recent contact with police in 2008. Data on police use of excessive force in 2008 were reported for 97.5% of use-of-force cases. The total includes estimates for persons identifying with other races or with two or more races, not shown separately. See appendix table 19 for standard errors.

*Excludes persons of Hispanic origin.

TABLE 20
Types of force used or threatened by police, 2008

Type of force police used or threatened	Percent of contacts with police in which—	
	Force was used or threatened	Excessive force was used or threatened
Pushed or grabbed	53.5%	60.2%
Kicked or hit	12.6	17.2
Sprayed chemical/pepper spray	4.9!	5.6!
Electroshock weapon (stun gun)	4.1!	5.6!
Pointed gun	25.6	28.4
Threatened force	76.6	84.9
Shouted at resident	75.5	76.6
Cursed at resident	39.1	44.0
Number (in thousands)	574	417

Note: Table is based on the residents most recent contact with police in 2008. Percentages do not sum to total because respondents could have reported that police both threatened and used force or that police used more than one type of force. See appendix table 20 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer cases, or coefficient of variation is greater than 50%.

(table 21). Among those persons involved in situations in which force was actually applied by police (e.g., grabbing, hitting, using chemical spray, or pointing a gun), an estimated 80.6% believed the actions were excessive. Of respondents who reported that police only threatened force during the incident, about 74% felt it was excessive. Among individuals who reported the use or threat of force only involved police shouting or cursing at them, 42.9% felt that those actions were excessive.

Individuals who had contact with police were asked about their behavior during the incident. Among persons experiencing police use or threat of force in 2008, an estimated 21.9% reported that they argued with, cursed at, insulted, or verbally threatened the police (table 22). An estimated 11.6% of those involved in a force incident reported disobeying or interfering with the police. About 5% resisted being handcuffed, arrested, or searched by police.

TABLE 21
Persons who felt police threat or use of force against them was excessive, by type of force used or threatened, 2008

Type of force used or threatened	Contacts with police in which force was used or threatened	
	Number (in thousands)	Percent who felt it was excessive
Total	562	74.3%
Police used force*	344	80.6%
Police only threatened force	141	74.3
Police only shouted/cursed at resident	72	42.9!

Note: Table is based on the residents most recent contact with police in 2008. Data on use of excessive force by police in 2008 were reported for 97.5% of use-of-force cases. Total includes respondents who did not report the type of force they experienced, not shown separately. See appendix table 21 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

*Includes police actions such as grabbing, hitting, using chemical spray, or pointing a gun at the respondent.

TABLE 22
Conduct of residents during police contacts in which force was used or threatened, 2008

Conduct of resident during contact involving force	Percent
Resident—	
Engaged in at least one type of behavior*	28.4%
Argued with, cursed at, insulted, or verbally threatened the police	21.9
Disobeyed or interfered with officer(s)	11.6
Resisted being handcuffed, arrested, or searched	4.8!
Tried to get away from police	3.4!
Pushed, grabbed, or hit officer(s)	0.6!
Number (in thousands)	574

Note: Table is based on the residents most recent contact with police in 2008. See appendix table 22 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

*Detail does not sum to total because some respondents reported more than one type of behavior.

Persons police suspected of wrongdoing or who had contact through a criminal investigation represented a relatively large percentage of the force incidents. Individuals police suspected of wrongdoing accounted for 16.6% of the force incidents compared to 2.5% of all contacts (table 23). Persons whose contact occurred during a criminal investigation accounted for 21.6% of force incidents, compared to 5.6% of all contacts.

In 2008, 9.6% of persons who were suspected of wrongdoing by police experienced the use or threat of force (table 24). By comparison, persons who contacted police to report a crime or another problem experienced force or the threat of force less than 1% of the time.

More than half of persons who had force used or threatened against them were searched by police

About 57% of those who had force used or threatened against them by police were searched either before or after the force occurred (table 25). An estimated 10.4% of persons who experienced the use or threat of force reported that police found illegal items, such as drugs or a weapon (not in table).

TABLE 23
Reasons for contact with police in which force was used or threatened, 2008

Reason for most recent contact	Residents who had contact with police	Contacts with police in which force was used or threatened
Total	100%	100%
Traffic-related contacts	59.2%	40.0%
Driver during traffic stop	44.1	27.9
Passenger during traffic stop	2.9	3.7!
Traffic accident	12.2	8.3!
Other contacts	40.8%	60.0%
Person reported crime/problem to police	20.9	9.0
Police provided assistance or service	6.3	5.7!
Police investigating crime	5.6	21.6
Police suspected resident of wrongdoing	2.5	16.6
Other reason	5.5	7.1!
Number (in thousands)	40,015	574

Note: Table is based on the residents most recent contact with police in 2008. Detail may not sum to total due to rounding. See appendix table 23 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

Among individuals who had force used against them in 2008, an estimated 54.3% were handcuffed and 39.9% were arrested during the incident. The higher percentage of persons handcuffed versus those arrested during force incidents may be an indication that police sometimes used handcuffs to detain people during contact and later released them without making an arrest. Overall, 18.9% of persons who experienced force in 2008 were injured during the incident (not in table).

An estimated 83.9% of individuals who experienced force or the threat of force felt that the police acted improperly. Of those who experienced the use or threat of force in 2008 and felt the police acted improperly, 13.7% filed a complaint against the police.

TABLE 24
Contacts with police in which force was used or threatened, by reason for contact, 2008

Reason for most recent contact	Percent of residents who experienced use/threat of force by police among those who had police contact
Total	1.4%
Traffic-related contacts	
Driver during traffic stop	0.9%
Passenger during traffic stop	1.9!
Traffic accident	1.0!
Other contacts	
Resident reported crime/problem to police	0.6%
Police provided assistance or service	1.3!
Police investigated crime	5.5
Police suspected resident of wrongdoing	9.6
Other reason	1.9!

Note: Table is based on the residents most recent contact with police in 2008. Data on use of force by police in 2008 were reported for 99.8% of police contact cases. See appendix table 24 for standard errors.

! Interpret data with caution; estimate based on 10 or fewer sample cases, or coefficient of variation is greater than 50%.

TABLE 25
Police actions during contacts with the public in which force was used or threatened, 2008

Police action during contact involving force	Contacts with police in which force was used/threatened	
	Number (in thousands)	Percent
Searched resident/vehicle*	566	57.1%
Handcuffed resident	570	54.3
Arrested resident	574	39.9

Note: Table is based on the residents most recent contact with police in 2008. Data on whether a resident was searched were reported by residents for 98.3% of use-of-force cases, 99.2% of handcuffed, and 100% of arrested. See appendix table 25 for standard errors.

*Includes searches conducted on the vehicles of drivers stopped by police.

Methodology

Data collection

The National Crime Victimization Survey (NCVS) is an annual survey that collects data on crime against persons age 12 or older from a nationally representative, stratified, multi-stage cluster sample of U.S. households. Since 1999, the Police-Public Contact Survey (PPCS) has been administered every 3 years as a supplemental survey to all persons ages 16 or older within households sampled for the NCVS. (For more details on the NCVS, see Survey Methodology for Criminal Victimization in the United States, 2007 at www.bjs.gov.)

The U.S. Census Bureau fielded the 2008 PPCS questionnaire, processed the survey data, and provided estimation specifications. The 2008 PPCS was pretested

in the spring of 2008 and conducted between July 1, 2008, and December 31, 2008. Respondents were asked about their contacts with police during the past 12 months. For instance, persons interviewed in July 2008 were asked about contacts that occurred between August 2007 and July 2008. Those interviewed in August 2008 were asked about contacts between September 2007 and August 2008.

In 2008 the PPCS interviewed 57,978 of the 72,566 eligible individuals in the NCVS sample (table 26). Among the PPCS interviews, 22,301 (38.5%) were conducted in person and 35,677 (61.5%) were by telephone. A total of 14,588 nonrespondents who were excluded from the 2008 PPCS as non-interviews or as proxy interviews. Non-interviews (12,803) included respondents not available for the interview, those who refused to participate, and non-English speaking respondents. (Unlike the NCVS interviews, PPCS

TABLE 26
Number of U.S. residents age 16 or older in the Police-Public Contact Survey, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	All eligible PPCS respondents			PPCS interviews completed			Persons with police contact			Persons against whom force was used or threatened		
	2002	2005	2008	2002	2005	2008	2002	2005	2008	2002	2005	2008
Total	93,410	80,237	72,566	76,910	63,943	57,978	15,731	11,843	9,549	209	166	121
Sex												
Male	44,295	38,078	34,733	35,049	29,125	26,962	7,892	5,972	4,856	158	116	79
Female	49,115	42,159	37,833	41,861	34,818	31,016	7,839	5,871	4,693	51	50	42
Race/Hispanic origin												
White ^c	67,619	56,198	51,717	56,696	46,068	42,792	12,199	9,054	7,361	121	94	79
Black/African American ^c	10,277	8,677	7,401	8,101	6,859	5,840	1,492	1,076	810	46	44	23
Hispanic/Latino	11,341	10,540	9,282	8,929	7,327	6,237	1,542	1,135	921	37	24	14
Other ^c	4,173	4,249	3,536	3,184	3,238	2,625	498	462	357	5	1	3
American Indian/Alaskan Native ^c	~	309	370	--	237	305	~	61	68	~	1	2
Asian/Hawaiian/Pacific Islander ^c	~	3940	3,166	--	3,001	2,320	~	401	289	~	0	1
Two or more races ^c	~	573	630	--	451	484	~	116	100	~	3	2
Age												
16-17	3,433	3,019	2,667	2,375	1,870	1,623	500	392	219	16	18	4
18-19	2,970	2,599	2,385	2,080	1,652	1,522	680	511	372	25	15	10
20-24	7,244	6,046	5,199	5,565	4,398	3,697	1,733	1,265	953	39	29	27
25-29	7,544	6,467	5,853	6,156	5,033	4,585	1,674	1,239	1,040	30	26	20
30-34	8,655	6,849	5,755	7,187	5,435	4,610	1,690	1,152	926	15	21	11
35-39	9,451	7,487	6,302	7,872	6,028	5,045	1,915	1,246	981	27	12	17
40-44	9,831	8,125	6,537	8,155	6,531	5,190	1,757	1,325	962	19	9	8
45-49	9,188	8,327	7,285	7,650	6,759	5,894	1,619	1,358	1,049	11	11	8
50-54	8,344	7,372	7,118	7,015	6,075	5,810	1,354	1,078	914	8	9	5
55-59	6,645	6,271	6,006	5,668	5,265	5,039	968	790	724	10	4	4
60-64	5,152	4,768	5,030	4,382	4,033	4,241	612	555	516	5	6	5
65 or older	14,953	12,907	12,429	12,805	10,864	10,722	1,229	932	893	4	6	2

Note: Detail may not sum to total due to rounding. The Police-Public Contact Survey was administered as a supplement to U.S. residents age 16 or older within households sampled for the National Crime Victimization Survey.

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

^aDriving population totals were based on PPCS respondents who reported operating a motor vehicle a few times a year or more. The driving population also includes a small number of persons who were pulled over by police as a driver in a traffic stop, but who did not report driving a few times a year or more.

^bIncludes stops of all types of motor vehicles (e.g., motorcycles, buses, and private and commercial cars and trucks) for both personal and business travel.

^cExcludes persons of Hispanic origin.

interviews are conducted only in English.) The remaining 1,785 were proxy interviews representing household members who were unable to participate for physical, mental, or other reasons. After adjustment for nonresponse, the sample cases in 2008 were weighted to produce a national population estimate of 236,511,832 persons age 16 or older (table 27).

PPCS nonrespondents consisted of persons whose household did not respond to the NCVS (NCVS household nonresponse), persons within an interviewed NCVS household who did not respond to the NCVS (NCVS person nonresponse), and persons who responded to the NCVS but did not complete the PPCS (PPCS person nonresponse). The NCVS household response rate between July and December 2008 was 91%. The NCVS person response rate was 88%, and the PPCS person response rate was 91%. The combined

NCVS and PPCS person response rate was 80%. The overall weighted response rate for the 2008 PPCS (calculated by multiplying the household response rate by the combined NCVS-PPCS person response rate) was 73%.

To produce national estimates on police-public contacts, sample weights were applied to the survey data so that the respondents represented the entire population, including the nonrespondents. Despite the nonresponse adjustments, low overall response rates and response rates to particular survey items can still increase variance in these estimates and produce bias when the nonrespondents have characteristics that differ from the respondents. The Office of Management and Budget (OMB) guidelines require a nonresponse bias study when the overall response rate is below 80%.

TABLE 26 (continued)

Number of U.S. residents age 16 or older in the Police-Public Contact Survey, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Driving population ^a			Drivers stopped by police ^b			Stopped drivers searched by police		
	2002	2005	2008	2002	2005	2008	2002	2005	2008
Total	68,482	57,004	51,715	5,628	4,744	4,160	263	189	180
Sex									
Male	32,529	26,879	24,706	3,288	2,759	2,346	221	160	154
Female	35,953	30,125	27,009	2,340	1,985	1,814	42	29	26
Race/Hispanic origin									
White ^c	52,616	42,742	39,358	4,326	3,582	3,144	148	109	111
Black/African American ^c	6,339	5,415	4,638	546	410	387	48	31	40
Hispanic/Latino	6,927	5,798	5,118	577	505	451	62	37	24
Other ^c	2,600	2,658	2,190	179	201	146	5	8	3
American Indian/Alaskan Native ^c	~	196	263	~	24	32	~	3	1
Asian/Hawaiian/Pacific Islander ^c	~	2,462	1,927	~	177	114	~	5	2
Two or more races ^c	~	391	411	~	46	32	~	4	2
Age									
16-17	1,545	1,162	940	146	126	67	9	6	4
18-19	1,715	1,333	1,220	302	209	169	32	18	12
20-24	4,944	3,844	3,240	766	563	472	54	40	45
25-29	5,632	4,612	4,204	685	577	500	39	43	36
30-34	6,705	5,077	4,296	645	503	439	45	21	17
35-39	7,409	5,628	4,755	711	523	442	35	11	21
40-44	7,662	6,159	4,881	584	543	444	22	13	10
45-49	7,181	6,359	5,563	520	527	427	15	21	10
50-54	6,535	5,661	5,404	454	408	368	8	9	12
55-59	5,218	4,907	4,696	325	313	329	4	6	5
60-64	3,980	3,666	3,922	210	213	205	0	1	5
65 or older	9,956	8,596	8,594	280	239	298	0	0	3

Note: Detail may not sum to total due to rounding. The Police-Public Contact Survey was administered as a supplement to U.S. residents age 16 or older within households sampled for the National Crime Victimization Survey.

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

^aDriving population totals were based on PPCS respondents who reported operating a motor vehicle a few times a year or more. The driving population also includes a small number of persons who were pulled over by police as a driver in a traffic stop, but who did not report driving a few times a year or more.

^bIncludes stops of all types of motor vehicles (e.g., motorcycles, buses, and private and commercial cars and trucks) for both personal and business travel.

^cExcludes persons of Hispanic origin.

BJS and the Census Bureau compared the distributions of respondents and nonrespondents and nonresponse estimates for various household and demographic characteristics, and examined their impact on the national estimates produced for the 2008 PPCS. The study looked at household-level and person-level response rates and found no significant variation or bias in the rates among various population groups. The largest bias among the household characteristics was in region and type of location in urban areas; however, these biases were reduced in the nonresponse adjustments. The largest bias in person nonresponse was observed in the Hispanic origin characteristics. Nonresponse statistics were also computed for key survey questions from the PPCS, and no evidence of bias was found during the analysis.

Follow-up interviews

PPCS respondents were asked about their contact with police during the 12 months prior to their interview. Persons who said they had a face-to-face contact during 2008 were asked to describe the nature of the contact. Persons who had more than one contact were asked about only their most recent contact during the time period. Respondents were provided a list of six specific reasons for having contact with police: 1) traffic accident, 2) traffic stop, 3) reporting a crime, 4) police provided assistance, 5) police investigating crime, and 6) the police suspected the resident of wrongdoing. Respondents who reported having contact during a traffic stop were asked whether they were the driver or passenger in the vehicle. Drivers were asked an additional set of questions

TABLE 27
National estimates from the Police–Public Contact Survey, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	U.S. residents age 16 or older			Persons with police contact			Persons against whom force was used or threatened		
	2002	2005	2008	2002	2005	2008	2002	2005	2008
Total	215,536,780	228,085,340	236,511,830	45,278,880	43,657,900	40,014,950	664,460	716,140	574,070
Sex									
Male	103,988,720	110,527,320	115,059,600	23,884,650	23,407,380	21,241,630	520,180	514,490	390,040
Female	111,548,060	117,558,030	121,452,230	21,394,230	20,250,530	18,773,320	144,280	201,650	184,030
Race/Hispanic origin									
White ^c	157,373,710	163,210,810	167,989,750	34,743,450	33,065,210	29,951,410	373,850	406,380	346,700
Black/African American ^c	25,694,070	25,572,760	26,667,150	4,966,390	4,226,430	3,788,670	172,660	182,690	130,130
Hispanic/Latino	23,955,180	26,076,370	27,570,380	4,191,710	4,129,510	4,132,420	102,670	104,920	67,810
Other ^c	8,513,810	11,501,660	12,217,290	1,377,330	1,763,800	1,707,420	15,280	3,260	18,850
American Indian/Alaskan Native ^c	~	989,730	1,305,870	~	254,670	288,890	~	^	^
Asian/Hawaiian/Pacific Islander ^c	~	10,511,930	10,911,420	~	1,509,130	1,418,530	~	^	^
Two or more races ^c	~	1,723,750	2,067,260	~	472,960	435,030	~	18,890	10,580
Age									
16–17	8,258,250	8,475,570	8,565,220	1,720,200	1,753,210	1,130,310	61,520	81,050	23,300
18–19	8,003,620	8,035,700	8,718,540	2,594,030	2,471,970	2,078,710	90,600	86,670	54,980
20–24	19,385,230	20,357,980	20,578,400	6,074,820	5,901,510	5,208,610	145,970	149,040	149,030
25–29	17,745,200	20,066,540	21,409,590	4,842,870	4,913,730	4,782,620	84,060	122,140	103,630
30–34	19,564,860	19,637,600	19,490,390	4,573,910	4,310,160	3,887,800	39,480	77,880	52,250
35–39	21,108,220	20,761,970	20,788,470	5,171,390	4,273,210	4,013,390	77,290	56,950	69,430
40–44	23,048,580	22,527,140	21,284,590	5,024,130	4,579,890	3,897,430	59,950	29,790	31,780
45–49	21,111,000	22,466,380	22,866,590	4,470,580	4,544,500	4,012,020	35,340	35,720	29,320
50–54	18,156,610	20,057,380	21,515,300	3,515,570	3,523,800	3,380,270	17,120	27,260	18,040
55–59	14,751,340	17,514,520	18,634,440	2,491,260	2,640,810	2,693,650	32,600	12,000	14,810
60–64	11,253,810	13,003,800	15,328,060	1,577,380	1,800,660	1,866,810	11,500	21,070	20,770
65 or older	33,150,060	35,180,760	37,332,260	3,222,740	2,944,450	3,063,320	9,040	16,570	6,730

Note: Detail may not sum to total due to rounding. The Police–Public Contact Survey was administered as a supplement to U.S. residents age 16 or older within households sampled for the National Crime Victimization Survey.

... No cases in sample.

[^]Separate statistics on the racial categories that make up the other race category are not shown due to too few sample cases to obtain reliable estimates.

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

^aDriving population estimates based PPCS respondents who reported operating a motor vehicle a few times a year or more. The driving population also includes a small number of persons who were pulled over by police as a driver in a traffic stop, but who did not report driving a few times a year or more.

^bIncludes stops of all types of motor vehicles (e.g., motorcycles, buses, and private and commercial cars and trucks) for both personal and business travel.

^cExcludes persons of Hispanic origin.

about the reason for being pulled over and the actions taken by police during the stop. A seventh category allowed interviewers to record reasons that did not fall into any of the six specific reasons. Among the 9,549 respondents who had contact with police, 751 reported the reason for contact under this nonspecific category.

Following the data collection, BJS examined these write-in responses to determine if any descriptions fit one of the six categories and, when possible, coded the field into an existing category. This review uncovered 302 responses that indicated the reason for contact was related to a traffic stop. Some of these records lacked sufficient detail to determine whether the respondent was a driver or passenger in a vehicle that had been pulled over by police or was reporting some other type of contact that was connected to a traffic

stop (e.g., paying a speeding ticket). Stopped drivers who were not originally classified under the specific category during the interview did not receive the additional questions about the traffic stop.

To address this potential missing data issue, BJS instructed the Census Bureau to conduct follow-up interviews with 122 of these respondents to seek clarification on the nature of their contact with police. Ninety respondents agreed to complete the follow-up interview. Of the completed interviews, 79 respondents reported that their contact with police occurred as a driver in a traffic stop and completed the additional set of questions regarding the traffic stop.

TABLE 27 (continued)
National estimates from the Police–Public Contact Survey, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Driving population ^a			Drivers stopped by police ^b			Stopped drivers searched by police		
	2002	2005	2008	2002	2005	2008	2002	2005	2008
Total	191,735,660	202,718,120	209,218,860	16,783,470	17,919,880	17,663,080	821,970	816,220	870,440
Sex									
Male	95,983,080	101,472,320	104,459,150	10,210,450	10,982,000	10,329,940	707,290	713,790	757,290
Female	95,752,580	101,245,800	104,759,710	6,573,020	6,937,890	7,333,140	114,680	102,430	113,150
Race/Hispanic origin									
White ^c	146,203,930	151,211,390	154,113,560	12,842,250	13,509,660	12,933,130	445,360	463,520	499,920
Black/African American ^c	20,118,090	20,160,000	20,871,120	1,852,090	1,638,360	1,844,510	183,710	146,650	225,720
Hispanic/Latino ^c	18,470,530	20,499,820	22,379,170	1,595,870	1,814,890	2,038,100	178,640	158,580	118,110
Other ^c	6,943,110	9,381,290	10,127,790	493,260	772,960	710,310	14,270	33,680	14,880
American Indian/Alaskan Native ^c	~	817,570	1,111,040	~	97,680	140,450	~	^	^
Asian/Hawaiian/Pacific Islander ^c	~	8,563,720	9,016,750	~	675,270	569,860	~	^	^
Two or more races ^c	~	1,465,620	1,727,220	~	184,010	137,030	~	13,780	11,800
Age									
16–17	5,411,470	5,292,210	4,830,950	487,200	564,440	330,740	31,620	30,880	20,900
18–19	6,624,080	6,465,710	6,946,820	1,166,360	996,300	968,140	113,410	113,830	70,270
20–24	17,241,050	17,857,670	17,910,570	2,707,710	2,639,640	2,578,440	194,150	209,090	255,500
25–29	16,187,490	18,380,850	19,498,730	1,999,670	2,319,350	2,271,630	111,050	171,030	179,120
30–34	18,204,140	18,332,750	18,094,130	1,765,380	1,959,310	1,850,800	129,760	79,560	77,710
35–39	19,828,440	19,367,560	19,547,120	1,976,040	1,882,710	1,826,820	104,180	42,950	86,520
40–44	21,664,780	21,198,320	19,917,380	1,737,810	1,910,910	1,792,900	63,530	49,500	43,090
45–49	19,795,430	21,116,110	21,515,530	1,497,270	1,820,910	1,666,980	43,500	64,960	43,060
50–54	16,933,350	18,658,970	19,928,210	1,214,760	1,345,030	1,374,770	20,100	33,280	46,670
55–59	13,574,900	16,353,850	17,302,130	859,630	1,050,480	1,230,140	10,680	18,030	19,210
60–64	10,273,390	11,841,570	14,115,950	599,060	682,060	748,190	...	3,100	18,320
65 or older	25,997,130	27,852,550	29,611,340	772,580	748,750	1,023,530	10,080

Note: Detail may not sum to total due to rounding. The Police–Public Contact Survey was administered as a supplement to U.S. residents age 16 or older within households sampled for the National Crime Victimization Survey.

... No cases in sample.

^aSeparate statistics on the racial categories that make up the other race category are not shown due to too few sample cases to obtain reliable estimates.

^bNot applicable. The 2002 PPCS did not separately identify persons of other races or those of two or more races.

^cDriving population estimates based PPCS respondents who reported operating a motor vehicle a few times a year or more. The driving population also includes a small number of persons who were pulled over by police as a driver in a traffic stop, but who did not report driving a few times a year or more.

^bIncludes stops of all types of motor vehicles (e.g., motorcycles, buses, and private and commercial cars and trucks) for both personal and business travel.

^cExcludes persons of Hispanic origin.

Limitations of the estimates

BJS administers the PPCS questionnaire to all persons age 16 or older who reside in U.S. households sampled for the NCVS. The PPCS excludes proxy interviews for a person unable to participate because of physical, mental, or other reasons. BJS staff determined that caregivers and other proxy interviewees would have difficulty describing the details of any contacts with police and decided to exclude them. To the extent that persons who experience contacts with police do not fall into this target population, the PPCS data collection missed certain encounters between the law enforcement officers and members of the public. For instance, this household survey did not interview U.S. residents living abroad, homeless persons, or persons living in military barracks. The PPCS also did not interview persons institutionalized (e.g., incarcerated in a correctional facility) at the time of the interview about their encounters with police during the 12-month reference period. Such exclusions may affect the findings because contact with police leading to incarceration would involve more serious outcomes (e.g., contacts involving an arrest or use of force by police).

The BJS Survey of Inmates in Local Jails (SILJ) collects data from a nationally representative sample of jail inmates on a wide range of topics, including the specific types of force police might have used or threatened to use during the arrest that preceded the inmates' incarceration. An analysis of the 2002 SILJ and 2002 PPCS data found that the percentage of inmates who experienced the use or threat of force at the time of their arrest was about 22%, while the percentage of PPCS respondents who had a contact with police that involved force or the threat of force was about 1.5%.⁴ When combining the PPCS and SILJ data, the overall estimated percentage of contacts that involved the threat or use of force in 2002 was 1.7%.

This report describes the prevalence of public contact with the police and the prevalence with which the contact involves traffic stops, searches, and uses of force. It describes the extent to which prevalence rates vary by some of the categories of respondent characteristics or by the nature of the contact. This information is collected and disseminated to inform the public about the nature of interaction between law enforcement officers and the public. However, the data collected and described in this report cannot provide a sufficient basis to infer a causal relationship between characteristics of the respondent and behavior of police. This limitation exists despite the descriptive statistics that seem to show some differences (or no differences) in the prevalence of contacts, stops, searches, or use of force in relationship to the age, race, or sex of the respondent.

⁴See Hickman, M., Piquero, A., & Garner, J. (2008). Toward a national estimate of police use of nonlethal force. *Criminology & Public Policy*.

Conducting tests of statistical significance

Persons interviewed through the PPCS sample have a known probability of selection, and their responses can be used to produce national estimates of contacts between police and the public. Since the estimates are based on a sample of the population and not a complete enumeration, these estimates are subject to sampling error (a discrepancy between an estimate and a population parameter based on chance). Sampling error varies by the size of the estimate in relation to the size of the base population, and is reduced by increasing the size of the sample taken from the population.

A standard error is a measure of the sampling error, or the margin of error due to sampling, and can be used as a measure of precision expected from a sample; the smaller the standard error, the more precise or reliable the estimate. Standard errors for selected tables are available at the end of this report.

In general, when comparing estimates between groups, if the difference between two estimates is at least twice the standard error of that difference, there is at least 95% confidence that the two estimates actually differ. Thus, one can conclude that there is a statistically significant difference between the two groups.

All differences discussed in this report were statistically significant at or above the 95% confidence interval unless otherwise indicated. Some differences were not significant at the 95% confidence level, but were significant at the 90% level. The report also indicates that some comparisons were not different, which meant that the difference between the two estimates was not significant at either the 95% or 90% levels. In order to calculate the confidence intervals for the estimated 16.9% of residents who had contact with police in 2008, the calculated standard error of 0.3% was used ([appendix table 5](#)). The 95% confidence interval around this estimate was calculated as plus or minus 1.96 multiplied by 0.3% (or 16.3% to 17.6%). The 95% confidence interval around the percentage of residents who had contact in 2005 was 19.1% plus or minus 1.96 multiplied by 0.5% (or 18.2% to 20.1%). Statistical significance tests found that the difference between these two estimates was statistically significant at the 95% confidence level. This means the apparent difference was not simply the result of surveying a sample rather than the entire population.

Significance testing calculations were conducted using statistical programs developed specifically for the PPCS by the U.S. Census Bureau. These programs take into consideration the complex sample design of the PPCS when conducting tests of statistical significance.

Comparing estimates from the Police-Public Contact Surveys

Certain comparisons were limited in this report to findings from the 2002, 2005, and 2008 surveys for several reasons. Changes were made to the data collection instrument following the 1999 survey to reduce the overall response burden to survey participants. These changes affected estimates of the reasons for contact with police and information on contacts that occurred while driving a vehicle that was stopped by police. In 1999, respondents were asked to identify the reasons for all of their contacts with police during the previous 12 months and the frequency of those contacts. In addition, any respondent who had been pulled over in a traffic stop in the last year was asked to describe the nature and outcome of the stop. Following the 1999 survey, the data collection instrument was changed so that respondents were only asked to provide detailed information on their most recent contact with police during the previous 12 months. Respondents whose most recent face-to-face contact was not a traffic stop, but who had been pulled over by police earlier in the year, were not asked to describe that incident.

Following the 1999 survey, the measurement of the number of drivers in the United States was also modified, making the estimate of the likelihood of being stopped by police in 1999 is not directly comparable to estimates in 2002, 2005, and 2008. The denominator used to calculate the likelihood of being stopped by police was “licensed drivers” in 1999, as estimated by the U.S. Department of Transportation’s 1995 Nationwide Personal Transportation Survey. In 2002, 2005, and 2008, the denominator was “drivers in the United States,” as estimated directly from responses to additional questions included in Police-Public Contact Surveys. The denominator change was made to account for all persons who drive, licensed and not licensed, to better approximate the number of persons at risk of being stopped by police. Excluded from the new denominator were licensed drivers who indicated that they never drive.

A number of methodological changes were implemented in the NCVS in 2006. Analyses of the survey data after 2006 indicated that the changes had a relatively small impact on the estimates and that the 2008 estimates are comparable with estimates for 2005. Information on the methodological changes to the NCVS are available online at www.bjs.gov.

Some of the 2005 national estimates in this report differ slightly from those shown in the BJS report *Contacts between Police and the Public, 2005*. The weights for the 2005 PPCS data were revised to reflect a slight change of the NCVS person weights, which were the starting point for the PPCS weights. For instance, the difference between the overall rate of police-public contact from the 2005 report (19.09%) and the revised rate (19.14%) was about 0.05%.

Other BJS reports on police-public contact

Each of the following publications is available on the BJS website.

- *Police Use of Force: Collection of National Data*, NCJ 165040, November 1997
- *Contacts between Police and the Public: Findings from the 1999 National Survey*, NCJ 184957, February 2001
- *Characteristics of Drivers Stopped by Police, 1999*, NCJ 191548, March 2002
- *Contacts between Police and the Public: Findings from the 2002 National Survey*, NCJ 207845, April 2005
- *Characteristics of Drivers Stopped by Police, 2002*, NCJ 211471, June 2006
- *Contacts between Police and the Public, 2005*, NCJ 215243, April 2007

APPENDIX TABLE 1

Standard errors for number of U.S. residents age 16 or older who had contact with police, by reason for contact, 2002, 2005, and 2008

Reason for most recent contact	2002	2005	2008
Total	586,640	875,979	654,917
Traffic-related contacts			
Driver during traffic stop	382,925	581,994	449,121
Passenger during traffic stop	79,554	110,896	90,569
Traffic accident	208,731	285,308	215,081
Other contacts			
Resident reported crime/problem to police	317,192	423,511	294,601
Police provided assistance or service	145,538	183,210	144,105
Police investigating crime	126,999	170,478	135,364
Police suspected resident of wrongdoing	77,136	110,484	84,297
Other reason	120,094	164,559	132,794

APPENDIX TABLE 2

Standard errors for reason for contact among U.S. residents age 16 or older who had contact with police, 2002, 2005, and 2008

Reason for most recent contact	2002	2005	2008
Traffic-related contacts			
Driver during traffic stop	0.7%	1.0%	0.9%
Passenger during traffic stop	0.2	0.2	0.2
Traffic accident	0.4	0.6	0.5
Other contacts			
Person reported crime/problem to police	0.6%	0.8%	0.7%
Police provided assistance or service	0.3	0.4	0.3
Police investigating crime	0.3	0.4	0.3
Police suspected resident of wrongdoing	0.2	0.2	0.2
Other reason	0.3	0.4	0.3

APPENDIX TABLE 3

Standard errors for percent of U.S. residents age 16 or older who had contact with police, by reason for contact, 2002, 2005, and 2008

Reason for most recent contact	2002	2005	2008
Traffic-related contacts			
Driver during traffic stop	0.2%	0.3%	0.2%
Passenger during traffic stop	0.0	0.0	0.0
Traffic accident	0.1	0.1	0.1
Other contacts			
Resident reported crime/problem to police	0.2%	0.2%	0.1%
Police provided assistance or service	0.1	0.1	0.1
Police investigating crime	0.1	0.1	0.1
Police suspected resident of wrongdoing	0.0	0.0	0.0
Other reason	0.1	0.1	0.1

APPENDIX TABLE 4

Standard errors for number of U.S. residents age 16 or older who had contact with police, by demographic characteristics and reason for contact, 2002 and 2008

Demographic characteristic	Driver during traffic stop		Resident reported crime/problem to police	
	2002	2008	2002	2008
Total	382,925	449,121	317,192	294,601
Sex				
Male	289,550	333,333	194,226	180,891
Female	222,988	273,132	226,124	209,297
Race/Hispanic origin				
White	330,289	378,675	272,457	251,590
Black/African American	102,750	120,036	84,556	68,611
Hispanic/Latino	93,794	127,385	73,585	75,345
Other	46,201	68,473	37,078	42,927
Two or more races	~	27,050	~	22,976
Age				
16-17	45,865	44,190	33,976	31,669
18-24	161,657	177,361	88,415	89,435
25-34	158,853	194,050	122,505	110,202
35-44	157,525	179,539	139,588	112,945
45-54	129,867	161,799	122,211	117,984
55-64	88,779	125,146	76,466	93,485
65 or older	60,388	84,744	74,915	72,144

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races

APPENDIX TABLE 5**Standard errors for percent of U.S. residents age 16 or older who had contact with police, by demographic characteristics, 2002, 2005, and 2008**

Demographic characteristic	2002	2005	2008
Total	0.3%	0.5%	0.3%
Sex			
Male	0.4%	0.6%	0.4%
Female	0.6	0.5	0.4
Race/Hispanic origin			
White	0.6%	0.5%	0.4%
Black/African American	0.9	0.8	0.6
Hispanic/Latino	0.4	0.8	0.6
Other	0.4	1.0	0.8
American Indian/Alaskan Native	~	3.4	2.7
Asian/Hawaiian/Pacific Islander	~	1.0	0.8
Two or more races	~	2.8	2.1
Age			
16-17	1.0%	1.4%	0.9%
18-24	0.8	1.1	0.8
25-34	0.6	0.9	0.7
35-44	0.6	0.8	0.6
45-54	0.6	0.8	0.6
55-64	0.6	0.7	0.6
65 or older	0.4	0.5	0.4

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those with two or more races.

APPENDIX TABLE 6**Standard errors for characteristics of U.S. residents age 16 or older with and without face-to-face police contact, 2002, 2005, and 2008**

Demographic characteristic	With police contact			Without police contact		
	2002	2005	2008	2002	2005	2008
Sex						
Male	0.7%	1.1%	0.9%	0.5%	0.7%	0.5%
Female	0.7	1.1	0.9	0.5	0.7	0.5
Race/Hispanic origin						
White	0.7%	1.0%	0.8%	0.5%	0.7%	0.5%
Black/African American	0.4	0.5	0.4	0.3	0.4	0.3
Hispanic/Latino	0.4	0.5	0.5	0.3	0.4	0.3
Other	0.2	0.3	0.3	0.1	0.2	0.2
Two or more races	~	0.1	0.1	~	0.1	0.1
Age						
16-17	0.2%	0.3%	0.2%	0.1%	0.2%	0.1%
18-24	0.5	0.8	0.6	0.3	0.4	0.3
25-34	0.5	0.8	0.7	0.3	0.5	0.3
35-44	0.6	0.8	0.6	0.4	0.5	0.4
45-54	0.5	0.7	0.6	0.3	0.5	0.4
55-64	0.3	0.5	0.5	0.3	0.4	0.3
65 or older	0.3	0.4	0.4	0.3	0.5	0.4

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

APPENDIX TABLE 7

Standard errors for number of contacts between police and the public, by demographic characteristics, 2008

Demographic characteristic	Percent who had contact with police—	
	One time	Two or more times
Total	0.8%	0.7%
Sex		
Male	1.0%	0.9%
Female	1.0	0.9
Race/Hispanic origin		
White	0.9%	0.8%
Black/African American	1.9	1.8
Hispanic/Latino	1.8	1.7
American Indian/Alaskan Native	6.1	6.0
Asian/Hawaiian/Pacific Islander	2.6	2.5
Two or more races	5.0	5.0
Age		
16–17	3.3%	3.2%
18–24	1.6	1.5
25–34	1.4	1.3
35–44	1.4	1.3
45–54	1.4	1.3
55–64	1.6	1.4
65 or older	1.6	1.5

APPENDIX TABLE 8

Standard errors for perceptions of police behavior during contact, by reason for contact and race/Hispanic origin of residents, 2008

Reason for most recent contact	All races	Black/African American		Hispanic/Latino
		White	American	
Percent of residents who felt that police acted—				
Respectfully				
All contacts	0.5%	0.5%	1.5%	1.3%
Traffic accident	0.9	0.9	2.7	2.7
Driver during traffic stop	0.7	0.7	2.0	1.7
Resident reported crime/problem to police	0.8	0.8	2.2	2.4
Police provided assistance or service	1.0	1.2	4.2	2.3
Police were investigating crime/person suspected of wrongdoing	1.8	1.9	5.1	5.8
Properly				
All contacts	0.6%	0.6%	1.6%	1.4%
Traffic accident	1.0	1.1	3.2	3.1
Driver during traffic stop	0.7	0.8	2.2	1.8
Resident reported crime or problem to police	0.9	0.9	2.8	2.6
Police provided assistance or service	1.2	1.4	3.2	2.4
Police were investigating crime/person suspected of wrongdoing	1.9	2.0	5.3	6.6

APPENDIX TABLE 9

Standard errors for drivers stopped by police, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Number of drivers stopped by police during the most recent contact			Percent of all U.S. drivers		
	2002	2005	2008	2002	2005	2008
Total	382,925	581,994	449,121	0.2%	0.3%	0.2%
Sex						
Male	289,550	438,681	333,333	0.3%	0.4%	0.3%
Female	222,988	331,342	273,132	0.2	0.3	0.3
Race/Hispanic origin						
White	330,289	495,744	378,675	0.2%	0.3%	0.3%
Black/African American	102,750	132,529	120,036	0.5	0.6	0.5
Hispanic/Latino	93,794	141,471	127,385	0.5	0.6	0.5
Other	46,201	82,334	68,473	0.6	0.8	0.6
American Indian/Alaskan Native	~	23,535	27,419	~	2.6	2.3
Asian/Hawaiian/Pacific Islander	~	75,647	60,283	~	0.8	0.6
Two or more races	~	34,306	27,050	~	2.1	1.5
Age						
16–19	95,855	128,491	97,502	0.7%	1.0%	0.8%
20–29	182,114	268,435	213,812	0.5	0.7	0.5
30–39	158,241	228,338	181,250	0.4	0.6	0.5
40–49	144,731	224,149	174,755	0.3	0.5	0.4
50–59	110,150	168,920	147,476	0.3	0.5	0.4
60 or older	85,506	121,570	117,195	0.2	0.3	0.3

~Not applicable. The 2002 PPCS did not separately identify persons of other races or those with two or more races.

APPENDIX TABLE 10

Standard errors for reasons police gave drivers for traffic stop, 2002, 2005, and 2008

Reason for traffic stop	Percent of stopped drivers		
	2002	2005	2008
Speeding	1.0%	1.5%	1.2%
Vehicle defect	0.5	0.7	0.7
Record check	0.6	0.7	0.5
Roadside sobriety check	0.2	0.3	0.3
Seatbelt violation	0.3	0.5	0.4
Illegal turn or lane change	0.4	0.5	0.5
Stop sign/light violation	0.4	0.6	0.6
Other reason	0.4	0.6	0.6

APPENDIX TABLE 11**Standard errors for drivers' perceptions of traffic stop legitimacy, by race/Hispanic origin and reason for stop, 2008**

Reason for traffic stop	Percent of drivers who perceived they were stopped for a legitimate reason			
	All races	White	Black/African American	Hispanic/Latino
All reasons	0.9%	1.0%	2.7%	2.2%
Speeding	1.0%	1.0%	3.5%	2.6%
Vehicle defect	2.1	2.3	6.4	4.4
Record check	2.3	2.4	7.2	8.2
Roadside sobriety check	5.1	5.9	0.0	15.2
Seatbelt violation	3.2	3.6	9.4	9.7
Illegal turn or lane change	3.1	3.7	11.2	6.6
Stop sign/light violation	2.9	3.3	9.7	7.4
Other reason	2.6	3.1	7.4	6.2

APPENDIX TABLE 12**Standard errors for enforcement actions taken by police during traffic stops, by reason for stop, 2008**

Reason for traffic stop	Percent of drivers who were—				
	Arrested	Ticketed	Issued a written warning	Given a verbal warning	Allowed to proceed with no enforcement action
All reasons	0.3%	1.2%	0.8%	0.6%	0.8%
Speeding	0.3%	1.4%	1.0%	0.9%	0.5%
Vehicle defect	0.9	2.6	2.4	1.8	2.0
Record check	0.8	3.0	1.9	1.4	3.5
Roadside sobriety check	3.2	4.0	2.5	1.7	5.5
Seatbelt violation	1.0	4.0	2.8	1.7	2.5
Illegal turn or lane change	1.3	3.5	2.9	1.7	2.2
Stop sign/light violation	0.7	3.1	2.6	1.6	1.6
Other reason	1.4	2.9	2.2	1.6	2.5

APPENDIX TABLE 13**Standard errors for enforcement actions taken by police during traffic stops, by demographic characteristics of drivers, 2008**

Demographic characteristic	Percent of drivers who were—				
	Arrested	Ticketed	Issued a written warning	Given a verbal warning	Allowed to proceed with no enforcement action
Total	0.3%	1.2%	0.8%	0.6%	0.8%
Sex					
Male	0.4%	1.4%	1.0%	0.7%	0.9%
Female	0.3	1.6	1.2	0.9	1.1
Race/Hispanic origin					
White	0.3%	1.3%	0.9%	0.7%	0.9%
Black/African American	1.1	2.8	1.9	1.2	2.0
Hispanic/Latino	0.8	2.7	1.9	1.0	1.9
Other	0.8	4.2	3.1	2.2	2.6
Two or more races	3.6	8.1	6.1	2.8	4.4
Age					
16–19	0.9%	3.3%	2.6%	1.8%	1.9%
20–29	0.7	1.9	1.3	1.0	1.2
30–39	0.6	2.1	1.4	1.0	1.3
40–49	0.4	2.2	1.6	1.2	1.5
50–59	0.5	2.5	1.8	1.5	1.8
60 or older	0.6	2.9	2.1	1.8	2.3

APPENDIX TABLE 14

Standard errors for stopped drivers who were searched by police, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	2002	2005	2008
Total	0.4%	0.5%	0.4%
Sex			
Male	0.5%	0.7%	0.6%
Female	0.3	0.4	0.3
Race/Hispanic origin			
White	0.3%	0.4%	0.4%
Black/African American	1.3	1.8	1.8
Hispanic/Latino	1.5	1.6	1.2
Other	1.3	1.7	1.1
Two or more races	~	4.2	5.1
Age			
16–19	1.3%	1.8%	1.6%
20–29	0.7	1.0	1.0
30–39	0.8	0.7	0.8
40–49	0.6	0.7	0.6
50–59	0.5	0.7	0.7
60 or older	0.0	0.3	0.7

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

APPENDIX TABLE 15

Standard errors for type of search conducted by police during traffic stop and the outcome, 2008

Characteristic of search	Driver only	Vehicle only	Both driver and vehicle
Type of search			
With consent	7.9%	7.2%	5.4%
Without consent	7.9	7.2	5.4
Outcome of search			
Criminal evidence found	2.2%	1.8%	3.6%
No criminal evidence found	2.3	1.9	3.8
Driver's perception of legitimacy			
Search perceived as legitimate	8.3%	6.1%	4.5%
Search perceived as not legitimate	8.4	6.2	4.6

APPENDIX TABLE 16

Standard errors for actions taken by police during traffic stops, by time of day, 2008

Actions taken by police during traffic stops	Percent of drivers stopped—							
	During the day				At night			
	All daytime contacts	6 am–noon	Noon–6 pm	Day, time unknown	All nighttime contacts	6 pm–midnight	Midnight–6 am	Night, time unknown
All stops	1.1%	0.9%	1.1%	0.4%	1.1%	0.9%	0.5%	0.1%
Police searched the driver/vehicle	3.9%	2.6%	3.3%	1.1%	3.9%	3.7%	3.4%	0.4%
Police arrested the driver	4.9	3.8	3.7	0.0	5.0	5.0	4.9	0.0
Police used or threatened force	8.4	3.5	7.7	4.1	8.5	8.3	7.2	0.0

APPENDIX TABLE 17

Standard errors for U.S. residents age 16 or older who experienced the use or threat of force by police at any time during the year, 2005 and 2008

U.S. residents age 16 or older	2005	2008
Number of residents experiencing use/threat of force at any time during the year	96,656	72,071
Percent of residents who experienced use/threat of force by police among those who had police contact	0.2%	0.2%

APPENDIX TABLE 18

Standard errors for contacts with police in which force was used or threatened, by demographic characteristics, 2002, 2005, and 2008

Demographic characteristic	Residents experiencing use or threat of force during most recent contact					
	Number			Percent		
	2002	2005	2008	2002	2005	2008
Total	55,167	78,483	60,539	0.1%	0.2%	0.1%
Sex						
Male	47,680	63,856	48,522	0.2%	0.3%	0.2%
Female	22,678	36,076	31,828	0.1	0.2	0.2
Race/Hispanic origin						
White	39,239	55,196	45,385	0.1%	0.2%	0.2%
Black/African American	25,110	34,010	26,294	0.5	0.8	0.7
Hispanic/Latino	18,731	24,533	18,462	0.4	0.6	0.4
Other	6,675	3,676	9,379	0.5	0.2	0.5
Two or more races	~	9,354	6,947	~	1.9	1.6
Age						
16–19	23,367	32,323	19,946	0.5%	0.7%	0.6%
20–29	29,592	43,118	37,975	0.3	0.4	0.4
30–39	20,130	28,412	25,346	0.2	0.3	0.3
40–49	17,967	18,701	17,458	0.2	0.2	0.2
50–59	12,557	14,006	12,553	0.2	0.2	0.2
60 or older	7,806	13,680	11,429	0.2	0.3	0.2

~Not applicable. The 2002 PPCS did not separately identify persons of two or more races.

APPENDIX TABLE 19

Standard errors for persons who felt the threat or use of force against them by police was excessive, by demographic characteristics, 2008

Demographic characteristic	Percent who felt force was excessive
Total	4.2%
Sex	
Male	5.0%
Female	7.4
Race/Hispanic origin	
White	5.5%
Black/African American	8.8
Hispanic/Latino	10.7
Age	
16–29	5.7%
30 or older	5.7

APPENDIX TABLE 20

Standard errors for types of force used or threatened by police, 2008

Type of force police used or threatened	Percent of contacts with police in which—	
	Force was used or threatened	Excessive force was used or threatened
Pushed or grabbed	4.8%	5.4%
Kicked or hit	3.1	4.1
Sprayed chemical/pepper spray	2.0	2.4
Electroshock weapon (stun gun)	1.8	2.4
Pointed gun	4.2	5.0
Threatened force	4.1	4.0
Shouted at resident	4.1	4.7
Cursed at resident	4.6	5.5

APPENDIX TABLE 21

Standard errors for persons who felt police threat or use of force against them was excessive, by type of force used or threatened, 2008

Type of force used or threatened	Percent who felt force was excessive
Total	4.2%
Police applied force	4.8%
Police only threatened force	8.1
Police only shouted/cursed at resident	12.4

APPENDIX TABLE 22

Standard errors for conduct of residents during contacts with police in which force was used or threatened, 2008

Conduct of resident during contact involving force	Percent
Resident—	
Engaged in at least one type of behavior	4.2%
Argued with, cursed at, insulted, or verbally threatened the police	3.9
Disobeyed or interfered with officer(s)	3.0
Resisted being handcuffed, arrested, or searched	1.9
Tried to get away from police	1.6
Pushed, grabbed, or hit officer(s)	0.7

APPENDIX TABLE 23

Standard errors for reasons for contact with police in which force was used or threatened, 2008

Reason for most recent contact	Residents who had contact with police	Contacts with police in which force was used or threatened
Traffic-related contacts	0.9%	4.6%
Driver during traffic stop	0.9	4.2
Passenger during traffic stop	0.2	1.7
Traffic accident	0.5	2.5
Other contacts	0.8%	4.7%
Person reported crime/problem to police	0.7	2.6
Police provided assistance or service	0.3	2.1
Police investigating crime	0.3	3.8
Police suspected resident of wrongdoing	0.2	3.4
Other reason	0.3	2.3

APPENDIX TABLE 24

Standard errors for contacts with police in which force was used or threatened, by reason for contact, 2008

Reason for most recent contact	Percent of residents who experienced use/threat of force by police among those who had police contact
Total	0.1%
Traffic-related contacts	
Driver during traffic stop	0.2%
Passenger during traffic stop	0.9
Traffic accident	0.3
Other contacts	
Resident reported crime/problem to police	0.2%
Police provided assistance or service	0.5
Police investigating crime	1.1
Police suspected resident of wrongdoing	2.1
Other reason	0.6

APPENDIX TABLE 25

Standard errors for police actions during contacts with the public in which force was used or threatened, 2008

Police action during contact involving force	Percent
Searched resident	4.8%
Handcuffed resident	4.8
Arrested resident	4.6

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This report in PDF and in ASCII and its related statistical data and tables are available at the website: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2229>.